

STATE OF NEW YORK

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

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

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

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

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

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

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

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

44 § 72-d. Placement of incarcerated individuals based on gender identi-
45 ty. 1. An incarcerated individual who has a gender identity that differs
46 from their assigned sex at birth, who has a diagnosis of gender dyspho-
47 ria, who has a variation in their sex characteristics, or who self-iden-
48 tifies as transgender, gender nonconforming, nonbinary, or intersex
49 pursuant to subdivision seven of section one hundred thirty-seven of
50 this chapter shall be presumptively placed in a correctional facility
51 with persons of the gender that most closely aligns with such person's
52 self-attested gender identity unless the person opts out of such place-
53 ment. Placement shall not be conditioned upon the incarcerated individ-
54 ual's history of, consent to, intention to seek, or refusal to undergo
55 any treatment or intervention regarding their sex characteristics or
56 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.