

A Report from

Policy Matters Ohio

Selective Celling:
Inmate Population
in Ohio's Private Prisons

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May 2001

Policy Matters Ohio

By

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Acknowledgements

Policy Matters Ohio receives generous operational support from the George Gund Foundation. We owe special thanks to David Focareta who provided extensive research, writing and editing assistance. Without his help, this report would not have been completed. For insightful comments on earlier drafts and assistance with methodology, we thank Chris Howell, Mark Cassell, Stephanie Luce, Mark Brenner, and Zach Schiller. Any remaining errors are, of course, our own responsibility.

Policy Matters Ohio is a non-profit research institute dedicated to bridging the gap between research and policy in Ohio. Policy Matters seeks to broaden the debate about economic policy in Ohio by providing quantitative and qualitative analysis of important issues facing working people in the state. Other areas of inquiry for Policy Matters have included wage distribution, women and work, economic inequality, and pupil transportation privatization.

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Executive Summary

Like most states, Ohio has been under pressure to reduce costs for state services. Because the Ohio Department of Rehabilitation and Correction has seen its expenses grow at a rapid pace, it is a natural place to look for savings. Privatizing public prisons is one potential solution. This report examines some aspects of the limited record of private prisons in this state to try to assess the wisdom of this solution.

This state's brief experience with private prisons presents reasons for caution. Running a prison is one of the most dangerous, difficult things that government has to do, and both public and private institutions have struggled to manage this task without safety problems, violations of basic rights, inflated costs, and other problems. Private prison operators in Ohio have experienced inmate escape, inmate murders and injuries, contract violations and cost overruns, many of which have been well-documented in the popular press. Two of the three experiments with private prisons in Ohio (one of which was a federal prison) have proven to be disastrous. Ohio officials nonetheless show remarkable willingness to continue to experiment with private prisons, with limited oversight and cost analysis. This Policy Matters Ohio report, by privatization scholar and criminal justice professor Michael Hallett and Policy Matters Executive Director Amy Hanauer, points to reasons to be cautious about prison privatization, even in the case of Lake Erie Correctional Institution, which has been free of the major scandals associated with the other two private institutions. Among other things, the report shows:

- ◆ Dramatic cost savings, the primary rationale for prison privatization in Ohio, have not been clearly demonstrated.
- ◆ Memoranda and analysis of surprising new data indicate a pattern of sending less expensive inmates to Lake Erie, artificially inflating reported cost savings.
 - ◆ A series of memoranda from the Ohio Department of Rehabilitation and Corrections indicate a policy of selecting inmates with limited medical problems, limited mental health problems, and limited behavior problems for Lake Erie.
 - ◆ Quantitative analysis of transportation logs for medical trips over an eight-month period in the year 2000 confirm that Lake Erie's inmates were given dramatically less outside medical treatment than inmates at other Ohio prisons. These logs indicate that the number of medical trips by Lake Erie's inmates was a small fraction of the number of medical trips for inmates at comparable public facilities.
 - ◆ Quantitative analysis of the internal disciplinary records of a random sample of 194 inmates at one public and one private institution reveals that a public institution with costs similar to Lake Erie's was sent inmates that were between 1.5 and 2.5 times more likely to commit internal disciplinary infractions.
- ◆ Quality issues, including staffing, turnover, programming and recidivism, have not been examined in Ohio.

Introduction

The report summarizes some of the relevant research on prison privatization nationwide and raises specific questions about the possible expansion of prison privatization in Ohio. Expanded use of privately-operated prisons has been put forward as one possible solution to Ohio's budget woes. This report briefly recounts Ohio's history with private prisons, touches on some of the larger issues raised by privatization, and engages in a quantitative analysis of inmate medical and behavioral issues at Ohio's more successful private prison. The report concludes with a set of policy recommendations for state lawmakers.

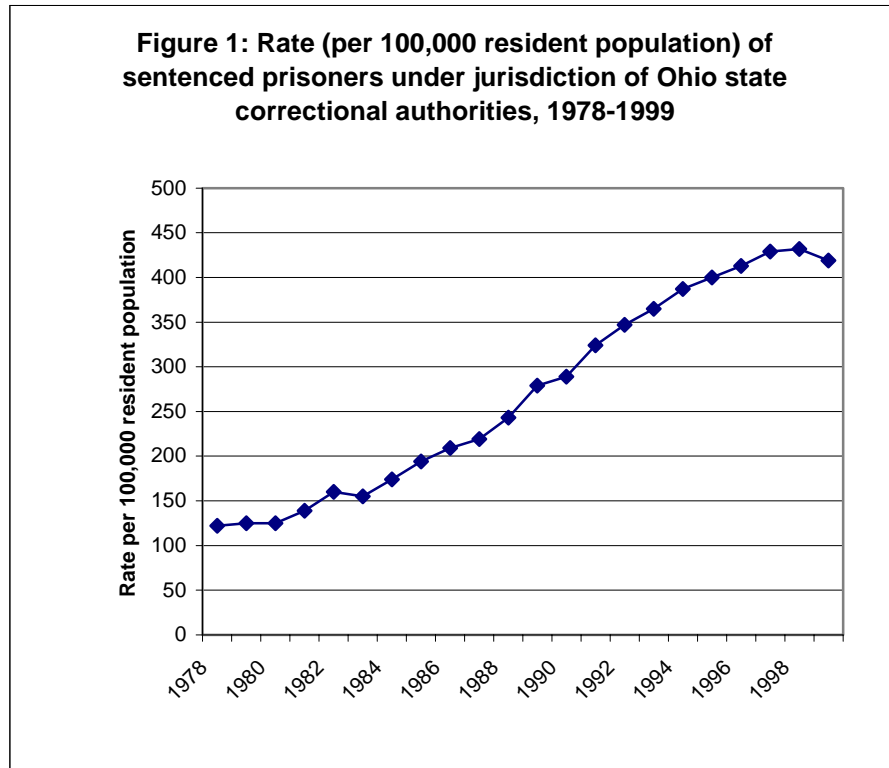
Background and History

There are many legitimate reasons to examine alternatives to publicly-run prisons. Prisons and other law enforcement functions have taken up an ever-growing share of state and federal budgets. Safety is often a concern in prisons, with inmates and staff frequently being injured. Escapes occur, often with public safety being compromised. And prison programming is notoriously ineffective. Data from recent national studies reveal that 63 percent of inmates released from prison are rearrested for a felony or serious misdemeanor within three years of release (Cole and Smith, 2001).

Public prisons, then, have not been the most effective public institutions. If a private company could offer better programming, an improved rehabilitation record, better job placement post-release, or reduced recidivism, along with adequate public accountability, prison privatization might be worth a serious look. However, in Ohio, the biggest justification for turning to private prisons has been cost savings.

The Ohio Department of Rehabilitation and Corrections (ODRC), along with many other Ohio state agencies, is being pressured to reduce its budget in the next fiscal year (*Columbus Dispatch*, 12/31/2000). The ODRC budget has skyrocketed in the last 25 years, from \$167.72 million in fiscal year 1975 to \$1.29 billion in 2000, a more than seven-fold increase in real dollars (Ohio Legislative Budget Office, 1997)¹. This increase is due primarily to the dramatic rise in number of prisoners in Ohio, which took place during the same period. The number of inmates in the state prison system has more than quadrupled since 1975, from 11,000 to 48,000. The number of facilities has more than quadrupled from 8 to 34; and the number of employees has grown from 3000 to 15,500. Figure 1 portrays Ohio's incarceration rate since 1978.

¹ Using the Consumer Price Index we adjusted 1975 dollars to their equivalent year 2000 value. The General Revenue Fund (GRF) portion of the ODRC budget was \$52.4 million in 1975, which would equate to \$167.7 million in year 2000 dollars. The GRF portion of the ODRC budget in year 2000 was \$1.29 billion dollars, about 7.66 times more than in 1975 when adjusting for inflation. We are unable to obtain the entire 1975 ODRC budget. However, General Revenue Funding has consistently accounted for between 80 and 90 percent of the overall ODRC budget. Other portions of the budget include General Services Fund Group, Federal Special Revenue Fund Group and Intragovernmental Service Fund Group.



Source: *Sourcebook of Criminal Justice Statistics*, 1999

At the same time that the inmate population was increasing so dramatically, new prison construction with expensive electronic equipment was needed, high-priced "Supermax" facilities were being added to the mix, costly addiction and mental health treatment programming was being required, and the existence of gangs and other special security threats was growing. These factors contributed further to growth in the ODRC budget.

According to the Ohio Legislative Budget Office's analysis, of all GRF spending categories, ODRC's spending has been the fastest growing since 1975—outpacing K-12 education, Medicaid, higher education, and human services. This has contributed to a budget crisis in which the Governor and legislature are searching for sources of potential dramatic cost savings. Private management of prisons has been seized upon as one such potential source. As the *Columbus Dispatch* reported, the very first bid to operate a private prison in Ohio was promoted as saving \$1.6 million on an \$11 million annual contract, for a savings of 14.5 percent. ODRC estimated

that the second private prison would cost 12 percent less under private management than the state would incur, for an \$8.2 million savings over four years (*Columbus Dispatch*, 11/9/99).

Two of the three experiments with private prisons in Ohio have proven to be disastrous. This report raises questions about Ohio's more successful private prison, Lake Erie Correctional Institution (LAECI). In particular, we find evidence that LAECI is being given a far less challenging inmate population than a public institution with similar costs and the same security level. There are many additional questions that ought to be answered about prison policy. We hope that future analysis can uncover more about program quality, staff turnover, staffing levels, inmate rehabilitation, and recidivism. But the primary rationale offered by privatization advocates has not been that the private facilities would out-perform the public on these important qualitative issues. Rather, the argument has been that private prisons would be more cost effective. If budget issues are our primary problem, is prison privatization a reasonable solution? The evidence-- even in the more successful cases -- indicates that it is not.

A Troubled History: Three Ohio Case Studies

Northeast Ohio Correctional Facility

Ohio seems to have a particularly high tolerance for scandals in privatized prisons. The state was in the national spotlight in 1998, when six prisoners, including five murderers, escaped from Northeast Ohio Correctional Facility, a federal prison in Youngstown, Ohio run by the Corrections Corporation of America (CCA). Prior to the escape, in the first year of the facility's operations, two prisoners were murdered and as many as 20 more were stabbed. Many of the guards had little or no experience in corrections, and maximum-security inmates were imported from out of state to what was intended as a medium-security institution. Inmates received inadequate medical treatment and conditions at the prison were generally chaotic. The problems at the Youngstown facility eventually resulted in a \$1.5 million settlement by CCA with inmates housed there (Bates, 1998; Reno, 1998; Hallett, 2001). As this report went to press, it appeared that the facility might soon be forced to close. The Federal Bureau of Prisons will assume jurisdiction of the federal prisoners currently housed in Youngstown by August 18th, and CCA has yet to find a new source of inmates. Despite this alarming history, the state of Ohio has since contracted with two different private corporations to run two new state-owned facilities in northern Ohio.

North Coast Correctional Treatment Facility

Great fanfare accompanied CiviGenics' bid to operate the North Coast Correctional Treatment Facility in Grafton, Ohio, a minimum-security institution designed for felony drunken-driving offenders and non-violent drug and alcohol abusers. A *Columbus Dispatch* headline blared "Bid to Operate Private Prison Would Save Ohio \$1.6 Million", and the story raved "the price tag for running Ohio's first state-owned private prison is \$11 million per year, a savings of \$1.6 million compared with state operation" (*Columbus Dispatch*, 9/11/99). State law required the private

facility to be paid 5 percent less per inmate per day (PIPD) than the state's estimated cost to oversee these inmates.

CiviGenics is a Massachusetts-based firm that promotes itself as the largest provider of community corrections treatment services in the United States and the fourth largest private jail/prison operator in the United States. Its website also boasts that it operates seventeen facilities in seven states and will soon be opening three more institutions. What the website fails to mention is that Ohio recently refused to renew its contract with the company after what the director of ODRC called "a series of contract violations". These included failure to adequately manage treatment programs (the very programs in which the institution was to have specialized), violations of minimum staffing requirements, and billing the Ohio Department of Rehabilitation and Corrections more than \$74,000 for employees who were not at work or not on the payroll (*Plain Dealer*, 12/1/2000).² Ohio has since designated Management & Training Corporation (MTC), which runs the Lake Erie Correctional Institution described below, as the preferred vendor to run North Coast. A contract is expected this spring.

North Coast opened on February 29, 2000. Just two months and three days later, what was to be the first of many administrative problems came to light when a judge cited contract violations at the facility. On the same day, a riot between guards and inmates at the brand new facility resulted in five inmates being transferred out (*Chronicle-Telegram*, 6/30/2000). Another inmate disturbance occurred two days later. A pattern of contract violations, safety problems, and other issues continued to plague the institution over the course of the following year. The extensive problems led to four different people serving as warden, one of whom had to serve at two different points to substitute for sudden departures.

In addition to understaffing and safety concerns, the language of the contract itself became a problem. The contract contains a clause that commits ODRC to paying CiviGenics for 95 percent inmate capacity regardless of the actual number of inmates being held in the facility. When the state found that it couldn't fill the prison with drunken-driving offenders, other inmates were sent to North Coast (*Cincinnati Enquirer*, 9/19/2000). Although the facility was designed to hold only felony drunken-driving and nonviolent drug offenders, sixteen percent of the inmates had been convicted of sexual battery, assault, arson, manslaughter, robbery, or other similar crimes. The contractual imperative to pay CiviGenics for 95 percent capacity was likely the cause of these careless inmate assignments.

² Nor does it mention a previous contract termination in Teller County, CO after two suicides and an escape in a 100-bed facility (*The Gazette*, 8/19/98). ODRC signed its contract with the company five months after this debacle took place.

The problems culminated in December 2000, when the state withheld \$74,499 from its monthly payment to CiviGenics in order to recover some of its cost and in January when the state announced that CiviGenics' contract would not be renewed. By April, when the state had not received a sufficient number of bids that were 5 percent below the state's estimated costs for North Coast, ODRC significantly increased its estimated per diem costs, enabling private companies to increase their bid prices.³ Vendors are now permitted to charge up to \$62.88 per prisoner per day, as compared to the \$53.11 that won CiviGenics the original bid. In addition to having raised their estimated per diem costs, the state is now likely to incur additional costs in changing to another private vendor. As with the two previous contracts, it is likely that the state will allot a start-up allocation to account for higher expenses in the first years of the contract.

Lake Erie Correctional Institution

Lake Erie Correctional Institution, a 1380-bed, medium-security institution in Conneaut, Ohio, is currently run by the Management & Training Corporation of Ogden, Utah. The prison was opened just over a year ago, in early April of 2000. The contract was awarded to MTC without the company having to go through a competitive bidding process, prompting criticism by Wackenhut and other competitors of the Utah firm. ODRC estimated that MTC would save 12 percent annually over what the state would incur to run the facility (*Columbus Dispatch*, 11/9/99). Like CiviGenics, MTC was subject to a state law requiring that the private company be paid a maximum of 5 percent less than the state's estimated cost of housing these prisoners.

The state estimated that if it ran the institution itself, it would cost \$41.47 per inmate per day to care for the medium-security inmates at Lake Erie (*Columbus Dispatch*, 11/9/99). ODRC used a hypothetical model to derive this estimated cost and has released limited information about the variables that went into that model. The hypothetical cost is less than the actual costs of some public minimum/medium security institutions, but is several dollars per inmate per day more than actual costs at North Central Correctional Institution (\$37.48), a comparable state-run prison with the same inmate security classification. The two-year contract with MTC allocated \$36.47 PIPD in the year 2000, with an increase to \$38.04 in 2001⁴. Also included was a \$2,622,563 activation fee.⁵

³ CiviGenics was paid \$53.11 per inmate per day in 2000 and \$55.39 in 2001, plus a \$350,200 activation fee. When North Coast was found to be in such chaos under CiviGenics management, a new RFP at a much higher per diem was issued. ODRC still received an insufficient number of bids. Later, the department further raised its estimated per diem costs to run the facility to \$66.88, allowing bids to be as high as \$62.88 per inmate per day while still achieving the 5 percent savings (ODRC, North Coast RFP).

⁴ A simple inflationary increase, using the consumer price index, would have allowed MTC to raise its expenses to \$37.32 PIPD, a 2.33 percent increase. ODRC allotted a 4.3 percent increase to the higher \$38.04 per diem.

⁵ The state rate would have been \$41.47 per inmate per day. Lake Erie's bid allotted \$36.47 per inmate per day (PIPD), plus a \$2,622,563 "activation fee". This fee, spread over two years, amounts to \$3592.55 per day. Distributed among 1346 inmates (the average of 1311 and 1380, the permissible range at Lake Erie), this amounts to an additional \$2.67 PIPD, bringing the overall cost paid in 2000 to \$39.14. Because we believe that public facilities also face significant start-up costs, we do not add the \$2.67 to per diem in discussing it, but it is important to note that this is what the public actually paid to MTC in the year 2000.

This per diem cost (without the activation fee) does constitute a 12 percent savings over the department's hypothetical cost projection, but it constitutes only a two percent savings over North Central's actual costs, for what appear to be far more difficult inmates.

MTC also had a 95 percent capacity clause in its contract with the state, ensuring that, like CiviGenics, they would be paid for 95 percent capacity regardless of whether that level was actually assigned.

Further, as demonstrated by memoranda and statistical analysis, Lake Erie seemed to have been given an easier and cheaper inmate population than a comparable publicly-run prison. This was borne out by the comparison of the inmates at Lake Erie and North Central, a facility which is operating at \$37.48 per inmate per day, despite having an inmate population that appears to be significantly more expensive in medical and disciplinary needs. If our assessment of the inmate profile at Lake Erie and North Central is correct, Lake Erie should be operating at a much lower cost per inmate per day than North Central. Instead, the best we can determine is that they were operating at a slightly lower per diem cost than North Central in 2000, and are operating at a slightly higher per diem this year. Lake Erie appears to have been thankfully free of the headline-grabbing scandals and incompetence that Ohio citizens experienced with the North Coast and Northeast Ohio facilities. But that is faint praise for an institution that also appears to have achieved its modest cost savings only with an atypical inmate population.

Comparing Institutions

When comparing costs it is vital that comparisons be between similar institutions with similar programming requirements, comparable inmate profiles, similar regions, and comparable communities (Thomas, 1996; GAO, 1996). Inmate physical health, inmate mental health, security level, behavioral problems, programming requirements, age of facilities, size of facilities, staff turnover and staff ratios are among the main factors affecting prison costs. (Shichor, 1995; GAO, 1996). Costs per inmate per day in Ohio's prisons range from a low of \$37.48 for the minimum and medium-security inmates at North Central Correctional Institution to a high of \$365.00 for Oakwood Correctional Facility's inmates, who require intensive psychiatric treatment. Our assessments of inmate health issues and behavioral issues indicate that Lake Erie Correctional Institution should be able to operate far more economically than state institutions of the same security status.

Atypical Inmates in Ohio: Special Needs at North Coast, Special Selection at Lake Erie

At both the North Coast Correctional Treatment Facility and Lake Erie Correctional Institution, the inmate population is atypical of that housed in publicly-run facilities throughout the state. North Coast Correctional Treatment Facility was designed uniquely for the care & custody of DWI offenders--non-violent inmates receiving "alcohol and other drug treatment services" (ODRC,

CiviGenics Contract). It is the only facility of its kind in the state. Because no other facility has a similar mix, we are unable to mount a reasonable comparison with a state-run facility.

Lake Erie was designed to house minimum- and medium-security inmates who were roughly comparable to those at other Ohio institutions. However, a series of memoranda from the Ohio Department of Rehabilitation and Correction and the Office of Correctional Health over the course of the year 2000 make it clear that less-expensive, easier-to-monitor inmates were targeted for transfer to the private facility.

Fewer Medical Needs: The Memo Trail

On May 1, 2000, a memorandum from the Warden at Grafton Correctional Institution was sent to all inmates regarding voluntary transfers to Lake Erie Correctional Institution. The memo read, in part, "The Department of Rehabilitation and Corrections has placed several restrictions on the type of inmates they are willing to accept at the Lake Erie facility. The restrictions are:

1. Non-smoking inmates (Lake Erie is a smoke-free facility);
2. No major medical problems (as determined by our medical department);
3. No mental health problems (as determined by our mental health department)." (see Appendix 2 for full copy of memo.)

"(ODRC) has placed several restrictions on the type of inmates they are willing to accept at the Lake Erie facility (including)... non-smoking... no major medical problems... no mental health problems." - memo from prison warden

If the first memo was ambiguous, clarification was offered half a year later. On November 20, 2000, a memorandum from the Operation Manager of the Office of Correctional Health Care to all health care administrators reprimanded recipients for failing to screen out medically-needy inmates in making transfers to private institutions. The memo read, in part "Please review the medical files of those inmate (sic) scheduled for transfer to one of our private prisons. If any inmate has a scheduled surgery or a scheduled surgery consult pending please have them removed from the transfer list ... these inmates may go to anyone (sic) of the ODR&C institutions that is appropriate for their security level. When these transfers do occur it creates a lot of extra work for all concerned. The inmate must be returned to the sending institution and then reclassified to another institution." (see Appendix 2 for complete copy of memorandum)

"If any inmate has a scheduled surgery ... please have them removed from the transfer list ... When these transfers do occur it creates a lot of extra work for all concerned." - ODRC memorandum

Fewer Discipline Issues: The Memo Trail Continues

A month after the second memo was issued, the Chief of the Bureau of Classification and Reception at ODRC added new selection criteria to the mix. "Although we do not have any specific written screening criteria for placing inmates at Lake Erie beyond the security level and medical and

mental health levels, the following has been the practice by the Bureau staff when considering placement there:

1. Initially after the first opening of LAECI, inmates were limited to those who were either minimum or medium security who were in good health and level N⁶ or P-1 mental health levels. Only level 1 STG members were placed there.... Shortly after LAECI opened, the Bureau was informed that there were some incidents related to STG activity. As a result of these problems and on the advice of Central Office's STG Coordinator's office, the Bureau began to limit the number of known Aryan Brotherhood members sent to LAECI... Security upgrades and downgrades were not sent...
2. Currently, inmates are assigned to LAECI if they are either minimum or medium security; they are from the northeastern corner of the state; they are medical level 1 or 2; and have mental health classification of level N, C-2 or C-3. At this point, we have been limiting STG member to level 1s. Known leaders and enforcer have not been sent..." (see Appendix 2 for complete copy of memorandum).

These memos suggest that before going to Lake Erie, inmates had to be certified as medium or minimum security, in good health, in good mental health and non-smoking. They could not be members of the Aryan Brotherhood or another gang, and could not have undergone an upgrade or downgrade in

These memos suggest that before going to Lake Erie, inmates had to be certified as medium or minimum security, in good health, in good mental health and non-smoking. They could not be members of the Aryan Brotherhood or another gang, and could not have undergone an upgrade or downgrade in security status. This is in keeping with the less challenging inmate profile sent to private prisons nationwide.

Beyond the Memo Trail: Evidence Confirming Memos

Of course, many memoranda are issued. What evidence do we have that inmate assignment actually followed the pattern implied by these orders?

Medical Data

The memoranda cited above and reproduced in the appendix make it clear that ODRC intended to send less medically needy inmates to Lake Erie. This is significant because medical costs are a large contributor to overall costs in a correctional facility. However, the memos alone do not give us a sense of whether they succeeded in reducing Lake Erie's medical expenses, and the extent of that success. In an attempt to compare medical needs, we examined ODRC records on the number of trips to receive outside medical treatment for Lake Erie and three public facilities. Lake Erie does not use Corrections Medical Center, the outside medical facility used by most institutions in the state. Instead they send inmates to local hospitals when treatment is required. As a result, MTC was

⁶ Medical level 1 or 2 are the levels for healthy inmates. N, c-2 and c-3 refer to the least needy mental health categories. STG stands for security threat group and level 1 is the lowest level for this category.

permitted to add \$2.69 per inmate per day to its bid, a 7.4 percent increase. MTC then agreed to bear the costs of its inmate transportation and medical care independently.

The results of the comparison were striking. Lake Erie stood out for its dramatically lower use of transportation for medical needs. As Table 1 shows, other minimum and medium security institutions (with comparable and different per diem rates) all have inmates with dramatically greater use of medical transportation than Lake Erie. Dayton averaged 6.5 trips per month or 52 trips over the eight-month period, North Central averaged 11.13 trips per month or 89 for the entire period, and Richland averaged 33 trips per month or 264 for the entire period. By contrast, our examination of medical logs showed that Lake Erie sent only 2 inmates out for medical treatment over the entire 8-month period examined, an average of just one trip every four months.

Controlling for the size of the institution, we see that over the eight-month period, there were 11.48 medical visits for every 100 inmates at Dayton⁷, 4.56 medical visits for every 100 inmates at North Central, 12.93 visits for every 100 inmates at Richland, and just 0.15 visits for every 100 inmates at Lake Erie.

Table 1 details this data for the period examined.

If it is true that the facility was given far less medically needy inmates, Lake Erie could have achieved more than the entire mandated savings, simply by having lower medical costs.

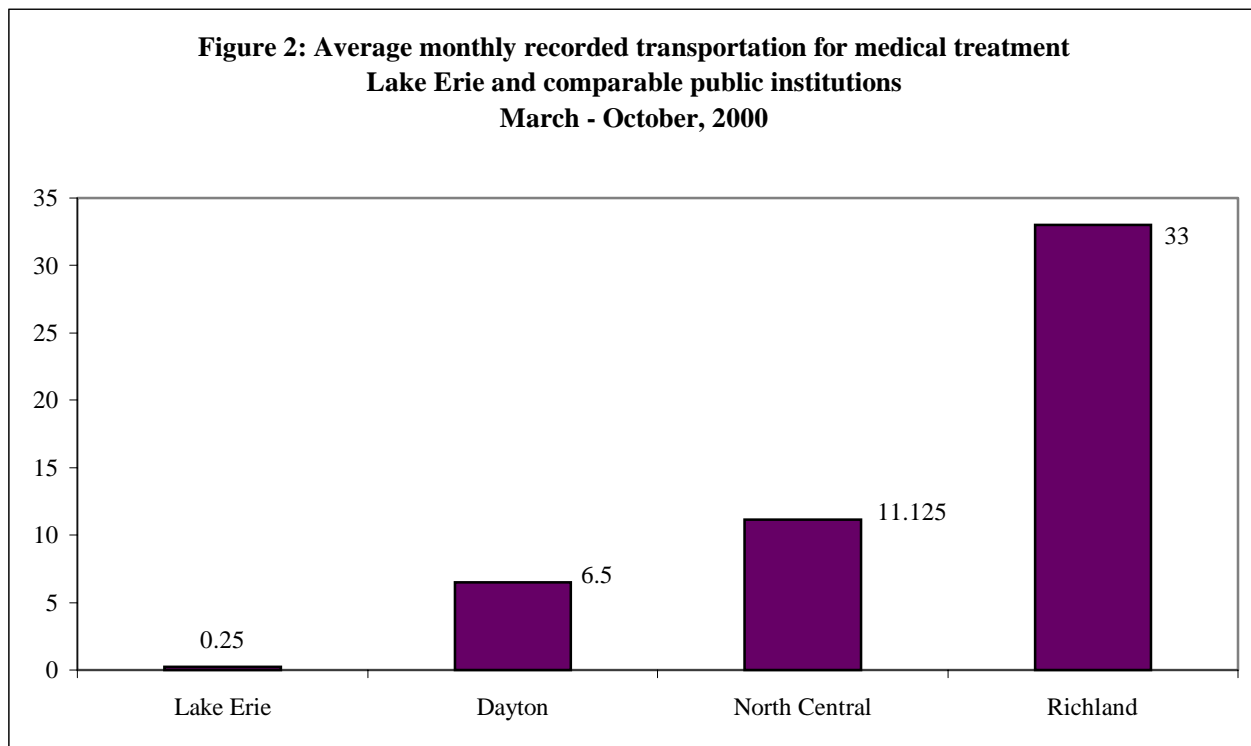
Table 1: Transportation for medical treatment, Lake Erie and selected public institutions, March-October 2000

	Lake Erie	Dayton	North Central	Richland
March	1	8	2	36
April	0	6	2	36
May	0	6	1	28
June	0	5	9	36
July	0	6	23	33
August	0	9	22	38
September	1	3	10	28
October	0	9	20	29
Total visits, 8-month period	2	52	89	264
Average visits per month	0.25	6.5	11.125	33
Total visits, entire period, divided by number of inmates	.0015	.1148	.0456	.1293

Source: Authors’ analysis of prison transportation logs

⁷ Some of these visits were likely to have been one of multiple visits by the same inmate over the eight-month period. That is, one of the six medical trips from Dayton in April may have been for a prisoner who also took a medical trip in March. This does not change the basic finding – that medical expenses were substantially higher for the public institutions.

There are several possible reasons that a one-year old private prison would have such reduced need for medical treatment of its inmates. State facilities could be over-treating inmates; the private facility could have superior medical treatment on site, rendering trips to the medical facility unnecessary; Lake Erie could be engaging in egregious failure to treat medical conditions; or Lake Erie could have been given far less medically needy inmates than other facilities. The first three reasons seem unlikely and the final possibility is the one that follows from the memoranda. It seems that Lake Erie’s inmates require substantially less medical care than comparable institutions. As mentioned, by choosing to provide medical care in a different way, Lake Erie was permitted to raise its bid by \$2.69, or 7.4 percent, per inmate per day. If it is true that the facility was then given far less medically needy inmates, it is possible that Lake Erie could have achieved more than the entire mandated savings, simply by having lower medical costs. Figure 2 displays the average number of monthly trips for medical treatment for Lake Erie, North Central, Richland and Dayton.



Source: Authors’ Analysis of Prison Transportation Logs

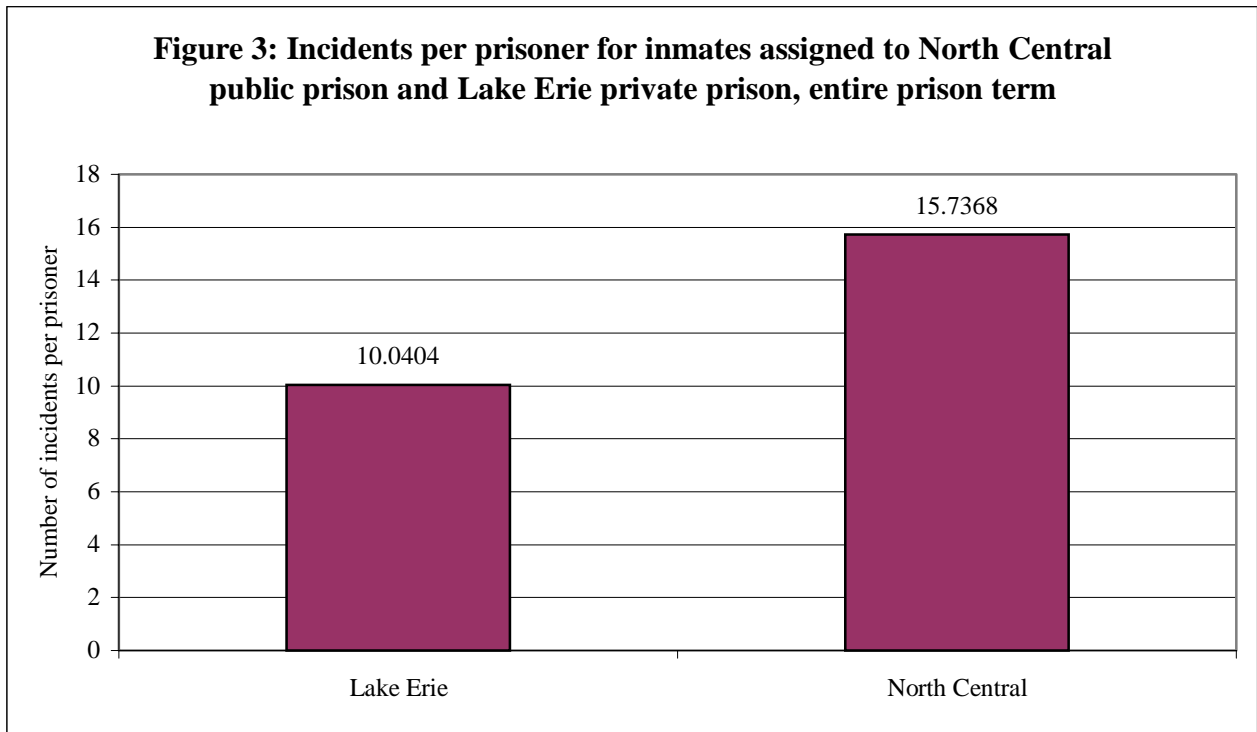
Disciplinary Data

The memoranda cited imply that ODRC engaged in a conscious effort to send inmates to Lake Erie who were unlikely to pose a disciplinary problem. But as with the medical data, we were uncomfortable drawing this conclusion from memoranda alone. The classification of an institution

(minimum, medium or maximum) is not sufficient to determine what internal behavioral problems will result post-incarceration. To better assess disciplinary costs, we chose a random sample of 100 inmates at two institutions: Lake Erie Correctional Institution and North Central, the public institution with the closest per diem expenditure per prisoner to Lake Erie's. For that random sample, we requested internal disciplinary records for their entire incarceration term.⁸ ODRC provided us with 194 of the 200 requested records. We have no reason to believe that the omitted records skew the sample. Because Lake Erie has been open for just one year, these disciplinary records provide an indication of the kind of inmates who were selected for each of the institutions, rather than an indication of how discipline might be handled differently at the facilities. We found that Lake Erie's inmate population, in terms of the disciplinary problems they'd had during their entire term in the correctional system, seemed substantially more compliant than the inmates at the cost-comparable North Central.

Internal disciplinary records for inmates list each incident in which a prisoner is charged with one or more violations, the violations with which he was charged (these are all-male facilities), and the findings of the internal disciplinary body. The very roughest analysis looks at the total number of incidents per inmate, without controlling for type of offense or time span. By this measure, North Central's inmates, with 15.74 incidents apiece on average, substantially outnumber Lake Erie's, with just 10.04 incidents each. Figure 3 displays this information.

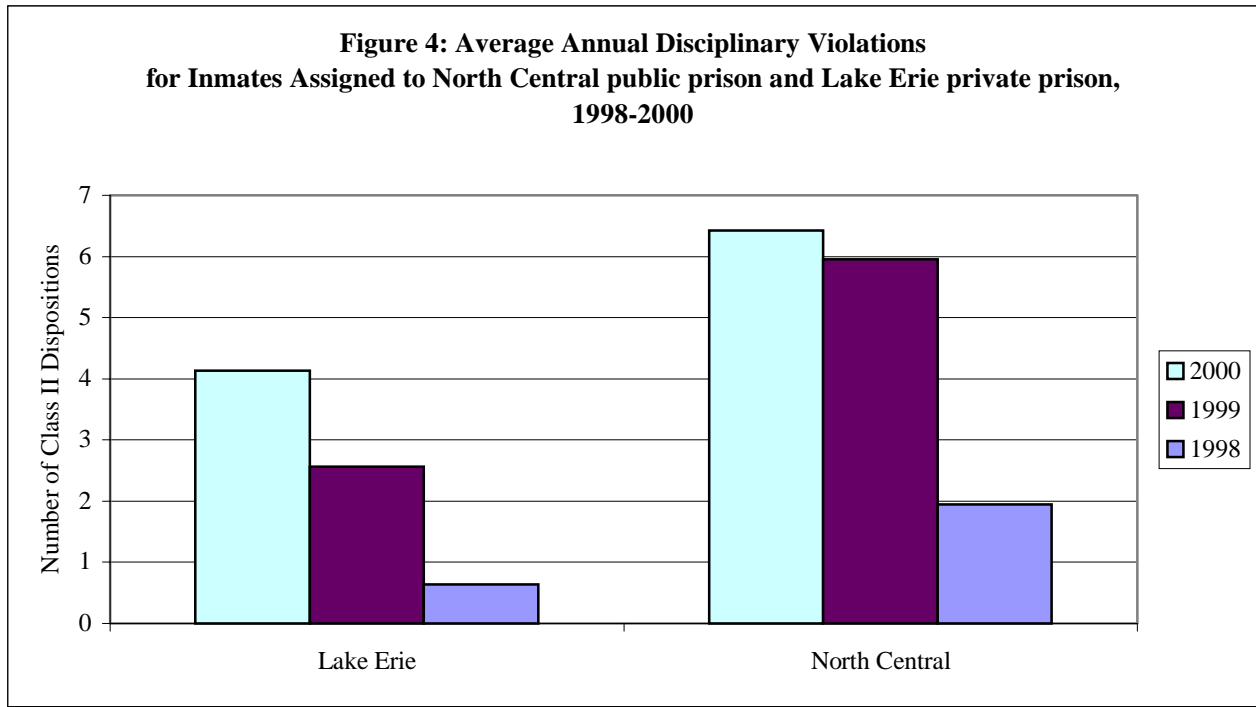
⁸ We also requested 100 disciplinary records from a second public facility, but because the department was only able to provide 85 of the 100 requested from that facility, we excluded them from the analysis



Source: Authors' Analysis of Prisoner Court Cards

A more meaningful measure focuses on Class II incidents, the more egregious internal violations, and analyzes their frequency on a year by year basis. Class II violations range from seemingly minor issues like "being out of place" or "disrespect" to potentially dangerous infractions like "inciting a riot", "fighting, with or without weapons", or "committing a felony or misdemeanor". When examining Class II incidents for which inmates were found guilty, on an annual basis, we found a similar ratio to the lifetime all incident data, with North Central's inmates averaging 6.43 violations apiece in the year 2000, and Lake Erie's averaging only 4.14 each. By violations in the year 1999, Lake Erie's prisoners appear to be even more divergent from the public facility's, with North Central inmates averaging 5.95 incidents and the inmates who would later be sent to Lake Erie's averaging just 2.57, less than half the number at North Central. Overall numbers decline as we look at earlier years because the samples get smaller; some inmates sampled have been in prison for less than two years. Ratios between the different institutions remain similar however, with North Central inmates having between 1.5 and 2.5 times as many incidents as Lake Erie's. We chose to omit data prior to 1998, however, because many of the sampled inmates were not yet in the system at that time. The most valid year to examine is likely 1999 because it contains a full year's data, much of the sample was in the system for this year, and all of the inmates were still in the public system, so potential differences in the way the private facility might handle discipline will not distort the data. In these

years, North Central inmates had 2.32 times as many Class II incidents as Lake Erie. Figure 4 displays this information.



Source: Authors' Analysis of Prisoner Court Cards

Inmate Profile: Summary

In short, inmates accepted at Lake Erie were primarily those who exhibited fewer medical, mental health, security, behavior, and affiliation problems, who did not smoke, were not known to be in gangs, and had a history that made them less likely to cause unanticipated problems or expense for the facility. This makes it surprising not that Lake Erie achieved the modest cost savings it did but that it failed to achieve much more dramatic savings. Private facilities nationwide are notorious for creaming the cheapest offenders in order to yield the highest profits or produce the highest “savings” margins, leaving public facilities with a broader, more costly set of inmates. This appears to have occurred with Lake Erie.

Inmates accepted at Lake Erie exhibited fewer medical, mental health, security, behavior, and affiliation problems; did not smoke; were not known to be in gangs; and had a history that made them less likely to cause unanticipated problems or expense for the facility.

For Further Study

Quality Issues to Examine: Safety, Turnover, Staffing Levels, Rehabilitation Record

As mentioned in the introduction, short-term costs and creaming problems are not the most important variables to assess about private prisons. We urge further study of important

programmatic issues facing Ohio prisons. If private vendors can offer enhanced rehabilitation and reduced recidivism, then higher costs and atypical inmate profiles may be justified. Even if private vendors can offer slightly reduced costs, as Lake Erie appears to have done with an easier inmate profile, we should ensure that these cost reductions are not at the expense of program quality.

There is little local evidence to bring to bear on these questions, but the national evidence is not promising. One recent study found that private prisons are likely to assign 15 percent fewer staff per inmate. (Austin & Irwin, 2001). Low staffing can result in low safety. Hallett and Lee cite Tennessee's Select Oversight Committee on Corrections' finding that a private Tennessee facility had between four and ten times as many injuries to prisoners and staff than comparable public facilities did and between five and nine times the reported incidents of use of force. Austin and Irwin also found a greater percentage of inmate-on-inmate assaults at private prisons than at public facilities.

Understaffing is also one of several variables that have led to high turnover (and vice versa). Corrections employment, whether public or private, has the highest rate of employee turnover of any criminal justice profession (Cole, 1994). High turnover results in a disproportionate number of inexperienced or untrained staff, which leads to instability within the institution. It also requires a constant administrative focus on recruitment and training, which increases costs and detracts from programming. In privatized prisons, most studies show that turnover and morale problems are worse.

By national corrections standards, ODRC has at times achieved an impressive turnover rate of just 6.3 percent for corrections officers and 5.8 percent for all ODRC employees, according to ODRC reports of their 1998 turnover rates (ODRC, North Coast RFP). Turnover in Ohio is typically closer to 12 percent, according to a recent phone call with a department spokesperson. The data on turnover in Ohio's private prisons is limited, but appears to be quite alarming. When ODRC announced that it would not renew CiviGenics' contract for North Coast, it revealed that a stunning 56 percent of the staff at North Coast had left during its one-year tenure - more than 2.8 times what was required in the contract, and nearly nine times what the public facilities in the state experienced in 1998 (ODRC, North Coast RFP; *Chronicle-Telegram*, 1/6/01). North Coast was docked more than \$74,000 by ODRC in part because of this dismal turnover rate.

Concerns about turnover are apparent in the contract for Lake Erie Correctional Institution. The contract reads: "Although the ODRC has mandated that the annual turnover rate for correction officers is not to exceed twenty percent, MTC will make every effort to ensure the staff attrition rate for all positions does not exceed this requirement" (ODRC, MTC Contract). In this way, the contract itself violates ODRC mandates. At the time of publication of this report, ODRC had not provided us with turnover data from Lake Erie, despite requests. This is an important issue for future examination.

The national data indicates that private prisons have a spotty and sometimes scandalous record on safety, turnover, staffing and programming. The local data that we have, like the dismal 56 percent turnover rate at North Coast, confirm that Ohio's private prison operators have often experienced the same problems. We urge evaluators to gather more and better information on the record of Ohio's private prisons. In particular, a detailed analysis of prison programming is essential to evaluating private prison quality in Ohio.

Issues Related to Contracting: Monitoring, Hidden Costs, Captivity, Bankruptcy

Contract Monitoring and Evaluation

Because private contractors are not public bodies, oversight and accountability pose a special challenge. States must closely monitor and evaluate contractors to ensure contract compliance and to assess performance. The National Institute of Justice (NIJ) of the U.S. Department of Justice makes extensive recommendations regarding oversight. NIJ suggests monitoring of all disciplinary actions, infractions, or injuries; monitoring inmate participation in programs and sanitary conditions; formal surveys of inmates and staff; regular, unannounced spot checks or on-site visits; follow-up of released inmates including attention to recidivism and rehabilitation; and periodic reviews and audits.

In Ohio, the privately-operated facilities each have an ODRC-paid monitor on site. However, the direct legislative oversight body for the private vendors is the Correctional Institution Inspection Committee (CIIC), a bi-partisan legislative advisory group that may conduct inspections, issue reports, and make recommendations. Currently the CIIC has no decision-making authority over the private vendors. It is not an oversight board for the administration of private correctional facilities, but monitors facilities in the entire state. The committee is required to inspect each facility only once every two years and has no regulatory authority over any facility. Thus, counter to the monitoring and oversight guidelines put forward by the U.S. Department of Justice (DOJ), the legislative oversight structure for the operation of private prisons in Ohio is reactive rather than proactive. DOJ recommends that a specific oversight board should continuously monitor the performance of privately-run prisons. This is not being done in Ohio.

Hidden Costs

Another difficulty associated with contracting has to do with hidden costs, costs which an entity incurs, but which are difficult to figure into a per diem rate and may actually be borne by another body. This appears to have been more of a problem with North Coast than with Lake Erie. We list potential hidden costs at the two facilities in Appendix 1.

Fictional Free Markets

The ostensible reason that private companies can be more efficient than public bureaucracies is that they are subject to competition. In an ideal free market, numerous providers exist to serve

customers' needs and customers enforce efficiency by switching companies. In conditions where competition among vendors is limited, however, so too are customers' options. Because there are only a limited number of corrections corporations, the benefits of the free-market system in prisons are less powerful. Corrections vendors know this, and CCA spokespeople have said so publicly. "The fact of the matter is that D.C. needs us more than we need D.C.," said one Corrections Corporation of America spokesperson during contract negotiations (*Nashville Banner*, 2/21/97; *Tennessean*, 3/21/97). In the aftermath of the problems with the CCA facility in Youngstown, Ohio, then Governor George Voinovich "forcefully suggested Ohio close the facility," only to be told he had no legal authority to do so (*Plain Dealer*, 8/4/98).

Many commentators on prison privatization have warned against jurisdictions becoming captive to prison service vendors (Bowditch & Everett, 1991; Gilbert, 2000; Shichor, 1995; Walzer, 1991). Once a jurisdiction delegates its authority to manage and operate a correctional facility to a private corporation, the jurisdiction also runs the risk of becoming overly-dependent upon that corporation for services. The limited number of private vendors of correctional services makes this a false market. Furthermore, Ohio state law places limits beyond those that the market already imposes. Current law forbids ODRC from accepting a proposal from the Correctional Officers Employee's Union, the Ohio Civil Service Employees Association (OCSEA) for the operation of North Coast Correctional Treatment Facility in the aftermath of CiviGenics dismissal. This further limits the number of vendors available and the healthy functioning of this market.

Corrections Corporation of America and Wackenhut together hold 77 percent of the private corrections market. Despite the fact that CCA has had a number of scandals and an extremely poor recent performance record, it still holds 55 percent of the market, because states can't simply switch to another brand like consumers opt for a different toothpaste.

Bankruptcy

Finally, the possibility of bankruptcy must be considered and accounted for in any contract for private prison services (NIJ, 1987). Should a private contractor find itself out of business or unable to deliver the level of service required (the latter happened to CCA in a South Carolina facility), then the state would be liable for resuming its stewardship of the state prisons. Business analysts have speculated that Corrections Corporation of America might face bankruptcy, having lost \$744 million in 2000. As Republican Representative Scott Walker of Wisconsin's state Assembly Corrections and Courts Committee noted last year: "If CCA were to go bankrupt, the state would have to scramble to find beds" (*Milwaukee Journal Sentinel*, 11/18/2000). If a private provider of prison services filed for bankruptcy, the state could incur dramatic and immediate costs, a severe threat to public safety, and threats to inmate well-being that could be disastrous. Finally, numerous commentators have noted that the likely transition costs of the state moving back in to take control of a privatized facility could be considerable (Robbins, 1998). Privatization researchers suggest

Selective Celling: Inmate Population in Ohio's Private Prisons

that separate insurance policies be taken out by jurisdictions to guard against vendor bankruptcy (Gilbert, 2000).

Conclusion and Policy Recommendations

This study has reviewed the alarming history of the three private facilities in Ohio. It has also presented surprising new data about the way inmates are assigned to Lake Erie, one of Ohio's private prisons. Together these subjects present serious cause for concern. However, there are more important questions to be answered about Ohio's private prisons; questions that the state has not tried to address before pronouncing that it has "no major concerns" about Lake Erie. We urge the state to examine employee turnover, programming, recidivism and results. Only then will we know whether the experiment with private vendors should be continued.

Policy Recommendations

Eliminate special selection

1. Ensure that Lake Erie Correctional Institution is actually being assigned inmates who are randomly selected from the appropriate security status, not being given especially healthy or especially compliant inmates that artificially deflate their costs.

Improve Accountability

2. Require all private (and public) institutions to comply with public information requests and to conform to the U.S. Department of Justice's monitoring and oversight guidelines. Establish strict monitoring standards to be used with any private prison contract in the future.
3. Immediately release requested information on staffing and turnover levels at Lake Erie.
4. Ensure that all costs associated with private prisons, including increased monitoring costs, are included in inmate per diem cost calculations.

Level the playing field

5. Remove the legislative requirement that North Coast Correctional Treatment Facility remain private. Accept bids from all vendors, public and private.
6. Change the requirement of 5 percent savings over a hypothetical figure to one that requires 5 percent savings for a comparable institution with a similar inmate profile. Require demonstration of savings before renewing contract.

Remember real goals

7. Conduct further analysis that examines prison quality, programming, recidivism and job placement post-incarceration.
8. Work to reduce the inmate population, which has nearly quintupled since 1975. This might be accomplished in part by carefully observing and exploring California's experience with reduced sentencing requirements for non-violent drug-related offenses.

Appendix 1: Potential Hidden Costs

In the case of North Coast Correctional Treatment Facility, public entities provided a great deal of support that was not figured into the costs of running the facility. We want to emphasize that there is nothing wrong with providing this support; it is quite logical for the state to do everything in its power to assist a new prison in being successful. Nonetheless, doing so adds to the cost of the private facility, and we should be cognizant of that in assessing private prisons' efficiency. At North Coast, ODRC in collaboration with the Ohio Central School System provides all academic educational programs for inmates, including three full-time and two part-time professional staff (teachers, librarians and principals) (ODRC, North Coast RFP). ODRC assigned state employees to train CiviGenics employees and made numerous forms of training available to private employees at no charge (*Columbus Dispatch*, 7/30/2000). The ODRC also paid for criminal background checks for North Coast employees. ODRC provided "equipment and supplies to establish and operate 25 workstations" at North Coast and paid for installation and maintenance of all telephone equipment, all monitoring equipment, and training in the monitoring system at the facility. Other equipment provided by ODRC to North Coast included security, cashier, records, processing, photography and control equipment; furnishings and equipment for laundry, dormitories, kitchen, and segregation cells; mattresses, lockers, and tables; extensive dental, pharmacy and medical equipment and furnishings; books and other library and computer equipment; and groundskeeping equipment (ODRC, North Coast RFP). This extensive list of costly subsidies artificially deflates the North Coast budget, making the institution appear far more efficient than it actually was.

In the case of Lake Erie, the contract appears to have been far more carefully negotiated, leaving far fewer troubling hidden costs. This is evidence that the state learned from negative experiences at North Coast and substantially improved its contract. Nonetheless, ODRC again paid for the computer system at the facility. Further, it remains unclear whether the six new ODRC staff assigned to monitor that facility are accounted for in the costs. Finally, there appears to be some training provided by the state to Lake Erie staff. This is more than reasonable to provide, but does artificially reduce costs at the private vendor.



Ohio Department of Rehabilitation and Correction

GRAFTON CORRECTIONAL INSTITUTION
2500 S. Aron-Seldon Road
Grafton, Ohio 44044

Bob Taft, Governor

Reginald A. Wilkinson, Director

TO: All inmates
FROM: Carl S. Anderson, Warden *C.S.A.*
DATE: May 1, 2000
SUBJECT: Voluntary Transfers to Lake Erie Correctional Institution

Lake Erie Correctional Institution, located in Conneaut, Ohio was officially opened on April 20, 2000. It is an institution operated by a private vendor, under contract with the State of Ohio and the Ohio Department of Rehabilitation and Correction, which will house medium security inmates. Conneaut, Ohio is approximately 45 miles east of Cleveland, Ohio.

If there are inmates in this institution who would like to be transferred to this facility, please send a note to Unit Management Administrator, Mr. Niswonger.

The Department of Rehabilitation and Correction has placed several restrictions on the type of inmates they are willing to accept at the Lake Erie facility. The restrictions are:

1. Non-smoking inmates (Lake Erie is a smoke-free facility);
2. No major medical problems (as determined by our medical department);
3. No mental health problems (as determined by our mental health department).

/maf

cc: Executive Staff
Unit Staff
Post (all pods)
File



Ohio Quality Connections ...

Quality Connections through Partnership





Ohio Department of Rehabilitation and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

Bob Taft, Governor

www.drc.state.oh.us

Reginald A. Wildeson, Director

TO: Terry Collins, Deputy Director

FROM: Bernie Ryznar, Chief
Bureau of Classification and Reception

DATE: December 20, 2000

RE: Criteria for assigning inmates to LAECI

Although we do not have any specific written screening criteria for placing inmates at Lake Erie beyond the security level and medical and mental health levels. The following has been the practice by the Bureau staff when considering placement there:

1. Initially after the first opening of LAECI, inmates were limited to those who were either minimum or medium security who were in good health and level N or P-1 mental health levels. Only level 1 STG members were placed there. These limitations are used on the opening of all new institutions to allow time for staffing and programming to be in place to meet security and inmate programming needs. Shortly after LAECI opened, the Bureau was informed that there were some incidents related to STG activity. As a result of these problems and on the advice of Central Office's STG Coordinator's office, the Bureau began to limit the number of known Aryan Brotherhood members sent to LAECI. Inmates who were from the northeastern corner of the state were assigned from other medium institutions and from reception. Security upgrades and downgrades were not sent, as has been the practice of the Bureau in the past for newly opened institutions.
2. Currently, inmates are assigned to LAECI if they are either minimum or medium security; they are from the northeastern corner of the state; they are medical level 1 or 2; and have mental health classification of level N, C-2 or C-3. At this point, we have been limiting STG members to level 1s. Known leaders and enforcers have not been sent. The nature of the inmate's crime; length of sentence or release date are not factors in determining whether the inmate is sent to LAECI. Security level downgrades from close security to LAECI have been made. Transfers are still pending the availability of bed space. Security upgrades from minimum have been made to LAECI and transfers completed. (see attached)
3. The nature of transfers from LAECI to other institutions has been consistent with practices of other medium security institutions. (see attached)

Memo

To: All Health Care Administrators
From: Steve Asch, Operation Manager *SA*
CC: Kay Northrup, Deputy Director OCHC
Dr. Bruce Martin, Medical Director
Deputy Wardens Special Service
B. Ryzner, Chief Bureau of Classification

Date: 11/20/00
Re: Inmate transfers

J. Albrecht - 11/20/00

I am sending this memo as a reminder to everyone about inmate transfers to institutions with privatized medical services.

I continue to have problems with inmate transfers to privatized institutions. Please review the medical files of those inmates scheduled for transfer to one of our private prisons. If any inmate has a scheduled surgery or a scheduled surgery consult pending please have them removed from the transfer list. Institutions with privatized medical services are as follows Toledo, NCI, NCCTF, LaECI, TCI and NEPRC (female).

This rule should also apply to any type of procedure completed at OSU. (ie. C-Scan, Upper GI etc.)

These inmates may go to anyone of the ODR&C institutions that is appropriate for their security level.

When these transfers do occur it creates a lot of extra work for all concerned. The inmates must be returned to the sending institution and then reclassified to another institution.

Cc FILE trans

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