

TESTIMONY
BEFORE THE CONSTITUTIONAL MODERNIZATION COMMISSION

Public Institutions Committee

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Chairperson Readler, members of the Public Institutions Committee: thank you for the opportunity to appear and speak to you about the Department of Rehabilitation and Correction.

Concerning prisons, the Ohio Constitution provides only the following at Article VII, Section 2:

The directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the General Assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the Senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate.

In the absence of extensive constitutional provision on this topic, I will attempt to provide an overview of the status of the agency created to support and direct the prisons, to include a few of its legal concerns.

The United States incarcerates its citizens at a higher rate than any other country in the world, by a substantial margin.¹ The success of the Ohio Department of Rehabilitation and Correction is of crucial to concern for us all, in light of the fact that at least 97% of committed offenders will one day rejoin our communities. In most states, the correctional leadership adheres to philosophies and practices that are reasonably universal and well-understood. The great challenge facing many correctional agencies is the responsibility to manage more offenders than the facilities are constructed to handle, with insufficient staffing levels to supervise them.

¹ The incarceration rate for the United States is listed at 716 per 100 thousand; the Russian Federation is 484; China is 121; and Canada is 114. See International Centre for Prison Studies, at http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprte. (Accessed June 6, 2013).

Ohio currently operates 28 prisons²; in 2001, there were 34³. Ohio's current incarcerated inmates number around 50,100. In 2001, there were 45,250. When a prison has more prisoners than it was designed to handle, it strains the plumbing facilities, the kitchen equipment and the maintenance staff. Programs staff spend their time looking for empty beds or resolving disputes, rather than avoiding disputes and delivering programs. Today, the Department employs 11,800 staff; in 2001, there were over 16,000 employees in the Department. Staffing shortages affect the community supervision side of the house, as well. Of the 22,250 offenders released last calendar year, 13,800 of them were released to some form of supervision.

For your assistance, I have copied information showing some of these statistics. The Department of Rehabilitation and Correction has a website where these reports and many more can be viewed or downloaded. The website is a great resource for anyone who wishes to learn more about the programs and policies of the department. You may view this information at: <http://www.drc.ohio.gov/web/Reports/reports.htm> .

Among the most pressing of the legal and operational challenges facing the Department is the responsibility to carry out the death penalty. The Department has been engaged in protracted litigation over this topic, which adds a significant additional element of pressure for a task that is already difficult, to say the least, under the best of circumstances. Ohio will soon run out of the drug used for lethal injection, due to the unwillingness of drug manufacturers to have their product associated with this use, or to risk litigation. The Department is legally obligated to perform this task but is opposed or obstructed in its efforts to do so.

Our free society has experienced a decline in the strength of the family unit, which traditionally was where children learned moral values. In some cases, criminal gangs have replaced the family as a source of support and social bonding. The consequences are manifested in the increasing levels of violence in our prisons, when street gangs re-connect to form security threat groups inside prisons. Many of the state's prisons are constructed as dormitory-style housing, and many inmates have been able to live in those settings in an orderly fashion. The Department has prisons constructed with cell houses, but the increased levels of violence in recent years has overtaxed those prisons, as that form of housing is increasingly necessary to contain the violent conflicts between inmates and the assaultive acts directed at staff. There is always a potential for litigation when imposing greater restrictions on inmates, arising from an inmate's

² See May, 2013 Fact Sheet, Ohio Department of Rehabilitation & Correction website at: <http://www.drc.ohio.gov/web/Reports/FactSheet/May%202013.pdf> .

³ See July, 2001 Fact Sheet, Ohio Department of Rehabilitation & Correction website at: <http://www.drc.ohio.gov/web/Reports/FactSheet/July%202001.pdf> .

asserted right of due process under the U.S. Constitution, but there is no litigation on this topic at present of which I am aware.

The Department lost an element of institutional control and behavior motivation in 1996 when parole was abolished for many crimes. I understand that the parole board had, in some circles at least, become a discredited institution, but our opportunity to evaluate an inmate's readiness to rejoin the community on the basis of institutional conduct motivated inmates to restrain their violent impulses.

As Ohio's sentencing laws have changed, the role of the Sentence Bureau has become much more complex. It is not a simple thing to calculate a release date with all the facets and elements of a criminal sentence, from pre-trial confinement credit to mandatory specifications of actual incarceration, credit for programming, all with differing sentence codes and penalties dependent upon the date of conviction.

Major legal challenges in the past have focused on the Department's obligation to care for the medical and mental health needs of the inmate population. The lawsuits have been resolved, but it is still challenging to recruit and retain the staff necessary to provide care for the incarcerated population who cannot seek it themselves, and whose lifestyles quite often undermined their own health. The Department, with the support of the legislature, must maintain its commitment to providing adequate care for inmates. Additionally, I am sure we all would wish that the inmates who obtain needed mental health care for their serious illnesses could continue to receive adequate care when released to the free community. The gap in treatment services for the mentally ill in our communities is evident to those who work in corrections. At a minimum, the lack of adequate care adds a significant degree of difficulty for offenders who must reenter society. The lack of care can also contribute to the cycle of criminal misconduct. The relative availability of mental health care in prison has at times been a factor considered by the sentencing court in deciding the disposition of a criminal matter.

I would be pleased to answer any questions the Committee may have.