

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Discrimination

Christina Lusk,

Court File No.: _____

Judge: _____

Plaintiff,

v.

**COMPLAINT AND
DEMAND FOR JURY TRIAL****Minnesota Department of Corrections;
Commissioner Paul Schnell, Deputy
Commissioner Michelle Smith, Medical
Director James Amsterdam**

Defendants.

Plaintiff Christina Lusk, through her attorneys, Jess Braverman and Christy Hall of Gender Justice, 200 University Avenue West, Suite 200, St. Paul, Minnesota 55103, and Sharon Roberg-Perez and Rebecca Bact of Robins Kaplan LLP, 800 LaSalle Ave Suite 2800, Minneapolis, Minnesota/800 Boylston St., Boston, Massachusetts, for her Complaint against the Minnesota Department of Corrections (“DOC”), Commissioner Paul Schnell, Deputy Commissioner Michelle Smith, and Medical Director James Amsterdam (collectively, “Defendants”), states and alleges as follows:

INTRODUCTION

Christina Lusk is a transgender woman who is currently in the custody of the DOC. She is recognized legally and socially as female – including by the State of Minnesota. Yet, the Minnesota DOC treats Ms. Lusk as a man simply because she is transgender.

The DOC is housing Ms. Lusk at Minnesota Correctional Facility - Moose Lake (“Moose Lake”), a men’s facility. The DOC has placed Ms. Lusk at Moose Lake, rather than at the women’s facility, Shakopee, because she is transgender. Upon information and belief, the DOC makes their

gender-based placement on genitalia, in violation of the Minnesota Human Rights Act, the Minnesota Constitution, and the Prison Rape Elimination Act (“PREA”).

The agency has not only placed Ms. Lusk with men subjecting her to discrimination and harassment, but for months the DOC refused to acknowledge her legal name, Christina Lusk, instead forcing her to use a male name that Ms. Lusk had legally changed and has not used in years. Ms. Lusk has also been denied medical care while in the DOC. In spite of her documented medical need, the DOC arbitrarily deferred Ms. Lusk’s gender-affirming surgery until after her release in 2024.

Through their discriminatory policies and practices, and their utter lack of competence regarding the medical and mental health needs of incarcerated transgender people, the DOC routinely fails the transgender Minnesotans, such as Ms. Lusk, who are placed in their care. Plaintiff brings this lawsuit to remedy illegal discrimination based on sex and sexual orientation, which includes gender identity, in violation of the Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A.01, *et seq.*, and violations of Ms. Lusk’s right to equal protection of the law, to bodily integrity and autonomy, and to be free from cruel or unusual punishment, enshrined in the Minnesota Constitution.

PARTIES, JURISDICTION & VENUE

1. Plaintiff is a citizen of Minnesota. During all relevant times, Plaintiff was a citizen of Minnesota.
2. Defendant Minnesota Department of Corrections is an agency of the State of Minnesota and is a “public service” under Minn. Stat. § 363A.12. It operates ten correctional facilities housing approximately 7,500 incarcerated people.¹
3. Defendant Minnesota Department of Corrections is headquartered and has its principal place of business at 1450 Energy Park Drive, Suite 200, St. Paul, Minnesota 55108.

¹ https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%201-1-2021_tcm1089-467125.pdf

4. Paul Schnell is the Commissioner of the Minnesota Department of Corrections and is sued in his official and personal capacities.
5. Michelle Smith is the Deputy Commissioner of the Minnesota Department of Corrections and is sued in her official and personal capacities.
6. James Amsterdam is the Medical Director of the Minnesota Department of Corrections and is sued in his official and personal capacities.
7. The District Court in the County of Ramsey, State of Minnesota, has original jurisdiction over the parties and the claims set forth in this Complaint pursuant to Minn. Stat. § 363A.33, subd. 6.
8. Venue in this Court is proper pursuant to Minn. Stat. § 363A.33, subd. 6 because the respondent has its principal place of business in Ramsey County.

FACTUAL ALLEGATIONS

CHRISTINA LUSK

9. Ms. Lusk is a transgender woman. In other words, she is a woman who was assigned male at birth.
10. Plaintiff Christina Lusk was born in Rochester Minnesota and attended Irondale high school in New Brighton Minnesota. Ms. Lusk has owned her own business building foundations for houses. She was married for four years and has two children, a son and a daughter. In her youth, Ms. Lusk was a water ski performer in the Rochester Water Shows.
11. Ms. Lusk came out as transgender in 2008. Being able to live authentically as herself was a great relief to Ms. Lusk who, prior to coming out, had attempted suicide in part from the stress of hiding her true self and living inauthentically—for decades— as a man.
12. Individuals are generally assigned a sex — “male” or “female” — at birth. This assignment is typically based on external genitalia, and not the multitude of other factors that bear on one’s

sex, such as hormones, internal reproductive organs, chromosomes, secondary sex characteristics that develop later in life, brain anatomy, and gender identity.

13. Gender identity refers to a person's innate sense and deeply held understanding of their own gender. Everyone has a gender identity.
14. A transgender person is someone whose gender identity does not align with the sex they were assigned at birth. A cisgender person is someone whose gender identity does align with the sex they were assigned at birth.
15. Ms. Lusk has been diagnosed with gender dysphoria, a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (5th ed). Gender dysphoria occurs when the incongruence between a person's gender identity and their sex assigned at birth causes clinical distress.
16. Being transgender is not, in itself, a mental disorder, and "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."²
17. Gender dysphoria can, however, lead to serious medical problems, including clinically significant distress, dysfunction, debilitating depression, and self-harm.
18. The widely accepted standards of care ("SOC") for treating gender dysphoria are published by the World Professional Association for Transgender Health ("WPATH"). The medical consensus for treatment of gender dysphoria, embraced by major medical and health organizations including the American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, and the National Endocrine Society, is to support the patient with their social and/or medical transition and for the patient to live in a manner that is consistent with their gender identity.

² American Psychiatric Association, Position Statement on Discrimination Against Transgender & Gender Variant Individuals (2018), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

19. Responding to gender dysphoria by forcing transgender people to live in alignment with their sex assigned at birth, rather than in alignment with their gender identity, causes substantial psychological pain: such efforts are considered medically unethical under the SOC and have been rebuked by the federal Substance Abuse and Mental Health Services Administration.
20. WPATH recognizes that individuals experiencing gender dysphoria may live in a variety of housing circumstances, including prisons and other institutional settings. The SOC states explicitly that: “[p]eople should not be discriminated against in their access to appropriate health care based on where they live, including institutional environments such as prisons or long-/intermediate-term health care facilities . . . Health care for transsexual, transgender, and gender nonconforming people living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same community . . . Access to these medically necessary treatments should not be denied on the basis of institutionalization or housing arrangements.”³

MS. LUSK’S TRANSITION AND TREATMENT FOR GENDER DYSPHORIA

21. As part of Ms. Lusk’s transition and treatment for gender dysphoria, she has been taking feminizing hormones since 2009. These hormones produce breast growth, reduce muscle mass, and affect patterns of fat distribution and hair growth.
22. Though feminizing hormone treatments can stimulate breast growth, some transgender women also pursue breast augmentation, often referred to as “top surgery.”⁴ Ms. Lusk, in consultation with her treating physicians, had a breast augmentation procedure in 2017.

³ WPATH, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People 67 – 68 (7th ed.), <https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf?t=1605186324>. *See also* National Commission on Correctional Healthcare, Transgender and Gender Diverse Health Care In Correctional Settings, available at <https://www.nchc.org/transgender-and-gender-diverse-health-care>.

⁴ “Top surgery” is an umbrella term that may refer to breast augmentation surgery for transgender women or a mastectomy for transgender men.

23. In February 2018, Ms. Lusk legally changed her name to Christina Suzanne Lusk. In the same order, the court directed the Department of Health to register a replacement birth certificate listing her sex as female.
24. Ms. Lusk, with the support of her treatment team, began to actively pursue genital surgery in 2016.
25. On January 9, 2018, Ms. Lusk met with a healthcare provider with the Mayo Clinic's transgender health center, Dr. Todd Nippoldt. In the records from this visit, Dr. Nippoldt correctly noted that Ms. Lusk was interested in genital surgery, but incorrectly noted that she was seeking breast augmentation. This was likely a typo, as Ms. Lusk had a breast augmentation procedure in 2017. That Ms. Lusk had breast augmentation surgery prior to her commitment is apparent from simply looking at Ms. Lusk. Indeed, the DOC issued Ms. Lusk a bra upon her arrival.
26. Dr. Nippoldt further noted in his records that Ms. Lusk had "met with our mental health provider and does have letters from her local mental health providers indicating she is appropriate for surgery."
27. In May 2018, Ms. Lusk was referred to and saw a medical provider at the University of Minnesota – Fairview, Dr. Nicholas Kim.
28. Dr. Kim discussed the surgical procedure and the risks for vaginoplasty with Ms. Lusk in detail, noted that she accepted these risks and wished to proceed with the surgery, and indicated that Ms. Lusk would have to provide two letters of support prior to authorization.
29. On December 5, 2018, Ms. Lusk returned to Fairview. She met with one of the two surgeons who would perform the vaginoplasty, Dr. Joseph Pariser, and provided the requested two letters of support.
30. Dr. Pariser wrote in the medical records from this visit that Ms. Lusk has "persistent, well documented gender dysphoria . . . She has been on continuous hormones for years. We received

letters of support. She previously underwent breast augmentation and is happy with the results. She desires vaginoplasty.”

31. According to the records, Dr. Pariser directed Ms. Lusk to follow up with Dr. Kim, who would be performing the surgery together with Dr. Pariser. Ms. Lusk was to coordinate with Dr. Kim’s office to schedule the surgery and obtain prior authorization.

MS. LUSK’S CURRENT INCARCERATION

32. On December 17, 2018, shortly after this meeting with Dr. Pariser and before Ms. Lusk was able to schedule the surgery with Dr. Kim, Ms. Lusk was arrested and charged with First Degree Possession of a Controlled Substance.
33. Ms. Lusk was held in the Hennepin County Jail from the time of her arrest through her guilty plea and sentencing on February 22, 2019.
34. Ms. Lusk was then directly transferred from jail to the DOC.
35. Ms. Lusk has been continually incarcerated since the date of her arrest.
36. Ms. Lusk is housed at the Minnesota Correctional Facility – Moose Lake, which is a men’s facility.
37. Ms. Lusk’s expected release date is May 23, 2024.
38. At the time of her arrest, she was on conditional release for a 2012 DWI offense. Her period of incarceration includes sentencing for both the release violation and the new offense.
39. Ms. Lusk filed a charge with the Minnesota Department of Human Rights on January 8, 2020 alleging discriminatory treatment by the DOC, including denying her request for a transfer to the women’s facility, housing her in a room with seven men, and requiring her to change her clothes and use the bathroom with men; referring to her by her former name rather than her legal name; and denying her gender-affirming care that had been approved by her healthcare providers before her arrest.

DOC HOUSING ASSIGNMENTS FOR INCARCERATED TRANSGENDER PEOPLE

40. The DOC maintains a Transgender Committee that considers housing placements for transgender individuals. The Committee is made up of the DOC's health services director, medical director, director of behavioral health, and director of nursing, along with an intake/security representative, health services administrator from the intake facility, warden of the facility where the individual is housed, and any other DOC employee deemed necessary to make a decision.⁵
41. Per DOC Policy 202.045, the DOC considers "on a case-by-case basis whether a placement would ensure the offender's health and safety, and whether the placement would present management or security problems." The DOC "does not place transgender, gender non-conforming, or intersex offenders in dedicated facilities, units, or wings solely on the basis of such identification or status" unless that placement is "established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such offenders."
42. In determining housing placements for transgender individuals, the Transgender Committee "makes recommendations regarding facility placement and other matters that it deems necessary to maintain the offender's safety, such as single cell or shower restrictions . . . The committee considers factors such as the offender's security level, criminal and disciplinary history, current gender expression, medical and mental health needs, vulnerability to sexual victimization, and the likelihood of perpetrating such abuse on other offenders."
43. The DOC's policy falls short of the minimum requirements under the federal Prison Rape Elimination Act ("PREA").⁶ PREA is a federal statute that creates standards and protocols to

⁵ The policy governing the Transgender Committee, DOC Policy 202.045, was revised effective October 6, 2020. Under the revised policy, the Committee has a slightly different makeup. This section refers to the version of Policy 202.045 that was in place while Ms. Lusk's housing assignment was being evaluated. This version of the policy was effective as of June 19, 2018.

⁶ 28 C.F.R. §§ 115.41-115.42.

prevent the sexual assault and victimization of people in custody. PREA identifies transgender people as a group that is at risk of sexual victimization.⁷

44. The DOC's policy on housing transgender inmates leaves out a crucial aspect of the PREA requirements. Under PREA "[a] transgender or intersex inmate's own views with respect to his or her own safety *shall be given* serious consideration."⁸ (emphasis added). There is no such provision in the DOC's policy.
45. Further, even though PREA prohibits the DOC from making placement decisions based solely on genitalia, this appears to be the MN DOC's current practice.⁹
46. The MN DOC routinely places transgender women in men's facilities. It is unclear whether the MN DOC has ever in its history placed a transgender woman in a woman's facility, regardless of risk of sexual assault. It is unclear whether the MN DOC has ever in its history made a placement decision regarding whether to place an incarcerated person in Shakopee or a men's facility based on any factor other than genitalia.

MS. LUSK'S HOUSING ASSIGNMENT

47. When Ms. Lusk was placed in DOC custody in March 2019, she was initially placed in the DOC's intake facility, St. Cloud. From St. Cloud, incarcerated people are typically sent to other facilities in Minnesota. Ms. Lusk requested placement at the Minnesota Correctional Facility – Shakopee, which is the only women's facility in the DOC.
48. The Transgender Committee met on March 20, 2019 and, in a memo dated March 25, 2019, recommended that Ms. Lusk be moved to Moose Lake, a men's facility, rather than Shakopee, the women's facility. The Committee also recommended "continued shower alone restrictions,

⁷ Id.

⁸ 28 C.F.R. § 115.42(e).

⁹ "Does a policy that houses transgender and intersex inmates based exclusively on external genital anatomy violate [PREA]? Yes." <https://www.prearesourcecenter.org/frequently-asked-questions/does-policy-houses-transgender-or-intersex-inmates-based-exclusively>

and single cell or dormitory housing.” The memo does not contain any details of the deliberations.

49. At Moose Lake, Ms. Lusk was placed in dormitory housing with multiple men. Though Ms. Lusk was able to shower alone, she was not afforded privacy to use the bathroom or change her clothes alone. Ms. Lusk was subjected to ongoing harassment in this dormitory.
50. On April 29, 2019, Ms. Lusk filed a grievance, which she termed an appeal of the Transgender Committee’s decision to house her at Moose Lake rather than Shakopee. She stated that she has female secondary sex characteristics, identifies as a woman, and poses no risk to security or management of the facility. Ms. Lusk also wrote that the Committee’s decision to place her in dormitory housing put her in the “direct line of fire for violence” and that she felt unsafe in a men’s facility.
51. On May 6, 2019, the Transgender Committee met again to discuss Ms. Lusk’s renewed request to be placed at Shakopee and housed in a single cell. The Committee’s memo, dated May 7, indicates that the Committee “reviewed the requests and reaffirmed the decisions to not transfer to [Shakopee] or approve single cell living. Similar requests will not be reviewed again unless new information becomes available.”
52. Again, the Transgender Committee did not provide any explanation in its memorandum regarding the reasons for its decision to deny Ms. Lusk a transfer to Shakopee or a single cell at Moose Lake.
53. On May 10, 2019 Ms. Lusk was placed in segregation due to suicidal ideations. Ms. Lusk had been repeatedly sexually abused in her group cell. She did not report the abuse to staff because in light of her experience with the DOC, she did not believe they had any interest in protecting her or that they were capable of keeping her safe from reprisal.

54. During her time at Moose Lake, Ms. Lusk knew another transgender woman in the same unit, who, like Ms. Lusk, had a breast augmentation. This woman was also sexually assaulted and reported the assault to staff. The DOC did not move her to Shakopee, but rather, they moved her from Moose Lake to another men's facility.
55. Upon information and belief, between April and June 2019, Ms. Lusk submitted several requests to be housed in a single cell rather than in a dormitory setting with men at Moose Lake.
56. Ms. Lusk saw DOC mental health provider Dr. Lon Augdahl for a psychiatric assessment on July 11, 2019. In the notes from the visit, Dr. Augdahl indicated that Ms. Lusk "feels great torment being here in a male prison..." Ms. Lusk feels "horrible," "tearful," and "cannot understand why the single cell restriction that she has is not available here. She states that Moose Lake has told her that she will not have a single cell for two years."
57. According to Dr. Augdahl, Ms. Lusk "feels she is in the wrong prison" and was struggling with staff who referred to her as a man and inmates who made comments about her to her three cellmates, such as "you're in there with that thing." Ms. Lusk reported, "it's really rough, I'm being tormented."
58. Dr. Augdahl noted that Ms. Lusk had been housed at Moose Lake in the past, but that since that time "she has transitioned more so than previously in the DOC and as such may be a target for more harassment," particularly because of her female secondary sex characteristics.
59. Dr. Augdahl also stated in his notes that Ms. Lusk's placement in a male facility was negatively impacting her gender dysphoria. He said that even medical intervention would likely not be able to counteract the harmful impact of her housing at Moose Lake.
60. On February 9, 2020, Ms. Lusk again requested to be moved to a single cell, complaining that the DOC's continued failure to accommodate her violated her legal rights.

61. Finally, after nearly a year and numerous requests from Ms. Lusk, the Transgender Committee met on February 24, 2020 and in a memorandum dated March 2, 2020, approved Ms. Lusk for a single cell upon availability.
62. Again, the Committee's memo approving a single cell does not give any reason for the Transgender Committee's decision. The memo also does not state whether there was any new information, at this stage, that prompted this outcome after repeated refusals.
63. On or about March 4, 2020, Ms. Lusk was moved to a single cell in Moose Lake. Ms. Lusk continues to be housed at the men's facility, Moose Lake, and not the women's facility, Shakopee.
64. Ms. Lusk housing situation has continued to change during her period of incarceration. Since the time of her initial placement in a single cell, Ms. Lusk has been housed in a shared cell with up to seven men at a time.

GENDER-AFFIRMING MEDICAL CARE AT THE DOC

65. As noted, for roughly a decade prior to her arrest, Ms. Lusk had been living as a woman. She had been receiving gender-affirming care for many years in the form of feminizing hormones and breast augmentation. At the time of her arrest, she was in the process of securing prior authorization for vaginoplasty; she had met with the doctors who would perform the surgery she had provided the required letters of support, and she was on the verge of scheduling her surgery.
66. Under DOC Policy 202.045, the DOC "provides transgender, gender non-conforming, and intersex offenders with appropriate gender-related mental health and medical services throughout their incarceration."¹⁰

¹⁰ As noted, DOC Policy 202.045 was revised effective October 6, 2020. The revised policy explicitly states that an incarcerated transgender person need not have been receiving gender-affirming care prior to their incarceration in order to receive such care while incarcerated.

67. To provide gender-affirming care, the DOC first requires an individualized assessment by facility medical staff, to include whether the individual has been diagnosed with gender dysphoria, the nature and severity of any symptoms associated with gender dysphoria, the individual's treatment and life experiences prior to and during incarceration, whether the individual is willing to participate in mental health therapy in conjunction with medical treatments, whether there is "sufficient time remaining on the offender's term of imprisonment to complete hormone or other medical treatment," and whether there are any medical or mental health conditions that might create an undue risk of adverse health consequences caused by gender-affirming care.¹¹
68. When she entered DOC custody in March 2019, Ms. Lusk submitted a request for gender-affirming surgery. She noted that she had been approved by the University of Minnesota and the Mayo Clinic for this medically necessary treatment, provided the names of her healthcare providers, and asked to schedule the surgery.
69. According to a note on Ms. Lusk's request, DOC Health Services asked Ms. Lusk to sign releases to obtain her medical records.
70. On April 12, 2019, the Transgender Committee met and, in a memo dated April 17, approved Ms. Lusk's requests for eyeliner, mascara, and women's undergarments. With respect to her request for surgery, however, the Committee wrote: "Sex reassignment surgery is deferred until further research is done." The memo does not specify what sort of research the Committee intended to conduct or what lack of information precluded granting Ms. Lusk's request.
71. On June 17, 2019, DOC Medical Director James Amsterdam decided, on behalf of the Transgender Committee, to: "Defer sex reassignment surgery at this time. At this point, she could pursue that after release."

¹¹ The revised policy includes revisions to these criteria, including changing "sufficient time remaining on the offender's term of imprisonment to complete hormone or other medical treatment" to "[a]vailable continuity of care upon the offender's/resident's release."

72. Ms. Lusk's expected release date is May 23, 2024, nearly five years from the date of the decision to defer her care.
73. The June memorandum includes a note to "see attached email," but any attachment was not part of the DOC's submissions as part of the Minnesota Department of Human Rights process.
74. On June 26, 2019, Ms. Lusk wrote to the Transgender Committee regarding the decision to defer her care. She noted that she is a transgender woman who had been living as a woman for eleven years, had legally changed her name, and was receiving gender-affirming care including hormones and breast augmentation.
75. Ms. Lusk met with Dr. Augdahl for a psychiatric assessment on July 11, 2019. In his notes from the visit, Dr. Augdahl stated that she "[c]learly fits criteria for gender dysphoria" and that she had been receiving gender-affirming care at the University of Minnesota.
76. Even though Ms. Lusk repeatedly described torment and distress associated with her gender dysphoria in a men's facility, Dr. Augdahl deemed that she was "functioning" and wrote in the diagnosis section of his notes that Ms. Lusk had "mild to moderate severity" gender dysphoria.
77. Dr. Augdahl also stated his impression that Ms. Lusk provided "some discrepant details . . . claiming that she has had breast augmentation in 2017, but I am not sure if this is supported by outside records," though he paradoxically noted that she was wearing a bra at the session.
78. Of course, there was no discrepancy. Ms. Lusk's medical records from the University of Minnesota clearly state that she had had the breast augmentation procedure in 2017, confirming Ms. Lusk's statements to Dr. Augdahl – notwithstanding the confusion in the records from the Mayo Clinic about whether she had already had the procedure or was seeking it in 2018.
79. On July 25, 2019, Ms. Lusk received a letter from DOC Behavioral Health Services Director Stephen Huot, who wrote: "The Transgender Committee has met regarding your case and consideration of gender reassignment surgery has been deferred at this time. Medical personnel

are addressing your request for surgery in an appropriate manner. The committee does believe that it would be in your best interest to pursue chemical dependency treatment, as your incarceration is for a DWI offense. We encourage you to do so.”

80. On November 20, 2019, Ms. Lusk filed a grievance with the DOC seeking vaginoplasty. In her grievance, Ms. Lusk wrote, “I have been diagnosed with severe Gender Dysphoria. I have attempted suicide four times due to my severe distress caused by my GD as well as self mutilation. My mental capacity is under control, and I am able to make good decisions as far as surgery. I have letters of support from my primary physician, my gender specialist, my therapist, as well as my psychiatrist, only two letters are required for surgery but I go up and beyond what is required.” She cited WPATH’s SOC regarding provision of gender-affirming care for people in institutional settings, as well as court decisions finding that correctional facilities were deliberately indifferent in denying gender-affirming care to incarcerated transgender people. She wrote, “Prison officials often put off or outright deny transgender prisoners access to health care for GD, even though courts have repeatedly found that such delays [or] denials of assessment or treatment violated the constitution.”
81. On December 11, 2019, DOC staff member Kathryn Reid responded to Ms. Lusk, inexplicably stating, “Per Mayo Medical Center’s medical records: ‘she does not appear to have severe gender dysphoria. To do her ‘top surgery’ would be cosmetic enhancement since she has Tanner V breast development from her hormone therapy.’ The DOC does not do cosmetic surgery.”
82. The DOC were clearly referring to dated records from before her breast augmentation, and not to Ms. Lusk’s most recent records regarding vaginoplasty. Again, Ms. Lusk had already completed the breast augmentation procedure prior to her incarceration and said as much in her grievance. The DOC even provided Ms. Lusk with bras as part of her uniform.

83. There is no question that the DOC has Ms. Lusk's most updated medical records in their possession. The DOC included these records from the University Minnesota – Fairview as part of their MDHR attachments. According to the records in the DOC's possession, Ms. Lusk has "persistent, well documented gender dysphoria...she has been on continuous hormones for years. We received letters of support. She previously underwent breast augmentation and is happy with the results. She desires vaginoplasty." According to these records Ms. Lusk was ready to coordinate with Dr. Kim's office for a surgery date and obtain prior authorization for insurance coverage.
84. On January 15, 2020, Ms. Lusk wrote another letter regarding the response that she received to her grievance. She wrote, "you keep saying that my mayo clinic records say I do not have severe enough Gender Dysphoria to warrant sex confirmation surgery. You are looking at the wrong records." She clarified that the records from the University of Minnesota, rather than the Mayo Clinic, indicated that she was approved for surgery, and that her therapist, psychiatrist, gender specialist, primary care physician, and Behavioral Health case manager all concurred that surgery was necessary in her case.
85. Ms. Lusk also wrote a kite,¹² dated August 3, 2020, which again stated that the DOC was looking at the wrong medical records, and requesting the credentials of the DOC's treating healthcare providers regarding training in the management of gender dysphoria.
86. According to WPATH's SOC, if "the in-house expertise of health professionals in the direct or indirect employ of the institution does not exist to assess and/or treat people with gender dysphoria, it is appropriate to obtain outside consultation from professionals who are

¹² A kite is a formal correspondence submitted to the DOC by an incarcerated person

knowledgeable about this specialized area of health care.”¹³ It is unclear whether the DOC ever sought such outside counsel.

87. To date, Ms. Lusk remains at the Moose Lake facility with an expected release date of 2024. The DOC continues to insist on deferring Ms. Lusk’s medical care until after she is released, an arbitrary period of time unrelated to Ms. Lusk’s medical needs.

88. Ms. Lusk does not have access to medical professionals who are competent in working with patients with gender dysphoria. Her own psychiatrist at the DOC misgenders her in her medical records.

NAME-CHANGE POLICIES WITHIN THE DOC

89. DOC’s policy number 202.130 covers use of names for incarcerated people. Under this policy, the DOC uses the name provided on the original warrant of commitment for incarcerated people.

90. If a person is committed to the DOC under both a parole violation and a new offense, the DOC will use the name associated with the original warrant of commitment for the offense underlying the parole violation.

91. Incarcerated people must use their commitment names on all outgoing mail.¹⁴ In other words, when Ms. Lusk sends out a letter, she must use the “male” name she had legally changed in 2018.

92. The Doc does permit exceptions to their policy for religious purposes.¹⁵

¹³ WPATH’s SOC, *supra* note 3, at 68.

¹⁴ DOC Policy 202.130(E)

¹⁵ DOC Policy 202.130(F).

93. Additionally, the commissioner can authorize an exception for the DOC to use the incarcerated person's legal name for safety or security reasons if the incarcerated person provided documentation.¹⁶
94. During Ms. Lusk's incarceration, the DOC revised its Policy 202.045, "Management of Transgender/Gender Non-Conforming/Intersex Offenders/Residents," with an effective date of October 6, 2020. Under this policy, all incarcerated people within the DOC must be given the opportunity to select the pronouns and honorifics by which they would like to be addressed. The pronoun and honorific "must be displayed on the offender's/resident's badge and all staff members must refer to the offender/resident using that pronoun and honorific." An individual may request to change the pronoun and honorific by which they are addressed at any time during their period of incarceration.
95. The revised policy does not make any provision for using the correct names, along with pronouns and honorifics, for transgender residents who have the wrong name on their original warrants of commitment. The DOC continues to misgender and misname transgender residents through their unnecessary and inflexible policy.

THE DOC'S REFUSAL TO USE MS. LUSK'S LEGAL NAME

96. At the time of her arrest in 2018, Ms. Lusk was on conditional release for a 2012 felony DWI offense. The DOC determined that this new offense violated the conditions of her release. Ms. Lusk's current period of incarceration comprises both the sentence for the new offense and a recommitment for violating the terms of her release.

¹⁶ DOC Policy 202.130(G).

97. Though the state of Minnesota recognizes Ms. Lusk's legal name as Christina Lusk, and though she was charged and convicted under that name for her 2018 offense, the DOC used Ms. Lusk's "male" name, which was listed on her warrant of commitment from 2012.
98. When she was placed in DOC custody in March 2019, before she was assigned to Moose Lake, Ms. Lusk asked about changing the name that the DOC used for her.
99. In a memo dated March 21, 2019, DOC staff member Sarah Gibbison responded to Ms. Lusk's request. After reviewing Ms. Lusk's legal name change documents and the DOC's policies, she wrote that Ms. Lusk could not change her first name within the DOC system until the expiration of her sentence for violating the terms of her release. That sentence was set to expire on May 19, 2021. At that point, she wrote, Ms. Lusk could write to the DOC's Central Records Office to seek an administrative name change.
100. On or about July 23, 2019, Phil Duran, an attorney with Rainbow Health Minnesota (then known as JustUs Health) wrote to DOC Commissioner Paul Schnell on Ms. Lusk's behalf. Mr. Duran requested that Mr. Schnell direct DOC to recognize Ms. Lusk's current legal name pursuant to the language within policy 202.130, which permits exceptions in the interest of safety. Among other things, Mr. Duran pointed out that when DOC insists on referring to Ms. Lusk by her "male" name, instead of her actual, legal name, it communicated to other prisoners – and staff – that DOC disregarded her transgender identity, even while it is widely recognized that transgender inmates are at heightened risk of violence. Mr. Duran further noted that requiring Ms. Lusk to identify herself with a "male" name arguably violated her First Amendment protections against compelled speech. Commissioner Schell referred the matter to Assistant Commissioner Michelle Smith. Assistant Commissioner Smith promptly dismissed the request without written explanation.

101. In approximately September 2019, Assistant Commissioner Smith verbally advised Mr. Duran that changing Ms. Lusk's DOC profile from her "male" name to her legal name might make it difficult for people in the community to locate her. The DOC did not elaborate on why they believed that to be the case. Ms. Lusk was prosecuted and ordered incarcerated under her legal name, Christina Lusk. Had she not had any supervision remaining over her 2012 DWI at the time of her new offense, she would have been listed by the DOC as Christina. Once she completed serving time for the 2012 offense, she would be eligible to have the DOC use the name Christina. The DOC also declined to comment on why exceptions can be made for religious purposes but not for transgender people who have legally changed their names.
102. Assistant Commissioner Smith later indicated to Mr. Duran that changes to policy 202.130 were forthcoming. Over two years later, there has been no known progress on updating policy 202.130.
103. As Dr. Augdahl recorded in his notes from Ms. Lusk's psychiatric evaluation on July 11, 2019, that the misnaming and misgendering of Ms. Lusk has caused her significant distress.
104. It is unclear how members of the Transgender Committee and Behavioral Health Services would be expected to develop meaningful therapeutic relationships with clients with gender dysphoria when they are either required to, or choose to, use the wrong name for their clients thereby exacerbating the dysphoria with every communication.
105. Ms. Lusk's sentence for the 2012 commitment expired during her current period of incarceration, on May 19, 2021. Nevertheless, despite the above-referenced correspondence and Ms. Lusk's repeated requests, the DOC continued to use her "male" name, though that is not the name listed on the only operable warrant of commitment, for months after the expiration.
106. This means the DOC uses Ms. Lusk's former name on correspondence with her, including correspondence from the Transgender Committee and Behavioral Health Services. Indeed, a

July 25, 2019, letter from Behavioral Health Services Director Stephen Huot addresses Ms. Lusk by her former “male” name and states: “Please note that I have used your given name because that is how our system lists you. However, I give you the courtesy of your preferred title.”

107. According to WPATH’s SOC, using the correct name and pronouns for transgender people is an easy way of supporting their transition and can be part of gender-affirming care; refusing to do so may significantly exacerbate gender dysphoria.¹⁷

108. Around September 2021 the MN DOC finally began to use Ms. Lusk’s legal name, Christina Lusk, as the primary name in their records, as she had requested since her initial placement.

109. Nevertheless, staff at the DOC continue to refer to Ms. Lusk with the incorrect name, pronouns, and honorific. Ms. Lusk has filed kites regarding this, but the situation has not resolved.

SEARCHES, CLOTHING, AND DISCIPLINE

110. When the DOC searches transgender women in male facilities, the default policy is for all searches to be done by male staff.¹⁸ Transgender women in male facilities may request searches by female staff. This request must be pre-authorized by the transgender committee, and any allowances must be clearly communicated to relevant staff.¹⁹

111. The transgender committee can also approve transgender women for women’s undergarments. Ms. Lusk has long been approved for women’s undergarments.

112. DOC staff have punished Ms. Lusk for having breasts and for wearing women’s clothing. Ms. Lusk was once reprimanded for failing to wear a bra when her bras were in the wash. She was recently reprimanded by a guard for wearing a nightgown, which she is allowed to do, without wearing pants underneath, even though no one had previously complained about this.

¹⁷ WPATH’s SOC, *supra* note 3, at 16, 52.

¹⁸ DOC Policy 202.045 (F)

¹⁹ *Id.*

Every time Ms. Lusk is disciplined she has to wait 90 days from the end of her disciplinary period before she can apply for bootcamp (Challenge Incarceration Program), which is a program that allows inmates early release on meeting program conditions.

113. Ms. Lusk has been searched by male staff despite being approved for female searches only.

114. Male staff have openly stared at Ms. Lusk's breasts and have watched her change her clothing. Staff members repeatedly comment on her breasts and ask her if she's wearing a bra when she is indeed wearing one. She has repeatedly complained about one staff member in particular, Tom Peterson, who repeatedly stares at her breasts and comments on them. His behavior has not changed.

115. Ms. Lusk has been repeatedly misgendered and misnamed by DOC staff.

116. Ms. Lusk has been sent to segregation on a number of occasions, and while there she has been repeatedly forced to wear men's undergarments.

117. Ms. Lusk has been denied industry jobs at the DOC, which are the best paying jobs. She was permitted to take an industry position one time during a COVID outbreak when there were not enough people available to work. While at this job, Ms. Lusk heard from one inmate that the DOC person in charge of industry hiring had said, in sum and substance, that she did not want Ms. Lusk or another transgender inmate to be out there.

118. Ms. Lusk has complained about all of this mistreatment through kites and other written methods to no avail.

COUNT I

Sex and Sexual Orientation Discrimination Minnesota Human Rights Act

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. Plaintiff is a transgender woman and thus a member of a protected class under the MHRA. Defendants discriminated against Plaintiff in access to, admission to, full utilization of, and

benefit from a public service because of her sex and sexual orientation, and Defendants' actions, therefore, constitute illegal discrimination in public services in violation of Minn. Stat. § 363A.12.

2. As a direct and proximate result of Defendants' illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, loss of reputation, has incurred attorney's fees, costs, and expenses, and has suffered other serious damages.
3. The unlawful practices complained of above were intentional and were performed by Defendant with malice and/or reckless indifference to Plaintiff's rights.

COUNT II

Reprisal Minnesota Human Rights Act

Plaintiff realleges the above allegations of this Complaint and allege as follows:

1. Defendants unlawfully engaged in reprisal against Plaintiff because she opposed sex and sexual orientation discrimination, in violation of Minn. Stat. § 363A.15.
2. Because of the actions Plaintiff took to oppose sex and sexual orientation discrimination, Defendant took adverse action against her.
3. The unlawful practices complained of above were intentional and were performed by Defendant with malice and/or reckless indifference to Plaintiff's rights.
4. As a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, loss of reputation, has incurred attorney's fees, costs, and expenses, and has suffered other serious damages.

COUNT III**Equal Protection
Minnesota Constitution**

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. Defendants deprived Plaintiff of her right to equal protection under the Minnesota Constitution. Minn. Const. art. I § 2.
2. Defendants discriminated against Plaintiff on the basis of gender, which is subject to heightened scrutiny under the Minnesota Constitution, Article I § 2.
3. Defendants discriminated against Ms. Lusk on the basis of transgender status, which is subject to heightened scrutiny under the Minnesota Constitution, Article I § 2.
4. Defendants discriminated against Ms. Lusk based on invidious stereotypes, moral disapproval, and unfounded fears about people who are different, which is subject to heightened scrutiny under the Minnesota Constitution, Article I § 2.
5. Defendants are liable for violation of Ms. Lusk's rights under the Minnesota Constitution, Article I § 2.
6. As a result of Defendants' discriminatory actions, Ms. Lusk was deprived of full utilization of and benefit from a public service.
7. As a direct and proximate cause of Defendants' illegal conduct, Plaintiff was denied full and equal access to public services and has suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, loss of reputation, has incurred attorney's fees, costs, and expenses, and has suffered other serious damages.

COUNT IV**Cruel or Unusual Punishment
Minnesota Constitution**

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. Defendants' treatment of Plaintiff, including but not limited to their placement of Ms. Lusk in a men's facility without due regard for her safety or well-being, their denial of medical care, their refusal to use her actual name while also forcing her to misname herself, repeatedly placing her at risk of harassment and abuse, disregarding ongoing harassment, forcing her to wear male undergarments while in segregation, and their failure to adequately train and supervise staff, constitutes cruel or unusual punishment in violation of the Minnesota Constitution, Article I § 5.
2. Defendants are liable for violation of Ms. Lusk's rights under the Minnesota Constitution, Article I § 5.
3. As a direct and proximate cause of Defendants' illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, loss of reputation, has incurred attorney's fees, costs, and expenses, and has suffered other serious damages.

COUNT V

Due Process – Bodily Integrity And Autonomy Minnesota Constitution

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. Defendants' treatment of Plaintiff, including their placement of Ms. Lusk in a men's facility without due regard for her safety or well-being, their denial of medical care, their refusal to use her actual name while also forcing her to misname herself, repeatedly placing her at risk of harassment and abuse, disregarding ongoing harassment, forcing her to wear male undergarments while in segregation, and their failure to adequately train and supervise staff, violates Ms. Lusk's right to bodily integrity and autonomy protected by the due process guarantees of the Minnesota Constitution, Article I § 7.

2. As a direct and proximate cause of Defendants' illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, loss of reputation, has incurred attorney's fees, costs, and expenses, and has suffered other serious damages.

COUNT VI

Declaratory Judgment

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. The DOC's policy of making placement decisions solely on genitalia is unconstitutional, violates the MHRA, and is unenforceable.
2. The DOC's policy of deferring gender affirming surgeries until after an incarcerated person's release date is unconstitutional, violates the MHRA, and is unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. That the practices of Defendants complained of herein be adjudged, decreed, and declared to violate the rights secured to Plaintiff by the Minnesota Constitution and the Minnesota Human Rights Act, Minn. Stat. § 363A.01, *et seq.*
- B. That a permanent mandatory injunction be issued requiring that Defendants adopt practices in conformity with the requirements of the Minnesota Constitution and the Minnesota Human Rights Act, Minn. Stat. § 363A.01, *et seq.*
- C. That a permanent prohibitory injunction be issued prohibiting Defendants from engaging in the practices complained of herein.
- D. That the Court order Defendants to pay a civil penalty to the State of Minnesota pursuant to Minn. Stat. § 363A.29.

- E. That Plaintiff be awarded compensatory damages in an amount to be established at trial, and treble damages pursuant to Minn. Stat. § 363A.33 and § 363A.29.
- F. That Plaintiff be awarded punitive damages pursuant to Minn. Stat. § 363A.29 in an amount to be established at trial.
- G. That the Court issue an order enjoining Defendants and their officers, agents, and employees from subjecting Plaintiff to differential treatment and from any retaliation against Plaintiff for prior actions, or for bringing this action.
- H. That the Court retain jurisdiction until the Court is satisfied that the Defendants have remedied the practices complained of herein and are determined to be in full compliance with the law.
- I. That the Court order Defendants to pay counsel for Plaintiff for her reasonable attorney's fees and the costs and expenses of this action.
- J. That Plaintiff be awarded pre- and post-judgment interest on any monetary damages awarded, pursuant to Minn. Stat. § 549.09.
- K. Pursuant to Minn. R. Civ. P. 8.01, notice is provided that reasonable damages may be greater than \$50,000.
- L. That Plaintiff be awarded other and further legal and equitable relief as may be found appropriate, just, and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: June 6, 2022

GENDER JUSTICE

/s/ Jess Braverman

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ACKNOWLEDGEMENT

The undersigned acknowledges that pursuant to Minn. Stat. § 549.211, subd. 2, that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: June 6, 2022

/s/ Jess Braverman _____

MINNESOTA
JUDICIAL
BRANCH