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Transsexual Prisoners: Medical Care Issues

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Introduction

In a [prior article](#) in this publication, there was a general discussion of transsexual prisoners, the medical definition of transsexual, and of some of the caselaw addressing the duty to protect them against assault and harassment. Clearly, one of the other major issues that arises concerning such prisoners is that of special medical needs.

For a general discussion of the duty to provide adequate medical care to all prisoners, click [here](#). That discussion is applicable here and is useful as background before reading the material presented in this article.

The special medical needs of transsexual prisoners has been an area of much controversy and litigation. At the conclusion of this article, a few useful resources are listed.

Medical Care

In a number of cases, transsexual inmates have taken issue with the adequacy of medical care provided to them during incarceration. Issues raised in litigation have included requests for sex change surgery, requests for beginning or continuing hormone therapy, and requests simply for medical evaluation of the prisoner's condition and what medical and psychological services are necessary and appropriate to provide.

Courts have looked very unfavorably on any indication that prison officials have allegedly simply declined to provide any medical evaluation and treatment at all for transsexual prisoners. In [Barrett v. Coplan](#), #03-317, 292 F. Supp. 2d 281 (D.N.H. 2003),

for instance, the court found that a prisoner suffering from gender identity disorder (GID) stated an Eighth Amendment claim for inadequate medical care based on an allegation that prison officials refused to provide any evaluation of and treatment of this condition, and that state Correctional Department had a policy prohibiting any hormone or surgical treatment for inmates suffering from GID regardless of their medical condition.

While the Eleventh Amendment barred claims against prison officials in their official capacities, the plaintiff prisoner stated a claim against the Commissioner of the New Hampshire Department of Corrections in his individual capacity.

In [Brooks v. Berg](#), #00-CV-1433, 2003 U.S. Dist Lexis 11911 (N.D.N.Y.), the court told state prison authorities that they could not use, as the sole basis for denying treatment of a prisoner's alleged gender identity disorder, the fact that he only sought such treatment after being incarcerated.

The prisoner is serving a 50-year-to-life term for murder cannot be denied medical treatment, including possibly a sex change operation, and related procedures, solely on the basis that he only sought such treatment after he was incarcerated.

The plaintiff prisoner claims that he became aware of his "female identity" as early as his childhood, but that he only became familiar with the medical diagnosis of "[gender identity disorder](#)" once he was imprisoned. This is a judicially and medically recognized psychiatric disorder. The prisoner, since 1998, has requested diagnostic psychotherapy for this disorder.

The prisoner stated the belief that this psychotherapy would establish that he is entitled to further treatment, including "electrolysis, vocal cord modulation, breast implant surgery" and other operations.

His request for the psychotherapy and other treatment, however, was denied under a policy of the New York State Department of Correctional Services which provided that therapy for prisoners suffering from gender identity disorder may continue if they began the gender reassignment process before incarceration, but that for prisoners who discover the disorder and seek to begin the procedure "during incarceration, transsexual surgical operations are not honored."

The court rejected this as an inadequate basis for the denial of treatment.

"Surely inmates with diabetes, schizophrenia, or any other serious medical need are not denied treatment simply because their conditions were not diagnosed prior to incarceration."

In issuing his ruling, the judge emphasized that he was not at this time ordering a sex change operation or any specific course of medical treatment, but rather ordering the state to provide adequate medical and psychiatric evaluation to determine what treatment would ultimately be appropriate. (The prisoner ultimately was denied treatment, following a complex litigation history, but the case is still important for what it says about the non-permissible basis of denying treatment).

The request for the therapeutic administration of female hormones is a frequent one from transsexual inmates. In [Praylor v. Tx. Dep't of Criminal Justice](#), #04-50854, 2005 U.S. App. Lexis 25043 (5th Cir.), a federal appeals court ruled that the Texas prison system did not violate a transsexual prisoner's constitutional right to adequate medical treatment by denying a request for hormone therapy.

The prisoner argued that the defendants' denial of his request for hormone therapy to treat his transsexualism was cruel and unusual punishment in violation of the Eighth Amendment. He sought injunctive relief requiring that he be provided with hormone therapy and brassieres.

The appeals court acknowledged that the Eighth Amendment protects a prisoner from inadequate medical care, but only if that care is "sufficiently harmful to evidence deliberate indifference to serious medical needs."

The court noted that other federal appeals courts that have considered the issue have concluded that declining to provide a transsexual with hormone treatment does not amount to acting with deliberate indifference to a serious medical need.

The immediate court assumed for the purposes of appeal, without deciding, that transsexualism involves a serious medical need, but held, on the evidence presented, that the refusal to provide the plaintiff with hormone therapy did not constitute deliberate indifference.

In the plaintiff's case, the court noted, the evidence showed that he did not request any other form of medical treatment besides hormone therapy. Testimony from the Texas correctional department's medical director indicated that Texas prisons have a policy of treating transsexuals, but that the plaintiff did not qualify for hormone therapy because of the length of his term and the prison's inability to perform a sex change operation, as well as the evaluation that there was no medical necessity for the hormone, and the possibility of disruption at the all-male prison.

Further, the evidence indicated that the plaintiff had been evaluated on two separate occasions, and was found ineligible for hormone therapy, and that he was provided with mental health screening as part of its process for evaluating transsexuals. Under these circumstances, the court could not find that the denial of his request for hormone therapy

was deliberate indifference to his condition, and he was not entitled to an injunction requiring it.

Other cases addressing the same or similar issues include: White v. Farrier, #07-1207, 849 F.2d 322 (8th Cir. 1988) (acknowledging that transsexualism is a serious medical condition, but holding that declining to provide hormone therapy did not constitute deliberate indifference to that medical need); Meriwether v. Faulkner, #86-1144, 821 F.2d 408 (7th Cir. 1987) (holding that a transsexual prisoner has no constitutional right to “any particular type of treatment, such as estrogen therapy”); and Supre v. Ricketts, #84-2803, 792 F.2d 958 (10th Cir. 1986) (concluding that declining to provide hormone therapy did not constitute deliberate indifference when prison officials offered alternate treatment).

Also see Maggert v. Hanks, #97-1651, 131 F.3d 670 (7th Cir. 1997) (Transsexual prisoner has no constitutional right to prison-provided hormonal and surgical treatment; denial of such treatment is not “cruel and unusual” when its expense would make it unavailable to the person of “average wealth” even if not in prison).

In Gammett v. Idaho State Board of Corrections, #CV05-257, 2007 U.S. Dist. Lexis 66456 (D. Idaho), however, a court denied correctional officials' motion for reconsideration of an order requiring them to provide a transsexual inmate with female hormone therapy and psychotherapy for treatment of gender issues. The officials based their motion on a claim that the prisoner's purported history of attempting to live like a female was not substantiated.

That evidence, however, was found by the court to really only relate to the issue of whether or not the defendants were liable for allegedly failing to previously diagnose and treat the inmate before he engaged in self-castration, and was only “marginally” related to his diagnosis and treatment for gender identity disorder (GID) after that castration.

The trial court ruled that GID was a life-threatening mental health condition if untreated, in light of the prisoner's actions of self-mutilation and attempts at suicide after having repeatedly requested treatment for GID.

Other cases of interest in this area include:

* De'Lonta v. Angelone, #01-8020, 330 F.3d 630 (4th Cir. 2003), the court found that a prisoner suffering from gender identity disorder stated a claim for inadequate medical treatment based on alleged indifference to their need for protection against self-mutilation following the withdrawal of hormone therapy.

* Allard v. Gomez, #00-16947, 9 Fed. Appx. 793, 2001 U.S. App. Lexis 13321 (Unpub. 9th Cir. 2001), stating that there were triable issues as to whether hormone therapy was denied to a transsexual inmate on the basis of an individualized medical evaluation or as a

result of a blanket rule, which constituted deliberate indifference to the inmate's medical needs.

* [Smith v. Rasmussen](#), #99-3262, 249 F.3d 755, 2001 U.S. App. Lexis 8467 (8th Cir. 2001), rejecting an inmate's suit to require the state to pay for sexual reassignment surgery; the state's Medicaid program covered psychotherapy and medication for his gender identity disorder but did not have to pay for the surgery.

* [McCulley v. Angelone](#), #00-6211, 2000 U.S. App. Lexis 14667 (4th Cir. 2000), upholding a trial court's denial of his request for a preliminary injunction requiring Virginia prison officials to continue providing hormone injections that the inmate had received prior to entering prison. The court concluded that the district court properly applied the balancing of hardship analysis and did not abuse its discretion in denying the requested relief.

* [Farmer v. Hawk- Sawyer](#), #92-1690, 69 F. Supp. 2d 120 (D.D.C. 1999), ruling that a federal Bureau of Prisons policy requiring that a transsexual inmate provide documentation of hormone therapy before incarceration in order to receive hormone therapy in prison did not violate equal protection; policy was rationally related to a legitimate government interest in protecting inmate health and safety.

* [Long v. Nix](#), #95-1613, 86 F.3d 761 (8th Cir. 1996), concluding that the refusal of prison officials to agree to self-proclaimed male transsexual prisoner's requests to wear female clothes and makeup, or to have hormone therapy and sex-change surgery, did not constitute deliberate indifference to a serious medical problem when prisoner consistently refused, over a 20 year period, to cooperate with psychological or psychiatric evaluation attempts that were repeatedly made.

Resources

The following are a few useful resources on the topic of this article. Inclusion of an item does not indicate agreement with its viewpoint.

- [Transsexual Prisoners: Protection From Assault](#), 2009 (7) AELE Mo. L. J. 301.
- [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.
- Transsexualism. General wikipedia article.
<http://en.wikipedia.org/wiki/Transsexuals>
- Basic TG/TS/IS Information, by Lynn Conway.
<http://ai.eecs.umich.edu/people/conway/TS/TS.html>

- FTMIInternational (serving the Female-to-Male community”). Includes links to healthcare and legal resources. <http://www.ftmi.org/>
- [Gender.org](#). Website of Gender Education & Advocacy, a non-profit corporation providing education and advocacy for transsexual and transgender issues, including medical issues.
- [Definition and Synopsis of the Etiology of Adult Gender Identity Disorder and Transsexualism](#) - prepared by 24 internationally recognized experts, published by the Gender Identity Research and Education Society (GIRES)(See: <http://www.gires.org.uk>)
- [Transgender Health](#), Lgbthealthchannel.
- “[Dual Prongs for the Doubly Imprisoned: Transsexual Inmates & the Eighth Amendment Right to Treatment](#),” Matthew Stoloff, [Syracuse University College of Law](#) (August 2007).
- Law Review: “Transsexual Prisoners: How Much Treatment is Enough?” Bradley A. Sultan, New England Law Review (Summer, 2003) 37 New Eng. L. Rev. 1195 (17074 words).
- [Standards of Care for Gender Identity Disorders](#) (Version 6) published by the World Professional Association for Transgender Health, Inc., described on its [website](#) as a “professional organization devoted to the understanding and treatment of gender identity disorders” with approximately 350 members from around the world, in the fields of psychiatry, endocrinology, surgery, law, psychology, sociology, and counseling. The group also publishes the International Journal of Transgenderism.
- Law Review: “Categorical Exclusions: Exploring Legal Responses to Health Care Discrimination Against Transsexuals,” by Kari E. Hong, [Columbia Journal of Gender and Law](#) (2002) 11 Colum. J. Gender & L. 88 (20905 words).

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