

PRISON OVERCROWDING IN OHIO

by

William L. Ridenour

The prison overcrowding problem in Ohio has reached a critical stage. Some institutions are operating at nearly 200% of original design capacity. In fact, Ohio has struggled for over a decade to reduce its prison population. For instance, recent studies have shown that the incarceration rate in Ohio is 4.9 percent higher than the national average. The national incarceration rate is 545 adults per 100,000 residents, as compared with Ohio's incarceration rate of 572 adults per 100,000 residents. FN1 Since August of 2013, there have been over 50,000 prisoners incarcerated in Ohio's prison system. FN2 It has been projected that Ohio's prison population will increase to over 53,000 prisoners by the year 2019, which will undoubtedly create an even greater demand on Ohio's prison budget. For example, the average cost to house each prisoner has been announced by prison officials as approximately \$22,836 per year. FN3 Consequently, the annual cost to house 53,000 prisoners will be in excess of 1.2 billion dollars. This cost will be at least triple for elderly prisoners who routinely require expensive medications and treatments.

In 2011, the Ohio General Assembly created legislative reforms in an effort to reduce prison overcrowding. Specifically, the Legislature passed House Bill 86, in which certain prisoners would be permitted to earn time off their sentences for participating in programs such as job training, diverting first-time, low-level non-violent offenders into community based corrections, and raising the threshold for what qualifies as felony theft to 1,000 dollars. In addition, House Bill 86 contained a provision for releasing elderly prisoners who are 65 years of age or older. This provision of the law contained a "discretionary" clause which permitted the Parole Board to screen candidates for release based solely on its discretion. To the utter astonishment of Ohio's lawmakers, the Parole Board evaluated several hundred eligible candidates but found none to be suitable for release. Perhaps there is a lesson in this debacle for future legislation. Maybe the Legislature should bear in mind that entrenched bureaucrats will exploit any discretionary wiggle-room to negate the good intentions of Ohio lawmakers whenever possible.

On April 30, 2012, the Columbus Dispatch newspaper reported that there are over 4,700 prisoners still incarcerated in Ohio who were convicted under the law in effect prior to 1997 ("Old Law"). This figure is unlikely to change according to the chairwoman for the Ohio Parole Board, Ms. Cynthia Mausser, "[b]ecause we're 16 years from Senate Bill 2, most people suitable for parole have already been released." FN4 For this reason, it is the general consensus among Ohioans that the parole board has single-handedly cost taxpayers millions of dollars in unnecessary expenses.

The Ohio Department of Rehabilitation and Correction ("ODRC") continues to insist that the combined design capacity for Ohio's prison system is approximately 38,000 prisoners. However, this figure appears to have been grossly inflated, according to the American Correctional Association's ("ACA") minimum standards for the design capacity of a modern prison facility -- the actual combined design capacity of the Ohio prison system is closer to 30,000 prisoners. The ACA is a non-profit organization responsible for inspections of ODRC facilities and its staff. It has no authority to correct deficiencies, it merely possesses the power to grant or deny accreditation to prisons.

According to ACA standards, each prisoner must be provided with at least 60 square feet of available floor space, assuming that the prisoner spends no more than ten hours per day locked into this area. FN5 The ACA standard also includes the standard ratio of one toilet, one washbasin, and one shower for each twelve prisoners, with an additional requirement of one urinal for each six prisoners. Based on this standard, and the existing ratio for these facilities, the ODRC is presently operating its prison system at approximately 167 percent of combined design capacity. Ohio's aging prison system was not originally designed to operate under

such overcrowded conditions.

Several worn-out and deteriorated prisons in Ohio fail to meet basic constitutional minima. Sanitation is abominable, with some building structures so dilapidated and overcrowded that they are unfit for human habitation. Prisoners are routinely housed in areas containing less than 25 square feet of living space for each prisoner. Indeed, many prisoners are forced to sleep in dayrooms, hallways, gyms, and in other areas not designed to house prisoners.

Under these conditions, and the accompanying shortage of correctional officers, prisoners' personal property is often stolen and their living areas are frequently vandalized by other prisoners. There is a pervasive atmosphere of violence, which has been attributed to disgruntled State employees, extreme prison overcrowding, and deep-seated enmities growing out of the months, and sometimes years, of constant daily friction among the prison population. These severe living conditions may have been a contributing factor to the unusually high suicide rate for 2013, which reached an all-time high of ten suicides in an eleven month period. Some prisoners simply cannot cope with these overcrowded conditions.

There are currently over 6,800 prisoners incarcerated in Ohio who are 50 years of age or older. This group of prisoners account for an estimated 13.5 percent of the overall prison population. A report from the Human Rights Watch found that elderly prisoners are more likely than younger ones to develop mobility impairments, hearing and vision loss ... "and chronic disabling and terminal illnesses." Prisoners who continue to age in prison will eventually require assisted living and nursing-home level care. Most of these elderly prisoners are too old and infirm to threaten public safety if they were released.

While many elderly prisoners are housed at the Hocking Correctional Institution ("H.C.I.") in Nelsonville, Ohio, many others are scattered throughout the State in different prison facilities. Prison overcrowding and the practice of housing elderly prisoners among the general population has been identified as the main cause for an increase in violent assaults against the elderly. FN6 These incidents of violence and sexual assault are frequently directed toward the elderly primarily because they are too old and infirm to defend themselves. These elderly prisoners live in an environment where violence and terror reign, and where they are subject to the constant threat of extortion and violent attack by other prisoners. Frequently, the incidents of assault go unreported to prison officials primarily because of fear, intimidation. Ironically, the victims of assault and the offenders are usually punished equally by prison officials under prison rule infractions for fighting, thereby discouraging victims from coming forward to report the assaults. A majority of elderly prisoners in Ohio live with the ever-present threat of violent assault by other prisoners.

The facts are inescapable, the current rate of population growth in the Ohio prison system is unsustainable, and the aging prison population is creating a fiscal catastrophe for future lawmakers. Indeed, the general consensus among Ohio lawmakers is that the State's budget cannot continue to operate under the heavy financial burden created by prison overcrowding. Prison overcrowding has reached a critical stage, to the point where, if something is not done soon to alleviate this crisis, many prisoners will suffer irreparable harm, particularly the elderly. This crisis could be averted by the Governor. An executive order by the Governor could release a majority of elderly and Old Law prisoners with a single stroke of his pen, which in turn would cut Ohio's prison population by an estimated 13.6 percent.

FOOTNOTES

FN1: Springfield News-Sun Newspaper, August 30, 2013, at B7.

FN2: *ibid.*

FN3: The Columbus Dispatch Newspaper, April 30, 2012, at p.B2.

FN4: *ibid.*

FN5: American Correctional Association standard.

FN6: The Middletown Journal Newspaper, April 4, 2013.