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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY GLOVER, et al.

Plaintiffs,

USDC No. 77-CV-71229-DT

v.

HONORABLE JOHN FEIKENS

PERRY JOHNSON, Director,  
Michigan Department of  
Corrections, et al.

Defendants.

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT

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PLAINTIFFS' AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FOR REMAND HEARING ON PARITY OF PROGRAMMING

NOW COME Plaintiffs, by and through their counsel, and submit the following findings of fact and conclusions of law based upon the hearings held before this Court on remand from the Sixth Circuit Court of Appeals as it relates to parity of programming for women prisoners in Michigan.

Glover v. Johnson



PC-MI-002-004

## I. SIXTH CIRCUIT DIRECTIONS ON REMAND

In its initial 1979 decision, the district court--correctly identified the remedial goal to be achieved in this litigation--*parity in the treatment of male and female prisoners.*

Glover v. Johnson, 138 F.3d 229, 241 (6th Cir. 1998) (Emphasis in original).

The Sixth Circuit reiterated that the goals identified in 1979 continued to be the goals today and identified those goals as including "*remedying* constitutional infirmities through achieving parity of treatment for men and women." (Emphasis added).

The Sixth Circuit directed that this matter should be remanded for "consideration of whether these ultimate goals had been accomplished," i.e. "whether the Defendants have achieved the parity of educational and vocational opportunity...that the district court found lacking in 1979." Glover v. Johnson, 138 F.3d at 241-242.

The court quoted with approval this Court's definition of the term "parity of treatment" as requiring Defendants to "provide women prisoners with treatment in facilities that are *substantially equivalent to those provided the men [,] i.e., equivalent in substance if not in form...*" *Id.* (Emphasis in original).

In directing that Defendants need not be bound by this Court's remedial plans or orders in demonstrating that they had remedied the constitutional infirmities found in 1979, the Sixth Circuit ruled that:

If the Defendants can demonstrate that they have remedied the constitutional violations found in 1979, even without compliance with the details of previous orders or plans, they must be permitted to do so. *Id.* at 242.<sup>1</sup>

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<sup>1</sup> The Sixth Circuit equally identifies a standard for determining whether Defendants had achieved the "requisite access to the court that the district court found lacking in 1979." As the parties have agreed to settle the Glover access to court issue based upon the orders, plans, and rulings of the district and circuit court in the cases of Knop v. Johnson and Hadix v. Johnson, Plaintiffs do not address this issue in this brief.

Based upon the following findings, Defendants have not remedied the equal protection constitutional violations found in 1979 in the areas of vocational and apprenticeship programming. There is insufficient evidence to determine whether parity of programming exists in the post-secondary educational areas. Defendants have achieved parity in the area of work pass/public works programming.

## II. FINDINGS OF FACT

### A. VOCATIONAL

1. In 1979 this Court found "[T]raining in five broad occupational areas is currently available at Huron Valley: office occupations, food service, graphic arts, building maintenance, and general shop." Glover v. Johnson, 478 F. Supp. 1075, 1086. <sup>2</sup>

"By way of comparison, male prisoners have access to some twenty different vocational programs including automobile servicing, heating and air conditioning, machine shop and drafting among others." Id.

2. As a result of this evidence the court found that women prisoners had a right to a range and quality of programming substantially equivalent to that offered the men, and that the range of vocational programs offered did not meet this standard. Supra at 1087. The Court found that the vocational programs offered too few opportunities to women as compared with those offered for male prisoners. Supra at 1088.

3. In so finding the Court noted that:

Every male prisoner, of course, does not have access within his institution to each of these programs. But, aside from the possibility of transfer between institutions the fact that any given male cannot participate in

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<sup>2</sup> In 1979 the class consisted of approximately four hundred (400) women housed at the Huron Valley Women's Facility and the Kalamazoo County Jail.

every program does not change the fact that men as a group have greater vocational opportunities than women. *Supra* at p. 1087, n. 10.

### Vocational Programs 1998

4. In September 1998 there were approximately 39,000 male prisoners in the Michigan prison system. Pls. Ex. 34. There were at that time approximately 1,700 female prisoners in the system. Pls. Ex. 34.

5. Female prisoners in 1998 were housed in three facilities: Scott, population 856; Crane, population 540; Camp Branch 300. There are 400 beds at the Camp of which approximately 100 are currently unused. Tr. 1/11/99 Zang at 52.

6. The ratio of women to men in the Michigan prison system in 1998 was greater than the ratio in 1979.

7. The MDOC lists eighteen different vocational programs that are available to male inmates.)<sup>3</sup> Defs. Ex.5. See also summary of Defs. Ex. 5 in Pls. Ex. 15 and chart prepared by Defs. Pls. Ex. 2. These eighteen vocational programs are:

1. Print Shop
  2. Optical Technology
  3. Auto Body Repair
  4. Small Engine Repair
  5. Welding
  6. Electronics
  7. Building Restoration
  8. Building Trades/Theory
  9. Meat Cutting
  10. T.V. Production
  11. Machine Tool Operator
  12. Business Education Technology
  13. Graphic Arts/Print Shop
  14. Food Service
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<sup>3</sup> During the evidentiary hearing the Court inquired as to whether auto body, auto mechanics and small engine repair are separate programs. They are. Compare Pls. Ex. 43 description of small engine repair. Pls. Ex. 11, p. 1.

15. Horticulture
16. Institutional Maintenance
17. Building Trades
18. Auto Mechanics

8. The MDOC lists seven different vocational programs as being available to female prisoners. See Defs. Ex. 5 and summary in Pls. Ex. 15. These seven vocational programs are:

1. Office Occupations (Business Ed. Tech)
2. Graphics
3. Food Service
4. Horticulture
5. Institutional Maintenance
6. Auto Mechanic\*\* Not Available January-August 1998.
7. Building Trades

9. There were only four operational vocational programs for women up through March 1998 as auto mechanics, building trades and institutional maintenance were not operated at the Scott facility. Pls. Ex. 1.

10. Women prisoners through August 1998 had the same limited range of vocational program offerings as in 1979, Pls. Ex. 1 and Glover v. Johnson, 478 F.Supp at 1086.

#### Additional Unlisted Vocational Programs

11. The charts prepared by defendants that list all vocational programs, Defs. Ex. 5 and 2, were prepared from the academic/vocational monthly reports. <sup>4</sup>

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<sup>4</sup> Ms. Zang agreed there was an omission of a vocational program at the Scott facility in Pls. Ex. 2. When asked the reason for the omission, she stated: "I have been told – this chart comes out of the education manager's office, and I have been told that there have been problems periodically with computer glitches." Tr. 1/11/99 Zang at 60-61.

12. Ms. Zang identified pre-vocational computer lab as a program she thought should be included even though it is not listed as a vocational program. See Pls. Ex. At 4, Tr. 1/11/99 Zang at 58.

13. In addition to the vocational programs that are reported and the one program at the Scott facility referred to by Ms. Zang, there are the following vocational programs available to male prisoners:

Marquette Branch Prison Power plant operations Pls. Ex. 48.

Southern Michigan Correctional Facility barber training. Pls. Ex. 47.

Carson City Temporary Substance Abuse Education, two phases taught by Western Michigan University. Pls. Ex. 45.

Mound Correctional Facility Bloodborne Pathogens Pls. Ex. 50

Saginaw Correctional Facility We Stand Sincere job seeking skills Pls. Ex. 46

Women Prisoners Do Not Receive Comparable Vocational Programming<sup>5</sup>

14. Plaintiffs' Rebuttal Exhibit 49 included descriptions of two vocational programs at the Handlon Training Unit. The first described the machine shop program as follows:

The recent addition of CNC Numerical Control and Computer Assisted Machine places our program in the forefront of new technology. Recent new replacement of various grinders, mills, lathes, and saws has helped to keep us in line with new developments in machine design and construction. Students who have a desire to learn and apply themselves have an excellent opportunity to develop salable job skills in a high demand skilled trade. The Machine Shop program at HMTU could compete as one of the best in the state.

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<sup>5</sup> The Court indicated that it would not consider evidence of the comparability of vocational programs in terms of the components and skills taught the men and those taught the women. Tr. 1/20/99 Bloom at 34.

The second described the welding program as follows:

Recently a robot, band saw, hydraulic iron bender, and a plasma cutting torch have been added and this additional equipment rates the program as one of the best equipped welding programs in the state, and possibly in the United States. Students who earn a certificate in a certain segment of welding have entry level skill. Those who complete the entire program earn a diploma and are employable at a higher level.

15. Women prisoners do not have either of these vocational programs and Defendants have not identified any comparable program available to women.

16. The auto mechanics course available to male prisoners at the Handlon facility contains the following components:

Among the areas studied are air conditioning, batteries, starters and charging systems, brakes, manual and automatic transmissions, and transaxles, clutches, engine overhaul, wheel alignment and balancing, ignition systems, and fuel systems including feedback carburetors, fuel injection systems and, and electronic engine controls. (Emphasis Added)

17. A comparison to the automobile mechanics program available to women, Pls. Ex. 16<sup>6</sup>, shows that the women do not receive training in each of those components in number 18 above that are underlined.

Male prisoners have available a program in graphic arts/print shop; women only have a program in graphic arts. Pls. Ex. 15.

18. Much of the vocational programming available to female prisoners does not have the complexity and sophistication of that available to male prisoners.

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<sup>6</sup> This program has only been available to women since August of 1988, see finding 8 above, Tr. 1/11/98 Zang at 68.

Vocational Programming is Only Available to Women on a Part time Basis

19. Defendants agree that vocational programming is only available to women prisoners on a part-time basis. Tr. 1/11/99 Zang at 89-90.

It is undisputed that male prisoners at a number of facilities have access to full-time vocational programming, Pls. Ex. 3.

20. It is usual for women to be serving shorter sentences than their male counterparts Bloom at 14. Thus, they are less likely to complete a vocational program that is only part-time.

21. Monica Nowas, a woman prisoner at the Scott facility testified that she is trying to enroll in the automobile mechanics program since December 15, 1998. Tr. 1/14/99 Nowas at 15. She further indicated that her earliest release date is 2003 and that the automobile mechanics program, which is part-time, requires 8,000 hours. Id. At 17.

Male Prisoners Receive Greater Supplemental Vocational Programming Through OJT

22. Defendants also operate an OJT program whose purpose is to “provide an additional semester of training for those students who have completed a skilled development program in the vocational school. *The quality of this experience is such that labor unions may in certain cases count it as part of the work experience requirements for a journeymen’s card. Institutional work assignments will be made from students who have completed such a program or who have had an extensive vocational background in that area on the street*”. MDOC Policy Directive, P.D. 05.02.21. [Pls. Ex. 6. (Emphasis added). See also Defs. Ex. 1-N.

23. Male prisoners in substantial numbers are able to obtain OJT following completion of their vocational program and receipt of their certificate. Pls. Ex. 7. Tr.

1/11/99 Zang at 130.

24. Nancy Zang testified that there was not O & T available to women prisoners. Tr. 1/11/99 Zang at 130.

Women Prisoners Have Extra Limitations Placed On  
Their Participation In Vocational Programming

25. Women prisoners at security Level I can only take vocational programming if they agree to be moved to the higher and more restrictive security Level II. Tr. 1/11/99 Zang at 89, 90.

26. Male prisoners at security Level I may take vocational classes without having to agree to transfer to a higher security level. The vocational programming available at Level I facilities, see Defs. Ex. 5, contain some of the most substantial vocational programming available in the system.

27. There are sixteen (16) male facilities which are classified as multi levels by the MDOC. Scott Facility is classified as a multi level for women prisoners housing Levels I, II, IV, V. Pls. Ex. 33.<sup>7</sup>

28. Male multi-level prison facilities may “mix” different custody levels in vocational programming; this is not allowed at the female multi-level facility. Pls. Ex. 42. P.D. 05.01.140. BBB compared to CCC.

29. Female prisoners must meet requirements to participate in the auto mechanics and building trades programs that men need not meet. Pls. Ex. 18, Tr. 1/11/99 Zang at 94.

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<sup>7</sup> While the Scott Correctional Facility houses security levels up through V, Defendants routinely mix the Level IV and V numbers together and identify it as a Level I to IV facility. See Pls. Ex. 33, pp. 4-5.

30. The low enrollment in building trades and auto mechanics is due in part to restrictive eligibility requirements that are applied only to women. The 8/24/98, aff. N. Zang, para. 5, states that over half of the 61 women who asked to be classified to these programs from 8/8/98 were denied due to the eligibility restrictions. Pls. Ex. 18.

31. Defendants agree that women are required to meet extra requirements to participate in certain vocational programs. Tr. 1/11/99 Zang at 96.

32. The decision to "mix" a number of security levels in the Scott Facility and to provide the auto mechanics program at Western Wayne rather than Scott was that of the Defendants. Having made the decision Defendants cannot rely on it to treat women differently.

B. APPRENTICESHIPS

1. In 1979, no apprenticeship training programs were available to women. In contrast, this Court noted that male inmates were offered potential apprenticeships in the following nine trades: "millwright, machinist, machine repair, tool maker, tool and dye maker, industrial maintenance, electrician, draftsman and tool and dye designer. In addition, these trades are practicing in connection with the prison industries program at SPSM."

2. The Court noted in 1979 that there were no prison industries for women but that "prison industries were provided at four male institutions. Glover v. Johnson, Supra at p. 1089-1090.

3. This Court then required apprenticeship and industry programs for women

similar to those provided men that meet the educational and rehabilitative goals of the programs. Supra at 1090-1091.

4. The stated purpose of the apprenticeship program is to "equip apprentices for future employment in the community as skilled workers in a craft/trade, and to promote self improvement and citizenship." Michigan Department of Corrections Policy Directive, P.D. 05.02.122. Defs. Ex. 1G.

5. Defendants provide male prisoners the opportunity to participate in the following twelve apprenticeship programs:

- Landscape gardener
- Carpenter
- Cook
- Electrician
- Farm worker
- Housekeeper
- Industrial Maintenance Mechanic
- Material Coordinator
- Meat Cutter
- Painter
- Plumber
- Refrigerator Mechanic

Defs. 11/16/98 Response to Plaintiffs' Interrogatory No. 41.

6. The twelve identified apprenticeship programs for the male facilities exist at the Marquette Branch Prison. Tr. 1/21/99 Mahoney at 46-47.

7. Several facilities reported the existence of additional apprenticeship programs for men. Pls. Ex. 3.

8. Defendants maintain a monthly business record reporting the enrollments of prisoners involved in vocational, educational, apprenticeship and OJT programs at each facility. These reports are called Academic/Vocational Monthly Reports. Plaintiffs'

Exhibit 3 provides the monthly reports for all facilities (including Camps) for the month of September 1998.

9. Huron Valley Men's Facility (HVM), identified apprentice enrollments at that facility in 1998 for the months of January (30), February (24), March (32), and April (30). Pls. Ex. 4, pp. 1-4.<sup>8</sup>

10. Apprenticeship programs were also reported at the Riverside Correctional Facility (RCF), also for the months of February (8), March (6), April (13), May (16), and June (14) Pls. Ex. 5, Academic/Vocational Monthly reports for Riverside Correctional Facility, January through April, pp. 1-4.<sup>9</sup>

11. MDOC original, contemporaneous, signed business records demonstrate the existence of additional apprenticeship programs for men at the Riverside and Huron Valley Men's Facility. Pls. Ex. 4, 5.<sup>10</sup>

12. Women prisoners are provided the opportunity to participate in the following seven apprenticeship programs:

1. Cook

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<sup>8</sup> The original monthly Academic/Vocational reports for the months of May through July were not provided to the Plaintiffs as evidenced by either the non-contemporaneous data of the report or the "Revised" notation. Pls. Ex. 3, pp. 5-7.

<sup>9</sup> Unsigned, non-contemporaneous records for the months of June and August reflect no apprentices but a signed, contemporaneous report for July again reports sixteen apprentices. Pls. Ex. 5, pp. 5-11.

<sup>10</sup> Nancy Zang stated a belief that the earlier reports were an error and that "if the Court would be willing to I can personally contact every school principle and verify that and have them submit an affidavit." Tr. 1/11/99 Zang at 123, 126. No such affidavits of the principles have been submitted. Nor were the original hand-written reports which Defendants' stated would show the accurate amounts provided. Tr. 1/11/99 Zang at 124-125. Plaintiffs did receive a copy of an affidavit sent to the Court by Ms. Zang which was not proffered for admission and which does not provide the authenticity of the contemporaneous business records.

2. Dental Technician
3. Maintenance Technician
4. Landscape Gardener
5. Building Maintenance Repairer
6. Painter
7. Computer Peripheral Operator

13. The Plaintiff class of women prisoners are not provided substantially comparable opportunities to participate in a range of skilled apprenticeship programs as provided to male prisoners. The lack of comparable apprenticeship trade opportunities for women is exacerbated by the wide variety of skilled job opportunities provided men in the related correctional industries program. Pls. Ex. 23.

14. The purpose of the correctional industries program is to "provide adequate, regular, diversified and suitable employment for inmates of the state for the purpose of enhancing job skills consistent with proper penal purposes." MCL 800.331. Pls. Ex. 22.

15. Male prisoners have the opportunity to participate in twenty different industry programs with the accompanying opportunity to learn the related skills. Pls. Ex. 23, 24.<sup>11</sup>

16. Women prisoners are provided the opportunity to participate in data processing, dental, janitorial, cushion and tab. Pls. Ex. 24.<sup>12</sup>

17. In addition to the range of opportunities provided in industry and apprenticeship to men that are not provided to women, there exists an industry program

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<sup>11</sup> The twenty different programs are: Textile, Optical, Warehouse, Machine Shop, Carton, Shoe, Metal Furniture, Sign, Laundry, Farms, Chair, Mattress, Wood Furniture, Garment, Saw Mill, G.I.S., Software, Furniture Refinishing, Vinyl, Drafting, License Plates, Dairy Processing and Meat Processing. Pls. Ex. 23, 24.

<sup>12</sup> However, the tab factory is not operational. Tr. 1/11/99 Zang at 166.

for men in the camp system; no such opportunity exists for women in the camp system. Pls. Ex. 24, p. 2 identifying Camp Ottawa industry and Tr. 1/11/99 Zang at 154 (MSI correctional industry program exists only in the male camp programs).

18. Defendants operate an OJT program for men which allows them to accumulate hours for a journeymen's apprenticeship card as well as providing skilled vocational trade opportunities and do not operate such a program for women. Tr. 1/11/99 Zang at 130, 132; Pls. Ex. 7.

19. Defendants' report of OJT and apprentice enrollments in their Academic/Vocational Monthly reports joined these two statistics together in the middle right hand column for purposes of the monthly reports. Pls. Ex. 3.

20. Defendants monitor apprenticeship and on-the-job training (OJT) jointly through a curriculum committee. MDOC Policy Directive, P.D. 05.02.12 (E)(5), pp. 2 of 6. As noted in the policy directive the on-the-job training program provides both advanced vocational training opportunities for prisoners as well as allowing prisoners to accumulate hours toward the attainment of journeymen's apprenticeship card.

21. The Riverside Correctional Facility (RCF) for men reports OJT enrollments in January (22), February (19), March (15), April (19), June (24), and July (21). Pls. Ex. 5.

22. The Ryan Regional Facility reported an OJT program with 16 enrollments in October 1998. Pls. Ex. 7.

23. The Marquette Branch Facility (MBP) reported an October enrollment of 65 OJT students. Pls. Ex. 7.

24. The Gus Harrison Facility (ARF) reported 1 OJT student in October 1998.

Pls. Ex. 7.

25. The Chippewa Temporary Facility (KTF) reported 13 male students enrolled in OJT in October 1998. Pls. Ex. 7.

26. The Chippewa Regional Facility (URF) reported 7 students involved in OJT for the month of October 1998. Pls. Ex. 7.

27. The Muskegon Temporary Facility (MTF) reported 8 students involved in OJT in October 1998. Pls. Ex. 7.

28. Neither the Scott Correctional Facility (SCF) nor the Crane Correctional Facility (ACF) have ever reported OJT students nor do they report any such students in their academic monthly reports for September or October 1998. Pls. Ex. 3, pp. 1, 29.

29. The Chippewa Correctional Facility's (URF) OJT is in custodial maintenance providing male prisoners "hands on learning, which increases their skills in the custodial field. They received the DOT employment codes and credit for 200 hours of OJT on their certificate of completion." Pls. Ex. 10, p. 7.

30. There is a process in the men's facilities where, after men have accumulated a sufficient number of hours working either in OJT or MSI, they can petition the Department of Labor for certification. Tr. 1/21/99 Mahoney at 48-50.

31. Through the provision of a wider range of apprenticeships for male prisoners than provided to female prisoners, the opportunity to participate in OJT which is provided to males and not females, and the wide range of opportunities to participate in Michigan State Industries, women prisoners are not provided parity of opportunity to obtain the skilled trades training leading to certification.

C. EDUCATION/COLLEGE

1979 Post-Secondary Programs

1. The issue with regard to educational programs is limited to post-secondary. As this Court noted in 1979 with regard to ABE, special education and GED, "Since the Plaintiffs have raised no complaint regarding these programs and it does not appear on this record they are in any way inferior to those offered at male institutions, I do not pass and their adequacy in this case." Glover v. Johnson, 478 F. Supp. at 1083.

2. With regard to post-secondary programming, this Court noted that the community college courses made available to [women] were less adequate than those offered to males, the course selection was narrower, and "often so limited or haphazard as to make it difficult to complete successfully a course sequence leading to an associates degree in a given field." Supra at 1083.

3. Noting its significant rehabilitative benefits this Court found "that the state has a continuing constitutional duty to inmates to ensure that substantial equivalence in community college program is maintained...in this regard care should be taken to design or select programs that follow a coherent educational plan over time." Id. at p. 1084.

4. With regard to baccalaureate programs, this Court required that women prisoners were entitled to no less assistance than provided to male inmates. Id.

5. In 1987 this Court found the existence of equal protection violations with regard to the provision of post-secondary educational programming, finding that female inmates were not receiving comparable programming to that provided to male inmates. Glover v. Johnson, F. Supp. 621, 622, 624 (E.D. Mich. 1987).

6. Defendants were again ordered in 1987 to provide parity in educational

opportunities to women prisoners. On appeal the Sixth Circuit did not dispute the finding of equal protection violations and specified the formula for determining what would constitute parity in this area. Glover v. Johnson, 855 F.2d 277, 287 (6th Cir. 1988). While recognizing that "to devise a formula" was "not an easy task," the Sixth Circuit identified criteria to review, which included the history of educational offerings for males and females as well as the current state of programs. Glover v. Johnson, 855 F.2d 277, 287-289 (6th Cir. 1988).

7. On remand in 1989 this Court again addressed "Defendants' obligation to maintain parity of programming and to facilitate and not impede the participation of women inmates in secondary education. Glover v. Johnson, 721 F. Supp. 808, 816 (E.D. Mich. 1989).

8. This Court compared the men's and women's post-secondary programming and concluded that the programs, degrees and expenditures led to the conclusion that women in 1989 had still not achieved parity.<sup>13</sup>

9. The findings of this Court with regard to college programming have centered on a comparison of male and female opportunities. This Court's remedial orders have required that "in no way shall Defendants' assistance and cooperation in establishing and operating a baccalaureate program which any four year college wishes to offer to women inmates be less than that provided to colleges providing baccalaureate programs at men's prisons." Glover v. Johnson, 934 F.2d at 703-711. As such the hearings conducted with regard to college programming have always embraced an analysis and

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<sup>13</sup> An average of forty [men from one prison] have received bachelors degrees each year since 1979. By contrast [women prisoners] scheduled to graduate its first bachelor degree candidates in May 1989. Glover v. Johnson, 721 F. Supp. at 836.

comparison of the post-secondary opportunities provided to women prisoners as compared to male prisoners.

10. Thus in 1989, unlike in other areas, hearings were held and evidence was taken with regard to comparing the male and female opportunities. The Sixth Circuit in 1991 addressed the parity of opportunity provided to male inmates as compared to female inmates and concluded:

The assistance and support, both direct and indirect, Defendants had provided for the baccalaureate programs being offered to male inmates is ongoing and substantial. Until 1986 with the exception of two short periods of less than one year, Defendants provided no comparable assistance to support any baccalaureate degree program for female inmates.

11. Despite the recognition that in analyzing the comparability of the provision of post-secondary programming between male and female inmates, it is necessary to take historical information into account to determine whether there are opportunities to participate comparable programs leading to a degree, Plaintiffs both in discovery and presentation of proofs to address Defendants' provision of education presently in 1998. Opinion and Order Granting in Part and Denying in Part Plaintiffs' Motion to Compel Discovery, Plaintiffs' Discovery Requests, 7/24/98, Nos. 33, 34.

12. The equal protection violations involving post-secondary educational programs have included Defendants' failure to "provide a systematic and coherent course package which, when successfully completed culminates in the receipt of an associates degree; [and] that the associate degree be such that it will enable entry into a four year college program;" Glover v. Johnson, 510 F. Supp. 1019, 1021 (E.D. Mich. 1981).

13. Plaintiffs were provided discovery limited to a snapshot of the courses

currently offered to male and female inmates in the post-secondary degree programming. Based upon this data it cannot be determined whether Defendants have and are now providing women prisoners with comparable opportunity to participate in the programming. Tr. 1/13/99 Meisler at 62-64.

14. There exists the opportunity for male prisoners to participate in college programming which includes the opportunity to participate in associate degree programming and baccalaureate degree programming. Pls. Ex. 37.

15. Male prisoners are enrolled and provided the opportunity to participate in programming for associates degrees in business administration, business data processing, Arts and Sciences, Applied Associates in Paralegal and Applied Associates in Accounting. Pls. Ex. 37, Tr. 1/13/99 Meisler at 68.

16. Women are enrolled and participating in associates degree programming in Liberal Arts, Business Administration and Business Data Processing. Pls. Ex. 37. While Defendants are currently providing the opportunity to participate in post-secondary programs original class members who began their participation in 1977 have not yet to complete the degree requirements necessary to obtain their degrees. Tr. 1/14/98 Monica Jahner at 30.

17. Defendants' Exhibit 3 regarding college enrollments is flawed in that it counts the enrollment for women in the paralegal certificate program yet omits the enrollment of men in both the certificate and associate degree paralegal programs. Defs. Ex. 3, Pls. Ex. 45, p. 8.

18. Taking into consideration the interests and needs of women prisoners as well as their skills, participation in post-secondary education is necessary to allow

women prisoners the opportunity to obtain rehabilitation opportunities comparable to those of male prisoners. Tr. 1/13/99 Meisler at 73-79; Tr. 1/20/99 Bloom at 13-17, 21.

D. OFF GROUNDS PROGRAMMING (WORK PASS/PUBLIC WORKS)

1. In 1979 this Court held:

I find that work pass is desirable program with substantial rehabilitative possibilities for qualified inmates preparing for release. In this context, I find no sufficient reason to deny the women inmates an opportunity to participate.

2. The work pass program is intended to "give work camp prisoners an opportunity to work at paid employment in the community." Pls. Ex. 29, P.D. 05.02.130

I.

3. Work camp is defined as a correctional facility that houses prisoners who are made available "for work on public works projects or paid employment in the community." Both Level I and Level II facilities may participate in public works while only a Level I facility can be designated as a "work camp" for purposes of work pass. Pls. Ex. 29, P.D. 05.02.130 II.

4. The public works program which is a component of the work pass program for prisoners at Level I and Level II facilities is to provide for "meaningful work assignments for eligible prisoners, parolees and probationers." Pls. Ex. 27, P.D. 03.02.121.

5. Both male and female prisoners are provided limited opportunity to participate in the work pass program which has been all but eliminated since 1979. Tr.

1/11/99 Zang at 141. 6. Both male and female prisoners have the opportunity to participate in a public works program. Pls. Ex. 28A.

7. Prisoners in the camp program and prisoners who are Level I at the Scott Facility (female) and men who are Level I at the Gus Harrison, Carson City, Ionia Temporary, Cooper Street, Macomb, Michigan Reformatory and Mid-Michigan Correctional Facilities are provided the opportunity to participate in public works. Pls. Ex. 28, public work assignments for facilities and camps for the months of July through September 1998.

8. 19 percent of the women at Camp Branch participate in work pass and public works programs and 26 percent of men in the camp programs participate in the public works and work pass program. Pls. Ex. 28B based upon Exhibit 28A and population figures for the eligible facilities set forth in Pls. Ex. 34.

9. Including both the eligible facilities and the camps participating in public works a total of 7 percent of the eligible women participate in public works and work pass opportunities and a total of 9 percent of the men participate in public work and work pass opportunities. Pls. Ex. 28B based upon Pls. Ex. 28A, 34.

10. The opportunity for women to participate in public works and work pass programming is substantially comparable to the opportunity provided to male prisoners.

## **II. CONCLUSIONS OF LAW**

The inquiry for this court is whether the equal protection violations in 1979 have been remedied. This Court's legal analysis set forth in its 1979 ruling remains the law of the case.

The Sixth Circuit noted in its remand opinion that this Court's 1979 decision stands as it was never appealed.<sup>14</sup>

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<sup>14</sup> Defendants likewise acknowledge that male and female prisoners are similarly situated for purposes of the equal protection analysis and the question is whether there is presently

As this Court noted in relying upon Craig v. Borman, 428 U.S. 190, 197 (1976):

Defendants here are bound to provide women inmates with treatment in facilities that are substantially equivalent to those provided to the men, i.e. equivalent in substance if not in form... (Glover v. Johnson, Supra at p. 1079).

Defendants' expressed goals with regard to these programs remain the same; to provide educational and vocational treatment to "assist [prisoners] in acquiring skills necessary for successful performance in the community;" to "[enhance] job skills;" "to assist prisoners in acquiring employment and job skills;" "provide a means for inmates to earn wages for support of their families;" to train for "future employment in the community as skilled workers in a craft/trade." Defs. Ex. 1C, 1G and 1N.

In light of the stated goals, the question is do the programs offered to women provide comparable opportunity as composed with male prisoners' program opportunities.

The Supreme Court in Craig v. Borman, Supra has held that its decision in Reed v. Reed, 404 U.S. 71 (delineating a higher standard of scrutiny for classification based on gender), was controlling and that "outdated misconceptions concerning the role of females in the home rather than in the market place and world of ideas" would not sustain the State's burden to prove the legitimacy of regulations or statutes.<sup>15</sup>

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parity of programming between male and female prisoners. Tr. 1/11/99, pp. 8-10.

<sup>15</sup> The Court in Craig invalidated an Oklahoma statute that prohibited the sale of beer to males under the age of 21 and females under the age 18. The Court noted that it had previously determined in Reed that statutory classifications distinguishing between male and female are "subject to scrutiny under the equal protection clause" and that the rationale basic standard does not sufficiently protect the interests from invasions by the State. As in Reed, the Craig court declared that outdated misconceptions concerning the role of females in the homes were loose fitting characterizations incapable of supporting

The Supreme Court has adhered to the heightened scrutiny standard ever since and most recently affirmed these principles in United States v. Virginia, 116 S.Ct. 2264 (1996) noting that it has "carefully inspected official action that closes the door or denies opportunity to women" and that "all gender based classifications today warrant heightened scrutiny." Id. at 2286 (quoting from J.E.B. v. Alabama EXREL. T.B., 511 U.S. 127, 136 (1994)).<sup>16</sup>

To withstand heightened scrutiny, a party seeking to uphold governmental action based on gender must offer an "exceedingly persuasive justification" for the classification. United States v. VMI, Supra at 2271 (quoting Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (1982)). In VMI, Justice Ginsberg, writing for the majority, reasoned that because the programs offered at VWIL were substantially inferior to those at VMI, VMI's attempt to offer a parallel education at VWIL failed to survive an equal protection attack. The court also noted that it was relevant that "our Nation has had a long and unfortunate history of sex discrimination" (quoting from Frontiero v. Richardson, 411 U.S. 677, 684 (1973)).

The Supreme Court has repeatedly recognized that neither federal nor state governments act compatibly with the equal protection principle when they deny equal protection to women to aspire, achieve, participate in and contribute to society based

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the State's scheme. As a result the Court held that Oklahoma's gender based statute constituted a denial of equal protection to males ages 18-21.

<sup>16</sup> United States v. Virginia involved gender discrimination by the Virginia Military Institute (VMI), the sole single sex school among Virginia's fifteen (15) public institutions for higher learning. VMI had proposed a parallel program for women, Virginia Women's Institute for Leadership, (VWIL), however the school differed from VMI in academic offerings, methods of education, and financial resources in such a manner as to constitute an equal protection violation.

upon their individual talents and capacities.

The attainment of skills necessary to perform successfully in society is at the core of Defendants' provision of these programs. In order to determine whether the programming provided to women is comparable to that provided to men at the present time, i.e. if women are receiving parity of opportunities with male prisoners, this Court must, as it did in 1979, look to whether the range of skills offered to women prisoners are substantially equivalent to the range of programming provided to male prisoners both in the variety of programming offered as well as in the quality of programs. As this Court noted in 1979:

The women inmates have a right to a range and quality of programming substantially equivalent to that offered to the men and the programs currently offered do not meet this standard.

Glover v. Johnson, 478 F. Supp at 1087.

As set forth in Plaintiffs' findings of fact the opportunity to obtain skills and training in vocational and apprenticeship programs for men continue to far outdistance the opportunities provided for women.<sup>17</sup>

Defendants have not provided an adequate justification for the lack of opportunities for women prisoners and instead have argued that based upon the size of the institution and numbers of women there are larger percentages of women involved in generic programming than male prisoners. Alternatively Defendants attempted to compare the women's facilities to certain "bench mark" male facilities. Neither of Defendants' methods of analysis provide a justification for the failure to provide women

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<sup>17</sup> This analysis does not take into account the potentially greater needs of women prisoners in light of their status upon release as single mothers, their prior lack of skilled

opportunities to obtain skills at a level comparable to that provided male prisoners.<sup>18</sup>

In 1979 this Court rejected Defendants' argument that any differences in treatment are "the result of the limitations placed on them by the size of the institution," noting that there is no fixed relationship in size per se in the kinds of programs offered in any institution. This Court also rejected the bench mark analysis in 1979 when Defendants argued that the female facility offered programming of comparable and sometimes better quality than available in similarly sized male institutions, noting that:

The state avoids the fact that all state female felons are sent to Huron Valley while all male felons are not confined in a facility of comparable limitations. Supra at p. 1078.

The point is that absent the separation of male and female prisoners into different institutions based on sex, women prisoners would have the same range of opportunities provided to male prisoners. The fact that Defendants have decided to separate prisoners based on gender does not allow them to deprive one gender of the range of skill and rehabilitative opportunities that they provide to the other. Defendants cannot justify their separate but unequal treatment of women prisoners by arguing a "bench mark" theory. In addition, it is clear that the "bench mark" chosen by Defendants were the facilities that provided the least opportunities to male prisoners and were not "bench marks" at all.<sup>19</sup>

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training or employment history, and the realities of the market place and wage inequities for women in general.

<sup>18</sup> This Court has interpreted the Sixth Circuit's remand opinion as disallowing this Court from looking at the quality of the programs provided to male and female inmates. This has restricted the Plaintiffs' proof in this area. See for example Tr. Vol. IV, pp. 31-39 which plaintiffs believe would have highlighted further inequities.

<sup>19</sup> Defendants for example in comparing a Level II men's facility with the Crane Facility, chose Carson City which is the only Level II men's facility which provides only one vocational program. Defendants disregarded the many other Level II facilities for men

Nor does Defendants attempt to analyze the programs based upon the percentage of women enrolled in these programs versus the percentage of men enrolled in their programs address the comparability of the opportunities provided to men and women. In the first instance, the programs before this Court are vocational, apprenticeship, public works/work pass and post-secondary education. Defendants consistently include enrollments in special education, adult basic education and GED in their analysis to arrive at overall enrollment percentages in programming. This Court in 1979 and throughout the history of this case has held that these programs are not at issue.<sup>20</sup>

More significantly Defendants simply count participation in programs without regard to what the programs are or what they provide in terms of the opportunity to learn a skill or obtain the goals established for these programs.<sup>21</sup> The Sixth Circuit stated in its remand that this Court in 1979 correctly identified the goal to be whether women are being provided with substantially equivalent treatment with regard to the program opportunities in the relevant areas. Defendants ignore the reality of the range of opportunities and skill training provided to male prisoners. As this Court noted:

Every male prisoner, of course, does not have access within his institution to each of these programs. But aside from the possibility of transfer between institutions, the fact that any given male cannot participate in every program does not change the fact that men as a group have greater vocational opportunities than women.

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which had up to six vocational program offerings and would demonstrate, even on a one to one comparison, a better range of comparable programming for male prisoners than female prisoners.

<sup>20</sup> Defendants have over the years objected to providing Plaintiffs with the information regarding the GED programming for women prisoners which objection this Court has sustained.

<sup>21</sup> There is also a significant problem with Defendants' numbers which exclude men's enrollment in apprenticeship and OJT (the advance vocational/apprenticeship program).

That was the case in 1979 and that is nearly the identical case today.<sup>22</sup>

If the goal and purpose is, as Defendants have stated, to acquire various skills for purposes of employment then of course it does matter that a greater number of these skill options are being provided to men than are being provided to women. This is clearly the case in the vocational and apprenticeship programs.

### III. REMEDIES

Should the Court determine, however, that the requirements of the equal protection clause of the Fourteenth Amendment are not being met as to any of the foregoing, it will explain its reasons for such conclusion and it will identify with particularity the measures it deems necessary to assure equal protection for all female inmates.

Glover v. Johnson, 138 F.3d at 242.

Recently the United States Supreme Court addressed the terms of a proper remedy for an equal protection violation stating:

The remedial decree--must closely fit the constitutional violation; it must be shaped to place persons unconstitutionally denied an opportunity or an advantage in "the position they would have occupied in the absence of [discrimination]."

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<sup>22</sup> In fact up through August 1998 the numbers would have been almost identical with women being provided five (5) vocational programs to the men's eighteen (18). In 1979 it was five (5) vocational programs to the men's twenty-two (22). However, a number of the programs that Defendants counted as vocational for men in 1979 seem to have entered the category of informal vocational in 1998.

A proper remedy for an unconstitutional exclusion, we have explained, aims to "eliminate [so far as possible] the discriminatory effects of the past and to bar like discrimination in the future."

United States v. Virginia, 518 U.S. 110, 135 L.Ed 2nd 735, 760 (1996).

In light of the facts and law set forth above, Plaintiffs believe the following is necessary to assure equal protection for the Plaintiff class of female inmates in Michigan in the areas of vocational, apprenticeship, work pass and educational programming:

1. **Vocational**: This Court found in 1979 that the Plaintiff class of women prisoners did not have the opportunity to participate in the range of vocational programming offered to male prisoners. Defendants have failed to provide women prisoners with the opportunity to obtain the skills and training which the Michigan Department of Corrections itself recognizes as "necessary for successful performance in the community" by assisting prisoners in "acquiring employment and job skills" and the development and enhancement of "interpersonal skills." Pls. Ex. 9, P.D. 05.02.112 (I)(E)(I)(2)(3).

Throughout the 1980's and 1990's Defendants continued to fail to provide women prisoners with the opportunity to learn a range of skills through vocational programming that would provide them both with employment opportunities upon release and enhance their opportunity for rehabilitation. This failure continues through the present as demonstrated by the continued lack of opportunity for women prisoners to participate in the range of vocational programming (both formal and informal) provided to male prisoners.

Plaintiffs believe it is necessary to assure equal protection for women prisoners

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that Defendants be required to: a) provide an increased range of vocational programming to women prisoners which provides skill training in areas comparable to male prisoners in terms of the comparability of the skills and wage opportunities; b) Defendants be required to remove the unique restrictions placed on women for participation in auto mechanics and building trades vocational programming;<sup>23</sup> c) The vocational programs for women prisoners should also include the opportunity to participate in some of the programs on a full time basis in a comparable manner to male programming opportunities; d) The restrictions on Level IV and Level I women having the opportunity to participate in vocational programming should be lifted by allowing both men and women prisoners the benefit of Defendants' Policy, P.D. 05.01.140 (BBB)(1) Pls. Ex. 42, p. 9 of 10], which benefit is currently provided only to male prisoners in multi level facilities.

2. **Apprenticeships**: Plaintiffs currently may participate in six (6) different apprenticeships while the class of male prisoners have the opportunity to participate in at least twelve (12) different types of apprenticeship programs.<sup>24</sup> Plaintiffs are entitled to the range of skills and formal apprenticeship programs that are provided to men.

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<sup>23</sup> On August 24, 1998 Defendants submitted an affidavit to this Court of Nancy Zang attesting that in the relatively short time span of August 8, 1998 through August 24, 1998, sixty-one (61) women prisoners indicated an interest in participating in either auto mechanics or building trades. Over half of the women prisoners were denied the opportunity to participate in these programs due to Defendants' unique to women eligibility criteria. (Affidavit of Nancy Zang, 8/24/98, ¶ 5).

<sup>24</sup> This is independent from the opportunities that male prisoners have exclusively to develop skills leading to a journeymen's card during their incarceration which include the OJT program which is not provided for women, an array of skilled training through the correctional industry program, and the "informal" apprenticeship program.

The size differentials between men and women's prison population is irrelevant to the ability to sustain a range of apprenticeship opportunities (each apprenticeship program having only one or two participants as a maximum enrollment opportunity). There is no reason why women should not have the same range of skill opportunities as men. Therefore Plaintiffs believe that women should be provided opportunities in twelve (12) different trade areas with the trade areas selected being comparable to the opportunities available to men in relationship to the market job and wage structure provided upon the completion of those journey apprenticeships.

Plaintiffs also believe that they have demonstrated that men have the opportunity to participate in on-the-job training programs. Women should similarly be provided the opportunity to participate in this programming which by policy enhances vocational training and allows prisoners to accumulate hours toward the completion of a journeymen's card.

3. **Work Pass/Public Works:** Plaintiffs believe that the Court's jurisdiction may be terminated over this portion of the case.

4. **Post-Secondary Education:**

Plaintiffs do not believe that parity has been demonstrated in the area of post-secondary education. In light of the history of inequities in this program resulting in three separate findings of equal protection violations (1979, 1987 and 1989) and the nature of the programming which is degree oriented, the evidence as presented was insufficient to determine parity. Defendants presented no evidence other than

expenditures per prison bed.<sup>25</sup> Plaintiffs' proofs were limited due to the Court's restriction on discovery and proofs to January through October 1998.

Plaintiffs believe the onus is on Defendants to demonstrate that they have remedied the equal protection violations in this area. Irrespective of the burden Defendants maintain the information as to the course offerings and degree completions. Plaintiffs propose that the Court retain jurisdiction over this matter until Defendants provide data on course offerings and degree completions through the fall semester 1999. Absent Plaintiffs raising a claim at that time that the information provided demonstrates a current equal protection violation this Court may then terminate its jurisdiction.

Respectfully submitted,

  
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DATE: February 12, 1999

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<sup>25</sup> The Sixth Circuit, in Judge Engles's concurring opinion noted in 1988 that per capita expenditures could not be a controlling consideration in the equal protection analysis necessary in this area. Glover v. Johnson, 855 F.2d at 288.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY GLOVER, et al.

Plaintiffs,

v.

USDC No. 77-71229  
Honorable John Feikens

PERRY JOHNSON, Director,  
Michigan Department of  
Corrections, et al.

Defendants.  
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**CERTIFICATE OF SERVICE**

I certify that on February 12, 1999 I mailed a copy of the foregoing  
PLAINTIFFS' AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR  
REMAND HEARING ON PARITY OF PROGRAMMING in the above-entitled matter by first  
class mail to: Leo H. Friedman, Assistant Attorney General, Corrections Division, One  
Michigan Avenue, Suite 300, P.O. Box 30216, Lansing, Michigan 48909 and Lisa Ward, 1300  
N. Waverly, #5, Lansing, Michigan 48917.

  
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KERON MOORE

DATED: February 12, 1999