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SENATE BILL

No. 132

Introduced by Senator Wiener
(Coauthor: Senator Galgiani)
(Coauthor: Assembly Member Mark Stone)

January 14, 2019

An act to add Sections 2605 and 2606 to the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 132, as amended, Wiener. Corrections.

Existing law establishes the state prisons under the jurisdiction of the Department of Corrections and Rehabilitation. Existing law authorizes a person sentenced to imprisonment in the state prison or a county jail for a felony to be, during the period of confinement, deprived of those rights, and only those rights, as is reasonably related to legitimate penological interests.

This bill ~~would, commencing January 1, 2021, would~~ require the Department of Corrections and Rehabilitation to, during initial intake and classification, *and in a private setting*, ask each individual entering into the custody of the department to specify the individual's gender identity and sex assigned at birth, ~~and, if the individual's gender identity is different from their sex assigned at birth, whether the individual~~

*identifies as transgender, nonbinary, or intersex, and their gender pronoun and honorific. The bill would prohibit the department from disciplining a person for refusing to answer or not disclosing complete information in response to these questions. The bill would authorize a person under the jurisdiction of the department to update this information. The bill would prohibit ~~staff and contractors~~ *staff, contractors, and volunteers of the department* from failing to consistently use the gender pronoun and honorific an individual has specified in verbal and written communications with or regarding that individual that involve the use of a pronoun or honorific.*

The bill would require the department, for a person who ~~has a gender identity that differs from their sex assigned at birth,~~ *is transgender, nonbinary, or intersex* to only conduct a search of that person according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual’s search preference. The bill would additionally require the department to house the person in a correctional facility designated for men or women based on the individual’s preference, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as
- 2 “The Transgender Respect, Agency, and Dignity Act.”
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) *The term “transgender” is broad and inclusive of all gender*
- 5 *identities different from the gender a person was assigned at birth*
- 6 *including, but not limited to, transsexual, two-spirit, and māhū.*
- 7 *“Nonbinary” is an inclusive term used to describe individuals who*
- 8 *may experience a gender identity that is neither exclusively male*
- 9 *nor female or is in between or beyond both of those genders,*
- 10 *including, but not limited to, gender fluid, agender or without*
- 11 *gender, third gender, genderqueer, gender variant, and gender*
- 12 *nonconforming. The term “intersex” is a broad and inclusive term*
- 13 *referring to people whose anatomy, hormones, or chromosomes*
- 14 *fall outside the strict male and female binary.*
- 15 (a)
- 16 (b) The United States Supreme Court recognized that
- 17 incarcerated transgender individuals are particularly vulnerable to

1 sexual abuse and sexual harassment and that disregarding the
2 known risks to a transgender woman constitutes deliberate
3 indifference in violation of the federal constitution.

4 ~~(b)~~

5 (c) In California, a study of the state’s prisons found that the
6 rate of sexual assault for transgender women in those prisons was
7 13 times higher than for men in the same prisons.

8 *(d) Transgender men in California prisons also report high*
9 *rates of sexual and gender-based violence, harassment, and*
10 *discrimination.*

11 ~~(e)~~

12 (e) Official data collected by the federal Bureau of Justice
13 Statistics confirm that, nationwide, incarcerated transgender
14 individuals experience exceptionally high rates of sexual
15 victimization. In a 2011–12 survey, almost 40 percent of
16 incarcerated transgender individuals reported experiencing sexual
17 victimization while incarcerated compared to 4 percent of all
18 incarcerated individuals.

19 ~~(f)~~

20 (f) A congressional study found that instances of prison rape
21 often go unreported, and that “most prison staff are not adequately
22 trained or prepared to prevent, report or treat inmate sexual
23 assaults.”

24 ~~(g)~~

25 (g) Forty percent of transgender women respondents reported
26 harassment from other incarcerated individuals.

27 ~~(h)~~

28 (h) Thirty-eight percent reported being harassed by correctional
29 officers or staff.

30 ~~(i)~~

31 (i) Correctional officers and other incarcerated people
32 predominantly refer to transgender women as men, using masculine
33 ~~pronouns~~: *pronouns, and transgender men as women, using*
34 *feminine pronouns.*

35 (j) *Gender transition is a deeply personal experience that may*
36 *involve some combination of social transition, legal transition,*
37 *medical transition, or none of these. Some transgender, nonbinary,*
38 *and intersex people experience gender dysphoria that requires*
39 *medical treatment, while others do not experience gender*
40 *dysphoria. Due to safety concerns, inconsistent medical and mental*

1 *health care, insufficient education and resources, and other factors,*
 2 *incarceration often serves as a barrier to gender transition.*
 3 *Regardless of the ways in which a person chooses or is able to*
 4 *express their gender or to take medical, social, or legal transition*
 5 *steps, they deserve respect, agency, and dignity.*

6 SEC. 3. Section 2605 is added to the Penal Code, to read:

7 2605. (a) During the initial intake and classification process,
 8 *and in a private setting,* the Department of Corrections and
 9 Rehabilitation shall ask each individual entering into the custody
 10 of the department to specify ~~the individual's:~~ *all of the following:*

11 (1) ~~Gender~~ *The individual's gender* identity of female, male, or
 12 ~~nonbinary, and sex assigned at birth.~~ *nonbinary.*

13 (2) ~~Gender pronoun and honorific if the individual's gender~~
 14 ~~identity is different from their sex assigned at birth.~~

15 (2) *Whether the individual identifies as transgender, nonbinary,*
 16 *or intersex.*

17 (3) *The individual's gender pronoun and honorific.*

18 (b) A person incarcerated by the department may not be
 19 disciplined for refusing to answer, or for not disclosing complete
 20 information in response to, the questions pursuant to this section.

21 (c) At any time, a person under the jurisdiction of the department
 22 may inform designated facility staff of their gender identity, and
 23 designated facility staff shall promptly repeat the process of
 24 offering the individual an opportunity to specify the gender
 25 pronoun and honorific most appropriate for staff to use in reference
 26 to that individual, in accordance with subdivision (a).

27 (d) ~~Staff and contractors~~ *Staff, contractors, and volunteers* of
 28 the department shall not consistently fail to use the gender pronoun
 29 and honorific an individual has specified in all verbal and written
 30 communications with or regarding the individual that involve use
 31 of a pronoun and honorific.

32 (e) For the purposes of this section, the following terms have
 33 the following meanings:

34 (1) "Gender pronoun" means a third-person singular personal
 35 pronoun, such as "he," "she," or "they."

36 (2) "Honorific" means a form of respectful address typically
 37 combined with an individual's surname.

38 (f) ~~This section shall become operative on January 1, 2021.~~

39 SEC. 4. Section 2606 is added to the Penal Code, to read:

1 2606. (a) An individual incarcerated by the Department of
2 Corrections and Rehabilitation who ~~has a gender identity that~~
3 ~~differs from their sex assigned at birth, with or without a diagnosis~~
4 ~~of gender dysphoria or any other physical or mental health~~
5 ~~diagnosis, and regardless of anatomy, shall be: *is transgender,*~~
6 ~~*nonbinary, or intersex, regardless of anatomy, shall:*~~

7 (1) ~~Addressed~~ *Be addressed* in a manner consistent with the
8 incarcerated individual’s gender identity.

9 (2) If lawfully searched, *be* searched according to the search
10 policy for their gender identity or according to the gender
11 designation of the facility where they are housed, based on the
12 individual’s search preference. If the incarcerated individual’s
13 preference or gender identity cannot be determined, the search
14 shall be conducted according to the gender designation of the
15 facility where they are housed.

16 (3) ~~Housed~~ *Be housed* at a correctional facility designated for
17 men or women based on the individual’s ~~preference.~~ *preference,*
18 *including, if eligible, at a residential program for individuals under*
19 *the jurisdiction of the department. These programs include, but*
20 *are not limited to, the Alternative Custody Program, Custody to*
21 *Community Transitional Reentry Program, Male Community*
22 *Reentry Program, or Community Prisoner Mother Program.*

23 (4) Have their perception of health and safety given serious
24 consideration in any bed assignment, placement, or programming
25 decision within the facility in which they are housed pursuant to
26 paragraph (3) of subdivision (a) or subdivision (b), ~~as consistent~~
27 ~~with the federal Prison Rape Elimination Act.~~ *including, but not*
28 *limited to, granting single-cell status, housing the individual with*
29 *another incarcerated person of their choice, or removing the*
30 *individual or individuals who pose a threat from any location*
31 *where they may have access to the individual who has expressed*
32 *a safety concern. If, pursuant to this paragraph, the individual is*
33 *not granted an alternative based on their perception of health and*
34 *safety, the department shall document the reasons for that denial*
35 *and share them with the individual.*

36 (b) If the Department of Corrections and Rehabilitation has
37 management or security concerns with an incarcerated individual’s
38 search preference pursuant to paragraph (2) of subdivision (a) or
39 preferred housing placement pursuant to paragraph (3) of
40 subdivision (a), the Secretary of the Department of Corrections

1 and Rehabilitation, or the secretary’s designee, shall, before
2 denying a search preference or housing the incarcerated individual
3 in a manner contrary to the person’s preferred housing placement,
4 certify in writing a specific and articulable basis why the
5 department is unable to accommodate that search or housing
6 preference.

7 (c) The Department of Corrections and Rehabilitation shall not
8 deny a search preference pursuant to paragraph (2) of subdivision
9 (a) or a housing placement pursuant to paragraph (3) of subdivision
10 (a) based on any discriminatory reason, including, but not limited
11 to, any of the following:

- 12 (1) The anatomy, including, but not limited to, the genitalia or
13 other physical characteristics, of the incarcerated person.
- 14 (2) The sexual orientation of the incarcerated person.
- 15 (3) For a denial of a housing preference pursuant to paragraph
16 (3) of subdivision (a), a factor present among other people
17 incarcerated at the preferred type of facility.

18 (d) The incarcerated individual shall receive a copy of the
19 written statement described in subdivision (b) and, within a
20 reasonable time following the individual’s receipt of the statement,
21 the Department of Corrections and Rehabilitation shall provide
22 the individual with a meaningful opportunity to verbally raise any
23 objections to that denial, and have those objections documented.

24 (e) If an incarcerated individual raises concerns for their health
25 or safety at any time, their housing and placement shall be
26 reassessed.

27 ~~(f) This section shall become operative on January 1, 2021.~~