

RESOLUTION 02-04-2013

DIGEST

Criminal Law: Hormones Replacement Therapy for Inmates

Adds Penal Code section 2658 to require the maintenance of a transgender inmate's medically prescribed hormone replacement therapy during incarceration.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Identical to Resolution 12-05-2012, which was approved in principle; similar to Resolutions 02-22-2008, 06-11-2009, 01-07-2010, 11-02-2011 and 12-05-2012, all of which were approved in principle.

Reasons:

This resolution adds Penal Code section 2658 to require the maintenance of a transgender inmate's medically prescribed hormone replacement therapy during incarceration. This resolution should be approved in principle because it would insure that transgender inmates will not lose the continuity of their medical treatment while incarcerated.

The treatment of prisoners for gender identity disorder is an issue faced by correctional facilities across the country. Often, the health care providers in such facilities do not understand, are indifferent to, or are actually hostile to the special medical needs of the transgender individual. By requiring correctional facilities to maintain the transgender inmate's medically prescribed hormone replacement therapy, this resolution will guarantee necessary medical care and treatment in accordance with regulations that govern the California Department of Corrections and Rehabilitation. (See Cal. Code Regs., tit. 15, § 3350.1, subd. (d).)

When transgender persons stop hormone replacement therapy, many of the changes they achieved as a result of the therapy may be reversed. This set back may have devastating psychological effects. This resolution would protect against such an outcome.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Penal Code section 2658, to read as follows:

1 § 2658

2 (a) A transgender person sentenced to incarceration or who is being held pursuant to a
3 pending criminal matter in a California state correctional facility, county or city jail, or other
4 county or city custodial correctional facility, who is receiving hormone replacement therapy
5 prescribed by a licensed physician or other health care provider at the time the transgender
6 person is incarcerated, shall not have his or her hormone replacement therapy reduced or
7 terminated while he or she is incarcerated without a medical evaluation and the approval of a
8 licensed physician who has working knowledge of the Standards of Care for Gender Identity

9 Disorder as promulgated by the World Professional Association for Transgender Health through
10 the process identified in Section 2656.

11 (b) A transgender person sentenced to incarceration or who is being held pursuant to a
12 pending criminal matter in a California state correctional facility, county or city jail, or other
13 county or city custodial correctional facility, who initiated hormone replacement therapy
14 subsequent to incarceration, shall not have his or her hormone replacement therapy curtailed or
15 terminated while he or she incarcerated without a medical evaluation and the approval of a
16 licensed physician has working knowledge of the Standards of Care for Gender Identity Disorder
17 as promulgated by the World Professional Association for Transgender Health through the
18 process identified in Section 2656.

19 (c) A transgender person sentenced to incarceration or who is being held pursuant to a
20 pending criminal matter in a California state correctional facility, county or city jail, or other
21 county or city custodial correctional facility, who is receiving hormone replacement therapy
22 while incarcerated, shall receive a mandatory medical evaluation of the effects of their hormone
23 replacement therapy. This evaluation shall follow established medical guidelines for the care and
24 treatment of transgender individuals and shall take place according to the following schedule:

25 (1) Every six months for one year, if the individual initiated hormone replacement
26 therapy while incarcerated or within a year prior to incarceration;

27 (2) Annually thereafter while in the custody and control of the California state
28 correctional facility, county or city jail, or other county or city custodial correctional facility.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Under the existing law there are no provisions for hormone therapy to transgender inmates.

This Solution: Would require prison medical providers to maintain a transgender inmate's medically-prescribed hormone replacement therapy during the inmate's incarceration if such hormone replacement therapy was prescribed prior to or during incarceration.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

This resolution adds Penal Code section 2658 to require the maintenance of a transgender inmate's medically prescribed hormone replacement therapy during incarceration.

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