

# Here's how NY's transgender protections will work

**VOTE UP** Jon Campbell, JonCampbellGAN 12:11 p.m. EDT October 26, 2015



When Gov. Andrew Cuomo moved last week to provide greater legal protections to transgender New Yorkers, he was relying on a 1945 law to make it happen.

In [this past weekend's Gannett newspapers \(/story/news/local/2015/10/25/ny-transgender-protections-rely-law/74597650/\)](#), we examined how Cuomo will put the anti-discriminatory regulations into place using what his administration calls a "progressive interpretation" of the state Human Rights Law.

Already, at least one conservative group is talking about a potential lawsuit.

So how does it work? And where are the potential legal questions?

## 1) The Human Rights Law prevents discrimination

The [state Human Rights Law \(http://www.dhr.ny.gov/law#296\)](http://www.dhr.ny.gov/law#296), first passed in 1945, prevents employers, housing providers, businesses and a host of others from discriminating against someone based on a long list of factors: age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status.

Transgender status and gender dysphoria are not specifically singled out in the law, so...

## 2) Cuomo's administration is broadening the definitions

Under Cuomo's direction, the state Division of Human Rights has [proposed regulations \(https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GenderIdentityRegulation.pdf\)](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GenderIdentityRegulation.pdf) that would make clear that "sex" refers not only to gender, but "gender identity and the status of being transgender."

The same regulations would make clear that gender dysphoria -- when someone is medically recognized as having a different gender than they were assigned at birth -- is considered a "disability" under the law.

That way, when the Human Rights Law outlaws discrimination based on sex or disability, the regulations would ensure they apply to transgender individuals and those with gender dysphoria.

## 3) Is it legal?

Cuomo's office believes it is on firm legal ground, in part because the Human Rights Law gives the governor's administration some wiggle room to interpret the law through regulations.

At least one conservative group, the Monroe County-based [New Yorkers for Constitutional Freedoms \(http://albanyupdate.com/media-center/press/993-nycf-promises-pushback-on-gov-andrew-cuomo-s-latest-executive-overreach\)](http://albanyupdate.com/media-center/press/993-nycf-promises-pushback-on-gov-andrew-cuomo-s-latest-executive-overreach), isn't so sure. They've raised the possibility on a lawsuit, questioning whether protections for transgender individuals was what the Legislature had in mind when the law was passed in 1945.

"All options are on the table right now, and that's something we're certainly looking at," Rev. Jason McGuire, executive director of New Yorkers for Constitutional Freedoms, said of a potential lawsuit. "You can't tell me that in 1945 they were anticipating this issue of gender identity and gender dysphoria."

## 4) Next steps

In order for regulations to take effect, they first have to be formally published in [the official State Register \(http://www.dos.ny.gov/info/register/2015.html\)](http://www.dos.ny.gov/info/register/2015.html) and put to a 45-day comment period.

This set of proposals are expected to be published in either the Nov. 4 or Nov. 10 register, which would open up them up to public comment.

After the comment period closes, the state Division of Human Rights would be able to adopt the rules at any point. From there, potential challengers would have 120 days from the day the rules are adopted to file what's known as an Article 78 challenge -- basically a lawsuit filed to fight a state action or determination.



**[Jon Campbell \(/staff/4661/jon-campbell\)](#)**

Jon Campbell is an Albany correspondent for Gannett's New York outlets. He's been working out of the Albany Bureau since 2011, covering Gov. Andrew Cuomo's administration and the state Legislature. Previously, he was the environment and health reporter for the Press & Sun-Bulletin in Binghamton. A native of Lockport, Niagara County, he's an avid Bills and Sabres fan.

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