conformity. Each of these three dimensions itself is complex and often fluid. The biological correlates, etiology, and influences on gender identity development remain largely unknown. Thus, if legal systems move to make self-reported gender identity a legal principle, multiple basic questions will require more data, research, and scholarly debate. Some of the questions which need to be explored are:

Would protections for a broader category of “gender non-conforming expression” be a more inclusive and logical legal principle than rights specifically related to a self-report of feelings of gender dysphoria?

In cases where women’s sex-based rights conflict with claims of gender identity-based rights, such as in sports, bathrooms, therapeutic shelters, and prisons, what are the rationales for, and potential harms associated with, the legal system removing existing precedents of allowed sex-based protections for biological females?

Biological sex does not change, but gender self-identification does. How should legal and regulatory systems cope with the fluid nature of gender self-identification?

Should governments and legal systems record both markers, biological sex and gender self-identification? Under which circumstances should either be used?

With so many core unanswered questions, forensic psychiatrists currently have limited firm data on which to base their opinions. On questions related to gender, many people default to ideological or political theories, and forensic psychiatrists are not immune to such cultural influences. Thus, better support for open inquiry and free exchange is needed to explore the implications of gender self-identification. As an organization, the American Academy of Psychiatry and the Law could model rigor and thoughtful exchange via invited columns from varied perspectives, debates, and a call for articles to explore these issues of fundamental importance and profound disagreement. Again, I thank Dr. Berlin for starting this conversation.

References
5. Regnerus M, Vermurlen B. Attitudes in the U.S. toward hormonal and/or surgical interventions for adolescents experiencing gender dysphoria. Arch Sex Behav. 2022 May; 51(4):1891–902

Kristopher Kaliebe, MD
Tampa, FL

Disclosures of financial or other potential conflicts of interest: None.

DOI:10.29158/JAAPL.230104-23

Key words: over-incarceration; racism; social justice

In Reply

Editor:

I agree with Dr. Kaliebe that there should be a thoughtful exchange of ideas, hopefully based upon empirical evidence, regarding matters relevant to transgender persons. There is still much more that can be learned. That said, there is a great deal that is already clear.

The term “gender identity” had been introduced into the professional literature approximately 60 years ago by Dr. John Money. It is not a new concept. Dr. Kaliebe refers to that concept as “gender self-identification,” suggesting that biological sex does not change but that gender self-identification does. In most instances, however, gender self-identification does not change. The vast majority of cisgender persons (individuals whose subjective feelings of gender identity correspond with their external birth anatomy) never experience doubt about their own gender. Similarly, the vast majority of transgender persons (individuals whose subjective feelings of gender identity are in diametrically opposed conflict with their external birth anatomy) never experience doubt about their own gender.

Describing to others one’s own subjective experiences is a uniquely human capacity. Ordinarily it is not, as suggested by Dr. Kaliebe, an “ephemeral” process. For example, most persons can accurately describe to others the nature of their own sexual orientation. In the vast majority of cases, if the individual disclosing is being honest, associated behaviors will correspond with self-reported mental desires and experiences. Just as some persons who characterize themselves as “bisexual” may appear to be “fluid” in their interactions with men and women, some individuals whose feelings of gender identity may not be exclusively either cisgender or transgender may also appear to be “fluid” in their self-perceptions and behaviors. Still, the vast majority of persons do not experience fluidity of gender identity.

It is well documented that transgender persons have existed for as long as history has been recorded,
and that they have existed, and that they still exist, in a multitude of cultures. They can be recognized not only by self-identification, but also by the nature of their associated gender-related behaviors. The existence of transgender persons is not a “woke” invention. Just because transgender persons are different from the majority should not mean that they ought to be entitled only to diminished societal rights and protections. Historically and in many cultures that has been the case, but forensic psychiatrists can play a role in assuring that that circumstance does not continue.

In the courtroom, forensic psychiatrists can educate a judge or jury about the fact that transgender persons have been present in society for ages. Forensic psychiatrists can explain that feelings of gender identity are not chosen, but that they are discovered and experienced in the mind, and that from a psychiatric perspective transgender persons possess the same mental capacities, emotions, and human qualities as others. They can testify about the mental discomfort associated with a discrepancy between one’s external genital anatomy and a person’s subjective feelings of gender identity. Testimony can be provided regarding treatments that can enhance the sense of mental well-being experienced by transgender individuals.

Dr. Kaliebe suggested that gender identity has only recently been recognized within regulatory and legal frameworks. That may be true. Nevertheless, many jurisdictions allow transgender persons to change identifiers on driver’s licenses, on birth certificates, and on other documents to conform to their internal sense of who they are as a person. The regulatory and legal system has already accepted the legitimacy of transgender persons as individuals who are entitled to rights and protections.

Dr. Kaliebe suggested that the rights of transgender persons need to be balanced against the rights of others; for example, the right for women to have privacy and security in bathrooms and prisons. I agree with that. At the same time, I would note that there is little reason to believe that any man would undergo breast enhancement surgery and vaginoplasty to be able to spend time in a woman’s bathroom. Were a cisgender man to dress as a woman to be able to enter a woman’s bathroom, existing laws already allow for criminal prosecution. It is not difficult to protect women’s rights, including transgender women’s rights, in bathrooms. Unisex bathrooms can be designed so as to allow for only one person at a time to enter. They can also be designed with stalls in which nudity cannot be observed by others. There need not be a conflict between anyone’s rights in addressing such matters.

I agree with Dr. Kaliebe that in addressing questions related to gender, many people default to ideological or political theories. I believe that forensic psychiatrists can help to distinguish between those viewpoints, and what is known from a scientific and mental health perspective.

Fred S. Berlin, MD, PhD
Baltimore, MD

Disclosures of financial or other potential conflicts of interest: None.

DOI:10.29158/JAAPL.230091-23

Key words: over-incarceration; racism; social justice

CORRIGENDUM

In “Dissociative Identity Disorder: Medicolegal Challenges,” (JAAPL 2011;39(3):402-6), the author reported the court’s finding in State v. Darnall, 614 P.2d 120 (Or. Ct. App. 1980) on page 403. The court did not make a finding that the defendant was “most likely malingering,” as was stated in the text. The original text of the article on this point has been removed, and an accurate statement of the court’s finding has been inserted in the version of the article now available online. Readers of the 2011 print version are notified regarding this correction.

DOI:10.29158/JAAPL.230092-23