

STATE OF NEW YORK

2860

2023-2024 Regular Sessions

IN SENATE

January 25, 2023

Introduced by Sens. SALAZAR, BRISPORT, BROUK, HOYLMAN-SIGAL, JACKSON, MYRIE, RIVERA, SEPULVEDA, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and 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 or other
6 institution who has a gender identity that differs from their assigned
7 sex at birth, who has a diagnosis of gender dysphoria, who has a vari-
8 ation in their sex characteristics, or who self-identifies as transgen-
9 der, gender nonconforming, 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 (g) 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 or other institution.

(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 or other institution 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

1 described in subparagraph (v) of paragraph (a) of subdivision seven of
2 section one hundred thirty-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. After being
24 notified that a transgender, gender nonconforming, nonbinary, or inter-
25 sex person is seeking presumptive placement, the department shall have
26 two days to make a determination pursuant to this subdivision. A denial
27 of presumptive placement shall be provided in writing to the affected
28 person within two days of the department's decision. The department
29 shall include in its written decision a description of all evidence
30 supporting the department's decision and an explanation of why the
31 evidence supports a determination that the person presents a current
32 danger of committing gender-based violence against others. The depart-
33 ment shall attach all supporting documentation to the written decision.
34 The supporting documentation may be redacted as necessary to protect any
35 person's privacy or safety. Unsubstantiated allegations are not clear
36 and convincing evidence justifying a denial of presumptive placement or
37 transfer out of presumptive placement.

38 4. The department's decision pursuant to subdivision three of this
39 section is final and shall not be grievable.

40 5. An incarcerated individual denied presumptive placement pursuant to
41 subdivision three of this section may re-apply for presumptive housing
42 at any time when there is information that was not previously submitted
43 to the commissioner or the commissioner's designee or when previous
44 information was improperly weighed by the commissioner or the commis-
45 sioner's designee. Such application shall be subject to subdivision
46 three of this section.

47 6. The department is prohibited from denying a presumptive placement
48 or transferring a person out of a presumptive placement as a form of
49 discipline.

50 7. A transgender, gender nonconforming, nonbinary, or intersex incar-
51 cerated individual experiencing harassment, violence or threats of
52 violence due to their gender identity or sex characteristics shall not
53 be placed in involuntary protective custody for more than fourteen days
54 as a result of such harassment, violence or threats of violence, and
55 shall be housed in a least-restrictive setting where they will be safe
56 from such behavior.

1 8. All people shall receive notice in writing in a language and manner
2 understandable to them about the requirements of this section upon their
3 admission to a correctional facility or other institution. The depart-
4 ment shall provide annual training on provisions of this section to all
5 correctional personnel who are involved in the supervision or placement
6 of incarcerated individuals.

7 9. The department shall report annually to the governor, the temporary
8 president of the senate, the minority leader of the senate, the speaker
9 of the assembly, the minority leader of the assembly, the chairperson of
10 the senate crime victims, crime and correction committee and the chair-
11 person of the assembly correction committee on the number of transgen-
12 der, gender nonconforming, nonbinary, or intersex incarcerated individ-
13 uals who (a) were denied presumptive placement in accordance with
14 subdivision three of this section; (b) voluntarily opted out of presump-
15 tive placement in accordance with subdivision one of this section; and
16 (c) were kept in involuntary protective custody for longer than fourteen
17 days. Reports required by this section shall be posted on the website
18 maintained by the department. Reports may include de-identified individ-
19 ual information in the aggregate, but shall not include personally iden-
20 tifiable information.

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

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

29 14. (a) Notwithstanding the provisions of this section, any incarcer-
30 ated individual determined to have a gender identity different from
31 their assigned sex at birth, who has a diagnosis of gender dysphoria,
32 who has a variation in their sex characteristics, or who self-identifies
33 as transgender, gender nonconforming, nonbinary, or intersex pursuant to
34 subdivision seven of section one hundred thirty-seven of this chapter
35 shall be presumptively placed in a facility housing unit with incarcer-
36 ated individuals of the gender most closely aligned with such person's
37 self-attested gender identity unless the person opts out of such place-
38 ment. Placement shall not be conditioned upon the incarcerated individ-
39 ual's history of, consent to, intention to seek, or refusal to undergo
40 any treatment or intervention regarding their sex characteristics or
41 gender identity, including those interventions described in subparagraph
42 (v) of paragraph (a) of subdivision seven of section one hundred thir-
43 ty-seven of this chapter. The incarcerated individual shall be permit-
44 ted to leave such placement and transfer to a unit housing individuals
45 of their assigned sex at birth at any time. Any such person who has
46 opted out of such presumptive placement or who leaves such placement may
47 again request placement in a housing unit with persons of the gender
48 that most closely aligns with their self-attested gender identity at any
49 time. Such presumptive placement may be overcome by a determination in
50 writing by the chief administrative officer or their designee that there
51 is clear and convincing evidence that such person presents a current
52 danger of committing gender-based violence against others. A denial of
53 presumptive placement shall not be based on any discriminatory reasons,
54 including but not limited to (1) the past or current sex character-
55 istics, including chromosomes, genitals, gonads, other internal or
56 external reproductive anatomy, secondary sex characteristics, or hormone

1 function of the person whose housing placement is at issue, (2) the
2 sexual orientation of the person whose housing placement is at issue,
3 (3) the complaints of other incarcerated individuals who do not wish to
4 be housed with a non-cisgender or intersex person due to that person's
5 gender identity, or sex characteristics, or (4) a factor present among
6 other people in the presumptive housing unit or facility. After being
7 notified that a transgender, gender nonconforming, nonbinary, or inter-
8 sex person is seeking presumptive placement, the chief administrative
9 officer or their designee shall have two days to make a determination
10 pursuant to this subdivision. A denial of presumptive placement shall
11 be provided in writing to the affected person within two days of the
12 decision by the chief administrative officer or their designee. The
13 chief administrative officer or their designee shall include in their
14 written decision a description of all evidence supporting the decision
15 and an explanation of why the evidence supports a determination that the
16 person presents a current danger of committing gender-based violence
17 against others. The chief administrative officer or their designee shall
18 attach all supporting documentation to the written decision. The
19 supporting documentation may be redacted as necessary to protect any
20 person's privacy or safety. Unsubstantiated allegations are not clear
21 and convincing evidence justifying a denial of presumptive placement or
22 a transfer out of presumptive placement.

23 (b) The chief administrative officer's or their designee's decision
24 pursuant to paragraph (a) of this subdivision is final and not grievable.
25

26 (c) An incarcerated individual denied presumptive placement pursuant
27 to paragraph (a) of this subdivision may re-apply for presumptive hous-
28 ing at any time when there is information that was not previously
29 submitted to the chief administrative officer or their designee or when
30 previous information was improperly weighed by the chief administrative
31 officer or their designee. Such application is subject to paragraph (a)
32 of this subdivision.

33 (d) The chief administrative officer or their designee is prohibited
34 from denying a presumptive placement or transferring a person out of a
35 presumptive placement as a form of discipline.

36 (e) A transgender, gender nonconforming, or nonbinary incarcerated
37 individual experiencing harassment, violence or threats of violence due
38 to their gender identity or sex characteristics shall not be placed in
39 involuntary protective custody for more than fourteen days as a result
40 of such harassment, violence or threats of violence, and shall be housed
41 in a least-restrictive setting where they will be safe from such behav-
42 ior.

43 (f) All people shall receive notice in writing in a language and
44 manner understandable to them about the requirements of this subdivision
45 upon their admission to a local correctional facility. The sheriff shall
46 provide annual training on provisions of this subdivision to all correc-
47 tional personnel who are involved in the supervision or placement of
48 incarcerated individuals.

49 (g) The sheriff of each county shall report, in a form and manner
50 prescribed by the commission, the number of transgender, gender noncon-
51 forming, nonbinary, or intersex incarcerated individuals who (1) were
52 denied presumptive placement in accordance with paragraph (a) of this
53 subdivision; (2) voluntarily opted out of presumptive placement in
54 accordance with paragraph (a) of this subdivision; and (3) were kept in
55 involuntary protective custody for longer than fourteen days. The
56 commission shall include such information in its annual report pursuant

1 to section forty-five of this chapter, but shall exclude identifying
2 information from such report. Reports required by this provision shall
3 be posted on the website maintained by the commission.

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

10 § 5. Section 500-b of the correction law is amended by adding a new
11 subdivision 15 to read as follows:

12 15. Pursuant to its authority under section forty-five of this chap-
13 ter, the commission in collaboration with the department shall promul-
14 gate rules and regulations to ensure that local correctional authorities
15 timely notify the department when a transgender, gender nonconforming,
16 nonbinary, or intersex person is being transferred into the custody of
17 the department. The rules and regulations shall ensure the department
18 makes necessary arrangements to ensure gender-aligned housing, unless
19 the impacted individual opts out of such housing, immediately upon
20 transfer to department custody.

21 § 6. Subdivision 1 of 500-k of the correction law, as separately
22 amended by chapters 93 and 322 of the laws of 2021, is amended to read
23 as follows:

24 1. Subdivisions five [~~and~~], six and seven of section one hundred thir-
25 ty-seven of this chapter, except paragraphs (d) and (e) of subdivision
26 six of such section, relating to the treatment of incarcerated individ-
27 uals in state correctional facilities are applicable to incarcerated
28 individuals confined in county jails; except that the report required by
29 paragraph (f) of subdivision six of such section shall be made to a
30 person designated to receive such report in the rules and regulations of
31 the state commission of correction, or in any county or city where there
32 is a department of correction, to the head of such department.

33 § 7. This act shall take effect immediately; provided, however, that
34 the amendments to section 500-b of the correction law made by sections
35 four and five of this act shall not affect the repeal of such section
36 and shall be deemed repealed therewith.