

ASSEMBLY, No. 5768

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 18, 2021

Sponsored by:

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District 29 (Essex)

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SYNOPSIS

Requires DOC to assign transgender inmate to State correctional facility based on inmate's gender identity and use inmate's preferred gender pronoun.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning the confinement of transgender inmates in State
2 correctional facilities and supplementing Title 30 of the Revised
3 Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. a. During initial classification, Department of Corrections
9 staff shall ask each inmate:

10 (1) to identify the inmate's gender identity or expression as
11 male, female, or non-binary;

12 (2) whether the inmate identifies as transgender, non-binary, or
13 intersex; and

14 (3) the individual's preferred gender pronoun.

15 An inmate who refuses to answer these questions shall not be
16 disciplined.

17 b. Each inmate shall be assigned to a State correctional facility
18 based on the inmate's gender identity or expression, regardless of
19 the gender that the individual was assigned at birth or the inmate's
20 anatomical characteristics. An inmate who is non-binary shall be
21 assigned to a facility based on the inmate's stated preference.

22 c. An inmate may, at any time, inform a Department of
23 Corrections staff member of the inmate's gender identity or
24 expression and preferred gender pronoun. The Department of
25 Corrections staff member shall follow procedures to be established
26 by the Commissioner of Corrections for ensuring that the inmate is
27 assigned, or reassigned if necessary, to a State correctional facility
28 in accordance with subsection b. of this section.

29 As used in this section:

30 "Gender expression" means a person's gender-related appearance
31 and behavior.

32 "Gender identity" means a person's internal, deeply held
33 knowledge of their own gender, regardless of the gender the person
34 was assigned at birth.

35 "Intersex" means a person whose biological sex characteristics
36 may not fit within the medical definitions of male and female and
37 may include, but shall not be limited to, internal reproductive
38 organs, external genitalia, and sex chromosomes.

39 "Non-binary" refers to a person whose gender is not exclusively
40 male or female and may include those with more than one gender or
41 with no gender.

42 "Transgender" refers to a person whose gender identity or gender
43 expression differs from societal expectations associated with the
44 gender the person was assigned at birth.

45
46 2. Department of Corrections staff members, volunteers, and
47 contractors shall refer to an inmate using the inmate's preferred
48 gender pronoun. A staff member, volunteer, or contractor who

1 consistently fails to use the inmate's preferred gender pronoun shall
2 be subject to discipline in accordance with relevant rules and
3 regulations established pursuant to section 3 of P.L. ,
4 c. (C.) (pending before the Legislature as this bill).

5
6 3. The Commissioner of Corrections, in consultation with the
7 Commissioner of Human Services, shall promulgate rules and
8 regulations, pursuant to the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
10 purposes of this act.

11
12 4. This act shall take effect immediately.

13
14
15 STATEMENT

16
17 This bill requires the Department of Corrections (DOC) to assign
18 transgender inmates to a State correctional facility based on the
19 inmate's gender identity or expression and refer to an inmate using
20 the inmate's preferred gender pronoun.

21 This bill requires DOC staff, during initial classification, to ask
22 each inmate: to identify the inmate's gender identity or expression
23 as male, female, or non-binary; whether the inmate identifies as
24 transgender, non-binary, or intersex; and the individual's preferred
25 gender pronoun. An inmate who refuses to answer these questions
26 is not to be disciplined. This bill requires DOC staff members,
27 volunteers, and contractors to refer to an inmate using the inmate's
28 preferred gender pronoun. A staff member, volunteer, or contractor
29 who consistently fails to use the inmate's preferred gender pronoun
30 shall be subject to discipline in accordance with relevant rules and
31 regulations established under the bill.

32 Under current law, the Department of Corrections (DOC)
33 considers gender identity-based housing requests on a case by case
34 basis. Each request is reviewed by a committee, which considers a
35 number of factors including, but not limited to: medical and mental
36 health evaluations that address an inmate's transgender, intersex, or
37 gender dysphoric status along with a recommendation for suitability
38 to house the inmate in a male correctional facility, female
39 correctional facility, or both types of correctional facilities; the
40 needs expressed by the inmate, including the inmate's own views
41 with respect to safety and the inmate's expressed gender identity;
42 security threat level information; the assigned custody level;
43 maximum expiration date and parole eligibility dates; prosecutor
44 notification requirements; the inmate's criminal history,
45 disciplinary history, and likelihood of perpetrating abuse; types of
46 facilities and location; inmate population; staffing issues; physical
47 plant issues; programming requirements and availability; sentencing
48 and other legal requirements; institutional adjustment; and any other

1 relevant factors. Once the gender identity transfer request has been
2 reviewed, the committee will make a recommendation regarding
3 gender identity based housing. The correctional facility
4 institutional classification committee will consider the
5 recommendation when determining the inmate's housing
6 assignment.

7 This bill provides that an inmate who identifies as transgender is
8 required to be assigned to a State correctional facility based on the
9 inmate's gender identity or expression, regardless of the gender that
10 the individual was assigned at birth or the inmate's anatomical
11 characteristics. An inmate who is non-binary is to be assigned to a
12 facility based on the inmate's stated preference.

13 Under the bill, "gender expression" means a person's gender-
14 related appearance and behavior; "gender identity" means a
15 person's internal, deeply held knowledge of their own gender,
16 regardless of the gender the person was assigned at birth; "intersex"
17 means a person whose biological sex characteristics may not fit
18 within the medical definitions of male and female and may include,
19 but shall not be limited to, internal reproductive organs, external
20 genitalia, and sex chromosomes; "non-binary" refers to a person
21 whose gender is not exclusively male or female and may include
22 those with more than one gender or with no gender; and
23 "transgender" refers to a person whose gender identity or gender
24 expression differs from societal expectations associated with the
25 gender the person was assigned at birth.