

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

KARI SUNDSTROM, *et al.*,

Plaintiffs,

v.

Case No. 06-C-0112 (CNC)

MATTHEW J. FRANK, *et al.*,

Defendants.

JOINT PRE-TRIAL REPORT

1. SHORT SUMMARY OF THE CASE

This case is a civil rights action seeking declaratory and injunctive relief invalidating and prohibiting enforcement of 2005 Wisconsin Act 105, Wis. Stat. § 302.386(5m) (the “Act”), on the grounds that it violates the Eighth Amendment’s prohibition on “cruel and unusual punishments” and the Fourteenth Amendment’s guarantee of “equal protection of the laws.” The Act prohibits the Wisconsin Department of Corrections (DOC) from providing hormone therapy or sex reassignment surgery in order to “alter the person’s physical appearance so that the person appears more like the opposite gender.”

Plaintiffs Kari Sundstrom, Andrea Fields, Lindsey Blackwell, Jessica Davison and Vankemah Moaton are male-to-female transsexuals who are (or were) incarcerated in DOC prisons, have been diagnosed with Gender Identity Disorder (“GID”),¹ and have been prescribed hormone therapy by DOC physicians as treatment for their GID.

¹ GID involves a “strong persistent cross-gender identification” and “[p]ersistent discomfort with [one’s] sex or sense of inappropriateness in the gender role of that sex.” *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. Text Reference 2000).

Plaintiffs allege that Defendants' enforcement of Act 105 violates the Eighth Amendment, because it deprives them of medically necessary treatment for Plaintiffs' objectively serious medical needs that DOC's medical personnel would otherwise provide them, and does so not based on any individual medical judgment but because of Act 105's blanket rule. Alternatively, Plaintiffs allege that Defendants' enforcement of Act 105 violates the Eighth Amendment because Defendants deny the treatment, even though they know that depriving Plaintiffs of this necessary treatment may cause serious harm to them. Defendants allege that a diagnosis of GID does not create a serious medical need and, even if it does, hormone therapy and/or sex reassignment surgery are not medically necessary treatment for persons with the condition, so that failure to provide these options cannot violate the Eighth Amendment.

Plaintiffs allege that Act 105 discriminates against an identifiable minority, transsexual prisoners, in that it categorically denies access to medical treatment that is needed by such prisoners, but does not categorically deny access to medical treatment that is needed by other prisoners. Plaintiffs contend that this discriminatory treatment violates the Equal Protection Clause, because Act 105's prohibition is not reasonably related to a legitimate penological interest, or, in the alternative, because it discriminates on the basis of gender, does not serve an important governmental objective, and does not use means that are substantially related to the achievement of such objectives.

Defendants claim that Act 105 is reasonably related to their legitimate penological interest in maintaining prison security, and thus does not violate the Equal Protection Clause.

2. STATEMENT OF ISSUES FOR TRIAL

- A. Does Defendants' enforcement of Act 105 violate the Eighth Amendment as applied to Plaintiffs?
- B. Does Act 105 violate the Eighth Amendment on its face?
- C. Do Defendants violate the Equal Protection Clause of the Fourteenth Amendment by enforcing Act 105 to deny Plaintiffs' access to hormone therapy and/or sex reassignment surgery?
- D. Does Act 105 violate the Equal Protection Clause of the Fourteenth Amendment on its face?
- E. Should a permanent injunction be entered?

3. NAMES AND ADDRESSES OF WITNESSES EXPECTED TO TESTIFY

- A. Vankemah Moaton Jackson Correctional Institution
Black River Falls, WI
- B. Randi Ettner, Ph.D. 1214 Lake St.
Evanston, IL
- C. Frederick Ettner, M.D. 800 Austin St.
Evanston, IL
- D. Kevin Kallas, M.D. 3099 E. Washington Ave.
Madison, WI
- E. George Brown, M.D. 549 Miller Hollow Rd.
Bluff City, TN
- F. Walter L. Kautzky, M.S. 3301 Southern Woods Drive
Des Moines, IA
- G. Kenneth, a/k/a Karen, Krebs Oshkosh Correctional Institution
Oshkosh, WI
- H. Eugene Atherton, B.A. 101 Yucca Ave.
Florence, CO
- I. Daniel Claiborn, Ph.D. 10801 W. 87th St.
Overland Park, KS
- J. James Greer, M.D. 3099 E. Washington Ave.

Madison, WI

- K. David Burnett, M.D. 3099 E. Washington Ave.
Madison, WI
- L. Kari Sundstrom Unknown

4. BACKGROUNDS OF EXPERT WITNESSES

- A. Randi Ettner, Ph.D.

Dr. Ettner has been a licensed clinical psychologist since 1980 and has counseled transsexual patients since 1977. She has been awarded Fellow status in clinical evaluation by the American Board of Psychological Specialties. Over the course of her career, she has seen over 2500 clients with gender identity concerns. She has written two books on the subject of gender identity and transsexualism, *Confessions of a Gender Defender: A Psychologist's Reflections of Life Amongst the Transgendered* (1996), and *Gender Loving Care: A Guide to Counseling Gender-Variant Clients* (1998), as well as numerous peer-reviewed articles on that subject. She is the co-editor of *Principles of Transgender Medicine and Surgery* (2007), and she presents original research at symposia every two years throughout the world. She is the founder and president of New Health Foundation Worldwide, a non-profit organization that serves transgender youth and indigent persons. She has lectured throughout North America, taught graduate students, and given grand rounds presentations to hospital medical staff. Dr. Ettner is currently serving her second consecutive term as a member of the World Professional Association for Transgender Health's Board of Directors. She is also a member of the editorial board of the International Journal of Transgenderism.

- B. Frederick Ettner, M.D.

Dr. Ettner is a licensed physician in Illinois, California and Washington and has been a board-certified family practice physician for the past 30 years. For the past 13 years, he has consulted and treated over 500 gender dysphoric patients. He is a member of the American Academy of Family Physicians and the World Professional Association for Transgender Health. He is a preceptor for the Northwestern University Feinberg School of Medicine, the University of Illinois Abraham Lincoln School of Medicine, Midwestern University and Rosalind Franklin University of Medicine and Science. He lectures and presents in-service forums on the condition and treatment of gender dysphoria to medical students and other medical and mental health professionals. He authored the Preface to *Principles of Transgender Medicine and Surgery* (2007).

C. George Brown, M.D.

Dr. Brown is a board-certified psychiatrist and full Professor of Psychiatry at East Tennessee State University in Johnson City, TN. He has treated patients with Gender Identity Disorder for the past 30 years and has received training regarding the GID diagnosis and treatment from the University of Rochester, Case Western Reserve University, and the Institute of Living/Hartford Hospital. He has published widely on this topic in peer-reviewed journals and in three textbooks published by the American Psychiatric Association, including the chapter on Gender Identity Disorders in Adults in the medical text entitled Treatments of Psychiatric Disorders (Glen Gabbard, M.D., ed., 3rd Ed. 2001). He is a co-author of WPATH's Standards of Care for Gender Identity Disorders, 5th Version, a consultant on the 6th Version, and a member of the Revision Committee for the 7th Version. He authored the portion of the Standards of Care addressing care for prison inmates with GID. In addition to his research and writing on

GID topics, Dr. Brown has seen over 500 clients with transgender concerns over the past 30 years, and has expertise in both their psychiatric and hormonal treatment.

D. Walter Kautzky, M.S.

Mr. Kautzky's correctional career spans forty years and includes experience in all aspects of prison and jail operations and administration. He has served as Director of the Iowa Department of Corrections, Executive Director of the Colorado Department of Corrections, Deputy Secretary and Director of Prisons for the Washington State Department of Corrections, and Deputy Secretary of the North Carolina Department of Corrections. He has been a member of the American Correctional Association for over 30 years. He is currently a consultant and trainer on prison issues including safety and security, classification procedures, conditions of confinement, special management inmates, and services for mentally ill inmates. His decades of professional management and administrative experience in operating correctional facilities have included working to address the needs of transgender inmates in North Carolina, Washington, and Hawaii. Mr. Kautzky has a Master of Science degree in Criminal Psychology. He recently completed an article, *Facility Design – Its Critical Role in Preventing Sexual Assault* for publication by the Bureaus of Justice Statistics and has published other articles on corrections.

E. Eugene Atherton, B.A.

Mr. Atherton is the President of Correctional Consulting Services Group, LLC, a criminal justice consulting service agency that provides direction to clients on correctional issues including security auditing, conditions of confinement, and management of high risk inmates. He recently completed 27 years of correctional public

service, most recently serving as the Assistant Director of Prisons – Western Region for the Colorado Department of Corrections. He previously served as Warden of Colorado State Penitentiary, Warden of Buena Vista Correctional Facility (Colorado), and Security Specialist for the Colorado Department of Corrections. He has edited and co-authored several publications relating to prison security and use of force, including the American Correctional Association publication *Guidelines for the Development of A Security Program*.

F. Daniel Claiborn, Ph.D.

Dr. Claiborn has a Ph.D. in psychology and is a licensed psychologist in Kansas and Missouri. He has provided individual, marital/family, and group psychotherapy services for 36 years and forensic psychology services for 25 years. He is a member of the American Psychological Association and the Kansas Psychological Association, and is the Ethics Chair for KPA. He has served twice as President of the Kansas Association of Professional Psychologists, and has taught in graduate psychology programs. He is an instructor at the Johnson County Regional Police Academy. Since 1985, he has provided counseling to approximately 50 transgender clients, and has given several hospital presentations on Gender Identity Disorder.

5. LIST OF EXHIBITS

Plaintiffs' Exhibit List²

Exhibit	Exhibit No.
Executive Directive #68	2
E-mail chain ending with e-mail from Dr. Kallas to Dr. Burnett et al., dated 1-23-06	7
E-mail chain ending with e-mail from Dr. Kallas to Alexander Stolarski, dated 1-10-06, with attached memo	8
E-mail chain ending with e-mail from Dr. Kallas to James Greer, dated 1-27-05	10
E-mail chain ending with e-mail from Dr. Kallas to Lucie Widzinski-Pollock, dated 3-1-05	11
E-mail from Dr. Kallas to Robert Margolies, dated 12-18-05	12
Memorandum from the Department of Correction to the Governor's Office, dated 12-14-05, analyzing AB 184	13
Document entitled Gender Identity Disorder	14
E-mail chain ending with e-mail from Joseph Hoey to Robert Margolies, dated 9-27-05, Margolies' handwritten notes on reverse side.	15
Letter from Matthew Frank to Rep. Dean Kaufert, dated 10-19-04	16
Outline of Dr. Kallas's March 2005 testimony before the Senate Committee	17
E-mail chain ending with e-mail from Sara Coleman to Dr. Kallas, dated 1-13-06	20
Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders, Sixth Version, February, 2001	21
Document titled "Top 100 by Cost 2004" listing drug names, quantity dispensed and total cost of the drugs	22
2005 Wisconsin Act 105	24
Memo from Steve Casperson to Dr. Burnett and Dr. Kallas re AB 184, dated 1-6-06	29
Memos from Dr. David Burnett to Joseph/Nygren and Kaplan/Edwards, dated 1-11-06	30
Chain of emails Bates stamped 001231-001234	32
Listing of paid hospital claims	33
Letter from Jim Greer to Kari Sundstrom, dated 1-12-06	36

² Both parties reserve their rights to object to the admission of the documents on the two lists. They will, however, attempt to reach stipulations as to admission of some documents prior to the pre-trial conference. The parties also reserve the right to use additional documents for impeachment purposes.

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<i>Curriculum Vitae</i> for Dr. Randi Ettner	525
Dr. Randi Ettner's Expert Report 6/28/06	526
Dr. Randi Ettner's Expert Report 6/22/07	527
E-mail updates to <i>Curriculum Vitae</i> for Dr. Randi Ettner	528
Dr. Fred Ettner's Expert Report	529
<i>Curriculum Vitae</i> for Dr. Fred Ettner	530
Portions of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition – Text Reference (2001) (cover; Transvestic Fetishism diagnosis)	232
August 29, 2007 written confirmation from DOC Probation/Parole Agent Gwen E. Luedcke, regarding Lindsey Blackwell's extended supervision status, including Rules of Community Supervision dated 7/15/07 and Probation/Parole Rules dated 10/25/06	233
Kari Sundstrom's rules of extended supervision, as provided by Ms. Sundstrom's Department of Corrections agent Matt Hanneman	234
All pleadings in the case State of Wisconsin v. Kari S. Sundstrom (Dane County Circuit Court Case No. 2007-CF-0755)	235
September 2007 Declaration of Kenneth Krebs, a/k/a Karen Krebs	238
American Medical Association, Complete Medical Encyclopedia, Random House Reference, New York, NY, 2003 [entries on "gender-identity disorder," "sex change," and "transsexualism"]	600

Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Saunders (imprint of Elsevier Science (USA)), 2003 [entries on "gender identity disorder," "transsexual," "transsexualism"]	601
The Merck Manual Second Home Edition (online), http://www.merck.com/mmhe/print/sec07/ch104/ch104b.html , [entry for "Gender Identity."]	602
The Dictionary of Medical Terms, Fourth Edition, by Peter Collin, Bloomsbury Publishing, London, 2004 [entries for "gender identity disorder," "gender reassignment surgery," and "gender reorientation."]	603
The Sloane-Dorland Annotated Medical-Legal Dictionary, Richard Sloane, 1987, West Publishing Company [entries for "dysphoria, gender," "gender [change]," "reassignment, sex," and "transsexualism."]	604
The Sloane-Dorland Annotated Medical-Legal Dictionary, 1992 Supplement, by Richard Sloane, 1992, West Publishing Company [entries for "dysphoria, gender," and "identity, gender."]	605
Milwaukee Journal Sentinel article – April 4, 2005, “Lawmakers discuss blocking gender treatments in prison” – Bates no. 001078	606
Wisconsin Dept. of Administration, Division of Executive Budget and Finance, Fiscal Estimate – 2005 Session, LRB Number 05-1941/2 – Bates nos. 001031-32	607
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Richard Green & Ray Blanchard, <u>Gender Identity Disorders</u> , in Kaplan & Sadock's Comprehensive Textbook of Psychiatry (Benjamin J. Sadock, M.D. & Virginia A. Sadock, M.D. eds, 2000).	610
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Defendants' Exhibit List

- 220 Expert report of Daniel C. Claiborn, Ph.D.
- 245 Vita of Daniel C. Claiborn, Ph.D.
- 202 Expert report of Eugene Atherton
- 205 Resume of Eugene Atherton
- 529 Expert report of Fred Ettner, M.D.

- 526 Expert report of Randi Ettner, Ph.D.
- 527 Second expert report of Randi Ettner, Ph.D.
- 516 Expert report of George Brown, Ph.D.
- 500 Expert report of Walter (Kip) Kautzky
- 1000 Certified copy of Judgment in a Criminal Case, U.S. District Court Southern District of Georgia, Case No. CR201-00033-001
- 1001 Certified copy of conviction, Dane County, Wisconsin, Case No. 93 CF 30
- 1002 Certified copy of Judgment of Conviction, Milwaukee County, Wisconsin Case No. 2006CF001336
- 1003 Certified copy of Judgment of Conviction, Winnebago County, Wisconsin Case No. 2004CF000438
- 1004 Certified copy of Amended Judgment of Conviction, Winnebago County, Wisconsin Case No. 2004-CF000438
- 1005 Certified copy of Judgment of Conviction, Winnebago County, Wisconsin Case No. 2003CF000308 (Sentence Withheld, Probation Ordered)
- 1006 Certified copy of Judgment of Conviction, Winnebago County, Wisconsin Case No. 2003CF000308 (After Revocation of Probation Sentence to Wisconsin State Prisons and Extended Supervision)
- 1007 Certified copy of Abstract of Judgment, The State of Indiana v. Vankemah D. Moaton, Cause No. 49-G06-9809-CF-15 1852
- 1008 Certified copy of Judgment of Conviction, Milwaukee County, Wisconsin Case No. 2005CF001382
- 1009 Certified copy of U.S. District Court, Western District of Wisconsin Case No. 3 :97CR00008-001
- 21 Harry Benjamin Gender Dysphoria Association standards of care for gender identity disorder, 6th version, dated February 2001
- 521 Need for Revisions to the Version 6 Standards of Care Section on Incarcerated Persons with GID (draft)
- 24 2005 WI Act 105
- 2 Executive Directive 68
- 261 Letter dated January 12, 2006 to Lindsey Blackwell #417632 from Jim Greer and Kevin Kallas, MD
- 1010 Letter dated January 12, 2006 to Andrea Fields #279429 from Jim Greer and Kevin Kallas, MD
- 36 Letter dated January 12, 2006 to Kari Sundstrom #243955 from Jim Greer and Kevin Kallas, MD
- 1011 Portions of deposition transcript of Lindsay Blackwell. May 2, 2006
- 1012 Portions of deposition transcript of Andrea Fields, May 3, 2006
- 1013 Portions of deposition transcript of Kari Sundstrom, May 3, 2006
- 1014 Portions of deposition transcript of Matthew Davison, June 20, 2007
- 1015 Portions of deposition transcript of Vankemah Moaton, June 21, 2007
- 1016 Portions of deposition transcript of Walter Kautzky, May 31, 2007

6. DESIGNATION OF DEPOSITIONS TO BE READ INTO RECORD AS SUBSTANTIVE EVIDENCE³

Plaintiffs' Proposed Deposition Designations:

Deposition of David Burnett:

p. 6: line 12-13

p. 9: lines 9-19

p. 36: line 12 to p. 37: line 14

Defendants' Response: No foundation. Dr. Burnett is not an expert in GID or the Harry Benjamin standards.

p. 39: lines 16 – 23

Defendants' Response: No foundation. Dr. Burnett is not an expert in GID or the Harry Benjamin standards.

p. 46: line 13 to p. 47: line 14

Defendants' Response: Add lines 15-23.

p. 54: line 22 to p. 55: line 23

Defendants' Response: No foundation.

p. 89: lines 5-13

Defendants' Response: No foundation. If there is foundation, add lines 14-20.

p. 91: lines 9-15

p. 98: line 8 to p. 99: line 3

p. 99: lines 13-17

p. 121: line 1 to p. 122: line 2

p. 133: line 5 to p. 134: line 23

Deposition of Judy Smith:

p 8, lines 4-8

p 13, lines 10-23

p 16, line 15-25 through p 17, line 5

p 20, lines 4-25

p 27, line 25 through p 28, line 8

p 29, lines 14-24

³ Both parties reserve their rights to object to the deposition designations on the two lists, but will attempt to reach stipulations prior to trial.

Defendants' Response: Add 6-13.

p 35, lines 14-23

Defendants' Response: Add 8-13

p 37, lines 10-22

p 44, lines 8-18

p 49, lines 6-12

p 51, lines 2-13

p 54, lines 7-14

Defendants' Response: Add 15-20.

p 57, lines 17-22

p 59, lines 15-17 & 21-25

Deposition of James Greer:

p. 5: lines 21-25

p. 13: lines 10-20

p. 33: line 22 to p. 34: line 12

p. 38: line 10 to p. 39: line 1

p. 41: lines 8-24

p. 47: line 17 to p. 48: line 10

p. 51: line 22 to p. 52: line 3

Deposition of Sharon Zunker:

p. 13: line 19 to p. 14, line 4

p. 37: line 8 to p. 38, line 1

p. 28: line 14 to p. 29, line 19

Deposition of Robert Margolies:

p. 8: line 20 to p. 9: line 3

p. 25: line 23 to p. 26: line 24

p. 35: lines 6-25

p. 36: lines 13-21

p. 56: lines 12-19

p. 60: lines 5-13

Defendants' Proposed Deposition Designations:

1. Lindsay Blackwell, May 2, 2006, Depo. at p. 35, l. 10-25; p. 36, l. 1-15.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Lindsey Blackwell's deposition transcript, on the condition that the Defendants agree to the

admission of the following additional portions of the transcript: p. 35, ll. 7-9; p. 38, ll. 5-21.

2. Lindsay Blackwell, May 2, 2006, Depo. at p. 45, l. 1-25; p. 46, l. 1-2.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Lindsey Blackwell's deposition transcript.

3. Andrea Fields, May 3, 2006, Depo. at p. 75, l. 15-25; p. 76, l. 1-24.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Andrea Fields' deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p.37, ln. 4-25; p. 38, ln. 1-3; p. 41, ln. 19-24

4. Andrea Fields, May 3, 2006, Depo. at p. 81, l. 19-25; p. 82, l. 1-5.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Andrea Fields' deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p. 82, ln. 6-10.

5. Kari Sundstrom, May 3, 2006, Depo. at p. 21, l. 13-22.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Kari Sundstrom's deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p. 22, ln. 15-16.

6. Kari Sundstrom, May 3, 2006, Depo. at p. 36, l. 19-24.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Kari Sundstrom's deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p. 36, ln. 25; p. 37, ln. 1-8.

7. Matthew Davison, June 20, 2007, Depo. at p. 33, l. 11-20.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Matthew Davison's deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p. 23, lines 3-11, 15-21, 25; p. 24, lines 1-8; p. 28, lines 2 1-25; p. 29, lines 1-6.

8. Matthew Davison, June 20, 2007, Depo. at p. 43, l. 6-25; p. 44, l. 1-25; p. 45, l. 1-25; p. 46, l. 1-25; p. 47, l. 1-6.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Matthew Davison's deposition transcript.

9. Vankemah Moaton, June 21, 2007, Depo. at p. 27, l. 16-25; p. 28, l. 1-25; p. 29, l. 1.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Vankemah Moaton's deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p. 27, ll. 8-15; p. 29, ll. 2-14.

10. Vankemah Moaton, June 21, 2007, Depo. at p. 41, l. 13-25.

Plaintiffs' Response: Plaintiffs do not oppose a designation of this portion of Vankemah Moaton's deposition transcript, on the condition that the Defendants agree to the admission of the following additional portions of the transcript: p. 42, ll. 1-9.

11. Walter Kautzky, May 31, 2007, Depo. at p. 33, l. 2-25; p. 34, l. 1-25; p. 35, l. 1.

Plaintiffs' Response: Plaintiffs object to this designation pursuant to F.R.E. 802 (hearsay) and F.R.E. 403 (cumulative, waste of time, more prejudicial than probative).

12. Walter Kautzky, May 31, 2007, Depo. at p. 48, l. 13-25; p. 49, l. 1-25; p. 50, l. 1-25; p. 51, l. 1-2.

Plaintiffs' Response: Plaintiffs object to this designation pursuant to F.R.E. 802 (hearsay) and F.R.E. 403 (cumulative, waste of time, more prejudicial than probative).

13. Walter Kautzky, May 31, 2007, Depo. at p. 63, l. 25; p. 64, l. 1-4.

Plaintiffs' Response: Plaintiffs object to this designation pursuant to F.R.E. 802 (hearsay) and F.R.E. 403 (cumulative, waste of time, more prejudicial than probative).

14. Walter Kautzky, May 31, 2007, Depo. at p. 155, l. 1-17.

Plaintiffs' Response: Plaintiffs object to this designation pursuant to F.R.E. 802 (hearsay) and F.R.E. 403 (cumulative, waste of time, more prejudicial than probative).

15. Walter Kautzky, May 31, 2007, Depo. at p. 161, l. 6-11.

Plaintiffs' Response: Plaintiffs object to this designation pursuant to F.R.E. 802 (hearsay) and F.R.E. 403 (cumulative, waste of time, more prejudicial than probative).

16. Walter Kautzky, May 31, 2007, Depo. at p. 161, l. 24-25; p. 162, l. 1-6.

Plaintiffs' Response: Plaintiffs object to this designation pursuant to F.R.E. 802 (hearsay) and F.R.E. 403 (cumulative, waste of time, more prejudicial than probative).

17. Judy Smith Depo. at p. 51, l. 14-25; p. 52, l. 1-7.

18. Judy Smith Depo. p. 58, l. 10-17.

7. ESTIMATE OF TIME NEEDED TO TRY CASE

Counsel for the parties believe that this case should take no more than five days to try.

8. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties, after consultation, arrived at stipulations as to certain facts. The parties also submit separate proposed findings of facts and conclusions of law.

STIPULATED FACTS

The parties stipulate that the following facts may be deemed established:

1. Kari Sundstrom, a male-to-female transsexual⁴, was designated male at birth but has a female gender identity.
2. DOC has diagnosed Ms.⁵ Sundstrom with Gender Identity Disorder ("GID").
3. In 1990, Ms. Sundstrom began hormone therapy as treatment for her GID. After she became incarcerated in 2003, DOC confirmed her GID diagnosis and continued her hormone therapy.
4. In 2006, because of the passage of Act 105, DOC began to taper Ms. Sundstrom's hormone therapy by halving the dosage. As a result of the reduction, Ms. Sundstrom experienced mood swings, hot flashes, severe headaches, bloating, and crying fits.

⁴Although there are some subtle differences in the way different sources define transsexual, Plaintiffs use the word here to describe persons with severe Gender Identity Disorder who have a serious medical need for hormone therapy or sex reassignment surgery. Defendants do not stipulate to this definition.

⁵ The parties have agreed to refer to Plaintiffs using female pronouns and titles throughout the course of this proceeding. By doing so, Defendants and the DOC do not concede that Plaintiffs or any other person identified as transgender, transsexual, or suffering from GID should be so addressed in the correctional system.

5. The reinstatement of Ms. Sundstrom's hormone therapy because of the preliminary injunction in this action led to an abatement of her withdrawal symptoms.
6. Ms. Sundstrom was released from prison on December 12, 2006, but remains on extended supervision. There are conditions on her supervision and her violation of them may be the basis for her being reincarcerated.
7. VINELink, the online version of VINE (Victim Information and Notification Everyday), the National Victim Notification Network, in which DOC participates, lists Ms. Sundstrom as having “absconded.” On April 20, 2007, a criminal complaint against Ms. Sundstrom was filed in Dane County Circuit Court. A felony warrant issued the same day.
8. Andrea Fields is a male-to-female transsexual in DOC custody at Green Bay Correctional Institution (GBCI).
9. DOC has diagnosed Ms. Fields with GID.
10. Ms. Fields has received feminizing hormone therapy continuously since 1996. In 2003, Ms. Fields underwent breast augmentation as a component of her gender transition. After she became incarcerated in 2005, DOC confirmed her GID diagnosis and continued her hormone therapy.
11. In 2006, because of the passage of Act 105, DOC began to taper Ms. Fields’ hormone therapy by halving the dosage. As a result of the reduction, Ms. Fields experienced nausea, muscle weakness, loss of appetite, increased hair growth, skin bumps and depression.
12. The reinstatement of Ms. Fields' hormone therapy because of the preliminary injunction in this action led to an abatement of her withdrawal symptoms.

13. Lindsey Blackwell is a male-to-female transsexual.
14. When she was around 12 years old, Ms. Blackwell tried to commit suicide as a result of her transsexualism.
15. DOC has diagnosed Ms. Blackwell with GID.
16. In 1998, Ms. Blackwell was first diagnosed with GID and began hormone therapy as treatment for that condition.
17. DOC provided her with hormone therapy during her incarceration.
18. After DOC reduced her hormone therapy because of Act 105, Ms. Blackwell began experiencing mental and physical changes, including emotional fluctuation and changes in breast sensation.
19. The reinstatement of Ms. Blackwell's hormone therapy because of the preliminary injunction in this action led to an abatement of her withdrawal symptoms.
20. Ms. Blackwell was released from prison on October 10, 2006, but remains on extended supervision. There are conditions on her supervision and her violation of them may be the basis for her being reincarcerated.
21. Matthew Davison, a/k/a Jessica Davison, is a male-to-female transsexual in DOC custody at OSCI.
22. DOC has diagnosed Ms. Davison with GID.
23. Prior to receiving hormone therapy, Ms. Davison attempted to kill herself by jumping off a roof.
24. Ms. Davison was first diagnosed with GID in 2005 and began hormone therapy as treatment for that condition shortly thereafter. DOC has provided her with hormone therapy during her incarceration.

25. After she arrived at Dodge Correctional Institution, DOC began to withdraw Ms. Davison's hormone therapy because of Act 105. As a result of that withdrawal, Ms. Davison experienced increased and darker hair growth; voice deepening; breast reduction and leaking; mood swings; mental and emotional instability; hot flashes; and body aches.
26. The reinstatement of Ms. Davison's hormone therapy because of the preliminary injunction in this action led to an abatement of her withdrawal symptoms.
27. Vankemah Moaton is a male-to-female transsexual in DOC custody at Jackson Correctional Institution (JCI).
28. DOC has diagnosed Ms. Moaton with GID.
29. Ms. Moaton has experienced suicidal ideation in the past, including when she was removed from hormone therapy.
30. Ms. Moaton began taking feminizing hormone therapy in 2000 and has continued to receive that treatment during her DOC incarceration.
31. After she entered DOC custody, DOC began to withdraw Ms. Moaton's hormone therapy because of Act 105. As a result of that withdrawal, Ms. Moaton started growing hair on her chest and face, developing tenderness in her chest and groin, and experiencing skin breakouts, hot flashes and depression.
32. The reinstatement of Ms. Moaton's hormone therapy because of the preliminary injunction in this action led to an abatement of her withdrawal symptoms.
33. All of the Plaintiffs have, to varying degrees, feminine physical characteristics as a result of their hormone usage.
34. Defendant Matthew J. Frank was, at the time this action was filed, the Secretary of the State of Wisconsin Department of Corrections. The current Secretary of DOC is

Richard Raemisch.

35. Defendant James Greer is the Director of the DOC Bureau of Health Services.

36. Defendant Judy P. Smith is the Warden at Oshkosh Correctional Institution ("OSCI").

37. Defendant Thomas Edwards was the Health Services Unit Manager of the OSCI Health Services Unit until May 11, 2007. The position is currently vacant.

38. GID is classified as a psychiatric disorder in DSM-IV-TR, the current edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"). GID has been included in the DSM since the third edition of that manual, which was published in 1980. In prior editions, the DSM classified "transsexualism" as a psychiatric disorder.

39. The following diagnostic criteria are listed in the DSM for GID: 1) a strong and persistent cross-gender identification; 2) a persistent discomfort with one's sex or a sense of inappropriateness in the gender role of that sex; 3) the disturbance is not concurrent with a physical intersex condition; and 4) the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

40. Matthew Davison, a/k/a Jessica Davison, has used a female name since childhood. At school, Andrea Fields acted like a girl, talked like a girl, walked like a girl, wore makeup, and had a feminine hairstyle. Kari Sundstrom and Lindsey Blackwell expressed themselves as girls well before starting hormones. Vankemah Moaton started behaving in a feminine manner prior to age eight. Kenneth, a/k/a Karen Krebs, a male-to-female transsexual in DOC custody, cross-dressed as a child and adolescent. Erik Huelsbeck, a/k/a Erika Huelsbeck, dressed as a girl for "dressed-up" day at school and other times, sometimes publicly.

41. DOC administrative personnel agree that deference on health care matters should be given to DOC health care staff.
42. While in a DOC prison, Lindsey Blackwell shaved her body, arched her eyebrows, let her fingernails grow, and wore her hair in a feminine style.
43. DOC sometimes prescribes hormone therapy for reasons that do not have to do with GID, such as estrogen replacement therapy in post-menopausal years, or for inmates with a congenital or hormonal disorder that requires the administration of hormone therapy.
44. The legislative sponsors of Act 105 labeled it the “Inmate Sex Change Prevention Act.” They issued multiple press releases prior to its passage stating that it was intended to prevent “bizarre taxpayer funded sex change procedures” and to stop the DOC policy of “[allowing] pharmacists within the correction system to give hormones to an inmate diagnosed with gender identity disorder.”
45. The only correctional or medical expertise offered during the legislative hearings regarding Act 105 was that of Defendants' correctional medical personnel, Dr. Kevin Kallas and Dr. David Burnett.
46. No other DOC representative testified before the legislature regarding Act 105. No one other than legislators spoke in support of the bill that became Act 105.
47. An earlier draft of Act 105 made explicit reference to GID, banning the use of DOC funds "to provide or facilitate the provision of hormonal therapy or sexual reassignment surgery for the treatment of gender identity disorder."
48. Several of the press releases issued by the sponsors of Act 105 specifically noted that the issue of sex reassignment treatment for inmates came to light when they learned

that a Wisconsin transgender inmate was receiving treatment that led her to develop “female characteristics, such as breasts.”

49. While SRS is more expensive than hormone therapy, DOC provides surgeries of equal or greater cost, such as organ transplant and open heart surgical procedures, when medically necessary.

50. Genital sex reassignment surgery costs approximately \$20,000. The most expensive surgical procedures provided to inmates by Defendants include organ transplants, such as liver, kidney and pancreas transplants, and open heart surgical procedures. In 2005, Defendants paid \$37,244.09 for one coronary bypass surgery and \$32,897.00 for one kidney transplant surgery.

51. The Fiscal Estimate prepared for AB-184, the bill that became Act 105, noted that the Defendants paid a total of \$2300 for cross-gender hormone therapy for two inmates with GID in 2004. Such hormone therapy for inmates with GID costs Defendants approximately \$300 to \$1000 per inmate per year. A second-generation antipsychotic, Quetiapine, costs approximately \$2555 to 2920 per inmate per year on average, and, in 2004, the Defendants paid approximately \$2.5 million for inmates to have Quetiapine. Another second-generation antipsychotic, Risperidone, costs approximately \$2555 per inmate per year on average.

52. Act 105 has prevented DOC from undertaking thorough evaluations of at least two inmates to determine whether hormone therapy is medically necessary and appropriate for them.

53. Erik Huelsbeck, a/k/a Erika Huelsbeck, was continuously in facilities administered by DOC from December 2004 until she was transferred to the Wisconsin

Resource Center in July 2007. Ms. Huelsbeck was first diagnosed with GID by DOC in 2006. She has not been evaluated to determine whether she will be prescribed hormone therapy, nor could she receive such treatment, because of Act 105. Similarly, Ms. Krebs has been diagnosed with GID by DOC. However, she has not been evaluated to determine whether she will be prescribed hormone therapy, nor could she receive such treatment, because of Act 105.

54. Ms. Sundstrom was in general population for the bulk of her DOC prison sentence.

55. The other Plaintiffs have been in DOC general population for most of their sentences.

56. When OSCI identifies inmates who are more likely to be victims of violence by other prisoners, or more likely to perpetrate violence, it takes steps to address that through closer monitoring or placing the inmate in a different housing unit.

57. DOC does not permit inmates to pay for their own health care or to seek insurance coverage, as non-inmates could, so Act 105 bars the only avenue for inmates with GID to receive hormone therapy and/or sex reassignment surgery.

58. Neither the Department of Corrections as a whole, nor any of the Defendants had any involvement in the drafting of, or the introduction of any of the bills that became Act 105.

59. OSCI has 11 different housing units. One is a dormitory setting and houses 148 inmates. Two are wet cell units – they have toilet and shower facilities in the cell. The remaining nine have group bathrooms. The non-dormitory units have between 160-200 inmates each. The majority of the inmates in those units are double-celled.

PARTIES' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties will submit this date their separate proposed findings of fact and conclusions of law.

Dated this 2nd day of October, 2007.

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