

# STATE OF NEW YORK

709

2023-2024 Regular Sessions

## IN ASSEMBLY

January 11, 2023

Introduced by M. of A. ROZIC, GALLAGHER, GONZALEZ-ROJAS, LAVINE, SIMON, EPSTEIN, BRONSON, WEPRIN, KELLES, SEAWRIGHT, JACKSON, BURDICK, GLICK, FORREST, LUPARDO, FAHY, CRUZ, GIBBS -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to enacting the "gender identity respect, dignity and safety act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "gender identity respect, dignity and safety act".

3 § 2. Section 137 of the correction law is amended by adding a new  
4 subdivision 7 to read as follows:

5 7. (a) Any incarcerated individual in a correctional facility who has  
6 a gender identity that differs from their assigned sex at birth, who has  
7 a diagnosis of gender dysphoria, who has a variation in their sex char-  
8 acteristics, or who self-identifies as transgender, gender nonconform-  
9 ing, nonbinary, or intersex shall:

10 (i) be addressed by correctional officers and staff in a manner that  
11 most closely aligns with such person's gender identity, including the  
12 name and pronouns specified by that person. If a person states that, in  
13 order to most closely align with their gender identity, they use a name  
14 that is different from the name listed on their government-issued iden-  
15 tification, they shall be addressed and referred to by their requested  
16 name;

17 (ii) have access to commissary items, clothing, personal property,  
18 programming and educational materials that most closely align with such  
19 person's gender identity;

20 (iii) have the right to be searched by a correctional officer or staff  
21 member of the gender most closely aligned with such person's gender  
22 identity, unless the incarcerated individual requests otherwise or under  
23 exigent circumstances;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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(iv) have the right to access all necessary and appropriate medical and mental health care, including routine and preventive medical care related to their sex characteristics, and affirming medical and mental health care as related to gender dysphoria or gender affirmation, which includes access to items that are used by individuals to affirm their gender identity, including those items associated with necessary and appropriate care after gender-affirming surgery;

(v) have the right not to be subjected to medical or mental health treatments or interventions which they do not want or to which they do not provide informed consent, including but not limited to surgical interventions to change their sex characteristics such as genital surgeries and sterilizations, and counseling that pathologizes or attempts to change their sexual orientation or gender identity; and

(vi) have the right to maintain the confidentiality of records or portions of records related to their incarceration that would reveal their sex characteristics or their transgender, gender nonconforming, nonbinary, or intersex status, or that would otherwise reveal that their gender identity differs from their assigned sex at birth, that they have a diagnosis of gender dysphoria, or that they have an intersex trait or variation in their sex characteristics. This provision does not prevent an incarcerated individual from consenting to the release of such material nor does it prevent the release of aggregate data, reports created pursuant to subdivision seven of section seventy-two-d and paragraph (e) of subdivision fourteen of section five hundred-b of this chapter, or records that have otherwise been de-identified and would not reveal the identity of a transgender, gender nonconforming, nonbinary, or intersex person without their consent.

(b) The department is prohibited from requiring documentation to confirm a person's gender identity, sex characteristics, or intersex status.

(c) All people shall receive notice in writing in a language and manner understandable to them about the requirements of this subdivision upon their admission to a correctional facility.

(d) The department shall provide annual training on provisions of this subdivision to all personnel.

(e) A violation of this subdivision is a violation of section forty-c of the civil rights law and section two hundred ninety-six of the executive law. Any individual aggrieved under this subdivision may initiate proceedings in a court of competent jurisdiction or in the New York state division of human rights seeking injunctive relief and damages, including reasonable attorney's fees.

§ 3. The correction law is amended by adding a new section 72-d to read as follows:

§ 72-d. Placement of incarcerated individuals based on gender identity. 1. An incarcerated individual who has a gender identity that differs from their assigned sex at birth, who has a diagnosis of gender dysphoria, who has a variation in their sex characteristics, or who self-identifies as transgender, gender nonconforming, nonbinary, or intersex pursuant to subdivision seven of section one hundred thirty-seven of this chapter shall be presumptively placed in a correctional facility with persons of the gender that most closely aligns with such person's self-attested gender identity unless the person opts out of such placement. Placement shall not be conditioned upon the incarcerated individual's history of, consent to, intention to seek, or refusal to undergo any treatment or intervention regarding their sex characteristics or gender identity, including those interventions described in subparagraph

1 (v) of paragraph (a) of subdivision seven of section one hundred thir-  
2 ty-seven of this chapter.

3 2. The incarcerated individual shall be permitted to leave such  
4 presumptive placement and transfer to a facility housing individuals of  
5 their assigned sex at birth at any time. Any such person who has opted  
6 out of such presumptive placement or who leaves such placement may again  
7 request placement in a correctional facility with persons of the gender  
8 that most closely aligns with their self-attested gender identity at any  
9 time.

10 3. Such presumptive placement may be overcome by a determination in  
11 writing by the commissioner or the commissioner's designee that there is  
12 clear and convincing evidence that such person presents a current danger  
13 of committing gender-based violence against others. A denial of presump-  
14 tive placement shall not be based on any discriminatory reasons, includ-  
15 ing but not limited to (a) the past or current sex characteristics,  
16 including chromosomes, genitals, gonads, other internal or external  
17 reproductive anatomy, secondary sex characteristics, or hormone function  
18 of the person whose housing placement is at issue, (b) the sexual orien-  
19 tation of the person whose housing placement is at issue, (c) the  
20 complaints of other incarcerated individuals who do not wish to be  
21 housed with a non-cisgender or intersex person due to that person's  
22 gender identity or sex characteristics, or (d) a factor present among  
23 other people in the presumptive housing unit or facility. A denial of  
24 presumptive placement shall be provided in writing to the affected  
25 person within two days of the department's decision. The department  
26 shall include in its written decision a description of all evidence  
27 supporting the department's decision and an explanation of why the  
28 evidence supports a determination that the person presents a current  
29 danger of committing gender-based violence against others. The depart-  
30 ment shall attach all supporting documentation to the written decision.  
31 The supporting documentation may be redacted as necessary to protect any  
32 person's privacy or safety. Unsubstantiated allegations are not clear  
33 and convincing evidence justifying a denial of presumptive placement or  
34 transfer out of presumptive placement. A person may grieve the denial.

35 4. The department is prohibited from denying a presumptive placement  
36 or transferring a person out of a presumptive placement as a form of  
37 discipline.

38 5. A transgender, gender nonconforming, nonbinary, or intersex incar-  
39 cerated individual experiencing harassment, violence or threats of  
40 violence due to their gender identity or sex characteristics shall not  
41 be placed in involuntary protective custody for more than fourteen days  
42 as a result of such harassment, violence or threats of violence, and  
43 shall be housed in a least-restrictive setting where they will be safe  
44 from such behavior.

45 6. All people shall receive notice in writing in a language and manner  
46 understandable to them about the requirements of this section upon their  
47 admission to a correctional facility. The department shall provide annu-  
48 al training on provisions of this section to all correctional personnel  
49 who are involved in the supervision or placement of incarcerated indi-  
50 viduals.

51 7. The department shall report annually to the governor, the temporary  
52 president of the senate, the minority leader of the senate, the speaker  
53 of the assembly, the minority leader of the assembly, the chairperson of  
54 the senate crime victims, crime and correction committee and the chair-  
55 person of the assembly correction committee on the number of transgen-  
56 der, gender nonconforming, nonbinary, or intersex incarcerated individ-

1 uals who (a) were denied presumptive placement in accordance with  
2 subdivision three of this section; (b) voluntarily opted out of presump-  
3 tive placement in accordance with subdivision one of this section; and  
4 (c) were kept in involuntary protective custody for longer than fourteen  
5 days. Reports required by this section shall be posted on the website  
6 maintained by the department. Reports may include de-identified individ-  
7 ual information in the aggregate, but shall not include personally iden-  
8 tifiable information.

9 8. A violation of this section is a violation of section forty-c of  
10 the civil rights law and section two hundred ninety-six of the executive  
11 law. Any individual aggrieved under this section may initiate  
12 proceedings in a court of competent jurisdiction or in the New York  
13 state division of human rights seeking injunctive relief and damages,  
14 including reasonable attorney's fees.

15 § 4. Section 500-b of the correction law is amended by adding a new  
16 subdivision 14 to read as follows:

17 14. (a) Notwithstanding the provisions of this section, any incarcer-  
18 ated individual determined to have a gender identity different from  
19 their assigned sex at birth, who has a diagnosis of gender dysphoria,  
20 who has a variation in their sex characteristics, or who self-identifies  
21 as transgender, gender nonconforming, nonbinary, or intersex pursuant to  
22 subdivision seven of section one hundred thirty-seven of this chapter  
23 shall be presumptively placed in a facility housing unit with incarcer-  
24 ated individuals of the gender most closely aligned with such person's  
25 self-attested gender identity unless the person opts out of such place-  
26 ment. Placement shall not be conditioned upon the incarcerated individ-  
27 ual's history of, consent to, intention to seek, or refusal to undergo  
28 any treatment or intervention regarding their sex characteristics or  
29 gender identity, including those interventions described in subparagraph  
30 (v) of paragraph (a) of subdivision seven of section one hundred thir-  
31 ty-seven of this chapter. The incarcerated individual shall be permit-  
32 ted to leave such placement and transfer to a unit housing individuals  
33 of their assigned sex at birth at any time. Any such person who has  
34 opted out of such presumptive placement or who leaves such placement may  
35 again request placement in a housing unit with persons of the gender  
36 that most closely aligns with their self-attested gender identity at any  
37 time. Such presumptive placement may be overcome by a determination in  
38 writing by the chief administrative officer or their designee that there  
39 is clear and convincing evidence that such person presents a current  
40 danger of committing gender-based violence against others. A denial of  
41 presumptive placement shall not be based on any discriminatory reasons,  
42 including but not limited to (1) the past or current sex character-  
43 istics, including chromosomes, genitals, gonads, other internal or  
44 external reproductive anatomy, secondary sex characteristics, or hormone  
45 function of the person whose housing placement is at issue, (2) the  
46 sexual orientation of the person whose housing placement is at issue,  
47 (3) the complaints of other incarcerated individuals who do not wish to  
48 be housed with a non-cisgender person due to that person's gender iden-  
49 tity, or sex characteristics, or (4) a factor present among other people  
50 in the presumptive housing unit or facility. A denial of presumptive  
51 placement shall be provided in writing to the affected person within two  
52 days of the decision by the chief administrative officer or their desig-  
53 nee. The chief administrative officer or their designee shall include  
54 in their written decision a description of all evidence supporting the  
55 decision and an explanation of why the evidence supports a determination  
56 that the person presents a current danger of committing gender-based

1 violence against others. The chief administrative officer or their  
2 designee shall attach all supporting documentation to the written deci-  
3 sion. The supporting documentation may be redacted as necessary to  
4 protect any person's privacy or safety. Unsubstantiated allegations are  
5 not clear and convincing evidence justifying a denial of presumptive  
6 placement or a transfer out of presumptive placement. A person may  
7 grieve the denial.

8 (b) The chief administrative officer or their designee is prohibited  
9 from denying a presumptive placement or transferring a person out of a  
10 presumptive placement as a form of discipline.

11 (c) A transgender, gender nonconforming, or nonbinary incarcerated  
12 individual experiencing harassment, violence or threats of violence due  
13 to their gender identity or sex characteristics shall not be placed in  
14 involuntary protective custody for more than fourteen days as a result  
15 of such harassment, violence or threats of violence, and shall be housed  
16 in a least-restrictive setting where they will be safe from such behav-  
17 ior.

18 (d) All people shall receive notice in writing in a language and  
19 manner understandable to them about the requirements of this subdivision  
20 upon their admission to a local correctional facility. The sheriff shall  
21 provide annual training on provisions of this subdivision to all correc-  
22 tional personnel who are involved in the supervision or placement of  
23 incarcerated individuals.

24 (e) The sheriff of each county shall report, in a form and manner  
25 prescribed by the commission, the number of transgender, gender noncon-  
26 forming, or nonbinary incarcerated individuals who (1) were denied  
27 presumptive placement in accordance with paragraph (a) of this subdivi-  
28 sion; (2) voluntarily opted out of presumptive placement in accordance  
29 with paragraph (a) of this subdivision; and (3) were kept in involuntary  
30 protective custody for longer than fourteen days. The commission shall  
31 include such information in its annual report pursuant to section  
32 forty-five of this chapter, but shall exclude identifying information  
33 from such report. Reports required by this provision shall be posted on  
34 the website maintained by the commission.

35 (f) A violation of this subdivision is a violation of section forty-c  
36 of the civil rights law and section two hundred ninety-six of the execu-  
37 tive law. Any individual aggrieved under this subdivision may initiate  
38 proceedings in a court of competent jurisdiction or in the New York  
39 state division of human rights seeking injunctive relief and damages,  
40 including reasonable attorney's fees.

41 § 5. Subdivision 1 of 500-k of the correction law, as separately  
42 amended by chapters 93 and 322 of the laws of 2021, is amended to read  
43 as follows:

44 1. Subdivisions five [~~and~~], six and seven of section one hundred thir-  
45 ty-seven of this chapter, except paragraphs (d) and (e) of subdivision  
46 six of such section, relating to the treatment of incarcerated individ-  
47 uals in state correctional facilities are applicable to incarcerated  
48 individuals confined in county jails; except that the report required by  
49 paragraph (f) of subdivision six of such section shall be made to a  
50 person designated to receive such report in the rules and regulations of  
51 the state commission of correction, or in any county or city where there  
52 is a department of correction, to the head of such department.

53 § 6. This act shall take effect immediately; provided, however, that  
54 the amendments to section 500-b of the correction law made by section  
55 four of this act shall not affect the repeal of such section and shall  
56 be deemed repealed therewith.