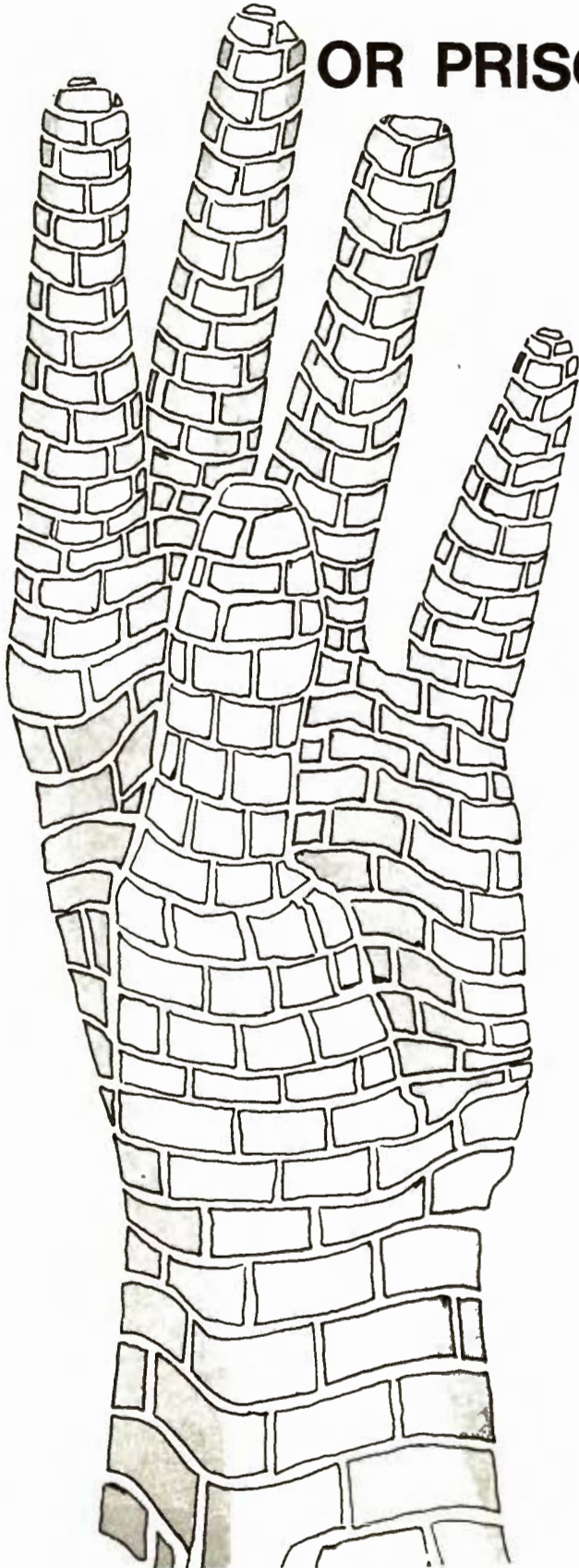


PROTECTING INMATE RIGHTS: PRISON REFORM OR PRISON REPLACEMENT?

Summary Edition



—A report of the Ohio Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Ohio Advisory Committee.

February 1976

*As I would not be a slave,
so would I not be a master.
This expresses my idea of
democracy - - -*

*Abraham Lincoln
Letter, August 1858*

PROTECTING INMATE RIGHTS: PRISON REFORM OR PRISON REPLACEMENT?

A report prepared by the Ohio Advisory
Committee to the U.S. Commission on Civil Rights

SUMMARY EDITION

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Ohio Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE:

Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

February 1976

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to the

UNITED STATES COMMISSION ON CIVIL RIGHTS

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LETTER OF TRANSMITTAL

OHIO ADVISORY COMMITTEE TO THE U.S.
COMMISSION ON CIVIL RIGHTS
February 1976

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John A. Buggs, Staff Director

Sirs and Madam:

The Ohio Advisory Committee submits this report of its study of inmate rights and institutional conditions in Ohio's adult State prison system as part of its responsibility to advise the Commission on civil rights problems within this State.

This report examines both the status of Ohio inmate rights and the institutional conditions affecting those rights. The Advisory Committee has worked on this issue for over 2 years. In July 1973 it conducted open meetings on this question and has heard from past and present prisoners and prison staff, administrators, State legislators, correctional experts, and civic leaders.

The Advisory Committee finds that in spite of much State and Federal case law and State administrative regulations guaranteeing prisoners' rights, Ohio inmates suffer widespread and repeated violations of those rights. The Advisory Committee agrees with many corrections experts that the very institutional structure of prisons is largely to blame for these rights violations and therefore recommends systemic as well as statutory and administrative changes. We strongly feel that prisons may be inherently incapable of operating constitutionally.

The Advisory Committee recommends new State programs to increase the use of probation and decrease the use of incarceration, thereby enabling the closing of most of Ohio's prisons. We also recommend the repeal of State laws which have the effect of rewarding counties financially for the number of persons committed to State prisons.

The Advisory Committee also recommends the enactment of both Federal and State bills of rights for prisoners with provisions for vigorous enforcement. We further urge that such Federal legislation condition the receipt of all Federal funds upon State enactment and enforcement of such a bill of rights.

In the meantime, the Advisory Committee recommends greatly increased monitoring of prison disciplinary and parole procedures. We also urge development of a unified State correctional policymaking and budgeting authority to overcome the present extensive fragmentation of Ohio adult corrections.

It is our hope that the Commission will support our recommendations and make effective use of these findings in the Commission's National Prison Project.

Respectfully,

/s/

ELDRIDGE T. SHARPP, JR.
Chairman

ACKNOWLEDGMENTS

The Ohio Advisory Committee wishes to thank the staff of the Commission's Midwestern Regional Office, Chicago, Ill., for its role in the preparation of this report. The report was written by Frank E. Steiner with legal assistance from Margaret V. Johnson. Other staff members who participated in the preparation of the report include Valeska S. Hinton, Duane Lindstrom, Delores Miller, Ada L. Williams, Sharon A. Rivers, and Kim Dewey (student intern). All worked under the guidance of Clark G. Roberts, Regional Director.

Final edit and review was conducted in the Commission's Office of Field Operations, Washington, D.C., by editor Bonnie Mathews, assisted by Mary Frances Newman and Audree B. Holton. Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations.

Preface to the Summary Edition

The complete text of this report is more than 176 pages long, and includes 18 charts and tables and eight appendices. Due to rapidly increasing costs of printing and distributing government reports, this report has been issued in two editions: the complete text and this abridged version. This version includes the complete texts of Chapters I, VII, and VIII of the full report and, therefore, includes all conclusions, findings and recommendations of the Advisory Committee. The full report has been placed in many public and university libraries throughout the State and a limited number of copies will be available from the Commission's Washington and Chicago offices for a time after the report's official release. All inquiries about the report's availability should be sent to the Commission's Midwestern Regional Office, 230 South Dearborn Street, Room 3251, Chicago, Illinois, 60604, 312/353-7371.

SUMMARY EDITION

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CHAPTER I

I N T R O D U C T I O N

The Ohio Advisory Committee to the U.S. Commission on Civil Rights has been concerned about conditions in Ohio's adult prisons for several years. In 1971 and 1972 the Advisory Committee received allegations from inmates, prison staff, and other citizens that violations of inmate and staff rights were occurring in the prisons.

In 1973 the Commission initiated a national study to determine the need for Federal guidelines to protect prisoners' rights. The Commission also wanted to determine the extent of discrimination against minority and women inmates. Traditionally concerned with racial discrimination and more recently with sex discrimination, the Commission has concluded that adequately addressing the rights of minority and women prisoners first requires examination of the rights afforded all prisoners. This is permitted in legislation establishing the Commission which directs it to:

...study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice; [Sec. 104(a)2 of the Civil Rights Act of 1957, as amended] [Emphasis added.]

This language has been consistently interpreted to mean that the Commission's jurisdiction in the area of the administration of justice extends to matters pertaining to denial of equal protection, whether or not on the basis of race, sex, or national origin.¹

1. U.S., Commission on Civil Rights, Office of General Counsel, memorandum, Mar. 13, 1973.

The Ohio Advisory Committee chose to participate in what grew to be a 14-State national project.

In Ohio, as throughout the nation, prison problems have generated controversy and often violence. Elected and appointed officials have frequently responded to the issues by conducting investigations and issuing studies of prison conditions. These studies include the 358-page final report of the Ohio Citizens' Task Force on Corrections, a highly professional group appointed in 1971 by former Governor John J. Gilligan and headed by Judge Bernard Friedman of Cleveland, and the 1973 report of the Administration of Justice Committee, a Cleveland-based private consulting firm staffed by former corrections officials. The general assembly's Republican leadership issued a 1973 report on conditions in the Southern Ohio Correctional Facility at Lucasville, an institution also studied by the recently abolished Governor's Advisory Panel for Rehabilitation and Correction. The general assembly's staff has continued to gather information on Ohio prison administration as part of the legislature's oversight functions. The Ohio prisons have also been the subject of several academic research projects in recent years.

Nearly all of these reports have catalogued allegations of mistreatment of inmates and have publicly sounded the call for "prison reform" of varying degrees. What these prior reports did not address, however, were prison policymaking and budgeting priorities and the enforcement of the system's revised rules and regulations. This report addresses these and also raises the fundamental issue of whether prisons should continue to exist at all in this State. The latter concern was raised by many witnesses during the Advisory Committee's informal hearing in Columbus, Ohio in 1973 and has been repeatedly addressed in recent years by national experts on prisons.

Although the Advisory Committee originally initiated its investigation in response to allegations of mistreatment of inmates, the Committee members were also aware of the relatively high regard with which Ohio's prison system has been viewed by corrections specialists nationally, particularly under its former director, Dr. Bennett J. Cooper. This apparent conflict between everyday operation of the system and its national reputation required an investigation which examined the system's basic structure, budget, and policy-making apparatus. Through that study, especially the budgetary aspects, the Advisory Committee has come to question many of the positive assumptions made about Ohio's prison system. More importantly, however, the Advisory Committee became increasingly concerned that the protection of inmates' constitutional rights and the continuation of Ohio's prison system as it is today may be irreconcilable goals. As U.S. District Court Judge James E. Doyle has said:

If the functions of deterrence and rehabilitation cannot be performed in a prison without the imposition of a restrictive regime not reasonably related to these functions, it may well be that these functions can no longer be performed constitutionally in a prison setting.²

In brief, the Advisory Committee could not ignore the information before it which, when analyzed, amounted to an indictment of prisons generally, not merely a critique of Ohio's seven prisons. As a result, the Advisory Committee is attempting to stake out some new discursive ground within the corrections debate in Ohio. It is also doing this nationally through its parent agency, the Commission. Hopefully this document will both help clarify the issues and also identify more options for creative action by State and Federal officials.

2. *Morales v. Schmidt*, 340 F. Supp. 544 (W.D. Wis., 1972).

CHAPTER VII

SUMMARY AND CONCLUSIONS

Ohio, a leader in many areas of public life, can also lead in its handling of adult corrections by boldly facing the realities this Advisory Committee believes to exist in its correctional system today. Failure to do so will mean the continued denial of prisoners' rights and may even mean chaos in Ohio's prisons.

New Realities

Ohio elected officials and corrections administrators must face new factors in decisionmaking. Among these the most outstanding are:

- * growing court commitments to Ohio prisons;
- * increasing prison populations for the first time in 9 years;
- * increased concern for inmate rights by the Federal judiciary;
- * new national awareness among prisoners of their constitutional rights;
- * a much higher proportion of minority inmates;
- * greater public and professional disillusionment with the past performance of correctional institutions and programs;
- * increased militancy of line correctional officers concerned for their job security and safety; and

Unfinished Business

These new and changing realities will require revision of State correctional policy and practice. This will be doubly difficult in Ohio because of the State's unfinished business in adult corrections which includes the following:

- * the gap between rhetoric and reality in institutional treatment programs, development of community corrections centers, and State budget practices;
- * a system of State reimbursement of county criminal court costs which rewards counties for sending offenders to State prison but not for placing them on probation;
- * apparent unwillingness by State officials to consider developing State programs giving incentives to local courts to decrease commitments to State institutions;
- * widespread fragmentation of State correctional policy, fund sources, decisionmaking, personnel, and accountability;
- * continued racism throughout the prison system on both an individual and institutional level;
- * over-dependence on time-limited Federal funds for most new and innovative programs;
- * lack of uniform enforcement of State regulations, especially those designed to protect inmate rights;
- * inadequate protection of inmates' first amendment rights, especially in the areas of assembly and grievance procedures.

Backsliding in 1975

Since the beginning of 1975 the Ohio prison system's unfinished business has increased, partly through actions of Governor Rhodes and department director Denton, which appear injurious to prisoner rights and peace in Ohio's prisons. One action was Governor Rhodes' abolition of the Governor's Advisory Panel on Rehabilitation and Correction, a body which had brought renewed hope to many prisoners and others that their pleas for objective investigation of prison problems were being heard. The second action was director Denton's decision not to replace retiring chief ombudsman George Miller, thus abolishing the office of ombudsman, a position which had been a first step toward more effective grievance procedures.

The Ohio Advisory Committee believes that the recent regressive trend in administration of Ohio's prisons will ultimately cost Ohio citizens much in terms of increasing budgets and possible injuries or deaths. Conversely, greater protection of inmate rights will have many benefits for all Ohioans. These will include lowered recidivism and the lessening of violent incidents within prisons.

Whether these benefits are immediate or long range, however, greater protection of Ohio prisoners' rights is required now. Adequate protection of inmate rights, furthermore, requires a major shift in policy, budget, and practice in Ohio adult corrections.

Toward Rights and Reintegration in Ohio Corrections

Ohio officials have accepted, at least rhetorically, two premises of modern correctional philosophy:

- (1) Inmates have many more constitutional rights than previously thought, and these must be more adequately protected; and
- (2) Ultimately, prisons are ineffective tools for deterrence or rehabilitation and must be largely replaced by smaller, community based programs for the nondangerous majority of offenders.

Ohio has not moved effectively to achieve either premise in practice. Regulations to protect inmate rights are often unenforced, and minimal State funds support community corrections which are dependent on dwindling Federal funds. Both problems have at least one common basis which will prevent the actual achievement of either inmate rights or community corrections. That common factor is the continued dominance of custody concerns in Ohio corrections at the levels of State budgets, legislative intent, administrative budgeting, and personnel. This dominance is so great that even new fund sources, such as the \$2.7 million in Federal revenue sharing funds spent by the Department of Rehabilitation and Correction in fiscal year 1973-74, are immediately consumed by guards' salaries, overtime, and prison operations. The ancient attitudes of retribution and confinement still run Ohio's prisons.

Ohio's own general revenue funds must be redirected to both institutional treatment within prisons and to community corrections as the best replacement for prisons. Both are crucial because both are currently stymied by Ohio's institutional corrections establishment, which consumes State general revenue funds for custody concerns. Such changes will, in part, require new State appropriations.

More is needed, however, than funds. Simply put, power in State corrections must be removed from the nearly complete control of those who emphasize custody at the expense of other alternatives. Priorities for the use of available funds must change. Ohio should set goals in the following two areas:

- (1) Replacement of most State prisons with community-based alternatives to incarceration; and
- (2) Greatly increased protection for the rights of prisoners now incarcerated.

The first goal will require development of a State plan listing the prisons to be closed in priority order with a timetable for the accomplishment of that goal. The second goal will require greatly increased monitoring of prison staff performance and stronger sanctions for staff who violate inmates' legal rights.

Such major administrative and structural change is probably impossible without the involvement of all three branches of Ohio government, concerned citizens, and selected Federal officials. Each party has specific responsibilities within an overall strategy for Ohio corrections. Advisory Committee proposals for specific parts of such a strategy are detailed in the following section.

CHAPTER VIII

FINDINGS AND RECOMMENDATIONS

Finding 1: Correctional Planning and Budgeting

Ohio's adult correctional system is fragmented in a number of ways: in policies, funding sources, decisionmaking processes, and staffing. Ohio may be said to have several adult correctional systems serving different purposes with different funds allocated by different officials who supervise different staff. This occurs despite the requirement that Federal safe streets funds be spent only as part of a unified, statewide plan. Many federally funded projects stressing staff training, new prison programs, and community corrections will be automatically phased out soon if they are not funded with State monies. The absence of coordinated State corrections policy or practice results in the continued denial of inmate rights, minimal public accountability for State corrections programs, and a coming crisis in prison programs.

Recommendation:

The Ohio Advisory Committee to the U.S. Commission on Civil Rights recommends to the Governor:

- (a) that a unitary correctional planning and budgeting authority be developed within the executive branch. Such an authority should include representatives of the Department of Rehabilitation and Corrections central office, each adult prison, the Adult Parole Authority, the Criminal Justice Supervisory Commission, the new Governor's Advisory Panel on Rehabilitation and Correction, and any other State department overseeing funds used in Ohio adult State corrections;

- (b) that this new, unitary correctional authority be directed to develop a comprehensive State policy and budget plan, consistent with a new program of State probation subsidies designed to reduce court commitments to State prisons (Finding and Recommendation 4).
- (c) that this unitary authority be directed to develop affirmative plans for State takeover of all LEAA-funded projects in the Department of Rehabilitation and Correction that are worthy of continuation.
- (d) that this unitary authority develop ways to facilitate accountability of Ohio adult State corrections to both the general assembly and the public.

Finding 2: Legislative Oversight

The current lack of a unitary State correctional policy and budget authority is matched by the virtual absence of effective legislative oversight. The general assembly, while legally charged with approving or disapproving budget priorities, in fact merely approves or disapproves budget totals. This process effectively eliminates the legislature as a part of State correctional policymaking. Rather than a policymaking body, the legislature has been perceived as a "policy-ending" body whose only interest is budget cutting.

Recommendation:

The Ohio Advisory Committee recommends that the general assembly reestablish its policymaking authority by developing new, specific procedures for the oversight and monitoring of Ohio adult corrections including:

- (a) stipulated program priorities within appropriation bills for the Department of Rehabilitation and Correction;
- (b) mutually agreed-upon goals for Ohio adult corrections within departmental appropriations bills;
- (c) creation of more earmarked State funding sources to channel general revenue funds

now given essentially with "no strings" to the Department of Rehabilitation and Correction;

- (d) increased staffing of such legislative arms as the Legislative Services Commission, its Legislative Budget Office, and other oversight agencies of the general assembly; and
- (e) increased program auditing, after the example of the Federal General Accounting Office of the U.S. Congress, to evaluate the performance of State-funded correctional programs.

Finding 3: LEAA Scrutiny of State Plans

Federal laws and regulations require States receiving funds from the Law Enforcement Assistance Administration (LEAA) to develop "comprehensive" statewide plans. State criminal justice activities, however, are in most cases fragmented and uncoordinated with each other and with local and Federal priorities. Ohio planning and budgeting for adult corrections clearly illustrate this problem. The State's Administration of Justice Division has been unable, in some cases, to secure information on planning and budgeting from the Department of Rehabilitation and Correction as required under Federal and State regulations.

Recommendation:

The Ohio Advisory Committee recommends to the Law Enforcement Assistance Administration of the U.S. Department of Justice that its regulations governing State Planning Agencies (SPA's) be revised in the following ways:

- (a) that SPA's be required, as a condition for receiving LEAA funds, to describe and analyze the functions of all State-level criminal justice planning and budgeting agencies, divisions, and officials to determine the degree of actual integration of State criminal justice planning and budgeting;
- (b) that SPA's be required to submit affirmative State plans for achievement of unified State criminal justice planning and budgeting procedures covering all criminal justice functions and fund sources. Such plans

should include timelines for achievement of the required procedures and institutional structures.

- (c) that SPA's be allotted future Federal funds in proportion to their States' actual achievement of comprehensive, statewide criminal justice planning and budgeting as measured, in part, by the extent that States maintain promising projects formerly funded with Federal monies.

Finding 4: State Probation Subsidy

Court commitments to Ohio prisons continue to increase and prison populations are rising again after a 9-year decline. Many public and private agencies in Ohio have advised decreased use of incarceration in total institutions as a viable method of correcting criminal deviance. At present there is no State strategy in Ohio to change commitment rates and encourage use of community correctional facilities, although State correctional officials have stressed their intention to move toward a community corrections strategy. The State of California has devised highly effective programs in this area using State probation subsidies. This was recommended in 1971 by the Ohio Citizens' Task Force on Corrections.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and general assembly the passage of legislation creating a probation subsidy program for Ohio. Such a program should grant subsidies to local counties or groups of counties for additional probation services as incentives to reduce commitment rates to State prisons. Subsidy levels should be flexible and geared to the prevailing cost of living. Local governments should be given maximum control over the use of such subsidies consistent with sound correctional practice and the over-all public good of the State. The implementation of such a program in Ohio should be part of a State commitment to close most of Ohio's prisons in favor of greatly increased use of probation and State-funded, community-based, correctional facilities and services. Because of its antiquated condition, the first institution which should be closed is the Ohio State Reformatory at Mansfield.

Finding 5: Criminal Cost Reimbursement

The State of Ohio selectively reimburses counties for criminal court costs of indigent offenders when such offenders are committed to State prisons. Because counties must pay the criminal costs for indigent offenders not sentenced to State prison, the present procedure rewards counties for sending offenders to prison. Seven of the State's 88 counties received 65.4 percent of the \$6.9 million in State criminal cost reimbursements over the past 4 fiscal years. The same seven counties account for the majority of Ohio's rapidly increasing commitments to State prisons.

Recommendation:

The Ohio Advisory Committee recommends that the Ohio General Assembly repeal sections 2949.18, 2949.19, and any other sections of the Ohio Revised Code that encourage county courts to commit offenders to prison for reasons unrelated to the potential danger of the offender to the community. The Advisory Committee further recommends that, if State reimbursement of county court costs is necessary for fiscal reasons, the general assembly authorize an across-the-board reimbursement formula such as used in other States.

Finding 6: Minority Hiring Plans

Although a growing majority of Ohio's adult inmate population was of black, Latino, or other minority background in 1973, the correctional staff was 4.1 percent minority in prisons, and in 1974 it was 7.6 percent minority overall (including prisons, central office, and Adult Parole Authority). This disparity contributes to a hostile prison atmosphere conducive to the denial of the rights of both inmates and staff. The Department of Rehabilitation and Correction has not published an affirmative action program for hiring of minorities and women. Attempts to recruit minority staff with Federal monies appear to have been tangential to the department's regular operations and unsuccessful. External action is necessary, both because of the small number of minority staff and the allegations of racial harassment made by existing minority staff.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and the Department of Rehabilitation and Correction that the latter's affirmative

action plan for hiring minorities and women be publicized to solicit assistance in its implementation from every possible source. To the Ohio Criminal Justice Supervisory Commission, furthermore, the Advisory Committee recommends special monitoring of minority hiring within the Department of Rehabilitation and Correction. The Supervisory Commission should seek the cooperation and assistance of other State agencies having affirmative action responsibilities as well as the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice. If departmental progress in hiring and retention of minority staff does not meet reasonable goals agreed upon by the relevant agencies, the supervisory commission should take steps to end the correction department's LEAA projects by cutting off funds.

Finding 7: Correctional Data Collection

Department of Rehabilitation and Correction records of the racial and ethnic backgrounds of persons under its supervision are poorly organized and incomplete. The department's data system, for instance, apparently has no such information regarding 48.5 percent of the individuals supervised by the Adult Parole Authority. When such data have been collected, moreover, such categories as Pilipino, Mexican American, Puerto Rican, and other persons of Spanish-speaking background have been omitted. These deficiencies can hamper administrative planning, coordination with other parts of the criminal justice system, and development of adequate services for minority inmates.

Recommendation:

The Ohio Advisory Committee recommends that the Department of Rehabilitation and Correction devise a more comprehensive system of categories and procedures for collecting necessary data now and in the future on the racial and ethnic backgrounds and sex of persons who come under its supervision. The Advisory Committee further recommends that the department base this information on self-identification that such data be made public on a frequent, regular basis.

Finding 8: Staff Transfers

Development of an effective State probation subsidy program would help reduce the prison population thus making some State prisons unnecessary. However, many Ohio prisons provide significant economic support, through payrolls, within their respective localities. Correctional officers in Ohio and other States have reacted to strategies of "decarceration" with legitimate concern for their own job security. Some observers in California, Ohio, Massachusetts, and elsewhere have in fact claimed that correctional officers have precipitated crises within prisons scheduled to be phased out in order to protect their jobs.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and General assembly that concurrent with development of an effective State probation subsidy program and the closing of prisons found to be unnecessary, a State plan be devised for transfer of correctional staff to employment in other State agencies. Such a plan should:

- (a) be developed in consultation with representatives of correctional staff affected;
- (b) include guarantees that staff phased out of prison positions will incur no loss in pay or seniority as a result of transfers to other agencies;
- (c) include necessary retraining of all transferred staff to insure their future employability; and
- (d) be accompanied with action by the State administration to seek the active support of public employee organizations in Ohio corrections for the goals of more humane treatment of inmates and stricter observance of State regulations designed to protect inmate and staff rights.

Finding 9: Citizen Involvement in Policymaking

Corrections administrators and penologists throughout the Nation advocate community participation in adult corrections. Throughout the term of Ohio's former Governor, John J. Gilligan, which ended in 1974,

this State was overcoming its resistance to the systematic involvement of citizens in corrections in more than a voluntary, case-by-case manner. This was exhibited in the operation of several local prison advisory committees and in the establishment of the Governor's Advisory Panel for Rehabilitation and Correction in February 1974. Though this original advisory panel was limited by the lack of resources, it represented a significant step toward greater community involvement in Ohio correctional policy-making and management. This body, however, was officially abolished by present Governor James A. Rhodes in April 1975.

Without major citizen contribution to correctional programs, these tend to degenerate to a power struggle between inmates, correctional staff, and administrators.

Recommendation:

The Ohio Advisory Committee strongly recommends to Governor James A. Rhodes the immediate re-establishment of a permanent Governor's Advisory Panel for Rehabilitation and Correction, with membership as diverse in viewpoint as the original panel.

Furthermore:

- (a) the panel should be given its own paid staff;
- (b) staff and other expenses should be paid with State funds from outside the Department of Rehabilitation and Correction to help insure independence for the panel's investigations and recommendations;
- (c) the panel's reports should be made public;
- (d) the panel should be directed to cooperate with the Ohio Criminal Justice Supervisory Commission to seek a unitary State correctional policy and budget process. (Finding and Recommendation 1)

- (e) The Advisory Committee recommends that if such an independent panel is not established by the Governor, the general assembly move to establish a body of this type having the characteristics recommended here and responsible for reporting regularly to the general assembly and all citizens of the State of Ohio.

The Advisory Committee further recommends to the Governor and the Department of Rehabilitation and Correction the establishment of public advisory panels for all institutions and for each program and service area of the department. Each advisory panel should be representative of the appropriate professional and commercial interests and include major representation from citizens at large. Each panel should be directed to issue public, as well as internal, reports of its work. These panels should play a critical as well as supportive role.

Finding 10: Prisoner Civil Rights Legislation

Despite a recent reversal in the courts' "hands-off" attitudes toward prisoner rights cases, the legal status of such rights is incompletely defined. As a result, State and Federal courts often deny hearings to legitimate prisoner pleas; decisions may not follow key precedents protecting such rights; prison administrators are still granted excessive discretionary authority; and administrative regulations mandating inmate rights often go unenforced in Ohio and elsewhere. In sum, State and Federal courts stand essentially alone, when they stand at all, on behalf of inmate rights.

Recommendation:

The Ohio Advisory Committee recommends:

- (a) to the Ohio General Assembly the enactment of a "Civil and Human Rights Law for Inmates of State Correctional Institutions." In formulating the act, the legislature should use as one guide the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals;

- (b) to the United States Congress, the same action, to cover all correctional institutions, State and Federal;
- (c) that both State and Federal prisoner rights laws seek to codify and carefully define the protected rights of prisoners, the responsibilities of courts to protect those rights, the criminal and civil sanctions appropriately imposed upon violations of such laws, and the changed status of departmental regulations on inmate rights as a result of the passage of such laws;
- (d) to State and Federal legislators that grievance and enforcement machinery be built into such prisoner rights laws in the form of added investigative and enforcement capacities of State and Federal agencies, including offices of attorney general;
- (e) to the U.S. Congress, amendment of the 1968 Safe Streets Act and other Federal laws providing assistance to criminal justice agencies, so as to make enactment of State prisoner rights laws and provision of enforcement machinery prerequisites for State and local receipt of Federal funds for corrections activities;
- (f) to the U.S. Commission on Civil Rights, that it publicly support enactment of strong laws to protect prisoners' rights as detailed in the preceding five points.

Finding 11: Prison Disciplinary Procedures

Inmate dissatisfaction with Ohio prison disciplinary procedures is extremely high. Copies of rules are not uniformly available to inmates and are often interpreted too loosely in favor of correctional officers' judgment. No routine, systemwide monitoring of disciplinary procedures occurs. Racial discrimination, furthermore, appears to be rampant in disciplinary proceedings.

Recommendation:

The Ohio Advisory Committee recommends to the Department of Rehabilitation and Correction:

- (a) that the central administration assure responsibility for duplicating all regulations affecting inmate behavior and rights in sufficient quantities for distribution to all inmates, their families, and other interested parties;
- (b) that all records of prison disciplinary proceedings, including tapes of Rules Infraction Board hearings, be routinely monitored and analyzed by personnel responsible to an independent penal ombudsman to insure staff compliance with disciplinary regulations;
- (c) that all rules infraction boards and institutional inquiry boards include at least one minority staff person as a prerequisite for meeting to hear cases;
- (d) that analyses of disciplinary proceedings be given on a regular basis to the general public and to a reestablished Governor's Advisory Panel on Rehabilitation and Correction or comparable body created by the general assembly;
- (e) that staff violation of departmental regulations be cause for dismissal and that dismissal be more frequently used as a means of controlling and preventing staff abuse of inmates;
- (f) that prison superintendents be regularly and formally evaluated by top management of the Department of Rehabilitation and Correction, in consultation with lower level staff, inmates, and citizen representatives to insure effective control of line correctional staff by superintendents.

Finding 12: Legal Services for Prisoners

Legal services to Ohio adult prisoners unable to hire lawyers are virtually nonexistent after the end of an LEAA funded, legal assistance program.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and to the Governor's Advisory Panel on Rehabilitation and Correction that a statewide legal assistance service be initiated as soon as possible. Such a service should be funded and directed independently of the Department of Rehabilitation and Correction. Funds for the operation of such a service should not come from sources intended only for limited "pilot" projects. Finally, and most importantly, any legal services program for prisoners instituted by the State should place no administrative restrictions on prisoners' use of that program for the assertion of any legal right.

Finding 13: Ombudsman and Grievance Procedures

Inmates and many outside observers regard present grievance procedures as overly complex, time-consuming, and undependable. The ombudsman, furthermore, is not sufficiently independent of prison administration to provide adequate "backup" when grievance procedures fail. In addition, the new Governor, James A. Rhodes, and the new Director of the Department of Rehabilitation and Correction, George F. Denton, have not staffed the office of ombudsman since the resignation of its most recent incumbent, George Miller, in early 1975.

Recommendation:

The Ohio Advisory Committee recommends that the ombudsman position be removed from the payroll of the Department of Rehabilitation and Correction and reestablished with an independently funded staff as Ohio's Independent Penal Ombudsman. The ombudsman should at all times and without exception have access to all institutions and records of the Department of Rehabilitation and Correction. The ombudsman should report directly to the Governor, to the Ohio Criminal Justice Supervisory Commission,

and to whatever legislative or executive corrections advisory panel may be established as recommended herein. (Finding and Recommendation 9)

Finding 14: Inmate Advisory Councils

Although elected inmate advisory councils are uniformly advocated by correctional experts and mandated in Ohio regulations, they do not exist in several Ohio prisons. The substitute bodies, ad hoc committees in specific issue areas, are less visible to and representative of inmates, and less effective in achieving internal communication and resolution of conflicts. Lack of inmate councils has contributed to less orderly forms of inmate expression.

Recommendation:

The Ohio Advisory Committee recommends to the Department of Rehabilitation and Correction the reestablishment of elected inmate councils in all institutions. Such councils should not be limited in their relationships to staff of their respective prisons. Rather, they should also establish regular channels of communication with higher authorities in the department, with whatever advisory panel on rehabilitation and correction, which may be reestablished, and with the Ohio General Assembly. As recommended by the National Advisory Commission on Criminal Justice Standards and Goals, inmates should be given a greater role in managing the institutions in which they are confined. Effective, elected, inmate councils can be one means to that end.

Finding 15: Alleged Involuntary Hysterectomies

The Ohio Advisory Committee has received several allegations from separate, unrelated sources that inmates at the Ohio Reformatory for Women may often be coerced by State officials into submitting to hysterectomies. If such is or has been the case, it would be a reprehensible, inhumane, and illegal practice deserving of vigorous prosecution.

Recommendation:

The Ohio Advisory Committee recommends to both the U.S. Department of Justice and the Ohio attorney general a thorough investigation of allegations of forced sterilization of female prisoners in Ohio. This Advisory Committee further recommends to whatever advisory panel for rehabilitation and correction which may be reestablished, as well as to all concerned Ohio citizens, active monitoring of this investigation and of the overall medical care afforded Ohio's women prisoners.

Finding 16: Prison Medical Care

Prison medical care is jeopardized by conflicting priorities of security and inmate labor. Prison medical decisions are often made by nonmedical, security personnel, and medical treatment, including drugs and some surgery, is sometimes given for security rather than health reasons.

Recommendation:

The Ohio Advisory Committee recommends to the Department of Rehabilitation and Correction that responsibility for the planning and supervision of health services be assigned to professionally qualified persons who work with, rather than subordinate to, institutional and central office correctional staff.

The Advisory Committee further recommends that the department's medical advisory committee immediately begin monitoring the prescription of drugs throughout the system to insure the medical necessity of such treatment. Regular reports on the number, type, and purpose of drug prescriptions for inmates should be made to a reestablished executive or legislative advisory panel on rehabilitation and correction and to the general public.

Finally the Advisory Committee recommends that the Department of Rehabilitation and Correction establish a central office division of medical services, staffed by trained medical professionals responsible for providing and overseeing medical care for all persons incarcerated in State correctional institutions.

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