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:

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

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

7. (a) Any incarcerated individual in a correctional facility or other institution 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 shall:

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

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

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

described in subparagraph (v) of paragraph (a) of subdivision seven of section one hundred thirty-seven of this chapter.

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

3. Such presumptive placement may be overcome by a determination in writing by the commissioner or the commissioner's designee that there is clear and convincing evidence that such person presents a current danger of committing gender-based violence against others. A denial of presumptive placement shall not be based on any discriminatory reasons, including but not limited to (a) the past or current sex characteristics, including chromosomes, genitals, gonads, other internal or external reproductive anatomy, secondary sex characteristics, or hormone function of the person whose housing placement is at issue, (b) the sexual orientation of the person whose housing placement is at issue, (c) the complaints of other incarcerated individuals who do not wish to be housed with a non-cisgender or intersex person due to that person's gender identity or sex characteristics, or (d) a factor present among other people in the presumptive housing unit or facility. After being notified that a transgender, gender nonconforming, nonbinary, or intersex person is seeking presumptive placement, the department shall have two days to make a determination pursuant to this subdivision. A denial of presumptive placement shall be provided in writing to the affected person within two days of the department's decision. The department shall include in its written decision a description of all evidence supporting the department's decision and an explanation of why the evidence supports a determination that the person presents a current danger of committing gender-based violence against others. The department shall attach all supporting documentation to the written decision. The supporting documentation may be redacted as necessary to protect any person's privacy or safety. Unsubstantiated allegations are not clear and convincing evidence justifying a denial of presumptive placement or transfer out of presumptive placement.

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

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

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

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

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

9. The department shall report annually to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the chairperson of the senate crime victims, crime and correction committee and the chairperson of the assembly correction committee on the number of transgender, gender nonconforming, nonbinary, or intersex incarcerated individuals who (a) were denied presumptive placement in accordance with subdivision three of this section; (b) voluntarily opted out of presumptive placement in accordance with subdivision one of this section; and (c) were kept in involuntary protective custody for longer than fourteen days. Reports required by this section shall be posted on the website maintained by the department. Reports may include de-identified individual information in the aggregate, but shall not include personally identifiable information.

10. A violation of this section 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 section 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.

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

14. (a) Notwithstanding the provisions of this section, any incarcerated individual determined to have a gender identity different 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 facility housing unit with incarcerated individuals of the gender most closely aligned 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 (v) of paragraph (a) of subdivision seven of section one hundred thirty-seven of this chapter. The incarcerated individual shall be permitted to leave such placement and transfer to a unit housing individuals of their assigned sex at birth at any time. Any such person who has opted out of such presumptive placement or who leaves such placement may again request placement in a housing unit with persons of the gender that most closely aligns with their self-attested gender identity at any time. Such presumptive placement may be overcome by a determination in writing by the chief administrative officer or their designee that there is clear and convincing evidence that such person presents a current danger of committing gender-based violence against others. A denial of presumptive placement shall not be based on any discriminatory reasons, including but not limited to (1) the past or current sex characteristics, including chromosomes, genitals, gonads, other internal or external reproductive anatomy, secondary sex characteristics, or hormone

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

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

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

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

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

(f) 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 local correctional facility. The sheriff shall provide annual training on provisions of this subdivision to all correctional personnel who are involved in the supervision or placement of incarcerated individuals.

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

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

(h) 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.

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

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

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

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

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