

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

JOHN DOE 1; JOHN DOE 2; JOHN DOE 3;
JOHN DOE 4; JOHN DOE 5; JOHN DOE 6;
and JOHN DOE 7, on behalf of themselves and
a class of all others similarly situated,

CLASS ACTION

Plaintiffs,

Case No. 13- 1196 -CZ

vs.

Hon. Carol Kuhnke

MICHIGAN DEPARTMENT OF CORRECTIONS ("MDOC");
RICK SNYDER, Governor of the State of Michigan;
DANIEL H. HEYNS, Director, Michigan Department of Corrections;
THOMAS FINCO, Deputy Director of MDOC Correctional Facilities Administration;
DENNIS STRAUB, former Deputy Director of MDOC Correctional Facilities Administration;
RANDY TREACHER, Chief Deputy Director of MDOC Correctional Facilities Administration;
WILLIE SMITH, Warden of Carson City Correctional Facility;
HEIDI WASHINGTON, Warden of Charles Egeler Reception and Guidance Center;
MARY BERGHUIS, Warden of Earnest C. Brooks Correctional Facility;
PAUL KLEE, Warden of Gus Harrison Correctional Facility;
JOHN PRELESNIK, Warden of Richard A. Handlon Correctional Facility;
CATHLEEN STODDARD, Warden of Richard A. Handlon Correctional Facility;
CINDI S. CURTIN, Warden of Oaks Correctional Facility;
DAVID BERGH, Warden of Thumb Correctional Facility;
JEFFREY WOODS, Warden of Chippewa Correctional Facility;
ROBERT NAPEL, Warden of Marquette Branch Prison; and
KENNETH MCKEE, Warden of Bellamy Creek Correctional Facility,
Jointly and severally,

Defendants

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A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, where it was given docket number 13-1049-CZ and was assigned to Judge Kuhnke. The action is no longer pending.

In addition, a civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in the Eastern District of Michigan and was assigned to Judge Cleland. The action remains pending.

COMPLAINT AND JURY DEMAND

Plaintiffs on behalf of themselves and all others similarly situated, allege as follows:

INTRODUCTORY STATEMENT

1. This proposed class action lawsuit is pursued on behalf of children confined in adult prisons operated by the Michigan Department of Corrections (MDOC). During the last three years, at least 500 children ranging in age from 14-17 ("youthful prisoners") have been incarcerated in MDOC's adult prisons for sentences of a year or more.

2. During their imprisonment, these youth have been housed in cells with adult prisoners, and have been forced to shower, eat, recreate and work with adult prisoners without

adequate supervision to ensure their safety and without regard to their status as children. Male youthful prisoners incarcerated in the adult prisons are also subject to body searches and viewing by female staff while showering and performing basic bodily functions.

3. MDOC is and was on notice that incarcerating youth in adult prisons without regard to their vulnerable child status subjects youthful prisoners to heightened and substantial risk of physical and sexual violence and abuse and sexual harassment at the hands of adult prisoners and prison staff.

4. Placing children in adult prisons without regard to their youthful status and vulnerability has resulted in increased punishment and degrading treatment through the use of tasers, solitary confinement and deprivation of rehabilitative programming and educational services.

5. Defendants' policy and practice of housing youthful and adult prisoners together without taking adequate steps to protect youth from a known harm constitutes deliberate indifference to their safety.

6. Congress enacted the Prison Rape Elimination Act (PREA) a decade ago after recognizing the harm to youth placed in adult facilities. PREA requires state prisons to keep any prisoners under the age of 18, who are housed in adult facilities, separate by sight and sound from adult prisoners.

7. As a result of Defendants' policies and practices, the proposed class, including Plaintiffs, have suffered and are at an imminent risk of suffering irreparable harm, including but not limited to physical injuries, sexual violence and abuse, severe emotional distress and mental trauma, degrading treatment, lengthened periods of incarceration, solitary confinement and deprivation of basic educational and rehabilitative services.

JURISDICTION AND VENUE

8. This action is brought pursuant to the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2301 et seq. The amount in controversy exceeds twenty five thousand (\$25,000) dollars, excluding interest and costs.

9. This Court has personal jurisdiction over the Defendants named herein because each is a public official of the State of Michigan who is sued in his or her individual and/or official capacity in order to enforce the performance of his or her official duties, and the State consented to be sued for violations of ELCRA.

10. Venue is proper in this Court because MDOC operates facilities in Washtenaw County and several of the individual Defendants reside and/or do business in Washtenaw County.

PARTIES

A. PLAINTIFFS

11. Plaintiff representatives are citizens of the United States and at all relevant times were children imprisoned in facilities under the jurisdiction of the MDOC. Plaintiffs bring this action on behalf of themselves and a class of youthful prisoners who are, were, or will be confined in adult prisons in Michigan and who have been or will be subjected to sexual and physical assaults and abuse, sexual harassment, and degrading treatment from adult prisoners and staff as a result of incarceration in adult prisons without adequate supervision, separation from adult prisoners, or treatment consistent with their status as children. Plaintiffs seek relief for themselves and for members of the class.

B. DEFENDANTS

12. All individual defendants are sued in their individual and official capacities.

13. Defendant MDOC is a Department of the State of Michigan and with the Defendant Governor, is responsible for the care and custody of youthful prisoners incarcerated in prisons in the State of Michigan. Defendant MDOC and Defendant Governor have the responsibility, authority and ability to remedy current and future conditions at facilities housing youthful prisoners that have given rise to the sexual and physical abuse and assaults, degrading treatment and deprivation of rights as set forth in this complaint.

14. Defendant Rick Snyder is the Governor of the State of Michigan and is invested with executive power pursuant to Art. V, Section 1 of the Michigan Constitution. Defendant Snyder, with the management of the Michigan Department of Corrections, is responsible for the care and custody of youthful prisoners in the State of Michigan, and has the responsibility, authority and ability to remedy current and future conditions at facilities housing youthful prisoners that have given rise to and continue to pose a substantial risk of sexual and physical abuse and assaults, degrading treatment and deprivation of rights as set forth in this complaint.

15. Defendant Daniel H. Heyns, (“Heyns”) is the Director of the Michigan Department of Corrections. His duties and responsibilities include a responsibility for developing and implementing policies and procedures for the operation and management of the Michigan Department of Corrections and its employees. He is responsible for the care, custody and protection of prisoners under the jurisdiction of the Michigan Department of Corrections.

16. Defendant Thomas Finco (“Finco”) is the Deputy Director of the MDOC’s Correctional Facilities Administration (CFA), and has served in that capacity since October 1, 2011. Defendant Finco’s duties and responsibilities include the operation of all correctional

institutions in the MDOC system, including promulgating and administering MDOC's policies related to the placement and custody of individual prisoners at MDOC facilities.

17. Defendant Dennis Straub ("Straub") was the Deputy Director of the CFA before October 1, 2011. His duties and responsibilities included the promulgation and administration of MDOC policies, including custodial placement and the custody and protection of youthful prisoners at their respective facilities during his tenure.

18. Defendant Randy Treacher ("Treacher") is the Chief Deputy Director of the CFA. His duties and responsibilities include the supervision of Defendants Straub and Finco during their respective tenures.

19. Defendants MDOC, Governor Snyder, Heyns, Finco, Straub and Treacher are collectively referred to in this action as "Policymaker Defendants."

20. The individual Warden Defendants were, at all relevant times, wardens at MDOC facilities where the named Plaintiffs have been housed with adult prisoners and have been subject to the harm and injuries set forth herein. At all relevant times the Warden Defendants were responsible for the training, assignment and supervision of staff at their respective facilities, as follows:

a. WILLIE SMITH, Warden of Carson City Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOE 5.

b. HEIDI WASHINGTON, Warden of Charles Egeler Reception and Guidance Center, was and is responsible for the unlawful treatment and conditions involving JOHN DOES 3, 6 and 7.

c. MARY BERGHUIS, Warden of Earnest C. Brooks Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOE 5.

d. PAUL KLEE, Warden of Gus Harrison Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOE 6.

e. JOHN PRELESNIK, Warden of Richard A. Handlon Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOES 1 and 6.

f. CATHLEEN STODDARD, Warden of Richard A. Handlon Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOES 1 and 6.

g. CINDI S. CURTIN, Warden of Oaks Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOE 2.

h. DAVID BERGH, Warden of Thumb Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOES 2, 3, 4 and 5.

i. JEFFREY WOODS, Warden of Chippewa Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOES 3 and 5.

j. ROBERT NAPEL, Warden of Marquette Branch Prison, was and is responsible for the unlawful treatment and conditions involving JOHN DOE 6.

k. KENNETH MCKEE, Warden of Bellamy Creek Correctional Facility, was and is responsible for the unlawful treatment and conditions involving JOHN DOE 1.

21. The above-named wardens will be collectively referred to herein as the “Warden Defendants.”

22. In their capacity as wardens, Warden Defendants’ duties and responsibilities include the training, assignment, supervision, discipline and investigation of correctional officers and MDOC employees.

23. The Warden Defendants are also responsible for the custody, safety, protection, fair treatment and rehabilitation of the youthful prisoners in their facilities and for ensuring that

the facilities housing youthful prisoners are operated according to proper correctional standards, statutes and/or laws to ensure the safety and protection of vulnerable populations, including Plaintiffs.

24. The Warden Defendants are also responsible for developing procedures and implementing policies to prevent the sexual abuse and degrading treatment of youthful prisoners and are also responsible for ensuring an adequate and effective mechanism for the safe and effective reporting of sexual and physical assaults and sexual harassment experienced by prisoners housed at their facilities.

25. The Warden Defendants are responsible for ensuring that youthful prisoners under their care and supervision are not deprived of rehabilitative or educational opportunities or subjected to retaliation and/or increased punishment due to their vulnerable status as youth.

CLASS ACTION ALLEGATIONS

26. This action is properly brought as a class action pursuant to M.C.R. 3.501. This action is brought by the named Plaintiffs on behalf of youthful prisoners who, since October of 2010, have been, are now, or will be hereafter incarcerated in adult correctional facilities under the jurisdiction of the Michigan Department of Corrections and who have been subjected to physical and sexual abuse, assaults, harassment and/or other degrading treatment by adult prisoners and/or MDOC custodial staff.

27. The number of youth who have been subject to these violations of their rights while under the jurisdiction of the MDOC since 2010 exceeds one hundred children. The number of class members is sufficiently numerous to make class action status the most practical method for Plaintiffs to challenge the policies, procedures and practices of Defendants that are a proximate cause of their ongoing abuse.

28. There are questions of law and fact raised by the named Plaintiffs' claims common to, and typical of, those raised by the Class they seek to represent.

29. Questions of law or fact common to the Class, without limitation, include:

- a. Defendants' failure to properly house youthful prisoners, failure to separate youthful prisoners from adult prisoners in MDOC facilities, and failure to provide adequate supervision to safeguard this vulnerable population resulting in sexual abuse and physical violence by adult prisoners;
- b. Defendants' failure to properly supervise, train, monitor, discipline, and/or regulate prison staff and failure to properly house and protect this vulnerable population resulting in sexual abuse and physical violence by adult prisoners and prison staff;
- c. Defendants' ongoing failure to promulgate and implement proper policies and procedures to identify and house vulnerable youthful prisoners to safeguard their protection from harm from sexual abuse, solitary confinement and deprivation of rehabilitative opportunities;
- d. Defendants' failure to adequately protect youth from a known risk of sexual abuse from adult prisoners and properly supervise, train, and discipline prison staff in violation of Plaintiffs' rights.

30. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class members.

31. Plaintiff Class representatives will fairly and adequately protect the interests of the Plaintiff class members. Plaintiffs' counsel know of no conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the

class representatives will vigorously prosecute the suit on behalf of the Class; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving issues of children, sexual assault, and/or prison conditions. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class.

32. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class.

33. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs.

FACTS

34. The State of Michigan places children as young as fourteen years of age in adult prisons under the supervision of the MDOC.

35. The MDOC has failed to separate youth under the age of 18 from adult prisoners, despite their obvious and substantial vulnerability to harm from adult prisoners. The MDOC has maintained a policy and procedure of placing 17 year old youths directly in cells and housing units with adult prisoners, despite their obvious and substantial vulnerability to harm from adult prisoners.¹

¹ Plaintiffs' Counsel has learned that in the weeks preceding filing of this complaint, some MDOC facilities have started to separate 17-year-olds from the adult population in some settings. The extent and scope of these efforts throughout the MDOC system is unclear.

36. The MDOC has failed to adequately separate or supervise youth aged 14-17 incarcerated with adult prisoners despite the promulgation of standards under the Prison Rape Elimination Act (PREA) requiring site and sound separation of youth under the age of 18 from adults. 42 U.S.C. § 15601 et seq.; 28 CFR 115.14.

37. PREA is a federal statute designed to address findings that youth are eight times more likely to be subjected to sexual violence and that youthful prisoners are five times more likely to be sexually assaulted in adult rather than juvenile facilities. PREA requires that any youth under the age of 18 shall not be placed in a housing unit in which the youthful inmate will have sight, sound or physical contact with any adult prisoners or use of a shared day room or other common space, shower area, or sleeping quarters.

38. Independent of the requirements of PREA, Defendants have failed to adequately consider youth and their obvious vulnerability in determining the proper placement, transfer, supervision and treatment of youth under their supervision.

39. In contravention of PREA, MDOC's own policies, and/or standard correctional practices, Defendants have placed vulnerable youth, including Plaintiffs, in adult prisons without separation by sight and sound from adult prisoners, without adequate supervision during contact with adults, and without procedures to protect youth, including Plaintiffs, from sexual victimization so as to ensure their safety and well-being.

40. Defendants' practice of using solitary confinement for the placement of youth, including Plaintiffs, without ensuring humane treatment, have failed to adequately protect Plaintiffs and constitutes a punishment for their vulnerability and/or reporting of abuse.

41. Defendants, without adequate procedures, training or supervision, have subjected youth to cross-gender searches, pat-downs and viewings while showering and performing basic bodily functions without taking adequate steps to protect their safety, privacy and rights.

42. Defendants have created and continued policies that fail to separate youthful and adult prisoners in showers, yard, programming, or eating areas, and fail to provide them with adequate supervision to prevent sexual victimization and assault.

43. Defendants, despite their knowledge and the obvious and apparent risks of placing youth in adult prisons, have failed to implement and effectuate policies, procedures and mechanisms to deter sexual and physical abuse against Plaintiffs and other youth under their supervision.

44. As a result of Defendants' acts and omissions in failing to safeguard vulnerable youth, including Plaintiffs, the plaintiffs in this case have all experienced some combination of sexual and physical abuse, harassment, and/or related violence from adult prisoners and/or staff in MDOC facilities in the last three years.

45. Defendants have aided and abetted the sexual abuse and misconduct by adult prisoners and staff by failing to take adequate steps to prevent and deter the violations of Plaintiffs' rights, by, among other acts and omissions, failing to adequately train, supervise, investigate and discipline staff who violated Plaintiffs' rights. Defendants' acts and omissions regarding screening, training, supervision, investigation and discipline surrounding the placement of youth in adult prisons and the sexual and physical abuse of these youths permitted and ratified the abusive behavior by adult male prisoners and by MDOC staff.

46. Defendants also knew or should have known that the placement of children in adult prisons without adequate separation from adult prisoners or supervision together with a

failure to properly train, regulate, supervise, monitor, discipline and adequately investigate complaints about MDOC staff would lead to sexual assaults, sexual harassment and violence against youthful prisoners, including Plaintiffs, housed in MDOC adult prisons.

47. Defendants' mechanisms for addressing grievances through an administrative process are ineffective and futile for Plaintiffs' claims as Defendants do not provide an adequate or available system for Plaintiffs to exhaust their claims administratively.

48. Plaintiffs are not allowed to file grievances challenging policies, procedures, placement, housing or custody, and Defendants do not provide an alternative administrative mechanism to exhaust the claims set forth in this Complaint.

49. A grievance cannot be instituted except through a written form and Defendants and their agents have consistently failed to ensure that Plaintiffs are provided grievance forms; Defendants and their agents have routinely refused to process grievances; and/or Defendants and their agents have regularly failed to ensure responses to grievances, rendering any administrative process for Plaintiffs unavailable or futile.

50. At all relevant times Plaintiffs were advised that a precondition to filing a grievance was consultation with the individual who was being grieved. Since complying with this requirement in the context of Plaintiffs grieving staff and adult prisoners' criminal sexual conduct and abuse would place Plaintiffs in grave danger, Defendants' requirements have rendered the grievance system unavailable to Plaintiffs.

51. Defendants, by policy and practice, have created barriers to the grievance system rendering the administrative process effectively unavailable to youth, including Plaintiffs.

52. Moreover, Plaintiffs were and are routinely discouraged from using the grievance system as a mechanism for addressing individual assaults and mistreatments, by threats and

intimidation by MDOC staff and other prisoners and by virtue of MDOC's own policies regarding grievances. MDOC's requirements for exhaustion are non-compliant with the Prison Rape Elimination Act and each Defendant has been sufficiently on notice of the existence of sexual abuse, degrading treatment and retaliation against youth, including Plaintiffs, to allow Defendants the opportunity to take remedial actions prior to Plaintiffs filing this action.

53. Plaintiffs as a purported class of children, including non-prisoners and next friends, need not exhaust administrative remedies prior to bringing this action.

STATEMENT OF FACTS RELATIVE TO
EACH NAMED PLAINTIFF AND CLASS REPRESENTATIVE

A. JOHN DOE 1

54. John Doe 1 is currently a prisoner at an adult prison under the jurisdiction of the MDOC.

55. John Doe 1 was incarcerated in an adult MDOC prison in early 2012 at age 17. Since that time, he has been housed in the Charles Egeler Reception and Guidance Center ("RGC"), the Richard A. Handlon Correctional Facility ("MTU"), and Bellamy Creek Correctional Facility ("IBC").

56. MTU Warden Defendant and Policymaker Defendants failed to separate John Doe 1 from adult prisoners despite his obvious vulnerability or take adequate precautions to protect him from assault and abuse.

57. In the spring and summer of 2012, while at the Handlon facility, John Doe 1, on threat of physical violence, was repeatedly anally raped and forced to engage in oral sex with adult male prisoners. The rapes occurred in his cell and in the shower.

58. Over an extended period, corrections officers witnessed men cycling in and out of John Doe 1's cell, sexually assaulting him. Several of the officers knew that his cellmate was selling access to John Doe 1.

59. Adult prisoners exercised control over John Doe 1 by, among other things, forcing him to have sex with other adult prisoners.

60. The sexual abuse, forced sex, and trafficking abuse of John Doe 1 was open and obvious to MDOC staff and his attempts to get help were rejected.

61. John Doe 1 was also forced to provide sexual services to other prisoners in the showers, which were located next to the corrections officers' desk.

62. John Doe 1 reported to a prison official that he was receiving threats, but he was refused protective custody.

63. John Doe 1 was transferred to IBC after the assaults at Handlon. There, he continued to face sexual threats and pressures from adult prisoners.

64. On August 8, 2012, John Doe 1 was placed in solitary confinement. John Doe 1 continued to be sexually harassed and threatened while in solitary confinement.

65. John Doe 1 continues to be kept in a cell by himself, where he is deprived by the MDOC of access to necessary rehabilitative and educational programming and adequate medical and mental health treatment.

B. JOHN DOE 2

66. John Doe 2 is currently a prisoner at an adult prison under the jurisdiction of the MDOC.

67. John Doe 2 was incarcerated in an adult MDOC prison in early 2011, when he was 16 years old. Since that time, he has been housed in various facilities, including the Charles

Egeler Reception and Guidance Center (“RGC”), the Thumb Correctional Facility (“TCF”), and Oaks Correctional Facility (“ECF”).

68. TCF Warden Defendant and Policymaker Defendants failed to separate John Doe 2 from adult prisoners or take adequate precautions to protect John Doe 2 from assaults and abuse.

69. Shortly after his arrival at TCF in the Spring of 2012, John Doe 2 was brutally beaten and raped by his adult cellmate.

70. After the rapes, John Doe 2 experienced rectal bleeding, which was noted by medical staff at TCF.

71. Despite the fact that MDOC prison officials at TCF knew or should have known of the rape and assault as evidenced by documented rectal bleeding, John Doe 2 was placed back in the same cell with his assailant.

72. An MDOC staff member at TCF facilitated the abuse and assault of John Doe 2 by opening John Doe 2’s cell to allow an adult prisoner in the cell to assault him.

73. Despite the obvious vulnerability and sexual abuse of John Doe 2 at TCF at age 17, John Doe 2 was transferred without any protection or safeguards to another adult facility – ECF -- and placed in a cell with an adult male prisoner.

74. ECF Warden Defendant and Policymaker Defendants failed to separate John Doe 2 from adult prisoners or take precautions to protect him from further assaults and abuse.

75. At ECF, John Doe 2’s adult cellmate sexually abused and harassed him by, among other actions, forcing John Doe 2 to shower while he watched him and masturbated.

76. No precautions were taken by ECF staff to protect or ensure John Doe 2’s safety, despite his obvious vulnerability and child status.

77. In November of 2012, John Doe 2 was transferred to another cell in ECF and again placed with an adult prisoner without safeguards or supervision.

78. There, John Doe 2 was physically assaulted and sexually harassed and abused. ECF staff, upon becoming aware of the assault, failed to protect John Doe 2 and punished him for reporting the abuse by issuing him a misconduct ticket and sending him to solitary confinement.

79. Upon his release from solitary confinement, John Doe 2 was physically assaulted again with a knife, resulting in a scar across the face and marking him as a victim and as an ongoing target for other prisoners.

80. After this incident, John Doe 2 was again placed in solitary confinement. As a result of transfers and placements in solitary confinement, John Doe 2 has been deprived of rehabilitative and educational programming and suffered extreme mental and physical distress.

81. Defendants have also failed to provide adequate medical and mental health treatment to John Doe 2.

C. JOHN DOE 3

82. John Doe 3 is currently a prisoner in an adult prison under the jurisdiction of MDOC.

83. John Doe 3 was incarcerated in an adult MDOC prison early in the fall of 2010, when he was 16 years old. He has also been housed in RGC, TCF, and Chippewa Correctional Facility ("URF").

84. During his initial stay at RGC, John Doe 3 was housed in a unit surrounded by adult prisoners, where he was sexually harassed and threatened with assault. The sexual

harassment was open and obvious to MDOC staff, who failed to take any steps to prevent the ongoing abuse.

85. John Doe 3 was transferred to the TCF without any safeguards to protect him from further abuse, despite his obvious vulnerability. TCF Warden Defendant and Policymaker Defendants failed to separate John Doe 3 from adult prisoners or take adequate precautions to protect him from assaults and abuse.

86. At TCF, John Doe 3 was not separated from adult prisoners and Defendants failed to take steps to ensure his safety. John Doe 3 was raped and sexually abused by adult male prisoners on at least three separate occasions at TCF.

87. The first assault occurred at TCF in or around the Winter of 2010/2011, when at the age of 16, adult prisoners came into John Doe 3's room and raped him. John Doe 3 was sexually assaulted and abused throughout his stay at TCF in his cell and in the bathroom.

88. MDOC female staff members at TCF grabbed and pulled John Doe 3's genitals and sexually abused and harassed John Doe 3 during body searches. They also sexually harassed him while he was showering and/or performing basic bodily functions.

89. MDOC staff at TCF repeatedly told John Doe 3 that he was going to get raped, and threatened to facilitate a rape as punishment for complaints.

90. At the age of 17, Defendants transferred John Doe 3 to the Chippewa Correctional Facility ("URF"), without any safeguards for his protection despite his prior abuse and obvious vulnerability.

91. URF Warden Defendant and Policymaker Defendants failed to separate John Doe 3 from adult prisoners or take adequate precautions to protect him from further assaults, abuse and harassment. While a prisoner at URF, John Doe 3 was routinely sexually and physically

assaulted by correctional staff by having his genitals grabbed and pulled on during body searches.

92. John Doe 3 was subjected to intense threatening and humiliating verbal sexual abuse by adult prisoners in the presence of MDOC staff at URF. The MDOC staff witnessing these verbal assaults failed to take any steps to prevent the abuse and ratified the abuse by failing to punish the offenders.

93. Defendants' failure to provide safe and secure housing to John Doe 3 and failure to provide adequate medical and mental health care has resulted in his loss of rehabilitative and educational programming, and severe emotional distress.

D. JOHN DOE 4

94. John Doe 4 is currently a prisoner in an adult prison under the jurisdiction of the MDOC.

95. John Doe 4 was 16 years old when he was incarcerated at TCF. TCF Warden Defendant and Policymaker Defendants failed to separate him from adult prisoners or take precautions to protect him from assaults or abuse or to protect his privacy.

96. John Doe 4 has been subjected to physical and sexual assaults and abuse by MDOC staff since his incarceration in an adult prison.

97. From late 2012 to early 2013, a female MDOC staff member repeatedly opened John Doe 4's cell for purposes of engaging in coerced sexual intercourse with him.

98. The coerced sexual intercourse with John Doe 4 occurred in a cleaning closet in the Essex Unit of TCF.

99. Female MDOC staff members have also grabbed and pulled on John Doe 4's genitals on multiple occasions.

100. During his first year in prison, John Doe 4 was imprisoned in solitary confinement for over 130 days, at times on food and water restrictions and without adequate provisions for his youthful status.

101. Defendants have failed and refused to provide a safe, secure and humane custodial environment, resulting in John Doe 4 being retained in solitary confinement because he fears for his safety. He has been deprived of rehabilitative and educational programming and subjected to increased length of incarceration.

E. JOHN DOE 5

102. John Doe 5 is currently a prisoner in an adult prison under the jurisdiction of the MDOC.

103. John Doe 5 was first incarcerated in an adult MDOC prison in September of 2011. Since that time, he has been housed in a number of facilities, including RGC, TCF, Earnest C. Brooks Correctional Facility (“LRF”), URF, and Carson City Correctional Facility (“DRF”). John Doe 5 was 16 years old when he was placed in an adult prison at TCF. The TCF Warden Defendant and Policymaker Defendants failed to separate John Doe 5 from adult prisoners or take precautions to protect him from assaults and abuse.

104. While incarcerated at TCF, John Doe 5 was sexually harassed, grabbed and had his buttocks and genitals slapped and groped by adult male prisoners.

105. John Doe 5 was placed in a cell with an adult prisoner at TCF. John Doe 5 was physically assaulted and anally raped by his adult cellmate.

106. John Doe 5 was also subjected to humiliating and extreme sexual harassment, comments and sexual touching and abuse by MDOC female staff at TCF.

107. A MDOC female staff member at TCF repeatedly performed body searches on John Doe 5 where she would grab his genitals in a sexual manner.

108. John Doe 5, at age 17, was transferred to the LRF without any safeguards or protection from further abuse. The LRF Warden and Policymaker Defendants failed to separate him from adult prisoners or take precautions to protect him from assaults and abuse despite the prior abuse and obvious vulnerability.

109. In the fall/early winter of 2012, John Doe 5 was repeatedly raped in his cell by adult prisoners at LRF. MDOC staff was aware of assaults and aware that adult male prisoners were paying John Doe 5's cellmate for access to John Doe 5 for purposes of sexually assaulting him. Defendants failed to take any action to discipline the offending adult prisoners or intervene to prevent the sexual trafficking of John Doe 5.

110. John Doe 5 requested protection at LRF but each request was ignored and/or denied.

111. John Doe 5 was transferred to another adult prison while he was still a child and without any safeguards or protection despite his pleas. While housed at URF, URF Warden Defendant and Policymaker Defendants again placed John Doe 5 in a cell with adult prisoners and failed to take adequate precautions to protect him from assaults and abuse.

112. John Doe 5 was repeatedly sexually abused and sexually harassed at URF and physically assaulted when he attempted to resist.

113. MDOC staff at URF were aware of the abusive conduct directed toward John Doe 5 by adult prisoners, refused to provide him with requested protective custody, and threatened him with disciplinary tickets.

114. Defendants were aware of the vulnerability and abuse of John Doe 5, yet they transferred him to DRF with no safeguards or precautions in place to protect him from further abuse.

115. At DRF, the DRF Warden and Policymaker Defendants failed to separate John Doe 5 from adult prisoners or take precautions to protect him from assaults and abuse.

116. After transfer to DRF, John Doe 5 was again sexually abused, assaulted and raped by two adult male prisoners on separate occasions in a shower area.

117. MDOC staff at DRF knew of the assaults and took no action to discipline the offending prisoners to protect John Doe 5 or provide medical or mental health treatment to him.

F. JOHN DOE 6

118. John Doe 6 is currently a prisoner in an adult prison under the jurisdiction of the MDOC.

119. John Doe 6 was incarcerated in an adult MDOC prison in September of 2012, at the age of 17. He has been housed in RGC, MTU, Gus Harrison Correctional Facility (“ARF”), and Marquette Branch Prison (“MBP”).

120. Despite John Doe 6’s obvious vulnerability and youth, the Warden and Policymaker Defendants at the various correctional facilities failed to separate John Doe 6 from adult prisoners or take precautions to protect him from assaults and abuse.

121. During his incarceration at RGC in the fall of 2012, John Doe 6 was repeatedly sexually harassed and threatened by adult male prisoners. The sexual harassment was open and obvious to MDOC staff.

122. Despite knowledge of the sexual harassment, threats and John Doe 6’s vulnerability, Defendants transferred John Doe 6 to MTU without any safeguards or protection.

While at MTU, John Doe 6 repeatedly expressed concern to MDOC staff about sexual pressure and threats from other prisoners. He was then transferred to ARF.

123. Upon his transfer to ARF, John Doe 6 was placed in adult housing and in late winter of 2013, was raped by an adult male prisoner in the laundry room at ARF.

124. After he was transferred to MBP in the spring of 2013, John Doe 6 reported the rape occurring at ARF to MDOC officials.

125. MDOC staff failed to provide adequate protection, mental health and medical treatment to John Doe 6 and failed to take steps to provide a safe and humane environment despite their knowledge of his abuse.

126. At MBP, John Doe 6 has been housed for over five months in solitary confinement, where he continues to be sexually harassed, threatened, and told that he will be sold for sex in the yard. John Doe 6 has refused to go back to the general population out of fear of additional rapes and has been punished with misconduct tickets for refusing to leave his solitary cell and return to general population.

127. Defendants' failure to provide safe and secure housing to John Doe 6 has resulted in loss of rehabilitative and educational programming, severe emotional distress, and increased length of incarceration.

G. JOHN DOE 7

128. John Doe 7 is currently a prisoner in an adult prison under the jurisdiction of the MDOC.

129. John Doe 7 was first incarcerated in an adult MDOC prison in the summer of 2013.

130. John Doe 7 was 17 years old when he was incarcerated at RGC, where he was housed with adult male prisoners. The RGC Warden and Policymaker Defendants failed to separate John Doe 7 from adult prisoners or take precautions to protect him from assaults and abuse.

131. MDOC staff members acknowledged their awareness of his vulnerability and substantial risk of sexual assaults and abuse and yet took no steps to protect him or ensure his safety.

132. In July of 2013, an adult male prisoner entered John Doe 7's cell at RGC and sexually harassed and assaulted John Doe 7. When John Doe 7 called the RGC staff for help, he was further physically assaulted by the male prisoner.

133. John Doe 7 was so fearful of future sexual and physical assaults that he confined himself to his cell, resulting in loss of rehabilitative programming and severe emotional distress.

CLAIMS FOR RELIEF

COUNT I

(ELCRA² – Creating Sexually Hostile Prison Environment)

134. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

135. The facilities operated by the Defendant Michigan Department of Corrections were and are public services under the ELCRA, MCL 37.2101 et seq. and MCL 37.2301.

136. Defendants' acts and omissions constitute sexual harassment and violate Plaintiffs' rights under the ELCRA, MCL 37.2103(h)(i)(ii)(iii) by subjecting Plaintiffs to unwelcome sexual advances and assaults and other conduct, both verbal and physical, of a sexual nature.

137. Defendants as the entity and individuals responsible for administering the prisons control every aspect of lower-level staff and adult prisoners' utilization of the prison or its services. Through the exercise of reasonable care, Defendants could have limited the accessibility of predatory adult prisoners and staff to the vulnerable youth prisoners.

138. By placing Plaintiffs in adult prisons, Defendants have created a sexually hostile prison environment, and they have created intimidating and abusive conditions that are severe or

² Prior to March 10, 2000, the facilities housing Plaintiffs were recognized as a "public service" facility within the meaning of the ELCRA, MCL 37.2301(b). *Neal, et al v. MDOC, et al.*, 232 Mich. App. 730 (1988). On December 20, 1999, the State of Michigan amended the ELCRA's definition of "public service" by excluding from the definition "a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment." Michigan Public Act No. 202 of 1999. The amendment took effect on March 10, 2000. The stated purpose of the amendment was to target Plaintiffs who were part of a class of prisoners in *Neal, et al. v. MDOC, et al.*, No. 96-6986-CZ. The amendment of the ELCRA deprives Plaintiffs, and all those similarly-situated, of equal protection of the laws in violation of the Michigan Constitution and of the Fourteenth Amendment of the United States Constitution, because the amendment targeted deprivation of a single class of persons (Michigan prisoners) for all state statutory protection from unconstitutional discrimination. This deprivation of protection lacks any rational relationship to any legitimate state purpose.

pervasive and do not meet a valid penological objective. Defendants' actions have deprived Plaintiffs of the full and equal enjoyment of the respective prison facilities.

139. Defendants' acts and omissions have resulted in harm to Plaintiffs including physical and emotional harm, Plaintiffs being denied privileges and opportunities that should be available to imprisoned youth, as well as longer terms of incarceration, harsher confinement and increased security levels in violation of MCL 37.2103 et seq.; MCL 37.2701(a)(f).

COUNT II

(ELCRA – Failing to Prevent and to Remedy Sexually Hostile Prison Environment)

140. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

141. The facilities operated by the Defendant Michigan Department of Corrections were and are public services under ELCRA, MCL 37.2101 et seq. and MCL 37.2301.

142. Defendants' acts and omissions constitute sexual harassment and violate Plaintiffs' rights under the ELCRA, MCL 37.2103(h)(i)(ii)(iii) by subjecting Plaintiffs to unwelcome sexual advances and assaults and other conduct, both verbal and physical, of a sexual nature.

143. Defendants were aware, or should have been aware, that a sexually-hostile environment existed in the relevant prisons.

144. Defendants are liable under the ELCRA for the acts of their agents and adult prisoners under their control because MDOC was aware of the hostile and abusive prison environment created by its agents and employees and adult prisoners who have harmed plaintiffs and failed to take prompt and adequate remedial action.

145. Defendants' actions have deprived Plaintiffs of the full and equal enjoyment of the respective prison facilities.

146. Defendants' acts and omissions have resulted in harm to Plaintiffs including physical and emotional harm, Plaintiffs being denied privileges and opportunities that should be available to imprisoned youth, as well as longer terms of incarceration, harsher confinement and increased security levels in violation of MCL 37.2103 et seq.; MCL 37.2701(a)(f).

COUNT III
(ELCRA – Aiding and Abetting Violations of the Act)

147. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

148. The facilities operated by the Defendant Michigan Department of Corrections were and are public services under ELCRA, MCL 37.2101 et seq. and MCL 37.2301.

149. Defendants as the entity and individuals responsible for administering the prisons control every aspect of lower-level staff and adult prisoners' utilization of the prison or its services. Through the exercise of reasonable care, Defendants could have limited the accessibility of predatory adult prisoners and staff to the vulnerable youth prisoners.

150. By creating an environment where adult prisoners and staff were allowed access to the vulnerable youth prisoners, Defendants aided and abetted other named defendants, as well as lower-level prison employees and other inmates in the creation of a hostile environment in violation of MCL 37.2701(b).

151. Defendants' actions have deprived Plaintiffs of the full and equal enjoyment of the respective prison facilities.

152. Defendants' acts and omissions have resulted in harm to Plaintiffs including physical and emotional harm, Plaintiffs being denied privileges and opportunities that should be

available to imprisoned youth, as well as longer terms of incarceration, harsher confinement and increased security levels in violation of MCL 37.2103 et seq.; MCL 37.2701(a)(f).

COUNT IV
(ELCRA – Age Discrimination)

153. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

154. Plaintiffs and members of the Plaintiff Classes are members of a protected class pursuant to the Constitution of the State of Michigan and the ELCRA, MCL 37.2101 et seq. and MCL 37.2301.

155. The facilities operated by the Defendant Michigan Department of Corrections were and are public services under the ELCRA, MCL 37.2101 et seq. and MCL 37.2301.

156. Defendants' conduct and Defendants' treatment of Plaintiffs as set forth above also constitutes discriminatory treatment based on Plaintiffs' age. Based on the age of the Plaintiffs, they are subjected to sexual abuse and violence.

157. Defendants aided and abetted other named defendants, as well as lower-level prison officials and other inmates in denying Plaintiffs full and equal enjoyment of the respective prison facilities in violation of MCL 37.2701(b).

158. In addition, Defendants' failure to separate children from adult prisoners and the resulting sexual abuse and violence experienced by Plaintiffs also constitutes maintenance of an official policy, custom, pattern or practice that has a disparate impact on Plaintiffs based on their age.

159. Specifically, Defendants' policies and practices, including failure to properly screen prisoners for known vulnerabilities when making placement decisions, have a disparate

impact on Plaintiffs and the Plaintiff class by subjecting them to increased levels of sexual abuse, assault and other violence in prison than inmates in the general MDOC population.

160. Defendants' acts and omissions based upon Plaintiffs' age have resulted in harm to Plaintiffs including physical and emotional harm, Plaintiffs being denied privileges and opportunities that should be available to imprisoned youth, as well as longer terms of incarceration, harsher confinement and increased security levels in violation of MCL 37.2103 et seq.; MCL 37.2701(a)(f).

DAMAGES

161. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

162. The acts and omissions of Defendants constituting violation of Plaintiffs' and Plaintiff class members' rights were and are a proximate cause of Plaintiffs' damages.

163. As a result of Defendants' acts and omissions, the Plaintiff class representatives and the Plaintiff class members, individually and as a class, have suffered severe emotional, psychological injuries, physical injuries and damages, loss of freedom and loss of education, employment and rehabilitation opportunities and privileges and income.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Assert jurisdiction over this action;
- B. Certify this case as a class action pursuant to Rule 3.501 of the Michigan Court Rules on behalf of the proposed Plaintiff class and designate the harmed Plaintiffs as representatives of the class and their counsel of record as Class Counsel;

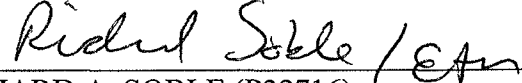
C. Award damages to Plaintiffs and Class Members for harm caused by Defendants' violations of law, including punitive and exemplary damages where appropriate.

D. Award the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees and costs.


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Respectfully submitted,

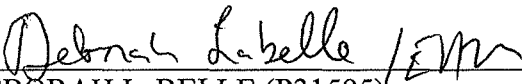

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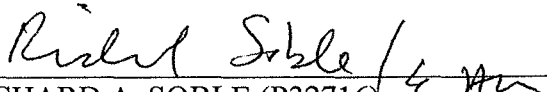

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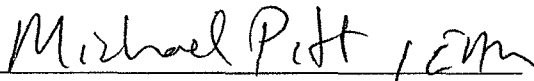
DEMAND FOR TRIAL BY JURY

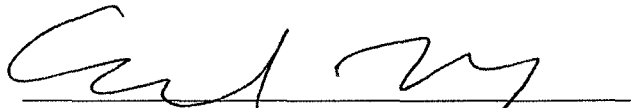
NOW COME Plaintiffs, by and through their counsel, and hereby demands a trial by jury
as to all of those issues so triable as of right.

Respectfully submitted,


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