

The Gender Identity Respect, Dignity, and Safety Act,

S6677 (Salazar)/A7001-A (Rozic)

Legislation To Protect Gender-Expansive People Who Are Incarcerated

Background

Transgender, gender-nonconforming, non-binary, and intersex (gender-expansive) people who are incarcerated in New York State prisons and county jails face daily humiliation including harassment, misgendering, transphobic comments, horrific physical and sexual abuse, and assaults by both staff and other incarcerated people. They receive inadequate medical and mental health care and may fear reprisals for using legal remedies to address underlying problems.

Gender-expansive New Yorkers disproportionately face food, shelter, and employment insecurity, race-based and gender-based discrimination, and immigration status issues. They are disproportionately likely to be incarcerated due to criminalization and discriminatory policing. According to the landmark National Center for Transgender Equality 2015 U.S. Transgender Survey, 2% of respondents had been incarcerated in the past year, more than twice the rate in the general population (0.87%). The rate was several times higher among transgender people of color. Nearly one in ten Black transgender women was incarcerated in the previous year, ten times the rate in the general population.

From the Survey's Executive Summary: "Respondents who were held in jail, prison, or juvenile detention in the past year faced high rates of physical and sexual assault by facility staff and other inmates. In the past year, nearly one-quarter (23%) were physically assaulted by staff or other inmates, and one in five (20%) were sexually assaulted. Respondents were over five times more likely to be sexually assaulted by facility staff than the U.S. population in jails and prisons, and over nine times more likely to be sexually assaulted by other inmates." Sexual abuse behind bars can lead to post-traumatic stress disorder, depression, substance abuse, HIV, and other infections.

Many New York facilities still house gender-expansive people strictly according to their genital anatomy. If jail/prison officials realize the danger of housing gender-expansive people according to their sex assigned at birth, they will instead place them in "protective custody," which has similar harmful restrictions to solitary confinement. These individuals are given little or no activity or human contact, which can cause serious psychological harm. Solitary confinement also increases the risk of assault by correction officers.

Some facilities have denied access to gender-appropriate clothing or grooming items and punish gender-expansive people for attempting to express their gender identities. Many New York facilities do not have policies for providing hormone therapy and other transition-related care so those who are already receiving hormone therapy may be abruptly taken off the needed treatment.

There is medical consensus that lack of proper medical and mental health care can lead to clinical distress, feelings of isolation, self-surgery or self-harm, suicidal ideation, suicide, and death. Want of support and constant fear can have lasting and harmful effects on a person's

physical and emotional well-being, and as a result, gender-expansive people leave custody with substantially more damage to their physical and mental health than when they entered.

When this legislation is passed:

- Prisons and jails will house people based on their gender identity unless the person opts out of that placement.
- Prison and jail officials will be prohibited from denying a person's preferred housing based on unfair and discriminatory reasons, such as (i) anatomy or genitalia, (ii) sexual orientation, or (iii) the complaints of other incarcerated people.
- Prison and jail officials will be prohibited from denying preferred placements or transferring people out of preferred placements as a form of discipline.
- Prison and jail officers and staff will be required to use a person's name and pronouns regardless of what name or gender marker is on their official paperwork.
- Gender-expansive people will have access to commissary items, clothing, and programming that most closely align with their gender identities.
- Gender-expansive people will have the right to be searched by officers most closely aligned with their gender identities unless they request otherwise.
- Consistent with existing law, gender-expansive people will have the right to medical care and treatment, including gender-affirming surgeries.
- Involuntary protective custody will be limited in duration.
- Privacy policies and practices will be strengthened for gender-expansive people who are incarcerated.

New York State Must Follow Other Jurisdictions and Protect Gender-Expansive New Yorkers who are Incarcerated

- In August 2020, as a result of a lawsuit, Steuben County, New York, adopted one of the strongest jail or prison policies in the country. This settlement was endorsed by the New York State Sheriffs' Association. The protections for gender-expansive people in that policy serve as the model for those in the Gender Identity Respect, Dignity, and Safety Act.
- In September 2020, California enacted the Transgender Respect, Agency, and Dignity Act, landmark legislation that will allow incarcerated transgender, non-binary, and intersex people to be housed and searched in a manner consistent with their gender identities.
- In April 2021, the United States Justice Department provided a statement of interest in litigation brought by an incarcerated transgender woman and explained that failure to provide transgender people with a safe environment and adequate medical care is cruel and unusual punishment under the Eighth Amendment.
- In June 2021, as a result of a lawsuit, the New Jersey Department of Corrections, agreed to adopt a policy that requires New Jersey state prisons to house transgender people according to their gender identities.
- Connecticut, Massachusetts, and New York City require that housing decisions be based on a person's gender identity. These jurisdictions also require that searches be conducted by a staff person of the gender of the person being searched unless the person being searched requests otherwise or there are exigent circumstances.