

PAROLE SUITABILITY IN OHIO
By William Ridenour

Parole suitability for Ohio prisoners appears to have become dependent upon the grant terms in the agreement between the Department of Rehabilitation and Correction ("DRC") and the federal government. The groundwork for this grant contract was laid when the United States Congress enacted legislation in 1994 to provide states with funding to increase bed capacity for "Part 1 Violent Offenders." A Part 1 Violent Offender was defined by the Justice Department to include the offenses of murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault. This legislation was titled "Violent Crime Control and Law Enforcement Act of 1994" and it became operational in 1996.* The terms of these grants were applicable only to prisoners who were identified as violent offenders. Currently, there are approximately 4,400 prisoners incarcerated in Ohio who were convicted prior to July 1, 1996 ("Old Law"), most of which are designated by DRC as violent offenders.

To qualify for grant funds under this new federal law the state requesting funds was required to demonstrate that it has practiced indeterminate sentencing and met one of the following criteria on the date the statute was enacted:

- "1. Persons convicted of any Part 1 Violent Crime on average serve not less than 85 percent of the prison term under the state's sentencing and release guidelines; or
2. Persons convicted of any Part 1 Violent Crime on average serve not less than 85 percent of the maximum prison term allowed under the sentence imposed by the court."

When these grant terms were established in April of 1996, Ohio did not have formal sentencing and release guidelines, at least nothing reduced to writing in the Ohio Administrative Code. Consequently, the words "on average serve not less than 85 percent of the maximum prison term allowed under the sentence imposed by the court" have a significant impact on the combined average time served for violent offenders who were convicted under the Old Law. The practice of the parole board under the Old Law was to routinely release prisoners on parole after they served approximately 23 percent of their maximum sentence term or, in other words, after serving their minimum sentence term under the indeterminate sentencing scheme. This created a combined "average" 62 percent deficiency in the "85 percent of the maximum prison term" required under the terms of these grants.

Perhaps the words "unsuitability for parole," in parole board vernacular, actually mean that the shrinking pool of Old Law prisoners cannot be released because it would breach the grant terms with the federal government, in which all violent offenders who were incarcerated when these grants were approved are required to serve "on average [] not less than 85 percent of their maximum sentence term." To release a significant number of Old Law prisoners now, in all probability, would reduce the combined average time served for violent offenders to obviously low levels and subject DRC to substantial financial penalties for breach of the grant agreement under contract law. Thus, it appears that the terms of these violent offender grants are the actual controlling factor for parole suitability in Ohio.

* Title II, Subtitle A (Public Law 103-322, codified 42 U.S.C. Section 13701 et seq.).