Subject: Appropriate Placement of Transgender Prisoners (Resolution 15-A-17)

Presented by: Gerald E. Harmon, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Peter H. Rheinstein, MD, JD, MS, Chair)

At the 2017 Annual Meeting the AMA House of Delegates referred Resolution 15-A-17, “Appropriate Placement of Transgender Prisoners,” from the New England delegation, which asked:

That our American Medical Association establish policy supporting the ability of transgender prisoners to be placed in facilities that are reflective of their affirmed gender status regardless of surgical status, if they so choose.

The Reference Committee on Amendments to Constitution and Bylaws noted that testimony was evenly divided in support of the resolution and ultimately recommended referral, recognizing the “complexities of this issue” and “that more information and research on the subject are necessary.” In response, this report identifies and addresses concerns relevant to the placement of transgender prisoners.

BACKGROUND

The problem facing the safety and health of transgender prisoners is severe and well documented. Transgender prisoners are disproportionately the victims of sexual assault, suffering higher rates of sexual assault than general population inmates [1,2]. The increased rate of violence largely stems from transgender prisoners being housed based on their birth sex, and not according to their affirmed gender [1]. One study showed that birth sex-based housing policy has allowed transgender prisoners to suffer from rape, harassment, and physical violence at a rate of 34 percent compared to 10 percent for the overall population [3]. Another study, of only California prisons, has shown that 59 percent of transgender prisoners experience sexual assault, versus only 4.4 percent of the overall prison population [4], with another study showing that the proportion of transgender prisoners in California experiencing sexual assault to be as high as 75 percent [1].

The risks of violence typically are in the context of transfeminine inmates, because “of animosity toward the expression of their gender identity and because many have slight and effeminate builds” [5]. Genitalia-based prison housing policies place transgender inmates at special risk of sexual violence, because the “prison hierarchy subjugates the weak to the strong and equates femininity with weakness” [6].

GENITALIA/BIRTH SEX-BASED HOUSING POLICY

The status quo of most prisons and jails in the United States is to house transgender prisoners according to their birth/biological sex and not according to their affirmed gender identity [7].
Genitalia based housing policy is “deeply ingrained” in the United States to the point where it is taken for granted without any official justification [8]. This status quo is founded on a limited definition of “transgender” constrained to the “gender binary,” a social construct where only two genders are recognized at birth: male or female [7,9]. A more useful definition of “transgender,” one that breaks free of the “gender binary,” is a person “whose inner gender identity and outward gender expression differ from the physical characteristics of the body at birth” [10].

Under the status quo, many correctional institutions try to ameliorate the risks and hazards of sex-based housing by placing transgender prisoners in administrative segregation. Such segregation, in the interests of safety, isolates transgender prisoners from the general population [1]. However, administrative segregation is not a good solution as it creates its own sets of problems. It often differs little from punitive segregation or solitary confinement. Such confinement removes prisoners from the companionship of others, denies prisoners access to prison programs, and is psychologically damaging [7]. Administrative segregation acts as a further punishment of the transgender prisoner and has been significantly criticized by scholars and attorneys [2].

ALTERNATIVE HOUSING POLICIES

In an attempt to address health and safety problems of transgender prisoners several jurisdictions have created alternative jail housing policies based on “the sex the individual identifies with and where they will be the safest, as opposed to genitalia-based placement” [9].

For example, in 2002 San Francisco County, California, instituted a protocol that requires jail officials to assess transgender prisoners for vulnerability and place vulnerable individuals in a unit with other vulnerable populations, away from “predators;” the policy has resulted in marked decreases in sexual assaults [2]. In 2009 the Washington, DC, Department of Corrections similarly enacted a housing policy that takes into account the opinions of transgender individuals and healthcare professionals and permits inmates to be housed according to their gender identity [9,11]. In 2011 Cook County, Illinois, likewise changed its policy to allow transgender inmates to “be housed, dressed, and searched according to their gender identity rather than the sex/gender they were assigned at birth” [9].

AMA POLICY

Several AMA policies address a range of transgender issues [12,13,14]. House Policy H-65.964, “Access to Basic Human Services for Transgender Individuals,” opposes policies that prevent transgender individuals from accessing services and facilities (including restrooms) in line with one’s gender identity [12]. House Policy H-65.967, “Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients,” supports policies that allow for a change of sex designation on a birth certificate for transgender individuals, whether or not an individual has undergone surgery [13]. House Policy H-40.966, “Military Medical Policies Affecting Transgender Individuals,” affirms that there is no medical reason to prohibit transgender individuals from serving in the military [14].
RECOMMENDATION

In consideration of evidence indicating the risk placement choices pose for transgender prisoners, the Board of Trustees recommends that the following be adopted in lieu of Resolution 15-A-17 and the remainder of this report be filed:

1. That our American Medical Association supports the ability of transgender prisoners to be placed in facilities, if they so choose, that are reflective of their affirmed gender status, regardless of the prisoner’s genitalia, chromosomal make-up, hormonal treatment, or non-, pre-, or post-operative status; and (New HOD Policy)

2. That our American Medical Association supports that the facilities housing transgender prisoners shall not be a form of administrative segregation or solitary confinement. (New HOD Policy)

Fiscal note: Less than $500
REFERENCES


