

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30736
LANSING, MICHIGAN 48909-8236

August 24, 2017



BY:.....

HAND DELIVERED

Clerk of the Court
Washtenaw County Circuit Court
101 E. Huron Street
PO Box 8645
Ann Arbor, MI 48107-8645

Re: *Tom Nowacki, et al v MDOC*
Washtenaw County Circuit Court No. 11-852-CD

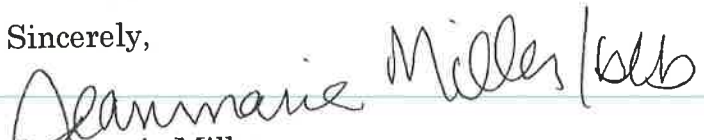
Dear Clerk of the Court:

Enclosed for filing please find a Praecipe, Defendant's Motion and Brief for Summary Disposition and a Proof of Service in the above referenced matter.

Also enclosed is a check in the amount of \$20.00 representing the motion fee and a judge's copy.

Thank you for your assistance.

Sincerely,


Jeanmarie Miller
Assistant Attorney General
(517) 373-6434

JM:blb

Enclosures

c: Hon. David S. Swartz
James K. Fett ✓
Glen N. Lenhoff

STATE OF MICHIGAN
22ND JUDICIAL CIRCUIT

**PRAECIPE FOR
CIVIL / DOMESTIC
MOTION**

CASE NO.: 11-852-CD

JUDGE: David S. Swartz

Address: Central Assignment, 101 E. Huron St., P.O. Box 8645, Ann Arbor, Michigan 48107-8645 Telephone: (734) 222-3383 Fax: (734) 222-3084

ALL BLANKS ON THIS PRAECIPE MUST BE PROPERLY COMPLETED. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE COURT DECIDING NOT TO HEAR YOUR MOTION.

Tom Nowacki
(Plaintiff)

VS

Michigan Department of Corrections
(Defendant)

1. I wish to place a Motion for (state nature of motion in brief form):

Summary Disposition

on the Motion Docket for Wednesday October 25, 2017 at no oral argument
(Day) (Date) (Time)
pursuant to stip & order

BEFORE SUBMITTING THIS PRAECIPE TO THE COURT, YOU ARE REQUIRED TO CONTACT THE OTHER ATTORNEY OR PARTY (if in Pro Per) TO DETERMINE WHETHER THE SUBJECT OF YOUR MOTION IS A CONTESTED ISSUE. PLEASE INDICATE BELOW THAT YOU HAVE COMPLIED WITH THIS REQUIREMENT, OR EXPLAIN WHY IT WAS NOT POSSIBLE TO DO SO.

2. a. I have contacted opposing attorney/party and have been informed that this motion will / will not (CIRCLE ONE) be contested.
- b. I have not contacted opposing attorney/party for the following reason: _____

RECEIVED
AUG 28 2017

3. Are you serving by **MAIL**?
Opposing party must be served at least 9 days before the hearing date.
- OR

- Are you serving in **PERSON**?
Opposing party must be served at least 7 days before the hearing date.

BY:

4. Motion has been filed with the Clerk's Office

Dated: August 24, 2017

James K. Fett
(Name of Attorney for Plaintiff)

Glen N. Lenhoff
(Name of Attorney for Plaintiff)

Jeanmarie Miller (P44446)
(Name of Attorney for Defendant)

(Name of Attorney for Defendant)

[Signature]
(Signature of Moving Attorney/Party)

Attorney for Defendant

525 W. Ottawa St., PO Box 30736
(Street Address of Moving Attorney/Party)

Lansing, MI 48909
(City, State, and Zip Code of Moving Attorney/Party)

517-373-6434
(Telephone Number of Moving Attorney/Party)

PRAECIPES shall be FILED in the Central Assignment Office, Room 1110, at least 7 days before the time set for hearing.

COURT USE ONLY (Do Not Write below line)

Adj to _____

Adj to _____



STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

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No. 11-852-CD

HON. DAVID S. SWARTZ

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BY:.....

PROOF OF SERVICE

The undersigned certifies that a copy of the following was served upon the attorneys of record in the above cause by U.S. mail to Glen N. Lenhoff and James K. Fett at the above addresses, respectively, with postage fully prepaid, on the 24th day of August, 2017:

1. Praecipe;
2. Defendant's Motion and Brief in Support to Enforce Statutory Stay and to Administratively Close Case Pending Resolution of Appeal in Court of Claims Case; and
3. Proof of Service.


Legal Secretary

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

RECEIVED
AUG 28 2017

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Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
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Defendant.

No. 11-852-CD

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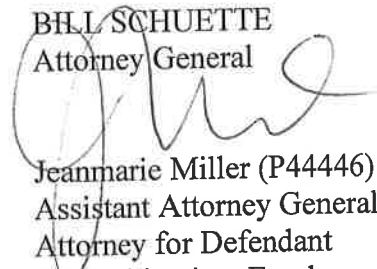
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DEFENDANT MDOC'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)

For the reasons set forth in the accompanying brief, Defendant, Michigan Department of Corrections, moves for summary disposition pursuant to MCR 2.116(C)(10).

Respectfully submitted,

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Dated: August 24, 2017

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY



TOM NOWACKI, et al,

BY:.....

Plaintiffs,

No. 11-852-CD

v

HON. DAVID S. SWARTZ

STATE OF MICHIGAN DEPARTMENT OF
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**BRIEF IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY DISPOSITION**

INTRODUCTION

This case is about the Michigan Department of Corrections' (MDOC) ongoing efforts to ensure that it complies with its Constitutional obligations to ensure the safety and security of its female correctional facility in a manner that protects the rights of not only its employees, but also the female prisoners. To do so, MDOC has had to balance the rights of its employees and the rights of its prisoners. In the past, MDOC has been found to have fallen short in this balancing

test. As a result, MDOC has undertaken efforts to ensure that it complies with not only Michigan's employment laws, but also with state and federal mandates for ensuring the proper care and custody of its prisoners. One of the ways that this has been done is through establishing certain bona fide occupational qualification (BFOQ) positions at MDOC's female correctional facility.

Plaintiff Tom Nowacki, on behalf of the class, challenges the propriety of the BFOQ positions, despite the fact that the rationale for these BFOQ positions has been approved by the Sixth Circuit Court of Appeals and the Michigan Civil Service Commission, and the fact that MDOC has met its burden to establish the BFOQs in previous litigation involving a female corrections' officer. Contrary to Plaintiff's assertions, MDOC has established a factual basis for each of the BFOQs at issue in this case – namely, that the positions require officers to conduct searches of female inmates; to potentially observe them in a state of undress; and/or to interact with them in isolated, one-on-one circumstances (providing an opportunity for sexual abuse or misconduct to occur). Each BFOQ was established after consultation with the onsite officials who were, and remain, in the best position to determine the needs of the prisoners, the employees and the facility as a whole. An undisputed basis for the BFOQs has been established.

FACTUAL SUMMARY

A. Prior to 2000, MDOC faced multiple lawsuits alleging that its treatment of female prisoners violated their constitutional rights, and thereafter implemented changes to address issues of sexual abuse and misconduct.

Before 2009, MDOC managed a population of approximately 2,000 female prisoners housed in several facilities. *Everson, et al v Michigan Department of Corrections*, 391 F3d 737 (CA 6, 2004). Problems with sexual abuse and other mistreatment of female prisoners plagued MDOC for an extended period of time. Various commissions and human rights groups found that rape and other sexual misconduct by corrections staff against female prisoners had been

occurring over a long period of time. *Id.* In addition to receiving such public criticism, several high profile lawsuits were filed against MDOC regarding its treatment of female prisoners.

In 1997, the United States Department of Justice launched an investigation into MDOC's treatment of female prisoners that culminated in a lawsuit alleging that MDOC was violating the constitutional rights of its female prisoners. *United States v Michigan*, ED Mich, No. 97-CVB-71514-BDT (USA) (Ex 2, Settlement Agreement in *USA v State of Michigan, et al*). In 1996, a group of female prisoners filed a federal lawsuit alleging sexual misconduct, sexual harassment, violation of privacy rights, and various other constitutional violations. *Nunn v Michigan Department of Corrections*, ED Mich, No. 96-71416-DT (Ex 4, Settlement Agreement in *Nunn, et al v Michigan Department of Corrections*). A similar lawsuit was filed in Washtenaw County Circuit Court as well. *Neal v Michigan Department of Corrections*, Case Nos.: 96-6986-CZ and 03-162-MZ. Additional lawsuits were also filed—*LaCross v Michigan Department of Corrections*, Washtenaw County Circuit Court, Case No. 05-944-CZ and *Mason v Michigan Department of Corrections*, USDC-ED, Case No. 05-73943.

After extensive and costly litigation, the above cases culminated in three separate Settlement Agreements that required the MDOC to implement a variety of changes in Department policy and procedure, training programs for staff and prisoners, and physical changes at the facilities. These changes were implemented to reduce incidents and allegations of sexual misconduct, sexual harassment, and over familiarity in the female prisons. Specifically, the Settlement Agreements required MDOC:

- To increase screening and training requirements for employees at its female facilities to address issues of sexual abuse and misconduct. (Ex 3, Settlement Agreement in *Neal, et al v Michigan Department of Corrections*).
- To limit assignment of staff in all housing units to female officers. (Ex 4, pgs 5-6).

- To ensure that no male officer was in a position to see a female prisoner in a state of undress and that no male officer could conduct a search – even a pat down search – of a female prisoner. (Ex 4, p 5).
- To implement policies that restricted prisoners and male staff from being alone in a one-on-one situation. (Ex 2, p. 11; Ex 4, pgs 5-6).

In addition to implementing the remedial measures above, MDOC also compensated female prisoners who had allegedly been subjected to sexual abuse and sexual harassment, paying a total of \$100 million. (Ex 3).

B. In 2000, in order to effectuate the changes mandated by the settlement agreements, MDOC sought approval to designate certain assignments as female-only BFOQ positions.

In 2000, in an effort to reduce complaints of sexual misconduct and abuse, and to comply with the various settlement agreements, MDOC sought formal approval from the Michigan Civil Service Commission (MCSC) to have certain assignments filled by females only.¹ The settlement of various lawsuits was also the impetus for the later 2009 BFOQ expansion sought by MDOC. (Ex 12, Manns Dep, pgs 10-11; Ex 13, Lopez Dep, p 23).

In August 2000, MDOC asked the MCSC to establish certain assignments at its women's correctional facilities to be staffed by females only. (Ex 6, August 2, 2000 Letter from Manns to Department of Civil Service). MDOC asked for the BFOQs in light of the settlements reached in the civil litigation and to prevent further sexual abuse and misconduct. These assignments were

¹ Formal approval was required from the MCSC because under Article 11, § 5 of the Michigan Constitution, only the MCSC can establish and classify assignments and set the duties and requirements for each assignment. (Ex 13, Lopez Dep, pgs 16-17). That is, all positions must be authorized by the MCSC and only the MCSC can establish selective position requirements such as BFOQs. (Ex 5, Michigan Civil Service Commission Regulation 4.01, pgs 10-11). MDOC itself could not establish any of the BFOQ assignments at issue in this case. (Ex 13, Lopez Dep, p 16). MDOC had to apply to MCSC for the BFOQ designations and demonstrate the need for the assignments. (Ex 12, Manns Dep, pgs 17-18). The ultimate decision to establish a BFOQ was under the complete and constitutional authority of the MCSC. (Ex 12, Manns Dep, pgs 17-18, 34)(Ex 13, Lopez Dep, pgs 17-19).

largely in the housing units at the women's facilities. (Ex 6). The MCSC ultimately approved the creation of BFOQ assignments at the women's prisons. (Ex 7, August 14, 2000 Civil Service Letter).

In 2002, in *Everson, et al v Michigan Department of Corrections*, USDC-ED, Case No. 00-73133, a group of employees challenged the establishment of the BFOQs claiming that they violated Title VII and the ELCRA. (Ex 1). The Sixth Circuit Court of Appeals ultimately upheld the designations, finding several factors that weighed in favor of establishing BFOQs at MDOC, and holding that due deference was to be given to the judgment of MDOC with regard to staffing issues at its prisons. Relying on *Dothard v Rawlinson*, 433 US 321 (1977), the court held BFOQ's were appropriate to ensure the safety and security in a prison setting. The Sixth Circuit found that MDOC had an obligation to ensure that female prisoners were not sexually assaulted and it was appropriate to limit male officer interaction with female prisoners in certain locations, such as housing units, where prisoners were often in a state of undress and had their bodies exposed. The court also found that it was reasonable to restrict male officers from working in certain positions in order to reduce the risk of sexual contact with prisoners (i.e., minimize access to secluded areas and one-on-one contact). These included not only housing positions, but also positions where pat-down and other searches of the prisoners might be necessary.

In 2005, as a result of the *Everson* decision, MDOC removed all males from housing units in women's prisons. Nowacki does not, in the instant case, challenge any of the corrective actions or BFOQ designations made by the MDOC prior to 2008. Rather, as explained below, the instant suit challenges only the BFOQ designations established in 2009, following MDOC's

consolidation of its three adult female correctional facilities into one, the Women's Huron Valley Correctional Facility ("WHV").

C. In 2008, MDOC consolidated all of its female facilities in one location, and sought approval for 11 additional BFOQ assignments in order to ensure continued compliance with the settlement agreements.

In 2008, MDOC consolidated all of its female facilities at one location, WHV. Meetings were held to discuss how the new female-only facility was to be staffed. (Ex 10, Warren Dep, p 26). The individuals working in the facilities met and conferred regarding the staffing plans and required positions. (Ex 10, Warren Dep, p 26). According to MDOC's Human Resources Directors, the employees in the facility working with the employees and prisoners were in the best position to determine how staffing needs should be met. (Ex 12, Manns Dep, pgs 49, 53); (Ex 13, Lopez Dep, pgs 13-15). One of the issues considered was whether in the new facility there would be a need for additional positions to be filled by women only. The Warden and Deputy Wardens met to discuss each position that might be needed and how that position should be staffed.

In considering the staffing plan, of key concern were assignments that required staff to conduct pat-down or strip searches of employees, positions that allowed for a prisoner to be seen in a state of undress, and positions with one-on-one, unsupervised interaction between staff and a prisoner. (Ex 10, Warren Dep, pgs 45, 51, 60-61); (Ex 11, Evans Dep, pgs 23, 29-30); (Ex 14, Straub Dep, p. 8); (Ex 15, Curtis Dep, p 31). These meetings resulted in not only a decision to request that certain assignments be established by MCSC as BFOQ positions, but also that other assignments be changed to allow males to fill them as well as females. (Ex 10, Warren Dep, pgs 60-61).

As a result of the staffing plan drafted, MDOC requested that the MCSC establish eleven additional BFOQ assignments. (Ex 8, March 27, 2009 Letter from Gary Manns to Civil

Service). Those assignments were: Food Service Officer, Yard Control Officer, Rover Officer, Health Care Officer, Property Room Officer, School Officer, Off-Site Hospital Officer, Gate Control Officer, Gym Officer, Electronic Monitor Officer, and Industries Officer. MDOC sought the additional BFOQ designations because the assignments were “either an isolated position, involves potential privacy concerns on the part of the prisoners, or requires an officer to conduct pat-down searches on the female prisoners.” (*Id.*) On April 17, 2009, the MCSC established the additional BFOQ assignments. (Ex 9, April 17, 2009 Civil Service Letter).

D. In the instant case, Nowacki challenges the 2009 BFOQ designations that were established as a result of the lawsuits and settlements.

MDOC officials have testified regarding the rationale used in seeking the 2009 BFOQ classification from the MCSC as well as why no reasonable alternative existed. The record evidence shows that MDOC sought BFOQ classifications for these positions because of same concerns that justified the BFOQ classification for the housing unit assignments upheld in *Everson*. As a general principle, MDOC has explained that searches of female prisoners may be necessary in any portion of the facility (including non-housing units), and where necessary must be conducted by a female officer. If a female officer is not present, calling one in from another location is not always feasible because the facility covers a large area, many assignments require officers to work in remote locations, and a female officer may not be nearby or available.

Additionally, a female officer cannot leave her assignment unless relief is obtained for her, and relief may not be readily available. (Ex 11, Evans Dep, pgs 101, 122; Ex 13, Lopez Dep, p 44). Additionally, wherever possible, MDOC tries to staff with multiple male and female officers to ensure that a BFOQ assignment would not be necessary. (Ex 10, Warren Dep, pgs 60-61). In fact, there are non-BFOQ assignments on every shift and most of the BFOQ positions remain in the housing units. (Ex 18, BFOQ/Non-BFOQ Assignments at WHV).

With regard to the eleven BFOQ assignments established by the MCSC in 2009, the considered judgment of MDOC personnel for requesting the BFOQ designations is detailed below:

POSITION	JUSTIFICATION
Food Service Officer	Assignment is staffed by 2 officers although part of the time it is a single officer assignment. Prisoners are required to change clothes and to be monitored in the bathrooms. Pat-down searches are required to be conducted of all prisoners going to and from a food service assignment to ensure that no contraband is brought in and, most importantly, that no contraband such as tools or food are removed from the food service area. (Ex 10, Warren Dep, pgs 70-72, 75-76); (Ex 11, Evans Dep, pgs 64-68, 70-72); (Ex 15, Curtis Dep, p 31).
Yard Control Officer	Searches of prisoners are required. (Ex 10, Warren Dep, pgs 116-117); (Ex 11, Evans Dep, pgs 77-78). There are yard control officer assignments that are filled by men and not all yard control assignments are BFOQ positions. (Ex 10, Warren Dep, pgs 112, 116). Men can serve as yard control officers.
Rover Officer	The rover assignment is a housing unit position. (Ex 11, Evans Dep, p 108); (Ex 10, Warren Dep, pgs 174-178); (Ex 16, Position Descriptions). Housing unit assignments are not in dispute in this case. Additionally, there are non-BFOQ Rover assignments that are filled by men. (Ex 10, Warren Dep, p 180).
Health Care Officer	Health Care is basically a housing unit that houses acute and chronically ill prisoners and where prisoners can be seen in a state of undress. (Ex 10, Warren Dep, p 155); (Ex 11, Evans Dep, pgs 99-100).
Property Room Officer	The property room officer is an isolated, one-on-one position. Searches are required to ensure prisoners leaving a property room assignment are not taking contraband from the property room. (Ex 10, Warren Dep, pgs 182-185); (Ex 11, Evans Dep, pgs 114-119); (Ex 15, Curtis Dep, p 31).
School Officer	The school officer has to search prisoners leaving the school to ensure contraband is not being taken. In the school area, prisoners are taught wood working skills and work with implements that could be used as weapons. There are only 2

	officers, each serving in separate isolated areas of the school. Also, the bathrooms in the school area are in open bays where a prisoner could be seen in a state of undress. (Ex 10, Warren Dep, pgs 187-192); (Ex 11, Warren Dep, p 20).
Off-Site Hospital Officer	The off-site hospital officer is both a BFOQ and a non-BFOQ assignment. Men are allowed to fill this position. The BFOQ requires 1 female because a prisoner could be seen in a state of undress in a hospital treatment setting. Visual contact with the prisoner must be maintained at all times when outside the facility. (Ex 10, Warren Dep, pgs 202-204); (Ex 11, Evans Dep, pgs 123-124).
Gate Control Officer	The gate control officer has to conduct searches of everyone going in and out of the gates. All prisoners, and most visitors, are females. (Ex 10, Warren Dep, pgs 123-124, 127-129); (Ex 11, Evans Dep, pgs 84-86).
Gym Officer	The gym officer is a single officer assignment. The officer has to conduct searches of prisoners when they leave the gym to ensure they are not taking equipment out of the gym area. Prisoners must also be monitored in the bathroom areas. (Ex 10, Warren Dep, pgs 131-133, 135); (Ex 11, Evans Dep, pgs 91-93); (Ex 15, Curtis Dep, p 31).
Electronic Monitor Officer	The electronic monitor officer observes the camera feed for all cameras in the facility. Many cameras are in areas where women may be in a state of undress. (Ex 10, Warren Dep, pgs 141-147); (Ex 11, Evans Dep, pgs 95-96); (Ex 15, Curtis Dep, pgs 36-37).
Industries Officer	The industries officer is a single assignment position. The officer is required to search prisoners when they leave the industries area to ensure no tools are taken from the area. (Ex 10, Warren Dep, pgs 162-167); (Ex 11, Evans Dep, pgs 106-107).

As described above, all eleven BFOQ designations were established because, *inter alia*, they required officers to conduct invasive searches of female inmates; permitted officers to see female inmates in a state of undress; and/or placed the officer in an isolated one-on-one interaction with the female inmate (raising concerns that such isolation would allow an opportunity for potential sexual abuse or misconduct to occur). (See Ex 4, p 5 (provision of

Nunn settlement agreement requiring that MDOC “maintain a written procedure that restricts male staff from being alone in one-on-one situations with prisoners at facilities and centers not clear visible to prisoners or other staff . . .”). Thus, for the assignments detailed above, there was no reasonable alternative that would allow MDOC to comply with the various settlement agreements referenced above and to protect the rights of its female prisoner population other than the establishment of the BFOQs. MDOC did not have the personnel or technology to allow for any other measures.

E. In a claim brought by a female corrections officer challenging the very same BFOQs at issue in this case, the Court of Claims granted summary disposition to MDOC, holding that it established the propriety of the 2009 BFOQ designations.

MDOC has already established the propriety of all eleven 2009 BFOQ designations in an individual lawsuit brought in the Michigan Court of Claims by Aleika Buckner, a former corrections officer at WHV. In that lawsuit, the parties extensively litigated the very same questions of law and fact at issue in the present case.

In a well-reasoned opinion by the Honorable Mark T. Boonstra, the Court of Claims granted summary disposition to MDOC. The court began by citing to the Sixth Circuit’s opinion in *Everson* (in which MDOC successfully established the propriety of the 2000 BFOQ designations) for the general principle that “courts have treated BFOQs in prison settings differently from other types of employment situations and have afforded deference to the reasoned decisions of prison officials.” (Ex 21, October 26, 2016, Opinion and Order in *Buckner v MDOC*, at 14). The court held that MDOC was entitled to such deference, given that the record showed that it implemented the 2009 BFOQ designations as part of a carefully considered and years-long process to address “a history of problems involving the sexual abuse of female prisoners;” the pertinent actors engaged in extensive discussions regarding which positions

should be designated as BFOQ to address these problems; and “MDOC thought about the positions and attempted to limit the number of positions that would ultimately be given the BFOQ designation.” (Ex 21, pgs 18-19).

As explained in more detail below, the court concluded that the eleven BFOQ designations were reasonably necessary to normal operations at HVC; the justifications for the BFOQs – i.e., security, safety and privacy – related to the central mission of MDOC’s business; and no reasonable alternatives existed to the establishment of the BFOQs. Most importantly, the court noted that the very same concerns – i.e., that officers in the positions need to conduct searches of female inmates, may see them in a state of undress, and may be in situations of isolated one-on-one contact – that motivated the 2000 BFOQ designations (upheld in *Everson*) also motivated the 2009 BFOQ designations. (Ex 21, pg 22) (noting that “all of the [eleven] positions at issue contained at least some type of search requirement” and that requiring male officers to call upon female officers when a search is needed would require the female officers “to leave their posts in order to assist their male colleagues . . . This would no doubt create a security risk at the vacated post”). Buckner sought reconsideration and that was denied as well. (Ex 22, November 30, 2016, Opinion and Order).

ARGUMENT

A. Summary Disposition Standard

In ruling on a motion for summary disposition under MCR 2.116(C)(10), “a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the non-moving party.” *Scalise v Boy Scouts of America*, 265 Mich App 1, 10 (2005). The moving party bears the initial burden to specifically identify the undisputed factual issues and support its position with documentary evidence. MCR 2.116(G)(3)(b); *Maiden v Rozwood*, 461 Mich 109, 120 (1999); *Neubacher v Globe Furniture*

Rentals, 205 Mich App 418, 420 (1994). The non-movant then has the burden of showing that a genuine issue of disputed fact does in fact exist and to produce admissible evidence to establish those disputed facts. *Meagher v Wayne State Univ*, 222 Mich App 700, 719 (1997); *Neubacher*, at 420.

B. Nowacki's claim should be dismissed in its entirety with prejudice because he executed a valid Release of All Claims and Employment with the State of Michigan in October, 2015 and, thus, released all present claims.

A settlement agreement is a contract and must be treated as such. *Mass Indemnity and Life Ins Co v Thomas*, 206 Mich App 265, 268 (1994). Under Michigan law, a settlement and release is valid if its "fairly and knowingly" made. *Brooks v Holmes*, 163 Mich App 143, 145 (1987). Once a settlement agreement is reached, the agreement should not be set aside simply because a party has a "change of heart." *Metro Life Ins Co v Goolsby*, 165 Mich App 126 (1987). The burden is on the party seeking to avoid the release—here Nowacki—to prove by a preponderance of the evidence that the Court should set aside the release. *Binard v Carrington*, 163 Mich App 599 (1987).

In October 2015, Nowacki settled a workers' compensation claim he had against MDOC. In that claim Nowacki was represented by counsel – Attorney David Cooper. As part of that settlement, Nowacki executed a "Release of All Claims and Employment with the State of Michigan." (Ex 20, Release of All Claims and Agreement to Indemnify). In that Release Nowacki specifically released the State of Michigan from "any and all liability, claims, and causes of action, arising out of Federal law, State law or common law, *including but not limited to, tort actions, civil rights, and disability claims, claims for wrongful discharge and any claims for discrimination arising directly or indirectly out of his employment.*" (Ex 20)(emphasis added). Nowacki later tried to set aside that settlement but his request was denied. (Ex 23, December 10, 2015 Order of State of Michigan, Department of Licensing and Regulatory Affairs

Workers' Compensation Agency). As stated, Nowacki was represented by an attorney during his workers' compensation proceedings. As the named plaintiff in the present action, Nowacki was aware of the present litigation as well. He still chose to sign the agreement releasing the claims he had against the State of Michigan. In doing so he gave up his claims in the present case. Nowacki's individual claims should be dismissed in this matter. And because Nowacki is the only named plaintiff in this matter, the class action should also be dismissed for lack of an adequate class representative.

C. MDOC has presented ample evidence to establish that being female is a BFOQ for the assignments at issue.

MDOC has presented ample evidence to establish that being female is a BFOQ for the challenged assignments. The Elliott-Larsen Civil Rights Act (ELCRA) permits overt discrimination if the disparate treatment is based on a BFOQ, and allows for the creation of a BFOQ where it is "reasonably necessary to the normal operation of the business or enterprise." MCL 37.2208. Although no Michigan Court has set forth the standard for reviewing a BFOQ, the Sixth Circuit Court of Appeals in *Everson v Michigan Department of Corrections*, 391 F3d 737 (CA 6, 2004) found that to maintain a requirement for a BFOQ an employer must establish: (1) that there is a basis for the belief that all or substantially all individuals outside of the designated class will not be able to perform the job safely and efficiently; (2) the job qualification that the excluded individuals are not able to perform relates to the essence or central purpose of operating the business at hand; and (3) the employer must establish that there is no reasonable alternative to employing one group exclusively for the job for which the BFOQ is sought. *Everson* at 748-749. Additionally, deference is to be afforded to the judgment of prison administrators with regard to issues involved in operating a prison. This is due to the challenges

they face and the unique resources they possess. *Everson* at 750. In this case, all three required elements are met.

1. The prior history of sexual abuse and misconduct against female prisoners provides a basis in fact for the BFOQ designations.

In *Everson*, the Sixth Circuit found that MDOC's history of sexual abuse in its female facilities, along with the requirements imposed by the settlements reached in the various lawsuits filed by and on behalf of female prisoners, provided a basis in fact for the BFOQ positions. While the problems began to decrease after BFOQs were established in the housing units, the problems did not stop. In fact, from 2004 through 2009, there were 233 additional complaints of sexual abuse, sexual harassment, and over familiarization. (Ex 17, Defendant's Response to Plaintiff's Interrogatories). Thus, it was clear there were still problems. Also, a new, single facility was being established to house female prisoners that required a new staffing plan. That staffing plan called for more one-on-one assignments where a single officer would be working with the female prisoners. Under the settlement agreements reached and implicitly approved by the court in *Everson*, this was not allowable. Furthermore, pat-downs and searches by male guards of female prisoners was not allowed. As the Sixth Circuit in *Everson* found, these types of situations called for the use of a BFOQ considering Michigan's prior history in dealing with female prisoners. Interestingly, since the additional BFOQ positions were established in 2009, there have been less than 50 complaints of sexual abuse, sexual harassment, and over familiarization- a far cry from what it was before. (Ex 17, Defendant's Response to Plaintiffs Interrogatories Dated May 9, 2013). Based on this history, the Michigan Court of Claims in *Buckner* found that MDOC established the propriety of the eleven additional 2009 BFOQ designations, including the four at issue here. (See Ex 21 at 16-17 (examining history of

litigation against MDOC and complaints of abuse, and concluding that the BFOQ designations materially advanced security and privacy interests)).

Defendant notes that in addition to the Sixth Circuit's decision in *Everson* and the Michigan Court of Claims' decision in *Buckner*, various federal courts have held that under the circumstances set forth by MDOC above, BFOQs are justified and the courts have upheld sex-based correctional officer assignments in women's prisons. Most recently, in *Teamsters Local Union No 117 v Washington Department of Corrections*, 789 F3d 979 (CA 9, 2015), the Ninth Circuit found that there was a basis in fact to establish a BFOQ for program and activity positions such as gym, industries, school officers, and for relief positions where the basis offered was the necessity of performing pat-down searches. The court found that the decisions of the corrections officials were entitled to deference and that if a position required a pat-down search, such a search served as a basis for implementing a BFOQ. This was particularly true where the position might put an officer in a position to see a prisoner in a state of undress. *See also Robina v Iranon*, 145 F3d 1109, 1110 (CA 9, 1998) (upholding the BFOQ designation of six correctional officer positions at Hawaii women's prison); *Tharp v Iowa Dept of Carr*, 68 F3d 223, 224 (CA 8, 1995) (upholding the BFOQ designation of all correctional officer positions in women's residential unit within a mixed-gender minimum security prison.)

The types of BFOQ assignments upheld in *Teamsters* are in all respects identical to those at issue here, and the BFOQ assignments upheld in *Buckner* are *in fact* the very same assignments. All of the assignments require pat-down searches which the Sixth Circuit in *Everson* has held can only be conducted by females. *See* Ex 21 at 22 (noting that "all [eleven] of the positions at issue contained at least some type of search requirement" and "inmates have a privacy interest in having non-emergency strip and pat searches – a pervasive fact of prison life –

performed by guards of the same sex”). Furthermore, many of the assignments put officers in a position to observe female prisoners in a state of undress. Many of the assignments are also one-on-one assignments which pose a particular risk for misconduct to occur. These are the very factors considered and approved in *Everson*, *Buckner* and *Teamsters* as providing a factual basis for a BFOQ. Just as the BFOQs were justified in those cases, the BFOQs are justified here as well.

2. The decisions to create BFOQ designations were based on available knowledge and experience.

As the *Everson*, *Buckner* and *Teamsters* courts noted, the decisions of MDOC officials are entitled to due deference. Both Warden Warren and Deputy Warden Evans testified that they met as a group to develop the staffing plans for the unified women’s facility. Based on the decision in *Everson*, due consideration was paid to those assignments that would allow a male officer to see a female prisoner in a state of undress, required a pat-down search, or were single-person assignments. These were all of the same criteria set forth by the Sixth Circuit in *Everson*. To find that consideration of the criteria was not reasonable or reasoned would require this Court to ignore and disregard the holdings in *Everson*, *Buckner* and *Teamsters*. (See also Ex 21 at 19 (examining history of litigation, complaints of sexual abuse, and MDOC decision-making process, and noting that “the record belies [plaintiff’s contention] that the BFOQs were implemented in a haphazard fashion . . . [g]iven the discussions that occurred . . . [and] the experience of MDOC officials with BFOQs dating back to *Everson*, this Court will afford deference to MDOC’s decision-making process . . .”). The decisions were not “knee-jerk,” but rather based upon the staffing levels, requirements and needs of every assignment, weighed-against the need to maintain the constitutional rights of the prisoners. In fact, where it was able to, MDOC removed a BFOQ designation from assignments that were not single assignments and

also utilized companion assignments identical to the ones filled by females that were filled by males (i.e. yard, rover).

3. When the BFOQ designations were created, no reasonable alternative existed that would accommodate the concerns raised by the Sixth Circuit in *Everson* or that would address the continuing problem of sexual misconduct.

All of the assignments that were established as BFOQs in 2009 met the same criteria as those established in 2000. Searches are an integral part of maintaining the security of a prison facility. Body searches of female prisoners can only be performed by female officers. Accordingly, a female officer's presence is necessary to conduct such searches. When an assignment is a single-person assignment, there is simply no alternative but to assign a female to the position. Certainly, MDOC should not be required to incur the costs of hiring more, unnecessary staff. Furthermore, Warden Warren, Deputy Warden Evans, RPA Curtis and HR Director Lopez all were questioned about calling for relief office when a search was necessary. All testified that such a requirement was not logistically feasible and could in fact cause security concerns in other areas of the facility were an officer was pulled from her assignment. This very suggestion was considered and quickly rebuffed by the Ninth Circuit in *Teamsters*, as well as by the Court of Claims in *Buckner*. (See Ex 21 at 22 (noting that pulling female officer from assignment "would no doubt create a security risk at the vacated post")); *Teamsters*, 789 F3d at 992 ("Notably, temporarily removing a female guard from another part of the prison . . . creates a gap for dealing with privacy issues at the post vacated . . . that solution fixes one problem but creates another") (internal quotations omitted).

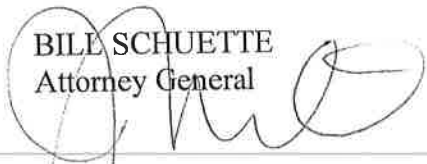
Requiring another officer to respond to a post where a pat-down search was needed, or monitoring prisoners in areas where a prisoner may be in a state of undress, is not feasible and creates a gap for dealing with the security and privacy issues at the post vacated. Failing to

respect the privacy interests of all prisoners at all posts obviously undermines the essence of the facility's operations by exposing prisoners to potential privacy violations and MDOC to potential further lawsuits. It is simply not feasible to solve a problem in one area (by reassigning a female to search a prisoner) by creating a problem in another (leaving a post vacated.) At the time the BFOQs were implemented, there was no reasonable alternative to protect the rights of prisoners recognized by the court in *Everson*.²

CONCLUSION

A finding that the BFOQs were not, or are not, supported by the facts would be improper. Under the persuasive authority of *Everson* and *Buckner*, the BFOQ assignments at issue here are proper and should be upheld. All of the assignments either require pat-down searches, allow for prisoners to be seen in a state of undress, are in housing units, or are single-officer assignments. Additionally, many already have a complimentary assignment that is filled by a male officer. As the BFOQs were found to be proper in *Everson*, *Buckner* and *Teamsters*, they should be found proper here.

Respectfully submitted,


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Dated: August 24, 2017

² Since the adoption of the BFOQs at issue in this case MDOC has made significant upgrades to its electronic monitoring capabilities at HVC, which were cost prohibitive and unworkable in 2009. As a result, most of the BFOQs have been removed. (Ex 19). The only BFOQs currently remaining are for the assignments of Rover and Electronic Monitor Officer.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

RECEIVED
AUG 28 2017

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

No. 11-852-CD

HON. DAVID S. SWARTZ

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INDEX OF EXHIBITS

Exhibit 1	<i>Roslyn Everson, et al v MDOC, et al</i>
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Exhibit 21..... *Buckner v MDOC*, October 26, 2016-Opinion and Order
Exhibit 22..... *Buckner v MDOC*, November 30, 2016-Opinion and Order
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LEXSEE 391 F.3D 737

ROSLYN EVERSON; RANDY FOX; STENNIS GEORGE; BRENDA L. SEBASTIAN, and a class of all persons similarly situated, Plaintiffs-Appellees, v. MICHIGAN DEPARTMENT OF CORRECTIONS; BILL MARTIN, individually and in his official capacity as Director of the Michigan Department of Corrections, Defendants-Appellants (02-2033), LINDA NUNN; TRACY NEAL, Intervening Defendants-Appellants (02-2028/2084).

Nos. 02-2028/2033/2084

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

04a0418p.06; 391 F.3d 737; 2004 U.S. App. LEXIS 24905; 2004 FED App. 0418P (6th Cir.); 94 Fair Empl. Prac. Cas. (BNA) 1542; 86 Empl. Prac. Dec. (CCH) P41,900

February 4, 2004, Argued
December 3, 2004, Decided
December 3, 2004, Filed

SUBSEQUENT HISTORY: Rehearing denied by, Rehearing, en banc, denied by *Everson v. Mich. Dep't of Corr.*, 2005 U.S. App. LEXIS 4653 (6th Cir., Mar. 18, 2005)

US Supreme Court certiorari denied by *Everson v. Mi Doc*, 2005 U.S. LEXIS 6089 (U.S., Oct. 3, 2005)

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Eastern District of Michigan at Detroit. No. 00-73133--Avern Cohn, District Judge. *Everson v. Mich. Dep't of Corr.*, 222 F. Supp. 2d 864, 2002 U.S. Dist. LEXIS 12544 (E.D. Mich., 2002)

DISPOSITION: Reversed and remanded.

COUNSEL: ARGUED: Deborah A. LaBelle, LAW OFFICES OF DEBORAH LaBELLE, Ann Arbor, Michigan, Mark W. Matus, MICHIGAN DEPARTMENT OF ATTORNEY GENERAL, Lansing, Michigan, for Appellants.

John R. Runyan, SACHS WALDMAN, Detroit, Michigan, for Appellees.

ON BRIEF: Deborah A. LaBelle, LAW OFFICES OF DEBORAH LaBELLE, Ann Arbor, Michigan, Mark W.

Matus, MICHIGAN DEPARTMENT OF ATTORNEY GENERAL, Lansing, Michigan, for Appellants.

John R. Runyan, Eileen Nowikowski, Marshall J. Widick, SACHS WALDMAN, Detroit, Michigan, for Appellees.

JUDGES: Before: NORRIS, GILMAN, and ROGERS, Circuit Judges. ROGERS, J., delivered the opinion of the court, in which NORRIS, J., joined. GILMAN, J. (pp. 20-21), delivered a separate dissenting opinion.

OPINION BY: ROGERS

OPINION

[*739] [***2] ROGERS, Circuit Judge. Following separate lawsuits by female prisoners in Michigan and by the Civil Rights Division of the United States Department of Justice, both of which alleged rampant sexual abuse of female prisoners in Michigan, the Michigan Department of Corrections (the [**2] "MDOC") barred males [*740] from working in certain positions at its female prisons. Specifically, the MDOC designated approximately 250 Correctional Officer ("CO") and Residential Unit Officer ("RUO") positions in housing units at female prisons as "female only." A group of MDOC employees, both males

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and females, sued the MDOC, alleging that the MDOC's plan violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), and Michigan's Elliott-Larsen Civil Rights Act, *Mich. Comp. Laws* § 37.2202. Following a bench trial, the district court ruled in the plaintiffs' favor, concluding, among other things, that gender was not a bona fide occupational qualification (a "BFOQ") for the positions in question. The district court entered a permanent injunction enjoining the MDOC from making gender-specific assignments at female prisons. Because gender is a BFOQ for the positions in question, we reverse the judgment of the district court.

BACKGROUND

At the time of trial, the MDOC managed a population of approximately 2000 female prisoners.¹ Currently, the MDOC houses most of its female prisoners at three facilities. The Robert [**3] Scott Correctional Facility (the "Scott Facility"), located in Plymouth, Michigan, is a multilevel prison with an operating capacity of 860 prisoners, and it serves as the reception center for all incoming female prisoners. The Western Wayne Correctional Facility (the "Wayne Facility"), also located in Plymouth, Michigan, is a secure Level I facility with an operating capacity of 775. Camp Brighton, located near Pinckney, Michigan, is a Level I facility with barracks-style housing, and it has an operating capacity of 358.

1 At the time of trial, female prisoners represented 4.3% of the MDOC's total population of approximately 46,000 prisoners. According to the MDOC, since trial, the total population has increased to 50,600 prisoners, and the female population has increased to 2,100 prisoners, 4.2% of the total population.

At the time of trial, the MDOC employed approximately 19,000 persons, about 9400 of whom served as COs and RUOs. The duties of COs and RUOs in the housing units include patrolling the sleeping, [**4] shower, and bathroom areas, attending to the basic needs of women prisoners (including the provision of sanitary supplies), monitoring activity in the living quarters, enforcing housing rules and procedures, and assuring that proper standards of care and hygiene are maintained. RUOs staff the housing units on the first and second shifts, while COs staff the housing units on the third shift. CO positions outside the housing units include intake officer and transportation officer. Intake officers

shepherd prisoners through the intake process, during which new prisoners are strip searched, fingerprinted, and showered, and during which paperwork is completed on the prisoners. Intake officers examine prisoners while they are naked. Among other things, transportation officers drive inmates to prisons to which they have been transferred and to medical appointments. Sometimes during transportation, female prisoners, who are placed in restraints, require the assistance of a transportation officer to use the bathroom.

The parties have provided only a partial picture of the staffing at Michigan's female prisons. According to the testimony of Lori Sahl, a corrections officer employed at the Wayne [**5] Facility, there are three officers per shift assigned to each housing unit at the Wayne Facility. Each unit comprises a pair of wings which house between 80 and 90 inmates each. One [**741] officer works the "A" wing, one officer works the "B" wing, and one officer works at a desk, where he or she watches the other two officers as they make their rounds. R. 113, Tr. at 91. According to the testimony of Joan Yukins, the warden of the Scott Facility, the housing units at the Scott Facility are shaped like a bow tie with an "A" side, a "B" side, and a "center" [***3] containing offices and laundry rooms. In most of the units, each side holds 96 inmates, though the capacity is lower in the high-security and psychiatric units. For the most part, the units are staffed with either two officers per side or one officer per side plus a "rover." R. 119, Tr. at 15-18, 21.

The problem of sexual abuse² and other mistreatment of female inmates has long plagued the MDOC. In 1993, following interviews of a number of inmates, the Michigan Women's Commission³ advised the MDOC that it believed that "sexual assault and harassment are not isolated incidents and that fear of reporting such incidents is a [**6] significant problem." In 1996, after an independent investigation, Human Rights Watch issued a report concluding that "rape, sexual assault or abuse, criminal sexual contact, and other misconduct by corrections staff are continuing and serious problems within the women's prisons in Michigan [and] have been tolerated over the years at both the institutional and departmental levels."⁴ Human Rights Watch also charged that the male corrections staff routinely violated the privacy rights of inmates by, for example, abusing their power to conduct "pat-down" searches and improperly viewing inmates as they used the shower or toilet. Later, in 1998, Human Rights Watch

issued a second report describing a campaign of retaliation by corrections staff against several women who had made public accusations of sexual abuse. In 1999, following its own investigation, the United Nations Commission on Human Rights seconded Human Rights Watch's charge that corrections officers systematically retaliated against women who reported sexual abuse.

2 The MDOC recognizes three categories of what we collectively term "sexual abuse." "Sexual misconduct" means engaging in, or attempting to engage in, any of the following:

1. A sexual act with any prisoner.

2. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.

3. Prohibited physical contact, including fondling or kissing.

4. Indecent exposure or other indecent sexual behavior by staff in the presence of a prisoner.

"Sexual Harrassment" means "sexual advances, requests for sexual favors, and other offensive verbal or physical conduct, including communications, of a sexual nature with a prisoner. This includes verbal conduct of a gender-related nature intended to humiliate, harass, degrade or arouse." "Overfamiliarity" means "conduct between staff and a prisoner which has or is likely to result in intimacy or a close personal association, or conduct that is contrary to the good order of the facility."

[**7]

3 The Michigan Women's Commission is an independent unit in the executive office of the governor. *Mich. Comp. Laws Ann. § 10.71* (West 2001).

4 Human Rights Watch found that the current allegations of sexual abuse were "consistent with a pattern and practice of conduct in women's prisons since, at least, the mid-1980s."

Statistics compiled by the parties add some content to the charge of rampant sexual abuse of female inmates in Michigan's prisons. According to the MDOC, between 1994 and January 31, 2001, it investigated 217 allegations of sexual misconduct⁵ [*742] against female inmates, of which 43 were sustained and of which only 47 were deemed unfounded. According to the plaintiffs' calculations, between 1994 and 2000, female inmates made 208 allegations of sexual misconduct, of which 58 were sustained or resulted in the resignation, leave, or discharge of the accused. In 1997 and 1998, Michigan cases constituted 10 out of a total of 20 convictions of male staff nationwide for criminal sexual conduct against women prisoners.

5 These figures do not include allegations of sexual harassment or overfamiliarity. Additionally, evidence presented at trial indicates that sexual misconduct may be underreported. R. 117, Tr. at 164; J.A. at 3149, 4177.

[**8] [***4] In addition to public criticism, the MDOC faced a pair of high-profile lawsuits involving the sexual abuse of female inmates⁶ in this period. On March 27, 1996, a group of female inmates filed suit in the United States District Court for the Eastern District of Michigan against the MDOC and a number of state officials and corrections officers (the "*Nunn* lawsuit"). The inmates alleged rampant sexual misconduct, sexual harassment, violation of privacy rights, and retaliation by corrections officers, and they asserted violations of the *First, Fourth, Eighth, Ninth, and Fourteenth Amendments* under 42 U.S.C. § 1983, and of the Violence Against Women Act, 42 U.S.C. § 13981. The inmates' monetary claims were settled for a little less than \$ 4 million, and, on July 31, 2000, the inmates' claim for injunctive relief was resolved by a settlement agreement (the "*Nunn* agreement"). In the *Nunn* agreement, the MDOC pledged, among other things, to restrict pat-down searches of female inmates by male staff, to require male staff to announce their presence upon entering a housing unit area, and to maintain areas where inmates [**9] may dress, shower, and use the toilet without being observed by male staff. Additionally, the *Nunn* agreement provided that "consistent with the MDOC's announced intention to limit the assignment of staff in facility housing units to female officers, the MDOC will make a good faith effort to accomplish this objective."⁷

6 The plaintiffs' Second Amended Complaint

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named 32 female inmates as plaintiffs.

7 More completely, the MDOC agreed in the *Nunn* agreement to (1) screen applicants for positions involving contact with female inmates for drug abuse and criminal histories, (2) train staff and internal investigators on issues relating to the supervision of prisoners, (3) review training materials on sexual misconduct for prisoners, (4) minimize access to secluded areas and one-on-one contact between male staff and inmates, (5) ban pat-down searches of inmates by male staff absent emergency circumstances during a twelve-month evaluation period, (6) require male staff to announce their presence upon entering a housing unit area, (7) maintain areas where inmates may dress, shower, and use the toilet without being observed by male staff, (8) assign at least one female to transport an inmate, (9) facilitate prisoner and staff reporting of allegations of sexual misconduct, sexual harassment, and retaliation, (10) investigate allegations of sexual misconduct, sexual harassment, and retaliation timely and completely, and (11) make a good faith effort to limit the assignment of staff in housing units to female officers.

[**10] In June of 1994, the Civil Rights Division of the United States Department of Justice (the "DOJ") initiated an investigation of allegations of sexual abuse and other violations of the constitutional rights of inmates at a pair of Michigan women's prisons pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.* The State refused to grant the DOJ access to the facilities, but the DOJ managed to interview over 100 inmates in the course of its investigation. By a letter dated March 27, 1995, the DOJ advised the Governor of Michigan that it [*743] had concluded that "various acts, practices, and other conditions at both facilities deny inmates confined there of their constitutional rights." The DOJ found that "sexual abuse of women inmates by guards, including rapes, the lack of adequate medical care, including mental health services, grossly deficient sanitation, crowding, and other threats to the physical safety and well-being of inmates violates their constitutional rights." The DOJ letter reported a pattern of sexual abuse, including sexual assaults by guards, "frequent" sexual activity between guards and inmates, sexually aggressive [**11] acts by guards (such as pressing their bodies against inmates, exposing their genitals to inmates, and fondling inmates during

"pat-down" searches), and ubiquitous sexually suggestive comments by guards. The DOJ letter also detailed improper visual surveillance of inmates, including the "routine" practices of watching inmates undress, use the shower, and use the toilet.

Two years later, on March 10, 1997, the DOJ filed suit against the State of Michigan in the United States District Court for the Eastern District of Michigan (the "USA lawsuit") pursuant to the Civil Rights of Institutionalized Persons Act. The United States alleged that Michigan was violating the constitutional rights of female inmates by failing to protect them from sexual misconduct, by failing to prevent unlawful invasions of their privacy, and by failing to provide adequate medical and mental health care. After conducting extensive discovery, the United States dismissed its claims related to the provision of medical and mental health care. On May 25, 1999, the parties entered into a settlement agreement resolving the remaining claims (the "USA agreement"). In the USA agreement, Michigan pledged, among [**12] other things, to minimize access to secluded areas and one-on-one contact between male staff and female inmates, to implement a "knock and announce" policy whereby male officers must announce their presence prior to [***5] entering areas where inmates normally could be in a state of undress, and to restrict pat-down searches of female inmates by male staff. ⁸ The MDOC also agreed to conduct a study exploring the feasibility of "redeploying officers to increase the presence of female officers in the housing units" and "rotating staff assignments to housing units," and, if feasible, to implement a plan consistent with this study.

8 More completely, Michigan agreed to (1) conduct pre-employment screening, including drug testing and criminal background checks, to determine the fitness of applicants for work at female prisons, (2) provide specialized training for employees at female prisons, (3) educate inmates on the MDOC's prohibitions against sexual misconduct, sexual harassment, and overfamiliarity, (4) facilitate inmate and staff reporting of allegations of sexual misconduct, sexual harassment, and overfamiliarity, (5) investigate allegations of sexual misconduct, sexual harassment, and overfamiliarity in a timely and complete fashion, (6) minimize access to secluded areas and one-on-one contact between

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male staff and female inmates, (7) conduct random interviews of inmates concerning sexual misconduct, sexual harassment, and overfamiliarity, (8) implement a "knock and announce" policy whereby male officers must announce their presence prior to entering areas where inmates normally could be in a state of undress, (9) ban "pat-down" searches of female inmates by male staff absent exigent circumstances during an evaluation period of at least six months, (10) screen inmates for past histories of physical or sexual abuse, and (11) conduct a study to explore the feasibility of redeploying officers to increase the presence of female officers in the housing units and of rotating staff assignments to the housing units.

[**13] On June 25, 1999, and on October 25, 1999, the MDOC's Director issued Director's Office Memoranda to implement the *USA* agreement. On December 6, 2000, the Director signed a Policy Directive [*744] that superseded the Director's Office Memoranda and formalized the changes mandated by the *USA* and *Nunn* agreements. Major changes in policy instituted by the MDOC included a moratorium on pat-down searches of female inmates by male officers absent exigent circumstances; a "knock and announce" policy requiring male staff to announce their presence before entering places where female prisoners are likely to be in a state of undress; a uniform dress code for prisoners; the minimization of one-on-one contact between male staff and female inmates and of access to secluded areas; the maintenance of one or more locations where inmates may dress, shower, and use the toilet out of sight of male staff; random interviews of female inmates; specialized training for inmates and staff at female prisons; improved procedures for investigating allegations of sexual misconduct and retaliation; and drug testing of and criminal history checks on applicants for employment.

Sometime in 1998, prior to the [**14] *USA* and *Nunn* agreements, the MDOC's Director⁹ appointed a Gender Specific Assignment Committee (the "GSAC"), consisting of a number of high-level MDOC officials, which was instructed to review officer assignments within Michigan's correctional facilities--both male and female--for the feasibility of making them gender-specific. In its final report, which was issued on December 11, 1998, the GSAC recommended gender-specific assignments to certain tasks, such as strip

searches, pat-down searches, and urine collection. However, the GSAC unanimously endorsed gender neutrality in assignments to first- and second-shift positions in housing units, and a majority of the committee advised against gender-specific assignments to third-shift positions in housing units. Four of six members recommended that the MDOC move toward "gender balance"--meaning that, "where more than one officer is assigned, the second officer may be gender specific"--through attrition, stating that they did not "believe gender specific assignments are a viable option due to the labor pool and union contracts," but observing that "some states have voluntarily implemented gender specific assignments on specific [**15] shifts through letters of agreement with the corrections officers' union or have responded to various threats/instances of court intervention." One of the dissenters advised that only females should be assigned to third-shift housing unit positions in female facilities, while the other advocated gender-specific assignments to third-shift housing unit positions in both male and female facilities.

9 The defendant, Bill Martin, was appointed as Director of the MDOC in 1999.

Pursuant to the *USA* agreement, the MDOC commissioned Securicor New Century, LLC ("Securicor"), a consulting firm, to study ways to increase the presence of female officers in the housing units at Michigan's women's prisons. In particular, Securicor was instructed to explore the feasibility of redeploying female officers to positions in the housing units and of rotating staff assignments. Securicor's [***6] report, dated August 20, 1999, recommended a number of strategies for increasing the number of female officers in the housing units, [**16] including exploring the redeployment of all available female officers to housing units, covering RUO vacancies in the housing units with female COs, redeploying female officers in supervisory positions, exploring the possibility of rotating female officers assigned to housing units to different shifts and locations, creating incentives for female applications, changing [*745] the shift times to create overlapping shifts, and revising the criteria for promotion.

On October 13, 1999, during testimony before the House Appropriations Subcommittee on Corrections of the Michigan House of Representatives, Bill Martin, the MDOC's Director, disclosed that the MDOC was exploring the possibility of removing male officers from

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certain areas in female facilities, as well as female officers from certain areas in male facilities, in order to minimize incidents of sexual misconduct. On December 9, 1999, Martin formally announced his intention to remove male officers from female prisons, stating, "I am convinced that the single best way to protect [male officers'] personal and professional lives is to remove them from those assignments in which they are most vulnerable" to allegations of sexual abuse. [**17] According to the district court, Martin was unaware of the GSAC's analysis when he made this decision, and there was no evidence presented at trial that any internal MDOC memoranda recommended such a step or that Martin had consulted the Michigan Department of Civil Rights or the Attorney General of Michigan regarding the change.

In February 2000, the MDOC hired Michael Mahoney¹⁰ to study "whether certain custody positions at MDOC women's facilities should be filled only by female custody staff or if there is a less intrusive means to ensure the safety and reasonable privacy needs of female inmates." In June 2000, Mahoney issued a report concluding that only female officers should fill the CO and RUO positions in housing units, segregation units, and intake units at Michigan's women's facilities. He opined that this reform would reduce the likelihood of sexual misconduct, improve the security in the housing units by removing "gun-shy" male officers and by permitting increased surveillance of inmates, and reduce false allegations of sexual misconduct. Mahoney advised that reforms undertaken pursuant to the *Nunn* and *USA* settlements could not alone address the problems of sexual [**18] abuse and inmate privacy.

¹⁰ Mahoney was the president and executive director of the John Howard Association, a private, not-for-profit prison reform group, and he served as an expert for the DOJ in the *USA* lawsuit.

On August 2, 2000, the MDOC filed applications with the Michigan Department of Civil Service (the "MDCS") for "selective certification" of CO and RUO positions in the housing units, segregation units, and intake units at its women's facilities as "female only." In the applications, the MDOC reported that it had faced lawsuits alleging sexual misconduct and violation of privacy rights of female inmates, and had made a number of changes in response to these charges. However, it

stated that "it is felt that these changes will not eliminate inappropriate behavior or sexual misconduct," and it claimed that selective certification would

enhance the privacy of female prisoners, reduce the likelihood of sexual misconduct, the reduction [sic] of fear of sexual misconduct will enhance the [**19] ability of the [MDOC] to achieve its mission, security capabilities would be improved due to much less reluctance by female staff to perform observation duties, and female staff only in housing units would reduce the likelihood of instances where individual male staff and individual female prisoners would be involved in long isolated contacts.

On August 14, 2000, the MDCS approved the MDOC's applications without a hearing. As of the summer of 2001, the certification affected 267 positions--257 CO and RUO positions in housing units, 8 [**746] transportation officers, and 2 intake officers. The MDOC contends that, in the interim, the total number of affected positions has decreased to 247.

[**7] On July 12, 2000, the plaintiffs¹¹ filed suit against the MDOC and Bill Martin, the MDOC's director, in his official capacity and individually, in the United States District Court for the Eastern District of Michigan. The plaintiffs alleged that gender-based assignments at female correctional facilities violated Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-2(a)(1), and Michigan's Elliott-Larsen Civil Rights Act (the "Elliott-Larsen [**20] Act"), *Mich. Comp. Laws Ann.* § 37.2202(1)(a) (West 2001). Additionally, the plaintiffs asserted against Martin an *Equal Protection Clause* claim under 42 U.S.C. § 1983. Plaintiffs sought a declaratory judgment that gender-based assignments at female correctional facilities violated Title VII, the Elliott-Larsen Act, and the *Equal Protection Clause*, injunctive relief enjoining further discrimination, damages for lost earnings, compensatory damages for emotional distress and damage to their reputations, punitive damages against Martin, and attorney fees pursuant to Title VII and the Elliott-Larsen Act.

¹¹ The original plaintiffs are (1) Roslyn Everson, a CO at the Scott Facility, (2) Randy

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Fox, an RUO at the Camp Branch Correctional Facility in Coldwater, Michigan, which, at the time the suit was filed, housed female inmates, (3) Stennis George, an RUO at the Scott Facility, and (4) Brenda L. Sebastin, a CO at the Camp Cassidy Lake Correctional Facility in Chelsea, Michigan, which, at the time the suit was filed, housed female inmates. Later, Richard Idemudia, an RUO at the Western Wayne Facility, was added as a plaintiff. On November 1, 2000, the plaintiffs moved for certification of a class composed of all corrections officers and related classes of employees who have been or will be adversely affected by the gender-based assignments at correctional facilities that house female prisoners. The district court never ruled on the motion, which the defendants opposed.

[**21] On September 28, 2000, the district court entered a temporary restraining order, which enjoined the MDOC and Martin "from implementing the plan to make gender-specific assignments and/or to allow only female staff to hold Corrections Officer and Resident Unit Officer positions in work assignments in housing units, segregation units and/or intake units at the Robert Scott, Western Wayne, and Camp Branch Correctional Facilities." On October 13, 2000, the district court granted a motion for intervention filed by a group of female inmates--specifically, the certified class from the *Nunn* Lawsuit and the certified class in *Neal v. MDOC*, No. 96-6986-CZ (Washtenaw Co. Cir. Ct.), another class action by female inmates against the MDOC alleging sexual abuse, privacy violations, and retaliatory conduct by male staff.

The bench trial began on February 13, 2001, and continued over nine days until March 7, 2001. On July 11, 2002, the district court entered a decision and a declaratory judgment providing that gender-based assignments to the CO and RUO positions at the Scott Facility, the Wayne Facility, and Camp Brighton violate Title VII and the Elliot-Larsen Act. The court concluded [**22] that the implementation of the policy would have an adverse employment effect on the plaintiffs and that gender was not a bona fide occupational qualification. On August 8, 2002, the district court entered a final judgment, which permanently enjoined the defendants from implementing the plan to make gender-specific assignments to CO and RUO positions at the Scott Facility, the Wayne Facility, and Camp Brighton, and

which dismissed the plaintiffs' § 1983 claim against Martin with prejudice.¹²

12 On December 7, 2000, the district court bifurcated the issue of damages and stayed discovery pending the resolution of the issue of liability.

[*747] The district court concluded that gender is not a BFOQ for housing unit officers. The court explained that "there has simply been no showing that there is reasonable cause to find that all, or substantially all, males are not able to perform safely and efficiently the duties of a CO and RUO in the housing units in the female prisons." *Everson v. Mich. Dep't of Corr.*, 222 F. Supp. 2d 864, 895 (E.D. Mich. 2002). [**23] In reaching this conclusion, the court made the following findings of fact: (1) standard practices nationwide provide for the employment of male corrections officers in female prisons and "there is nothing unique about the operation of the female prisons in Michigan"; (2) the GSAC and Securicor studies did not recommend this strategy, and "there is no evidence that any MDOC official supported it at the time the request was made to [the MDCS] for selective certification"; (3) the concern over cross-gender supervision of prisoners originated with Martin; (4) the opinions of the plaintiffs' experts were "considerably more credible" than those of the defendants' experts; (5) the changes required by the *USA* and *Nunn* agreements [***8] have only recently been implemented; (6) statistical evidence showed a "substantial decrease" in improper conduct since the implementation of the changes called for in the *USA* and *Nunn* agreements; and (7) "the published literature on the presence of male correctional officers in female prisons does not support a female BFOQ for corrections officer in the housing units in a female prison." *Id.* at 893-95.

~~Additionally, the [**24] district court determined that reasonable alternatives to the MDOC's plan exist. Specifically, it stated that the Securicor study identified a number of reasonable alternatives--in particular, covering vacancies with females, increasing female coverage where necessary with overtime, and redeploying female officers in supervisory positions--which the MDOC had not explored. *Id.* at 895. Additionally, it noted that the MDOC had not made efforts to enhance pre-employment screening to lessen the likelihood of employing high-risk male COs and RUOs in female prisons. *Id.* The court stressed, however, that nothing in its decision "should be~~

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read to prohibit the MDOC officials from making gender specific task assignments." *Id.* at 899. The MDOC and Martin, as well as the intervening defendants, timely appealed.

ANALYSIS

The district court erred in finding that the female gender is not a BFOQ for the positions of CO and RUO in the housing units at MDOC's female facilities. ¹³ Title VII of the Civil Rights Act of 1964 broadly proscribes gender-based discrimination in the workplace. *See Grant v. Gen'l Motors Corp.*, 908 F.2d 1303, 1306 (6th Cir. 1990). [**25] The MDOC concedes that it has adopted a facially discriminatory plan, and this case therefore "turns on whether such overt disparate treatment is for some reason justified under Title VII." *Reed v. County of Casey*, 184 F.3d 597, 599 (6th Cir. 1999) (internal quotation omitted). Title VII permits overt discrimination if the disparate treatment is based on a bona fide occupation qualification, or BFOQ. *Id.*

13 Because we find that gender is a BFOQ, we need not address the defendants' alternative argument that the plaintiff's Title VII claim fails for lack of an adverse employment action by the MDOC.

The BFOQ defense countenances gender-based discrimination "in those certain instances where . . . sex . . . is a bona fide [*748] occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." ¹⁴ 42 U.S.C. § 2000e-2(e) (2001). It is true that the BFOQ defense is written narrowly, and is to be read narrowly. *Int'l Union, [**26] United Auto., Aerospace & Agric. Implement [**9] Workers of Am. v. Johnson Controls, Inc.*, 499 U.S. 187, 201, 113 L. Ed. 2d 158, 111 S. Ct. 1196 (1991). Moreover, the burden is on an employer to establish a BFOQ defense. *Grant*, 908 F.2d at 1306.

14 The Eliot-Larsen Act parallels Title VII. Section 202(1)(a) of the *Eliott-Larsen Act* provides

An employer shall not do any of the following: . . . Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a

term, condition, or privilege of employment, because of . . . sex . . .

Mich. Comp. Laws Ann. § 37.2202(1)(a) (West 2001). The Elliott-Larsen Act also includes a "BFOQ" defense, which reads

A person subject to this article may apply to the commission for an exemption on the basis that . . . sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. . . . An employer may have a bona fide occupational qualification on the basis of . . . sex . . . without obtaining prior exemption from the commission, provided that an employer who does not obtain an exemption shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.

Id. § 37.2208.

Federal civil rights cases are persuasive rather than controlling authority in determining the proper interpretation of the Elliott-Larsen Act. *Bryant v. Automatic Data Processing, Inc.*, 151 Mich. App. 424, 390 N.W.2d 732, 734 (Mich. Ct. App. 1986). However, the parties have not identified any relevant substantive differences between Title VII and the Elliott-Larsen Act, and the parties and the district on the same basis that we decide the plaintiffs' Title VII claim.

[**27] Courts have offered various formulations of the BFOQ defense, *Dothard v. Rawlinson*, 433 U.S. 321, 333, 53 L. Ed. 2d 786, 97 S. Ct. 2720 (1977), and from these decisions we distill the principles that lead us to the conclusion that the defense has been established in this case. First, "it is impermissible under Title VII to refuse to hire an individual woman or man on the basis of stereotyped characterizations of the sexes," *id.*, and an employer must have a "basis in fact," *id.* at 335, for its belief that gender discrimination is "reasonably necessary"--not merely reasonable or convenient--to the normal operation of its business. *Diaz v. Pan Am. World*

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Airways, Inc., 442 F.2d 385, 388 (5th Cir. 1971); see also *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 414, 86 L. Ed. 2d 321, 105 S. Ct. 2743 (1985) (interpreting the BFOQ defense in the *Age Discrimination in Employment Act* ("ADEA")). Courts have variously stated that an employer can meet this requirement by showing that "all or substantially all [members of one gender] would be unable to perform safely and efficiently the duties of the job involved," *Johnson Controls*, 499 U.S. at 207 [**28] (quoting *Weeks v. S. Bell Tel. & Tel. Co.*, 408 F.2d 228, 235 (5th Cir. 1969)); that "it is impossible or highly impractical" to determine on an individualized basis the fitness for employment of members of one gender, 15 *Harriss v. Pan Am. World Airways, Inc.*, 649 F.2d 670, 676 (9th Cir. 1980) (quoting *Weeks*, 408 F.2d at 235 n.5); or that "the very womanhood or very manhood of the employee undermines his capacity to perform a job satisfactorily," *Torres v. Wisc. Dep't of Health & Soc. Servs.*, 859 F.2d 1523, 1528 (7th Cir. 1988) (en banc). Second, the Supreme Court has stressed that "in order to qualify as a BFOQ, a job qualification must relate to the essence, or to the central mission of the employer's business." *Johnson Controls*, 499 U.S. at 203 (internal citations and punctuation omitted). Third, this court imposes on employers asserting a BFOQ defense the burden of establishing that no reasonable alternatives exist to discrimination on the basis of sex. *Reed*, 184 F.3d at 600.

15 The plaintiffs maintain that the "impossible or highly impractical" standard applies only to the BFOQ defense set forth in the ADEA. They argue that the court should not import this "lower" standard into Title VII jurisprudence because (1) Title VII's BFOQ "provides only the narrowest of exceptions to the general rule requiring equality of employment opportunities," *Dothard v. Rawlinson*, 433 U.S. 321, 333, 53 L. Ed. 2d 786, 97 S. Ct. 2720 (1977), (2) the Supreme Court declined to adopt the standard for Title VII cases in *International Union, United Automobile, Aerospace and Agriculture Implement Workers of America v. Johnson Controls, Inc.*, 499 U.S. 187, 113 L. Ed. 2d 158, 111 S. Ct. 1196 (1991), and (3) the standard is premised on considerations unique to the aging process.

The plaintiffs' argument fails for a number of reasons. Most fundamentally, the "impossible or highly impractical" standard is not solely an

ADEA standard. This language appears to have originated in a Title VII case, *Weeks v. So. Bell Tel. & Tel. Co.*, 408 F.2d 228, 235 n.5 (5th Cir. 1969), and subsequently to have been applied in ADEA cases. *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 414 n.19, 86 L. Ed. 2d 321, 105 S. Ct. 2743 (1985). At least two circuits have utilized this language in Title VII cases. *Harriss v. Pan Am. World Airways, Inc.*, 649 F.2d 670, 676 (9th Cir. 1981); *Weeks*, 408 F.2d at 235 n.5.

Moreover, even if the standard had not yet been applied in Title VII cases, precedent suggests that it should be. "The provisions of the ADEA generally receive an identical interpretation to corresponding provisions of Title VII," *Lilley v. BTM Corp.*, 958 F.2d 746, 750 n.2 (6th Cir. 1992), and Title VII and the ADEA define the BFOQ defense in materially indistinguishable terms. Compare 29 U.S.C. § 623 (f)(1)(2001) ("It shall not be unlawful for an employer . . . to take any action otherwise prohibited . . . where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business . . ."), with 42 U.S.C. § 2000e-2(e) ("It shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of . . . sex . . . in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. . ."). In fact, the Supreme Court has observed that Congress borrowed the concept and statutory language from Title VII's BFOQ defense in composing the ADEA's BFOQ defense, and the Court has used Title VII and ADEA case law interchangeably. *Johnson Controls*, 499 U.S. at 201; *Criswell*, 472 U.S. at 412, 416.

The plaintiffs' arguments against applying the "ADEA" standard in Title VII cases--the plaintiffs do not acknowledge the lineage of the "impossible or highly impractical" standard--are not persuasive. The Court has read the ADEA's BFOQ defense, "which tracks the BFOQ provision in Title VII, just as narrowly." *Johnson Controls*, 499 U.S. at 201. The *Johnson Controls* decision concerned whether the employer's asserted BFOQ related to the "essence" of the

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employer's business, and did not purport to hold that an employer can establish "reasonable necessity" only by showing that "all or substantially all woman would be unable to perform safely and efficiently the duties of job involved." *Johnson Controls*, 499 U.S. at 206-07 (internal quotations omitted). The plaintiffs fail to identify the "considerations unique to the aging process" that require a departure from the usual practice of interpreting Title VII and the ADEA in identical fashion.

In short, the BFOQ defense has not been reduced to a single, universally-applicable test. The "all or substantially all" and "impossible or highly impractical" standards are, to use the language of *Dothard*, 433 U.S. at 333, "formulations" of the facts of the particular case before it. In the instant case, both standards have helped guide our analysis, but our decision does not turn on the use of either standard.

[**29] In reaching the conclusion that the female gender is a BFOQ for the CO and RUO positions in this case, we are aided [*750] by a series of cases that directly address the issue of gender as a BFOQ for corrections officers in female correctional facilities. *Reed*, 184 F.3d at 600; *Robino v. Iranon*, 145 F.3d 1109, 1110-11 (9th Cir. 1998); *Tharp v. Iowa Dep't of Corr.*, 68 F.3d 223, 226 (8th Cir. 1995); *Torres*, 859 F.2d at 1532. These decisions teach that the reasoned decisions of prison officials are entitled to deference and that the goals of security, safety, privacy, and rehabilitation can justify gender-based assignments in female correctional facilities.

Because of the unusual responsibilities entrusted to them, the redoubtable challenges they face, and the unique resources they possess, the decisions of prison administrators are entitled to a degree of deference, even in the Title VII context. As the Seventh Circuit, sitting en banc, observed, prison officials

must grapple with the "perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system: to punish [**30] justly, to deter future crime, and to return imprisoned persons to society with an improved chance of being useful,

law-abiding citizens."

Torres, 859 F.2d at 1529 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 352, 69 L. Ed. 2d 59, 101 S. Ct. 2392 (1981)). To meet this daunting task, the court continued, "prison administrators always have been expected to innovate and experiment. Unless prison administrators try new approaches, the 'intractable problems' will remain and the lot of the incarcerated individual will not improve. Indeed, it probably will deteriorate." *Id.* (internal citation omitted). Thus, the court concluded that, although the decisions of prison officials are not accorded as much deference in Title VII cases as they are in constitutional cases,¹⁶ "their judgments still are entitled to substantial weight when they are the product of a reasoned decision-making process, based on available information and experience." *Id.* at 1532; see also *Robino*, 145 F.3d at 1110 (holding that the professional judgments of prison administrators are entitled to deference); cf. *Tharp*, 68 F.3d at 226 (applying a "deferential [**31] balancing test" to constitutional component of plaintiffs' [*751] challenge to prison administrator's gender-based staffing assignments).

16 In cases involving constitutional challenges to the actions of prison administrators, the Supreme Court has stressed repeatedly that the decisions of administrators are entitled to substantial deference. See, e.g., *Washington v. Harper*, 494 U.S. 210, 223-24, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990); *Turner v. Safley*, 482 U.S. 78, 84-85, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987); *Whitley v. Albers*, 475 U.S. 312, 321-22, 89 L. Ed. 2d 251, 106 S. Ct. 1078 (1986). In particular, "the proper standard for determining the validity of a prison regulation claimed to infringe on an inmate's constitutional rights is to ask whether the regulation is reasonably related to legitimate penological interests," even when "the constitutional right claimed to have been infringed is fundamental, and the State under other circumstances would have been required to satisfy a more rigorous standard of review." *Harper*, 494 U.S. at 223 (internal quotation marks omitted). Behind this rule is the recognition that

courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. . . .The problems of

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prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint. Where a state penal system is involved, federal courts have . . . additional reason to accord deference to the appropriate prison authorities.

Turner, 482 U.S. at 84-85 (internal citations omitted).

[**32] The district court distinguished *Torres* and its progeny on the ground that the MDOC's decision "reflected neither reasoned decision making nor professional judgment, but rather the consequence of a [***11] belief of one person, not a correctional professional, in a transitory position of authority, that it was best for the female prisons in Michigan." *Everson*, 222 F. Supp. 2d at 898. The court elaborated,

The reason for this case is that Martin became director and he came to the position with a stereotypical view of the role of sex in employment in male and female prisons: males guard males and females guard females. Without consulting his staff and without a review of internal studies, national policies or the literature Martin, and Martin alone, decided the change was appropriate and the MDOC staff fell in line. Martin had no qualifications from past training[,] employment or experience to make a reasoned judgment on the subject and his leaving corrections as a profession simply confirms this.

Id. at 897. In defending the district court's ruling, the plaintiffs point to the district court's findings that Martin did not [**33] consult with his staff, that the MDOC did not submit its BFOQ request to the Michigan Department of Civil Rights, and that the GSAC study did not recommend gender-specific assignments.

The district court committed legal error in concluding that the MDOC had forfeited the deference normally afforded prison administrators. Cases may arise in which a prison official has acted so capriciously that his decision does not deserve deference, but the case at bar does not fall in this category. The MDOC was not obligated to follow any particular protocols in order to earn deference, and the district court applied too exacting a standard in dismissing the MDOC's deliberations as inadequate. In effect, the district court circumvented the rule of deference by second-guessing the procedures employed by the MDOC.

Though it did not exhaust its institutional resources, the MDOC made a considered decision that a BFOQ was necessary to address the grave problem of sexual abuse of female inmates. When Martin assumed the position of Director, the MDOC faced a pair of high-profile lawsuits and a chorus of public criticism charging that it had ignored, or covered up, widespread sexual abuse of its female [**34] inmates--a situation calling for prompt and decisive action. In the *USA* agreement, the MDOC agreed to study the feasibility of increasing the presence of female officers in the housing units, ¹⁷ and, in the *Nunn* agreement, the MDOC agreed to make a good faith effort to limit the assignment of staff in housing units to female officers. J.A. at 1255, 1266. The Securicor study, undertaken pursuant to the *USA* agreement, recommended that the MDOC "explore the re-deployment of all available female corrections officers . . . to housing units." J.A. at 994. Mahoney's report, which Martin commissioned prior to the MDOC's application for selective certification, recommended that only women be assigned to the CO and RUO positions in the housing, segregation, and intake units because, in Mahoney's opinion, only this action could ensure safe and humane conditions of confinement and the [**752] professional operation of the MDOC's facilities. J.A. at 1441. Additionally, Martin testified that he consulted with his staff about the plan prior to seeking selective certification and discussed privacy accommodations for female inmates with prison officials from other states.

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J.A. at 3307-08, 3314. [**35] Finally, the MDOC assembled an array of materials in support of its application for selective certification,¹⁸ and the MDOS approved the application.¹⁹ Clearly, the MDOC's [***12] plan was "the product of a reasoned decision-making process," *Torres*, 859 F.2d at 1532, and not simply the result of Martin's whim.

17 Three experts for the DOJ in the *USA* lawsuit recommended that, consistent with Title VII's mandate of equal employment opportunity, the DMOC staff the housing units in its female facilities with female staff only, either permanently or until misconduct was reduced. J.A. at 4009-10, 4014, 4116, 4167.

18 The materials included a summary of disciplinary action taken against MDOC employees for sexual abuse, data on practices in female prisons in other states, descriptions of the duties of COs and RUOs in the housing units in Michigan's female facilities, applications for a BFOQ for officer positions at a women's prison prepared by Wisconsin corrections officials, expert reports from the *USA* lawsuit, the GSAC study, the Securicor study, the Mahoney report, and the *USA* and *Nunn* agreements. J.A. at 3729-4203.

[**36]

19 The district court found that the Department of Civil Service "rubber-stamped" the DMOC's application. *Everson v. Mich. Dep't of Corr.*, 222 F. Supp. 2d 864, 878 (E.D. Mich. 2002). We find this conclusion, which was based solely on the fact that the approval took twelve days, unwarranted.

The procedural shortcomings identified by the district court do not dictate a contrary conclusion. The district court apparently reasoned that, because Martin had a limited background in corrections,²⁰ because Martin did not consult with the wardens of the female facilities before adopting the plan, because the MDOC did not seek approval from the Michigan Department of Civil Rights, and because the GSAC study did not recommend a BFOQ, the plan did not reflect the institutional expertise of the MDOC and, hence, did not merit deference. However, as discussed above, the evidence shows that Martin drew on some, though not all, of the resources and expertise of the MDOC in the course of settling the *USA* and *Nunn* lawsuits and formulating

the plan. Moreover, the district court failed [**37] to recognize that courts defer to the judgments of prison administrators not simply because of their expertise. Additional reasons counsel in favor of a policy of judicial restraint: the ability of administrators to plan and muster resources, the primary nature of the executive--as opposed to the judicial--branch of government to run the prisons, and the respect owed to state sovereignty by the federal judiciary. *Cf. Turner v. Safley*, 482 U.S. 78, 85, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987). These considerations apply whether or not Martin acted unilaterally. Finally, none of the irregularities identified by the district court vitiated the MDOC's decision-making process. A prison official need not run his department as a participatory democracy nor build "unanimity of opinion" to win deference. *Torres*, 859 F.2d at 1532. Neither the district court nor the plaintiffs explain what sort of penological expertise the Michigan Department of Civil Rights would have contributed, and there was no statutory requirement that the MDOC obtain approval from the Department of Civil Rights. *Mich. Comp. Laws Ann.* § 37.2208 (West 2001). To bind the MDOC to [**38] the recommendations of the GSAC, which were made before Martin became Director and before the *USA* and *Nunn* agreements, would, in violation of *Torres* and its progeny, deprive the MDOC of the freedom to evolve and [*753] innovate.²¹ In short, in closely scrutinizing the decision-making process of the MDOC, the district court effectively rendered the rule of deference a nullity.

20 Prior to his appointment as director of the DMOC, Martin's only experience in corrections was his four years of service on the Corrections Committee of the Michigan House of Representatives while a state legislator.

21 Additionally, the GSAC's recommendations rested, at least in part, on the conclusion that gender-based assignments were not a viable option "due to the labor pool and union contracts"--a conclusion silent as to the penological soundness of gender-based assignments. J.A. at 3933.

Application of the correct legal standard, which mandates that we give due regard to the professional judgment of the MDOC, makes [**39] it clear that the female gender is a BFOQ for the CO and RUO positions in the housing units at female prisons in Michigan. Viewed in proper perspective, the exclusion of males

from these positions is "reasonably necessary" to "the normal operation" of the MDOC's female facilities. The MDOC reasonably concluded that a BFOQ would materially advance a constellation of interests related to the "essence" of the MDOC's business--the security of the prison, the safety of inmates, and the protection of the privacy rights of inmates--and reasonable alternatives to the plan have not been identified.

Unquestionably, the security of the prisons relates to the essence of the MDOC's business, and the MDOC maintains that the presence of male COs and RUOs in female housing units imperils security in a number of ways. First, the presence of males in the housing units necessitates the use of "artificial barriers to security" such as covers for cell windows, doors on the toilet stalls, shower curtains, the moratorium on pat-down searches by male officers, and the "knock and announce" policy.²² Second, allegations of sexual [***13] abuse, whether true or not, create a "poisoned atmosphere" that [**40] breeds misconduct on the part of inmates and guards.²³ Third, many [**754] male officers, afraid of false accusations of sexual abuse, become "gun-shy" and fail to monitor and discipline inmates in a proactive fashion.

24

22 George Camp, a former corrections official and currently a corrections consultant, testified that these artificial barriers to security "give inmates an opportunity to manipulate behind that, to do things that they ought not to be doing, for the staff not to be aware, not to interact with them, and I think that runs counter to being alert, observant, and in the know, and you have to have that." J.A. at 3110. He further testified that "once you abandon any part of the turf at any time or any place, you have sent a signal that this belongs to the inmates and it cannot, and once you do that, it leads to a creeping and eroding of the legitimate rights, the legitimate obligation of a prison staff to be everywhere, to be informed, to be alert." J.A. at 3111. Similarly, Annabelle Romero, who worked as a consultant for the DOJ in connection with the USA Lawsuit, described the shades for cell windows as "a Bank-Aid approach" that prevents officers from "accomplishing 100 percent of their duties" and "creates a security hazard for both the officers and the inmates." J.A. at 3373-74. Likewise, Director Martin testified that "any time you put barriers in a facility from

observation, direct observation, it puts I think inmates and staff at certain risk. For instance, if a window curtain is up on a cell door and an officer, male or female, it doesn't matter, can't see in, there's no way we can intervene in a suicide attempt because we don't know that's going on. We just don't know what's behind it, and it seems contrary then to other recommendation that you put windows in other doors [so] that you can always see in." R. 114, Tr. at 166. Finally, Joan Yukins, the warden of the Scott Facility, criticized "tying the hands of male corrections officers in the housing units" by means of the shades for cell windows and the moratorium, on "pat-down" searches. R. 119, Tr. at 33. She stated that she thought "we can function better in those housing units with females in there being able to look over the curtains, go into bathrooms, go into the showers if necessary, pat down the prisoners in the housing units where they live." J.A. at 3620.

[**41]

23 Michael J. Mahoney, an expert for the DOJ in the USA lawsuit and the author of the Mahoney report, testified that "the nature of [the] atmosphere in the correctional facility really relies upon the relationship between staff and prisoners, and allegations even when falsely made and in some cases particularly when falsely made can have a negative impact on that kind of an atmosphere. It increas[es] friction. It increases mistrust. It puts both staff and inmates in to a 'we and they' game, and I think in those situations it only serves to . . . reduce[] the positive corrections consultant responsible for monitoring the DMOC's inferences." J.A. at 3242. Relatedly, Patrick McManus, a corrections consultant responsible for monitoring the MDOC's compliance with the USA agreement, testified that "prisons need to have a level of trust, confidence, comfort between staff and prisoners if they are going to function well," and that "it was in [the housing units] that the mistrust, the fear between the female prisoners and the male staff, was the most prominent and where it was likely to be the most corrosive." J.A. at 3090. Similarly, Director Martin testified that allegations create "friction between staff and prisoners that is counterproductive to safety and security in the prison." J.A. at 3290. Finally, Yukins testified that "allegations of sexual misconduct by female

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[inmates] on the male officers have a very detrimental effect to the institution and to the employees and the prisoners." J.A. at 3614.

[**42]

24 George E. Sullivan, a corrections professional who had served as an expert for the DOJ in the USA lawsuit, testified that, in conversations with male officers at the Wayne Facility, the officers "were very candid in expressing their serious concerns, seeming even fearful of doing their jobs in the women's housing units risking a sexual harassment charge against them by female inmates. 'How could I explain such a charge to my wife or family,' asked one of them." J.A. at 3223. He opined that "male staff generally in women's prisons around the country, and especially at Western Wayne, do not, and will not (and in my opinion should not) conduct the security searches and procedures necessary to assure control over escape devices, weapons, illicit drugs, drug paraphernalia, and other serious contraband within the living spaces of female inmates. As a simple matter of their own self-consciousness and modesty, most male staff are very reluctant to search women's garments, personal care/sanitary items, observe them nude in showers or while using toilets." J.A. at 3224-25. Likewise, Camp testified that male officers "are tentative, that they are perhaps reluctant to engage female prisoners in a way that they would males to find out what was going on in a professional way, to be alert to the events in the institution or in the housing unit, to make rounds." J.A. at 3134. Finally, Mahoney testified that "in order to run a facility, you have to supervise prisoners, and that requires observation on a regular basis. When staff may feel reluctant, particularly male staff, to view females in a state of undress, in the use of toilet facilities, in dressing, and other kinds of situations, they may reluctantly, not pursue vigorously their supervision requirements because of the natural reluctance to not do that." J.A. at 3243.

[**43] Giving due deference to the judgment of the MDOC, we agree that the MDOC's plan will significantly enhance security at the MDOC's female facilities. Support for the MDOC's position comes from *Dothard v. Rawlinson*, 433 U.S. 321, 53 L. Ed. 2d 786, 97 S. Ct. 2720 (1977), in which the Supreme Court held that the

male gender was a BFOQ for prison guards in Alabama's maximum-security men's prisons. The environment in Alabama's penitentiaries was, in the words of the Court, "a peculiarly inhospitable one for human beings of whatever sex," characterized by "rampant violence" and a "jungle atmosphere." *Id.* at 334 (internal quotations omitted). Noting that inmates were housed in dormitories rather than cells, that inmates were not segregated according to their offense or level of dangerousness, and that an estimated 20% of inmates were sex offenders, the Court found "a basis in fact for expecting that sex offenders who have criminally assaulted women in the past would be moved to do so again if access to women were established within the prison," and it spotted "a real risk that other inmates, deprived of a normal heterosexual environment, would assault women guards because [**44] they were women." *Id.* at 335. The Court concluded, [***14]

[*755] The likelihood that inmates would assault a woman because she was a woman would pose a real threat not only to the victim of the assault also to the basic control of the penitentiary and protection of its inmates and other security personnel. The employees very womanhood would thus directly undermine her capacity to provide the security that is the essence of a correctional counselor's responsibility.

Id. at 336. Similarly, in the instant case, a "basis in fact" exists that "privacy screens" preclude proper surveillance of inmates and that allegations of sexual abuse engender hesitancy in male officers and mistrust between inmates and guards, and thus the "very manhood" of male COs and RUOs undermines their capacity to provide security.

The safety of inmates also indisputably relates to the essence of the MDOC's business, and the MDOC believes that it must eliminate males from the CO and RUO positions in the housing units in order to safeguard female inmates from sexual abuse. The defendants state that males perpetrate most of the sexual abuse in its female facilities. [**45] noting that, according to the plaintiffs' calculations, between 1994 and 2000, 189 of 208 allegations of sexual misconduct--including all of the sustained allegations--were made against male (officer and non-officer) employees, while the remaining 19 allegations were made against female employees or

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non-employees. J.A. at 700. The defendants also claim that sexual abuse most frequently occurs in the housing units, noting that, according to the MDOC's figures, 39% of the allegations of sexual misconduct arose in housing units, and that, according to the testimony of a MDOC expert, 57% of "alleged incidents" occurred in housing units. MDOC Br. at 8-9; R. 112, Tr. at 82. The defendants further argue that corrections officers commit a majority of the sexual abuse, noting that, according to the plaintiffs' figures, 125 of 208 allegations of sexual misconduct were lodged against male officers. J.A. at 700. Finally, while conceding that the vast majority of male COs and RUOs conduct themselves professionally, the MDOC contends that it cannot predict which officers will engage in sexual abuse.

The MDOC has established that the exclusion of male COs and RUOs from the housing units will decrease [**46] the likelihood of sexual abuse. As we have emphasized, the MDOC's decision receives "substantial weight," *Torres*, 859 F.2d at 1532, and, given the severity of the harm to sexually abused inmates, the MDOC may set "more stringent" qualifications for officer positions. *Harriss v. Pan Am. World Airways, Inc.*, 649 F.2d 670, 676 (9th Cir. 1980) (quoting *Usery v. Tamiami Trail Tours, Inc.*, 531 F.2d 224, 236 (5th Cir. 1976)). As the data cited above shows, some male officers possess a trait precluding safe and efficient job performance--a proclivity for sexually abusive conduct--that cannot be ascertained by means other than knowledge of the officer's gender, and thus gender was "a legitimate proxy" for a safety-related job qualification. Cf. *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 414-15, 86 L. Ed. 2d 321, 105 S. Ct. 2743 (1985) (applying "legitimate proxy" standard in an ADEA case. As the Ninth Circuit found in analogous circumstances, MDOC's decision to designate certain positions as female-only was "a reasonable response to concerns about inmate privacy and allegations of abuse by male [officers]." *Robino v. Iranon*, 145 F.3d 1109, 1111 (9th Cir. 1998). [**47]

The district court erred in concluding that the safety interests of female inmates did not support a BFOQ. The court reasoned that the MDOC's plan was not reasonably [**756] necessary because the MDOC had only recently implemented the reforms mandated by the USA and *Nunn* agreements, because improper conduct had decreased since the implementation of the reform, and because only a minuscule percentage of male officers sexually abuse

inmates. ²⁵ *Everson*, 222 F. Supp. 2d at 894-95. Further, the court relied on the lack of effort "to enhance pre-employment screening of new CO's and RUO's to lessen the likelihood of employing high risk male CO's and RUO's in the female prisons." *Id.* at 895.

25 The district court found that allegations of "improper conduct" declined from 57 in 1998 (22 of which were sustained), to 40 in 1999 (of which 3 were sustained), to 25 in 2000 (none of which were sustained). *Everson v. Mich. Dep't of Corr.*, 222 F. Supp. 2d 864 (E.D. Mich. 2002). The court did not identify the source of this data, define what constitutes "improper conduct," or explain whom the allegations were made against. *Id.* The plaintiffs state that, between 1994 and 2000, only 1.3% of the total number of male officers were involved in sustained allegations of sexual misconduct. *Everson* Br. at 39.

[**48] [***15] The district court applied too restrictive a standard in rejecting the MDOC's safety-based argument. Apparently, the court thought that the MDOC could establish a BFOQ only by showing that "all, or substantially all, males are not able to perform safely and efficiently the duties of a CO and RUO in the housing units in the female prisons." *Id.* However, as discussed above, the "all or substantially all" standard represents just one formulation of the "reasonable necessity" requirement, and the "impossible or highly impractical" standard better suits the instant case. No amount of sexual abuse is acceptable, and, given the gravity of the harm visited on the victims of sexual abuse, the MDOC permissibly eschewed the "wait-and-see" approach commended by the district court. None of the parties claims that the reforms mandated by the USA and *Nunn* agreements will completely eradicate sexual abuse, and the MDOC acted within the narrow confines of the BFOQ defense when it undertook a policy reasonably calculated to bring sexual abuse to an irreducible minimum.

The district court also erred in concluding that pre-employment screening constituted a reasonable alternative [**49] to a female BFOQ. Harley Stock, an expert for the plaintiffs, testified that the MDOC could reduce its risk of hiring applicants likely to engage in sexual abuse by instituting psychological testing and making other changes in its pre-employment screening. However, Stock conceded that (1) the tests he proposed

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do not measure a subject's proclivity for sexual abuse specifically, but instead place subjects into high risk categories that "might include such things as inappropriate sexual behavior" or assess "the ability to relate to members of the opposite sex," (2) he had not conducted follow-up studies to assess the accuracy of his testing methods, (3) his proposed testing is valid only for a year, and (4) he saw the testing of current employees as a "problem." R. 116, Tr. at 40-43, 47, 54-55. Given its speculative value, and its limited applicability, testing does not qualify as a reasonable alternative to gender-specific assignments.

The privacy rights of Michigan's female inmates also weigh in favor of a BFOQ. "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Turner*, 482 U.S. at 84. "Thus, while inmates may [**50] lose many of their freedoms at the prison gate, they retain those rights [that are] not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration." *Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir. [*757] 1992) (quoting *Hudson v. Palmer*, 468 U.S. 517, 523, 82 L. Ed. 2d 393, 104 S. Ct. 3194 (1984)). Our court has recognized that "a convicted prisoner maintains some reasonable expectations of privacy while in prison, particularly where those claims are related to forced exposure to strangers of the opposite sex, even though those privacy rights may be less than those enjoyed by non-prisoners." ²⁶ *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992); see also *Kent v. Johnson*, 821 F.2d 1220, 1227 (6th Cir. 1987) (assuming that "there is some vestige of the right to privacy retained by state prisoners and that this right protects them from being forced unnecessarily to expose their bodies to guards of the opposite sex"). As one of our sister circuits has explained, most people "have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the [**51] other sex may be especially demeaning and humiliating. When not reasonably necessary, that sort of degradation is not to be visited upon those confined in our prisons." *Lee v. Downs*, 641 F.2d 1117, 1119 (4th Cir. 1981); see also *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963) ("We cannot conceive of a more basic subject of [**16] privacy than the naked body. The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity."). ²⁷

26 This court has found the "privacy" right against the forced exposure of one's body to strangers of the opposite sex to be located in the *Fourth Amendment*. *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992); *Kent v. Johnson*, 821 F.2d 1220, 1226 (6th Cir. 1987). Other courts have described this right as a liberty interest guaranteed by the *Due Process Clause* of the *Fourteenth Amendment*. *Sepulveda v. Ramirez*, 967 F.2d 1413, 1415 (9th Cir. 1992) (relying upon *Grummett v. Rushen*, 779 F.2d 491 (9th Cir. 1981)); *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963); *Rushing v. Wayne County*, 436 Mich. 247, 462 N.W.2d 23, 30 (Mich. 1990). Additionally, under certain circumstances, the invasion of an inmate's bodily "privacy" can violate the inmate's *Eighth Amendment* rights. For example, in *Jordan v. Gardner*, 986 F.2d 1521, 1531 (9th Cir. 1993) (en banc), the court held that a cross-gender clothed body search policy at a women's prison in Washington state constituted cruel and unusual punishment because many of the inmates had histories of sexual or physical abuse by men and because cross-gender bodily searches, even if conducted properly, would likely inflict psychological trauma on many of these inmates. Similarly, in *Kent*, 821 F.2d at 1227-28, this court held that a male inmate had stated a claim under the *Eighth Amendment* for purposes of *Rule 12(b)(6) of the Federal Rules of Civil Procedure* by alleging that "female prison guards have allowed themselves unrestricted views of his naked body in the shower, at close range and for extended periods of time, to retaliate against, punish and harass him for asserting his right to privacy."

[**52]

27 Of course, as important this right may be, it must yield to the needs of prison administration. Thus, courts evaluate prison policies that infringe on the privacy rights under a "rational relationship" that provides that a policy is valid if "reasonably related to legitimate penological interests." *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992) (quoting *Turner v. Safley*, 482 U.S. 78, 89, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987)). Factors to consider in applying this standard include, "(1) whether there is a valid, rational connection between the prison policy and the legitimate governmental interest . . . ; (2) the

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existence of alternative means for inmates to exercise their constitutional rights; (3) the impact that accommodation of these constitutional rights may have on other guards and inmates, and on the allocation of prison resources; and (4) the absence of ready alternatives as evidence of the reasonableness of the regulation." *Id.* at 917.

Courts have recognized that this privacy interest can justify the exclusion of male officers from certain positions [**53] in female prisons. In *Robino v. Iranon*, a Hawaii women's correctional center asserted that the female gender was a BFOQ for 6 out of 41 corrections officer positions at a [*758] women's correctional center because the restriction was reasonably necessary to accommodate the privacy interests of the inmates, and to reduce the risk of sexual conduct between the officers and inmates. 145 F.3d 1109, 1110 (9th Cir. 1998). The positions at issue raised privacy concerns in that they were "residential" and required the officer on duty "to observe the inmates in the showers and toilet areas for the prison's own security or provided unsupervised access to the inmates." *Id.* at 1111. Accepting the BFOQ argument, the court found the policy "a reasonable response to the concerns about inmate privacy and allegations of abuse by male [officers]." *Id.* Similarly, in *Tharp v. Iowa Department of Corrections*, the court upheld a policy that assigned only female officers to the women's unit of a mixed-gender minimum security prison in Iowa. 68 F.3d 223, 224 (8th Cir. 1995). Among other duties, the officers conducted room searches, urinalysis tests, and strip [**54] and pat-down searches of inmates, though only female staff--either female officers or, if none were available, less trained female staff--conducted urinalysis and personal searches. *Id.* Without even reaching the BFOQ issue, the court deemed the policy a "reasonable gender-based job assignment policy" because, among other things, it addressed "female inmate privacy concerns." *Id.* at 226; see also *Carl v. Angelone*, 883 F. Supp. 1433, 1442 n.3 (D. Nev. 1995) (stating that a BFOQ might be justified on the ground of "simple decency in order to afford female inmates as much privacy as possible, even if not constitutionally mandated or protected").²⁸

28 We note that courts have identified "privacy" as a basis for a BFOQ in other contexts as well. See, e.g., *Healey v. Southwood Psychiatric Hosp.*, 78 F.3d 128, 133 (3d Cir. 1996)(child care specialist at psychiatric hospital); *Hernandez v.*

Univ. of St. Thomas, 793 F. Supp. 214, 218 (D. Minn. 1992)(janitor in female dormitory); *Local 567 Am. Fed. of State, County, & Mun. Employees v. Michigan Council 25*, 635 F. Supp. 1010, 1014 (E. D. Mich. 1986) (attendants at mental health care facility).

[**55] The MDOC's policy similarly advances the privacy interests of Michigan's female inmates. The housing unit serves as inmates' "home," the place where they "let their hair down" and perform the most intimate functions like "like showering, using the toilet, dressing, even sleeping." J.A. at 3089, 3371. In the housing units, inmates spend a great deal of time in close contact with the officers, who supervise "the most intimate aspects of an inmate's life in prison, what time they go to sleep, where they sleep, when they get up, brush their teeth, use the restroom, shower, dress." J.A. at 3369; see also J.A. at 3291, 3368. Inmates must request sanitary napkins and other personal items from the officers. J.A. at 3565. Given these circumstances, the MDOC, in Martin's words, determined that "sound correctional practices" and "simple human decency" dictated the exclusion of males from CO and RUO positions in the housing units. J.A. at 3292.

The MDOC has instituted "privacy screens" to address the most severe invasions of privacy, but these measure are not failsafe. The MDOC has provided inmates with screens for their cell windows, but these screens do not cover the entire window and [**56] a male of "average height" can see over them. J.A. at 3147; see also J.A. at 3154. Officers can also see over the doors on the toilet stalls. J.A. at 3531. Opaque curtains shield inmates from view while they shower, but they are exposed when they reach outside the stall for a towel. R. 118, Tr. at 170, 242; see also R. 120, Tr. at 33-34; J.A. at 3564. Finally, although male staff [***17] are required to knock and announce before entering places [**759] where female prisoners are likely to be in a state of undress, such as a bathroom or a shower facility, the "announcements" are frequently inaudible to the inmates. R. 118, Tr. at 243; J.A. at 3378. Thus, even with these privacy screens, prurient male officers have ample opportunity to gaze upon inmates in a state of undress, and even the most professional officers are liable to intrude on the privacy of inmates unintentionally. Moreover, these privacy screens do not address the fear of unwanted viewing experienced by many inmates, some of whom have a history of physical or sexual abuse by

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men.

The MDOC has made a reasonable determination that its plan will protect the privacy rights of its female inmates. Regardless of whether [**57] its current conditions violate the constitutional rights of its inmates, a prison may invoke the BFOQ defense to justify measures taken to enhance inmate privacy. *Robino*, 145 F.3d at 1111; *Carl*, 883 F. Supp. at 1442 n.3. Thus, the goal of "privacy" provides support for the MDOC's BFOQ defense.

In rejecting the MDOC's privacy-based argument, the district court erroneously determined that inmate privacy did not go to the "essence" of the MDOC's business. The court found that "there is nothing in any publication of the MDOC to suggest that the 'privacy of prisoners, especially female, as the term is conventionally used, is a mission of the MDOC.'" *Everson*, 222 F. Supp. 2d at 878. But, as quoted a few pages earlier in the court's opinion, the "position descriptions" for the CO and RUO positions state that the "goal is to provide a safe, clean, secure, and efficient living environment while respecting the privacy of female prisoners, and enforcing rules and regulations." *Id.* at 867; J.A. at 3737, 3744, 3756 (emphasis added). Additionally, in his report, Mahoney stated that the MDOC has hired him "to determine whether [**58] certain custody positions at . . . women's facilities should be filled only by female custody staff or if there is a less intrusive means to ensure the safety and reasonable privacy needs of female inmates." J.A. at 1426 (emphasis added). More importantly, when determining whether a particular job qualification relates to the "essence" of the employer's business, a court must undertake a functional analysis of the employer's business, and not simply look to the employer's mission statement or other documentation. Here, given the MDOC's legal responsibility to safeguard the privacy rights of its inmates, Director Martin's statement that respecting the privacy interests of female inmates represents "sound correctional practice" and "basic human decency," and our common-sense understanding of corrections practice, it is beyond cavil that "privacy" relates to the essence of the MDOC's business.

In rejecting the MDOC's argument for a BFOQ, the district court stressed that the MDOC's plan departed from national norms. The court found that "standard practices nationwide provide for the employment of male corrections officers in female prisons" and that "there is

nothing unique about [**59] the operation of the female prisons in Michigan." *Everson*, 222 F. Supp. 2d at 893. The court further found that "the published literature on the presence of male correctional officers in female prisons does not support a female BFOQ for corrections officer in the housing units in a female prison." *Id.* at 894. In short, the court reasoned that, because the MDOC's plan deviated from standard practice, the plan was not reasonably necessary to the normal operation of Michigan's female prisons.

The district court committed legal and factual error by using standard practice as a yardstick for the reasonable [*760] necessity of the MDOC's plan. In determining whether gender-based discrimination constitutes a BFOQ, a court must examine the particular circumstances of the individual employer, and not simply rely on generalizations about an industry or a group of employers, as the district court did. See *Dothard*, 433 U.S. at 336 n.23; *Torres*, 859 F.2d at 1529. Additionally, "appraisals need not be based on objective, empirical evidence, and common sense and deference to experts in the field may be used" to establish a BFOQ. *Healey v. Southwood Psychiatric Hosp.*, 78 F.3d 128, 132 (3d Cir. 1996); [**60] see also *Torres*, 859 F.2d at 1531; cf. *Wittmer v. Peters*, 87 F.3d 916, 920 (7th Cir. 1996) (substantial deference accorded to experts in a constitutional challenge to state's hiring preference for African-American lieutenants in penal boot camp). Both of these precepts are especially true where the employer is a prison administrator that "must be allowed to adopt innovative solutions to the intractable problems of prison administration." *Torres*, 859 F.2d at 1529 (quoting *Turner v. Safley*, 482 U.S. 78, 107, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987)). Placing the straightjacket of standard [***18] practices on prison officials, as the district court did, would deprive of them of the ability "to innovate and experiment," to the detriment of the inmates and society in general. *Id.*

In addition to this legal error, the district court clearly erred in finding "nothing unique" about Michigan's female prisons. In reaching this conclusion, the district court inexplicably failed to address Michigan's deplorable record regarding the care of its female inmates, which, absent evidence to the contrary, we must assume sets it apart from other [**61] states. In light of the endemic problem of sexual abuse, it was incumbent upon the MDOC to act decisively and creatively, and the lessons of *Torres* apply with special force. As Martin

testified, and as we agree,

the [MDOC's] plan to assign only females in the housing units . . . challenges the thinking of the past 15 years or so that officers are officers and prisoners are prisoners no matter what their gender, but the [MDOC's] staff and prisoners have paid a high price for going along with this conventional wisdom and I believe that I should be given the flexibility to exercise my best judgment on staffing the housing units to make our female prisons as safe and secure as they can be for the staff, the prisoners, and the public.

J.A. at 3295. In brief, given the case-by-case nature of the BFOQ analysis, the flexibility afforded prison administrators, and the MDOC's unique history, the lack of a national consensus does not mean that the female gender is not a BFOQ for CO and RUO positions in Michigan's female prisons.

The district court also erred in finding that there are "reasonable alternatives" to the MDOC's plan. As noted above, an employer invoking the [**62] BFOQ defense has the burden of establishing that there are no reasonable alternatives to discrimination. *Reed*, 184 F.3d at 600. In addition to pre-employment screening, which is discussed above, the district court identified the following alternatives to female-only staffing of the CO and RUO positions in the housing units: covering vacancies with females; increasing female coverage where necessary with overtime; redeployment of female officers in supervisory positions; and eliminating the policy that each CO and RUO conduct five pat-down searches per shift. *Everson*, 222 F. Supp. 2d at 895.

with overtime "is not a satisfactory long-term solution" for many reasons, including "the amount of time spent by supervisors to schedule overtime, staff burnout, and decreased staff effectiveness, as well as the fiscal cost of overtime." J.A. at 989; *see Reed*, 184 F.3d at 600 (holding that an option that would place "financial strains" on a county jail by requiring the payment of overtime, and that would "cause fatigue" in a jail employee, was not a reasonable alternative). Third, neither the district court nor the plaintiffs have explained how the redeployment of female supervisors to the housing units at the female prisons would cure problems stemming from the very presence of male COs and RUOs in the housing units. Fourth, the MDOC has already instituted a moratorium on pat-downs of female inmates by male officers, so this measure would not increase inmate safety or privacy. Moreover, the moratorium on pat-down searches impairs the ability of the male officers to protect the security of the prison and the safety of the inmates.

Before concluding, we emphasize the limited nature of our holding. [**64] We do not hold that gender constitutes a BFOQ for corrections officers in female prisons outside of Michigan. Nor do we hold that gender constitutes a BFOQ for positions in Michigan's female prisons beyond the approximately [**762] 250 positions we have discussed. Nor do we have occasion to address whether the male gender can ever be a BFOQ for a corrections officer position at a male prison. Rather, we simply conclude that, given the [***19] endemic problem of sexual abuse in Michigan's female facilities, given the constellation of issues addressed by the MDOC's plan (security, safety, and privacy), and given the deference accorded the MDOC's judgment, the MDOC's plan is reasonably necessary to the normal operation of its female prisons.

~~The MDOC has demonstrated that the district court~~ erred in deeming these proposals "reasonable alternatives" to gender- [*761] specific staffing. First, the proposal to fill vacancies with female officers is simply a watered-down version of the MDOC's plan; the district court did not explain why it is permissible under Title VII to move to female-only staffing in the housing units through attrition but not through the immediate transfer of males to other positions. Second, increasing coverage with overtime is self-evidently expensive and inefficient. In fact, the Securicor [**63] study--the source of the proposal--stated that increasing coverage

CONCLUSION

The district court prefaced its decision with a famous quotation from Alexis de Toqueville: "There is hardly ever a political question in the United States which does not sooner or later turn into a judicial one." *Everson*, 222 F. Supp. 2d at 865 (quoting *Democracy in America* 248 (J.P. Moyer & Max Lerner eds., Harper & Row 1996) (1832)). This apothegm indeed illuminates the present dispute, though not in the manner [**65] suggested by the district court. The MDOC's appeal is before this court not because Director Martin "made a decision and tried to

translate the decision into a courtroom judgment," *id.* at 899, but rather because, among other errors, the district court failed to accord proper deference to the decision of a state political actor, the MDOC, when individuals challenged that decision by filing suit in federal court rather than through the political process. For this reason, and for the other reasons discussed above, we **REVERSE** the judgment of the district court and **REMAND** with instructions to dismiss the complaint.

DISSENT BY: RONALD LEE GILMAN

DISSENT

[***20] RONALD LEE GILMAN, Circuit Judge, dissenting. I disagree with the majority's conclusion that being a female is a bona fide occupational qualification (BFOQ) for approximately 250 Correctional Officer (CO) and Residential Unit Officer (RUO) positions in prisons for women inmates managed by the Michigan Department of Corrections (MDOC). In reaching its conclusion, the majority repeatedly stresses the importance of giving "due regard to the professional judgment of the MDOC." Although the judgments of prison officials [**66] are "entitled to substantial weight when they are the product of a reasoned decision-making process, based on available information and experience[.]" *Torres v. Wis. Dep't of Health & Soc. Servs.*, 859 F.2d 1523, 1532 (7th Cir. 1988) (en banc), the factual findings of the district court following a bench trial are also entitled to substantial deference. *Anderson v. City of Bessemer City*, 470 U.S. 564, 575, 84 L. Ed. 2d 518, 105 S. Ct. 1504 (1985).

The district court made several key findings of fact that I believe have not been adequately considered by the majority. First, the district court concluded that standard practice in the corrections field is to allow the ~~employment of males in female prisons, even though the~~ male employees may be limited in the scope of the tasks that they are permitted to perform. Second, the court found that internal studies by the MDOC did not support the wholesale elimination of male COs and RUOs from the housing units in the female prisons. The studies recommended that various tasks be assigned on a gender-specific basis and that the number of female COs be increased in the female housing units, but they did not recommend a female [**67] BFOQ for these positions. Third, the court concluded that the professional concern over cross-gender supervision in Michigan prisons was

essentially limited to that of Bill Martin, the then-current director of the MDOC who requested the BFOQ certification. Martin was not someone with extensive experience in prison policy and administration, nor did he consider the recommendations of the department's internal studies or consult with other senior managers of the MDOC.

Despite these factual findings by the district court, the majority has accepted the conclusion that gender is a BFOQ in this case, a determination reached by Martin and "rubber-stamped" by the MDOC without consultation or study. Unlike the situation in *Robino v. Iranon*, 145 F.3d 1109 (9th Cir. 1998), upon which the majority relies, the MDOC did not "conduct[] an extensive survey of post duties before determining which posts should be designated female-only." *Id.* at 1111. The MDOC's BFOQ determination, because it was not the "product of a reasoned decision-making process, based on available information and experience[.]" *Torres*, 859 F.2d at 1532, should be afforded [**68] less deference than we would otherwise give the professional judgment of prison officials.

I also believe that the majority's reliance on the *Torres* decision is unjustified. At issue in *Torres* was whether the district court erred in rejecting the prison officials' contention that a female BFOQ for correctional officer positions was necessary to further the goals of inmate rehabilitation, security, and privacy. 859 F.2d at 1526. The Seventh Circuit held that, with respect to the goal of inmate rehabilitation, the district court had erred in requiring the defendants to produce objective, empirical evidence of the need for a BFOQ, and remanded the case so that the district court could consider the totality of the circumstances. *Id.* at 1532. But with respect to the goals of security and privacy, the court affirmed the district court's determination that the various ~~methods the prison had adopted to address the privacy~~ concerns of female inmates, such as the use of "privacy cards" and limiting male guards' observation of unclothed female inmates, had not undermined prison security. [**763] *Id.* at 1526, 1528. It explained that "the decision [**69] of the district court that the defendants' BFOQ plan cannot be justified by concerns for *prison security* or for the basic *privacy rights* of the inmates is correct in law and fact." *Id.* at 1528 (emphasis added).

Here, however, the majority concludes that the female BFOQ *is* necessary to advance the goals of prison

391 F.3d 737, *763; 2004 U.S. App. LEXIS 24905, **69;
2004 FED App. 0418P (6th Cir.), ***20; 94 Fair Empl. Prac. Cas. (BNA) 1542

security and prisoner safety, even though the district court determined that changes implemented as a part of the settlement agreements referred to in the majority opinion--including the "knock and announce" [***21] policy, restricting pat-down searches of inmates by male staff, and limiting male officers' views of areas where inmates dress, shower, and use the toilet--made a female BFOQ unnecessary. Thus, although *Torres* stands for the proposition that the reasoned judgment of prison officials should be given special consideration, it also supports the district court's conclusion that a female BFOQ is not necessary or appropriate for the purposes of prison security and privacy rights.

Finally, I believe that the district court was correct when it called for the use of "a scalpel rather than a meat ax approach to staffing tasks in the [**70] female prisons." *Everson v. Mich. Dep't of Corr.*, 222 F. Supp. 2d 864, 896 (E.D. Mich. 2002). A reasonable alternative to the complete exclusion of males from the CO and RUO positions is the assignment of sensitive tasks to female correctional officers. In concluding its opinion, the district court held that

there is no justification for a blanket ban on employment of male corrections officers in the female prisons of Michigan. The MDOC has the right to limit certain tasks in the female prisons to female corrections officers, particularly to ensure female inmates' rights to privacy[,] bearing in mind at all times the security interest of the corrections officers. . . . There are tasks in the running of a female prison as has been explained above which should not be performed by male correction officers such as strip searches and body cavity searches. It should not be difficult to define these tasks and adjust CO and RUO duties in the housing units in the female prisons accordingly. Nothing in the decision here to deny the BFOQ's

requirement should be read to prohibit the MDOC officials from making gender specific task assignments. The vast majority of female [**71] prisons in the United States appear to manage their populations safely and efficiently and still comply with the requirements of equal employment opportunity laws. Nothing in the record here suggests the MDOC can not do the same thing.

Id. at 898-99. I fully agree with this assessment.

Other courts that have addressed this precise issue have reached the same conclusion. *See, e.g., Forts v. Ward*, 621 F.2d 1210, 1216-17 (2d Cir. 1980) (affirming the portion of the district court's decision that balanced the conflict between male guards' employment rights and female inmates' privacy rights by "carefully tailored adjustments to either facilities or work assignments[,] and vacating that portion of the decision that categorically prohibited the assignment of male guards to nighttime shifts); *Gunther v. Iowa State Men's Reformatory*, 612 F.2d 1079, 1086 (8th Cir. 1980) (holding that in order for a male prison to show that the hiring of women for guard positions was unworkable, the prison "must also demonstrate that it could not reasonably rearrange job responsibilities in a way to minimize the clash between privacy interests of [**72] inmates and [*764] the nondiscrimination principle of Title VII").

Given that gender-sensitive task assignment is a preferred alternative to the wholesale exclusion of males from the positions in question, I believe that the majority has erred in holding that being a female is a BFOQ for those positions. The fact that the overwhelming weight of judicial authority agrees should make us all the more cautious in finding that a BFOQ exists in this case. Accordingly, I would **AFFIRM** the decision of the district court.

2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 97-CVB-71514-BDT

v.

Hon. John Corbett O'Meara

STATE OF MICHIGAN, et al,

Defendants.

SETTLEMENT AGREEMENT

I. INTRODUCTION

On March 10, 1997, the United States initiated this litigation alleging that Defendants were violating the constitutional rights of inmates incarcerated in Michigan women's prisons to be free from sexual misconduct and unlawful invasions of privacy, and to receive appropriate medical and mental health care for serious medical and mental health needs.

After conducting considerable discovery, the United States has dismissed its medical and mental health care claims against Defendants. In order to resolve the remaining issues in this litigation, the parties have entered into this settlement agreement, which, if substantially complied with by Defendants within the time frames specified in Section XV below, will result in the dismissal of the United States' remaining claims.

The parties agree that this settlement does not constitute an admission by the State of Michigan or the individual Defendants of the truth of the allegations contained in the Complaint, and does not constitute an admission of liability by Defendants in this action. Defendants agree that

policies and procedures adopted or changed pursuant to this Settlement Agreement will continue to be implemented after the Complaint has been dismissed; provided, however, that this Settlement Agreement is not intended to, nor does it, prevent Defendants from changing its policies for purposes of confronting issues that could arise in the future.

This Settlement Agreement is the product of negotiations conducted only between the State of Michigan and the United States of America, and DOJ does not purport to speak for any private plaintiffs.

The parties understand and agree that to the extent that this Agreement requires changes in MDOC policy affecting bargaining unit employees, such changes are subject to negotiations with the labor union(s) representing the affected employees, and are subject to approval by the Michigan Office of State Employer and the Michigan Civil Service Commission, and subject to state law. The parties also understand and agree that disciplinary action against employees of the MDOC is subject to the terms of collective bargaining agreements and state civil service rules. MDOC will make a good faith attempt to seek modifications or additions to existing or future collective bargaining agreements to effectuate the provisions of this Settlement Agreement.

II. DEFINITIONS

For purposes of this agreement only, the following definitions shall apply:

- A. "MDOC" means the Michigan Department of Corrections.
- B. "Inmate" means any female inmate incarcerated in Scott or Crane.
- C. "Scott" means the Scott Correctional Facility.
- D. "Crane" means the Crane Correctional Facility.
- E. "Staff" means correctional officers, maintenance workers, kitchen workers, teachers

employed full time by MDOC, counselors, and any other person having significant contact with inmates, whether employed by MDOC or under contract with MDOC, who are assigned to work at Crane or Scott. "Staff" does not include medical specialists, contractual dentists and optometrists, or college instructors who are employed by an entity other than MDOC.

F. "Management" means the Director of the MDOC, Deputy Director of Correctional Facility Administration, Warden and Deputy Warden of Crane and Scott.

G. "Sexual Misconduct" means staff engaging in, or attempting to engage in, a sexual act with any inmate, or the intentional touching of an inmate's genitals, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person. Sexual misconduct also includes indecent exposure to an inmate(s).

H. "Sexual Harassment" means sexual advances, requests for sexual favors, and other offensive verbal or physical conduct of a sexual nature. Sexual harassment also includes verbal conduct of a gender-related nature intended to humiliate, harass, degrade or arouse.

I. "Overfamiliarity" means conduct between a staff member and an inmate which has or is likely to result in intimacy or a close personal association, or conduct that is contrary to the good order of the institutions.

J. "DOJ" means the United States Department of Justice.

K. "Consult" means only provision of written and/or verbal comments to counsel.

III. MDOC POLICIES AND PROCEDURES

A. Policies And Procedures. MDOC will revise its current policies and procedures relating to sexual misconduct, sexual harassment, overfamiliarity, and other concepts encompassed by this Settlement Agreement and, where necessary, will utilize concepts and materials obtained from

other sources generally accepted in the corrections community as knowledgeable in the area to ensure that its policies and procedures are simple, direct, and explicitly define and prohibit sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement.

B. Policies And Procedures Regarding This Settlement Agreement. MDOC will revise as necessary its policies and procedures to ensure that all of the provisions of this Settlement Agreement are incorporated into MDOC policies and procedures. Prior to final adoption of any revised policy and procedure, MDOC will provide DOJ with a reasonable opportunity to review the proposed policy and procedure and to consult with MDOC regarding the proposed policy and procedure.

IV. PRE-EMPLOYMENT SCREENING

A. Current Staff With Inmate Contact. MDOC will conduct a Law Enforcement Information Network ("LEIN") check to include criminal history approximately every 5 years after the initiation of employment for all staff. As a result of those LEIN inquiries, MDOC will take appropriate action consistent with MDOC policies relating to failure to report criminal convictions. Within six months of the execution of this Agreement, MDOC will, to the extent not already accomplished, conduct a LEIN check to include criminal history of all staff who have been employed by MDOC for over five years.

B. Future Correctional Staff with Female Inmate Contact. In accordance with P.D. 02.06.110, 111 and applicable Civil Service Rules, MDOC will continue to utilize reasonable measures to determine applicants' fitness to work in a female facility prior to hiring correctional staff for a womens' facility. These measures will include, but will not be limited to: drug abuse screening;

fingerprints to be sent to the Michigan State Police; investigation of information in employment application (past employment for previous 5 years, past education, references); LEIN check to include criminal history and filed personal protective orders for domestic violence; National Crime Information Center record check; military discharge status; investigation of whether applicants have ever worked in MDOC prisons, and if so, whether they were the subject of investigations or allegations of sexual misconduct, sexual harassment, overfamiliarity or conduct prohibited by policies established pursuant to this Agreement.

C. Future Non-Correctional Persons With Female Inmate Contact. MDOC will utilize the same pre-employment screening measures for non-correctional staff, who will have significant contact with female inmates as it does for correctional staff. For non-correctional staff employed by an entity other than MDOC, and for volunteers, MDOC will make a LEIN inquiry to include criminal history and filed personal protection orders for domestic violence.

V. STAFF TRAINING

A. Training Materials. DOJ recognizes that MDOC provides specialized training for all staff who work in a female correctional facility through the 40 hour seminar entitled Issues in Managing the Female Offender. MDOC will continue to require that all staff who work with inmates complete this training program.

MDOC will, where necessary, revise its current training materials utilizing concepts and materials obtained from other sources generally accepted in the corrections community as knowledgeable in the area to ensure that it will continue to have a current, complete set of training materials relating to sexual misconduct, sexual harassment, overfamiliarity and other subject matter covered by this Agreement. During the pendency of this action, MDOC will, prior to final adoption

of any new training materials, provide DOJ with a reasonable opportunity to review the proposed training materials and to consult with MDOC regarding the proposed materials.

Upon implementation, MDOC will require existing staff to acknowledge in writing that they have been apprised of MDOC policies concerning conduct prohibited by policies established pursuant to this Agreement. MDOC will revise its current training materials to incorporate all of the provisions of this Agreement for which training is to be conducted.

B. Training Topics. MDOC will, for sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement, include in its preservice and inservice staff training at least the following concepts: (1) identification of what constitutes the above referenced conduct; (2) explanation of how inmates are harmed by such conduct; (3) description of how the security of the facility is jeopardized by such conduct; (4) a statement of the legal and employment consequences of participating in or failing to report such conduct; (5) a description of how to report such conduct, including when, how, and to whom it should be reported, with emphasis on staff's obligation to monitor, observe, and report the behavior of other staff regarding such conduct and disciplinary consequences for failure to report; (6) instruction on supervising, observing, and interacting with opposite gender inmates; (7) instruction on the proper method of conducting pat down searches of inmates; (8) instruction on the enforcement of MDOC's revised inmate dress code; and (9) instruction on the prohibition of retaliation by staff members and how to report retaliation.

C. Training Topics Regarding Sexual Misconduct and Harassment. MDOC will, within sixty (60) days of the execution of this Agreement, implement a training module, modeled after the Federal Bureau of Prisons' two hour training module, addressing sexual misconduct and

harassment for both new employees and in-service staff training.

D. Routine In-service Training. Subsequent to initial in-service training, the Director of MDOC, after consultation with the Special Administrator (See Section VII (A) (1) (c) below) will determine the number of hours of mandatory in-service training covering the topics described in Section V(B) to be required of all institutional management, corrections officers, and non-correctional staff with inmate contact.

VI. INMATE EDUCATION

A. Inmate Information. As part of new inmates' orientation process and reorientation for existing inmates regarding subjects of this Agreement, MDOC will provide inmates with both written and verbal presentations concerning the MDOC's prohibitions against sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement and the reporting thereof, as set forth in MDOC's policies and described in MDOC's Sexual Assault/Abuse Prevention and Intervention brochure and Inmate Handbook. This information will include: (1) identification of what constitutes sexual misconduct, sexual harassment, overfamiliarity, or other conduct prohibited by policies established pursuant to this Agreement; (2) a statement that MDOC prohibits such conduct by staff and by inmates; (3) a statement of the consequences of participating in such conduct, including when, how, and to whom it should be reported; (4) a statement on the consequences of reporting such conduct as a victim and as a witness, including assurances of confidentiality and non-retaliation; (5) information on the rules regarding interacting with opposite gender staff; (6) instruction on the MDOC approved method of conducting pat down searches; (7) explanation of staff members' duty to report misconduct; and (8) instruction on the terms of MDOC's inmate dress code.

MDOC will take necessary measures to ensure that non-English speaking inmates receive the above information.

B. High Visibility Reminders. MDOC will post in all Scott and Crane living areas posters or similar signs that remind readers of MDOC's prohibition against sexual misconduct.

C. Copies of this Agreement will be maintained in Scott and Crane law libraries.

VII. FACILITATION OF INMATE AND STAFF REPORTING OF ALLEGATIONS OF SEXUAL MISCONDUCT, SEXUAL HARASSMENT OR OVERFAMILIARITY

A. Inmate Reporting. MDOC will facilitate the reporting of sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement by the means and methods set forth in MDOC policy and described in MDOC's Sexual Assault/Abuse Prevention and Intervention brochure and Inmate Handbook, including verbal reporting by inmates, grievances, kites, and letters. To assure inmates that they will not be placed in protective custody as a result of reporting conduct pursuant to this paragraph, MDOC will continue its current policy regarding protective custody.

1. Minimization of Deterrents to Reporting.

a. Confidentiality. MDOC will take all reasonable steps to ensure that staff and inmates preserve the confidentiality of inmates who report sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by this Agreement, including, but not limited to, warnings not to discuss investigations and providing for disciplinary action against a staff member, or an inmate, who intentionally compromises the confidentiality of an investigation.

b. Prohibition of Retaliation. Retaliation will continue to be prohibited by the MDOC pursuant to P.D.02.03.108, and the MDOC will continue to take disciplinary action

regarding substantiated instances of retaliation as appropriate.

c. Special Administrator. MDOC will appoint a Special Administrator, not based at either Scott or Crane, who will report directly to the MDOC's Director, to whom inmates can write or speak with in confidence about allegations of sexual misconduct, sexual harassment, overfamiliarity, or other conduct prohibited by policies established pursuant to this Agreement. Information about the role and responsibilities of the Special Administrator will be provided to inmates by means of the Sexual Abuse/Assault Prevention and Intervention brochure and the Inmate Handbook. The Special Administrator will have appropriate experience, education and training necessary to address such issues in women's prisons, including, but not limited to, the training identified in Section V(A) above. MDOC will provide to the Special Administrator quarterly reports of complaints and the status of investigations regarding sexual misconduct, sexual harassment, overfamiliarity, other conduct prohibited by policies established pursuant to this Agreement, or retaliation for filing reports of such conduct. The Special Administrator will have the authority to request a criminal or administrative investigation of sexual misconduct, sexual harassment, overfamiliarity, or conduct prohibited by policies established pursuant to this Agreement.

B. Staff Reporting. Confidentiality and Prohibition of Retaliation. MDOC P.D.02.03.100 and Work Rules 1, 33 and 38 shall govern staff reporting, confidentiality, and prohibition of retaliation, including but not limited to, the duty to report conduct prohibited by policies established pursuant to this Agreement, prohibiting retaliation in response to the reporting of such violations, and to keep confidential such reports.

VIII. INVESTIGATION OF ALLEGATIONS OF SEXUAL MISCONDUCT

A. MDOC Investigations. MDOC will conduct timely, complete, thorough,

documented, and uniform investigations in accordance with generally accepted corrections investigation principles of all allegations, however received (verbal report, kite, grievance, or letter to management) of sexual misconduct, sexual harassment, overfamiliarity, or conduct prohibited by policies established pursuant to this Agreement. MDOC investigators will continue to be trained in conducting such investigations.

B. Continuation of Investigations. MDOC will continue to refer allegations of sexual misconduct that, if true, constitute criminal acts to the Michigan State Police (MSP) for investigation. If, after an MSP investigation, MSP determines that it lacks sufficient evidence to refer the matter to the county prosecuting attorney for criminal prosecution, MDOC will continue to conduct an administrative investigation into the allegations, using a "preponderance of evidence" standard, and will take appropriate disciplinary action.

C. Questionnaires. MDOC may use written questionnaires or statements to secure information from suspects or witnesses in sexual misconduct investigations in conjunction with other investigative techniques. MDOC will conduct face-to-face interviews of all suspects and victims, and of sufficient witnesses to establish the facts.

D. Continuation Of Investigations. If an employee accused of sexual misconduct resigns or is fired, MDOC will continue to take investigative action in accordance with P.D.01.01.140.

E. Mandatory Staff Participation In Investigations. Subject to the limitations reflected in Section I of this Settlement Agreement, MDOC will discipline, up to and including termination, staff who are accused of and/or witnessed sexual misconduct and who refuse to cooperate with an investigation.

F. Response to Allegations Arising In This Lawsuit. MDOC will, in conjunction with

the Michigan State Police where necessary, continue ongoing investigation of all remaining allegations of sexual misconduct and of egregious instances of sexual harassment arising in this lawsuit.

G. Temporary Reassignment of Employee. MDOC will continue its current practice of removing staff accused of sexual misconduct from contact with female inmates pending the outcome of the investigation.

H. Review of Sexual Assault/Sexual Misconduct. MDOC will ensure that all investigations of staff accused of sexual misconduct, sexual harassment, overfamiliarity, or other conduct prohibited by policies established pursuant to this Agreement, will include a search for past allegations, investigations, or discipline against the alleged perpetrator. MDOC will also review prior allegations of such conduct made by the inmates.

IX. SEARCH FOR AND APPROACH TO SEXUAL MISCONDUCT

A. Minimization of One on One Situations. MDOC will implement a new policy that restricts inmates and male staff from being alone in one-on-one situations together at Scott or Crane in areas not clearly visible to inmates or other staff, with the following exceptions: emergencies, medical care, counseling, questioning during investigations, and reporting of confidential information.

B. Minimizations of Access to Secluded Areas. MDOC has and will continue to take reasonable measure to eliminate access to secluded areas that are not necessary to the operation of Scott or Crane.

C. Monitoring/Protection For Secluded Areas. MDOC has and will continue to increase the visibility and observability of secluded areas of Scott and Crane to which inmates have access, including, but not limited to, retrofitting as necessary doors with windows, screens, or other devices

which will facilitate surveillance, installing convex mirrors to provide a line of sight beyond areas not viewable from door windows or other observation points, and rekeying to further restrict access to secluded areas. MDOC will require that supervisors conduct rounds of such areas at periodic intervals sufficient to guard against sexual misconduct, sexual harassment, overfamiliarity or other conduct prohibited by policies established pursuant to this Agreement.

D. Inmate Clothing. MDOC will implement a standard institutional dress code for inmates.

E. Random Inmate Interviews and Exit Interviews. The Special Administrator, or individuals designated by the Director, which may include Scott and Crane Wardens and Deputy Wardens, will conduct periodic, confidential, random interviews of inmates regarding, at a minimum, sexual misconduct, sexual harassment, overfamiliarity, and other policies and procedures established to effectuate the terms of this Settlement Agreement, and inmate understanding of the MDOC rules and regulations governing same. In addition, the Special Administrator or designee, the Scott and Crane Wardens and Deputy Wardens will conduct confidential, random exit interviews of inmates. Nothing in this provision shall be interpreted to mean that the Special Administrator or designee cannot, in order to initiate or assist in an investigation of sexual misconduct, share with the MDOC investigators and management information obtained in random inmate and staff interviews. The Special Administrator will share allegations of sexual misconduct, sexual harassment, overfamiliarity and conduct prohibited by policies established pursuant to this Agreement with the warden.

F. Post-Investigation Management Review. Pursuant to P.D.01.01.140, the Sexual Assault/Sexual Misconduct-Review Committee will continue to conduct regular meetings to discuss both substantiated and unsubstantiated incidents of sexual misconduct and possible methods for

avoiding such incidents in the future. Significant information resulting from such reviews will be considered for inclusion into MDOC training materials, policies and procedures.

G. Creation of Sexual Misconduct Files. MDOC will utilize its tracking system to store allegations of, and information concerning, sexual misconduct, sexual harassment, overfamiliarity and conduct prohibited by policies established pursuant to this Agreement, whether substantiated or not. The tracking system will be searchable by, at a minimum, inmate and staff name, and by type of prohibited behavior. Investigators and management will have access to this tracking system. The tracking system will be queried prior to accepting rehires. MDOC will conduct a quarterly search of this tracking system, and any staff shown in this review to have been the subject of more than two allegations of prohibited behavior within the past five years shall be subject to appropriate action, including, but not limited to: a meeting with supervisors, a referral to an employee assistance program, retraining, or reassignment. The tracking system will also be used to effectuate the provision of Paragraph VIII(H).

H. Staffing. Within ninety days after execution of this Settlement Agreement, MDOC will conduct a staffing study to explore the feasibility of: 1) redeploying officers to increase the presence of female officers in the housing units at Scott and Crane; and 2) rotating staff assignments to housing units at Scott and Crane. If feasible, MDOC will develop and implement a plan consistent with this study.

X. RESPONSE TO SUBSTANTIATED MISCONDUCT

A. Staff Discipline. Staff who resign in lieu of termination during an investigation for sexual misconduct, sexual harassment, overfamiliarity, other conduct prohibited by policies established pursuant to this Agreement, retaliation, or failure to report a violation of MDOC policy

or Work Rules in such areas will not be eligible for rehire by the Michigan Department of Corrections. In a situation where an allegation of sexual misconduct, sexual harassment, overfamiliarity or conduct prohibited by policies established pursuant to this Agreement is substantiated, appropriate disciplinary action will be taken pursuant to MDOC policy and work rules.

B. Inmate Psychological Services. MDOC will offer psychological services consistent with and identified in P.D 04.06.180 to any inmate subjected to or alleged to have been subject to sexual misconduct with staff. MDOC will offer psychological services consistent with and identified in P.D.04.06.180 to any inmate found by MDOC to have been subjected to, or to any inmate who makes a credible allegation in a kite, grievance, or letter to management, that she was subject to, sexual harassment.

C. Inmate Discipline. If an inmate makes allegations of sexual misconduct which are determined to be unfounded, the inmate shall be charged with major misconduct.

XI. MONITORING OF INMATE DRESSING SHOWERING AND TOILETING AREAS

Knock And Announce Policies. Absent exigent circumstances or reasonable suspicion of inappropriate behavior, male corrections officers will be trained that, as an accommodation, they are to announce their presence into areas where inmates normally could be in a state of undress.

XII. PAT DOWN SEARCHES

Absent exigent circumstances or a reasonable suspicion that the inmate is in possession of contraband, and subject to legitimate penological concerns, pat down searches of female inmates will only be conducted by female corrections officers during an evaluation period of at least six months. During the evaluation period MDOC will (a) conduct training and make any needed policy revisions

to further clarify that pat down searches are not used to sexually harass inmates, and (b) evaluate the feasibility of modifying or eliminating the current requirement of five daily pat down searches per officer. Should the MDOC decide to resume the routine search of inmates by male officers, institutional management will routinely observe line staff conducting pat down searches and give instruction or guidance as needed.

XIII. SCREENING OF INMATES REGARDING PAST HISTORIES OF PHYSICAL OR SEXUAL ABUSE

MDOC will continue to have trained Reception Center staff conduct adequate screening of all new inmates including inquiries designed to elicit past histories of physical or sexual abuse and, pursuant to P.D.04.06.180, provide, when necessary, mental health services to inmates.

XIV. QUALITY ASSURANCE PROGRAM

MDOC will monitor the quality of its pre-employment hiring process, its staff training and inmate education programs as described in this Agreement, as well as the quality of investigations described in Section VIII above.

XV. DOJ MONITORING OF SETTLEMENT AGREEMENT, TIME FRAME FOR SUBSTANTIAL COMPLIANCE, AND TERMINATION OF THE LITIGATION

A. Conditional Dismissal Under Rule 41(a). Upon execution of this Settlement Agreement, the parties will jointly move the Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. Civ. P. 41 (a) (2), conditional upon Defendants' achieving substantial compliance with its terms, and will attach this Settlement Agreement to such motion. The motion will request that the case be placed on the Court's inactive docket, though the Court shall retain jurisdiction over the case until a final dismissal.

B. Monitoring And Time Frames For Compliance. DOJ and a jointly agreed on expert,

who must be selected and contracted with before this Settlement Agreement is executed, will have reasonable access to inmates and staff, MDOC documents, information relating to implementation of this Settlement Agreement, and to allegations of sexual misconduct and other prohibited conduct addressed by this Settlement Agreement for the purpose of monitoring Defendants' implementation of the Settlement Agreement. The parties will equally fund the joint expert's activities.

Not more than one DOJ attorney, one attorney for MDOC, the MDOC Director or his designee, and the joint expert will conduct an initial on-site compliance monitoring tour of Scott and Crane approximately three months after execution of this Settlement Agreement. Neither DOJ nor the joint expert shall add provisions or expand the scope of this Settlement Agreement in any manner. Within 30 days of the end of the compliance tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance.

Not more than one DOJ attorney, one MDOC attorney, the MDOC Director or his designee, and the joint expert will conduct a final on-site compliance monitoring tour of Scott and Crane approximately six months after execution of this Settlement Agreement. Within 30 days of the end of the final compliance tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance. If the joint expert determines that Defendants have substantially complied with the terms of the Settlement Agreement, the parties will file a stipulation to dismiss containing the following language: "The United States agrees that dismissal of this action is appropriate. There is no pattern or practice of Defendants violating female inmates' constitutional right to be free from sexual misconduct and sexually inappropriate behavior. The Michigan

Department of Corrections remains committed to eliminating sexual misconduct and all other forms of prohibited sexual conduct within the Scott and Crane facilities."

If the joint expert determines that Defendants have not substantially complied with the Settlement Agreement, DOJ may file a motion to restore the case to the Court's active docket for purposes of litigating the allegations in the Complaint, and Defendants agree not to contest such motion. Neither DOJ nor the Defendants shall file a motion or suit for specific performance of the Settlement Agreement. The United States reserves the right to file a motion to restore this case to the Court's active docket for purposes of litigating the allegations in the Complaint at any time if it believes that defendants are not making a good faith effort to substantially comply with the Settlement Agreement. Plaintiff shall give defense counsel 14 calendar days' written notice before the filing of such motion.

C. Substantial Compliance. "Substantial Compliance" with the terms of the Settlement Agreement will fully satisfy the Settlement Agreement. Isolated and unintentional incidents will not constitute noncompliance.

XVI. EVIDENCE

In the event this action goes to trial, nothing contained in this Settlement Agreement will be introduced as evidence.

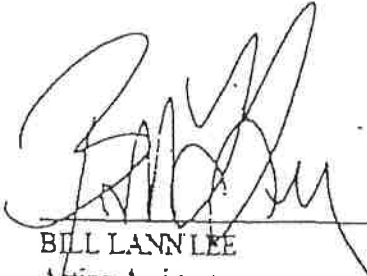
XVII. COSTS.


All parties shall bear their own costs and fees.

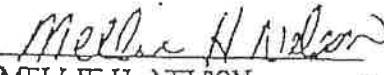
Dated May 25, 1997

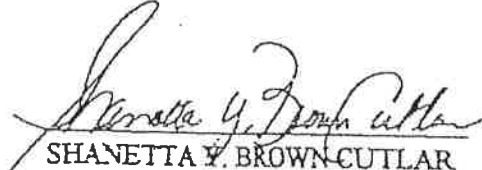
FOR THE PLAINTIFF

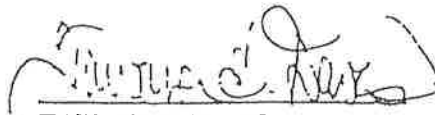
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FOR THE DEFENDANT.



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Director
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AJR 3

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TRACY NEAL, et al.,

Plaintiffs,

v

Case No. 96-6986-CZ
Hon. Timothy P. Connors

MICHIGAN DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

NICOLE ANDERSON, et al,

Plaintiffs,

v

Court of Claims
Case No. 03-162-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

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CLASS SETTLEMENT AGREEMENT

I.

RECITALS

I. Introduction

The Parties engaged in extensive settlement negotiations through the facilitation process that were conducted in good faith and at arms length. Through these settlement negotiations, the Parties have reached agreement on a proposed settlement of *Tracy Neal, et al v Michigan Department of Corrections, et al*, Washtenaw County Circuit Court no. 96-6986-CZ, in joinder with *Nicole Anderson, et al, v Michigan Department of Corrections*, Court of Claims No. 03-162-MZ, ("Class Action"), and *Tammy LaCross, et al v Nancy Zang, et al*, Washtenaw County Circuit Court No. 05-944-CZ and *Natheauleen Mason, et al v Granholm, et al*, U.S. District Court for the Eastern District of Michigan No. 05-cv-73943 ("Related Cases") that they believe to be fair, adequate and reasonable, and in the best interests of the Plaintiffs, the members of the Settlement Class, and the Defendants. This Settlement Agreement memorializes the terms of the final settlement between the Parties at the conclusion of the settlement negotiations.

Pursuant to the terms set forth below, and the Parties' belief that settlement is in their best interests, the Plaintiffs and the Defendants enter into this Settlement Agreement to bring about a full, complete and final resolution of all claims which are or could have been raised in the Class Action and the Related Cases.

II.

TERMS AND CONDITIONS

1. Effective Date

As used in this Settlement Agreement, "Effective Date" means the date on which this

Settlement Agreement is finally approved by the Court and the Order approving the Settlement Agreement becomes final. For the purposes of this paragraph, the Order approving the Settlement Agreement "becomes final" upon the later of (a) the expiration of the time for filing an appeal from that Order or otherwise seeking appellate review; or (b) if an appeal is timely filed or other appellate review sought from that Order, the date the decision affirming the settlement approval becomes final and all other means of appellate review are exhausted or expire.

2. Dismissal Of Class Action And Related Cases And General Release

In consideration of the payments set forth below in section II (3) and the equitable relief described in section II (8), the Plaintiffs and members of the Settlement Class hereby completely release and forever discharge Defendants, their employees, agents, predecessors, successors and indemnors, heirs and assigns, from any and all claims, demands, obligations, actions, causes of action, wrongful death claims, judgments, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Plaintiffs and members of the Settlement Class now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Class Action complaints, all related pleadings, and any judgments entered in the Class Action, including, without limitation, any and all known or unknown claims for bodily and personal injuries or any future wrongful death claim, which have resulted or may result from the alleged acts or omissions described in the Class Action and Related Cases prior to August 14, 2009.

The Plaintiffs acknowledge that they are solely responsible for the Plan of Allocation and Distribution and Defendants have no responsibilities, involvement or liability arising out of that Plan or the distribution of proceeds.

This release shall be a fully binding and a complete settlement among the Parties, their employees, attorneys, agents, predecessors, successors, indemnors, heirs and assigns.

The Plaintiffs and the members of the Settlement Class acknowledge and agree the release and discharge set forth above is a general release. The Plaintiffs and members of the Settlement Class expressly waive, and assume the risk of, any and all of their claims for damages which exist as of August 14, 2009 arising out of any incidents which are the subject of the above-captioned and Related Cases, but of which they do not know or suspect to exist whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Settlement Agreement. The Plaintiffs and members of the Settlement Class further agree to accept payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. The Plaintiffs and members of the Settlement Class assume the risk that the facts or law may be other than as believed. It is understood and agreed to by the Parties that this Settlement is a compromise of disputed claims, and the payment is not to be construed as an admission of liability on the part of any Defendant, the State of Michigan, the Michigan Department of Corrections or its employees or agents, by whom liability is expressly denied.

3. Payments

In consideration of the release set forth above, and in settlement of all claims, including attorney fees, costs and interest, in the Class Action and Related Cases, the Michigan Department of Corrections shall pay the sum of One Hundred Million (\$100,000,000.00) Dollars. This amount shall be paid via electronic funds transfer made by the Michigan Department of Treasury to an escrow account to be identified by the Plaintiffs, in accordance with the following schedule:

October 15, 2009:	\$10,000,000.00
October 15, 2010:	\$10,000,000.00
October 15, 2011:	\$15,000,000.00
October 15, 2012:	\$20,000,000.00
October 15, 2013:	\$20,000,000.00
October 15, 2014:	\$25,000,000.00

The amounts paid as described shall be held in Plaintiffs' identified escrow account pending distribution in accordance with the Court's approved Plan of Allocation. If this Settlement Agreement is nullified as described in Section IV, any undistributed funds shall be returned to the Michigan Department of Corrections. If an appeal from the Order approving the Settlement Agreement is filed, distributions from this escrow account shall be suspended until conclusion of that appeal. If the Order approving the Settlement Agreement is reversed, any undistributed funds shall be returned to the Michigan Department of Corrections.

In the event the Michigan Department of Corrections fails to make a payment on the due dates set forth above, the Plaintiffs and members of the Settlement Class may, at their option, terminate this Settlement Agreement in accordance with the following terms and those set forth in

Section IV of this Settlement Agreement. Alternatively, Plaintiffs may, at their discretion, enforce the Settlement Agreement pursuant to the terms set forth in Section V (2).

In the event Plaintiffs decide to terminate this Settlement Agreement, the Parties shall be returned to their respective status as of the date and time immediately prior to its effective date and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed and effected, including the reinstatement of the Class Action and Related Cases in the trial courts.

If the Plaintiffs terminate this Settlement Agreement based on the Michigan Department of Corrections' failure to make a payment on the due dates as set forth above, all judgments obtained before or thereafter shall be offset by any amounts previously paid by the Michigan Department of Corrections and disbursed according to the Court's approved Plan of Allocation. If this Settlement Agreement is terminated by the Plaintiffs and members of the Settlement Class prior to completion of all payments identified in paragraph II(3) above, the Plaintiffs and members of the Settlement Class shall provide the Defendants with all necessary records showing the distributions, including the amounts and to whom made, through the date of termination.

4. Waiver Of State Reimbursement Under The State Correctional Reimbursement Act

In further consideration of the release set forth above, Defendants agree that the payments to the named Plaintiffs and settlement class members and interest thereon, will not be subject to the State Correctional Facility Reimbursement Act, MCL 800.401.

5. Waiver Of Prohibition Against Personal Bank Accounts

In further consideration of the release set forth above, Defendant Michigan Department of Corrections agrees to waive the prohibition on prisoners maintaining accounts at financial institutions outside of their Department of Corrections institutional account as set forth in Michigan

Department of Corrections Policy Directive 04.02.105. The waiver will cover those incarcerated individuals that receive settlement funds under the terms of this Settlement Agreement, and shall be in effect until the individual is no longer incarcerated. Further, this waiver shall be subject to the following four conditions: (i) There will not be more than four quarterly disbursements (i.e. one withdrawal every three months) from the accounts; (ii) The disbursements will be to the prisoner's Department of Corrections institutional account only; (iii) The only money deposited in the account will be the settlement proceeds and; (iv) The Department of Corrections may promptly obtain a statement of the account at any time, including any deposits or withdrawals for any or no reason.

6. Delivery Of Dismissals With Prejudice

Concurrent with the effective date of this Settlement Agreement, counsel for the Plaintiffs and members of the Settlement Class shall deliver to counsel for Defendants mutually agreed upon, executed Orders dismissing the Class Action and Related Cases with prejudice, except as set forth below. Plaintiffs hereby authorize defense counsel to file said dismissals with the respective courts and enter them as a matter of record.

The Plaintiffs and members of the Settlement Class further agree that all monetary judgments entered in the Class Action shall be set aside or vacated concurrent with the filing of the Order dismissing the Class Action with prejudice.

The Plaintiffs and members of the Settlement Class do not agree to set aside or vacate the January 23, 2007 Order granting them partial summary judgment entered in *Mason, et al v Granholm, et al*, US District Court Case No. 05-73943. The Parties, however, stipulate to dismiss all remaining claims in *Mason et al v Granholm, et al*, with prejudice, and, in the same Order, to enter a declaratory judgment from the court's January 23, 2007 Order, that will be entered as a final judgment, which would then be subject to an appeal by right.

7. Dismissal Of Appeals

In consideration of the Release described above, Defendants shall move to dismiss all appeals arising from the Class Action and the related state court case *Tammy LaCross, et al v Nancy Zang, et al*, within five (5) business days after the effective date of this Settlement Agreement.

8. Equitable Relief

Defendant MDOC believes it has implemented policy and training changes to improve its investigations of grievances and complaints related to sexual assaults and sexual harassment by male MDOC staff against female prisoners over the course of several years, beginning in 2000. Most particularly, beginning in 2006, under this administration, Defendant MDOC made significant changes in the staffing of the housing units in female correctional facilities to specifically address and reduce sexual assaults and sexual harassment by male staff toward female prisoners.

In addition to steps already taken by the MDOC to address past alleged sexual assaults and sexual harassment by male staff toward female prisoners, the MDOC further agrees to implement the following action:

A. MDOC shall inform the complainant female prisoners of the results of its investigations of a complaint of all sexual assault or sexual harassment, whether the prisoner has been transferred or released from custody.

B. Upon a female prisoner's release from custody from a correctional facility, the MDOC shall advise the female prisoner that any claims of alleged sexual assault or sexual harassment that may have occurred during the female prisoner's incarceration, may be filed with the Michigan State Police.

C. The MDOC shall establish a Retaliation Review Committee at each female correctional facility, consisting of the Grievance Coordinator, and at least one person in the position

of Assistant Deputy Warden, Inspector or Deputy Warden, which shall be maintained for one year from the date of the preliminary approval of this Settlement. Within five (5) days of receipt of an allegation of retaliation from a prisoner who has reported sexual misconduct or sexual harassment, the Review Committee shall begin review of the allegations, including major and minor misconduct tickets issued against the prisoner. Factors which may be considered by the committee shall include, but not be limited to: 1) the connection between the staff who issued the ticket and the staff accused of sexual misconduct or sexual harassment; 2) any evidence or witness statements submitted by the prisoner alleging retaliation; 3) critical incident reports, grievances, kites and any other documents related to the prisoner's report of sexual misconduct or sexual harassment; 4) the prisoner's prior allegations of retaliation; 5) the amount of time between the reporting and the misconduct ticket; and 6) the prisoner's prior misconduct history.

Within ten (10) days, unless a one time extension of not more than two weeks is granted by the warden, the Review Committee shall report its findings to the warden with an explanation of the factual basis for its finding. The warden or designee shall promptly notify the prisoner of the review results. Findings or recommendations of the Review Committee are advisory only, and shall not have any bearing upon the hearings process for prisoner misconduct or grievances established by statute, administrative rule and policy directive unless the hearings officer, hearings administrator or grievance coordinator chooses to consider the information gathered. If the warden determines that there is evidence of retaliation, the warden shall take appropriate action which may include withdrawing a ticket pursuant to PD 03.03.105(K)(3), bringing it to the attention of the hearing officer or requesting a rehearing if the ticket has already been heard.

D. Female prisoners will not be issued a misconduct for filing a complaint of sexual misconduct, sexual harassment, or retaliation which is not sustained, unless it is shown by a

preponderance of evidence that the complaint was intentionally false.

E. The MDOC will facilitate outside, ongoing independent counseling/psychological treatment paid for by the Plaintiffs as approved consistent with PD 04.06.135.

F. The MDOC agrees to create a counseling group to provide group counseling, at a minimum of once per year, for female prisoners who are victims of custodial sexual abuse.

G. The MDOC will refer grievances that allege sexual abuse or sexual misconduct to the MDOC's Internal Affairs for review and action, notwithstanding the rejection or denial of the grievance for technical reasons.

H. The MDOC's Internal Affairs shall conduct semi-annual reviews of complaints alleging staff sexual misconduct toward female prisoners.

I. The Director of the MDOC agrees to appoint a member of her staff to review and analyze the Prison Rape Elimination Act (PREA) Report and Recommended Standards for reducing rape and sexual misconduct in correctional facilities in relation to issues related to the grievance process, investigation process, treatment, monitoring process, and training. The appointed member will prepare a report recommending changes to MDOC policy, if any, and the adoption of any suggested Standards, if any, to continue to improve the MDOC's response to sexual misconduct of staff toward prisoners by February 15, 2010. The MDOC Director shall review and authorize the ~~adoption of any staff recommendation within thirty (30) days after issuance of that report. The~~ MDOC shall provide Plaintiffs' counsel with a copy of the report and the Director's decisions related to the report.

III.

NOTICE OF CLASS ACTION

The Parties agree to provide a Notice of Class Action to potential class members who were sexually assaulted, sexually harassed, or had their privacy rights violated by male staff of the MDOC for the first time, after September 1, 2004, who had not previously had an opportunity to opt out of this class action.

IV.

NULLIFICATION OR SUSPENSION OF THE SETTLEMENT AGREEMENT

In the event that: (i) the Court does not enter an Order approving the Notice of Settlement of Class Action, or; (ii) the Court does not approve the Settlement Agreement and enter a final Order accordingly, or; (iii) the respective Courts do not enter dismissal Orders incorporating the Parties' agreed terms, or; (iv) the Settlement does not become final for any other reason, the Settlement Agreement shall be null and void and the Class Action and Related Cases shall be reinstated. The Parties agree that prior to terminating the Settlement Agreement on the grounds set forth above, the issues causing termination will first be submitted to facilitation for attempted resolution.

In the event that final approval of the Settlement is not achieved, or the Settlement Agreement is terminated as provided herein, the Parties and their counsel agree that, as required by law, everything contained in the pleadings, papers, or verbal statements submitted during or related to the settlement negotiations or the settlement approval proceedings, other than those documents filed with the court, will be kept confidential, will not be disclosed to others, and will not be used, quoted, referenced, proffered or admitted in the lawsuit or any other litigation as evidence or for any other purpose.

V.

SCOPE OF SETTLEMENT AGREEMENT

1. Exclusive Agreement

This Settlement Agreement, the Notice of Class Settlement, and Plan of Allocation, incorporated by reference into this document shall together comprise a full and exclusive agreement of the Parties with respect to the matters discussed herein.

There have been and are no representations or inducements to compromise these actions other than those recited or referenced in this Settlement Agreement.


2. Exclusive Enforcement

Nothing in this Settlement Agreement is expressly or impliedly intended to confer any rights upon any person other than the Parties hereto. The right to seek judicial enforcement of this Settlement Agreement is vested exclusively in the Parties. Enforcement of this Settlement Agreement is governed by the applicable laws and court rules of the State of Michigan. The Parties agree that this court has full authority to enforce the terms and conditions of this agreement and

issue any orders of compliance, costs, or fees, related to the enforcement of the provisions of the Settlement Agreement.

DEBORAH A. LaBELLE (P31595)
Co-Counsel for Plaintiffs
Dated: _____, 2009

PATRICIA CARUSO
IN HER OFFICIAL CAPACITY AS
DIRECTOR OF THE MICHIGAN
DEPARTMENT OF CORRECTIONS.
Dated: _____, 2009



JOHN L. THURBER (P44989)
Assistant Attorney General
Counsel for Defendants
Dated: July 15, 2009

CLASS REPRESENTATIVES:

Toni Bunton

Dated: _____, 2009

Renee Williams

Dated: _____, 2009

4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA NUNN, *et al*,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, *et al*,

Defendants.

Case No. 96-CV-71416-DT

Hon. John Corbett O'Meara

Magistrate Marc L. Goldman

SETTLEMENT AGREEMENT REGARDING
INJUNCTIVE AND DECLARATORY RELIEF

I. DEFINITIONS

- A. "Prisoner" means any women prisoner under the jurisdiction of the Michigan Department of Corrections housed in a facility. Women prisoners housed in a center are also covered by the provisions of this agreement using the term "prisoner," except for Sections IX(A and C), X(A)(3)(b), and except as provided by Section XI(I).
- B. "Facility" means any prison, institution or camp housing women prisoners. "Center" means any community corrections center or technical rule violation center housing women prisoners. The term "Housing Unit" includes segregation units at facilities.
- C. "Staff" means correctional officers, maintenance workers, kitchen workers, teachers, counselors, supervisors, administrators, and any other person who has contact with prisoners as a regular and routine part of their employment, by MDOC or as a full time contractual worker assigned to a facility or a center.
- D. "Sexual Misconduct" means staff engaging in, attempting to engage in or aiding and abetting: (1) a sexual act with any prisoner; (2) the touching of a prisoner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person; (3) prohibited physical contact including fondling or kissing. (4) indecent exposure or other indecent sexual behavior by a staff person in the presence of a prisoner.

- E. "Sexual Harassment" means sexual advances, requests for sexual favors, and other verbal or non-verbal communication of a sexual nature. Sexual harassment also includes verbal conduct of a gender-related nature intended to humiliate, harass degrade or arouse.
- F. "Retaliation" means harmful action, or threat of such action taken by staff against a prisoner because of that prisoner's resistance to, complaint regarding, or cooperation in an investigation of sexual misconduct, sexual harassment, or other conduct prohibited by this agreement.

II. POLICIES AND PROCEDURES PROHIBITING SEXUAL MISCONDUCT

Within 120 days of execution of this agreement, the MDOC shall develop and maintain one policy which implements prohibitions against sexual misconduct, sexual harassment, and retaliation, and identifies the reporting and complaint mechanisms, the investigation procedures and discipline for sexual misconduct, sexual harassment, and retaliation, included in this agreement. The policy shall also identify the counseling and education concerning sexual misconduct, sexual harassment and retaliation, to be provided to prisoners pursuant to this agreement. The policy may refer to other policies as a means of setting forth this information.

III. SCREENING OF JOB APPLICANTS AND CURRENT STAFF

- A. Prior to staff being assigned to a position involving contact with prisoners, MDOC will ensure that the following has occurred: drug abuse screening; investigate information in employment applications; perform LEIN checks on criminal history and personal protective orders for domestic violence; review National Crime Information Center records; investigate whether applicants have ever worked in a correctional setting and, if so, whether they were the subject of allegations of sexual misconduct, sexual harassment, or retaliation and, if so, whether any such allegations were sustained.
- B. MDOC shall perform LEIN checks on criminal history and personal protective orders for domestic violence for all staff every five (5) years.
- C. The MDOC shall develop written procedures for employment and placement of staff in contact positions with prisoners consistent with MDOC's policies regarding prevention of sexual misconduct against women prisoners, based upon the results of the screening performed pursuant to this section.

IV. STAFF TRAINING

A. Basic Training on Working with Prisoners

1. Training on issues relating to the supervision of prisoners shall be provided to all staff. The frequency and level of training provided to part time and full time contractual staff shall be in accordance with MDOC training policies and practices.
2. The existing curriculum and training materials for facility staff shall be reviewed for adequacy and effectiveness by an independent consultant agreed to by the parties.
3. The consultant shall have the opportunity to observe the training which occurs during the compliance period, and if necessary, make recommendations for changes or additions to the training materials, methodology or implementation of training. The compliance expert shall review the consultant's recommendations in accordance with Section XIII(B)(6).
4. Any recommended training, or portion thereof, which has not been rejected by the compliance expert and which has been designated by the consultant as critical will be provided to current staff not more than ninety (90) days after the recommendation is made, and to any transferring staff immediately upon their assignment to a facility. All other recommendations which have not been rejected pursuant to section IV(A) will be incorporated into the next annual in-service training program.

B. Investigator Training

1. The existing curriculum and training materials for facility staff responsible for investigating allegations of sexual misconduct, sexual harassment, or retaliation shall be reviewed for adequacy and effectiveness by an independent consultant agreed to by the parties.
2. The consultant shall have the opportunity to observe the training which occurs during the compliance period and, if necessary, make recommendations for changes or additions to the training materials, methodology or implementation of training. The compliance expert shall review the consultant's recommendations in accordance with Section XIII(B)(6).
3. Within one hundred and twenty (120) days from the date the recommendations are made, MDOC will train all current facility staff assigned to investigate allegations of sexual misconduct, sexual harassment or retaliation in accordance with the consultant's recommendations, or portion thereof, which have

not been rejected pursuant to section IV(B). Thereafter, staff who have not completed the recommended training will not be assigned to investigate such allegations.

4. Specialized training will be provided by an outside consultant with expertise in sexual assault intervention and crisis counseling for all facility Medical and Mental Health Staff who may receive a prisoner's complaint of sexual misconduct.

V. PRISONER EDUCATION

- A. The existing training materials for prisoner education, the brochure on sexual misconduct, and the sexual misconduct/harassment posters shall be reviewed for adequacy and effectiveness by an independent consultant agreed to by the parties.
- B. The consultant shall have the opportunity to observe the prisoner education training, and if necessary, make recommendations for changes or additions to the materials, training method or implementation. The consultant may obtain evaluations of existing prisoner education training from a reasonable sampling of prisoners and staff involved in the training. The compliance expert shall review the consultant's recommendations in accordance with Section XIII(B)(6).
- C. Any recommendation, or portion thereof, which has not been rejected by the compliance expert will be implemented within ninety (90) days after the recommendation is made. Thereafter, the recommendations which were not rejected by the compliance expert pursuant to-section V (B) and (C) will be provided to all incoming prisoners as part of their orientation.
- E. All written material shall be available in Spanish as well as English. Reasonable measures shall be taken to ensure that other non-English speaking prisoners receive the same information.

VI. CONSULTANTS

- ~~A. The consultant(s) identified in this agreement must be selected and contracted with before this agreement is executed.~~
- B. The parties shall have the right to meet jointly with the consultant(s).
- C. The consultant(s) shall submit recommendations regarding training and education materials, and postings, to the parties for review and comment.
- D. The costs of consultant(s) shall be borne by the MDOC.

VII. PREVENTION OF PROHIBITED CONDUCT

A. Minimization of One on One Situations

MDOC will maintain a written procedure that restricts male staff from being alone in one-on-one situations with prisoners at facilities and centers in areas not clearly visible to prisoners or other staff, with the following exceptions: emergencies, medical care, counseling, questioning during investigations, and reporting of confidential information.

B. Minimizations of Access to Secluded Areas

MDOC will maintain reasonable measures to eliminate prisoner access to secluded areas that are not necessary to the operation of the facility or center.

C. Sexual Misconduct Files

MDOC will use a tracking system to store allegations and information concerning, sexual misconduct, sexual harassment, and retaliation, whether substantiated or not. The tracking system will be searchable by, at a minimum, prisoner and staff name, type of prohibited behavior, date, facility, location and shift when the alleged incident occurred. Investigators and management will have access to this tracking system. The tracking system will be queried prior to accepting rehires. MDOC will conduct a quarterly search of this tracking system, and any staff shown in this review to have been the subject of more than two allegations of prohibited behavior within the past five years shall be subject to appropriate action, including, but not limited to a meeting with supervisors, a referral to an employee assistance program, retraining, or reassignment.

VIII. PAT DOWN SEARCHES

Absent emergency circumstances or a reasonable suspicion that the prisoner is in possession of contraband, pat down searches of prisoners will only be conducted by female corrections officers during an evaluation period of at least twelve months. Should the MDOC decide to resume the routine search of inmates by male officers, it will give plaintiffs' counsel thirty (30) days written notice.

IX. STAFFING ISSUES

- A. Consistent with the MDOC's announced intention to limit the assignment of staff in facility housing units to female officers, the MDOC will make a good faith effort to accomplish this objective during

the monitoring period. If such efforts are still ongoing at the end of the monitoring period, monitoring will be extended as to this issue only for not more than two additional six month periods.

- B. Any male entering a housing unit area in a facility or center shall announce his presence upon entering that area.
- C. All male staff must log in when they enter a housing unit or other area which keeps a log and any failure to log in shall be immediately reported to supervision.
- D. Except when a female officer is not available and immediate transport is deemed necessary at least one female officer will be assigned to transport a prisoner. On medical runs where it is probable the prisoner will be seen fully or partially nude, no male officer will remain in the examination room absent an emergency or a request from the examining physician.
- E. MDOC shall maintain locations at facilities and centers where prisoners may dress, shower and use the toilet without being observed by male staff.

X. FACILITATION OF PRISONER AND STAFF REPORTING OF ALLEGATIONS OF SEXUAL MISCONDUCT, SEXUAL HARASSMENT AND RETALIATION

- A. Prisoner Reporting. To encourage and facilitate the reporting of sexual misconduct, sexual harassment, retaliation and other conduct prohibited by this agreement, the MDOC agrees to provide the following:
 - 1. Secure box. At facilities and centers Prisoners shall have access to a secure locked box to make written reports of sexual misconduct, sexual harassment, or retaliation. The sole individuals who will have access to this box are the facility Inspector, the Warden, or the supervisor of the center. The contents of the box shall be reviewed on a daily basis by one of the above individuals and receipt acknowledged to the prisoner within four (4) days.
 - 2. Confidentiality. MDOC will take all reasonable steps to ensure that staff and prisoners preserve the confidentiality of staff and prisoners who report sexual misconduct, sexual harassment, retaliation and other conduct prohibited by this agreement. These steps include, but not limited to, warnings not to discuss investigations and disciplinary action against individuals who intentionally compromise the confidentiality of an

investigation. This does not preclude a prisoner from discussing the matter a) with counsel, b) for purposes of seeking treatment, or c) to ensure her own safety.

3. Retaliation

- a. Retaliation against a prisoner or staff for reporting staff misconduct is prohibited and subject to disciplinary action including termination;
- b. At each facility, a Review Committee shall be maintained consisting of the Grievance Coordinator, and at least one person in the position of ADW, Inspector or Deputy. Within five (5) days of receipt of an allegation of retaliation from a prisoner who has reported sexual misconduct or sexual harassment, the review committee shall begin review of the allegations including major and minor misconduct tickets issued against the prisoner. Factors which may be considered by the committee shall include, but are not limited to: 1) the connection between the staff who issued the ticket and the staff accused of sexual misconduct or sexual harassment; 2) any evidence or witness statements submitted by the prisoner alleging retaliation; 3) critical incident reports, grievances, kites and any other documents related to the prisoner's report of sexual misconduct or sexual harassment; 4) the prisoner's prior allegations of retaliation, 5) the amount of time between the reporting and the misconduct ticket; and 6) the prisoner's prior misconduct history.

Within ten (10) days, unless a one time extension of not more than two weeks is granted by the warden, the Review Committee shall report its findings to the warden with an explanation of the factual basis for its finding. The warden or designee shall promptly notify the prisoner of the review results. Findings or recommendations of the Review Committee are advisory only, and shall not have any bearing upon the hearings process for prisoner misconduct or grievances established by statute, administrative rule and policy directive unless the hearings officer, hearings administrator or grievance coordinator chooses to consider the information gathered. If the warden determines that there is evidence of retaliation, the warden shall take appropriate action which may include withdrawing a ticket pursuant to P.D. 03.03.105(K)(3), bringing it to the attention of the hearing officer or requesting a rehearing if the ticket has already been heard.

- c. Within 90 days after execution of this agreement, prisoners who received major misconduct tickets from staff convicted of criminal sexual conduct or against whom allegations of sexual misconduct or sexual harassment have been sustained, may present these tickets to MDOC for review if there is a written record that the prisoner asserted retaliation during the time the ticket was reviewed. If there is evidence that the major misconduct ticket was issued in retaliation for reporting staff sexual misconduct or sexual harassment, MDOC will request a rehearing on that major misconduct ticket. This provision applies only to major misconduct tickets that have been issued since March 1, 1991.
- d. Prisoners will not be involuntarily placed in protective custody simply because they reported conduct prohibited by this agreement.
- e. Prisoners will not be issued a misconduct for filing a complaint of sexual misconduct, sexual harassment, or retaliation which is not sustained, unless it is shown by a preponderance of evidence that the complaint was intentionally false.

XI. INVESTIGATION OF ALLEGATIONS

- A. Consistent with the investigative training set forth in Section IV.B. of this agreement, MDOC will conduct timely, complete, thorough, documented and uniform investigations of all allegations, however received (verbal report, kite, grievance, or letter) of sexual misconduct, sexual harassment, retaliation or conduct prohibited by policies established pursuant to this Agreement. MDOC investigators will continue to be trained consistent with Section IV(B) in conducting such investigations.
- B. MDOC will continue to refer allegations of sexual misconduct which, if true, constitute criminal acts to the Michigan State Police (MSP) for investigation. Regardless of whether the referral to the MSP results in a criminal prosecution, MDOC will continue its administrative investigation into the allegations, using a "preponderance of evidence" standard, and will take appropriate disciplinary action.
- C. MDOC investigators will conduct face-to-face interviews of all suspects, victims and eye witnesses to sexual misconduct and retaliation.
- D. Staff are required to cooperate in all investigations. MDOC will discipline, up to and including termination, staff who are accused of, witnessed, or have personal knowledge of sexual misconduct, sexual harassment, or retaliation and who refuse to cooperate.

- E. If a staff accused of sexual misconduct, sexual harassment or retaliation resigns, transfers, or is fired, the investigation will be completed in accordance with procedures developed pursuant to this agreement.
- F. MDOC will review the named Plaintiffs' allegations of sexual misconduct and sexual harassment which were not sustained if the Plaintiffs present new evidence supporting the allegations. The MDOC will review the Plaintiff's allegations of retaliation based on major misconduct tickets resulting in a guilty finding which were issued within one (1) year of the Plaintiff making a formal complaint of sexual misconduct or sexual harassment. In any review under this paragraph, the MDOC will apply the investigative standards to be implemented pursuant to this agreement. The allegations which Plaintiffs wish to have reviewed must be identified prior to execution of this agreement. If any reviewed allegations are sustained, MDOC will take appropriate action.
- G. MDOC will continue to remove staff accused of sexual misconduct from physical contact with prisoners until the investigation is concluded.
- H. MDOC will ensure that all investigations of staff accused of sexual misconduct, sexual harassment, retaliation or other conduct prohibited by this agreement, will include a search for prior allegations, investigations, or discipline against the accused staff.
- I. A prisoner who has reported sexual misconduct by staff shall be provided the opportunity to speak with a counselor trained in sexual assault and crisis intervention prior to being interviewed by a facility investigator or Internal Affairs. This prisoner shall have the right to have this counselor present during the investigation interview. This provision is not mandatory at centers if trained counselors are not available in that location.

XII RESPONSE TO SUSTAINED MISCONDUCT

A. Staff Discipline

- I. ~~Staff who resign in lieu of discipline as a result of an investigation for sexual misconduct, sexual harassment, retaliation or other conduct prohibited by policies established pursuant to this agreement, or during an investigation which ultimately results in a sustained finding, will not be eligible for rehire by the MDOC.~~

2. Where allegations of such conduct are sustained, or the investigation reveals violations of work rules or other policies and procedures, appropriate disciplinary action shall be taken pursuant to MDOC policy and work rules.

B. Prisoner Psychological Services

1. MDOC will offer psychological services consistent with and identified in P.D. 04.06.180 to any prisoner subjected to or alleged to have been subject to sexual misconduct with staff. MDOC will offer psychological services consistent with and identified in P.D. 04.06.180 to any prisoner found by MDOC to have been subjected to, or to any prisoner who makes a credible allegation in a kite, grievance, or letter to management that she was subjected to sexual harassment.

XIII COMPLIANCE/TERMINATION

A. Conditional Dismissal Under Rule 41(a).

Upon execution of this Settlement Agreement, the parties will jointly move the Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. Civ. P. 41(a) (2), conditional upon the MDOC achieving substantial compliance with its terms, and will attach this Settlement Agreement to such motion. The motion will request that the case be placed on the Court's inactive docket, though the Court shall retain jurisdiction over the case until a final dismissal.

B. Compliance Expert and Monitoring.

A compliance expert agreed to by the parties will have reasonable access to prisoners and staff, MDOC documents, information relating to implementation of this Settlement Agreement, and to allegations of sexual misconduct and other prohibited conduct addressed by this Settlement Agreement for the purpose of monitoring the MDOC's implementation of the Settlement Agreement. The Plaintiffs' attorneys will have reasonable access to information, including MDOC documents, relating to implementation of this Settlement Agreement, and to allegations of sexual misconduct and other prohibited conduct addressed by this Settlement Agreement for the purpose of monitoring the MDOC's implementation. The MDOC will fund the compliance expert's activities. The compliance expert's shall:

1. Review allegations of sexual misconduct, sexual harassment,

1. Review allegations of sexual misconduct, sexual harassment, retaliation and conduct prohibited under the agreement whether received directly from a prisoner or through reports, or grievances made to prison staff, investigators or administrators;
 2. Determine whether alleged victims of sexual misconduct have been provided counseling, medical treatment, and mental health care in accordance with this agreement;
 3. Determine whether prisoners have been treated in accordance with Department policy and the terms of this agreement during and subsequent to investigations;
 4. Monitor or review investigations and procedures to be certain they comply with the requirements of this agreement;
 5. Recommend the initiation or reopening of investigations or reviews of allegations arising during the monitoring period;
 6. Review the recommendations of the consultants and reject recommendations that are unreasonable or contrary to the purposes of this agreement;
 7. Prepare a report midway through the monitoring period based on the information collected informing the parties of his or her opinion of the MDOC's compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance, and any recommendations for achieving substantial compliance;
 8. Prepare a final report within 30 days of the end of the initial compliance period informing the parties of his or her opinion of the MDOC's compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance;
-
9. The compliance expert's reports explaining his assessment of the MDOC's compliance with each provision of this agreement shall be provided to all parties. The expert must promptly notify the parties of any finding of non-compliance;

10. The parties shall have thirty (30) days to comment on each report. The parties shall meet within two (2) weeks of the submission of comments in an attempt to resolve disputes.

The compliance expert will conduct an initial on-site compliance monitoring tour of the facilities, and centers approximately 120 days after execution of this Settlement Agreement. The compliance expert will conduct a final on-site compliance monitoring tour of the facilities and centers 12 months after execution of this Settlement Agreement. Not more than three Plaintiffs' attorneys, three attorneys for the MDOC, and the MDOC Director or his designee may accompany the compliance expert on these tours. The compliance expert may conduct private meetings with staff and prisoners. Plaintiffs' attorneys may hold a group meeting with the named plaintiffs after the initial and final compliance monitoring tours. Neither the parties nor the compliance expert shall add provisions or expand the scope of this Settlement Agreement in any manner.

If the compliance expert determines that the MDOC has substantially complied with the terms of the Settlement Agreement, the parties will file a stipulation to dismiss. If the compliance expert determines that the MDOC has substantially complied, but good faith efforts are still ongoing under section IX(A), the parties will file a stipulation dismissing all but that remaining portion of the agreement. If the compliance expert declares that the MDOC has not substantially complied, the Court shall hold *de novo* hearings to make findings and issue orders regarding the allegations of non-compliance. Neither Plaintiffs nor the MDOC shall file a motion or suit for specific performance of the Settlement Agreement.

- C. Substantial Compliance. "Substantial Compliance" with the terms of the Settlement Agreement will fully satisfy the Settlement Agreement. Isolated and unintentional incidents will not constitute noncompliance.

XIV. COSTS

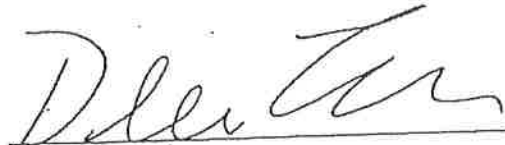
All parties shall bear their own costs and fees.

XV. INTEGRATION AND LIMITATION

This document is a final and complete expression of the agreement between the parties as to all claims for declaratory, equitable or injunctive relief. Nothing in this agreement shall be construed to require any party to act in violation of law or court order.

Dated: July 31, 2000

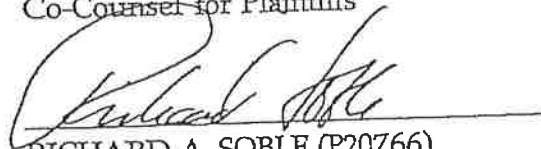
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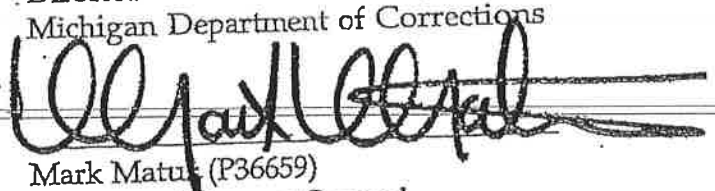


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Michigan Civil Service Commission

REGULATION

SPDOC No.: 11-04	Effective Date: June 26, 2011	Index Reference: Establishment, Nonpreauthorized Classification Actions, Conversion, Downgrade, Reclassification, Selective Position Requirements, Subclass	Regulation Number: 4.01
Issued By: Classifications and Selections	Rule Reference: Rules: 4-1 (Position Establishment & Classification) 4-2 (Position Classification Review)		Replaces: Reg. 4.01 (SPDOC 07-14, October 7, 2007)
Authority: Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules.			
Subject: POSITION CLASSIFICATION ACTIONS THAT REQUIRE CIVIL SERVICE REVIEW			

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1. **PURPOSE**

This regulation establishes the standards and procedures for processing position classification actions that require Civil Service review. Refer to regulation 4.02 [Preauthorized Position Classification Actions] for the standards and procedures for processing preauthorized classification actions.

2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at www.michigan.gov/mdcs.

Rule 4-1 Position Establishment and Classification

4-1.1 Requirement

All positions must be established in the classified service unless specifically exempted or excepted by article 11, section 5, of the constitution, or these rules.

4-1.2 Classification

A position established in the classified service must be reviewed to classify the position properly.

4-1.3 Authority to Establish

The appointing authority may establish a position for reasons of administrative efficiency. An appointment cannot be made to a position until it has been established and classified.

4-1.4 Classification Plan

The civil service commission shall authorize an official classification plan for all positions in the classified service. The state personnel director shall administer the official classification plan.

(a) Classification. Every position established must be classified in accordance with the official classification plan.

(b) Reclassification. Civil service staff may reclassify an employee if the employee's position has experienced gradual growth and accretion of higher level duties and responsibilities. The appointing authority must certify that the employee is satisfactorily performing the duties of the position.

Rule 4-2 Position Classification Review

Civil service staff shall provide for both a periodic and ongoing review of positions in the classified service to ensure positions continue to be properly classified.

3. DEFINITIONS

A. Civil Service Commission Rule Definitions

1. *Classification* means a group of positions whose assigned duties and responsibilities are sufficiently alike to warrant assigning the same classification title and requiring the same qualifications.
2. *Classification Level* means the placement of a classification within a series based on the duties and responsibilities of the position.
3. *Class Series* means a series of classifications with similar but progressively more responsible job duties.
4. *Position* means a classified job identified by its respective duties and responsibilities.
5. *Preauthorized* means the specific authorization granted to an appointing authority to process a transaction in accordance with civil service rules and regulations without prior civil service review.
6. *Reclassification* means an authorized classification action to change an employee's classification or grade based on the gradual growth and accretion of higher level duties.
7. *Selective position requirements* means specific qualifications that are narrower or more limited than those generally associated with a position and that are determined to be essential for performance of the duties of a specific position.
8. *Subclass* means additional specialized experience, specialized training, licensure, or other specialized qualification that is required for appointment to a specific subgroup of positions.

B. Additional Definitions as used in this Regulation

1. *Establishment* means the creation of a new position by an appointing authority by defining the duties, responsibilities, and other relevant considerations on a position description. Civil Service shall classify every position established in accordance with the official classification plan.
2. *Conversion* means a change of positions from one classification to another when a classification is abolished, a new classification is created or a position is moved into or out of a performance pay program as authorized by Civil Service.

4. STANDARDS

A. Establishment and Reclassification.

1. A classification action that is not preauthorized must be reviewed and approved by Civil Service before it can be placed in the Human Resources Management Network (HRMN). Classification actions for Departmental Trainee, advanced, senior (advanced), lead worker, supervisory, managerial, specialist, administrative, or executive positions are not preauthorized.
2. For a classification action that requires Civil Service review and approval, the appointing authority must submit to Civil Service a Position Action Request (CS-129) and a completed Position Description (CS-214). Additional supporting documentation may be required to complete the classification review, such as an organizational chart for the work area, approved advanced level standards, the appropriate specialist or managerial ratings, or a Civil Service approved Request for a Credential Review (CS-153A). Positions in classifications in Groups 1, 2, and 3 of the Equitable Classification Plan (ECP) that are subclass eligible should have proposed subclasses entered on the CS-129. If any additional information is necessary, Civil Service will request further clarification.
3. A position classification review will be based on the application of the classification plan to the duties and responsibilities of the position as of the date the request is received. The effective date of the reclassification may be retroactive as provided under regulation 4.04 [Effective Dates for Classification Actions] if the classification plan and the duties and responsibilities of the position are the same on both the date received and the retroactive date.
4. The effective date assigned to any classification action request that requires Civil Service review will be in accordance with regulation 4.04.

B. Establishment.

1. The classification of a new position requires approval by Civil Service, unless otherwise preauthorized to the agency.
2. A position establishment is necessary, and a position reclassification is not appropriate, when the primary function of the position undergoes a material and substantial change, requiring a new body of knowledge, skills, and abilities to perform the duties. Each request is evaluated on an individual basis. A new position establishment and appointment is typically necessary when the job changes in any of the following ways:
 - a. From a worker to a Departmental Trainee, supervisor, manager, administrator, or executive.
 - b. From a worker to an unrelated program or staff specialty.
 - c. From one program or staff specialty area to another unrelated program or staff specialty area.
 - d. From a supervisor to a manager, administrator, or executive.

- e. From a nonprofessional to a professional.
 - f. When two or more work areas are combined and similarly situated positions exist where there should be competition for the new position.
 - g. From one kind of work to another; e.g., accounting assistant to carpenter or property analyst to personnel management analyst.
 - h. From a classification in one ECP Group to a classification in another ECP Group.
3. All professional administrative assistant positions must be established in the proper class series and at the proper classification level, as described in the job specification.
 4. All secretaries and senior executive management assistants reporting to positions in the ECP Group 4 must be established at the appropriate classification level, as described in the job specification.
 5. All multiple, limited, and overall assistant division director positions must be established in the proper class series and at the proper classification level.
 6. Appointing authorities are to comply with any executive orders or directives in place that are applicable to their agency.
 7. A supervisory, managerial, administrative, or executive-level position may be established with vacant subordinate positions to allow the future managerial employee to select the subordinates. The appointing authority has six months from the date of the manager's appointment to fill the subordinate positions and submit verification to Civil Service. If the subordinate positions are not filled within this six-month time period, Civil Service will reclassify the position to the proper classification. Civil Service may grant extensions beyond the six-month period if an appointing authority demonstrates good cause.
 8. A project manager position, a professional managerial position that has lead responsibility for major projects, may be established as a temporary or permanent position. A temporary project manager position can be established for up to 24 months. Extensions are permissible for demonstrated good cause. A permanent position can be established and must have continuous assigned projects, with certification as to the continuous nature of the projects. The project manager position must supervise two filled positions at all times. The subordinate positions can be permanently established, established on a temporary basis, or borrowed from other work areas.
 9. A pattern position is a position that requires the possession of specific education, experience, skills, and knowledge that can only be gained through on-the-job-training at the lower levels in the classification. A pattern position must be filled at the lowest level in the approved pattern. The reclassification of a pattern position is not preauthorized to an appointing authority.

C. Reclassification.

1. A reclassification requires appointing authority certification that the incumbent (a) meets the minimum requirements, (b) is satisfactorily performing the duties and responsibilities of the requested classification or classification level, and

(c) has a current, satisfactory probationary, annual, or, follow-up performance rating.

2. A standard reclassification is one classification level higher, after the equivalent of one year (2080 hours in level) of full-time, documented, satisfactory service of compatible work assignments at the lower classification level.
3. If, during the qualifying period, the incumbent is on an extended paid absence of more than two consecutive pay periods, the appointing authority may delay the reclassification for a period equivalent to the length of the absence.
4. If, during the qualifying period, an employee is on an unpaid absence, the reclassification will be delayed for a period equivalent to the length of the absence.
5. A position may be reclassified in any of the following circumstances:
 - a. To the advanced level when the position is assigned the most complex duties and responsibilities beyond those assigned to an experienced-level position, as determined by Civil Service approved, advanced classification standards.
 - b. From the experienced level or advanced level to a specialist level if the position's principal duties and responsibilities remain basically the same, but the job has evolved from a worker to a related and identifiable program or staff specialty that is recommended by the appointing authority and accepted by Civil Service.
 - c. From a student assistant to an appropriate career classification in accordance with regulation 3.02 [Student Assistants in the Classified Service].
 - d. When there is no change in the assigned duties and responsibilities, but a change in the overall classification plan results in a change in the classification concept.
 - e. When a change in the classification of the supervisor's position impacts upon the subordinate position's classification.
 - ~~f. When a change in the subordinate position's classification impacts upon the supervisory position's classification.~~
 - g. When the duties and responsibilities remain basically the same, but the position takes on greater importance and stature through a change in the organizational placement. For example, a division organizational entity is elevated to a bureau organizational entity in recognition of the agency's changing mission and program goals.
 - h. When there is continuity in the duties and responsibilities of a supervisory or managerial position and responsibility for additional program(s) and/or staff are added such that the position meets the concepts, examples of work, and requirements for a different classification.

- i. When the duties and responsibilities remain basically the same, but the duties and responsibilities have gradually accrued over a long period of time (several years), to the extent that a reasonable argument can be made that a reclassification is warranted. Civil Service will review when and how the onset of these duties and responsibilities occurred.
 - j. When the appointing authority proposes and Civil Service accepts that the reclassification is warranted because the employee would be competing for his or her own position. This is a situation where no real competitive opportunity exists for the position.
6. The assignment and performance of working-out-of-class duties and responsibilities does not support a position reclassification. Working-out-of-class assignments and position reclassification are mutually exclusive situations. Working-out-of-class assignments will be reviewed and processed in accordance with regulation 4.08 [Working Out Of Class].

D. Conversion.

A position may be converted to a different classification or moved into or out of a performance pay program only when Civil Service determines conversion is warranted. Regulation 5.07 [Performance-Pay Programs], standards E., G. and L. establishes how salary is determined upon conversion of an occupied position.

E. Departmental Trainee.

The Departmental Trainee facilitates career movement of employees who do not possess a bachelor's degree into designated professional classifications, based on specific state classified experience that has provided the knowledge, skills, and abilities to perform professional tasks in a learning capacity.

1. The appointing authority must submit a Position Description (CS-214) and Position Action Request (CS-129) requesting that Civil Service classify the new position. Civil Service designates, on the CS-129, the classification to which the position will be reclassified upon completion of the transitional period.
2. If the Departmental Trainee is used to facilitate the movement of an employee to a position that will ultimately be classified at the advanced level, ~~position-specific or universal, advanced classification standards must be approved~~ prior to the employee's appointment.
3. The appointing authority must submit a request for credential review in accordance with standard B.4. of regulation 3.07 [Appointment and Job Changes]. Civil Service shall review the qualifications of the intended appointee prior to the appointment.
4. An employee may be reclassified to the new professional classification after successful completion of the experience requirements for the classification. A reclassification requires appointing authority certification that the employee (a) meets the minimum requirements, (b) is satisfactorily performing the duties and responsibilities of the requested classification or classification level, and (c) has a current, satisfactory probationary, annual, or follow-up performance

rating. If the reclassification would result in a pay decrease, the employee continues in the transitional period for another year.

5. Regulation 5.01 [General Salary Schedule Administration], standard L., establishes standards for determining salary upon appointment of the employee to a Departmental Trainee.
6. Regulation 2.01 [Implementing a Reduction-in-Force for Nonexclusively Represented Employees], standard D., provides guidance in determining employment preference for Departmental Trainees in the event of a reduction in force (RIF).

F. Establishment and Assignment of Selective Position Requirements.

1. Selective position requirements for specific positions must be job related. The appointing authority must establish that the position is different from others in the classification, detail how it is different, and describe what unique qualifications are needed. A current, approved Position Description (CS-214) for an established position must be submitted with the request for selective position requirement approval.
2. Selective position requirements must be specific qualifications that are narrower or more limited than the classification requirements and are essential to the duties of the position. For example, an associate's degree in a particular area could be approved for a position in a classification with an associate's degree requirement or a master's degree could be approved for a general classification that typically requires a bachelor's degree.
3. The criteria must relate to entry requirements, not to knowledge, skills, abilities, or other characteristics acquired in the position.
4. Selective position requirements must be quantifiable, easily observable, and verifiable. For example, "possession of a teacher's certificate", "15 college credits in toxicology", "one year of experience in historic preservation."
5. Selective position requirements may be approved for positions in classifications with approved subclasses.
6. An approved selective position requirement must be applied whenever the position is to be filled. The approval remains in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities affecting the qualification requirements.
7. Selective position requirements must be approved and in place for 28 calendar days before the criteria can be applied in a RIF action affecting the position, the employee, or a person exercising employment preference to the position. When a RIF affects a position with an approved selective position requirement in place for 28 calendar days or more, the approved requirement must be applied to all persons in whose bump chain the position appears. Only employees who satisfy the selective position criteria may exercise employment preference into the position.

G. Establishment and Assignment of a Subclass.

1. An identified position or a group of positions must exist and have duties and responsibilities that require more specialized qualifications (i.e., experience, training, or licensure) than those established on the class specification. The duties and responsibilities must be essential to the position at job entry. The subclass definition must describe qualifications for which there is a recognized applicant pool.
2. Civil Service establishes, abolishes, and revises subclasses and their definitions. Requests to establish, abolish, or revise subclasses may be initiated by appointing authorities or Civil Service staff. Appointing authorities have the opportunity to review and comment on subclasses to be established, abolished, and revised, including the definition, before implementation.
3. Subclasses may be assigned when a position is established or at any other time, except during a RIF. An appointing authority must provide supporting rationale for requesting addition or removal of a subclass from a specific position.
4. The approval of subclasses for a position does not preclude further narrowing of the requirements through selective position requirements, when appropriate.
5. Subclass additions, deletions, and revisions are published periodically in the "Established and Abolished Class Report." Subclasses are represented by subclass codes and defined in a list as maintained on the Civil Service web site.
6. To be found qualified for a subclass, a person must first meet the qualifications of the classification of the job to which the subclass is assigned.
7. If a position is assigned one subclass, the applicant selected to fill it must satisfy the subclass criteria. If a position is assigned more than one subclass, the applicant selected must satisfy at least one of the subclasses.
8. Subclass criteria must be approved and in place for 28 calendar days before the subclass criteria may be applied in a RIF action. Subclass qualification must be determined for all persons in whose bump chain the position appears. ~~Only employees who satisfy the subclass criteria may exercise employment preference into the subclass assigned position.~~

H. Downgrading Positions.

1. An appointing authority may request reclassification between any of the lower classification levels within the non-supervisory/non-managerial class series; e.g., worker, specialist class series, except for professional administrative assistant positions.
2. Agency recall names preclude downgrading of a position.

5. PROCEDURES

A. Establishing and Reclassifying Positions.

Responsibility	Action
Appointing Authority	1. Submits a Position Action Request (CS-129), Position Description (CS-214), and any other necessary information to Civil Service for a position review.
Civil Service	2. To reclassify a filled position, certifies on the CS-129 that the employee meets the minimum qualifications, is satisfactorily performing the duties and responsibilities of the requested classification, and has a current satisfactory performance rating. 3. Reviews the establishment or reclassification request. 4. If approved or modified, classifies or reclassifies the position to the appropriate classification with the necessary documentation on the CS-129 and enters the necessary position information and/or employee information in HRMN. 5. If an establishment is disapproved, documents the reason on the CS-129 and informs the appointing authority of their right to file a technical complaint. 6. If a reclassification is disapproved, documents the reason on the CS-129 and informs the incumbent and appointing authority of their right to file a technical complaint.
Appointing Authority	7. Releases the CS-129 to the appointing authority. 8. Receives the Position Action Request (CS-129) and, for any occupied position, enters any employee information in HRMN not entered centrally by Civil Service.

B. Establishing Selective Position Requirements.

Responsibility	Action
Appointing Authority	1. Submits a written request for approval that includes a copy of the current CS-214, a CS-129, any additional documentation, and a narrative that provides the rationale and linkage between the requested criterion and the CS-214, and any relevant supporting materials, such as pertinent legislation.
Civil Service	2. Reviews the request and, if approved, enters the necessary position information in HRMN. 3. If the request is disapproved, informs the appointing authority of their right to file a technical complaint. 4. Releases the CS-129 to the appointing authority.

C. Establishing Subclasses.

Responsibility	Action
Appointing Authority	1. Submits a written request to establish a new subclass, or to revise or abolish an existing subclass, and provides supporting rationale.
Civil Service	2. Reviews requests for subclass establishment, abolishment, or revision. Makes determination and notifies user agencies.
All Appointing Authorities	3. Reviews and comments on proposed subclass establishment, abolishment, or revision.
Civil Service	4. Reviews agency comments and makes appropriate adjustments to subclass. 5. Includes subclass establishments, abolishments, and revisions in the "Established and Abolished Class Report."

Responsibility (continued)	Action (continued)
Civil Service	6. Updates subclass listing directly to the Civil Service web site to reflect subclass changes.

D. Assigning and Removing Subclasses from Positions.

Responsibility	Action
Appointing Authority	1. Completes a CS-129 requesting addition or removal of subclasses from a position, with supporting rationale.
Civil Service	2. Reviews CS-129 and makes determination regarding appropriateness of adding or removing requested subclasses. If approved, enters the necessary position information.
	3. Releases CS-129 to appointing authority.
Appointing Authority	4. Receives the CS-129 and, if approved, enters the employee information in HRMN for any occupied position.

CONTACT

Questions regarding this regulation should be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-373-3030 or 1-800-788-1766; or by e-mail to MCSC-BHRS@michigan.gov.

State of Michigan



John Engler, Governor

Department of Corrections

Grandview Plaza Building, P.O. Box 30003
Lansing, Michigan 48909

Bill Martin, Director

August 2, 2000

Jeffrey Simbob
Bureau of Human Resource Services
Michigan Department of Civil Service
Capitol Commons Building
Lansing, MI 48909

Dear Mr. Simbob:

This is a request for selective certification to allow only female staff in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, segregation units, or the intake unit at the Scott Correctional Facility, which houses only female inmates. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

As indicated in the attached report, a mission of the Michigan Department of Corrections is to provide a safe, secure environment, respecting the privacy of prisoners, specifically females, while providing staffing consistent with the appropriate federal and state laws regarding equal employment opportunity. The MDOC has been involved with litigation relevant to sexual misconduct between male staff and female prisoners and their privacy rights. In addition, the Department recently entered into a settlement agreement of the USA v. Michigan 97-CV-71514-DT, which alleged that inmates in Michigan women's prisons were subject to sexual misconduct, sexual harassment, over-familiarity and invasion of privacy by staff.

The Department has made a number of changes responding to allegations of inappropriate behavior and complaints regarding privacy of female prisoners. These include physical plant modifications, policy, procedure, and employee handbook changes, improvements in staff training, staffing level increases, and improving prisoner education. However, it is felt that these changes will not eliminate inappropriate behavior or sexual misconduct.

Accordingly, we are requesting that the indicated positions be selectively certified for female staff only to occupy the positions. The following reasons are cited for this request; same sex supervision would enhance the privacy of female prisoners, reduce the likelihood of sexual misconduct, the reduction of fear of sexual misconduct will enhance the ability of the Department to achieve its mission, security capabilities would be improved due to much less reluctance by



Jeffrey Simbob
Page 2

female staff to perform observation duties, and female staff only in housing units would reduce the likelihood of instances where individual male staff and individual female prisoners would be involved in long isolated contacts. The request is being made for the following position numbers:

Corrections Officer Positions - Housing

47-04-21-02-04-04-001	47-04-21-02-04-04-006	47-04-21-02-04-04-011
47-04-21-02-04-04-002	47-04-21-02-04-04-007	47-04-21-02-04-04-012
47-04-21-02-04-04-003	47-04-21-02-04-04-008	47-04-21-02-04-04-013
47-04-21-02-04-04-004	47-04-21-02-04-04-009	47-04-21-02-04-04-014
47-04-21-02-04-04-005	47-04-21-02-04-04-010	

Corrections Officer Positions - Intake

47-04-21-02-04-04-015	47-04-21-02-04-04-016
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Resident Unit Officer Positions

47-04-21-02-03-01-090	47-04-21-02-03-01-120	47-04-21-02-03-01-150
47-04-21-02-03-01-091	47-04-21-02-03-01-121	47-04-21-02-03-01-151
47-04-21-02-03-01-092	47-04-21-02-03-01-122	47-04-21-02-03-01-152
47-04-21-02-03-01-093	47-04-21-02-03-01-123	47-04-21-02-03-01-153
47-04-21-02-03-01-094	47-04-21-02-03-01-124	47-04-21-02-03-01-154
47-04-21-02-03-01-095	47-04-21-02-03-01-125	47-04-21-02-03-01-155
47-04-21-02-03-01-096	47-04-21-02-03-01-126	47-04-21-02-03-01-156
47-04-21-02-03-01-097	47-04-21-02-03-01-127	47-04-21-02-03-01-157
47-04-21-02-03-01-098	47-04-21-02-03-01-128	47-04-21-02-03-01-158
47-04-21-02-03-01-099	47-04-21-02-03-01-129	47-04-21-02-03-01-159
47-04-21-02-03-01-100	47-04-21-02-03-01-130	47-04-21-02-03-01-160
47-04-21-02-03-01-101	47-04-21-02-03-01-131	47-04-21-02-03-01-161
47-04-21-02-03-01-102	47-04-21-02-03-01-132	47-04-21-02-03-01-162
47-04-21-02-03-01-103	47-04-21-02-03-01-133	47-04-21-02-03-01-163
47-04-21-02-03-01-104	47-04-21-02-03-01-134	47-04-21-02-03-01-164
47-04-21-02-03-01-105	47-04-21-02-03-01-135	47-04-21-02-03-01-165
47-04-21-02-03-01-106	47-04-21-02-03-01-136	47-04-21-02-03-01-166
47-04-21-02-03-01-107	47-04-21-02-03-01-137	47-04-21-02-03-01-167
47-04-21-02-03-01-108	47-04-21-02-03-01-138	47-04-21-02-03-01-168
47-04-21-02-03-01-109	47-04-21-02-03-01-139	47-04-21-02-03-01-169
47-04-21-02-03-01-110	47-04-21-02-03-01-140	47-04-21-02-03-01-170
47-04-21-02-03-01-111	47-04-21-02-03-01-141	47-04-21-02-03-01-171
47-04-21-02-03-01-112	47-04-21-02-03-01-142	47-04-21-02-03-01-172
47-04-21-02-03-01-113	47-04-21-02-03-01-143	47-04-21-02-03-01-173
47-04-21-02-03-01-114	47-04-21-02-03-01-144	47-04-21-02-03-01-174
47-04-21-02-03-01-115	47-04-21-02-03-01-145	47-04-21-02-03-01-175
47-04-21-02-03-01-116	47-04-21-02-03-01-146	47-04-21-02-03-01-176
47-04-21-02-03-01-117	47-04-21-02-03-01-147	47-04-21-02-03-01-177
47-04-21-02-03-01-118	47-04-21-02-03-01-148	47-04-21-02-03-01-178
47-04-21-02-03-01-119	47-04-21-02-03-01-149	

Jeffrey Simbob
Page 3

Included for your review are documents utilized by the Department in making its determination for the request of the selective certifications.

Thank you for your consideration of this request and please contact me if you need any further information regarding this matter.

Sincerely,



Gary Manns, Personnel Director
Michigan Department of Corrections

attachments

STATE OF MICHIGAN



CIVIL SERVICE COMMISSION

SUSAN GRIMES MUNSELL, CHAIRPERSON
RAE LEE CHABOT
ROBERT P. HUNTER
JAMES P. PITZ

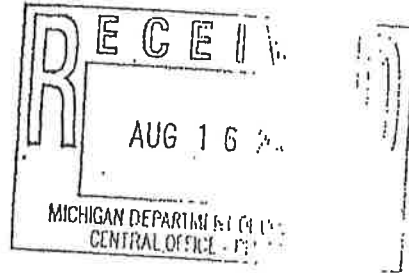
JOHN ENGLER, Governor

DEPARTMENT OF CIVIL SERVICE

CAPITOL COMMONS CENTER
400 SOUTH PINE STREET, P.O. BOX 30002
LANSING, MICHIGAN 48909
www.state.mi.us/mdcs

JOHN F. LOPEZ, State Personnel Director

August 14, 2000



Mr. Mark T. Symons
Department of Corrections
Western Wayne Correctional Facility
48401 Five Mile Road
Plymouth, MI 48170

Dear Mr. Symons:

This is in response to a memo from Gary Manns dated August 2, 2000 requesting selective certification approval for the following positions at the Western Wayne Correctional Facility, Bureau of Correctional Facilities Administration.

Position Number
See attached

Classification Title
Corrections Officer 8-E9
Resident Unit Officer E10

Based on the Position Description (CS-214) and the information provided in your letter, the selective certification criterion approved for this position is as follows:

Allow only female staff at Western Wayne Correctional Facility in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, which include segregation units. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

All of the applicants considered for this position must possess the minimum requirements for the classification. The screening of applicants to identify those who possess the selective certification criterion will be the responsibility of your agency.

Mr. Mark T. Symons

Page 2

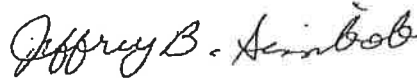
August 14, 2000

This approval will remain in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities or the position is abolished.

The standards of Civil Service Regulation 3.05, on "Selective Certification for Position-Specific Qualifications" and Civil Service Regulation 2.01, on "Implementing a Reduction in Force for Nonexclusively Represented Employees," must be applied.

If you have any questions, please contact Gloria Hastings, Personnel Management Analyst, at (517) 373-1824.

Sincerely,



Jeffrey Simbob
Human Resource Manager
Bureau of Human Resource Services

cc: Gary Manns
Position File

Attachment

Attachment

Positions to be Filled by Females Only
Western Wayne Correctional Facility
August 11, 2000

Corrections Officer Positions

47-04-17-07-05-00-357	47-04-17-07-05-00-367	47-04-17-07-05-00-376
47-04-17-07-05-00-358	47-04-17-07-05-00-368	47-04-17-07-05-00-377
47-04-17-07-05-00-359	47-04-17-07-05-00-369	47-04-17-07-05-00-378
47-04-17-07-05-00-360	47-04-17-07-05-00-370	47-04-17-07-05-00-379
47-04-17-07-05-00-361	47-04-17-07-05-00-371	47-04-17-07-05-00-380
47-04-17-07-05-00-362	47-04-17-07-05-00-372	47-04-17-07-05-00-381
47-04-17-07-05-00-363	47-04-17-07-05-00-373	47-04-17-07-05-00-382
47-04-17-07-05-00-364	47-04-17-07-05-00-374	47-04-17-07-05-00-383
47-04-17-07-05-00-365	47-04-17-07-05-00-375	47-04-17-07-05-00-384
47-04-17-07-05-00-366		

Resident Unit Officer Positions

47-04-17-07-05-00-385	47-04-17-07-05-00-407	47-04-17-07-05-00-428
47-04-17-07-05-00-386	47-04-17-07-05-00-408	47-04-17-07-05-00-429
47-04-17-07-05-00-387	47-04-17-07-05-00-409	47-04-17-07-05-00-430
47-04-17-07-05-00-388	47-04-17-07-05-00-410	47-04-17-07-05-00-431
47-04-17-07-05-00-389	47-04-17-07-05-00-411	47-04-17-07-05-00-432
47-04-17-07-05-00-390	47-04-17-07-05-00-412	47-04-17-07-05-00-433
47-04-17-07-05-00-391	47-04-17-07-05-00-413	47-04-17-07-05-00-434
47-04-17-07-05-00-392	47-04-17-07-05-00-414	47-04-17-07-05-00-435
47-04-17-07-05-00-393	47-04-17-07-05-00-415	47-04-17-07-05-00-436
47-04-17-07-05-00-394	47-04-17-07-05-00-416	47-04-17-07-05-00-437
47-04-17-07-05-00-395	47-04-17-07-05-00-417	47-04-17-07-05-00-438
47-04-17-07-05-00-396	47-04-17-07-05-00-418	47-04-17-07-05-00-439
47-04-17-07-05-00-397	47-04-17-07-05-00-419	47-04-17-07-05-00-440
47-04-17-07-05-00-398	47-04-17-07-05-00-420	47-04-17-07-05-00-441
47-04-17-07-05-00-399	47-04-17-07-05-00-421	47-04-17-07-05-00-442
47-04-17-07-05-00-400	47-04-17-07-05-00-422	47-04-17-07-05-00-443
47-04-17-07-05-00-401	47-04-17-07-05-00-423	47-04-17-07-05-00-444
47-04-17-07-05-00-402	47-04-17-07-05-00-424	47-04-17-07-05-00-445
47-04-17-07-05-00-403	47-04-17-07-05-00-425	47-04-17-07-05-00-446
47-04-17-07-05-00-404	47-04-17-07-05-00-426	47-04-17-07-05-00-447
47-04-17-07-05-00-405	47-04-17-07-05-00-427	47-04-17-07-05-00-448
47-04-17-07-05-00-406		

STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

SUSAN GRIMES MUNSELL, CHAIRPERSON
RAE LEE CHABOT
ROBERT P. HUNTER
JAMES P. FITZ



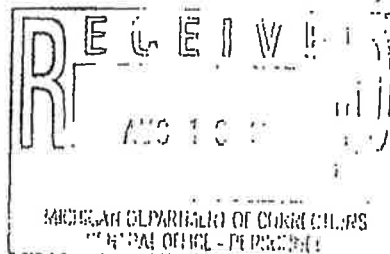
JOHN ENGLER, Governor

DEPARTMENT OF CIVIL SERVICE

CAPITOL COMMONS CENTER
400 SOUTH PINE STREET, P.O. BOX 30002
LANSING, MICHIGAN 48909
www.state.mi.us/mdcs

JOHN F. LOPEZ, State Personnel Director

August 14, 2000



Ms. Carol Zachery
Department of Corrections
Scott Correctional Facility
47500 Five Mile Road
Plymouth, MI 48170

Dear Ms. Zachery:

This is in response to a memo from Gary Manns dated August 2, 2000 requesting selective certification approval for the following positions at the Scott Correctional Facility, Bureau of Correctional Facilities Administration.

Position Number
See attachment

Classification Title
Corrections Officer 8-E9
Resident Unit Officer E10

Based on the Position Description (CS-214) and the information provided in your letter, the selective certification criterion approved for this position is as follows:

Allow only female staff in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, segregation units, or the intake unit at the Scott Correctional Facility, which houses only female inmates. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

All of the applicants considered for this position must possess the minimum requirements for the classification. The screening of applicants to identify those who possess the selective certification criterion will be the responsibility of your agency.

Ms. Carol Zachery

Page 2

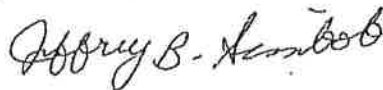
August 14, 2000

This approval will remain in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities or the position is abolished.

The standards of Civil Service Regulation 3.05, on "Selective Certification for Position-Specific Qualifications" and Civil Service Regulation 2.01, on "Implementing a Reduction in Force for Nonexclusively Represented Employees," must be applied.

If you have any questions, please contact Gloria Hastings, Personnel Management Analyst, at (517) 373-1824.

Sincerely,



Jeffrey Simbob
Human Resource Manager
Bureau of Human Resource Services

cc: Gary Manns

Position File

Attachment

Attachment

Positions to be Filled by Females Only

Scott Correctional Facility

August 11, 2000

Corrections Officer Positions - Housing

47-04-21-02-04-04-001	47-04-21-02-04-04-006	47-04-21-02-04-04-011
47-04-21-02-04-04-002	47-04-21-02-04-04-007	47-04-21-02-04-04-012
47-04-21-02-04-04-003	47-04-21-02-04-04-008	47-04-21-02-04-04-013
47-04-21-02-04-04-004	47-04-21-02-04-04-009	47-04-21-02-04-04-014
47-04-21-02-04-04-005	47-04-21-02-04-04-010	

Corrections Officer Positions - Intake

47-04-21-02-04-04-015	47-04-21-02-04-04-016
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Resident Unit Officer Positions

47-04-21-02-03-01-090	47-04-21-02-03-01-120	47-04-21-02-03-01-150
47-04-21-02-03-01-091	47-04-21-02-03-01-121	47-04-21-02-03-01-151
47-04-21-02-03-01-092	47-04-21-02-03-01-122	47-04-21-02-03-01-152
47-04-21-02-03-01-093	47-04-21-02-03-01-123	47-04-21-02-03-01-153
47-04-21-02-03-01-094	47-04-21-02-03-01-124	47-04-21-02-03-01-154
47-04-21-02-03-01-095	47-04-21-02-03-01-125	47-04-21-02-03-01-155
47-04-21-02-03-01-096	47-04-21-02-03-01-126	47-04-21-02-03-01-156
47-04-21-02-03-01-097	47-04-21-02-03-01-127	47-04-21-02-03-01-157
47-04-21-02-03-01-098	47-04-21-02-03-01-128	47-04-21-02-03-01-158
47-04-21-02-03-01-099	47-04-21-02-03-01-129	47-04-21-02-03-01-159
47-04-21-02-03-01-100	47-04-21-02-03-01-130	47-04-21-02-03-01-160
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47-04-21-02-03-01-105	47-04-21-02-03-01-135	47-04-21-02-03-01-165
47-04-21-02-03-01-106	47-04-21-02-03-01-136	47-04-21-02-03-01-166
47-04-21-02-03-01-107	47-04-21-02-03-01-137	47-04-21-02-03-01-167
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47-04-21-02-03-01-110	47-04-21-02-03-01-140	47-04-21-02-03-01-170
47-04-21-02-03-01-111	47-04-21-02-03-01-141	47-04-21-02-03-01-171
47-04-21-02-03-01-112	47-04-21-02-03-01-142	47-04-21-02-03-01-172
47-04-21-02-03-01-113	47-04-21-02-03-01-143	47-04-21-02-03-01-173
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47-04-21-02-03-01-115	47-04-21-02-03-01-145	47-04-21-02-03-01-175
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47-04-21-02-03-01-117	47-04-21-02-03-01-147	47-04-21-02-03-01-177
47-04-21-02-03-01-118	47-04-21-02-03-01-148	47-04-21-02-03-01-178
47-04-21-02-03-01-119	47-04-21-02-03-01-149	

STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

SUSAN GRIMES MUNSELL, CHAIRPERSON
RAE LEE CHABOT
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JAMES P. PITZ



JOHN ENGLER, Governor

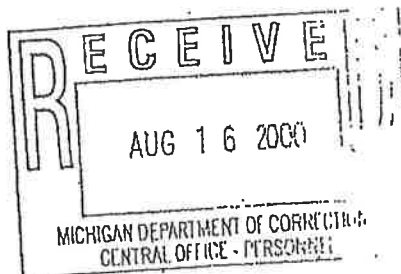
DEPARTMENT OF CIVIL SERVICE

CAPITOL COMMONS CENTER
400 SOUTH PINE STREET, P.O. BOX 30002
LANSING, MICHIGAN 48909
www.state.mi.us/mdcs

JOHN F. LOPEZ, State Personnel Director

August 14, 2000

Mr. Dennis Hopkins
Department of Corrections
Florence Crane Correctional Facility
38 Fourth Street
Coldwater, MI 49036



Dear Mr. Hopkins:

This is in response to Gary Manns' August 2, 2000 letter requesting selective certification approval for the positions at Camp Branch in the Bureau of Correctional Facilities Administration.

Position Number
See attached listing

Classification Title
Corrections Officer 8-E9
Resident Unit Officer E10

Based on the Position Description (CS-214) and the information provided in Mr. Manns' letter, the selective certification criterion approved for the positions is as follows:

Allow only female staff at Camp Branch, which houses only female inmates, in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, which include segregation units. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

All of the applicants considered for this position must possess the minimum requirements for the classification. The screening of applicants to identify those who possess the selective certification criterion will be the responsibility of your agency.

Mr. Dennis Hopkins

Page 2

August 14, 2000

This approval will remain in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities or the position is abolished.

The standards of Civil Service Regulation 3.05, on "Selective Certification for Position-Specific Qualifications" and Civil Service Regulation 2.01, on "Implementing a Reduction in Force for Nonexclusively Represented Employees," must be applied.

If you have any questions, please contact Jeanette M. Robinson, Personnel Management Analyst 12, at (517) 335-6592.

Sincerely,



Jeffrey Simbob
Human Resource Manager
Bureau of Human Resource Services

cc: Gary Manns
Position File

Attachment

ATTACHMENT

Positions to be Filled by Females Only

Camp Branch

August 14, 2000

Corrections Officer Positions - Housing

47-04-16-81-03-37-083	47-04-16-81-03-37-090	47-04-16-81-03-37-097
47-04-16-81-03-37-084	47-04-16-81-03-37-091	47-04-16-81-03-37-098
47-04-16-81-03-37-085	47-04-16-81-03-37-092	47-04-16-81-03-37-099
47-04-16-81-03-37-086	47-04-16-81-03-37-093	47-04-16-81-03-37-100
47-04-16-81-03-37-087	47-04-16-81-03-37-094	47-04-16-81-03-37-101
47-04-16-81-03-37-088	47-04-16-81-03-37-095	
47-04-16-81-03-37-089	47-04-16-81-03-37-096	

Resident Unit Officer Positions

47-04-16-81-02-37-22	47-04-16-81-02-37-33	47-04-16-81-02-37-44
47-04-16-81-02-37-23	47-04-16-81-02-37-34	47-04-16-81-02-37-45
47-04-16-81-02-37-24	47-04-16-81-02-37-35	47-04-16-81-02-37-46
47-04-16-81-02-37-25	47-04-16-81-02-37-36	47-04-16-81-02-37-47
47-04-16-81-02-37-26	47-04-16-81-02-37-37	47-04-16-81-02-37-48
47-04-16-81-02-37-27	47-04-16-81-02-37-38	47-04-16-81-02-37-49
47-04-16-81-02-37-28	47-04-16-81-02-37-39	47-04-16-81-02-37-50
47-04-16-81-02-37-29	47-04-16-81-02-37-40	47-04-16-81-02-37-51
47-04-16-81-02-37-30	47-04-16-81-02-37-41	47-04-16-81-02-37-52
47-04-16-81-02-37-31	47-04-16-81-02-37-42	47-04-16-81-02-37-53
47-04-16-81-02-37-32	47-04-16-81-02-37-43	



8
Matt
Gand

STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

PATRICIA L. CARUSO
DIRECTOR

March 27, 2009



Jeremy S. Stephens, State Personnel Director
Michigan Civil Service Commission
400 South Pine Street, P.O. Box 30002
Lansing, MI 48909

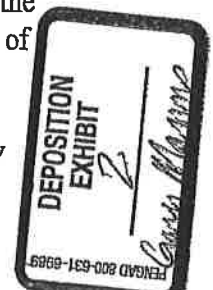
Dear Mr. Stephens:

In accordance with Civil Service Rule 1-8.4 Bona Fide Occupational Qualification (BFOQ), the Michigan Department of Corrections (MDOC) is requesting to expand the establishment of BFOQ positions. If approved, this will result in the utilization of only female staff in positions with regular work assignments that affects the privacy and security of female prisoners. Custody and security duties include those that affect the privacy of female prisoners such as observance of showers, dressing and undressing, use of toilet facilities, and conducting multiple daily searches, including clothed body and unclothed strip searches.

The mission of the MDOC is to provide a safe and secure environment, while respecting the privacy of prisoners, and to provide staffing which is consistent with the appropriate federal and state laws regarding equal employment opportunity. The MDOC has been involved with litigation involving alleged sexual misconduct between male staff and female prisoners and their privacy rights. This litigation, along with the MDOC's desire to maximize the safety and security of its staff and prisoners, has demonstrated the critical need to expand a limited number of BFOQ positions. Each of the identified positions is either an isolated position, involves potential privacy concerns on the part of the prisoners, or requires an officer to conduct pat-down searches on the female prisoners. Thus, each position touches on the MDOC's legitimate concerns of safety, security, and privacy.

The Department has made a number of changes responding to allegations of inappropriate behavior and complaints regarding privacy of female prisoners. These include physical plant modification, policy, procedure, and employee handbook changes, improvements in staff training, staffing level increases, and improved prisoner education. Notwithstanding these changes, however, the Department has determined that additional steps would further increase the safety and security of its staff and prisoners. The MDOC has reasonably concluded that the BFOQ positions would accomplish the issues at hand – the security of the prison, the safety of prisoners, and the protection of the privacy rights of prisoners.

Accordingly, the MDOC is requesting that the attached positions be approved to be filled by female staff. Same sex supervision will maximize the female inmate's right to privacy and



reduce the likelihood of sexual misconduct. This will enhance the ability of the Department to achieve its mission of providing safety and security for female prisoners.

Thank you for your consideration of this request and please contact me if you need any further information regarding this matter.

Sincerely,



Gary Manns, Administrator
Operations Support Administration

C: Director Patricia Caruso, MDOC
James Long, Attorney General's Office
Pete Govorchin, Attorney General's Office

JENNIFER M. GRANHOLM
GOVERNOR



STATE OF MICHIGAN
CIVIL SERVICE COMMISSION

JEREMY S. STEPHENS
STATE PERSONNEL DIRECTOR

COMMISSIONERS

SHERRY L. McMILLAN, CHAIR
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KELLY G. KEENAN
THOMAS M. WARDROP

April 17, 2009

Mr. Gary Manns
Department of Corrections
Grandview Plaza Bldg
Lansing, MI 48933

Dear Mr. Manns:

This letter is in response to your letter of March 27, 2009, requesting approval of an expansion of the bona fide occupational qualification (BFOQ) based on sex for a number of additional positions in the Department of Corrections.

Civil Service staff has reviewed your request and the position descriptions attached to your request, and determined that it is appropriate that only female employees be assigned to regular work assignments in these positions that affect the privacy and security of female prisoners, including, but not limited to, observing showers, dressing, undressing, and use of toilet facilities, and conducting clothed body and unclothed strip searches.

Therefore, as provided in Civil Service Rule 1-8.4, I approve the BFOQ based on sex for the positions requested.

Sincerely,

A handwritten signature in black ink that reads "Jeremy S. Stephens".

Jeremy S. Stephens
State Personnel Director

Cc: Patricia Caruso, Director, MDOC
James Long, Attorney General
Pete Govorchin, Attorney General
Matt Fedorchuk, CSC

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al,

Plaintiffs,

Case No. 11-852-CD

-v-

HON. ARCHIE C. BROWN

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

_____ /

The Deposition of MILLICENT D. WARREN, taken
before Timothy J. Boroski, RPR/CSR-2378 and Notary Public in
and for the County of Clinton, State of Michigan, at the
Women's Huron Valley Correctional Facility, 3201 Bemis Road,
Ypsilanti, Michigan, on Tuesday, October 16, 2012, commencing
at or about 8:40 a.m.

APPEARANCES:

Law Office of Glen N. Lenhoff
BY: ROBERT D. KENT-BRYANT, ESQ., (P40806)
.328 South Saginaw-Street
8th Floor, North Building
Flint, Michigan 48502
810.235.5660

Co-Counsel appearing on behalf of plaintiffs,

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1 (Off the record from 9:03 to 9:05).
 2 MR. KENT-BRYANT: Back on the record.
 3 Q (BY MR. KENT-BRYANT) All right. Any other reasons, to
 4 your understanding, that – just to your understanding,
 5 that Huron Valley was changed to an all women's facility?
 6 A Right.
 7 Q And the understanding that you just relayed to me, from
 8 where did you obtain that understanding?
 9 A Just kind of like wardens' meetings where we would get
 10 updates on various things.
 11 Q Okay. Any minutes of meetings kept at those warden's
 12 meetings?
 13 A There is minutes kept. I wouldn't – I – I have no idea
 14 where they are. I would imagine the deputy director's
 15 secretary may have.
 16 Q How often do – well, how often at that time did wardens'
 17 meetings take place?
 18 A Usually twice a year. You just get updates as to where
 19 the department is going.
 20 Q And prior to Huron Women's Facility, or the Huron
 21 facility becoming all women, how long had that been
 22 discussed in wardens' meetings that you recall?
 23 A I don't recall.
 24 Q All right. Now, so prior to Huron Valley becoming an
 25 all women's facility, there – as you mentioned, there

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1 was a portion of it that was a women's facility, true?
 2 A Correct.
 3 Q All right. During that time, what positions, if any,
 4 were BFOQ-female only?
 5 A It was my understanding it was corrections officers whose
 6 responsibility was to conduct searches of prisoners. A
 7 female prisoner had to be searched by an officer of the
 8 same sex.
 9 Q All right. And what – well, let me ask you this. Let
 10 me back up, because I want to be as specific as possible.
 11 Prior to Huron Valley becoming an all women's
 12 facility, were any particular positions BFOQ?
 13 A Yes.
 14 Q All right. And so those positions that were BFOQ at that
 15 time would have had – each of them would have had a job
 16 description; true?
 17 A Yes.
 18 Q And now in the job description – well, strike that.
 19 And someone would have made application for
 20 those particular job positions to be BFOQ; true?
 21 A I don't understand when you say –
 22 Q Well, what is your understanding as to – back in that
 23 time period, how a position becomes designated BFOQ?
 24 A I was never part of that decision. I believe there was a
 25 position description that was developed by previous

Page 20

1 administrators of women's facility. I don't know when it
 2 was done, but it was done in conjunction with civil
 3 service, I believe.
 4 Q And so, for instance, when you look over as warden at
 5 Huron Valley – which is before it became all women's;
 6 right?
 7 A Yes.
 8 Q In the women's portion of the facility were intake
 9 officers. Was that position BFOQ?
 10 A There was no assignment intake officer that I recall at
 11 this – at Women's Huron Valley Correctional Facility.
 12 Q Was there segregation at Huron Valley Women's Facility?
 13 A No.
 14 Q Okay. And housing, in housing, was that a BFOQ-women
 15 only when you arrived?
 16 A Yes.
 17 Q Okay. So there were no intake officers, there were no
 18 segregation officers when you first arrived in the
 19 women's portion?
 20 A Correct.
 21 Q But there were housing officers?
 22 A Yes.
 23 Q And the housing officers were BFOQ-women only; true?
 24 A Yes.
 25 Q Any other positions when you first arrived that you know

Page 21

1 of that were BFOQ-women only?
 2 A I can't specifically say. My focus was on maintaining
 3 what the previous warden had put in place in
 4 transitioning to this new facility. That was to be a
 5 transition to in 2009.
 6 Q All right. So when you say – again, I'm pretty
 7 persnickety about the record.
 8 A Yes.
 9 Q When you say that you can't say what other positions
 10 besides housing were BFOQ-women only, what you're saying
 11 is that, as you sit here, you don't know; true?
 12 A Correct.
 13 Q All right. Now, do you know whether the position
 14 descriptions as they existed before Huron Valley became
 15 an all women's facility, do you know if those position
 16 descriptions still exist?
 17 A I would assume so. I believe they do. They are a civil
 18 service position. So there has to be some – something
 19 somewhere.
 20 Q All right. When you first arrived at Huron Valley, in
 21 the women's facility, if you know, how many overall
 22 employees were there?
 23 A I don't know the number.
 24 Q Do you have an approximation?
 25 A No, I really don't.

(Pages 18 to 21)

Page 22

1 Q Do you know what percentage of the officers that were
 2 working in the women's facility before Huron Valley
 3 became all women, what percentage were males and what
 4 percentage were females?
 5 A No, I do not.
 6 Q Do you have even any approximation of that?
 7 A No.
 8 Q Okay. All right. Then -- I mean, and we have, I'm not
 9 going to ask you about them yet, but we have a number of
 10 position descriptions. For instance, my first one here
 11 is of food service officer. And we have others. We have
 12 yard control officer, et cetera. Do you know when these
 13 position descriptions were developed?
 14 A No, I do not.
 15 Q Okay. Now, there is position descriptions -- there is
 16 gym officer, there is electronic monitor officer. You
 17 know, and all of these are for the Huron Valley
 18 Correctional Complex. Rover officer, et cetera.
 19 Did you play a role, any role at any point in
 20 developing these position descriptions?
 21 A Not that I recall.
 22 Q Do you know who did develop -- or does it depend on the
 23 position? Because we'll later be going through them one
 24 by one.
 25 A Generally, a position description is developed by the

Page 23

1 director over that -- or manager over that assignment.
 2 For example, if it was in a housing units, the housing
 3 unit supervisor -- it may have been an assistant resident
 4 unit supervisor, a resident unit supervisor. At the
 5 time, there were assistant deputy wardens and there were
 6 deputy wardens. I was not warden at the women's facility
 7 when those were developed.
 8 Q All right. Well, was there, to your knowledge, a change
 9 in any of Huron Valley's position descriptions when it
 10 became an all female facility?
 11 A Could well have. Simply because, my understanding, I'm
 12 not an HR expert, but whenever you fill a position, you
 13 must have an updated position description. So those were
 14 routinely done by human resources in conjunction with the
 15 hiring manager.
 16 Q Okay. Because this is important and I want to go through
 17 this systematically, because I want to get as firm an
 18 idea as I can of who made these descriptions and who was
 19 involved in drafting these descriptions.
 20 So in May of 2009 -- I'm repeating myself, but
 21 I just want to get my footing here. In May of 2009,
 22 Huron Valley becomes an all female facility, true?
 23 A Correct.
 24 Q At that time, you mentioned that whenever there is a
 25 change in a position, the position description is

Page 24

1 updated; true?
 2 A Yes.
 3 Q All right. And as of May 2009 when it was changed to an
 4 all female facility, was that considered to be a point at
 5 which all the positions were being changed and the
 6 position descriptions required updating?
 7 A I don't recall any direct involvement of that. I recall
 8 direct involvement only in the position descriptions for
 9 the deputy warden positions.
 10 Q Okay. But my question is, you mentioned earlier that
 11 when there is a position -- someone new is in a position,
 12 is that what you meant by a position change?
 13 A Creation of a new position.
 14 Q Okay. Well, when this became an all female facility,
 15 were all the positions considered to be new positions?
 16 A No.
 17 Q Okay. What positions were considered to be new positions
 18 when this became an all female facility?
 19 A The deputy wardens.
 20 Q Okay. Any others?
 21 A We expanded. For example, you know, if we had five
 22 housing units and now we have 15 housing units, we hired
 23 that many more, or we accepted that many more people into
 24 that position. But that position description is, I don't
 25 want to say statewide, because if it's BFOQ, obviously,

Page 25

1 there is not a BFOQ assignment in regard to every
 2 correctional facility.
 3 Q Right.
 4 A There are, but it's not -- it's not in the same context
 5 of gender. There are BFOQ assignments at every
 6 correctional facility that relate to specific skills for
 7 that assignment is my understanding.
 8 So, for example, if you are weapons trained,
 9 that is a bonafide requirement for that assignment is to
 10 be trained in the weapon, or you can't have that
 11 assignment.
 12 Q Well, there is information in this case that when this
 13 became an all female, Huron Valley became an all female
 14 facility, that a number of job descriptions had a strip
 15 search requirement added to them.
 16 Do you recall that?
 17 A No.
 18 Q Are you denying that is true?
 19 A I don't have knowledge of it.
 20 Q All right. You have never had anyone bring to your
 21 attention or complain to you or anything of this sort
 22 that strip search requirements have been added to job
 23 descriptions?
 24 A (No response).
 25 Q Let's say in the last three or four years I'm talking

(Pages 22 to 25)

1 about since you've been here at Huron Valley.
 2 A Strip search requirements are a basic requirement of a
 3 correctional officer if directed to do so.
 4 Q Well –
 5 A And policy -- policy states it must be of the same
 6 gender.
 7 Q But there has been testimony in this case that the
 8 specific job descriptions, like food service officer, for
 9 instance, had a strip search requirement added to the job
 10 description in and around the time it became -- this
 11 facility became all female.
 12 Are you aware of that? Are you denying that it
 13 occurred? Are you affirming that occurred? Do you just
 14 not know?
 15 A I don't know.
 16 Q So now are you aware that when this facility, or since
 17 the time that this facility has become all female, that a
 18 number of positions have been BFOQ'd-female only?
 19 A I know when the staffing for the facility was created,
 20 there were distinctions as to what assignments must be
 21 BFOQ.
 22 Q Okay. Okay. Let's start there.
 23 A Okay.
 24 Q Okay. So this would have been actually before the
 25 facility became all female; true?

1 A Correct.
 2 Q All right. And then staffing decisions are made with
 3 regard to each position; true?
 4 A Staffing decisions are based on facility operations. Not
 5 each position. I'm not understanding you.
 6 Q Well, when I talk about position, I'm talking about -- I
 7 mean, maybe I'll -- maybe I'll mark one of these so we
 8 can at least use it as an example.
 9 A Yes, it would be helpful.
 10 (Exhibit Number 1 marked for identification by
 11 the reporter)
 12 Q (BY MR. KENT-BRYANT) He'll give you that copy.
 13 Okay. Showing you Exhibit 1, can you identify
 14 that document, please?
 15 A Yes, it's a Department of Corrections -- it's a Michigan
 16 Department of Civil Service Position Description.
 17 Q All right. And this is a position description for food
 18 service officer at Huron Valley Correctional Complex;
 19 true?
 20 A Correct.
 21 Q All right. And is this a position description that is in
 22 force right now?
 23 A (No response).
 24 Q And, of course, I'm asking you these questions. You're
 25 free, obviously, to review it

1 A I believe what you have given me as a position
 2 description is a composite. What that tells me is that
 3 this position description was developed by someone. It's
 4 not signed. I don't know who -- who developed it. But
 5 it is a general composite of the general assignments of
 6 the corrections officer classification working as a food
 7 service officer.
 8 Q Here at Huron Valley?
 9 A Yes.
 10 Q And it indicates that it's for all three shifts; right?
 11 A Yes.
 12 Q And the civil service classification is corrections
 13 officer E; true?
 14 A Correct.
 15 Q All right. And then it does say this is a gender based
 16 BFOQ position, designated for female officers working on
 17 the a.m., p.m., and midnight shifts; true?
 18 A Correct.
 19 Q All right. Now, first of all, do you know when this
 20 specific position description was developed?
 21 A No, I do not.
 22 Q Okay. Can you infer that it was developed after, or
 23 commensurate with, I guess you could say, with this
 24 becoming an all female facility?
 25 A There really is no way I can tell that from this

1 document. There was a Huron Valley Correctional
 2 Complex --
 3 Q Okay.
 4 A -- prior to it being Women's Huron Valley Correctional
 5 Facility. Since it's undated, this could have been in
 6 place before I was asked to come here.
 7 Q Are you aware that the food service officer position has
 8 been BFOQ-female only since you have been here?
 9 A Not directly.
 10 Q Indirectly? When you say not directly, what do you mean?
 11 A I was asked to come here. It was three facilities in
 12 one.
 13 Q Right.
 14 A We did not have food service.
 15 Q Right.
 16 A Okay. The food service officers worked over on this side
 17 of the facility, which was men's. That's where the
 18 kitchen existed. They had satellite kitchens, both in
 19 the camp and at the correctional facility for women.
 20 Q Okay.
 21 A When we began the transition, I was instructed to ensure
 22 I had female officers working in the food service
 23 building over here, because we had female prisoners at
 24 that time making the meals because we were moving the men
 25 out and the small cadre of men that were left were

(Pages 26 to 29)

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1 A No.

2 Q For food service officer?

3 A I can't tell you I developed that.

4 Q No, no, no. I'm -- forget what my hand was doing. You

5 developed the custodial assignment sheet for food service

6 officer, true?

7 MS. MILLER: Well, wait a minute. I think

8 there is some confusion. Because I don't think there

9 is -- the custodial assignment sheet is a facility-wide

10 sheet that lists all the positions.

11 MR. KENT-BRYANT: Right, okay.

12 MS. MILLER: So to say that there was a

13 custodial assignment sheet for food service I think is

14 inaccurate. The food service would be one thing on a

15 facility-wide custodial assignment sheet.

16 Q (BY MR. KENT-BRYANT) Is that accurate?

17 A That's accurate.

18 Q All right. So you were part of the decision to make food

19 service officer BFOQ female; true?

20 A Indirectly, yes.

21 Q All right. And when you say indirectly, what do you

22 mean?

23 A I don't make that final decision. I don't have the

24 authority.

25 Q Okay. But you were involved in that decision?

Page 44

1 A No.

2 Q You did not recommend it? What was your role in it

3 becoming BFOQ-female only?

4 A Discussion.

5 Q With whom?

6 A The deputy wardens.

7 Q Okay.

8 A The RPA and Deputy Director Straub.

9 Q All right. And describe for me then the process by which

10 it became BFOQ-female only, perhaps beginning with when

11 you first considered the issue.

12 A Could you repeat the question?

13 Q Sure. Maybe I'll just ask you this:

14 When did the issue of whether food service

15 officers should be BFOQ-female only first become

16 presented to you? When did you first deal with that

17 issue?

18 A I don't recall specifically speaking on any assignment by

19 title in that context. What we discussed was --

20 Q And when you're talking about "we", you're talking about

21 whom?

22 A The group I have described.

23 Q Okay.

24 A The deputies, the RPA --

25 Q Okay.

Page 43

1 A Yes.

2 Q Who else was involved in that decision?

3 A It was approved by Deputy Director Straub.

4 Q Anybody else involved in this decision?

5 A I'm sure it was reviewed by Bruce Curtis.

6 Q All right. And did you consult with anyone for whom --

7 or who work for you? I mean, anybody else at the

8 facility.

9 A Deputies.

10 Q Which deputies?

11 A At the time, I had Lucille Evans, Carol Vallie, V-A-L-L, I

12 think it was I-E. And I believe Mary Jo Pass, it's two

13 words, Mary Jo, J-O, Pass, P-A-S-S.

14 Q What was Carol's position?

15 A Deputy warden.

16 Q Here at Huron Valley?

17 A Correct.

18 Q And Mary Jo Pass?

19 A Deputy warden.

20 Q Okay. All right. And Lucille Evans was deputy warden,

21 too?

22 A Correct.

23 Q All right. What was your basis for -- well, strike that.

24 You recommended that the food service officer

25 position be BFOQ-female only; true?

Page 45

1 A -- the deputy director.

2 Q Okay. So what --

3 A Was the essential assignment of that job for a

4 corrections officer would require them to do a search of

5 a female prisoner any time they were on that assignment.

6 Q All right. So this is -- so the group, did the group

7 that you describe, did you meet as a whole, or were these

8 a series of conversations? I mean, when you say the

9 group, did you have meetings regarding these positions?

10 A There were meetings. There were individual

11 conversations.

12 Q Okay. Were there ever times where the whole group met?

13 A With others.

14 Q Such as...?

15 A The decision to make this a -- one large female facility

16 was made prior to my being asked to come here.

17 Q Understood.

18 A And because of what their plan was, they had --

19 Q They being Curtis and Straub?

20 A -- they, as in the Department of Corrections Field

21 Operations, developed groups of persons to transition

22 this operation.

23 Q Huron Valley you're talking about?

24 A Correct.

25 Q Okay. So there were -- see, the thing is, I can't depose

(Pages 42 to 45)

1 A That is determined upon authoring and creating the post
 2 order assignment sheet. There is a post order for every
 3 custodial assignment.
 4 Q All right. And that's the book you're talking about;
 5 right?
 6 A It's part of the book.
 7 Q All right. But no where in the book, as far as you know,
 8 does the book say that a position, say explicitly, that a
 9 position is going to be BFOQ-female only; true?
 10 A True.
 11 Q All right. So that book goes to someone who looks at the
 12 book -- someone or someone's -- who looks at the book and
 13 determines that it's going to be BFOQ-female only; true?
 14 A I'm sorry, apparently, I'm not clear. When you develop
 15 it, if the job requirement says that you must do a search
 16 of a prisoner on that assignment, it must be BFOQ.
 17 Q Right. I understand that.
 18 A That's a given. I mean, that's not a -- it doesn't --
 19 it's -- so if that's in the assignment, then --
 20 Q Okay. Well, who specifically looks at the book and says,
 21 "Hey, this has a search requirement. Therefore, it's
 22 BFOQ-female only?"
 23 A It's done at the time of development.
 24 Q And who is that?
 25 A It's generally written by a deputy. And I don't know if

1 search requirement, or a -- or if the assignment will
 2 require seeing women in a state of undress, then it is
 3 declared BFOQ-female only at the facility?
 4 A Yes.
 5 Q All right. And you mentioned an involvement of Straub of
 6 Curtis. Where do they come in?
 7 A Going back initially, developing the whole custodial
 8 assignment sheet, has the title. And in order to
 9 determine appropriate staffing levels, those that are
 10 BFOQ only were identified for budget reasons to ensure
 11 that we hire the proper number of each gender for that
 12 assignment.
 13 If the assignment is non-BFOQ, it's whatever
 14 gender. There is no special qualifications for that
 15 assignment. If it's BFOQ identified, we can only hire a
 16 female for that assignment.
 17 Q Okay.
 18 A And so that whole sheet comes together, which is -- does
 19 a calculation of how many staff we go to the
 20 appropriations and ask for money to fund this facility,
 21 part of which have to be female only. And it's used for
 22 a lot of various reasons.
 23 Q You mentioned earlier that Straub and Curtis approve the
 24 BFOQ-female only designations. Did I recall that
 25 correctly?

1 I sign them any longer. We used to have to sign them
 2 annually as a warden.
 3 Q Okay. So that's done within the facility?
 4 A Yes.
 5 Q All right. And it sounds like the process is you, or one
 6 of the deputies, gets this book, or both. And if it has
 7 a search requirement, then it's BFOQ-female only; true?
 8 A I think there is more that goes into it. There also is
 9 if you would be in a position to view a female in a state
 10 of undress.
 11 Q Okay. Anything else?
 12 A Strip search. But that's part of the search process.
 13 Q Anything else?
 14 A I don't believe so.
 15 Q Okay. So, you know, and I apologize for continually
 16 abusing this dead horse, but I just want to make sure
 17 we're as specific as possible and that I'm understanding.
 18 So from these work groups, you get these books,
 19 which include post order assignments. Those are things
 20 you receive at the facility. And with regard to each
 21 post order assignment, you and/or the deputy wardens or
 22 supervisors review the books. One of the things you're
 23 reviewing the books for is to determine whether a
 24 specific position has to be BFOQ only.
 25 If, in looking at the assignment, there is a

1 A Yes.
 2 Q Is that the stage at which they approve it?
 3 A They approve the overall -- the overall staffing.
 4 Q All right.
 5 A Okay. So we would -- typically, before one was sent in
 6 for final approval, because the authority falls with the
 7 deputy director, you would sit down and -- how can I say
 8 this? I can't use an example here, because I have not
 9 had to be in that position here. When I was a warden in
 10 a men's facility, I would have to sit down and justify
 11 why I needed another officer in the back of food service,
 12 for example.
 13 Q Right.
 14 A So when it goes up there and he's making that decision on
 15 the big pot of money, he goes, "Well, I really have to
 16 approve that for Warden Warren at the Thumb, because it's
 17 a safety issue, they really need that assignment there."
 18 So you have a meeting with them to discuss your
 19 proposed staffing. And with the women, at the women's
 20 facility, the issue of BFOQ is on the table. So that the
 21 conversation says, "Is that assignment a BFOQ?"
 22 The question is answered.
 23 "Is there a requirement to do searches on that
 24 assignment?
 25 "Yes."

(Pages 50 to 53)

1 she advocated all the staff at Huron Valley being female
 2 only. And this would have been before the facility
 3 transferred over to female inmates only, true, this
 4 conversation?
 5 A I don't know when the conversation took place.
 6 Q Can you put it in a year, like 2009, 2010, '11?
 7 A Oh, certainly, it would have been in 2009 or prior.
 8 Q Okay. And did either Curtis or Straub give their
 9 reaction to Caruso's comment?
 10 A I believe they had the same, I don't want to say opinion,
 11 but they agreed.
 12 Q With Caruso?
 13 A No, with -- I'm characterizing. I don't want to
 14 characterize somebody. But with the more reasonable
 15 resolution.
 16 Q All right. And that would have been the -- this
 17 compromise with yard assignment, construction,
 18 transportation, control center, information desk, bubble,
 19 did they agree with that compromise?
 20 A Yes.
 21 Q Okay. So, again, just to make sure I understand the
 22 process, you would have received these books that you
 23 describe from the working groups, if they described a
 24 position where someone would be in a state of -- a female
 25 prisoner would be in a state of undress, or there would

1 You came in with a custodial assignment sheet.
 2 Was that modified in any way as a result of your meetings
 3 with Curtis and Straub?
 4 A Multiple times. It's a draft. It's a working draft.
 5 And it doesn't become legal or -- until it's signed by
 6 the deputy director and that becomes your document.
 7 Q Was it modified at all with regard to BFOQ positions?
 8 A The final approved draft?
 9 Q Yeah. Did the final approved draft differ at all from
 10 your initial submission as it pertains to BFOQ-female
 11 only positions at Huron Valley?
 12 A Yes.
 13 Q Okay. What were the differences?
 14 A For example, I'm going to -- please don't say I'm not
 15 telling the truth if I don't have the number right, but I
 16 believe there were six officers on the yard, as a yard
 17 assignment. Initially, they were identified as all BFOQ.
 18 Q Okay. So you had initially identified them as BFOQ?
 19 A They were identified because this -- not me.
 20 Q This facility?
 21 A Yes.
 22 Q All right.
 23 A Because the essential assignment required, if you're on
 24 the yard, if I saw you as a prisoner put something on
 25 your person or hide contraband, the officer would have to

1 be a search requirement, then you would have designated
 2 those positions BFOQ-female only.
 3 So you had a meeting with Straub and Curtis, or
 4 maybe more than one meeting, to discuss approval of this
 5 custodial assignment sheet that you developed. And at
 6 one of these meetings, they mentioned Caruso's comments.
 7 And then you mentioned a compromise was reached
 8 that included assignments such as yard assignment,
 9 construction, transportation, control center, info desk
 10 and bubble, as non-BFOQ positions here at Huron Valley;
 11 correct?
 12 A That they could be --
 13 Q They could be?
 14 A -- BFOQ or non-BFOQ.
 15 Q They could be either one?
 16 A With the caveat that there was a -- the ability to have a
 17 custodial officer to provide the essential service of a
 18 shake if it was required.
 19 Q Okay. So do I interpret that correctly that there would
 20 have to be at least a female available to perform a
 21 shake? But if there were a female-available, then the
 22 second officer could be male; is that what you're saying?
 23 A Yes.
 24 Q All right. Now, the -- this compromise, was that any --
 25 well, let me ask you this:

1 do a search.
 2 The compromise was, if we have six officers,
 3 and we use staff efficiently, three of which could be
 4 female and called upon to do a search if a search was
 5 called for. And would do so, so that there was not any
 6 allegation that a male fondled, grabbed, sexually
 7 assaulted, whatever, the female. And that is in -- just
 8 right out in the open you can't put your hands on them.
 9 The same thing on a transportation assignment.
 10 If there are two officers transporting --
 11 Q But make sure -- just for organizational purposes, the
 12 question I have on the table is what changes were made
 13 so that -- from your original submission of the custodial
 14 assignment tree assignments, the draft, to the final
 15 draft, what changed? And you mentioned yard. What --
 16 A So if it were six assignments, we did three BFOQ, three
 17 non-BFOQ.
 18 Q For the yard?
 19 A For the yard.
 20 Q Okay. What else?
 21 A Transportation, the same thing. Whatever the whole
 22 number was, we split it in half.
 23 Q Okay. What else?
 24 A The assignment I talked about with the bubble, gate --
 25 Q Okay.

1 A -- and information desk.
 2 Q Were changed from all BFOQ to half and half?
 3 A They were established as half and half.
 4 Q Okay. But just to be clear, in your initial draft you
 5 had them BFOQ-female only?
 6 A I can't say for sure.
 7 Q You're not sure?
 8 A (No audible response).
 9 Q That's fair.
 10 A It is not a document until it is done.
 11 Q I understand.
 12 A So, in the final, it was agreed that my gate officer who
 13 primarily shakes people down could be a man.
 14 Q Right. I really understand.
 15 A But if I have a female visitor come in, someone from the
 16 bubble who is a female could come out, relieve them, the
 17 male could go in the bubble and could perform that
 18 search.
 19 Q All right. I want to know, insofar as you recall, how it
 20 changed from your original proposal. I'm not saying it's
 21 unusual that these changed, but just how it changed from
 22 your original proposal to the final draft. Was yard
 23 initially all BFOQ-female only?
 24 A Yes.
 25 Q And then that changed to half and half, true?

1 A The bubble --
 2 Q Bubble, gate and information?
 3 A -- the gate and the information desk. It was a given
 4 that one of those three at all times must be a female.
 5 Q All right. Okay. Other than -- well, strike that.
 6 In your initial draft of the custodial
 7 assignment, were there any non-BFOQ positions?
 8 A Yes.
 9 Q Okay. What was non-BFOQ?
 10 A We called it a perimeter vehicle.
 11 Q Okay.
 12 A Actually, it was called perimeter security vehicle.
 13 Q Anything else?
 14 A The gun tower, the sally port.
 15 Q Okay.
 16 A Can I look at this? -----
 17 Q Sure. Do you mind if I sneak behind you and get a little
 18 refill?
 19 A (Examining document). The visiting room, information
 20 desk.
 21 Q Okay. Hold on.
 22 A Bubble, rover.
 23 Q Was non-BFOQ?
 24 A Was not distinguished as BFOQ only.
 25 Q All right.

1 A Yes.
 2 Q Was transportation originally all female --
 3 A Yes.
 4 Q -- or all BFOQ-female?
 5 A Yes.
 6 Q And then that changed to half and half?
 7 A Yes.
 8 Q Was the bubble originally all female BFOQ?
 9 A I think the gate was.
 10 Q Okay. Not sure about the bubble?
 11 A Yeah.
 12 Q Correct?
 13 A Yes. Correct.
 14 Q All right. And the gate was initially all BFOQ-female
 15 and then changed to half and half? Or at least someone
 16 being available?
 17 A Correct.
 18 Q All right. And then the information desk, was that
 19 originally BFOQ-female only?
 20 A Was not identified either way.
 21 Q All right. All right. And then it ended up being half
 22 and half?
 23 A It's a little bit of a mischaracterization. If I could,
 24 those three assignments work together.
 25 Q Which three?

1 A I believe that may be all.
 2 Q All right. And if something is not distinguished as BFOQ
 3 only, then the assumption is that it's not BFOQ; true?
 4 A Correct.
 5 Q All right. So here at Huron Valley the food service
 6 officer works where?
 7 A It's called the food service building.
 8 Q Right. And some of this may seem obvious, but what is
 9 done at the food service building?
 10 MS. MILLER: Can I just -- are you going to go
 11 into specific positions at this point?
 12 MR. KENT-BRYANT: You know, only this one.
 13 MS. MILLER: Okay. Can we take a quick break?
 14 (Off the record from 10:35 to 10:44).
 15 MR. KENT-BRYANT: Back on the record.
 16 Q (BY MR. KENT-BRYANT) What is done at the food service
 17 building?
 18 A The purpose of the building is to receive, store, prepare
 19 and serve food to prisoners and staff.
 20 Q All right. And food is served there how often; all three
 21 meals, or --
 22 A Three times a day.
 23 Q And I take it the, maybe I'm wrong, does the whole prison
 24 eat at the same time?
 25 A No.

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1 A They go on for long periods of time.
 2 Q Almost constantly.
 3 A It seems like it's all day.
 4 Q By the time you're done with breakfast, it's time for
 5 lunch?
 6 A Yeah, they start prepping. You know, we have a time
 7 where we do count and those kinds of things. It is --
 8 you know, there are down times. But there is
 9 specifically a meal, a meal and a meal. So the activity
 10 results --
 11 Q All right.
 12 A -- around -- it may take a couple hours to have that
 13 accomplished. Because we do it custody level.
 14 Q All right. And there are typically two food service
 15 officers. Those are -- those positions are BFOQ-female
 16 only? --
 17 A I believe so.
 18 Q All right. And the reason that they are BFOQ-female only
 19 is what?
 20 A Two. One is the strips -- the search requirement. And,
 21 secondly, there are bathrooms there where women go. And
 22 it may require a female officer to go in the area to
 23 ensure there is one prisoner in each stall instead of
 24 multiple.
 25 Q Okay. Any other reasons?

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1 A Food service is an assignment, historically, that incurs
 2 a lot of theft. Primarily, of food stuff, food products,
 3 but also of tools.
 4 It's probably our biggest critical tool
 5 assignment we have at a facility inside the secure
 6 perimeter. Because we have knives and cutting tools and
 7 those kinds of things.
 8 So searches are critical in that area to ensure
 9 prisoners do not remove those items. We have counts of
 10 those items.
 11 And also food stuffs. It's not uncommon for a
 12 prisoner to be searched and found to be in possession of
 13 a quantity of cheese or meat. Usual not -- usually not
 14 the healthy stuff, but those kinds of products they will
 15 secure on their persons to take back out of there.
 16 Q Okay. Now, with regard to the searches -- or, actually,
 17 that can be broken down in at least two ways. There are
 18 patdowns and there are strip searches; true?
 19 A Yes.
 20 Q All right. Now, when you're talking about search
 21 requirements with regard to food service, are you talking
 22 about patdowns, strip searches or both?
 23 A Could be both.
 24 Q Okay. All right. With regard to strip searches, let's
 25 talk about that. I understand what you said before about

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1 why there might not need to be searches. It just seems
 2 that applies more to patdowns than strip searches or do
 3 you disagree?
 4 A I'm sorry?
 5 Q With regard to food service, it sounded like what you
 6 told me would apply more to an increased need for
 7 patdowns rather than an increased need for strip searches
 8 over other parts of the facility; do you agree with that
 9 or disagree?
 10 A Neither. I believe the assignment has potential for a
 11 request for strip search, which always starts, generally,
 12 with a pat search.
 13 Q Okay.
 14 A If there is a suspicion that a particular prisoner has
 15 contraband.
 16 Q Okay.
 17 A And so a pat search is done within the authority and
 18 decision making of each individual corrections officer.
 19 If they don't find anything on a pat search, they may
 20 call for authorization for a strip search, because they
 21 have a strong sense through their observation skills that
 22 this prisoner may have secreted contraband.
 23 Q All right. Let's talk about -- so someone makes a
 24 request for authorization for a strip search at Huron
 25 Valley. So you just have a food service officer do it.

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1 Let's just use this hypothetical. Who do they call?
 2 A A supervisor, which would -- sergeant could be. Could be
 3 a lieutenant. When meal lines are running --
 4 Q Okay. Well, that okay. With -- that answered my
 5 question.
 6 A Okay.
 7 Q Now, on this facility, is there not a specific strip
 8 search room or place on the facility where strip searches
 9 are typically performed?
 10 A Preferably, there are strip searches performed in
 11 identified areas.
 12 Q Okay. And on this facility, what are the identified
 13 areas?
 14 A There is an area on each side of the facility in the
 15 administration building. It is adjacent to the visiting
 16 room.
 17 Q Okay.
 18 A And strip searches are performed on every prisoner who
 19 has contact with someone from the outside --
 20 Q Right.
 21 A -- In a visit. Or if they are removed from the facility
 22 under custodial assignment and they have any potential
 23 contact with the public. That would be going to court,
 24 going to the hospital; any public contact.
 25 Q So someone -- you have got -- there is lunchtime and a

(Pages 70 to 73)

1 pat-down is performed of one of the prisoners, but based
 2 on the observational skills of the correction officer,
 3 there is a need to perform a strip search.
 4 He calls in for authorization from a
 5 supervisor. The supervisor gives the authorization.
 6 Typically, that prisoner would be taken to one of the
 7 designated strip search areas; true?
 8 A Yes.
 9 Q All right.
 10 A Or segregation. You stopped me. That would be another
 11 area that a strip search is routinely done.
 12 Q All right. And then there is on duty, typically, an
 13 officer who performs the strip search; true? It's not
 14 usually the food service officer or somebody – or just a
 15 typical corrections officer; true?
 16 A No.
 17 Q That's not true? Is there someone that usually performs
 18 the strip search at the facility?
 19 A Any officer, who is a female, could be designated by a
 20 supervisor to perform a strip search on a prisoner.
 21 Q Who usually performs, what position usually performs
 22 strip search as a matter of practice?
 23 A Any female corrections officer.
 24 Q So it's your contention that there aren't specific – I'm
 25 not saying what's in their job description. I'm saying

1 They have been done in food service.
 2 They are daily done – pat searches are daily
 3 done in food service. Where, again, it requires a female
 4 to touch the body, clothed body, of a prisoner before
 5 they leave the assignment. That must be done by a
 6 female.
 7 Q With regard to the – but so I'm clear. If a strip
 8 search – if it's determined by a food service officer
 9 that a strip search is required, the prisoner will
 10 usually be taken to a designated area; true?
 11 A Yes. Unless approval is given for it to be conducted on
 12 site.
 13 Q Now, since you have been warden – first of all, have
 14 there been any strip searches that have emanated from
 15 food service? In other words, has anyone – has any food
 16 service officer ever requested a strip search?
 17 A Yes.
 18 Q All right. How many times has that happened to you?
 19 A I don't know.
 20 Q Do you know whether there would be a record of that, and
 21 if so, where it would be?
 22 A There would be records. The reason we assign them
 23 generally in a particular area, a room designated to do
 24 strip searches, is that you need a proper room –
 25 Q I understand that. But stay on this topic for a second,

1 who actually, on a day-to-day basis, usually does it?
 2 It's your contention that there is not any distinction
 3 between the different positions?
 4 A I'm trying to answer this very honestly for you.
 5 Q Um-hum.
 6 A If a need for a strip search is – occurs –
 7 Q Right.
 8 A – and you happen to be assigned in a housing unit, and
 9 you're coming back from lunch, the shift commander can
 10 say officer so and so, female, go and strip search this
 11 prisoner right now.
 12 So depending on the circumstance, yes. On a
 13 routine basis, if you work in segregation, every prisoner
 14 who comes into segregation is strip searched. So you may
 15 do some more often if your "normal" assignment is in
 16 segregation as a female officer.
 17 Q Right.
 18 A The same would hold true for a visit. If you are working
 19 in a visiting room, you could be a male or a female.
 20 However, the female officer that is designated to work in
 21 the visiting room that day is the one that performs the
 22 strip search after the visit.
 23 I don't want to mislead you that, you know, if
 24 you're a female and a need for a strip search is done and
 25 you're a corrections officer, you could be assigned that.

1 though. I have limited mental capacity. So if we have
 2 got two going on at the same time, I'm not – I tend to
 3 lose my train of thought.
 4 So the records for whether a strip search
 5 emanated from food service, where would that be found?
 6 A It should be found in the strip search log that is
 7 maintained on the west side of the facility in the
 8 control center.
 9 Q Okay. Now, you're not sure how many strip searches since
 10 you've been here have emanated from food service; right?
 11 A No.
 12 Q Now, do you know whether those strip searches have been
 13 performed at the designated area versus right there in
 14 food service?
 15 A Yes, I know.
 16 Q Okay. And what is the answer?
 17 A Both.
 18 Q How many have been performed in food service?
 19 A I don't know.
 20 Q Do you know what the circumstances of that were – or of
 21 those were?
 22 A I know of one particular incident.
 23 Q Okay. Tell me about it.
 24 A An officer, I don't recall if the supervisor was –
 25 authorized it, decided it was important to do a strip

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1 A Yes.

2 Q And that would be even in housing, true?

3 A Yes.

4 Q And I just want to make sure, it's been awhile since the

5 first day of your deposition. This facility does not

6 include intake, true?

7 A Yes, it does.

8 Q Oh, it does include intake. All right. It doesn't

9 include segregation?

10 A Yes, it does.

11 Q Oh, it does. All right.

12 A We have everything.

13 Q Okay. Intake and segregation are BFOQ positions, true?

14 A Yes.

15 Q All right. Looking at Exhibit 4, first of all, do you

16 know who drafted that document? Or Exhibit 5, I'm sorry.

17 Looking at Exhibit 5, do you know who drafted that?

18 A No, I do not.

19 Q Take a look at it. Is it accurate? Is there anything

20 there that is inaccurate?

21 MS. GROSSI: Are you asking, is it accurate as

22 of today?

23 MR. KENT-BRYANT: Sure.

24 THE WITNESS: (Examining document). I tried to

25 quickly scan it. But, no, I do not believe it's

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1 accurate.

2 Q (BY MR. KENT-BRYANT) In what respect is it not accurate?

3 A Should I go page by page?

4 Q Just however is easiest to point out the inaccuracies.

5 A Okay. Yard control officer is not exclusively a BFOQ

6 designated position. In other words, there should be an

7 assignment that mirrors this for men as well as for

8 women.

9 Q Okay.

10 A So if I'm looking at specifically for BFOQ, and there is

11 not a counter one, then I would say it doesn't cover all

12 yard assignments.

13 Q Okay.

14 A All right. Specifically, if it's for female yard

15 officers, there are some things that don't necessarily

16 happen every day, but they could be related. But this is

17 not -- it does not cover anything for people who are not

18 qualified for BFOQ. In other words, we have yard control

19 officers who are non-BFOQ and yard control officers who

20 are BFOQ.

21 Q Okay. All right. We'll talk about that in a moment.

22 What other inaccuracies, if any, do you see in there?

23 A Okay. If this is just for a BFOQ assignment?

24 Q Sure.

25 A Okay. Because it's two distinctions. I want to make

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1 that clear --

2 Q All right.

3 A -- that we have some that are BFOQ and some that are not.

4 Q Right. I understand.

5 A Okay. So if it's just BFOQ, the observes prisoners

6 activities on Page 6, including changing of clothes.

7 That may happen. I think 10 percent of the

8 time is pretty generous. The only time I would expect a

9 yard control officer to be in the housing unit performing

10 that task would be if they were relieving an officer who

11 is assigned to the housing unit for some particular

12 reason.

13 Q Okay.

14 A All right. So on a daily basis, 10 percent seems a

15 little bit high to me.

16 Q So, in other words -- can I trade this back and forth

17 with you a little bit?

18 A Yes.

19 Q So one of the individual tasks related to duty is

20 "observes prisoner activities, including the changing of

21 clothes." First of all, you're saying that that is

22 something that happens infrequently, true?

23 A Yes.

24 Q And for a yard control officer, under what circumstance

25 would that occur?

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1 A If for some reason the shift commander assigns a yard

2 control officer to relieve a housing unit officer, then I

3 could see that being a part of their function. But under

4 duty Number 4, for this particular assignment --

5 Q Oh, you've got a copy?

6 A Yes.

7 Q Okay, very good.

8 A -- the individual tasks are more mirroring a housing unit

9 officer's assignment more than a yard.

10 Now, yes, they do ensure prisoners shower and

11 maintain appropriate appearance. If I'm a yard officer

12 and I see a regular -- on a daily basis, Prisoner Warren,

13 and Prisoner Warren has an unkempt appearance, or is

14 starting to smell, I'm going to say, you know, when was

15 the last time you took a shower? You know, how are you

16 feeling? One of those kinds of things. So, yes, they

17 may observe that kind of state of poor hygiene.

18 As far as the changing of the clothes, the

19 toilet, keeping linens and clothing thoroughly clean,

20 they might see their clothes are dirty when they are in

21 the yard. But they wouldn't necessarily see that their

22 linens are.

23 Yes, if they have a porter assigned to them for

24 some reason on the yard -- which generally doesn't

25 happen, there are usually yard control officers will

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1 monitor ground maintenance people -- but they would
 2 ensure the porters are responsible for doing their job.
 3 And if they had an area that they were responsible for
 4 then, yes. If they were responsible for the yard shack,
 5 for example, they would be responsible for making sure
 6 that that is clean and it falls under that task.
 7 But most of these tasks are related to a
 8 housing unit assignment as opposed to a yard assignment.
 9 Q What is a yard check?
 10 A Yard shack, I'm sorry.
 11 Q Oh, yard shack?
 12 A Yeah.
 13 Q What is that?
 14 A It is best described as like a bus station.
 15 Q Okay.
 16 A A square kind of building that people can go into to get
 17 out of the elements. They have windows all around in
 18 ours. There probably is a chair in there. But there is
 19 no phone or anything else to that. It's just to allow
 20 you to observe the yard under inclement weather.
 21 Q With some shelter?
 22 A Yes.
 23 Q So in terms of yard control officers, unless they are
 24 called upon to relieve another officer in a housing unit,
 25 for instance, there is no need for them to see female

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1 prisoners in a state of undress, true?
 2 A Correct.
 3 Q All right. So the BFOQ designation here is not
 4 necessarily inaccurate, but there are also yard control
 5 officer positions that are not BFOQ? Is that what you're
 6 saying?
 7 A Yes.
 8 Q And what is the split in terms of assignment?
 9 A It's half.
 10 Q Okay. And why is it half and half?
 11 A When I was first asked my opinion by CFA
 12 administration --
 13 Q And CFA stands for...?
 14 A Correctional facilities administration --
 15 Q Correctional facilities administration, okay. I gotcha.
 16 Go ahead.
 17 A The staffing chart that I was authorized for the facility
 18 had them all BFOQ as indicated in this.
 19 Q All right. And this is something you have referenced
 20 before I believe --
 21 A Yes.
 22 Q -- with Straub and Curtis; is that correct?
 23 A Yes.
 24 Q All right.
 25 A And I advocated too that the concern for providing a

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1 search in the times a search would have to be done for a
 2 prisoner on the yard, that if a male officer observed a
 3 situation in which it would require a search, they had
 4 the ability to call a female partner, for lack of a
 5 better term, to come over and conduct that search so that
 6 it was not essential to limit the yard control officers
 7 to only BFOQ assignments.
 8 Q Now, the yard control officers have the responsibility to
 9 perform, or assist in performing five pat-downs a day, is
 10 that true?
 11 A Yes. But the caveat says that they're exempt from that
 12 if they are male. There is no other best way for me to
 13 say that. Men are exempt from that.
 14 Q Is that documented?
 15 A I believe so. I can't tell you exactly where.
 16 Q And while we're talking about documents, you also
 17 mentioned earlier, or we were talking about overtime
 18 assignments. If we wanted to look over the last year or
 19 two to determine overtime assignments and who has
 20 received overtime assignments, what would we look for?
 21 Or, I mean, what would we order?
 22 A Could you say that again?
 23 Q Yes, sure. I would like to determine the total amount of
 24 overtime that has been assigned particularly since this
 25 has become a female only facility, and the individuals to

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1 whom it has been assigned.
 2 What records would we look for to determine
 3 those issues?
 4 A Well, we track overtime by hours. I really would have to
 5 refer to the collective bargaining agreement how long we
 6 keep what is called overtime equalization lists.
 7 Q Okay.
 8 A There is a retention period, I'm sure, that would list
 9 names. I am not aware of the ability to track with any
 10 document overtime based on gender.
 11 Q Unless we -- now, just with people's names, do they have
 12 full names or --
 13 A I honestly don't manage that. I know there is a process.
 14 I don't know if they use initials or full names.
 15 Q Okay. But it's called an overtime equalization list?
 16 A Yes.
 17 Q All right. So you went to -- you mentioned with regard
 18 to Duty 4 that, on Exhibit 5, that there were a number of
 19 these that applied more to housing than to the yard
 20 control officer.
 21 Any other, what you consider, inaccuracies in
 22 Exhibit 5?
 23 A On Page 7 of that exhibit, under tasks related to general
 24 summary duty Number 5, it talks about assistance
 25 supervising urine drops. I'm not sure if that's 10

(Pages 115 to 118)

<p>Page 123</p> <p>1 But if they do not, short of that waiver, a male officer 2 has to perform the search of a male visitor, a male staff 3 member on the assignment. 4 Q Okay. 5 A So, you know – 6 Q What you're talking about, though – now, working – 7 A These duties are performed by men when it relates to a 8 male staff volunteer or prisoner. 9 Q All right. The gate control officer position, however, 10 is distinct from the bubble position and the information 11 desk position; is that true? 12 A Yes. 13 Q All right. And a gate control officer is a BFOQ 14 position, true? 15 A Yes. 16 Q Do you know who drafted that position description? 17 A No. 18 Q All right. Do you know when that position was declared 19 BFOQ? 20 A No. 21 Q Do you know who was involved in the decision to make that 22 a BFOQ position? 23 A Honestly, no. I – I believed it to be longstanding. 24 Q Now, why is the gate control officer position a BFOQ 25 position?</p>	<p>Page 125</p> <p>1 A That would probably be their primary duty. 2 Q Are you aware of specific occasions when the gate 3 officer, or the gate control officer, has performed a 4 strip search? 5 A I don't know particularly, no. 6 Q Now, the gate control officer has that five pat-down 7 requirement; is that true? 8 A They have other requirements, because they do searching 9 of staff. So there is additional requirements that they 10 must do and – 11 Q All right. Do they have the five pat-down requirement, 12 the requirement to pat-down five female prisoners? 13 A They would do that if there were five prisoners who would 14 be traversing the gates. The gate is not an area where 15 prisoners traverse without clear authorization. 16 Q Okay. 17 A So if I have two prisoners that are allowed to traverse 18 the gate that day that are prisoners, then they could not 19 possibly pat-down five. 20 Q All right. So is that requirement in general waived for 21 that position? 22 A I don't think there is an official waiver, because 23 normally there are that many prisoners. We have changed 24 some of our practices. So, for example, we don't have 25 visits seven days a week any longer. So there are two</p>
<p>Page 124</p> <p>1 A Well, in particular here because of the female prisoner 2 issue and the prisoners – it's a potential for having 3 your hands put on a prisoner, a female prisoner, to 4 perform various types of searches. 5 Q What types of searches? 6 A Strip searches, clothed body searches, pat-down. 7 Q Is it typically the gate officer who performs the strip 8 search of female prisoners who are receiving visitors? 9 A That would vary based on the availability of other staff. 10 Q So not always? 11 A Correct. 12 Q When would the gate officer be called upon to perform a 13 strip search? 14 A If there wasn't a staff member available. 15 Q When is there not a staff member available? 16 A There could be a variety of situations. The supervisor 17 has determined that the "shakedown officer" would be 18 assigned to perform some other duty, maybe they are 19 taking urine samples that day, and we have a visitor we 20 have to process for a particular reason, then they may 21 have to do that. So it -- it would be based on 22 individual daily circumstances. 23 Q Okay. Typically, the shakedown officer is going to be 24 the one that performs the strip search of the female 25 prisoners after a visitation?</p>	<p>Page 126</p> <p>1 days of the week where it is not likely prisoners will be 2 in the area to have that done. 3 We do, however, have a number of what we call 4 gate pass assigned prisoners who traverse the gates 5 daily. Often it's more than two, up to five, it could be 6 ten. So they do it based on the traffic in the gate that 7 day. They don't have to go find somebody to do a search 8 on to meet that criteria. 9 Q And what would cause female prisoners to be traversing 10 that area? 11 A If they are being allowed out on a gate pass assignment, 12 primarily. 13 Q Okay. And is that one of the reasons, in your opinion, 14 that a position is BFOQ female only? 15 A I'm speaking from my experience. Every correctional 16 facility in the state, if not the country, does their 17 very best to assign a female to your gate and male in 18 either the bubble or the information desk to perform a 19 pat-down search of persons entering through their area of 20 control who are the opposite sex. 21 Q All right. Is that a yes, that it's – that this is one 22 of the reasons – 23 A Yes. 24 Q – that the position is BFOQ only? 25 A Yes.</p>

(Pages 123 to 126)

1 Q So the information desk and the bubble and the gate
2 officer it sounds like at this facility work together to
3 perform pat-downs of depending on the gender and, I guess
4 in some cases, the preferences of the non-prisoners who
5 require pat-downs, true, like staff and so forth?

6 A Yes.

7 Q All right. And so a female gate officer who is
8 confronted, let's say, with a male non-prisoner who
9 requires, such as staff, who requires a pat-down, can
10 call on the assistance of the bubble or the information
11 gate to perform that pat-down?

12 A Yes.

13 Q Why couldn't it go the other way around? Why couldn't
14 you have a male officer who is confronted with having to
15 do a pat-down of a female be able to call upon a female
16 who may happen to be in the bubble or information desk
17 position?

18 MS. GROSS: I'm going to object. It calls for
19 speculation.

20 You can answer.

21 THE WITNESS: Again, this is just based on my
22 experience and practice. One of the three would have to
23 be staffed as a female. And experience has shown us
24 that, for whatever reason, the majority of visitors are
25 female at the female facility, including children.

1 Q All right.

2 A Without being searched by someone to make sure there is
3 not contraband, like weapons or ammunition coming out of
4 there. Every time we would be going back and forth. And
5 that is very frequent.

6 Or the reverse of it, my officer, the female
7 sitting at the front desk would not be sitting at the
8 front desk. They would be called away from that duty and
9 exchanging duties with the person in the gate. Because
10 the majority of the time they are performing searches on
11 female visitors, staff, volunteers. The majority of our
12 volunteers are female who come to the facility.

13 Q How far, just physically, is the bubble from the typical
14 station of the gate officer, or gate control officer?

15 A It is separated specifically on this side by an
16 electronic gate that is controlled by the person in the
17 bubble and then the door. It has to be staffed 24/7. So
18 you can't leave the area without somebody coming in to
19 relieve you to go out to go through the gates to come
20 into another assignment. So it would take three people
21 to do that.

22 Q Physically, how far is it, though?

23 A Less than 20 feet.

24 Q All right. And the information desk, physically, how far
25 is it from the typical station of the gate control

1 It would be logistically difficult, if not very
2 disruptive, to have the female officer at the front desk
3 performing various duties and be called to do rounds, for
4 example, in the perimeter security vehicle, leaving no
5 one at the front desk, which is often the case, and no
6 one be able to go through the gates because we only have
7 a man there to perform those duties.

8 Q (BY MR. KENT-BRYANT) So, you know, let me -- because I'm
9 going to ask you a question that's going to --

10 A Sure.

11 Q -- subsume that answer into the question. Because my
12 next question is, you mentioned it would be logistically
13 difficult to have a male in the gate control officer

14 position. And my next question was going to be, could
15 you tell me in what respect you believe that it would be
16 logistically difficult? So if you could answer that
17 question. I think you were starting to.

18 A Yes, certainly, if we reverse it, like you're suggesting,
19 and the man is in the gate -- and I'm just using male and
20 female because it's easier to imagine in your mind -- the
21 male is in the gate and the female is in the bubble, just
22 say. They can't come out of that without being searched,
23 because it's in conjunction with our arsenal. And so --

24 Q They can't come out of what, I'm sorry?

25 A The bubble.

1 officer?

2 A About the same. Maybe it's a little bit further I guess.
3 Maybe 30 feet.

4 Q Okay. Now, referencing Exhibit 6, are you aware of
5 whether men have ever staffed that position?

6 A My previous testimony was that men staff it all the time.

7 Q The gate control officer position?

8 A When there is a male traversing the gate.

9 Q Okay. I guess I mean assigned to that position then.

10 A No.

11 Q Okay. You're not aware of any occasion here where that
12 has occurred?

13 A No.

14 Q All right. And are aware of Exhibit 6 having been
15 amended at any time since you have been warden here?

16 A I have no knowledge.

17 Q Now, do you know, and I know you have worked in male
18 prisoners, or in male prisons, is the gate control
19 officer position in male prisons staffed by men only?

20 A No.

21 Q Why not?

22 A The very same reason that we have visitors of both
23 genders who traverse the gates.

24 Q Okay. So when you were warden at the Thumb Correctional
25 Facility, was it a BFOQ female only position?

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1 A It was not identified as a BFOQ, but it is staffed. I
 2 recall it being staffed with a female on a regular basis.
 3 Q Female only?
 4 A Again, as I said, I don't believe there is a BFOQ
 5 anywhere else. I don't believe the assignment is
 6 identified as a BFOQ anywhere else.
 7 Q Right. Which means that it's formally designated female
 8 only. As a practical matter, if you know, when you were
 9 warden at Thumb Correctional Facility, was the gate
 10 control officer position staffed only by females?
 11 A I can't say exclusively, no.
 12 Q Okay. See if they are in the same order. This is going
 13 to be the gym control officer position.
 14 MS. GROSS: I just have gym officer.
 15 MR. KENT-BRYANT: Right. Okay. You're right.
 16 I'm wrong.
 17 (Exhibit Number 7 marked for identification by
 18 the reporter).
 19 Q (BY MR. KENT-BRYANT) I want to show you -- and you may
 20 be spotting a pattern here -- I'm going to show you what
 21 has been marked as Exhibit 7. I'll ask you to identify
 22 that and whether there are any inaccuracies in that
 23 particular document.
 24 A This document is a State of Michigan, Department of Civil
 25 Service Position Description for the position of gym

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1 officer. (Examining document). Okay.
 2 Q Are there any inaccuracies in the job description?
 3 A Yes.
 4 Q What would that be?
 5 A On Page 5, Number 15.
 6 Q Okay. You can -- she can look at that.
 7 A (Handing document).
 8 Q Thank you.
 9 A Duty 1, individual tasks related to the duty, conduct
 10 shakedowns and searches of female prisoners including
 11 strip searches. Strip searches would not be performed in
 12 that gym area. However, they would do shakedowns and
 13 searches of prisoners. They may be asked to do a strip
 14 search in the areas that strip search are performed, but
 15 not on that assignment.
 16 I'm not sure what it means by saying completes
 17 reclass reports for job lists. It seems like it's an
 18 incomplete sentence and I don't know what it refers to.
 19 On Page 6, under Duty 23, ensures prisoners
 20 shower and maintain appropriate appearance. Yes, to the
 21 point that if they look disheveled and smell, that would
 22 be an indication that they are not maintaining proper
 23 hygiene.
 24 However, there are no showers in the building
 25 to observe. And they don't -- I don't believe they

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1 change clothes there at all. There are bathroom
 2 facilities there. They do have porters, so they do have
 3 to do all of that. But there was no showers that I know
 4 of that are in place in the gymnasium.
 5 On the same page, under Duty 4, assist in
 6 prisoners security screen reports. And assist obtaining
 7 information for PER reports. That seems a bit of a
 8 stretch that --
 9 Q What is a PER report?
 10 A A parole eligibility report.
 11 Q Okay.
 12 A It would be typically done in a housing unit. However,
 13 they could be called upon to -- by a housing supervisor
 14 to have input as to how they behave in the gymnasium.
 15 And, again, I think it's much of a stretch.
 16 On Page 7, under duty, Number 5, again, we find
 17 that assists in supervising urine drops. Urine drops are
 18 not taken in that building unless it's a mass number and
 19 that's designated as an area for some particular
 20 emergency reason they would be taken. But that would not
 21 be a duty unless that assignment was a closed and the
 22 supervisor had no one else to perform that duty.
 23 Yes, I believe everything else is fairly
 24 accurate.
 25 Q All right. With regard to Exhibit 7, do you know who

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1 drafted this?
 2 A I thought we were on 6?
 3 MS. GROSS: Don't mind this. This is Number
 4 7.
 5 Q (BY MR. KENT-BRYANT) I'm sorry. (Indicating).
 6 A Oh, yes, I'm sorry. No, I do not.
 7 Q Do you know when this position was BFOQ'd?
 8 A No.
 9 Q Do you know who was involved in the decision to BFOQ it?
 10 A Relating back to previous testimony, when it was
 11 determined that this would be the female facility, a
 12 staffing chart, which is the authorized assignments by
 13 the deputy director of correctional facilities
 14 administration makes that determination. At that time it
 15 was designated that. By whom, it would have been by
 16 the -- the authority in that would have been Dennis
 17 Straub.
 18 Q All right. And why is this position BFOQ?
 19 A Again, in that area prisoners are subject to searches of
 20 their persons and property. And the officer, custodial
 21 officer assigned would be called upon to do that. As
 22 well as potentially observing them in a state of undress
 23 while they are using the restroom.
 24 Q Okay. And when you're talking about the searches, you're
 25 talking about pat-down searches, true?

(Pages 131 to 134)

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<p>1 A Yes. Clothed body searches, yes.</p> <p>2 Q And why – there is a procedure that we have gone over</p> <p>3 for men to perform their five pat-down requirement. You</p> <p>4 recall that, true?</p> <p>5 A Yes.</p> <p>6 Q All right. Why would a male assigned to the gym officer</p> <p>7 position not be able to make use of that process?</p> <p>8 A In that area in particular there are several items that</p> <p>9 could be considered dangerous if used without direct</p> <p>10 supervision by prisoners. So, potentially, they could</p> <p>11 secret them. There would be a reason for them to obtain</p> <p>12 or secret that contraband on their person, which would</p> <p>13 require a custodial officer to perform a thorough search</p> <p>14 of the prisoner to ensure those items do not leave the</p> <p>15 area of his or her control.</p> <p>16 Q And why would a male officer called upon to do that not</p> <p>17 be able to seek the assistance of a female officer?</p> <p>18 A In most cases, it's a single officer assignment.</p> <p>19 Q Are there other officers readily available to assist in</p> <p>20 those sorts of situations?</p> <p>21 A Not in the building.</p> <p>22 Q Now, officers in the facility commonly call each other</p> <p>23 for assistance with a number of matters, correct?</p> <p>24 A Yes.</p> <p>25 Q And why – well, first of all, you went back – or you</p>	<p>1 A No.</p> <p>2 Q Now, was this a position, if you know, that before this</p> <p>3 became a female only facility was sometimes staffed by</p> <p>4 male officers?</p> <p>5 A I don't know.</p> <p>6 Q Do you know whether before this BFOQ, or this position</p> <p>7 was declared BFOQ, whether there was, by anyone, any</p> <p>8 effort to speak to the officers that actually had this</p> <p>9 assignment for how frequently this secreting of items</p> <p>10 occurred?</p> <p>11 A No, I do not.</p> <p>12 Q The – now, if this is – and let me rephrase this just a</p> <p>13 little bit. I mean, there may be items that are secreted</p> <p>14 that are undetected. But I'm talking about situations</p> <p>15 where it's been detected, or at least suspected that</p> <p>16 someone has been secreting an item and then requiring a</p> <p>17 search.</p> <p>18 If this occurred, let's say, just once a year,</p> <p>19 just hypothetically, that would not be a major</p> <p>20 inconvenience for a male officer, true? If just,</p> <p>21 hypothetically, if a male officer held that position?</p> <p>22 MS. GROSS: I'm going to object. Calls for</p> <p>23 speculation.</p> <p>24 THE WITNESS: It would be unusual that</p> <p>25 prisoners in the area do not take the opportunity to do</p>
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<p>1 testified that there are a number of items potentially</p> <p>2 dangerous that could be secreted. What items in the gym</p> <p>3 area are you referencing?</p> <p>4 A They have weight equipment, for example, that are free</p> <p>5 weights, for example. They have musical instruments.</p> <p>6 They have baseball bats, baseballs, basket balls. Other</p> <p>7 kinds of physical fitness equipment; ropes, those kinds</p> <p>8 of items.</p> <p>9 There are generally a large number of prisoners</p> <p>10 in that area. And so when you're trying to search them,</p> <p>11 you need to be able to perform that duty sometimes</p> <p>12 without the assistance of someone else. Because they are</p> <p>13 leaving that area to traverse the yard. In other words,</p> <p>14 they have to leave that area and go back to where they</p> <p>15 are allowed to be. And the officer that is supervising</p> <p>16 that area may not be available to come and assist in that</p> <p>17 search.</p> <p>18 Q All right. And the secreting of items from the gym area,</p> <p>19 are you aware of how frequently that actually occurs?</p> <p>20 A No, I can't say. No.</p> <p>21 Q Is there any source of information for how frequently</p> <p>22 that occurs?</p> <p>23 A I don't believe so.</p> <p>24 Q Have you ever spoken to any of the officers from the gym</p> <p>25 area concerning how frequently that occurs?</p>	<p>1 inappropriate things in that area, including hiding</p> <p>2 things like that.</p> <p>3 Q (BY MR. KENT-BRYANT) But my question is, you have cited</p> <p>4 really the idea of having to search the prisoners for</p> <p>5 secreted items as a reason for the BFOQ. But the extent</p> <p>6 to which that's a major problem or a minor problem really</p> <p>7 depends on how frequently it occurs, doesn't it?</p> <p>8 A There could be non-dangerous contraband found on a</p> <p>9 regular basis that is not reported.</p> <p>10 Q That's not my question, though. As to whether it's a</p> <p>11 major problem or a minor problem depends on how</p> <p>12 frequently it actually occurs, true?</p> <p>13 A Yes.</p> <p>14 Q And you also mentioned that there is a restroom in the</p> <p>15 gym area where women are in a state of undress, true?</p> <p>16 A Yes.</p> <p>17 Q And you're talking about actually using the facilities?</p> <p>18 A Yes.</p> <p>19 Q All right. In the gym area, that's not a place where –</p> <p>20 that restroom area is not a place where the women are</p> <p>21 supposed to be changing clothes, correct?</p> <p>22 A Not that I'm aware of, no.</p> <p>23 Q It's a facility where you use the toilet?</p> <p>24 A Yes.</p> <p>25 Q All right. And the people using the toilet, are there</p>

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1 stalls, are they protected in there from being able to be
 2 seen by others that are in that facility, the bathroom
 3 facility?
 4 **A** The bathroom in the gymnasium is in an area that has
 5 windows that open to the gymnasium. Very large windows.
 6 Ten – from the ceiling down to waist area, perhaps, that
 7 look right into the area where you can visually see the
 8 sinks and a short partition in which somebody walks in.
 9 You see the head and you see the feet. If they are
 10 seated, you don't necessarily see the head.
 11 I do not know if they have doors that close on
 12 the front of there, but there is simply a very short
 13 partition.
 14 **Q** All right. But they are designed to – I mean, you can't
 15 look from the gymnasium into the bathroom and see
 16 people – see any of the people's private areas while
 17 they are using the restroom, true?
 18 **A** No.
 19 **Q** All right. And is there any reason why, if a male
 20 officer needed to access the bathroom in an emergency,
 21 that the knock and announce policy couldn't be used?
 22 **A** No.
 23 **Q** Are you aware of male officers having been assigned to
 24 this gym facility or other gym facilities where the
 25 prisoners have been female at all at any point?

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1 **A** I don't know.
 2 **Q** Do you know if anyone spoke to any male officers who had
 3 the assignment of gym officers involving female prisoners
 4 before this position was BFOQ'd?
 5 **A** I do not know.
 6 **Q** So women who are in the gym, and really even outside of
 7 the stalls, are not supposed to be in a state of undress
 8 in the gym, true?
 9 **A** Correct.
 10 **Q** And, typically, if the need arose to perform a strip
 11 search arising out of the gym area, that would be
 12 performed in one of the designated rooms on any of the
 13 east or west administration buildings, true?
 14 **A** Right, correct.
 15 **Q** Now, in male facilities where you have been a warden,
 16 have there been similar gym facilities?
 17 **A** Yes.
 18 **Q** And have those gym officer positions been BFOQ male only?
 19 **A** No.
 20 **Q** Why not?
 21 **A** I don't know that any of the assignments in facilities
 22 where I was warden were specifically identified BFOQ or
 23 not.
 24 **Q** All right. And when you were at the Thumb, was there a
 25 gym?

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1 **A** Yes.
 2 **Q** And that was not a BFOQ only position – women BFOQ
 3 female – or male only position?
 4 **A** This is the first facility that I have worked at, that I
 5 know of, BFOQ in that definition exists.
 6 **Q** Okay. My question is, though, say, for instance, at the
 7 Thumb, I understand that it never was BFOQ, but why
 8 wasn't it BFOQ male only?
 9 **A** I don't know.
 10 **Q** All right.
 11 MR. KENT-BRYANT: All right. Let's mark this
 12 8.
 13 (Exhibit Number 8 marked for identification by
 14 the reporter).
 15 **Q** (BY MR. KENT-BRYANT) Just for safety's sake, I'm going
 16 to give you Exhibit 8 and ask you to look specifically at
 17 the version of it that is marked. And, again, ask you to
 18 identify what Exhibit 8 is and tell me if you find any
 19 inaccuracies. (Handing document).
 20 **A** (Examining document). The document is a State of
 21 Michigan, Department of Civil Service, position
 22 description for the specific assignment of electronic
 23 monitor officer.
 24 **Q** Okay.
 25 MR. KENT-BRYANT: Counsel, is that just a

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1 collection of the Lucille Evans' --
 2 MS. GROSSI: These are all the --
 3 MR. KENT-BRYANT: -- exhibits?
 4 MS. GROSSI: Yes, these are all the exhibits
 5 used at the Lucille Evans deposition.
 6 MR. KENT-BRYANT: Would you mind if I --
 7 MS. GROSSI: No.
 8 MR. KENT-BRYANT: -- I just went in the same
 9 order, if possible. See if we're -- while she's looking.
 10 **A** (Examining document).
 11 MR. KENT-BRYANT: Okay. I might make reference
 12 to them, because there is a couple of things I want to
 13 skip here.
 14 MS. GROSSI: Okay.
 15 **Q** (BY MR. KENT-BRYANT) Are there any inaccuracies in
 16 Exhibit 8?
 17 **A** The best way I can answer that is to say, understanding
 18 their task is to monitor electronic equipment, for
 19 example, on Page 5, under duty Number 2, it states,
 20 "Monitor prisoner porters to ensure they complete job
 21 duties."
 22 Prisoner porters do not work in control center.
 23 They are not allowed in there. However, technically, an
 24 officer could observe a prisoner doing that duty using a
 25 camera by observing them anyplace in the facility doing

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1 that job.

2 Q Okay.

3 A So it doesn't say that specifically, but I'm trying to be

4 as --

5 Q Okay.

6 A -- honest as I can be.

7 The rest of it is, again, based on what they

8 observe in the assignment, which is really inside a very

9 closed restricted area in which you don't have prisoner

10 contact in that assignment. So to write misconducts is

11 based on what you observe on the camera, for example, not

12 something you are -- directly have seen like we are

13 seeing one another. All of those duties would be based

14 on their ability to observe the activity on the area in

15 front of them.

16 Q So what are you referencing with regard to the job

17 description and inaccuracies?

18 A What I'm saying is it says a general duty doesn't

19 specifically say using the security monitoring equipment

20 available. It just says ensures prisoners compliance

21 with department policy, rules and regulations. And says

22 monitor prisoners activity and behavior.

23 Q All right.

24 A Most people would consider that being a direct

25 observation. There is no direct observation of the

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1 officer on that assignment.

2 Q Okay.

3 A Okay?

4 Q I understand that.

5 A Otherwise, I would say it is one of the more accurate

6 position descriptions you have shown me thus far.

7 Q All right. And in regard to Exhibit B, do you know who

8 drafted that?

9 A No, I do not.

10 Q Do you know when this position was BFOQ'd?

11 A I know that it was on the staffing chart that I was

12 authorized to administer here.

13 Q Do you know if, prior to that time, if was a BFOQ female

14 only position?

15 A No, I do not.

16 Q All right. And this is BFOQ female only on all shifts,

17 true?

18 A Correct.

19 Q And, again, would it have been Straub and Curtis who

20 would have been involved in the BFOQ decision for this

21 position?

22 A Yes.

23 Q And why is this position BFOQ?

24 A This particular position has access to all facilities

25 cameras that report back to control center. So they have

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1 the potential of seeing a prisoner in a state of undress

2 on a regular basis.

3 Q Under what circumstances will the electronic monitor

4 officer see a prisoner in a state of undress?

5 MS. GROSSI: I'm going to object. Calls for

6 speculation.

7 Q (BY MR. KENT-BRYANT) You can answer.

8 A The positioning of the camera allows for viewing of

9 prisoners going into particular areas. A prisoner who

10 would remove their clothing going into a shower area.

11 Certainly, any emergency situation.

12 Q Okay. So any other examples of situations where the

13 electronic monitor officer would see a prisoner in a

14 state of undress?

15 MS. GROSSI: Same objection.

16 THE WITNESS: This is speculation. But,

17 potentially, if the prisoner willfully put themselves in

18 that position.

19 Q (BY MR. KENT-BRYAN) All right. I mean, that

20 particular -- yes, it was responsive to my question and I

21 appreciate that. That can occur on any position, true?

22 A Correct.

23 Q And the emergency situations that you're referencing,

24 what are you thinking of there?

25 A The same situation.

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1 Q Okay. Now, the cameras that the electronic monitor

2 officer would be viewing, they do not focus on the inside

3 of prisoner cells, true?

4 A There are some that do, yes.

5 Q In which situations?

6 A We have a number of cells that have cameras installed for

7 the purpose of direct observation.

8 Q What are those?

9 A They are specifically identified cells that would be what

10 we refer to as stripped of any items that could be used

11 to harm themselves. Primarily, it's just a bed and a

12 mattress without any other implements of self-harm

13 available to a prisoner. There are times when the

14 prisoner clearly is in a state of undress.

15 Q In these particular cells you're talking about?

16 A Yes. Yes.

17 Q It has not -- it's not uncommon for them even to be in

18 their own cell and be under direct observation to have

19 removed their clothing, taken off their suicide

20 protection gown. Checking their restraints, you know, is

21 very frequent.

22 And also observing them using the bathroom

23 where there is a toilet involved. In most of those cells

24 there is a toilet. And you do observe all of that on

25 those cameras.

(Pages 143 to 146)

1 Q And in the shower areas, the – where are the cameras –
 2 you mentioned that the cameras see women undressing
 3 getting into the shower. Are they focused on the shower
 4 areas?
 5 A They are not – they are –
 6 Q By focused, I mean pointed at. Not –
 7 A Right. They should be looking at the entrances to those
 8 areas. The way in which some of them are designed I
 9 guess is the best way to – constructed.
 10 Q Which, the showers or the cameras?
 11 A The showers. The cameras I can point wherever. But you
 12 can pick up areas that – you know, they can be in a
 13 state of undress. It's – the showers, I mean, we use
 14 every space we can get. So the shower might be right up
 15 against the wall. And even though you're looking at who
 16 goes in there, you may be capturing part of that
 17 entranceway to the shower.
 18 Q Do you know, as you sit here today, whether it actually
 19 does?
 20 A I don't look at all the cameras. There is 1,400 cameras.
 21 I –
 22 Q But my question is; as you sit here today –
 23 A Not purposefully. The best way I can describe it, I have
 24 instructed the cameras to be placed so that we can
 25 determine who goes in a particular area and with whom,

1 A For example, in those observation cells I mentioned,
 2 there are –
 3 Q Restroom facilities in there you mentioned.
 4 A Yeah. To help explain, there is wet cells. Wet cells
 5 have a toilet and and a sink in them.
 6 Q Right.
 7 A Okay. Otherwise, there is a general bathroom area where
 8 there is stalls.
 9 Q Right.
 10 A And then adjacent to that is generally a shower. So that
 11 they would be in the same proximity, but not necessarily
 12 next to each other. I'm thinking, because every – there
 13 are so many buildings around here with different setups
 14 or configurations of their bathrooms.
 15 A Dickinson, I don't know if you can see into that area. I
 16 believe all the toilets are in stalls, except for in the
 17 housing unit.
 18 Q All right. All right. So I just want to make sure I
 19 understand. So in answer to the questions, do any of the
 20 cameras in and around the restroom areas show women in a
 21 state of undress? Is the answer yes, no, or I don't
 22 know?
 23 A I'm going to have to say no.
 24 Q Okay. Now, the electronic monitor position, that's not a
 25 position that has a strip search requirement, is it?

1 but not necessarily what is going on in that area.
 2 Q All right.
 3 A So...
 4 Q I guess the question stands, though, as you sit here
 5 today, do you know whether the cameras in the – or in or
 6 near the shower area, actually do capture prisoners in a
 7 state of undress?
 8 A I can't answer that.
 9 Q All right.
 10 A I'm sorry.
 11 Q Have any electronic monitor officers told you that the
 12 cameras in and around the shower area see women in a
 13 state of undress?
 14 A No.
 15 Q Now, are the shower areas and the restroom areas, are
 16 they the same areas or different areas?
 17 A It depends on the housing unit.
 18 Q All right. So is there any problems with the cameras
 19 seeing women in restroom areas in a state of undress?
 20 A (No audible response).
 21 Q And by restroom areas, I mean restroom areas as distinct
 22 from the shower areas. I assumed before when you were
 23 talking about shower areas, that if those included
 24 restroom facilities, they were included in your prior
 25 answers.

1 A No, not normally.
 2 Q Now, do you know if when this facility, before it became
 3 female only and there were men and women in different
 4 areas, do you know with regard to anywhere where females
 5 might reside whether male corrections officers ever were
 6 assigned to the electronic monitor officer position?
 7 A I do not know.
 8 Q Do you know if, before this position was designated BFOQ,
 9 whether any men or women were spoken to who had been
 10 electronic monitor officers in this facility?
 11 A I have no idea.
 12 Q Now, the electronic monitor position in male prisons,
 13 that's not a BFOQ male only position, true?
 14 A True.
 15 Q In the Thumb where you were warden, why wasn't that a
 16 BFOQ male only position?
 17 A I believe I have testified to this in the past. My
 18 experience with BFOQ assignments were specifically
 19 related to the female facilities.
 20 Q Okay.
 21 A When that became an acronym that was used in the
 22 department and it applied specifically to the female
 23 facilities, I don't recall any of my positions, whether
 24 they would normally or as a practice were staffed with
 25 females, were ever designated as BFOQ only. Maybe that

(Pages 147 to 150)

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1 female only position, true?
 2 A Yes.
 3 Q And what is the reason for that?
 4 A Because the officer is interchanged with the infirmary
 5 officer, switched out with the infirmary officer. And
 6 the infirmary is considered like a housing unit.
 7 Probably even more so because the prisoners are confined
 8 to the bed.
 9 Q Under what circumstances are they interchanged with the
 10 infirmary officer position?
 11 A I understand they can be assigned to provide lunch
 12 reliefs where there may be additional movement in and
 13 out. Maybe they have to pack up a cell and they need to
 14 be in the unit while that duty is performed.
 15 Q All right. And so they may be switched with the
 16 infirmary officer position you're saying?
 17 A Correct.
 18 Q And how often does that occur?
 19 A I would only speculate. I don't know if they -- the
 20 clinic itself is very busy, except for during count
 21 times.
 22 Q So the -- and if someone had to be switched with an
 23 infirmary officer, what is it that an infirmary officer
 24 does that would require a BFOQ?
 25 A The infirmary is considered a housing unit.

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1 Q Okay.
 2 A And so there are bedrooms, beds. They are confined to
 3 their bed for the most part.
 4 There are -- one shower in particular is really
 5 well opened up because of an infirm prisoner. If they
 6 have to do searches, you might see the prisoner in a
 7 state of undress on a regular basis.
 8 Q Let me ask you this:
 9 Has the health care officer position always
 10 been, since you have been here, interchanged with the
 11 infirmary officer position?
 12 A I believe so.
 13 Q Well, if someone, I'm not saying who, testified that
 14 that's a relatively recent development, would you have
 15 any reason to dispute that?
 16 A I'm -- I don't understand your question.
 17 Q Well, I think there will be testimony in this case that
 18 the health care officer only recently interchanges with
 19 the infirmary officer. And before that that was not the
 20 case.
 21 Would you have any reason to dispute that?
 22 A I don't have any knowledge of that.
 23 Q All right. One way or the other?
 24 A No.
 25 Q You have to answer verbally.

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1 A No.
 2 Q If the health care officer did not have to interchange
 3 with the infirmary officer, would there be any reason for
 4 that position to be BFOQ?
 5 MS. GROSS: I'm going to object. Calls for
 6 speculation.
 7 THE WITNESS: I believe it could be safely
 8 managed with certain accommodations.
 9 Q (BY MR. KENT-BRYANT) By a male officer?
 10 A Yes.
 11 Q All right. What sort of accommodations are you thinking
 12 of?
 13 A It really applies, again, to the knock and announce.
 14 Q Okay.
 15 A For example, the officer podium for that station with the
 16 phone and everything else is right at the door. And so
 17 they process prisoners in. But they leave that
 18 assignment quite frequently.
 19 Q Who does? Which --
 20 A The officer.
 21 Q The health care?
 22 A The health care officer.
 23 Q Okay.
 24 A And the area is, I'm going to describe it as a U-shaped
 25 hallway where doorways are open -- I mean, every time I

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1 round over there they never close doors it seems. You
 2 know, they may pull a curtain if they have a curtain.
 3 But there are nurses in the offices, doctors going back
 4 and forth. They are doing blood draws. It's a typical
 5 clinic.
 6 And so they would have to be announcing that,
 7 you know, male in the area every time they came around.
 8 And often the women are -- they have to remove clothing
 9 in order for a medical procedure to occur.
 10 Q That's in the infirmary area?
 11 A No, that's also in the -- this is like a regular -- the
 12 health care officer the best way I can describe is like a
 13 regular doctor's office. For example, the male medical
 14 providers cannot be in one of those rooms without a
 15 female medical provider there. So, in other words, if
 16 there is a male doctor, he cannot perform an exam or be
 17 in that room without the female nurse being present.
 18 So the same concept would play out that --
 19 because the officer is right there in that area, there
 20 would have to be some way to let the prisoner know it's
 21 not the doctor coming around. It is a male officer
 22 coming around and making checks.
 23 Q All right.
 24 A That's the best way I can put you there.
 25 Q And so the accommodation you made would be essentially

(Pages 155 to 158)

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1 the same as the doctor/nurse situation is what you're
 2 saying?
 3 A Yes, I mean, continually announcing knock and announce --
 4 Q Okay.
 5 A -- male in the area. Because they should be rounding on
 6 an infrequent, at least every half hour basis, of the
 7 entire area.
 8 Q All right. And in this position there should not be a
 9 strip search requirement I think you already said, true?
 10 A That is correct.
 11 Q And you're unaware of any history of a health care
 12 officer having to perform a strip search, true?
 13 A That's correct.
 14 Q And maybe you just explained this. In terms of a
 15 pat-down requirement within health care, is that not
 16 applicable to that situation?
 17 A I'm not sure if you're paying attention to me. You're
 18 reading so --
 19 Q I'm listening. I'm multi-tasking. Just go ahead.
 20 A Okay. All right. I believe the question was the
 21 pat-search requirement?
 22 Q Right.
 23 A I believe they still have to perform the required number
 24 for that assignment. I believe, just with routine work
 25 there, they do more than five.

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1 Q All right.
 2 A I believe prisoners are routinely pat searched before
 3 they go into a medical procedure. And certainly
 4 afterwards it would be prudent to do so because they
 5 would be around medical equipment that could be used.
 6 Q And male officers would perform, if they were in the
 7 health care position, could perform that pat-down
 8 consistent with the procedure from the facility's
 9 procedure manual that we went over the last time, true?
 10 A No, a male could not be exempt in that assignment. There
 11 is many critical tools, to include syringes and those
 12 kinds of things that --
 13 Q Let me just interrupt you. The procedure I'm referring
 14 to, then we can get it out, but it's the one we looked at
 15 last time where males weren't exempt. It's a situation
 16 where males and females collaborate and the men can frisk
 17 the outer clothing that is removed and women would
 18 perform the actual pat-down. Do you recall that
 19 procedure?
 20 A Yes.
 21 Q All right. And that could be performed in the health
 22 care infirmary -- or health care officer position, true?
 23 A I would disagree.
 24 Q Why?
 25 A It would be very inefficient.

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1 Q Why?
 2 A The majority of prisoners who are seen in health care
 3 have -- should be pat searched upon leaving that --
 4 leaving that assignment.
 5 Q Can that be performed by the infirmary officer?
 6 A They are in two separate locations, altogether.
 7 Q Which wasn't my question, though. Could it be performed
 8 by the infirmary officer?
 9 A There would have to be someone that relieves the
 10 infirmary officer, it has to be staffed with an officer
 11 all the time, before relieving them to come in and do a
 12 search of everyone coming out as they come in and out of
 13 the office.
 14 Q Is it true that, in the infirmary area, that the medical
 15 staff always closes the door during an exam of a
 16 prisoner?
 17 MS. GROSS: I'm going to object. Calls for
 18 speculation.
 19 THE WITNESS: I can't testify --
 20 Q (BY MR. KENT-BRYANT) One way or the other?
 21 A -- one way or the other.
 22 Q All right. And, again, I understand the background
 23 information that you have given me, but when you were
 24 warden at the Thumb, the health care officer could be
 25 female, true?

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1 A Yes.
 2 Q All right. Do you know whether Exhibit 9 has been
 3 amended at any time since you have been warden?
 4 A No, I do not.
 5 Q All right.
 6 MR. KENT-BRYANT: What do you have as your next
 7 one?
 8 MS. GROSS: I have industries officer.
 9 MR. KENT-BRYANT: Okay. Mark this as 10.
 10 (Exhibit Number 10 marked for identification by
 11 the reporter).
 12 Q (BY MR. KENT-BRYANT) All right. My question to you
 13 again is, first, can you identify what has been marked as
 14 Exhibit 10 and tell me any inaccuracies you see in it, if
 15 there are any?
 16 A This is the State of Michigan, Department of Civil
 17 Service, position description for the assignment of
 18 Industries officer. (Examining document). Okay.
 19 Q What inaccuracies, if any, do you see in there?
 20 A Page 5, under 15, duty Number 1, conducts shakedown and
 21 searches of female prisoners; correct. Including strip
 22 searches; incorrect.
 23 . Again, curious to me, is the "Complete reclass
 24 reports for job lists."
 25 Q Okay.

(Pages 159 to 162)

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1 A I'm not sure what that means.
 2 Q Not sure that's a complete sentence. All right.
 3 A Yeah, another cut and paste it looks like. Page 6, under
 4 duty Number 3, again, assists in prisoner security screen
 5 reports. I do not believe that is –
 6 Q Okay.
 7 A – a responsibility.
 8 On Page 7, under Duty 6, I do not believe they
 9 would assist in the supervision of large group
 10 activities.
 11 Q Okay.
 12 A It seems to be totally out of place. Everything else
 13 appears to be accurate.
 14 Q All right. And I assume you don't know who specifically
 15 drafted Exhibit 10, true?
 16 A That is correct.
 17 Q However, the fact that it's designated as BFOQ female
 18 only, that would have been a decision that Curtis and
 19 Straub made?
 20 A At some point, yes.
 21 Q And why is industries officer a BFOQ female only
 22 position?
 23 A I believe the industries officer position was also in
 24 place at Scott Correctional Facility.
 25 Q Okay.

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1 A The industries brought here was really totally under
 2 development and never did result in what they told me it
 3 was going to be. It was supposed to be prisoners making
 4 uniforms for prisoner – for prisoners, female prisoners.
 5 So an area was designed where they would change their
 6 clothing from what we considered to be blues, uniform
 7 prisoner uniform, into a jump suit.
 8 Q Okay.
 9 A And we even fashioned a change area for that purpose.
 10 They would be searched, in particular everyone leaving
 11 the assignment because the nature of the assignment,
 12 which it still does use sewing machines, which has
 13 needles and thread which are huge contraband items,
 14 ~~dangerous contraband inside a facility, as well as a~~
 15 number of other kinds of tools that they need to maintain
 16 the machinery in there.
 17 Q How many people are in there at a time?
 18 A There are two functions. Let me finish.
 19 Q I'm sorry.
 20 A One is a sewing operations.
 21 Q Um-hum.
 22 A And the other one is an operation that makes dentures for
 23 all prisoners throughout the State of Michigan. So they
 24 have a finite number of prisoners that are assigned in
 25 there. In other words, they only have so many work

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1 stations and I believe they have no more than 20
 2 prisoners who are working on dentures. And they do them
 3 for the entire State of Michigan.
 4 So there is lots of tools in there. There are
 5 molds. There are scrapers. There is – I can't go into
 6 the whole process. It's unbelievable the number of
 7 tools.
 8 They work in an area separate from where they
 9 do the sewing. The sewing numbers never reached the
 10 potential they had told me. I think we may have 30 that
 11 are assigned in there at any given time. So between the
 12 two areas, 50 to 60 prisoners. The officer –
 13 Q Is that at once or is that –
 14 A Um-hum, yes.
 15 Q – total?
 16 A Yes, at once.
 17 Q Okay.
 18 A In total between both of the factories.
 19 Q Right.
 20 A The officer is responsible for both operations, making
 21 rounds and, you know, completing the pat searches, the
 22 searches of prisoners. The bathroom are – they are open
 23 in that they are a bathroom facility with what I call a
 24 cafe door. It's a half door so you can see a head and
 25 feet when you're standing. And you can only see the feet

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1 when you're seated on the commode. That's in the
 2 officer's area to monitor.
 3 I think I covered most of the essential
 4 assignments. All of the prisoners assigned in there are
 5 female, obviously. And the custodial responsibility is
 6 on the industries officer.
 7 Q Are the females, are all the females searched every day
 8 upon leaving?
 9 A I don't believe the requirement is to search every
 10 prisoners. I believe it's a random search. The reason I
 11 say that is it – when we're random, we are less
 12 predictable. So, therefore, you don't know if you're
 13 going to be subject to search. So the risk becomes
 14 greater. I might be caught or I might not be caught in a
 15 search situation.
 16 Q Okay. So it's a random – do you know how many searches
 17 are performed per day by the industry officer?
 18 A No, I do not.
 19 Q Are you aware if, whether yourself or anyone else, has
 20 have ever spoken to industry officers concerning how many
 21 searches are performed per day?
 22 A Not on that topic, no.
 23 Q All right. Are you aware of any strip searches being
 24 generated from the industries area?
 25 A No.

(Pages 163 to 166)

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1 Q Now, the industry officer has the same five searches --
 2 pat-downs per day requirement?
 3 A I need to clarify. We need to be talking had the
 4 requirement, yes. We no longer have that assignment.
 5 Q The five pat-downs per day?
 6 A The industries officer assignment --
 7 Q Oh, no longer --
 8 A -- has been eliminated --
 9 Q Oh, okay.
 10 A -- from the department. So at the time, yes.
 11 Q Well, is the industries area still functioning?
 12 A Yes.
 13 Q And what is the name of the position of the person that
 14 supervises that area?
 15 A It is part of the duties of the yard staff.
 16 Q Okay. Why was that position eliminated?
 17 A It was eliminated by Deputy Director Treacher as an
 18 efficiency measure.
 19 Q So is there someone in the industries area at all times?
 20 A Yes.
 21 Q All right. By someone, I mean an officer, of course.
 22 A No.
 23 Q No, there is not? So at times the prisoners, there is no
 24 one inside the building supervising them?
 25 A There are no officers inside the building supervising

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1 them.
 2 Q Who is supervising them?
 3 A In the one area, their technical position is called an
 4 industry supervisor.
 5 Q Okay.
 6 A It's a general term for a work supervisor depending on
 7 the factory they are running.
 8 Q Okay.
 9 A One happens to be Mr. Burris who is the supervisor of the
 10 dental lab operation. And the other one is Amy Sabo who
 11 is an industry supervisor for MSI. And she is --
 12 Q MSI?
 13 A Michigan State Industries.
 14 Q Okay.
 15 A They run the factories.
 16 Q All right. Are they Department of Corrections officers?
 17 A They are not officers.
 18 Q Okay. Are they Department of Corrections employees?
 19 A Yes.
 20 Q Do they perform searches?
 21 A No.
 22 Q So what happens if they detect someone secreting a tool
 23 or a needle or something of that sort?
 24 A They call for assistance.
 25 Q And to whom do they call for assistance?

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1 A Control center.
 2 Q And control center does what with that call for
 3 assistance?
 4 A Depending on the circumstance, the control center will
 5 dispatch someone. The yard sergeant could send the yard
 6 officer who -- the yard officer now has duties to make
 7 rounds, custodial rounds in the area. They also have to
 8 search prisoners leaving the area at the end of their
 9 shifts.
 10 Q Leaving the industries area?
 11 A Yeah.
 12 Q Okay. I'm sorry, I interrupted you.
 13 A The Industries, if you can imagine, it's like a normal
 14 job. It's a factory job. So you start at a certain
 15 time. They eat on their assignment. They stay in the
 16 building the whole time. And then they leave at the end
 17 of the day.
 18 So we can -- we can put somebody there to
 19 supervise who comes in the building. And once they are
 20 in the building, they secure the building. And then they
 21 leave and go do their other assignment and come in and
 22 make rounds. And then at the end of the shift, when
 23 everyone is done working for the day, they search the
 24 prisoners before they leave the building and then go back
 25 to their other duties.

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1 Q All right. And randomly search the prisoners?
 2 A I believe it's random.
 3 Q All right. Has the -- have there been any problems
 4 involving prisoners secreting -- well, strike that.
 5 Strike that.
 6 So the procedure, if there is an issue with
 7 prisoners secreting items, is that Mr. Burris or Ms. Sabo
 8 is supposed to call the control center, true?
 9 A Yes.
 10 Q Has that happened?
 11 A I don't know. The change happened within the last six
 12 months perhaps. Seems like a shorter period of time. So
 13 I don't know.
 14 Q And there haven't been any problems reported to you
 15 concerning that procedure, true?
 16 A You would have to define problem.
 17 Q Well, I'll define it broadly and maybe I'll even say
 18 issue. Have there been any issues/problems reported to
 19 you concerning that procedure?
 20 A I have received staff complaints about the failure to
 21 have custody staff in the area.
 22 Q What have been the nature of those complaints?
 23 A It's a change from what we have always done. And they
 24 feel that they aren't officers.
 25 Q That Mr. Burris and Ms. Sabo aren't officers?

(Pages 167 to 170)

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1 A Correct. In addition to others. They just happen to be
 2 the work supervisors I named for you.
 3 Q Have there been any safety problems reported?
 4 A No.
 5 Q And have there been any complaints from prisoners
 6 concerning Mr. Burris, given that he's male?
 7 A Yes, there have been complaints about Mr. Burris in the
 8 broad term.
 9 Q Have there been any complaints about him as a function of
 10 him being a man, in other words?
 11 A Yes.
 12 Q What have those been?
 13 A Typical complaints filed by a female prisoner for
 14 whatever reason. Allegations of over familiarization or
 15 he doesn't like me. I lost my job because he doesn't
 16 like me or I wouldn't do whatever for him. Those things
 17 are brought to our attention routinely. And we
 18 investigate the allegation to see if there is any
 19 allegation that can be substantiated.
 20 But to answer your question, honestly, yes, we
 21 get complaints about him.
 22 Q Any complaints about him seeing prisoners in a state of
 23 undress?
 24 A No.
 25 Q And he doesn't have pat-down responsibilities --

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1 A No.
 2 Q -- true?
 3 Obviously, he doesn't have strip search
 4 responsibilities?
 5 A Correct.
 6 Q Now, is he new or has he always been there? I mean, in
 7 other words, they staff it now. But were they there when
 8 the industry officers were there? I mean, are they --
 9 A Yes.
 10 Q Okay. So the industries officers were in addition to
 11 Mr. Burris and Ms. Sabo?
 12 A Yes.
 13 Q All right. How long has Mr. Burris been there?
 14 A Since we opened the facility.
 15 Q Okay.
 16 A The operation was in place at the Scott Correctional
 17 Facility. He was the industry supervisor there. He
 18 moved the whole process here when Scott closed. And we
 19 temporarily put it in the programs building until the
 20 warehouse was built or redesigned to make a factory out
 21 of it. I can't tell you when we moved him in there.
 22 It's been a nightmare in the last several years.
 23 Q All right. So it seems that now the industries officer
 24 position is gone, and now the officer responsibilities
 25 are part of the yard control officer responsibilities,

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1 correct? It's part of the rounds?
 2 A Yes.
 3 Q And is it part of both the male and female yard control
 4 officer rounds?
 5 A They can't be assigned to do pat searches. So making
 6 "rounds", they can make rounds. If they are called upon
 7 to perform a search of -- on a female prisoner, they are
 8 not allowed to do so.
 9 Q Unless they follow the procedure we talked about?
 10 A If it's an emergency.
 11 Q Well, there is also the procedure where -- well, the yard
 12 control officers actually don't have to do --
 13 A Correct.
 14 Q -- the five pat-downs --
 15 A That's correct.
 16 Q -- true?
 17 Who else is exempt from the five pat-down
 18 requirement besides the yard control officers?
 19 A Oh, boy, I'm not going to name them all. I don't know
 20 for sure. But, for example, the perimeter security
 21 vehicle officer. An officer assigned to the information
 22 desk. The bubble officer. We don't have the arsenal
 23 officer anymore. I do not believe the sally port
 24 officer.
 25 Q Okay.

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1 A I know those off of the top of my head.
 2 Q Okay. Now, have you ever received any -- this question
 3 doesn't pertain particularly to the industries officer
 4 position.
 5 Have you ever received complaints from female
 6 officers about having to assist male officers with their
 7 pat-down requirements?
 8 A A specific one does not come to mind.
 9 Q All right.
 10 MR. KENT-BRYANT: Okay. Is rover officer the
 11 next one you have there?
 12 MS. GROSSI: Yes.
 13 MR. KENT-BRYANT: Do you want to take a quick
 14 break just to stretch your legs? I do.
 15 THE WITNESS: Would you like to take a quick
 16 break?
 17 MR. KENT-BRYANT: Let's take a quick break.
 18 (Off the record from 12:30 to 12:45, during
 19 which time Exhibit Number 11 was marked for
 20 identification by the reporter).
 21 Q (BY MR. KENT-BRYANT) All right. Let me show you what
 22 has been marked as Exhibit 11. Same drill. If you could
 23 identify that and then peruse it for any inaccuracies.
 24 A This is a State of Michigan, Department of Civil Service
 25 position description, specifically for the rover,

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1 R-O-V-E-R, officer. (Examining document). This
 2 assignment is specific to the midnight shift only –
 3 Q Okay.
 4 A – according to this document. You all set?
 5 Q No. This is one we're going to have to share. This is
 6 the rover position for, it appears to me, to be for the
 7 a.m. and p.m. shifts as well. So why don't we go
 8 ahead and – well, we'll have to share, because it's
 9 my – this one is my only copy. It hasn't been
 10 previously mark.
 11 (Exhibit Number 12 marked for identification by
 12 the reporter).
 13 Q (BY MR. KENT-BRYANT) Why don't we have you go through 11
 14 first with the inaccuracies before we move onto Exhibit
 15 12.
 16 A Okay. Page 5, under 15, Duty 1, again, I find that
 17 language I have trouble with: "Completes reclass reports
 18 for job lists."
 19 Q Okay, go ahead. I understand your comments on that.
 20 A And then going to Page 7, under Duty 5, assists in
 21 supervision of large group activities outside the housing
 22 unit, such as meals, movies, special entertainment, et
 23 cetera. That would not occur on the midnight shift.
 24 Q Okay.
 25 A The other duties that are identified in here could occur

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1 on the midnight shift as assigned. Many typically would
 2 not be as that is an inactive shift and prisoners are
 3 primarily asleep during that time.
 4 Q All right. Generally, what does a rover do?
 5 A On the midnight shift, they will provide relief to
 6 officers assigned to various positions throughout the
 7 facility.
 8 Q All right. Let me show you Exhibit 12. And if you could
 9 identify that and also find any inaccuracies in that
 10 particular exhibit.
 11 A Very quickly, but in the interest of time, I find that
 12 there are some inconsistencies. I'm sorry, did you want
 13 me to go through the description, what we're looking at?
 14 Q Yeah, any inconsistencies. Are there any different than
 15 the ones you identified in Exhibit 11?
 16 A Yes. On Page 6, I believe, under Duty 3, it talks about
 17 assists in prisoner security screen reports; not really a
 18 responsibility of the rover. Could potentially obtain
 19 information for the parole eligibility report; not
 20 likely.
 21 The rest of the duties generally could be
 22 applied.
 23 Q All right. And both the – well, all three shifts of
 24 rover are BFOQ, true?
 25 A Correct.

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1 Q And what is the reason for that?
 2 A The potential assignment for them to work in a housing
 3 unit where prisoners are often found in a state of
 4 undress, to perform their duties, relieving the officer
 5 normally assigned.
 6 Q How often do they relieve housing officers, or officers
 7 that work in housing?
 8 A To be honest it depends on the circumstance. They could
 9 be sent in to provide a bathroom relief. They could be
 10 sent in to provide a half hour meal relief. And because
 11 we have one on "each side of the unit", often they could
 12 be in there for an hour performing those duties. It
 13 depends on how long the need is for them to relieve the
 14 normally assigned officer on that position.
 15 Q How – I'm sorry. How many rovers are there on each
 16 shift?
 17 A Without looking at my staffing chart, I can't tell you.
 18 Q More than one?
 19 A Yes.
 20 Q Are there more on one shift than another?
 21 A I believe so.
 22 Q Are the days shifts more – are there more rovers than
 23 there are on the midnight shifts?
 24 A On our active shifts, which would be both days and
 25 afternoons.

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1 Q Okay. Right. Okay. So the reason it is BFOQ is that
 2 the rover may have to relieve someone in housing. Are
 3 there any positions that the rover does not provide
 4 relief for?
 5 A They could be called upon to provide relief for any
 6 assignment that is not supervisory.
 7 Q Have there been any efforts to balance the staffing of
 8 the rover so that females would be available to cover
 9 housing assignments or, you know, covering any sort of
 10 relief in housing, while the males could cover
 11 non-housing, non-BFOQ assignments?
 12 A To the extent possible.
 13 Q In each of these, and I'm talking about Exhibits 11 and
 14 12, they say that the rover is a BFOQ position. Is it?
 15 I mean, are men staffed on rover ever?
 16 A I don't believe they are precluded, but I would have to
 17 look at the chart to say for sure. I believe it's BFOQ.
 18 Q So they are precluded? I mean, this is a BFOQ position
 19 or it's not about a BFOQ position?
 20 A I believe it is. However, we could have a male, for
 21 example, that is assigned to relieve those that don't
 22 require a female to relieve them. I'm sorry, that was
 23 awkward.
 24 Q Well, the rover is an actual assignment, correct, that –
 25 you know, someone comes to work today and they are going

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1 to be the rover –

2 A Correct.

3 Q – for today, right?

4 Are any of those assignments given to males?

5 A Yes.

6 Q Even though the position is BFOQ?

7 A I can give you an example that recently happened.

8 Q Okay.

9 A Our programs building is normally closed. The programs

10 deputy was working and required to have the maintenance

11 of the floors to be an issue. Which she had to supervise

12 with a custodial officer that happened to be a male.

13 So although males don't normally work in the

14 programs building because they have to do pat searches,

15 she was there to perform that duty if it needed to be

16 done so he could perform custodial responsibilities.

17 So can it? Yes, I just gave you an example of

18 how it could be. Rovers could be assigned to relieve

19 your bubble officer and it doesn't require a woman or a

20 female to work in the bubble to relieve that officer.

21 Q Well, I'm asking the opposite, though. Maybe we're

22 confusing one another.

23 So when the assignment sheets are made up for a

24 week or so forth, are men ever assigned to rover, to be

25 the rover officer?

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1 A I believe I just said yes.

2 Q Did you? All right. So in that particular circumstance,

3 it was determined that you wouldn't need a female to be

4 the rover for that particular circumstance; is that how

5 it worked?

6 A I believe it can be likened to the situation where we

7 identified half of the assignments for the yard to be

8 BFOQ and half of the assignment non-BFOQ. I believe the

9 same principal applies to rover.

10 Q All right. So, my understanding, and I guess I didn't

11 see it there in what we received, but my understanding is

12 there would be a yard control position description that

13 is not BFOQ in addition to one that is BFOQ; is that

14 correct?

15 A That's correct.

16 Q And that's the same for rover?

17 A I believe so.

18 Q If you know, is it half and half the way the yard control

19 officer position is?

20 A Honestly, I can't say. Sorry. The term rover and yard

21 control has been interchanged with each other over the

22 years for reasons beyond me. So I don't know what it

23 currently looks like.

24 Q Okay. Currently, is the rover position assigned

25 approximately 50/50 males and females?

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1 A I believe so.

2 Q All right. And, currently, as far as you know, there are

3 both yard control officers and rover officers?

4 A Yes. To understand the operation, we could have

5 activities on the yard. In other words, prisoners on any

6 given shift traversing the yard. So I need a yard

7 officer out there.

8 Q Right.

9 A Additionally, it may be Officer Dine. So the rover may

10 have to be assigned in the, you know, in the housing unit

11 to relieve the officer. So both could be performing

12 different but similar functions.

13 Q All right.

14 A Okay.

15 MR. KENT-BRYANT: What are we on, 13, now?

16 (Exhibit Number 13 marked for identification by

17 the reporter).

18 Q (BY MR. KENT-BRYANT) I want to show you what has been

19 marked as Exhibit 13. And if you could identify the

20 document and then, again, find any inaccuracies in the

21 job description if there are any.

22 A This is a State of Michigan, Department of Civil Service

23 position description. I don't know if we can save a

24 whole lot of time. But this was – this is not a

25 position that works at this facility.

Page 182

1 Q Has it ever been?

2 A No.

3 Q Okay.

4 A This is a different classification altogether. We don't

5 staff any corrections medical aides at this facility.

6 I'm only aware of one facility in the state in which we

7 do that.

8 Q Okay. That probably does save some time.

9 Going back to the rover position real briefly,

10 that's not a position that requires that the officers

11 perform strip searches, true?

12 A Under normal circumstances, no. They could be called

13 upon to do it clearly, but not in the assignment. They

14 were relieving someone in the housing unit. We don't

15 perform strip searches in the housing unit.

16 MR. KENT-BRYANT: Mark this as 14.

17 (Exhibit Number 14 marked for identification by

18 the reporter).

19 Q (BY MR. KENT-BRYANT) I want to show you what has been

20 marked as Exhibit 14, if you could identify that and,

21 again, determine any inaccuracies that are in the

22 position description.

23 A This is a State of Michigan, Department of Civil Service,

24 position description for the assignment of property room

25 officer. (Examining document). All right. Ready?

(Pages 179 to 182)

Page 183

1 Q Yes.

2 A Okay. On Page 5, under 15, under general summary of

3 duties, it speaks on the responsibility to conduct strip

4 searches of female prisoners. I don't believe that is a

5 function of that assignment.

6 "Completes reclass reports for job lists."

7 Again, I don't know what that means.

8 Q Right.

9 A Page 6, Duty 4, they may observe changing of clothes if

10 it's a size-related issue. Probably more so shoes than

11 items of clothing.

12 There is not a toilet in the facility -- in the

13 area. And that I believe is all of it.

14 Q All right. And, once again, with regard -- well, what

15 does a property room officer do?

16 A Their primary function is to ensure the safety of all

17 incoming property to prevent the introduction of escape

18 materials or contraband to the prisoners.

19 Q Okay.

20 A They are also involved fairly intimately in the ordering

21 process of items for prisoners. I don't believe they do

22 any measuring. However, with women's clothing in

23 particular, items come in sized. So there may be a need

24 to try on an item. A shirt is too small. It has to go

25 back. So rather than have it leave that area, the

Page 184

1 officer then takes the product and returns it to the

2 manufacturer or the store or whatever the prisoner

3 purchased it from.

4 It's an isolated assignment. Prisoners come

5 over there on a pass or a call-out to pick up property.

6 They could be over there for a period of time by

7 themselves. So we call it an isolated assignment. They

8 shakedown prisoner property. This is essentially the

9 assignment.

10 They do clerical kinds of duties from the

11 standpoint of they maintain property cards so we have an

12 idea of what goes in and what comes out. Some property

13 in controlled by quantity. So if, for example, they say

14 Prisoner Warren already has two pairs of shoes. They are

15 only allowed two pairs of shoes. So you have to give me

16 the other pair of shoes in order for me to give you that

17 pair of shoes.

18 So it has to be an exchange process in some of

19 that. So that's where it comes into some of the

20 changing of the clothing. Essentially, that's what they

21 do.

22 Q And it's designated as a BFOQ female only position, true?

23 A Yes.

24 Q Why?

25 A. Well, I believe part of it is it's an isolated

Page 185

1 assignment. And male officers are prohibited from being

2 in an area one-on-one with a female prisoner.

3 Q Prohibited by whom?

4 A I understand that's part of the department's policy.

5 Q Do you know where I could find that policy?

6 A Female prisoners cannot be -- I mean, if they are

7 under -- if they are working with a male, there generally

8 has to be two prisoners. If we are transporting a female

9 prisoner, the transport officer has to be at least one

10 male and one female.

11 It's for privacy rights and to minimize the

12 risk of abuse.

13 Q My question, though, was it sounds like you're saying

14 there is a general policy somewhere that male corrections

15 officers cannot be isolated with the female prisoners.

16 I haven't seen that in my research, but that doesn't mean

17 it's not there. Can you point me in the direction?

18 A I can't tell you the document.

19 Q Okay.

20 A I know that --

21 Q Is there a document?

22 A I can't tell you that. I know in practice we do not put

23 a male staff member in that position routinely.

24 Q Okay. Any other reasons that it's a BFOQ position?

25 A Could be information that I'm not privy to.

Page 186

1 Q All right. There is not a strip search requirement for

2 the position, true?

3 A True.

4 Q Is there a pat-down requirement for the position?

5 A They could be called upon to do a pat search.

6 Q Do they have that five pat-down per day requirement?

7 A I don't know.

8 Q Okay. Under what circumstances would they be required to

9 to do a pat-down?

10 A If there is any reason to believe the prisoner has

11 something they shouldn't have.

12 Q All right. Which is part of the pat-down policy

13 regardless of position, true?

14 A Yes.

15 Q So a yard control officer would have that same pat-down

16 responsibility, right?

17 A Yes.

18 Q Have you become aware of any situation in which the

19 property officer needed to do a pat-down that actually

20 occurred?

21 A One doesn't come to mind in particular.

22 Q All right. Do you know how common it is that the

23 property room officer has to perform a pat-down?

24 A No.

25 Q In terms of seeing women in a state of undress, the

(Pages 183 to 186)

Page 187

1 property room officer shouldn't have to see women in a
 2 state of undress, true?
 3 **A I don't think so.**
 4 **Q All right. Did you have a -- you must have had a**
 5 **property room at the Thumb?**
 6 **A Yes.**
 7 **Q And that was a position that could be staffed either by**
 8 **males or females, true?**
 9 **A Yes.**
 10 **MR. KENT-BRYANT: Mark this as 15.**
 11 **(Exhibit Number 15 marked for identification by**
 12 **the reporter).**
 13 **Q (BY MR. KENT-BRYANT) All right. I'm going to show you**
 14 **what has been marked as Exhibit 15. Again, I would ask**
 15 **you to identify it and then leaf through it to identify**
 16 **any inaccuracies.**
 17 **A Department of Corrections -- I'm sorry, State of**
 18 **Michigan, Department of Civil Service, position**
 19 **description for the assignment of school officer.**
 20 **(Examining document). Okay.**
 21 **Q Inaccuracies?**
 22 **A Page 5, under Duty 15 -- or Item 15, duty Number 1,**
 23 **speaks on performing strip searches. They are not**
 24 **performed -- they do not perform strip searches in the**
 25 **school building routinely; only in emergencies. And**

Page 188

1 that's under a situational incident.
 2 "Completes reclass reports for job lists." I'm
 3 not clear on what that means.
 4 **Q Right.**
 5 **A Page 6, Duty 4, speaks on observes female prisoners**
 6 **changing clothes. The potential is there. Given the**
 7 **vocational programing that goes on in the building, there**
 8 **may be a need for them to change soiled clothes. But,**
 9 **generally, it's not out in the open.**
 10 **On duty Number 5, Page 7, speaks on the**
 11 **assisting supervising urine drops; generally not.**
 12 **Generally does not occur in that area. That would be it.**
 13 **Q All right. And why is this position BFOQ?**

14 **A Again, there is a requirement to perform searches of**
 15 **prisoners' persons, pat-down searches -- which men are**
 16 **prohibited from doing by policy -- when they leave the**
 17 **school building and leave the classrooms.**
 18 **Q How many school officers are assigned at a time?**
 19 **A I'm going to say two.**
 20 **Q Is this another position where one can be male and one**
 21 **can be female or do they both need to be female?**
 22 **A They both are female. One works specifically in the**
 23 **vocational education area. It contains the largest tool**
 24 **crib, which contains the most critical, dangerous tools**
 25 **that are stored inside the facility.**

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1 **And the other one works in the school building**
 2 **proper where primarily classroom activity goes on. But**
 3 **there is other kinds of things that occur in the**
 4 **building; primarily, classroom.**
 5 **Q All right. I think you already said there is not a strip**
 6 **search requirement and, generally speaking, there is no**
 7 **reason to be seeing the women in a state of undress in**
 8 **this school officer position, true?**
 9 **A True.**
 10 **Q Now, the searches, are you aware that at times in the**
 11 **past, even when the school was servicing females, that**
 12 **male officers also were school officers before it got**
 13 **BFOQ'd?**
 14 **A Well, I don't know. I mean, it was always supposed to be**
 15 **BFOQ from my knowledge. I understand there was a male**
 16 **assigned there. And I pointed to the staffing chart that**
 17 **required it to be a BFOQ. So when I was aware of it, you**
 18 **know, I instructed staff to follow the staffing chart**
 19 **that identified it as being a BFOQ assignment.**
 20 **Q All right. Did you ever speak to any of the male or**
 21 **female school officers concerning whether the search**
 22 **requirement had ever caused any sort of problem?**
 23 **A No, I have never had a conversation.**
 24 **Q Do you have any evidence that there were any sorts of**
 25 **problems concerning the search requirement when the**

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1 position was being staffed by males and females?
 2 **A None was brought to my attention.**
 3 **Q So is the reason that you made sure that it was female**
 4 **only strictly because it was designated BFOQ?**
 5 **A Strictly because the assignment requires the custodial**
 6 **officer to perform a search of the prisoner to ensure**
 7 **there is no contraband leaving the area. Whether it be**
 8 **school books, whether it be screws, wrenches, hammers,**
 9 **drills; all those item.**
 10 **And so the officer would have to put --**
 11 **physically put his hands on the prisoner's body to do**
 12 **that search. That is a requirement under the BFOQ for a**
 13 **female to have that assignment.**

14 **Q Now, is that one that was done to every inmate using the**
 15 **facility or is that a random search?**
 16 **A It should be random coming out of the school building**
 17 **proper. Out of the trades area, it should be all of**
 18 **them.**
 19 **Q And is that written down anywhere?**
 20 **A It may be in their post order. I don't know-**
 21 **Q Why from the trade area should it be all of them?**
 22 **A To familiarize you with the operation, we run a buildings**
 23 **trade, which means they run a wood shop. They have**
 24 **glues. They have hammers. They have drills. They have**
 25 **screw drivers. They have saws. They have a multiple**

(Pages 187 to 190)

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1 critical tools that I don't want find in anybody's back
 2 or being used as a weapon. So they should be searched
 3 whenever they are assigned over there. Auto mechanics
 4 has even more of those kinds of tools.
 5 Q How is this different than the industries area?
 6 A Industries is a -- you know, the machines are fixed and
 7 what they are primarily getting are needles. While a
 8 needle can cause damage by poking you and spread disease,
 9 it's kind of ugly what happens when a wrench comes up
 10 somebody's head.
 11 Q Are there -- other than needles, are there any other
 12 tools or dangerous implements in the industries area?
 13 A I believe all of the scissors are rounded off, except for
 14 when they have to do the large cutting. And that's done
 15 by the employees of the state --
 16 Q Okay.
 17 A -- not the prisoners.
 18 Q Other than the scissors, anything else?
 19 A The sewing machine operation itself. I mean, they have
 20 other things that are required to fix it. So if the
 21 industry supervisor has to fix a sewing machine, that's
 22 behind a caged area and is accounted for. But it's not
 23 used by prisoners.
 24 Q And what about in the dentures area? Are there awls or
 25 screw drivers or --

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1 A Not screw drivers. There are other kind of implements.
 2 I don't know what you call them. And they are handed
 3 out. They are controlled that way.
 4 Q In the schools area, why would, if one of the officers
 5 were female, why wouldn't she be able to perform the
 6 required searches? I'm listening.
 7 A From an operational stand, the facility operates on a
 8 schedule. So at the time the school is being released
 9 and the prisoners are subject to search, that's the same
 10 time that that activity is going on in the trades area.
 11 So I have the need to provide that search
 12 whether it be random or on every body coming out of there
 13 at identically the same time. So I can't be relieved by
 14 the other officer because they are already doing that
 15 duty on their assignment.
 16 Q So it has to be at identically the same time for what
 17 reason? I guess I --
 18 A Schedule. That's when class let's out.
 19 Q What would be the reason that it couldn't be staggered by
 20 a few minutes?
 21 A Because we're a 24/7 operation and we run by the minute
 22 on our schedule. And so count time, mealtime, school
 23 time, starting and ending, traversing the yard, it's very
 24 much controlled by a schedule.
 25 All of the teachers arrive at one time.

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1 Classes begin at one time. Classes end at a time.
 2 Buildings close at a time. Prisoners are released from
 3 those. The only exception to that is if somebody calls
 4 in sick and then we don't have that assignment.
 5 Q When there was a male and female in the school, how was
 6 it done, the searching?
 7 A I don't know.
 8 Q With regard to the implements in the school, like
 9 hammers, drills, those sorts of things, do the prisoners
 10 have to turn in their ID before they receive the tools?
 11 A They should.
 12 Q Are they required to?
 13 A Because I'm responsible for holding discipline at this
 14 facility, no, they are not always required to.
 15 Q In other words, sometimes -- what you're saying is
 16 sometimes the policy that they must turn in their ID is
 17 violated; is that what you're saying?
 18 A Right.
 19 Q How often does that happen?
 20 A I can't put a number on it.
 21 Q Fair to say, though, that the prisoners are required by
 22 policy to turn in their ID before they receive a tool,
 23 true?
 24 A Staff are required by policy to ensure prisoners that are
 25 assigned a tool are identified. Sometimes you have to

Page 194

1 turn in your ID. Sometimes an ID is kept on their
 2 person. But it must be logged who the tool is given to
 3 and by whom and who the tool is returned by and -- from
 4 and by whom.
 5 Q And none of the prisoners are actually allowed to leave
 6 the area until all the tools are accounted for, true?
 7 A They should not be, correct.
 8 Q All right. And isn't it true that the pat-downs occur
 9 only if there are tools that are missing and unaccounted
 10 for?
 11 MS. GROSSI: I'm going to object. Calls for
 12 speculation.
 13 THE WITNESS: That goes against policy.
 14 Q (BY MR. KENT-BRYANT) All right. Do you know as a matter
 15 of practice whether that's true or not?
 16 A No, I do not.
 17 Q And what policy are you referencing? Not the content of
 18 it. But is it a policy that is in writing somewhere?
 19 A About conducting pat searches on prisoners?
 20 Q No, no, no. Specifically, with regard to the school, I
 21 believe you testified that in the -- there were two
 22 areas. Tell me their names again.
 23 A The vocational?
 24 Q That all the prisoners needed to be searched. You said
 25 that was the policy for that. Is that written down

(Pages 191 to 194)

Page 195	Page 197
<p>1 anywhere?</p> <p>2 A You may find it in your post orders. I can't say</p> <p>3 specifically.</p> <p>4 Q All right. And it sounds like you're not sure one way or</p> <p>5 the other whether, as a matter of practice, the searches</p> <p>6 only occur there if there are tools missing?</p> <p>7 A I can't answer that.</p> <p>8 Q Okay. You know, similarly, if someone were – I'm</p> <p>9 skipping around a little bit right now. If someone were</p> <p>10 to testify that the searches in the health care area did</p> <p>11 not occur as a matter of practice when women left the</p> <p>12 infirmary, would you have any reason to say that's not</p> <p>13 true?</p> <p>14 A I will tell out that I would not condone that. It's a</p> <p>15 high risk area for contraband leaving that area.</p> <p>16 Officers should follow that post order and prisoners</p> <p>17 should be pat searched leaving that area.</p> <p>18 Q Is there a post order?</p> <p>19 A There should be a post order for every assignment an</p> <p>20 officer is given at this facility.</p> <p>21 Q Okay. I mean, is there a post order that says that the</p> <p>22 health care worker must shake down all prisoners leaving</p> <p>23 the infirmary?</p> <p>24 A I can't answer that.</p> <p>25 Q All right. So, as you sit here, you don't know one way</p>	<p>1 Q Say that again. Left without...?</p> <p>2 A Proper security monitoring. In other words, a partner in</p> <p>3 the area on an isolated assignment. Frequent contact</p> <p>4 with that officer to ensure that they are safe when</p> <p>5 prisoners are in that area.</p> <p>6 Q All right. But, I mean, a female – maybe I'm not</p> <p>7 understanding. A female property officer would face the</p> <p>8 same risks to life and limb that a male would, true?</p> <p>9 A Not with female prisoners.</p> <p>10 Q In what respect?</p> <p>11 A The tragic events involved sexual assault as well as</p> <p>12 murder.</p> <p>13 Q All right. I mean, so there is – but the sexual</p> <p>14 assault, I mean, you're not – the primary concern is not</p> <p>15 the female prisoner assaulting the corrections officer,</p> <p>16 the male corrections officer, true?</p> <p>17 A Repeat that.</p> <p>18 Q Right. With regard to sexual assault, the primary</p> <p>19 concern isn't that the female prisoner will assault the</p> <p>20 male corrections officer? It's that the male corrections</p> <p>21 officer will assault the female prisoner, true?</p> <p>22 A It can go either way.</p> <p>23 Q But –</p> <p>24 A We have historically provided more protection to a</p> <p>25 female, whether it be a prisoner or a staff member.</p>
<p>1 or the other whether it actually happens?</p> <p>2 A I don't perform that duty. I don't know.</p> <p>3 Q All right. But, as you sit here today, it sounds like</p> <p>4 you also don't know whether those officers have been</p> <p>5 ordered to do so; is that true?</p> <p>6 A I don't know what the officers are ordered to do –</p> <p>7 Q All right. Well, I mean –</p> <p>8 A – by their supervisor. I couldn't testify to that.</p> <p>9 Q – have you ordered their supervisors to order them to</p> <p>10 perform pat-downs of prisoners coming out of the</p> <p>11 infirmary?</p> <p>12 A I don't remember any direct order to do so.</p> <p>13 Q All right. And skipping around a little bit more, in the</p> <p>14 property room – is the property room equipped with</p> <p>15 cameras?</p> <p>16 A I believe so.</p> <p>17 Q All right. Why does that not ameliorate the problem of</p> <p>18 the officer being isolated with the prisoner?</p> <p>19 A I'm going to try and be without passion on this. My</p> <p>20 experience –</p> <p>21 Q You can be with passion if you'd like.</p> <p>22 A – with this department is single officer assignments are</p> <p>23 such a high risk that, left without property security</p> <p>24 measures, has resulted in staff death both at this</p> <p>25 facility and at the Thumb facility.</p>	<p>1 Q All right. So, I mean, I think we could agree that when</p> <p>2 we're assessing the risk of the corrections officer to</p> <p>3 violence at the hands of the inmate, there is both the</p> <p>4 male and female officers are at risk, right?</p> <p>5 A The risk is greater.</p> <p>6 Q For...?</p> <p>7 A For a female to be assaulted by a male prisoner on a</p> <p>8 single assignment.</p> <p>9 Q Okay, right. I wouldn't disagree. Now, this is a female</p> <p>10 facility. So here, isn't it fair to say, that the risk</p> <p>11 to the male corrections officer of assault by the female</p> <p>12 prisoner at least isn't any higher than it would be for a</p> <p>13 female corrections officer?</p> <p>14 A True. The reverse, however, is the potential for a male</p> <p>15 officer to be inappropriate with a female prisoner on an</p> <p>16 isolated assignment.</p> <p>17 Q And this brings us back to the beginning. Why are the</p> <p>18 cameras that are present in the property room, why do</p> <p>19 they not ameliorate that problem?</p> <p>20 A Camera observation can be used for investigation and</p> <p>21 determination if there has been inappropriate behavior.</p> <p>22 after the fact.</p> <p>23 Q Is this not something that links into the electronic</p> <p>24 monitor officer?</p> <p>25 A It is.</p>

(Pages 195 to 198)

Page 199

1 Q All right. So they are seeing it in real time, right?

2 A Not necessarily.

3 Q Why not necessarily?

4 A You can't look at 1,400 cameras at the same time.

5 Q So -- well, what is the job of the electronic monitor

6 officer?

7 A To monitor cameras throughout the facility.

8 Q All right. So they are supposed to be trying to observe

9 what is going on in real time, correct?

10 A It is not possible to look at them all in real time in

11 all locations.

12 Q But that's what they're doing, right? They are

13 looking --

14 A They are looking at some areas all the time.

15 Q Right. And then they are supposed to be scanning the

16 different screens with, at intervals, to be able to see

17 what is going on, right?

18 A Not every camera is looked at every shift by every

19 officer assigned to the electronic monitor.

20 Q Would there be a major inconvenience in requiring the

21 electronic monitor officer to maintain surveillance of

22 the property room at certain intervals?

23 MS. GROSS: I'm going to object. It calls for

24 speculation.

25 THE WITNESS: I can't answer that. We have no

Page 200

1 policy on it.

2 Q (BY MR. KENT-BRYANT) Okay.

3 A This is the first experience the department has in the

4 number of cameras installed in the facility.

5 Q In your opinion, does the facility need more electronic

6 monitor officers?

7 A I don't have an opinion on that.

8 Q If you could have anything you wanted, would you want

9 another -- or more electronic monitor officers?

10 A If I could have anything I wanted?

11 Q Yes, you get three wishes for your whole life.

12 A The first one would not be that.

13 Q The first one is supposed to be to wish for more wishes.

14 But, in all seriousness, do you think that that position

15 could be better served with more officers staffed to it?

16 A Well, this is not politically correct. I believe that we

17 could have more officers assigned to the correctional

18 facility than we currently have.

19 Q All right.

20 A Specific to that assignment, I have personally sought

21 guidance on what we should be doing with the system they

22 have installed here.

23 Q The cameras system?

24 A Yes. What to monitor, when to monitor it, how to release

25 it, under what circumstances. The system was installed,

Page 201

1 and it's not finished being installed, and began as a

2 project that has gone beyond anyone's expectation in

3 running a correctional facility. There is not another

4 facility in the state that has half the number of cameras

5 we have here. The department's policy is silent on all

6 of the use of this type of technology.

7 I'm not an expert. I can't tell you. I can

8 tell you that I feel it's inadequate. But I can't tell

9 you what is adequate. I don't know what the expectation

10 will be of using that equipment to its fullest extent.

11 Q Okay. So the amount of equipment is not inadequate,

12 but -- so I'll let you answer. You're not saying the

13 amount of equipment is inadequate, right?

14 A Certainly not.

15 Q Right. Okay. When you say it's inadequate, what are you

16 referencing?

17 A This deposition is a perfect example. Your expectation

18 is that I have an officer that can monitor every camera

19 screen that could be going on in real time. You're not

20 atypical of the average non-corrections person. What I

21 call a lay person.

22 The expectation is, if you have 1,400 cameras,

23 why can't you prevent what you see going on? And my

24 answer would be, I can't see what is going on in real

25 time, realistically, 24/7.

Page 202

1 Q All right.

2 A It's the proverbial --

3 Q But what is inadequate?

4 A -- chicken versus egg.

5 What is adequate? You define that.

6 Q No, no, no. I'm not under oath. You said that you

7 considered something to be inadequate. I'm wondering

8 what it is that you were referencing.

9 Is the protocol for using them, the staff; what

10 are you talking about.

11 A All of that.

12 Q Okay.

13 MR. KENT-BRYANT: Let's mark this.

14 (Exhibit Number 16 marked for identification by

15 the reporter).

16 Q (BY MR. KENT-BRYANT) All right. I'm going to show you

17 what has been marked as Exhibit 16. If you could,

18 identify that document and then, again, look to see if

19 there are any inaccuracies in it.

20 MS. GROSS: This is -- okay.

21 THE WITNESS: (Examining document). Okay.

22 Q (BY MR. KENT-BRYANT) All right. And any inaccuracies?

23 A Again, there should be one identical for non-BFOQ.

24 Q Okay.

25 A And on Page 5, under 15, again, that statement,

(Pages 199 to 202)

Page 203

1 "Completes reclass reports for job lists."
 2 Q Right
 3 A And I believe on Page 8, under 16, there would not be any
 4 need to write a prisoner pass. A prisoner never leaves
 5 your area.
 6 There wouldn't be any reports on caustics or
 7 cleanliness associated with the assignment. The
 8 responsibility for cleanliness would be with the hospital
 9 housekeeping staff.
 10 They would not complete security classification
 11 screens or order supplies. They wouldn't set up
 12 schedules for porters or laundry.
 13 Q All right. And what does an offsite hospital officer do?
 14 A They provide custodial supervision for a prisoner
 15 confined as a patient, an inpatient at a local hospital,
 16 under which the department has a contract for services.
 17 Q All right. And it's your belief that right now – you –
 18 well, strike that.
 19 Usually, there are two officers that will be
 20 offsite hospital officers on any given occasion?
 21 A Yes.
 22 Q And it's your believe that, currently, that one of those
 23 officers can be male?
 24 A Correct.
 25 Q Now, has this been this way since the facility has been

Page 204

1 converted to female only?
 2 A Yes.
 3 Q And in terms of the BFOQ position, why does that have to
 4 be a BFOQ position?
 5 A Again, the prisoner is in a state of undress often during
 6 medical procedures. They lay in hospital gowns with –
 7 usually without clothing underneath them. The officer
 8 has to maintain direct observation, even if it's a
 9 situation where they are delivering a child. Because we
 10 have responsibility for that prisoner not to leave our
 11 custody. They put on restraints. They may have to check
 12 restraints, whether it be around ankles or around belly's
 13 and wrists.
 14 Q Anything else?
 15 A Prisoner goes to the bathroom. They are confined to the
 16 bed. They might be bathed in the bed.
 17 Q Okay. I just want to make sure – okay.
 18 Are there, again, published rules for where
 19 women can be in a state of undress and not in a state of
 20 undress?
 21 A Prisoner housing unit rules? I don't know what you're
 22 referring to.
 23 Q Okay. It may be. It may be.
 24 A Yes.
 25 Q All right. I'm going over a witness list that has been

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1 submitted by the Department of Corrections. One of the
 2 people listed is a man named Tony Lopez. Do you know
 3 what he would know about this facility and specifically
 4 the decisions made to declare certain positions BFOQ
 5 female only?
 6 A Mr. Lopez works for civil service in Lansing as our
 7 liaison for the Department of Corrections.
 8 Q Okay. Have you ever worked with him regarding the BFOQ
 9 issue?
 10 A No.
 11 Q All right. Same question with regard to Nancy Zang,
 12 Z-A-N-G?
 13 A The question?
 14 Q Yes. Do you know what she would know concerning this
 15 facility and specifically the decisions made regarding
 16 designating certain positions BFOQ female only?
 17 A No, I do not.
 18 Q Do you know what Clarice Stovall would know about those
 19 issues?
 20 A No, I do not.
 21 Q Do you know what Susan Davis would know about those
 22 issues?
 23 A I don't know what she would know.
 24 Q Who is Susan Davis?
 25 A She was the warden who was – I replaced here.

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1 Q Oh, that's right. That's right. And who is Paul
 2 Slaughter?
 3 A Slaughter?
 4 Q Slaughter? Okay.
 5 A Yes. He is my administrative assistant.
 6 Q Okay. Do you know what he would know concerning
 7 decisions made to designate certain positions BFOQ only?
 8 A I couldn't imagine Paul knows anything.
 9 Q I'll tell him you said that.
 10 A Well, as regards to that. He came here long after this
 11 facility was opened.
 12 Q Right.
 13 A He was not involved in – doesn't supervise anyone and
 14 doesn't do any HR work.
 15 Q Chances are he's listed – I don't want to speak for
 16 counsel – chances are he's listed to verify the
 17 authenticity of documents.
 18 A Possibly.
 19 Q Okay. I just didn't know who he was.
 20 MR. KENT-BRYANT: Let me speak with my client.
 21 (Off the record from 2:00 to 2:02).
 22 MR. KENT-BRYANT: Back on the record.
 23 No further questions.
 24 MS. GROSSI: I have a few questions.
 25 MR. KENT-BRYANT: I have no further questions.

(Pages 203 to 206)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al.,

Plaintiffs, NO: 11-852-CD

vs: JUDGE BROWN

STATE OF MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendant

_____ /

The Deposition of LUCILLE EVANS, taken
before me, Daniel E. Ripka, CSR-2367, Notary Public, on
Wednesday, October 17, 2012, at the Woodland Correctional
Center, 91036 East M-36, Whitmore Lake, Michigan, commencing at
or about 9:30 A.M.

APPEARANCES:

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Appearing on Behalf of Defendant.

ALSO PRESENT: TOM NOWACKI

1 meetings took place? I mean, do you know approximately
 2 what year?
 3 A. I don't recall.
 4 Q. To you does May 2009 seem like it makes sense for when the
 5 facility opened as an all women's facility?
 6 A. That... that sounds like the correct date --
 7 Q. Okay.
 8 A. -- that Scott prisoners transferred there and we became
 9 one women's facility.
 10 Q. All right. Do you remember...
 11 Well, doing the math you would have been there
 12 for about 18 months or so while it was an all women's
 13 facility before you transferred over here; is that true?
 14 A. Before I transferred to this particular facility?
 15 Q. Correct. Correct.
 16 A. No. I was there from December -- I'm sorry, from January
 17 of 2005 until I transferred to this facility.
 18 Q. Right. But the marker I'm using is from when it became an
 19 all women's facility. You were there about 18 months when
 20 it was an all women's facility?
 21 A. Approximately, yes. I don't recall exactly, but
 22 approximately, yes, 18 months or so.
 23 Q. I'm going to show you... I'm going to show you what was
 24 marked as Exhibit 2. And for the time that you were there
 25 does this look like an accurate list of the positions that

1 Q. Okay.
 2 A. We discussed I'm pretty sure medical emergency
 3 transportation.
 4 Q. Okay.
 5 A. That's what I can recall off of the top of my head.
 6 Q. Now, we'll go through the different positions in more
 7 detail in a moment.
 8 When you talk about the shakedown position,
 9 what's that position?
 10 A. When prisoners go for visits they have to be shaken down
 11 prior to the visit and after the visit.
 12 Q. Was there a position for performing strip searches?
 13 A. Yes.
 14 Q. That's different than the shakedown position?
 15 A. The person that -- We never had a position titled a strip
 16 search position, it was titled a shakedown position and it
 17 included strip searches.
 18 Q. So the shakedown person was generally the person in
 19 addition to other things that was responsible for strip
 20 searches that needed to be performed at the facility?
 21 A. Pretty much. But that was only in the location at the
 22 visiting room near the control center area.
 23 So there was more than one position where staff
 24 was required to multitask and do shakedowns.
 25 Q. I haven't gotten a full tour of the facility. There's a

1 were BFOQ and non BFOQ?
 2 And you can take your time.
 3 A. This appears accurate.
 4 Q. Okay. And what you see in Exhibit 2, was it at this
 5 meeting or these meetings among administrative staff where
 6 it was determined which positions as are reflected in
 7 Exhibit 2 would become BFOQ female only and which would
 8 not?
 9 A. There's a lot of positions listed here so I don't recall
 10 if this is accurate to reflect our discussion at a
 11 meeting.
 12 Q. All right. Do you recall at the meeting or meetings you
 13 referenced earlier what positions were discussed in terms
 14 of becoming BFOQ female only?
 15 A. I vaguely recall.
 16 Q. Okay. What do you recall?
 17 A. Housing units; the infirmary, as I've said earlier; yard
 18 positions, some of the yard positions; hospital positions,
 19 hospital coverage; MSI Industries.
 20 Q. Go ahead. Any others?
 21 A. Food service, the shakedown position, half of the control
 22 center assignments, the recreations officer position, the
 23 reception and guidance center positions.
 24 Q. What was that again? I'm sorry.
 25 A. Reception and guidance center. It's RGC.

1 room designated for strip searches that need to be
 2 performed near the visiting area; is that true?
 3 A. Yes, that's correct.
 4 Q. All right. And is that where strip searches were
 5 performed if they needed to be performed from anywhere in
 6 the facility?
 7 A. No. The facility has an east entrance and a west
 8 entrance. Prisoners were allowed to visit on the east
 9 entrance and the west entrance.
 10 Q. Okay.
 11 A. So you would have to have that assignment covered on both
 12 sides of the facility.
 13 Q. Is there a room designated for strip searches near both
 14 the east --
 15 A. Yes.
 16 Q. -- and the west entrance?
 17 A. Yes.
 18 Q. Okay. So if a strip search were required anywhere, you
 19 know, if a situation arose anywhere in the facility where
 20 a strip search is required it would have to be performed
 21 in one of those two rooms?
 22 A. No.
 23 Q. Okay. Tell me why.
 24 A. If there is a situation in segregation where a prisoner is
 25 threatening harm or have injured themselves, to be sure

1 that the prisoner doesn't still have something that she
 2 could hurt herself with a strip search could be done in
 3 segregation.
 4 Q. Segregation. Okay.
 5 A. Uh-huh (Yes).
 6 Q. Okay. With the exception of what you just said if a strip
 7 search were required anywhere in the facility, with the
 8 exception of what you've already said, would it typically
 9 be done at one of the strip search rooms in the east or
 10 the west side?
 11 A. Not necessarily.
 12 Q. Okay. Explain.
 13 A. A strip search could be done in a housing unit, a strip
 14 search could be done in the food service area.
 15 Q. Was it preferred, however, by administration that it be
 16 performed in one of these two rooms near the east and west
 17 entrance?
 18 A. I can't say yes. I cannot say yes.
 19 Q. Why not?
 20 A. Because if a prisoner is in segregation and the prisoner
 21 has been taken to segregation for an assault on the yard
 22 with a weapon and you took that person into segregation
 23 that would be the preferred location for the strip search,
 24 not to take them from --
 25 Q. Segregation.

1 A. Yes. Their supervisor, a sergeant, a lieutenant. It's
 2 normally a shift commander.
 3 Q. All right. And if there aren't any extenuating reasons
 4 for the strip search to occur in, you know, wherever the
 5 location is, let's say it's food service, is it typically
 6 the case that the officer will then be ordered to take the
 7 prisoner to one of these strip search rooms in the east or
 8 west with the exception of the segregation issue that you
 9 mentioned?
 10 A. That's a fair assessment.
 11 Q. Okay. When you first arrived at Huron Valley Women's in
 12 January 2005 in the women's facility do you have a sense
 13 of what percentage of the employees were male versus the
 14 percentage that were female?
 15 A. When I arrived in 2004?
 16 Q. Or '4 or '5, when you first arrived --
 17 A. I'm sorry. 2005. I'm sorry.
 18 Q. That's okay -- as assistant deputy warden.
 19 A. The majority were females. I can't speculate on the
 20 percentage.
 21 Q. When the facility reopened as an all -- I don't want to
 22 say reopened, but when it was fully converted to a women's
 23 facility, an all women's facility, do you have an estimate
 24 as to what percentage of the employees were male versus
 25 what percentage were female?

1 A. -- that location to another location with a possible
 2 weapon for a strip search.
 3 Q. Right. And you mentioned that earlier. So let me
 4 rephrase the question.
 5 With the exception of the issue you just spoke
 6 of concerning segregation, if a strip search is required
 7 on the facility, Huron Valley Women's, is it preferred by
 8 administrative staff that it occur in either one of the
 9 strip search areas near the west or east entrance?
 10 A. I'm sort of having a difficult time answering your
 11 question when you say is it preferred by administrative
 12 staff.
 13 Q. Right.
 14 A. It's situational.
 15 When it is referenced for visiting and
 16 transportation it is preferred that it be done in those
 17 two areas.
 18 There are many issues that could arise that
 19 administration or as an administrator I would prefer the
 20 strip search to be done in the area that is closest to
 21 where the incident occurred.
 22 Q. Okay. So my understanding of the procedure is if an
 23 officer wants to or feels that it's necessary to perform a
 24 strip search typically the officer needs to get permission
 25 from administration, right?

1 A. I would say -- I'll just give as an estimate that 75, 80
 2 percent of the staff were females.
 3 Q. You mentioned the majority were females in January 2005
 4 from your estimate. Was there a higher percentage of
 5 female employees after the facility became all female or
 6 before?
 7 A. Your question again is...?
 8 Q. Yeah, it wasn't a great question.
 9 In January 2005 when you arrived as assistant
 10 deputy warden there was a certain percentage of women who
 11 were employed at the portion of the facility that was
 12 women's, and then there was a certain portion that were
 13 employed at the facility when it became all women's. I'm
 14 just wondering which was higher. Were there more, a
 15 higher percentage of women in January 2005 working at the
 16 women's facility or after it became an all women's
 17 facility?
 18 A. There was a higher percentage after it became an all
 19 women's facility because there were more staff there.
 20 Q. All right.
 21 Okay. Going back to the meetings you spoke
 22 about earlier where the issue of BFOQing positions was
 23 discussed, do you recall what the criteria the group used
 24 to decide whether a position should be BFOQ female only?
 25 A. I do not recall the verbiage or the exact wording that was

1 used. The basic method used to assist in gauging whether
2 it should be a BFOQ position was those positions where a
3 prisoner would be required to be shaken down and those
4 positions where a female prisoner would be in a state of
5 undress.

6 Q. Anything else, or were those the two basic criteria?

7 A. To my knowledge, to my recall those were basically the
8 criteria.

9 Q. All right. And lots of times, I'll just give you a
10 guidance for how I work, after some question where I've
11 asked you for a list I usually say at the end of it, you
12 know, "Anything else?" I'm not suggesting that there has
13 to be anything else, nor am I attempting to badger you,
14 I'm just making sure that we've gotten the full list of
15 your reasons, you know, and that you haven't been
16 interrupted, or anything like that.

17 All right. So --

18 A. You'll take into consideration, recall that I may not
19 recall and I may --

20 Q. All you can do is your best.

21 A. Okay.

22 Q. That's all you can do.

23 And when you talk about one of the criteria
24 having to do with the issue of a shakedown, how did that
25 work? Was it if a shakedown was ever required as part of

1 forward would be BFOQ female only. Were some of the
2 positions that were determined should be BFOQ female only
3 formerly not BFOQ female only?

4 A. I do not recall, with the exception of what I've already
5 named for you those housing units --

6 Q. Right.

7 A. -- infirmaries, and so on and so forth, obviously I don't
8 recall all of the exact positions or I would have named
9 them. So I can't... To answer your question I can't
10 distinguish, I can't recall to be able to distinguish
11 which specifically were BFOQ --

12 Q. Already?

13 A. -- and which were expanded to be BFOQ.

14 Q. Okay. Well, we'll go through them. Maybe that's harder
15 to do as a group. Maybe if we go through them one by one,
16 which we'll do later, that will be helpful.

17 Now, you mentioned the issue of women in a state
18 of undress. Were there rules that the women had
19 concerning when they could be in a state of undress?

20 A. Yes.

21 Q. Okay. Do you recall what those rules were?

22 A. Prisoners could only be in a state of undress in their
23 cell, in the shower, during the strip search process, in
24 the infirmary, which was like a hospital environment.

25 Q. Anywhere else?

1 whatever the job description was then that would be BFOQ
2 female, or was there some other way of approaching that?
3 How did you do that?

4 A. I'm not quite understanding your question.

5 Q. Okay. So one of the criteria for determining whether a
6 position in general was going to be BFOQ female only, and
7 I'm going back to when this group was meeting, had to do
8 with the issue of shakedown. And I'm trying to sort of
9 focus in on that.

10 Was it the consensus of the group that if a
11 shakedown of a prisoner was ever required within that
12 position that it would then be a BFOQ female-only
13 position, or was there a more nuanced approach to it?

14 A. The criteria basically was if it was a routine requirement
15 that a prisoner be shaken down.

16 Q. Now, in a lot of these positions prior -- Well, I'll ask
17 you this. In some of the positions that were declared
18 BFOQ female only when the facility became all female were
19 some of those positions not BFOQ female only prior to the
20 facility becoming all female? So like food service?

21 A. State your question again.

22 Q. Sure. In these meetings there was discussion about what
23 positions would be BFOQ female only. And there was, at
24 least out of these group meetings I'm getting from your
25 testimony, a decision concerning which positions going

1 A. I cannot recall.

2 Medical exams. That would be in the medical
3 building or the medical area.

4 That is what I can recall.

5 Q. Were there different, during different shifts or different
6 times were there different rules about when the women
7 could be in a state of undress?

8 A. I'm not really understanding your question.

9 Q. So particularly third shift. I don't know. See, these
10 are things I don't know the answers to.

11 Particularly third shift when people are going
12 to bed, sleeping, were there any different standards for
13 where they could be in a state of undress, or was it the

14 same as the other two shifts?

15 A. It was pretty much the same as the other two shifts. I
16 don't want to expand on your answer -- on your question,
17 but I think in all fairness it deserves a bit of
18 explanation, if I may.

19 Q. Uh-huh (Yes).

20 A. Female prisoners have assignments at any prison, prisoners
21 have work assignments. If a prisoner has a work
22 assignment, regardless to what time of day that prisoner
23 gets off of the assignment, there may be 50 women working
24 in food service that work a specific shift. When they get
25 off work and they leave that shift and they go to their

1 procedures.
 2 Q. The video, does the video contain live strip searches of
 3 actual people?
 4 A. The video contained a live strip search.
 5 Q. Okay. So not using some mannequin, or something like
 6 that, an actual person?
 7 A. Correct.
 8 Q. All right.
 9 Do you know who Ralph Golidy or Goliday is?
 10 A. At the time I was at the facility he was the union – he
 11 was a union steward. He is a corrections officer.
 12 Q. Okay. Do you recall telling him that, and this is what he
 13 said that you told him, quote, "We are doing some things
 14 to motivate the male correction officers to leave the
 15 facility?"
 16 A. I do not recall making that statement.
 17 Q. Do you deny that you made that statement?
 18 A. I deny making that statement. That is not of my
 19 professional character.
 20 Q. Warden Warren testified that after you all had the
 21 meetings to determine, among other things, what positions
 22 would be BFOQ female only she would develop I think it was
 23 called a custodial assignment sheet and she would review
 24 the custodial assignment sheet with Curtis and Straub and
 25 from that would be generated a final custodial assignment

1 Q. Okay.
 2 MR. KENT-BRYANT: I'm going to go over position
 3 descriptions. Do you want to take break?
 4 MS. MILLER: This would be a good place to take
 5 a break, yup.
 6 MR. KENT-BRYANT: Okay.
 7 (Discussion off the record. Recess taken
 8 at 11:19 A.M. Deposition resumed at or
 9 about 11:34 A.M.)
 10 Q. (BY MR. KENT-BRYANT): All right. I want to show you what
 11 I think was actually marked Exhibit 1, and can you
 12 identify that document, please?
 13 A. It's a position description.
 14 Q. For which position?
 15 A. According to the document it's for corrections officer.
 16 Q. And for what working title?
 17 A. It says food service.
 18 Q. And that's at Huron Valley?
 19 A. The division does indicate Huron Valley Correctional
 20 Complex. That's what it says here.
 21 Q. And the general summary of function/purpose of the
 22 position indicates that there was a gender based BFOQ for
 23 this particular position; is that true?
 24 A. The document reads that, yes.
 25 Q. And was that true while you were there?

1 sheet. Her meeting with Curtis and Straub, are you
 2 familiar with that fact or that process?
 3 A. I do not have firsthand knowledge or information of when
 4 Warden Warren met with her boss or the deputy director.
 5 Q. Right.
 6 A. I would like to add the meeting, meetings that we held as
 7 an administrative staff at the facility, our information
 8 and our requests were mere recommendations that the warden
 9 then would present to the deputy director and the RPA.
 10 Q. Okay. That's what she said, too.
 11 And she said that at one of the meetings with
 12 Curtis and Straub that they told her that Caruso said that
 13 ~~the department wanted all employees at Huron Valley to be~~
 14 female.
 15 Did Warden Warren tell you that?
 16 A. Warden Warren has never told me "I would like to see every
 17 staff person at this institution be female."
 18 Q. No. Maybe I said that a little bit wrong. Did she tell
 19 you that she was told that Caruso said that?
 20 A. I don't recall. She and I -- I worked for her for a very
 21 long time, we had many conversations. I don't recall that
 22 conversation, her stating that.
 23 Q. All right.
 24 A. I'm not saying that she did or didn't, but we had many,
 25 many conversations.

1 A. Yes.
 2 Q. Now, to be clear, because I didn't mean to be tricky, at
 3 the time the facility turned to female only it was a BFOQ
 4 female-only position, true?
 5 A. I didn't --
 6 Q. I think I was too general in my previous question.
 7 A. I didn't get your question.
 8 Q. Yes. This became a gender based BFOQ position after the
 9 facility became female only, true?
 10 A. I cannot be positive.
 11 Q. Okay. You do recall, I think you testified you do recall
 12 men working this position on occasion --
 13 A. Yes, I do.
 14 Q. All right. And to let me finish the question so I don't
 15 want you to have something on the record that you're not
 16 happy with. That was only before the facility became
 17 female only, true?
 18 Maybe not. I guess that's what I understood.
 19 A. I need to be sure of your question.
 20 Q. Right. And that's consistent with my initial instruction
 21 to you, so that's completely appropriate.
 22 The only time you remember men working food
 23 service was before the facility became all female; is that
 24 true?
 25 A. That's not exactly true.

1 Q. Okay. Explain.
 2 A. During our conversion process the men that were housed on
 3 the men's side of the facility no longer worked in the
 4 food service preparation areas. So the male prisoners
 5 that originally cooked were being transferred out.
 6 Q. Right.
 7 A. They no longer cooked.
 8 The women prisoners then began a transition into
 9 the food service assignment and do the cooking for the
 10 facility. We sent only women to cover that assignment.
 11 We allow only women to escort in that assignment.
 12 But our conversion wasn't complete at that
 13 point, so that is why I say it's not 100 percent true that
 14 it was female only, because we never allowed anything
 15 except for female officers to supervise the women in food
 16 service and transport the women to that food service
 17 assignment from one side of the compound to the other.
 18 Q. All right. From the time that you arrived in January 2005
 19 is what you're saying?
 20 A. Our conversion, it's in the conversion process that we're
 21 speaking of, that probably started in maybe the following
 22 year or so. I can't be positive of the date, but women
 23 only worked in food service prior to the complete
 24 conversion.
 25 Q. Okay. I understand what you're saying.

1 A. Because there is -- This is a position where critical
 2 tools are on hand, critical tools for the Department of
 3 Corrections, your knives and spatulas and things that are
 4 metal that can be sharpened, and because prisoners have to
 5 be shaken down on this assignment.
 6 Because an officer in the food service position
 7 has to monitor the food service workers that means they
 8 have to check in the restroom to make sure that the female
 9 prisoners are appropriate in their actions and behaviors
 10 in the restroom.
 11 Q. Okay. Anything else?
 12 A. That's quite enough, I think. Yes. No, there's nothing
 13 else.
 14 Q. All right. Now, you gave me an example earlier of a strip
 15 search that took place actually in the food service area,
 16 true? That was the one where the people were reprimanded?
 17 A. Yes, it's the food service area.
 18 Q. Any other examples you are aware of where a strip search
 19 was required emanating from the food service area?
 20 A. I don't recall.
 21 Q. Well, you said it was frequent. What was your basis for
 22 saying strip searches were frequently required?
 23 A. Because the prisoners in food service have access to
 24 knives, the prisoners in food service have access to power
 25 items.

1 Looking at Exhibit 1, does it seem to reflect
 2 the description of duties of people in the food service
 3 position? And the exhibit's the whole stapled together
 4 thing not just the front page.
 5 A. Roughly this appears to be the working position
 6 description for the food service assignment.
 7 Q. All right.
 8 And this applied to all shifts; is that true?
 9 A. Yes.
 10 Q. And this was one of the positions that the group that you
 11 previously described discussed making BFOQ female only?
 12 A. I cannot be 100 percent positive in my memory of each and
 13 every position that we discussed. That facility has more
 14 positions than your average facility.
 15 Q. I'm just asking you about this one, though, at this point.
 16 A. I would like to say yes.
 17 Q. All right.
 18 A. Originally -- I'm about a hundred percent sure that this
 19 is part of the original discussion with BFOQ positions,
 20 but I just can't be positive.
 21 Q. All right. And do you recall the reason that this
 22 position was BFOQed?
 23 A. Because prisoners have to be strip searched on occasion
 24 often.
 25 Q. Any other reason?

1 Q. Okay. So I understand that. But do you have information
 2 that strip searches were frequently required in food
 3 service?
 4 A. Not any information that I can give you a specific date or
 5 time on.
 6 Q. Other than the situation in which the strip search was
 7 performed in the food service area and the officers were
 8 reprimanded do you recall any other specific times where a
 9 strip search emanated from the food service area?
 10 A. I don't recall.
 11 Q. All right. Now, in terms of --
 12 A. Can I add does it mean it doesn't happen?
 13 Q. You just did.
 14 In terms of the number of employees that were
 15 assigned to food service, were there two food service
 16 officers at any given time?
 17 A. Yes.
 18 Q. And when the prisoners were taken to food service were
 19 they accompanied by officers, like rovers?
 20 A. No.
 21 Q. They just walked through?
 22 A. Not necessarily.
 23 Q. Sometimes were they?
 24 A. No, not routinely.
 25 Q. Routinely how many corrections officers would be present

1 in the food service area?
 2 A. What specific time of day are you asking about?
 3 Q. Did it change according to the time of day?
 4 A. Yes, it did.
 5 Q. Okay. Tell me about that.
 6 A. On the start of the shift for prisoner workers there would
 7 be the food service worker that was assigned. There could
 8 be a yard officer that goes in through the area to make a
 9 round or check on the building.
 10 There are civilian food service state employees.
 11 When the chow lines are in progress and the
 12 feeding process is going on the number of officers in food
 13 service varies.
 14 Q. All right.
 15 A. Because you would send additional staff when the
 16 process — when the food service lines are being
 17 processed.
 18 Q. So while food service is up and running — I mean, is food
 19 service — It's not 24 hours, is it? It's just whenever
 20 the meals are, or is there something going on 24 hours?
 21 A. Well, they have to prep the food prior to serving it,
 22 so...
 23 Q. Right. I mean, is there ever a time where it's closed?
 24 A. I don't remember what the food service hours are over at
 25 Women's Facility, but during the midnight — I mean, it

1 but it's a vehicle. So you have a security officer with
 2 the vehicle, then that doesn't stop the production that's
 3 occurring in food service.
 4 Q. Right.
 5 A. So you need an officer to keep an eye on these prisoners
 6 that are in the production area, maybe those that's in the
 7 baking area. Then you would have another set of prisoners
 8 that will be chopping a vegetable, or something. Then
 9 there would be another set of prisoners that would be in
 10 the actual seating area that would be setting the food up
 11 on the line, so you couldn't take the officer from the
 12 vehicle to come and shake down someone.
 13 I guess the point that I'm making is this. The
 14 female officer was not always accessible to just stop to
 15 go shake down someone.
 16 Q. You say that the female officer wasn't accessible. Did
 17 you ever... Maybe I asked this question, but I think I
 18 asked it more generally. Concerning food service, did you
 19 ever receive any sort of complaint or information that
 20 having a male officer in food service made it more
 21 difficult to perform the shakedowns that were required?
 22 A. I answered that and I said, and I'll repeat myself, the
 23 female officers complained all the time.
 24 And you asked me for specific names and I
 25 couldn't give you specific names. You may have female

1 doesn't take them all night to make the bread, so to
 2 speak.
 3 Q. All right. So while it was open there were always at
 4 least two officers there, right?
 5 A. Sometimes there was one.
 6 Q. All right. What would that be?
 7 A. If an officer went to lunch and, you know, it may just be
 8 for a very short time. If an officer went to the
 9 restroom.
 10 Q. If someone had, for any significant period of time had to
 11 leave that assignment someone else would —
 12 A. Would be — Correct. They would send a relief. I'm sorry
 13 to cut you off.
 14 Q. No. That's fine. That's exactly what I was asking.
 15 So in terms of shakedowns in food service, a
 16 male could have prisoners shaken down by a female
 17 correction officer at almost any time; is that true?
 18 A. That's not true.
 19 Q. Why?
 20 A. If there was a vehicle at the back dock unloading
 21 supplies, it may be an outside vendor, it may be an
 22 outside contractor that's bringing food supplies, a
 23 security officer needs to be in that location on that
 24 assignment to keep an eye on that vehicle. I mean, you've
 25 got a vehicle, a running vehicle. I mean, it's shut off,

1 officers walking past your office complaining. You may
 2 have female officers — You may be in the general area
 3 when female officers are complaining. So I apologize, but
 4 I can't give you specific names.
 5 Q. All right. I thought I asked that generally about the
 6 facility, but I better make sure.
 7 So what you just said is certainly true of the
 8 facility in general, right, that you're saying female
 9 officers complained to you that they were pulled off of
 10 duty to perform shakedowns for male officers, but you
 11 don't remember who any of those females were, true?
 12 A. I never said they complained directly to me. I said that
 13 I could hear them in passing if they are...
 14 Q. Okay. All right. You never received a direct complaint
 15 about that?
 16 A. I may have, but I don't recall the name of the person.
 17 Q. Okay. Well, as you sit here today do you recall receiving
 18 directly, someone came to you and complained about being
 19 pulled off their duty to assist a male to perform a
 20 shakedown of a female inmate?
 21 A. I'm going to say not formally.
 22 I have... I would sit in the lunchroom a lot of
 23 times in the same lunchroom that the officers would eat in
 24 because I'm wanting to make myself available to the staff,
 25 and that is where a lot of conversation occurred amongst

1 the female officers regarding their inability to perform
2 their assigned task when they were required to go and
3 perform shakedowns or strip searches, and so on and so
4 forth.

5 Q. So this would be something you would overhear, is that
6 what you're saying?

7 A. Yes.

8 Q. All right. But none of those females came to you and
9 specifically made a complaint, true?

10 A. Oh, I'm positive that in my, you know, sitting there
11 eating lunch someone in an informal way have said "You
12 know, Deputy Evans, this is really difficult."

13 Q. Do you recall any single person who did that even
14 informally?

15 A. I do not, because I ate lunch in there and I made myself
16 available for conversation, or I just needed to be
17 available for the staff.

18 Q. Are you aware of any grievances being filed by any female
19 officers about having to assist males performing
20 shakedowns?

21 A. I can't - I'm not familiar with that. I don't review all
22 the grievances that the officers write.

23 Q. All right.

24 Now, did you speak with any males, male
25 corrections officers about what problems, if any, it

1 Q. All right. Just from your general experience, you were
2 there for quite a while, somebody being called to assist
3 somewhere and being pulled off their assignment would
4 happen several times a shift, wouldn't it?

5 A. I cannot give you an answer on how many times it occurred.

6 Q. It wasn't uncommon; is that true?

7 A. No, it wasn't uncommon.

8 Because, remember, males had to respond and
9 assist in emergencies. So, no, it's not uncommon for an
10 emergency to occur and males to be required to respond.

11 Q. Right. Sometimes males, particularly if there was a
12 violent situation males on the grounds were of particular
13 usefulness, true? So to restrain a prisoner, for
14 instance.

15 A. I'm going to... I'm going to say that we have female staff
16 that were capable, it may have required more than one
17 female, but we had female staff that were capable of
18 handling emergencies as well as the males.

19 Q. Did you receive complaints or hear comments from the
20 female correction officers that they valued having the
21 male correction officers around to assist in some of those
22 emergency situations?

23 A. Can you repeat your question?

24 Q. Yes. Did you receive complaints or overhear conversations
25 or receive comments or overhear comments from any of the

1 caused for them to have to request female assistance in
2 doing shakedowns?

3 A. I don't recall.

4 Q. Then just to clarify, so as you sit here today you don't
5 remember speaking to any of the male officers about the
6 issue of what, if any, problems were caused by requiring
7 female officers to assist them with shakedowns?

8 A. I cannot recall.

9 Q. Now, male officers sometimes get called off their duty to
10 assist other officers, too, true?

11 A. Yes.

12 Q. So at any given time when Huron Valley was an all women's
13 facility, still is, but when you were there, there might
14 be, say, a hundred or so people, maybe more, that are
15 actively working there at any given time like on any given
16 shift?

17 A. Uh-huh (Yes).

18 Q. Is that true?

19 A. Yes.

20 Q. And during any given shift the number of times that people
21 are called off a particular assignment to assist somewhere
22 else in the facility, how often does that occur?

23 A. I cannot tell you what the frequency would be. I would
24 not be the person that would be contacted, it would be a
25 shift supervisor, shift command.

1 female corrections officers that they valued having the
2 male correction officers around to be able to respond to
3 some of those emergency situations?

4 A. I'm positive I've heard female officers indicate that it
5 is good for the facility to have males available to
6 assist, or just available.

7 Q. Okay. Something new. And what I'll be doing with these
8 new ones is he'll mark the one that you actually use,
9 that's the official copy, and then I hand a copy to your
10 attorney and then question off of one, just so you know
11 what the paper shuffle is.

12 (Deposition Exhibit Number 4 was marked for
13 identification by the reporter.)

14 Q. (BY MR. KENT-BRYANT): All right. Can you identify what
15 has been marked as Exhibit 4?

16 A. A position description.

17 Q. For...?

18 A. Yard control officer.

19 Q. Okay. Very good.

20 And this is a BFOQ only position according to
21 Exhibit 4?

22 A. Are you asking me a question?

23 Q. Yes. Yes.

24 A. It is. It says on the bottom of the document that "This
25 is a gender based BFOQ position." According to the

1 document then, yes, it is a BFOQ position description.
 2 Q. Do you recall this being a position that the group that
 3 you described discussed being BFOQ female only?
 4 A. I do not recall. There were... I do not recall.
 5 Q. All right.
 6 The yard position, why was the yard position, if
 7 you know, BFOQ female only?
 8 A. Staff assigned to the yard are responsible to shake down
 9 five prisoners per day.
 10 Q. Okay.
 11 A. Staff on any assignment are to shake down prisoners.
 12 Q. Any other reason?
 13 A. If a prisoner is suspected to have contraband on some type
 14 of weapon on her she would need to be cuffed and shaken
 15 down and escorted to a secure area for strip search.
 16 Q. All right. Any other reason?
 17 A. That basically would be the main reason.
 18 Q. How many yard officers were there at any given time?
 19 A. I'm going to try and work --
 20 MS. MILLER: Are you talking about after it
 21 became all female in May of 2009?
 22 MR. KENT-BRYANT: Sure, I'll ask that. Then my
 23 next question will be whether it was any different.
 24 Q. (BY MR. KENT-BRYANT): But after it became all female how
 25 many yard officers -- Oh, I see what you're saying.

1 A. I don't recall.
 2 Q. Okay.
 3 And were there ever any strip searches that
 4 emanated from the yard area?
 5 A. That was a long time ago. I don't remember.
 6 Q. All right. Did you ever speak to any men who were
 7 assigned to the yard area concerning how convenient or not
 8 convenient it was to have female corrections officers
 9 assist them with shaking down female prisoners?
 10 A. I don't recall a conversation with a male about that.
 11 Q. Talking about shakedown, how long does a shakedown
 12 typically take?
 13 A. A couple of minutes. It depends on the person. It
 14 depends on what is being shaken down.
 15 Q. Well, just typically. A couple minutes?
 16 A. Probably three to five minutes.
 17 And, again, it does depend. If the female is
 18 wearing an outer coat, if there is suspicion that she has
 19 something like hidden in her bra it may be a shakedown
 20 that is a more detailed shakedown.
 21 If it is suspected that -- And prisoners do it
 22 as often as they can, take a loose stitching in their
 23 lining of their clothing to move contraband from one
 24 location to another. If those type of things are
 25 suspected then naturally the shakedown would be -- would

1 Okay. How many yard officers were there at any
 2 given time?
 3 A. My memory is not what it used to be. I want to say
 4 possibly six.
 5 Q. Okay.
 6 A. I don't remember how many yard positions right off of the
 7 top of my head.
 8 Q. Prior to the facility becoming all female were there men
 9 that worked the yard position in the female area?
 10 A. Your question is prior -- Please repeat the question.
 11 Q. Yeah, prior to the facility becoming all female were there
 12 men working the yard in the female part of the complex?
 13 A. There were men working the yard and women.
 14 Q. Okay. And were there any reports of there being any
 15 problems with men being able to perform shakedowns with
 16 the assistance of a female officer in the yard before the
 17 facility became all female?
 18 A. I don't recall.
 19 Q. Did you ever speak with -- You know, kind of similar
 20 series of questions here. Did you ever speak or overhear
 21 any complaints of females about any inconvenience caused
 22 by having to assist men in shaking down female prisoners
 23 in the yard area?
 24 A. You're asking me before it became one facility?
 25 Q. Right.

1 take longer because the person is being -- they're looking
 2 for something very, very specific and so they would want
 3 to be quite detailed.
 4 But I would say typically three to five minutes.
 5 Q. Okay. And now in the case where, you know, say it's
 6 wintertime and there's coats and that sort of thing, the
 7 male officer could inspect the coat for contraband, true?
 8 It would be removed first from the female, but then the
 9 male officer could inspect the coat, true?
 10 A. He could according to policy.
 11 Q. Right. All right.
 12 Now, here at this facility I assume there are
 13 yard officers?
 14 A. Yes.
 15 Q. And they can be male or female?
 16 A. They can be, yes.
 17 Q. All right. And if a yard officer is a female here at a
 18 men's facility the female yard officer can pat down the
 19 male inmate, true?
 20 A. That is true. If there is a female that is a yard officer
 21 at Woodland they could in theory shake down a male
 22 prisoner, yes.
 23 Q. I think what you're saying as it's currently constituted
 24 there aren't any women assigned to yard here at Woodland?
 25 Is that what you're implying?

1 A. We can assign women to yard to answer your question.
 2 Q. Okay.
 3 A. And they can shake down male prisoners. That is really
 4 your question. And so yes and yes.
 5 Q. All right. And in the yard women are not supposed to be
 6 in a state of undress, true?
 7 A. We're talking – Oh, we're back to female.
 8 Q. I switched back, as I do.
 9 A. Okay.
 10 MS. MILLER: She was hoping you weren't talking
 11 about the COs.
 12 THE WITNESS: Yes. That's true. Correct.
 13 MR. KENT-BRYANT: I wasn't. I wasn't.
 14 Q. (BY MR. KENT-BRYANT): At Huron Valley women were not
 15 supposed to be in a state of undress?
 16 A. Correct. Yes, sir. Correct.
 17 Q. In the yard area?
 18 A. That is correct.
 19 Q. The same for food service, true?
 20 A. Correct.
 21 Let's restate your question about food service.
 22 Q. Women were not supposed to be in a state of undress in the
 23 food service area, right?
 24 A. Traditionally and typically that is correct.
 25 Food service is an assignment where women have

1 Q. For what position?
 2 A. The working title is the gate control officer.
 3 Q. And this was a BFOQ female-only position at Huron Valley
 4 Women's; is that true?
 5 A. The document reads "This is a gender based BFOQ position."
 6 Q. All right. Now, is this a position that was discussed at
 7 the group meeting among administrators that you spoke of
 8 earlier?
 9 A. I don't recall. I'm sorry, I do not recall.
 10 Q. All right. Do you have any knowledge as to why that
 11 position was considered BFOQ female only?
 12 A. The women's... The Huron Valley Women's Facility has many
 13 gate pass prisoners.
 14 For corrections terminology a gate pass prisoner
 15 is a prisoner that works outside of the gates and
 16 therefore pass through the gated area to and from an
 17 assignment.
 18 Q. Okay. And why did that necessitate that this be a BFOQ
 19 female-only position?
 20 A. I can only speculate.
 21 Q. You don't know as you sit here today?
 22 A. No, no, no. You asked me why is it.
 23 Q. Right.
 24 A. And I'm just going to give you my speculation of why it
 25 is. That female prisoners traverse the gates and they

1 soiled their clothing or their garment and would need to
 2 change. Food service is an assignment that is longer than
 3 15 minutes or an hour, and by it being a – just the mere
 4 species of a female you would find that – Or you wouldn't
 5 find. That's certainly not appropriate English. Please
 6 strike that.
 7 Q. No, go ahead. I understand what you're saying.
 8 A. It could not – It would not be unnormal or unnatural for
 9 women to on a long-term assignment that would be four
 10 hours, five, six hours to maybe not have – they would
 11 need to maybe change occasionally or more often than you
 12 would find in a men's facility for purposes that are
 13 just --
 14 Q. Of personal hygiene?
 15 A. That is correct.
 16 Q. All right. And that would be performed in the restroom
 17 area?
 18 A. Correct.
 19 Q. All right.
 20 (Deposition Exhibit Number 5 was marked for
 21 identification by the reporter.)
 22 Q. (BY MR. KENT-BRYANT): Okay. Handing you what's been
 23 marked as Exhibit 5. Can you identify this document,
 24 please?
 25 A. It is a position description.

1 must be shaken down and strip searched as well.
 2 Q. Always have to be strip searched?
 3 A. Coming in from an outside detail where you have access to
 4 the public and contraband, that's correct.
 5 Q. How many officers were assigned at any given time to the
 6 gate?
 7 A. One. At shift change there was a second officer added, or
 8 if there was heavy traffic or during unusual events I
 9 should say with high volumes of traffic there would be
 10 two.
 11 MS. MILLER: Can I just ask you to clarify?
 12 Because the way you answered that. You said one, and then
 13 you said at shift change. Do you mean there was typically
 14 one, and then at shift change they would add another?
 15 THE WITNESS: That is correct.
 16 MS. MILLER: Okay.
 17 MR. KENT-BRYANT: Right. That's what I
 18 understood.
 19 THE WITNESS: Thank you for clarifying.
 20 MS. MILLER: That's okay.
 21 Q. (BY MR. KENT-BRYANT): So during before the facility
 22 became all female do you recall any men being assigned to
 23 gate control officer?
 24 A. Yes, I do.
 25 Q. And did those men shake down or search females?

1 A. No.

2 Q. All right. What was done instead?

3 A. Several things.

4 Q. Okay. Tell me.

5 A. We would attempt to pull a female from another assignment.

6 It's really -- And when I say several things I

7 should have said several assignments or locations, we

8 would pull a female from that assignment or that location.

9 Q. All right. Was there a place where typically the female

10 was drawn from?

11 A. Not typically.

12 Q. All right.

13 A. Every attempt would be made to use the strip search

14 officer, because the strip search officer was closer to

15 the gate area.

16 Q. Okay.

17 Now, there's not -- I didn't see a specific

18 position description for a strip search officer. Was

19 there... was there such a position description, or is it

20 part of another position?

21 A. There's no position description for a shakedown officer,

22 is there not? Did you have that?

23 Q. I have not seen it. But that doesn't mean it doesn't

24 exist. I mean, this is why we do discovery to see what we

25 do and do not have.

1 mean, are we talking a couple? Are we talking a couple

2 dozen?

3 A. It depends on how many gate pass assignments we may have

4 as to how many prisoners may go through the gate to be

5 strip searched.

6 Q. And the strip search officer, how far is, I mean in space,

7 is the strip search officer typically from the gate

8 officer?

9 A. Maybe 30 feet. You're back at Women's Facility now,

10 aren't you?

11 Q. Correct. Correct.

12 A. Space and mileage and measurements is not my expertise, I

13 really need that on the record. It's not.

14 Q. Okay.

15 A. I would say maybe 30 to 50 feet.

16 Q. Okay. Within voice distance?

17 A. No. There are gates that separate the individuals.

18 Q. Okay. So do they radio when they need assistance at the

19 gate?

20 A. They could, yes.

21 Q. Is that typically what is done?

22 A. They could radio or they could pick the phone up.

23 Q. Okay. All right.

24 The strip search officer when not conducting a

25 strip search or not performing a shakedown at the gate

1 But it could have been somebody that had a

2 different name, I don't know. Do you?

3 A. No. We multi -- The gate officer is basically relieved by

4 the person that does the strip searches.

5 Q. All right.

6 A. The strip search officer could be the control center

7 officer.

8 Q. All right.

9 What does a strip search officer do? I mean,

10 sometimes I have to ask these questions that maybe seem

11 obvious, but tell me what the strip search officer does?

12 A. Shakes down female prisoners when there is a male on

13 assignment that can't shake down the female prisoner and

14 conducts a strip search to ensure that a prisoner is not

15 in possession of contraband.

16 Q. Okay. Does the strip search officer typically perform the

17 strip searches of prisoners even if the request for the

18 strip search doesn't emanate from the gate area?

19 A. Yes.

20 Q. Okay. Now, and I really have no idea, so how many, in any

21 given shift, let's say, and maybe the shifts are

22 different, how many women go through the gate area per

23 shift that need to be shaken down?

24 A. I can't answer that. I don't have the answer to that.

25 Q. I mean, do you have any -- I mean, is there any range? I

1 area, what is that individual doing?

2 A. You may not find a position description because that

3 assignment is traditionally in addition to other duties.

4 Q. Okay.

5 A. So that could be the control center officer that functions

6 as control center officer and strip search officer and

7 shakedown officer and gate relief, if you follow me.

8 Q. Right. Right.

9 A. It could be a person that is -- You won't probably find a

10 description.

11 If you've looked at our staffing sheets -- their

12 staffing sheets you may not see that listed as a staffing

13 position. The function is a mandatory requirement,

14 however, we don't get staffing for...

15 Q. Strip search officer.

16 A. Correct.

17 Q. Right.

18 All right. But it sounds like typically there's

19 a person on duty who is going to be primarily charged with

20 performing the strip searches during any given shift; is

21 that true? And it might be the control center officer?

22 A. That is pretty much true.

23 Q. Okay.

24 A. I do want to add, and if I may.

25 Q. Sure.

1 A. It's been a while since I've worked at the women's
 2 facility and exactly every space, and distance, and
 3 location I'm just not going to be able to recall a hundred
 4 percent.
 5 Q. Right. I understand. I understand. And you got it on
 6 the record.
 7 And that's not uncommon at all. It's hard to be
 8 sitting in a room like this and estimating distance and
 9 this sort of picture you have in your mind, so I
 10 understand that.
 11 Just by the way, these position descriptions, do
 12 you know -- Well, let's just use the gate officer
 13 position, do you know who drafted those?
 14 A. I do not know.
 15 Q. Okay. Did you contribute to them in any way as far as you
 16 know?
 17 A. I'm sorry. I don't remember.
 18 Q. All right. All right.
 19 Now, I believe there will be some testimony that
 20 the, let's say in the case of Exhibit 1 which was the food
 21 service position description, that the strip search
 22 requirement was added after or at the time of, I should
 23 say, the facility became an all women's facility. Do you
 24 know whether or not that's true?
 25 A. I don't know that to be true or not.

1 service building that we used as a gym during the evening
 2 hours.
 3 Q. Okay.
 4 A. And so it's still safe to say that we didn't have a gym.
 5 Q. All right. Still don't have a gym?
 6 A. We did not have a gym. You asked about January of 2005 --
 7 Q. Right.
 8 A. -- and that's what I'm speaking of.
 9 Q. Right. Did they construct a gym or was something
 10 converted to a gym after that?
 11 A. Once the conversion was completed the portion of the
 12 facility which was the west entrance which we gained had a
 13 gym.
 14 Q. All right. So is the gym officer position, was that a new
 15 position as of the conversion of the facility to an
 16 all-female facility?
 17 A. I don't recall.
 18 Q. All right.
 19 Do you recall whether the gym officer position
 20 was one of the positions your group discussed becoming a
 21 BFOQ female-only position?
 22 A. I'm sorry. I don't remember if that was a part of your
 23 discussion.
 24 Q. You don't remember if that was a part of your discussion?
 25 A. Correct. Was that your question?

1 Q. Okay.
 2 (Deposition Exhibit Number 6 was marked for
 3 identification by the reporter.)
 4 Q. (BY MR. KENT-BRYANT): Could you identify the document
 5 that's been marked as Exhibit 6, please?
 6 A. It's titled position description.
 7 Q. And this is for the working title of gym officer?
 8 A. Yes.
 9 Q. Okay. What does a gym officer do?
 10 A. A gym officer supervises prisoners during their leisure
 11 time activity. A gym officer assists in the security
 12 patrol of group activities, which may include outside
 13 participants, outside meaning non-Department of
 14 Corrections employees.
 15 Q. Now, when you arrived in January of 2005 were some of the
 16 gym officers male?
 17 A. When I arrived in 2005 if memory serves me correctly we
 18 didn't have a gym.
 19 Q. Okay. When did there start to be a gym?
 20 A. I don't remember.
 21 Q. Okay. All right.
 22 Do you remember at any time when you were there
 23 after January of 2005 any males being gym officers?
 24 A. Excuse me. Let me retract that.
 25 When I arrived in January of 2005 we had a food

1 Q. Yes. Yes, it was.
 2 Do you know why the gym officer position was
 3 designated BFOQ female only?
 4 A. The requirement that prisoners are to be shaken down. And
 5 the gym also had a rest room area, which of course would
 6 require -- I mean, it wouldn't require, but it would just
 7 be kind of logical if prisoners went into the restroom
 8 area it's at a point where they would be in a state of
 9 undress.
 10 Q. All right. Well, in the gym was this a rest room or a
 11 locker room? I mean, was it a place where people changed
 12 clothes or was it a place where they went to the bathroom?
 13 A. In the gym they had a locker room and a rest room.
 14 Q. All right. How many gym officers were there at any given
 15 time?
 16 A. To my knowledge?
 17 Q. Right.
 18 A. There was one on each shift that the gym was open.
 19 Q. Okay. What shifts was it open?
 20 A. That would have been A.M. and the P.M. shift.
 21 Q. Okay. One and two?
 22 A. Yes.
 23 Q. All right.
 24 Now, other than in the locker room were women
 25 allowed to be in a state of undress in the gym area?

1 A. No, sir.
 2 Q. All right.
 3 Now, did you ever receive directly any
 4 complaints from any female corrections officers having to
 5 assist male correction officers in the gym area to perform
 6 shakedowns?
 7 A. I don't recall that.
 8 Q. In — Oh, go ahead.
 9 A. I don't recall that a female complained to me about
 10 anything related to the gym.
 11 Q. Okay. And do you ever recall a strip search emanating
 12 from the gym area; in other words, an officer called in
 13 for permission to have a strip search performed from the
 14 gym area?
 15 A. I don't recall if it occurred. I don't remember.
 16 Q. And I think I asked you this. Getting maybe a little bit
 17 tired. You don't recall one way or the other whether any
 18 men ever worked as a gym officer, true?
 19 A. No, I don't recall, I really don't.
 20 (Deposition Exhibit Number 7 was marked for
 21 identification by the reporter.)
 22 Q. (BY MR. KENT-BRYANT): All right. Can you identify
 23 Exhibit 7?
 24 A. A position description.
 25 Q. For what position?

1 A. Electronic monitor officer.
 2 Q. And is this a position that you recall the group
 3 discussing in terms of it being a BFOQ female-only
 4 position?
 5 A. I don't recall whether the group discussed this one.
 6 Q. And what does the electronic monitor officer do?
 7 A. Electronic monitor monitors cameras throughout the
 8 facility.
 9 Q. Are there any cameras that are actually pointed at any
 10 area where women are allowed to be in a state of undress?
 11 A. Their cell. If you have a prisoner that is on observation
 12 status, in addition to there being a physical person
 13 observing, the camera.
 14 Q. Do you ever recall a time while you were there where
 15 cameras were pointed into cell areas?
 16 A. If you have an observation, prisoner on observation, the
 17 camera would be in addition to the individual that would
 18 provide observation for the prisoner. So, yes.
 19 Q. But my question was, and maybe you answered it, my
 20 question was do you recall that happening?
 21 A. Yes.
 22 Q. How often did that happen?
 23 A. When a prisoner was on observation status.
 24 Q. I mean, and how often did that happen?
 25 A. A prisoner could be on observation status at any time. I

1 don't have an exact number or date, or I can't say how
 2 many instances per day.
 3 Q. Is there a record of that somewhere, do you know?
 4 A. I can't be positive.
 5 Q. And for what reasons would a prisoner be put on
 6 observation status?
 7 A. Suicide precaution.
 8 Q. Any other reason?
 9 A. Self-injurious behavior.
 10 Q. Anything else?
 11 A. Those are documented items and that's normally determined
 12 by QMHP, so it would be a qualified mental health person
 13 that makes a determination of these two scenarios where it
 14 would be suicide precaution or a self-injurious behavior
 15 issue.
 16 Q. Other than when someone's on observation status cameras
 17 are not pointed inside the cells, true?
 18 A. That's correct.
 19 Q. The electronics officers, they're located in the control
 20 center?
 21 A. Correct.
 22 Q. All right. How many officers are typically in the control
 23 center?
 24 A. I pause because I'm thinking.
 25 Q. Uh-huh (Yes).

1 A. Between two and three.
 2 Q. All right.
 3 And do the officers in the control center have
 4 different responsibilities if there's more than one?
 5 A. Yes.
 6 Q. And would one of them be the electronic monitor officer?
 7 A. Yes.
 8 Q. And what are the others?
 9 A. My memory doesn't serve me as well, I'll repeat that.
 10 Q. Okay.
 11 A. The other officer could be the officer that is the count
 12 officer. That person is the individual that is the master
 13 of... to handle all the — is the individual that handles
 14 the master count boards and the movement in and out of the
 15 facility, in addition to many other duties.
 16 Q. And people in the control — officers in the control
 17 center, do they have any shakedown responsibilities?
 18 A. Yes. We discussed that earlier that that person is
 19 traditionally the one that does the shakedowns, the strip
 20 searches.
 21 Q. All right. Okay. I understand what you're saying now.
 22 So the person that's the electronic monitor
 23 officer, does that person have —
 24 A. It may be the electronic monitor who goes to do the strip
 25 search, it may be the control center — the count officer

1 in control center.
 2 Q. Okay.
 3 A. It could be either one. If the electronic monitor officer
 4 is watching a prisoner that is making suicidal gestures
 5 that's on observation for suicide naturally that person
 6 wouldn't be moved from that assignment to go do a
 7 shakedown or strip search.
 8 Q. Right.
 9 A. So it could be the monitor officer -- To answer your
 10 question, is it exclusively the electronic monitor that
 11 does the shakedowns and strip searches, to answer your
 12 question the answer is no.
 13 Q. All right. All right. I understand what you're saying.
 14 Going back to the gate officer assignment, if
 15 they required assistance it would likely come from one of
 16 the people in the control center, but not necessarily one
 17 particular assignment or the other, it would depend?
 18 A. That is correct. That is correct.
 19 Q. All right.
 20 (Deposition Exhibit Number 8 was marked for
 21 identification by the reporter.)
 22 Q. (BY MR. KENT-BRYANT): I want to show you what's marked as
 23 Exhibit 8. Can you identify that, please?
 24 A. It's a position description.
 25 Q. For which position?

1 medical staff that work at the facility. It is their job
 2 to make rounds throughout the healthcare area.
 3 In doing such a prisoner could be in the state
 4 of undress if they're being examined by a nurse or doctor,
 5 which is what the intent of the healthcare facilities is
 6 for, to provide medical services, and that could include
 7 physical exam.
 8 Q. All right. So in your mind what's the distinction between
 9 a healthcare officer and an infirmary officer?
 10 A. The infirmary officer, they have very like duties. The
 11 infirmary is a location where prisoners are housed for
 12 long-term traditionally based on medical problems,
 13 generally severe medical problems that it would be similar
 14 to a hospital, and so just for my description, and the
 15 healthcare officer is the officer that is responsible for
 16 the doctor's office.
 17 Q. Okay.
 18 A. The infirmary officer is the officer who is responsible
 19 for the hospital.
 20 Q. All right. And typically at any given time how many
 21 officers are assigned to the healthcare and/or infirmary
 22 officer position?
 23 A. One. One per position.
 24 Q. One per shift?
 25 A. Correct. We don't have a healthcare officer -- When I was

1 A. A resident unit officer.
 2 Q. And what working title?
 3 A. Healthcare and/or infirmary officer.
 4 Q. Okay. And this is a BFOQ female-only position, true?
 5 A. The document reads "This is a gender based BFOQ position."
 6 Q. At any time that you were at Huron Valley was that ever
 7 not a BFOQ female-only position?
 8 A. I do not recall, because the working title is twofold.
 9 It's a healthcare and an infirmary.
 10 Q. Would you separate those two in your mind as two different
 11 things?
 12 A. For the purpose of this meeting I think it -- It's just my
 13 opinion that they should be separated for the purpose of
 14 your questioning because I don't want to give information
 15 related to both that could very well be exclusive to one
 16 or the other in a given scenario.
 17 Q. All right. So I'll try and follow up on that.
 18 Healthcare officer, what would a healthcare
 19 officer do?
 20 A. The healthcare officer is the officer that is responsible
 21 for the entire... I guess it's similar to a doctor's
 22 office environment at the facility. That is person is
 23 responsible, as the other officers, to conduct the
 24 shakedowns. The healthcare officer provides safety and
 25 security for -- additional safety and security for the

1 at the women's facility there was not a healthcare officer
 2 on the midnight shift.
 3 Q. Okay. Now, is this one of the positions that you recall
 4 the group discussing to be BFOQ female only?
 5 A. It is one of the positions that we discussed.
 6 Q. And the reason that it was determined to be BFOQ female
 7 only is because women might be seen in a state of undress?
 8 A. That would be number one.
 9 Q. And what else?
 10 A. Number two would be that the officers would be required to
 11 conduct shakedowns of the females.
 12 Q. And do you recall ever receiving any complaints either
 13 directly or indirectly about female officers having to
 14 assist male officers in the healthcare infirmary area with
 15 shakedowns?
 16 A. Not that specific area.
 17 And I'd like to clarify. When I indicated to
 18 you that females complained all the time because they had
 19 to go and assist in other areas and it left the area that
 20 they were assigned to vulnerable, the discussion that was
 21 heard was not applicable to each and every specific
 22 location or assignment.
 23 I've noted as we've gone through the position
 24 descriptions you asked about it, and when we go to the
 25 various locations, and so just, you know, for the record

1 Q. Oops. You're absolutely right.
 2 Could you identify Exhibit 9? I'm sorry.
 3 A. It's a position description.
 4 Q. For what position?
 5 A. The Industries officer.
 6 Q. And is this one of the positions that the group that you
 7 referenced earlier discussed making BFOQ female only?
 8 A. I'm sorry, I do not recall.
 9 Q. Is this a position where you recall prior to the facility
 10 becoming all female that men worked on at least some of
 11 the time?
 12 A. I was not at the women's facility when the Industries
 13 opened.
 14 Q. Okay. So, I mean, this description says it's a BFOQ
 15 female-only position. If I asked you why it was
 16 determined that this was a BFOQ female-only position would
 17 you have any information on that?
 18 A. Industries would be a position where there is dangerous
 19 tools, critical tools, the opportunity to... It's a
 20 volatile position where a prisoner could utilize that
 21 position in itself as part of escape opportunity.
 22 Industries position required a prisoner to be
 23 strip searched because of the nature of the tools and
 24 equipment the prisoners are working with, and of course
 25 they would need to be shaken down.

1 for identification by the reporter.)
 2 Q. (BY MR. KENT-BRYANT): All right. I've handed you
 3 Exhibit 10. Could you identify Exhibit 10 for me, please?
 4 A. It's a position description.
 5 Q. And for what position?
 6 A. It's a rover officer.
 7 Q. What does a rover officer do?
 8 A. A rover officer, I believe... Some facilities define a
 9 rover officer as a yard rover and some define them as
 10 housing unit rover. I would need to read the position
 11 description to attempt to know whether this – what the
 12 rover did if it would be different for housing as opposed
 13 to yard –
 14 Q. That's fine.
 15 A. – so may I?
 16 Q. Yes. Absolutely.
 17 A. We can continue.
 18 I've confirmed that it does apply to, it is
 19 applicable for a housing unit. It's written on the
 20 document.
 21 Q. Okay. This particular position.
 22 Now, at Huron Valley were there rovers that were
 23 working in the housing units and also not working in
 24 housing units?
 25 A. If memory serves me correct there is a yard rover

1 So my response in just experience in the
 2 Department of Corrections and experience with working with
 3 female prisoners would be that the Industries position
 4 would be a BFOQ position because it would require a
 5 prisoner to be shaken down and strip searched.
 6 Q. Right. But you weren't part of the decision to make the
 7 BFOQ designation for the industries officer at Huron
 8 Valley, true?
 9 A. I do not recall whether this was part of the discussion
 10 when we discussed BFOQ positions. I was not at the
 11 facility when the Industries position opened, when the
 12 Industries opened.
 13 Q. Was there any similar sort of facility prior to this
 14 particular building opening?
 15 A. What would you define as similar facilities?
 16 Q. Well, let me back up a little bit. Do you know what the
 17 industries officer at Huron Valley does?
 18 A. No, I wasn't there when the position opened.
 19 Q. All right. So that's a new position then?
 20 A. Correct.
 21 I could assume, but that's not appropriate for
 22 this venue.
 23 Q. I agree.
 24 Okay. You can set that aside.
 25 (Deposition Exhibit Number 10 was marked

1 assignment
 2 Q. Let's see if we've got that one here.
 3 A. I really work hard to make sure that memory serves me
 4 properly.
 5 Q. Let me ask you this. Was the yard rover position BFOQ
 6 female only?
 7 A. I don't remember.
 8 Q. Do you remember your working group of which you were a
 9 member discussing the yard rover position in terms of it
 10 being a BFOQ female only?
 11 A. I don't. I don't recall.
 12 Q. Okay.
 13 A. And it's a good possibility that... At this facility we
 14 have a yard rover. I thought we had one at Women's
 15 Facility and I wanted to clarify before I mentioned it
 16 that my memory fails me, so I wasn't sure if it was
 17 housing or yard, because at this facility I have housing
 18 and yard, and it's been a long time since I've been at
 19 Women's and I'm really working to ensure that I'm not
 20 mixing rovers with, you know, the two facilities.
 21 Q. Understood.
 22 I want you to assume hypothetically that there
 23 was a yard rover position at Huron Valley. I think there
 24 was.
 25 A. I think there was as well.

(Pages 106 to 109)

1 Q. Or probably still is.

2 A. I can't be a hundred percent positive, but I do think

3 there was.

4 Q. And I also think that it was BFOQed female only. I want

5 you to assume that hypothetically.

6 A. Right. I don't..

7 Q. Do you know reasons there would be for making the yard

8 rover position BFOQ female only?

9 A. The same reason that you would... I should state that,

10 I'm sorry.

11 Because the requirement is that a prisoner – a

12 staff person shake down a prisoner to prevent the

13 introduction of contraband.

14 Q. Right. This is not, a yard rover position isn't a

15 position where you'd be –

16 A. In the housing.

17 Q. It wouldn't be in housing?

18 A. Okay.

19 Q. Correct? The yard rover is different than a rover that

20 would be in housing?

21 A. Correct.

22 Q. And so the yard rover position isn't a position where

23 you'd be concerned about prisoners being seen in a state

24 of undress, true?

25 A. True.

1 assist in shakedowns. Do you recall any specific position

2 to which any of those complaints pertained?

3 A. I do not.

4 Q. All right. And the rover officer position in housing

5 units, did they actually enter the housing units? Was

6 that part of the job responsibility?

7 A. Yes.

8 Q. All right.

9 A. They were assigned in the housing unit.

10 Q. Right.

11 (Deposition Exhibit Number 11 was marked

12 for identification by the reporter.)

13 Q. (BY MR. KENT-BRYANT): I'm showing you what's been marked

14 as Exhibit 11. Can you identify that document, please?

15 A. It's a position description.

16 Q. For what position?

17 A. The position title is an Inpatient and/or RTP medical

18 aide.

19 Q. And what does an Inpatient/RTP medical aide do?

20 A. This position or this person functions as would a resident

21 unit officer. They control the security, flow of the

22 housing unit to ensure there is no contraband. They're

23 responsible for shaking down, for providing additional

24 security for when there is group activity. They're

25 responsible for taking the count. They are to assist the

1 Q. So that the reason for BFOQing that position would have to

2 do with the shakedown requirements, true?

3 A. That is true if in fact there is a position that exists

4 and I'm accurate –

5 Q. Right. Assume hypothetically. Assume hypothetically

6 until we move on to the same topic – or to a different

7 topic.

8 Now, did you ever receive any complaints

9 specific to the yard rover position that males having to

10 use females to perform shakedown responsibilities was

11 causing any sort of disruption?

12 MS. MILLER: I'm just going to place objection

13 as to that because you're asking her if she received

14 complaints about a position you told her to hypothetically

15 assume existed.

16 THE WITNESS: That I can't –

17 MS. MILLER: So you're asking her did she

18 receive complaints about a hypothetical position.

19 THE WITNESS: That I can't really even confirm

20 myself is a position at Women's.

21 Q. Right. All right. You know what, I'll say that's fair

22 enough.

23 In fact, why don't I ask you generally. You

24 mentioned that you overheard complaints and comments from

25 women about having to be pulled off of an assignment to

1 doctors, nurses, and so on and so forth, in making rounds.

2 They participate in the treatment team meetings regarding

3 what is in a prisoner's best interest for recovery or

4 discharge from the housing unit.

5 Q. Now, do you recall whether your group discussed whether

6 this should be a female-only position?

7 A. I do not recall whether we specifically discussed this

8 position, but I would like to add, an Inpatient/RTP

9 medical aide is an assignment that is inside of a housing

10 unit and this position is exactly comparable for the most

11 part to a resident unit officer.

12 Q. And resident unit officers are in housing?

13 A. Correct.

14 Q. And that's BFOQed?

15 A. And this is an in housing assignment.

16 But to answer your question, no, I don't recall

17 whether we discussed this position or not.

18 Q. All right. And so this particular position... Does this

19 particular position participate in transportation of the

20 inmates to outside medical facilities at all?

21 A. It could.

22 Q. Is there a separate position that does that?

23 A. Officers are... officers are qualified with weapons, and

24 once an officer is qualified they are capable of taking

25 outside medical transportation runs.

1 Q. All right.
 2 (Deposition Exhibit Number 12 was marked
 3 for identification by the reporter.)
 4 Q. (BY MR. KENT-BRYANT): Could you identify the document
 5 that is identified or that is marked as Exhibit 12?
 6 A. It is a position description, and the working title is
 7 property room officer.
 8 Q. All right. And this has been designated as a gender-based
 9 BFOQ position as well, true?
 10 A. According to the document, yes, that is correct, that's
 11 what it states here.
 12 Q. And was this one of the positions that was discussed in
 13 your working group during the conversion process?
 14 A. I'm sorry. I do not recall whether this was one of the
 15 positions discussed or not.
 16 Q. Do you know why this position is designated BFOQ female
 17 only?
 18 A. Property room officer has the responsibility to shake down
 19 prisoners. The property room officer is basically a
 20 single assignment and that assignment is located in an
 21 area that's separated from housing units or living area.
 22 The property room officer is traditionally
 23 afforded a prison worker or prison workers, they may have
 24 a prison worker assigned, and that would create a
 25 one-to-one position - situation with a female prisoner or

1 A. Property room officer is responsible to store prisoner
 2 property, property that may have come from another
 3 facility that has not been - that's not allowable at that
 4 particular facility.
 5 I'm sure there's what we call a grandfather
 6 clause, there's items that were allowable many years ago
 7 but they're not allowable now.
 8 Q. Why is there - just out of curiosity, why is there a
 9 particular officer assigned to the property room?
 10 A. The property room officer processes catalog orders for the
 11 whole entire facility. So if you've got 1800 women and
 12 they're allowed to order up to \$150 worth of clothing, or
 13 whatever items per month, so 1800 women are allowed to
 14 order once a month up to \$150, in theory you may have 1200
 15 prisoners order, so you may have 1200 orders.
 16 And then family members, I mean, are - if a
 17 prisoner is decreasing their property and they have more
 18 shoes than the department allows and they want to send
 19 those shoes out to a family member the property room
 20 officer is responsible to ensure that they're packaged up
 21 and the contraband doesn't go out and the contraband
 22 doesn't come in with these items.
 23 So the property room officer is responsible for
 24 handling and issuing property.
 25 Q. I got it. And they work with inmates who are assisting in

1 female prisoners.
 2 Q. All right. And the one to one - Well, strike that.
 3 So the shakedown responsibility, when - Well,
 4 first of all, I guess I have to ask. Are you aware of men
 5 ever having occupied the property room officer position?
 6 A. I do not recall.
 7 Q. All right. Do you recall what men would do in the
 8 property room position if a shakedown were required?
 9 A. The same thing he would do in any other area where a
 10 shakedown would be required. He would need to contact
 11 control center and they would need to relieve a female to
 12 come and conduct the shakedown.
 13 Q. So tell me what the responsibilities of a property room
 14 officer are. I mean, in general.
 15 A. In general, the property room officer enforces the rules,
 16 the regulations, they issue property, they're responsible
 17 to make rounds.
 18 Q. What's in the property room?
 19 A. Property.
 20 Q. Well, whose property?
 21 A. Prisoner property.
 22 Q. Okay.
 23 And the prisoners, what do they have to do to
 24 use their property? I don't know how the property room
 25 works at all. Tell me how the property room-works.

1 the property room?
 2 A. They traditionally are allowed a worker.
 3 Q. All right. And that's the one-on-one contact you were
 4 talking about?
 5 A. That could occur if there is more - if there is not more
 6 than one prison worker.
 7 Q. And typically how many prison workers were there?
 8 A. I don't recall.
 9 Q. You don't know? All right.
 10 And the shakedown responsibilities, they have -
 11 How does someone in the property room - They have to do
 12 five random shakedowns per day also?
 13 A. Uh-huh (Yes). They shake down their - Well, housing
 14 officers have the responsibility as well. Everyone has
 15 the responsibility to conduct shakedowns.
 16 I do not recall for the property room whether
 17 it's specifically five. I would really need to read, you
 18 know, the document in totality to say, you know,
 19 absolutely and positively it's five versus three versus
 20 one. I don't recall what the exact number is for a
 21 property room officer.
 22 Q. All right. That's fine.
 23 And the property room wasn't within housing, was
 24 it?
 25 A. The property room is not - The property room is in a

1 building where a housing unit is located, but it's --
 2 Q. But not in the unit?
 3 A. That is correct.
 4 Q. All right.
 5 And so we're not certain what the responsibility
 6 of the property room officer was with regard to random
 7 shakedowns, but they would have responsibility for
 8 shakedowns if the need arose with prison employees, or
 9 prison workers within the property room, true?
 10 A. I'm sorry, what's your question?
 11 Q. Well, if there was some need to shake down a prison worker
 12 that would be a responsibility of -- within the property
 13 room, that would be a responsibility of the property room
 14 officer, true?
 15 A. That's correct.
 16 Q. All right. And if it were a male they would have to call
 17 out to control or to a supervisor to have a female assist
 18 in the shakedown, true?
 19 A. That is true.
 20 Prisoners on a work assignment are shaken down
 21 when they report to the assignment. When they leave the
 22 assignment there is no if they need to be shaken down. If
 23 a prisoner is working in an area with other prisoners'
 24 property, such as another prisoner's headphones, such as
 25 property that another person has purchased, they have to

1 operation of the property room or the facility in general?
 2 A. Not that I can specifically recall on this -- To narrow it
 3 by position, not that I can specifically recall.
 4 Q. Okay.
 5 (Deposition Exhibit Number 13 was marked
 6 for identification by the reporter.)
 7 Q. (BY MR. KENT-BRYANT): Can you identify Exhibit 13,
 8 please?
 9 A. It's a position description.
 10 Q. And that's for the school officer position?
 11 A. Working title is school officer, yes.
 12 Q. And do you recall whether this is one of the positions
 13 that your group discussed making BFOQ female only?
 14 A. I'm sorry, I do not recall.
 15 Q. Do you know why this position was designated BFOQ female
 16 only?
 17 A. The design of the facility is the restroom area is almost
 18 similar to an open bay style with just a very low cement
 19 wall, so there would be privacy issues related to female
 20 prisoners when they're using the restroom, and also the
 21 requirement of the shakedowns as well.
 22 Q. Okay. And dealing with the requirement of the shakedowns
 23 with regard to the school officer, first, at any given
 24 time is it just one school officer or is there more than
 25 one?

1 be shaken down before they leave to make sure they
 2 don't...
 3 Q. Before they leave the housing unit?
 4 A. Before they leave their assignment. If we could visualize
 5 a warehouse and...
 6 Q. No, I got you. I got you.
 7 A. I mean, we don't want them to steal other individuals'
 8 property and leave the property room with it, and so
 9 they're shaken down when they leave, that assignment, food
 10 service, when they leave assignments.
 11 Q. Are they shaken down when they leave the housing unit to
 12 go on the assignments?
 13 A. Very well could be.
 14 Q. All right. But as a matter of course, are they?
 15 A. It's not mandatory.
 16 Q. Okay.
 17 Now, when they return from the assignments are
 18 they shaken down?
 19 A. The property room officer conducts their shakedowns prior
 20 to them leaving the property room.
 21 Q. All right. And if it were a male the male would call a
 22 female to perform that shakedown, true?
 23 A. Correct.
 24 Q. Did you ever receive any complaints or have any
 25 information that that ever caused a problem with the

1 A. To my knowledge it's just one.
 2 Q. All right. And if that officer is male and a shakedown is
 3 required the male officer calls a female officer for
 4 assistance?
 5 A. He can't shake the female down.
 6 Q. Right.
 7 A. He would need to call his supervisor and his supervisor
 8 would need to assign a female officer.
 9 In all of these scenarios one officer, a male
 10 officer can't call a female officer from her assignment.
 11 Q. I understood that. I misspoke. I know what you've said.
 12 Now, for school how many prisoners are typically
 13 in the school area at any given time?
 14 A. I'm not sure, sir.
 15 Q. All right.
 16 Are they accompanied by housing officers at the
 17 school?
 18 A. No, they're not.
 19 Q. So from your understanding it's just the school officer
 20 and the female prisoners?
 21 A. Correct.
 22 Q. And, you know, again, I take it that you don't recall
 23 receiving any specific complaints specific to the school
 24 officer position where females complained that having to
 25 assist the males with shakedown was burdensome?

1 A. Correct.

2 Q. The —

3 A. I'll say this, though, if I may add — And I apologize if

4 I cut you off. I'll say this, if I may add. The school,

5 the industries, the recreational building, those are in

6 pretty far proximity from your traditional housing units

7 based on the physical layout of the facility.

8 And the point that I'm making is this. In this

9 very casual conversation that we just call a female

10 officer to come and assist in a shakedown is just really

11 not as casual as that, because it's a good distance from

12 one location to another. And if there is kind of an

13 emergent situation that a male calls for a female to

14 assist in a shakedown, well, control center would actually

15 authorize that person to be released from their

16 assignment, and depending on the urgency of the nature

17 it's a bit of a distance.

18 Q. Do you have an estimate of what the distance is?

19 A. No, I don't.

20 Q. You also mentioned the privacy concerns because the cement

21 walls aren't very high in the bathroom?

22 A. It's the physical design of...

23 Q. Of the bathroom.

24 There are also stalls in there, correct?

25 A. I don't remember. I'm trying to recall how it's made.

1 I know that there is a cement barrier and an

2 entrance on like the right and the left side of the

3 restroom.

4 I don't recall.

5 Q. All right.

6 A. There's absolutely some type of dividers, but I don't

7 recall whether it's a stall, or a stall door. I just...

8 Q. All right. And women are not allowed to be in a state of

9 undress in the school area, true?

10 A. Correct.

11 Q. And you can't see them in a state of undress in the

12 bathroom area from the school area, true?

13 A. True.

14 (Deposition Exhibit Number 14 was marked

15 for identification by the reporter.)

16 Q. (BY MR. KENT-BRYANT): Can you please identify Exhibit 14?

17 A. It's a position description.

18 Q. For what position?

19 A. It's for working title of off-site hospital officer.

20 Q. And this is a BFOQ female-only position?

21 A. As defined by the document, "This is a gender based BFOQ

22 position designated for female officers."

23 Q. And is this one of the positions that you recall your

24 group discussing prior to the conversion of the facility

25 to female only?

1 A. This is one of the positions that I recall us discussing.

2 Q. And do you recall why this position was BFOQed female

3 only?

4 A. Women in an off-site hospital, as in anyone in an off-site

5 hospital are in the state of undress. We're not normally

6 in a hospital bed clothed.

7 And when the doctor or nurse comes in to conduct

8 the physical exam of the prisoner that usually requires

9 they take off.

10 Q. But is it your understanding that that examination would

11 not be screened from the officer?

12 A. The officer has to — It's the officer's job to provide

13 coverage for the prisoner. They can't... If the doctor

14 comes in the officer can't — they just can't leave.

15 Q. No, I know. But typically in a hospital when the physical

16 exam is performed — Hold on — the area, the bed area is

17 screened from people walking in and other patients, and so

18 forth. Is that not the situation with the off-site

19 hospital officer?

20 A. I can't say that's a hundred percent true any or all of

21 the time.

22 Q. Are you saying it's not true, or do you just not know?

23 A. It's safe to say I don't know.

24 Q. All right. All right.

25 Do you recall there being any complaints or

1 comments about off-site hospital officers seeing women in

2 a state of undress?

3 A. Excuse me. I'd like to go back to your original question

4 about... Would you just repeat your last question,

5 please?

6 Q. Right. Do you recall receiving any complaints or comments

7 concerning off-site hospital officers seeing women in a

8 state of undress?

9 A. I'd like to go to the question before that.

10 Q. Oh, I have no idea what the question before that was.

11 A. The question before that you asked is the officer

12 basically present when the prisoner is in the state of

13 undress, is the officer present and at the

14 officer's (sic.) bedside, and I said — my response was I

15 can't say that that's true a hundred percent of the time

16 or all of the time. And you indicated, well, then is it

17 safe for me say that I'm not sure, and I indicated that

18 that was a fair answer.

19 I'd like to retract my saying that it is not

20 true.

21 Q. Just go ahead.

22 A. It is true that an officer is required to keep basic

23 visual contact of a prisoner when the prisoner is on —

24 when the prisoner is in an outside hospital.

25 Visual contact may... It could mean different

Page 1	<p style="text-align: center;">STATE OF MICHIGAN WASHTENAW COUNTY CIRCUIT COURT</p> <p>TOM NOWACKI, Plaintiff,</p> <p style="text-align: center;">-v- Case No. 11-852-CD Hon. Archie C. Brown</p> <p>STATE OF MICHIGAN DEPARTMENT OF CORRECTIONS, Defendant.</p> <hr/> <p>PAGE 1 TO 72</p> <p>The deposition of GARY E. MANNS, Taken at 805 East Main Street, Pinckney, Michigan, Commencing at 10:02 a.m., Thursday, April 4, 2013, Before Cheryl McDowell, CSR-2662, RPR.</p>	Page 3
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11	Correspondence dated August 2, 2000	11
12	DEPOSITION EXHIBIT NO. 2	34
13	Correspondence dated March 27, 2009	13
14		14
15	(Exhibits attached to transcript.)	15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23		23
24		24
25		25
Page 2	<p>APPEARANCES:</p> <p>MR. JAMES K. FETT - P39461 Fett & Fields, P.C. 805 East Main Street Pinckney, Michigan 48169 (734)954-0100 attys@fettlaw.com Appearing on behalf of the Plaintiff.</p> <p>MS. JEANMARIE MILLER - P44446 Assistant Attorney General 525 West Ottawa Street, Floor 5 Lansing, Michigan 48909 (517) 373-6434 MillerJ51@michigan.gov Appearing on behalf of the Defendant.</p>	Page 4
1	Pinckney, Michigan	1
2	Thursday, April 4, 2013	2
3	About 10:02 a.m.	3
4	GARY E. MANNS,	4
5	having first been duly sworn, was examined and testified	5
6	on his oath as follows:	6
7	EXAMINATION BY MR. FETT:	7
8	Q. Mr. Manns, please state your full name for the record.	8
9	A. Gary E. Manns.	9
10	Q. And you are employed by the Michigan Department of	10
11	Corrections?	11
12	A. Yes.	12
13	Q. How long have you been employed by the Department of	13
14	Corrections?	14
15	A. Over twenty-eight years.	15
16	Q. And what's your present position?	16
17	A. Training administrator.	17
18	Q. Okay. Were you ever personnel director?	18
19	A. Years ago, from '96 to 2006.	19
20	Q. Okay. Tell me about your educational background.	20
21	A. Bachelor's from Central, psychology.	21
22	Q. Okay. And have you ever given a deposition before?	22
23	A. Lots of them.	23
24	Q. Have I ever taken your deposition?	24
25	A. You're so familiar. I mean -	25

Page 5	Page 7
<p>1 Q. I looked at you, I know this guy.</p> <p>2 A. Yeah.</p> <p>3 Q. Did you testify in the Lindsay case, Dick Lindsay's</p> <p>4 case?</p> <p>5 A. Yes.</p> <p>6 Q. That must have been it.</p> <p>7 A. Yes.</p> <p>8 Q. That was years ago.</p> <p>9 A. A long time ago.</p> <p>10 Q. Okay. All right. So you've testified a lot, you know</p> <p>11 the rules.</p> <p>12 A. Uh-huh.</p> <p>13 Q. I'll just highlight what I think are the ones that</p> <p>14 bear repeating.</p> <p>15 The first rule, of course, is to give</p> <p>16 verbal responses rather than a nod of the head or, God</p> <p>17 forbid, a gesture. We need yes or no to yes-or-no</p> <p>18 questions rather than uh-huh or uh-uh.</p> <p>19 Of course, if any of my questions are</p> <p>20 unclear which it probably will be and it's not</p> <p>21 understandable to you, just ask me to rephrase it.</p> <p>22 I'll be happy to do that.</p> <p>23 This is not a memory test or endurance</p> <p>24 test, so if at any point you need a break, just let me</p> <p>25 know, and the only thing we'd ask is that if you want</p>	<p>1 A. 1985, April 7th of 1985.</p> <p>2 Q. Pretty good you remember that.</p> <p>3 All right. And did you have any other</p> <p>4 full-time employment before that? I mean career-wise,</p> <p>5 not summer.</p> <p>6 A. No.</p> <p>7 Q. Okay. Have you been -- have you remained continuously</p> <p>8 employed by Corrections?</p> <p>9 A. Yes.</p> <p>10 Q. All right. And, okay. I didn't notice that you</p> <p>11 changed titles here. I'm looking at some</p> <p>12 correspondence that you sent to Civil Service.</p> <p>13 A. Yes.</p> <p>14 Q. We'll get to that in a minute.</p> <p>15 Okay. So take me through the positions</p> <p>16 that you've held.</p> <p>17 A. Started out as a correction officer.</p> <p>18 Q. Okay.</p> <p>19 A. Went into labor relations, was a personnel officer at</p> <p>20 the Thumb Correctional Facility, came back as the</p> <p>21 personnel director, went to deputy director, and now</p> <p>22 I'm the administrator over training.</p> <p>23 Q. So when you say you went to deputy director, you're</p> <p>24 talking about deputy director of the whole shebang?</p> <p>25 A. Of the whole department, yes.</p>
<p>Page 6</p> <p>1 to take a break, just if there's a question on the</p> <p>2 table, answer that and then take the break.</p> <p>3 Generally speaking, your attorney may make</p> <p>4 some objection, but most of the time she's going to</p> <p>5 want you to answer anyway. She'll make her objection</p> <p>6 and then you would go ahead and answer unless she</p> <p>7 specifically says don't answer that question, it's</p> <p>8 subject to the First Amendment, or you're taking the</p> <p>9 Fifth Amendment on this.</p> <p>10 MR. FETT: I hope that's not the case, but</p> <p>11 is that right, Ms. Miller?</p> <p>12 MS. MILLER: That's correct. Unless I</p> <p>13 instruct you not to answer, you would answer over</p> <p>14 after I place my objection on the record.</p> <p>15 BY MR. FETT:</p> <p>16 Q. So it's important to concentrate so you remember what</p> <p>17 the question is.</p> <p>18 And a lot of people are earnest, they want</p> <p>19 to give the answers and everything, but wait until I'm</p> <p>20 finished so that our court reporter here has an ample</p> <p>21 opportunity to take down what I've asked and then what</p> <p>22 you're going to answer.</p> <p>23 All right. All right. Let's just do the</p> <p>24 Readers Digest version of your resume. So let's start</p> <p>25 first, when were you hired?</p>	<p>Page 8</p> <p>1 Q. So you were the personnel director, then the deputy</p> <p>2 director?</p> <p>3 A. Correct.</p> <p>4 Q. And what years? I think you told me like '96 to two</p> <p>5 thousand what?</p> <p>6 A. The personnel director was '96 to 2006. Deputy</p> <p>7 director was 2006 to 2011, training from 2011 to</p> <p>8 current.</p> <p>9 And on a side note, I was acting deputy</p> <p>10 director for probably two years in the '96 to 2000</p> <p>11 range.</p> <p>12 Q. Got it. Okay. So during the point when you were the</p> <p>13 personnel director, at some point you would have</p> <p>14 reported to Bill Martin?</p> <p>15 A. Yes.</p> <p>16 Q. And also to Ms. Caruso?</p> <p>17 A. Yes.</p> <p>18 Q. Any other directors that you reported to?</p> <p>19 A. Ultimately, yeah. I started, Bob Brown was the</p> <p>20 director.</p> <p>21 Q. Okay.</p> <p>22 A. Then went to Ken McGuinness, Bill Martin.</p> <p>23 Q. Okay.</p> <p>24 A. Bill Overton, Pat Caruso, Dick McKean, and now Heynes.</p> <p>25 Q. What's Heynes' first name?</p>

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1 A. Dan Heynes.
2 Q. Okay. Is he --
3 MS. MILLER: And that's H-E-Y-N-E-S.
4 THE WITNESS: Correct.
5 BY MR. FETT:
6 Q. Is he a Snyder appointee?
7 A. Yes.
8 Q. How about McKean?
9 A. McKean was, too.
10 Q. And Overton, who appointed?
11 A. Overton was appointed briefly by Engler, and then that
12 transitioned over into Granholm. Caruso was Granholm,
13 and then, let's see, yeah, then we're here with Heynes
14 which is Snyder.
15 Q. Okay. How much interaction would you have with Bill
16 Martin when you worked?
17 A. Quite a bit, quite a bit.
18 Q. Okay. So if he had a personnel issue, would you be
19 the first person he would call?
20 A. He would call me, yes.
21 Q. Okay. Same question as to Miss Caruso.
22 A. Yes. Even as deputy director, she called on me for a
23 lot of personnel. But when I went to deputy director,
24 the person that is the personnel director there and
25 currently is is Tony Lopez.

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1 Q. Okay. All right. Tell me how familiar you are with
2 the concept of BFOQ or Bona Fide Occupational
3 Qualifications.
4 A. In '99 I had to do the research on it when Bill Martin
5 wanted to look at implementing that, and so I'm
6 familiar with it from 1999, and I dealt with it a few
7 years and then turned it over to Tony Lopez. Even
8 when I was personnel director and underneath operation
9 support at that time, that was all the internal
10 operations of the department which HR was one of them,
11 I turned that over to Tony. So I started phasing
12 myself out of the day-to-day stuff with the BFOQs.
13 Q. Okay.
14 A. Tony's maintained -- I gave him all my records, so he
15 has everything under the sun for the last since 2006
16 or even before that.
17 Q. All right: Explain in your understanding the notion
18 of BFOQ.
19 A. Well, the BFOQ really is a legalized way in which you
20 theoretically can discriminate based on gender. In
21 this particular case, we had so many lawsuits coming
22 out of one-facility that the director at that time,
23 Bill Martin, looked at what can we do to minimize
24 impact coming out of that facility based on the
25 lawsuits going on.

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1 So he explored the idea of a BFOQ,
2 basically identifying positions that he thought would
3 be better served if they were gender based.
4 Q. Okay.
5 A. And at the time we looked around the United States,
6 and there was really only one position in the United
7 States we could find, and that was in Wisconsin on
8 second shift in one unit that had a person that was
9 part time, BFOQ.
10 Q. Female?
11 A. Female, yeah, yes.
12 Q. Okay. So this would have been around 1999?
13 A. 1999.
14 Q. Okay. And you said these lawsuits emanated out of one
15 particular facility.
16 Name the facility, please.
17 A. Well, the Scott Correctional Facility.
18 Q. Okay.
19 A. And, also, at that time, too, there was Western Wayne,
20 and I can't remember when we phased Western Wayne out.
21 We closed that, moved the prisoners to Scott. Then
22 ultimately all the prisoners at Scott when we closed
23 it went to Huron Valley.
24 Q. Are there any other women -- well, women prisons is
25 all women, right?

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1 A. Correct.
2 Q. Okay. And --
3 A. Prisoners.
4 Q. Prisoners. Any other women prisons right now as we
5 speak besides Huron Valley?
6 A. No, no. We consolidated everything into the one
7 facility for management.
8 Q. Okay. What percentage of the prison population is
9 female?
10 A. Departmental-wide?
11 Q. Yeah.
12 A. I couldn't even take a guess. The population itself,
13 and I'm -- I want to say it's forty-eight thousand but
14 I am not sure because I've stepped out of the
15 statistical numbers a while ago.
16 Q. Sure.
17 A. And so we have one facility out of thirty something
18 that are female. So I'm not sure what percentage that
19 would be because I don't know how many female
20 prisoners we have currently at the Valley.
21 Q. Okay. I was just curious. I'm not sure that it
22 matters in this case, but I'm sure maybe Mr. Curtis
23 will know.
24 A. He should know because he's the regional administrator
25 over that area.

Page 17	Page 19
<p>1 we had.</p> <p>2 Q. Okay. Can you tell me what the process is for being</p> <p>3 able to implement a BFOQ position?</p> <p>4 A. Well, with this particularly, it's a selective,</p> <p>5 through Civil Service, and then the selective cert</p> <p>6 basically is you identify a special need that the</p> <p>7 position has to have, and that way when say that</p> <p>8 person who holds whatever position it is has that</p> <p>9 special need, if they go on to something else, whoever</p> <p>10 replaced them, the position has the selective cert on</p> <p>11 it, so whoever else is coming in has to meet that</p> <p>12 requirement.</p> <p>13 Now, BFOQ is slightly different because</p> <p>14 that's a legal identification that a special need is</p> <p>15 in that position, and usually that is done through the</p> <p>16 court. Civil Service doesn't do a BFOQ. They do the</p> <p>17 selective cert. They identify the position.</p> <p>18 Q. Okay. And was that the case with regard to your</p> <p>19 August 2000 letter, you expected not a BFOQ</p> <p>20 designation as much as you wanted a selective</p> <p>21 certification?</p> <p>22 A. Correct, because that's dealing with Civil Service. I</p> <p>23 don't believe there was anything in here with BFOQ.</p> <p>24 This was all selective cert.</p> <p>25 Q. And selective cert required what?</p>	<p>1 originally, just those in the housing unit and the</p> <p>2 Intake, yeah. We didn't look at the other ones</p> <p>3 because there wasn't any need at that time to have a</p> <p>4 selective cert on them.</p> <p>5 Q. Okay. But what I'm getting at is there's positions at</p> <p>6 these female prisons that are not reflected in your</p> <p>7 letter of August 2000 which we've marked as Exhibit 1,</p> <p>8 right? Say yes.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you looked at those, correct?</p> <p>11 A. The other positions?</p> <p>12 Q. Yes.</p> <p>13 A. We looked at everything.</p> <p>14 Q. Okay.</p> <p>15 A. But I'd like to go back on your question.</p> <p>16 Q. Go ahead.</p> <p>17 A. Can you rephrase that again because I said yes, and</p> <p>18 I'm not sure what other positions that we're talking</p> <p>19 about.</p> <p>20 Q. Okay. Well, what I was -- I'll be happy to do that,</p> <p>21 and if at any point during the deposition you think,</p> <p>22 oh, geez, I'd like to supplement that, maybe I wasn't</p> <p>23 correct, feel free to let me know and we can do that.</p> <p>24 A. Yeah. I don't want to represent that everything was</p> <p>25 looked at for BFOQ because in this I only looked at</p>
Page 18	Page 20
<p>1 A. Civil Service's approval.</p> <p>2 Q. And you were seeking approval to have only females</p> <p>3 perform in the positions in your letter, Exhibit 1?</p> <p>4 A. Correct. Specifically it looks like we just went for</p> <p>5 the housing positions, Intake, and then RUOs, again,</p> <p>6 were the housing positions.</p> <p>7 Q. Okay. And when you went through the process of</p> <p>8 evaluating what positions could be designated female</p> <p>9 only, did you look at all the positions that were</p> <p>10 being performed in these female prisons?</p> <p>11 A. Correct. We looked at everything and determined these</p> <p>12 were the ones that we were going to put a selective</p> <p>13 cert on needing something specific meaning females in</p> <p>14 those positions. These were the ones identified at</p> <p>15 that time.</p> <p>16 Q. Okay. So can I take it from that determination that</p> <p>17 the balance of the positions did not require at least</p> <p>18 in your view a special certification that only females</p> <p>19 could perform in those?</p> <p>20 A. The balance of? You're talking total staff?</p> <p>21 Q. Okay.</p> <p>22 A. I'm not sure what the balance of. I can't remember</p> <p>23 the specific numbers of RUOs to COs and other</p> <p>24 positions in the facility.</p> <p>25 So going back to what I was looking at</p>	<p>1 certain positions.</p> <p>2 Q. All right. So why did you only look at certain</p> <p>3 positions as opposed to looking at everything?</p> <p>4 A. Well, these are the sensitive areas that were</p> <p>5 determined that would be probably more beneficial as a</p> <p>6 result of a lot of the complaints and grievances that</p> <p>7 the prisoners were making. The lawsuits that</p> <p>8 ultimately came out of it were really associated with</p> <p>9 large numbers in the housing unit, intake. That's</p> <p>10 where the prisoners come in. There could be various</p> <p>11 states of undress when they get processed into the</p> <p>12 prison.</p> <p>13 Again, it's housing units where they live,</p> <p>14 and so if you have male officers in there at the time</p> <p>15 prisoners are undressed, and at the time we didn't</p> <p>16 have what we later developed what's called a knock and</p> <p>17 announce. You know, officer, male officer coming in,</p> <p>18 you knock, male officer in the housing unit. That</p> <p>19 didn't exist up until that point.</p> <p>20 Q. Up to what point?</p> <p>21 A. That we started looking at doing the selective cert --</p> <p>22 Q. Okay.</p> <p>23 A. -- that I'm aware of.</p> <p>24 Q. All right. So with regard to these positions,</p> <p>25 corrections officer position, corrections intake,</p>

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1 Q. Okay. Is Russ Marlin the public information director
2 at the present time?
3 A. Yes.
4 Q. Okay. And how long has he been the public information
5 director?
6 A. I'm taking a guess. Seven years.
7 Q. Okay.
8 A. Give or take.
9 Q. And is James Long still the attorney for Corrections?
10 A. He's still an attorney with the AG.
11 Q. Okay. But he's assigned to you guys?
12 A. I don't know if that to be the fact right now.
13 Q. Okay.
14 A. I'm out of touch with that in my current position.
15 When I was deputy director, him and Denise Barton were
16 the two people I dealt with every day.
17 Q. Well, if you see him, tell him I said hello. He's a
18 fine gentleman.
19 A. Yes, he's a very good guy.
20 Q. How many times have you requested of the Department of
21 Civil Service that certain positions be designated for
22 female only?
23 A. This is the only time that I recall. This was a major
24 issue unless something else came along that I just
25 don't recall. But this was, this was it. This was

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1 the start of it
2 Q. And when you're saying this, you're pointing to
3 Exhibit 1?
4 A. I'm sorry. Exhibit 1, yes.
5 Q. All right. And it wasn't apparent to me from the
6 correspondence, but did they approve all of your
7 request?
8 A. I believe they did. I don't see any letters in here
9 from Civil Service, but there would have to be, excuse
10 me, a letter authorizing us to move forward from Civil
11 Service. I just, I don't see it.
12 Q. I have it. I was just trying to save paper.
13 All right. In 2009 you also communicated
14 with Civil Service in your capacity as operations
15 support administrator, is that right?
16 A. Yes, deputy director.
17 Q. Okay.
18 (Deposition Exhibit No. 2 marked and
19 attached.)
20 MR. FETT: I'll give you that, Jane.
21 MS. MILLER: Thank you.
22 BY MR. FETT:
23 Q. Go ahead and review that and let me know when you're
24 done.
25 A. Okay.

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1 Q. You wrote the letter dated March 27, 2009 to
2 Mr. Stevens, is that right?
3 A. Yeah, Gary Stevens was the state personnel director at
4 that time.
5 Q. Okay. And what was the impetus for you to write this
6 letter?
7 A. Quite honestly, I didn't even remember I wrote this
8 letter, but it looks like to expand the BFOQs in areas
9 that we felt needed to have female-only staff.
10 Q. Okay. And did you -- do you recall any conversations
11 with Miss Caruso regarding expanding positions that
12 were BFOQ female?
13 A. I really don't.
14 Q. Okay.
15 A. I don't even remember this letter, so --
16 Q. Okay. Well, there's an attachment to this I did not
17 include which I will have to get.
18 A. I'm sorry.
19 Q. Go ahead.
20 A. Can I take this for a minute?
21 Q. Sure, sure.
22 (Off the record at 10:48 a.m.)
23 (Back on the record at 10:50 a.m.)
24 BY MR. FETT:
25 Q. Do you recall whether or not there was an effort to

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1 designate additional positions as BFOQ when the
2 prisons were consolidated at Huron Valley?
3 A. I don't recall that specifically. But looking at this
4 letter, it looks like obviously I was trying to expand
5 something with BFOQ, but I don't know the specifics.
6 Q. Okay. All right. Can you tell me, is there any BFOQ
7 designations in the male prisons where it would be say
8 male only?
9 A. No, not that I'm aware of.
10 Q. Any designations in the male prisons where there's
11 female only?
12 A. Not that I'm aware of.
13 Q. Okay. And I guess that could occur if there was
14 someone needed to pat down female visitors, that might
15 be a position where you'd want to have female only if
16 you were going to do that?
17 A. I don't recall any specific, but I would imagine, and,
18 again, I haven't been in the facility in a while, but
19 I'm assuming we would have a female officer pat down a
20 female visitor.
21 Q. Okay. But you wouldn't have to designate that
22 position as BFOQ female only because you could just
23 have male and females work that position, true?
24 A. They do. I believe they do historically.
25 Q. Has there ever been any consideration to designating

Page 41	Page 43
<p>1 I understand this correctly. When you were looking at 2 whether or not to have positions designated as female 3 only, you were looking at the problem areas? 4 A. I don't know if I'd say problem areas because at any 5 time in a facility, something can be a problem area. 6 I think at that time it was where are complaints 7 coming from. 8 Q. Not geographically but position-wise are you saying? 9 A. I wouldn't even know. I wouldn't say position-wise 10 but location and facility. For instance, again, I'm 11 going from memory -- 12 Q. All right. 13 A. -- because I can't remember how it is, so I don't want 14 to be leading us in an area that isn't accurate. 15 But if there were a number of complaints 16 coming out of say intake where the prisoners come into 17 the facility, they're getting processed, prepped to go 18 into the facility, you know, if you have females 19 coming in, that could be an issue depending on who the 20 officer or officers are there. 21 Housing units, the same way. You have 22 prisoners that that's their living quarters. 23 Obviously there could be states of undress and 24 whoever's there. It's those sorts of things that 25 generated the interest or the discussion of what do we</p>	<p>1 A. Yeah, I was going to say that, but I didn't know that 2 to be the fact. 3 Q. Okay. 4 A. I believe it is the Neil, but, again, I don't know for 5 sure. 6 Q. Do you know if that event, that is the settlement of 7 that case for a hundred million, prompted the 8 department to do anything with regard to its BFOQ 9 designations? 10 A. I don't recall that occurring. 11 Q. Okay. 12 A. But, then again, I can't remember when I was leaving 13 that type of duty to go on to something else. 14 Q. If the settlement occurred say 2008 and you were a 15 deputy director,-- 16 A. I was, yeah. 17 Q. Would you have known whether or not that event, the 18 settlement, prompted any further BFOQ designation 19 requests? 20 A. I don't recall it, but that does not mean it did not 21 occur. 22 Q. Okay. 23 A. You know, when that lawsuit was going on, our 24 litigation area probably stepped up and looked at 25 that.</p>
<p>Page 42</p> <p>1 need to do to minimize complaints of this nature. 2 Q. How about positions relating to medical care or 3 hospital care; do you recall those as generating a lot 4 of grievances by the prisoners? 5 A. I don't know if it generated a lot of grievances, but 6 historically over time, there's always issues that had 7 popped up. I remember roughly the parameters that, 8 yes, there were some complaints coming out of the 9 clinic, hospital area in the facility. 10 Q. Okay. And do you recall that being an impetus for 11 listing some of those positions in Exhibit 1? 12 A. I don't know which position. I know we have housing 13 intake and RUO positions. It's possible. 14 Q. Okay. 15 A. I can't answer. I don't want to say that for certain 16 because, again, I don't want to go back on 17 thirteen-year-old memory, being separated from this. 18 Q. Okay. You're familiar with the hundred million dollar 19 settlement that the DOC entered into with the 20 plaintiffs in the prison lawsuit, aren't you? 21 A. Yes. 22 Q. Everybody's heard of that one. 23 A. I was ready. I was trying to hear what you were going 24 to say the name because I can't remember the name. 25 Q. The Neil, Neil case.</p>	<p>Page 44</p> <p>1 Q. Okay. Did you refine a list over time that eventually 2 became the list in Exhibit 1? 3 A. You mean prior to this letter? 4 Q. Yeah. 5 A. I really don't recall. I know we had a number of 6 discussions on what areas should we even be looking at 7 if we're going to look at something like this, but I 8 don't know. I can't recall the steps that led us up 9 to putting these positions down because that would 10 have been in '99. 11 Q. Sure. But all I'm trying to establish is if there was 12 additions and deletions to your list before you filed 13 it off. 14 A. I couldn't even take a guess. I imagine there had to 15 be some discussion before the final list was done. I 16 don't remember. 17 Q. Okay. 18 A. I've got a good memory, but I can't remember way back 19 then in that time. 20 Q. All right. That's fair enough. 21 Do you know whether there was sentiment 22 within the administration of Corrections to make all 23 the positions in the women's facility, all the 24 corrections officer positions female? 25 A. No, I don't believe that to be the case.</p>

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1 Q. Why don't you believe that to be the case?
 2 A. Because you had officers that were out in the yard,
 3 and out in the yard you have cameras. There's nothing
 4 sensitive out in the yard.
 5 Q. Okay.
 6 A. And so it doesn't seem like that would have an impact
 7 whether it was male or female.
 8 Q. Okay. Are there other positions besides a yard
 9 position that it really wouldn't make any difference?
 10 A. Back at that time we still had rover, ARV vehicles,
 11 towers, yard crews, and depending on where the yard
 12 crews are, I guess there always could be something
 13 occurring possibly. But the type of positions like
 14 that, I mean, you didn't have the allegations that
 15 were that frequent.
 16 Q. Okay. Do you know, when you were looking at this for
 17 Bill Martin, you and your staff looking at this, did
 18 you explore any alternatives to designating things as
 19 female only? And I'll give you some examples if you
 20 need.
 21 A. Yeah. I'm not -- alternatives to --
 22 Q. To designating something as female only. And --
 23 A. You mean other positions or --
 24 Q. Or things like just making sure you had both females
 25 and male officers available in a particular area if

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1 say a strip search had to be done.
 2 A. I would like to think we did that, but I can't recall
 3 the specific --
 4 Q. Okay.
 5 A. -- because that's a facility -- the best person would
 6 be the CFA --
 7 Q. Okay. That's fair.
 8 A. -- people.
 9 Q. You earlier referenced the knock and announce. And
 10 I'm thinking of police officers going to a house and
 11 knock and announce.
 12 But that was implemented at some point in
 13 Corrections as a way to kind of guard against invasion
 14 of female privacy, right?
 15 A. Correct.
 16 Q. Okay. Do you recall when that happened?
 17 A. It had to be in the nineties.
 18 Q. Okay.
 19 A. But I don't recall. That was probably the precursor
 20 to everything.
 21 Q. Okay.
 22 A. Again, that would be your CFA people coming on board
 23 later.
 24 Q. Got it. Okay. Earlier you had testified that you did
 25 some research and you only found one position in the

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1 United States which was in Wisconsin which was I think
 2 you said a part-time afternoon?
 3 A. Second shift.
 4 Q. Okay. As we sit here today, do you know if other
 5 states' prison systems employ these BFOQ designations?
 6 A. I have no idea because it's no longer a task, I
 7 wouldn't look into it, and I surely wouldn't do it on
 8 my own time.
 9 Q. All right.
 10 A. Yeah.
 11 Q. Not just for recreation?
 12 A. Not for giggles, no.
 13 Q. Do you know how you went about finding that out back
 14 in '99 or 2000, whenever you did it?
 15 A. I think, and, again, I don't know the specifics, but I
 16 think we had contacted other state corrections
 17 departments around the nation.
 18 Q. Okay. Is there any type of journal or treatise that
 19 you would look to in this day and age to find out
 20 whether or not other systems are using BFOQ
 21 designations?
 22 A. Right now?
 23 Q. Yeah.
 24 A. I imagine anybody can go on the Internet, go BFOQ
 25 prison system, and it would pop up.

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1 Q. Okay.
 2 A. Back then and the phones, we didn't have the good
 3 texts or anything back then, so that was all a manual
 4 call. So today's technology versus then, I mean, you
 5 probably can find out damn near anything you want.
 6 Q. Okay. Okay. I'm going to ask you about some
 7 positions, and I understand that you may not remember
 8 this because it's been a while, but you're here, so I
 9 might as well ask you.
 10 You earlier talked about yard officers. Is
 11 that referred to as a yard control officer?
 12 A. Yeah, I would imagine.
 13 Q. Okay. Do you know what a gate control officer is?
 14 A. Gate control officer could be the person coming out of
 15 the control center that lets prisoners and staff get
 16 through certain areas in the facility.
 17 Q. And would that be something that you think you would
 18 need a BFOQ female-only designation?
 19 A. I would have no idea. There would be better people to
 20 answer that question. Your CFA people would know that
 21 because that deals with the security of the facility.
 22 Q. Okay. But as you sit here today, you don't know
 23 whether you included a gate control officer in your
 24 list of positions?
 25 A. I don't believe I would have because that wouldn't

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1 have been any particular assignment that is going to
2 put in the mind thought back then a female prisoner in
3 a situation where it would be – they would be
4 vulnerable. You have cameras around, you have
5 officers out there, you've got the tower people at
6 that time. You have administration going everywhere.
7 You have maintenance people, grounds people,
8 contractors might be in there. So –
9 **Q. Got it. Do you think you would need to do a BFOQ**
10 **designation for a gym control officer?**
11 **A. I have no idea. That would be the call of the warden**
12 **or the people that you're – I guess we only have**
13 **deputy wardens now, so we've lost a lot of**
14 **classifications during all this period of time.**
15 **Q. Okay. But do you know what a gym control officer**
16 **does?**
17 **A. If it's what I think, your gym officer is the person**
18 **that opens up the gym, gets the basketballs and**
19 **different items out for the prisoners, monitors the**
20 **behavior in that location. And so –**
21 **Q. Okay. If that is, in fact, the duties –**
22 **A. Right.**
23 **Q. If those are the duties, would you need a BFOQ**
24 **female-only designation for that position?**
25 **MS. MILLER: Well, I'm just going to place**

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1 an objection. He's already said he has no idea and
2 he's not sure exactly what the position does.
3 But you can answer if you can.
4 **THE WITNESS: Well, again, I don't know if**
5 **I'm the person to say that. It would really be the**
6 **CFA people who deal with that every single day, and**
7 **I'd only be guessing, I wouldn't do any people any**
8 **good guessing.**
9 **BY MR. FETT:**
10 **Q. I understand that there's people better able based on**
11 **their present knowledge. But based on what you were**
12 **doing for the department in '99, 2000, and what you**
13 **know of the gym officer –**
14 **A. Gym officer.**
15 **Q. You wouldn't think you need a BFOQ designation for**
16 **that job, do you?**
17 **A. I don't believe you would. I was a correction officer**
18 **and I worked in the gym myself way, way, way back when**
19 **I was a youngster. Again, that was back then in my**
20 **perspective. It could be totally different now.**
21 **Q. Got it. Have you ever heard of an electronic monitor**
22 **officer?**
23 **A. No.**
24 **Q. Okay. Let me see if I'm saying it right. Yeah, I'm**
25 **saying it right.**

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1 **Okay. Do you know what a health care**
2 **infirmiry officer is?**
3 **A. That would be the person that is in the infirmiry when**
4 **prisoners go make their appointments. That person**
5 **would usually be sitting in the lobby of the infirmiry**
6 **when the person comes in.**
7 **Q. Okay. What do they do?**
8 **A. Monitor their area.**
9 **Q. Okay.**
10 **A. Make sure, check the pass, make sure the appropriate**
11 **person is over there, look at the call-out sheet if**
12 **they still have the call-out sheet, this person, this**
13 **prisoner should be here at this time for a medical**
14 **appointment, let me look at your ID, you're the right**
15 **person, sit here, whoever is going to be looking at**
16 **you will come out.**
17 **Q. Okay. And is that a duty that would require a BFOQ**
18 **female-only designation?**
19 **A. I'd only be guessing.**
20 **Q. All right. Based on what you were doing.**
21 **A. When I had that position from time to time when I was**
22 **an officer going all over, of course, I only worked in**
23 **a male facility, so I wouldn't see a need. But I'm**
24 **not the expert in it by any means.**
25 **Q. We earlier talked about the Industries officer, and I**

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1 **don't think I asked you what they do.**
2 **A. The industry officer, again, like many of these**
3 **officers, when prisoner workers come or other**
4 **prisoners deliver things there, that person probably**
5 **lets them in, checks their IDs. Industry officer when**
6 **prisoners are coming and going from their assignments**
7 **check and make sure that nothing is leaving with them.**
8 **I mean, industry is a great place to craft some**
9 **weapons, depending on where you're at. That one,**
10 **that's what they do.**
11 **Q. Okay.**
12 **A. Yeah.**
13 **Q. Do you know that position's been eliminated?**
14 **A. It does not surprise me.**
15 **Q. You've had to eliminate some positions?**
16 **A. A lot of positions were eliminated.**
17 **Q. Before that was eliminated, do you think that was the**
18 **kind of position that would require a BFOQ designation**
19 **female-only designation?**
20 **A. You're talking about in the women's facility?**
21 **Q. Yeah.**
22 **A. It potentially could, and the reason I say that is as**
23 **the prisoners are coming out, they may have to change**
24 **their clothes when they're going on to their**
25 **assignment, and when they come out, they put their**

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1 civilian clothes on. So potentially, yes.
2 Am I an expert in that, no, because, again,
3 you want to make sure that when prisoners, male or
4 female, are leaving their assignments, they go with
5 what they came with.
6 Q. Would that be something that could be addressed as the
7 need to check them out when they're taking off, could
8 that be addressed by using a team approach, having
9 both a male and a female there?
10 A. I would be answering for -- your best experts are CFA
11 people. I mean, you could, but, again, a team
12 approach might add extra staff that you don't have the
13 comfort of having.
14 Q. Okay. Do you know how many Industries officers you
15 would have at the, say at the women's facility?
16 A. I have no idea.
17 Q. All right. Are there corrections officers that deal
18 with, that work in an academic setting, they have
19 classes at the women's prison?
20 A. They used to have classes at the women's facility.
21 I'm assuming they still do now for equality because
22 the males have it I believe. It's been a while since
23 I've been to the facilities, and they had officers,
24 school officers. I don't know if they have those
25 anymore.

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1 Q. Okay. But they did when --
2 A. When I was familiar with what was going on in the
3 facilities.
4 Q. Did you designate any of those to be female only when
5 you were doing that project for Bill Martin?
6 A. I don't recall. I just don't recall which specific
7 assignments.
8 Q. Okay. As you sit here today, do you think that would
9 be an assignment that you would designate as BFOQ
10 female only?
11 A. Would I?
12 Q. Yeah.
13 A. Based on my old historical perspective, that person
14 usually sits out in the hallway, it might be in the
15 classroom, and they're just making sure that the
16 activities in the classroom are functioning
17 appropriately and everybody that's in there is
18 supposed to be in there.
19 So, again, I would be speculating, but I
20 don't know if that would be a need for that position.
21 Of course, that all could have changed, and somebody
22 current and brighter than I might see it differently.
23 Q. Okay. Taking you back again to the old days when you
24 were doing that project for Bill Martin, do you know
25 whether you had any food service positions designated

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1 as BFOQ female only?
2 A. I don't recall having that back then.
3 Q. Okay. That wouldn't require BFOQ female only, would
4 it?
5 A. Not from my memory, but a lot of things have changed
6 in the facilities since then.
7 Q. Sure, sure. This has nothing to do with this case,
8 but I'm looking at an article. So my question is does
9 the Department of Corrections have an affirmative
10 action plan?
11 A. I don't think that's required by the governor's office
12 anymore. I think that went out in like 1999 that the
13 department had to an EEO plan and the affirmative
14 action plan. So, no.
15 Affirmative action basically is the, from
16 my historical perspective the results and actions that
17 an employer takes to address the past effects of
18 exclusionary practices, and, when appropriate, you
19 correct that practice.
20 And affirmative action was a lot of times
21 implemented through the Civil Service system in which
22 you were able to go down into when we had the band
23 system, first band, second band, third band, bring
24 people up into the first band, to give people the
25 opportunity to participate in an interview.

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1 And that's where it got fuzzy with a lot of
2 people and they were down on it because people thought
3 that that meant that you had to give them the job.
4 Anybody who was in that class, it was to participate
5 in an interview, and then based on your interview, you
6 select the best candidate.
7 Q. Okay.
8 A. So, no, there is no affirmative action anymore. That
9 went out years ago.
10 Q. Okay.
11 A. And then EEO which is the cousin to that is the legal
12 obligation system by which nobody is discriminated
13 against by any illegal criteria such as age, race,
14 marital status, handicapper status, political
15 affiliation, genetics. That's wiping off some old
16 stuff, but that's been a while.
17 Q. And do you know whether or not these factors that you
18 can't discriminate based on, age, race, height,
19 weight, disability, blah, blah, does that apply to
20 prisoners, does that protect prisoners in your system?
21 A. That I don't recall.
22 Q. Okay. We've been talking about protections afforded
23 the female prisoners and what you've done to ensure
24 their privacy and eliminate misconduct.
25 And correct me if I'm wrong, but those same

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<p>1 corrections officers but we do have need of females 2 for our female-only BFOQ positions? 3 A. We've hired males all along. This year starting in 4 September, we're going to hire close to eight hundred 5 people. This past year we hired three hundred and 6 fifty total officers. 7 Q. Okay. But I understand that you're going to be flush 8 with some employees in the near future which is good. 9 A. Correct. 10 Q. But in the past do you know whether or not there was 11 like a moratorium on hiring male corrections officers 12 but they were still looking at applications from the 13 females because they had a shortage of females to fill 14 the BFOQ female-only positions? 15 A. We've always looked at both because we don't just hire 16 for one facility. We hire for everybody. And then 17 based on the budget, we have to determine which 18 facilities are going to get what. 19 Every facility is pretty much short staff, 20 and we try to minimize the impact on overtime and 21 staffing by hiring across the board. Some facilities 22 are hurting more than others. Not only do you have a 23 vacancy at a facility which is a true vacancy, but 24 each facility averages so many people off per pay 25 period on a leave of absence. That's causing</p>	<p>1 been a transfer freeze on it for about ten years. 2 Q. For everybody? 3 A. For the females. 4 Q. And why? 5 A. Filling in behind them, the women, the best people to 6 ask are going to be your CFA people because they're 7 the ones that put the freeze on. 8 Q. That's Mr. Straub? 9 A. Yes. 10 Q. Okay. Ten years. No wonder they're mad. Okay. 11 A. Well, and some of it, too, again, in that area we used 12 to have two facilities in Detroit. One closed, one 13 was repurposed to a reentry facility, and those were 14 all -- and Scott closed. 15 So technically, we don't have any 16 facilities, correctional facilities, in Wayne County. 17 Huron Valley is in Washtenaw County. And so a lot of 18 people that worked at Scott and Western Wayne 19 ultimately ended up over at Huron Valley. 20 There's no place -- a lot of the people 21 live in Wayne County, and so there's really no place 22 to work closer to home because Women's Huron Valley is 23 the closest and then you have Macomb Correctional 24 Facility in Macomb County. So the only facility 25 that's in operation in Wayne County is a reentry</p>
<p>1 overtime, too. 2 So you try to fill in the gap where you can 3 because, you know, where the real cost is is the 4 overtime cost, and that could be for a wide variety of 5 reasons. 6 Q. Do you know if there is a shortage of female 7 corrections officers to fill the BFOQ female-only 8 positions at the women's prison? 9 A. I don't know if there's a shortage of female officers 10 at the Women's Huron Valley. I know they have 11 vacancies, but I wouldn't know the specific -- I 12 wouldn't say the term shortage of female officers 13 there. 14 Q. Okay. You just don't know or -- 15 A. I really don't know how many are there and I should 16 because that is the area that I'm over now is 17 recruitment, and so we're doing the hiring. 18 Again, when it comes time to fill 19 positions, the correctional facilities people that 20 will be coming up are the ones that designate how many 21 they need where. 22 Q. Okay. Have you ever heard that the female corrections 23 officers at the women's prisons have a difficulty 24 getting transfers to the male facilities? 25 A. They've had ten years of difficulty because there's</p>	<p>1 center. 2 Q. Okay. 3 A. I'm going to turn this off. Sorry. 4 Q. It's no bother. 5 A. Yeah. 6 Q. Do you have employees, corrections employees, that are 7 tasked with taking phone calls from prospective 8 applicants for corrections officers? 9 A. Correction officers? 10 Q. Yeah. 11 A. We have some people from correctional facilities that 12 are on loan to us. 13 Q. I'm not -- I'm sorry if I confused it. I'm not saying 14 they have to be corrections officers. I'm just 15 talking about personnel, civilian corrections officers 16 or whatever that are tasked with taking phone calls 17 from prospective applicants, like I could call up and 18 say can you send me an application or when is the next 19 hiring. 20 A. Well, we have a recruitment unit that basically we 21 interview and hire people, but Civil Service, all 22 applicants in state government go to Civil Service. 23 No department's independent. 24 Q. Okay. 25 A. And so anybody who wants a job with the State of</p>

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al,

Plaintiffs,

Case No. 11-852-CD

-v-

HON. ARCHIE C. BROWN

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

The Deposition of TONY LOPEZ, taken before
Timothy J. Boroski, RPR/CSR-2378 and Notary Public in and for
the County of Clinton, State of Michigan, 206 East Michigan,
Lansing, Michigan, on Friday, June 7, 2013, commencing at or
about 1:35 p.m.

APPEARANCES:

Fett & Fields, PC
BY: JAMES K. FETT, ESQ., (P39462)
805 East Main Street
Pinckney, Michigan 48169
734.954.0100

Attorney of-record on behalf of Plaintiffs,

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1 Q And then you can't recall who the RPA is, but you recall
 2 speaking to the RPA about this?
 3 A I'm not a hundred percent sure on the RPA.
 4 Q All right.
 5 A But -- and Mr. Vance would have been the other person
 6 probably that I would have -- you know, again, to the
 7 best of my recollection, that I spoke with. And then I
 8 would speak with my own staff. You know, I may have my
 9 staff do this or that. But they weren't in the decision
 10 making part. They just compiled the information for me.
 11 Q All right. Did you speak with had Ms. Caruso at all --
 12 A I don't recall.
 13 Q -- about these decisions?
 14 A She was a director. I don't recall discussing -- more
 15 than likely what transpired was that there were
 16 discussions between the deputies and then the deputies
 17 discussed it with me. I don't recall discussing it with
 18 Ms. Caruso.
 19 Q All right. Now, did you know at this time Millicent
 20 Warren?
 21 A Yes.
 22 Q And you consider her a credible person?
 23 A Yes, I do.
 24 Q Did you -- did anyone ever tell you that Ms. Caruso or
 25 anyone else in the Department of Corrections wanted only

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1 female staff at Huron Valley at any point?
 2 A There has been some discussion on that.
 3 Q Among whom?
 4 A What I recall is it really wasn't with Ms. Caruso. This
 5 goes back to the Department of Justice.
 6 Q Okay.
 7 A Back in probably the late -- the mid to late '90s there
 8 was some -- there was a settlement entered into with the
 9 Department of Justice. I was the -- at that point I was
 10 the labor relations manager. And my boss, who was the
 11 human resource director, they wanted -- I had one or two
 12 meetings with them.
 13 It was more to deal with the contract
 14 implications in regards to filling positions,
 15 transferring. You know, there was very specific language
 16 in the MCO, the Michigan Correction Organization
 17 contract, and they had me in there more for a resource
 18 person. But even back then --
 19 Q Who is "they" when you're referring -- when you're using
 20 that term? When you say "they" had you...?
 21 A It was my boss who had been Marsha Foresman back then.
 22 Q Okay.
 23 A That wanted some information with regards to, you know,
 24 contract. And if there is any information --
 25 Q Did she express a desire to have the female prisons,

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1 prisons with female inmates, being staffed by only female
 2 corrections officers?
 3 A Again, I don't think anybody said, "Well, yes, we need
 4 this done." The -- the first time I was involved was,
 5 again, back to the Department of Justice, when they
 6 asked, "Is that feasible?"
 7 And I said, "I don't think it's going to be
 8 feasible based on the contract language. And based on
 9 the civil service rule and the need; is it a requirement
 10 to run the facility."
 11 So there was some discussion -- some brief
 12 discussion with the attorneys for the Department of
 13 Justice. And then I was involved in the settlement.
 14 There was a subsequent settlement. I think it was
 15 probably back in like '99 or something like that.
 16 Q Let me ask you those questions in reference to more
 17 recent times in the 2000s and in connection with these
 18 specific position descriptions. Did Mr. Straub or Warden
 19 Warren or anyone else in the 2000s time period express a
 20 desire to have only women corrections officers staff
 21 women's prisons?
 22 A Not that I recall.
 23 Q The -- going back to maybe the 1990s, and specifically I
 24 want to talk about the -- or ask you some questions about
 25 the positions that were designated BFOQ that eventually

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1 resulted in the Everson litigation. Are you familiar
 2 with that?
 3 A Yes.
 4 Q Were you a part of the decision making concerning what
 5 positions would be BFOQ'd at that time?
 6 A I was involved in getting positions established.
 7 Again --
 8 Q Positions established for the BFOQ?
 9 A Yes.
 10 Q Okay. So just to be clear, so you were involved in --
 11 were you involved in determining which positions would be
 12 BFOQ'd back then?
 13 A No, that's basically correction facility administration.
 14 You know, they make those determinations. They may
 15 contact me just to consult, what do you think about
 16 these, you know, this position.
 17 Q Again, let me stop you. I'm sorry to keep interrupting
 18 you. When you say what do you think of it, do they
 19 mean -- were you asked do you think from a prison
 20 administration point of view that this should be done, or
 21 did they ask you, if this is going to be done, how do you
 22 sort of technically do it?
 23 A If, if.
 24 Q It's the second thing I said?
 25 A Yes.

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1 Q Okay. So in terms of deciding whether RUOs, or people in
 2 intake, whether those positions would be BFOQ'd back
 3 then, you didn't really participate in the decision?
 4 A Correct.
 5 Q All right. Now, let's go forward, and it looks like
 6 you're already there. I want to ask you some questions
 7 specific to the positions that were recently BFOQ'd and
 8 that are included in Exhibit 1.
 9 Okay. So the first one I think is food
 10 services.
 11 MS. MILLER: Can you reference the page number
 12 or Bates number at the bottom?
 13 MR. KENT-BRYANT: Oh, great, there is a Bates
 14 number. I certainly can.
 15 THE WITNESS: I actually have industries as my
 16 first one.
 17 Q (BY MR. KENT-BRYANT) Okay. All right. That's all right.
 18 I'll ask you about industries. Just in terms of
 19 industries, what were the factors considered in
 20 determining to make a petition to have the industries
 21 position BFOQ'd?
 22 A That was actually done by correction facility
 23 administration, the warden, you know, up through that
 24 chain. It had little --
 25 Q Okay.

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1 A -- I had little input into developing the PDs. The PDs
 2 were developed locally by the warden and her
 3 administration coming up through correction facility
 4 administration.
 5 Q Okay. So I'm not -- at least at this point I don't think
 6 I'm so so concerned about who developed the PDs as
 7 much -- unless when you say developed the PDs, do you
 8 also mean made the decision whether a certain position
 9 would be BFOQ'd?
 10 A Yes.
 11 Q Or did you have input into whether --
 12 A No.
 13 Q You've got to let me finish.
 14 A Okay.
 15 Q Did you have input into what decisions would be BFOQ'd?
 16 A What positions would be?
 17 Q Positions, right.
 18 A No.
 19 Q Okay. Did anyone communicate to you why the industries
 20 position was chosen to be BFOQ female only?
 21 A At the time they were being established?
 22 Q At anytime, really, other than your attorney.
 23 A No.
 24 Q So, really, in the process from determining that a
 25 position should be BFOQ'd up through the petition that

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1 was made to civil service, what role did you play?
 2 A Facilitated the establishment of the positions.
 3 Q What does that mean?
 4 A Getting -- you know, these positions have to be
 5 established. We don't have the ability to -- there are
 6 some positions that are preauthorized to a department.
 7 And I can have my staff establish those positions.
 8 Q Let me just stop you there. What do you mean by
 9 "establish the position"?
 10 MS. MILLER: Can I help real quick?
 11 I think if you can go back and explain how
 12 establishing a position works with civil service and
 13 whether a position exists and can be filled. Assume he
 14 has no background as to how our civil service system
 15 works.
 16 MR. KENT-BRYANT: That's a very safe
 17 assumption.
 18 MS. MILLER: Can you in a nutshell kind of
 19 explain it to him? Because I think that's the
 20 difficulty. Your words make perfect sense to me. I know
 21 they mean nothing to him.
 22 THE WITNESS: Okay. I apologize. Sometimes --
 23 I mean, I have been dealing with this for years.
 24 Q (BY MR. KENT-BRYANT) No, that's okay. That's okay.
 25 A Well, civil service is the entity under the constitution

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1 that oversees all of the classified positions.
 2 Q Right.
 3 A So there is civil service classified positions. There
 4 are positions that civil service has delegated to us that
 5 we can go ahead and establish pursuant to their
 6 classification specifications. They have those -- for
 7 each classification there is a class spec, class
 8 specification. We can establish positions that are out
 9 there or else we can -- you know, we can work with civil
 10 service to develop additional classifications, but keep
 11 it real simple.
 12 So these positions, there are some out there.
 13 These classifications that we can go ahead and establish
 14 that we are preauthorized. Some positions, again, the
 15 classifications is established, we have to go through
 16 civil service to establish.
 17 There are certain criteria. You know,
 18 organizationally, you can have this position, this level,
 19 in this situation. So it's -- we work with civil
 20 service. For the BFOQs, and, hopefully --
 21 Q Go ahead. Keep going.
 22 A Okay. For the BFOQs, we need authorization from civil
 23 service.
 24 Q Right.
 25 A Again, they are the ones that have -- oversee all -- or

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1 the civil service commission does, under the
2 constitution, have the authority. They have delegated
3 that to the civil service. It used to be a department,
4 but the Civil Service Agency. So we work with them in
5 establishing the positions.
6 That's why the letter, this March 27th letters
7 that you referenced, we needed to send that to -- we
8 being human resources -- needed to send that to civil
9 service to permit us, to request that these -- that we
10 have authority to establish these positions.
11 And so that's what HR typically does. I mean,
12 we provide information, guidance, yes, we can. But like
13 in this situation, most of the determination in regards
14 to the need for these additional positions was made by
15 correction facility administration.
16 Q Okay. So here -- I'll tell you what my perhaps confusion
17 is. Was it your sense that the industry officer
18 position, in fact, all of these positions were new
19 positions?
20 A They were --
21 Q Or are they just newly designated BFOQ?
22 A The latter.
23 Q Okay. So the positions themselves already existed. But
24 the folks you worked with came to you and said we want
25 these to be BFOQ female only, right?

Page 19

1 A Yes.
2 Q And when you say you facilitated that, okay, first of
3 all, during those discussions do you ask them -- well,
4 you tell me what you -- they say, we want these to be
5 BFOQ female only positions, what did you do?
6 A Well, the first thing is, give me a PD, a position
7 description --
8 Q Right.
9 A -- on what the duties are going to be. And what is the
10 rationale. Because we have to include that in the
11 letter. And the rationale was to ensure the privacy of
12 the female prisoners, that they felt that these positions
13 were -- were -- were needed. By they, again, the
14 facility and correctional facility administration.
15 Q Did they -- we're talking about the warden and possibly
16 the RPA and Mr. Straub, did they -- they gave a
17 rationale. Did they give you a factual basis for the
18 belief that these positions -- let's just stick with the
19 industries position for now. Did they give you a
20 rational basis, or any factual basis for their belief
21 that these positions had to be BFOQ'd to ensure female
22 privacy?
23 A Well, some of the things were the observation of the
24 females in certain -- I'm -- the industries, it might
25 have been where -- they gave some rationale on certain

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1 situations. They were talking about in one situation, I
2 don't know if it's this one or not, where the females, as
3 part of the industries, which is the Michigan State
4 Industries, they had to change clothes.
5 So they -- you know, they have the clothes that
6 they wear while they're working and then they have to
7 remove the attire, get back into their prison garb, and
8 then -- so that could have -- you know, I remember them
9 talking about that.
10 Q Do you remember them talking about that specifically in
11 reference to the industries position?
12 A No. Again, I don't recall that. But there was some
13 discussion. Again, a lot of it was privacy, the
14 clothing.
15 Q Okay.
16 A There was another situation where --
17 Q Actually, I'm going to stop you because I want to go
18 through this systematically and with some level of
19 efficiency.
20 So with regard to the industries position, what
21 do you recall being the specific rationale that you were
22 given for wanting that position to be BFOQ female only?
23 A The specific was, again, the privacy. There was some
24 general statements made, I just don't recall them. But
25 looking at -- and I think the recent cases that had come

Page 21

1 out, I think they were around that time, too, out of
2 Washtenaw County. There said there was a need to ensure
3 a higher level of privacy to the female prisoners.
4 Q And with reference to the industries position, were
5 you -- what do you recall receiving as a factual basis
6 for that rationale?
7 A I guess I -- I didn't go position by position with them.
8 They gave some overall about pat-downs, privacy, you
9 know, the -- some of the females not being -- a clothing
10 issue. You know, so it was clothing, pat-downs, or
11 undressing, dressing, pat-downs, the -- the viewing by
12 the officers.
13 Q Okay.
14 A Those were in general terms.
15 Q For all of these positions?
16 A Yes.
17 Q Okay. And, unfortunately, there is going to be a certain
18 amount of repetition to this deposition, because although
19 there is a lot of overlap, in a way each of these
20 positions represents, you know, a separate --
21 A Sure.
22 Q -- sub-case.
23 A Um-hum.
24 Q So with regard -- if you end up repeating yourself, go
25 ahead and repeat yourself.

Page 22

1 A Okay.

2 MS. MILLER: I want to just interject. He's

3 told you that there was no specific discussion about a

4 specific position and it was in general terms. So, I

5 mean, if you're going to sit here and go through each

6 position description to have him give that same answer, I

7 think that's a complete waste of everyone's time. But I

8 just want to state that for the record.

9 MR. KENT-BRYANT: I'll try and be as efficient

10 as possible. But I do think the specificity is

11 important.

12 Q (BY MR. KENT-BRYANT) So in terms of the industry

13 position, did anyone tell you – they said that there

14 were the issues of pat-downs and privacy. Did they share

15 with you any sort of fact gathering or research or

16 anything of that sort they conducted or went through to

17 arrive at that determination that these things were

18 creating problems?

19 A Not that I recall.

20 Q Was there anything that had to – did you give any advice

21 concerning things that had to be added to position

22 descriptions so that the position descriptions would pass

23 muster to be BFOQ female only positions?

24 A No. Again, I'm looking at these. These are the

25 composite ones. And we had a history of – of issues

Page 23

1 with female prisons. And, you know, civil service had

2 approved a lot of these. We had court cases, and when we

3 established some of these, we referenced the court cases.

4 And those – the USA, about there was some

5 sexual misconduct by male officers. The Nunn decision,

6 the Everson. And so based on all of that, there was a

7 history of the department being found that we didn't

8 provide the safety and security for the female prisoners.

9 And then we had the Washtenaw case that had

10 just gone on that we ended up paying quite a bit of money

11 to the female –

12 Q Right

13 A – prisoners.

14 Q So that's general background why, at least some of the

15 positions –

16 A But that's also my knowledge of it, too.

17 Q Okay. I understand.

18 A That's my knowledge and that's civil service knowledge on

19 why that we felt that these positions were appropriate.

20 Q All right. All of those are, would it be fair to say,

21 general concerns with male employees in the female

22 prisons, true?

23 A I wouldn't say general. I would say very specific

24 concerns. I mean, we were – you know, we were found –

25 Q The wording wasn't so good. Let me reword it.

Page 24

1 There are concerns that are general to all

2 positions within the female prisons, true?

3 A Okay, yes.

4 Q All right. But there are some positions within the

5 female prisons that are still today allowed to be staffed

6 by males, true?

7 A Correct.

8 Q So with regard to the industries position, are you aware

9 of there being any fact gathering or research into why

10 the industry position in particular was chosen to be one

11 that needed to be BFOQ female only?

12 A I guess to the best of my recollection was that it was,

13 you know, a position inside the facility. And it, again,

14 dealt with the pat-downs, the searches, the dressing and

15 undressing.

16 Q Okay.

17 A And that's – again, that's – that's pretty much for all

18 of these positions.

19 Q All right. And I'll try and ask them in quick

20 succession. There are just little differences.

21 Let's go to the next position which is 6861,

22 which I have as the health care infirmary officer.

23 A What's – I'm sorry, 6861?

24 MS. MILLER: I have that as 6853, health care

25 infirmary officer.

Page 25

1 THE WITNESS: Okay. I don't know what you guys

2 are referencing.

3 MR. KENT-BRYANT: Did I skip one? There is two

4 of them. There is two of them. Let's do the 53 first.

5 MS. MILLER: Okay.

6 Q (BY MR. KENT-BRYANT) Other than the general concerns

7 that you have related to me about concerns about

8 pat-downs, about searching, about women in a state of

9 undress, are you aware of any specific research or fact

10 gathering that was done to determine that the 6853 health

11 care infirmary officer position needed to be BFOQ female

12 only?

13 A No.

14 Q Same question with regard to the 6861 health care

15 infirmary officer position?

16 A Other than what we have discussed in general terms, no.

17 Q All right. And did – well, asking you – and I'll

18 repeat it, the same question concerning the 6869

19 electronic monitor officer position, other than the

20 individuals you have named that communicated to you

21 concerns regarding pat-downs, searches and the issue of

22 women being seen in a state of undress, are you aware of

23 any particular research or investigation that was done to

24 determine that that position, the electronic monitor

25 position, needed to be BFOQ female only?

Page 42

1 were involved in the BFOQ decision?

2 A No.

3 Q Do you know whether the -- I know I asked you whether you

4 made any recommendations concerning the position

5 descriptions, but do you know whether there were any

6 additions made to the position descriptions so that the

7 positions could be BFOQ'd?

8 A I don't believe so. I think that my recollection is in

9 the general statement, you know, we included a general

10 statement similar to the other BFOQ position, you know,

11 dealing with privacy, dealing with the -- you know, for

12 the female prisoners. And, again, given the historic

13 nature of this issue, we believe that's sufficient.

14 Q Now, these -- obviously, these positions that were

15 requested to be BFOQ in 2009 were not requested to be

16 BFOQ'd in the previous round in the last 19 -- the mid to

17 late 1990s and so forth. Do you know why?

18 A Well, my understanding was that there was subsequent

19 issues of sexual misconduct and privacy issues. We had

20 just lost a major decision costing the State of Michigan

21 millions of dollars.

22 Q No, I understand that.

23 A And that's why. I mean, that's the discussions.

24 Q Okay. And do you know if a -- do you know any specific

25 problems that arose out of the particular positions that

Page 43

1 are contained in Exhibit 1?

2 A Other than the general information that we already

3 provided about privacy, that's it.

4 Q Right. But you referenced things like litigation and so

5 forth. Do you know of specific problems that were

6 reported arising out of the yard position, out of the

7 rover position, out of the gate control position, out of

8 the food services position, out of the infirmary

9 position, out of the school position, out of the

10 industries position?

11 A Other than the -- the concern with the security of the

12 facility, no.

13 Q And the security of the facility, explain that to me one

14 more time. How does that concern play in?

15 A Well, if you can't have officers performing all of the

16 functions of a correction officer, you know, there are

17 security issues. You know, we discussed about the

18 pat-downs where the males couldn't -- where the males

19 couldn't go into a certain area where they were

20 undressed. They had to knock.

21 There was requirements going back to the USA

22 and the Nunn -- the USA settlement and the Nunn decision

23 about male officers having to, you know, knock entering

24 the housing units. And some of that was just being

25 carried over.

Page 44

1 Q Okay. And so there is that, what, knock and announce

2 policy? Is that what it's called? That would raise,

3 what you're testifying to, a security concerning,

4 correct?

5 A Yes.

6 Q That's only in housing, right?

7 A Housing, primarily.

8 Q Right.

9 A And it could -- I don't know if it stems to other areas

10 where a female could be in a state of undress.

11 Q All right. You don't know one way or the other?

12 A Health care, no.

13 Q None of the positions in Exhibit 1 are housing positions,

14 true?

15 A Correct.

16 Q And I take it the other security concern is just the idea

17 that a female officer would have to be pulled off duty to

18 go assist a male officer who might need a pat-down or

19 something like that; is that what you're saying?

20 A That and maybe a pat-down. They just don't do it because

21 they can't get someone over there.

22 Q Okay. Any other security concerns? When you say

23 security concerns, anything else that you mean by that?

24 A With my limited knowledge, that's probably what I would

25 say. This is more something that the folks who deal with

Page 45

1 the facility day in and day out.

2 Q That was going to be my next question. For the most

3 part, when you're referencing security concerns, you're

4 deferring to security concerns that have been relayed to

5 you by the folks at the facility?

6 A Been raised by correctional facility administration

7 staff.

8 Q Going back to the March 27th, 2009, letter, is there

9 anything issued by civil service that sets, that you're

10 aware of, that sets forth their factual basis or

11 rationale for granting these BFOQ requests?

12 A Other than the letter from Mr. Stephens, no.

13 Q Okay. You were talking about knowledge of grievances and

14 complaints. There have been grievances and complaints

15 from female corrections officers, or resident unit

16 officers, I'm talking about female employees, at Womens

17 Huron Valley about mandatory overtime; is that true?

18 A Yes.

19 Q And there have also been complaints from the female

20 correction officers about restrictions on their ability

21 to transfer to other facilities, true?

22 A Yes.

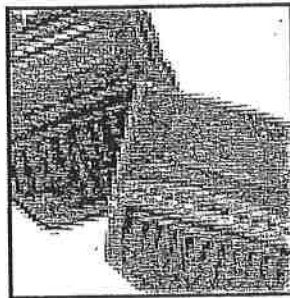
23 Q Let me ask this, just about the database. Well, I guess

24 that won't be -- okay.

25 There has been some testimony, I believe, or at

Nowacki v. State of Michigan Department of Corrections

Deponent: **Dennis Straub**
Taken: **4/5/2013**



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1 I'm hoping to be out of here by noon or sooner, so
2 it's not going to be a long deposition, but if you need to
3 take a break for anything, just let me know. If you need to
4 do that and there's a question on the table, we'd just ask
5 that you finish your answer and then take the break.
6 A. (Nodding head affirmatively.)
7 Q. At some point during the deposition your attorney may make an
8 objection and you just need to let her finish the objection
9 and then, unless she tells you not to answer, then you go
10 ahead and answer.
11 A. Understood.
12 Q. The only reason that she might say "Don't answer" is if it's a
13 question of attorney/client privilege.
14 MR. FETT: So have I got that right, Ms. Miller?
15 MS. MILLER: That is correct.
16 MR. FETT: I ask her that every time. She's tired
17 of answering that, but you guys need to know that I'm not
18 tricking you.
19 THE WITNESS: Right.
20 BY MR. FETT:
21 Q. Okay. I want to get some background information.
22 How far did you go in school?
23 A. I got a bachelor's of science degree from Western Michigan
24 University in 1973.
25 Q. Are you from the Kalamazoo area?

Page 6

1 A. No, sir.
2 Q. And so what year did you start working for Corrections?
3 A. 1972.
4 Q. Kind of give me the Reader's Digest version of your resume and
5 the positions you had. You don't have to tell me where or for
6 how long, just the progression of the positions you held.
7 A. Started in 1972 at Cassidy Lake Technical School as a
8 counselor. From there, went to the director classification
9 within the Reception & Guidance Center for the State. From
10 there, went to a resident unit manager. From there, went to a
11 - I said resident unit manager, did I?
12 Q. Yes.
13 A. Then I went to the deputy superintendent of the Reception &
14 Guidance Center. Then I went to, then, north side as an
15 assistant deputy warden, transferred inside SPSM, closed
16 custody, as an assistant deputy warden.
17 Q. Tell us what SPSM is.
18 A. State Prison of Southern Michigan. I'm sorry.
19 Q. Is that Jackson?
20 A. Yes. Then I went to the Cotton Correctional Facility as the
21 deputy warden. From there, was promoted to the warden of the
22 Cotton Correctional Facility. From there, went to a regional
23 prison administrator and, from there, went to the deputy
24 director.
25 Q. And as the deputy director, you would report to the director?

Page 7

1 A. Yes, sir.
2 Q. And the regional prison administrator would've reported to you
3 when you were there?
4 A. Yes.
5 Q. Would you agree with me that Department of Corrections is a
6 paramilitary organization?
7 A. Yes, I would.
8 Q. Did you have any military time?
9 A. No, sir.
10 Q. You know what a BFOQ is?
11 A. Yes, I do.
12 Q. Give me a Reader's Digest version of what a BFOQ is.
13 A. It could be special skill required for a position. It could
14 be a gender for a position. Something specific for a job.
15 Q. Okay. And during the course of your career, did you have
16 occasion to develop job descriptions that included BFOQ's?
17 A. I did not develop and write job descriptions as a deputy
18 director, I did as a warden.
19 Q. Okay. During the course of your career. So -
20 A. Yes, I would have done. I would have written jobs
21 descriptions, not BFOQ positions, other than as the deputy
22 director, to possibly identify positions.
23 Q. And when you were deputy director, would you have done BFOQ's
24 that related to gender as the specific -
25 A. Yes, but I did not do the job descriptions now.

Page 8

1 Q. Right. You're at a level where you wouldn't be writing job
2 descriptions, right?
3 A. Exactly.
4 Q. That would be a couple levels lower than you at least?
5 A. Or Personnel.
6 Q. Okay. Let's talk specifically about gender being a BFOQ for a
7 particular position.
8 What would cause the DOC to determine a particular
9 position warrants a BFOQ of gender only?
10 A. If there was reasons, such as at Huron Valley, where they were
11 going to see the female prisoners in a state of nudity,
12 something like that, or where they had to physically touch
13 them.
14 Q. All right.
15 A. That's an example.
16 Q. Okay. Did you ever have any training or seminars, any type of
17 schooling, about the BFOQ requirement as it relates to gender?
18 A. Just meetings we had with Personnel.
19 Q. When you say Personnel, are you talking about Gary Manns?
20 A. That would have been our Human Resource person as well as Tony
21 Lopez, who would have worked for Civil Service.
22 Q. Does he work for Civil Service or is he a DOC employee that's
23 like the liaison?
24 A. Which one?
25 Q. Lopez.

Page 13

1 A. Yeah. That was a little bit above my pay grade during that
2 time.
3 Q. All right. As you sit here today, let's talk about
4 pre-consolidation at Huron Valley. Well, you already answered
5 that question. I'm sorry.
6 I'd like to ask you questions about the development
7 of the BFOQ positions for use at the Huron Valley facility;
8 okay?
9 A. Yes.
10 Q. That's where I'm going.
11 And I would like you to look at an exhibit from an
12 earlier deposition of Mr. Marlan and it would be Exhibit 2
13 from Marlan and we'll mark it for this deposition too, also,
14 but I just want to address your attention to that.
15 On the second page, you'll see it's Exhibit 2, and
16 if you go to the second page, I would like you to review Line
17 8 on Page 55.
18 Do you see where the pink box is?
19 A. Yes, sir.
20 Q. Start at the top at Line 8 and read down to the bottom and
21 then go to 56 and read down to the end of that pink line.
22 A. Okay. I read it.
23 Q. You know, I didn't mean to confine your review. If you want
24 to read up or down from that, that's fine with me if you need
25 more context.

Page 14

1 A. Well, we'll see where you're going with it first.
2 Q. All right. What I've given you -- and let me just put the
3 sticker on there so I don't forget.
4 (At 10:24 a.m., Deposition Exhibit Number 1 was
5 marked.)
6 BY MR. FETT:
7 Q. This is the dep of Warden Millicent Warren.
8 Obviously you know Miss Millicent Warren; right?
9 A. Yes, sir.
10 Q. You weren't her direct supervisor but your subordinate, Bruce
11 Curtis, was her direct supervisor?
12 A. Yes, sir.
13 Q. And how often would you interact with Warden Warren?
14 A. I would probably see Millie once or twice a month when she
15 became the warden down at the Women's Huron Valley.
16 Q. And I presented you with testimony from her deposition taken
17 in this case and she refers to being informed by you and Bruce
18 Curtis that Pat Caruso, because of the lawsuit, wanted the
19 staff to be all females working with female prisoners.
20 Do you see that?
21 A. Yes.
22 Q. Did you tell Millicent Warren that?
23 A. I don't remember ever telling Millie that or anybody because
24 that's not the truth. Pat Caruso never said that, nor did I
25 or her ever want it to be all female.

Page 15

1 Q. Okay. Do you have any idea how Warden Warren would get that
2 idea?
3 A. The only thing I could assume, and I'm just assuming here now,
4 speculating, is the fact that we just got to joking, or Bruce
5 may have and just said, "Why don't we just make them all
6 female and quit trying to identify", jokingly, but that was
7 never my intent nor was it Director Caruso's intent.
8 There's a place for the men in a female institution,
9 the same as there are females in a male institution, and I
10 think they play a vital role in the rehabilitation process of
11 the female.
12 Q. Okay. When you say --
13 MR. FETT: Could you read back his answer?
14 (At 10:26 a.m., record repeated by reporter as
15 follows: "A. The only thing I could assume, and
16 I'm just assuming here now, speculating, is the
17 fact that we just got to joking, or Bruce may have
18 and just said, "Why don't we just make them all
19 female and quit trying to identify", jokingly, but
20 that was never my intent nor was it Director
21 Caruso's intent. There's a place for the men in a
22 female institution, the same as there are females
23 in a male institution, and I think they play a
24 vital role in the rehabilitation process of the
25 female".)

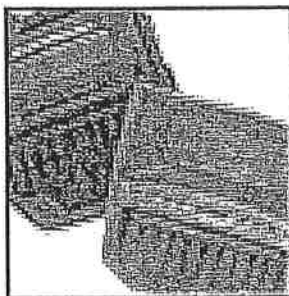
Page 16

1 BY MR. FETT:
2 Q. When you said, "Why don't we just make them all female",
3 you're talking about the positions at Huron Valley? You were
4 joking about it?
5 A. I'm assuming Bruce may have said that because I wouldn't have
6 said that. I didn't believe that, nor do I believe that
7 today. And it was never Director Caruso nor my intent to do
8 such. But I can just picture Bruce, you know, getting at the
9 end of the day, after trying to identify and reasoning, saying
10 "Well, hell, let's just make them all that", you know. Just
11 off-the-cuff joking.
12 I don't believe -- I just can't answer the question
13 because I don't know, but I know I didn't believe that and I
14 know Director Caruso did not believe that.
15 Q. Look at what's been marked as Exhibit, part of Exhibit 1, and
16 it is an article, Women Prisoners' Lawsuit Addresses MDOC
17 Abuse by Eric T. Campbell, and I'll direct you to the second
18 page, last paragraph.
19 Read that to yourself and let me know when you're
20 done.
21 A. I read it.
22 Q. With regard to the last item after the semicolon, Marlan is
23 quoted here -- not quoted -- but it says, "He cited new
24 training procedures for guards, physical plant changes
25 designed to prevent privacy issues and the termination of male

Nowacki v. State of Michigan Department of Corrections

Deponent: **Bruce Curtis**

Taken: **4/4/2013**



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Page 29

1 A. In Lansing.
2 Q. Okay.
3 A. Grandview Plaza.
4 Q. Do you recall meeting with Mr. Straub regarding any
5 issues relating to that consolidation?
6 A. Only there were quite a few meetings that had to do with
7 consolidating. Most of it where I was concerned is the
8 actual moving of the women, closing Scott which was a
9 big deal over in Plymouth and moving and transporting
10 those women over to the Huron Valley facility.
11 And most of mine was getting that facility
12 ready for the women to occupy that because there were a
13 lot of structural things that had to be done, and having
14 the boot camp or the Special Alternative Incarceration
15 under me, they had those male crews come in there to do
16 that.
17 Boot camp puts out a lot of crews, work
18 crews, and then my regional maintenance people had to
19 work with the Huron Valley maintenance people, and the
20 Huron Valley didn't have enough to do it. So my
21 regional maintenance people did the work, the structural
22 work to take care of that.
23 And I would go mostly confer with him on, you
24 know, money and what we needed here and what we needed
25 there, what we have to have for those women as compared

Page 30

1 to the men. Most of mine had to do with, my meetings
2 with Denny had to do with that.
3 Q. Okay. Did you ever meet with say Denny and Warden
4 Warren regarding issues relating to the consolidation of
5 prisoners?
6 A. Mostly construction issues, things like that. Not so
7 much staffing issues because staffing issues were pretty
8 simple to me. As I said earlier, my concern is that we
9 have appropriate staffing to cover yard areas, to cover
10 gymnasium areas, to cover feeding, to cover the housing
11 units, those kind of things, and that's pretty simple.
12 There is an executive, operations executive
13 position, at that time it was operations administrator,
14 who handled staffing for the department.
15 Q. Who filled that position?
16 A. Ed Mize, a guy by the name of Ed Mize.
17 Q. M-I-E-S?
18 A. M-I-Z-E.
19 But most of the staffing that would come
20 through that, I don't know how much the deputies, the
21 deputy wardens at WHB conferred with Ed at that time,
22 and they didn't confer with me except Warden Warren
23 might ask me if we can do this and this in terms of the
24 amount of staffing they could have because the regional
25 business manager works directly for me, and they would,

Page 31

1 they would do the study of what this thing is going to
2 cost. That's mostly where I came into play.
3 Q. Okay. So I think I know the answer to this but I've got
4 to ask anyway. So did you have anything to do with
5 whether positions at Huron Valley would be designated
6 BFOQ females only?
7 A. I did not.
8 Q. Okay. Would you expect that yard officer positions
9 would have to be BFOQ female only?
10 A. No.
11 Q. How about industries officer?
12 A. Well, unless it was a position where the position was
13 isolated, as I stated before, I would be concerned about
14 that, and it depends on what staff are there continually
15 with that officer.
16 Q. All right. But with those caveats?
17 A. Yeah, those were the -- that's pretty much the
18 decision-making of in my mind of where BFOQ should be.
19 Q. Got it. How about food service officer?
20 A. That's the same thing. It would be the same thing.
21 Q. And I know what you mean but just for the record, it
22 would be the same thing provided that there's no
23 isolation?
24 A. That's correct.
25 Q. So if there's no isolation, it doesn't have to be

Page 32

1 designated BFOQ?
2 A. If they -- it depends on where in the food service
3 operation that happens, and it also would depend on what
4 staffing were there. If a food service officer was a
5 dining room officer and it's an open, obvious position
6 with females going and coming but similar to the yard, I
7 mean, it's a public area, it wouldn't be a problem.
8 Q. Okay.
9 A. If that officer was something like that we had in
10 central, I can't remember Huron Valley. I've got a lot
11 of prisons, so I can't remember what their staffing is
12 back there. Let's say it was a back dock position and
13 it is alone back there with those women workers. I'd
14 say that had to be a BFOQ position.
15 Q. Okay. Okay. Would the same notion apply to say the gym
16 officer?
17 A. It would be the same.
18 Q. Okay. Same thing with gate officer?
19 A. Well, it depends on if they had to -- sometimes the
20 duties of the gate officer, for example, and there's a
21 lot of different gates in prisons, is to shake down the
22 prisoners coming through. That couldn't be a male
23 officer.
24 Q. Okay. But could a male officer do that if they were
25 working with a female officer?

Page 33	Page 35
<p>1 A. Well, you'd have the female officer do it. The male 2 officer would be observing. 3 Q. Okay. 4 A. You know, if it was a -- again, it depends on the 5 situation and where it is. 6 Q. Okay. 7 A. It depends on the equipment being used, whether they're 8 going through a pass-through metal detector, whether 9 they're using a wand to look for metal objects. 10 Q. Okay. Let me switch directions here for just a moment. 11 Do you know at the prison level, specifically like the 12 Huron Valley Women's Prison, whether there is the 13 ability to track overtime usage? 14 A. Sure, there is. 15 Q. Okay. And that's something that the agency is concerned 16 about because you want to minimize overtime -- 17 A. Yes. 18 Q. -- in an economy like this. 19 Can -- do you have the capability with your 20 accounting system to figure out what a particular 21 individual worked for overtime in a particular period? 22 A. You should have an Overtime Equalization List. The 23 shift commander in that particular facility should be 24 monitoring the overtime equalization. 25 Q. And just explain briefly what an Overtime Equalization</p>	<p>1 doesn't mean that everybody starts with zero overtime 2 for figuring out who gets the overtime? 3 A. That's right. 4 Q. Okay. I mean, they would call that like a rolling, 5 rolling amount? 6 A. Revolving. 7 Q. Okay. 8 A. However you -- it's been so long since I was shift 9 commander or deputy warden. 10 Q. Okay. Going back again to the BFOQ, are you familiar 11 with what an electronic monitor officer is? 12 A. Yes. 13 Q. Just briefly give me the Readers Digest version of what 14 they do. 15 A. Well, they, they monitor the screenings, the camera 16 system that we have, whether they're in units or whether 17 they're in possibly segregation cells or things like 18 that. 19 Q. Okay. 20 A. It's the monitoring system, and they monitor cameras, 21 you know, all over the, all over the facility. 22 Q. So they just have to sit there and watch screens? 23 A. And Huron Valley has many because it's a hundred and 24 eighty acres, and, yeah, you have banks of cameras that 25 you monitor.</p>
Page 34	Page 36
<p>1 List is. 2 A. You start with your most senior officer, offering them 3 overtime, and you may have an A list or B list or C list 4 or however that's set up. And you go down the list, and 5 when you exhaust that list, then you start over again. 6 Q. Okay. 7 A. And so that overtime, you equalize overtime between the 8 staff who are -- who sign up or want the overtime. 9 Q. So that the overtime that's reflected on that list, is 10 that for just for a particular year or is it a 11 continuing list that is -- that there's no specific 12 period?</p>	<p>1 Q. Is there caffeine readily available? 2 A. Oh, yes. You try to relieve them -- 3 Q. I would hope. 4 A. -- a decent period of time. 5 Q. Is that -- should that be a BFOQ position? 6 A. Yes. 7 Q. Okay. And why is that? 8 A. Because of the different, the way the cameras face in 9 terms of showers and the possibility of different stages 10 of dress and undress. 11 Q. Okay. Is there any -- is that a BFOQ position in the 12 male prisons?</p>
<p>13 A. Well, it goes on. You know, you look at what your 14 yearly statistics are and try to figure out where your 15 problems are, if you're running overtime in certain 16 areas. 17 Q. Okay. 18 A. But it would go on. It would be a continual list. I 19 mean, because the year ended, that doesn't mean that 20 Officer A, if he, he or she has less overtime than 21 Officer B, you would try to equalize that as best you 22 can. 23 Q. So that -- 24 A. And it would continue on, yes. 25 Q. All right. So that just because a new year starts</p>	<p>13 A. I don't know. No, we don't have them in male. We don't 14 have BFOQ in males. It would be an SAI. 15 Q. What's that mean? 16 A. It would be that if we had a camera in a women's housing 17 unit, a male wouldn't be monitoring the camera, Special 18 Alternative Incarceration, the boot camp I was telling 19 you with the other. 20 In a male prison, you don't have BFOQ 21 positions. 22 Q. Okay. Do you know what a health care infirmary officer 23 is? 24 A. Yes. 25 Q. Give me the Readers Digest version of that.</p>

1 A. It would be an infirmary officer is an officer that
 2 monitored what goes on in the infirmary and keep the
 3 infirmary secure while the nurses and practitioners and
 4 doctors and dentists are examining and looking at the
 5 patients.
 6 Q. Okay. Is that a position that should be a BFOQ?
 7 A. You know, I can't remember if that's a position at the
 8 Valley or not. I don't remember if that's a BFOQ one or
 9 not. It could, though, because of, again, the different
 10 stages of dress or undress.
 11 Q. What if they're just in the front office and not where
 12 the patient care is going on?
 13 A. It wouldn't be, again, unless they were left alone,
 14 unless there were instances where they would be alone
 15 with women.
 16 Q. Okay. What is a school officer position?
 17 A. The same thing. It's a person that monitors the school,
 18 and they inspect the rooms when the rooms are vacated.
 19 They do shakedowns of women coming in and out of the
 20 school, those kinds of things. They're required to do
 21 shakedowns at any time, and with the women, that would
 22 probably most likely be a BFOQ position.
 23 Q. Do you know how they handle shakedowns at Huron Valley?
 24 A. I've never really watched them, stood and watched them
 25 handle shakedowns. They would shake down the way they

1 do in a men's facility. They would shake down, you have
 2 a regular pat shakedown, then you have a clothed body
 3 shakedown which is more thorough where you take your
 4 shoes off and things like that and you do a more
 5 thorough shakedown.
 6 Then in an emergency, if you've got a need to
 7 know or if it's obvious somebody has something, you'd
 8 have a strip shake.
 9 Q. Okay. And do you know if - do you know whether or not
 10 at Huron Valley there are special rooms for strip
 11 searches and shakedowns?
 12 A. Most of the strip searches in the Valley are probably
 13 I'm sure done in the housing units.
 14 Q. Okay. Well, do you know, though?
 15 A. Otherwise, if they're not otherwise, they need to be in
 16 a private room. I'm not familiar with their gate
 17 shakedown area, although I know they would have to do it
 18 in a private room. That's the same with males.
 19 Q. Okay.
 20 A. You don't, you don't shake down and do a, do a strip
 21 search or clothed body search. Well, a clothed body
 22 search you can. You to be really careful with that.
 23 Q. Okay. But what I'm getting at, I think the testimony
 24 has been, has shown that there are two rooms at the
 25 Valley, one each near the visitors' area.

1 Are you aware of that?
 2 A. Not really.
 3 Q. Okay.
 4 A. I'm not really aware of where those rooms are sitting
 5 here, no.
 6 Q. Okay.
 7 A. Most all of my facilities have shakedown rooms.
 8 Q. Okay.
 9 A. The Valley, I'm not - we've changed it so much, I can't
 10 imagine where that room is right now.
 11 Q. Okay. So we were talking about the school officer
 12 thing, and if there was a team of officers, that is a
 13 male and a female, would that position still have to be
 14 BFOQ female only?
 15 A. Well, if they were working both shaking down, it should
 16 be.
 17 Q. But if only the female is doing the shakedown, of
 18 course.
 19 A. That's fine. It would be just like transportation.
 20 Q. Okay. Are there different type of strip searches?
 21 A. Well, strip search has really been an issue at the
 22 Valley in the last few years.
 23 Q. I'm referring -
 24 A. We've changed our, we've changed our process. But
 25 certainly women would work with strip searching women as

1 male prisoners, only males would work in there.
 2 Q. All right. I think you're going where I was going.
 3 There was a - the ACLU made a big deal about the way
 4 strip searches were being conducted.
 5 A. Sure.
 6 Q. And as a result of that, wasn't the way they do strip
 7 searches changed?
 8 A. Yes.
 9 Q. Okay. But strip searches are still done?
 10 A. Yes.
 11 Q. Just not the way they used to?
 12 A. Yes, exactly.
 13 Q. Okay. Let me take a break with my client here, see if
 14 I'm missing anything.
 15 A. Okay.
 16 Q. I don't have much more for you, though. Not because
 17 you're not interesting.
 18 (Off the record at 12:54 p.m.)
 19 (Back on the record at 12:57 p.m.)
 20 MR. FETT: Thank you, sir. I don't have
 21 anything further.
 22 MS. MILLER: I don't have anything for you,
 23 Bruce.
 24
 25 (Deposition concluded at 12:58 p.m.)

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Food Service Officer	11. Section Food Service
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position
Responsible for custody and security in Food Service, primarily on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

For Civil Service Use Only

Nowacki - Warren #1

10-16-12

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in Food Service. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in Food Service

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Conducts shakedowns and searches of female prisoners including strip searches.
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Communicates effectively with shift supervisors, Food Service supervisors, staff, and prisoners.
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e., CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes work as assigned
- Participates in committees as assigned

Duty 4

General Summary of Duty 4

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Randomly conducts strip searches to prevent theft and the introduction of contraband.
- Communicates with Food Service staff.
- Conducts clothed body searches for contraband.

Duty 5:

General Summary of Duty 5 %-of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Makes frequent rounds in the prisoner bathroom.
- Monitors cleanliness in rooms/areas of control.

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, emergency control activities
- Monitors large groups of prisoners
- Ensures sanitary standards are adhered to
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns and strip searches
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports. Must be physically fit and able to respond to emergencies as needed.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient Food Service area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in Food Service as well as some treatment responsibilities, primarily on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level.

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. *Indicate any exceptions or additions to the statements of the employee(s) or supervisor.*

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

4

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Yard Control Officer	11. Section Yard
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security on the yard as well as treatment responsibilities, primarily on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

M. Warren
EXHIBIT NO. 5
T.J.B. 2-20-13

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody of female prisoners on the yard. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners while active in the yard.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Assists in minor disciplinary procedures
- Disseminates information, current rule changes, memos etc., to prisoners
- Maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband

Duty 4

General Summary of Duty 4

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 5

General Summary of Duty 5

% of Time 10

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc.
- Participates in required training, mobilizations, emergency control activities
- Assist in supervising urine drops.
Assists in committees as assigned, i.e., CAC, Fire Safety, etc.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR-

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient yard area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security on the yard as well as some treatment responsibilities, primarily on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable.

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

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2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Resident Unit Officer E10	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Rover Officer	11. Section Housing Units
6. Name and Classification of Direct Supervisor Assistant Resident Unit Supervisor-1	12. Unit First And Second Shifts
7. Name and Classification of Next Higher Level Supervisor Resident Unit Manager-2	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female housing unit, as well as treatment responsibilities, primarily on the day and afternoon shift. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am and pm shifts.

M. Warden
EXHIBIT NO. 12
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in a housing unit. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in a housing unit

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine housing rules and policies
- Conducts shakedown and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e. CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes reports as assigned
- Participates in committees as assigned

Duty 4

General Summary of Duty 4

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Assists in room changes/bed changes to facilitate room management
- Conducts cell searches for contraband

Duty 5

General Summary of Duty 5 % of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner shower activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control
- Maintains laundry issue, state materials, MSI laundry procedure and prisoner room guidebooks to ensure proper procedures are followed.

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, emergency control activities
- Assists in the supervision and collection of urine drops.
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient living area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security of a housing unit as well as has some treatment responsibilities on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

One year experience as a Corrections Officer 9, Corrections Medical Aide 9, or Special Alternative Incarceration Officer 9.

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Health Care/Infirmiry Officer	11. Section Health Care/Infirmiry
6. Name and Classification of Direct Supervisor Correction Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Correction Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female infirmiry as well as treatment responsibilities on all shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on all shifts.

M. Warren
EXHIBIT NO. 9
T.J.B. 2.20.13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in the infirmary. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in the Infirmary

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedown and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists.
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior, conducting rounds in areas where prisoners are in various stages of undress.
- ~~Writes passes authorizing prisoners to attend activities~~
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3.

General Summary of Duty 3 % of Time 10

Ensures that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitor prisoners who need assistance dressing and undressing as needed
- Monitors cleanliness in rooms/areas of control.

Duty 4

General Summary of Duty 4 % of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e. CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assists in obtaining information for PER reports
- Completes work as assigned
- Participates in committees as assigned

Duty 5

General Summary of Duty 5

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Assists in room changes/bed changes to facilitate room management.
- Conducts cell searches for contraband.

Duty 6

General Summary of Duty 6

% of Time .5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, emergency control activities
- Assists in medical emergencies and notifies Health Care staff.
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns and strip searches
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports. Must be physically fit and able to respond to emergencies as needed.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the Infirmary as well as some treatment responsibilities, primarily on the-day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Handwritten mark: a large 'X' over the number '12'.

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron-Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Property Room Officer	11. Section Property Room
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit Day Activity Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position
Responsible for custody and security in the property room as well as treatment responsibilities on the day activity shift. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the day activity shift.

M. Warren
EXHIBIT NO. 14
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody of female prisoners in the property room. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in the property room.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Conducts thorough shakedowns of incoming property and distributes allowable items
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 30

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband

Duty 4

General Summary of Duty 4

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cards, laundry issue, and state materials to ensure proper procedure is followed.
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 5

General Summary of Duty 5

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participates in required training, mobilizations, emergency control activities
- Other duties as assigned

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes-to-activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient living area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security as well as some treatment responsibilities on the day activity shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

- High School graduate or completed GED
- 15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

- 8 level - None
- 9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

- Satisfactory completion of the Department of Corrections Officer Academy
- Must be able to qualify in all required emergency control programs
- Successful completion of the Department's PA415 training
- Required female offender training
- Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) School Officer	11. Section School
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First And Second Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female educational setting as well as treatment responsibilities on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am and pm shifts.

M. Warren
EXHIBIT NO. 15
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody of female prisoners in the school. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners during educational activities in the school.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- ~~Writes passes authorizing prisoners to attend activities~~
- Maintains regular pass log of prisoner pass activities
- Assists with counseling and minor disciplinary procedures
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband

Duty 4

General Summary of Duty 4

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners maintain appropriate appearance
- Observes female prisoners changing clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 5

General Summary of Duty 5

% of Time 10

Miscellaneous other duties

Individual tasks related to the duty.

- Participates in required training, mobilizations, and emergency control activities
- Account for all critical and dangerous tools.
- Assist in supervising urine drops.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the school as well as some treatment responsibilities, on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 16
T.J.B. 2-2013

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer- E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Outside Hospital Officer	11. Section Various Local Hospitals In The Area.
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security of female prisoners under guard at local outside hospitals on all shifts. The goal is to provide a safe, clean, secure, environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in a hospital environment. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness, and overall condition of female prisoners while under guard in a hospital setting.

Individual tasks related to the duty.

- Monitor prisoner behavior
- Enforces host hospital rules
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitor activities and behavior of female prisoners who may be in various stages of undress
- Disseminate information, current rule changes, memos etc., to prisoners
- Take formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Work cooperatively with host hospital security staff and medical personnel to ensure safety, security, and compliance with local rules and regulations.

Individual tasks related to the duty.

- Maintain constant visual observation of assigned female prisoners who may be in various states of undress based upon their medical condition.
- Ensure all security measures are followed during all physical examinations and medical testing.
- Maintain a constant visual of female prisoners during surgical procedures including childbirth, and procedures done on private areas of the body and/or various states of undress
- Maintain open communications with hospital security staff and institutional supervisor.

Duty 4

General Summary of Duty 4

% of Time 10

Prevent prisoners from injuring other patients, employees, visitors and/or themselves and from damaging property.

Individual tasks related to the duty.

- Monitor prisoner behavior
- Write prisoner misconduct tickets
- Assist in room/bed changes and any other movement required
- Conducts searches for contraband

Duty 5

General Summary of Duty 5

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners maintain appropriate appearance
- Observes female prisoners changing clothes
- Monitors and observes toilet activities
- Ensure prisoners keep linens and clothing clean
- Monitors cleanliness in rooms/areas of control

Duty 6

General Summary of Duty 6

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participate in required training, mobilizations, and emergency control activities
- Communicate with Shift Supervisor regarding status of prisoner
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforce rules
- Write passes to activities
- Monitor cleanliness/caustic reports
- Conduct prisoner shakedowns
- Fill out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature _____

Date _____

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient treatment area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security of female prisoners under guard at offsite medical facilities as well as some treatment responsibilities, on the day, afternoon, and midnight shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 6
T.J.B. 2-20-13

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Gate Control Officer	11. Section Gate
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security at the gate as well as treatment responsibilities, on all shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1

% of Time 45

Responsible for the custody and security in the gate area. Has direct contact with and knowledge of individual prisoners. Monitors all gate traffic, incoming staff, volunteers, and female prisoners moving through the security gate.

Individual tasks related to the duty.

- Enforces compliance of the allowable items list that are permitted entry through the gate
- Gives direction to staff traversing the gate and monitors the flow of traffic.
- Conducts shakedowns and searches of female prisoners including strip searches.
- Completes work reports/block reports for prisoners working in area.

Duty 2

General Summary of Duty 2

% of Time 25

Ensures only authorized staff, volunteers, and female prisoners are allowed to traverse through the gate.

Individual tasks related to the duty.

- Ensures contraband does not enter through the gate area.
- Maintains log of prisoner pass activities
- Disseminates information to the Bubble Officer
- Maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 25

Prevents prisoners escaping and ensuring all security measures are in compliance with institutional and department rules, regulations, policies, and procedures.

Individual tasks related to the duty.

- Monitors the flow of gate traffic
- Checks all identification of individuals entering and exiting the gate area.
- Ensures only authorized staff, volunteers, and prisoners traverse the front gate.
- Ensures gate traffic clear the metal detector
- Ensures an accurate log of all visitors and volunteers is maintained.
- Ensures visitors are issued proper temporary I.D. tags and that their hands are marked accordingly
- Ensures all pedestrians are shaken down randomly and clothed body searches are recorded in the log.

Duty 4

General Summary of Duty 4

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participates in required training, mobilizations and emergency control activities
- Respond to emergencies as needed.
- Other duties as assigned.

Duty 5

General Summary of Duty 5

% of Time _____

Individual tasks related to the duty.

•

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

•

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe and secure environment while enforcing rules and regulations. This person is responsible for the custody and security of the gate area on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 9 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Successful completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable.

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 7
T.J.B. 2-20-13

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

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2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Gym Officer	11. Section Gym
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First And Second Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security of female prisoners in the Gym area as well as treatment responsibilities on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient working environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the day and afternoon shifts.

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in the Gym. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in a physical fitness environment.

Individual tasks related to the duty.

- Enforces routine rules and policies
- Gives direction to prisoners regarding daily activities
- Conduct shakedowns and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 20

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 20

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner shower activities including the changing of clothes
- Monitors and observes toilet activities
- Monitors prisoner porters to ensure they complete their job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 4

General Summary of Duty 4

% of Time 15

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband
- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes reports as assigned
- Participates in committees as assigned

Duty 5

General Summary of Duty 5

% of Time 5

Miscellaneous other duties.

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy
- Participates in required training , mobilizations, and emergency control activities
- Assists in supervising urine drops
- Other duties as assigned

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient physical fitness area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the Gym as well as some treatment responsibilities, primarily on the day and afternoon shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Successful completion of Department of Corrections Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 8
T.J.B. 2-20-13

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Electronic Monitor Officer	11. Section Control Center
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position
~~Responsible for custody and security responsibilities on all shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.~~

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 55

Responsible for the custody and security of the entire facility.

Individual tasks related to the duty.

- Enforces routine housing rules and policies by monitoring cameras located throughout the facility from the control center.
- Gives warnings/summaries/misconducts to modify behavior of violators by monitoring cameras to observe prisoner behavior.
- Electronically monitor observations of seclusion rooms containing female prisoners who can be in various stages of undress.
- Electronically monitor activities of female housing units, sallyport, and security fences throughout the facility.
- Conducts shakedowns and searches of female prisoners including strip searches.
- Ensures only authorized staff, volunteers, and female prisoners are allowed to traverse through the gate.

Duty 2

General Summary of Duty 2 % of Time 20

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitor prisoner activity and behavior.
- Maintains regular pass log of prisoner pass activities.
- Disseminates information, current rule changes, memos, etc., to prisoners
- Take formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.
- Monitor prisoner porters to ensure they complete job duties
- Maintain cleanliness reports
- Monitor cleanliness in rooms/areas of control

Duty 3

General Summary of Duty 3 % of Time 10

Assists as necessary with other assigned duties and committees as assigned, i.e., CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Completes reports as assigned.
- Participates in committees as assigned.
- Operates and monitors cameras from control center to ensure security and compliance of policies and rules throughout the facility.
- Assist Control Center Officer in security related tasks including zone checks, OMNI and CMIŞ moves, and lock changes.

Duty 4

General Summary of Duty 4 % of Time 10

Prevent prisoners from injuring other prisoners, employees, and themselves and from damaging property

Individual tasks related to the duty.

- Monitors prisoner behavior
- Write prisoner misconduct tickets.
- Assist in room/bed changes to facilitate room management
- Conduct searches for contraband.

Duty 5

General Summary of Duty 5

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participate in required training, mobilizations, and emergency control activities.
- Accurately record pertinent information in the Control Center log.
- Communicate with shift supervisors, keeping them informed of pertinent information.
- Assist in supervising prisoner urine drops.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean and secure environment from the control center while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for custody and security as well as some treatment responsibilities on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

I. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state
confidentiality requirements protect
a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Industries Officer	11. Section Industries Building
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit Day Activity Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position
Responsible for custody and security in the industries area as well as treatment responsibilities on the day activity shift. The goal is to provide a safe, clean, secure, efficient working environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the Day Activity Shift.

M. Warren
EXHIBIT NO. 10
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in the Industries Building. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in a work environment.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- ~~Writes passes authorizing prisoners to attend activities~~
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3 % of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e. CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes reports as assigned
- Participates in committees as assigned

Duty 4

General Summary of Duty 4 % of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Maintains accountability of critical and dangerous tools.
- Conducts searches for contraband

Duty 5

General Summary of Duty 5

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Monitors and observes toilet activities
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 6

General Summary of Duty 6

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, and emergency control activities
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

Enforcing rules

Writing passes to activities

Monitoring cleanliness/caustic reports

Conducting prisoner shakedowns

Filling out log book

17. Describe the types of decisions that require your supervisor's review.

Writing misconducts - minor and major

Completing security classification screens

Ordering supplies - janitorial and office

Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

Complete and sign service ratings.

Assign work.

Provide formal written counseling.

Approve work.

Approve leave requests.

Review work.

Approve time and attendance.

Provide guidance on-work methods.

Orally reprimand.

Train employees in the work.

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient work area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the Industries building as well as some treatment responsibilities on the Day Activity shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

TOM NOWACKI, et al,

Plaintiffs,

No. 11-852-CD

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

HON. ARCHIE C. BROWN

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C
Attorneys for Plaintiff
805 E. Main Street
Pinckney, MI 48169
734-954-0100

Glen N. Lenhoff (P32610)
LAW OFFICE OF
GLEN N. LENHOFF
Co-Counsel for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, MI 48502
(810) 235-5660

Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
INTERROGATORIES DIRECTED TO DEFENDANT DATED MAY 8, 2013**

INTERROGATORY QUESTIONS

1. For each year 2004 to the present, please state the total number of reports against male correction officers by female inmates for:
 - a. sexual misconduct
 - b. sexual harassment

- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

5. For each year 2004 to the present, please state the total number of reports against female correction officers by female inmates for:

- a. sexual misconduct
- b. sexual harassment
- c. over-familiarization

RESPONSE: See attached spreadsheet, bates numbered 007271.

6. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *sexual misconduct* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

7. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *sexual harassment* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

8. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *over-familiarization* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

Please do not object as the district court in *Everson v MODC*, 222 F Supp 2d 864 (ED Mich 2002) stated that "The MDOC keeps detailed statistics which display individual incidents of improper conduct in each of the female prisons year by year, ...," *id* at 887.

Dated: 6/19/13

Pam R Nelson

Pam R. Nelson
Litigation Specialist
MDOC

Subscribed and sworn to before me this

19 day of June, 2013.

Robert W. Farr

Notary Public

Eaton County, Michigan

My Commission expires: 1-29-2015

acting in Ingham County

Allegations of Sexual Harassment, Sexual Misconduct and Overfamiliarity Toward Women Prisoners Made
Against Corrections Officers

January 2004 through May 2013

Allegation	Staff/Pris	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
SM	M/F	8	10	1	6	5	1	2	1	0	0	34
SM	F/F	0	3	0	0	1	1	2	2	0	0	9
SH	M/F	15	6	10	5	5	5	1	0	2	1	50
SH	F/F	19	13	20	19	23	12	4	1	0	0	111
Overfamiliar	M/F	4	2	2	3	1	0	2	0	1	0	15
Overfamiliar	F/F	3	6	4	2	3	2	7	1	4	2	34
TOTAL		49	40	37	35	38	21	18	5	7	3	253

Allegation	Staff/Pris	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
SM	M/F											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		3	5	0	1	1	0	0	1	0	0	11
Unfounded		5	5	1	5	4	1	2	0	0	0	23
SM	F/F											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		0	0	0	0	0	1	0	0	0	0	1
Unfounded		0	3	0	0	1	0	2	2	0	0	8
SH	M/F											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		10	5	8	2	4	4	0	0	2	0	35
Unfounded		5	1	2	3	1	1	1	0	0	1	15
SH	F/F											
Sustained		2	0	2	1	4	0	0	0	0	0	9
Not Sustained		13	7	9	11	11	4	2	1	0	0	58
Unfounded		4	6	9	7	8	8	2	0	0	0	44
Overfamiliar	M/F											
Sustained		1	1	1	1	0	0	2	0	1	0	7
Not Sustained		1	1	0	2	0	0	0	0	0	0	4
Unfounded		2	0	1	0	1	0	0	0	0	0	4
Overfamiliar	F/F											
Sustained		1	3	0	0	2	0	2	1	4	1	14
Not Sustained		2	3	3	0	0	0	1	0	0	0	9
Unfounded		0	0	1	2	1	2	4	0	0	1	11
TOTAL		49	40	37	35	38	21	18	5	7	2	252
											(1 open)	

Facilities include: Western Wayne, Robert Scott, Huron Valley Complex-Women, Camps Brighton, White Lake & Valley, Special Alternative Incarceration

NOTE: Overfamiliarity includes any overly familiar conduct/contact with prisoners or their families, not necessarily of a sexual nature.

SM = Sexual Misconduct
SH = Sexual Harassment

as of May 31, 2013

007271

BFOQ/NON BFOQ ASSIGNMENTS – WHV

DAY SHIFT BFOQ

Calhoun – RTP/Acute
 Calhoun – RTP/Acute
 Dickinson – Level II
 Dickinson-Level II
 Emmet –Level I
 Fillmore – Level I
 Gladwin – Level I
 Harrison-Level I
 Unit #1 – SEG/Level IV
 Unit #1 – SEG/Level IV
 Unit #2 – Level II
 Unit #3 – Level II
 Unit #4 – Level II
 Unit #5 – Level II
 Unit #9 – RGC/Level II
 Food Service
 Gate
 Infirmary Health Care (E)
 infirmary Mental Health
 Outside Hospital
 Rover
 School
 Electronics Monitor

Calhoun – RTP/Acute
 Calhoun – RTP/Acute
 Dickinson – Level II
 Emmet –Level I
 Fillmore – Level I
 Gladwin – Level I
 Harrison-Level I
 Kent – Infirmary
 Unit #1 – SEG/Level IV
 Unit #1 – SEG/Level IV
 Unit #2 – Level II
 Unit #3 – Level II
 Unit #4 – Level II
 Unit #5 – Level II
 Unit #9 – RGC/Level II
 Food Service
 Gate
 Infirmary Health Care (W)
 Outside Hospital
 Property Room
 Rover
 School
 Electronics Monitor

Calhoun – RTP/Acute
 Dickinson – Level II
 Dickinson – Level II
 Emmet –Level I
 Fillmore – Level I
 Gladwin – Level I
 Harrison-Level I
 Unit #1 – SEG/Level IV
 Unit #1 – SEG/Level IV
 Unit #2 – Level II
 Unit #3 – Level II
 Unit #4 – Level II
 Unit #5 – Level II
 Unit #6 – Level I
 Unit #9 – RGC/Level II
 Food Service
 Gym
 Infirmary Dental
 Outside Hospital
 Rover
 Rover
 Yard Control

DAY SHIFT NON-BFOQ

Alert Response
 Control Center
 Outside Hospital
 Rover
 Visiting Room

Bubble
 Information Desk
 Outside Hospital
 Rover
 Visiting Room

Bubble
 Information Desk
 Outside Hospital
 Rover
 Yard Control

DAY ACTIVITY BFOQ

Industries

School

Intake – RGC

DAY ACTIVITY NON-BFOQ

Nowacki - Warren #2

10-16-12

BFOQ & NON-BFOQ ASSIGNMENTS – cont'd.

Page 2 of 3

January 24, 2012

Vehicle Sally port
Construction Security Escort

Construction Security Escort
Construction Security Escort

Construction Security Escort

AFTERNOON SHIFT BFOQ

Calhoun – RTP/Acute
Calhoun – RTP/Acute
Dickinson-Level II
Dickinson-Level II
Emmet-Level I
Fillmore-Level I
Gladwin-Level I
Harrison-Level I
Unit #1-SEG/Level IV
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #5-Level II
Unit #9-RGC/Level II
Food Service
Gate
Infirmary Health Care (E)
Infirmary Mental Health
Outside Hospital
Rover
School
Electronic Monitor

Calhoun – RTP/Acute
Dickinson-Level II
Dickinson-Level II
Emmet-Level I
Fillmore-Level I
Gladwin-Level I
Harrison-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #5-Level II
Unit #6-Level I
Unit #9-RGC/Level II
Food Service
Gate
Infirmary Health Care (W)
Outside Hospital
Rover
Rover
Yard Control

Calhoun – RTP/Acute
Dickinson-Level II
Dickinson-Level II
Emmet-Level I
Fillmore-Level I
Gladwin-Level I
Harrison-Level I
Unit #1-SEG/Level IV
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #5-Level II
Unit #6-Level I
Unit #9-RGC/Level II
Food Service
Gym
Infirmary Dental
Outside Hospital
Rover
School
Electronic Monitor

AFTERNOON SHIFT NON-BFOQ

Alert Response
Control Center
Outside Hospital
Rover
Rover
Yard Control

Bubble
Information Desk
Outside Hospital
Rover
Visiting Room

Bubble
Information Desk
Outside Hospital
Rover
Visiting Room

MIDNIGHT SHIFT BFOQ

Calhoun-RTP/Acute
Calhoun-RTP/Acute
Dickinson-Level II

Calhoun-RTP/Acute
Dickinson-Level II
Dickinson-Level II

Calhoun-RTP/Acute
Dickinson-Level II
Dickinson-Level II

BFOQ & NON-BFOQ ASSIGNMENTS -- cont'd

Page 3 of 3

January 24, 2012

Emmet-Level I
Fillmore-Level I
Harrison-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #5-Level II
Unit #6-Level I
Food Service
Outside Hospital
Yard Control

Emmet-Level I
Gladwin-Level I
Harrison-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #4-Level II
Unit #5-Level II
Unit #9-RGC/Level II
Outside Hospital
Rover
Electronic Monitor

Fillmore-Level I
Gladwin-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #6-Level I
Unit #9-RGC/Level II
Outside Hospital
Rover
Electronic Monitor

MIDNIGHT SHIFT NON-BFOQ

Bubble
Outside Hospital
Rover

Bubble
Outside Hospital
Yard Control

Control Center
Outside Hospital

C: File



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

March 22, 2016

Michigan Civil Service Commission
Janine M. Winters, State Personnel Director
400 S. Pine Street
Lansing, MI 48909

Dear Ms. Winters:

This is to advise that the department will be discontinuing the use of gender based Bona Fide Occupational Qualification (BFOQ) for some Corrections Officer positions located at the Women's Huron Valley Correctional Facility. The BFOQs were previously approved to assist the department in ensuring the privacy and security of female prisoners. The department's request for expanded BFOQs was submitted to former State Personnel Director, Jeremy S. Stephens on March 27, 2009 and approved April 17, 2009. However, with the continuing technological advances that have been made at the facility since the original approval for the BFOQs was granted, primarily the placement of over 1,300 cameras throughout the facility, monitoring of cameras and high capacity storage recorders, the department does not believe that some of the previously approved BFOQs remain necessary.

The following are the specific positions/assignments that no longer require BFOQ designation:

- Food Service – Day and Afternoon assignments
- Gym – Day and Afternoon assignments
- Infirmary Dental – Day and Afternoon assignments
- Property Room – Day assignment
- School – Day and Afternoon assignments
- Yard Control – Day, Afternoon and Night assignments
- School Vocational – Day Activity assignment
- School Academic – Day Activity assignment.

Please contact me if additional information is required.

Sincerely,

Tony Lopez

Tony Lopez
Human Resources Director

STATE OF MICHIGAN
WORKERS' COMPENSATION AGENCY

RELEASE OF ALL CLAIMS AND EMPLOYMENT
WITH THE STATE OF MICHIGAN

This release is incorporated into the settlement agreement between Thomas Nowacki Social Security No. xxx-xx-9562, at 23010 Edward, Dearborn, MI 48128, and the State of Michigan, including all its departments, agencies, commissions and bureaus (State).

The undersigned employee, Thomas Nowacki, in consideration of a settlement agreement to redeem liability in the amount of \$24,500.00 presented for approval by the Magistrate this date in the *Thomas Nowacki v. Department of Corrections* case against the State, agrees to separate, if not already separated, from his employment and waives all seniority with the State. The undersigned employee also agrees not to apply or accept reemployment with the State.

The undersigned employee fully releases and forever discharges the State, its officers, directors, and employees from any and all liability, claims, and causes of action, arising out of Federal law, State law or common law, including, but not limited to, tort actions, civil rights, and disability claims, claims for wrongful discharge, and any claims for discrimination arising directly or indirectly out of his employment.

This release will not adversely impact any vested retirement rights.

If the Magistrate does not approve the agreement to redeem liability, this release is void and of no force or effect.

Dated this 12th day of Oct, 2015.


Witness


Employee

AGREEMENT TO REDEEM LIABILITY
 Michigan Department of Licensing & Regulatory Affairs
 Workers' Compensation Agency/Board of Magistrates
 P. O. Box 30016, Lansing, MI 48909

PLAINTIFF NAME Thomas Nowacki	SOCIAL SECURITY NUMBER xxx xx 9562	ADDRESS 23010 Edward, Dearborn, MI 48128
EMPLOYER State of Michigan, Department of Corrections		CARRIER State of Michigan, Self-Insured

Thomas Nowacki was an employee of State of Michigan, Department of Corrections, and on or about 1/02/14, LDW, and any and all other dates, the employee received an injury arising out of and in the course of his/her employment and that six (6) months has elapsed since the date of injury and that:

The employee/plaintiff alleges disabilities, injuries and occupational diseases related but not limited to head, eyes, ears, nose, mouth, teeth, face, neck, throat, back, spinal column, chest, stomach, shoulders, arms, elbows, wrists, hands, fingers, thumbs, hips, legs, knees, ankles, feet, toes, brain & nervous system, glands, musculo-skeletal system, internal organs including but not limited to heart & cardiovascular systems, lung & pulmonary system, gastrointestinal system, vascular system, reproductive system, herniae, skin, sensory organs & systems, organic, functional, mental, stress, emotional & psychiatric disorders; and aggravation, exacerbation and progression of all of the foregoing by work performed up to and including the last day worked.

The defendant(s) employer/carrier denies liability. In order to avoid the uncertainties of litigation, it is the intention of the parties to compromise, settle and redeem any and all of the employee/plaintiff's claims of any nature whatsoever, known or unknown, for any and all liability against the(se) defendants(s); including but not limited to past, present, and future workers' compensation of whatsoever kind in nature, whether weekly or otherwise, including but not limited to medical and nursing care expenses, vocational rehabilitation, and any and all other benefits and penalties, past, present, or future, which might be due to and owing to employee/plaintiff, plaintiff's dependents, heirs, and assigns, for any and all liability, disabilities, injuries and occupational diseases, physical or mental, known or unknown, including but not limited to those stated above, for the sum of \$24,500.00.

The parties preserve any third party rights set forth in Section 418.827 of the Workers' Disability Compensation Act.

That in further consideration for the receipt of the above sum by employee/plaintiff from the State of Michigan, plaintiff hereby voluntarily quits and resigns this employment and executes a "Release Of All Claims And Future Employment With The State of Michigan," executed as part of this redemption.

WHEREFORE, it is agreed to by and between the parties that the Agency may enter an order in this cause providing that the sum of \$24,500.00 shall be forthwith paid by the employer/carrier to Thomas Nowacki, and that upon such payment the liability of the employer/carrier for the payment of compensation of said injury shall be redeemed in accordance with Sections 418.835, 418.836 and R 408.39 of the Workers' Disability Compensation Act.

Dated: 10/14/15

Thomas Nowacki
 Thomas Nowacki, Employee or dependent(s)

David Cooper
 David Cooper, Attorneys for employee or dependent(s)

State of Michigan, Self-Insured
 Employer (if self-insured) or Insurance Company

Daniel M. Bridges
 Daniel M. Bridges, Attorneys for Employer

ADDENDUM TO AGREEMENT TO REDEEM

"CMI, A York Risk Services Company, Inc.", will not seek reimbursement for past LTD benefits extended while the claimant pursued this workers' compensation claim and for which the workers' compensation benefit might have entitled "CMI, A York Risk Services Company, Inc.", to reimbursement.

The proceeds of this redemption will be taken as a credit or offset by "CMI, A York Risk Services Company, Inc.", against future LTD benefits owed, if any.

Further, this settlement will not affect "CMI, A York Risk Services Company, Inc." right to recoup overpaid LTD benefits, past or future, resulting from payment received by claimant from other sources.

Date: 10/14/2015

By: Thomas Nowacki
Thomas Nowacki
Plaintiff

Date: 10/12/2015

By: [Signature]
David Cooper
Attorney for Plaintiff

Date: 9-17-15

By: [Signature]
Daniel M. Bridges
Attorney for State of Michigan

RECEIVED

OCT 31 2016

CIVIL LITIGATION, EMPLOYMENT
& ELECTIONS DIVISION

STATE OF MICHIGAN
COURT OF CLAIMS

ALEIKA BUCKNER,
Plaintiff,

OPINION AND ORDER

v

Case No. 14-000267-MZ

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Hon. Mark T. Boonstra

Defendant.

Before the Court is Plaintiff's motion, which is labeled as a motion for "declaratory judgment," but which is more akin to a motion for summary disposition under MCR 2.116(C)(10). Because Defendant Michigan Department of Corrections (MDOC) has made the requisite showing with regard to the propriety of the bona fide occupational qualification designations at issue, the Court DENIES Plaintiff's motion and GRANTS summary disposition in favor of MDOC, the nonmoving party, under MCR 2.116(I)(2).

I. PERTINENT FACTS

A. PROCEDURAL HISTORY

Plaintiff was formerly employed as a corrections officer at the Women's Huron Valley Correctional Facility (HVCF). She initially filed this action in Washtenaw Circuit Court and alleged gender discrimination and retaliatory discharge. According to Plaintiff's complaint, MDOC contrived reasons for making gender a "Bona Fide Occupational Qualification" (BFOQ)

requirement for many positions at HVCF.¹ Plaintiff alleged that she complained about the BFOQs to her supervisors, but to no avail. In January 2015, MDOC terminated Plaintiff's employment after alleging that she made a false injury report. For purposes of the present action, Plaintiff contends that MDOC impermissibly discriminated on the basis of gender by implementing certain BFOQs. Plaintiff sought economic damages as well as equitable relief in the form of declaratory relief, injunctive relief, and reinstatement of her former position.

MDOC filed a notice of transfer with regard to the claims for equitable relief. The claims for damages remained in Washtenaw Circuit Court. Acting *sua sponte*, this Court (KRAUSE, J.) found that the basis for transferring the claims for equitable relief had not been established and it returned the entirety of the case to Washtenaw Circuit Court. In June 2016, the Court of Appeals reversed this Court's decision to transfer Plaintiff's equitable claims and remanded for this Court to hear and decide the equitable claims. *Buckner v Dep't of Corrections*, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2016 (Docket No. 326564).

Following the Court of Appeals' decision, this Court ordered MDOC to respond to Plaintiff's February 25, 2015 motion for declaratory relief, which, because of the *sua sponte* transfer and subsequent appeal, had never been decided. MDOC has now responded and the matter is fully briefed.

¹ Although the BFOQs in question designated certain positions as female-only, and plaintiff is female, plaintiff alleged that the BFOQs adversely impacted women corrections officers as a result, for example, of excessive overtime and inability to transfer to other facilities. [Complaint, ¶ 28.]

B. RELEVANT MDOC HISTORY

This case arises out of MDOC's decision in 2009 to designate certain positions as BFOQ-female only. This was one of the latest steps in a series of reforms implemented in women's correctional facilities in this state. As summed up by the United States Sixth Circuit Court of Appeals in *Everson v Michigan Dep't of Corrections*, 391 F3d 737, 741 (CA 6, 2004), "[t]he problem of sexual abuse and other mistreatment of female inmates has long plagued the MDOC." In the late 1990s and early 2000s, these problems led to a number of investigations and a few, high-profile lawsuits. *Id.* at 742. One lawsuit, which was filed by female inmates in the Eastern District of Michigan and is otherwise known as the "Nunn lawsuit," resulted in a settlement of approximately \$4 million and injunctive relief. *Id.* The injunctive relief included promises by MDOC, "among other things, to restrict pat-down searches of female inmates by male staff, to require male staff to announce their presence upon entering a housing unit area, and to maintain areas where inmates may dress, shower, and use the toilet without being observed by male staff." *Id.* In addition, MDOC stated that it would "make a good faith effort" to limit the assignment of staff in housing units to female officers. *Id.*

In another high-profile lawsuit, the Civil Rights Division of the United States Department of Justice (DOJ), filed an action against the state in United States District Court. This led to a settlement agreement in May 1999, in which MDOC agreed to a number of reforms, including that it would conduct a study regarding certain practices. *Id.* at 743. In December 2000, MDOC implemented new policies that included, among other things, a moratorium on pat-down searches of female inmates by male officers and the maintenance of areas where female inmates could dress, shower, and use the toilet outside the view of male officers. *Id.* at 744. As part of the reforms implemented, MDOC also reviewed officer assignments "for the feasibility of making

them gender specific.” *Id.* In addition, MDOC employed a consulting firm to study ways to increase the presence of female officers in women’s prisons, and it hired Michael Mahoney, the president and executive director of the John Howard Association, a private, not-for-profit prison reform group, to study whether certain positions at women’s prisons should be filled only by female corrections officers. *Id.* at 744-745.

Shortly thereafter, MDOC filed applications with the Civil Service Commission for what was referred to as “selective certification” of certain positions in housing, segregation, and intake units at women’s prison facilities as “female only.” *Id.* at 745. The certification was approved, and MDOC made a number of housing, segregation, and intake unit positions female-only. *Id.* at 746. These qualifications were the impetus for the plaintiffs’ complaint in *Everson*, where the Sixth Circuit upheld the qualifications. *Id.* at 761.

After the Sixth Circuit’s decision in *Everson*, MDOC removed all males from housing units in women’s prison facilities in 2005. In 2008, MDOC decided to consolidate all women’s prisons into a single location, the HVCF. During this timeframe, a third high-profile lawsuit (the *Neal* litigation) involving sexual abuse of female prisoners was percolating in state court. The *Neal* litigation, which was a class action, resulted in a substantial settlement in July 2009.

C. BFOQS AT ISSUE

The instant case concerns 11 position-types that MDOC designated as “BFOQ-female only” in 2009. As noted, the HVCF became a women’s facility in 2008. MDOC Deputy Director Dennis Straub recalled discussions with “the Assistant Attorney General and MDOC Director Patricia Caruso about making certain positions at HVCF BFOQ-female only. He

recalled that MDOC was “looking at” BFOQ requirements prior to the *Neal* litigation, “but the Neal lawsuit just sped that thought process and action up.”

Tony Lopez, an MDOC human resources employee, recalled that the BFOQ designations at issue had their origins in the DOJ lawsuit. He recalled that he worked with the Civil Service Commission in designating the positions at issue as BFOQ. As part of his role, he was required to obtain a position description, which was usually crafted by “the facility and correctional facility administration.” Lopez testified in his deposition that inmate privacy concerns, such as officers viewing prisoners in a state of undress, as well as situations involving “pat-downs” or other searches, were given as a rationale for creating the BFOQ designations at issue. He also testified that MDOC’s “history of—of issues with female prisons,” was a motivating factor in developing the designations. In addition to the above rationales, Lopez testified that the 2009 BFOQs at issue arose, in part, because “there was [sic] subsequent issues of sexual misconduct and privacy issues.” He further testified that security concerns were a motivating factor, specifying that male corrections officers could not perform pat-down searches and could not be in areas where there was a potential for seeing inmates in a state of undress, and that “if you can’t have officers performing all of the functions of a corrections officer, you know, there are security issues.” When asked if he performed any analysis to determine if there was a reasonable alternative to the BFOQ designations, he testified “no,” “[o]ther than reviewing the [position descriptions] and the historical knowledge that I have”

Gary Manns, an MDOC administrator and former deputy director, testified that he “had to do the research” on the idea of BFOQ-female only requirements in 1999, after some of the lawsuits MDOC faced. He made the initial request to the Civil Service Commission in 2000 to ask that the BFOQs at issue in *Everson* be implemented. Later, in 2009, he again wrote the Civil

Service Commission and asked to expand the list of positions that would carry the BFOQ-female only designation. The letter stated that, if approved, the BFOQ designations:

will result in the utilization of only female staff in positions with regular work assignments that affects the privacy and security of female prisoners. Custody and security duties include those that affect the privacy of female prisoners such as observance of showers, dressing and undressing, use of toilet facilities, and conducting multiple daily searches, including clothed body and unclothed strip searches.

The letter stated that each of the identified positions "is either an isolated position, involves potential privacy concerns on the part of the prisoners, or requires an officer to conduct pat-down searches on the female prisoners." Thus, "each position touches on MDOC's legitimate concerns of safety, security, and privacy." In response to Manns's letter, Civil Service approved the BFOQ designations on April 17, 2009.

Millicent Warren, the warden at HVCF, testified in a deposition that when the new HVCF was being staffed, there were discussions about which assignments should receive a BFOQ designation. The exact extent of Warren's involvement in the BFOQ designations is unclear from the record; however, she testified that she participated in some discussions about the designations. She also testified that deputy wardens, such as Lucille Evans, were involved in the process as well. Warren testified that the BFOQ determination hinged on whether there was "a requirement to do searches^[2] on that assignment," or if the positions involved observing female prisoners in a state of undress. As it concerned searches, Evans and Warren testified that MDOC policies prohibited male corrections officers from conducting pat-down searches. The

² Plaintiff repeatedly states that the BFOQ designation was tied to strip searches. However, Warren testified, as did Evans, that this was not the case.

only role a male MDOC officer was allowed to assume in regard to searching a female prisoner was in what was referred to as a "team search." This type of search involved a male officer asking a female officer for assistance in conducting a pat-down search. If the prisoner wore an outer garment, such as a coat, that could be removed, the male corrections officer could ask the prisoner to remove the coat, and then search the coat. The male officer was prohibited from touching the female prisoner. The female corrections officer would conduct the pat-down search on the prisoner.

The BFOQ positions at issue are briefly summarized below.³

1. FOOD SERVICE OFFICER

The first BFOQ designation involves food service, a position to which two corrections officers were assigned; both positions were designated as BFOQ-female only. Warren testified that these positions were so designated because they required frequent pat-down searches, which could only be done by female officers. The need for the frequent pat-down searches arose from the potential for prisoners to steal food and food-preparation tools in what Warren described as "probably our biggest tool critical assignment." Evans testified about the difficulty of staffing the position with one male officer, given the frequent need for shakedowns. She testified that a "team search" procedure whereby a male officer would call over a female officer for assistance with a "shakedown" or pat-down search would not always be available because a female officer would not always be able to leave her post to assist the male officer. Additionally, Warren

³ According to Defendant's documentary evidence, several of the positions are no longer designated as BFOQ: food service, gym, infirmary, property room, school, yard control, and school. This was made possible, according to Defendant, by "continuing technological advances . . . primarily the placement of over 1,300 cameras throughout the facility"

testified that the schedule of feeding prisoners made it difficult to perform regular team searches in the food service area because team searches would interrupt food service.

2. YARD CONTROL OFFICER

Warren testified that there are six yard control officer positions, three of which were designated as BFOQ-female only, and three of which had no designation, meaning that male corrections officers could fill those positions. Evans testified that each yard control officer is required to conduct five shakedowns, or pat-down searches, per day. Because searches were required and because it was feasible to call over a female officer for help given the number of officers on assignment, some, but not all, of the positions were designated BFOQ.

3. ROVER OFFICER

As with the yard control officer assignment, there were some rover officer assignments—essentially a fill-in officer—that were designated as BFOQ-female only, and some with no designation, meaning that they could be filled by male corrections officers. According to Warren and Evans, some rover assignments could call for corrections officers to work in a housing unit, which involved the potential for seeing prisoners in a state of undress. These were designated as BFOQ-female only. However, other rover assignments, those involving the yard, did not require a BFOQ designation.

4. HEALTH CARE OFFICER/INFIRMARY OFFICER

Warren testified that a health care officer interchanges and overlaps with the position of infirmary officer. There is only one health care officer and only one infirmary officer assigned during a particular shift. The infirmary officer position was “considered a housing unit,” so it was designated BFOQ. As for the health care officer position, Warren testified that it required

frequent pat-down searches, because of the opportunity for prisoners to steal medical equipment and because the position involved the potential for seeing prisoners in a state of undress during medical examinations. Warren testified that given the number of pat-down searches required, it would be "very inefficient" to have a male officer work in the health care officer position.⁴ Warren testified that the infirmary was a "separate location[] altogether" from the health care facility, making it very difficult, and potentially dangerous, for the infirmary officer to vacate her post in order to assist a male officer in performing a pat-down search in the health care area.

5. PROPERTY ROOM OFFICER

The property room officer assignment is a single-officer assignment in which a corrections officer ensures the safety of incoming property and interacts with prisoners, often on a one-on-one basis, who come to pick up incoming personal property items. Warren testified that the position was designated BFOQ-female only because it was an isolated, one-on-one position, which by itself necessitated a ban of male corrections officers, per MDOC policies. In addition, the position required frequent pat-down searches, which, again, could only be performed by female corrections officers.

6. SCHOOL OFFICER

There were two school officer positions at HVCF, both of which were designated as BFOQ-female only. The positions involved the potential of seeing female prisoners in a state of undress because prisoners' clothes could become dirty during some of the vocational programming offered, and those prisoners could potentially need to change their clothes.

⁴ It does not appear she was asked about the possibility of a male officer in the infirmary position, given that it was a housing unit.

However, Warren testified that prisoners who felt the need to change should do so in designated areas, and "not out in the open." The school officer position required frequent pat-down searches because the school contained a wood shop, which gave prisoners access to a number of dangerous tools. This made the area a "high-risk area." Warren testified that the two officers on this assignment worked in separate locations. Hence, if one school officer position were staffed by a male officer, the female officer would need to leave her post unattended in order to perform a search, if one were requested by the male officer. This would also lead to delays that could disrupt the scheduling of classes and the schedule of teachers arriving at the facility. Given the frequent need for searches and the distance between the posts, the school officer position was required to be designated as female-only.

7. OFF-SITE HOSPITAL OFFICER

The off-site hospital officer provided custodial supervision for prisoners who needed to receive medical treatment at an off-site hospital facility. The assignment was filled by two officers, with one position being designated as BFOQ-female only. Warren and Evans testified that the BFOQ designation was necessary because it involved a very high likelihood of observing a patient in a state of undress, given that the prisoners often underwent medical procedures and examinations. In addition, Warren testified that the position involved the possibility of having to monitor a prisoner in the bathroom or while bathing.

8. GATE CONTROL OFFICER

Another position that was designated as BFOQ was the "gate control officer," a position which requires an officer to monitor prisoners⁵ and visitors passing who traverse prison gates. Ordinarily, the position is staffed by a single officer, but two officers work the position during shift changes. Evans testified that the position requires frequent searches, including occasional strip searches. Warren testified that it was "logistically difficult" to have a male gate control officer, given the frequent searches required at the position. A male officer would need to bring a female over to the post to perform a search; however, there were no other corrections officers staffed nearby who would be readily able to assist in this manner.

9. GYM OFFICER

According to Warren, the gym officer is, in "most cases" a single-officer assignment. The officer supervises prisoners in the gym area, which includes several items that could be dangerous, including weight equipment, baseball bats, baseballs, and ropes. Warren testified that the position was designated BFOQ because it was a single assignment and because it required pat-down searches. She also testified that the gym officer had the potential for seeing prisoners in a state of undress; however, she clarified that prisoners were not supposed to change their clothing in the gym area, and that the bathroom in the gym had limited partitions installed.

10. ELECTRONIC MONITOR OFFICER

The electronic monitor officer position is staffed by multiple officers and it appears that all of the positions are designated BFOQ-female only. An officer in this position is charged with

⁵ According to Evans, the HVCF had "many gate pass prisoners," meaning prisoners who worked outside the gates and who had to pass through the gates for work assignments.

monitoring dozens of camera feeds from inside the HVCF. Some of the cameras are positioned near the shower areas and have the potential to capture prisoners entering and/or exiting the showers. In addition, some specifically identified cells, which are set aside for prisoners who are suspected of suicide or self-injurious behavior, have cameras in them. Some of these cells even include toilets. These positions were designated as BFOQ-female only because of the potential of seeing a prisoner in a state of undress.

11. INDUSTRIES OFFICER

The industries officer, a position that did not appear to exist any longer at the time of the pertinent depositions in this case, was charged with overseeing a sewing operation and a denture-manufacturing operation inside the HVCF. Prisoners in the industries building used a number of tools and items that were considered contraband. As a result, the industries officer was required to perform frequent pat-down searches and, according to Evans, strip searches.⁶ Evans testified that given the location of the industries building, the industries officer could not be a male corrections officer. Evans testified that there were no other officers nearby, meaning that if a male were assigned as the industries officer and he found it necessary to conduct a pat-down search, he would have to ask a female officer in another building to vacate her post in order to conduct the search. In addition, Warren testified that the bathroom in the industries area was relatively open with only a "half door," which involved the potential for viewing prisoners in a state of undress.

⁶ Warren disagreed as to whether the position required strip searches.

II. BFOQS, IN GENERAL

This case involves employment qualifications based on gender, which would ordinarily be prohibited under MCL 37.2202(1). The issue is whether MDOC has a valid defense under MCL 37.2208, which provides an exemption “on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise.” There is a lack of Michigan caselaw interpreting and examining the BFOQ defense under the ELCRA, so examination of federal precedent interpreting a similar BFOQ provision under Title VII of the Civil Rights Act is instructive.

In general, the BFOQ defense is a narrow defense. *UAW v Johnson Controls, Inc*, 499 US 187, 201; 111 S Ct 187; 113 L Ed 2d 158 (1991). The burden is on the employer to establish the defense, which must be based upon objective requirements that pertain to qualifications that affect the employee’s ability to perform the job in question. *Teamsters Local Union No 117 v Washington Dep’t of Corrections*, 789 F3d 979, 987 (CA 9, 2015); *Everson*, 391 F3d at 748. In *Everson*, the United States Sixth Circuit Court of Appeals examined BFOQs implemented by MDOC with regard to housing unit positions in women’s prisons in this state. As an initial matter, the Court explained that a BFOQ may not be based on a “stereotyped characterization of the sexes” and instead must have a “basis in fact” for the employer’s belief “that gender discrimination is ‘reasonably necessary’—not merely reasonable or convenient—to the normal operation of its business.” *Everson*, 391 F3d at 748 (citation and quotation marks omitted). An employer can meet this first requirement by showing: (1) “that all or substantially all [members of one gender] would be unable to perform safely and efficiently the duties of the job involved”; (2) “it is impossible or highly impractical to determine on an individualized basis the fitness for employment of members of one gender”; or (3) “the very womanhood or very manhood of the

employee undermines his capacity to perform a job satisfactorily[.]” *Id.* at 748-749 (citation and quotation marks omitted). Additionally, the job qualification “must relate to the essence, or to the central mission of the employer’s business[.]” *Id.* at 749 (citation and quotation marks omitted). Finally, an employer asserting the defense has “the burden of establishing that no reasonable alternatives exist to discrimination on the basis of sex.” *Id.* The difficult burdens imposed by these standards led the Ninth Circuit in *Teamsters Local Union No 117*, 789 F3d at 987, to observe that “[i]n light of these demanding legal standards, BFOQs are few and far between. In many industries, it is difficult to imagine any jobs that would qualify as BFOQs.”

A. DEFERENCE TO PRISON OFFICIALS

Courts have treated BFOQs in prison settings differently from other types of employment situations and have afforded deference to the reasoned decisions of prison officials. In *Everson*, 391 F3d at 750, the Sixth Circuit surveyed a number of cases examining BFOQs in the context of correctional facilities and remarked that “[t]hese decisions teach that the reasoned decisions of prison officials are entitled to deference and that the goals of security, safety, privacy, and rehabilitation can justify gender-based assignments in female correctional facilities.” The deference afforded to prison officials arises from “the unusual responsibilities entrusted to them, the redoubtable challenges they face, and the unique resources they possess” *Id.* The deference given is not a “free pass,” nor is it afforded as a matter of course. *Teamsters Local Union No 117*, 789 F3d at 987-988. Rather, courts only afford deference to prison officials when the decisions made arise from a “reasoned decision-making process.” *Id.* at 988.

B. EVERSON

Because the parties cite the case extensively and because the case considered similar issues, a brief discussion of the Sixth Circuit’s decision in *Everson* is warranted. That case dealt

with BFOQ designations in housing units at female prisons in Michigan. *Everson*, 391 F3d at 740. In evaluating whether the BFOQs were permissible, the Sixth Circuit began by noting MDOC's history of sexual abuse and mistreatment of female inmates and detailing the numerous investigations conducted, the vast public criticism, and the high-profile *Nunn* and DOJ lawsuits. *Id.* at 741. Turning to the BFOQs in that case, the Sixth Circuit first found that MDOC's decision was entitled to the deference that is typically afforded to prison officials. *Id.* at 750-751. The Court reasoned that such deference might not be due in a situation where prison officials acted in a capricious manner, but concluded that "the case at bar does not fall in this category." *Id.* at 751. The Court explained that deference was due because, even though MDOC "did not exhaust its institutional resources," it nevertheless "made a considered decision that a BFOQ was necessary to address the grave problem of sexual abuse of female inmates." *Id.* at 751. The Court noted the various studies that MDOC commissioned in response to the various settlement agreements entered into, the expert report prepared by Michael Mahoney, MDOC Director's discussions with staff members, and the application to the Civil Service Commission for certification of the positions as BFOQ-female only. *Id.* at 751-752.

With this deference in mind, the Court examined the BFOQ designations in that case and concluded that it was "clear that the female gender is a BFOQ for [the correction officer] positions in the housing units at female prisons in Michigan." *Id.* at 753. Such designations were reasonably necessary for the normal operation of MDOC facilities and MDOC reasonably concluded that the BFOQs "would materially advance a constellation of interests related to the 'essence' of the MDOC's business[.]" *Id.* This "constellation of interests" included "the security of the prison, the safety of inmates, and the protection of the privacy rights of inmates" *Id.*

1. BFOQS MATERIALLY ADVANCED SECURITY INTEREST

As to the first interest materially advanced by the BFOQ designations in *Everson*—prison security—the Sixth Circuit noted that “the presence of males in the housing units necessitates the use of ‘artificial barriers to security’ such as covers for cell windows, doors on the toilet stalls, shower curtains, the moratorium on pat-down searches by male officers,’ and the ‘knock and announce’ policy.” *Id.* These barriers, the Court noted, gave inmates the opportunity to take advantage of opportunities when they were, even temporarily, out of sight and not subject to interaction with corrections officers. *Id.* at 753 n 22. In addition, the presence of male corrections officers in housing units led to allegations of abuse, which created a “poisoned atmosphere” that bred misconduct and left some male officers “gun-shy” about monitoring and disciplining inmates. *Id.* at 753-754. Thus, there was a basis in fact for the idea that having male officers in housing units threatened security and, “[g]iving due deference to the judgment of the MDOC,” the Court agreed that the BFOQs would “significantly enhance security at the MDOC’s female facilities.” *Id.* at 754.

Moreover, the Court agreed that the safety of inmates “indisputably relates to the essence of MDOC’s business” *Id.* at 755. In that regard, the Court noted statistics confirming that males perpetrated most of the sexual abuse in female facilities, that most of the instances of abuse happened in housing units, and that officers committed the majority of the abuse. *Id.* Further, the Court found that “[t]he MDOC has established that the exclusion of male [officers] from the housing units will decrease the likelihood of sexual abuse.” *Id.*

2. BFOQS MATERIALLY ADVANCED PRIVACY INTERESTS

As it concerned privacy interests, the Court concluded that “[t]he privacy rights of Michigan’s female inmates also weigh in favor of a BFOQ.” *Id.* at 756. Indeed, although

prisoners lose many freedoms upon incarceration, they nevertheless retain “some reasonable expectations of privacy while in prison,” particularly with regard to exposure to members of the opposite sex. *Id.* at 756-757. Privacy interests justified excluding males from certain positions in female prisons, particularly those involving shower and toilet areas. *Id.* at 757-758. In reaching this decision, the Court cited an Eighth Circuit case that involved a policy which assigned only female officers to a women’s prison facility where the officers’ duties included “room searches, urinalysis tests, and strip and pat-down searches of inmates” *Everson*, 391 F3d at 758, citing *Tharp v Iowa Dep’t of Corrections*, 68 F3d 223, 224 (CA 8, 1995). The BFOQs at issue in *Everson*, the Court reasoned, advanced the privacy interests of female prisoners in a way that privacy screens and other efforts—short of removing males from the housing unit—did not achieve. *Everson*, 391 F3d at 758-759. “Thus, the goal of ‘privacy’ provides support for the MDOC’s BFOQ defense.” *Id.* at 759.

3. NO REASONABLE ALTERNATIVES

Finally, the Sixth Circuit concluded that no reasonable alternatives to the BFOQs had been identified. *Id.* at 760. In this regard, the Court rejected the idea that simply phasing out male officers by filling vacancies with female officers was a reasonable alternative, noting that this was “simply a watered-down version of the MDOC’s plan[.]” *Id.* at 760-761. Furthermore, the idea of increasing coverage by female officers through forced-overtime policies was unreasonable because it would lead to increased costs and overworked staff. *Id.* at 761. And, the Court noted that the “very presence” of male officers in the housing units was a problem, and merely increasing the presence of female officers did not directly address that problem. *Id.*

4. HOLDING IN *EVERSON*

The Sixth Circuit upheld the BFOQs at issue in *Everson*, but took care to emphasize what it described as “the limited nature of our holding.” *Id.* In particular, the Court explained that it did not “hold that gender constitutes a BFOQ for positions in Michigan’s female prisons beyond the approximately 250 positions we have discussed.” *Id.* Non-housing unit positions were not at issue in that case.

III. THE INSTANT CASE

The instant case involves a question not reached in *Everson*: whether BFOQ-female only designations are appropriate in the non-housing unit corrections officer positions that were the subject of the 2009 BFOQ designations.

A. DEFERENCE TO PRISON OFFICIALS

In answering this question, this Court first determines that it should afford deference to the decision-making of MDOC officials. Although Plaintiff’s brief does not expressly argue that deference to MDOC should not be given in this case, Plaintiff nevertheless attempts to make MDOC’s decision-making process look haphazard. For instance, Plaintiff argues that certain relevant actors knew “painfully little” about the BFOQ process. In addition, Plaintiff characterizes MDOC’s decision as a “knee-jerk” reaction to high-profile courtroom defeats. However, the record does not bear out Plaintiff’s characterization of the BFOQ decision-making process. As an initial matter, it should be noted that the problems MDOC sought to address with the BFOQ designations in this case were not new. MDOC has a history of problems involving the sexual abuse of female prisoners. MDOC has, for several years, sought to address those problems. The evidence in this case reveals that the BFOQs were an extension of MDOC’s prior efforts at redressing its checkered past, as MDOC officials acknowledged the department’s prior

shortcomings when they testified about implementing the BFOQs at issue in this case. The record also reveals that officials were aware of the high-profile litigation and the high-profile courtroom defeats. This Court will not punish MDOC by depriving it of the deference it would otherwise be due simply because MDOC was cognizant of its prior failures. As noted by the Ninth Circuit in *Teamsters Local Union No 117*, 789 F3d at 988, “[i]f sordid details of sexual abuse and constitutional violations do not inspire a ‘crisis’ and feelings of ‘panic,’ then what does?” For that reason, “[t]he state shouldn’t be demonized for kicking into gear to find a remedy for its long-running challenges.” *Id.*

Moreover, the record belies the idea that the BFOQs were implemented in a haphazard fashion. For instance, Lopez testified in his deposition that BFOQ requirements had their origins in the DOJ lawsuit and that MDOC’s history of shortcomings factored into the BFOQ designations in this case. In addition, although some of the pertinent actors could not remember all of the details, there was nevertheless testimony that MDOC administrative staff met to discuss the BFOQs implemented in this case. These meetings included discussions and input from deputy wardens, such as Evans, who was closely involved in supervising some of the positions at issue in this case. Furthermore, there also appears, based on Warren’s testimony, to have been some back-and-forth and compromise about which positions should be BFOQ. Although Plaintiff cites this evidence in an effort to show discriminatory intent, the evidence shows that MDOC staff thought about the positions and attempted to limit the number of positions that would ultimately be given the BFOQ designation. Moreover, Courts have rejected an idea that the question of deference should turn on subjective intent; instead, the issue of deference should consider the process employed in implementing the BFOQs and the actions taken by prison officials. *Teamsters Local Union No 117*, 789 F3d at 988. Given the discussions

that occurred in this case and the experience of MDOC officials with BFOQs dating back to *Everson*, this Court will afford deference to MDOC's decision-making process in this case.

B. MDOC HAS MET ITS BURDEN WITH REGARD TO THE BFOQS AT ISSUE

The next inquiry is whether MDOC can meet its burden of establishing a valid BFOQ defense, which, even in the face of deference, is a difficult burden to meet. According to MDOC's request to the Civil Service Commission for BFOQ designations and pertinent deposition testimony, the positions at issue were designated BFOQ: because of privacy concerns; because they involved isolated, one-on-one situations between prisoners and corrections officers; and/or because they required an officer to conduct a pat-down search on a female prisoner. According to MDOC, "each position touches on the MDOC's legitimate concerns of safety, security, and privacy." Upon review of the record and the positions at issue, the Court concludes that there is no genuine issue of material fact and that MDOC is entitled to judgment because the BFOQs had a basis in fact and were reasonably necessary to the normal operations of the HVCF. In addition, the BFOQs materially advance interests that relate to the essence of prison security, inmate safety, and/or inmate privacy, and no reasonable alternatives to the BFOQs have been identified. See *Everson*, 391 F3d at 748-749, 753.

1. BASIS IN FACT THAT BFOQS ARE REASONABLY NECESSARY

As an initial matter, there is a basis in fact to conclude that the BFOQs at issue are reasonably necessary to normal operations at the HVCF. Even after the implementation of the BFOQs in *Everson*, the record in this case reveals that there were still numerous complaints of sexual harassment, sexual misconduct, and overfamiliarity toward female prisoners made against male corrections officers. Lopez testified that part of the impetus for the 2009 BFOQs was that, despite the BFOQs at issue in *Everson*, sexual abuse and sexual misconduct issues continued to

exist. According to documentary evidence provided by MDOC in response to Plaintiff's requests for admissions, from 2004 to 2008, the year before the BFOQs were implemented, there were 84 such complaints⁷ lodged against male corrections officers by female prisoners. After the BFOQs at issue were implemented, this number decreased to 19 such complaints from 2009 to 2013. It is beyond dispute that "[p]reventing sexual assaults is [] a legitimate prison objective." *Teamsters Local Union No 117*, 789 F3d at 990. And in this case, the issue was hardly a new one for MDOC. Given MDOC's history of problems, combined with the fact that allegations continued to exist after implementation of the *Everson* BFOQs, the BFOQs were reasonably necessary to normal prison operation. Indeed, even though not all of the allegations were substantiated, even unsubstantiated allegations are harmful to the normal operation of a prison. As recognized by the Court in *Everson*, 391 F3d at 753-754, such allegations "create a 'poisoned atmosphere' that breeds misconduct on the part of inmates and guards" and can even make officers "gun-shy" about properly monitoring and disciplining inmates. To this end, Michael Mahoney, the expert retained by MDOC prior to the implementation of the BFOQs at issue in *Everson*, remarked that prison morale, culture, and even safety "is determined to a great degree by the interaction between staff and prisoners." Conflicts in the interactions between corrections officer and inmates, Mahoney continued, whether real or perceived, disrupt normal prison operations and "hinder the ability of the MDOC to conduct the essence of its business."

⁷ MDOC's brief cites a much higher number of complaints—233. Rather than focusing on MDOC's figure, which encompasses allegations of sexual misconduct, sexual harassment, and overfamiliarity against female officers as well as against male officers, the Court focuses only on the complaints lodged against male officers.

The discussion in the preceding paragraph leads to another important point. Not only were the BFOQs aimed at curbing sexual misconduct/harassment, MDOC also cited the BFOQs as being necessary for security and privacy. With regard to privacy, some of the positions—such as the electronic monitor officer and the healthcare/infirmiry officer and offsite hospital officer—involved housing unit situations where inmates were in a state of undress. Having male officers staff these positions threatened that privacy interest. Furthermore, all of the positions at issue contained at least some type of search requirement. As recognized by the Ninth Circuit in *Teamsters Local Union No 117*, 789 F3d at 990, “inmates have a privacy interest in having non-emergency strip and pat searches—a pervasive fact of prison life—performed by guards of the same sex.” Male officers were prohibited from performing such searches, meaning that they had to ask female officers to assist them in performing a search. Evans and Warren testified that this was simply not feasible in many instances. Thus, in order to provide the requisite level of privacy, female corrections officers would, in many instances, need to leave their posts in order to assist their male colleagues with a search. This would no doubt create a security risk at the vacated post. Accordingly, as articulated in *Everson*, 391 F3d at 755, “the ‘very manhood’ of male [corrections officers] undermines their capacity to provide security” in the positions at issue.

On the issue of reasonable necessity, it should be noted that Plaintiff contends that the BFOQs were not reasonably necessary by highlighting certain evidence in the record demonstrating that female corrections officers were able to perform some of the BFOQ positions at issue in this case in male correctional facilities. This comparison is not as compelling as Plaintiff makes it out to be. It could almost go without saying that the issues inherent in the supervision of female prisoners by male corrections officers are different from the issues

involved in the supervision of male prisoners by female corrections officers. The evidence in the record bears this out as well, as Mahoney's report notes that the supervision of female prisoners by male officers implicates privacy and safety concerns that do not exist to the same degree when female officers supervise male prisoners.

2. BFOQS RELATE TO THE ESSENCE OR CENTRAL MISSION OF MDOC

The justifications given for the BFOQs—security, safety, and privacy—“relate to the essence, or to the central mission of” MDOC’s business. See *Everson*, 391 F3d at 749. Similar to *Everson*, MDOC has argued that employing male corrections officers in each of the positions at issue “imperils” those interests in a number of ways. Starting with inmate privacy, a number of the positions at issue—electronic monitor officer, healthcare/infirmiry officer, and off-site hospital officer, involve officers viewing inmates in various stages of undress. In particular, these positions either require the officer to directly observe inmates in their cells, during medical procedures or examinations, or while in a hospital bed. MDOC presented evidence that these positions are similar to housing units or, in the context of the electronic monitor officer, positions that directly observe female prisoners in housing units. The rover officer position is required to assist in housing units. As the Court succinctly noted in *Everson*: “The housing unit serves as inmates’ ‘home’ the place where they . . . perform the most intimate functions like showering, using the toilet, dressing, even sleeping.” *Everson*, 391 F3d at 758 (citations and quotation marks omitted). As the Court in *Everson* remarked, “simple human decency” dictates the exclusion of male corrections officers from these positions, and MDOC made a reasonable determination that the BFOQ requirements for those positions will protect and materially advance the privacy interests of female inmates. *Id.* at 759. “Thus, the goal of ‘privacy’ provides support for the MDOC’s BFOQ defense.” *Id.* Indeed, courts have upheld the use of

similar BFOQs on the issue of inmate privacy. See *Robino v Iranon*, 145 F3d 1109, 1111 (CA 9, 1998); *Tharp v Iowa Dep't of Corrections*, 68 F3d 223, 224-226 (CA 8, 1995).

The interests set forth by MDOC are also implicated by pat-down searches, which were required of all of the positions designated as BFOQ. As noted above, all of the positions required pat-down searches, which, pursuant to MDOC policy, only female corrections officers could perform, absent exigent circumstances. In addition, many of the assignments were single-officer assignments (property room officer, gate officer, gym officer). Thus, these positions, if not made female-only, would require an officer to call a female guard, who would then vacate her post, to come perform the pat-down search. The remaining positions were staffed with multiple officers, but they were situated such that it would be difficult to call another officer over to assist with a search without compromising security. Those searches, according to Evans and Warren, were important parts of the correction officers' duties, particularly in the food service, gym, industries, and school areas, given the potential contraband items that were present in each of those areas. Searches were also of critical importance to the safety of prisoners in the gate area and property room areas, as those areas both concerned places where contraband could enter the prison. Placing male corrections officers, who could not perform routine searches, in those areas could make such searches less likely to occur or, at the very least, could leave other areas vulnerable if female officers from another area had to come assist their male counterparts in performing a team search. Hence, designating the positions as female-only implicated MDOC's legitimate interest in maintaining security and ensuring the safety and privacy of female prisoners.

3. NO REASONABLE ALTERNATIVES

On the evidence before this Court, MDOC has established that no reasonable alternatives exist to discrimination on the basis of gender with regard to each of the 11 positions at issue. See *Everson*, 391 F3d at 749. Starting with the healthcare/infirmiry officer and off-site hospital positions, Warren and Evans described these positions as “housing” positions where prisoners slept, showered, and used the toilet.⁸ The “rover” position too, often had to assist in the housing unit of the prison. Just as there were no reasonable alternatives to designating the housing positions at issue in *Everson* as BFOQ, there are no reasonable alternatives to applying the BFOQ designation to these “housing” positions. See *Everson*, 391 F3d at 760-761. Moreover, Warren and Evans testified that corrections officers in these positions were responsible for monitoring prisoners at all times and that searches of prisoners were very important in the health care facilities and medical settings because of the potential for prisoners to steal medical tools, such as syringes. These searches had to be performed by female officers, and it was “very inefficient,” given the privacy concerns at issue, to have a male officer even be in a position to assist in a team search. To that end, prisoners in these settings were often in various stages of undress for medical procedures and examinations. In addition, Evans testified that prisoners in these assignments had to use showers that were often within view. Furthermore, as it concerned the “rover” position, it is worth noting that all of the housing unit positions to be covered by this officer were designated as BFOQ in the first instance. Allowing a male to fill these positions would “undermine[] the documented need of making those positions female-only in the first

⁸ The healthcare/infirmiry position was, at the very least, a part-time housing unit position because the infirmary was considered a housing unit and officers in the position were required to work both healthcare and infirmary.

place.” *Teamsters Local Union No 117*, 789 F3d at 994. Indeed, similarly to *Everson*, 391 F3d at 753-754, allowing male officers to fill these housing unit positions would, at a minimum, require the use of artificial security barriers, such as screens and/or a knock and announce policy, which decreases security, is likely to lead to allegations of sexual abuse, and could potentially make male officers “gun-shy” and thus lead to lessened supervision. Accordingly, the record contains sufficient evidence to conclude that MDOC satisfied its burden as to whether reasonable alternatives existed with regard to these positions.

There is also evidence in the record to support that there was no reasonable alternative for the electronic monitor officer position. As noted, that position required officers to view a number of camera feeds at a given time. Some of these camera feeds were pointed in individual cells, including cells that contained toilets. Other cameras were positioned near the showers. Again, these are considered part of the “housing unit” of the prison. Although observation via a video feed does not present the same risks of sexual assault that might be present if an officer is actually placed in a housing unit, it nevertheless has the same, if not increased, privacy concerns for inmates. Indeed, while a male corrections officer could theoretically afford a female inmate some level of privacy by knocking and announcing his presence, an officer observing a video feed cannot do the same.

As it concerns the remaining assignments, Warren and Evans testified that three of the assignments were single-officer positions—property room officer, gate officer, and gym officer. Once again, at a minimum, each of these positions required an officer to perform routine pat-down searches. Although male officers could utilize team searches by calling female officers to assist, there was testimony in the record that team searches were not feasible in these locations due to the location of the assignment. As noted by the Ninth Circuit in *Teamsters Local Union*

No 117, 789 F3d at 992, “temporarily removing a female guard from another part of the prison to cover” a particular assignment “creates a gap . . . at the post vacated. At best, that solution fixes one problem but creates another.” It is evident that there could be increased security risks occasioned by moving female officers from one location to another in order to perform searches. For instance, shuttling female officers around in order to perform searches at the request of male officers could lead to longer wait times for searches, could produce extra burden and strain on female officers, and could lead to a lack of supervision or, at the least, a temporary lack of supervision in the vacated areas. See *id.* at 993. In *Everson*, 391 F3d at 761, the Sixth Circuit held that a court should not require a prison to incur increased expenses and add additional corrections officers as a means of avoiding the necessity of a BFOQ designation. Accordingly, giving deference to MDOC’s decision-making and staffing decisions in this case, MDOC satisfied its burden of showing a lack of reasonable alternatives.

The above discussion concerning search requirements also illustrates why, giving the appropriate level of deference to MDOC’s reasoned decision-making, there is no reasonable alternative to making the remaining positions—food service, yard control, school officer, and industries officer—BFOQ-female only. As noted, Warren and Evans testified that these positions required frequent, oftentimes random, pat-down searches. In addition, they offered testimony that the BFOQ designation was required for those positions because male officers could not, without difficulty, simply request one of their female colleagues to come assist with a search. Again, this Court will not require MDOC to hire extra corrections officers just to avoid BFOQ designations. See *Everson*, 391 F3d at 761. In addition, it should be noted that the Mahoney report indicated that, shortly after the moratorium on pat-down searches by male officers was initiated and pat-down searches became less frequent, “[i]nstances of increased

levels of contraband, decrease in staff morale, and perceptions of a lessening of security have occurred.” In other words, when pat-down searches became less frequent, contraband levels increased, morale decreased, and security decreased. According to testimony in the record, the BFOQ positions at issue in this case were intended, in part, to maintain an appropriate level of pat-down searches. Giving deference to the decision-making of MDOC officials, it is fair to conclude that staffing positions with female officers who can perform searches, rather than staffing the positions with male officers who are required to call for assistance in order to conduct a search, will lead to more searches, less contraband, and enhanced security. See *Everson*, 391 F3d at 760 (explaining that common sense and deference to experts—particularly prison officials—may be used to establish the necessity of a BFOQ). Indeed, pat-down searches, particularly random pat-down searches, have been recognized as “an important tool in preventing the flow of contraband.” *Teamsters Local Union No 117*, 789 F3d at 993. As such, the Court concludes that MDOC satisfied its burden of showing a lack of reasonable alternatives.

On the issue of reasonable alternatives, it should be noted that Plaintiff takes a position that, overall, MDOC implemented broad, overreaching BFOQ-requirements with no precision or accuracy. For many of the reasons noted above, the evidence in this case belies that position. Instead, it supports the idea that MDOC took care to limit BFOQ designations to those involving housing unit positions, direct observation of female prisoners in stages of undress, or those involving searches under scenarios where it would be impracticable to call for assistance. In other words, “[i]nstead of a blanket ban on male prison personnel, the Department crafted the staffing needs to fit each specific facility and guard post. It targeted only guard assignments that require direct, day-to-day interaction with inmates and entail sensitive job responsibilities” *Teamsters Local Union No 117*, 789 F3d at 989. This sentiment from *Local Union No 117*,

which involved BFOQ qualifications imposed on many positions that are similar to those at issue in the case at bar—including officers responsible for overseeing visitation, a relief post similar to the rover position at issue in this case, educational programs, the gym, and certain housing positions—rings true in the instant case as well, given the evidence presented.

IV. CONCLUSION

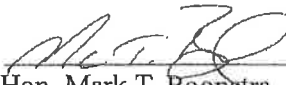
Because MDOC, rather than Plaintiff, is entitled to summary disposition, IT IS HEREBY ORDERED that summary disposition in favor of MDOC is GRANTED pursuant to MCR 2.116(I)(2) on the issue of the propriety of the BFOQs.⁹ Plaintiff's motion for a declaratory judgment is DENIED, and Plaintiff's request for equitable relief is therefore also DENIED. This Order consequently resolves all matters pending before this Court relative to Count I of Plaintiff's complaint, alleging gender discrimination.

Further, at a September 13, 2016 status conference held by the Court with counsel for the parties, counsel for the parties represented that the only equitable claims before this Court related to Count I (gender discrimination) and did not relate to Count II (retaliatory discharge). The briefing of the parties, and their requests for "summary disposition" and a "judgment" are in accordance with that representation. Consequently, the Court finds that the parties have expressly, or at least "tacitly" by their conduct, "approved the continuing jurisdiction of the [Washtenaw] Circuit Court for a trial of both plaintiff's jury claim for money damages and [her] claim for equitable relief," if any, on Count II. *Baynesan v Wayne State University*, __ Mich App __; __ NW2d __ (Docket No. 326132), slip op. at 5,

⁹ Because of the resolution of the BFOQ issue, the Court declines to consider MDOC's alternative argument in support of summary disposition.

This Order thus resolves the last pending claim and closes the case.

Dated: October 26, 2016



Hon. Mark T. Boonstra
Court of Claims Judge

STATE OF MICHIGAN
COURT OF CLAIMS

Dept of Attorney General
DEC 05 2016
State Operations Division
RECEIVED

ALEIKA BUCKNER,
Plaintiff,

OPINION AND ORDER

v

Case No. 14-000267-MK

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Hon. Mark T. Boonstra

Defendant.

Before the Court is Plaintiff's motion for reconsideration of this Court's October 26, 2016 opinion and order granting summary disposition to Defendant (MDOC). For the reasons set forth below, the motion for reconsideration is DENIED.

Many of the pertinent facts and the procedural history of this case have been set forth in this Court's prior opinion and order and do not bear repeating. In sum, Plaintiff, a former corrections officer at the Women's Huron Valley Correctional Facility (HVCF), filed a complaint and raised allegations concerning the implementation of Bona Fide Occupational Qualifications (BFOQ) for certain positions at HVCF. This Court held that the MDOC met its burden with regard to the BFOQs at issue in this case and granted summary disposition to MDOC.

Plaintiff has now moved for reconsideration. Her arguments, which present a mix of new arguments and a reiteration of some of her previous arguments, can be broken down into four main categories: (1) the recent elimination of many BFOQ positions by MDOC is an admission

that the designations were unnecessary;¹ moreover, even apart from the recent elimination of the BFOQs, the evidence in this case reveals that (2) the BFOQs were not the product of a reasoned decision-making process; (3) the BFOQs were not reasonably necessary for the operation of the HVCF; and (4) MDOC failed to consider reasonable alternatives to the BFOQs.

A decision to grant or deny of a motion for reconsideration rests in this Court's discretion. *Luckow Estate v Luckow*, 291 Mich App 417, 423; 805 NW2d 453 (2011). LCR 2.119(F)(3) provides:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

As will be set forth below, Plaintiff fails to demonstrate "a palpable error by which the court and the parties have been misled" and that a different disposition must be reached. See LCR 2.119(F)(3).

I. RECENT ELIMINATION OF MANY BFOQ POSITIONS

Initially, Plaintiff notes a March 22, 2016 letter from Tony Lopez, the Michigan Department of Corrections Human Resources Director, in which Lopez states that a recent increase in the number of security cameras at HVCF rendered many BFOQs unnecessary. The letter states that *after* the BFOQs were approved in 2009, MDOC made advances in its

¹ This Court's prior opinion, at page 7 n 3, noted the elimination of the BFOQ positions, which occurred on or about March 22, 2016. Plaintiff's previous briefing in this matter was filed before that elimination occurred and did not encompass the decision to eliminate the BFOQ designations.

monitoring equipment and installed over 1,300 cameras, which resulted in MDOC being able to eliminate many BFOQ designations. In pertinent part, the letter states that:

The department's request for expanded BFOQs was submitted to State Personnel Director, Jeremy S. Stephens on March 27, 2009. However, with the continuing technological advances at the facility *since the original approval for the BFOQs was granted*, primarily the placement of over 1,300 cameras throughout the facility, monitoring of cameras and high capacity storage recorders, the department does not believe that some of the previously approved BFOQs remain necessary. [Emphasis added.]

Plaintiff's motion for reconsideration declares that the BFOQ designations were eliminated "based on the availability of security cameras which [MDOC] had all along" (capitalization and emphasis omitted). Contrary to Plaintiff's suggestions, Lopez's letter does not indicate that the cameras were available at the time of the BFOQ designations or that MDOC had them "all along." Rather, it expressly states that the cameras were part of "continuing technological advances" made at the HVCF *after the* BFOQ designations at issue were requested. Based on Lopez's letter, there does not appear to be any evidence on which the Court could conclude that the cameras were available to MDOC at the time of the BFOQ designations, thereby rendering the BFOQ designations unnecessary from the outset.

In supporting her argument, Plaintiff broadly declares that "[s]ecurity cameras were considered a viable alternative to widespread use of BFOQs before Defendant opened" the HVCF. Plaintiff cites caselaw indicating that security cameras were installed in prisons in two different states—Washington and New York—in the mid-2000s and late 1990s. However, Plaintiff provides no substantive discussion concerning how widespread the use of the cameras was in those other prisons, much less whether those other prisons employed the same or a similar camera system as MDOC chose to employ in 2016. Nor does Plaintiff give any indication as to whether it was feasible, given camera costs and budgetary concerns, for MDOC to have installed

this system in 2009.² Rather, Plaintiff essentially asserts that because other prison systems used security cameras, MDOC could have, in 2009, employed the same system it later installed in 2016. This assertion is meritless. There can be no reasonable dispute that *some* security cameras were available to MDOC in 2009. Indeed, one of the BFOQ positions at issue in this case, the electronic monitor officer, was charged with monitoring security cameras. However, the fact that *some* security cameras were available in 2009 does not provide evidence that the same system MDOC later installed in 2016 was available and was a feasible alternative to the BFOQs in 2009. Had Plaintiff produced evidence that the system was available and that it could have been installed in 2009, the issue in this case could be different. However, an assertion that security cameras, in general, were available in 2009 is not the type of evidence Plaintiff needs to be able to support such a claim.

With regard to the idea that security cameras were available to MDOC in 2009, Plaintiff cites deposition testimony from Millicent Warren, the Warden at HVCF, and Gary Manns, an MDOC administrator and former deputy director, in support of her position. However, a review of the cited portions of deposition transcripts does not reveal support for Plaintiff's position. The cited portions of transcript deal with one of the BFOQ positions, the electronic monitor officer position. In short, both Warren and Manns discussed that the cameras installed in the facility were required to be viewed by the electronic monitor officer. Neither discussed the availability of cameras or anything that would be relevant to Plaintiff's assertions in the motion for reconsideration. Again, the fact that some cameras were available in 2009 is not really at issue.

² In this regard, a court need not impose as a "reasonable alternative" an option that would place "financial strains" on the employer. *Everson v Mich Dep't of Corrections*, 391 F3d 737, 761 (CA 6, 2004) (citation and quotation marks omitted).

The issue is whether MDOC could have installed a system of cameras in 2009 that would have made the BFOQ designations unnecessary. Plaintiff, despite her representations to the contrary, has not provided any evidence in this regard.

Finally, on the issue of security cameras, Plaintiff cites what appears to be a complaint filed against MDOC by the Department of Justice. Plaintiff contends that the DOJ was “breathing down [MDOC’s] neck” in 2016, thereby prompting MDOC to eliminate the BFOQs and to cite security cameras as its reason for doing so. According to Plaintiff, this “did not placate the DOJ, which filed suit on June 13, 2016.” Attached to Plaintiff’s brief as Exhibit 2 is the first page, and only the first page, of a June 13, 2016 complaint filed by the DOJ against MDOC. There is no indication as to the substance of the complaint, other than that it was an action to “enforce the provisions of Title VII of the Civil Rights Act of 1964 . . .” Based on the single page of the complaint provided by Plaintiff, there is no indication as to whether the DOJ suit even involved the BFOQs. Given the lack of explanation by Plaintiff, this Court is unable to ascertain the value of the DOJ complaint in this case, and the mere existence of a complaint filed by the DOJ against the MDOC does not present a reason to grant the motion for reconsideration.

II. REASONED DECISION-MAKING PROCESS

Next, Plaintiff contends that MDOC’s decision-making process in adopting the BFOQs was haphazard and not the type of reasoned decision-making employed in similar BFOQ cases. Although not expressly articulated by Plaintiff, this contention is relevant to the Court’s analysis of the BFOQs because reviewing courts afford deference to the *reasoned* decision-making of prison officials. *Everson v Michigan Dep’t of Corrections*, 391 F3d 737, 750 (CA 6, 2004). This deference, which is not granted as a matter of course, is a matter which is left to the discretion of the court and which is meant to acknowledge that prison officials are tasked with

making difficult decisions regarding prison staffing and security. *Teamsters Local Union No 117 v Washington Dep't of Corrections*, 789 F3d 979, 987-988 (CA 9, 2015); *Everson*, 391 F3d at 750. Pages 18-20 of this Court's prior opinion covered the reasonableness of MDOC's decision-making and many of the arguments Plaintiff makes in her motion for reconsideration. Nevertheless, this memorandum will briefly address the matter.

Plaintiff cites the Sixth Circuit's decision in *Everson* and the Ninth Circuit's decision in *Teamsters Local Union No 117* and notes the various studies, reports, statistics, and discussions among prison officials in those cases that led to the implementation of the respective BFOQs. She then attempts to contrast the BFOQ decision-making process employed in this case, arguing that MDOC did next to nothing by comparison. In addition, she argues that certain reports that MDOC relied on in *Everson*, such as the expert report from Michael Mahoney, cannot support the instant BFOQs because Mahoney's report only concluded that BFOQs were necessary for housing positions.

Plaintiff's comparison to the decision-making process employed in cases such as *Everson* and *Teamsters Local Union No 117* is unconvincing. As an initial matter, it should be noted that MDOC had, at the time it implemented the BFOQs in this case, the same information that was available in *Everson*, plus additional information. That is, MDOC had knowledge of its historical shortcomings in women's correctional facilities, all of the studies and information that it relied on in *Everson*, as well as information concerning sexual misconduct in women's prisons after the *Everson* BFOQs were implemented. Furthermore, although Plaintiff faults MDOC—and this Court's prior opinion—for relying on some of the *Everson* information, some of the same concerns at issue in *Everson*, which involved housing-unit positions, were implicated by some of the positions at issue in this case—the infirmary, healthcare, rover, and electronic

monitor officers—which were considered housing unit positions. Accordingly, the studies and information relied on in *Everson* and MDOC’s decision-making process in that case were, to an extent, relevant in the instant case as well. As the prior opinion and order notes, the BFOQs in this case were an extension of MDOC’s efforts in *Everson*. Indeed, MDOC officials, such as Lopez, acknowledged MDOC’s shortcomings as justifications for the BFOQs in this case.

In addition, the record in this case, as the original opinion and order points out, reveals discussions amongst key MDOC employees regarding the decision to implement the BFOQ designations at issue in this case. Although Plaintiff faults certain witnesses for being unable to remember all of the details that went into the BFOQ designations, the record nevertheless reveals that there were at least some meetings and some discussions involving the BFOQs in this case before they were implemented. As the original opinion notes at page 19: “[t]hese meetings included discussions and input from deputy wardens, such as Lucille Evans, who was closely involved in supervising some of the positions at issue in this case. Furthermore, there also appears, based on Warren’s testimony, to have been some back-and-forth and compromise about which positions should be BFOQ.”

In arguing that MDOC’s decision-making process was not reasoned, Plaintiff compares this case to the decision-making in *Ambat v City & Co of San Francisco*, 757 F3d 1017 (CA 9, 2015), to which the Ninth Circuit declined to afford deference. In that case, San Francisco Sheriff Michael Hennessey adopted a BFOQ policy in San Francisco’s female correctional facilities and cited a number of safety and privacy concerns in support of the BFOQs. *Id.* at 1022. The primary issue in that case was whether Hennessey’s decision-making was the type of reasoned decision-making that was entitled to deference. *Id.* at 1024. The Ninth Circuit declined to grant deference in that case because: (1) the defendant did not conduct any studies on the

misconduct that was occurring; (2) there were no consultations between Hennessey and deputies, i.e., those who were directly responsible for supervising inmates; and (3) Hennessey did not consult any outside sources, but merely relied on incidents he read about, coincidentally, in Michigan's women's prisons. *Id.* at 1026.

MDOC's decision-making in the instant case is not comparable to the decision-making at issue in *Ambat*. Again, it should be noted that the BFOQs in this case arose out of a lengthy history of issues facing MDOC. This history prompted one round of studies and reforms, which ultimately led to the consolidation of all women's prisons into a single facility: HVCF. Before implementing the BFOQs, there were meetings and discussions, including discussions with deputy wardens such as Evans. These discussions with deputy wardens, i.e., those charged with overseeing the BFOQ positions, were the types of discussions that were missing in *Ambat*. Furthermore, with regard to studies, the original opinion notes that there were, even after the BFOQs implemented in *Everson*, allegations of sexual misconduct, sexual harassment, and overfamiliarity between male corrections officers and female officers at HVCF. Although Plaintiff points out that none of these allegations were substantiated, she ignores that there were 38 such allegations from 2006 to 2008, and that such allegations, even if unproven, are of great concern in a prison. (See original opinion at 21, citing *Everson* and Mahoney's expert report). Thus, in contrast to *Ambat*, MDOC had much more information at its disposal in this case, and its decision-making was more involved and less haphazard than Plaintiff argues it was.

Finally, in arguing that MDOC's decision-making process was not reasoned, Plaintiff faults MDOC for seeking civil service approval for the BFOQs, rather than asking the Michigan Civil Rights Commission for approval. In making this argument, Plaintiff cites MCL 37.2208, which provides that:

A person subject to this article may apply to the [Civil Rights] commission for an exemption on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. Upon sufficient showing, the commission may grant an exemption to the appropriate section of this article. An employer may have a bona fide occupational qualification on the basis of religion, national origin, sex, age, or marital status, height and weight without obtaining prior exemption from the commission, provided that an employer who does not obtain an exemption shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.

Plaintiff argues that MDOC “obviously preferred Civil Service approval” to approval by the Civil Rights Commission “because it is a mere rubber stamp process, taking all of three weeks in 2009.” Plaintiff’s argument misses the mark. MCL 37.2208 does not require approval by the Civil Rights Commission for BFOQs. Rather, the statute simply allows an employer to apply to the Civil Rights Commission for approval for any BFOQ positions. It is not readily apparent what this approval achieves, however. For instance, although MCL 37.2208 provides that the failure to obtain this approval will result in the employer bearing the burden of establishing that the BFOQ is reasonably necessary, caselaw already places this burden on the employer in defending a challenge to BFOQ designations. See, e.g., *Everson*, 391 F3d at 748. Moreover, although Plaintiff criticizes MDOC for seeking Civil Service approval in this case, she mischaracterizes *why* Plaintiff sought approval from the Civil Service Commission. The March 27, 2009 letter from Gary Manns to Jeremy Stephens states that Manns sought Civil Service approval pursuant to Michigan Civil Service Rule 1-8.4, which deals with BFOQ designations. In other words, in order to designate the civil service positions at issue as BFOQ, it appears Manns needed approval from the Civil Service Commission. There is no indication, as Plaintiff suggests, that MDOC sought this Civil Service Commission approval because it thought the Civil Service Commission would give a “rubber-stamp” authorization. Rather, it appears that the

Civil Service approval was simply required by the Civil Service Commission in its exclusive role in regulating the terms and conditions of Civil Service employment.

In sum, although Plaintiff presents a number of arguments in support of her assertion that MDOC's implementation of the BFOQs in this case was not the product of reasoned decision-making, her arguments are without merit and this Court sees no reason to revisit its discretionary decision to afford deference to the MDOC's decision-making process.

III. BASIS IN FACT THAT BFOQS WERE REASONABLY NECESSARY

Although this Court affords deference to MDOC's decision-making, that deference, as explained in the original opinion and order, does not amount to a "free pass." *Teamsters Local Union No 117*, 789 F3d at 987-988. Rather, MDOC must still meet its burden of establishing, among other matters, that the BFOQs were reasonably necessary. Pages 20-24 of this Court's prior opinion and order concluded that MDOC met this burden, and Plaintiff has presented nothing in her motion for reconsideration to establish an entitlement to relief under LCR 2.119(F)(3). In short, Plaintiff largely asserts some of the same arguments she made in her initial briefing with regard to whether the BFOQs were reasonably necessary. The Court briefly notes, however, that Plaintiff points to an answer MDOC gave in response to a request for admissions in a related, but separate, case. That response stated that the BFOQs—which were the same BFOQs that were at issue in the other case—were

put into place because of necessity and to ensure that the privacy and individual rights of the female inmates were not violated, pursuant to *Everson v MDOC*, 391 F3d 737, 761-762 (6th Cir.2004).³ The BFOQ's were put into place after

³ It is not apparent for what purpose the admission cites *Everson* because the cited page range encompasses the dissenting opinion of Judge Gilman in which Judge Gilman expressly

examining each position in light of the settlement agreement reached in the Neal litigation.

Plaintiff contends that *Everson* “has no more to do with this case than the man on the moon” and that the BFOQs could not have been put into place because of the *Neal* settlement, because that settlement was reached in July 2009, after the BFOQs were implemented. Plaintiff’s argument is meritless. As an initial matter, Plaintiff’s argument ignores the documentary evidence in this case, which, as will be discussed below, demonstrated that the BFOQs were reasonably necessary. Furthermore, *Everson*, despite Plaintiff’s repeated assertions, is relevant to this case. Although *Everson*, 391 F3d at 761, dealt with corrections officers in housing units and its holding was limited to housing units, some of the positions at issue in the instant case—infirmity, healthcare, rover, and electronic monitor officer—were either in housing units or in units considered to be housing units. Furthermore, certain privacy concerns cited in *Everson* are relevant to this case. Moreover, although the *Neal* settlement was reached after the BFOQs were implemented in this case, the lawsuit itself, which was pending when the BFOQs were implemented, nevertheless factored into MDOC’s decision-making, according to Lopez’s testimony. Plaintiff’s attempt to find flaws in MDOC’s decision-making based on this admission is unavailing.

On a related note, Plaintiff argues that MDOC cannot rely on deposition testimony from Warren or Evans in support of its contention that the BFOQs were reasonably necessary because, according to Plaintiff, neither Warrens nor Evans participated in the BFOQ decision-making process. Plaintiff contends that their respective testimony lacks foundation and is inadmissible.

“disagree[d] with the majority’s conclusion that being a female is a bona fide occupational qualification (BFOQ) for approximately 250 Correctional Officer (CO) and Residential Unit Officer (RUO) positions in prisons for women inmates managed by the Michigan Department of Corrections (MDOC).” *Everson*, 391 F3d at 761-762 (GILMAN, J., dissenting).

However, as this Court's original opinion points out, although Warren's involvement in the BFOQ decision-making process is somewhat unclear, it is nonetheless apparent that she had some role in the process. Further, Evans's testimony—including the very pages of her deposition that Plaintiff cites in support of her argument—reveals that she was involved in the process as well. For instance, Evans testified that “Administrative staff did meet and discuss what positions would be BFOQ” and that she played a role in this process.

Plaintiff argues that “[t]he competent evidence” in this regard is the “801(D)(2)(d)⁴ admission of Deputy Director Gary Manns” who testified that BFOQs were unnecessary for food service, yard rover, healthcare infirmary, school officer, gate control, and gym officer positions. Plaintiff's reliance on Manns's testimony is misplaced. Although Manns testified that certain BFOQ designations were unnecessary, Plaintiff ignores that many of his assertions given in his deposition were prefaced with the disclaimer that he had did not have any personal knowledge and that he was only speculating as to whether a position should be BFOQ. For instance, when asked whether a gate control officer should be BFOQ, Manns replied, at page 45 of his deposition, “I would have no idea. There would be better people to answer that question.” Manns then proceed to testify—despite his earlier assertion that he had “no idea”—that he did not think the position should be BFOQ. He followed this same procedure—saying he had no knowledge but guessing nonetheless—in regard to the gym officer, healthcare infirmary officer,

⁴ MRE 801(d)(2)(d) provides a hearsay exception for a statement by a party opponent where the statement is offered against a party and is “a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship”

and school officer.⁵ When entertaining a motion for summary disposition, the Court is only to consider evidence that is substantively admissible. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163-164; 645 NW2d 643 (2002). MRE 602 provides that “[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” In this case, Manns expressly denied that he had personal knowledge. This speculation is hardly the “competent evidence” Plaintiff presents it to be, and will not be considered. See MRE 602; *Veenstra*, 466 Mich 163-164; *Ghaffari v Turner Constr Co*, 268 Mich App 460, 464; 708 NW2d 448 (2005).

Finally, “and most importantly,” according to Plaintiff, Plaintiff argues that the BFOQs were not reasonably necessary because MDOC failed to present any evidence from the “unknown persons who actually created the non-housing unit BFOQ designations by inserting the strip search requirement into the job descriptions.” In support, Plaintiff cites MDOC’s answers to interrogatories in another case wherein MDOC stated it had “No records” of who participated in adding strip searches to certain job descriptions at HVCF. Plaintiff contends that the strip search requirements were “bogus” and that strip searches were added to job requirements solely for the purpose of excluding male corrections officers from certain positions at HVCF. However, as noted in this Court’s original opinion, Plaintiff greatly overstates the importance of strip searches. As noted, Evans and Warren testified that the BFOQ designation was triggered by any search requirement, not a strip search requirement. In addition, Plaintiff

⁵ Plaintiff only provided portions of Manns’s deposition testimony, and the full discussion surrounding the food service officer is not included in the transcript. Further, there is no indication that the yard rover position—the other position mentioned by Mann—was even designated BFOQ; rather, only the housing unit rover position was BFOQ.

misrepresents Warren's testimony about searches and strip searches. In short, strip searches were not, despite Plaintiff's repeated assertions to the contrary, the impetus for the BFOQ requirements. Rather, having to perform *any* type of search—along with the potential for isolation between a corrections officer and a prisoner and/or the potential to see a prisoner in a state of undress—was the impetus for the BFOQ designations.

IV. CONSIDERATION OF ALTERNATIVES TO BFOQS

Plaintiff cites portions of Lopez's deposition testimony to argue that MDOC did not consider alternatives to BFOQs. In the cited portion of the deposition transcript, Lopez was asked whether he performed any analysis to determine whether there was a reasonable alternative to the BFOQs. In response, Lopez asserted, "[o]ther than reviewing the PDs [position descriptions] and the historical knowledge that I have, no." Lopez then confirmed that he was "not familiar with any specific study" done with regard to reasonable alternatives.

Plaintiff argues that this testimony from Lopez confirms that MDOC did not consider any alternatives before implementing the BFOQs. Plaintiff's argument is meritless. Lopez did not testify that he failed to consider any alternatives. He simply said that he was not familiar with any particular studies done in this case. Also, he did not testify that he did not consider anything in determining whether reasonable alternatives existed. Rather, he testified that "*[o]ther than reviewing the PDs and the historical knowledge*" he had, he did nothing. In other words, he considered alternatives in light of the position descriptions and his historical knowledge—which included the DOJ lawsuit and MDOC's history of litigation in relation to civil rights violations in women's prisons. Furthermore, as discussed in pages 25-29 of the original opinion, MDOC carried its burden on the lack of reasonable alternatives.


V. CONCLUSION

In sum, Plaintiff has not demonstrated palpable error under LCR 2.119(F)(3). She largely rehashes many of the same arguments she made in her original briefing, and those arguments do not demonstrate palpable error. The only new evidence Plaintiff cites is the fact that many BFOQ positions were eliminated, as well as an ambiguous reference to a DOJ lawsuit against MDOC. However, this evidence does not cast doubt on whether the BFOQ designations were reasonably necessary *at the time* they were implemented.

IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration is DENIED.

This order resolves the last pending claim and closes the case.

Dated: November 30, 2016



Hon. Mark T. Boonstra
Court of Claims Judge

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
WORKERS' COMPENSATION AGENCY

THOMAS NOWACKI
SS# XXX XX 9562
Plaintiff

v.

STATE OF MICHIGAN,
DEPARTMENT OF CORRECTIONS
Defendant _____ /

ORDER

In this matter, a redemption agreement was approved and a redemption order was personally served on all parties by Magistrate Colombo on October 13, 2015. The redemption order provides on its face:

Parties agree to waive the 15-day appeal period. The director will not review this matter further on his/her own motion.

This agreement was documented by Angelia Lewis, the Workers' Compensation Agency Director's Representative.

On November 6, 2015, the Workers' Compensation Agency received a Motion to Set-Aside Redemption from plaintiff. Plaintiff claims that the "Release of All Claims was signed in error."


Since the parties voluntarily agreed to waive the 15-day appeal period, the redemption order became final on October 13, 2015. MCL 418.837 provides that a party may request that the director of the Workers' Compensation Agency review the order of the magistrate. MCL 418.837(3) specifically provides that unless the review is requested within 15 days of service of the order, the order shall be final. There is no provision in the Workers' Disability Compensation Act for a delayed request for review. Plaintiff's request for redemption review was filed after the expiration of the 15-day period set forth in MCL 418.837(3).

Therefore the director of the Workers' Compensation Agency is without jurisdiction to hear and decide the *Motion to Set-Aside Redemption*.

It is hereby ordered that the *Motion to Set-Aside Redemption* filed on November 2, 2015, be dismissed.

Dated and entered at Okemos, Michigan, on this 9th day of December 2015.

WORKERS' COMPENSATION AGENCY



MARK C. LONG
Director

MAILED

DEC 10 2015

WORKERS' COMPENSATION
AGENCY

Unless a claim for review is filed by either party within 15 days from the mailing date of this Order, as specified under Section 418.837(2) to the Michigan Compensation Appellate Commission, this Order shall stand as a final decision of the Workers' Compensation Agency.

DEC 16 2015

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