

CORRECTIONAL INSTITUTION INSPECTION COMMITTEE
125TH OHIO GENERAL ASSEMBLY

SENATE MEMBERS

Mark Mallory, Chair

James Jordan, Secretary

Stephen Austria

Robert Hagan

HOUSE MEMBERS

John Willamowski, Vice Chair

Todd Book

Michael DeBose

Robert Latta

EXECUTIVE SUMMARY

OF THE

BIENNIAL REPORT

TO THE

126TH OHIO GENERAL ASSEMBLY

January 18, 2005

Prepared by the
Correctional Institution Inspection Committee Staff

CORRECTIONAL INSTITUTION INSPECTION COMMITTEE BIENNIAL REPORT EXECUTIVE SUMMARY

I. CIIC COMPOSITION

MEMBERS

Members and Officers of the Correctional Institution Inspection Committee (CIIC) from 2003 to 2004 include the following: Senators- Mark Mallory (Chairman), James Jordan (Secretary), Stephen Austria, and Robert Hagan; Representatives- John Willamowski (Vice Chairman), Michael DeBose, Robert Latta, Robert Otterman (2003), and Todd Book (2004). [Page 13]

STAFF

The CIIC Staff Office reopened in October 2003, when funding was partially restored. The CIIC Staff include the following: Shirley Pope (Director), Gregory Geisler (Inspector), Adam Jackson (Inspector), Carol Robison (Inspector), Richard Spence (Inspector), and Elizabeth Curtis (Inspector – Part Time). [Page 13]

II. CIIC DUTIES AND ACTIVITIES

STATUTORY CHARGE

Sections 103.71 through 103.74 give the statutory charge to the Correctional Institution Inspection Committee (CIIC). Pursuant to Section 103.73 of the Ohio Revised Code, the CIIC's duties include the following: 1) "establish and maintain a continuing program of inspection of each state correctional institution used for the custody, control, training, and rehabilitation of persons convicted of crime and of each private correctional facility" 2) "evaluate and assist in the development of programs to improve the condition or operation of correctional institutions" and 3) "Prepare a report for submission to the succeeding general assembly of the findings made in its inspections, and of any programs that have been proposed or developed to improve the condition or operation of the correctional institutions in the state. The report shall contain a separate evaluation of the inmate grievance procedure at each state correctional institution." [Page 15]

CIIC MEETINGS

The Correctional Institution Inspection Committee held nine meetings from September 18, 2003 to August 17, 2004. The agenda of the meeting on September 18, 2003 included the proposal and adoption of the Restart Plan for the CIIC Staff Office and the hiring of the CIIC Director and two inspectors. [Page 17]

INSPECTIONS

Pursuant to Section 103.73 of the Ohio Revised Code, "The committee shall make an inspection of each state correctional institution each biennium and of each private correctional facility each biennium." The CIIC conducted 20 inspections, which included 19 state-operated and one private-operated institutions, and prepared the corresponding inspection reports during the period of October 2003 through December 2004. The CIIC was unable to conduct inspections on the 14 remaining institutions, which includes 12 state-operated and two private-operated institutions, due to the CIIC Staff Office restart occurring 10 months into the biennium. These institutions will be prioritized in the upcoming schedule of inspections. It is noted that the Lima Correctional Institution closed on June 26, 2004. [Page 21]

OTHER ACTIVITIES

The CIIC's activities also included replying to numerous written and verbal contacts, performing on-site visits, and attending meetings. [Page 23]

III. CIIC DATABASE

CONTACTS RECEIVED

The CIIC notified all inmates and staff in Ohio prisons of the CIIC Staff Office reopening on October 30, 2003 via a memo sent to each warden and institution. The memo welcomed communication from inmates, staff, and others who are interested in the correctional institutions in the State of Ohio to help guide the Committee in inspections, evaluations, and inquiries. [Page 25]

A CIIC Database was implemented on January 6, 2004, to record and track contacts and concerns reported to the CIIC. The CIIC received 1,803 contacts from January 6, 2004 to January 12, 2005. The Southern Ohio Correctional Facility had the largest number of contacts with 292 (16.2% of the total contacts) and the Montgomery Education and Pre-Release Center had the least number of contacts with zero (0% of the total contacts). The CIIC received 45 contacts concerning local jail facilities, which the Committee has the authority to inspect. [Page 26]

REPORTED CONCERNS

Each contact received by the CIIC was analyzed to identify the concerns that were raised by the contact. The concerns were categorized based on the complaint code list utilized in the Ohio Department of Rehabilitation and Correction's Inspector of Institutional Services Monthly Report. The complaint code list contains 31 complaint codes, such as health care, force/supervision, and staff accountability. CIIC added an "inmate grievance procedure" and "other" complaint codes to the list. The concerns were then entered into the CIIC Database. [Page 27]

A total of 5,038 concerns were logged from January 6, 2004 to January 12, 2005. The Southern Ohio Correctional Facility had the most reported concerns with 845, which is 16.8% of the total logged concerns. The Mansfield Correctional Institution was second with 419 concerns and the Pickaway Correctional Institution was third with 374 concerns. The three institutions comprised 32.5% of all reported concerns. The Montgomery Education and Pre-Release Center had the least reported concerns with zero, and was followed by Northeast Pre-Release Center and Franklin Pre-Release Center, which each had three reported concerns. Tables are provided for each of the 34 state-operated and private-operated institutions, which list the type and number of reported concerns at each institution. [Page 28]

Force/Supervision was the most reported concern with a total of 646, which is 12.8% of all reported concerns. The Southern Ohio Correctional Facility had the most reported Force/Supervision concerns with a total of 136. Staff Accountability was the second most reported concern with a total of 573, which is 11.4% of all reported concerns. The Southern Ohio Correctional Facility had the most reported Staff Accountability concerns with a total of 82. Non-Grievable Matters was the third most reported concern with a total of 530, which is 10.5% of all reported concerns. The Southern Ohio Correctional Facility had the most reported Non-Grievable Matters concerns with a total of 102. Health Care was the fourth most reported concern with a total of 487, which is 9.7% of all reported concerns. The Pickaway Correctional Institution had the most reported Health Care concerns with a total 107. Inmate Grievance Procedure was the fifth most reported concern with a total 400, which is 7.9% of all reported concerns. The Southern Ohio Correctional Facility had the most reported Inmate Grievance Procedure concerns with 66. Inmate Groups was the least reported concern with a total of 9, which is .2% of all reported concerns. Telephone with a total of 14 concerns and Dental Care with a total of 22 concerns were the next least reported concerns. [Page 29]

WRITTEN INQUIRIES

Written inquiries are utilized by the CIIC as a part of its monitoring and evaluation role. The written inquiries to the institutions or Ohio Department of Rehabilitation and Correction's (ODRC) Central Office ensure that they are aware of an allegation or a particular problem reported to the CIIC, and to request information on the findings of any investigation and/or their assistance to ensure the concern is addressed. A tracking system for the written inquiries was created in March 2004. A total of 86 written inquiries were submitted between March 17, 2004 and December 23, 2004, with 75 inquiries submitted to institutions, nine inquiries submitted to ODRC Central Office, one submitted to a jail, and one submitted to the Mohican Juvenile Correctional Facility. The Mansfield Correctional Institution received the most written inquiries with a total of 19. The Southern Ohio Correctional Facility received the second most written inquiries with a total of 15. Force/Supervision concerns were addressed in 24 written inquiries. Health Care concerns were addressed in 15 written inquiries and Confidential Informant issues were addressed in 12 written inquiries. The CIIC has presently received responses to 75 of the 86 written inquiries. [Page 74]

The Mansfield Correctional Institution received 12 written inquiries that addressed Confidential Informant issues. It is still recommended that the ODRC provide clear written guidelines to all investigators on the use of confidential information, use of informants, and "dealing" as prohibited in the ODRC Employee Code of Conduct. It is also recommended that serious consideration be given to how best to increase support services, monitoring, and supervision of investigators throughout the prison system by Central Office staff. [Page 77]

IV. PRISON OPERATIONS, CONDITIONS AND PROGRAMS MONITORED

DATA REVIEW AND MONITORING

The CIIC requested ODRC to have institutions submit monthly data reports and annual data reports regarding areas such as the inmate grievance procedure, use of force, medical, and education, to assist CIIC in its evaluation of prison operations, conditions, programs, and grievance procedure. [Page 79]

INMATE POPULATION

The inmate population as of November 1, 2004 totaled 44,159, which is an overall decrease of 1,311 inmates from the November 1, 2003 total of 45,470. (A 2.9% decrease.) The male population decreased by 1,071 inmates, which resulted in a total of 41,023 inmates. (A 2.5% decrease.) The female population increased by 251 inmates, which resulted in a total of 3,136 inmates. (An 8.7% increase.) [Page 79]

The Ohio Department of Rehabilitation and Correction (ODRC) classifies inmates by the following security levels: Level One (previously minimum), Level Two (previously medium), Level Three (previously close), Level Four (previously maximum), and Level Five (previously high max or supermax). [Page 81]

The Chillicothe Correctional Institution (a level two security facility) has the largest inmate population with a total of 2,660 inmates. It is followed by the Mansfield Correctional Institution (a level three security facility) with 2,399 inmates and the Richland Correctional Institution (a level two security facility) with 2,324 inmates. The Corrections Medical Center has the lowest inmate population with 109 inmates. It is followed by the Oakwood Correctional Facility with 125 inmates and the Montgomery Education Pre-Release Center with 327 inmates. The Ohio State Penitentiary (a level five and four security facility) has an inmate population of 439, which is a reduction of 39 inmates from 2003. The Southern Ohio Correctional Facility (a level four security facility) has an inmate population of 965, which is a reduction of 107 inmates from 2003. The Southern Ohio Correctional Facility population appears to be its lowest in history. [Page 81]

A review of the ODRC institutions' security levels, populations, and physical structures reveals that the ODRC has the potential to adapt its institutions to meet inmate

needs. It is recommended that ODRC assess its existing bed space and examine the current and potential use of that space, particularly for underutilized institutions, with consideration of how possible changes could accommodate special needs populations. No greater improvement could be made to impact the entire operations, conditions and programs of the Level Three facilities than to eliminate double-celling not only in segregation, but also in general population. [Page 83]

EXPANSION OF BEDS FOR FEMALES

On July 9, 2004, ODRC conducted a problem analysis based on the fact that their three female prisons were operating at an average overcrowding rate of 124.6%, which was higher than the ODRC total average overcrowding rate of 123.4%. Reports also indicated that the overall ODRC inmate population is expected to increase by 14% over the next eight years, and the female inmate population is expected to increase by 28% over the same period. The ODRC decided to convert the Trumbull Correctional Camp from a male to a female facility, to create an additional 300 female beds. As of December 13, 2004, the camp population consisted of 59 female inmates, with an additional 80 female inmates scheduled for transfer by the end of the year. [Page 83]

INMATE ON INMATE ASSAULTS

There were 482 inmate on inmate assaults in 2003 and 411 inmate on inmate assaults in 2004, which is a decrease of 71 assaults (a 14.7% decrease). The Southern Ohio Correctional Facility (SOCF) had the highest number of assaults for each year, with 139 assaults in 2003 and 85 assaults in 2004. SOCF had 20.7% of the total inmate on inmate assaults in 2004. The decrease in assaults at SOCF may be attributed to a reduction in inmate population from 1072 in 2003 to 965 in 2004. [Page 84]

INMATE ON STAFF ASSAULTS

There were 544 inmate on staff assaults in 2003 and 432 inmate on staff assaults in 2004, which is a decrease of 112 assaults (a 20.6% decrease). The Southern Ohio Correctional Facility (SOCF) had the highest number of assaults for each year, with 130 assaults in 2003 and 133 assaults in 2004. SOCF had 30.8% of the total inmate on staff assaults in 2004. [Page 85]

USE OF FORCE INCIDENTS

A thorough analysis of use of force incidents could not be completed because a number of institutions failed to submit their monthly use of force reports. The CIIC will work with the ODRC to ensure accurate and complete reporting. Data submitted in November 2004 revealed that the Southern Ohio Correctional Facility had the most use of force incidents, with a total of 40 incidents. The Ross Correctional Institution was second with a total of 31 incidents, and the Lebanon Correctional Institution was third with a total of 28 incidents. A comparison of use of force incidents to inmate population revealed that the Corrections Medical Center had the highest percentage of use of force

incidents per total inmate population with 6.3% (7 incidents/112 inmates). The Southern Ohio Correctional Facility was second with 4.2% (40 incidents/ 946 inmates), and the Ohio State Penitentiary was third with 1.8% (28 incidents/ 434 inmates). [Page 86]

DISCIPLINARY REPORTS BY RACE

ODRC Data from September 2004 revealed the following racial breakdown for the inmate population: White - 50.05%, Black - 48.89%, Other - 1.06%. The 2000 Census data revealed the following racial breakdown for the population of Ohio: White - 85%, African American - 12%, Other - 3%. [Page 88]

A review of November 2004 disciplinary reports by race revealed 60% (4727 reports) of the inmates who received disciplinary reports were black, and 39% (3053 reports) of the inmates who received disciplinary reports were white. The North Central Correctional Institution had the most reported disciplinary reports with 1,139. The Southern Ohio Correctional Facility was sixth with 486 disciplinary reports, and the Ohio State Penitentiary was nineteenth with 129 disciplinary reports. Complete data is needed to determine if these trends exist over a year and two year period. [Page 89]

MEDICAL SERVICES

A review of ODRC Medical Services Data reveals a problem with their monthly reporting. Institution data is often incomplete, illegible, and unclear. It is recommended that the Central Office staff ensure the accuracy of the reported number of hours worked by contract employees. It is strongly recommended that Central Office personnel ensure that complete and accurate monthly data is provided on the standardized form. [Page 89]

The ODRC established a Health Care Review Team to review medical services and to submit a report with recommendations. The ODRC is committed to implement the report's recommendations. [Page 89]

DEATHS

The CIIC receives special incident reports on all inmate deaths from the ODRC. Each special incident report is reviewed and inquiries are initiated when deemed warranted. ODRC reported 144 deaths during the time period of October 25, 2003 through December 31, 2004, with 131 resulting from natural causes, one resulting from murder, and 12 resulting from suicide. The Pickaway Correctional Institution (PCI) recorded the most inmate deaths with a total of 31 (21.5% of all deaths). The Corrections Medical Center (CMC) was second with 23 inmate deaths (16% of all deaths). The totals appear to be based on PCI housing chronically ill inmates and CMC housing seriously ill inmates. CIIC initiated inquiries in 20 of the deaths. [Page 93]

MURDER

The one murder recorded from October 25, 2003 through December 31, 2004 occurred at the North Central Correctional Institution on August 10, 2004. [Page 93]

HUMAN IMMUNODEFICIENCY VIRUS (HIV)

As of November 30, 2004, 399 inmates have tested positive for HIV Infection, with 131 of the inmates identified as being in the AIDS stage of the disease. ODRC estimated the cost for a complete year of treatment at \$30,000. ODRC could not report the current number of inmates in treatment, since inmates are in need of treatment on an intermittent basis. [Page 96]

HEPATITIS C

As of November 30, 2004, 3,299 inmates have tested positive for Hepatitis C Infection. Treatment lasts either six months or one year based on the "geneo-type" of the virus, and costs \$30,000 per year. As of January 2005, 15 inmates are receiving treatment for Hepatitis C Infection. It was reported that approximately two inmates have tested positive for Hepatitis A Infection as of November 30, 2004. [Page 96]

TUBERCULOSIS (TB)

As of November 30, 2004, one inmate has tested positive for Tuberculosis (TB). [Page 97]

ODRC policies and procedures should be reviewed in regard to housing and job assignments of infected inmates, in an effort to alleviate inmate tension concerning these issues. The option of single celling inmates in the higher security institutions may be a viable alternative. Additional education for institution staff and inmates concerning infectious diseases would assist in addressing the reported issues of concern. [Page 97]

MENTAL HEALTH

ODRC data from October 2004 revealed that there were 8,030 inmates on the mental health caseload, with 7,237 of these inmates also being on the psychiatric caseload. The Ohio Reformatory for Women had the most inmates on the mental health caseload with a total of 778 inmates. The Chillicothe Correctional Institution was second with 555 inmates and the Pickaway Correctional Institution was third with 436 inmates. [Page 98]

RESIDENTIAL TREATMENT UNITS

Residential Treatment Units (RTU) exist for inmates with serious mental health issues at the following institutions: Allen Correctional Institution, Chillicothe Correctional Institution, Grafton Correctional Institution, Correctional Reception Center,

Trumbull Correctional Institution, Warren Correctional Institution, Southern Ohio Correctional Facility, and Ohio Reformatory for Women. A total of 723 beds are available in the Residential Treatment Units. [Page 99]

SUICIDES

ODRC reports indicate that one suicide occurred from October 25, 2003 through December 31, 2004, and 11 suicides occurred from January 1, 2004 through December 31, 2004. The 11 suicides in 2004 is an ODRC record. The Correctional Reception Center and Ross Correctional Institution each had two suicides in 2004. It was reported that seven of the suicides occurred in special housing units, including segregation, residential treatment units for the mentally ill, and the infirmary. Almost 50% of the inmates were on the mental health caseload, and more than two thirds had a prior history of suicidal behavior. Almost 50% of the inmates had been on and discharged from suicide precautions (watches) less than 10 days prior to their deaths. [Page 100]

ODRC established a 2004 Suicide Review Team to review the suicides and applicable policies and procedures, and enacted additional measures at the ODRC Reception Centers (Correctional Reception Center, Lorain Correctional Institution, Ohio Reformatory for Women) to help safeguard the lives of inmates. ODRC has also established a Suicide Back to Basics Committee and Suicide Prevention and Review Teams. [Page 101]

A possible partial solution or proposed improvement is a renewed emphasis on a prompt mental health staff interview with the inmate who has verbalized a desire or intent to commit suicide. If inmates knew that the automatic, certain response to relaying suicidal thoughts, would be immediate referral to a mental health staff person, they would be more likely to speak of their need for help, and more likely to urge other inmates with suicidal thoughts to seek help of staff. [Page 102]

On November 19, 2004, a "Technical Assistance Report on Suicide Prevention Practices Within the ODRC" was submitted to ODRC by Lindsay M. Hayes, Project Director of the National Center on Institutions and Alternatives. Recommendations were included in the report regarding staff training, identification and screening, housing, levels of supervision, intervention, and follow-up/mortality review. The ODRC has developed a plan to implement each recommendation. One of Hayes' recommendations regarding housing states:

Isolation should be avoided. Whenever possible, house in general population, mental health unit, or medical infirmary, located in close proximity to staff. Inmates should be housed in suicide-resistant, protrusion-free cells. Removal of an inmate's clothing (excluding belts and shoelaces), as well as use of physical restraints (e.g. restrain chairs/boards, straitjackets, leather straps, etc.) and cancellation of routine privileges (visits, telephone calls, recreation, etc.), should be avoided

whenever possible, and only utilized as a last resort for periods in which the inmate is physically engaging in self-destructive behavior.

It is strongly recommended that the newly formed ODRC Suicide Prevention Committee seriously consider changes necessary in policy and practice to implement the above quote from the suicide prevention expert. [Page 103]

SEX OFFENDER TREATMENT PROGRAMS

An ODRC inmate is classified as a sex offender if he/she is sentenced to the Department for a sexually oriented offense or a substantially equivalent former state law, within 15 years from his/her current date of commitment to the Department. Male sex offenders are sent to the Sex Offender Risk Reduction Center (SORRC) at the Madison Correctional Institution, and female sex offenders remain at the Ohio Reformatory for Women for assessment, preliminary programming, and determination of future treatment. The total number of sex offenders incarcerated by the Department as of January 6, 2005, is 9,103. [Page 104]

Comprehensive Sex Offender Programs are provided at the following institutions: Chillicothe Correctional Institution, Southeastern Correctional Institution, Lebanon Correctional Institution, North Central Correctional Institution, Madison Correctional Institution, Hocking Correctional Facility, and Ohio Reformatory for Women. Specialized sex offender programming is provided for sex offenders with mental retardation at the Sugar Creek Developmental Center at the Allen Correctional Institution, and geriatric sex offenders at the Hocking Correctional Facility. The programs listed above have a total capacity to treat 520 sex offenders at a time. As of January 2005, 450 sex offenders were in treatment. The establishment and availability of sex offender treatment for all sex offenders is a primary need, as evidenced by the Department's executive staff's input to the Director in 2004. [Page 105]

The Prison Rape Elimination Initiative has become a major initiative for the Department. The Sexual Assault Abatement Committee was created by the Department to address this issue. The Department should consider requiring a mandatory sex offender program for offenders who commit sexual assaults in the institution, comparable to the mandatory substance abuse program that exists for substance abusers. [Page 107]

SUBSTANCE ABUSE TREATMENT PROGRAMS

ODRC provides a variety of programs to address alcohol and other drug abuse problems among the inmate population. The ODRC Fiscal Year 2003 Recovery Services Report lists approximately 70 programs at the 33 institutions. The Department also partners with other state agencies and community agencies to provide treatment. [Page 107]

Therapeutic Community (TC) programs exist at the Pickaway Correctional Facility (PCI), Belmont Correctional Institution (BEI), Grafton Correctional Institution

(GCI), and Ohio Reformatory for Women (ORW). The Department converted the TC program at NCI into a cognitive behavioral program. The Therapeutic Community Model has been nationally recognized as being the most effective program for high security inmates for whom traditional recovery services have had no effect. It is strongly recommended that careful consideration be given to the merits of retaining not only the TC programs at PCI, BECI, GCI and ORW, but to seriously consider expanding availability of this program to higher security inmates. Level three inmates should be given an opportunity to participate in such a highly successful program. [Page 108]

INTENSIVE PROGRAM PRISON (IPP)

Ohio Revised Code Sections 5120.031, 5120.032, and 5120.033 provide the statutory requirements for the Shock Incarceration Programs and Intensive Program Prisons (IPP). The Department is in the process of modifying the IPP Programs at the Southeastern Correctional Institution and Ohio Reformatory for Women, from a boot camp modality to an education and community service modality. They are creating additional IPP Programs with an education modality at the Northeast Pre-Release Center, North Central Correctional Institution, and Ohio Reformatory for Women. They are also creating IPP Programs with an alcohol and other drugs (AOD) modality at the Pickaway Correctional Institution and North Coast Correctional Treatment Facility. The program at the North Coast Correctional Treatment Facility is in addition to the OMVI IPP Program presently in operation at the facility. The ODRC has proposed to rescind one administrative rule and to change the language in another to reflect the changes listed above. [Page 110]

The IPP Program for DUI Offenders at the North Coast Correctional Treatment Facility has an inmate capacity of 100. There have not been enough eligible inmates to fill the program. The December 2004 monthly report indicated that there were five inmates in the program at the beginning of the month, and eight inmates in the program at the end of the month. [Page 112]

EDUCATIONAL AND VOCATIONAL PROGRAMS

The ODRC provides education programs at each institution. There were 31,516 inmates enrolled in education programs in Fiscal Year 2003, and 29,722 inmates enrolled in education programs in Fiscal Year 2004. There were 3,222 completion certificates awarded to ODRC students in Fiscal Year 2004. Educational programs are grouped under the following five types: Academic, Career/Technical, Advanced Job Training, Apprenticeship, and Library Services. There were 2,121 inmates who passed their GED tests during the period of October 2003 through November 2004. [Page 112]

PRISON LABOR ADVISORY COUNCIL (PLAC)

Pursuant to section 5145.162 of the Ohio Revised Code, the Director of the Office of the CIIC shall serve as an ex-officio member of the ODRC Prison Labor Advisory Council (PLAC). The CIIC Director or designee has attended monthly meetings from

December 2003 through January 2005 to discuss issues and developments related to Ohio Penal Industries (OPI). [Page 117]

OHIO PENAL INDUSTRIES (OPI)

ODRC operates OPI shops in 19 of the 33 prisons and employs 1,931 inmates, which is 4.8% of the total inmate population. ODRC reported that 23,118 inmates (57.85% of the total inmate population) are employed in Institutional Operations, which is comprised of Maintenance and Food Service, Agriculture, Cleaning, and Clerks. [Page 117]

V. INMATE GRIEVANCE PROCEDURE

EVALUATION MANDATE

The Correctional Institution Inspection Committee (CIIC), pursuant to Ohio Revised Code 103.73 (Duties of inspection committee), has the statutory duty to submit a biennial report that “shall contain a separate evaluation of the inmate grievance procedure at each state correctional institution”. In partial fulfillment of the requirement, an inmate grievance procedure section has been included in each of the separate institution inspection reports. This section of the biennial report presents the results of our system wide and individual institution review and analysis of the inmate grievance procedure. [Page 119]

Data for this section was obtained from the Inspector of Institutional Services Monthly Reports and the CIIC Database. There were 400 logged concerns regarding the inmate grievance procedure in the CIIC Database, which is 7.9% of all logged concerns. [Page 119]

HISTORICAL PERSPECTIVE

The ODRC publication, “Three Decades of Progress: A Retrospective of Growth” (1972-2002) provides a chronology relevant to the grievance procedure in Ohio prisons. In 1975, a U.S. District Court appointed a special master in the case of *Taylor v. Perini*. The special master’s first report stated that there is, “No effective grievance procedure maintained to process complaints related to racial discrimination, harassment, intimidation, or insult”. In 1978, a tentative agreement was reached in *Taylor v. Perini*, and ODRC agreed to adopt numerous measures, which included the establishment of the position of Institutional Inspector and a formal grievance procedure. In 1991, the *Taylor v. Perini* lawsuit was settled after 22 years of litigation. [Page 121]

RELEVANCE OF TAYLOR V. PERINI

The Special Master, Attorney Vincent Nathan, stressed the critical importance of having an effective inmate grievance procedure. An effective grievance procedure can prevent the enormous cost of prison litigation. The procedure can also prevent the

tremendous financial and human cost of violence and uprisings, thereby serving fundamental safety and security purposes. Nathan urged Legislators to include language requiring CIIC to evaluate the inmate grievance procedure in the 1978 proposed legislation to create the CIIC. [Page 122]

An Outside Review Committee was established at the Marion Correctional Institution (MCI) due to litigation in the *Taylor* case. The Committee was composed of private citizens selected by the warden, who volunteered to come to the institution to review inmate grievances. The Committee received praise for its work and the CIIC recommended that an Outside Review Committee be established at every Ohio prison. ODRC disbanded the Outside Review Committee after *Taylor v. Perini* was settled in 1991. It would be relatively easy to form Outside Review Committees of volunteers from within the institutions' communities to be called upon to visit the institutions on occasion, to review and offer opinions regarding grievance decisions pending appeal to the ODRC Chief Inspector. This would enhance the effectiveness of the grievance procedure and may well widen the network of potential partnerships for the expansion of the re-entry philosophy and initiative. [Page 122]

During the pending litigation, the Marion Correctional Institution had the largest volume of grievances filed. It reflected an environment in which inmates felt free to use the inmate grievance procedure without fear of reprisal, instead of being a negative indicator calling attention to a troubled institution. [Page 123]

AMERICAN CORRECTIONAL ASSOCIATION'S (ACA) STANDARD

The ACA's Adult Correctional Institutions Standard 4-4284 (Grievance Procedure) only requires that "There is a written inmate grievance procedure that is made available to all inmates and that includes at least one level of appeal." It is reflected in ODRC's Administrative Rule 5120-9-31 (The Inmate Grievance Procedure), which states "Appropriate provisions shall be made to ensure access to the inmate grievance procedure by inmates not fluent in English, persons with disabilities, and those with low literacy levels." In the biennium, a significant number of inmates have communicated the concern that mentally ill inmates, the illiterate, and others with low education levels, reportedly did not receive the needed help for them to use the grievance procedure. [Page 124]

According to the ACA, "A grievance procedure is an administrative means for the expression and resolution of an inmate's problems." ODRC data revealed that 5,779 of the 7,381 grievances filed (78.3% of the total grievances) resulted in "not resolved" dispositions. If the grievance procedure does not also effectively function as a means to actually solve problems and address issues of concern, it is falling short of fulfilling its primary purpose. [Page 125]

ACA RECOMMENDATIONS

The ACA provides written recommendations stating what provisions should be included in the inmate grievance procedure. They include the following:

- 1) *Written responses to all grievances, including the reasons for the decisions.* — ODRC's administrative rule clearly ensures that inmates are provided with written responses, but does not require reasons for the decisions. [Page 126]
- 2) *Response within a prescribed, reasonable time limit, with special provisions for responding to emergencies.* — CIIC has received a pattern of complaints from inmates about non-response to informal complaints, extension after extension on grievance decisions, and reportedly the same on appeal decisions, which raises the question if ODRC's responses are in a prescribed reasonable time. ODRC data indicated that 262 grievances (10.3%) received extensions of 14 days to 28 days from the date of response during the time period of July 2004 through November 2004. Time limits are placed on the inmates regarding the use of the different steps of the grievance procedure, and are reportedly strictly adhered to by staff. The time limits for filing grievances effectively discourage the use of the grievance procedure, and contribute to its negative perception. Per the administrative rule, the special provision for emergencies is that the inspector may waive the informal complaint requirement when it is determined that there is a substantial risk of physical injury, in complaints of unreported use of force, and in allegations meeting the definition of inappropriate supervision. [Page 126]
- 3) *Supervisory review of grievances.* — The ODRC grievance procedure includes supervisory review of grievances by providing that an inmate may appeal the inspector's decision to the Chief Inspector whose decision is final. Grievances regarding wardens or inspectors are filed directly with the Chief Inspector and do not include a supervisory review since the Chief Inspector's decision is final. The inmate must demonstrate in the grievance that the warden or inspector "was personally and knowingly involved in a violation of law, rule or policy, or personally and knowingly approved or condoned such a violation", which is a difficult standard to be met by inmates. It tends to discourage inmates from ever using the grievance procedure to notify the Chief Inspector about problems with inspectors and wardens, the two most important staff at the institution as it relates to the implementation of an effective grievance procedure. [Page 129]
- 4) *Participation by staff and inmates in the procedure's design and operation.* — ODRC staff have definitely participated in the operation of the grievance procedure since Informal Complaint Resolution Forms submitted by inmates must be responded to by staff. Contrary to the ACA recommendation, there has been no inmate participation in the design or operation of the inmate grievance procedure. Difficulties still exist in verifying if ODRC staff have

received Informal Complaint Resolution Forms, and enforcing the requirement to respond in a timely manner. (Excerpts from inmates' letters describing their frustration with the grievance procedure and their lack of involvement are provided in this section.) [Page 129]

- 5) *Access by all inmates, with guarantees against reprisals.* — ODRC's administrative rule provides access to all inmates and prohibits retaliation or the threat of retaliation for the use of the inmate grievance procedure, but retaliation reportedly continues to occur. Retaliation, which is extremely difficult to prove, is often reported to be in the form of a conduct report against the inmate who uses the procedure. Inmates who have experienced retaliation for the good faith use of the grievance procedure are reluctant to use the grievance procedure again to report the retaliation. The Inspector of Institutional Services Monthly Reports revealed that 42 grievances were filed for the complaint subsection titled Retaliation for Filing Grievances during the October 2003 through November 2004 period. [Page 134]
- 6) *Applicability over a broad range of issues.* — ODRC's procedure is designed to address inmate complaints related to any aspect of institutional life that directly and personally affects the grievant, and thus fulfills the ACA recommendation. [Page 136]
- 7) *Means for resolving questions of jurisdiction.* — ODRC's administrative rule clarifies that if part of the grievance is grievable and part is not grievable, then the allegations that are grievable will be considered. A concern relayed to the CIIC is that some inspectors are reportedly too quick to reject a grievance as not grievable, merely because a portion of the problem or incident involved a matter that is not grievable. [Page 137]

THE GRIEVANCE PROCEDURE ACCORDING TO ADMINISTRATIVE RULE 5120-9-31

The most recent revision to the administrative rule was effective August 1, 2004, but the last major revision to the administrative rule was effective January 1, 2002, following the submission of a report by Attorney Vincent Nathan, a contracted outside expert. [Page 137]

The inmate grievance procedure, which is described in this section, is composed of the following three consecutive steps: 1) filing of an informal complaint 2) filing of the notification of grievance and 3) filing of an appeal of the disposition of grievance. There is a specific form designated by the Chief Inspector to use for each step. Whenever feasible, inmate complaints should be resolved at the lowest step possible. [Page 137]

Grievance appeals concerning medical diagnosis or a specific course of treatment shall be copied to the office of correctional health care, reviewed by a health care

professional, and a joint response provided from the office of the Chief Inspector and the office of correctional health care. [Page 139]

CIIC GRIEVANCE DATA

The CIIC Database contained 400 logged concerns in the Inmate Grievance Concern Section for the time period of January 6, 2004 to January 12, 2005, which is an average of 33 inmate grievance concerns per month. The Southern Ohio Correctional Facility had the most reported concerns with a total of 66. The Ohio State Penitentiary was second with a total of 30 reported concerns. The inmate grievance concerns are 8% of all logged concerns in the database. [Page 141]

The CIIC Database subsection entitled Retaliation for Filing Grievance contained 66 logged concerns for the time period of January 6, 2004 to January 12, 2005, which is an average of 5.5 retaliation for filing grievance concerns per month. The Lake Erie Correctional Facility had the most reported concerns with a total of eight. The Southern Ohio Correctional Facility and Trumbull Correctional Institution each had seven concerns. [Page 141]

REPORTED AREAS OF CONCERN AND RECOMMENDATIONS

The CIIC identified the following areas of concern with the inmate grievance procedure with corresponding recommendations:

- 1) *Concern* - Retaliation and fear of retaliation by institutional staff if an inmate uses the inmate grievance procedure. *Recommendation(s)*- a) Comply with Vincent Nathan's Recommendation 4 in his Evaluation of the Inmate Grievance System Report, which states that the ODRC should begin to impose the most serious disciplinary consequences for acts of retaliation by staff against inmates as a result of the latter's use of any aspect of the grievance process. b) One of the best ways to send a strong message that retaliation will not be tolerated is through thorough investigations of alleged reprisals or threats of reprisals, and by taking corrective action specified in Administrative Rule 5120-9-31, one case at a time. [Page 141]
- 2) *Concern* – Difficulties of inmates who are mentally ill, have low literacy levels, or have other disabilities, in using the inmate grievance procedure. *Recommendation(s)* – a) The Department should work to ensure that the inmate grievance procedure is not, and is not seen as, an adversarial procedure, with the Department of Rehabilitation versus the inmates. This will result in inmates being more receptive to seeking the assistance of the institutional inspector in using the procedure. b) The institutional inspectors' workloads at each institution should be evaluated to ensure that they have sufficient time to assist inmates who require assistance in using the inmate grievance procedure, and to facilitate all aspects of the inmate grievance procedure. c) The grievance procedure should be reevaluated to ensure that

the forms and process are in the most simplified state to guarantee ease of use by all parties. [Page 143]

- 3) *Concern* – Untimeliness in receiving grievance forms from staff and in responses by staff to informal complaints, notification of grievances, and appeals of the disposition of grievance. *Recommendation(s)* – a) The workload of the institutional inspectors at each institution should be evaluated to ensure that they have the ability to provide grievance forms in a timely manner, to monitor and act on delayed responses to the informal complaint resolution forms, and to respond to notification of grievance forms in a timely manner. b) The Chief Inspector should work to improve the quality of the staff responses to informal complaint resolution forms and notification of grievance forms to reduce the domino effect of informal complaints resulting in notification of grievances and notification of grievances resulting in appeals of the disposition of grievance. c) The ODRC should consider some “outside the box” solutions, such as the Outside Review Committee, which resulted from the *Taylor v. Perini* case. d) The workload at the Chief Inspector’s Office should be evaluated to determine if additional staff, such as assistant chief inspectors, are required to monitor the grievance procedure, provide quality and timely grievance appeal decisions, and perform the additional duties of the Office of the Chief Inspector listed in Administrative Rule 5120-9-30. [Page 143]
- 4) *Concern* – The majority of grievance dispositions result in a “not resolved” disposition. *Suggestion* – a) The Chief Inspector should ensure that the institutional inspectors and assistant chief inspectors dispose of grievances with “resolved” dispositions whenever warranted. Only through a drastic increase in the number of grievances in which problems are in fact resolved, will inmates gradually develop a more positive view of the grievance procedure. [Page 145]

ODRC GRIEVANCE DATA

ODRC reported that there were 7,381 grievances filed from October 2003 through November 2004, which is an average of 527 grievances per month. The Southern Ohio Correctional Facility had the highest number of grievances with a total of 722 (9.8% of the total grievances), which is an average of 52 grievances per month. The Mansfield Correctional Institution was second with 537 grievances, and the Ohio State Penitentiary was third with 488 grievances. The Dayton Correctional Institution had the lowest number of inmate grievances with a total of eight, which is an average of .6 grievances per month. [Page 145]

There are 31 complaint categories under which a grievance can be filed. Health Care was the leading complaint category with a total of 1,235 grievances, which is 17% of the total grievances. Force/Supervision was second with a total of 1,224 grievances,

which is 16.8% of the total grievances. Personal Property was third with 1,146 grievances, which 15.7% of the total grievances. [Page 146]

There are tables for each of the 33 institutions, which list the subject and number of complaints grieved. [Page 148]

The Southern Ohio Correctional Facility had the most Health Care grievances with a total of 117, which is 9.5% of the total health care grievances filed, and the most Force/Supervision grievances with a total 151, which is 12.3% of the total force/supervision grievances filed. [Page 172]

There are tables for each of the 31 complaint categories, which list the number and percentage of grievances filed for each institution. [Page 172]

RESOLVED AND UNRESOLVED GRIEVANCES

There were 7,381 grievances filed from October 2003 through November 2004 that resulted in resolved and not resolved dispositions. The following are the three types of resolved dispositions: 1) problem corrected, 2) problem noted, correction pending, and 3) problem noted, report/recommendation to the warden. The following are the ten types of not resolved dispositions: 1) contrary to Ohio Revised Code, 2) contrary to administrative rule, 3) contrary to ODRC department policy, 4) contrary to institution policy, 5) staff action was a valid exercise of discretion, 6) insufficient evidence to support claim, 7) false claim, 8) failure to use informal complaint procedure, 9) not within the scope of the grievance procedure, 10) not within the time limits. [Page 203]

There were 1,602 grievances with resolved dispositions (21.7% of the total grievances) from October 2003 through November 2004. The Ohio State Penitentiary was ranked first in total number of resolved dispositions with a total of 149, which is 9.3% of the total resolved dispositions. The Ohio State Penitentiary had resolved dispositions in 30.5% of the grievances filed at the institution. [Page 203]

There were 5,779 grievances with not resolved dispositions (78.3% of the total grievances) from October 2003 through November 2004. The Southern Ohio Correctional Facility ranked first in total number of not resolved dispositions with a total of 602, which is 10.4% of the total not resolved dispositions. The Southern Ohio Correctional Facility had not resolved dispositions in 83.4% of the grievances filed at the institution. Thirteen institutions had not resolved dispositions in over 80% of their grievances. [Page 203]

An analysis of the 2,534 grievances with dispositions from July 2004 through November 2004 revealed that 1,930 grievances (76.2% of the total grievances) resulted in not resolved dispositions. A total of 866 grievances (44.8% of the not resolved grievances) resulted in not resolved dispositions due to "insufficient evidence to support claim". A total of 351 grievances (18.2% of the not resolved grievances) resulted in not resolved dispositions due to "staff action was a valid exercise of discretion". [Page 204]

The analysis of the grievances with dispositions from July 2004 through November 2004 revealed the following racial breakdown: Resolved dispositions – 51.8% for black inmates, 46.7% for white inmates, and 1.5% for other inmates; Not Resolved dispositions – 54.8% for black inmates, 43.8% for white inmates, and 1.4% for other inmates. [Page 204]

The analysis of the grievances with dispositions from July 2004 through November 2004 revealed that 10.3% of the grievances had been given extensions of 14 to 28 days. [Page 210]

CONCLUSION

The inmate grievance procedure is an essential process for the ODRC Institutions. An effective inmate grievance procedure results in the reduction of inmate tension, the prevention and reduction of litigation against ODRC, and the availability of an information gathering and management tool. The reduction of inmate tension in the institutions can create a more positive institution atmosphere, increase the safety of staff and inmates, increase the security of the institution, and reduce inmate misconduct and disturbances. The potential information gathering from the grievance procedure can result in immediate identification of issues and swift correction of problems within the institutions, which can assist the wardens and other staff in the operation of the institutions in a more effective, safe, and secure manner, for the betterment of all. The prevention and reduction of litigation against ODRC could result in a major cost savings for the Department and could prevent possible court mandates. [Page 211]

The areas of concern regarding ODRC's inmate grievance procedure do not pertain to the written administrative rule, but to the extent to which the provisions of the administrative rule are carried out in practice. Based on concerns that have been expressed and data that has been gathered, the inmate grievance procedure is operating below the level of optimum effectiveness. There is also the general perception by inmates that the grievance procedure has extremely limited effectiveness. There is reason to believe that in general, inmates lack faith in the procedure. [Page 211]

Many believe that the inmate grievance procedure remains ineffective in resolving complaints related to racial discrimination, harassment, intimidation, and insult. Inappropriate supervision of staff can be a preceding factor in assaults on staff, use of force incidents and inmate suicides. [Page 211]

Additional areas of concern regarding the inmate grievance procedure include the following: 1) there is a definite need to eliminate the adversarial nature and perception of the procedure 2) ODRC staff responses to informal complaints, grievances, and appeals need to be made in a timely manner 3) access to the grievance procedure needs to be ensured for all inmates, especially the inmates with special needs 4) the quality of responses by staff to informal complaints, grievances, and appeals needs to improve 5) there needs to be a reduction in retaliation and fear of retaliation for utilizing the

grievance procedure 6) the number of not resolved grievances needs to be reduced when warranted 7) Many inmates have little or no faith in the inmate grievance procedure, and 8) A determination needs to be made on staff needs and job duties of institution inspectors and Chief Inspector to ensure their ability to improve the quality and timeliness of responses to grievances and appeals. [Page 212]