

Joann-Matthew Means

Writing 39C

Danah Alfaiakawi

8/20/2021

The Interconnections Between Advocacy Approaches For Inmate
Sex Reassignment Surgery

ABSTRACT

The challenges transgender inmates face in getting Sex Reassignment Surgery (SRS) in the US largely depend on whether the inmate is in California. Because of *Quine v. Beard*, the California Department of Corrections and Rehabilitation (CDCR) was forced to fundamentally change its treatment of transgender people by offering transgender-specific medical care, which has not occurred in any other state. California's process still has issues though. Litigation may be an appropriate approach for dealing with inappropriate treatment that Quine faced after her transfer, although the obstacles this litigation faced would be an area for future research. Other inmates who want to receive SRS may find that filling out the appropriate forms and understanding administrative processes could be challenging. The Prison Law Office is addressing this via pamphlets available in prisons, although distributing these pamphlets poses a challenge.

Other US states and the federal government do not have policies for requesting SRS, and an inmate's only recourse is litigation. An obstacle to litigation at the circuit court level is the difference between the fifth and ninth circuit decisions (*Gibson v. Collier* 2019, and *Edmo v. Corizon Inc.* 2019, respectively), as either of these could be cited as a sister circuit ruling. Any litigation also faces the possibility that the correctional department will parole the inmates to

avoid a judicial decision. In terms of strong and weak approaches, more research is needed to determine other approaches to these problems.

INTRODUCTION

This project has illuminated an important aspect of advocacy: even though minorities often advocate for changes to environments or systems to better suit them, the smaller the minority, the less of an impact they can make. The topic of advocacy for sex reassignment surgery (SRS) access for transgender inmates is a good illustration of this. Although there have been major cases, information on current advocacy efforts is hard to come by. Nevertheless, litigation for the right to SRS, think tank reports on the topic, informational handouts, and litigation to update and streamline the process are all essential elements to this advocacy effort. These advocacy efforts all address different parts of the process though, and both compliment and necessitate each other.

NARROW TOPIC FOCUS

Information on advocacy efforts around SRS is hard to come by because of the specificity of the topic. While most transgender people experience dysphoria, which the American Psychological Association defines as “a marked incongruence between one's experienced/expressed gender and assigned gender” (Cloward), it is not always required for effective treatment. As the World Professional Association for Transgender Health says in version seven of its standards of care:

“many individuals need both hormone therapy and surgery to alleviate their gender dysphoria, others need only one of these treatment options and some need neither”

(WPATH)

From this, it is clear that only a subset of transgender people require SRS for effective treatment. Past advocacy and analysis has largely focused on both the implementation by states of the

Prison Rape Elimination Act (PREA), and the provision of healthcare as in the Prison Policy Initiative (PPI) report, and The Constitutionality And Future Of Sex Reassignment Surgery In United States Prisons, an article published in the Hastings Women's law journal (Oberholtzer)(Acevedo). Because of this, SRS is not only a subtopic of healthcare, but a subtopic of a subtopic in the larger paper.

LITIGATION PT. 1

Litigation allowing prisoners to have SRS is the first step in the process of ensuring the provision of this surgery to transgender inmates. Cases usually claim that the correctional department was deliberately indifferent to a prisoner's serious medical need under 42 U.S.C. § 1983 (Cloward). This is ultimately based on the eighth amendment's prohibition on cruel and unusual punishment (Cloward). These cases seek a settlement where the correctional department is legally responsible for providing the inmate with SRS, but can also include requests for larger changes, or for inmates to be able to possess items that align with their gender such as underwear and jewelry (Cloward). Litigation has been somewhat effective in securing inmate's right to SRS. *Edmo v. Corizon Inc.* (2019) in the ninth circuit court of appeals forced the Idaho department of corrections to provide SRS to Andre Edmo (Cloward). The case of *Quine v. Beard* a few years before was even more successful, not only winning SRS for Shiloh Quine, but also demanding "structural changes [to] CDCR's treatment of transgender [individuals]." (Cloward). This resulted in California being the first state to allow prisoners access to SRS.

However, litigation is far from 100% effective. The case *Gibson v. Collier* broke jurisprudence in its interpretation of the 8th amendment, and resulted in a blanket ban on SRS within the 5th circuit (Cloward). In the cases of *De'lonta v. Johnson* and *Norsworthy v. Beard*

litigation proceeded, but was cut short because the correctional departments paroled the inmates. These cases reveal the biggest obstacles to advocacy through litigation: conservative judges (especially those at the circuit court level) and correctional departments paroling inmates to avoid being forced to provide SRS. Quine v. Beard was able to dodge both of these potentially fatal blows by being argued in California, and Quine not being eligible for parole because of her murder conviction.

THINK TANK REPORTS

Instead of addressing the problem of SRS access at its source like litigation, think tank reports complement litigation by making information more broadly accessible. While sources like the Transgender Law Center² have comprehensive lists of laws, a spreadsheet filled with links would be intimidating to someone casually browsing the internet (TLC). A report from a think tank, like the Prison Policy Initiative's *The dismal state of transgender incarceration policies*, has an easy to read layout, and expandable tables to summarize the policies it discusses (Oberholtzer). This clear format complements litigation by raising public awareness. If correctional departments know that the public is paying attention to a case, they may be less likely to parole the inmate to avoid providing care, as doing so would undermine the public's perception of their credibility. Public attention also makes news outlets more likely to report on the case. If people hear the inmate's story, they might become sympathetic to their cause, which could put pressure on judges to rule in favor of inmates to appeal to voters, or to avoid recall attempts. Therefore, by presenting information accessibly, think tank reports complement litigation by shifting public attention.

The drawback to think tank reports lies in the information they are able to present. For example, the 2017 PPI report only discusses the policies of 21 states, while the Transgender Law Center document covers all 50 (Oberholtzer)(TLC). This is because the 21 states described had their policies freely available without a freedom of information act request (Oberholtzer). This shows that think tanks may be more limited in the information they present because of the scope of their projects, when compared to advocacy organizations with a broader focus like that Transgender Law Center. Presenting timely information is also something that think tank reports can struggle with. [Figure 1](#) illustrates this with a timeline. Despite changes already being underway in the CDCR, this information is completely absent from the 2017 PPI report (Oberholtzer). Perhaps this was left out because of an abundance of caution, but not even including a footnote demonstrates that information from think tank reports may also not be as timely as information from other sources.

PAMPHLETEERING

While generating awareness in the general public of transgender prisoner's struggle to get SRS is important, it is also important to do so inside the prisons themselves. Pamphleteering does this in a way that complements both think tank reports, and litigation. Pamphlets parallel think tank reports by providing key information about SRS. Instead of describing problems more generally, they provide prisoners with direct routes for self advocacy. These include form numbers, timelines and rules the correctional department needs to follow throughout the process (PLO 2021). This information could give prisoners confidence to pursue SRS if they were previously only considering it. Pamphleteering and litigation form a symbiotic structure. Changes to department systems brought on by litigation are not helpful to prisoners if the prisoners are not

made aware of them. However, pamphleteering requires litigation in order to allow for the changes it discusses. The main obstacle to pamphleteering is distribution. Both the 2016 and 2021 version of the Prison Law Office (PLO) pamphlet start with a disclaimer saying that “the laws change frequently and... we do not always have the resources to make changes to this handout. every time the law changes” (PLO 2021)(PLO 2016). In fact, the laws surrounding SRS have changed significantly in the past five years, as seen in [figure 2](#). The fact that the PLO needs to include this disclaimer, because of the rapid rate of legal change, indicates that distributing correct information to prisoners using pamphlets poses a significant challenge.

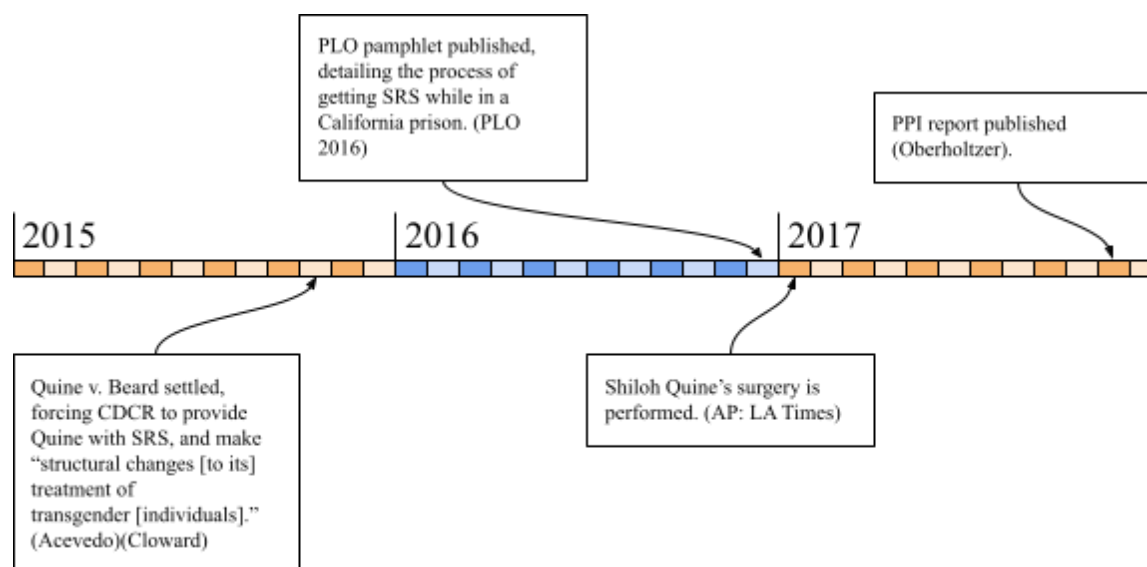
LITIGATION PT. 2

One possible cause of this legal change is litigation to streamline and update correctional department policies. This seeks to address issues that fell through the cracks in the initial settlement. For example, after Quine won her case against California, she received SRS and was transferred to a women’s prison (AP: NBC). However, after her transfer, she was treated like a new inmate, and underwent an initial screening during which she was denied a razor to shave, and grew a beard (AP: NBC). Because Quine had been serving a life sentence since 1981, it would be assumed that she would be transferred without undergoing this screening (AP: NBC). However, ensuring the smooth transfer of transgender people after SRS, or at least providing those who need it with a shaving razor could require litigation. One obstacle that this particular case faces could have been its transience. Quine was only supposed to be held for 45 days before being released into the general population, and being allowed a razor (AP: NBC). Law firms might choose to focus their attention on getting more people the right to SRS as opposed to improving an existing process. Those working to improve policies in this way also face more

general obstacles for litigating the cases of prisoners. The obstacle here is the Prison Litigation Reform Act (PLRA) which requires prisoners to exhaust every level of the complaint system within the prison before filing a lawsuit (ACLU). Having to go through this process once to receive SRS along with the years-long legal battle required to win it through litigation, and then being sent back to the beginning when trying to address a different issue would be very disheartening. Therefore, both this case specifically, and the approach in general face obstacles in their advocacy approach.

CONCLUSION

While SRS advocacy may be limited to a few sources, these all address different aspects of the issue, and both complement and necessitate each other. Litigation addresses the problem of SRS access at its source, but faces issues in the form of conservative judges, and restrictive policies like the PLRA. Think tank reports draw attention to litigation, and while they may contain out of date information, public scrutiny may encourage correctional departments and judges to make decisions in favor of the inmate. Pamphleteering helps litigation by ensuring its benefits are known about by prisoners, but also requires litigation to make these benefits available in the first place. Pamphlets distributed to prisons cannot be updated with the speed or ease of a think tank website though, meaning that maintaining accurate information in paper form is difficult. While the drawbacks to each method mentioned here also apply to larger scale advocacy, the specificity of the effort to allow prisoners access to SRS makes them apparent. The interreliance and synergy of these methods, and their overall effect in California, demonstrates that multiple methods of advocacy are needed to dismantle systems of oppression. Because of this unified and diverse effort, we are able to take yet another step in the larger fight for transgender equality.



[Figure 1](#): A timeline of events ending with the publication of the Prison Policy Initiative report.

While CDCR agreed to Quine's settlement they did not complete another request for SRS until after Andre Edmo's case was settled and her surgery was performed in July of 2020 (AP: CBS). Each box is one month. CDCR: California Department of Corrections and Rehabilitation. PLO: Prison Law Office. PPI: Prison Policy Initiative.

2016 PLO Pamphlet (PLO 2016)	2021 PLO Pamphlet (PLO 2021)
<p>On May 24, 2016, CDCR updated its care guidelines regarding gender-affirming surgery, also known as Sexual Reassignment Surgery (SRS), for patients with Gender Dysphoria. We call it SRS in this handout because that is the term CDCR and California Correctional Health Care Services (CCHCS) uses for the surgery. The policy on Sexual Reassignment Surgery has changed a lot in the last year, and it may continue to change as CCHCS finalizes and modifies its policies and procedures.</p> <p>If you want to undergo gender-affirming surgery, we advise you to submit a 7362, so you can discuss it with your primary care provider.</p> <p>Under the new guidelines, after a prisoner request SRS as treatment for GD, the institution provider must complete a Request for Services (RFS). The RFS should say something like: “The patient is requesting evaluation for sex reassignment surgery.” The provider will then refer the RFS to the prison’s Institution Utilization Management Committee (IUMC), along with medical, mental health, and custody assessments. The provider will also discuss SRS with the prisoner, including the risks associated with it. If the provider refuses to complete the RFS for you, you should submit a 602-HC asking to be considered and evaluated for Sexual Reassignment Surgery.</p> <p>Once the RFS is submitted, IUMC forwards that and other information to the Headquarters Utilization Management Committee (HQUMC) in Sacramento. This generally must be done within 90 days following a documented request for SRS.</p> <p>HQUMC then assigns it to their subcommittee for review. The subcommittee is called the Sex Reassignment Surgery Review Committee (SRSRC). It meets weekly and is made up of six voting members and several non-voting members. The voting members are two CDCR physicians from Medical Services, two CDCR physicians from the Mental Health Program, and two CDCR</p>	<p>In July 2021, CDCR updated its care guidelines regarding gender-affirming surgery for patients with Gender Dysphoria. The policy may continue to change as CCHCS finalizes and modifies its policies and procedures.</p> <p>If you want to undergo Gender-Affirming Surgery, we recommend that you to submit a 7362, so you can discuss it with your primary care provider (PCP).</p> <p>Under these guidelines, after a person requests GAS as treatment for gender dysphoria (GD), <u>the institution must schedule an appointment with the person’s PCP within 14 days</u>. After this appointment, the PCP must complete a Request for Services (RFS) to the prison’s second level of review. The RFS should say something like: “The patient is requesting evaluation for Gender Affirming Surgery.” If the provider refuses to complete the RFS for you, you should submit a 602-HC asking to be considered and evaluated for Gender Affirming Surgery. Once the RFS is submitted, the prison’s second level reviewer forwards that and other information to the Statewide Medical Authorization Review Committee (SMART) in Sacramento. This generally must be done within 90 days following a documented request for GAS.</p> <p>SMART then assigns it to their subcommittee for review. The subcommittee is called the Gender Affirming Surgery Review Committee (GASRC). It generally meets weekly and is made up of eight to twelve voting members and several non-voting members. The voting members include at least two CDCR physicians from Medical Services, at least three CDCR physicians from the Mental</p>

<p>psychologists from the Mental Health Program. The SRSRC reviews, evaluates, and discusses the provided information to determine whether or not to recommend SRS from a medical and mental health standpoint.</p> <p>HQUMC reviews the SRSRC recommendation and determines whether SRS is approved or denied. If HQUMC disagrees with an approved recommendation from SRSRC, the Statewide Chief Medical Executive or designee will decide whether SRS will be approved. The guidelines do not put deadlines on HQUMC and Statewide Chief Medical Executive review. The guidelines do state that the prisoner will receive notice of the final decision in writing within five business days.</p> <p>If SRS is denied, you may proceed directly to court. The decision is not subject to review in the 602-HC process. The guidelines allow prisoners to submit a new request for SRS one year after issuance of a letter disapproving the request.</p>	<p>Health Program, and at least three CDCR psychologists from the Mental Health Program. The GASRC reviews, evaluates, and discusses the provided information to determine whether or not to recommend GAS from a medical and mental health standpoint. The findings of the subcommittee are based on a majority vote of the members.</p> <p><u>Once the GASRC has made a decision, they will complete a memorandum including their decision, factors considered in the decision, and specific information that the GASRC determines would be helpful to the patient and the patient's care team to understanding the decision. The GASRC must provide a copy of this decision memorandum to the incarcerated person as well as other members of mental health and medical staff.</u></p> <p>If the GASRC recommends GAS, the patient will be scheduled for an appointment with their PCP to discuss the decision. The patient's copy of the memorandum will be provided at this appointment. Then, the <u>patient will be assigned a primary care nurse who will communicate with the patient and staff regarding the surgery process.</u> This nurse will inform the GASRC when surgery is scheduled and completed.</p> <p>If the GASRC denies GAS, the patient shall be <u>scheduled for an appointment with their mental health primary clinician</u> to discuss the decision. This appointment should occur within fourteen days of receiving the decision. You will get a copy of the decision during this appointment. You may submit a new request for surgery no sooner than one year after issuance of the denial. You may also appeal the decision using the 602-HC process.</p>
---	---

Figure 2: A comparison of the policies and procedures for receiving SRS listed in the 2016 and 2021 pamphlets from the Prison Law Office. Differences are highlighted, with matching colors indicating a change in policy from one version to the next. Blue underlined text indicates that the section does not have a matching section in the other pamphlet.

Notes

1. California Department of Corrections and Rehabilitation
2. In my context project, I incorrectly referred to this as the National Transgender Law Center.

Works Cited

Vertical line (|): used in advocacy project. Horizontal line (-) used in context project.

Plus sign (+) used in both projects.

- + Acevedo, Brooke. "The Constitutionality And Future Of Sex Reassignment Surgery In United States Prisons." *Hastings Women's Law Journal*, vol. 28, no. 81, 2017. *Westlaw*, [https://1.next.westlaw.com/Document/Ie70bd4a9557b11e79bef99c0ee06c731/View/FullText.html?originationContext=docHeader&contextData=\(sc.Keycite\)&transitionType=Document&needToInjectTerms=False&docSource=f6637092adbc4427825877eaaab1ed4d](https://1.next.westlaw.com/Document/Ie70bd4a9557b11e79bef99c0ee06c731/View/FullText.html?originationContext=docHeader&contextData=(sc.Keycite)&transitionType=Document&needToInjectTerms=False&docSource=f6637092adbc4427825877eaaab1ed4d). Accessed 21 August 2021.
- | American Civil Liberties Union. "Know Your Rights: The Prison Litigation Reform Act." American Civil Liberties Union, https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf. Accessed 21 August 2021.
- + Associated Press. "California murder convict becomes first U.S. inmate to have state-funded sex reassignment surgery." *Los Angeles Times* [Los Angeles], 6 january 2017, <https://www.latimes.com/local/lanow/la-me-ln-inmate-sex-reassignment-20170106-story.html>. Accessed 21 August 2021.
- + Associated Press. "Idaho inmate becomes 2nd in US to receive gender surgery." *Idaho News*, CBS News, 28 july 2020, <https://idahonews.com/news/local/idaho-inmate-becomes-2nd-in-us-to-receive-gender-surgery>. Accessed 21 August 2021.
- + Associated Press. "Transgender Inmate Says Women's Prison Is 'Torture.'" *NBC News*, NBC News, 23 march 2021,

<https://www.nbcnews.com/feature/nbc-out/transgender-inmate-says-women-s-prison-torture-n737676>. Accessed 21 August 2021.

- + Cloward, Gregory J. “A (Cruel and) Unusual Decision: Questions Raised For The Fifth Circuit Moving Forward From *Gibson v. Collier*.” *Nevada Law Journal*, vol. 21, no. 405, 2020. *Westlaw*,
[https://1.next.westlaw.com/Document/If8e0ffccb8e811ebbea4f0dc9fb69570/View/FullText.html?originationContext=docHeader&contextData=\(sc.Search\)&transitionType=Document&needToInjectTerms=False&docSource=58444b3b0d194c1b8693ca1b99532b77](https://1.next.westlaw.com/Document/If8e0ffccb8e811ebbea4f0dc9fb69570/View/FullText.html?originationContext=docHeader&contextData=(sc.Search)&transitionType=Document&needToInjectTerms=False&docSource=58444b3b0d194c1b8693ca1b99532b77). Accessed 21 August 2021.
- Deutsch, Maddie. “Information on Testosterone Hormone Therapy.” *UCSF Transgender Care*, University of California: San Francisco hospital, july 2020,
<https://transcare.ucsf.edu/article/information-testosterone-hormone-therapy>. Accessed 21 August 2021.
- Khokha, Sasha, and Erin S. McIntyre. “‘A Butterfly With My Wings Cut Off’: A Transgender Asylum Seeker’s Quest to Come to California.” *KQED News*, KQED News,
<https://www.kqed.org/news/11844742/a-butterfly-with-my-wings-cut-off-a-transgender-asylum-seekers-quest-to-come-to-california>. Accessed 21 August 2021.
- Miller, Leila. “California prisons grapple with hundreds of transgender inmates requesting new housing.” *Los Angeles Times* [Los Angeles], 5 april 2021,
<https://www.latimes.com/california/story/2021-04-05/california-prisons-consider-gender-identity-housing-requests>. Accessed 21 August 2021.
- National Center for Transgender Equality. “LGBTQ people behind bars: A guide to understanding the issues facing transgender prisoners and their legal rights.”

- transequality.org*, National Center for Transgender Equality,
<https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>. Accessed 21 August 2021.
- + Oberholtzer, Elliot. “The dismal state of transgender incarceration policies.” *prisonpolicy.org*, Prison Policy initiative, 8 November 2017,
<https://www.prisonpolicy.org/blog/2017/11/08/transgender/>. Accessed 21 August 2021.
- | Specter, Donald, Sara Norman, et. al. *Common issues facing transgender people in california prison: the law and self-advocacy*. Prison Law Office, August 2021,
<https://prisonlaw.com/wp-content/uploads/2021/08/Transgender-Handout-Aug-2021.pdf>.
Adobe PDF file. Accessed 21 August 2021.
- | Specter, Donald, Sara Norman, et. al. *common issues facing transgender prisoners: the law and self-advocacy*. Prison Law Office, December 2016,
<https://prisonlaw.com/wp-content/uploads/2017/02/Transgender-Handout-December-2016.pdf>. *Adobe PDF* file. Accessed 21 August 2021.
- | Transgender Law Center. *Agency-Specific Policies Tracking Sheet.xlsx*. Transgender Law Center, N.D., <https://tlcenter.app.box.com/s/szt8awqsh9dnjqgu0n0hgfxac6fzy9m>.
Microsoft Excel file. Accessed 21 August 2021.
- + World Professional Association for Transgender Health. *Standards of Care for the Health of Transsexual, Transgender, and Gender- Nonconforming People*. 7th ed., World Professional Association for Transgender Health, 2012. *wpath.org*,
https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf.
f. Accessed 21 August 2021.