

STATE OF NEW YORK

709--A

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, BORES -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 identity, unless the incarcerated individual requests otherwise or under
2 exigent circumstances;

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

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

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

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

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

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

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

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

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

1 refusal to undergo any treatment or intervention regarding their sex
2 characteristics or gender identity, including those interventions
3 described in subparagraph (v) of paragraph (a) of subdivision seven of
4 section one hundred thirty-seven of this chapter.

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

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

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

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

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

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

1 shall be housed in a least-restrictive setting where they will be safe
2 from such behavior.

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

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

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

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

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

istics, 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

1 involuntary protective custody for longer than fourteen days. The
2 commission shall include such information in its annual report pursuant
3 to section forty-five of this chapter, but shall exclude identifying
4 information from such report. Reports required by this provision shall
5 be posted on the website maintained by the commission.

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

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

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

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

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

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