



Written by [R. Cort Kirkwood](#) on September 7, 2012

## Judge to Taxpayers: You'll Pay for Murderer's Sex Change

To the annals of liberal judicial activism add another subheading: A federal judge in Massachusetts [has ordered](#) the state's department of corrections to pay for a murderer's sex-change operation.

U.S. District Court Chief Mark L. Wolf, [chief judge](#) of the [U.S. District Court in Massachusetts](#), [says taxpayers](#) will pick up the tab for doctors to lop off the manhood of she-man "Michelle" Kosilek, whose real name is Robert. The [judge opined](#) that the Eighth Amendment to the federal Constitution forbids denying a [sex-change operation](#) to a "transsexual" who is "sick" and "needs" it.



Unknown, the [Boston Globe reported](#), is what the operation will cost. But it won't be cheap, given that taxpayers will also cough up the dough to pay for the treatment Mademoiselle Michelle will need afterward.

### He Murdered His Wife

Kosilek has been in the slammer since he murdered his wife, Cheryl, in 1990. By then, he "was transitioning to a female identity," the [Globe reported](#).

Since then, the gender-bender has, apparently, been something of a professional psychiatric patient. He's been fighting to get the surgery for at least 10 years. [According to](#) the *Globe*, "the care she [he] has already received has been unsuccessful, she argued in court documents."

When the case was first filed a decade ago, Wolf ruled that treatment was necessary but stopped short of ordering the surgery. Kosilek sued again, saying the hormone treatments, laser hair removal, and psychotherapy she had received were insufficient to address severe anxiety and depression.

Kosilek has already tried to castrate himself and twice tried to commit suicide, once while taking the antidepressant Prozac. The Department of Correction's own doctors have said that surgery is the only appropriate care for Kosilek.

Wolf's ruling follows those of other courts, the [Globe reported](#), which established the precedent for treating the "symptoms" associated with the "disease" Kosilek purports to have. The First and Seventh circuit courts of appeals [have ordered](#) hormone treatments for "gender identity disorder" and [struck down](#) a law forbidding the state to pay for such treatment of inmates. Indeed, the [First Circuit's ruling](#) came in another case involving the Bay State's corrections department. And a federal tax court [has said](#) the treatments [are tax deductible](#) because they are "necessary."

### Wolf's Decision

Thus did [Wolf rule](#) that Kosilek can order the doctors to sharpen their scalpels and start billing the



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taxpayers. His decision hinges on the state's obligation to provide adequate medical care under the [Eighth Amendment](#) to the U.S. Constitution, which forbids excessive or cruel and unusual punishment. [Wolf accepted](#) the idea that Kosilek suffers from a disease that "is recognized as a major mental illness by the medical community and by the courts."

Kosilek is, therefore, a transsexual — a man who truly believes that he is a female cruelly trapped in a male body. This belief has caused Kosilek to suffer intense mental anguish.

The accepted "standards of care," [Wolf ruled](#), may only require hormonal or psychotherapy. But "there are, however, some cases in which sex reassignment surgery is medically necessary and appropriate," he wrote. "This fact that sex reassignment surgery is for some people medically necessary has recently become more widely recognized."

Wolf also found that the commissioner of the state department of corrections subjected Kosilek to a "long period of pretense and prevarication" in denying him the sex-change surgery, not least by claiming the surgery would pose a security risk. Wolf dismissed that idea.

[Wolf ruled](#) that "Kosilek has proven that the DOC is violating his rights under the Eighth Amendment. He has also established that this violation will continue if the court does not now order the DOC to provide the treatment its doctors have prescribed":

The Eighth Amendment prohibits cruel and unusual punishment.... Among other things, the Eighth Amendment does not permit the unnecessary infliction of pain on a prisoner, either intentionally or because of the deliberate indifference of the responsible prison official. Any such infliction of pain is deemed "wanton." The wanton infliction of pain on an inmate violates the Eighth Amendment.

Prisoners have long been held to have a right to humane treatment, including a right to adequate care for their serious medical needs. It may seem strange that in the United States citizens do not generally have a constitutional right to adequate medical care, but the Eighth Amendment promises prisoners such care.

Of course, the judge's logic could easily be taken one step further: Since many prisoners [commit suicide](#) merely because of the trauma of being locked up — and there are other alternative punishments available for crimes besides jail or prison — prison itself could be considered cruel and unusual punishment under Wolf's interpretation of the Eighth Amendment.

And so the uxoricidal she-man will get his sex-change operation.

Kosilek, [who lost a battle to get](#) taxpayer-subsidized [electrolysis](#), will, naturally, also receive all the post-operative care he needs, no matter how much it costs. [According to](#) the *Globe*, "The judge did not say who should perform the surgery or where it should be conducted, leaving those decisions to state officials."

The cost of the surgery ranges from \$7,000 to more than \$50,000, depending on the extent of cosmetic work, according to informational surgery and transgender websites.

It was not clear how much postsurgery care would have to be provided, though the state would bear that cost as well.

Senator [Scott Brown](#), the liberal Republican who succeeded leftist [Ted Kennedy](#), [is outraged](#). "This is an outrageous abuse of taxpayer dollars," said he. "We have many big challenges facing us as a nation, but



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nowhere among those issues would I include providing sex-change surgery to convicted murderers.”

### **Fluke: Sex-Change Surgery for All**

As odd as Reagan-appointee Wolf’s decision appears to be, it might not be long before insurance companies and/or taxpayers have to pick up the bill for gender-benders who want to explore the Final Frontier of self-mutilation. [According to the \*Daily Caller\*](#), the Democrat heroine Sandra Fluke has called for the law to force insurance companies to cover sex-change surgery.

Fluke gained national renown when [she told](#) the [House Democratic Steering and Policy Committee](#) that Georgetown University, the Catholic law school she attends, should be forced to provide free birth control for students. [Fluke testified](#) that birth control was so expensive she could not afford it, even though the local Wal Mart offers it for \$9 a month. She became a cause célèbre after orator of the airwaves [Rush Limbaugh called her](#) a slut. Tears were shed. Feminists rent their garments. [The president called](#) to express his undying sympathy.

Americans later learned that Fluke was hardly a simple law-school student attending a [\\$40,000 a year university](#), yet who could not afford birth control pills to stanch the consequences of fornicating. [She is a professional activist](#) for “women’s health issues,” meaning she concerns herself with birth control and abortion.

Thus, it was no surprise to see [Fluke argue](#) in [the \*Georgetown Journal of Gender and Law\*](#), that private health insurance companies should be forced to pay for sex-change operations.

The article, “[Employment Discrimination Against LGBTQ Persons](#),” is not available online, but the [Daily Caller](#) offered the money quote: “Fluke and co-editor Karen Hu advocated remaking U.S. law to remove what they called a ‘gender bias’ at the root of denying coverage for ‘transgender medical needs,’ describing it as ‘a prime example of direct discrimination.’”

“Transgender persons wishing to undergo the gender reassignment process frequently face heterosexist employer health insurance policies that label [gender-reassignment] surgery as cosmetic, or medically unnecessary and therefore uncovered,” Fluke and Hu wrote.

[The \*Daily Caller\* describes](#) Fluke’s history of liberal activism in great detail.



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