



April 13, 2015

**Via Email, Certified U.S. Mail, and Facsimile**

Gary C. Mohr, Director  
Ohio Department of Rehabilitation and Correction  
770 West Broad Street  
Columbus, Ohio 43222

Jay Forshey, Warden  
Ohio State Penitentiary  
878 Coitsville-Hubbard Road  
Youngstown, Ohio 44505

Re: Concerns about Policies and Hunger Strike

Dear Director Mohr and Warden Forshey,

I write to you in response to troubling reports I am receiving about policies and conditions within the Ohio State Penitentiary (“OSP”). It has come to my attention that apparently following an incident in which a correctional officer was assaulted in December 2014, OSP initiated changes for some or all prisoners that include: (1) halting of rehabilitative programming; (2) increasing deprivation of human contact; (3) restrictions on prisoners’ movement within the prison; and (4) constraints upon individuals’ rights to practice their religion. OSP continues these punitive and destructive policies, despite the fact that the alleged assault occurred four months ago, and preventative safeguards (including the removal of the supposed assailant) have been installed. There is no indication the policies will change. As a result of these severe restrictions, prisoners in your facility are continuing a hunger strike that began in March.<sup>1</sup>

OSP’s prohibition of group religious activity for Level 5B prisoners appears to impose a substantial burden on the exercise of these prisoners’ religious beliefs, in violation of Section 3 of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc-1(a)(1)-(2). This statute provides in part that “no government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution,” unless the burden furthers “a compelling governmental interest,” and does so by “the least restrictive means.” *See Cutter v. Wilkinson*, 544 U.S. 709 (2005). I am unaware of what compelling governmental

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<sup>1</sup> Toledo Blade, *Hunger Strike*, <http://www.toledoblade.com/Featured-Editorial-Home/2015/04/07/Hunger-strike-3.html> (last visited Apr. 10, 2015).

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interest may justify OSP's new policy, and by the same token am dubious that this policy is the least restrictive means to achieve any such interest.

Additionally, I am troubled by your new policy severely limiting out-of-cell/recreation time and "range-time." I hear that some prisoners are not receiving the minimum amount of out-of-cell/recreation time articulated by ODRC policy or are recreating in even more severely restricted conditions than before. In particular, ODRC Policy 53-CLS-02, states that all the prisoners housed at OSP (Levels 5B, 5A, and 4B), are entitled to, at minimum, 5 one-hour daily periods per week; inside or outside recreation pods, yet now some prisoners receive none or very little meaningful recreation time. I have also received reports indicating that OSP has eliminated "range-time," when prisoners are allowed to roam their enclosed housing units freely for a period of time. This limitation is of grave concern because it means that many prisoners are living in a cage for 23-24 hours a day with little to no human contact, potentially causing profound mental and psychological effects.<sup>2</sup>

Finally, I have also learned that OSP has terminated Level 5B programming. I am unaware of any justification sufficient to warrant such a drastic restriction. These programs are essential to OSP's goal of rehabilitation. By cutting these programs entirely, OSP is inhibiting the process of rehabilitation.

In totality, these restrictions pose a severe danger to the prisoners at OSP. I understand that on average, prisoners can spend several years classified as a Level 5 prisoner, with nine months to a year at Level 5B. Under normal circumstances, OSP and ODRC recognize that the restrictive nature of the prison and Level 5 security can have a deteriorating effect on the mental health of prisoners. According to ODRC policy, prisoners who are subjected to prolonged Level 5 security are placed on elevated monitoring by OSP's mental health staff. If these additional restrictions are in place indefinitely at this extreme level of isolation, it will only have an even greater negative impact on these prisoners' overall health and well-being. As most individuals in the prison system are eventually released into the community, the ill-effects of isolation are a public safety concern for all the people of Ohio.

Ironically, while these new restrictions were precipitated by an assault on a staff member, the long-term effect they will have on prisoners' mental health and overall attitude may pose an even greater threat to security at the prison. As prisoners' grapple with even more extreme restrictions, they become more desperate and less stable, unnecessarily risking the safety of everyone at OSP, staff and prisoner alike.

Given the prolonged and seemingly arbitrary nature of these new policies, they appear to have been enacted merely to serve as a punishment against all Level 5B prisoners and run afoul of all notions of fairness and decency.

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<sup>2</sup> American Civil Liberties Union, *The Dangerous Overuse of Solitary Confinement in the United States* (2014), available at [https://www.aclu.org/sites/default/files/assets/stop\\_solitary\\_briefing\\_paper\\_updated\\_august\\_2014.pdf](https://www.aclu.org/sites/default/files/assets/stop_solitary_briefing_paper_updated_august_2014.pdf), at 6-7.

In pursuance of our continuing investigation, under Ohio's open records law, Ohio Revised Code §149.43, I ask you to provide the following records<sup>3</sup> generated between December 1, 2014 through the present date:

1. All policies concerning recreational and range time, programming and restrictions on religious practices.
2. Every policy and procedure that has been developed, renewed, or reinstated by the OSP during the stated period.
3. All of the policies that the Ohio State Penitentiary relied upon as a basis to institute (1) the ban on programming; (2) the ban on religious group activity; or (3) the restrictions on recreational or range time.
4. Any records regarding the implementation or communication of new policies.
5. Any communications related to the negotiation or discussion between any official(s) or correctional officers at OSP and any inmate(s) concerning new policies enacted since December 1, 2014.
6. Investigation reports of assaults on correctional officers in December, 2014.

Given the immediate need to address these issues, I ask that you produce the requested records electronically as they become available. I sincerely hope ODRC will fulfill this request as soon as possible and will contact you within 48 hours to inquire into the status of this request.

Please do not hesitate to contact me at 216-472-2220 or at [flevenson@acluohio.org](mailto:flevenson@acluohio.org) if you wish to discuss this matter further or have questions about the records request.

Sincerely,

Freda J. Levenson  
Legal Director

Cc: Stephen Gray, Chief Counsel  
Ohio Department of Rehabilitation and Correction

Joanna Saul, Executive Director  
Correctional Institution Inspection Committee

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<sup>3</sup> Records include, without limitation: writings, documents, papers, text files, computer files, emails from official or personal accounts, audio recordings, photographs, video recordings, annals, archives, journals, logs, notes, and drafts of those records.