

PLENTY OF SPACE IN OUR PRISONS

[This is the first essay regarding prison overcrowding and one former inmate's solutions]

Recent articles by the Associated Press have Ohio judicial chief Maureen O'Connor and Corrections Director Gary Mohr blaming Ohio's current prison overcrowding on the failure of local judges to properly implement new sentencing reforms. Mohr warns that expensive new prisons are going to have to be built unless something is done to lower the influx of new prisoners which threaten federal court intervention.

Gary Mohr admits that there are thousands of inmates in the systems that simply do not need to be there. O'Connor and Mohr are overlooking the fact that Ohio's prisons are bulging with thousands of "old law" legacy prisoners left over from the '70s, '80s and '90s who remain in the system serving indeterminate sentences due to the unlimited and unbridled discretion of the Parole Board to deny parole. These prisoners could be safely released today by the Ohio Parole Board: a former powerhouse that is now a bureaucratic dinosaur desperately trying to preserve their jobs by holding on to as many old law offenders as it can.

THE FORMER OHIO PAROLE BOARD

Under former law, the Ohio Parole Board possessed exclusive authority to grant parole to offenders sentenced under the indeterminate sentencing scheme created by Ohio legislators in the 1930's under the old Calvinist theory that a neutral and ethical parole board would fairly and equitably determine when a "penitent" had sufficiently been reformed. The offender was sentenced to an indeterminate sentence consisting of a minimum and maximum term between which an enlightened parole board would decide when the prisoner was rehabilitated. Their power and discretion was, and continues to be, absolute with no appeal or oversight.

In its heyday prior to 1996, the Ohio Parole Board had sole authority to decide when every prisoner in Ohio went home, at one point ruling the lives of over 48,000 inmates, parolees, their families and children. In practice, the Board usually paroled a prisoner who had faithfully observed the rules of the institution after having served the minimum term. Rarely did the Board require the inmate to serve more than the minimum term except in cases of bad behavior or in cases involving the most heinous forms of the crime.

After a history of scandals, bribery and indictments, as well as inconsistent decision making, the Ohio legislature replaced indeterminate sentences with fixed-term sentences that gave judges sole authority over time served by Ohio prisoners, thereby abolishing the power of the Ohio Parole Board except in life sentences. It was believed that the Parole Board would eventually parole all the old law prisoners remaining in the system and would, over time, cease to exist as it once did.

THE PAROLE BOARD'S STRUGGLE FOR SURVIVAL

With only 4,800 old law prisoners now remaining in Ohio's prisons, and in spite of the legislature's efforts, the Ohio Parole Board has managed to survive 18 years later with its full complement of board members, hearing officers, and support staff by retaining its only means of self-preservation: the power to make old law prisoners serve out their maximum terms... and they are succeeding. Ohio law requires there to be a parole board as long as there are old law prisoners serving indeterminate sentences; therefore, the more prisoners, the more board members are needed: the fewer prisoners, the fewer board members needed. Therefore, in order to preserve their jobs, the Parole Board is denying parole to as many old law prisoners as it can and is revoking previously granted paroles at an unprecedented rate. In addition, to preserve even more jobs, the Adult Parole Authority (APA) has implemented rules and policies that now require a majority vote of the full board in order to grant a parole where previously only one board member was required.

Statistics bear out the fact that parole rates have been slashed from a rate of 48% in 2004 to 7 % in 2011. During one period of that year, 507 old law inmates were reviewed for possible release. Several of those prisoners were technical parole violators returned for minor rule violations and 68% were aged 65 and older. None were paroled.¹

To counter any criticism, the Parole Board claims that the remaining old law cases represent the "worst of the worst" individuals that are too dangerous to parole. The Board then provides the media with ghastly details of select cases that horrify the public. The public naturally reacts with disgust and turns its back on the whole disgusting business overlooking the fact that prisoners who have done their time, and whose case-facts are well within the heartland of offenses, continue receiving parole denials despite having followed all the rules, earned merit and honor status, and completed every rehabilitative program possible both inside and outside the system (with some prisoners even starting their own programs). Meanwhile, new law offenders, committing the exact same crimes, with the exact same case-facts, have come to prison, done their time, and have long gone home to their families.

OHIO PRISONS: "THE VILLAGE OF THE DAMNED"

Old law prisoners, held captive by the Ohio Parole Board under lengthy open-ended legacy sentences, are powerless. The few court cases that have addressed this abuse of Parole Board discretion have sided firmly with the Board stating that, under Ohio law, they can deny parole "for any constitutionally permissible reason or no reason at all."²

1 Laura Bischoff, *Changes May Help More State Prisoners Get Parole*, Dayton Daily News (June 17, 2012)[July and August parole hearings of 160 cases and legislatively mandated review of 347 cases].

2 *Inmates of Orient Corr. Inst. v. Ohio State Adult Parole Auth.*, 929 F.2d 233 (6th Cir.1991)

Ohio prisons have turned into the “Village of the Damned” for these old laws prisoners serving lengthy maximum terms; terms that were imposed by judges who originally wanted to be tough but who never imagined the defendant would *ever* serve more than the minimum term. Judges who have witnessed this abuse of Parole Board discretion have tried to rectify the situation by attempting to reduce their defendant's maximum terms only to be reversed by higher courts that have ruled such post-sentence modifications illegal.

JUDGES POWERLESS

Retired Judge James D. Henson of the Richland County Common Pleas Court witnessed this abuse in one of his cases and tried to correct it by issuing a court order reducing the 25-year maximum sentence of a defendant after the Parole Board issued him a “super-flop”(a continuance of more than 5 years). In his order Judge Henson stated:

“When this Court, and this Judge, originally sentenced the defendant ...it was this Court's intention that the defendant serve between twelve (12) and fifteen (15) years in prison for the three separate cases for which he pled guilty. Given the rules and regulations of the Adult Parole Authority and their policies at the time the defendant was sentenced [in 1983], this Court felt that a 4 to 25 year sentence would accomplish that purpose.”

“However, due to a change in the policy of the Adult Parole Authority in giving inmates superflops, *apparently for its own purposes*, the intent of the Court in its original sentence is being subverted.” [Emphasis added]

The Ohio Supreme Court ruled Judge Henson's attempt to modify the sentence illegal.³

Under law, Parole Board actions require no justification and there is no oversight or appeal. If asked, the Board casually asserts that it is acting in the public interest and has a mandate to protect the public from these legacy prisoners by using its unlimited discretion to hold these men as long as possible... well past the terms served by new law offenders who have committed the exact same crimes.

TWO PRISONS CAN CLOSE TODAY

The Ohio Parole Board is a power unto itself and answerable to no one ... except to Governor Kasich. Perhaps Kasich should ask Corrections Director Mohr if future intervention of the feds can be avoided by looking into making more beds available *now* through responsible and fair parole practices instead of by spending millions on the building of new prisons in 2017. The fact is Mohr could actually *close down* at least two institutions next week by simply paroling the old law legacy prisoners who have served more than enough time, have demonstrated their rehabilitation, and are deserving of a chance at freedom.

³ *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223 ¶14.

Others in the field of corrections agree. Christine Money and Maggie Beightler are both former Ohio prison wardens and are co-directors of the Embark Program which provides job-readiness, counseling, and reentry assistance to graduates both before and after release from prison. Both regularly lobby the Ohio Parole Board to open the gates for their graduates who, they submit, have long paid their debt to society and are ready for release. Other voices are being heard advocating for a change in the law that would either place limits on the power of the Parole Board or allow sentencing courts to revisit and modify legacy sentences or grant delayed probation.

Ohio ranks as 7th in the nation in number of prisons and per capita incarceration. With Ohio's incarceration rate so high, and with so many expensive legacy prisoners eligible for parole who could quickly be released safely and responsibly, the Legislature, the Governor and Director Mohr all have an easy solution to Ohio's prison overcrowding... if one just takes the lead.

NEXT: The Ohio Parole Board revokes as many paroles as it can for minor violations, returning the violator to prison for years, while letting new law violators go free.