

Feb 5/1/01

UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Glover v. Johnson

MARY GLOVER, et al,

Plaintiffs,

v.

PERRY JOHNSON, et al,

Defendants.



PC-MI-002-003

U.S. DIST. COURT
EAST DIST. MICH.
DETROIT

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FILED

FILE NO. 77-CV-71229-DT

HONORABLE JOHN FEIKENS

DEFENDANTS' PROPOSED FINDINGS OF FACTS
AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

A. OVERVIEW

1. As of October 31, 1998, the Michigan Department of Corrections (MDOC) housed approximately 38,915 inmates within 39 major institutions and 13 camps.¹ Defendants' Exhibit 2.

2. The total male inmate population housed within these major institutions is 35,926. *Id.*

¹This figure does not include male and female inmates assigned to the Huron Valley Center. Huron Valley Center is an MDOC facility operated by the Michigan Department of Community Health. Mental health services are provided for those prisoners identified as suffering from services mental illness/severe mental disorders or requiring an evaluation of the need for mental health services at the center. This figure also does not include male inmates housed at the Reception and Guidance Center (RGC). The RGC houses males 21 years of age and older who are recent court commitments, administrative transfers, medical or psychiatric transfers, prison escapees, parole violators or Residential and Electronic Programs' Trustees with new prison sentences.

3. The total female inmate population housed within these major institutions is 1,394.² *Id.*

4. The total male inmate population housed within these camps is 2,989.
Id.

5. The total female inmate population housed within these camps is 412.
Id.

6. The institutions housing male inmates with their respective populations and security classification levels are as follows (*Id.*):

FACILITY		POPULATION	SECURITY LEVEL
Adrian Temporary	ATF	957	Secure I
Alger Maximum	LMF	532	V
Baraga Maximum	AMF	592	V
Brooks	LRF	1,214	I, II, IV
Carson City Temp	OTF	956	II
Carson City Correctional	DRF	1,248	I, II, IV
Chippewa Temp	KTF	960	II
Chippewa Regional	URF	1,189	I, III, IV
Cotton Correctional	JCF	1,650	I, II, III, IV
Egeler Correctional	SMN	1,008	II
Gus Harrison	ARF	1,240	I, II, IV
Michigan Training Unit	MTU	1,307	II
Hiawatha Temporary	HTF	957	Secure I
Huron Valley Men's	HVM	477	IV
Ionia Maximum	ICF	554	II, VI
Ionia Temporary	ITF	959	Secure I
Kinross Correctional	KCF	1,218	II

²This figure does not include female inmates housed at the Scott Correctional Facility Reception and Guidance Center.

FACILITY		POPULATION	SECURITY LEVEL
Lakeland Correctional	LCF	1,195	Secure I, II
Macomb Correctional	MRF	1,240	I, II, IV
Marquette Branch Prison	MBP	1,116	I, V
Michigan Reformatory	RMI	1,256	I, IV
Mid-Mich. Temporary	STF	960	Secure I
Mound Correctional	NRF	1,055	II, IV
Muskegon Correctional	MCF	1,292	III
Muskegon Temporary	MTF	956	Secure I
Newberry Correctional	NCF	921	II
Oaks Correctional	ECF	707	V
Riverside Correctional	RCF	767	IV
Ryan Regional	RRF	1,051	II, IV
Saginaw Correctional	SRF	1,239	I, II, IV
SPSM-Central Complex	SMI	176	IV
Parnall Correctional	SMT	1,444	I
Standish Maximum	SMF	508	V
Thumb Correctional	TCF	854	II, IV
Western Wayne	WCF	746	III
Cooper Street	JCS	815	Secure I
Southern Michigan	JMF	610	IV

7. The camps housing male inmates with their respective populations are as follows (*Id.*):

CAMP		POPULATION
Brighton	CBI	214
Cusino	CCU	320
Koehler	CKO	239
Kitwen	CKT	238

CAMP		POPULATION
Lehman	CLE	338
Manistique	CMQ	208
Ojibway	COJ	409
Ottawa	COT	238
Pellston	CPL	129
Pugsley	CPP	139
Sauble	CSA	150
Tuscola	CTU	255

8. The institutions housing female inmates with their respective populations and security levels are as follows(*Id.*; TR Vol I, 1/11/99, p. 51):

Florence Crane (ACF)	546	II
Scott Correctional (SCF)	848	I, II, IV, V.

9. The camp housing female inmates and its population is as follows (Defendants' Exhibit 2; TR Vol I, 1/11/99, p. 52):

Camp Branch (CDW)	412
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10. All male and female inmates housed at the camps are classified as Level I. (*Id.*)

11, Prisoners within the MDOC are classified as Levels I, II, III, IV, V, VI, in ascending order of security risk. (TR Vol. II, 1/13/99, p. 129).

12. The following educational, vocational and apprenticeship programs exist at the women's major institutions as of October 31, 1998 (Defendants' Exhibits 2, 3, 4, 5):

Institution	Number of Vocational Programs	College Programs Yes or No Number Enrolled	Number of Students in Educational Programs³	Percent (%) of population in Educational Programs	Apprenticeship Programs Yes or No
Crane	4	Yes	456	85%	Yes
Scott	6	Yes	475	61%	Yes

Footnote ³ and ⁴.

13. The following educational, vocational and apprenticeship programs exist at the men's major institutions as of October 31, 1998 (Defendants' Exhibits, 2, 3, 4, 5):

See references of footnotes in below spreadsheet:

Name of Institution	Number of Vocational Programs	College Programs Yes or No Number Enrolled	Number of Students in Educational Programs³	Percent (%) of population in Educational Programs	Apprenticeship Programs Yes or No
Adrian Temporary (ATF)	1	No	238	25%	No
Alger Maximum (LMF)	0	No	109 Includes 32 cell study	20%	No
Baraga Max (AMF)	0	No	184 Includes 91 cell study	31%	No
Brooks (LRF)	3	No	293	24%	No
Carson City Temp (OTF)	1	No	201	21%	No
Carson City Reg. (DRF)	1	No	291	23%	No
Chippewa Temp (KTF)	2	No	172	18%	No

³The heading representing the "Number of Students in Educational Programs" includes enrollment in ABE/ESL, Special Education, GED, Pre-Release Vocational Programs, Apprenticeship Programs, College Programs, and cell study.

⁴No Educational programming is offered at SPSM-Central (SMI) due to renovations which are currently under way pursuant to Court orders.

Name of Institution	Number of Vocational Programs	College Programs Yes or No Number Enrolled	Number of Students in Educational Programs ³	Percent (%) of population in Educational Programs	Apprentice-ship Programs Yes or No
Chippewa Reg. (URF)	2	No	378 Includes 52 cell study	32%	No
Cotton (JCF)	3	No	377	23%	No
Egeler (SMN)	4	Yes per court order	467	38%	No
Gus Harrison (ARF)	2	No	385	31%	No
Handlon MI Trng. Unit (MTU)	6	No	636	31%	No
Hiawatha (HTF)	3	No	173	18%	No
Huron Valley Men's (HVM)	2	No	173 Includes 23 cell study	36%	No
Ionia Max (ICF)	1 Level II only	No	232 Includes 160 cell study	42%	No
Ionia Temp (ITF)	6	No	314	33%	No
Kinross (KCF)	5	No	299 Includes 12 cell study	25%	No
Lakeland (LCF)	3	No	289	24%	No
Macomb (MRF)	3	No	403	33%	No
Marquette Branch (MBP)	2	No	345 Includes 22 cell study	31%	Yes
MI Reformatory (RMI)	1	No	476 Includes 55 cell study	38%	No
Mid-Mich (STF)	4	No	404	42%	No
Mound (NRF)	2	No	225	21%	No
Muskegon (MCF)	4	No	433	34%	No
Muskegon Temp (MTF)	2	No	251	26%	No

Name of Institution	Number of Vocational Programs	College Programs Yes or No Number Enrolled	Number of Students in Educational Programs ³	Percent (%) of population in Educational Programs	Apprentice-ship Programs Yes or No
Newberry (NCF)	2	No	632	69%	No
Oaks Max (ECF)	0	No	160 Includes 35 cell study	23%	No
Riverside (RCF)	2	No	218	28%	No
Ryan (RRF)	2	No	281 Includes 3 cell study	27%	No
Saginaw (SRF)	3	No	358	29%	No
SPSM-Central (SMI)	2	No	0 ⁴		No
Parnall (SMT)	4	No	338	23%	No
Standish Max (SMF)	0	No	181	36%	No
Thumb (TCF)	4	No	307	36%	No
Western Wayne (WCF)	2	No	125	19%	No
Cooper Street (JCS)	1	No	167	20%	No
So. Mich(JMF)	3	No	201	33%	No

See Footnote 3 and 4 on pages 4 and 5 respectively.

14. The Scott Facility has six (6) vocational programs, and the Crane Facility has four (4) vocational programs. Defendants' Exhibit 5.

15. Five (5) male institutions have no vocational programs. *Id.* Five (5) male institutions have one (1) vocational program. *Id.* Twelve (12) male institutions have two (2) vocational programs. *Id.* Eight (8) male facilities have three (3) vocational programs. *Id.* Only seven (7) male institutions offer four (4) or

more vocational programs, but never more than six (6) programs. *Id.*

16. Male inmates are classified at custody Levels I, II, III, IV, V, VI. (*Id.*; TR. Vol I, 1/11/99, p 53).

17. Highest classification level for female inmates is Level V (*Id.*; TR. Vol II, 1/13/99, p 130).

18. No female inmates are classified as Level III (*Id.*).

19. There is no Level VI women's facility. (*Id.*).

20. Level I women inmates housed at the Scott Facility are outside the secured perimeter. (TR. Vol I, 1/11/99, p 88).

21. Different types of Level I facilities exist, including secure Level I facilities because male sexual offenders are not permitted in the camp program. (Defendants' Exhibit 2; TR Vol II, 1/13/99, p 131).

22. No women inmates are placed within a secure Level I facility (*Id.*; TR. Vol I, 1/11/99, pp 53, 88-89).

23. The Scott Facility is a multi-level facility which contains every conceivable custody level that exists in the State of Michigan for women prisoners (Levels I, II, IV, V). TR. Vol I, 1/11/99, p 51; TR. Vol II, 1/13/99, pp 132-133, Defendants' Exhibits 2, 3, 4, 5, 6, 7. The Scott Facility is also the only reception center for women in the state, and therefore, it processes women coming into the system as new commitments as well as women who have been placed in the community and violated CRP or parole. *Id.* The Scott Facility also contains the Residential Treatment Program for women, which is a specialized mental health population unit which is staffed by mental health professionals. *Id.* Additionally, the Scott

Facility is the only site for administrative segregation for women and also houses women prisoners in protective custody. *Id.*

24. There is no male prison facility exactly comparable to Scott. (TR. Vol II, 1/13/99, pp 132-133).

25. The MDOC chose Saginaw Correctional Facility and the Standish Correctional Facility as benchmark facilities to Scott. (*Id.*, p 133; Defendants' Exhibits 6, 7). The Standish Facility is a Level V facility which also has an administrative segregation unit and a protective custody unit. *Id.* The Saginaw Facility is a multi-level facility with Level I, II, and IV inmates. *Id.* Additionally, the Level I unit is outside the secured perimeter, as similar to Scott. *Id.* Both the Standish and Saginaw facilities offer an array of educational programming, with Saginaw offering some of the best vocational programs for male inmates. *Id.* p 134.

26. Carson City Temporary was chosen as a benchmark facility to the Crane Facility. *Id.*, Defendants' Exhibits 6, 7. Carson City is a Level II facility, closest in population size to Crane, and any prisoner housed at Carson City would have, in terms of security screening, screened at the same level as any women housed at Crane. *Id.* Additionally, Carson City has an array of programming, including an MSI program, and a law library similar to Crane. *Id.*

27. Camp Lehman was chosen as a benchmark facility to Camp Branch. *Id.*, Defendants' Exhibits 6, 7. Camp Lehman is the only male camp with a law library, along with academic programming. *Id.* pp 134-135.

28. The federal court's authority to intrude itself into the operation of Michigan's prison system is limited to assuring that sufficient parity is achieved

between male and female inmates in matters of educational and vocational opportunities as satisfies the demands of the Equal Protection Clause of the Fourteenth Amendment.

B. WITNESSES

1. The Defendants' called three (3) witnesses to testify in this matter: Nancy Zang, Michael Mahoney, and Bruce Wolford, Ph.D.

2. Ms. Zang is Special Administrator, Female Offender Programs, MDOC. TR. Vol I, 1/11/99, p 50. Ms. Zang began her position on August 1, 1991. *Id.* The position was created by the Federal Court and is responsible for oversight and implementation of all of the Federal Court orders that have been issued in *Glover*. *Id.* Finally, Ms. Zang periodically has special assignments relative to women offenders. *Id.*

3. Michael Mahoney is President and Chief Executive Officer of the John Howard Association in Chicago, Illinois. Defendants' Exhibit 7; TR Vol V, 1/21/99, pp 5-11. The John Howard Association is a 98 year old, private, not-for-profit prison watchdog and reform organization which is governed by a volunteer citizen board of directors of approximately 35 individuals, who include civil leaders, state and federal judges, and academics interested in prison reform. *Id.* Mr. Mahoney has served as a Monitor for the federal court on numerous occasions. *Id.*

4. Mr. Mahoney had previous experience with the MDOC as an expert witness and court-appointed special administrator. *Id.* Mr. Mahoney had the opportunity as part of his previous experience and in conjunction with this case to tour a number of Michigan's correctional facilities. *Id.*

5. Mr. Mahoney had previous experience evaluating apprenticeship programs in a correctional setting. *Id.* Additionally, Mr. Mahoney was familiar with Michigan State Industries (MSI) within the MDOC. *Id.* Mr. Mahoney also had experience evaluating correctional work opportunities, including public works programs. *Id.*

6. Mr. Mahoney was retained by Defendants to observe and form an opinion as to the comparability of opportunities for male and female inmates within the MDOC regarding prison industries, public works, and apprenticeship. *Id.* Mr. Mahoney toured certain facilities and examined voluminous data. *Id.* Mr. Mahoney performed a system-wide comparison, and his conclusions are based upon system-wide data. *Id.*; TR Vol V, 1/21/99, pp 33-34.

7. Bruce Wolford is Professor, Department of Correctional Services, Eastern Kentucky University. Defendants' Exhibit 6; TR. Vol VI, 1/22/99, pp 5-9. Dr. Wolford is also Director, Training Resource Center, Eastern Kentucky University, and Director, Kentucky Educational Collaborative for State Agency Children. *Id.*

8. Dr. Wolford has extensive experience dealing with corrections issues. *Id.* He also has previous experience dealing with incarcerated female inmates. *Id.* Dr. Wolford has prior experience evaluating educational programming in a correctional setting. *Id.* Finally, prior to this case, Dr. Wolford had previous experience with the MDOC, including touring several correctional facilities in Michigan. *Id.*

9. Dr. Wolford was retained by Defendants to observe and form an opinion as to the comparability of educational and vocational opportunities for

male and female inmates in MDOC facilities. *Id.* Dr. Wolford also examined educational and vocational funding levels for male and female inmates. *Id.* In performing his analysis, Dr. Wolford reviewed voluminous data and toured various facilities. *Id.*

10. Plaintiffs called five (5) witnesses to testify in this matter: Barbara Bloom, Richard Meisler, and three female inmates, Lessie Brown, Monica Nowos, and Monica Jahner.

11. Barbara Bloom is an Assistant Professor, San Jose State University. Plaintiffs' Exhibit 40. (Despite Defendants' objections, Professor Bloom was permitted to testify by telephone). Professor Bloom's "protocols" for evaluating in-prison programs have not been validated within the scientific community. TR Vol IV, 1/20/99, pp 22, 48-49. Dr. Bloom acknowledged that she knew of no protocols that had been accepted in the general community. *Id.*

12. Professor Bloom has no professional experience dealing with the MDOC. *Id.*, p 49. She has never visited Michigan correctional facilities, or interviewed inmates and staff. *id.*, p 51. The majority of Professor Bloom's research involved the State of California and other west coast states. *Id.*, pp 49-50. The State of California houses over 11,000 female inmates in five (5) facilities, while Michigan houses less than 2,000 inmates in three (3) facilities. *Id.*

13. Professor Bloom never reviewed any current materials regarding Michigan female inmate demographics. *Id.*, p 51. The only statistics regarding Michigan female inmates Professor Bloom reviewed were from 1994. *Id.*, p 53. Professor Bloom was not provided all exhibits. *Id.*, p 52.

14. Richard Meisler is a Program Officer with the Great Lakes College Association. Plaintiffs' Exhibit 41. The Great Lakes College Association runs programs for faculty/students in a consortium of twelve private, liberal arts colleges. TR Vol II, 1/13/99, p 48. None of the twelve colleges in the consortium operate any college programs in men or women's prisons. *Id.* pp 95-96.

15. Dr. Meisler has not been involved with Michigan's prisons since 1987. *Id.*, p 96. Dr. Meisler never met with the school principals at the men or women's prisons. *Id.* Dr. Meisler was not able to evaluate whether parity in college programming existed. *Id.*, p. 62. Additionally, Dr. Meisler did not know if college programming admission criteria is different for male or female inmates. *Id.*, p 99. He was also unaware whether the vocational programs at the female facilities was court mandated. *Id.*, pp 100-101.

16. Dr. Meisler has never evaluated a vocational or college program in a prison setting. *Id.*, pp 108-109.

17. Most if not all of the female inmate testimony was based on hearsay, or lack of personal knowledge. Lessie Brown, an inmate at the Crane Facility, is not currently involved in programming, and has not been since 1992. TR Vol. III, 1/14/99, pp 5, 10. She is a tutor in the graphic arts program, and acknowledged there is no need for a print shop. *Id.*, pp 5, 11. Monica Nowos is a Level II prisoner at the Scott Facility. *Id.*, p 14. Ms. Nowos has completed the paralegal program, and has applied for auto mechanics. *Id.*, pp 15-16. She has not participated in any other programming. Monica Jahner is a Level II prisoner at the Scott Facility. *Id.*, p 46. Ms. Jahner is not enrolled in vocational programming and has never been enrolled.

Id., p 42. Ms. Jahner is not aware if male inmates have the same restrictions as female inmates, nor is she aware of the custody levels at various male facilities. *Id.*, pp 42-43. Ms. Jahner's "knowledge" is based on hearsay. *Id.*, p 43.

C. WORK PASS/PUBLIC WORKS

1. The criteria for work pass is established in department policy and administrative rules and is applied identically to men and women. Defendants' Exhibit 1B; 1993 AACS R791.4410, R791.4420, R791.4425.

2. Although Level I and II facilities may both be designated as "work camps" for purposes of public works, only Level I facilities can be designated as "work camp" for purposes of work pass. Defendants' Exhibit 1B.

3. A prisoner housed in a work camp is eligible for consideration for work-pass status when all of the conditions set forth in 1993 AACS R 791.4420 are met. *Id.*

4. The focus of the work pass program is paid employment in the community. As such, the type of job that is available for a prisoner is contingent on an employer in the community being willing to hire the prisoner. *Id.*

5. Work pass candidates cannot be placed in a job unless the pay scale meets legal minimum usage requirements and the prevailing wage for similar skills in the community. *Id.*

6. The place of employment must meet prevailing standards of safety for the particular job in that community. Proof of worker compensation insurance is required. *Id.*

7. Work pass employment may not result in the displacement of other

employed workers, nor may it be applied to skills, crafts or trades in which there is a surplus of available gainful labor in the locality. *Id.*

8. Prisoners do not "complete" a work pass program. Instead, prisoners typically become eligible for placement in another residential setting. Typically, this involves a return to the community via placement at a corrections center, on tether, or on parole.

9. Other instances when a prisoner would leave a work pass program would typically involve reclassification to a higher security level as a result of a misconduct.

10. During 1998, one (1) male prisoner participated in the work pass program. This prisoner is housed at Camp Pellston, and is employed at a local restaurant. TR Vol I, 1/11/99, p 142.

11. During 1998 (1/1/98 - 12/3/98), thirteen (13) female prisoners housed at Camp Branch participated in the work pass program. As of 12/3/98, five (5) prisoners are assigned to work pass detail at a local factory. *Id.*

12. Other than the one male inmate referenced above, the work pass program for male inmates has been eliminated as poor public policy. TR Vol I, 1/11/99, pp 141-142.

13. Work pass for women inmates has not been eliminated pursuant to Federal Court order. *Id.*, pp 142, 157-158.

14. A public works program exists for male and female inmates. *Id.*, p 142. Public work crews are supervised by a MDOC employee. *Id.*, p 143. These crews go into the community during business hours and work at a variety of different jobs,

including cleaning up city parks and planting flowers. *Id.*

15. A prisoner on public works is under the direct supervision of either a MDOC employee or someone who has participated in public works supervisor training. *Id.*, p 144; Plaintiffs' Exhibit 27.

16. The MDOC provides work crews to public and non-profit agencies to perform services for the benefit of the general public and in order to provide meaningful work assignments for eligible prisoners, parolees and probationers. Plaintiffs' Exhibit 27.

17. The camps are eligible to send inmates on public works. TR Vol I, 1/11/99, pp 145, 154.

18. The Scott Facility Level I inmates and certain male Level I facility inmates operate public work crews. *Id.*, pp 145-146; TR Vol V, 1/21/99, p 53.

19. Public works is not available for Level II, III, IV, V and VI inmates. TR Vol V, 1/21/99, p 53.

20. The MDOC criteria for participation in public work crews is gender neutral. TR Vol I, 1/11/99, pp 162-163; Plaintiffs' Exhibit 27.

21. There is no MDOC policy, program, directive, or activity that makes it more difficult for women to participate in public works than men. *Id.*, pp 163-164.

22. The assessment of public works assignments by Defendants' expert witness Michael Mahoney, was based upon the percentage of women participating versus the percentage of male inmates. *Id.*, p 56; Defendants' Exhibit 7. Mr. Mahoney examined the number of public works jobs made available to male and female inmates. *Id.*, p 57. His conclusion was reached based upon comparing the

levels of inmates participating independent of their eligibility. *Id.*, pp 62-63.

23. Public work assignments afforded female inmates are comparable and exceed those of male inmates. Defendants' Exhibit 7; TR Vol V, 1/21/99, p 22.

24. Gate pass allows inmates at one facility to go to another facility to work under the supervision of MDOC staff. TR Vol II, 1/13/99, pp 143-144. Gate pass has never been a part of the *Glover* proceedings. *Id.*, p 145.

D. EDUCATIONAL PROGRAMMING

1. The following academic programs may be provided by the MDOC pursuant to policy (Defendants' Exhibits 1C, 1D):

- a. Adult Basic Education (ABE) and English as a Second Language (ESL);
- b. Special Education;
- c. General Education Development (GED);
- d. Pre-Release/Interpersonal Skills Development (ISD);
- e. Vocational Education;
- f. Apprenticeships;
- g. College programs as required by court order.

2. Pursuant to MDOC policy, the primary goals of the education program are (Defendants' Exhibit 1C):

- a. To increase basic reading, math, writing, and critical thinking skills of prisoners to the minimum required to obtain a GED certificate;
- b. To assist prisoners in acquiring employment and job skills; and
- c. To develop and enhance interpersonal skills of prisoners.

3. Unless exempted by MDOC policy, each prisoner is expected to reach the highest level of educational achievement, up to GED, consistent with his/her abilities. *Id.*

4. ABE programming is designed to provide instruction to prisoners who have not attained the 8th grade level in reading, math, and writing skills as measured by standardized testing. ABE programming includes instruction in ESL for all prisoners in need of such instruction, as determined by education staff, and included as a goal in the Education Program Plan. ABE instructional components include reading, math, and language skills. *Id.*

5. Special education is specialized instruction and services for eligible prisoners 21 years of age or younger, and is designed to meet unique educational needs. The goal of special education programming is to assist each eligible prisoner in developing his/her education potential. *Id.*

6. GED programming is designed for prisoners who have satisfactorily completed the Department's ABE program. Other prisoners who qualify for GED programming are those who have demonstrated competency at the 8th grade level, as measured by standardized tests, but have not yet attained a documented high school diploma or GED. GED instructional components include math, social studies, science, literature and the arts, and writing skills. *Id.*

7. Pre-Release, Interpersonal Skills Development programs focus on preparing prisoners for their release from prison. Instructional components in these programs include improving self-esteem, preparing for job interviews, completing sample job applications, resume writing, identifying job leads, money

management, relationships, family living, problem solving, conflict resolution substance abuse awareness, and decision making. *Id.*

8. Vocational education enables prisoners to prepare for employment. In a vocational education program, a prisoner develops his/her ability to do a specific job or cluster of jobs, practices job readiness skills, and acquires job search skills. This is done through a systematic program of hands-on training and related instruction. *Id.*

9. Pursuant to MDOC policy, prisoners are allowed to complete only one vocational program at State expense. *Id.*

10. An apprenticeship is a formal method of training workers in a skilled craft, occupation, or trade. During the apprenticeship term, an apprentice is assigned to learn a craft through a systematic program of on-the-job training and related instruction. Apprenticeship terms range between 2,000 and 8,000 hours. All apprenticeship programs must be registered with the United States Department of Labor, Bureau of Apprenticeship and Training, as described in MDOC policy PD 05.02.122 "Institutional Apprenticeship Programs." *Id.*; Defendants' Exhibit 1G.

11. College programming is not offered unless required by court order. Defendants' Exhibit 1C. However, prisoners may be allowed to attend college through correspondence courses at their expense, pursuant to MDOC policy, PD 05.02.119. *Id.*; Defendants' Exhibit 1E.

12. Prisoners are permitted to earn only one college associate's degree or the credit equivalent, and one baccalaureate degree or the credit equivalent, at State expense, where available pursuant to court order. Defendants' Exhibit 1C.

13. Both female institutions (Scott and Crane) offer special education services. Sixteen (16) male institutions (Brooks, Carson City Correctional, Chippewa Correctional, Cotton, Harrison, Handlon, Michigan Training Unit, Huron Valley Men's, Ionia Temporary, Lakeland, Marquette - Level V only, Michigan Reformatory, Ryan, Thumb, Standish, Western Wayne) offer special education services. *Id.*; Defendants' Exhibit 1L.

14. As of October 31, 1998, 2,074 male inmates are on a waiting list to enroll in academic programming. As of this same date, 29 female inmates are on a waiting list to enroll in academic programming. Defendants' Exhibit 2.

15. As of October 31, 1998, 866 male inmates are on an waiting list to enroll in vocational programming. As of this same date, 24 female inmates are on a waiting list to enroll in vocational programming. Defendants' Exhibit 5.

16. Female inmates have comparable or greater opportunities than do male inmates to participate in vocational and educational programs. Defendants' Exhibits 2, 3, 4, 5, 6; TR Vol VI, 1/22/99, pp 28-29.

17. Greater financial resources are appropriated for female inmates than male inmates for vocational and academic programs. Defendants' Exhibit 6; *Id.*, pp 31-32.

18. The District Court requested that MDOC Special Administrator Nancy Zang submit an affidavit to the court responding to certain errors in Plaintiffs' Exhibits. TR Vol I, 1/11/99, pp 123, 125-126; TR Vol II, 1/13/99, pp 46, 156-157. Pursuant to the Court's direction, on January 20, 1999, Ms. Zang's affidavit was filed with the Court. (Docket No. 1421).

19. In response to the errors contained in Plaintiffs' exhibits, Ms. Zang's affidavit (Docket No. 1421) states:

a. With regard to On-the-Job Training (OJT), the following response was provided in Defendants' Response to Plaintiffs' Interrogatories And Request For Production Of Documents Pursuant To The District Court's Order Of November 6, 1998, which was served on Plaintiffs' on November 16, 1998 (Interrogatory 41):

"OJT: . . . It should be noted that OJT programming is governed by P.D. 05.02.121, which is attached. However, no Michigan Department of Corrections (MDOC) facility currently provides OJT programming which complies with the requirements of this policy directive. In some instances, informal arrangements between school and maintenance staff have evolved. These informal arrangements afford prisoners limited opportunities for vocational instruction which is in some instances supplemented by assignments to work details that provide practice in a work setting. However, these informal arrangements are not officially recognized or entitled "OJT Programming."

b. During the court hearing on January 11, 1999, I was questioned by Plaintiffs' Attorneys regarding Plaintiffs' Exhibit 3. This exhibit appeared to contain the cover page of the Academic/Vocational Monthly Reports submitted by all prison schools in the Michigan Department of Corrections (MDOC) for the period of time September 1, 1998 - September 30, 1998. As I stated during my testimony, I believed that reports submitted by six facilities contained a data entry error in the section of the report related to Headcount of OJT Students and Headcount of Apprentice

Enrollments. This includes the reports submitted by the Chippewa Temporary Facility KTF); Marquette Branch Prison (MBP); Muskegon Temporary Facility MTF); Ryan Correctional Facility (RRF); Egeler Correctional Facility (SMN); and the Chippewa Regional Facility (URF).

c. I have spoken with administrators at the six facilities, Chippewa Temporary Facility KTF), Marquette Branch Prison (MBP), Muskegon Temporary Facility (MTF), Ryan Correctional Facility (RRF), Egeler Correctional Facility (SMN), and the Chippewa Regional Facility (URF) to obtain clarification as to the entries submitted on the September 1998 reports.

d. The school principal who supervises the educational programs at both the Chippewa Temporary Facility KTF) and the Chippewa Regional Facility (URF) advised me that after a prisoner completes the custodial maintenance program, he may request additional practice. If this request is made, the prisoner may be assigned to work in his housing unit. This assignment could be as the unit porter. If the prisoner is assigned a porter detail, he is paid based on the MDOC pay policy as a porter: If he is not assigned as a porter, he would continue to receive the student pay. The prisoner's work on a porter detail is monitored by custody staff.

The school principal indicated that this is an informal arrangement and does not comply with the MDOC Policy Directive 05.02.121 (Defendants' Exhibit 1-N). The sole purpose of this arrangement is allow prisoners the opportunity to practice skills learned while assigned to a work detail.

e. The school principal at the Marquette Branch Prison (MBP) advised me that during a 1981 riot, the vocational school was burned down. Staff were then

faced with the dilemma of running vocational programs with no facility in which to operate them. As such, they identified various work assignments at the facility in which instruction could be joined with practice. The work assignments which were identified for this initiative included all porter assignments.

The Marquette Branch Prison (MBP) began offering instruction in institutional maintenance by providing prisoners with 3 hours of classroom instruction via the Technical Publishing Company (TPC) program, one day per week. The TPC program consists of workbooks, videos, and tests. This instruction is then supplemented by the prisoner being assigned to a porter detail. Once the prisoner completes all the requirements of the TPC program and passes the test, he is awarded a certificate. During the period of instruction, the prisoner is paid at the unskilled worker rate pursuant to the Director's Office Memorandum 1998-1 (Defendants' Exhibit 1-K). If the prisoner completes the requirements of the TPC program and passes the test, he is eligible for pay at the skilled worker rate.

f. The Warden at the Muskegon Temporary Facility (MTF) advised me that approximately eight years ago, it was determined that it would be beneficial to provide Special Education students with a combination of classroom instruction and work experience. An informal arrangement began which allowed Special Education students to be assigned certain jobs on a limited basis in the institutional kitchen. All prisoners who are engaged in this type of assignment are paid at the unskilled worker rate pursuant to Director's Office Memorandum 1998-1 (Defendants' Exhibit 1-K). The nine prisoners identified as OJT students on the September 1998 monthly report have this type of assignment.

g. The School Principal at Ryan Correctional Facility (RRF) has advised me that there are not any OJT assignments or Apprenticeship assignments at Ryan. The numbers which reported enrollments in these two categories were a data entry error.

h. The School Principal at the Egeler Correctional Facility (SMN) has advised me that an informal arrangement exists which allows prisoners to participate in hands-on experience which she categorizes as work-study. This allows prisoners to practice skills taught in the custodial maintenance program by also being assigned as a porter.

i. I was also questioned by Plaintiff Attorneys regarding Plaintiffs' Exhibit 4 which are the Academic/Vocational Monthly reports submitted by the Huron Valley Men's Facility (JVM) for the months of January, February, March, April, May, June, July, August, September, October 1998. As I stated during my testimony, I believed that the reports which reflected 30 apprenticeship enrollments was a data entry error. I have had the opportunity to review the 10 reports which comprise Plaintiffs' Exhibit 4. I note that the reports for May - October 1998 do not reflect apprenticeship enrollments. Further, the School Principal at the Huron Valley Men's Facility (HVM) has advised me that a data entry error occurred on the January, February, March and April 1998 reports. There is not, nor has there ever been, an apprenticeship program at the Huron Valley Men's Facility (HVM).

j. During the court hearing on January 11, 1999, I was also questioned by Plaintiff Attorneys regarding Plaintiffs' Exhibit 5. This exhibit contained the

Academic/Vocational Monthly Reports for the Riverside Correctional Facility (RCF) for the months of January, February, March, April, May, June, July, August, September, and October, 1998. Having now had the opportunity to review and investigate these reports, I note that the May, June, August, September, and October 1998 Academic/Vocational Monthly Reports do not reflect any students enrolled in OJT or Apprenticeship Programming. I have talked with the Riverside Correctional Facility (RCF) School Principal, and been advised that a data entry error occurred on the remaining monthly reports. There are no OJT or apprenticeship programs at the Riverside Correctional Facility (RCF).

k. Given the data errors that have been identified during this investigation, I also questioned how this would occur. I am advised that there are approximately thirteen (13) screens on which data has to be entered to produce the Academic/Vocational Monthly reports which Plaintiffs' entered as Exhibits 3, 4, and 5. It appears that the instructions for data entry on some screens may be confusing. The type of data which should be entered in the section for Apprenticeship and OJT Statistics appears to have been misinterpreted in some instances. This misinterpretation resulted in the data entry areas which are identified above.

20. On December 15, 1998, the Michigan Legislature enacted 1998 P.A. 320 amending M.C.L. 791.233, and provided that regardless of gender, a prisoner whose minimum term of imprisonment is two (2) years or more shall not be paroled unless the prisoner has either earned a high school diploma or a GED certificate. M.C.L. 791.233 (f) provides:

A prisoner whose minimum term of imprisonment is 2 years or more shall not be released on parole unless he or she has either earned a high school diploma or earned its equivalent in the form of a general education development (GED) certificate. The director of the department may waive the restriction imposed by this subdivision as to any prisoner who is over the age of 65 or who was gainfully employed immediately before committing the crime for which he or she was incarcerated. The department of corrections may also waive the restriction imposed by this subdivision as to any prisoner who has a learning disability, who does not have the necessary proficiency in English, or who for some other reason that is not the fault of the prisoner is unable to successfully complete the requirements for a high school diploma or a general education development certificate. If the prisoner does not have the necessary proficiency in English, the department of corrections shall provide English language training for that prisoner necessary for the prisoner to begin working toward the completion of the requirements for a general education development certificate. This subdivision applies to prisoners sentenced for crimes committed after December 15, 1998. In providing an educational program leading to a high school degree or general education development certificate, the department shall give priority to prisoners sentenced for crimes committed on or before December 15, 1998.

E. COLLEGE PROGRAMMING

1. College programming is provided at only three (3) institutions pursuant to court orders issued by United States District Court Judge John Feikens. One (1) male institution, Egeler Correctional Facility (SMN) and both of the female institutions, Scott Correctional Facility (SCF) and Crane Correctional Facility (ACF), offer court-mandated college programming. Defendants' Exhibits 3, 4; TR Vol II, 1/13/99, p 101.

2. Male prisoners housed at SMN may participate in college

programming if they meet the admission criteria of the college provider.

Defendants' Exhibit 1C. Montcalm Community College delivers associate level programming and Spring Arbor College delivers baccalaureate level programming. *Id.*; *Id.*, pp 101-102.

3. Female prisoners housed at SCF may participate in college programming if they meet the admission criteria of the college provider.

Defendants' Exhibits 1C, 1F. Montcalm Community College provides associate level programming as well as classes in paralegal studies. Spring Arbor College provides baccalaureate level programming. *Id.*; *Id.*, p 102.

4. Female prisoners housed at ACF may participate in college programming if they meet the admission criteria of the college provider.

Defendants' Exhibits 1C, 1F. Kellogg Community College provides associate level programming as well as classes in paralegal studies. Western Michigan University provides baccalaureate level programming. *Id.*; *Id.*, p 102.

5. Post Secondary Program Plans are required for all college students, each semester, regardless of gender. *Id.*

6. College programming, including associate and baccalaureate degrees, are mandated at the women's secured facilities. *Id.* All female inmates may participate in college programming if they are academically eligible. Defendants' Exhibit 1F; TR Vol II, 1/13/99, pp 102-103.

7. Women in camps who want to attend college can be transferred back to the secured facilities for such programming. Thus, all women in custody have the

ability to attend college. Defendants' Exhibit 1F; TR Vol II, 1/13/99, pp 154-155, 159-160. Male inmates do not have right to transfer to enroll in college courses. *Id.*, p 154.

8. As of October 31, 1998, 245 female inmates are enrolled in associate degree college programming. Defendants' Exhibit 3.

9. As of October 31, 1998, 25 female inmates are enrolled in 1-year certificate paralegal training program offered by the community colleges. *Id.*; TR Vol II, 1/13/99, pp 103-106.

10. As of October 31, 1998, 120 female inmates are enrolled in baccalaureate college programming. *Id.*

11. As of October 31, 1998, 33% of the female inmate population of the Crane Facility are enrolled in college programming. *Id.*

12. As of October 31, 1998, 27% of the female inmate population at the Scott Facility are enrolled in college programming. *Id.*

13. As of October 31, 1998, 142 male inmates at the Egeler Facility are enrolled in associate degree programming, and 43 male inmates are enrolled in baccalaureate college programming. 18% of the male inmate population at the Egeler Facility are enrolled in college programming. *Id.*

14. As of October 31, 1998, 22% of the entire female inmate population are enrolled in college programming. *Id.*, Defendants' Exhibit 4.

15. As of October 31, 1998, .004% of the entire male inmate population are enrolled in college programming. *Id.*

16. Federal government eliminated PELL Grant funding for all inmates, regardless of gender, convicted of particular crimes.

17. The *Glover* court mandated the State to make up the loss of PELL Grant funds for women so as to not preclude any college programming.

18. For female inmates, exceptions made to MDOC policy to permit mixing of custodies for college in order to comply with *Glover* orders.

19. Greater financial resources are appropriated for female inmates than male inmates for college programming. Defendants' Exhibit 6.

F. APPRENTICESHIPS

1. The MDOC has instituted a policy directive concerning institutional apprenticeship programs, PD 05.02.122. Defendants' Exhibit 1G.

2. The program is conducted, operated, and administered in conformity with applicable provisions of the Rules and Regulations for the United States Department of Labor for apprenticeship programs, 29 CFR Part 30, as amended, and adopted in the "Standards of Apprenticeship for Local Apprenticeship Committee." *Id.*; TR Vol V, 1/21/99, p 45.

3. An apprenticeable occupation involves manual, mechanical or technical skills and knowledge clearly identified and commonly recognized throughout an industry. An apprenticeable occupation requires a minimum of 2,000 hours of on-the-job work experience. Most apprenticeable occupations range between 2,000 and 8,000 hours. Such standards include a structured, systematic prospectus identifying work processes and related instruction necessary for the

apprentice to complete. It is a document used by the Michigan Department of Corrections to train one or more apprentices. The standards must be registered with the United States Department of Labor, Bureau of Apprenticeship and Training (BAT). *Id.*

4. There is a competitive process with interviews for applicants which is similar to the outside world. *Id.*

5. The pay rate of the apprenticeship is one of the highest paying jobs in the institutions. *Id.*

6. The standards for both male and female apprenticeship programs adhere to the guidelines established by BAT. *Id.*

7. Both women's facilities have apprenticeships. Defendants' Exhibits 4, 7.

8. Crane Correctional Facility. Five (5) apprenticeships are certified by BAT: Computer Peripheral Equipment Operator; Landscape Gardener, Building Maintenance Repair, Electrician Maintenance, and ~~Cook~~. *Id.*, TR Vol I, 1/11/99, p 116.

9. Scott Correctional Facility. Six (6) apprenticeships are certified by BAT: ~~Cook~~; Dental Assistant; ~~Landscape Gardener~~; Building Maintenance Repair; Electrician; Painter. *Id.*

10. Only one (1) (Marquette Branch Prison) out of the 37 men's facilities have apprenticeships in 1998. Twelve (12) apprenticeships are certified by BAT: Landscape Gardener; Carpenter; Cook; Electrician; Farm Worker; Housekeeper

(commercial, residential, industrial); Industrial Maintenance Mechanic; Material Coordinator (warehouse); Meat Cutter; Painter; Plumber; Refrigeration Mechanic. *Id.*; TR Vol V, 1/21/99, p 12.

11. As of October 31, 1998, eight (8) male prisoners were enrolled in apprenticeship programs. Defendants' Exhibit 4.

12. As of October 31, 1998, eleven (11) female prisoners were enrolled in apprenticeship programs. Five (5) prisoners were enrolled at the Crane Facility, and six (6) prisoners were enrolled at the Scott Facility. *Id.*

13. All apprenticeship programs at the Scott and Crane Facilities were operational in 1998. TR Vol I, 1/11/99, pp 139, 141.

14. Women inmates in the camp system have the opportunity to transfer and participate in the apprenticeship program. *Id.*, pp 152-153.

15. Male inmates in the camp system do not have the opportunity to transfer and participate in the apprenticeship program. *Id.*

16. Female inmates have a far greater access to participate in apprenticeship programs than male inmates. Defendants' Exhibit 7; TR Vol V, 1/21/99, pp 22-23.

17. One (1) out of every 34 male inmates participates in apprenticeship programs, and one (1) out of every 15 female inmates participate in apprenticeship programs. *Id.*

18. Women inmates fare better than male inmates regarding apprenticeship opportunities. *Id.*, p 46.

19. The assessment of apprenticeship programs by expert witness Michael Mahoney, was based upon apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training. *Id.*, p 50.

20. Some correctional facilities may inappropriately classify some work details as apprenticeships. *Id.*, pp 46, 48-49. However, these "helper" positions do not meet the strict standards of the Department of Labor. *Id.*

21. Both male and female inmates in these "helper" programs, or other activities which do not meet the strict standards of the Department of Labor, may petition the Department of Labor for certification. *Id.*, pp 50, 64.

G. INDUSTRIES (MSI)

1. Female inmates have a greater access to industry programs than male inmates. Defendants' Exhibit 7; TR Vol V, 1/21/99, p 20.

2. The majority of the women inmates opportunities in Industries at both the Scott and Crane Facilities were in the semi-skilled, highly skilled and specialists range. *Id.*; *Id.*, p 21.

3. Female inmates have the same pay levels as male inmates, and based upon a variety of skill levels, exceed males. *Id.*; *Id.*

4. 28% of the total male inmate population were employed in Industries, and 36% of the total female population were employed. *Id.*; *Id.*, p 20.

H. VOCATIONAL PROGRAMMING

1. Individualized Program Plans (IPP) are implemented for women in vocational programs.

2. Individualized Program Plans (IPP) are not currently implemented for men in vocational programs.

3. The Life Skills Institute was developed with a federal grant and is implemented only at women's facilities.

4. The Life Skills Institute is not implemented at any of the men's facilities.

5. Eligibility for vocational placement is based on a department-wide educational policy that references procedures and criteria for placement.

6. Vocational programming offered at all women's secured facilities, Female Offender Program Bulletin 1995-1, Defendants' Exhibits 1H; 5:

Crane Correctional Facility. (546 population) Four (4) programs: Business Education Technology; Graphic Arts; Food Service/Management; Horticulture. Ratio 1:137.

Scott Correctional Facility. (848 population) Six (6) programs: Business Education Technology; Auto Mechanics; Institutional Maintenance; Graphic Arts; Food Service/Management; Building Trades/Restoration. Ratio 1:141.

7. The six (6) vocational programs established at the Scott Facility listed above, are pursuant to Federal Court order. TR Vol I, 1/11/99, p 57. In addition, the MDOC offers programs in denture technology and pre-vocational computer lab training which have not been recognized by the Court, *Id.*, p 58.

8. Three (3) of the four (4) vocational programs established at the Crane Facility listed above (Business Education Technology, Graphic Arts, Food

Service/Management) are pursuant to Federal Court order. *Id.*, pp 57-58. In addition, the MDOC offers a program in horticulture. *Id.*

9. Eligibility criteria for placement of women prisoners in vocational programming allows them to enroll with a TABE score of 7.0 which is identified in the Female Offender Program Bulletin (Defendants' Exhibit 1H) for Vocational Programming. This is a deviation from the MDOC policy which requires 8.0 scores on TABE. The MDOC instituted this change to ensure that vocational programs at Scott and Crane were not burdened with low enrollments. This privilege is not afforded male prisoners who must demonstrate reading and math skills at the 8.0 level to be eligible for enrollment in vocational programming. TR Vol I, 1/11/99, pp 93-94.

10. Vocational programming offered at only 31 of 37 men's facilities, (Defendants' Exhibit 5):

Adrian Temporary. (957 pop.) One (1) program: Electronics. Ratio 1:957

Brooks Regional. (1,214 pop.) Three (3) programs: Electronics; Food Service; Institutional Maintenance. Ratio 1:405.

Carson City Temporary. (960 pop.) One (1) program: Building Trades/Restoration. Ratio 1:960.

Carson City Regional. (1,248 pop.) Two (2) programs: Food Service/Management; Business Education Technology. Ratio 1: 624 .

Chippewa Temporary. (955 pop.) Two (2) programs: Building Trades/Restoration; Institutional Maintenance. Ratio 1:478.

Chippewa Regional. (1,189 pop.) Two (2) programs: Institutional Maintenance; Building Trades/Restoration. Ratio 1: 595.

Cooper Street Facility. (815 pop.) One (1) program: Institutional Maintenance. Ratio 1:815.

Cotton Correctional Facility (1,650 pop.) Three (3) programs: Food Service/Management; Institutional Maintenance; Building/Restoration. Ratio 1:550.

Egeler Facility. (1,008 pop.) Four (4) programs; Institutional Maintenance; Graphic Arts/Printshop; Institutional Maintenance; Optical Technology. Ratio 1:252.

Handlon Michigan Training Unit. (1,307 pop.) Six (6) programs: Building Trades/Restoration; Institutional Maintenance; Horticulture; Auto Mechanics; Machine Tool Operation; Welding. Ratio 1:218.

Gus Harrison Facility. (1,240 pop.) Two (2) programs: Food Service/Management; Institutional Maintenance. Ratio 1: 620.

Hiawatha Temporary. (927 pop.) Three (3) programs: Institutional Maintenance; Building Trades/Restoration; Business Education Technology. Ratio 1:309.

Huron Valley Men's. (477 pop.) Two(2) programs: Horticulture; Institutional Maintenance. Ratio 1:239.

Ionia Maximum. (554 pop.) One (1) program: Institutional Maintenance (Level II only). Ratio 1:554.

Ionia Temporary. (959 pop.) Six (6) programs: Horticulture; Building Trades/Theory; Institutional Maintenance; Business Education Technology; Building Trades/Restoration; Graphic Arts/Printshop. Ratio 1:160.

Kinross Correctional. (1,218 pop.) Five (5) programs: Institutional Maintenance; Building Trades/Restoration; Auto Mechanics; Welding; Auto Body Repair. Ratio 1:244.

Lakeland Correctional. (1,195 pop.). Three (3) programs: Business Education Technology; Food Service Management; Horticulture. Ratio 1:398.

Macomb Regional. (1,240 pop.). Three (3) programs: Food Service/Management; Horticulture; Institutional Maintenance. Ratio 1:413.

Marquette Branch Prison. (1,116 pop.). Two (2) programs: Meat Cutting; Institutional Maintenance. Ratio 1:558.

Michigan Reformatory. (1,256 pop.) One (1) program: Small Engine Repair. Ratio 1:1,256.

Mid-Michigan Temporary. (960 pop.). Four (4) programs: Building Education Technology; Building Trades/Restoration; Institutional Maintenance; Horticulture. Ratio 1:240.

Mound Regional. (1,055 pop.). Two (2) programs: Building Trades/Restoration; Institutional Maintenance. Ratio 1:528.

Muskegon Temporary. (956 pop.) Two (2) programs: Institutional Maintenance; Business Education Technology. Ratio 1:478.

Muskegon Correctional. (1,292 pop.) Four (4) programs: T.V. Production;

Horticulture; Auto Mechanics; Food Service/Management. Ratio 1:323.

Newberry Correctional. (921 pop.) Two (20 programs: Institutional Maintenance; Print Shop. Ratio 1:461.

Parnall Correctional. (1,443 pop.) Four (4) programs: Auto Mechanics; Horticulture; Institutional Maintenance; Meat Cutting; Ratio 1:361.

Ryan Regional Facility. (1,051 pop.) Two (2) programs: Food Service/Management; Institutional Maintenance. Ratio 1:526.

Riverside Correctional. (767 pop.) Two (2) programs: Business Education Technology; Horticulture. Ratio 1:384.

Saginaw Regional. (1,239 pop.) Three (3) programs: Institutional Maintenance; Horticulture; Food Service/Management. Ratio 1:413.

Southern Michigan Facility. (610 pop.) Three (3) programs: Institutional Maintenance; Business Education Technology; Optical Technology. Ratio 1:203.

Thumb Correctional. (854 pop.) Four (4) programs: Institutional Maintenance; Building Trades/Restoration; Horticulture; Food Service/Management. Ratio 1:217.

Western Wayne. (646 pop.) Two (2) programs: Auto Mechanics; Building Trades. Pursuant to District court order these programs are solely provided to female inmates from the Scott Facility. Male inmates at this facility are not allowed to participate in these programs.

11. Vocational programming is not provided to Level V and VI male inmates. Vocational programming is provided to Level V female inmates. TR Vol

II, 1/13/99, p 158.

12. Vocational programming is not offered at the Alger, Baraga, Oaks, and Standish Facilities, which house Level V male inmates. *Id.*; Defendants' Exhibit 5.

13. Vocational programming is not offered at the State Prison of Southern Michigan - Central Complex. The programs have been closed as a result of the remodeling of the facility which is currently underway, pursuant to federal court order. Defendants' Exhibit 5.

14. Following is a description of each of the vocational programs:

Business Education Technology (Office Occupations):

This program is designed to provide prisoners with the opportunity to develop job skills and knowledge which supports employment in a business environment. Instruction focuses on the development of computer and business related skills necessary for success in a clerical position. Prisoners are given the opportunity to learn software programs in word processing, Windows, and spreadsheets.

Hospitality/Food Service Management:

This program provides prisoners with the opportunity to develop knowledge and skills needed to obtain an entry level position in any food service operation. Safety, sanitation, basic cooking principals and baking techniques are applied using texts and lab applications. Prisoners are given the opportunity to plan, prepare, and serve meals.

Building Trades:

This program provides basic instruction in tool identification and safety as well as

occupational safety. Instruction is also provided in carpentry, electrical, blueprint reading, and plumbing. Additional instruction is provided in all phases of home construction including roofing, framing, window/door installation, wallboard, ceramic tile, painting, and masonry.

Instructional Maintenance (Custodial Maintenance):

This program provides instruction in basic custodial maintenance that includes the nine components of safety and health; chemical hazards; floor care; restroom care; power equipment; cleaning chemicals; blood borne pathogens; carpet and fabric upholstery care. Students have the opportunity for practical hands-on training and demonstrations.

Horticulture:

This program provides instruction in plant growth, taxonomy, plant classification, plant nutrients, pest science, propagation and safety procedures. Experience with live plants and hands-on instruction is a major component. Instruction is provided in the classroom, greenhouse, and outdoors. In many instances have the opportunity to participate in on-grounds beautification projects.

Graphic Arts (may also include a Print Shop):

This program provides instruction in basic principles and methods used in reproduce printed material using computers and printing and/or duplication equipment. Students are trained to use computers and software such as Microsoft Word and Aldus PageMaker to create layout documents.

Optical:

This program trains students to fabricate and dispense prescription dress and safety eyewear.

Auto Body Repair:

This program provides instruction in the basics of bumping, painting, disassembling, and assembling of cars, trucks, etc.

Auto Mechanics Program:

This program begins with introductions to shop safety, basic automotive construction, and shop skills. A student is required to pass 3 out of 4 State certification tests in the following areas: engine repair, brakes, electrical systems, and tuneup/engine performance. Additional enhancement and instruction may include automotive manual transmissions, air conditioning, and heating, front end & steering, automatic transmissions, heavy duty electrical, drive train, motorcycle repair, and recreational trailer repair.

Welding:

This program provides instruction on oxyacetylene safety welding, brazing, cutting, T.I.G. and M.I.G. welding and plasma arc cutting.

Electronics:

This program uses instruction and computers to teach the areas of electronics equipment service and maintenance which support employment in an entry level job in the community. Hands-on work experience is included as a part of the instruction.

Machine Shop:

This program is designed to provide students with skills that would support employment in an entry level job in the machine tool field. All areas of machine tool set-up and operation are covered in both related and hand-on instruction.

T.V. Production:

This program teaches the behind-the-scenes operations of T.V. programming. General areas of instruction include set design, lighting, camera work, video tape, timing, audio, editing , and directing.

Small Engine Repair:

This program provides instruction in the repair of 2-cycle and 4-cycle engines, motorcycles, diesel generators, Wankel rotary engines, outboard motors, and chain saws.

Meat Cutting:

This program trains prisoners to cut beef, pork, and chicken. Additionally, retail presentation techniques are included as an instructional component.

15. Ratio for vocational programming versus population of facility is significantly less in the secured women's facilities versus the men's secured facilities. Defendants' Exhibit 5.

16. Separation of custody for programs required by department policy waived for women, PD-05.01.140 (Plaintiffs' Exhibit 42). TR Vol II, 1/11/99, p 83.

17. Separation of custody levels for programs required statewide for male inmates by MDOC policy PD, 05.01.140 (Plaintiffs' Exhibit 42). *Id.*

18. No set time is established for women inmates to complete vocational

program. *Id.*, p 71. Every individual has different skills based upon ability. *Id.*

19. Purpose of vocational programs is not only to give inmates employable skills but also to give them the opportunity to practice going to work and being there at certain times, but also fulfilling goals and following instructions. *Id.*, p 77.

20. Vocational programs are full-time and part-time. Majority of vocational programs are part-time regardless of gender. *Id.*, pp 78-79; TR Vol II, 1/13/99, pp 148-149; Plaintiffs' Exhibit 3.

21. Women inmates leave a secure facility (Scott) and enter another secure men's facility (Western Wayne) for Building Trades/Restoration and Auto Mechanics. TR Vol I, 1/11/99, pp 95, 97-98. No male inmates leave a secured facility to participate in a vocational program. *Id.*

22. The Building Trades/Restoration and Auto Mechanics vocational programs for women are never full. *Id.*, p 100.

23. At the Scott Facility, an inmate can participate in academic and vocational programs at the same time. *Id.*, pp 106-108.

24. Food service sanitation and barbershop at the Egeler Facility are not vocational programs. *Id.*, pp 112-113; TR Vol II, 1/13/99, pp 146-148.

25. Women inmates in the camp system have the opportunity to transfer and participate in vocational programs. TR Vol I, 1/11/99, pp 152-153.

26. Male inmates in the camp system do not have the opportunity to transfer and participate in the vocational program. *Id.*

27. At the hearing on January 25, 1999, the District Court requested the

Defendants to submit to the Court evidence that women inmates in the camp system (i.e., at Camp Branch) have the opportunity to transfer and participate in vocational programming. TR Vol VII, 1/25/99, pp 31-32, 37-38.

28. On January 29, 1999, pursuant to the order of the District Court, Special Administrator Nancy Zang filed an affidavit with the Court. (Docket No.). In information provided to the Court Monitor, Rosemary Sarri, on December 22, 1998, the MDOC specifically responded to the question whether female inmates at Camp Branch may transfer to the Crane Facility for further education or vocational programming. *Id.* In its response, the MDOC stated that the MDOC regularly transfers female inmates each semester who are interested in attending college and meet the eligibility criteria for enrollment. *Id.* In 1998:

1998 Winter/Spring Semester =	11 transfers
1998 Summer Semester =	6 transfers
1998 Fall Semester =	2 transfers
1999 Winter/Spring Semester =	12 transfers pending

29. In its December 22, 1998 response to Dr. Sarri, the MDOC further indicated that in 1998, twelve (12) women were transferred to the Crane Facility to participate in vocational programs, and that transfers occur throughout the year. *Id.* The MDOC also advised Dr. Sarri that no male prisoners housed at a camp facility are allowed the opportunity to transfer to an institutional facility for purposes of participating in vocational or college programs. *Id.*

30. As a result of the District Court's Order, Ms. Zang directed staff at both Scott and Crane to conduct a current review to identify any prisoners who could be

classified Level I and assigned to a Level I facility, but are currently housed at a higher custody level at either Scott or Crane solely to allow them to participate in vocational programming. *Id.*

31. Ms. Zang was advised by the Classification Director at Scott that thirteen (13) prisoners are currently enrolled in vocational programs at Scott screen Level I. This means that if it were not for their participation in a vocational program, they would be transferred to a Level I facility. To enable participation in vocational programming, these prisoners have been waived to Level II. Of this number, four (4) prisoners are enrolled in Office Occupations; four (4) prisoners are enrolled in Graphic Arts; four (4) prisoners are enrolled in Institutional Maintenance, and one (1) prisoner is enrolled in Auto Mechanics.

32. Ms. Zang was advised by the Warden at Crane that twenty (20) prisoners are currently enrolled in vocational programs screen Level I. This means that if it were not for their participation in a vocational program, they would be transferred to a Level I facility. To enable participation in vocational programming, these prisoners have been waived to Level II. Of this number, six (6) are enrolled in Office Occupations; five (5) are enrolled in Food Service/Technology; tow (2) are enrolled in Graphic Arts; and seven (7) are enrolled in Horticulture. *Id.*

33. Female inmates have equal or greater opportunity than do male inmates to participate in vocational programs. Defendants' Exhibits 5, 6; TR Vol VI, 1/22/99, pp 29-30.

I. INSTITUTIONAL WAGES

1. The MDOC has instituted policy directives concerning institutional wages and stipends, PD 05.02.110; 05.04.100; DOM 1998-1. Defendants' Exhibits 1I, 1J, 1K.

2. MDOC policy prevents female and male inmates from getting unequal pay. *Id.*, TR Vol I, 1/11/99, pp 149-150.

J. APPROPRIATIONS: ACADEMIC AND VOCATIONAL PROGRAMMING

1. For fiscal year 1998 (October 1, 1997 - September 30, 1998), the Michigan Legislature appropriated \$25,427,800 for the male inmate facilities (39,856 beds) for academic and vocational programming. 1997 P.A. 88. This amounts to \$637.99 per male inmate bed. Defendants' Exhibit 6.

2. For fiscal year 1998, the Michigan Legislature appropriated \$2,361,500 for the female inmate facilities (1,707 beds) for academic and vocational programming. 1997 P.A. 88. This amounts to \$1,383.42 per female inmate bed. *Id.*

3. For fiscal year 1999 (October 1, 1998 - September 30, 1999), the Michigan Legislature appropriated \$25,300,000 for the male inmate facilities (40,792 beds) for academic and vocational programming. 1998 P.A. 321. This amounts to \$620.22 per male inmate bed. *Id.*

4. For fiscal year 1999, the Michigan Legislature appropriated \$2,374,200 for the female inmate facilities (1,837 beds) for academic and vocational programming. 1998 P.A. 321. This amounts to \$1,292.43 per female inmate bed. *Id.*

5. For fiscal year 1998, the MDOC's expenditures for college programming (baccalaureate degree, associates degree, paralegal certificates), for male inmates

totaled \$392,544.00. This amount included \$92,400.00 for the baccalaureate program and \$300,144.00 for the associates degree and paralegal program. *Id.*

6. For fiscal year 1998, 185 male inmates or .0004% of the male inmate population were enrolled in college programming. Defendants' Exhibits 3, 4.

7. For fiscal year 1998, the MDOC's expenditures for college programming (baccalaureate degree, associates degree, paralegal certificates), for female inmates, totaled \$735,339.00. This amount included \$224,877.00 for the baccalaureate program, and \$490,462.00 for the associates degree and paralegal program. Defendants' Exhibit 6.

8. For fiscal year 1998, 398 female inmates or 22% of the female inmate population were enrolled in college programming. Defendants' Exhibits 3, 4.

II. CONCLUSIONS OF LAW

1. The appropriate test that this Court must utilize when determining whether the Michigan Department of Corrections is currently in violation of the Equal Protection Clause of the Fourteenth Amendment with regard to educational, vocational, apprenticeship and work pass opportunities for female inmates, was set forth by the United States Supreme Court in *Craig v. Boren*, 429 U.S. 190 (1976).

"Analysis may appropriately begin with the reminder that *Reed* emphasized that statutory classifications that distinguish between males and females are subject to scrutiny under the Equal Protection Clause. ... To withstand constitutional challenge, previous cases establish that classifications by gender must serve

important governmental objectives and must be substantially related to achievement of those objectives." *Id.* at 197.

2. Subsequently, in *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979), the Supreme Court reaffirmed the well settled rule that the Equal Protection Clause of the Fourteenth Amendment only prohibits intentional or purposeful discrimination by the state. "*Davis* upheld a job-related employment test that white people passed in proportionately greater numbers than Negroes, for there had been no showing that racial discrimination entered into the establishment or formulation of the test. *Arlington Heights* upheld a zoning board decision that tended to perpetuate racially segregated housing patterns, since, apart from its effect, the board's decision was shown to be nothing more than an application of a constitutionally neutral zoning policy. Those principles apply with equal force to a case involving alleged gender discrimination." *Id.* at 273-274.

3. The Supreme Court has also upheld a gender-based classification that favors one sex if it intentionally and directly assists members of the sex that are disproportionately burdened. "It is readily apparent that a State can evoke a compensatory purpose to justify an otherwise discriminatory classification only if members of the gender benefitted by the classification actually suffer a disadvantage related to the classification." *Mississippi University For Women v. Hogan*, 458 U.S. 718, 728 (1982).

4. A prisoner has no constitutional right to a special educational or vocational program in prison. *Rhodes v Chapman*, 452 U.S. 337, 348 (1981).

5. The possibility of judicial intervention in matters of state concern must be approached cautiously. Given the typical complexity of the problems in operating a prison system, a policy of deference to the decision of responsible state officials is required. *Glover v. Johnson*, 478 F. Supp. 1075, 1079 (E.D. Mich. 1979).

6. Judicial oversight over state institutions must at some point, draw to a close. *Johnson v. Heffron*, 88 F.3d 404, 407 (6th Cir. 1996).

7. With regard to application of the Equal Protection Clause in the correctional setting, it has been noted that because of the differences between male and female inmates, there are always going to be differences in programming and services between male and female prisons.

When determining programming at an individual prison under the restrictions of a limited budget, prison officials must make hard choices. They must balance many considerations, ranging from the characteristics of the inmates at that prison to the size of the institution, to determine the optimal mix of programs and services. ... Indeed, as between any two prisons, there will always be stark differences in programming. ... Thus, female inmates can always point out certain ways in which male prisons are 'better' than theirs, just as male inmates can always point out other ways in which female prisons are 'better' than theirs. ... At bottom, using an inter-prison program comparison to analyze equal protection claims improperly assumes that the Constitution requires all prisons to have similar program priorities and to allocate resources similarly.

Klinger v. Department of Corrections, 31 F.3d 727, 732 (8th Cir. 1994). In addition, as the Eighth Circuit pointed out in *Klinger*, federal court programming comparisons at individual prisons may result in after-the-fact second-guessing by federal judges

and federal court micro-management of prisons. *Id.* at 732-733. *See also: Keevan v. Smith*, 100 F.3d 644 (8th Cir. 1996).

8. In this case, the Sixth Circuit has been very clear about the limits of this Court's involvement in this case:

To restate the matter for purposes of emphasis, the federal court's authority - the district court's and this court's - to intrude itself into the operation of Michigan's prison system is limited to assuring (1) that sufficient parity is achieved between male and female inmates in matters of educational and vocational opportunities as satisfies the demands of the Equal Protection Clause of the Fourteenth Amendment, and (2) that female inmates have the level of access to the courts that is constitutionally required under the First Amendment. *See Lewis v. Casey*, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d. 606 (1996).

Id. at 242. In its opinion, the Sixth Circuit also set forth that Plaintiffs have the burden of establishing a lack of parity with regard to the educational, vocational, apprenticeship and work pass opportunities presently being provided to female inmates in the Michigan prison system.

9. With regard to educational opportunities, the record reflects that female inmates have the same or greater opportunities as male inmates.

10. With regard to apprenticeship opportunities, the record reflects that female inmates have the same or greater opportunities as male inmates.

11. With regard to work-pass and/or public works opportunities, the record reflects that female inmates have the same opportunities as male inmates.

12. With regard to vocational opportunities, the record reflects that female

inmates have the same opportunities as male inmates.

13. The record reflects that sufficient parity has been achieved between male and female inmates with regard to programming opportunities satisfying the demands of the Equal Protection Clause of the Fourteenth Amendment, and therefore, federal court jurisdiction in this matter should terminate.

III. LEGAL ACCESS

1. The federal court's authority to intrude itself into the operation of Michigan's prison system is limited to assuring that female inmates have the level of access to the courts that is constitutionally required under the First Amendment. See, *Lewis v. Casey*, 518 U.S. 343 (1996).

2. Defendants are agreeable that the women's facilities will adopt the "legal access plan" ultimately determined to be adequate by the Sixth Circuit Court of Appeals after appeal in *Hadix v. Johnson/Knop v. Johnson*, Nos. 96-2387, 96-2397, 98-2391, 99-1007. The appeals in Nos. 96-2387/2397 concern U.S. District Court Judge Richard Enslen's October 1, 1996 Order. The MDOC has appealed various aspects of the October 1, 1996 order of the District Court, and oral argument has been held before the Sixth Circuit. A decision by the Sixth Circuit is pending. Docket Nos. 98-2391 and 99-1007 concern appeals of Judge Enslen's subsequent orders.

3. The adoption of the "legal access plan" as finally resolved by the Sixth Circuit, at the women's facilities will result in the paralegal studies programs provided by Montcalm Community College and Kellogg Community College at State expense pursuant to court order, to be eliminated, and no such programs shall

be provided. In effect, once a decision is made by the Sixth Circuit Court of Appeals, the women's facilities will adopt the same "legal access plan" provided to the men's facilities subject to *Hadix/Knop*. Additionally, adoption of the "legal access plan" as determined by the Sixth Circuit will also eliminate Women's Legal Services (WLS) or any other entity as a "provider" of legal access services at State expense pursuant to the Court orders in *Glover*.

4. Under the terms of the legal writer contract, WLS provides legal writer candidates who have met the designated criteria with 80 hours of classroom instruction in criminal law and procedure, and prisoner rights law. From the pool of trained prisoners, a team of legal writers is selected and assigned to work in the legal writer program. Daily supervision of the legal writers is provided by MDOC staff. Through the use of technology that includes computer, word processing software, and E-mail, the legal writers maintain contact with WLS staff. The legal writer is responsible for gathering facts, gathering the record, conducting research, and evaluating the case in consultation with the prisoner and WLS staff. Legal writers may E-mail questions or documents to WLS daily for feedback or approval. WLS staff reviews draft pleadings as well as the proposed final versions for proper format. WLS does not provide legal services to male prisoners at the *Hadix/Knop* facilities. In fact, pursuant to Judge Enslen's most recent orders, no on-site legal entity provides legal services to prisoners at the *Hadix/ Knop* facilities.

5. Any "paralegal studies program" for male prisoners at the *Hadix/Knop* facilities are maintained pursuant to this Court's orders regarding college

programming pursuant to the *Hadix* Consent Decree, and not pursuant to any orders issued by Judge Enslen. In direct contrast, the legal studies courses mandated by the court in *Glover*, were deemed necessary by the Court to guarantee the women inmates' right of access to the courts. *Glover v. Johnson*, 510 F. Supp. 1019 (E.D. Mich. 1981); *Glover v. Johnson*, 478 F. Supp. 1075 (E.D. Mich. 1979).

6. Pursuant to orders issued by the Court in *Glover*, the MDOC is required to provide on-site legal services (attorneys) at all facilities and the camp housing female prisoners. In accordance with those orders, the MDOC contracts with WLS to provide legal services to female prisoners. Male prisoners are not entitled to on-site legal services at State expense. Additionally, Montcalm Community College offers at the Scott Correctional Facility and Kellogg Community College offers at the Crane Correctional Facility a two-year college certification program specifically developed and designed by the *Glover* court for legal assistance to female prisoners at State expense.

7. It is Defendants' intent that the adoption of the "legal access plan" will result in the elimination of the paralegal studies programs provided by Montcalm Community College and Kellogg Community College at State expense, along with the elimination of WLS or any other entity as a "provider" of legal services at State expense.

IV. REMEDIES

The Sixth Circuit Court of Appeals has clearly and succinctly stated that if the District Court finds compliance with the Equal Protection Clause of the Fourteenth

Amendment, "it will terminate its jurisdiction over the Defendants as to those matters" (I.e., educational, vocational, apprenticeship, and work-pass opportunities). *Glover v. Johnson*, 138 F.3d 229, 243 (6th Cir. 1998).

Defendants submit that sufficient parity has been achieved between male and female inmates in all matters before the Court as satisfies the demands of the Equal Protection Clause of the Fourteenth Amendment, and therefore, termination of the federal court's jurisdiction is appropriate.

Defendants contend that the management of Michigan's correctional system must be returned to those with the knowledge, expertise, and responsibility to administer the same, namely the MDOC. In the event this Court determines that because the MDOC does not offer fifteen (15) total vocational program opportunities at both the Scott and Crane Correctional Facilities, that there is a "lack of parity" with regard to vocational programming, the MDOC suggests that the preferred available option is to reduce the total number of vocational programs offered to male inmates to coincide with the total number of vocational programs offered to female inmates.

Defendants contend that the MDOC's suggested option will result in less intrusion and micro-management by the Federal Court in Michigan's correctional system.

CONCLUSION

Defendants submit that the record reflects that sufficient parity has been achieved between male and female inmates with regard to programming opportunities satisfying the demands of the Equal Protection Clause of the Fourteenth Amendment, and therefore, federal court jurisdiction in this matter should terminate.

Respectfully submitted,

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04/99/FINDING of Facts