

Governor's Committee on
Prison and Jail Crowding

Final Report
April, 1990

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GOVERNOR'S COMMITTEE ON PRISON AND JAIL CROWDING

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by

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BACKGROUND ON THE COMMITTEE

Governor Richard Celeste authorized the bipartisan Governor's Committee on Prison and Jail Crowding by Executive Order 38-79. The 31 member Committee consisted of judges, legislators, sheriffs, prosecuting and defense attorneys, county commissioners, community corrections experts, and other State and local officials from across Ohio. Members were appointed by the Governor after he received nominations from the Chief Justice of the Ohio Supreme Court, the leaders of each caucus of the General Assembly, and professional organizations such as the Buckeye State Sheriffs' Association, Ohio Prosecuting Attorneys' Association, County Commissioners Association of Ohio, Ohio Association of Chiefs of Police, Ohio Halfway House Association, and the Ohio Community Corrections Organization. Dr. Bennett Cooper, corrections consultant and former Director of Rehabilitation and Correction under Governor James Rhodes and Governor John Gilligan, served as chairman of the Committee.

The new Committee superseded the Governor's Committee on Prison Crowding that was appointed in 1984 under Executive Order 34-38. In its 1986 report, the Prison Crowding Committee made 15 recommendations. Seven of the proposals were adopted by legislative or administrative action at little cost to the State. Two other proposals were embraced in part. A more detailed review of the 1986 recommendations and their status occurs later in this section.

Meanwhile, problems in Ohio's county jails continue to worsen. Antiquated facilities, new demands for space for drunk drivers, and a burgeoning number of pretrial detainees cause woes for county sheriffs and spawn intervention by federal courts. The new Committee was created to systematically review county jail crowding and to continue to work on the intractable problems of prison crowding.

The new Committee on Prison and Jail Crowding began meeting in June, 1989. It met at least once each month through March, 1990. Many meetings encompassed two days. The Committee had three subcommittees: Sentencing, Jails, and Community Corrections and Prisons. After an update on the status of the earlier Committee's proposals, this report contains recommendations from each subcommittee that were adopted by a two-thirds vote of the new Committee.

Status of the 1986 Recommendations

As noted above, several of the recommendations contained in the 1986 Interim Report of the Governor's Committee on Prison Crowding have been enacted or adopted. Dr. Simon Dinitz, criminologist and Professor of Sociology at The Ohio State University, served as Chairman of the Committee. This section reviews each 1986 recommendation and its current status.

When the Prison Crowding Committee began its work in September, 1984, Ohio prisons held 18,526 inmates in space designed to hold 13,032. The Committee concluded that new mandatory sentences, tougher sentencing by judges, and a paucity of community corrections alternatives would push the

prison population over 28,000 by 1995. In fact, the 1984 estimates were optimistic. Ohio's prison population now exceeds 31,000, with significant increases expected in the next five years. See STAFF FINDINGS, page 12, below.)

The Committee made a series of recommendations affecting the points at which inmates are released from prison. Each of the following proposals became law through legislative or administrative action.

o Earned credits. The Committee proposed an incentive earned credit program in which inmates could receive up to two days per month credit during participation in academic or vocational education, prison industries, or drug and alcohol abuse programs. A credit of three days per month could be earned for attaining and remaining at minimum security status in prison. And, up to 120 days could be awarded for meritorious conduct (such as saving a guard's life). The goal was to give small rewards that could ease crowding while encouraging rehabilitative activities. The earned credits proposals were enacted into law in 1987 as part of House Bill 261. The measure's prime sponsors were Representative C.J. McLin and Senator Barry Levey.

o "Good time". Before 1987, inmates in reformatories could receive a 28% reduction in sentence for good behavior while incarcerated. Inmates in penitentiaries could receive a good time reduction of about 22% of the minimum sentence imposed by the court. The Committee proposed eliminating the difference. Instead, the Committee suggested setting a flat maximum good time rate of 30%. If coupled with earned credits, the total reduction allowed could not exceed one-third of the minimum sentence imposed by a judge. The proposal was designed to make slight changes in individual prison terms that would have a significant cumulative impact on prison crowding. The good time changes were enacted by House Bill 261 in 1987. The cumulative impact of the earned credit and good time changes is a savings of about 3,500 beds over the next decade, while making only slight changes in individual sentences. The Office of Budget and Management estimates that a new 750 bed prison costs about \$50 million to build. Thus, House Bill 261 could save the State about \$235 million in construction costs and untold millions in operating costs. Even at the Department of Rehabilitation and Correction's more conservative estimate of \$40,000 per bed, the savings would total \$140 million. However, these savings were more than offset by the record number of inmates being sentenced to State prisons since 1987.

o Furlough. The Committee proposed placing more offenders, who were nearing the ends of their sentences, into closely supervised furlough programs. The law governing employment- and education-related furloughs was made more flexible by Senate Bill 94, which took effect in 1988. The main sponsors were Senator Paul Pfeifer and Representative C.J. McLin. About 250 inmates are on furlough to halfway houses at any given time, with little risk to public safety.

o Emergency sentence reductions. The Committee proposed that the Legislature adopt an emergency release statute that shares responsibility between the General Assembly and the Administration. In 1987, the Legislature agreed by enacting House Bill 262. The bill was sponsored by

Representative C.J. McLin and Senator Barry Levey. Under the bill, if the Director of Rehabilitation and Correction determines that an overcrowding emergency exists (perhaps as a result of a federal court order), he must notify the Correctional Institution Inspection Committee of the General Assembly. The C.I.I.C. must promptly review the Director's determination and may recommend one of the following remedies to the Governor: (1) reduce the minimum sentences of some offenders by 30, 60, or 90 days; or (2) advance the release dates of offenders serving determinate sentences (usually nonviolent, low-level felons) by 30, 60, or 90 days. If the C.I.I.C. disagrees with the Director's determination, it can refuse to act. The Director may then petition the Governor directly to select one of the remedies. On receipt of a recommendation by the C.I.I.C., or direct request by the Director, the Governor has the ultimate authority to order one of the remedies. In line with the Prison Crowding Committee's proposal, the bill exempts many violent and weapon-carrying offenders from eligibility for emergency sentence reductions. To date, an overcrowding emergency has not been declared under H.B. 262. However, because of the Committee's work, the State has a law in place to address crowding emergencies logically and with little partisan rancor.

o Parole guidelines. The Committee called for development and implementation of structured parole guidelines to govern the Parole Board in making release decisions. In 1986, the Department of Rehabilitation and Correction (DRC) implemented parole guidelines. The guidelines give offenders and the Parole Board clear standards to follow and reduce fluctuations in parole rates.

The earlier Prison Crowding Committee also had success implementing its informational recommendations. The following proposals were enacted by the General Assembly.

o Policy simulation model. The Committee called for the DRC to maintain a sophisticated system capable of projecting prison population trends and monitoring the impact of pending legislation on prison crowding and costs. The system was established in 1985 with Federal funds administered by the Governor's Office of Criminal Justice Services. It has since been incorporated into the Department's budget. The system was institutionalized by Senate Bill 94 in 1988. The bill specifically required the DRC to maintain a "technologically sophisticated system capable of estimating future [prison] populations." The DRC is required to review and update data every six months and work with an advisory committee of the C.I.I.C. to assure the system's accuracy and objectivity.

o Legislative impact statements. The Committee recommended that the DRC use the system just described to provide impact statements on pending legislation to the Governor and the General Assembly. The proposal was adopted as part of Senate Bill 94. The bill requires the Department to use the policy simulation model to project the impact of legislation relating to corrections, if requested to do so by the Governor or any member of the General Assembly.

In the area of alternative community correctional programs, the Prison

Crowding Committee's proposals were only partially adopted.

o Community Corrections Act revisions. The Prison Crowding Committee spent parts of three years working on revisions of the State's main source of community corrections programs, the Community Corrections Act (CCA). In 1986, the Committee recommended that: (1) certain nonviolent third and fourth degree felons be sentenced to facilities and programs in or near their communities, rather than to State prisons; (2) \$200 million be spent to upgrade local detention facilities, with an accent on regionalization; (3) \$20 to \$30 million be appropriated to fund community corrections programs under the CCA. Members of the Community Corrections Subcommittee continued to meet after the release of the 1986 report. The Subcommittee further recommended that the arcane CCA funding formula be simplified, that each county receive a minimum allocation, and that each sheriff receive a share to help with programs for misdemeanants and other jail-bound persons.

The proposal to shift low-level felons to community facilities and programs was not popular with many county commissioners and sheriffs, despite the interrelated call for adequate State funding. Local officials expressed suspicion about the State's willingness to subsidize local corrections operations for years to come. (Ironically, results similar to those sought in the Committee's recommendation are occurring in many counties, given the sudden popularity of State-built, State-funded, but locally-operated community-based correctional facilities, discussed below.)

Stripped of its more controversial elements, a revision of the Committee's CCA proposal became a rallying point for the nascent Ohio Community Corrections Organization. At the behest of the OCCO, the request for additional funds, the funding formula revisions, the minimum county allocations, and the sheriff's share provisions of the Committee's recommendations were introduced in the 118th General Assembly. At this late date in the session, it is unclear whether the proposals will be enacted.

o Community-based correctional facilities. CBCFs are program-oriented community facilities for felons that are built by the State and subsidized by State funds, but governed and operated by local judicial corrections boards. At the time of the Committee's 1986 report, \$20 million had been authorized for CBCFs, relatively few counties were interested in the program, and only one CBCF was operating (Dayton's Monday program). The Committee recommended additional use of, and funding for, CBCFs. Through the efforts of the DRC and the GOCJS, there are now three CBCFs in operation, one about to open, and five others on the drawing board. In March, 1990, the General Assembly expanded funding for CBCFs by \$15 million.

o Intensive probation. The Committee recommended a significant expansion of the State's intensive probation program. Intensive probation involves closer dealings with a probation officer than traditional probation. Work, school, or program participation becomes more important. The extra surveillance adds safety to probation and can result in placing more persons in community corrections rather than prisons. The DRC has expanded its intensive probation programs in recent years. However, in this era of massive prison construction, the Department has been compelled to prioritize institutional staffing needs over community sanctions.

o Provisions for mentally ill and retarded offenders. The Committee called for classifying and housing mentally ill and mentally retarded inmates in facilities other than conventional prisons. It also recommended that an analysis be undertaken by the DRC, in conjunction with the Departments of Mental Health and Mental Retardation and Develomental Disabilities, to address the treatment and habilitation needs of these offenders.

Although the DRC's classification systems have become more sophisticated, crowding and limited resources have kept a sizable number of mentally ill or retarded persons in the general prison population. However, the second prong of the Committee's recommendation was adopted. The DRC and the Department of Mental Health conducted a study of the prevalence and scope of mental health needs of prison inmates in the late '80s. This has helped to assess treatment needs and provide better care. Also, some specialized mental health units have been established in the prisons, staffed by the Department of Mental Health. Nevertheless, mentally ill, mentally retarded, and other special needs inmates continue to cause problems for the corrections system.

The other key topic addressed by the Committee in its 1986 report was sentencing. None of these proposals were adopted by the Legislature.

o Revision of the sentencing laws. The earlier Committee proposed comprehensive changes to Ohio's sentencing laws. Included were calls for eliminating most mandatory sentences (except for carrying a firearm during a felony), reducing the number of felony classifications, simplifying the Code, removing the cap on consecutive minimum sentences in most cases, removing multiple misdemeanants from the State prison system, requiring that inmates who are released from definite sentences, although not paroled, spend one year under community supervision, and establishing a sentencing review commission with the ability to review appeals of sentences and modify the terms.

Although there was some support for individual elements of the Committee's sentencing recommendations, the complete package has not been considered by the General Assembly. Undaunted, the Sentencing Subcommittee of the new Prison and Jail Crowding Committee again suggested broad revisions.

SUMMARY OF NEW RECOMMENDATIONS

SECTION I: SENTENCING RECOMMENDATIONS

Sentencing Commission

- * The General Assembly should establish a Sentencing Commission to review criminal sentencing in Ohio and recommend a system of sentencing designed to: ensure that punishment is proportionate to the seriousness of the crime and the offender's criminal history; provide just punishment that promotes respect for law; protect the public; promote similar punishment for similar offenses; and make frugal use of correctional resources.
- * The bipartisan Commission should be chaired by the Chief Justice and consist of five other judges (appointed by the Chief Justice), a sheriff, prosecutor, and defense attorney (appointed by the Governor), and two members of the Senate and House of Representatives (appointed by legislative leaders). An advisory committee representing the Department of Rehabilitation and Correction and other corrections experts should be created to serve the Commission.
- * The Commission should have the power to formally recommend sentencing guidelines to the General Assembly. If changes are proposed by the Legislature, the Commission should have the opportunity to assess the impact of the changes before enactment.
- * The Commission should be an ongoing body, charged with reviewing the implementation of sentencing and parole guidelines, suggesting revisions, and encouraging compliance.
- * The General Assembly should avoid making sentencing changes while the Commission prepares its recommendations.

Sentencing Simplification

- * The Ohio Criminal Code should be simplified by the Sentencing Commission, if established, or by a separate committee convened to simplify sentencing.

Petty Theft as a Felony

- * The Legislature should revise the theft statutes to increase the felony threshold to \$500 or to make petty theft a felony only after the third offense within five years.

Shock Probation Rulings

- * Sentencing judges should have 30 days after a shock probation hearing to enter a ruling, rather than 10 days under current law. Also, judges should be allowed to set a shock probation release date at any future time within an offender's minimum sentence, rather than immediately, upon entering the order.

Education as a Deterrent

- * A greater effort should be made by the State in the areas of crime prevention and education of potential offenders on the penalties for committing crimes.

SECTION II: JAIL RECOMMENDATIONS

Minimum Security Jails

- * Surplus buildings should be renovated or new buildings constructed to serve as minimum security jails. Renovation is preferred. The facilities may be single county structures under the control of the sheriff or multi-county facilities under the control of a regional governing board that includes the sheriffs from the counties served.
- * New jail standards and construction guidelines should be developed by the State that recognize the minimum security nature of the proposed jails and that contemplate lower costs.
- * Minimum security jails should hold only convicted drunk drivers and other nonviolent misdemeanants. Each facility should have drug and alcohol counseling, treatment, and education programs.
- * The State should pay a flat rate per bed in renovation and construction costs for minimum security jails. If needed, additional funds should be provided by the counties.
- * Private corporations should be allowed to develop minimum security jails, to be operated in conjunction with sheriffs or regional governing boards.
- * The Committee supports efforts by the General Assembly to find any additional funds needed to operate minimum security jails.

Bail Screening Programs

- * Local governments should establish bail screening programs and bail standards that ensure public safety. Those receiving State funds for jail purposes should be required to have bail screening programs and bail standards. Local governments should not detain persons in jails before trial if the persons are likely to appear at trial and are not threats to public safety.

Summons in Lieu of Arrest

- * Each law enforcement agency should adopt a policy that identifies offenses for which alleged violators may be given a summons instead of being taken into custody.

Victims' Mediation Programs

- * City attorneys and county prosecuting attorneys should create victim-offender mediation units within their offices to foster

resolutions of criminal disputes while avoiding the time and costs of filing formal charges, holding court proceedings, and incarcerating offenders.

Prosecutorial Screening

- * County prosecuting attorneys and city attorneys should assign a person to review the charges against each person arrested and detained in jail, within a reasonable time soon after detention begins, and assess the appropriateness of the charges and the likely success of prosecution on the charges.

Emergency Admission and Release Plan

- * The Commissioners of each county should, by resolution, form a county jail population committee. The committee should make an emergency admission and release plan to be implemented by the sheriff if the county jail population reaches unacceptable levels. The plan should be approved by the county's common pleas court.

Jail "Good Time"

- * The General Assembly should permit systematic sentence reductions for good behavior by jail inmates at a rate of 30% of the sentence imposed by the court.

Jail Construction

- * The State should commit itself to paying half the cost of jail construction needed in the State.

SECTION III: ALCOHOL AND DRUG TREATMENT AND RELATED RECOMMENDATIONS

Offenders with Special Needs

- * Efforts should be made, with State funding, to provide for the treatment or habilitation of offenders with special problems, such as mental illness, mental retardation, drug or alcohol addiction, sexual dysfunction, and illiteracy.

Department of Alcohol and Drug Addiction Services

- * The new Ohio Department of Alcohol and Drug Addiction Services should receive significant funding from the State. A sufficient share of the DADAS budget should be earmarked for substance abusing offenders, both in and out of confinement.

Certification of Treatment Programs

- * The new Department should move aggressively to certify existing community corrections programs as drug abuse treatment programs.

Additional Probation Officers

- * The Committee endorses the Ohio Supreme Court's call for reducing the caseloads of probation officers with State funding assistance, including funding for random drug and alcohol testing.
- * County probation departments should develop an increasingly severe continuum of sanctions for probationary offenders found to be using illicit drugs.

SECTION IV: COMMUNITY CORRECTIONS AND PRISONS RECOMMENDATIONS

Local Community Corrections Planning

- * The State should allocate funds to counties and multi-county regions to centralize community corrections planning in each county or region and eliminate the multiplicity of community corrections boards in some counties.
- * Community corrections boards should make a plan for the county or region that considers resources for alleged or convicted offenders from pre-arrest to post-conviction. The board should be prepared to assess the impact of the plan on the justice system.

Increased Funding for Community Corrections

- * The General Assembly should increase the amounts available to the Department of Rehabilitation and Correction to pass through to county community corrections programs.
- * The General Assembly should authorize an additional \$20 million for construction of community-based correctional facilities for nonviolent felons.
- * Additional community corrections funds should be available to permit transfers of nonviolent offenders and furloughees into structured community settings, such as halfway houses, as they near the ends of their prison sentences.
- * An account should be established to pay for auxiliary services, such as drug and alcohol treatment, for offenders placed in halfway houses.
- * The Legislature should make clear that Community Corrections Act funds may be used for misdemeanor programs that reduce jail crowding.

Prison Construction

- * New prison construction should be authorized only in conjunction with a substantial expansion of quality community corrections and local jails.

Pre-Sentence Investigations and Parole Violators

- * The General Assembly should require preparation of pre-sentence

investigations (PSIs) for persons who commit a probationable offense, unless waived by the court with the consent of the defense and prosecution.

- * The State should pay costs incurred in preparing additional PSIs, in incarcerating offenders in local jails while PSIs are prepared, and in detaining technical parole violators in local jails.
- * The State should develop PSI standards that include consideration of alternatives to incarceration.
- * The DRC should be authorized to enter a pilot contract with a willing county for mandatory PSIs or comparable information, with costs borne by the State.

Improved Criminal History Records

- * The Governor's Office of Criminal Justice Services should form a representative group of user agencies to assess and improve reporting to the State's criminal case history program.

Community Service and Electronic Monitoring

- * The Legislature should make clear that community service work could be made a condition of probation for felons and expand the number of hours of community service that could be required.
- * The General Assembly should specifically authorize the use of electronic monitoring as a tool to supervise arrestees and offenders.

Interagency Cooperation

- * Local courts and social service agencies should coordinate services that may be used as conditions of probation.

Uniform Monthly Release Date

- * The Department of Rehabilitation and Correction should be authorized to release all inmates eligible for release in a given month on the first working day of the month.

Parole Guidelines Modifications

- * The Adult Parole Authority should change its parole guidelines to select more offenders for earlier releases to community corrections programs.

Transfers to Community-Based Correctional Facilities

- * The Legislature should permit transfers of determinate sentence inmates from prison to a community-based correctional facility, with the approval of the CBCF's Judicial Corrections Board.

STAFF FINDINGS

Prison Crowding in Ohio

Despite a half-billion dollar prison construction program in the Eighties, crowding in Ohio prisons continues unabated. On March 26, 1990, the State prison system held 31,268 inmates in space designed for 19,848. The system was 57% over capacity. Ohio's prison population has nearly quadrupled since 1974, when there were fewer than 8,000 inmates. It has grown by 240% since 1981, when the State held about 13,000 inmates. (See Figure 1, p. 11.)

The problem is getting worse. In 1987, 10,942 inmates entered the Ohio prison system, an all-time record. The record was broken in 1988 as 12,466 prisoners were admitted. That record was shattered in turn by 1989's intake of over 16,000 prisoners. The net increase in the State's prison population from December, 1988, to December, 1989, was 4,400.

About 60% of the males who enter State prisons are sentenced for nonviolent, low-level felonies. Three-fourths of the female prisoners are admitted for nonviolent offenses. See Figure 8, p.41.)

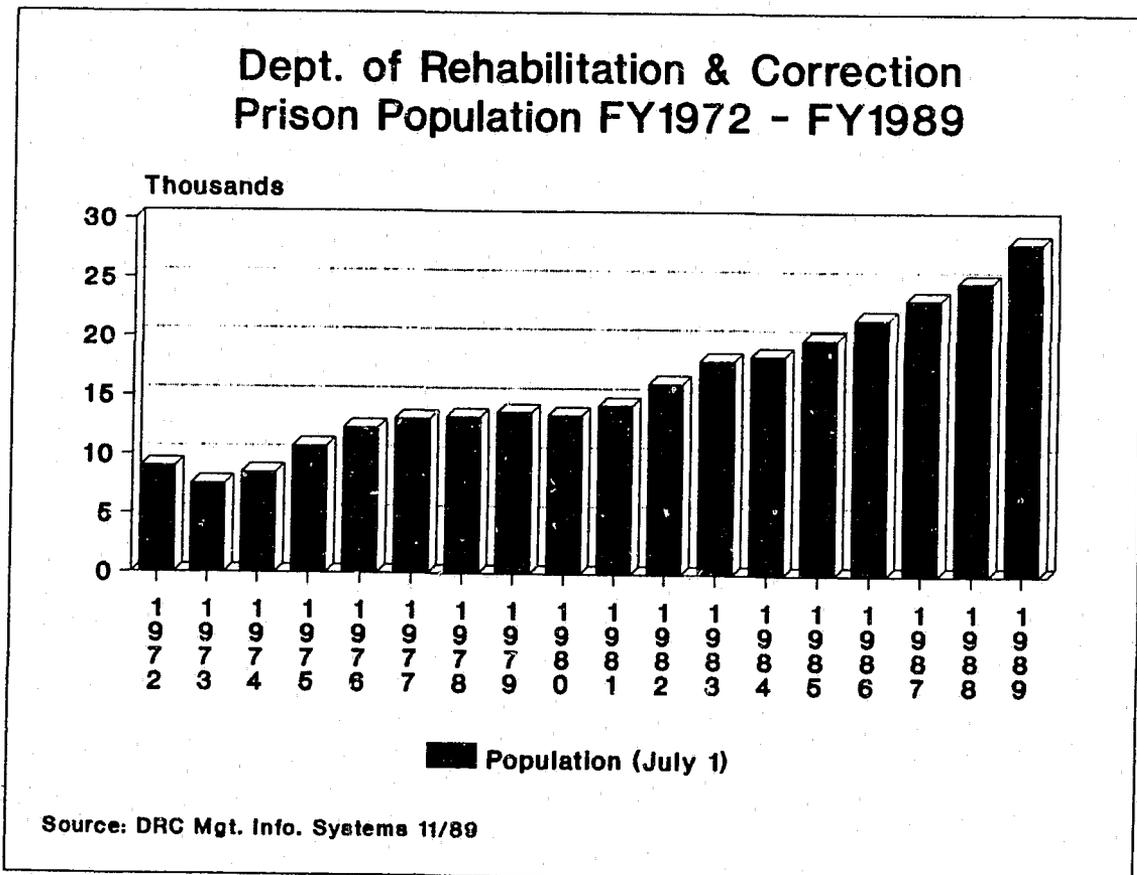


Figure 1

The official projections of the Department of Rehabilitation and Correction, adjusted in the fall of 1989, anticipated that the prison population would increase to nearly 43,000 in 1994 and level off near 46,000 in 1998. (See Figure 9, p.44.) However, the projections may be understated since intake continues at rates higher than anticipated a few months ago. From July through November, 1989, an average of 1,437 prisoners were admitted to Ohio prisons each month. In October alone, 1,539 inmates entered. Moreover, if any changes are made in existing sentencing laws that result in the incarceration of more offenders or longer prison terms, the problem will worsen.

Enacted in 1982, House Bill 530 authorized spending \$538 million to build additional prison space for about 8,000 offenders. At the completion of the H.B. 530 prison construction program in 1992, Ohio will have space for 21,745 prison inmates, which will be 24,255 beds short of the need predicted for 1998. Again this does not contemplate any tougher sentencing laws enacted between now and then. (See Figure 3, P.20.)

It would be expensive for the State to build enough prison cells to meet the projected need for 46,000 inmates by 1998. According to the DRC, the average Ohio prison costs over \$40,000 per inmate to construct. If 24,255 cells were constructed to meet the anticipated need, the program would cost at least \$970 million, using the DRC's figure. The Office of Budget and Management estimates that Ohio prisons cost about \$50 million per 750 beds, roughly \$67,000 per cell at 100% of designed capacity (or \$54,000 per cell at 125% of capacity). Using the OBM's figure, construction costs easily could top one billion dollars. The capital construction bill passed by the General Assembly in March, 1990, appropriated \$120 million of the projected billion dollar need. Eventually, operating costs would exceed these construction expenses. Excluding capital costs, it currently costs the State about \$11,300 annually to hold an inmate in prison.

Jail Crowding in Ohio

Crowding in Ohio's county jails is more difficult to measure than in the State's prisons. Judges and sheriffs in many counties regulate the jail population by granting early releases from confinement or by delaying the incarceration of sentenced misdemeanants until space is available in the jail. Some sheriffs simply refuse to accept certain nonviolent offenders into the jails.

Nevertheless, late in 1988, Ohio's 85 county jails held about 8,730 inmates in facilities that have a cumulative State-recommended capacity of about 7,000. County jails hold about 2,000 more inmates than in 1984. The average jail holds about 25% more inmates than recommended by the State. Two-thirds of the county jails regularly or occasionally exceed the recommended cap. (See Figure 2, p.13 and Figure 5, p.27.)

Forty percent of the State's sheriffs attempt to control jail populations by maintaining waiting lists of sentenced offenders. Estimates place more than 4,000 offenders on waiting lists statewide. Convicted drunk

drivers dominate the lists. This "hidden crowding" is not obvious when one merely looks at the number of inmates and capacity levels of jails. (See Figure 10, p.50.)

One-fourth of Ohio's county jails are under court order, typically issued by a federal district court. Suits are pending in several other counties. Over one dozen county jails operate under State administrative orders, most issued by the Ohio Fire Marshal. Nearly half of the counties are about to enter the 21st Century with facilities built, at least in part, during the 19th Century facilities. (See Figure 7, p.33.)

COUNTY JAIL CROWDING IN OHIO

COUNTY	CAPACITY		INMATES		COUNTY	CAPACITY		INMATES	
	DESIGN	STATE*	'88 AVE.	NOV.'88		DESIGN	STATE*	'88 AVE.	NOV.'88
Adams	38	23	22	22	Licking	161	161	108	135
Allan	77	77	76	86	Logan	36	36	40	45
Ashland	64	43	49	62	Lorain	163	163	212	212
Ashtabula	112	112	94	104	Lucas	318	295	320	375
Athens	42	42	32	30	Madison	27	18	21	21
Auglaize	20	20	20	27	Mahoning	160	118	133	130
Belmont	52	38	26	36	Marion	75	88	61	78
Brown	32	42	28	27	Medina	76	41	50	52
Butler	139	83	164	166	Meigs	-	-	-	-
Carroll	39	27	-	29	Mercer	28	12	13	18
Champaign	26	13	17	15	Miami	104	49	105	129
Clark	174	174	148	160	Monroe	16	16	1	4
Clermont	168	168	122	123	Montgomery	230	177	329	352
Clinton	26	13	17	22	Morgan	-	-	-	-
Columbiana	64	27	30	36	Morrow	25	15	18	19
Coshoccon	35	27	32	29	Muskingum	69	36	56	54
Crawford	50	27	34	20	Noble	12	12	7	8
Cuyahoga	880	880	1008	1143	Ottawa	48	48	-	46
Darke	40	40	31	33	Paulding	26	16	15	16
Defiance	41	19	35	36	Perry	20	13	7	8
Delaware	68	68	-	49	Pickaway	33	28	33	36
Erie	42	25	38	45	Pike	4	4	0	0
Fairfield	62	31	41	41	Portage	79	45	78	38
Fayette	50	29	23	23	Preble	15	15	21	17
Franklin	1292	1067	1265	1356	Putnam	20	12	10	15
Fulton	27	11	18	21	Richland	132	45	85	108
Gallia	-	-	-	-	Ross	48	16	50	49
Geauga	46	26	26	29	Sandusky	21	28	54	63
Greene	130	117	125	129	Scioto	110	35	63	71
Guernsey	30	18	23	22	Seneca	0	0	0	0
Hamilton	1298	1298	1386	1337	Shelby	31	31	23	29
Hancock	42	22	-	46	Stark	245	222	222	223
Hardin	16	14	9	10	Summit	231	-	-	185
Harrison	8	8	4	6	Trumbull	114	84	82	101
Henry	24	12	12	16	Tuscarawas	37	21	18	20
Highland	32	8	25	28	Union	32	16	11	10
Hocking	27	16	15	14	Van Wert	0	0	0	0
Holmes	24	13	11	10	Vinton	0	0	0	0
Huron	32	18	20	28	Warren	76	76	83	83
Jackson	30	14	14	16	Washington	72	36	45	53
Jefferson	20	20	29	36	Wayne	73	56	97	87
Knox	44	44	40	46	Williams	32	19	14	17
Lake	112	56	111	120	Wood	56	20	-	49
Lawrence	52	27	37	55	Wyandot	18	17	13	14

*Capacity recommended by jail inspectors at the Bureau of Adult Detention.

Figure 2

Over half of the inmates in county jails statewide are pretrial detainees, usually charged with felonies. In many urbanized counties, pretrial detainees account for almost all of the county jail population. Nearly 10% of the county jail population statewide consists of convicted felons who are sentenced to jail rather than prison. See Figure 6, p.29.)

About one-third of the inmates in Ohio's county jails are sentenced misdemeanants. Drunk drivers account for about half of this total. (See Figure 4, p.24.)

Jail construction is expensive. Current estimates range between \$40,000 and \$80,000 per cell, depending on security level. The GOCJS estimates the average cost at about \$60,000 per bed. Daily operating costs per inmate typically run between \$30 and \$40.

NEW RECOMMENDATIONS

This report contains 31 recommendations of the Governor's Committee on Prison and Jail Crowding. Because of the persistence and magnitude of crowding in Ohio, some recommendations call for comprehensive new ways to deal with the problem. The proposals for a sentencing commission, minimum security jails, and tying new prison construction to a significant expansion of community corrections are examples. Many other recommendations suggest small modifications to address subtle problems. All are important.

The following recommendations were developed by the Committee's three subcommittees and presented for discussion and vote by the full Committee. Only recommendations with the support of two-thirds of the Committee's members present were adopted. The supermajority requirement was meant to assure that the recommendations reflected a consensus of the Committee.

SECTION I: SENTENCING RECOMMENDATIONS

The Sentencing Subcommittee of the Governor's Committee on Prison and Jail Crowding wrestled with the complexity of the Criminal Code. The 1984 Prison Crowding Committee made two major recommendations that would have had impact on criminal sentencing: appellate review of sentences and code simplification. Neither of the recommendations received support in the General Assembly. However, the Ohio Prosecuting Attorneys' Association and the Ohio Association of Criminal Defense Attorneys have spent two years working on criminal code simplification for presentation to the General Assembly. This may be presented in 1990.

Sentencing Commission

Ohio has serious and worsening prison and jail crowding problems. Meanwhile, the Criminal Code grows more complex. As a result, Subcommittee members strongly felt that Ohio's sentencing structure must be reexamined. Kay Knapp, head of the National Structured Sentencing Project, funded by the Bureau of Justice Assistance, United States Department of Justice, attended subcommittee meetings to discuss how sentencing commissions work and what benefits result. Knapp has direct experience with the sentencing commissions in the Minnesota and Federal systems.

Sentencing guidelines can be a product of a sentencing commission's work. Such guidelines were first developed in 1980 in Minnesota. The guidelines use a matrix that weighs the severity of the offense and the offender's characteristics. Judges plot the offender's recommended sentence and impose a term within the recommended range. If a judge varies from the recommended sentences, the judge must explain the variance in writing. Nevertheless, sentencing commissions in other states retained, and sometimes expanded, judicial discretion.

The National Institute of Justice released a research report on the Minnesota sentencing system in April 1989. It found that "during the first two years of implementation, Minnesota's guidelines significantly reduced

sentencing disparities without putting additional burdens on correctional resources." The Minnesota Legislature has adjusted the initial sentencing guidelines, however, consistency in sentencing has remained.

The process of developing sentencing guidelines has differed from state to state. Guidelines have been under discussion in at least 20 states. Tennessee, Washington, and Oregon legislatively adopted sentencing guidelines. Louisiana is developing guidelines. The Subcommittee reviewed the guidelines developing process in many states. However, it did not thoroughly review Federal sentencing guidelines because Federal offenses generally differ from the types of crimes regulated by states.

Many states pursued sentencing guidelines because they can help allocate correctional resources. They began with a careful examination of existing sentencing patterns and types of crimes committed, then matched sanctions to crimes and offenders. The impetus for states to become involved in sentencing guidelines often has been prison crowding. However, very few of the states have mandated that the guidelines system be used to reduce crowding. Often the end result is a reduction in prison populations because of less disparity between sentences.

The Subcommittee decided Ohio should authorize a sentencing commission to develop a system of sentencing guidelines for the following reasons:

- * The implementation of guidelines could reduce disparities in sentencing.
- * Sentencing guidelines might serve as alternatives to increasing the number of mandatory sentencing provisions.
- * Sentencing guidelines could tie each sentencing decision more directly to the crime, offender, and victim.
- * Guidelines can be used to better predict correctional resources that may be needed.
- * A sentencing commission could provide the General Assembly with a response to public pressure for changing sentences. The General Assembly can look to the sentencing commission for recommendations on sentence lengths and appropriate punishments.

Committee members felt the actual development of a sentencing guidelines system was outside the purview of the Committee. The process usually takes approximately two years. The first step in the process is to complete empirical studies to determine current sentencing practices and resources and to glean information on the types of crimes committed. Once initial research is completed, the commission needs to assess which offenses and offenders should have which sanctions. Committee members recommend that a sentencing commission develop the sentencing guidelines system.

The recommended Sentencing Commission would be composed of elected officials (with the exception of the defense attorney) and would have a large judicial representation. Committee members felt a strong judicial presence was required since sentencing is a judicial function. The

Committee wanted elected representatives to determine the final sanctioning recommendations. The recommended advisory committee would be comprised mainly of persons from executive branch agencies that are responsible for correctional functions.

Once the sentencing guidelines system is developed, the package would be presented as a whole to the General Assembly. The time and information required to develop sentencing guidelines are extensive. Guidelines are like a giant puzzle - every sanction and crime depends on other sanctions and crimes. If the General Assembly changes parts of the package, it could have major impact. As a result, the Committee recommended the Sentencing Commission have an opportunity to appraise the impact of proposed legislative changes before enactment by the General Assembly.

After passage of sentencing guidelines, it is necessary for a body to monitor implementation and recommend needed changes. Changes could be necessitated by crime trends or by problems experienced during implementation. The Committee recommended that the Sentencing Commission be permanently established to fulfill those functions.

Finally, the Report of the Supreme Court Committee to Study the Impact of Substance Abuse on the Courts embraced the concept of creating a sentencing commission "similar to that proposed by the Governor's Committee on Prison and Jail Crowding". The January, 1990, Supreme Court report also suggested that the Legislature avoid amending criminal sentencing laws until the proposed Sentencing Commission issues its report and its recommendations are implemented. The Governor's Committee on Prison and Jail Crowding voted to expand its sentencing commission recommendation to include the Supreme Court Committee's suggestion as paragraph #7 of its recommendation.

[For a more comprehensive review of the role of a sentencing commission in Ohio, see the Appendix.]

Recommendation

1. A Sentencing Commission shall be established to develop a system for the sentencing of offenders that structures, but does not eliminate, judicial sentencing discretion and that serves the following purposes:
 - a. Ensures the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
 - b. Promotes respect for the law by providing punishment that is just;
 - c. Is commensurate with the punishment imposed on others committing similar offenses;
 - d. Protects the public;
 - e. Offers the offender an opportunity to improve him or

herself; and

- f. Makes frugal use of the State's resources.
2. The Sentencing Commission shall be established legislatively and be composed of the following thirteen members:
 - a. The Chief Justice, who shall serve as chair;
 - b. A court of appeals judge, three common pleas judges, and a municipal court judge appointed by the Chief Justice (no more than three should be of the same political party);
 - c. A sheriff, a prosecutor, and a criminal defense attorney, appointed by the Governor in consultation with the appropriate state association (no more than two appointments may be of the same political party);
 - d. Two senators, one appointed by the President of the Senate and one by the Minority Leader of the Senate; and
 - e. Two representatives, one appointed by the Speaker of the House and one by the Minority Leader of the House.

The appointing authority should ensure adequate representation by race and gender.

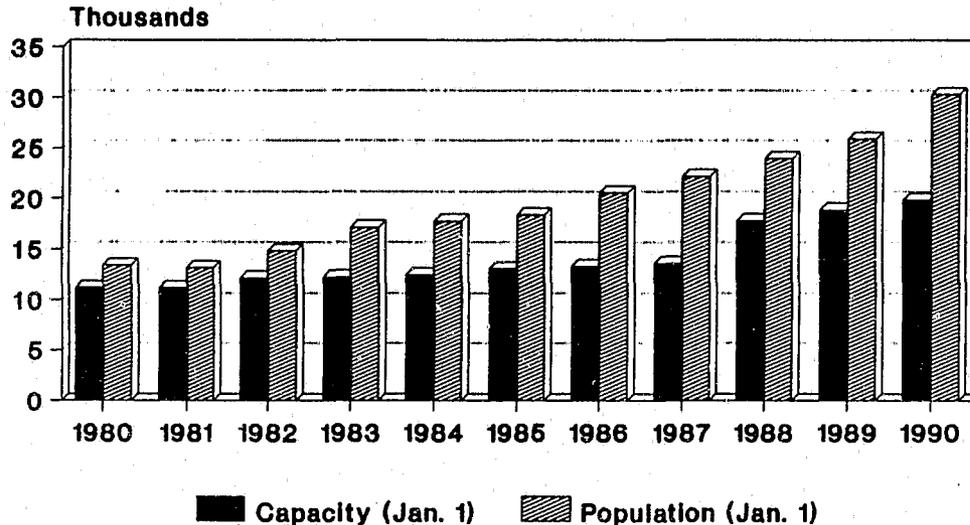
With the exception of the Chief Justice, the members of the Commission shall serve four year, staggered terms.

3. An advisory committee also should be established by the Sentencing Commission to serve as a resource. The members shall include, but not be limited to: director of the Department of Rehabilitation and Correction, chair of the Parole Board, director of the Correctional Institution Inspection Committee, and a representative of community corrections programming.
4. The Sentencing Commission shall have the following powers and duties:
 - a. The Commission shall devise a system of recommended sanctions for all felony offenses, and subsequently, for misdemeanor offenses, and devise a system for determining the type of sanction to be applied to each offender based on the nature of the offense and of the offender which may include, but is not limited to, total confinement, partial confinement, community supervision, community service, and monetary sanctions;
 - b. The Commission shall give consideration to existing guidelines in Ohio;

- c. The Commission shall be provided sufficient funding to conduct empirical research. The Commission's task prior to the creation of guidelines should include a detailed empirical study of prior sentencing patterns in the State. Projections regarding the impact of any proposed guidelines should be developed;
 - d. The Commission shall conduct a study to determine the capacities of correctional facilities and programs which are or will be available. While the Commission need not consider such capacities in arriving at its recommendations, the Commission shall project whether the implementation of its recommendations would result in exceeding such capacities;
 - e. The Commission shall forward its recommendations to the General Assembly. If the General Assembly changes the recommendations, the Commission shall be given an opportunity to present an impact statement prior to enactment.
 - f. The Commission shall continually review the implementation of the sentencing guidelines and the use of parole guidelines and make recommendations for changes in the Revised Code or guidelines as necessary to the General Assembly and Adult Parole Authority. Changes in court rules should be recommended to the Supreme Court.
5. The Sentencing Commission shall be provided with sufficient staff to accomplish its tasks. At a minimum this shall include an executive director and a research director. The staff shall be housed within the Office of Criminal Justice Services.
 6. The Sentencing Commission shall be responsible for recommending to the General Assembly a system to encourage the compliance with any guidelines established.
 7. To facilitate the work of the Sentencing Commission, the General Assembly should avoid revisions in the current sentencing structure until the Commission issues its recommendations and the recommendations are implemented.

Impact and Cost Estimates: The actual impact on the criminal justice system depends on the type of sentencing system developed. The cost of establishing and staffing a sentencing commission is estimated at \$400,000 each year for the first two years during the development phase and should reduce to \$250,000 per year thereafter. The costs are based on the costs of establishing and maintaining independent sentencing commissions in other states. More detail on costs can be found in the Appendix.

Dept. of Rehabilitation & Correction Prison Capacity for 1980 - 1990 Compared with Prison Population



Source: DRC Planning & Research 3/90

Figure 3

Sentencing Simplification

Sentencing under the Ohio Criminal Code has become increasingly complex. It has been 16 years since the last comprehensive rewrite of the criminal sentencing law took effect. Since then, piecemeal changes have greatly altered sentencing. The 1974 revisions defined four felony levels. During the ensuing years, other legislation has placed about 15 variations within the four felony levels.

As a result, the Code is confusing and contains many oddities. For instance, an aggravated third degree felony can be a more severe crime than a second degree felony, even though it is numbered as a lesser crime. "Aggravated" felonies bear special penalties, yet certain felonies designated as "aggravated" in the 1974 revisions are not penalized as "aggravated" in the current sense. For example, felonious assault is an "aggravated" felony for tough sentencing purposes, but "aggravated" assault is not an "aggravated" felony, despite its name.

The complexity of the Code not only confuses those persons the sanctions are designed to deter from crime, it also confuses judges, prosecutors, and defense attorneys. A comprehensive review of the Code needs to occur with a goal of producing a systematic and understandable approach to sentencing. If a sentencing commission were established, this should be one of its tasks. However, if a sentencing commission were not established, simplification of the Code remains necessary.

Recommendation

The Governor's Committee on Prison and Jail Crowding endorses sentencing simplification. The task should be assigned to the Sentencing Commission if established or a separate committee if the Commission is not established.

Impact and Cost Estimates: The impact of this recommendation depends on the approach taken. The Committee's intention for this recommendation was to develop a simpler system that would not increase or decrease the prison population. There is no cost associated with this recommendation.

Petty Theft as a Felony

One crime posing sentencing difficulties for judges is theft. Currently, if the value of property stolen is less than \$300, the offense is petty theft, a misdemeanor. However, if the amount stolen is worth more than \$300 or if the amount stolen is valued under \$300 but the offender has a prior petty theft conviction, theft becomes a felony punishable by incarceration in a State prison. Since shoplifters and other petty thieves are prone to repeat their crimes, some of these nonviolent, low-level offenders find themselves sentenced to expensive State prisons. The Committee determined that, with minor revisions to the law, prison crowding could be eased somewhat.

Recommendation

The General Assembly should revise the theft statutes to increase the felony threshold amount to \$500 or to make petty theft a felony only after the third offense within five years.

Impact and Cost Estimates: This recommendation would affect persons convicted of theft, receiving stolen property, and passing bad checks. According to the DRC, 3,134 offenders were sentenced to State prisons in FY89 for these offenses. The Department estimates that 1,040 of these offenders committed a theft crime involving less than \$300 or had less than two prior theft convictions in the prior five years. Of these, the DRC estimates that 340 receive shock probation after serving about two months in prison, on average. The other 700 serve an average of 14 months each. All told, diversion of the 1,040 thieves from State prisons would save space for about 870 inmates. At DRC's conservative average of \$40,000 per bed, the 870 beds would cost \$34.8 million to build. However, there is a tradeoff here. Many of these offenders would still be incarcerated, albeit as misdemeanants, in county jails. Committee members concluded jail is a more appropriate place for these petty thieves.

Shock Probation

Shock probation has been found to be a successful sanction in Ohio. Many judges feel that certain young offenders need only short terms of incarceration followed by community supervision, rather than full prison terms. In some of the larger communities in Ohio, there are no long-term

secure local sentencing options, so a judge is forced to sentence the offender to State institutions for secure confinement. The program has been effective in getting some nonviolent offenders out of State institutions more quickly.

The present shock probation statute allows a judge to release an offender from a State institution during the first ninety days of sentence. Many judges are unwilling to release an offender after only ninety days, but may be willing to release an offender later. If the sentencing judge's time frame is increased, more offenders are likely to be released on shock probation without harming the public. Also, release on shock probation must occur under current law once a judge decides in favor of the release. The judge cannot delay the release date until later in the sentence. The Committee recommended that judges be authorized to set a delayed release date any time within an offender's minimum sentence. To help maintain order in the prison, the delayed release would be contingent on the inmate's continued good behavior.

Recommendation

Ohio Revised Code Section 2947.061 should be amended to give judges more time to enter shock probation orders and allow the sentencing judge to set the date for shock probation at any time up to the expiration of the minimum sentence as follows:

(A)...The court shall hear any such motion within sixty days after the filing date thereof and shall enter its ruling thereon within ~~ten~~ THIRTY days thereafter SPECIFYING THE RELEASE DATE WITHIN THE MINIMUM SENTENCE CONTINGENT UPON CONTINUED GOOD BEHAVIOR OF THE DEFENDANT.

Impact and Cost Estimates: There is no immediately identifiable additional cost to this recommendation; however, there may be some long-range probation costs. There will be a reduction in inmates in the State system if judges use shock probation more often as expected. The actual number is difficult to assess.

Education as a Deterrent

Another long-range option for reducing the prison population discussed by the Committee was education as a deterrent. In 1985, the Cleveland Task Force on Violent Crime began a public education campaign on the three year actual incarceration sentence for using a gun in the commission of a felony. Research showed that the use of guns in robberies and other violent felonies decreased in Cuyahoga County after the campaign, leading to a second campaign to educate offenders on the increased penalties for repeated aggravated felony offenses. Committee members felt the Cleveland experience warranted a test of the education program statewide. The Committee proposed that the Governor's Office of Criminal Justice Services expand its crime prevention efforts to educate the public on the penalties for committing crimes and to evaluate the impact of such an educational campaign.

Recommendation

A greater State effort be made in the area of crime prevention and education of offenders on criminal penalties.

Impact and Cost Estimates: The impact of the recommendation is long-range and difficult to measure. The cost of the campaign could be between \$100,000 and \$250,000, depending on the extent of the materials used. Posters and public service announcements (PSAs) would need to be developed. Additional costs involve the purchase of time to air the PSAs during hours when more people watch television or listen to radios.

SECTION II: JAIL RECOMMENDATIONS

Recognizing that drunk drivers and pretrial detainees glut local jails, the Jail Subcommittee focused on recommendations designed to ease the burdens caused by these two groups. The Subcommittee also proposed ways to systematize the somewhat random process of emergency restrictions on jail admissions and emergency releases from jails. Mediation programs, jail "good time", and jail construction also were addressed by the Committee.

Minimum Security Jails

Drunk drivers comprise about half of the sentenced misdemeanants in Ohio's county jails and an even higher share of inmates in municipal jails. Moreover, drunk drivers dominate the lists of convicted offenders who must wait until space is available before entering crowded jails in some counties.

The Committee chose not to recommend changes in existing penalties for drunk driving. Rather, it focused on less expensive ways to incarcerate drunk drivers and other nonviolent misdemeanants.

County jails are called upon to house inmates ranging from traffic offenders to serial murderers. County jails are expensive to build since they must be able to accommodate maximum security inmates and keep them separated from less dangerous offenders. Committee members maintained less expensive structures should be used to house drunk drivers and other nonviolent offenders. Such misdemeanants are not dangerous by nature and are unlikely to escape. They could be held in dormitories, rather than individual cells, because they are unlikely to harm other inmates. The Jail Subcommittee received reports on pilot facilities in Butler, Hamilton, and Summit counties.

Drunk Drivers as a Percentage of Sentenced Misdemeanants
in County Jails

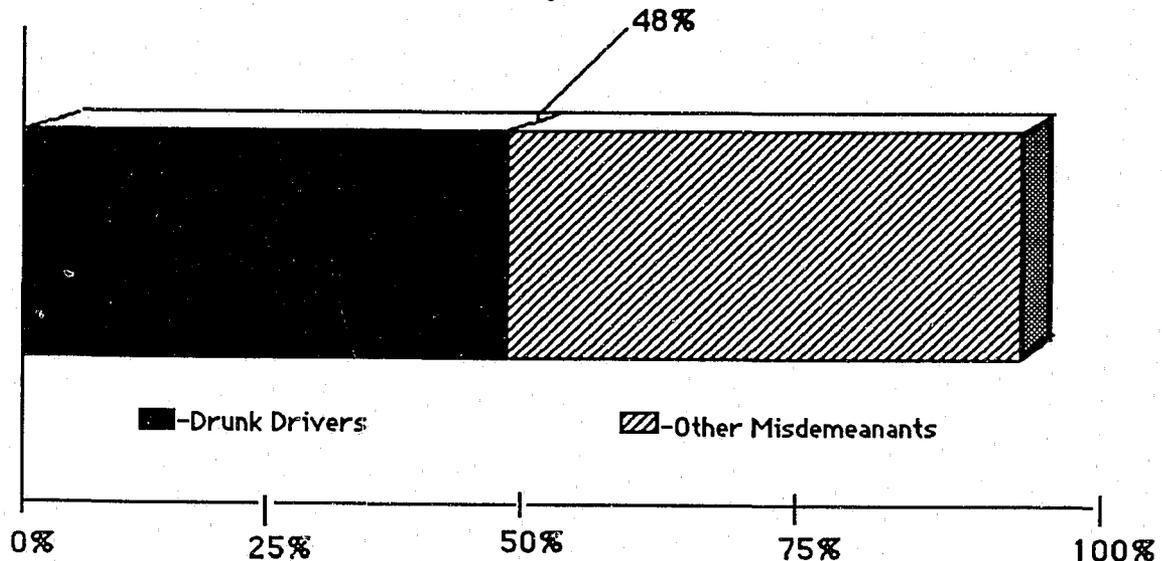


Figure 4

Where feasible, the Committee favored converting existing structures into minimum security jails. Members felt the proposed facilities should be called "jails" because of the punitive overtones of the term. Single county and multi-county facilities are recommended. Sheriffs would run the facilities, but would consider recommendations of sentencing judges regarding persons who may be inappropriate inmates. Counseling, treatment, and education would be required.

A critical part of the Committee's recommendation involves the Minimum Standards for Jails in Ohio and accompanying Construction Guidelines promulgated by the Bureau of Adult Detention of the Department of Rehabilitation and Correction. Committee members agreed some standards would be appropriate for minimum security jails, but maintained the Bureau should recognize the minimum security nature of the facilities--as opposed to the maximum security nature of existing county jails--and adjust standards and guidelines accordingly. Members felt that more flexible rules on security perimeters, the number of inmates per square foot, and the like would significantly lower costs and encourage renovation of existing structures.

The Jail Subcommittee considered various sources of funding for minimum security jails, including alcoholic beverage tax proceeds, court costs, drivers' license reinstatement fees, and fees paid by inmates. However, rather than identify specific sources of funding for the new facilities, the full Committee recommended support for any attempts of the General Assembly to provide funding for minimum security jails.

Recommendation

1. Surplus buildings should be renovated or new buildings should be constructed to serve as minimum security penal facilities. The facilities should be called minimum security jails. Where feasible, the minimum security jail should be a rehabilitated structure rather than a new building.
2. The Bureau of Adult Detention of the Department of Rehabilitation and Correction should be instructed to develop minimum standards and construction and renovation guidelines for the minimum security jails that reflect the minimum security nature of the facilities, as opposed to the maximum security nature of existing county jails. Dormitory facilities are encouraged. In developing the standards, the Department shall consult with sheriffs and other officials akin to those represented on the Jail Advisory Board.
3. Counties may join together to form regional minimum security jail districts. Each district should have a governing board comprised of sheriffs, judges, and county commissioners from all counties in the region. The governing board should decide the site of the facility, who would administer it, etc.
4. The sheriff or administrator in charge of the minimum

security jail should be free to transfer inmates between the minimum security jail and a maximum security county jail. In making transfer decisions, the sheriff should consider the recommendations of the sentencing court.

5. Minimum security jails should hold only convicted drunk drivers and other nonviolent misdemeanants.
6. All convicted drunk drivers, other than those first offenders who are sentenced to drivers' intervention programs in lieu of incarceration, would be eligible to be sent to minimum security jails unless the sentencing judge states, on the record, the reasons why the offender is not suited for minimum security incarceration.
7. Each minimum security jail should operate, or contract for the operation of, alcohol and drug counseling or treatment and education programs.
8.
 - a. A State-funded minimum security jail construction and renovation program should be created and administered in a manner similar to the ongoing county jail construction program authorized by House Bill 530 in 1982. The new program should be in addition to the H.B. 530 program.
 - b. The State should pay a flat rate per bed in construction and renovation costs for single county and regional minimum security jails that are operated by a county or counties. Financing should be through the sale of bonds. Additional funds required for construction or renovation should be paid by the county or counties.
 - c. The State should allow private corporations to develop county or regional minimum security jails (to be operated in conjunction with the local sheriff or regional governing board).
9. If these recommendations result in increased operational costs, the Committee recognizes the additional funds will have to be found. The Committee would support efforts to find the additional funds.

Impact and Cost Estimates: There were 1,350 drunk drivers in county jails in November, 1988. Hundreds more were interned in municipal jails or kept on waiting lists until jail space is available. No accurate statewide count of other nonviolent misdemeanants in jails is available. The Committee's staff estimates that a minimum security jail program of 2,300 beds statewide could remove almost all drunk drivers from jails, eliminate waiting lists, and house a substantial percentage of other nonviolent misdemeanants who are incarcerated now. Of course, the number will not be adequate if judges use the proposed facilities to house nonviolent misdemeanants who are placed on probation now.

County Jails Over Recommended Capacity
(As of November, 1988)

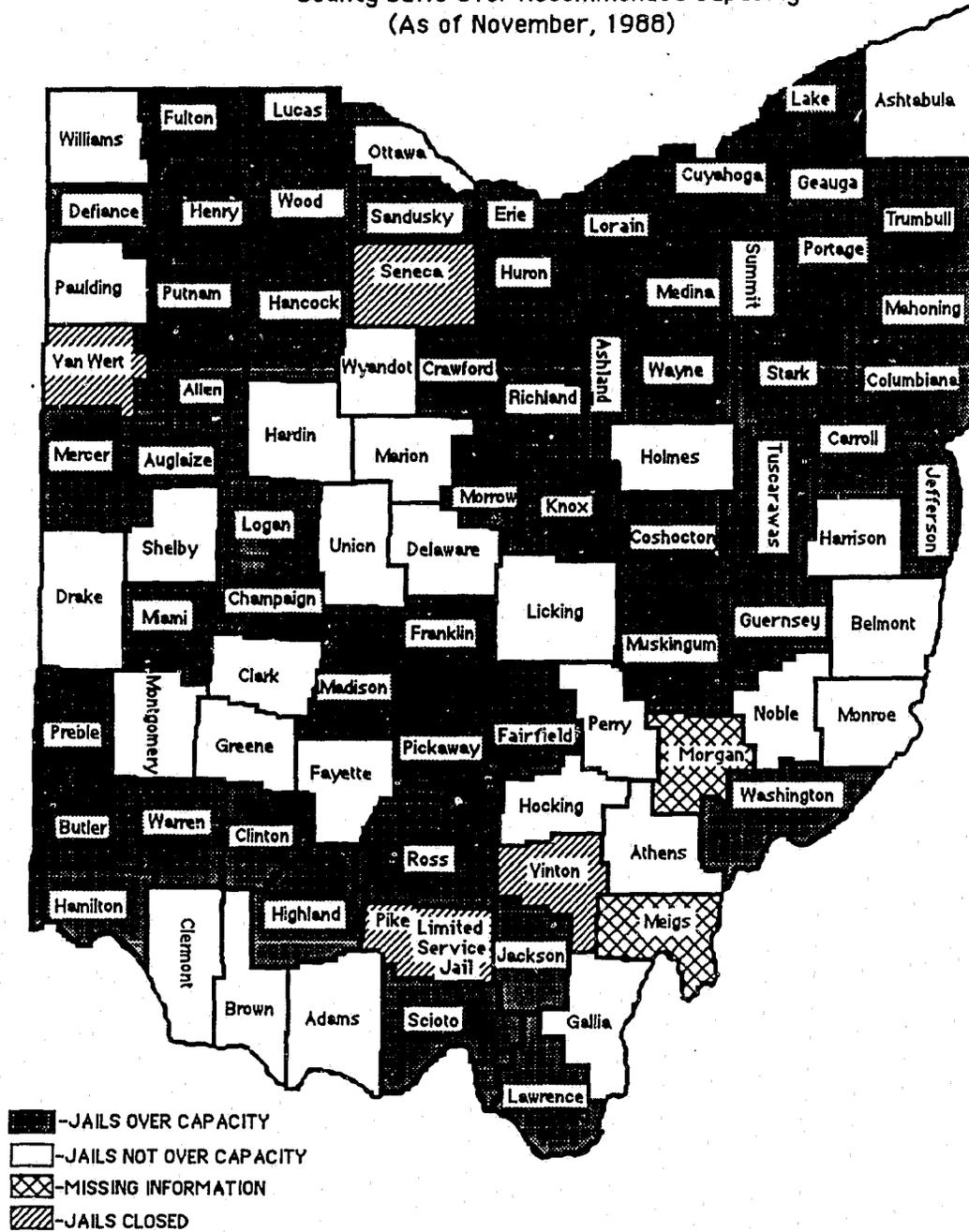


Figure 5

Inexpensive renovation is the key to keeping the capital costs of minimum security jails low. If new facilities are built, or expensive renovation is needed, costs will be higher. Nevertheless, minimum security jails should still be less expensive than other types of existing correctional facilities. Minimum security prison cells cost about \$30,000 each in Ohio. But, they are more secure than minimum security jails would have to be. Community-based correctional facilities cost about \$40,000 per bed. Much of the costs involved in these facilities is in making them secure. In a worst-case scenario, if space for 2,300 minimum security jail beds had to be built new at a cost of \$30,000 per bed, the capital costs of the Committee's recommendation would be \$69 million, which is still cheaper than the equivalent number of cells in maximum security county jails.

Assuming a more modest estimate of building and renovation at \$15,000 to \$20,000 per bed in dormitory settings, the Committee's proposal would cost about \$35 to \$46 million for 2,300 beds. Of course, if private enterprise is encouraged to participate, capital costs to the State could go down.

As for operating costs, the average county jail charges other jurisdictions about \$35 per inmate per day when it holds inmates under contract. Drunk driver facilities in Hamilton and Summit counties list per diem expenses at \$35 to \$40. Minimum security jails probably will cost more to operate than traditional county jails because of the extra counseling, treatment, and education programs. The Committee staff used \$40 per day per inmate as an estimate. At \$40 per day, 2,300 inmates would cost \$92,000 daily or \$33,580,000 annually. Of course, some of these costs could be defrayed by offenders.

Summons in Lieu of Arrest

Since over half of the inmates in county jails are being held awaiting trial and other proceedings, rather than as sentenced offenders, the Committee looked for ways to better identify persons who may be detained in jails unnecessarily. Members believed that a small amount of jail space could be freed without jeopardizing public safety if some property offenders were not taken into custody upon arrest. As an alternative, they could be given summonses telling them when to appear in court. This would ease jail crowding somewhat, spare jail administrators unnecessary paperwork, and lessen tensions between arresting officers and offenders.

Committee members proposed each law enforcement agency have discretion to make its own summons in lieu of arrest policy. Such a policy would create a presumption that certain persons, accused of specified nonviolent crimes, do not have to be brought to jail. However, the policy should not limit the discretion of law enforcement officers to bring such alleged offenders into custody when deemed necessary.

To keep persons who receive a summons from taking the procedure too lightly, the Committee proposed that officers giving summonses should remind alleged offenders of the consequences of failing to appear for court proceedings.

Recommendation

Each law enforcement agency should adopt a policy identifies offenses for which alleged violators may be given a summons in lieu of custodial arrest. At the time of serving the summons in lieu of arrest, the serving officer should remind the alleged offender of the consequences of failing to appear for proceedings.

Impact and Cost Estimates: Besides taking time to develop, summons in lieu of arrest policies should cost nothing and lessen jail crowding slightly.

Breakdown of the County Jail Population

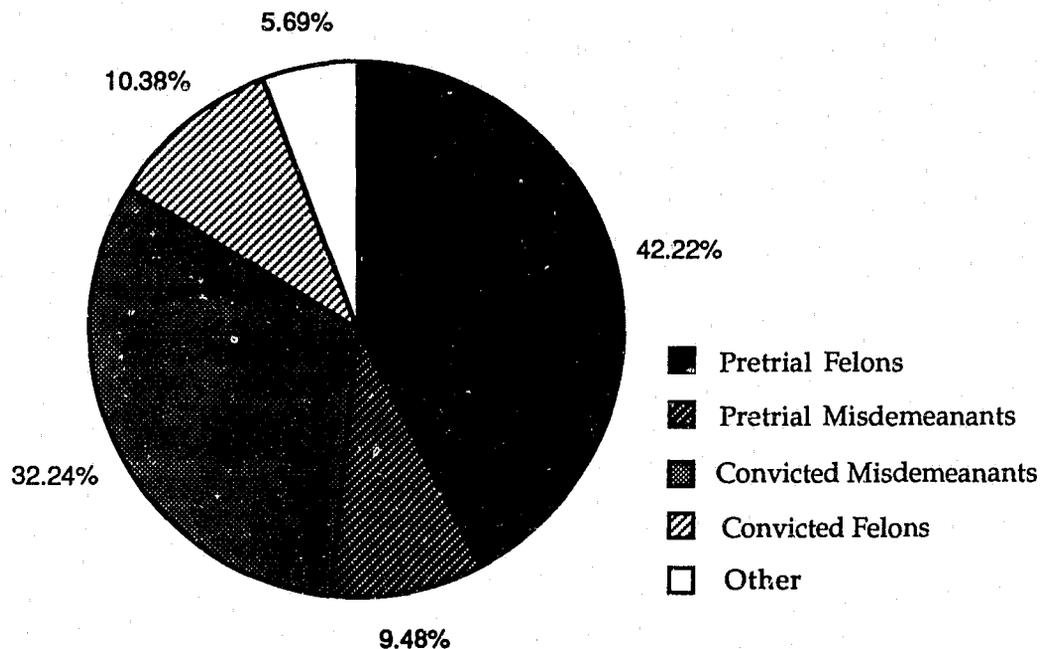


Figure 6

Victims' Mediation Programs

There is a movement toward resolving disputes through mediation. The concept is endorsed by the Ohio Supreme Court. In mediation, a neutral third party helps the parties in conflict reach mutually acceptable solutions to a problem. Although mediation is more common regarding civil disagreements, the Committee concluded mediation has a place in resolving minor criminal matters, too.

Columbus and a few other Ohio jurisdictions use mediation to settle criminal complaints, with emphasis on giving satisfaction to victims of minor crimes. The Columbus City Attorney's Night Prosecutor Program has heard nearly 500,000 cases over 18 years. The program now mediates about 45,000 cases per year, with a claimed settlement rate of 93% when both parties appear. In 1988, the program mediated over 35,000 cases dealing with bad checks alone. Over one-half million dollars were recovered, while formal charges were filed only in about 1,100 bad check cases. The program also hears domestic violence, simple assault, menacing, criminal damaging, and other cases.

Victims' mediation programs are another pretrial tool for reducing the number of persons in jails. Although many minor offenders would not serve jail time, some undoubtedly would. This group can be diverted from jail by mediation. Criminal mediation programs also have other advantages. They can ease workloads of judges, prosecutors, defense attorneys, and their staffs, saving money and time. They can give victims a convenient remedy short of full enforcement of the criminal law. And, minor offenders who cooperate can avoid the stigma of a criminal record.

One approach to criminal mediation is to have intake personnel in the prosecuting attorney's office refer suitable cases to the mediation program, after considering the wishes of the complainant. Formal charges are not filed, pending the outcome of mediation. The complainant and the prosecutor would retain the right to file formal charges if the alleged offender fails to appear for mediation or fails to mediate in good faith, or if the case is not mediated to the satisfaction of the complainant. In jurisdictions with summons in lieu of arrest policies, persons given summonses could be referred to the mediation program by law enforcement officers.

Another approach might be for judges to refer cases to the unit at an alleged offender's initial appearance. In making this decision, the judge should consider the wishes of the complainant. The judge could instruct the alleged offender that referral to the unit gives her the opportunity to dismiss the case via mediation. Failure to appear for mediation or failure to mediate in good faith could result in more formal criminal proceedings and possible incarceration.

Recommendation

City attorneys and county prosecuting attorneys should establish victim-offender mediation units within their offices. The mediation units should foster satisfactory resolutions of criminal disputes while avoiding the time and costs involved in filing formal charges, holding court proceedings, and incarcerating offenders.

Impact and Cost Estimates: The cost of a victims' mediation program would depend on the size of the program. Columbus' Night Prosecutor Program pays part-time hearing officers about \$6 per hour. Each gets 20-25 hours training in crisis intervention, conflict management, and mediation. Some legal instruction is provided. 75 part-time officers hear about 45,000 cases in a year. The impact on jail crowding is difficult to measure. However, persons familiar with the Columbus program maintain it diverts many cases from jail while giving satisfaction to victims.

Prosecutorial Screening

Occasionally, persons are arrested upon complaints by private citizens for activities that do not result in the filing of formal charges by prosecuting authorities. Yet, the arrestees sometimes tie up precious jail space until they are released. In Williams County, among others, no felony charges are filed unless approved by the prosecuting attorney. Committee members concluded the similar screening of charges elsewhere in the State could reduce the number of persons held in jails.

Recommendation

1. To assist in managing crowded jails, the county prosecuting attorney or city attorney with jurisdiction over the charge should assign a person to review the charges against each person arrested and detained in jail within a reasonable time soon after detention begins.

2. The screening process should assess the appropriateness of the charges against each detainee and the likely success of prosecution on the charges.
3. Information obtained in the screening should be used by the prosecuting or city attorney to determine whether to prosecute a detainee and made available to the court to allow prompt determination of probable cause.

Impact and Cost Estimates: This recommendation could be implemented in many jurisdictions without additional personnel. In jurisdictions with more cases to review, the prosecutor may need new staff to conduct the screening. The reduction in jail crowding from screening would depend on current practices in the jurisdiction.

Bail Screening

Few Ohio counties have formal bail screening programs. Such programs are designed to obtain and promptly verify information relevant to judges' decisions on whether a person should be released from jail before trial. The Jail Subcommittee heard reports from programs operated by the Cincinnati Bail Project and the Greene County Probation Department.

The Committee recognized the presumption of innocence to which alleged offenders are entitled. Yet, it also comprehended the public safety risks presented by some persons accused of crime. Bail screening programs can be sensitive to these competing concerns.

Bail screening programs take some of the risk and guesswork out of bail setting by judges. The programs also result in the release of more alleged offenders on bail subject to conditions--such as supervision, reporting, or drug testing--designed to safeguard the public. Bail screening programs can provide information that may be unavailable otherwise in court districts that do not have probation officers. And, by verifying information soon after arrest, such programs can ease the work involved in preparing presentence reports on persons later convicted. There is evidence such programs reduce the number of persons on bail who fail to appear for trial and other proceedings.

The Jail Subcommittee suggested each county or municipal probation department have a bail screening program designed to get verified information to the appropriate judge within 24 hours after booking. The full Committee elected to encourage local governments to establish bail screening programs and bail standards and to discourage holding nondangerous persons in jail prior to trial. However, Committee members felt counties receiving State jail funds should be required to have bail screening programs. Also, if the information were standardized, it could be turned over to the DRC later to aid in classifying new inmates.

Recommendation

1. Local governments are encouraged to establish bail standards and bail screening programs which will ensure the safety of the community. Local governments are discouraged from housing persons in jail prior to trial if the persons are likely to appear for their trials and other proceedings and are not threats to the community.
2. Any county that receives State funds for jail purposes shall establish a program of bail standards and bail screening.

Impact and Cost Estimates: The number of jail beds made available if bail screening programs become common is difficult to quantify. The impact is not likely to be great, but at least a few beds could be made available in each jurisdiction based on the experiences in the few counties with formal bail screening programs. The pool of persons potentially diverted from jails by bail screening is large; about 52% of the county jail population statewide consists of persons awaiting trial. Bail screening programs promptly identify persons likely to be released (making jail beds available hours to days earlier) and give information to judges to allow release in cases that may be considered too risky without the information.

Bail screening programs need not be expensive. They can be operated by probation departments. Interns and other inexpensive employees can conduct the screening, verification, and some monitoring. Often, this eases the work of traditional probation personnel later in the process, offsetting some of the costs.

Emergency Admission and Release Plan

Jail crowding compels judges and sheriffs to be resourceful. In many jurisdictions, sheriffs maintain regular dialogue with judges on the jail population. Often, judges are asked to authorize early releases of offenders to make room for incoming inmates. In some counties, sheriffs refuse to accept certain offenders because of crowding. Similarly, some prosecutors informally tell law enforcement officers that it is not feasible to arrest and bring certain low-level offenders to trial. Committee members believed an emergency admission and release mechanism could make jail admission and release fit a consistent philosophy in each county and perhaps assure that some time is served by more offenders. Formal emergency admission and release programs can be safety valves and deter federal court intervention.

The Revised Code does not specifically address emergency limits on admissions or emergency releases from crowded jails. The Committee would change this. The Committee recommended establishing a jail population committee in each county that would create an emergency admission and release plan the sheriff could use when he determines that jail crowding has reached unacceptable levels.

The Committee's proposal is designed to assure each county systematically determine which restrictions on admissions or emergency

Recommendation

1. The commissioners of each county should, by resolution, form a county jail population committee. The committee should establish an emergency admission and release plan to be implemented by the sheriff when the population of the county jail reaches unacceptable levels.
2. Before implementation, the emergency admission and release plan should be approved by the common pleas judges of the county.
3. The General Assembly should specify the appropriate membership of the committee and authorize the sheriff to implement the admission and release plan established by the committee.

Impact and Cost Estimates: The proposal is not intended to result in the release of all county jail inmates held in excess of State-recommended capacities. Rather, it is to provide a safety valve for each county.

Jail "Good Time"

Sheriffs have the right to grant time off for good behavior to sentenced jail inmates. However, the process requires that the sheriff prepare specific paperwork and formally request such an authorization from the sentencing judge on a case-by-case basis. The process is cumbersome and erratic, as some judges are more willing to involve themselves in it than others. To systematize and expedite the process, the Committee would allow the sheriff of each county to administer moderate reductions in time served to well-behaved offenders without the administrative difficulty of referring each offender's case back to the sentencing judge. The 30% jail good time rate proposed would match the rate available to State prison inmates.

Recommendation

The General Assembly should authorize sheriffs to directly administer a rule for reduction of jail time for good behavior. The reduction should be at a standard rate of 30%, and it would replace a system under which the sheriff may take each case back to the sentencing judge for authorization of a 10% reduction.

Impact and Cost Estimates: There are no good estimates concerning how much good behavior credit is now being administered. Thus, it is impossible to measure precisely how much impact this proposal might have. One might assume 25% of Ohio's 8,000 jail inmates, about 2,000 persons, are serving sentences eligible for reduction. This would exclude inmates awaiting trials or sentencing and sentenced drunk drivers. If an added reduction of 5% could be gained due to this provision, this would represent about 100 fewer beds needed. If there could be a gain of 10%, there would be a need for 200 fewer beds statewide. Additionally, the new system would cost less in paper and time.

Jail Construction

An examination of recent changes in Ohio's Criminal Code, patterns in judicial sentencing, and the way Ohio's jails are used leads to a strong conclusion: even if most of the recommendations of this report were adopted, Ohio's jails could be overflowing for years to come. Further, some of the jails that exist should be phased out, due to age and decrepitude. The following recommendation builds on existing State law to suggest all needed jail space be provided and the State pay half of these costs.

Recommendation

Through legislative action, the State should commit itself to pay for half the cost of all necessary jail construction in the State.

Impact and Cost Estimates: A survey prepared for the Committee estimated that jails hold 2,000 extra inmates; further, many jails had long lines waiting to serve terms. Persons on waiting lists tend to be low-level offenders or drunk drivers. Such persons could be handled by the proposed minimum security jails, some of which may be self-supporting. According to a survey completed in 1989 by the GOCJS, the total cost of the construction of new full-service jails needed in Ohio, at an average rate of \$60,000 per cell, is about \$368 million. Half of this amount, or \$184 million, would be borne by the State, under this proposal.

SECTION III: ALCOHOL AND DRUG TREATMENT AND RELATED RECOMMENDATIONS

Many persons in prisons and jails bounce like pinballs between criminal justice programs and various social service, mental health, and substance abuse treatment programs. With an emphasis on staffing for security, penal facilities have limited resources for education, treatment, and habilitation programs. Treatment providers often are reluctant to work with offenders because criminals are compelled into, rather than volunteering for, treatment. This section contains recommendations for dealing with offenders in need of social and treatment services.

Offenders with Special Needs

The corrections system does not have adequate resources for offenders with special problems such as drug or alcohol abuse, mental illness, mental retardation, sexual dysfunction, and illiteracy. Yet, with help, the recidivism rate of many of these offenders could be lowered. Current programs affect only a fraction of offenders with special needs.

Some members were concerned with the reluctance to treat offenders by some service providers. Thus, Committee members favored appropriating funds to correctional facilities and programs for necessary services, rather than to treatment providers.

Recommendation

1. Some offenders have special problems such as mental illness, mental retardation, drug or alcohol addiction, sexual dysfunction, and illiteracy. Efforts should be made for treatment or habilitation of these offenders within State and local correctional institutions and programs. The General Assembly should allocate sufficient funds for this effort.
2. Funds appropriated for treatment programs should be provided directly to correctional agencies responsible for running institutional or community programs to allow them to provide or contract for services.

Impact and Cost Estimates: To assess the amount needed, the DRC could identify the number of offenders in each special needs category and include an adequate amount in its next biennial budget request.

Department of Alcohol and Drug Addiction Services

Each subcommittee of the Governor's Committee on Prison and Jail Crowding independently discussed the new Department of Alcohol and Drug Addiction Services and the role it could play in providing services to persons under the jurisdiction of the criminal justice system. Each subcommittee reached a similar conclusion: the new Department should include among its priorities drug and alcohol abuse programs for offenders, both in and out of confinement. This would cover persons in diversion programs, sentenced offenders in jails, prisons, and other residential

settings, probationers, parolees, inmates in the proposed minimum security jails, and the like.

The drug and alcohol abuse problems of persons under the jurisdiction of the criminal justice system have ramifications that affect not only the offenders and their families, but many innocent victims of crime as well. Yet, traditionally, programs for offenders have not been a high priority. Providing intervention, counseling, and treatment to offenders should be a societal priority, according to the Committee.

Recommendation

The Committee encourages significant funding to the new Department of Alcohol and Drug Addiction Services. A sufficient portion of the Department's budget should be earmarked to meet the needs of substance abusing offenders, both in and out of confinement.

Impact and Cost Estimates: The Committee did not assess the impact and cost of the proposal. Since some argue that 70% to 80% of the offenders in penal facilities have drug or alcohol problems, the program would be expensive.

Certification of Treatment Programs

Committee members recognized certification of residential drug abuse treatment facilities is a requirement that must be met before certain offenders can be diverted from prison. The responsibility for certification is entrusted to the new Department of Alcohol and Drug Addiction Services. Prompt certification is needed so that valuable treatment alternatives to prison are available.

Recommendation

The Department of Alcohol and Drug Addiction Services should move aggressively to certify existing community corrections programs as residential and nonresidential drug abuse treatment programs.

Impact and Cost Estimates: Most drug treatment programs mentioned in the third paragraph seem to be self-sustaining at present. (This recommendation does not address the funding of additional programs.) Given the waiting lists to get into approved programs, it is reasonable to believe that judges would use such programs as sentencing alternatives more often if openings were available. Still, it is difficult to estimate the impact of certification alone.

Additional Probation Officers

Alcohol and drug abuse is a problem for many offenders. According to the 1988 Drug Use Forecasting (DUF) study in Cleveland, about 60% of the offenders arrested and brought to jail have some illicit drug (other than marijuana or alcohol) in their systems at the time of arrest. 52% of the arrestees tested positive for cocaine. Studies of prison populations show

70 to 80% of the offenders had alcohol or drug abuse problems prior to incarceration. Unless these problems or addictions are successfully treated, the offenders will continue to cause problems for the criminal justice system. Offenders on probation have easier access to alcohol and drugs, which will continue to aggravate the problem. Local probation departments have high caseloads, making it difficult for them to closely supervise offenders. In some courts, probation officers supervise as many as 500 offenders.

The Report of the Supreme Court Committee to Study the Impact of Substance Abuse on the Courts mentioned the need for additional probation officers to adequately supervise probationers and to complete more thorough presentence investigations. The report stated the average caseload in the seven largest counties is 120 probationers per probation officer. This does not allow much time for the officers to monitor offenders or to complete thorough presentence investigations.

In reviewing the Supreme Court Report, the Committee decided to endorse the recommendation for more probation officers. However, because of access to drugs, offenders on probation are more likely to use drugs. Drug addiction is a difficult problem to treat. An offender who, through random drug testing, shows drugs in his system should not automatically be sentenced to a State prison. A progressively severe range of sanctions should be developed, with prison as the ultimate penalty. Otherwise it is possible that the number of offenders sentenced to State institutions could skyrocket. If estimates are correct and 70% of offenders use drugs or alcohol and 60% of the offenders in Ohio are on probation in the community (approximately 60,000), a large portion of these offenders could end up in prison if alternative sanctions are not developed. Recognition should be given to counties that are creative in developing a continuum of local sanctions to deal with substance abusing probationers.

Recommendation

1. The Governor's Committee on Prison and Jail Crowding endorses the Supreme Court's recommendation regarding offenders on probation: The caseload of probation officers should be reduced and State funding should be made available to all courts to assist in this reduction. Funding also should be provided to permit random drug and alcohol testing.
2. County departments should develop an increasingly severe continuum of sanctions for probationary offenders found to be using illicit drugs.

Impact and Cost Estimates: The amount of funding needed to implement the recommendation is difficult to determine without a survey of all probation departments in the State. Many counties have begun working towards reducing caseloads and state subsidy assistance should recognize and be tied to efforts already undertaken. The entry level salary for a probation officer paid by the State is \$20,500. County probation costs vary. In theory, adequate treatment of substance abusing offenders will reduce recidivism and ease prison and jail crowding in the long term.

SECTION IV: COMMUNITY CORRECTIONS AND PRISONS RECOMMENDATIONS

The Community Corrections and Prisons Subcommittee had the broadest responsibility of the three subcommittees. Thus, the recommendations were very diverse. There is, however, a philosophy into which the recommendations can be set. Since community sanctions can be less expensive than full-fledged prisons and jails, while providing more benefits to society, Subcommittee members wished to use community correctional alternatives with as many offenders as could be wisely and justly sentenced to them. The Subcommittee explored road blocks to the more extensive use of community corrections and prepared recommendations when appropriate. Construction of either jails or prisons may be planned, but the Subcommittee's philosophy was that actual construction should be undertaken when no alternative seems reasonable and in conjunction with a full expansion of community corrections. The recommendations follow a progression from planning for community corrections and increased funding, through removal of statutory and administrative road blocks, reducing jail populations through community corrections, enabling and encouraging more use of community corrections by the Department of Rehabilitation and Correction (DRC), to paying for and building more correctional facilities.

These recommendations bring little immediate relief to prison or jail crowding. The Subcommittee instead pursued the theme that a solid community corrections structure with more jail space would relieve prison population pressures indirectly, as judges would be better able to find appropriate alternatives for offenders.

Local Community Corrections Planning

A significant expansion in the number of community alternatives occurred during the past decade. However, the growth has been like patchwork, with little clear pattern or organization to the alternatives. In some counties, there are several different boards that deal with different kinds of community alternatives, with no required coordination between the boards. In other counties, there is no formal community corrections planning. Committee members believed in consolidating these efforts into a single board, creating a formal board in counties or regions where one does not exist, and in assisting the board in developing a single community corrections plan for the county. This planning would be prerequisite to certain kinds of State community correctional funding.

Recommendation

From increased dollars provided by the General Assembly, the State should allocate initial planning grant funds and technical assistance to counties or multi-county regions that do not have a Community Corrections Board. The grants should be used to organize such a board which would develop a plan for a range of community alternatives for offenders.

Any community corrections plan shall cover the gamut from pre-arrest to post-adjudication, ways of handling offenders within the community, coordination of local programs and

resources, and measurement and reporting of the impact of the plan on other elements of the system.

In addition to the members designated in Revised Code Section 5149.34, a county commissioner, jail administrator, and municipal or county court judge should be added to the Community Corrections Board.

These considerations should be maintained: the maximum number of Community Corrections Board members shall remain at 15; the official designated to chair the Board shall be the presiding Common Pleas Court judge; there shall be a required number of yearly meetings, preferably quarterly; there shall be a Prison and Jail Subcommittee which must report on the impact of the plan on the other elements of the system.

Impact and Cost Estimates: It is estimated that grants of from \$5,000 to \$10,000 would be provided to about 70 counties that are not presently receiving Community Corrections Act funding. Assuming an average grant of \$7,500, costs for the program would be about \$525,000. This would be a one-time cost, assuming that, in future years, the basic plan could be modified inexpensively.

The costs would be immediate, but the gains would be gradual. It is believed a more coherent plan in each county would allow a greater focus on the development of those alternatives that seem most necessary and on the means to develop those alternatives. (Many of these alternatives would likely be funded through some State program, a consequence which is not included in these estimates.) As these alternatives develop over a three to five year interval, there should be an appreciable gain in the number of persons who end up with a community sanction instead of a full term in jail or prison. However, given the tentativeness of the scenario, it is impossible to estimate long-term benefit in reduced admissions to prison or in reduced incarceration costs.

Increased Funding For Community Corrections

To expand the use of community corrections, probably no single action is more important than devoting more money to paying for programs. As programs expand through the allocation of additional funds, and as safe new alternatives to imprisonment are established, there is clear evidence that judges increasingly use the alternatives instead of imprisonment. Further, there is evidence that the public finds the wise use of a broader range of alternatives acceptable.

Members of the Committee examined this issue and recommended an expansion in State funding for community corrections. They believed the mechanisms for funding through the DRC appear adequate, but there need to be more dollars devoted to the task, especially given the high number of nonviolent offenders admitted to State prisons. The four accounts in the State budget that provide the DRC with funds to pass through to counties are: Pilot Probation, which covers intensive supervision programs and operating costs for community-based correctional facilities; Community

Corrections Act, which contains funds for a wide range of programs; Halfway House Subsidy, which pays to house parolees and probationers; and Furlough Subsidy, which covers furlonghees in halfway houses.

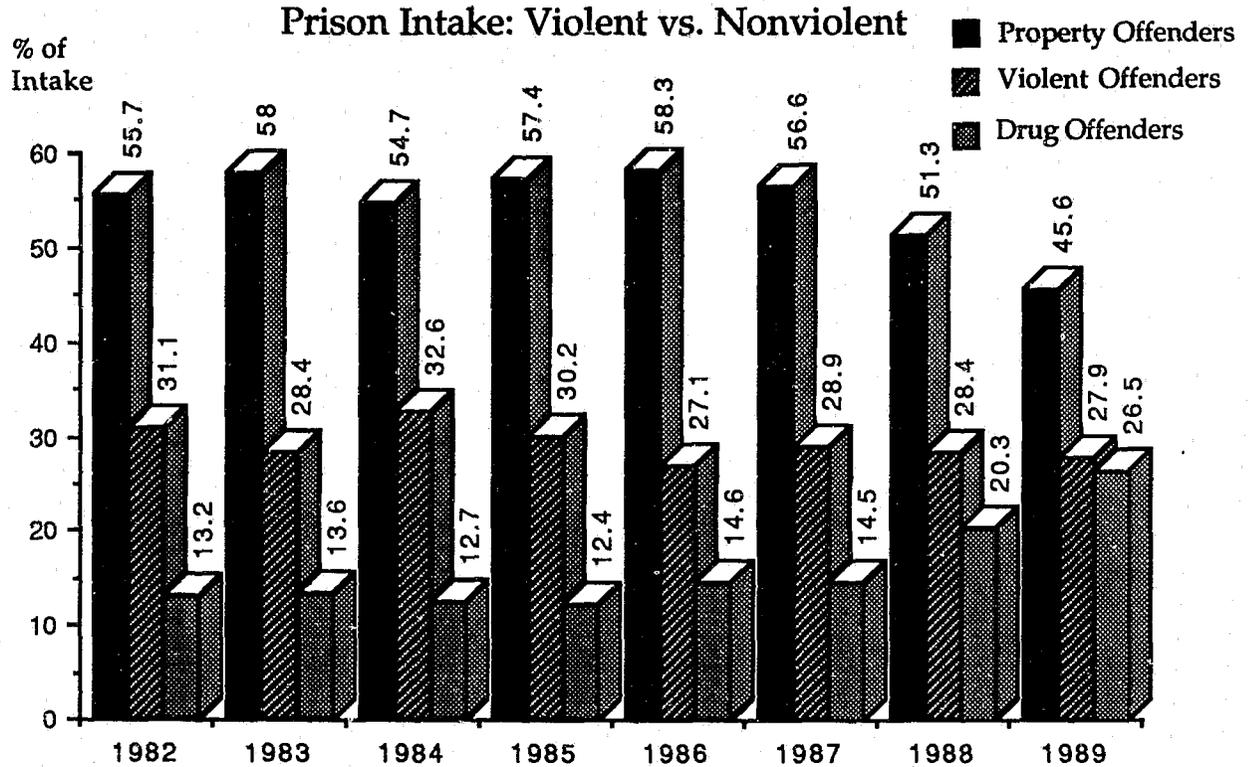


Figure 8

Recommendation

Because of the importance of opening prison and jail spaces for more serious offenders who should be incarcerated for longer periods of time, the Legislature should immediately increase the total budget of the Department of Rehabilitation and Correction for the four categories of Community Corrections pass-through monies which go directly to local communities. There should be continual increases thereafter in these four accounts.

Impact and Cost Estimates: The DRC maintained that, with adequate community resources in place, the State's prison population could be reduced by several hundred or even several thousand right now, without greatly jeopardizing public safety. The problem is that it takes time to develop or expand programs.

If funding were available, the DRC estimated the State could reasonably add 200 to 300 halfway house beds at an operating cost of about \$12,775 per bed (i.e., \$2.5 to \$3.8 million). An expansion beyond 300 would be optimistic, given the difficulty in siting halfway houses. The DRC also

estimated there is a market for about 300 more community-based correctional facility beds than are planned now. CBCFs cost about \$55 per day to operate and about \$40,000 per bed to build. Thus, 300 beds would cost about \$6 million to operate annually, and about \$12 million to build. Experts predict that Community Corrections Act appropriations would have to increase to \$20 to \$25 million to have a viable program in every county.

Transfer of Prisoners to Structured Residential Settings

This recommendation suggests a specific use to which expanded community corrections funding could be put. Currently, low-level nonviolent felons who receive determinate sentences are released at the expiration of their terms without parole supervision. Committee members felt this transition back into the community is too abrupt. The Committee proposed using community corrections pass-through monies to pay for housing certain offenders in structured residential settings (such as halfway houses) as they near the ends of their sentences. Similarly, the Committee proposed placing persons serving indeterminate sentences in such structured community settings as they near parole eligibility.

Recommendation

Additional community corrections funds should be used to permit transfer into structured residential community settings for nonviolent offenders serving determinate sentences who are within 120 days of the completion of their sentences and for furlough designees who are within 180 days of release.

Impact and Cost Estimates: The proposal could have a significant impact on prison crowding, provided sufficient structured residential facilities are available locally. In FY 1989, Ohio's prisons released over 9,000 persons who fit into the categories in the recommendation. If each averaged three months in a community facility, the proposal would save 2,250 prison beds annually. Of course, about 2,250 community beds would have to be made available. Operating costs for structured community facilities are similar to State prison operating expenses. But, construction and renovation costs are much greater for State prisons. At \$40,000 per bed, 2,250 prison beds would cost \$90 million. Capital costs for halfway houses usually are lower, since inexpensive buildings usually are renovated to serve this purpose.

Funding for Community-Based Correctional Facilities

The Committee suggested authorizing bond sales to expand the construction program for community-based correctional facilities (CBCFs). CBCFs are secure local facilities for nonviolent felons that incorporate work and other programs. In 1982, the General Assembly authorized \$20 million in bond sales for CBCFs. Nine facilities were planned with the 1982 authorization. Three are fully operational and a fourth will begin operating this year. Others are in various planning stages. The CBCF concept has become more popular with judges as an intermediate sanction between traditional probation and prison confinement. As a result, several

counties would like to establish CBCFs. Since the 1982 funds are allocated, additional authorization is needed.

Recommendation

The Legislature should authorize an additional \$20 million for construction of Community-Based Correctional Facilities. [Note: Between the time the Committee made a preliminary recommendation on this topic and the time this report was published, the General Assembly authorized an additional \$15 million for CBCFs in H.B. 808.]

Impact and Cost Estimates: The recommendation speaks to construction costs. CBCFs cost about \$40,000 to \$45,000 per bed. Hence, \$20 million will provide about 500 beds. Operating costs of CBCFs vary depending on size. Those operating at present receive a per diem average of \$55 for each inmate versus \$30 to \$35 per day in prison. However, overall savings occur due to shorter incarceration time in a CBCF than in prison. This level of inmate typically spends about three months in a CBCF, versus about one year in prison. The number of diversions that would result from full operation of all planned CBCFs would be 1,773 per year, resulting in a net savings of \$1.3 million, according to the DRC.

Halfway House Services Subsidy

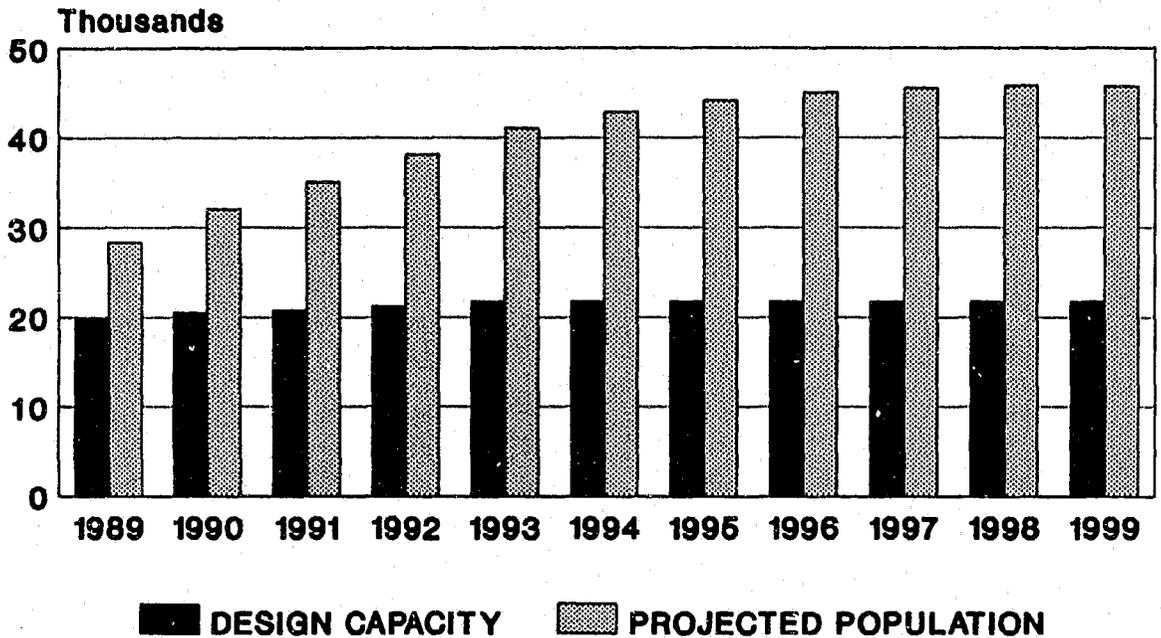
Halfway Houses are used to place furlougees and other prisoners who need a structured setting before release from incarceration. Most of the halfway houses funded by the DRC receive a flat per diem payment for each inmate. The cost of providing special counseling or treatment to some offenders is dramatically more than the standard per diem. Since halfway houses generally are hard-pressed financially, they may refuse offenders who cost appreciably more than average. Thus, diversions from prison are reduced. With a fund against which extra services could be financed, more offenders would be handled in the community. The following recommendation suggests a remedy.

Recommendation

Through legislative or administrative action, an account should be established to pay for auxiliary services for probationers and parolees. The services would be provided through halfway houses to offenders under supervision who are residents of the facility. Such services would emphasize substance abuse programming and counseling.

Impact and Cost Estimates: The DRC estimates that the number of persons placed in halfway house beds could be increased by 10% with such a program. If the per diem could be increased by an average of \$5 per day for offenders in need of extra services, the average placement cost would be \$7,200. This would offset an incarceration cost of over \$11,000 for the same offender. There would be a savings in reducing the need for construction of prison space. About 120 prison beds could be saved, reducing construction needs \$4,800,000 at a conservative estimate of \$40,000 per bed.

DR&C PRISON POPULATION PROJECTIONS 1989 - 1999 (PREPARED 10/89)



SOURCE: DRC PLANNING & RESEARCH (3/90)

Figure 9

Prison Construction

As the projections above illustrate, current sentencing patterns, pending revisions in the Criminal Code, and the present degree of crowding make the need for additional prison construction likely. This appears true even if the recommendations contained in this report were implemented. However, Committee members wanted to assure prison construction is not considered in a vacuum.

Recommendation

Any new prison construction should be authorized in conjunction with the substantial expansion of quality community corrections and local jails.

Impact and Cost Estimates: Present DRC prison population projections show the population rising to almost 46,000 over the next ten years, not taking into account harsher penalties presently under consideration or reductions

as a result of proposals in this report. Present design capacity of Ohio's prisons is 19,848. This should increase to 21,745 by the end of the H.B. 530 construction program in 1992.

If the prison population reaches 46,000, this represents 24,255 more than the 1992 planned capacity. To build this many beds at \$40,000 per cell would represent a construction cost of \$970 million. Ultimately, operating costs will exceed this amount.

Pre-Sentence Investigations

Community corrections programming can offer sentencing judges safe alternatives to incarceration in the State system.

Community alternatives will not reduce prison crowding unless judges use the alternatives in sentencing. To ensure that offenders are seriously considered for alternatives, the judge must be comfortable a particular sanction, including an alternative to incarceration, is appropriate.

Currently, pre-sentence investigations (PSIs) are necessary before placing a person on probation. Committee members maintained requiring PSIs in other cases would give judges additional information, which could result in sentencing more offenders to community sanctions, thereby easing prison crowding. The Committee recognized the burdens mandatory PSIs in all criminal cases would impose. Thus, the Committee proposed mandatory PSIs only when the offender is eligible for probation to a community sanction. To further reduce the burden, the Committee proposed allowing the court to waive a PSI, if the prosecution and defense agree to the waiver and if the offender is actually placed on probation. Members also felt PSIs should have consistent contents statewide. Members recognized the costs associated with these proposals and proposed they be borne by the State.

The Committee recognized PSIs have the additional benefit of giving prison officials better information on which to make classification decisions for offenders who are not granted probation. However, the Committee also realized mandatory PSIs in all cases could be expensive. The Committee proposed allowing the DRC to set up a pilot program for mandatory PSIs, or comparable information, with a willing county.

During the Committee's discussion of the costs related to detaining persons in local jails while PSIs are prepared, members also expressed concern with the costs of holding persons who violate conditions of parole on behalf of the Adult Parole Authority. The shortage of jail space causes problems for the APA. It is difficult for county jails to find room for persons who violate terms of parole. Some have refused to provide cells for technical parole violators (i.e., those whose parole violation did not involve committing another crime). Recognizing the APA's need for jail cells while believing jailors deserve remuneration for holding technical parole violators, the Committee suggested creating a system of per diem payments to jails holding such violators.

Recommendation

1. Through legislative action and court rules, the completion of a pre-sentence investigation should be required before an offender is sentenced for any probationable felony offense. At the concurrence of the defense and prosecution, the requirement for a PSI could be waived by the court if the offender were placed on probation.
2. The State should pay the extra cost of additional workers to prepare the additional PSIs. The State should pay the extra costs of jail space needed for additional offenders incarcerated during PSI preparation or pursuant to an order of the Adult Parole Authority.
3. Through legislative or administrative action, the State should oversee the development of PSI standards. The standards should include consideration of alternatives to incarceration. A more aggressive program of education for PSI preparers should be conducted by probation offices.
4. The Department of Rehabilitation and Correction should be given authority to negotiate an agreement with a cooperative county for a pilot project for mandatory PSIs or comparable information to be forwarded to the Department to help with classification of inmates. The costs of the project should be reimbursed by the State.

Impact and Cost Estimates: These recommendations could have considerable start-up costs, but there is strong evidence that the proposals will more than pay for themselves in relatively few years. Because the start-up costs would be incurred primarily at the local level, while the savings would occur primarily at the State level, the proposal includes a provision under which the State would cover the additional costs.

Using crude numbers from 1988, it appears that about 4,500 felons were eligible for probation, but were sentenced to prison system without a PSI. Under the recommendation, the DRC estimates that about 4,500 additional PSIs would need to be completed. The average investigation takes about 30 days. About 80% of the 4,500 persons would spend the month in jail, while the rest would remain on bond. With the expansion of sentencing alternatives and with more thorough consideration of alternatives via PSIs, it is reasonable to believe that 15% of the 4,500 eligible for probation would receive a community alternative sentence. This represents 675 persons.

About 23 probation officers would be needed for the extra PSIs at a cost of approximately \$30,000 each per year, with four secretaries at \$25,000 each per year. Both costs include fringe benefits and some equipment. Total personnel and equipment costs per year would be about \$790,000.

About 3,600 offenders would spend an additional month in jail during the completion of the PSI. This represents a need for about 296 jail beds statewide. At \$60,000 per bed in construction costs, this would represent a

one-time cost of \$17.8 million, if 296 beds actually were built. Since these beds would be scattered around the State's 88 counties, there probably would be little actual construction and few increased operating costs in most counties.

If 675 additional persons were diverted to community alternatives, a 1989 average cost of about \$5,000 per placement would be incurred. An average placement of one and one-half years could be expected. Thus a total cost of \$3,375,000 per year could be expected to cover diversions from prison resulting from additional PSIs.

Offsetting these costs would be a considerable savings in construction expenses. Prison cells are now being built at over \$40,000 each. Reducing the need for prison space by 675 beds at \$40,000 per cell represents a capital cost savings of at least \$27 million.

Additionally, there would be operational savings. First, the 675 inmates who would receive alternative community punishments would have averaged at least one year in prison. The present average prison cost is \$11,300 an inmate per year. Diversion under the proposal represents a savings of \$7,627,500 yearly. Further, the additional month that is spent in jails during the conduct of the PSI would count against the prison term. Since this would be 6,500 minus 675 inmates, there would be 485 inmate years. At the same annual cost, the annual savings would be \$5,480,500. Totalling these two figures, annual operations savings would be \$13,108,000.

There appear to be relatively minor costs with regard to the training implied in the recommendation. Two persons at the State level could work at this, costing perhaps \$70,000.

To summarize, total costs would be for probation officers, staff and equipment at a cost of \$790,000 per year; jail space at a one time cost of \$17.8 million; payment for alternatives at a cost of \$3,375,000; and trainer costs annually of \$70,000 a year. Savings include prison construction savings of \$27,000,000 and prison operations savings of \$13,108,000 per year. Clearly, the annual savings in prison operations more than offset the annual costs of the recommendations, and the costs of jail construction are less than the offsetting prison construction savings.

No estimate was made of the cost of a pilot mandatory PSI program. As for the per diem payments to jails that hold technical parole violators, at the end of 1989, there were about 65 such violators in local jail custody. If the per diem cost were \$40, the annual cost of renting 65 beds would be about \$949,000. This figure may be low because the year-end count of 65 was lower than usual and because the per diem reimbursement may be a carrot to house more parole violators in county jails.

Improved Criminal History Records

There is concern in criminal justice agencies around the State regarding the quality of information in inmate "rap sheets", that is, criminal case histories (CCH). Some agencies that should be reporting criminal activity or agency actions are not doing so with consistency and

accuracy. The degree to which these problems exist is unknown, but there is enough basis for skepticism that many users of the system do not rely on the rap sheets that they receive.

There are consequences to this skepticism. Without reliable information that is quickly accessible, the DRC and others that hold inmates are not quickly able to determine the likelihood of difficulty from individual inmates. This affects, most notably, bail release and classification decisions in jails or prisons. Where the information is unclear, decision-makers tend to be conservative, holding the accused or convicted securely until there is some basis for more flexible treatment. To some degree, the lack of a good rap sheet slows the preparation of a pre-sentence investigation. In both these instances, doubt about the quality of rap sheets generates pressure to hold persons in jail or prison for longer period or at higher, and more costly, levels of security.

The Committee suggested more study of the issue, drawing from many parties in the criminal justice system to assess the quality of reporting to the criminal case history system. The GOCJS is asked to serve as a forum for this assessment. Besides estimating the accuracy of information included and the level of missing information, the group would attempt to assess the reasons why agencies fail to report fully and properly. The group would also suggest remedies for any inadequacies that might exist, including penalties and rewards for those agencies who should be participating in the criminal case history system. If the system were improved, it should result in fewer in jails and in faster processing through prison reception.

Recommendation

The Governor's Office of Criminal Justice Services should form a representative group of user agencies to accurately assess current reporting for the State's criminal case history system with the aim of reporting to the General Assembly ways to improve the system and incentives for timely and accurate reporting.

Impact and Cost Estimates: Travel at 22.5 cents per mile, and some lunches would have to be bought. The exact amount would depend on the size of the study group. The group's staff needs would entail part of the time of one GOCJS professional staff member and part of a secretary's time, perhaps costing about \$20,000 in salaries and fringe benefits.

Statutory and Administrative Expansions

A survey of Ohio judges conducted for the Committee showed that certain sentencing alternatives are not used by some judges because statutory language does not specifically authorize them. In particular, the Committee suggested the Legislature specifically authorize the use of community service sanctions in felony cases and the use of electronic monitoring in many instances, including as a substitute for pretrial incarceration.

Recommendation

1. The General Assembly should specifically authorize the assignment of community service hours as a condition of probation for felons. Also, the number of hours of community service to which a convicted offender may be sentenced should be increased.
2. The General Assembly should specifically authorize the use of different forms of electronic surveillance as a condition of probation or as an extension of incarceration, including pretrial release.

Impact and Cost Estimates: Community service and electronic monitoring sentences are passing through an experimental usage phase. If the recommended changes are made, use may grow over the years, in part because of the greater clarity of authorization. Nevertheless, it is difficult to assess the impact of this recommendation.

Community Corrections Funding for Misdemeanants

The Committee sought to strengthen the community corrections framework into which offenders can be placed to provide local jail population relief and behavior control. The Community Corrections Act (Revised Code Section 5149.39, et seq.), administered by the DRC, presently focuses upon programs that relieve prison crowding. An earlier recommendation suggested the State expand funding to the program. Given crowded conditions in jails, and the number of counties that maintain lists of sentenced offenders who must wait for available space to begin serving sentences, the Committee also recommended expanding scope of the program to include jail crowding reduction, thereby making State funds available for alternative sanctions for misdemeanants.

Recommendation

The General Assembly specifically should authorize the use of Community Corrections Act funds for programs that reduce jail crowding. Jail crowding reduction priorities should be pretrial programs, probation departments, and mediation programs.

Impact and Cost Estimates: Without knowing how much money may be made available for jail reduction projects, and the nature of particular projects, it is not possible to reasonably estimate the impact of the proposal.

County Jail Waiting Lists
(As of November, 1988)

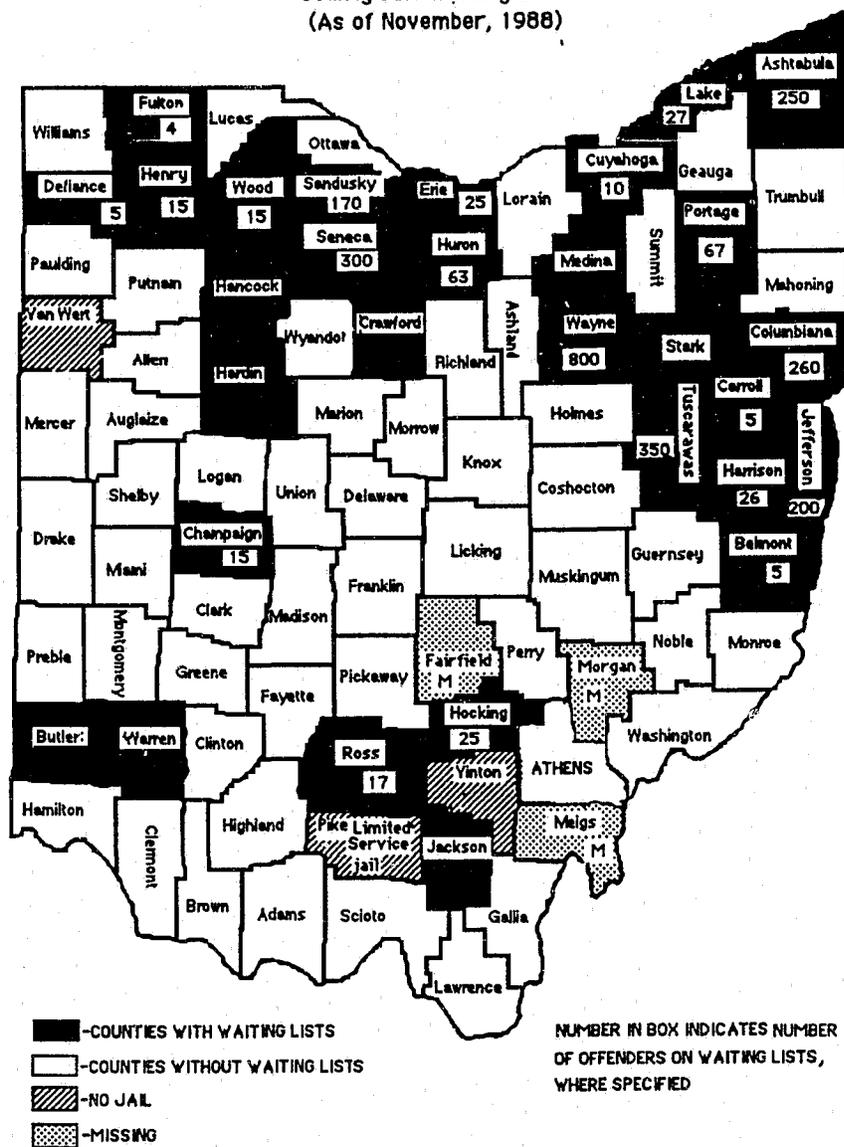


Figure 10

Interagency Cooperation

Social service agencies often require recipients of public assistance to participate in programs. Participation is monitored by a case worker. Sometimes the same recipients commit crimes and are placed in jail or prison because the court does not have adequate probation services and is unaware of the offender's status with social services agencies.

The Committee suggested the court and social service agencies in each county discuss overlapping services. For example, it may be possible to use a case worker assigned to a welfare recipient's case to monitor a condition of probation that also is a condition of receiving public assistance (e.g., participation in a local work program). The court would get the benefit of having a case worker effectively serve as a probation officer. The social services agency could benefit by greater cooperation from welfare recipients who are ordered into programs as a term of probation.

Recommendation

Local courts and social services departments should cooperate to determine: (a) whether offenders are receiving services through one or both agencies; (b) what services are received; and (c) whether there are opportunities to better coordinate services that may be used as conditions of probation.

Impact and Cost Estimates: The impact on prison or jail crowding is difficult to project. The availability of caseworkers should allow judges to place more offenders on probation, rather than place them in jails. This has occurred in Athens County. Net costs to the court and social services agencies should be reduced by eliminating duplication.

Uniform Monthly Release Date

Currently, inmates are released from prison on dates throughout the month that coincide with the exact ends of their sentences. The Committee discussed the advantages of releasing on the same day all inmates who are eligible for release in a given month. For instance, inmates whose exact sentence would end on March 1, March 5, and March 28, all would be released on March 1.

The recommendation has two main merits: administrative convenience and a modest reduction in the prison population, without radically changing any inmate's sentence. The DRC contended a uniform monthly release date would allow it to consolidate paperwork, better coordinate transportation of releasees, and let local parole staff process small groups of inmates instead of one inmate at a time.

As for prison population reductions, the proposal should save an average of two weeks of incarceration time for each release.

Recommendation

Through legislative and supporting administrative action, the Department of Rehabilitation and Correction should be authorized to release inmates eligible for release in a given month on the first working day of the month.

Impact and Cost Estimates: The DRC estimates the bedspace savings generated by the average two-week reduction in the time served by each inmate about to be released would total 22,400 inmate-weeks each year. This translates into saving space for about 430 persons. Any administrative savings would be an additional benefit.

Parole Guideline Modifications

If there were more community alternatives available to inmates exiting prison, the Parole Board might be able to modify existing parole guidelines to take this into account. For example, inmates for whom parole might have been rejected if noninstitutional supervision in the community were the only

option, might be acceptable for release if the initial time were spent in a structured residential community setting.

Recommendation

The Committee encourages the Adult Parole Authority to make policy changes to its parole guidelines to select more offenders for an earlier release to a community corrections program.

Impact and Cost Estimates: There would be no major cost to making changes in the parole guidelines. A parolee could be placed in a structured residential community setting for about \$35 a day. However, this would overstate costs since many parolees would be released to less expensive programs.

Transfers to CBCFs

Sometimes the community-based correctional facilities have empty beds. This wastes a valuable resource. This recommendation would give to the Judicial Governing Board of each CBCF the right to receive pre-release placements from prison until the numbers entering the CBCF from the normal diversion pool return to normal. The State prison system would not be able to force the CBCF to take pre-release offenders; this decision would remain the choice of the local board.

Recommendation

The General Assembly should permit the release of determinate sentence inmates from State prisons to community-based correctional facilities for a minimum of 90 days prior to the expiration of sentence. The Legislature should specify each CBCF's Judicial Corrections Board must approve opening the facility to such post-prison inmates before such a step could be taken.

Impact and Cost Estimates: There should be little additional costs, since the State currently subsidizes the operation of CBCFs.

SECTION V

Appendices

Executive Department

OFFICE OF THE GOVERNOR

Columbus

EXECUTIVE ORDER 88-79

CREATING THE GOVERNOR'S COMMITTEE
ON PRISON AND JAIL CROWDING

WHEREAS, the work of the Governor's Committee on Prison Crowding, formed pursuant to Executive Order 84-38, has generated several statutory and administrative changes that help control Ohio's burgeoning prison population; and

WHEREAS, record levels of intake in 1987 and 1988 contribute to making prison crowding an ongoing problem in Ohio; and

WHEREAS, Ohio's local jails have become crowded as the result of effective law enforcement, mandatory penalties for certain offenses, retention of felony offenders at the local level, and other factors; and

WHEREAS, judges in many counties must consult sheriffs before sentencing offenders to jails; often offenders must be placed on waiting lists until jail space is available; and

WHEREAS, community-based punishment alternatives to prison and jail sentences are not universally available or used; and

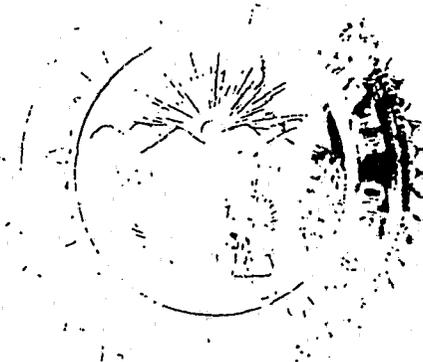
WHEREAS, the \$538 million spent on prison construction during the 1980s has not solved the state's prison crowding problem; the \$70 million of state money spent on jail construction during the same period only begins to meet physical plant needs locally.

NOW, THEREFORE, I Richard F. Celeste, Governor of the State of Ohio, by virtue of the authority vested in me by the

Constitution and laws of this state, do hereby direct and order that:

1. The Governor's Committee on Prison Crowding is hereby renamed the Governor's Committee on Prison and Jail Crowding. The Committee shall consist of an indeterminate number of members who shall be appointed by the Governor and serve at his pleasure. Other than ex officio members, one-third of the initial appointments to the Committee shall be appointed for a one-year term, one-third shall be appointed for a two-year term, and one-third shall be appointed for a three-year term. Thereafter, appointments shall be for three-year terms. Ex officio members shall include the Director of the Department of Rehabilitation and Correction and the Director of the Office of Criminal Justice Services. Members shall, unless otherwise compensated by their employers for service on the Committee, be entitled to reasonable and necessary expenses incurred for meals, lodging and mileage while on Committee business;
2. The Governor's Committee on Prison and Jail Crowding shall have the following powers and duties:
 - a. Continue to study the state's prison crowding problem and make recommendations to the Governor and the General Assembly on the issue, paying particular attention to community corrections alternatives; and
 - b. Assess the level and impact of jail crowding in the state; and
 - c. Recommend a comprehensive strategy to aid state and local officials in addressing future prison and jail population pressures; and

- d. Make recommendations to the Governor and the General Assembly designed to alleviate jail crowding; and
 - e. Establish any subcommittees and procedures deemed necessary to aid the Committee's work.
3. The Committee on Prison and Jail Crowding shall be comprised of persons who are knowledgeable of the criminal justice system; and
4. The Governor's Office of Criminal Justice Service shall provide staff who shall coordinate and facilitate the activities of the Committee. The Department of Rehabilitation and Correction shall also provide staff support for the Committee.



IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus, this 28th day of November, in the year of our Lord, nineteen hundred and eighty-eight.

Richard F. Celeste
Richard F. Celeste
Governor

ATTEST:
Sherrod Brown
Secretary of State

Filed in the Office of the Secretary
of State at Columbus, Ohio
on November 28, 1988
SHERROD BROWN
Secretary of State
Per Rattina Kew

STATE OF OHIO
Executive Department

OFFICE OF THE GOVERNOR

Columbus

EXECUTIVE ORDER 84 - 38

CREATING THE GOVERNOR'S COMMITTEE ON PRISON CROWDING

WHEREAS, the state prison system has expanded rapidly over the past several years; and

WHEREAS, the number of inmates incarcerated in Ohio's prisons has reached an all time high of over 18,400 inmates; and

WHEREAS, there have been several recent changes in the law which may serve to further increase the prison population levels; and

WHEREAS, it is necessary for policy makers at all levels to come together to examine the impact of the prison population on the overall operation and cost to the criminal justice system.

NOW, THEREFORE, I, Richard F. Celeste, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby order and direct that:

- 1) There is hereby created the Governor's Committee on Prison Crowding whose members shall be appointed by the Governor to serve at his pleasure. Members of the Governor's Committee on Prison Crowding shall, unless otherwise compensated by their employers for service on the Committee, be entitled to reasonable and necessary expenses incurred for meals, mileage, and lodging while on Committee business.
- 2) The Governor's Committee on Prison Crowding shall have the following powers and duties:
 - a. Examine the population projections for Ohio prisons;
 - b. Review the impact of prison population levels for policy and cost implications at all levels of the criminal justice system;
 - c. Recommend a comprehensive strategy for the State in addressing future prison populations;

- d. Advise the Governor and the Legislature regarding the impact and/or options in the area of prison population;
 - e. Establish as required, subcommittees, ad hoc committees, and other committees;
 - f. Establish the rules, regulations, and procedures which may be necessary or desirable for discharging the duties of the Committee.
- 3) The Committee on Prison Crowding shall be comprised of persons who are residents of the State of Ohio and are knowledgeable in the area of criminal justice.
 - 4) The Governor's Office of Criminal Justice Services, hereby ~~designated the recipient of a grant from the National Institute of Corrections to study the impact of prison crowding,~~ shall, in cooperation with the Ohio Department of Rehabilitation and Correction, coordinate the activities of the Committee on Prison Crowding and provide ~~financial and~~ staff support.



IN WITNESS WHEREOF, by my
 Authenticating Officer, I have
 hereunto subscribed my name and
 caused the Great Seal of the
 State of Ohio to be affixed at
 Columbus this 26 day of
 July, in the year of our Lord,
 nineteen hundred eighty-four.

Joseph J. Sommer

 Authenticating Officer for
 Governor Richard F. Celeste
 (Ohio Revised Code,
 Section 107.15)

ATTEST:

Shirley Brown

 Secretary of State

Filed in the Office of the Secretary
 of State at Columbus, Ohio

July 27, 1984
 Per *Barbara M. ...*



TO: Governor Richard Celeste and
Members of the General Assembly

FROM: David Diroll, Director DD
Governor's Committee on Prison & Jail Crowding

RE: A Sentencing Commission Under
H.B. 685 and S.B. 258

DATE: February 22, 1990

As passed by the House of Representatives, Amended Substitute House Bill 685 requests that the Governor's Committee on Prison and Jail Crowding make a recommendation to the Governor and the General Assembly on establishing a criminal sentencing commission for Ohio (Section 9). The same request was made part of Substitute Senate Bill 258 (Section 11) by the House Select Committee to Hear Drug Legislation earlier this month. The bills would give the Governor's Committee until next January to make its report.

This report is a task force rarity. It is designed to fulfill the legislative request contained in H.B. 685 and S.B. 258 before either bill becomes law. Members of the bipartisan Prison Crowding Committee believe that a sentencing commission is needed, not only as a possible tool for managing prison and jail crowding, but to address other wholly unrelated problems.

The Committee's sentencing commission recommendations have been greeted favorably by the Buckeye State Sheriffs Association, the Executive Committee of the Common Pleas Court Judges Association, and others. In fact, the Committee's proposal was endorsed by the Ohio Supreme Court in its Report of the Supreme Court Committee to Study the Impact of Substance Abuse on the Courts.

This report is intended to provide the General Assembly and its drafters with the information needed to formally enact a sentencing commission in 1990, ideally as part of H.B. 685 or S.B. 258.

Executive Summary

A sentencing commission should be established in Ohio to help manage prison crowding and correctional resources, to simplify the Criminal Code, to assure proportionality and uniformity of sentencing, to provide greater certainty, and to give the Legislature a vehicle for consensus building on sentencing issues.

The Commission would research and study the State's sentencing patterns, analyze the use of available resources, develop a sentencing policy for the State, recommend a structure for carrying out the policy, and provide for reasonable departures from the policy. The commission should be given about two

years to research sentencing practices and resources and develop a new sentencing structure.

The Prison Crowding Committee proposes that the bipartisan commission consist of 13 members. The Chief Justice would be the chairman. Other members would include an appeals court judge, three common pleas judges, and a municipal court judge (appointed by the Chief Justice), a sheriff, prosecutor, and defense attorney (appointed by the Governor), two senators, and two representatives. An advisory committee of corrections officials would help the commission.

The Committee recommends that the commission be provided with a professional staff, as in other states that have similar commissions. Costs are estimated at about \$400,000 annually for two years, and about \$250,000 yearly thereafter. The Committee proposes housing the project in the Governor's Office of Criminal Justice Services.

Why Create a Sentencing Commission?

There are several reasons why the time is right for establishing a sentencing commission in Ohio.

Prison Crowding and Resource Management. The Governor's Committee on Prison and Jail Crowding has been monitoring and working on prison crowding since 1986. Yet, the State anticipates a prison population of 46,000 by the year 2000, to be held in space designed for about 22,000. Although several earlier recommendations of the Committee were implemented, the Committee determined that crowding pressures are so great and ongoing that a comprehensive review of Ohio's sentencing structure and correctional resources is needed.

In the '80s, the General Assembly tried to strike a balance between certainty of imprisonment and deterrence by passing mandatory sentences. One anticipated impact has been to increase the prison population. However, an unanticipated impact has been the increase in plea bargaining cases down to levels that do not carry mandatory penalties. Ironically, tougher penalties sometimes result in softer sanctions. Certainty and deterrence both suffer. Crowding and plea bargaining will be exasperated if additional mandatory sanctions are enacted as part of S.B. 258 or H.B. 658.

The sentencing commission proposed by the Prison Crowding Committee would evaluate the entire sentencing structure and attempt to coordinate correctional resources with goals such as punishment and deterrence. The commission will identify additional resources needed to restore balance to the sentencing structure.

Complexity of the Sentencing Code. Sentencing under the Ohio Criminal Code has become increasingly complex. It has been 16 years since the last comprehensive revisions of the criminal sentencing law took effect. Since then, piecemeal changes to the Code have greatly altered sentencing. The 1974 revisions set forth four felony levels. Since 1974, roughly 15 categories have been shoehorned into these four classifications. As a result, the Code is confusing and contains many oddities. For instance, an aggravated third degree felony can be a more severe crime than a second

degree felony, even though it is numbered as a lesser crime.

Perhaps more confusing is the terminology that evolved during the '80s. Ohio law now has terms of imprisonment that are not "actual incarceration", terms that are "actual incarceration", and terms of actual incarceration that include or exclude "good time". "Aggravated" felonies bear special penalties, yet certain felonies designated as "aggravated" in the 1974 revisions are not penalized as "aggravated" in the current sense. For example, felonious assault is an "aggravated" felony for tough sentencing purposes, but "aggravated" assault is not an "aggravated" felony, despite its name.

The complexity of the code not only confuses those persons the sanctions are designed to deter from crime, it also confuses judges, prosecutors, defense attorneys, and, perhaps, one or two legislators. Penalties suggested in pending anti-drug bills will add further complexity.

Proportionality of Sentences. Most citizens believe in a hierarchy of crime that imposes the stiffest sanctions on the most violent, assaultive offenders. However, as the Code becomes more complex, it is difficult for policy makers to assure that punishment is proportionate to the seriousness of the offense and the offender's criminal history. Given limited resources, does it make sense to place a shoplifter in prison with hardened criminals if he is caught for a second time stealing a pair of sneakers? Conversely, should an offender who commits a series of vicious assaults be eligible for parole after 15 years, regardless of the lengths of sentences imposed by the judge? Both can happen now. Should a person convicted of selling marijuana for a second time serve life imprisonment—a term currently reserved for murderers and rapists—as is proposed by pending legislation? These are questions of proportionality.

A sentencing commission would review the State's sentencing statutes systematically and tie increased sanctions to the seriousness of the offense and the offender's criminal history. After the Commission's recommendations are adopted by the General Assembly, the commission could assist the Legislature in deciding proportionate sanctions for new offenses in the future.

Uniformity. The Department of Rehabilitation and Correction (DRC) reports that there are significant sentencing disparities between counties. As a result, a person convicted of a crime may receive a tougher or lighter sanction simply because the offense was committed in County A rather than County B. A sentencing commission could make sure that punishment meted out in one jurisdiction is commensurate with that imposed on similar offenders elsewhere in the State, while retaining judicial discretion within an acceptable range.

Coordination of resources. A sentencing commission could study available resources in making recommendations. It could match sanctions with resources. The commission's work would make correctional resource needs much easier for the Legislature to predict.

Certainty. A sentencing commission can recommend a system that provides greater certainty to all citizens, including prospective offenders,

regarding the punishment to be imposed for particular crimes.

Legislative Buffer. A sentencing commission would act on behalf of the Legislature to develop consensus sentencing policies for the State. The commission, with members representing different elements of the criminal justice system, could not only recommend substantive policy, but facilitate compromises before the matter reaches the General Assembly.

What Legislation is Needed to Create a Sentencing Commission?

Broad-based sentencing commissions are statutory bodies in other states. Legislation can take the form of temporary or permanent law, depending on the anticipated longevity of the commission. Most experts recommend making the commission an ongoing body. After the time needed to research sentencing practices and develop sentencing recommendations, experts see a continuing role for the commission in monitoring and evaluating the system and in providing recommendations and analysis to legislators on later changes in sentencing law. If the General Assembly agrees that Ohio's sentencing commission should have such an ongoing role, the Commission should be established in permanent statutory law.

What Would the Commission Do?

Students of sentencing commissions in other states claim that the commissions are most effective when the enabling legislation sets forth the following duties:

Agree on a sentencing policy. The commission should be instructed by statute to develop systematic policies and rationales for criminal sentencing in the state designed to achieve certainty in sentencing, deterrence, and the sensible use of correctional resources consistent with public safety.

Develop a sentencing structure. The commission should develop a sentencing structure for all criminal offenders--felons first, then misdemeanants--that governs the use and duration of a full range of sentencing options, from long terms of imprisonment to nonincarcerative sanctions such as probation and fines, consistent with public safety.

Establish bases for departure from the structure. The proposed structure should not be monolithic. The commission should set forth appropriate grounds for departure by sentencing judges. The commission should provide for the appropriate role of appellate review of departure from, or misapplication of, the new system.

Conduct an empirical study. The commission should undertake a detailed study of sentencing patterns in Ohio and of correctional resources available and their use. This research should give the commission an objective basis for decision making. The Prison Crowding Committee also recommends the commission review any existing sentencing guidelines.

Consider prison and jail capacity and other resources. The commission should study the capacities of correctional facilities and programs. It should project the impact of any proposed recommendations on prison and jail capacities and on other available and projected correctional resources.

Weigh the role of parole and jail early release. The commission should address the role of parole under the recommended sentencing system. The commission should also examine patterns of release from jails and their impact on the recommendations. This is necessary to understand better true impact of the system.

How Would the Legislature Deal With Proposed Guidelines?

Since the role of the sentencing commission is to undertake philosophic and political discussions and reach compromises in preparing guidelines, the Prison Crowding Committee suggests the sentencing recommendations be considered as a total package by the Legislature. Recognizing the enactment of recommendations ultimately is a legislative prerogative, the Committee recommends giving the commission an opportunity to assess the impact of any changes in the recommendations package before they are enacted. Once adopted by the Legislature, the system should be legally binding. In states where the system is merely advisory, it is frequently ignored.

Who Would be on the Commission?

In other states, sentencing commissions usually consist of judges, prosecutors, defense attorneys, and corrections officials. Some add legislators. Typically, members are appointed by the Governor, although there are variations.

Because sentencing is mainly a judicial function, members of the Governor's Committee on Prison and Jail Crowding agreed that judges should play a lead role on the sentencing commission. Members also felt that commission members should be elected, rather than appointed, officials, for the most part. Since legislators are responsive to the public and make key decisions as to the range of sentences available, the Committee recommends a prominent legislative presence. The Committee attempted to structure a commission large enough to be representative while small enough to work effectively. Rather than make the commission too large, the Committee proposes establishing an advisory committee of corrections experts. If the Committee's recommendations are implemented, Ohio's sentencing commission and advisory committee would provide representation from the legislative, judicial, and executive branches.

The Committee proposes that the Ohio Sentencing Commission be a 13-member body. The Chief Justice of the Ohio Supreme Court would serve as chairman. Other members would include: an appellate court judge, three common pleas judges, and a municipal court judge appointed by the Chief Justice (no more than three of these five could be of the same political party); a sheriff, prosecutor, and criminal defense attorney appointed by the Governor after consulting with appropriate state associations (no more than two of these three could be of the same party); two senators, appointed by the President and the Minority Leader of the Senate; and two representatives, appointed by the Speaker

and the Minority Leader of the House.

With the exception of the Chief Justice, each would serve four-year, staggered terms. The appointing authority should consider adequate representation by race and gender.

To serve as a resource to the Commission, the Prison Crowding Committee proposes creating an advisory committee to the commission. The advisory body would include, but not be limited to, the Director of Rehabilitation and Correction, the Chairman of the Parole Board, the Director of the Legislature's Correctional Institutions Inspection Committee, and a representative of community corrections programming.

How Much Staff Does the Commission Need?

The Prison Crowding Committee and sentencing commission experts believe that the staff needs of a sentencing commission—while not necessarily great—should not be underestimated.

Persons with data collection expertise and empirical research skills are needed to assess sentencing practices and regional variations, to project the impact of changes, and to monitor and evaluate the sentencing structure proposed. Persons conversant in criminal law and social policy are needed to work through the nuances of ranking crimes in a hierarchy and in dispassionately selecting appropriate sanctions. Administrative skills are essential to assure that the work of the commission proceeds expeditiously. Legislative and political savvy are important, since the commission must build a consensus for its proposals and since its goal is to produce a legal document to be approved by the General Assembly.

Most states with sentencing commissions have provided the commissions with an executive director, a research chief, an administrative assistant, a secretary, and various researchers and policy analysts. Staff members have training in criminal justice, political science, and law. The staffs are supplemented by temporary data collection personnel.

Washington, Tennessee, Oregon, and Pennsylvania each gave their commissions six employees. Minnesota had seven. Louisiana has eight.

Based on the experience of these and other states and the fact that Ohio is more populous than most of the states that have formed sentencing commissions, an Ohio sentencing commission should have at least seven full-time staff members. These would include: a project director with a solid understanding of Ohio's Criminal Code and of committee-oriented policy development; a research coordinator skilled in policy-oriented research; three professional staff members with backgrounds in criminal law, criminal justice, political science, or related fields, at least one of whom is expert in computer programming; an administrative assistant; and a secretary. In addition, the commission should be able to hire part-time data collectors and extra clerical support from time to time.

Rather than create a small new bureaucracy, the Prison Crowding Committee

recommends that the Commission's staff be placed as a unit within the Governor's Office of Criminal Justice Services. The Office works with courts and law enforcement officials at both the State and local levels, making it well-positioned for the task.

What Should be the Commission's Timetable?

Experience in other states indicates that the Legislature should expect the development of sentencing recommendations to take a minimum of two years.

Why so long? It will probably take about three months to nominate and appoint commission members. This period also would be used to hire a project director and find staff with requisite skills.

Next, the staff will need from six to nine months to collect data on what is occurring in the State's criminal courts. Unfortunately, Ohio does not have centralized data that describe dispositions, terms of probation, reductions in charges, and the like on a case-by-case basis. Commissions in other states reviewed data from 30% to 50% of the state's criminal dispositions over a year or two. They collected up to 100 bits of information on each case (e.g., offender's criminal history, offenses charged, offenses convicted, disposition rendered, correctional resources available to the judge, etc.). If Ohio attempted to analyze 30% of the State's felony filings in a year, the commission would have to gather data on about 14,000 cases from 88 common pleas courts. Collecting and analyzing the data will be time-consuming.

Data also would have to be collected to profile the prison and jail populations. Fortunately, the DRC has a system in place to help gather these data quickly. However, data on misdemeanants will have to be obtained from the municipal and county courts and sheriffs' offices.

The data collection period would not be idle time for commission members. This period can be used to wrestle with broad, tough, philosophical issues. For instance, should the guidelines be oriented toward punishment, deterrence, rehabilitation, incapacitation, or some hybrid of these? What is the appropriate role of criminal history? How important should victim vulnerability be? How should guidelines relate to available correctional resources? Should sentences be indeterminate or determinate? What is the role of good time and parole?

After data analysis, the commission would spend the next year ranking crimes, sorting through the range of sanctions appropriate for each level of crime, and setting preliminary recommendations and standards for departure from them. The commission would run computerized tests of proposed recommendations during this period to assess the impact and costs of the recommendations on the system. Other states have started to use a simulation model that accurately predicts resources needed at all levels of the correctional system from probation to prison and parole.

The commission would then take its preliminary recommendations to judges, prosecutors, defense attorneys, law enforcement officials, corrections officials, and others for feedback. After fine tuning the recommendations, the commission would present its recommendation package to the General Assembly. The commission

would work with the Legislature toward the implementation of the new system.

Once the system is are adopted by the Legislature, the commission's role would shift. In other states, the commission has remained in operation as a body that monitors the system, recommends needed changes, and helps legislators determine the costs and effects of different sentencing policies.

How Much Will This Cost?

Experts estimate that Ohio should budget about \$400,000 per year during the two years of recommendations development. This would cover staff, commission members' travel, lodgings, computer equipment, rent, supplies, et cetera. Once the system is implemented, costs should drop to about \$250,000 per year.

The three states that have implemented sentencing systems akin to those proposed in this report for Ohio (Minnesota, Washington, and Oregon) each spent \$200,000 to \$300,000 annually during guidelines' development. The population of each of these states is much smaller than Ohio's, however.

Projected First Year Budget for Ohio Sentencing Commission

Salaries (7 full-time employees):	\$227,967
Fringe Benefits (as average rate):	78,523
Meeting Costs (travel & board for 1.5 day mtgs):	19,911
Research Staff Travel:	2,019
Office Rent (7 x 144 sq. ft. x \$12/sq. ft.):	12,096
Phones (ave. \$80/mo./employee):	6,720
Supplies:	2,000
Postage:	1,000
Personal computers (3 x 6,709, including softwr):	20,127
Out-of-State Travel:	6,000
Part-Time Employees (\$6.76 x 1020 hrs.):	7,030
Code Services & Related Materials:	<u>2,000</u>
Total	\$ 385,393

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