

P U B L I C H E A R I N G
before
SENATE INSTITUTIONS, HEALTH & WELFARE COMMITTEE
on
OVERCROWDING IN STATE PRISONS & COUNTY JAILS

Held:
February 18, 1982
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Richard J. Codey (Chairman)
Senator Francis J. McManimon
Senator C. Louis Bassano

ALSO:

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SENATOR RICHARD J. CODEY (Chairman): Good morning. We would like to get started. The purpose of today's public hearing is to investigate the overcrowding of our State, county, and city institutions. This hearing is being conducted by the Senate Committee on Institutions, Health, and Welfare. Our first witness this morning is Mr. William Fauver, Commissioner of the Department of Corrections. Mr. Fauver.

W I L L I A M H. F A U V E R: Thank you, Mr. Chairman. I have distributed some material to the Committee, and I would like to talk about that, as well as the magnitude of the problem we are facing. I would like to say that I am pleased the Committee is having this type of hearing because the recognition of the problem has been slow in coming throughout the State. I know, both myself and the people in the counties appreciate the opportunity to be heard.

I would also like to invite the Committee, or any of the aides, to visit any of the institutions. Please feel free to call on any of our staff that you may need now or at a later time. And, I am sure the same invitation will be extended from the county people, so you can see the institutions, firsthand.

The material I have given you includes a brief opening statement, and I would just like to extract from that. I will try to be fairly brief on a very long subject, and then respond to any questions you may have.

In the statement, I say that during the last year both the State and the county institutions have experienced serious and ever-increasing overcrowding problems. Both the county and the State facilities are operating well beyond the capacities for which they were designed.

Now, the initial question is how did we get there? How did we get to this problem? I think there are basically three primary reasons for this. One is the effect of the new Criminal Code which calls for longer periods of time to be served. The second is the Parole Act of 1980. And, the third is the speedy trial system, which has put more people into the system. So, basically, it boils down to more people coming in and staying for longer periods of time and less people going out. That is a combination which we in corrections, both State and county, have had to deal with unilaterally for a long period of time.

The effects of the Code are most easily seen on the charts that I have given you in this material. If you open to page two, it demonstrates that the total commitments have risen, from two years ago to now, from a 6,000 figure to 8,900. Now, this means that those numbers are actually committed to the State institutions. These are adult males. Part of the big problem facing us right now is - if you look at the chart to the left - the waiting list in the county jails. As you can see from that, in a period of about a year it has gone from 200 to 1077 in January, and as we sit here today it is over 1100.

The next column shows the number of State inmates that were transferred out into county jails. We sent people out into the counties to see if there actually was bed space that could be utilized for State inmates. Under the Executive Order I have the authority to transfer people to these counties, and this is the number that has been transferred out primarily in only two counties -- Sussex and Mercer. These were the only two where there was any room. Now, that does not mean that on any given day, in the court's report or in their own reports in the counties, there aren't any beds there, but we have not shifted people where there are one or two beds for many reasons. They might be far from the county of their origin, and it may also be the fact that they have to go to court and the county transportation costs become involved -- and the fact that we, particularly in the shore counties

in the summer, have an influx, and we wanted to leave some bed space for them.

The basic problem boils down to the commitment of medium-maximum security beds. Now, I don't mean this to be critical of the Criminal Code. I think the Criminal Code is doing exactly what it was intending to do: it is getting the violent offenders off the street and into the institutions. The problem is just that there isn't space to keep them.

In that regard, I will submit to you some articles for your information. These are newspaper clippings, going back to 1976, in which the Department was asking for more bed space. This was a tough issue to convince people of -- that this was really going to happen. Some of the Department's figures were seen as self-serving in our projections -- that, for example, it is a Department and we were trying to create more of an empire by building more bed space. I think that the opponents of prison construction were listened to; and, as you will see from the clippings that I will submit to you, that definitely is a problem, because even with the 1980 bond issue, we are not, at this point, under construction in Camden with the State prison. One of the reasons for that delay has been the site and the fact that the money would not be approved for the bond issue until the site was decided upon. This got bogged down in committees, particularly in Capital Planning, and was really resurrected by the Legislature because after the vote was "no" in that particular Committee on the bond issue, the Assembly Committee, with Assemblyman Otlowski, asked to have hearings on that, and then the bill was further pushed and sponsored by a co-sponsor, Senator Hirkala, from this Committee, and it went through. So, we were able at that point to convince the legislators that there was a problem, but it was late in coming.

Now, the graphs on the next two pages, if I may call your attention to them, show the commitments and the types of people that are coming in. Just to summarize, 70% of the current inmates in the prison system are committed for violent crimes, and those crimes show on the chart on page 3.

Probably one of the most serious effects of the overcrowding has been the imposition of mandatory sentences. That shows on page 4, which indicates that so far there have been 806 people -- these are male adults -- sentenced to the State Prison System on mandatory sentences, for which there is an ineligibility for parole. There is no time worked off on that sentence. This is a very large percentage. This is better than one-quarter, and it continues to rise. So, some of these figures, as you can see -- 8% of these have mandatory minimums for 20 years or more -- meaning they are ineligible, up until that point, for release.

On the last page of this hand-out are the releases to parole from the institutions, and the dotted line is the prison complex. The youth complex is indicated by the top line. Youth, in this case, means indeterminate sentences rather than the determining prison sentences. The youth complex sentences, as you can see, have decreased from what they were normally. The prison complex is roughly about what it has been traditionally. There has been about a 30% decrease in those paroles.

The projections that the Department made were that the effects of the Criminal Code would hit us in about the spring of 1981, or about 18 months after the inception of the Code, and that was because people were going to be sentenced anyway and would be doing the first part of their sentence, but the extra length of stay wouldn't be recognized for about 18 months. Those projections were, at times, also questioned and it turned out to be right on the money; in fact, more severe than the Department, for the most part, projected.

This is basically where we are and how we got here. I would now like to take a minute to discuss some of the things that are being done.

The Department has created, since the inception of the Governor's Executive Order, in June of last year, a number of beds within the system, and also temporary kinds of beds. I would like to run over those with you, and then tell you some of the problem with them. Now, this is on another set of material, page 3. The first page says, "County Jail Populations", which I will get to in a minute.

The new bed space is created at the top of the third page, which is an un-numbered page, and it shows 370 beds created within the system. It shows 28 at Mercer County; 32 in Sussex; 40 in Trenton Psychiatric, which is another wing that was taken over at the State Hospital; and an additional 25 in community placements. Anticipated beds show, in February of '82, things that were just done. One is in effect, that is the Yardville Gymn, which was converted into a dormitory to house 60 inmates, and the Bordentown Chapel, which is not ready yet but which will be in effect this month. This will enable us to take another 60 inmates.

Following on down, within the next three to six months the transfer of the Juvenile Reception Unit from Yardville to Jamesburg picks up another 29 beds, and that will take effect on March 1st. Additional trailers have been ordered for, and site work is being done at Annondale and Leesburg to pick up the number shown there, another 128. Then, the bottom two are the two where we would pick up the most, and I would like to give you an up-date on that.

The first one mentioned is the Mid-State Correction Center at Fort Dix, with a capacity of 500. The Department and the State, for a number of years, have tried to get the use of Fort Dix from the military, and it was only the most recent request, toward the end of last year, that this was okayed. Since the general approval was given, the Department and the Attorney General's office have been in negotiation with the Department of Defense, the Department of the Army, for this use. There have been problems to work out as far as access, as far as security at the building, which the military wants to be sure of before they will allow us access.

The latest is that we are supposed to pick up the contract in final form from the Army on Friday -- tomorrow -- and our estimates are that-- Well, first let me backtrack a minute. The military will let us occupy the building once we have additional fencing and razor wire put up around the building, and additional towers. Our estimates on this are roughly 45 to 60 days; they are from contractors. Once that is done, we can start to put inmates into the facility and then fix up what has to be done inside at a later date. So, that is why I think the three to six months at the top of that, as far as the projection is concerned, is real.

The fourth item on the page, and the next large number, is Trenton State Prison renovations. The completion date for now, for phase one of the Trenton Prison renovation, is June or July of this year. At that point, it had been our intention to tear down the old wings of the prison -- to destroy them because they were so old. One of the reasons for the bond issue for replacement was because of the age of the facility. At this point, we are going to have to tear down one of the wings because it conflicts with the further renovation of Trenton Prison, but we do intend to keep two wings open while this kind of emergency exists, which will give us another three hundred beds. That total would mean within

the system and within the State facilities and the county facilities, fifteen hundred some odd beds would have been created since the Executive Order went into effect; the first one was signed in June by Governor Byrne.

This would address the issue of the backup in the counties, which is, right now, at 1100. The problem that I foresee is that that is going to continue to grow. To give an analogy, when the Governor agreed to the Executive Order, we were backed up about 400 and something in the county jails. The bed spaces that we have added, as of right now, well exceed that, and, yet, the backup in the county jails has climbed to 1100, and our projections are that it will continue to climb.

The need is in the medium-maximum security bed spaces. There is some room at our minimum security units, as there is room at some of the counties that run minimum security units. The question then becomes one of policy, or change in criteria to put people in these minimum security units that are not now put there. You know, liberalizing rules to be able to do that, or regulations to be able to do that, is a possibility, but it has to be weighed against our professional judgments as to track record with the types of offenders and the dangers that might present to the community.

On the county issue, the counties listed on the next page have taken trailers also, which the State has purchased, but there are problems with the counties installing them. Although most counties have been interested, the urban counties have problems with trailers, just on placing them. They don't have a spot. Hookup costs and installation costs are high. So, so far there are only four counties that are involved, and they are listed: Bergen, Essex, Middlesex, and Ocean, with 160 beds. The only stipulation we put on the use of the trailers was that they be for inmates; they couldn't use them for administration purposes or for other things, but just to help inmates; and, they are currently in use in these counties.

Above that on the page, you see the number of counties that have come in and cooperatively, with the money out of the bond issue-- And, let me backtrack a minute on that. The 1980 bond issue included \$30 million for construction of the prison in Camden and \$30 million for county construction aid. The advantage to the State was evident. Here it gives a number of State inmates that can be kept in the local county, that the counties would agree to keep, and would meet the criteria that a number of penologists have set forth on putting people as close to home as possible to maintain family ties, etc. The advantage to the county is evident in that this is money that comes in above their caps and many of these counties are either under court order to close or court order for construction of facilities or renovation of facilities. So, I think this is a start and a step in the right direction. But, the 270 beds listed here will not be available until the construction or the renovation work is completed in the listed counties.

I think for the first time, out of that bond issue, there was an attempt to address the problem as a statewide problem and not just as a state problem and county problem separate. I hope that this is a forerunner of things to come, both in this and in other areas, such as probation, parole, juvenile detention, etc.

Now, the county backup is demonstrated on page one, which shows what the capacity of that county jail is on the left, and what the county jail population is in the middle, and then the number of those inmates in that jail

that are state prisoners.

The removal of the state prisoners from the jails is a top priority of the Governor's. He made commitments to that during the campaign and has indicated that as a priority. I would point out that even with the removal of the state inmates, the counties would still be overcrowded, so it doesn't completely eliminate the problem. There are problems there that should be addressed, hopefully, on a cooperative nature. But, as an example, I will just pick one of these. The first one is Atlantic. When we say manageable population, it is basically what the county people have agreed upon, and the figures they have submitted to the courts through the AFC, and the Department concurs with. So, they show a manageable population of 186, a population on February 9th of 270, 72 of which are in-prison cases. And, then it runs down. The largest number is Essex County. Probably the three severest in numbers would be, just because of the percentage of overcrowding, Passaic, Union, and Camden. So, as you can see from this, if our plans for those other additional 900 beds basically come to pass by the summer, we would wipe this out for all intents and purposes, but my concern is that it still continues to grow -- the count will still continue to grow. So, I think other things have to be done, aside from just prison construction because the cost of prison construction is great and I don't think that if the trend continues, even if there were money, we just can't, practically, build fast enough to meet these kinds of needs.

You have material, which was also submitted. It is the Task Force Report from December. It was formed by Governor Byrne to come up with immediate kinds of solutions. Some of these things have been implemented. Most of them have not been, and part of that has just been because of the transition into a new administration, with the Governor taking some time to look at material supplied to him by the Department, and I am sure by others, as to proposals and suggestions about how to do that. But, I know that the Administration will be coming out fairly quickly with a policy on how to address these issues.

What I have presented to you is basically what we have done so far, and what we are intending to do, unilaterally. It addresses the immediate issues, but not really the long-term ones. I think that kind of a position paper on policy will be developed very shortly.

There are a couple of things I would like to address because they have come up in the past. One is on the issue of double celling. I have been opposed to double-celling at State institutions, recognizing very well that the counties are double-celling, and in many cases more than double-celling. The only institution in which we are double-celling in the State is in Trenton Prison. In the other institutions we have tried to avoid it by trying, for example, putting trailers at Rahway to house an additional 80 men behind the wall there. This gives us medium security bed space, but it also does not erode into program space. It is my professional opinion that to do otherwise -- to take away all these kinds of spaces -- would really lead to major disturbances in the institutions. Any state you can look at where there have been problems within the institutions, overcrowding is always cited as one of the major reasons, and is exacerbated by putting people into space used for programs.

I thought about this very carefully when we decided to use the chapel area and the gym area at Yardville, and weighted it against what has just become an impossible situation in the counties. I decided to try to give them some immediate relief by taking in 100 or so inmates by doing that. But, that

is the kind of balance that has to be struck all the time, and the kind of decision that has to be made. It is really not as simplistic as saying, "there is a building", or, "there are rooms here," or, "there is a warehouse here. to take over and put a fence around." That doesn't cut it, and would cause, again in my opinion, problems. I think that basically on that issue, our judgment and our track record over the last ten years speaks for itself.

The other issue I would like to address is one that we hit at times about planning and the Master Plan that was done prior to the new criminal code being enacted. I don't think that the Department has ever given up on that Master Plan that was written, but it did call for a lot more community based facilities for inmates. I think the new Criminal Code in itself, with a tightening of the sentences, is a clear indication that that is really not what people want. They want people away from them, and we have really had no better luck in establishing community home programs than we have with starting with prisons -- trying to get prisons sited. So, I think it can be expanded on. I think it is being thrown out at times as an answer that is really not an answer.

So, on the planning issue, I think that at times the Department's planning was really not that the Department wasn't planning -- and I think our ability to handle some of this shows that we have -- it was disagreement with the Department's plans, couched in terms of not planning rather than saying, "we disagree with what you are doing or with what you are planning to do."

What I have tried to do is to highlight a problem. As I have indicated, we have been cognizant of this for at least five to six years, and we have tried to do something about it, with limited success. I think the things we have done internally, which could not have been done without the cooperation of the counties, despite the fact that I know the situation they are under and the complaints they have with us and with the fact that they are stuck with that part of the problem, have helped the counties and the State, by the accommodations that have been made to survive to this point. We certainly intend to give it our best shot and continue, but I think we have to go further than just surviving and I would hope this Committee would address some of these issues with longer term goals, because if we create all this bed space and alleviate the county problem by July, as an example, and the rate of commitment continues, and the rate of parole continues, we will be right back here and we will have run out of miracles to perform to create this space.

Finally, I would just like to say that I, or my staff, would be glad to return when you have heard other testimony to answer any questions you might have, or to forward any other information you may wish. I will be glad to try and address anything you might need. Thank you.

SENATOR CODEY: Thank you. Senator McManimon.

SENATOR MC MANIMON: Based on the statements that the Commissioner made in the latter part of his presentation, I am going to ask a very direct question. Do you sincerely feel that this truly a realistic approach in your planning, based on the fact that you know you are being subjected to 70% commitments to State Prisons -- a 70% increase?

COMMISSIONER FAUVER: I think it is realistic in the sense that I think the bed spaces will be available. What I think doesn't show in this -- and maybe I should have addressed this briefly -- is that the reason we have been able to absorb that big increase is because we have moved prison cases into the

youth institutions, and it is becoming, in a sense, unclear as to what is a prison and what is a youth institution because there are so many prison cases in the buildings. Frankly, we don't have any alternative but to do that, but I think that even from the sense of the court's perspective, when they sentence someone to an indeterminate sentence, they have already decided that person is not as severe -- if you will, for lack of a better word -- a criminal, and they are giving him that type of sentence with the idea that he is eligible for parole right away, and he should be involved in programs. Also, they make a judgment as to whether he has improved himself. It becomes increasingly difficult to provide any of those things if prison cases continue to fill up those institutions. So, I think that is a problem, but the bed space -- I feel comfortable in saying we will have the bed space on these dates, or within those dates, or I wouldn't have presented it, because it would just be speculation then.

SENATOR CODEY: Mr. Fauver, it seems to me that what we have today in our state prisons is a very bad situation that is only going to get worse, and I am not sure that we are prepared to handle it from what I see at the present time. It also seems to me that the State has taken its problem and made it the counties' problem, and now the counties are taking the problem and making it the cities problem. I don't know whether it is going to explode in the next few days or in the next few months, but it seems that it is rapidly reaching that kind of potential. I seem to feel we have to do something immediate, and it doesn't seem to be here today -- that answer to doing something immediately.

COMMISSIONER FAUVER: Well, the answer to the immediate is only a fraction of the answer. I mean, there are only several hundred beds we can create immediately, as I indicated -- and by immediate I mean within the month.

I think for too long basically it has been looked at as a correction problem. It is not. You know, we do not in that sense, nor do the county jails, control the intake into the prisons. We do not control sentencing, nor do we control the exiting through paroles. Both of those areas have to be looked at, as well as increasing the bed spaces. In the plans that are being formulated through the Governor's office, or the ideas that are being talked about I should say, and the plans that are being formulated at this point, some of that will address the immediate problem. Whether there are other steps -- whether it is going to be other trailers or other types of things like that, modulars put down somewhere -- I am not certain that decision has been made. But, they are immediate. Trailers can basically be installed in four to six weeks.

SENATOR CODEY: Okay. But, as seasons change and it gets warmer, I would assume you will have more prisoners. There is more crime committed, so it is going to continue to get worse, and we have to address the problem immediately because it is severe. I went through Essex County Jail and I saw 80 people in a space that shouldn't accommodate more than 12, at best. You could feel the tension and you could see the situation that was coming within that space.

COMMISSIONER FAUVER: Yes. I am certainly aware of that. I think aside from just the increase in the commitments -- because generally there are more crimes in the warmer weather -- the living conditions are tougher in the warmer weather because of the humidity and the heat factor within the buildings. There is no question about that. That is why this figure is estimated at a June or July date, because we wanted to try to have these moves made before we really got into the middle of the summer.

I think the other thing with the counties, as I indicated, the State inmates are not the only problem. In some counties there would be considerable overcrowding without the State inmates. I am sure, given their drothters, today they would say, "Well, great, let us live with that. We want to deal with that." But, the point is, in any county there are a good number of pre-trial inmates. I know the Administrative Office of the Courts, through the Chief Justice, has asked the judges to look at that to see if changes can be made in bail. There have been changes made. I don't think that it can just be done unilaterally -- and when I say unilaterally, I mean both within the county and the State system. As you indicated, it is spilling down into -- particularly in Newark -- the City lockups because there is a blockage at the top.

SENATOR CODEY: Mr. Fauver, would you agree that the Camden site is three to four years away?

COMMISSIONER FAUVER: Yes. I would say three years at best.

SENATOR CODEY: I have heard that we are so overcrowded that we have guards making \$45 thousand and up, based on overtime. That is not an uncommon situation. Do we have the capacity to train people? When we house these inmates, do we have enough guards available?

COMMISSIONER FAUVER: Well, I would like to comment on the first thing. I don't believe that to be true. It is almost inconceivable that someone could make that kind of money as a line officer. Now, if you are talking about a supervisory officer, they could do it. I would say that the most severe problem with overtime, without a doubt, is in Trenton and Rahway. The problems are not just numbers of staffing, they are the conditions under which they have to work that cause more absenteeism than other places and a greater turnover. There is a training academy that trains both for State and the county. It does an adequate job in the training, but it is not geared to handle the numbers of people that go through the system, both State and county. There is a backup of quite a few officers waiting to go through the academy. Under Civil Service regulations, they cannot become permanent until they go through. But, the training is behind. In some cases people are on the job a year and one-half before they can get to the academy. It is kind of a like a Catch 22 because the places where they need the training the most, which would be the maximum security places, is where they generally tend to be the shortest and where they really don't feel comfortable in freeing people up to go, or if they do free them up to go, they may wind up working overtime, forcing people to work to cover them.

I think that in raw numbers of officer coverage within the institutions with the kinds of numbers -- the kind of inmate numbers they have -- in there now, I wouldn't say they were short to any great degree. Our request, even in this year's budget, does not reflect much in the way of requests for additional officer coverage.

SENATOR CODEY: Mr. Fauver, one more question -- your document on new State bed spaces--

COMMISSIONER FAUVER: Yes.

SENATOR CODEY: (continuing) --you have listed additional community placements. Can you just describe for me what that means?

COMMISSIONER FAUVER: Additional community placements mean that in this case we have a couple of half-way houses of our own that are run by the State, where we place people prior to -- like nine months prior to their release.

The additional spaces that we picked up here were through contract with Volunteers of America, who run these types of homes, and the New Jersey Association of Corrections. These are the two prime sponsors, and we contract with them to take State inmates. That is the additional number that was put out in the last six months of the last calendar year.

SENATOR CODEY: Thank you. Senator Bassano, do you have any questions?

SENATOR BASSANO: Commissioner, can you hear me?

COMMISSIONER FAUVER: Yes, sir.

SENATOR BASSANO: First of all, let me thank you for being here today. We certainly appreciate that. I would like to know with regard to the 1572 new beds that we are talking about for prisoners in our State, where do you anticipate those prisoners coming from? Are they going to come out of the county institutions, or are they going to come from some of the State institutions that are presently overcrowded, or will the majority of those beds be filled by additional people who are being sentenced under our new penal code?

COMMISSIONER FAUVER: Well, first, they will not be filled to reduce the populations at the State institutions. The priority will be to reduce the county jail backup. The actual transfers may be from, for example, a Leesburg to the Fort Dix site rather than from a county to Fort Dix. But, the intent will be to take in, let's say, 100 people in a given day from the counties, not to say that we are at over-capacity at Leesburg and we are going to get down to capacity by using those facilities. We have managed at the capacities we are at and we will maintain those capacities and get the reduction from the county.

Now, the other part, as to the sentencing under the new Code, as I indicated, these plans-- I think that was part of the thrust of Senator Cody's remarks about even if this all happens, that is now; but there are still going to be more people coming in because of things that were stated and because of the Code. Again, it is projection on that, basically. I don't know the raw figures -- how much that will go up from a backup of 1100. But, it has gone from a backup of four hundred and about seventy-five in June, to eleven hundred in January. Now, at the same time, I want to point out that the State has taken in a good number of people in this time. We have taken in over 2,000 people, and closer to 3,000. So, it is not that they are not coming in, but it is just that the numbers are so great.

SENATOR BASSANO: Based upon the 1572 figure that we have here, approximately how many of those beds will be made available for people who are presently in county institutions? Can you give us an idea as to how many of those beds will be utilized for county people?

COMMISSIONER FAUVER: Yes, all them will be utilized. But, the county backup will continue because if Essex County shows 160 today, the plan would enable us to take that 160. I don't know how many more in addition are going to be added on to that.

SENATOR BASSANO: I think I am still not getting the answer that I am looking for. Of the 1572, obviously some of those people are going to come out of Leesburg or out of some of the other State institutions. Of that number, how many people that are presently State prisoners that are being housed in county facilities will come out of the county? That is the basic figure I am looking for. I understand that overcrowding still exists, but what can we look for, at least in the form of temporary relief from the State as soon as those beds

are made available?

COMMISSIONER FAUVER: Well, again, I think I am answering you. You can look for all of that bed space to be made available for the counties -- the total number of beds -- because, as I indicated, if we move the people from Leesburg, it would only be because we think they fit better in the Fort Dix setting, not to relieve the overcrowding in Leesburg. If Leesburg's count is 1,000 today, when these bed spaces are open, Leesburg will still have a population of 1,000. What I am saying is, the county people won't go to any one specific institution. They will come in and be classified to wherever we think they belong. But, the bed space would be the bottom figure -- it would be the 957, realistically.

SENATOR BASSANO: On-- Excuse me?

COMMISSIONER FAUVER: I'm not sure I am being clear. My aide says I am not, so I accept her word for it. The count in the State institutions would go up by this figure. In other words, if we have 7,000 in now, we would have 8,000 in, and that would mean that 1,000 would come out of the county. It would not be-- The purpose of this is not to reduce our populations at all. It is to aid the county.

When I say aid the county, there are inmates -- the county is aiding us by keeping them. But, I mean, to relieve that pressure on the county, that is the purpose.

SENATOR BASSANO: So, what you are saying to me then is that Leesburg, if it is housing "x" number of prisoners, will continue to house that number?

COMMISSIONER FAUVER: That's correct.

SENATOR BASSANO: It is just that if you move someone out from Leesburg to a new facility, you are going to replace that person from Leesburg with someone out of one of the county institutions?

COMMISSIONER FAUVER: That's correct.

SENATOR BASSANO: On the Camden site, once that facility is in operation, do you feel that will be a permanent solution to our problem, at least on the State level, or do you feel we are going to, based upon the statistics you have, still have a need for additional beds in the State?

COMMISSIONER FAUVER: I don't think it will meet it on the State level, because one of the things with Fort Dix is, right now the contract with the Federal government is for three years, and whether there will be options on that is debatable. We are trying to, but it is up to them whether they will let us or not.

The other thing is, there are evacuation plans in that in case of any kind of national emergency. We would then have to vacate. So, I don't think we can count Fort Dix as a permanent facility by any stretch of the imagination. So, therefore, Camden would just kind of offset the Fort Dix loss if, in fact, there is a loss. Our projections are that we are going to need more bed space. I am not sure, sitting here, whether I would say that means more prisons. It may. It may mean -- you know, if there are any changes in legislation, for example, it could affect it. If there are changes in the rates of parole it could affect it, and we may not need them. It is not the only answer, but if things continue with nothing else changing, yes, we are going to need additional bed space.

SENATOR BASSANO: Thank you.

SENATOR CODEY: Thank you, Mr. Fauver.

COMMISSIONER FAUVER: Thank you.

SENATOR CODEY: Our next witness will be Mr. Edwin Stier, Director of the Division of Criminal Justice.

E D W I N H. S T I E R: Good morning, Senator.

SENATOR CODEY: Good morning.

MR. STIER: I am appearing here this morning on behalf of the Department of Law and Public Safety, headed by the Attorney General, who, as of course you know, is the State's chief law enforcement officer.

What I would like to do is to address the problem, primarily from the view of law enforcement. You have, of course, just listened to Bill Fauver, who is describing to you the conditions in the system from the point of view of the Corrections community. As I will point out to you in my remarks, we have now, and have for some time, been working very closely with the Corrections community to deal with the problem we are now facing in our institutions, which in our judgment has reached crisis proportions.

The reason we are working together is because we have recognized that the problems of prison overcrowding are really not separate problems. Historically, we have dealt with the problems of prison overcrowding and crime as separate problems. The law enforcement community, when defendants were convicted and sentenced to incarceration, stopped considering what the impact of that incarceration was going to be on the Corrections system. The Corrections people worked independent of the law enforcement community to deal with their problems in their institutions.

I think the Legislature has historically dealt with the problems of crime and the problems of prison overcrowding as separate problems. We now have come to the conclusion that they are really not separate problems; that they are interrelated and that you cannot deal with one without the other. In effect, what we are now faced with is balancing competing social interests. On the one hand we have crime and public safety to be concerned about -- ever increasing demand for longer sentences of incarceration, removal of criminals from the community, particularly professional, repetitive criminals who, statistically, are responsible for a large proportion of the violent crime that we face. And, on the other hand, we are faced with the problem of rising costs of incarceration, not just the dollar and cents costs of incarceration, but the social costs of siting institutions -- finding the space within our State to house the inmates.

Over the past several years, we in law enforcement, and the people in the Corrections system, have been trying to wrestle with this balance -- have been trying to help to strike this balance -- and have been trying to make adjustments in what each of us is doing to find the ultimate answer and the ultimate balance between how much public safety we can provide, and, at the same time, how much of the cost of incarceration the community can bear. I assure you that from our experience we have not found any quick fixes. I am not going to tell you I have an answer to that problem, that I can tell you either where that balance should be struck, or how we can address our current crisis situation in our institutions.

I can tell you something about what we have done and how we perceive the situation as reaching this level, and try to make some predictions about where we go in the future, at least from a law enforcement point of view.

First of all, we have to recognize that in fact we have had rising crime rates in this State, as we have had across the country over the past several years. The most recent crime statistics -- the Uniform Crime Report for 1980 -- indicate that crime in New Jersey, as it has been across the country, is up 10% over the prior year. Violent crime in New Jersey is up 21%, as compared with 13% across the country. Non-violent crime is up 9%, as it is across the country.

And, the startling statistic is that 83% of all the indexed crimes -- that is, those crimes that are generally considered most serious violent crimes, and serious property crimes -- are not cleared by arrest. That is, those crimes go unsolved, and the six month statistic for the year 1981 suggests that the rates are continuing at the levels that have been established in prior years. So, even if we did nothing but solve crime at the rate at which it has been solved over the years, even if we did nothing to improve our efficiency in law enforcement, the numbers of people who would be apprehended, prosecuted, convicted, and sent to institutions would increase, simply by virtue of the fact that we are dealing with more crime.

But, we have made adjustments. The Legislature has made adjustments and law enforcement has made adjustments in an attempt to use the criminal justice system to stem the increasing rate of crime in this State. The Criminal Code, which was enacted a couple of years ago by the Legislature, is generally viewed -- I think this is true not only in law enforcement but in the judicial system -- as a more harsh system of punishment than prior criminal law. That's a shift, by the way, from its original intent. If you go back into the legislative history of the Code, I think you will find that one of the primary elements in the code as it was originally proposed was the presumption against incarceration in an attempt to reduce the numbers of people who were going to institutions. During the development of the Code in the legislature, because we were beginning to experience a rapid rise in crime rates and because of very strong public sentiment in favor of meeting those crime rates with harsher punishment, the sentencing provisions of the Code shifted and now we have a Code which is generally considered to, at least with respect to the more serious crimes, have within it a presumption in favor of incarceration. Generally, the penalties for violent crimes -- first and second degree offenses -- have been increased. Categories for extended terms have been broadened; that is, there are more lengthy sentences on repeat offenders imposed under the sentencing provisions of the Code than were imposed under prior criminal law.

One important provision which I think deserves to be highlighted seems to have had the effect of shifting the sentencing of those convicted for first, second, and third degree offenses away from county jail and into State institutions. That is, statistically, there appears to be a more rapid increase in the number of people sentenced to State prison than to county jails. I think the reason for that -- at least the one we have speculated about and tried to analyze empirically -- is that prior to the enactment of the Code, a sentencing judge had the discretion to sentence anyone convicted for most offenses, including violent crime, from zero time in prison up to the maximum, which was either three or seven years, generally. Under the sentencing provisions of the Code, that discretion has now been restricted, and for a first, second, or third degree conviction, the choices that a sentencing judge has include sentencing for the statutory term, which is either 10 to 20 years, or 5 to 10 years, or, in the alternative, probation. And, the only way he can place a defendant into a county institution for one of those sentences is by imposing a period of incarceration as a condition of probation, and the code limits that to six months. Previously, a judge could sentence someone to county jail for up to a year for a majority of these offenses; now, he can only sentence someone to a county jail for up to six months. We believe that restriction has shifted the prison population to a great extent from the county jails, where they had previously been going for up to a year, to the State prisons,

which has led to the serious problem we are encountering at the State level.

In addition to the original provisions of the Code, we have had several amendments, as you well know: a three-year mandatory, minimum sentence for possession or use of a gun in connection with certain crimes; parole ineligibility extending to every kind of offense under the Code, of up to one-half the sentence that is imposed. We find that provision is used very heavily by sentencing judges, even more heavily than the extended term provisions for repeat offenders.

In addition to the Code, law enforcement has responded over the last several years to public demand to do something about crime. We have, in all but two counties in this State, full time prosecutors' offices, which every year become more efficient and more experienced at handling the case load which runs through their offices. We are in the process of automating the case management system in every prosecutor's office and every court in the State. Together with the Supreme Court, a year and one-half ago we launched a speedy-trial program. As of that time, that is, the beginning of the speedy-trial program, it took an average of a year for a case to get from arrest through trial disposition -- an unconscionable delay between the crime and the imposition of a penalty. The present goal of the speedy-trial program, we are confident we are going to meet the reduction of that period of time to 180 days, and there are goals beyond that for succeeding years.

A number of experiments are going on in the counties at speeding up the system. For example, in Hudson County, where we have a central processing system for everyone who is arrested in the county -- they are all brought before one judge -- a number of cases are disposed of right there, in that court room, on the day the defendant is brought before the judge for his initial appearance. I think the speed record that was achieved is something like two hours between the commission of a crime and the imposition of a sentence in one case in Hudson County under that system. Of course, we don't achieve that in every case, but the point is that a number of measures have been taken all over the State to speed up the system. Of course, the more you speed it up, the more people are going to come into the system, at least until we catch up with the backlog.

We have career criminal programs operating throughout the State which target repeat offenders, particularly those who are prone to commit violent crimes, and fast-track those cases. So, those cases are moved more rapidly and longer sentences are sought.

We have an arson program which has resulted in more convictions for that offense. And, generally we have made efforts, and are continuing to make efforts, to improve the quality of police services all over the State in an attempt to solve more crime, more rapidly.

We recognize though, that along with efforts to speed up the system and improve our efficiency, we have an obligation to weed out those cases that don't belong in the criminal justice system. So, each prosecutor has a screening system -- an intake system -- where cases are reviewed immediately upon entry into the prosecutor's office, and on the average, about 60% of the criminal complaints that are filed are either dismissed or down-graded so they can be handled in municipal court. So, all of those arrests are not processed ultimately through the Grand Jury and trial, with the potential for the imposition of a prison sentence.

In addition, pre-trial intervention programs are in operation throughout the State and a special procedure, similar to PTI, is in operation with respect to drug cases, so that minor drug offenses don't have to go through the system,

and can be disposed of in a suspended proceeding, where over a period of time, if the defendant hasn't engaged in other criminal activity, he is then released and his record is expunged.

When you analyze who is going to prison, I think you will recognize that the solutions are not those that have been freely discussed, at least at the initial stages of our recognition of the problem -- that is, the assumption that we can let out some of the petty offenders that are clogging up the prison system does not seem to hold up when you analyze the State prison population. Statistics show that approximately 60% of the people who are going to our State prisons are violent offenders, people who are sentenced for violent crimes. Twenty-five percent of the people who are going to our institutions are property crime offenders, but when you analyze that statistic you realize that 60% of those -- 60% of the 25% which are property offenders -- are convicted of burglary. Again, that is the kind of offense that I think most people believe deserves harsh sentences. And, even when you analyze those offenders who are in prison for either non-burglary property crimes or some other offense where we might feel that something other than a prison sentence ought to be imposed, we have to examine the record of each of those defendants before we reach a final conclusion, because you may find that a defendant who is convicted of a white collar offense may have a record for violent crime and may, based on that record, be a candidate for incarceration in the State prison system.

In addition to what we have tried to do in the criminal justice system, we have worked very closely with Bill Fauver and other members of the Corrections community to try and address the problem. The statistics I have given you have been generated as a result of a joint analysis of the crime statistics and incarceration statistics which were done by the Department of Corrections and the Department of Law and Public Safety, with direct participation by the courts. Obtaining Fort Dix as a temporary relief was a joint effort in which the Law Enforcement community participated -- Attorney General Smith was very instrumental in persuading the Administration to overcome the objections from the Pentagon, and finally agree to providing Fort Dix to help relieve our problem. The Kugler Commission was established and has filed a report, which I am sure you have, making several recommendations, the most important of which, of course, was that some kind of a legislatively enacted safety valve has to be created in order to relieve the pressure, if these trends continue, if there is no abatement, and if we simply run out of space.

We have worked with the courts to try and reduce the population in the county jails of pre-trial detainees, trying to weed out from the county jails, to relieve pressures on those institutions, those who can safely be placed back on the street. Accelerated bail hearings are being held all over the State. The assignment judges have received instructions from the Chief Justice to review jail population on a regular basis and initiate bail reduction hearings as early as possible.

We are working on the problem, but obviously we cannot solve the problem ourselves -- that is, law enforcement and corrections. We have now reached the point where the matter has to be dealt with legislatively. How the Legislature deals with it is something that I am not about to suggest. But, I can make one observation, and that is that the entire problem, not just the problem in the correction system, not just the problem of overcrowding in a particular county

or a particular city, has to be addressed, but the entire problem has to be addressed -- the entire problem of balancing the need of a community for public safety and for the most effective law enforcement we can provide, and at the same time the need for humane treatment for those who have been sentenced to incarceration. Thank you.

SENATOR CODEY: Thank you, Mr. Stier. Are there any questions?

SENATOR MC MANIMON: One thing that concerned me, Mr. Stier, was the fact that you stressed the concept of balancing the competing agencies with respect to the cost of incarceration, and also the cost of public safety. It is apparent that you are doing a hell of a job because people are being incarcerated. But, you reflected that in the county, sentences used to be for a year and now they are six months -- I mean, they are incarcerated in the county for six months and then they are forwarded on to the State, they become a State burden. If we were to go back to the initial intent and then put the burden on the county, we would have the same or a similar problem with the county that we are presently having with the State.

MR. STIER: I am not suggesting that that is an answer, except to this extent: if a judge is faced with the alternative of sentencing a defendant either to a period of incarceration for five to ten years, let's say, for a second degree offense, or placing him on probation and sentencing him to a county jail for up to six months, he may feel that the sentence of up to six months is inadequate, and statistically this appears to be the way sentencing judges are behaving. He may feel that six months is not enough time in an institution, and his only other option is to then sentence the defendant to five years. If he had more discretion to sentence to a county institution for, let's say, up to one year, he might feel that one is adequate. So, although the defendant would go to a county jail -- and it is true that for that period of time we wouldn't have solved the problem -- he would stay for a shorter period of time; he would stay for only a year rather than the five years, or whatever the period of time he would actually serve would be, but it would probably be a shorter period of time. So, the net result over a longer period of time would be reduction of prison populations.

Judges do not seem to be using that option of sentencing to a county jail for six months as a condition to probation. They seem to be taking the option of sentencing to State Prison for a more lengthy period of time.

SENATOR MC MANIMON: Well, the reason why I brought that to your attention was, just recently our own County Executive went on record stating that he just can't handle any more. It is also apparent that other counties are having the same basic problem. I asked the Commissioner -- Commissioner Fauver -- if this plan that they are presenting on the projected new beds is truly realistic. I am very much concerned about the fact that I don't think it is. Fort Dix is only going to be utilized as a stop-gap measure. You made a statement here and you gave us the facts, and if anyone should know, you should know that 60% of those State prisoners are presently in there for violent crime. Now, what would Fort Dix be used for? We are using youth centers and other things to accommodate these prisoners, so I am beginning to wonder if we do have to bite the bullet and bring the facts out instead of us starting something now only to have it obsolete again in three years, and you will be right back here again before us.

MR. STIER: I agree with you. All we have been talking about in terms of increasing bed space are a series of stop-gap measures, to try to solve

the present problem of overcrowding. Every indication that we see is, with that race to incarceration under the current sentencing provisions of the code, and given the crime rate in the state, and given our rate of solving crimes, those statistics will increase: more people are going to go to prison for longer periods of time, and as soon as we relieve the present problem, the problem is going to begin to build again. I don't know the answer, but I suggest the answer is not simply one of dealing with the question of providing more bed space, and it is not simply letting more people out of institutions. There has to be an analysis of who is going to jail, whether those people are going to prison for the length of time they ought to go, and what the cost of that is to the public. Only after you consider all those factors can you make an intelligent judgment, it seems to me, about whether the answer is in increasing the bed space in the institutions or in reducing the numbers of people going into those institutions.

SENATOR CODEY: Mr. Stier, you mentioned in your testimony about getting more State prisoners due to sentencing under the new Penal Code, correct?

MR. STIER: Yes.

SENATOR CODEY: Well, it seems to me that the situation we are in is that a prisoner is a prisoner and he is caught up in the system, whether he is in county or in state, and that really has no bearing at this point because of the overcrowding.

MR. STIER: Can I respond to that, Senator?

SENATOR CODEY: Sure.

MR. STIER: The only point I wanted to make on that score -- and I agree with you 100% -- is that the county and state systems have to be viewed as a whole. We have to look at the entire prison population of the State in order to understand the problem and begin to deal with it. My only point about making a distinction between a county sentenced inmate and a State prison sentenced inmate is that you also have to consider not just the number of people going in but the length of time for which they are sentenced. One way to relieve prison population is not to send fewer people to prison but to send them there for shorter periods of time. And, the one provision of the Code that I was talking about, and that I wanted to call you attention to, seems to have had the result of people going away for longer periods of time than they might otherwise be sent away for if there were greater discretion provided to a sentencing judge. That was the only point I wanted to make on that.

SENATOR CODEY: You also mentioned to Senator McManimon, in answer to one of his questions, about the effects of longer sentencing and the cost, and whether or not it is justified -- I guess it is justified and that we want to do that. I can remember reading, just recently, that the odds are that if you are born and live all your life in a large American city, your chances of being murdered are greater than an American combat soldier's were in World War II. So, it seems to me that the fear the public has here is justified. They want criminals away for longer periods of time, and I think on the bond issue you have seen that is their philosophy. They are willing to pay for it, as long as we do it the right way.

MR. STIER: My own views, of course, are based on my experience in law enforcement. I believe we have to respond to the problem of crime by demonstrating that punishment is going to be swift and severe, and that society is not going to tolerate the kind of lawlessness that we have witnessed over the past several

years. I think that if we maintain that posture and if we provide the resources to support that kind of approach, that we will eventually turn the corner. We are not going to do it alone in law enforcement. I don't think that law enforcement is going to solve the problem, any more than law enforcement is responsible for the creation of the problem, but I think that law enforcement has an important role to play in trying to contain the problem of crime. I think that we can be most effective if the philosophy that I just described is continued, yes.

SENATOR CODEY: Okay.

SENATOR BASSANO: Based upon your knowledge of the criminal justice system, in dealing with the new Penal Code and the projections the new Penal Code is giving off with regard to the number of beds that are going to be needed in the future, what do you see as the need for the State of New Jersey to have facilities -- additional bed facilities -- to meet our needs? What do you see that number as being?

MR. STIER: I wish I could give you an answer on that. I have seen projections that within two years we will need double the bed space we have. I don't know how valid those projections are. I don't know how realistic they are. There are variables that make it very difficult to project a specific number. I would have to-- I couldn't give you an intelligent answer to that that I would be satisfied with. I can tell you that given the current trends and the rates that we have seen, the bed space which is being projected will be inadequate to handle what we see coming down the pike.

SENATOR BASSANO: It makes it rather difficult for this Committee to try to make recommendations to the Legislature to look to the future when the future is so black in the sense that we just don't have any idea as to what direction we are moving in.

MR. STIER: I was offered the resources of our Department to work with the Legislature, with your Committee, to try to make those projections. I don't think this is something that we alone are going to be capable of forecasting. I think it is something we would have to come up with jointly. We do have the numbers. We do have the raw data, and we would be more than happy to work with the staff of the Committee to try and give you the information you need to make an intelligent projection.

SENATOR BASSANO: I would hope that you would do that, because it would make our job a little easier also.

MR. STIER: Certainly.

SENATOR CODEY: Thank you, Mr. Stier.

Our next witness is Mr. Anthony Fuccello, President of the Association of Wardens. Mr. Fuccello, good morning.

A N T H O N Y F U C C E L L O: Good morning. I apologize for not having anything prepared to hand to your Committee. I appreciate the opportunity to be here today on behalf of the County Jail Wardens. We have approximately 12 to 15 county jail wardens represented here today, along with the sheriffs who have charge of the county jails.

I have heard statistics spoken of here this morning that reflect our predicament of overcrowding in the county jails, but statistics don't really do our situation that much justice. There are a lot of people problems that go with overcrowding in county jails, and probably that will be the main focus of my testimony here today.

It is an established fact, of course, that we are overcrowded.

Approximately 70% of our 26 county institutions are beyond their rate of capacity at this point. The range of that overcrowding is between 81% and 201%. As Mr. Fauver has said, there are approximately 1,000 inmates in county jails that are beyond our rated capacities, of which 1100 are really state prison inmates awaiting transfer into the state prison system.

Our numbers began to climb approximately one year ago, and have been climbing at approximately the rate of 2% per month since a year ago today. Overcrowding in jails can have a very devastating effect on the people required to live and work in those institutions, especially the pre-trial status in the county jails. Inmates are extra hyper; they are overactive. Their condition is unsettled: they don't know what is happening to them; they don't know what is happening to their families; they don't have that peace of mind of knowing, "I have six months to serve", or "I have six years to serve." Consequently, they are in a continuous hyperactive state. When you begin to overcrowd people who are in this hyperactive state, there is a literal lack of personal space. People can't stretch out. They can't get away from the people they live with, day in and day out, and in that hyperactive state there is a lot more aggression, there are a lot more fights, there is a lot more bickering and stealing from each other, etc.

Merely by multiplication, the problems that we normally encounter in county jails are multiplied by our higher numbers. There is more contraband coming into the institutions. There is more sexual activity in the institutions. There is more noise. There are more complaints. There is more discipline -- just more of everything because of the high numbers. Our essential services are taxed beyond their limits -- medical services, food services, social services, and education. Visits are restricted, necessarily; so is recreation. This causes concern with inmates, that they don't have the opportunity to release their frustrations. Consequently, the system feeds on itself and they become more hyper, more overactive, more aggressive.

As a result of all of this, our staff is subjected to stress that is beyond description. They are more prone, because of this stress, to accident, they are more prone to illness, they are more prone to sicknesses that cause them to go off the job. When they are off the job we must fill these spaces with overtime. That means somebody else is working more. Consequently, there is more stress, more sickness, and more illness, and, again, the system feeds on itself.

Our staff gets short-tempered. They begin to write more charges against inmates. And, again, it feeds on itself.

What do we do with the people we don't have room for? What do we do with the people who go beyond our rate of capacity? Well, if we are lucky, we can double-bunk -- and I say that with tongue in cheek, of course. If we can't double-bunk, we begin to use classroom space and dormitories -- we create dormitory situations -- we begin to use recreation rooms, or hallways, and they start sleeping on the floor. When we use classrooms, or recreation areas, that takes programs away from us, and, again, these programs are designed to relieve some the frustration, and without that, we have more of the same -- more fights, etc.

One thing that you must bear in mind is that not all county jails are built the same, and it is quite possible for one county jail that is at 110% of capacity to be able to handle that 110%; another county with the same figure could in no way handle it. It depends upon where you have to put your people.

If you have to put them in classrooms, if you have to use gymnasiums, you are compounding your problem by taking away those program areas. County jails -- as has been mentioned -- should not operate beyond 90% of their rate of capacity. You need that 10% to move people around, to separate people who cannot be with each other by reason of the fact that they are co-defendants, or they may be in there for assaulting each other and they need to be separated. And, if you have disciplinary problems, you need places to lock people up. So, you need that 10% room in your jail just to move people around.

I would like to draw an analogy if I can between overcrowding and a drowning man -- a person who is a non-swimmer and who is in water. The non-swimmer in water can drown in six feet of water; he doesn't need twenty feet. So, it doesn't matter if it is 200% or 110%, it depends on who you are and what your physical plant is, and you could be in the same situation.

What are the solutions? I don't know, and I don't believe our county jail people really know what the solutions are. To over-simplify a very complicated problem, we need to either loosen up some of the cells that we have in the State by releasing -- early releases, etc. -- those offenders who are not of an assaultive nature, or we need to build more cells. It is as simple as that, from a simplistic viewpoint. I will leave it to people who are more intelligent than I am, or who are more experienced in this field than I am, to come up with the solid answers. I believe my colleagues will stand by me when I say that we keep so busy on a daily basis, just trying to keep our heads above water, that we don't have time to sit back, reflect, and think of long term, or even short term, solutions, beyond tomorrow.

As I said, there are approximately 12 to 15 counties represented here today, and I realize they are not on your agenda, but I am sure they would be willing to come forward and speak if you wanted to hear some particular problems of other areas.

SENATOR CODEY: Thank you, Mr. Fucello. You are also the warden in Mercer County?

MR. FUCCELLO: Mercer County, yes.

SENATOR CODEY: It would appear that your situation is not nearly as bad as some of your colleagues.

MR. FUCCELLO: In terms of percentage of numbers, no. We are bouncing around 120%, but we are one of those institutions that doesn't have the luxury of double bunking. Our physical plant does not allow us to do that without some major construction work being done. We are one of the ones who have to use program space. We are taking classrooms and making dormitories out of them. Our next step is going to be using the gymnasium. Again, that is not a desirable thing to do.

SENATOR CODEY: Do you feel that your colleagues have expressed the acuteness of the problem to you, that these county institutions themselves are ready to explode?

MR. FUCCELLO: Yes, they have to some degree. My heart goes out to Passaic County in particular, who recently experienced a population of over 200%. Because he is facing such sheer numbers, he doesn't get to our meetings that often, so he can't really relate that kind of information to me. Again, maybe you might want to ask Passaic County some questions directly.

SENATOR CODEY: Thank you, Mr. Fucello.

MR. FUCCELLO: Thank you, Senator.

SENATOR CODEY: Our next witness will be Mr. Joseph Wagner, Warden of the Atlantic County Jail. Mr. Wagner.

J O S E P H W A G N E R: I want to thank you for the opportunity to speak today. I want to be brief, but I want to talk to you about what it is like in the county jail since I have been the warden of the Atlantic County Jail.

The county jail, today, has 255 inmates. We have 186 beds. That means the rest of the people are sleeping on mattresses on the floor. It is that simple. Sixty of the people in our jail belong in State Prison. According to the statute, they are to be held only 15 days in the county jail and then they are to be transferred to the State. That is a very good statute, because the difference between a person who is sent to State prison and a person who is to be held in a county jail is great. It is not the same as putting one person here or one person there.

If a person is awaiting trial, that is the type of person that was intended for a county jail -- a detention facility -- until their speedy trial can be held. A person awaiting trial doesn't know what is going to happen. He doesn't know if he is going to be convicted. He doesn't know what the future actually holds. We do hold people for six months, or under a year, who have been sentenced, but that is still less than a year.

However, the day a person is convicted and especially the day this person is sentenced to State prison, I would ask you to take just a few moments yourself and think what would go through your mind if someone said: "you will spend the next ten years in State prison." That is the end. That is the end of hope. That is our most dangerous ending, right at that point. What does he have to lose? Ten years of his life he is going to lose. And, we are getting sentences of 20 years and 40 years. When you consider this, you can see it is not the same. A person who is sentenced to State prison should be quickly moved to a State facility. We have our own problems with county prisoners -- those sentenced to a county jail. Our prison rate has gone up there also. We used to have 40 to 50 people sentenced to county jail; we have 80 today.

We have put in all the programs in Atlantic County that we possibly can to reduce the detainees. We have a bail unit. We have the early release, pre-trial intervention. We have done everything on that end of it, from the courts. The people I have in my jail today are violent. They should not be on the street. There is not a warden in this room who is saying that -- that they should be released. But, at the same time, there are many people in this room who knew the problem back in 1974, when we sat on the planning commissions, and when they came out with their plan in 1975, 1976, and 1977. During that time we heard 4,800 beds were going to be needed by the year 1990. That was reduced to 1200. All right. We have not yet built one.

It is a matter of where are you going to place them? No one wants jail. No one wants crime. Simply put, put one in the north, one in central, and one in the south, but you must build.

For those who say, "No, we don't need any more bed space;" "We don't need any more jail space," ask them what they want to do with these people. But, don't ask the wardens to let them sleep on the floor. It is not an easy task. Anyone who walks through the jail, as we should and as we do, daily, can see the tension. One can see the problems. If you were to talk to someone who has been sentenced to 20 to 40 years in State prison, you would understand why I am so concerned that they be moved quickly. The answers are very difficult.

I don't want to take up your time, I just want to let you know that there is a great difference between a person who is sentenced to State prison and a person who should be housed in a county jail. Where you find the bed space -- there are mental hospitals, there are other camps; there is space around. We are expecting an increase, as usual, since it is a resort community, of 40 to 60 people during the summer months. I am now 60 over capacity. That will make it 120. You have the figures, I am sure, and I don't want to belabor the point. But, we do have a problem.

SENATOR CODEY: Senator McManimon.

SENATOR MC MANIMON: Yes, I am very much concerned about that report and that projection back in '76 and '77, when you said 4,000 additional bed spaces were needed. Am I to assume that is collectively, both State and county, and not just county?

MR. WAGNER: No, it was the Master Plan for the Department of Corrections.

SENATOR MC MANIMON: Which would encompass both county and State?

MR. WAGNER: No, just the State, State prison beds.

SENATOR MC MANIMON: Just the State? I asked the question, prior to your speaking, of the other speakers about the realistic approach to be made on this bond issue, which is only projecting 1572 beds.

MR. WAGNER: That's what came down. But, the projections in the meetings that we held before -- the general consensus was we would need 4,800.

SENATOR MC MANIMON: That's on the State level.

MR. WAGNER: Yes.

SENATOR MC MANIMON: It is completely disregarding the fact that we have a serious problem already on the county level.

MR. WAGNER: That's correct.

SENATOR MC MANIMON: And we know the serious problem we have on the State level, and the bond monies are projecting 1,572 new beds.

MR. WAGNER: We have projected in Atlantic County -- we are about to build a new jail -- back two to three years ago that we were going to need the additional beds.

SENATOR MC MANIMON: One other statement you made that concerned me very much too -- it was apparent from both Mr. Fauver and Mr. Stier -- was that the overcrowding situation definitely reflects back on the new Code of Criminal Justice and the new Parole Act, and, in conjunction with that, the Speedy Trial Program. Now, if our already projected increase of those going to State prison is 70%, and you already have a figure estimated for this summer -- and you are just mentioning Atlantic County -- if you take the 21 counties throughout the State and you use the same percentage, I think basically we are going to have to face the reality that this whole plan is completely way out of whack. We are not even going to touch one part of what we should be projecting.

MR. WAGNER: That's correct. The parole has released only half this year of what they did last year.

SENATOR MC MANIMON: Thank you very much, sir.

SENATOR CODEY: Mr. Wagner, the Kughler Report of a couple of months ago -- we now have a little over 5,000 prisoners, and they projected that in nine years we will have close to 15,000, so you can see the numbers we are talking about.

MR. WAGNER: One of the things that should be looked into for the immediate solution would be early release. It is a hard thing to accept, but

if a person is going to be released next Wednesday from jail -- from State prison -- he is not going to be rehabilitated in the next week. And, if he has done the major part of his sentence, that may be a quick stop-gap.

SENATOR CODEY: Thank you, Mr. Wagner.

Mr. Thomas Smith, Assistant Public Defender, Department of the Public Advocate.

T H O M A S S M I T H: Thank you for inviting our office to participate at these hearings. As many of you know, we handle about 80 to 85 percent of the criminal calendar in the State of New Jersey. Of that 80 to 85 percent, you could say over 90 percent who are incarcerated are represented by our office. So, we have an acute interest in problems of overcrowding in both the State institutions and in the county institutions.

You previously heard testimony as to facts concerning conditions in our county jails; and, going into those jails day-in and day-out, we see those problems. The overcrowding has caused the double-celling in cells that have been designed for one person. Traditional areas that we used for recreation, we used for work release programs, we used for education, are now being used to house inmates. This has increased tensions and has caused us problems in providing representation to the inmates -- in getting space to interview them, etc.

I am not going to take up the Committee's time by telling what we call "war stories", but I would like to relay one story that we came across in a particular county jail: Two inmates were placed in a cell that was designed for one inmate. That necessitated that one inmate would sleep on the bunk, and one inmate would sleep on a mattress on the floor. The mattress was partially under the commode; so, in essence, one of the inmates was sleeping under the commode. One of the inmates that was placed in this cell was a person who was in jail on a failure to pay motor vehicle fines and had a slight bail of \$500.00 - both of these were pre-trial. The other person was in on a case of possession of CDS, less than 25 grams - possession of marijuana. His bail was \$1,000.00. Now, the unwritten rule amongst the inmates is that seniority counts, and if you have been in the cell long enough, you get the bunk; and if you have been there the shorter period of time, you get the mattress. There was an altercation as to who had the seniority, because one of the inmates had paid part of his fine and had left but was thrown back in jail in the next couple of days. He argued that he had seniority from his past time. The other inmate said, "No, your time ended. It broke. I have seniority. I have been in this cell the longest period of time on a continuous basis." An altercation developed. A stabbing took place. One of the inmates allegedly stabbed the other inmate in the kidney. So, now we have a situation where we have two inmates on minor offenses; one inmate now has an indictable offense against him and the other inmate is seriously injured.

These are the kinds of things that develop in the county jails that exacerbate problems -- the overcrowding and the tension, etc. Now, what can be done? What I would like to do is pose a few questions in areas I think the Committee ought to take a look at when they deliberate on the questions of overcrowding. I am focusing basically on the county jails which we are really familiar with and with which we are involved in litigation. I will talk about that later.

The first area to take a look at is "bail". A number of pre-trial detainees are in county jails on low bails. They are in on offenses of property crimes, thefts, motor vehicle violations, failure to pay fines, etc., and these bails run anywhere from \$50.00 up to one or two thousand dollars, which is a relatively low bail. One area which the Committee ought to look at, I suggest, is the question of whether these individuals can be released without this bail hanging over their head - possibly on R & R, or some form of work program, etc. - so that the inmates who go to jail are people with high bail; people who are facing serious offenses.

Also the mechanics of bail should be looked at. In one county, we have a situation where if you are going to post bond using real property, you have to prove that the real property value is twice that of the bail. You also have to go out and get an accessor to come in and do an evaluation of the value of the property,

and then make a report. All of this slows down the eventual release of somebody on bail -- so possibly the bail mechanics should be looked at.

I think ultimately you are going to take a look at -- Given the situation and given the facts that we have limited space, we are going to have to prioritize who we lock up - this is both pre-trial and post disposition. The Penal Code, the effect of the parole statute, and other things have created a situation where many more individuals are going to jail for longer periods of time and facing more time. We should take a look at the question of minor offenses - whether in fact they ought to be susceptible to an incarceration period, the question of whether they ought to be susceptible to bail at all. It is a question of prioritizing the kinds of offenses with the available space.

The third area I would like to pose to the Committee is the question of "parole". Not so much from the standpoint of early consideration of parole - that is a legislative function and the Legislature took a look at that, and I think the present mood of this State is that the parole law should be tough. We have a situation where inmates, both in the county facilities and in the State facilities, have been determined to be releasible, but they are released sometime in the future. Possibly we could accelerate that release both in the county facilities and in the State facilities. In other words, they have gone before the parole board, and the parole board says, "Yes, we are going to release you, but we are going to release you in one month, two months, three months down the road". If there is proper pre-parole planning, you should be able to release those inmates within ten, fifteen, maybe twenty days of the final determination of the parole board.

We also have the problem, that has been exacerbated by having State prison inmates in county jails, of classification. Every inmate that goes into the prison system is classified. He is given what is called a "goal date" as to when he or she can be released from parole. A number of these inmates have been sentenced to county facilities. The classification process sometimes does not reach them for substantial periods of time; therefore, they are not classified or given what we call a "state prison number" right away. The State Parole Board, to their credit, has made concerted efforts to try to get those inmates classified. We have come across instances where inmates have spent time in county jails and have not been classified; and at the point they become classified, it is determined that they were eligible for parole at that time or prior to that. A greater effort needs to be made to classify State prison inmates in the county jails.

Finally, one of the areas that we think is somewhat exciting is the question of the use -- I know they have a program in Monmouth County -- of releasing inmates or not sentencing them to county jail time in order to provide some form of public service, in essence, sentencing them to a public service.

I am from Monmouth County and I am aware of a program which Judge Shebell has started in Monmouth County. I think Mayor Scioffi of Long Branch has agreed to participate in the program where you have a person to be sentenced before a judge who really does not need to be locked up but needs something, and maybe probation is not enough. Possibly working for a local municipality in the interim and not taking up bed space in the county jail would be better. I think that is an area that this Committee could take a look at.

The last area that we have been involved in is the question of litigation. The Office of the Public Defender's position is that they do not like to see the Federal courts operate our county jails or state prisons. We have been forced, and we

were forced to file litigation in Union County, whereupon we were able to achieve a consent decree with the County putting a cap on the number of inmates that can be housed in that facility - both state inmates and county inmates. In fact, this morning one of our attorneys was before Justice Mountain. They are having an evidentiary hearing on the implementation of that consent decree. We do not want to be put in the position of having to file litigation, because we feel that the State should control its own institutions. But where the institutions have become so crowded that constitutional rights either have been violated or about to be violated, then one of the only solutions available at that point is litigation. That is another area which we do not like to talk about - we only do that as a last resort, but that is one the solution areas that we have used in the past.

We have also instructed our attorneys to pay closer attention to the jail and to make as many bail hearings as possible so that we can get inmates that we feel should be on the street that can make bail. Sometimes we run into a stone wall where a judge will not lower the bail. We can make two or three bail motions and they still will not lower the bail.

One or two of the things that I have talked about are really not the solution. It is probably a combination of both or somewhere between the two extremes of releasing individuals or locking them up. The corrections' policy and the penal policy are "out of sync." This Legislature passed a bill which has had the effects of locking up more people for longer periods of time. Obviously, as we have heard today, there just wasn't any space for that. I would also caution the Committee to really pay attention to the effects of mandatory-minimum sentencing. We have not seen that effect yet, and that will probably exacerbate the problem even more because more and more of our clients are being sentenced to mandatory-minimum sentences, which means that where a bed turned over in a certain time frame, it is not going to turn over for five, maybe ten, fifteen, or twenty years. That will also exacerbate the problem. These two elements, the penal policy and corrections' policy, must become more "in sync" so that if in fact the policy judgement is made by the legislature to pass new statutes which have the effect of locking up more individuals, then that space will be there.

That concludes my comments and I will answer any questions. I would also add that if we can be of any assistance to you, we would be glad to help you in any way that we can.

SENATOR CODEY: Are there any questions? (No response)

Thank you very much.

MR. SMITH: Thank you.

SENATOR CODEY: Next, we will hear from Mr. Donald Phelan, Chief of Pre-trial Services, Administrative Office of the Courts.

D O N A L D P H E L A N: Our agency wishes to thank the Committee for the opportunity to share with it some of the things that we have done in the area of jail overcrowding. My remarks and presentations will deal almost exclusively with the county jail overcrowding issue, and some of the functions that the court has with respect to the operations within the system at the local level and some of things that we have done in the pre-trial area.

We began to look at this problem very closely in late 1980; and in January of 1981, we conducted a comprehensive survey of the county jail situation. We were particularly interested in the categories of offenders who were detained in facilities awaiting trial either in the municipal courts or within the superior courts. The core of the information that we gathered during the survey was done through the cooperation

of the State Warden's Association - Warden Fuccello made his presentation this morning - as well as the cooperation of the individual wardens and sheriffs of the twenty-five local facilities. The information zeroed in on a review of the yearly highs and lows for the facilities covering the last decade, how the institutions handled the administrative bail and pre-trial release, and a detailed analysis of the facilities' population for a day selected by the facility in the month of January. The only restriction placed on that was the facility had to select a day - midweek - so that it would be more representative of an average rather than looking at a Monday, or a Friday, or over the weekend when the facilities were generally a little inflated.

As I mentioned, we looked at the whole facility and concentrated primarily on the pre-trial population. As Warden Fuccello has indicated as well as Warden Wagner, the situation in the local facility is quite different than in the state facility. Their population is perhaps a little bit more dynamic. In the pre-trial area, there are a number of different classifications that the local people have to contend with - some of those are what we call "a whole population", which is a commitment before an arraignment takes place. This generally takes place in the evening or in the morning hours when courts are generally not in session. There is a classification called a "temporary commitment", which takes after the arraignment where the offender may be awaiting a scheduled hearing within a day or two in one of the courts. There is a committed population which generally relates to those individuals who have been arraigned in the municipal court on indictable offenses and the matter has been referred to the Grand Jury. Then you have your sentenced population divided by those serving sentences in county institutions, inmates awaiting transfer to prison, and then special population, such as weekend offenders, offenders serving weekend time, work release programs, and the like.

A further stratification was made in the pre-trial area to see how many were committed without bail conditions being set. Falling within this category were the population where a municipal court judge has the authority to set the bail in the first instance. The second category was where individuals were committed where bail had been set -- for some reason they could not post it. The third category was those committed where bail conditions had been set, but detainers had been filed - either there was a probation revocation filed, a parole violation, or a detainer from another jurisdiction. And the fourth category was where an offender was committed where no bail had been set because the bail setting authority was not within the province of the municipal court. There are, under rules of the court, special categories of offenders where only superior court judges can set the bail or pre-trial release conditions. These are generally in the more serious crime categories - first and second degree offenses.

The overall goal of our endeavor was to isolate possible problem areas by dividing and taking a look at the population and seeing if there were disproportionately high counts in any segments which could be viewed as problem areas that should be attended to. Some of our findings I think are very informative and some of them are displayed on the charts. The chart that is displayed now gives the median ranking in the facilities - the various twenty-five facilities - some of them are not included in the January column because the information was not available at the time the charts were put together - however, their information has subsequently been factored in, and the percentages that are displayed really do not change substantially.

In January, overall, the median was 105 percent of the rated capacity for the county system, broken down in a range of anywhere from 27 to 158 percent. You can see that in May, the median remained about the same, however, the range had increased between 33 and 166 percent. As of last Tuesday, a little over a year after the January information was collected, the median had increased to 121 percent and the range had

increased to 63 to 213 percent. In January of 1981, we discovered that 71.8 percent of the county jail population were pre-trial detainees. Sixteen percent of those were temporary commitments, and the remaining 84 percent were committed to waiting further processing either in the municipal or superior court.

A closer look at the bail status of that population revealed the fact that three percent were being detained without having bail set, generally falling into the category of those waiting to go back to the municipal courts; 18 percent had detainers filed on them - bail had been set, but there were detainers filed, and if the detainers were not lifted, the defendant could go nowhere - seven percent were awaiting action in the superior court on the more serious offenses for bail setting purposes.

Compared to the entire facility, about half of the facility then represented defendants who were in a pre-trial category. We also set forth some of the information on the sentenced population, which you can see 29 percent of the population were sentenced, 62 percent to county terms, 18 percent to work release programs and weekend sentences, and 20 percent awaiting transfer to state prison.

The final segment of that survey included some candid observation by the administrators of the facilities as to what had caused the problems. I think generally most of those have been covered this morning, most notably among them the penal code, the state overcrowding situation, the general economic conditions related to increases in crime, and the shrinking resources available in the health service system that services the county facilities, such as the drug and alcohol programs in mental health.

Following our analysis of that information, we met with the assignment judges and the Chief Justice, and discussed the situation and looked at various things that could be done immediately to perhaps impact on the local jail situation - especially in the bail and the pre-trial release area. A series of recommendations were agreed upon and adopted by the assignment judges at the urging of the Chief Justice. Some of those recommendations included the following: Judges and staffs of pre-trial release programs were to be available 24 hours a day, seven days a week. In most counties there are pre-trial release staffs on call in every county. There is a list of emergent judges who are available twenty-four hours, seven days a week for bail and pre-trial release setting purposes as well as for other court related matters.

Emphasis was placed on trying non-indictable cases more quickly than it had been done in the past. The municipal judges were asked to accelerate the number of court schedules they had, and to try the non-indictable cases sooner than perhaps were scheduled in the past. Of course, we have to appreciate in this situation that the majority of the 500-odd municipal courts are all part time. It is difficult for them to meet more frequently than they are now. A lot of them are meeting very frequently, and in some cases, although they are only part time, they are really functioning full time in their capacity.

Another action that was taken was an immediate notification on No Bills and remands from the Grand Jury so that if an offender was incarcerated in the county institution awaiting action by the Grand Jury if the Grand Jury returned a No Bill, there would be an immediate release. If there was a No Bill Remand, which is a downgrade, then the matter could go back to the municipal court. Actions were instituted to give immediate notification to the municipal court so that they could schedule that matter.

The fourth recommendation which was implemented was the adoption of the ten percent cash bail program throughout the State; and as of last month, the program is now operational in each one of the twenty-one counties.

A fifth step that was taken was a process to immediately review bail and pre-trial release conditions of all offenders incarcerated in the county jails. Even

though a municipal judge may initially set the bail the day following the commitment to the county facility, a superior court judge now reviews the condition; and if the situation warrants it, the conditions are lessened or the defendant is released in his own recognizance.

The last recommendation that was made and implemented was that the assignment judge, himself, take a more active, closer role in the monitoring of the jail list and jail cases to make sure that the judiciary was doing everything that it should do in light of the situation.

As a result of the action in these steps that I have outlined for the Committee, we have noticed a significant decrease in the pre-trial population in the county facilities. As I mentioned, in January of 1981, the pre-trial population stood at 71 percent. As of last Tuesday, the pre-trial population stood at 57 percent, and it has been at that figure for about the last six or seven months. We have also noticed a slight decrease in the number of county sentences, and they have decreased by about three percent. Unfortunately, and I think as everyone knows and can appreciate, the number of state prisoners held within the county institutions has dramatically increased; and between January of 1981 and Tuesday of this week, there was an increase of one hundred and thirty-one and a half percent. Basically that is what our agency has done in cooperation with the judiciary. I am not sure that I can present any miracle solutions to the problem, but I can assure the Committee that we will continue to do everything within our power to help alleviate the situation and, as the others have indicated, we certainly are more than willing to work with the Committee in any way that you feel will be helpful.

Thank you.

SENATOR CODEY: Are there any questions? (No response)

Mr. Phelan, it would appear to me that you have been on top of the problem and all I can say to you is you have to keep on top of the problem because I am sure as you heard this morning, it is only going to get worse. You have to do your part in your capacity to help it.

MR. PHELAN: We do, and I think the judges are very sensitive to the problem. They are also very sensitive to the community; they will release those that meet the conditions, according to the standards that have been set forth, taking into consideration the seriousness of the offense, the offender himself, the possible consequences of the actions and all the other things that go into trying to predict what condition would be proper and insure the defendant's appearance when the defendant is scheduled to appear.

SENATOR CODEY: It wouldn't be a bad idea to let them go through the jail.

We are going to take a recess and come back in 45 minutes.

(Recess for Lunch)

SENATOR CODEY: Our next witness will be Lucy McKenzie from the New Jersey Association on Correction.

L U C Y M C K E N Z I E: Thank you, Mr. Chairman. I am Lucy McKenzie, Director of the Citizen Action Division of the New Jersey Association on Correction. The Association is a citizens' organization, concerned with the enormous economic, social, and human cause of crime in New Jersey. We have been working for more than twenty years to improve the effectiveness of New Jersey's criminal justice system through our Citizen Action Division, and to provide services to offenders and ex-offenders which will help them return to their communities as self-sufficient citizens through our Moral Projects Division. These services include: half-way houses in Trenton and New Brunswick, whose residents are state prisoners nearing parole, and county prisoners sentenced directly to the house upon conviction.

Mr. Chairman, with your approval, I will skip some of this which tells you about how horrible the conditions are. I think you fully understand that.

In answer to Senator Bassano's question quoting the task force on prison overcrowding, the population of the state prison complex alone, which is the maximum and medium security facilities, will quadruple by 1990. The additional cost to incarcerate these people will rise from 20 million to 151 million. Capital needs for bed spaces could be 480 million, not including the inflation factor, the renovation of existing substandard facilities or debt service. The interest on bonds alone would double the 280 million figure.

Another crucial factor is the virtual impossibility of finding prison sites acceptable to both the state and the community involved. No one imagines that the State of New Jersey, faced with increasing needs and diminishing resources, will spend this amount of money for prisons and jails. Other solutions must be found.

First, however, we must understand the cause of this dramatic increase in the incarcerated population.-- without belaboring the point, I point to the Criminal Code. Still to come is an additional population increase resulting from the 1981 law, requiring both extended and mandatory terms for certain crimes involving the use or possession of a firearm.

On January 31, the editors of the Bergen Record said the unsayable. That day's editorial stated, "There is one thing that can be done right away - repeal or suspend those laws that call for mandatory and minimum sentences for certain crimes. What has happened here is a breakdown in the system.- as shocking and as predictable as the collapse of an overloaded bridge or watermain. To deal with the crime wave, we pass tougher laws. It seemed logical and even necessary at the time, but few of us stop to think what would happen when these laws started putting out more prisoners than the system could handled. Now that day has arrived, and it is time to face a painful truth: until the prisons are no longer full to bursting - until the State has found other ways, like work release and community-service sentences to punish criminals we are going to have to do without mandatory sentences. It is that simple."

The Association on Correction finds the Record's logic unassailable, and we support its recommendation. It is time for a reappraisal of sentencing in the cold light of reality. With or without the repeal or suspension of mandatory sentences, common sense requires that other measures be taken to deal with the emergency. The Task Force on Prison Overcrowding, whose report we support, makes the following constructive suggestions:

First, an estimated 500 individuals are being denied parole, only because of the lack of suitable residential and non-residential mental health and substance abuse programs. That is more than the projected population of the new Camden prison. Every effort should be made to locate and appropriate funds for more community facilities.

Two, the Legislature should appropriate funds for the establishment of alternatives to incarceration. I am quoting from the report: "A strong argument can be made that if practical alternatives to incarceration are created, judges may feel that they can responsibly make more use of probation. Additionally, the cost of handling an offender on probation or parole is much less than the expense of incarceration." Among the most widely used alternatives are: first, community service and restitution. Restitution requires the offender to reimburse the victim for damage done, while community service requires the offender to perform work, free of charge, for public and private agencies in the community. This kind of sentence can serve several purposes: to compensate the victim; to provide community services which otherwise would go undone; to link the punishment with the crime; and, to save taxpayer dollars and relieve overcrowding.

Good programs now exist in a few counties, but most are federally funded and in danger of elimination.

Second, half-way houses. There are presently available, 150 to 200 half-way house beds located in Trenton, Camden, New Brunswick, and Newark, with the State, the counties, and the federal government competing for the spaces.

The per diem cost at a half-way house is far less than the per diem in the county jail. The half-way house alternative helps to smooth the transition from prison to life outside for the offender. A survey conducted by the Association in mid 1981 revealed that the operators of existing facilities are willing and able to expand their operations. They cannot do so, however, without assurance that the additional beds will be filled.

The present state budget allows the Department of Corrections to spend 175,000 dollars for community half-way house beds. Many other states depend heavily upon this alternative. Ohio has 21 half-way houses for 625 offenders, with a state appropriation of \$3.6 million; Michigan has 2,200 offenders in 100 half-way houses across the state.

Other alternatives, such as intensive supervision and house arrest, are now under examination as part of a statewide study of probation initiated by the Chief Justice. Recommendations will be made at a June conference.

Third, parole should be available for inmates serving less than one year. Legislative action is needed to implement this recommendation.

Fourth, the Legislature should pass a statute which would permit the early release to prisoners nearing the end of their sentences in the event of serious overcrowding. Such a statute which would be triggered only by a declaration of emergency by the Commissioner of Corrections and the Governor, upon a finding of serious and protracted prison overcrowding, would accelerate parole eligibility by 90 days. Eligibility would not mean automatic release - the existing standards for parole would still have to be met. Such a statute has been adopted by several other states. In Michigan, approximately 800 prisoners were granted early release in May, 1981, without adverse public reaction.

This is a very reasonable response to the problem of the gross overcrowding. Overcrowding is not a temporary, mildly uncomfortable condition - it gives rise to problems and circumstances so horrible as to be unimaginable to those who only read about them. The public cannot imagine the strain upon inmates and correctional officers which results from such conditions as now exist in many of New Jersey's prisons and jails. We have no right, either legal or moral, to inflict such conditions upon the keepers or the kept. Those in the best position to know have said repeatedly that we are living on borrowed time. Under the circumstances, early release seems eminently sensible. There is much more to be said about overcrowding than time permits. It would

make the task of this Committee easier if the 120 members of the Legislature were well informed about the crisis in Corrections. To this end, I have suggested to the Assembly Majority Leader that a briefing be held for legislators with the assistance of the Department of Corrections and AOC. He likes the idea, and I now make the same suggestion to you with regard to the Senate, Mr. Chairman.

This Committee hearing, we hope, is a sign that the State's resources will now be brought to bear upon the problem of overcrowding. The Association on Corrections is anxious to share the information we have acquired over the past year, and we look forward to working with the Committee in the months to come. We thank you for the opportunity to share our views with you today. (See appendix for Ms. Mackenzie's full statement)

SENATOR CODEY: Thank you very much, Ms. McKenzie. Our next witness is Mr. Peter Shapiro, County Executive of Essex County.

P E T E R S H A P I R O: Thank you very much, Mr. Chairman, and members of the Committee. My name is Peter Shapiro. I am the County Executive of Essex County, New Jersey and, as such, I am the Chief Administrative Official responsible for the operation of New Jersey's largest county correction system.

I am here today to plead for immediate relief from a situation that becomes more critical and life-threatening each day. I appreciate this Committee's understanding and concern for the problem of jail overcrowding, and particularly that you put this as one of your first official acts and made it such a high priority area.

The level of overcrowding in Essex County's Jail and Jail Annex reached emergency levels one year ago. In February 1981, the County sued to compel the New Jersey Corrections Commissioner to accept state inmates being held in the county jail, contrary to past procedures. At that time, we were consistently holding a level - this was a year ago - of 40 state inmates. Judge Arthur Blake ordered the state to accept its inmates initially on a scheduled basis, and thereafter, on a timely basis. When we had 40 state inmates, we called the overcrowding a "powder keg" situation. Shortly afterward, there was a major disturbance in the Jail that has not known until our correction officers used tear gas - by the way, they didn't even have gas masks when they did that - and physically forced inmates back into their cells. It was a truly perilous situation at time.

We now are holding anywhere from 160 to 180 state prisoners daily - many more times, obviously, than the 40 of a year ago. To again call the situation a "tinder box" would be a ludicrous understatement. The fact that overcrowding has not already caused significant bloodshed, is sheer luck, and the blame, should a tragedy occur, must be placed squarely with the State, which has created a riot-prone atmosphere that is a threat to public safety.

New overcrowding records are reached and then broken as quickly as they are established. The Essex County Jail, which was built to hold 550, routinely holds over 700 today. It is averaging about 720. Every single cell is taken, inmates also sleep in the dining and dayroom areas which have no shower and limited bathroom facilities. Cots are set up at night and removed during the day to prevent their destruction and ultimate use as weapons. The second floor has a dormitory capacity of 70. Now, we are holding about 170 in that space. The hospital ward and protective custody ward, located on the twelfth floor, under normal conditions would house 20 inmates. That floor now houses 60.

We haven't been lax in our own efforts to try to deal with the problem ourselves. Invoking emergency procedures, we have prepared sites for housing 48 prisoners in state-provided trailers, which involve 200,000 in county expenses. Those trailers are open and occupied today. Also under emergency rules, the county ordered pre-fab units costing us 1.5 million dollars which will house an additional 68 inmates.

Those have yet to open, but should open very shortly. All of that space, those necessary only to account for the overcrowding created by the state prisoners. Jail personnel are currently working through their scheduled days off as well as working double shifts. Overtime of the two facilities last year cost us 1.9 million dollars. The personal toll on the correction officers and their families because of overtime demands cannot be calculated in that kind of dollar figure. They are called upon to make hard sacrifices because of the increasing demands in their job, and I know you are going to hear from at least one of their representatives later.

The Governor's June 1981 Executive Order has caused a constant growth in the number of state prisoners in county jails. Inevitably, this has created a "trickle-down effect" to the municipal prisons - basically the short-term lock-ups, which are only intended to hold people for a very short period of time -- causing a particular hardship which I am sure you have heard about in the State's largest city. As a result, Newark filed suit several weeks ago to force Essex County to take the detainees that we both recognize are rightfully ours. Those prisoners are our responsibility, but we can't accept them until the State takes its prisoners out of our facilities.

It is useful, I think, to point out a little bit of history, because we were involved in the court cases here which brought about the Governor's Executive Order. When the Executive Order was first adopted, the Governor was faced with a series of court orders that had sprung up from a variety of counties, requiring the State to accept custody of a large number of state prisoners then being held by the counties. Had the court orders been implemented, the State, it appears, would have been substantially over capacity at approximately 112 percent of their system capacity, while the counties would have been just nominally above their capacities at 101 percent. That was the situation that the Governor found intolerable, and that was the disparity in overcrowding that the Governor found that required alleviation.

The Executive Order was designed to prevent that disparity by requiring the Commissioner of Correction to make a fair and efficient allocation of prisoners between State and county institutions. Instead, what has happened - instead of reducing the overcrowding disparity between the State and county facilities, the Commissioner simply reversed it. Now it is the counties that are grossly overcrowded, and it is the State which is just at or slightly above capacity. The latest statewide figures we have seen from November 1981 show that the counties are at an average of 121 percent of capacity, and the State at an average of 102 percent - hardly a fair and equitable situation.

Some counties - like Essex and Passaic - are in even worse shape. Essex is now at 140 percent of capacity, and if we took in all the prisoners in Newark and the other municipal lock-ups, as we really ought to, we would be at 170 percent of capacity.

In short, instead of fairly allocating the burden, the state has simply attempted to exempt itself from the problem by placing its concerns foremost and ignoring the needs of the counties. The point of the Executive Order was to reduce the disparity - the result has been simply to reverse it.

Immediate steps must be taken to alleviate the emergency situation that presently exists. I urge that the State take the following actions:

First, to invoke emergency procedures for purchasing and contracting - the kinds of procedures that normally make these things take a long time to get accomplished but which we have procedures for getting around. In order to open the Fort Dix prison within two weeks, State law provides for emergency procedures to avoid the inevitable bureaucratic delays. There is enough evidence that an emergency exists at this point for the State to invoke this rule.

Number two, the immediate use of armories and vacant state institutions for prisoners. This has already been, I understand, put forward by the Commissioner this morning, and I will support that plea.

Third, the purchase of an adequate number of trailer and pre-fabricated jail cells to hold the overflow prison population in its emergency circumstances. In Essex County, we have placed trailers on the county property near the jail annex in a fenced-in area; we have not, however, put them inside the jail compound. So, if the Commissioner comes back and says there is no room within the jail compounds, that is simply a false argument, and it ought to be recognized as such. There are thousands of acres of state-owned land that the trailers or pre-fabricated units could be placed upon, we have put them on land apart from our prison facility, surrounded it by high fences with barbed wire on top at least to take care of what is an obviously urgent situation right away.

I think it is also wise of Governor Kean to examine the merits of selective sentence reduction for non-violent offenders or the acceleration of parole eligibility as was just earlier mentioned by one of the previous speakers, in order to further alleviate overcrowding conditions.

Also to add to my prepared text here, I think it is important that we can push ahead with efforts toward community based corrections - an area that could yield an awful lot of benefits, but which has frustrated us repeatedly locally. There is one important point I think needs to be made about both community corrections and about state facilities, and that is that there needs to be a change in the way in which we site these facilities. The long and laborious process for siting state facilities, for siting community-based corrections facilities, is so long and becomes so politically involved, we ought to find a way of doing it so it can happen more efficiently. I would recommend at the very least that the power to do this be placed strictly in the hands of the Commissioner of Corrections and be taken out of the hands of the legislature. As a former member of the Legislature, I realize it is a serious kind of suggestion to make as it would be a relinquishing of some control, but I think it is the only way we are really going to get around the tremendous complications that have arisen over the past few years.

If the State takes these steps to secure additional prison space and free up some of the existing space, there should be no state prisoners in county institutions. Although the counties would still face some overcrowding, in fact, we would still be over capacity in that case, it would be at a far more tolerable level. We could conceivably be able to handle that without the kind of danger that exists today.

The State has been aware for more than five years that this problem was brewing. The failure to act is inexcusable. The likelihood of violence erupting in our jails increases with each day's delay.

Thank you for permitting me to testify on this crisis of overcrowding. I will be happy to answer any questions you might have.

SENATOR CODEY: Thank you very much. Our next witness will be Christopher Dietz, Chairman of the State Parole Board.

C H R I S T O P H E R D I E T Z: Thank you, Mr. Chairman and members of the Committee. My name is Christopher Dietz, I am the Chairman of the New Jersey State Parole Board. The purpose of my testimony is to address the correctional system overcrowding, and in particular, to describe the relationship between parole policy and institutional populations.

Others who have studied the issues in depth can better describe all the trends leading to the current situation. It becomes clear that population growth was not an unforeseen or an unpredictable occurrence, although the magnitude of the problem may not have been obvious. There are a variety of options that are available to the Legislature to deal with the current situation. Many of these will be discussed here today. I urge that parole not be used as a tool to regulate population. However, while we can, and have, and will continue to assist in seeking solutions, it is clear to us that parole policy must focus primarily on risk assessment rather than the management of institutional populations.

Our role in the criminal justice process is established in the Parole Act of 1979. We consider inmates for parole after the punitive aspect of their sentences have been completed and then for establishing whether the inmate may safely be released to the community to complete his or her term under community supervision. However, considerable attention is focused on the impact of parole policy on population. The Board has attempted to analyze what, if any, is discernible. Findings indicate that parole policy has had a neutral impact on population overall, despite the fact that parole policy has influenced the distribution of population to some extent over the past several years.

You have probably noted that there have been cyclical trends in population. April 30, 1980, there were 6,618 inmates confined in state facilities. By September 30, 1980, however, this had declined to a population of 6,039, a decline primarily due to an interim impact of the implementation of the Parole Act as I will further explain. However, by December of 1981, the total population had risen to an all-time high of 8,478 inmates. During 1980 and 1981, institutional populations rose as the impact of the new Penal Code began to be felt. The proportion of all defendants receiving prison terms doubled, while those receiving youth indeterminate sentences remained roughly constant at about 10 to 11 percent. Thus, a huge increase in prison admissions occurred. During the first six months of 1981, the State courts sentenced as many defendants to state prisons as they would have normally sentenced within an entire year.

Statistics of the Administrative Office of the Court indicate this trend will continue. Although the proportion of indeterminate sentences remains roughly the same, an increase in the number of defendants sentenced resulted in somewhat more indeterminate admissions. As a result, New Jersey now faces a major problem in its ability to house inmate populations, a problem it shares with a number of states across the nation.

I would like to examine the parole release levels in New Jersey over 1980 and 1981. Parole release levels in New Jersey were relatively constant in the period from '75 to '79. During this interval, approximately 3,900 to 4,000 inmates were paroled annually from state correctional facilities. By 1978, this level had risen to 4,100 inmates. However, in calendar year 1980, 4,743 parole releases occurred, a significant increase over previous years. This release expansion was experienced almost exclusively in the prison complex.

We have examined monthly statistics, and they demonstrate that the rise in parole releases was particularly significant during the months of May, June, July, August, and September of 1980. In fact, even the small rise experienced outside the prison complex during this time is likely due to the prison inmates housed in the youth corrections complex.

You should note that this rise in release levels occurred immediately after the effective date of the new parole Act on April 21, 1980, and appeared to be related to several provisions of the act noted below. Rather than recite them as I did

in my statement, I will just briefly explain them to you, Senator. One provision was, under the old system, the Parole Board could set parole dates as far away as one year from the date of the hearing, but it would be a date actually given to the individual at the time of the hearing. The new provisions of the Parole Act of '79 required that the Board, upon making a determination that the individual was safe for return to society, must immediately set a date. So, there was an acceleration of those dates. It wasn't that they were getting released early, it was to the earliest point that they were allowable by law, when the punitive aspect of the sentence was over.

The Legislature then in another provision said to all multiple offenders, because the 2C provisions of the new code wiped out the offenders' status concept and gave the judges other means of imposing extended terms-- It said to all multiple offenders that were then existent in the prisons, if the prosecutor and the judge concur that this will not affect their concept of the punitive aspect, and will satisfy the punitive aspects, specifically, you can get a full step reduction. If they don't concur, if either the judge or the prosecutor were to say they oppose the reduction, there would be a half step. This was recently tested in the courts, and the Appellate Division upheld the constitutionality of this legislative provision.

The next point that came to the attention of the Board was not within the Parole Act, but the effect of the three-judge sentencing panel. What had happened was 2C decriminalized offenses and lowered the penalties for some offenses and changed the degree of crime for some offenses. For individuals who had been stringently sentenced under the old code, they could appeal to a three-member panel -- I believe they sat in Newark -- and the judges had the authority to reduce the sentences. To the degree that there was a reduction there, this accelerated. What happened, Senator was, imagine 100 -- as a point of example -- people in prison. If during the normal course of events, ten people would have been released every month, in ten months the 100 people would have been exhausted. What happened was, there was an acceleration. So, as that acceleration came up, there was no means to fill it, so that the statistics that followed showed that the very next year we paid the price. If you were to take the 4,700 we had in 1981, and then take what Commissioner Fauver talked about, the 3,300, and mean average them out, you get the 4,000 that is normally released every year. What he did was he got all the strawberry shortcake at the beginning of the meal, and when it came time for dessert there nothing left. So, we are paying for that type of problem right now.

In summary, several distinct factors produced a one-time rise in release levels in 1980. A normal rate of 4,100 would have been expected. Instead, the implementation of the new act increased this by 650, as I pointed out, and the parole rate was expected to drop again in 1980, which of course it started to do in October.

While this was partially attributable to the expected decline in former levels, other trends were observed. Available data indicated that the prison complex release began to stabilize in 1981, but a decline, again in paroles, was experienced in the youth complex. Statistics suggest that a number of releases were running at about expected levels, based upon historical data. In the youth complex, the levels in 1981 declined. The reason for this temporary decline can be determined. Under the new Parole Act, the State Parole Board, rather than the institutional classification departments and the boards of trustees, now has jurisdiction over all youth cases -- indeterminate sentences. The Board published a schedule -- I am going to divert from my testimony here for a second and try to condense it for you -- and in publishing it, they increased the amount of time a person would have to serve. No longer would a person serve roughly ten to twelve months for armed robbery. The mood of our communities, the intent of the courts, and obviously

the prosecutor, and in the best interest of making sure the individual could be returned and given an opportunity, the Board toughened those standards. We published them, and we knew there was going to be an impact, and what happened, again, is there was a period of time when the young adults that would have normally been almost in a revolving door situation, in and out -- the revolving door stopped and there was an accumulation of young folks that had to do more time to understand that society simply was not going to tolerate their shenanigans. This carries over, and I am diverting from my testimony.

This also carried over into our parole revocation decisions. There is no question that the Board has toughened the parole revocation. But that is so fundamental to the integrity of the parole process. The Board has consistently said, before other committees of the State Senate in other years, that parole is an earned trust. It is a privilege, not the forgiveness of a sentence. It is the privilege of serving the remainder of your term in the community as a law-abiding, productive citizen. Last year we had under our supervision, 13,500 people. Of that number, we brought back 1,375. Of the 1,375 that we brought back last year to prison, a little more than 500 had committed new crimes. That is roughly 4 percent of the parole population that was out there with the privilege of serving the remainder of their term under community supervision. A little more than 800 were brought back on technical violations. Now, someone could say: "Why do you have to be so tough on that?" Those are the individuals who are no longer tolerable risks. We are not going to wait until they go out and hurt somebody. We are not going to wait until they do something. When they have demonstrated their return to their former life style, they have demonstrated they are no longer worthy of the trust of society. Not to have the Board bring that type of person back would critically disable the paroling process in New Jersey, and probably irrevocably damage the trust of the public. Some counties recently, one in particular, issued an Executive Order, that no parole violators will be allowed into their facilities because of this overcrowding. Nothing cripples the integrity of the criminal justice process in New Jersey more than that.

It is my understanding this morning from the Deputy Attorney General assigned to advise the Board that steps are being taken to correct this. We understand the problems of the counties, and again, speaking apart from my testimony, the Board has put a team of three people out in the field. Both the executive director and myself have made ourselves available to any county institution. We are identifying people, we are holding hearings, and we have assigned hearing officers. The Bureau of the Budget certainly has been cooperative in allowing us the necessary staff to go out and do this work as quickly as possible. The work of the Parole Board is not to relieve overcrowding, it is to identify, by the standards set by the Legislature, those individuals who are worthy of trust. As was pointed out earlier, at this very moment in our system we have approximately 1,300 people that already have affirmative parole decisions. We have already made the determination that they are safe for society. The statistics shows that we have not been that bad.

Four percent for new crime is not -- I realize if there was a victim in the room, they would say it happened to me, you should do something about that. Every effort is made to refine that down. But to the degree that you could say an earlier release of those individuals who already have the parole, could instantly resolve this; you could get your 1,200 people almost within ten to fifteen days if appropriate legislation were to be sponsored with the Governor's support. It is an option. I think of all the options available to us, in the years that I have been in the criminal justice process as Parole Board Chairman, and the 40,000 cases that I have now -- last year it was 35,000; every year it increases by 5,000 -- it does the least damage to the credibility. The individual

that we would be considering has already earned the trust determination - that determination has been made not because a gun was at the temple of the Parole Board, or the temple of State Government of the Executive Branch or the Criminal Justice process itself, because of a court intervention, it was because we determined that these people could be released. There is no reason in the world-- I can assure you that if these people were to be released within a ninety day period or earlier -- and, we are not talking about forgiveness of sentence, we are not saying we are cutting the sentence short 90 days, all we are suggesting is that a provision allow us to accelerate eligibility -- it would have a dramatic impact and could provide relief, but, again, as the New Jersey Association of Corrections and other speakers have pointed out, these are interim measures. Something has to be done to look at the overview.

One of the other things, and the last point -- And, I am going to completely abandon even going back to my statement; I will leave my statement to stand as a matter of record, Mr. Chairman. I was recently at Essex County, and an individual appeared for a parole hearing. The individual had originally been sentenced to a 364 day term. As such, he would not have been eligible for Board consideration, or subject to the Board jurisdiction. But because he smuggled drugs into the institution, and a municipal judge gave him a 60 day consecutive sentence, he suddenly became eligible for parole consideration. Parole has got to be something that you do not get because you are doing something wrong. Eligibility even should be something. I think that is an inane concept.

I think if you are going to have parole, you might as well bring it right down to the individuals under one year. There doesn't seem to be any rhyme or sense to cause an individual to have to commit another crime to become eligible for parole. Needless to say, the Board is not granting paroles to people who commit crimes to get eligibility. It seems almost ridiculous that that is the way the system is structured right now.

Are there any questions, Mr. Chairman?

SENATOR CODEY: Senator McManimon?

SENATOR MC MANIMON: This is quite interesting.

SENATOR CODEY: Very interesting testimony.

MR. DIETZ: Thank you, Mr. Chairman.

SENATOR CODEY: Thank you.

Our next witness will be Senator Hamilton from National Council on Crime and Delinquency.

SENATOR WILLIAM J. HAMILTON: Mr. Chairman and members of the Committee, at the outset, let me take this opportunity to thank you for the privilege to appear before you, and to commend all of you - particularly you, Mr. Chairman, for the leadership you are displaying in calling this hearing, and attempting to come to grips with what is one of the most serious problems facing New Jersey today.

The problem of prison overcrowding is a persistent one, and probably will become a much greater problem before any real relief is forthcoming. It has set branch of government against branch of government, level of government against level of government. It is emotional; it is expensive. There are no easy solutions, there are no quick solutions, there are no inexpensive solutions, and there are no risk-free solutions. You deserve our thanks and commendation for the effort you are undertaking, and you already have that. You also deserve the assistance and the constructive criticism of members of the public sector and the private sector interested in corrections' matters, and that is why I am here today and undoubtedly why others representing a variety of interests and perspectives in the private and public lives of this State are here today.

Mr. Chairman, I am here on behalf of the National Council on Crime and Delinquency, a national, non-profit organization, with its headquarters in Hackensack in this State. The National Council on Crime and Delinquency, NCCD, is an organization of

tens of thousands of professionals and concerned citizens, having as a principal goal to foster community based programs for the prevention, treatment and control of delinquency, and crime. NCCD has spoken out in the past on corrections policy in New Jersey, but the problem you and I, and New Jersey face today, is probably more weighty and more difficult than any that NCCD has addressed in New Jersey in the past. It implicates the safety of our citizens, it implicates the expenditure of our limited resources, and it implicates, as well, the manner in which we handle or correct those who violate the laws of our State - the overwhelming number of whom will someday, sooner or later, better or worse, resume living in society.

The way in which one defines the problem of overcrowding is probably based mainly on one's perceptions and value judgements; one's philosophy of corrections, if you will, rather than on some neat, analytical matrix. Those perceptions and judgements will probably color, more than anything else, the solutions proposed. A few objective facts do stand out. State correctional facilities - maximum security, medium security, and minimum security - looked at by any measure of capacity, are seriously - no, dangerously - overcrowded. County correctional facilities - the county jails and county work houses - are also seriously and in many cases dangerously overcrowded.

In the case of county facilities, it seems clear that the major problem is the presence of large numbers of state prisoners already sentenced, who are being held in county facilities for a lack of cells in state facilities. Thus, if the problem of overcrowding in state facilities were to be solved, the problems of the several counties would be greatly reduced, if not eliminated.

The Report of the Governor's Task Force on Prison Overcrowding indicates that nearly 13,000 persons, a 28 percent increase, were sentenced in the first nine months of 1981. To some, that 28 percent increase is an appropriate and justifiable response to a perceived wave of crime and lawlessness. To others, the increase represents an overreaction to legitimate concerns about criminal activity and the minimal absence of, or under utilization of, other resources for handling those convicted of crime.

Whatever viewpoints we may take, I suggest that an examination of a number of basic facts, preliminary to the question of what to do about overcrowding, but directly relevant to the fact of overcrowding, is appropriate. Most observers have related the problem of overcrowding directly to the adoption of the New Jersey criminal code, which became effective on September 1, 1979. Enacted on August 10, the code had been discussed and debated in New Jersey since as early as 1970. If the code truly represents a major cause of overcrowding - and I think it does - we ought to be able to measure that from experience of the past two and one-half years. What has happened since Title 2C became the criminal law of New Jersey? Well, the Task Force report tells us that the rate of incarceration, the percentage of convicted offenders who receive confinement sentences, has increased 42 percent to 55 percent. Itself, an increase of 31 percent. The average term of incarceration has increased from 2.2 years to 3.6 years, an increase of 61 percent. Those numbers are dramatic. They suggest that unchecked, the problem of overcrowding will increase and exacerbate.

I think it is appropriate to ask, and most appropriate to ask in this legislative forum, whether these increases are the result of conscious policy decisions to dramatically increase rates of incarceration and average sentences. If so, were the implications of such policies on prison space requirements ever contemplated? As someone who participated in the process, I suggest that no such conscious policy was developed, and that implications of increased prison capacity were not perceived. At best a visceral "gettough on crime" attitude was probably present. No fiscal note was sought, and no planning process was undertaken in response to the visceral decisions made.

Indeed the need for additional cell space was never mentioned in Trenton, until Commissioner Fauver arrived at a Capital Budgeting and Planning Commission meeting in May, 1980, requesting a bond issue to provide the funding for one, 400-bed prison.

If I am correct in my assessment that precious little conscious policy-making was present in the enactment of the code, some reassessment is in order now. For the Legislature makes policy, whether or not it makes it consciously, and the absence of attention to conscious policy-making, if forgivable in the first instance, is certainly not justifiable now when it is possible to see clearly the product of past visceral decisions.

Without a change in sentencing policy, more mandated sentences and increased gradation of offenses are going to flow, and today's overcrowding will next year seem like a tea party.

The Governor's Task Force reports the following projected prison population for our New Jersey system: January, 1981, 7,785; two years later, 1983, 7,780; two years after that, 1985, 9,480; and January 1, 1990, eight years, not ten years from now, 14,400 convicted and incarcerated persons. At the present rate, during 1982, the prison population will increase by roughly 635 prisoners every three months. That is one and a half, 400-bed prisons, four times this year, or 6, 400-bed prisons needed this year. Looked at on the basis of capital cost, a total of 480 million dollars for construction will be needed between now and 1990 if costs were to be 60,000 dollars a bed - a figure that I submit is demonstrably already low.

And what of capped operating costs? The Task Force projects additional costs from 1982 to 1990 at the present rate of 14,000 dollars per inmate per year as follows: 1983, almost 57 million additional dollars; 1985, 81 million additional dollars; 1990, over 151 million additional dollars.

Does anyone really think that the taxpayers of this state are prepared to pay these sums for prisons that they do not want anywhere near their homes in the first place? Are your colleagues prepared to impose taxes to pay for these capital and operating expenses in this economy and at a time when social service programs, student loans, housing, transportation, and other worthwhile programs are being decimated? I believe the answer to both questions is a resounding no.

I suggest to this Committee, perhaps alone, perhaps jointly with the Judiciary Committee, with or without the corresponding Assembly Committees, you undertake a review of the criminal code, with respect to mandatory sentences, presumptive sentences, the degree of some offenses, and similar matters - and that you make a conscious re-appraisal of the policy decisions and implications in the Criminal Code. Some of these things you should change, others you undoubtedly will leave intact. In either event, both you and the public will have a greater appreciation of the meaning and consequence of those provisions and of the prison and other corrections resources your decisions require.

In the same vein, I suggest that Supervisory Treatment or Pre-trial Intervention, which is a pre-adjudicative, non-custodial program for least dangerous offenders, is employed with great disparity as among the twenty-one counties. PTI is a state-wide program. Some prosecutors and some courts employ it broadly and achieve prompt, sure, and most often, effective justice, at the same time conserving valuable court, prosecutor and juror time for more serious cases or hardened offenders. In other counties, PTI is rarely used. Data that would identify the counties in which PTI is working and why it is widely used may suggest to other counties that PTI be used and used effectively to handle some number of additional offenders. I urge that you either undertake the accumulation of such data or that you require that it be gathered and presented to you.

the overcrowding problem on the intake side. Other than the intake side, there are at least two other elements in the overcrowding equation: capacity and release.

Others who have testified or will testify today, have or will, I am confident, argue strongly against massive construction as the answer to overcrowding. I will not duplicate those arguments, nor compete with that testimony.

I believe, based upon having been around this Legislature, that some increase in capacity by construction, acquisition, expansion, or renovation, is likely to be sought and obtained regardless of what anyone may think of the wisdom of such policy. Within the broad array of such responses, there are some that, from the point of view of cost and policy, are sounder and wiser, both short-term and long-term.

Two such options bear mentioning. The first is the use of Stockade at Fort Dix - and I suspect that you already heard comments on that today. Planning has begun and perhaps construction as well. A supplemental appropriations bill has been passed. While there are problems of capacity and visitation, and concerning the location of the armory, the Fort Dix Stockade does represent available space - up to 536 beds - capable of renovation at relatively low cost for a short to mid-term response.

The use of Fort Dix will avoid a more costly commitment to building a capacity that may not be needed long-term, but would likely be used if available then, at the expense of less restrictive and community based rehabilitative programs. I urge you to monitor closely the development and use of Fort Dix, using your legislative and budget oversight powers.

The second existing resource worthy of serious consideration is Trenton Psychiatric Hospital. The Vroom Building, on the Trenton campus, now houses some of the most violent and dangerous of state prisoners, and probably will be used exclusively by the Department of Corrections when the Department of Human Services departs.

But, a second resource at Trenton Psychiatric could be used for housing what I think is probably the most unfortunate segment of the prison overpopulation. The Governor's Task Force reports a Parole Board estimate of perhaps 500 inmates who are or would be parole ready, but for the absence of suitable community-based mental health and substance abuse programs to assist in the transition from incarceration to freedom.

What better use of the McCrae Building at Trenton Psychiatric than to house former alcohol and drug dependent prisoners and those with other mental health problems? McCrae is slated for closing, perhaps as early as July of this year. It is sturdy, it is secure, and many of the Department of Human Services personnel who might lose their jobs if McCrae is merely closed as a psychiatric facility could be retained and/or retrained as corrections aides.

This use of McCrae should be examined, not only for the 346 beds it could provide, but more importantly for the inmates who can be afforded an opportunity for timely parole release with the counselling and support they require to make it on the outside.

One final capacity-related idea should be mentioned. The Governor's Emergency Overcrowding Executive Order has resulted in some 1,100 state prisoners being jammed into county jails. As I said earlier, transfer of those prisoners to state facilities would greatly alleviate the problems of the counties. If the State cannot cure the problems of its own making, it can at least compensate the counties for the danger and expense to which the counties are put. I would urge that most serious consideration be given to imposing an additional, if you will, penalty or surcharge on the State for each day that a state prisoner remains in a county facility under

a governor's emergency overcrowding order. This could provide some fiscal relief to the counties and some additional motivation to state officials to act to resolve overcrowding with rational measures.

Mr. Chairman, my final comments relate to the third element in solving the overcrowding equation-release. Here I suggest the establishment of a statutory system to provide for release of selected prisoners - I know other witnesses have mentioned this - prisoners suitable for early release, and that would occur when the prison system reaches or exceeds a certain percentage of rated capacity.

There are those who will attack such an approach as soft or resist it as unworkable. On the contrary, I suggest it is appropriate, practical, humane, and necessary.

The Governor's existing clemency power can be used to release prisoners on certain conditions. Indeed the Emergency Overcrowding Executive Order, proclaimed by Governor Byrne, more recently by Governor Kean, is a form of release or cap control. I suggest that such a measure is far more appropriate for legislative fashioning than for executive edict. The legislature enacts the criminal laws and appropriates the funds for the operations of the prison system. It is the legislature that should provide the safety valve when a dangerous overcrowding situation, such as now exists, occurs.

Moreover, it is not the inaction of the legislature in the face of the exercise of the executive power that is the likely area of conflict, it is the power of the courts to order release when overcrowding exists that should concern this Committee and all of your legislative colleagues.

Make no mistake that the courts - State or Federal - will act when - I say "when", not "if" - requested to act and the circumstances require. We witnessed last year, a federal court order the release of Alabama State prisoners because of overcrowding, and our own Superior Court order release to remedy overcrowding in the Union County Jail. If the executive and legislative branches fail to act, the message is clear, the judiciary will not similarly fail to act. Yet, the legislature is the part of government best able to fashion compromises and balance competing interests. Thus, it is the legislature that should act.

Your willingness to hold this hearing indicates that you and your Committee are prepared to do so. As I suggested earlier, a form of cap already exists. It exists on the state system by virtue of the Governor's Executive Order, and near chaos in the county system is the result. Now is the time for a legislatively designed safety valve - a release mechanism, a capping bill. Such legislation has been enacted in other states that face severe prison overcrowding, and it has worked. It matters little or not at all whether such legislation is patterned after Minnesota, or Michigan, or Delaware. All have functional cap legislation. The details as to how it is triggered, and who should be eligible for release can be developed in your committee, taking into account past criminal record, sentence remaining, and other relevant considerations.

I believe there is no greater legislative priority than a corrections system cap and overcrowding release bill. I urge you to act now. On behalf of NCCD, our sources are available to assist you with such legislation, and with respect to all aspects of overcrowding.

I thank you for letting me share these thoughts with you, and I wish you good luck.

SENATOR CODEY: Senator McManimon?

SENATOR MC MANIMON: I would just like to take the opportunity to compliment Senator Hamilton on this presentation today, and I would definitely urge every member of the Legislature of both houses receive a copy of this testimony. I think you attacked it directly, Bill. You went right to the heart of it, and it is

our responsibility-- I am very happy that our Chairman has called this session today because I think he realizes our responsibility; and by putting this message in the hands of every legislator, if he really reads it, he is going to give some serious thought to it.

SENATOR HAMILTON: Thank you, Senator.

SENATOR CODEY: Thank you very much. Our next witness will be Mr. George Conk, Public Interest Lawyers of New Jersey.

G E O R G E C O N K: I would like to thank the Committee for allowing us the opportunity to testify today. I would like to thank the Committee for calling this hearing. I think it is important and commendable that an initiative on this question was taken at such an early date, really at the first possible opportunity.

I am George Conk and I am Chairperson of Public Interest Lawyers of New Jersey. I am here today with Neil Cohen, who is the Legislative Coordinator of our Criminal Justice Task Force. I would like to take the opportunity to associate ourselves with the recommendations of Senator Hamilton. We also were impressed with his presentation and have to confess that his participation in our recent Criminal Justice Conference helped us clarify and form our own ideas. We see that in the last three months he has further developed his ideas. We are very pleased that the Vice Chairman also responded so positively to what we agree was an impressive presentation.

We appreciate that the Committee and many others have been here for a long time. We have a rather lengthy prepared statement which is accompanied by a National Crime Survey Report from September 1980, called "Criminal Victimization in the U. S." We would appreciate it if those two items could be placed in the record rather than burden the Committee with a full recitation. (See appendix for items submitted by Mr. Conk.)

Let me comment briefly on our perspective. We agree with Senator Hamilton and with Peter Shapiro that the direction we must move is toward a county community-based correction system. We also support the recommendation of the Governor's Task Force on Prison Overcrowding. We think they did an impressive job and underlined the fact that if we don't act in a planned and careful way, we will be forced to act by agencies outside with less sensitivity to our needs.

We have two fundamental propositions, each of which is addressed to the basic perspective that we should not be investing heavily in new prison capacity. It is expensive and I think that the results of the referendum on the prison bond in New York State have demonstrated that it is not even very popular politically. It is particularly going to be unpopular politically for legislators and for the Executive to propose massive new spending given the budgetary crisis which the State is facing and which it appears as a result of initiatives of the national administration is going to grow graver rather than less.

There is a problem of crime in our society whose gravity no one will dispute. There is a prison crisis in our society and we have to ask whether we have a prison crisis because we are responding to a crisis growth in crime in our society or whether it is a result of changes in the operation of our criminal justice system and our laws.

We believe that the crisis is as a result of the new Criminal Code. Our organization is substantially made up of defense attorneys: Public Defenders, private attorneys, former Public Defenders, persons who work in each phase of the criminal justice system. We know the system. We know what is happening on the street. We know what is happening in the jails. And we know what is happening in the prisons. None of us has any illusions about what is happening. But we have undertaken a study that surprised all of us. Most of us with a general liberal perspective assumed that crime was correlated somehow to unemployment rates and things like that. What we have discovered, using the best available data, is that it is simply non-responsive to economic fluctuations or anything else that seems to be going on, including the operation of the criminal justice system. The study that we have made available to the Legislature is a National Crime Survey Report from the Bureau of Justice Statistics of the United States Department of Justice. The surprising result

is that if any trend can be discerned from 1973 to 1979, which was the last long-term study for robbery, assault, rape, larceny, household burglary and motor vehicle theft across the country, that one is a slightly downward one. We are simply not contending with a dramatic increase in crime or, in fact, any increase in crime at all. We have obtained from the United States Census Bureau, whose statistics corroborate those of the United States Department of Justice, statistics which indicate that there is no significant difference for New Jersey at all. So the notion that we are in the midst of a national crime wave in which New Jersey is facing an increase which exceeds that of the national rate simply doesn't have any basis in fact when we use that form of statistic which we think is most reliable, that is, victimization studies involving close scientifically designed questioning of randomly selected groups of the population. These are studies which are being conducted every three months over a period of twenty years. We would be happy to make available to you and any interested persons copies of those statistics and facts.

We have, therefore, come to conclude that the criminal problem in our society - the problem of crime - is essentially beyond the capability of the criminal justice system and that we can more readily make things worse than we can make things better. We have been forced to confront the fact that Title 2C has made things worse in that it has created the prison overcrowding crisis without having a measurable impact on crime. As a result, we have a series of suggestions for amendment which are detailed in our prepared statement. Let me just summarize them briefly.

First, the Criminal Code created a series of presumptive sentences and ordinary terms of imprisonment. In practice, judges have treated them as nearly mandatory norms. So if there is a conviction of a second-degree robbery, the customary sentence is 7 years and rarely less. If there is a first-degree, the presumptive term is 15 years and rarely less. What discretion is exercised - and judges here believe they are responding to the public's cry and the Legislature's command - is discretion in favor of longer terms, specifically the use of the minimum-mandatory sentence, the parole disqualifier, which we feel should be abolished and should be abolished forthwith.

The result of the system is that rather than decreasing sentencing disparity it is increasing sentencing disparity. We feel there has to be a return to greater use of judicial discretion in sentencing. Therefore, we have proposed, first, an elaboration by the judge to be made at the time of sentencing of the nature and role of each defendant's participation in a crime. I am talking here from the practical experience of an attorney who has tried a number of armed robbery cases in the last year. If you have three men involved in an act, one is invariably a bystander, one has the gun and the third has some intermediate level of involvement. Those three people should be assessed differently because juries and people at large assess the degrees of culpability differently. What we have now typically is that all three would receive the same presumptive sentence and, varying widely from judge to judge, a minimum-mandatory, which can be up to one-half of the maximum sentence permitted for that degree.

So, we have large numbers of people who are in jail for 5 years, 7 years parole disqualified, and the message to them is: "Nothing you do while in prison can affect your parole date. If you avoid committing a crime in prison, you are going to get out on that set date." There is no incentive to study. There is no incentive to work. There is no incentive to participate in any programs. We think that is counterproductive. We think that the use of that is particularly counterproductive because it varies so widely from county to county, from judge to judge,

from case to case, that it has created tremendous disparities in the system. It is a shock if in Morris County a 7- or 10-year minimum-mandatory parole disqualifier is imposed. For those of us who practice in the criminal justice system in Newark, it is routine. We don't even notice. We are surprised to learn it is different somewhere else. The result of that minimum mandatory creates a class of prisoners with no interest in cooperation once in the system and is a key element in the increase in the prison population. And you heard Senator Hamilton and others speak about the use of the minimum mandatory. It is simply the one single mechanism in the Code which is most responsible for the increase in the prison population.

To eliminate the minimum mandatory is to allow greater discretion to the Parole Board. And I think that we can all agree from Mr. Dietz's presentation and from our knowledge of his performance as the Chairman of the Parole Board the seriousness and rigor with which that Board takes its work. If we eliminate the minimum mandatory and we allow the parole system to function in its normal way, what we will find is large groups of prisoners coming up for parole eligibility at, say, 2 1/2 years for a second degree, 3 1/2 or 4 years for a first degree, rather than serving out the 5 or the 7. That period of time between 2 1/2 and 5, say for a second degree, or 3 1/2 and 7 for a first degree, is the time period within which the Parole Board, based on the conduct of the prisoner inside the system, can make an individualized determination about the likelihood of that person committing a new crime.

So we feel that to eliminate that one mechanism, the minimum-mandatory sentences, will reduce the number of people being pressed into the system and will allow us to judge more wisely and individually the release dates of those who are in the system because sentencing has always been and it should return to being a two-step process; the judge, based on his knowledge of the facts of the case and the pre-sentence report, can make a determination for now, for today. Then sometime later down the road, that prisoner's behavior within the institution and his adjustment can again be assessed by the Parole Board. Right now, by using the minimum mandatory, we have eliminated that individualized assessment that the Parole Board makes.

Our third fundamental proposal is, to begin to move toward a county-based system and a community-based system, that there should be a presumption enacted by the Legislature of non-imprisonment in the State Prison complex for third and fourth degree offenses. Those primarily involve drug-related burglary or non-violent property type offenses. If incarceration is necessary for those offenses, it should be in the county system. The State Prison should essentially be reserved for those who have committed violent crimes and used deadly weapons.

Further, we believe that all custodial sentences in the county systems should presumptively, not without exception, but presumptively --- the ordinary pattern should be that they are served on weekends or inwork release programs in order to minimize the disruption of employment, education, family and other social factors. We have simply seen too many times as defense attorneys a man comes in- and it is a typical story - with a drug problem and a job, who is at the airport stealing luggage. The numbers could go on forever. It is simply pointless to take a man who is managing to hold a job and put him in a custodial setting that requires him to lose the job. It is one thing to say the man should be in jail on weekends or at night. That can very, very often be supported and justified. But to take a man out of a job when he is coming from a sector of society where jobs are few and far between, we think is counterproductive.

We also feel that increased reliance on the county institutions is very valuable because they can best coordinate with the existing county-based health, vocational and educational systems. The kinds of programs that Peter Shapiro will be down here every day trying to defend can utilize and coordinate with county correction

centers, whether they are drug programs, half-way houses, county hospitals, or county colleges. Each of them can coordinate with the Probation Departments and the County Prisons to move us toward a cheaper, possibly more effective and certainly more desirable community-based correction system.

Finally, I would just like to add that we, of course, endorse the recommendation of the Governor's Task Force on Prison Overcrowding for an early release bill. Chairman Dietz pointed to a population in the system that is appropriate for such a bill. Senator Hamilton underlined that. And we feel that the feasibility and necessity of that are so clear that action on this should be at least nearly immediate. Thank you very much. Neal.

N E I L M. C O H E N: What we have been trying to do is suggest non-budgetary solutions to the problems. The political atmosphere is such that sectors of society are requiring that money not be thrown after problems. What Senator Hamilton has provided in terms of solutions and what we are proposing are non-budgetary solutions.

You can have six Fort Dix facilities and it is very expensive, as Senator Hamilton pointed out. You can build new State facilities and they would cost about \$60,000 a bed. What should be implemented are such solutions as changes in Title 2C. That doesn't cost any money. As soon as a facility, I promise you - Mr. Conk and I know the system as defense attorneys --- as soon as that 600-bed facility is built, there is a word that goes out to all the criminal judges in New Jersey and they say to themselves, "Well, there are more beds now. So I can sentence and incarcerate more people and I can give them longer terms." So six months after you open the Fort Dix facility, it is going to be overcrowded. Courts are going to use the Persistent Offender Act more frequently because it only requires that someone have two convictions. The Code doesn't require or set forth whether those two convictions be violent offenses. The court is going to use the mandatory minimum more often. It is going to use the Persistent Offender Act more often. Because as soon as the new Code was implemented, the courts said, "Now we can put more people away." And they did. That is why there has been an increase in the length of terms and the number of people going to State facilities. But you can have six more State facilities and those beds will be used up within six months.

Therefore, the more beds we provide, the more people are going to be sentenced. People who should probably not go to jail for such long terms will now go because there is more bed space. It is like a Catch 22. So then, look at the Code. It doesn't cost any money to modify the statutes or the sentencing procedure. That is a method to reduce prison population.

When 2C was enacted, a three-judge panel was implemented to look at sentencing disparities between people sentenced under Title 2A and people sentenced under Title 2C. That might be an alternative, as well as utilizing the Parole Board as a method of reducing prison population.

PTI was mentioned by Senator Hamilton. That is another non-budgetary solution. PTI can be greater utilized to take people out of the system before they get into the system. As Senator Hamilton pointed out, there is great disparity from county to county as to the number of people being qualified and the number of people getting into the system and being accepted into PTI. You can utilize the money which you would use for bed space by providing counties with more funds for probationary supervision. Then more people can be accepted into PTI, standards can be reduced slightly, and the money can be used to monitor PTI people - first offenders. That is also a non-budgetary solution.

What essentially we are saying is: You have a choice. You can respond several ways. You can say we need money to build bigger institutions because the

voting populous believes a lot of people should be in State Prison. But that causes several problems; one is, within the political entities of the counties, who is going to have the State facility - who wants it in their county?

Therefore, what we are suggesting is that a review of Title 2C take place because I guarantee you - and it is a realistic and an in-court situation I have faced all the time as a Public Defender - as soon as you provide more space and you provide judges with a sentencing mechanism that is stricter, they are going to use that because that becomes the new norm. They forget how they sentenced under 2A where there was essentially presumption of probation unless you could show that the person should go to jail. Now, essentially there is the presumption of imprisonment unless you can come forward and show a reason why that person shouldn't go to jail. The courts are going to utilize anything that the Legislature provides for them. If it provides stricter sentences, the jails are going to be crowded as they are now. The more beds you build, the more beds that are provided, will not help the situation.

I remember being at a meeting of Freeholders in a particular county. They were talking about prison overcrowding at the county level. There was a discussion as to whether we could place two more beds in this portion of the building or three more beds here, or knock out a wall and add six more beds, which didn't deal with prison overcrowding because as soon as those beds go there, they are going to be full. So, whatever those steps are to increase the bed facility in New Jersey, they are not going to help the situation. It is going to continue to exacerbate it.

What we are also suggesting is that money be utilized, if it is to be utilized --- after you go through non-budgetary solutions, if money is going to be utilized, it should be utilized at the county level to provide more services at the county level for inmates for mental health and for education. There are a number of people in county facilities, not all county facilities, who should be on work release, who should work during the day and come back to the cell at night. That is, on the one hand, punishment because someone is being deprived of liberty, which is a punishment to anyone from any segment of society, losing a piece of liberty. At the same time, they work. If there is restitution somewhere in the person's sentence, they are starting to pay back the county or pay back the victim. At least something is being done there. The person goes back to the cell at night, but he still develops some kind of responsibility working during the day and providing perhaps some money to his family who may have to go on welfare because he has been taken out of the community and placed in jail. The family has to survive one way or the other. Sometimes that survival is not just welfare.

What we are suggesting essentially - and I will be very brief - is that there are certain solutions that the Legislature can take under consideration that do not require an immense expenditure of money. That can be done by a serious revision of the Criminal Code. I know that it took a long time for the Criminal Code to come into effect. I was down here. I was an aide to Senator Menza. It took a long time to get the Criminal Code together and have everyone agree on it. But there should be a continuing review. There should be a standing committee, I would say, in the Assembly and Senate Judiciary Committees to monitor the Code, review how it is being implemented, and find out what are the benefits and negative aspects of certain of its provisions, so you don't run into problems 10 or 15 years from now. I think that is the essence of the role of the Legislature, to try to come up with answers prior to a crisis developing. Thank you.

SENATOR McMANIMON: I don't know whether you had the opportunity to hear Edwin Stier, the Director of the Division of Criminal Justice.

MR. COHEN: We did not.

SENATOR McMANIMON: I think he hit the nail right on the head when he stated that when they were first doing work on the projected new Code, there was a shifting that took place. That has generated the multiplicity of problems that we have because it seems that now they are stressing incarceration more than anything else. All this ties in with some of the philosophy that you are projecting and that Mr. Hamilton has projected. I thank you very much for your presentation, gentlemen.

MR. CONK: We will be happy to be of any assistance we can.

SENATOR McMANIMON: Thank you. If we need anything further, we will get in touch with you.

John Richard.

J O H N R I C H A R D: Thank you for the opportunity to appear before you.

Let me state at the outset that these views are my own and that they do not necessarily reflect those of the United States District Court.

I would like to make two points. The first is that the situation in my opinion in the county jails is far worse than it is in the State penal system. And, second, I have some questions about the present policies of the Corrections Department, certainly as they affect Atlantic County. The problems are worse because of the different missions of the jails compared to the State penal facilities. In the county jails, you have a mixture of population. You have people who are charged - not convicted yet - charged with minor offenses who can't get out on bail. Also you have individuals who have been convicted of the worst crimes one can imagine. From a management point of view, this is very difficult. The State facilities, on the other hand, only contain convicted felons.

Second, jails of course are short-term facilities. Under the circumstances, once again it is very difficult to provide educational programs, recreational programs and contact visits. All of these things exist in the State penal facilities. Indeed, in Atlantic County, we have a situation now where inmates riot so that they can leave the County Jail and go to State Prison. It strikes me as rather absurd, but it does happen.

Third, the State has an extensive classification program. Hard-core inmates go to Trenton, etc. Because of the present overcrowded conditions in the jails, this is impossible. So once again, we have the person in there on a motor vehicle violation next to an individual who has raped seven people. This is not only immoral in my opinion, it is also very dangerous.

I do have some questions also about the policy of the State Department of Corrections, certainly as it affects Atlantic County. Commissioner Fauver this morning noted the good record of the Department of Corrections. That is quite true. But some of this has been accomplished by passing the buck. State facilities are not as overcrowded as the jails. Jails are much more overcrowded. We have the situation in Atlantic County, for example, where as part of the federal court order, the county has agreed to produce a constitutional jail. But they can't do it because of the State's policy. Indeed, the State Supreme Court recently ruled on this particular issue. I don't think that this policy is fair to the county. It is certainly not fair to inmates who sleep on the floor next to urinals, people who face sexual assaults every evening, etc. I am not sure if this is prudent government in any event.

In conclusion, I would like to state this: The transfer of sentenced felons is the State's statutory responsibility. Let me point to the recent Supreme Court decision. Justice Pashman in his opinion urges legislative action. He also notes that

the Executive Order which the court upheld is temporary. It is not a permanent solution. It cannot be viewed as such.

As far as building new facilities is concerned, I have no particular opinion to offer on this, but Atlantic is coming up with a new jail - \$14 million. And I will betray no national secret if I tell you that local officials would rather spend the money more productively than spending it on a jail. But they found the space and they came up with the money.

It is also my opinion that if the Legislature changes the rules of the game, the new Code, it must also provide the means to those charged with carrying out the laws by providing ways to implement the new policy. Since two of those who preceded me talked about litigation, quite clearly I think, the further involvement of the federal courts - the courts are involved in two of the counties at the present time - cannot be ruled out. This is simply my view, but I think it would be better for the State to solve its own problems before interference by the federal courts or anyone else.

Let me state in concluding, the problem should have been addressed a long time ago; it wasn't. The situation is critical. The situation is explosive. And I strongly believe that the situation ought to be addressed now - right now. Thank you very much.

SENATOR McMANIMON: Very good. Thank you very much.

Mrs. Canright.

WINIFRED CANRIGHT: I appreciate the fact that the common citizen is allowed to talk to you and that you are willing to listen to us. That is the real privilege of democracy and I thank you. Sorry that I can't talk to more.

My name is Winifred Canright. The reason that I dare speak on this very complicated subject is this: Ever since Attica and Rahway riots, I have studied prison systems and have been a volunteer, physiotherapist and teacher-counsellor in State prisons in New Jersey. I also speak as a representative of the Quaker Council on Corrections.

Quakers value the privilege of independence. Yet for 300 years, their attitudes have been influenced by George Fox who was frequently jailed for his beliefs. Addressing judges in 1651, he said, "It is harmful for prisoners to be confined for long periods for all they learn is to do more wicked things." Thirty years later in America, William Penn in his Great Law outlined a new avenue of corrections based on work programs rather than corporal punishment.

Today's leaders in correction say similar things. Norman Haroldson, the Director of the Federal Bureau of Prisons, stated: "If a man is not a criminal when he enters prison, he will be when he gets out." When Bob Mulcahy was Commissioner of Corrections, he remarked that if he were to hire an architect and a psychologist to design an environment that would embitter people, fill them with hate and rebellion, they would come up with something very like a prison.

It would be easy to pile up a huge stack of quotations from expert penologists, all admitting our prisons are failures. They neither reduce crime nor reform inmates. I spare you that. Instead I simply ask: Why look for more ways to cram people into our prisons? Reserve space for the dangerous who must be there. Let's try to keep non-violent people out of our jails by giving them sentences severe enough to meet New Jersey's official policy of just deserts, but which can be served outside the prison walls.

The New Jersey Correctional Master Plan of 1977 wisely recommended: "The least restrictive of the range of increasingly severe disposition should be

utilized. Incarceration should be seen as the last resort when no other alternative is likely to achieve the aim of deterrence and incapacitation."

I am going to speak briefly on ways that can be used. They may seem piecemeal and a little at a time - a woman's way of thinking we have got to do the small things. There may be some spectacular things that can be done to reduce the populations of the prison quickly. But I think that the Senate is farseeing enough to know that the problems will be with us and we must look for solutions that will affect the populations two or five more years in the future.

Halfway houses: We believe that an effective way to cut prison populations is to quickly develop a network of specialized halfway houses, some for the treatment of alcoholics who have committed crimes or treatment centers for drug addicts. We need halfway inn houses, work-release houses, study-release houses, and most of all pre-release houses.

Here follows a short description of what we have in New Jersey. Integrity House at Lincoln Park in Newark is an extremely well run establishment. One section is for long-term residential treatment of drug addicts, another is for pre-releasees from the State Prison. The benefits to the community are these: After six months of counselling, participants acquire growth in decision-making, develop job skills and experience, accumulate clothing and capital, and gradually adjust to normal living. These men are far more likely to become productive, crime-free citizens than their counterparts who come out of prison with minimal assistance and enough cash to last for two days if they eat sparingly. Parolees without help are almost always forced to get money the only way they know. Crime pays because nothing else pays. The financial advantage to the State is this: Instead of paying approximately \$39 a day to maintain a man in prison, the State pays only \$22 per day for the men it sends to Integrity House. Some of this is refunded when the man gets a job. These men have also become taxpayers to the State, to the Internal Revenue and Social Security. The annual savings to Corrections for the transfer to Integrity House, freeing one bed in the prison for the year, is \$6,205, plus a refund for room and board made by the pre-releasee plus taxes. We can take a few savings like that. Putting one man in that halfway house can save us a big pile of money as well as be of benefit to the man and the safety factor for the society that he is going to re-enter within a few months anyway.

Newark House is the only State operated halfway house for male offenders. It is a clean, well-run residence for 50 men. One evening when I visited there, an inmate recognized me as an old friend and came over to chat. I asked him what he thought of the place. He considered: "It ain't as good as being home. But I am sure glad to be in here. They have done a lot for me."

Yesterday, I called to update statistics for you, but could not get complete figures because it was the day the new Director was replacing Mr. Stevens at Newark House. I found out that in November 1981, residents working, most of them at minimum wages, earned a gross of \$27,500. The net was over \$20,000. On an annual basis, they are earning about \$330,000 a year, instead of sitting in prison cells, with payroll deductions of \$18,000. Workers paid \$2,692 in November for room and board at Newark House, saving the State for the year they pay in Corrections \$32,204 plus taxes - all this instead of costing the State for their incarceration in prison.

When Corrections announced that they had acquired and renovated the property - that is at Newark House - and would use it for a halfway house, the neighborhood was shocked and angry. Belatedly, the State met with them and some compromises were worked out. The block association of neighbors was invited to have representatives on the board and the situation was improved. One evening, I was there as a guest

at a party involving neighbors and residents of the house and the staff. In conversation with the president of the block association, I asked, "Do the neighbors mind having the house here?" "Oh, no," he answered. "We feel very much safer now that they are here. There is always a policeman around. One evening a woman was being mugged and one of the fellows from the house saw it, came out and saved her."

The cooperation continues. Five block associations have meetings there. It is like a social center for the community efforts. They even have health lectures and community planning things that are headquartered in the house. It has become a great asset to the community.

I stress that because the excuse that I have been given from the Corrections Department who at one time had \$2 million assigned to them to develop halfway houses and none have been developed --- and the excuse they give is that the communities won't accept them. I know it can be done if it is worked at properly.

There are several very good privately owned houses. Lucy told you about some of them. They are very good and very profitable to the State to send inmates there, plus a great asset to the men.

These pilot projects have demonstrated success for years. They help the offender, reduce the likelihood of future crime, save the State money during the last six months of imprisonment, and empty prison cells. Isn't that just exactly what you are looking for?

To put a dozen halfway houses in different cities, each holding 35 men, would empty 420 cells. This would give you more spaces than Mr. Fauver has been asking for in a new prison at a tiny fraction of the cost. Elderly buildings can be used and renovated for very little, particularly if the State will buck the unions and let the men remodel their own places as they have done at the house that I described first on Lincoln Place - Integrity House. The inmates have done a beautiful job. Things can be done economically if it is really wanted.

Restitution is an old idea that is gaining acceptance. It seems reasonable that an offender should work to compensate a victim for his or her losses. When this is not possible, community services seem more rational than the fiction that a man pays a debt to society by sitting in a cell. I am attaching a report of the successes and failures of a restitution program in New Jersey prepared for the Coalition of Penal Reform by Jeffrey Alport.

The Quaker Council on Corrections is also giving you a copy of a fascinating book, titled "The You-Earn-It Society," to each of the Committee. I will give them to you as I leave. We hope you will really enjoy it. It gives you a picture of what can succeed and what is being done in Massachusetts where the program is really having an impact.

Pre-trial intervention has been mentioned by several people. I add only a paragraph. The then Chief Justice Richard Hughes in the late '70's recommended increased use of pre-trial intervention. If a person is stopped when he is first involved in crimes, he is much less likely to enter a criminal career. The Chief Justice pointed out that pre-trial intervention in New Jersey has a per capita cost of \$351 compared to \$13,000 for a year in prison. Those figures are a few years old perhaps.

Concerning probation and parole, both departments should be strengthened. Use both to open up prison space. One small suggestion - and I don't know whether this should go through the Legislature or not. One step that would make for much better acceptance of Probation and Parole Officers by the people involved would be

to change the name from Officer to Parole Counsellor. Then change the function so that the idea of counselling predominated over the police functions that are attached to the name Officer, which can irritate, aggravate and turn off the street kid that is involved.

My last paragraphs are on changing the habitual criminal. An important Correctional Officer told me that 75 percent of prisoners are repeaters. With real effort that number could be reduced, leaving more space. Recently I asked a class of prisoners: If you could change two things about this prison, what would they be? Don't bother to tell me that you wish you could go knock the front gate off its hinges. Surprisingly, 17 out of the 20 answers came in with the wish for better prepared food taking a slight lead over the other answer. A desire for rehabilitative programs and more education and vocational training came in as a strong second. They had not been coached or prepared for this. It was a spur-of-the-moment question. There is a hunger for rehabilitative programs. There is a hunger for education and for job-training in our prisons. If those things were granted and used to their fullest capacity, we would have less people who go out on the street, fail, get back into crime, and come back into our prisons, filling them up.

Corrections puts these things on a very low priority. When any space restrictions or budget cuts come, they are the programs that suffer. Red carpets can be afforded, but rehabilitative programs are another matter.

I worked with Dr. Frances Cheek who developed and teaches a wonderful course in stress control and self control and leads the men to look deeply at themselves; for many of them it is the first time they have ever really thought of what they are and what they could be. During the course, some of them changed so much that we could see the difference even in their physical aspects. One of the men asked me, "Where have you been all this time? I have been here for four years wanting to get a course that would really help me and there was nothing."

There are many men who want and need help to change their lifestyles, but rehabilitation has gone out of fashion. So good programs are cut off. This program of which I have spoken is an example. Dr. Cheek and one secretary are the only paid employees. She gives stress training to Correction Officers, to staff, to inmates, to management officers, and supervises a course of volunteers who are working in all the prisons. Her work will end in June for the lack of funds. This is false economy. If this course that she is teaching and supervising and keeping going influences one man in each prison to go straight rather than to repeat his crimes, it would save enough in prison costs to pay for the course many times over. To keep parolees from returning to prison is a good way to cut prison populations.

When your Committee finishes its deliberations and chooses which ones of the many methods to follow to relieve both present and future crowding, we ask that you do more than produce the best legislation. We believe that a project, for instance, a restitution program, needs not only legislation, but funding, advice and supervision by somebody, in which both citizens and professionals participate. These things cannot function simply because they are legislated. They have got to have push. They have got to have strength - some financing - but they can save many times their costs. Thank you very much.

SENATOR McMANIMON: Thank you very much, Mrs. Canright. I really appreciate your input. Listening to your remarks, I reflected on one particular paragraph of Senator Hamilton's presentation, which was: "Without change in sentencing policy, today's overcrowding will next year seem like a tea party." So we know we have a serious problem.

MRS. CANFIELD: We really do. We have to look at the future and these slower, long-term things.

SENATOR McMANIMON: Very good.

Charles Schultz.

C H A R L E S S C H U L T Z: Senator, first I would like to thank this Committee for inviting me. I see the hour is growing late, so I will be brief.

I am a Correction Officer at the Essex County Jail. I am the PBA State Delegate. I have been employed there for nine years. I have listened to many distinguished speakers today. They all have some very good ideas.

As of this morning at 8:00 A.M., the count of the population at the Essex County Jail was 1,045. Seven hundred and eighteen are being housed in the Essex County jail. Fifty-three females are being house in the Women's Section at the Jail Annex and 274 males are being housed at the Jail Annex. Out of that, 172 are awaiting transfer to State facilities. I say that if the transfer was to take place today, Newark would fill us up by six o'clock this evening. As of eight o'clock this morning, Newark had 50 people in their holding facilities waiting to come to the Essex County Jail, another 80 in court, of which we usually get about half, and then there are those that we receive from the other municipalities. In one day we would be back up to 1,045.

There has to be some solution to the overcrowding. Taking away the State prisoners is not the only solution. It will be a help. But ever since the new Criminal Code has been in place, the daily population has gone up. The Essex County Jail has suffered two major disturbances due to the overcrowded conditions. One was in March 1980 and one again in May 1981.

We have heard from my boss Peter Shapiro that it is a tinder box. It is. The pressure, the stress, is unbearable on the inmate population and on the Correction Officers. It is only a matter of time before it explodes again. It may be happening now. It may happen tomorrow. But it will happen. There has to be some alternatives. The Essex County Jail is supposed to be a holding facility for detainees that are unable to post bond. They are awaiting trial. We are housing approximately 873 awaiting trial this morning. Maybe it is the court system. Maybe they are too slow. That is a large number of men awaiting trial.

I have heard as an alternative community-based corrections. But that is all after you are found guilty. There is nothing dealing with the holding facility, itself. You cannot build an additional 1000-bed jail in Essex County. Financially, the county could not stand for it. But the overcrowding situation is not all due to the State prisoners. It is due partly I would say to the new Criminal Code.

I heard about the judge who released the inmates from the Union County Jail due to the overcrowding. Also in the last week, a judge ordered the release of 72 inmates from a county jail in Florida. So it is not only a New Jersey problem; it is becoming a national problem. There is overcrowding in all the states - down South and out West. It has become a national problem and it also has to be dealt with on a national level.

In closing, I would like to again thank you for this opportunity. If there is anything the Essex County Jail PBA can do, we would be glad to help you in any way.

SENATOR McMANIMON: I appreciate your being here today. It is becoming more and more apparent that we are going to have to really discuss the violent and non-violent crime structures and maybe the whole sentencing policy is going to have to be completely reviewed as to what steps we might take with respect to the non-violent crimes. We realize the new Criminal Code has generated a hot potato for us, to be very frank. The State already projects a 70 percent increase in incarceration.

If this happens and the State is already overcrowded and now the counties are being overcrowded, we have to find an avenue to pursue. I think you are going to find that the Legislature realizes it is their problem and we are going to have to tackle it very shortly. Thank you.

John Farrell.

J O H N M. F A R R E L L: Mr. Chairman, I too want to express my appreciation to you for the opportunity of appearing here today. I represent a very important segment of the community and I think they have something that they would like to say to you. Many of the things we want to say are in this statement and some of them have been expressed before. Because of the shortness of time remaining, I would request that if this could be copied or repeated in your summary ---

SENATOR McMANIMON: It will be so recorded.

MR. FARRELL: Thank you. Then I will just very briefly go over the front page to tell you who we are and also give you the recommendations at the end.

My name is John M. Farrell. I am Senior Vice-President of Beneficial Management Corporation. I am speaking today as the Chairman of the New Jersey Executives' Committee of the National Council on Crime and Delinquency. The Executives' Committee represents a broad array of New Jersey corporations, which seek to improve the effectiveness of the State's criminal justice system.

The primary program objectives of the Executives' Committee are two-fold:

First, to encourage the use of cost-effective alternatives to incarceration for non-dangerous offenders, thereby lowering the continuing budget burden of the State's corrections system to the taxpayer.

Secondly, to encourage the development of community-based crime prevention programs to reduce the incidence of criminal and delinquent activity that create enormous losses to the State's residents and businesses.

Now, the rest of the material has been brought to your attention before, except I would like to repeat one sentence that I have in here so you know the gist of it. That is in relation to the cost. I say here that money is among our scarcest sources at present. That is one of the reasons why we have to save a little bit.

These are our four suggestions to you:

The Legislature should pass a statute similar to one which has been utilized by Michigan to successfully defuse their prison overcrowding crisis, without enormous financial outlays and without endangering public safety. Such an emergency overcrowding statute would accelerate parole eligibility by three months, allowing the reduction of the incarcerated population in an orderly fashion while selecting for release those inmates who would shortly be released in any event. As business people, we support the concept of a planned reduction of the overcrowded population. Given the magnitude of the problem currently facing the State, such a mechanism appears to be the only rational immediate response to the problem at hand, and there seems to be no grounds for the often expressed fear that releasing those who are near release anyway will present any increased danger to the public.

Secondly, within the State's prison system right now, there apparently are an estimated 500 individuals who have been denied parole release, for the sole reason that no suitable residential or non-residential mental health and substance abuse programs are available. Funding of these kinds of community programs should be accomplished to eliminate this problem in the future, thereby eliminating the need for one entire new prison.

Third, we further recommend that the Legislature appropriate funds where applicable for the purpose of establishing viable alternatives to incarceration

for those who do not require imprisonment, and who are currently eligible under the Criminal Code for non-incarcerative sanctions. We understand the AOC is now investigating the feasibility of instituting intensive probation supervision programs in this State, as well as a statewide program of community service sentencing. If these practical alternative programs are created and adequately funded, the State will have gone a long way towards a planned response to its correctional needs.

Fourth, while we understand the Legislature's reluctance to consider the possibility of revising the mandatory sentencing clauses of the Criminal Code - although we would contend such a re-examination is essential given the Criminal Code's disastrous impact on the prison population - we urge you, most emphatically not to give any credence to any further call for increased sentence lengths or additional mandatory sentences. The impact of 2C's harsher provisions is all too evident in the current crisis of overcrowding. To increase the severity of those provisions in the light of current experience would only exacerbate disastrously an already impossible situation.

That is the gist of this paper.

Let me add one more recommendation. This will take one minute. About a year and a half ago I wrote to Governor Byrne and also to Attorney General John Degnan, suggesting to them that as interested business people we should put together a committee of businessmen who would have no purpose whatsoever in getting to the bottom of the overcrowding, what constitutes it, why it is there and what can be done to correct it, except to save themselves tax money. I think that is still a good idea. It would cost the State of New Jersey nothing. These men would give of their time and the work necessary to give you a report of that kind. I am a member of enough organizations that I could say to you, we could give you these people of the strongest calibre that would give you a report that you could work with, that would be founded in fact, where there would be no biases and where there would be no personal aggrandizement of any kind whatsoever, except serving the State of New Jersey. We live here. We love New Jersey. We work here. We support it. We would like to see it get its proper place in the sun instead of being pointed to, as we are, as 40 years behind the times in our criminal justice system - and we are 40 years behind the times. I suggest to you that we would be very happy to do that for you. Thank you again.

(See appendix for complete statement submitted
by Mr. Farrell.)

SENATOR McMANIMON: Thank you very much, sir. It is quite apparent that you and Senator Hamilton have a great deal in common. You both seem to be going down the same path.

MR. FARRELL: I admire him. He is a tremendous individual.

SENATOR McMANIMON: I kind of think so myself.

Sheriff Lanzaro.

W I L L I A M L A N Z A R O: Senator, good afternoon. My name is William Lanzaro. I am the Sheriff of Monmouth County. I know the hour is late and I am only sorry that more of the Committee couldn't be here to hear probably the last two speakers today, myself and Sheriff Englehardt.

I have sat here since quarter of ten this morning and listened to various speakers tell us what is wrong with different parts of the system. Correct me if I am wrong. But I understood that the meeting here today was to address the overcrowding of the county and State prisons. We have heard various people tell us that 2C doesn't work and various other reasons why we are having overcrowding and what we should do about it, whether we should build additional prisons or should not build

additional prisons. But the need is now. I think Senator Hamilton put it best. He said it is a State problem. The State has imposed a problem on us. When I took over as Sheriff of Monmouth County last year, we had about 30 State-sentenced inmates awaiting transfer to State Prison. Now, as of eight o'clock this morning, I have 92 and I am down from 120 of last week. I have 104 inmates sleeping on the floor. I have feedback today that could result in my having a riot on my hands tonight. We can't look down the road. We have to look at today.

There are alternatives. Commissioner Fauver says that he doesn't want double bunking in the State facilities. But how about the bunking in the county jails? I have them double bunked. I have dormitories built for 12 with 24 in there. I have them sleeping in the shower area. I have them sleeping in the reception area. What am I supposed to do?

Do you know the immediate solution to the 1000 or the 1100 that are in the county jails? Double bunk them in the State Prison. Let them accept their responsibility and take them off the backs of the counties.

There is an alternative. A year ago, I proposed a workfare program. In Monmouth County, we have approximately 30 weekend-sentenced inmates, sentenced to consecutive terms by the municipal courts. These are people who are working supporting their families, your neighbors and mine, that are out in society and are no threat to anyone. The municipal judge sentences them to consecutive weekends. They come in our jail on Friday night. Also Friday is sentencing day in Monmouth County. So we get roughly 15 to 20 new sentences each Friday. We get our 20 to 25 weekenders. Now I don't have to tell you what happens on a weekend in our jail. Of course, the thought of going to jail on a weekend makes men half slopped up. So by the time they sober up it is Saturday afternoon and they are released on Sunday. This is at a cost of approximately \$50 a night to the taxpayers of Monmouth County. I have said, and the Assignment Judge in our county has now concurred, that there is an alternative. Let's put them on a workfare program. Let's encourage the municipal judges to sentence them to a county workfare program to be administered by the County Sheriff and it would work as such, as I proposed it. We have a county court house where we had 8 CETA workers we recently had to let go because of the cut in CETA funding. We could put them in the county court house on weekends working 9:00 to 5:00 where we already have the insurance and the supervision. We could put them in the county park system in the season, weather permitting, where we already have the insurance and supervision. By the way, the park system is very receptive to this. It would not replace anybody that is presently working in the park system because the park system has many trails that they would like to clean up and clear. Therefore, I wouldn't have those 25 or 30 in my jail on the weekend. They would work from 9:00 to 5:00 Saturday and Sunday, brown-bagging it, and that would be their sentence.

There is only one problem - and this is where the Legislature comes in. Two-thirds of the weekenders that we get in our jail are mandatory type sentences. When you say mandatory, that sounds serious, but not really. An individual is caught driving without insurance; because of the economics in these times he couldn't afford it. So his license is revoked. He has to support his family. He continues to drive and now he is caught driving on the revoked list. He is sent to the county jail. You can't call that guy an outright criminal. Is it a crime to want to support your family? Why can't we put him on a work program? We could also use him evenings. There are many areas. Our Assignment Judge this past week came out in favor of a community type program because with the exposure that my proposed program has been getting, I have had many requests in Monmouth County from municipalities who are

hard pressed for funds about cleaning up their municipalities. Mayor Scioffi, who was mentioned earlier, in Long Branch will not be able to clean up his beaches this summer because of budgetary restraints. He has asked me for help. Judge Shebell met with the Municipal Judges' Association last week in Monmouth County and instructed them, when possible, to sentence these people to a community type project which will be administered through the Probation Department of Monmouth County under the Chief Probation Officer and with the help of the Sheriff's Department. Already one municipal judge, as an alternative means, sentenced a defendant last week to eight consecutive Sundays washing the police cars in that municipality as punishment for throwing a rock through a window. This is the immediate answer. This is what we have to do: community service, workfare, etc.

If I could get rid of those 30 on the weekend and the municipal judges cooperate and have the discretion to put these people on workfare instead of putting them in the jail, this would help.

We have heard mentioned early release. You know it was never the intent of a sentencing judge for somebody to be released early. But if it is found after a series of meetings that this could be beneficial, why not release them? We heard, I think it was Mr. Dietz who said it takes roughly three months from the time it is said they could be released until they are released, because of the clearing stages. Why not when a date is set for release send them back to the sentencing county and put them on a workfare program while they are being processed. They are three months earlier out of State Prison. You can now utilize that bed. They will make a better adjustment back in society.

I, as the Sheriff of Monmouth County, am against just taking three months of their sentences and letting them go. If the judge meant that in the beginning, he would have set the sentence that way.

Another thing that the State is doing to us --- you know after 15 days, we get a per diem on every inmate. It was only in the past year that they have made that uniform throughout the State. We now get \$39 and change for each inmate after 15 days, except parole violators. If we have a parole violator and he has had his probable cause hearing and if he is there after the 15th day, we get nothing. Now it used to be --- and when I took over I noticed we had about \$80,000 coming on parole violators. So when I inquired about it, I got a letter from the Department of Corrections. If you read it in depth, it said, look, dummy, if you don't have enough sense to send those parole violators at the top of the class, that is your problem. That is just what I started doing last March.

Usually we send inmates by the length of time they have been there. Now we put the parole violators at the head of the class. With the Governor's order last summer, that has stopped. Now the State comes in and they do the classification in the county jails. They pick at random who they want. So where we should be getting rid of the long-term sentences, it is not necessarily so. They pick whom they want to go. We should have the say. It is our county jail. They are not our inmates. But the State is continually making their problem our problem.

I must say in all fairness to Joe Call and Gary Hilton and some of the others that the Department of Corrections has been most cooperative. I understand they have a job to do. Each week they try to take a certain number of inmates from you. Two or three weeks go by, then you have to get strong with them and say, "Look, you have to get them out of here." And they give you, "Well, we don't have any beds." Then we say, "Well, we are going to shut the jail down." All of a sudden they find beds. I don't understand this. This goes on and on. Take in Monmouth County,

with 104 sleeping on the floor. How much longer do you think I can stand it before I shut my jail down? Forget about 2C right now. Forget about building new prisons right now. Forget about rehabilitation right now. Let's address the immediate problem. It is unfortunate this notice - and again I would like to thank the Senators of the Committee who are here --- but it is unfortunate that a notice didn't go out to every Sheriff. I would like to see another meeting of this Committee with all of the Sheriffs that have jails and even the ones that don't and the Wardens. Get to the grassroots. Let's hear from the guys who are in the trenches who have to deal with this problem every day. We are the ones affected. We had to reduce our feeding because we are afraid of a riot. That is the input that you need. That is when you will get a better handle on this and better ideas.

Obviously, you are concerned because you called this hearing. And, obviously, we are concerned because we sat here all day long waiting to speak. We need your help. We realize it is a serious problem. We realize Fort Dix is only a stop-gap measure at best. We could sit here all day long discussing whose fault it is and look back. That is not going to cure anything. I think we just have to take a good look at where we are coming from and where we are going.

It is very nice of Commissioner Fauver to sit here and say, "I don't want double bunking." It's wonderful. I don't want double bunking either, Commissioner. But maybe we have to give and take a little bit. If he just took half of our population and double-bunked a little bit, it would help. It is just going to be a never-ending problem. We must work at it and work at it together. But I think community restitution, putting some of these people out in society, is one of the ways that we can reduce the population coming into the county jails.

I want to thank you very much for the opportunity to speak to you. I know the hour is late. If there are any questions, feel free to ask them.

SENATOR McMANIMON: Very good, Sheriff. You can rest assured I will discuss with Dick Codey, the Chairman of the Committee, the possibility of having a meeting with all the County Sheriffs throughout the State.

For your own personal information, I would like to clear the air with respect to workfare. You are talking to an individual who moved the Workfare Bill, which put welfare recipients to work, in the lower House last year. I have no qualms whatsoever about workfare.

MR. LAZARO: Senator, with 25 to 30 coming in each weekend in Monmouth County alone, we computed it would save us a quarter of a million dollars, not to mention the stress it will take off the officers and the institution. I think this is a good approach. You know some of these municipal judges have to be educated. They just can't use the county jail as a dumping ground. I think that is another thing that has to be addressed.

SENATOR McMANIMON: Thank you.

Sheriff Englehardt.

EDWIN ENGLEHARDT: First of all, I want to thank this Committee for inviting me here today to explain to you what some of our problems are in the Passaic County Jail. I will try to make this as fast as I can. I appreciate the fact that you are extending the time beyond four o'clock. I appreciate the opportunity to be here.

I am here today, Senator, to for the record tell this Committee what some of the problems are in the county jails of the State of New Jersey, but more particularly Passaic County Jail because as the Sheriff of Passaic County, I am totally responsible for the operation, custody and control of that jail.

Our Passaic County Jail is the most overcrowded county jail in the State of New Jersey. We have a jail that was built 25 years ago to house 227 inmates. Our population today is 487. Of the 487, 149 are sentenced State prisoners, 82 of which are sleeping on cements floors and mattresses. We have a situation - and you have heard this expressed by others - that is a powder keg. You heard Peter Shapiro say that and you heard the President of the PBA of the Essex County Jail say that. But our situation is even worse because we are more overcrowded.

It is a serious problem and I feel that some action has to be taken now, not three years from now.

What I would like to do now is give you my feelings on how this problem came about and not just be here to complain for the record, but possibly recommend what I consider a rather immediate solution.

The law specifically states that the State Department of Corrections shall accept their sentenced prisoners in 15 days. Because of the overcrowding in the State institutions, our former Governor last June declared an emergency, authorizing the Corrections Commissioner to force the counties to hold back shipping their State prisoners to State institutions. Also that emergency order authorized the Commissioner of Corrections to transfer any inmate from any county jail that is overcrowded to another county jail that is not overcrowded. To this day - and that emergency was issued last June - not one prisoner was transferred from the Passaic County Jail to any other county jail in the State of New Jersey, in spite of the fact that my population is 210 percent of capacity, the most overtaxed jail in the State of New Jersey. Also in that order, it gives the Commissioner of Corrections the opportunity to immediately take over any building anywhere in the State to provide beds to ease the overcrowded situation. I don't know of any single institution - building, factory, armory, or whatever - that has been taken over or even acted upon since that emergency order. Not one single bed that I know of has been made available as a result of that order. That order was nothing more than to protect the Commissioner of Corrections and the former Governor of this State from having a tremendous riotous situation on their hands in the State of New Jersey.

I think it is disgraceful and I think it is criminal that because of that order the Corrections Commissioner can keep his population at about 100 percent of capacity, which is manageable, and force the counties in this State to increase their populations - Passaic County particularly - by 210 percent. I don't think it is fair. The least they should do is bring their population up to 150 percent and bring mine down to 150 percent. If my population, Senator, was 100 percent, I wouldn't be sitting here today.

We don't have any problems in Passaic County housing Passaic County prisoners. We can maintain control. We always have. And two years ago, we began negotiations, we broke ground and we are in the process of constructing a fourth floor on the Passaic County Jail, giving me 200 more beds. But the way the State has been operating, the \$7 million that the County of Passaic has appropriated to satisfy Passaic County's needs -- the State of New Jersey is going to force Passaic County to hold their State prisoners. State prisoners are very, very difficult to handle. You must understand that county jails are not medium security prisons; county jails are not maximum security prisons; county jails are nothing more than holding facilities. They were never built or never intended to act as maximum security facilities. When you have 150 sentenced State prisoners, some to 40 years, some 30 years, some 25 years, forced to live in the county jail that is not equipped to handle that type of prisoner, you can imagine what kind of a problem I have and the kind of problem my warden has and what kind of a problem my men have.

Something has to be done and it has to be done quickly because these State prisoners are the ones who are giving us the problems. Those that haven't been sentenced yet are no problem. Those who are awaiting trial are no problem. Those that are sentenced to the county jail for under a year are no problem because they are manageable. They are not going to cause any problems before they are sentenced or tried that may affect the outcome of their trial. But those sentenced for long periods of time have nothing to lose. They want to get out of the Passaic County Jail and they want to go to State prisons. Why? Because they have programs and they have opportunities in State prisons that I would never allow in Passaic County. The Passaic County Jail is the most dreaded jail in the State and that is the way I want it to be. I feel that jails are places of punishment, not places for vacation. They go down to State prisons where they can get college degrees, have weekend furloughs - they go home on weekends and commit the same kinds of crimes they were convicted of - take day trips down at the shore, have elaborate rehabilitation programs. There are millions and millions of dollars going down the drain and rehabilitation doesn't work. Our residivism rate in Passaic County is 80 percent in spite of the millions and millions of dollars in rehabilitation. We have to have more jails, not country clubs.

I think it is disgraceful the State of New Jersey, Department of Corrections, is considering building a new minimum security facility in Camden at a cost to the taxpayers of this State of \$35 million for approximately 200 prisoners - \$35 million for an institution they haven't broken ground for yet, which is going to take two years to build, for 200 prisoners. Why do we need tremendously expensive institutions for prisoners? My suggestion is to utilize the existing facilities that are not being fully utilized today. When Governor Byrne issued that order last year, I made a suggestion - and if they had followed my suggestion, we wouldn't be faced with this problem today - that they appropriate two or three million dollars and I will tell them the location. I pointed this out in the past. I will tell you why they refused it. I say, take the Armory in the City of Paterson. It is in the most crime-ridden area in the City of Paterson. They talk about the poor relatives visiting the prisoners. They can walk to the jail. Utilize the Armory. The National Guard only uses that Armory for one weekend a month. Take three million dollars and convert that in six months and they could place 500 maximum-security prisoners in there. They don't need 65 square feet. They don't need a \$35 million complex. That doesn't discourage prisoners from committing crime. They are not afraid to go out, commit crime and go back to jail. They are better off in jail than they are at home. Utilize the existing buildings and facilities. If prisoners felt they were going to be very, very unhappy and dreaded going to jail, in my opinion, they would think twice before they committed a crime.

The State is responsible for the problem today. In 1975, Governor Byrne appointed a committee and Commissioner Fauver was a member of this committee. The committee spent many hours and God knows how many thousands of dollars. They submitted a report in 1977. On page 91 of this report, it specifically states that by 1980 the State will be 1200 beds short. It is 1981 and the State of New Jersey hasn't built one bed. All that money went down the drain. The money is there. The buildings are available. Eliminate these \$35 million country clubs. Utilize the existing buildings. That's what we need.

The Legislature is also partially responsible. I am very much in favor of mandatory sentencing to get these criminals off the streets. The public demands it; the public deserves it. We need those mandatory sentencing laws. But that is only

part of the problem. The Legislature should take the initiative and have the courage to pass the companion legislation appropriating funds or finding beds where these Sheriffs and Wardens can place these inmates once they are sent to jail as the result of mandatory sentencing.

What I say is: Forget about these \$35 million institutions for 200 people. Utilize the existing emergency order. Utilize the powers that the Commissioner has. Appropriate a fraction of the funds. Open up these armories and put these people who are in these overcrowded jails in them. Then you will have plenty of room for the criminals who are on the streets about to be incarcerated.

SENATOR McMANIMON: Thank you very much, Sheriff.

I would like to make just one statement. Earlier this morning I asked the specific question: Is the program being presented by the State a realistic approach to the problem of securing those beds which are so sorely needed? We have heard from professionals this morning. We have heard from professionals this afternoon. It is rather ironic that you sit here and hear differences of opinion expressed by sincere, honest people. We are looking to those with expertise to guide us. That is the purpose of this public hearing. It is quite apparent that we are all not going to agree in the final analysis. But it is also apparent that some positive action has to be taken. I think that is the intent of the Chairman of the Committee, Senator Codey, and the Committee. That is the sole purpose of this hearing.

I sincerely appreciate all those who have appeared here today. I believe that this will not be the last meeting because I have a feeling that we have a lot of homework to do and we are going to have to do it fast.

MR. ENGLEHARDT: Thank you very much.

SENATOR McMANIMON: Thank you.

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PUBLIC HEARING - FEBRUARY 18, 1982
SENATE HEALTH, INSTITUTION AND WELFARE COMMITTEE

William H. Fauver, Commissioner
Department of Corrections

During the past year, New Jersey's Correctional Institutions have been experiencing a serious and ever-increasing overcrowding situation. Both State and County facilities have been operating well beyond the capacities for which they were designed. Current population projections, mutually developed by the Administrative Office of the Courts and this Department, indicate that the overcrowding problem will not be alleviated in the immediate future.

There are three primary reasons for the overcrowding situation: 1) The effects of the New Code of Criminal Justice; 2) The effects of the new Parole Act; and 3) The impact of the State Speedy Trial program.

The new code of Criminal Justice, which appears to be viewed by the sentencing courts as a more harsh and severe sentencing code, has resulted in more offenders being committed to state institutions and for longer periods of time. Compared to commitments under Title 2A, the former criminal code, commitments to the State Prison System were up by a staggering 70%. Moreover, the median term imposed by the courts also increased from five to seven years. In addition, the imposition of mandatory minimum parole ineligibility terms will increase an offender's actual length of incarceration, further contributing to the overcrowding situation.

Similarly, commitments to State Youth Correctional institutions and County correctional facilities have also increased by 10% and 16% respectively under the new Criminal Code.

Besides more offenders being sentenced to custodial terms, the overcrowding situation has been further exacerbated by a significant reduction in the number of parole releases from the Youth Correctional Complex. Since the enactment of the new Parole Act of 1979, Youth Correctional parole releases have dropped by 30%. Moreover, additional increases in correctional populations can be partially attributed to the State Speedy Trial program which acts to move cases more expeditiously to disposition.

Resident Population Trends

During the last sixteen months, state correctional commitments have increased by 2721 inmates from a total of 6,199 on September 30, 1980 to a record high total of 8920 on January 31, 1982. This forty-four percent increase is reflected in corresponding increases within each of the major categories of inmates in the Prison Complex (determinate sentences), Youth/Adult Complex (indeterminate sentences), Juvenile Offenders (under 18 years of age), and offenders awaiting entrance into the state reception unit (county jail waiting list). Reference is made to page 1 of the attached report.

Commitment Offense

As of February, 1982, approximately seventy percent of all prison offenders resident in state facilities were convicted of crimes against person including Murder, Rape, Assault, Robbery, and Sexual Abuse. Reference is made to page 3 of the attached report.

Mandatory Minimum Terms

Since the enactment of the new code of Criminal Justice, 26% of all new prison offenders have been received with mandatory minimum parole ineligibility terms. Parole ineligibility terms are not reduced by "good time", work or minimum custody credits and can be imposed for up to one half of the maximum term.

Of the 806 prison offenders received with parole ineligibility terms, almost eight out of ten were sentenced with minimum terms in excess of three years. A three year parole ineligibility term is comparable to a 12 - 15 year term under Title 2A, the former Criminal Code. In many instances, the actual amount of "time served" will almost double. Instead of being considered for parole at one fourth or one fifth of their maximum sentence, most offenders with mandatory minimum terms will stay in prison until one half of their maximum. Reference is made to page 4 of the attached report.

New State Bedspaces

In order to help alleviate the severe overcrowding problem, the Department has created almost 500 temporary bedspaces through the use of trailers, classrooms, and recreation areas. The detailed breakdown of these temporary measures has been provided in material already submitted to the Committee. Within the next three to six months, over 1,000 additional bedspaces will be brought into use. Long term plans, which may require both extensive capital expenditures and/or the development of systemwide alternatives to resolve this problem are now being formulated.

NEW JERSEY DEPARTMENT OF CORRECTIONS
William H. Fauver, Commissioner

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Division of Policy and Planning
Bureau of Correctional Information Systems
February 17, 1982

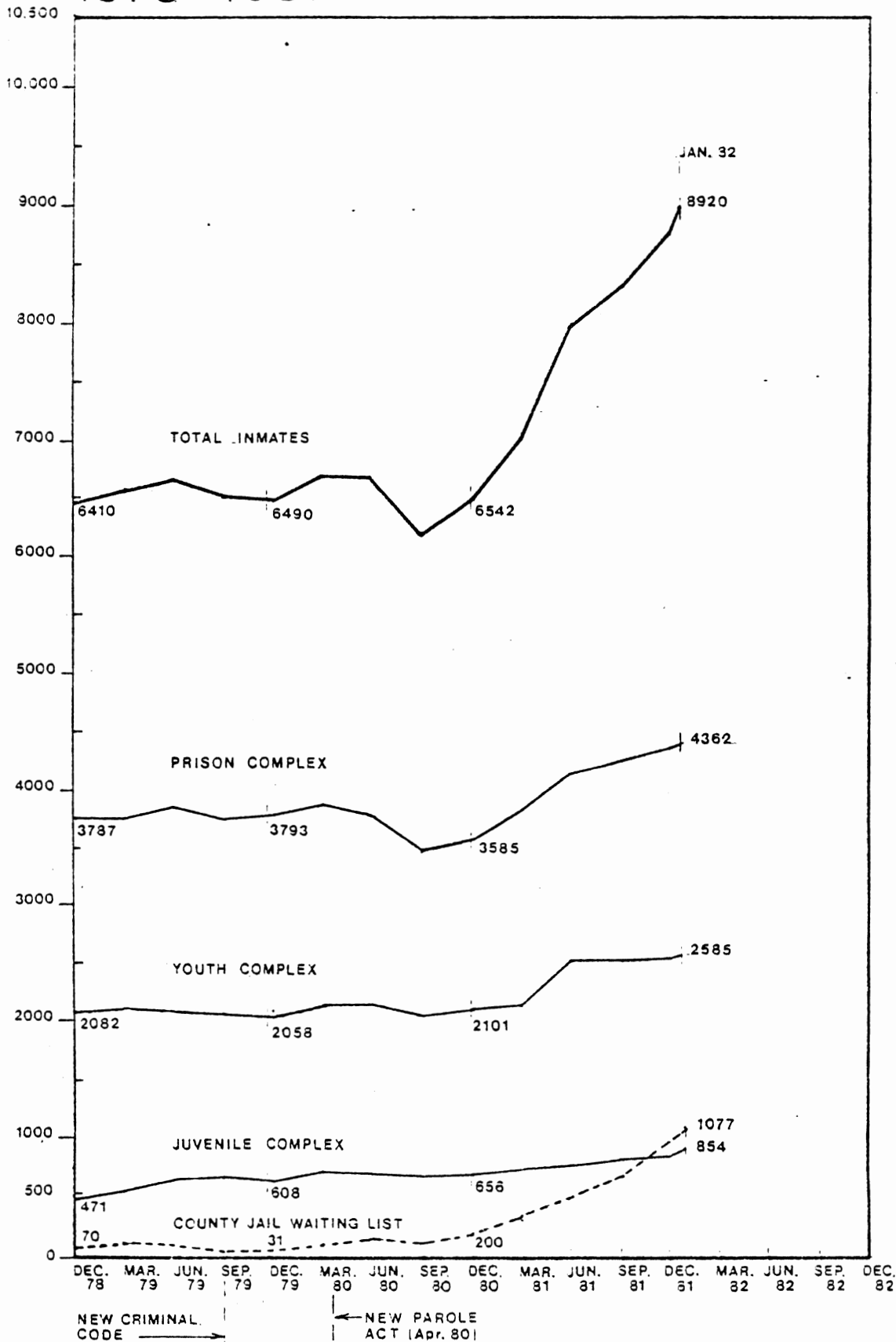
RESIDENT POPULATION COUNTS BY QUARTERS

| MAJOR CORRECTIONAL INSTITUTIONS | RESIDENT LAST DAY POPULATION COUNTS BY QUARTERS ENDING: | | | | | | | | | | | | | | | |
|---------------------------------------|--|-------------|--------------|--------------|-------------|-------------|--------------|--------------|-------------|-------------|--------------|--------------|-------------|-------------|--------------|--------------|
| | DEC 1978 | MAR 1979 | JUNE 1979 | SEPT 1979 | DEC 1979 | MAR 1980 | JUNE 1980 | SEPT 1980 | DEC 1980 | MAR 1981 | JUNE 1981 | SEPT 1981 | DEC 1981 | JAN 1982 | JUNE 1982 | SEPT 1982 |
| <u>TOTAL JURISDICTION</u> | 6410 | 6570 | 6643 | 6517 | 6490 | 6746 | 6666 | 6199 | 6542 | 7084 | 7940 | 8299 | 8722 | 8920 | | |
| COUNTY JAIL WAITING LIST | 70 | 105 | 93 | 40 | 31 | 100 | 150 | 75 | 200 | 360 | 470 | 650 | 945 | 1077 | | |
| COUNTY JAIL TRANSFERS | - | - | - | - | - | - | - | - | - | - | - | 48 | 50 | 42 | | |
| <u>TOTAL RESIDENT</u> | 6340 | 6465 | 6550 | 6477 | 6459 | 6646 | 6516 | 6124 | 6342 | 6724 | 7470 | 7601 | 7727 | 7801 | | |
| PRISON COMPLEX | 3787 | 3787 | 3820 | 3755 | 3793 | 3833 | 3722 | 3450 | 3585 | 3827 | 4155 | 4259 | 4351 | 4362 | | |
| YOUTH ADULT CORR. COMPLEX | 2082 | 2096 | 2084 | 2075 | 2058 | 2121 | 2118 | 2014 | 2101 | 2197 | 2528 | 2536 | 2557 | 2585 | | |
| JUV TRNG SCHOOLS RESID/TRNMT CNTRS | 471 | 582 | 646 | 647 | 608 | 692 | 676 | 660 | 656 | 701 | 787 | 806 | 819 | 854 | | |

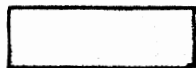
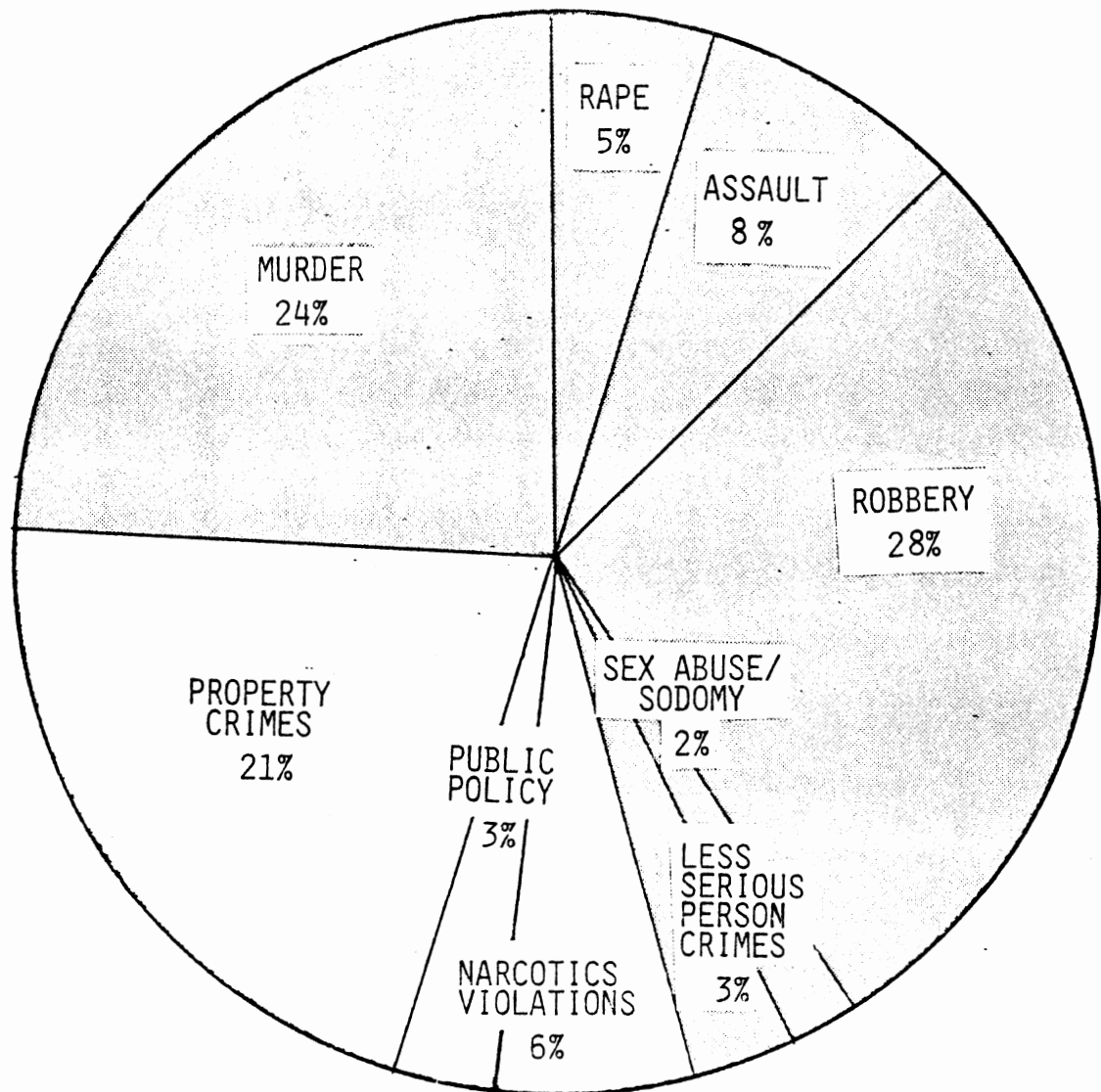
Compared to institutional counts on September 30, 1980, resident counts on January 31, 1982 increased by 1,677 or 27% from 6,124 to 7,801. The count in the Prison Complex increased by 912 or 26% from 3,450 to 4,362. The Youth Complex experienced a 28% increase or 571 offenders from 2,014 to 2,585. The County Jail Waiting List increased from 75 on September 30, 1980 to 1,077 on January 31, 1982.

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

TOTAL STATE CORRECTIONAL POPULATION (By Quarters) 1978 - 1981

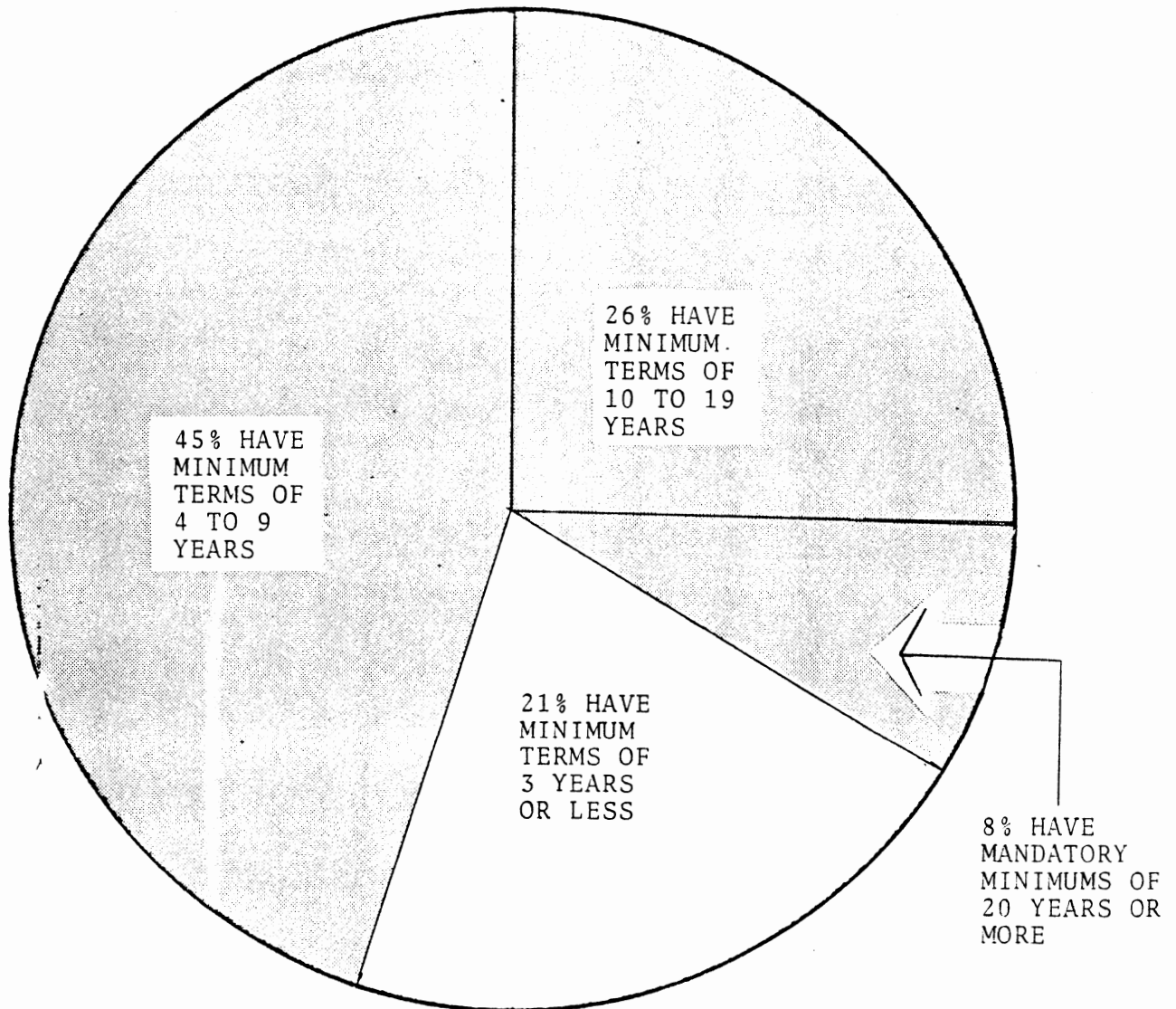



COMMITMENT OFFENSES OF INMATES IN N.J. PRISONS
AS OF FEBRUARY 3, 1982



70% OF CURRENT PRISON INMATES WERE
COMMITTED FOR VIOLENT CRIMES

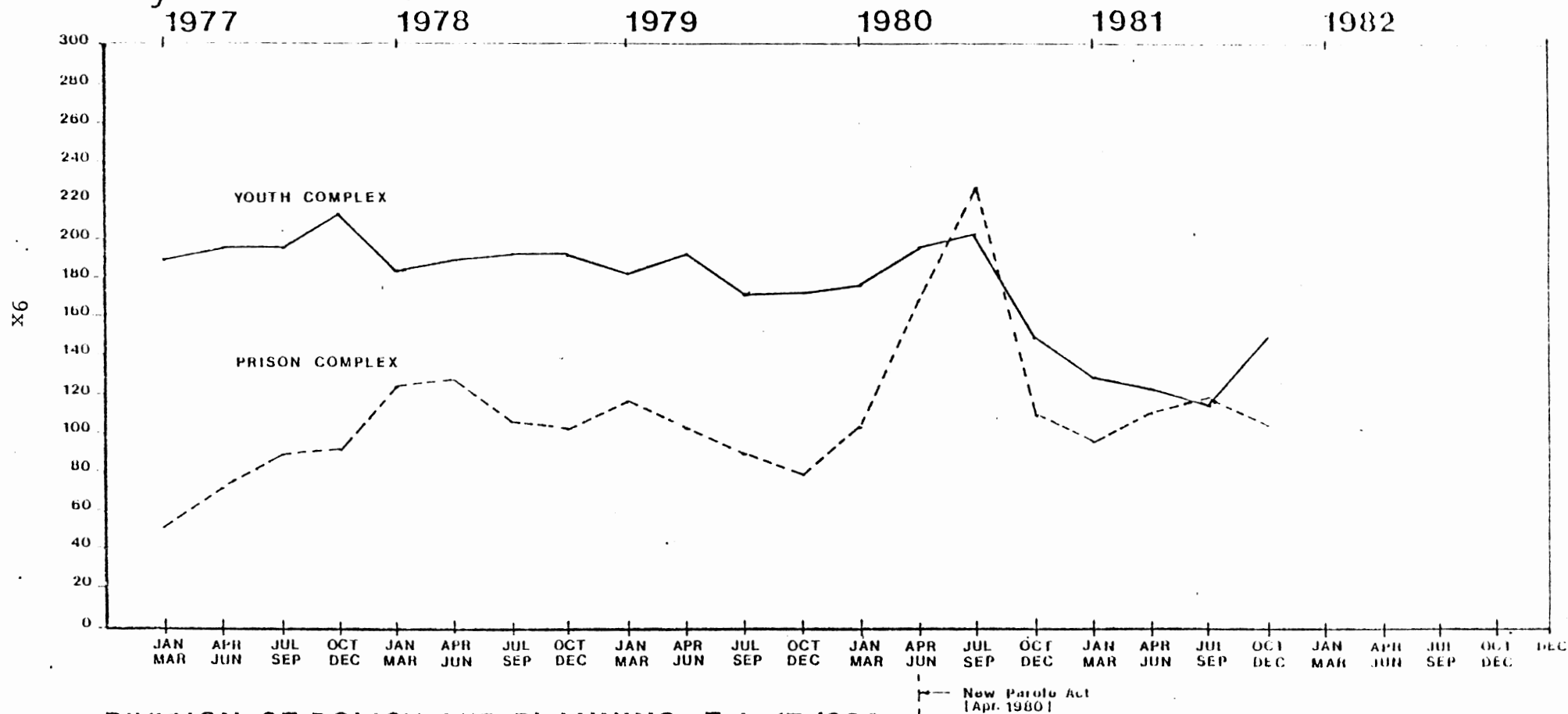
MANDATORY MINIMUM TERMS IMPOSED UNDER THE NEW PENAL CODE:
(BASED UPON 806 OR 26% OF NEW PENAL CODE COMMITMENTS)
N.J. PRISON COMPLEX, SEPTEMBER 1979 THROUGH JANUARY 1982



 79% OF THE MANDATORY MINIMUMS IMPOSED UNDER
THE NEW PENAL CODE ARE FOR FOUR YEARS OR MORE

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

RELEASES TO PAROLE OF ADULT MALE OFFENDERS (By Quarters) 1977-1982



DIVISION OF POLICY AND PLANNING; Feb. 17, 1982



NEW JERSEY ASSOCIATION ON CORRECTIONS

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David H. McAlpin, Jr.
PRESIDENT
~~JOHN H. FARRIN~~

Oliver B. Quinn, Esq.
~~INTERIM EXECUTIVE DIRECTOR~~
~~Timothy Weeks Esq.~~

TESTIMONY BEFORE THE
SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE
HEARING ON PRISON OVERCROWDING

February 18, 1982

I am Lucy Mackenzie, Director of the Citizen Action Division of the New Jersey Association on Correction. The Association is a citizens organization concerned with the enormous economic, social and human costs of crime in New Jersey. We have been working for more than twenty years to improve the effectiveness of New Jersey's criminal justice system, through our Citizen Action Division, and to provide services to offenders and ex-offenders which will help them return to their communities as self-sufficient citizens through our Morrow Projects Division. These services include half-way houses in Trenton and New Brunswick whose residents are state prisoners nearing parole and county prisoners sentenced directly to the house upon conviction.

Because the problem of prison and jail overcrowding in New Jersey must be faced immediately, the Association regards this hearing as extremely important. During the past year, we have been involved in the efforts of many agencies to devise strategies to meet the growing emergency. We have consistently advocated a comprehensive approach to the overcrowding problem, rather than the single solution of new prison construction. We were therefore pleased with the methodical approach taken by the Task Force on Prison Overcrowding, and we support most of the recommendations contained in its December report. It offers several short-term solutions which merit the closest attention of the Governor and the Legislature.

The most significant sentence of the report states: "The present problem is not a temporary aberration; it is overwhelming and profound, and all information presently available indicates that it is permanent in nature." The situation is truly overwhelming. Although corrections facilities should operate at no more than 92% of operational capacity, for reasons of safety and efficiency, the medium and maximum security facilities of New Jersey are now operating at 102% of capacity. If state inmates housed in jails are included, the figure is 124%. At the same time, the county jail population has reached 121% of operational capacity, including more than a thousand state prisoners. County officials, trying desperately to cope with an impossible situation, are seething with resentment against the state, which is spending a million dollars a month to keep its prisoners in the county jails. Meanwhile, at the bottom of the pecking order are municipal jails such as the Newark facility, where a cell in police headquarters measuring 4½ by 7 feet is being used to hold up to nine prisoners, and where inmates are forced to go days on end without bathing. The majority of these prisoners have not been convicted; they are in this hideous situation only because they cannot afford bail.

The population of the state prison complex alone (maximum and medium security facilities) will quadruple by 1990, and the cost to incarcerate these people will rise from \$20 million to \$151 million. Capital needs for bed spaces could be \$480 million, not including the inflation factor, the renovation of existing substandard facilities, or debt service. The interest on bonds alone would double the \$480 million. Another crucial factor is the virtual impossibility of finding prison sites acceptable to both the State and the community involved.

No one imagines that the State of New Jersey, faced with increasing needs and diminishing resources, will spend this amount of money for prisons and jails. Other solutions must be found. First, however, we must understand the cause of this dramatic increase in the incarcerated population. Analysts from the Administrative Office of the Courts point to the Code of Criminal Justice which became effective on September 1, 1979, resulting in a dramatic change in statewide sentencing practices. The impact of this change has been profound. Simply stated, more offenders are being sentenced to jail, and they are going

for longer periods of time, producing what Senator Codey has correctly described as "a powder-keg situation."

Still to come is an additional population increase resulting from the 1981 law requiring both extended and mandatory terms for certain crimes involving the use or possession of a firearm.

On January 31, the editors of the Bergen Record said the unsayable. That day's editorial stated:

"There's one thing that can be done right away; repeal or suspend those laws that call for mandatory and minimum sentences for certain crimes.....

What's happened here is a breakdown in the system, as shocking and as predictable as the collapse of an overloaded bridge or water main. To deal with the crime wave, we passed tougher laws. It seemed logical and even necessary at the time, but few of us stopped to think what would happen when those laws started putting out more prisoners than the system could handle. Now that day has arrived, and it's time to face a painful truth: Until the prisons are no longer full to bursting...until the state has found other ways, like work-release and community-service sentences, to punish criminals...we're going to have to do without mandatory sentences. It's that simple."

The Association on Correction finds the Record's logic unassailable, and we support its recommendation. It is time for a reappraisal of sentencing, in the cold light of reality.

With or without the repeal or suspension of mandatory sentences, common sense requires that other measures be taken to deal with the emergency. The Task Force on Prison Overcrowding makes the following constructive suggestions.

1. An estimated 500 individuals are being denied parole only because of the lack of suitable residential and non-residential mental health and substance abuse programs. That is more than the projected population of the new Camden prison. Every effort should be made to locate and appropriate funds for more community facilities.

2. The Legislature should appropriate funds for the establishment of alternatives to incarceration. "A strong argument can be made that if practical alternatives to incarceration are created, judges may feel that they can responsibly make more use of probation... Additionally, the cost of handling an offender on probation or parole is much less than the expense of incarceration."

Among the most widely used alternatives to incarceration are:

- . Community service and restitution. Restitution requires the offender to reimburse the victim for damage done, while community service requires the offender to perform work, free of charge, for public and private agencies in the community. This kind of sentence can serve several purposes: to compensate the victim; to provide community services which otherwise would go undone; to link the punishment with the crime; and to save taxpayer dollars and relieve overcrowding. Good programs now exist in a few counties, but most are federally funded and in danger of elimination.
- . Halfway houses. There are presently available 150-²⁰⁰~~300~~ halfway house beds, located in Trenton, Camden, New Brunswick and Newark, with the state, the counties and the federal government competing for the spaces. The per diem cost at a halfway house is far less than the per diem in a county jail, and the halfway house alternative helps to smooth the transition from prison to life outside for the offender. A survey conducted by the Association in mid-1981 revealed that the operators of existing facilities are willing and able to expand their operations. They cannot do so, however, without assurance that the additional beds will be filled.

The present state budget allows the Department of Corrections to spend \$175,000 for community halfway house beds. Many other states depend heavily upon this alternative. Ohio has 21 halfway houses for 625 offenders, with a state appropriation of \$3.6 million. Michigan has 2200 offenders in 100 halfway houses across the state.

Other alternatives, such as intensive supervision and house arrest, are now under examination as part of a statewide study of probation initiated by the Chief Justice. Recommendations will be made at a June conference.

3. Parole should be available for inmates serving less than one year. Legislative action is needed to implement this recommendation.
4. The Legislature should pass a statute which would permit the early release of prisoners nearing the end of their sentences, in the event of serious overcrowding. Such a statute, which would be triggered only by a declaration of emergency by the Commissioner of Corrections and the Governor upon a finding of serious and protracted prison overcrowding, would accelerate parole eligibility by ninety days. Eligibility would not mean automatic release; the existing standards for parole would still have to be met. Such a statute has been adopted by several other states, and in Michigan approximately 800 prisoners were granted early release in May, 1981 without adverse public reaction.

This is a very reasonable response to the problem of gross overcrowding. Overcrowding is not a temporary, mildly uncomfortable condition; it gives rise to problems and circumstances so horrible as to be unimaginable to those who only read about them.

The public cannot imagine the strain upon inmates and correctional officers which results from such conditions as now exist in many of New Jersey's prisons and jails. We have no right, either legal or moral, to inflict such conditions upon the keepers or the kept. Those in the best position to know have said, repeatedly, that we are living on borrowed time. Under the circumstances, early release seems eminently sensible.

There is more to be said about overcrowding than time permits. The Administrative Office of the Courts has devoted a great deal of time and attention to the subject, and has initiated such programs as the State Speedy Trial Program and the Ten Percent Bail Program. I would suggest that the committee meet

with the AOC to learn the full extent of their work in this area. This agency probably has the best overall view in state government of the problem of overcrowding and of possible remedies.

It would make the task of this committee easier if the 120 members of the Legislature were well informed about the crisis in corrections. To this end, I have suggested to the Assembly Majority Leader that a briefing be held for legislators, with the assistance of the Department of Corrections and the AOC. He likes the idea, and I now make the same suggestion to you with regard to the Senate.

This committee hearing, we hope, is a sign that the State's resources will now be brought to bear upon the problem of overcrowding. The Association on Correction is anxious to share the information we have acquired over the past year, and we look forward to working with the committee in the months to come. We thank you for the opportunity to share our views with you today.

STATEMENT OF CHRISTOPHER V. DIETZ
CHAIRMAN, NEW JERSEY STATE PAROLE BOARD

PRESENTED TO SENATE COMMITTEE
ON INSTITUTIONS, HEALTH AND WELFARE

RICHARD CODEY, CHAIRMAN

February 18, 1982

My name is Christopher V. Dietz and I am Chairman of the New Jersey State Parole Board. The purpose of my testimony is to address the issue of correctional system overcrowding and, in particular, to describe the relationship between parole policy and institutional populations.

Others who have studied the issues in depth can better describe all the trends leading to the current situation. It becomes clear that population growth was not an unforeseen nor an unpredictable occurrence although the magnitude of the problem may not have been obvious.

There are a variety of options that are available to the Legislature to deal with the current situation. Many of these will be discussed here today. I would urge that parole not be used as a tool to regulate population. However, while we can, have, and will continue to assist in seeking solutions, it is clear to us that parole policy must focus primarily on risk assessment rather than management of institutional populations. Our role in the criminal justice system is established in the Parole Act of 1979. We consider inmates for parole after the punitive aspects of their sentence has been completed and then for establishing whether the inmate may safely be released to the community to complete his or her term under community supervision. However, considerable attention has focused on the impact of parole policy on population. The Board has attempted to analyze what, if any impact is discernable. Findings indicate that parole policy has had a neutral impact on population overall, despite the fact that parole policy has influenced the distribution of population to some extent and over the last several years.

You have probably noted that there have been cyclical trends in population. On April 30 of 1980 there was 6,618 inmates confined in state facilities. By September 30 of 1980 however this had declined to a population of 6,039, a decline due primarily to an interim impact of the implementation of the Parole Act as we will further explain. However, by December of 1981, total population had risen to an all time high of 8,478 inmates.

During 1980 and 1981, institutional population rose as the impact of the new Penal Code began to be felt. The proportion of all defendants receiving prison terms doubled, while those receiving youth indeterminate sentences remained roughly constant at about 10% to 11 % of those sentenced. Thus, a huge increase in prison admissions occurred. During the first six months of 1981, the state's courts sentenced as many defendants to state prison as they would normally sentence in an entire year. Statistics of the Administrative Office of the Courts indicate this trend will continue. Although the proportion of indeterminate sentences remained roughly the same, an increase in the number of defendants sentenced resulted in somewhat more indeterminate admissions. As a result, New Jersey now faces a major problem in its ability to house inmate population, a problem it shares with a number of states.

I would like to examine parole release levels in New Jersey over 1980 and 1981. Parole release levels in New Jersey were relatively consistent in the period from 1975 to 1979. During this interval, approximately 3,900 - 4,000 inmates were paroled annually from state correctional facilities. By 1978, this level had risen to about 4,100 inmates. However, in calendar year 1980, 4,743 parole releases occurred, a significant increase over previous years. This release expansion was experienced almost exclusively in the prison complex.

EXHIBIT

Parole Release Rates - Prison Complex

| | <u>1978</u> | <u>1979</u> | <u>1980</u> |
|--------------------|-------------|-------------|-------------|
| Total | 4,100 | 4,092 | 4,743 |
| Prison Complex | 1,359 | 1,271 | 1,835 |
| Other Institutions | 2,741 | 2,821 | 2,908 |

We have examined monthly statistics and they demonstrate that the rise in parole releases was particularly significant during the months of May, June, July, August, and September of 1980. In fact, even the small rise experienced outside the prison complex during this time is likely due to prison inmates housed in the Youth Correctional Complex. Figures in my report indicate this.

EXHIBIT

1980 Release Rates

Monthly Averages (1980)

| | <u>Jan.-Apr.</u> | <u>May - Sept.</u> | <u>Oct. -Dec.</u> |
|----------------|------------------|--------------------|-------------------|
| Total | 336 | 490 | 317 |
| Prison Complex | 105 | 218 | 109 |
| Others | 231 | 272 | 208 |

You should note that this rise in release levels occurred immediately after the effective date of the new Parole Act on April 21, 1980 and appear to be related to several provisions of the Act as noted below:

Under the Act's provisions, parole release, if approved by the Board, must be effective "as soon as practicable after the (parole) eligibility date" (N.J.S.A. 30:4-123.55(b) and (d). This required the Board to facilitate release of those approved

for parole as close to actual eligibility as possible. Under previous practice, the Board generally established parole release dates approximately three to six months (sometimes longer) after a parole hearing. Since hearings were scheduled one month prior to parole eligibility, this provision, resulting in reduction of an average of 2-3 months in time served, resulted in 300-400 additional parole releases in 1980.

Multiple offenders, comprising approximately 25% of the inmate population under Title 2A, received a minor reduction in their eligibility dates under the provisions of N.J.S.A. 30:4-123.51(j). The Board implemented this provision during May and June of 1980. A review of hearing caseloads indicates that approximately 100 additional parole releases resulted.

During 1980, the three-judge resentencing Panel resentenced a significant number of prison inmates under Title 2C. The precise effect of this action on parole releases is not available. However, a number of inmates were made eligible for parole release in 1980 that would normally not have been eligible.

The implementation of the monitoring system generated the identification of parole-eligible inmates, and as a result, a 10% increase in the parole of those eligible occurred. It is estimated that perhaps 100-200 additional paroles were affected.

In summary, several distinct factors produced a one-time rise in release levels in 1980 above and beyond the norm. A normal rate of 4,100 paroles would have been expected; instead, the implementation of the new Act increased this by approximately 650. However, each factor contributing to this increase was a "one-shot", and the parole rate was expected to drop again in 1980.

During 1981, overall parole release levels did, in fact, drop from the previous 1980 levels. While this was partially attributable to the expected decline to former levels, other trends were observed. Available data indicate that prison complex releases began to stabilize in 1981, but that a decline in release levels was noticeable in the Youth Correctional Complex.

EXHIBIT

Parole Release Rates - Youth Complex

| | <u>1978</u> | <u>1979</u> | <u>1980</u> | <u>1981</u> |
|----------------|-------------|-------------|-------------|-------------|
| Prison Complex | 1,359 | 1,271 | 1,835 | 1,278 |
| Youth Complex | 2,270 | 2,276 | 2,171 | 1,550 |

Statistics suggest that a number of releases were running at about expected levels based upon historical data. In the Youth Complex, however, the level during 1981 declined.

The reasons for this temporary decline can be determined. Under the new Parole Act, the State Parole Board, rather than the Institutional Classification Departments and the Board of Trustees, has parole jurisdiction over youth cases. Current Board policy favors a significant increase in the amount of time served for young adult sentences. Consequently, the number of parole releases has declined and will continue to remain low until the average time served by indeterminate cases has stabilized. It currently appears that the typical youth inmate will serve about 14-15 months.

Since no comparative data for the period prior to the new Parole Act exists, it is impossible to determine the absolute reasons for this increase. It is clear, however, that the Parole Board is treating aggravating factors such as prior record, weapons, or parole/probation failures more seriously than previously, and time reductions for program participation are realistically applied. Evidence also exists that sentences have increased in length due to new presumptive terms and that defendants' records and offenses have gradually grown more serious.

Overall, it appears that current parole policy has impacted on population distributions, particularly where the Board is responsible for establishing eligibility terms, but the impact is temporary. Increased overall population figures appear to be more directly related to sentencing trends rather than parole release rates. The major trends have included a slight decline in the average time served in the prison complex and an increase in average time served in the youth complex. An additional 650 inmates were released in 1980, but trends were adjusting to their former levels in 1981. In terms of policy implications, the formerly large gap between time served in the prison and in the youth complex has narrowed, although the gap is still present.

The overall conclusion that we draw from this analysis is that Board policy, in general, has had a temporary impact on population that will be neutral over the long run. This is not to suggest, however, that we, as a public agency, are insensitive to the grave issues we face together. I would like to describe several pro-active initiatives we are currently undertaking. We think ways do exist that would enable us to increase releases and yet maintain public safety--but we cannot do this alone.

The Parole Act of 1979 contains several provisions of note. The Board has the authority to parole inmates directly to residential facilities funded directly or indirectly by the State. This would hypothetically occur in the case of an individual who has served the punitive aspect of his sentence and who might be safely released if some type of institutional placement might be found. Given the serious conditions of overcrowding and the fact that a significant number of individuals are likely candidates for release to residential facilities insuring public safety, the Board had placed a high priority on exercising this option.

The major problem, however, is that the resources to implement such an initiative are lacking. In cooperation with other public agencies, the Board is attempting to identify the specific resources to insure that the parole to residential facilities process becomes a reality in the near future. Our first focus has been on those inmates who appear to require placement in mental health facilities. Planning with the Division of Health and Mental Hygiene has been underway for the past several months. Even more advantageous possibilities should be considered as in the development of sheltered workshop placements for others.

The Parole Act also authorizes the Board to provide early release in a limited number of cases. Inmates who have made "exceptional progress" or adjustment during their period of incarceration often go

unrecognized. The Board is authorized to recognize inmates who have made exceptional progress for the purpose of early release consideration. The development of an exceptional progress initiative was postulated as a goal for fiscal year 1982, and the Board has taken the necessary steps to develop procedures for exceptional progress reviews. We are presently reviewing applications for the exceptional progress cases.

Some of you may also be familiar with a concept termed "contract parole". The basic concept is that the Parole Board, the Department of Corrections, and an inmate may enter into a contractual arrangement providing for an early release date if the inmate agrees to achieve certain goals by some pre-determined time. This "earned parole" concept could prove to have great utility, and we have asked the Department of Corrections to enter dialogue with us to determine if such a program might be developed.

As you are aware, there has been some discussion of utilizing early release as a mechanism for temporarily easing the overcrowding situations. In fact, the Governor's Task Force on Prison Overcrowding chaired by former Attorney General George F. Kugler, Jr. had recommended this approach. While this concept deserves your consideration, it is a decision I am sure you will weigh heavily. I would like to assure you, however, that the approach would only work, as was recognized by the Task Force, if the same stringent requirements were used in the granting of parole as are currently employed. Reduction of time would only occur for those approved for parole, and then only for 90 days.

There are also other options that deserve your consideration. You have examined the very serious and potentially dangerous backup of state inmates in county facilities. All indications are that the situation will become worse instead of better. Some of these state inmates housed in county facilities are parole violators who have either violated the conditions of parole or have committed new crimes. It would be a grave

mistake to assume that temporary relief could be realized by cutting back on the return of the parole violator to custody. To do so would jeopardize the very foundations of parole and undermine the credibility of the criminal justice system. A far more suitable alternative might be to extend some type of parole eligibility status to county inmates who are serving short terms for relatively minor offenses. While this might involve modification of existing law and development of a review mechanism at the county level, the approach makes some sense.

In summary, I come not with the answers to prison overcrowding, but only with some indications of the options that deserve discussion. Overall, I think that the Board has reacted to the challenge of overcrowding by assuming a practical stance, yet one which assures that the legitimacy of the parole process remains intact and public protection remains paramount. We applaud your efforts to deal with this most difficult situation and welcome an opportunity to assist in any way possible.

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February 18, 1982

STATEMENT OF PUBLIC INTEREST LAWYERS OF NEW JERSEY TO NEW JERSEY SENATE COMMITTEE ON INSTITUTIONS, HEALTH AND WELFARE REGARDING PRISON OVERCROWDING

REMARKS OF GEORGE W. CONK, ESQUIRE, CO-CHAIRPERSON, PUBLIC
INTEREST LAWYERS OF NEW JERSEY AND NEIL M. COHEN, ESQUIRE,
LEGISLATIVE COORDINATOR, PUBLIC INTEREST LAWYERS OF NEW
JERSEY CRIMINAL JUSTICE TASK FORCE.

Senator Codey and Members of the Committee:

We wish to thank you for this opportunity to present you the fruits of the thinking and experience of the members of our organization who are deeply involved in the operation of New Jersey's criminal justice system. Most recently 100 attorneys from around the State attended our conference "Crisis in Criminal Justice: The New Criminal Code - Two Years Later" in which we assessed the impact of the Code on the workings of the criminal justice and prison systems.

Through the efforts of the Criminal Disposition Commission, created by the legislature, and particularly through the exemplary efforts of Judge Leo Yanoff, its chair, the fundamental facts about the Code's impact on the state prison complex are now well known to us all. Our problems are similar to those faced by other states which have adopted similar changes in sentencing patterns; this has been carefully and thoroughly addressed in the impressive report issued by the Governor's Task Force on Prison Overcrowding, chaired by former Attorney General George F. Kugler.

We wish to make clear that we share the view which Chief Justice Robert N. Wilentz expressed in his address to the New Jersey State Bar Association on April 9, 1981. He there declared:

"I do not believe that public confidence in our system of justice, from a long range point of view, can be based on bulging prisons. I would much rather that it be based on compassionate laws, on equal justice, on the elimination of poverty, on the reform of a prison system that apparently guarantees recidivism, and on its ability to bring peace to an interracial society."

The problems of crime and corruption in our society - in our homes, in our public places, in relations among and between businesses and consumers and even by public officials are grave and deep-rooted. Today's hearing and the prison system which is today under scrutiny focus on "street crime"; those crimes of property or personal violence which comprise the overwhelming majority of the cases processed in our criminal justice system.

We are attorneys experienced in the day to day workings of our criminal justice system. We see it all - the policeman on the beat, the county jails, the criminal trial courts the state prison complex. We have learned this: the problem of crime in our society is far beyond the capacity of our criminal justice system - police, courts, prosecutors and prisons - to solve.

The persistence of the problem is due not to hamstrung courts because our courts are not hamstrung; it is due not to lenient judges because our judges are not lenient; our judges have strictly adhered to what they believe is the legislature's command and the public's cry for severity; it is not due to policemen whose hands have been tied because the police have all the force, authority and cooperation from our officials and our citizens which they require. The problem of crime in our society originates in social, economic and cultural structures so deep that the changes necessary to begin to reverse the problem are not on the immediate political agenda.

We must therefore face the fundamental fact: The problem of crime in our society will not be solved by tinkering with the operations of the criminal justice system. We can more readily make things worse than we can make things better. It is our contention that the present crisis is a result of such tinkering which has made things worse, without impacting in any measurable degree upon the underlying problem.

We must also make clear two fundamental premises: (1) The notion, so widely trumpeted at the highest levels of our national and state governments and in our media, that we are in the midst of a crime wave growing steadily in intensity across our nation is simply false. The United States Department of Justice Study, Criminal Victimization in the U.S., September 1980, demonstrates that there is no increase in the number of victimizations across the country in the period 1973 to 1979 for those crimes about which public concern is the greatest: robbery, assault, rape, larceny, household burglary, motor vehicle theft. In fact, the only trend that can be discerned for those offenses is a slightly downward one.

We must therefore accept this fact: our prisons are bulging because we have changed our laws, not because we have suffered a great increase in crime.

This brings us to the next essential assumption: (2) Neither more prisons nor more police can solve our problem without prohibitive expense or the creation of an apparatus of repression so fearsome that it would fundamentally undermine the civil liberties upon which democracy depends. As Judge David L. Bazelon, Senior Circuit Judge of the United States Court of Appeals for the District of Columbia, last week declared at Vanderbilt University, only a garrison state "akin to martial law" or acceptance of reforms in our society amounting to "a revolution in the way we govern ourselves" could reach the roots of crime in "the culture of poverty and discrimination still tolerated in every American city."

We believe that the Legislature must consider in its coming term ways to ease the crisis which we have seen developing in our prison system. We therefore propose that the legislature make the following changes in the Code of Criminal Justice:

I Every Judge at the time of sentencing a defendant to a custodial term in state prison complex shall make a detailed statement, in open court, elaborating how he/she applied the criteria for withholding or imposing a sentence of imprisonment, set forth in the 2C:44-1, which should be amended to compel the Judge to take into account the nature and role of each individual defendant's actions, including: (A) whether the victim actually sustained physical injury which was intended by the actor; (B) whether the defendant personally was armed with, used or wielded a weapon or personally used physical force; (C) whether the defendant threatened to use force, verbally or by display of a weapon; (D) whether the defendant merely aided and abetted the crime; (E) whether the defendant provided the means for commission of a crime; (F) whether the crime was completed or merely attempted or abandoned prior to completion.

The legislature should make clear its intent that customarily sentences should vary from person to person; in order to demonstrate to all - the victim, the public and defendant - that society's judgment does depend on the individual culpability of the defendant and the nature of the harm actually inflicted. This will help to restore the proper exercise of judicial discretion which has been unduly restricted by the way the criminal code is commonly understood by criminal trial judges.

We know as defense attorneys that juries make the kinds of distinctions which we are encouraging. People understand that a crime in which violence is actually used or a weapon is fired differs from and should be sentenced differently from those in which violence is merely threatened or possible.

II Minimum Mandatory Sentences - commonly known as parole disqualifiers - have aggravated arbitrary disparities in sentencing. The Legislature, in enacting the Code, hoped to eliminate disparities in sentencing not based on the specific facts of each case. It was hoped that "presumptive sentences" and "ordinary terms" of imprisonment would accomplish this.

In fact, the use of parole disqualifiers, which allow a Judge to sentence a defendant to up to one-half of the maximum sentence for first and second degree crimes without possibility of parole, has aggravated the situation. The use of this mechanism varies so widely from judge to judge, from case to case, from county to county that we now see a disparity in sentencing far greater and far more arbitrary than that which the legislature sought to reduce in 1979. The message to a prisoner is that no matter how he spends his time in prison, his time served will not be affected. If he studies or not; if he works or not; if he shows positive social attitudes or not, he will serve the same sentence due to the use of mandatory minimum. The prisoner in the next cell, serving time for a similar crime, without a mandatory minimum has an incentive to work, to study, to learn improved social relations. Such arbitrariness, such disparity, encourages recidivism, not correction.

We therefore call for the elimination from the Code of the mandatory minimum, parole disqualifiers for first and second degree offenses. The now inconsistent, often casual reliance on its provisions should be eliminated and the more considered, carefully articulated, individualized sentencing process sought by our first proposal should be enacted.

Sentencing must be a two step process - the first is a carefully tailored sentence by the trial court, informed by the facts known at the time of conviction; the second stage of sentencing is conducted by the parole board, after the opportunity has been given to the prisoner to demonstrate, within an institutional context, such favorable factors as would persuade the parole board, (the independence of which must be assured) of his favorable adjustment and the likelihood of return to society without repetition of the criminal behavior which sent him to state prison.

We propose as a means of eliminating any inequity that any prisoner currently serving a mandatory minimum, have that minimum lifted and his case, if his otherwise earliest parole date has already been reached, immediately reviewed by the parole board or by a special parole panel similar to the resentencing panel established when the Code was enacted. A post-sentence report should be routinely prepared by the probation department or the parole authorities and provided to the prisoner, his attorney and the resentencing authority.

III A presumption of non-imprisonment in state prison for third and fourth degree offenses should be enacted. To the extent that custodial sentences are warranted in third and fourth degree offenses (and we feel they should be markedly reduced in favor of greater reliance on probationary remedies), that time should be served in county institutions. The state prison complex should be reserved for those who have committed serious crimes of violence and use deadly weapons. We must move toward a county-based corrections system.

The Legislature should further provide that in all third and fourth degree cases where a custodial sentence is imposed to a county institution there shall be a presumption that the time should be served on weekends or in a work-release program in order to minimize the disruption of family, employment, educational and other positive social factors. Such a plan must be coupled with adequate funding of half-way houses, drug, alcohol, family and psychiatric treatment programs to address the problems of adjustment and personality development which accompany these offenders.

A County-based corrections system can best be coordinated with the County educational, vocational, health and social service institutions and agencies.

IV We also wish to make clear that we endorse the emergency overcrowding statute, similar to that enacted in Michigan, as urged by the Governor's Task Force on Prison Overcrowding. Its feasibility and necessity are so clear that action on this at least should be immediate.



Criminal Victimization in the U.S.

Summary Findings of 1978-79 Changes in Crime and of Trends Since 1973

National Crime Survey Report SD-NCS-N-18, NCJ-62993

September 1980

Common household thefts were relatively more numerous in 1979 than a year earlier, but stability generally characterized both the incidence of crime and the rates at which offenses were reported to the police. According to latest results from the National Crime Survey (NCS), significant victimization rate changes were evident for the two most prevalent kinds of measured crime--household larceny and personal larceny without victim-offender contact--between 1978 and 1979. The changes were in opposite directions. An increase of 1.3 million residential larcenies brought about a 12-percent rise in the rate for that crime, while 630,000 fewer noncontact personal larcenies caused a 5-percent drop in the rate for that offense.¹ Rates for rape, personal robbery, assault, personal larceny with contact, household burglary, and motor vehicle theft did not change significantly between the 2 years (Table 1).

Detailed NCS results in a forthcoming report will show that the 1979 increase in household larceny was fairly widespread, significantly affecting homeowners and renters alike, as well as households at all income levels.² The rise in the rate for that crime also was significant among white households and those headed by persons between the ages of 20 and 64. Although seeming to move upward, the larceny rates for black and for Hispanic households did not change significantly.

The reduced incidence of personal larceny without contact was also found among a number of subgroups. Thus, whites and males had lower 1979 rates for that crime, and there was some indication that females also had a lower larceny rate; the rate among blacks did not change significantly. Although the downward direction in rates for noncontact personal larcenies seemed to apply to all of the age and income

¹All changes or differences discussed in this report are statistically significant at a confidence level of 95 percent, unless qualified by the phrase "some indication," which denotes significance at a 90-percent level. According to NCS classification, the two crimes for which there was significant change in 1979 differ from one another solely on the basis of their place of occurrence.

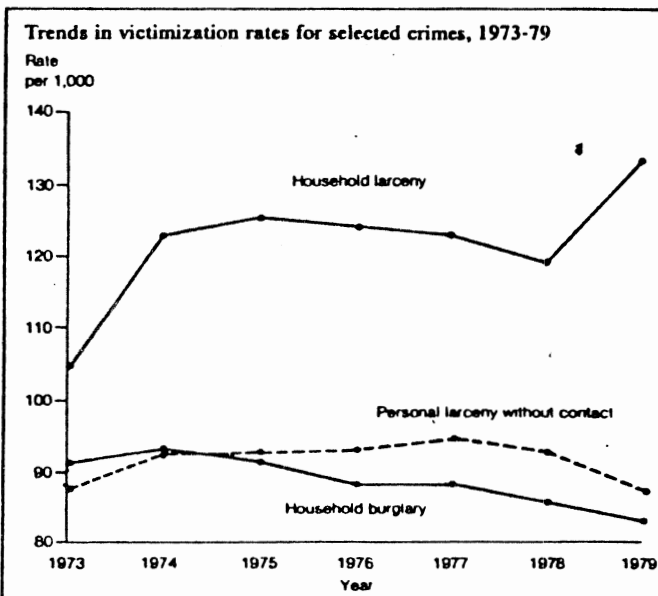
²The larceny rate was significantly higher for households with annual incomes ranging from \$7,500 to \$14,999, as well as for those in the \$15,000 and over bracket; there was some indication that it was also higher among those with incomes of less than \$7,500.

groups examined, the declines were only significant among persons age 25-34 and those earning \$15,000 or more annually. Hispanics and non-Hispanics alike experienced the crime at a lower rate.

Changes between 1978 and 1979 in the incidence of personal and household larcenies were not attended by variations in the rates at which those crimes were reported to the police. As in 1978, only about 1 in every 4 of each of those types of crime was made known to the authorities during 1979. For other crimes measured by the NCS, there also were no significant changes in the police reporting rates between 1978 and 1979 (Table 2).

Household larceny reached a peak in 1979--134 per 1,000--a figure that was 25-percent higher than that recorded in 1973, when NCS annual estimates first became available (see chart). With respect to personal larceny without contact, the 1979 drop placed the figure at a level not significantly different from its 1973 low.

Turning to post-1973 trends for other NCS-measured crimes, the 1979 rate for simple assault was higher than those for 1976 and earlier years, but the apparent increase in the 1979 rate over the 1977 and 1978 figures was not statistically significant; parallel results held for the overall assault rate, but no direction emerged for aggravated assault (Table 3). Similarly, no trends were evident in the rates for rape or personal larceny with victim-offender contact. The



rate for personal robbery, which had dropped 18 percent between 1974 and 1976, appeared to have halted its decline, although the most recent change was not statistically significant.

Although the 1978-79 change in the rate for residential burglary was not statistically significant, the latest figure--84 per 1,000 households--suggested a continuation of an overall decline that has taken place since 1974, when the rate was 93 per 1,000. The motor vehicle theft rate dropped sharply between 1975 and 1976, but there has been no other measurable year-to-year change in the incidence of that crime.

The 1979 rate, however, was significantly lower than that for 1975.

NCS data are collected by means of interviews with persons age 12 and over in a representative sample of approximately 60,000 households across the Nation. The survey is designed and carried out for the Bureau of Justice Statistics by the U.S. Bureau of the Census. Data in this report, another in a series to examine trends in crime, are preliminary and subject to revision. Future reports will contain a description of the survey methodology, including a discussion of sampling error, as well as definitions and other technical information.

Table 1. Personal and household crimes: Number of victimizations and victimization rates, by type of crime, 1973-79

(Rate per 1,000)

| Sector and type of crime | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Personal sector | | | | | | | |
| Crimes of violence | | | | | | | |
| Number | 5,351,000 | 5,510,000 | 5,573,000 | 5,599,000 | 5,902,000 | 5,941,000 | 6,159,000 |
| Rate | 32.6 | 33.0 | 32.8 | 32.6 | 33.9 | 33.7 | 34.5 |
| Rape | | | | | | | |
| Number | 156,000 | 163,000 | 154,000 | 145,000 | 154,000 | 171,000 | 192,000 |
| Rate | 1.0 | 1.0 | 0.9 | 0.8 | 0.9 | 1.0 | 1.1 |
| Robbery | | | | | | | |
| Number | 1,108,000 | 1,199,000 | 1,147,000 | 1,111,000 | 1,083,000 | 1,038,000 | 1,116,000 |
| Rate | 6.7 | 7.2 | 6.8 | 6.5 | 6.2 | 5.9 | 6.3 |
| Assault | | | | | | | |
| Number | 4,087,000 | 4,148,000 | 4,272,000 | 4,344,000 | 4,664,000 | 4,732,000 | 4,851,000 |
| Rate | 24.9 | 24.8 | 25.2 | 25.3 | 26.8 | 26.9 | 27.2 |
| Aggravated assault | | | | | | | |
| Number | 1,655,000 | 1,735,000 | 1,631,000 | 1,695,000 | 1,738,000 | 1,708,000 | 1,769,000 |
| Rate | 10.1 | 10.4 | 9.6 | 9.9 | 10.0 | 9.7 | 9.9 |
| Simple assault | | | | | | | |
| Number | 2,432,000 | 2,413,000 | 2,641,000 | 2,648,000 | 2,926,000 | 3,024,000 | 3,082,000 |
| Rate | 14.8 | 14.4 | 15.6 | 15.4 | 16.8 | 17.2 | 17.3 |
| Crimes of theft | | | | | | | |
| Number | 14,971,000 | 15,889,000 | 16,294,000 | 16,519,000 | 16,933,000 | 17,050,000 | 16,382,000 |
| Rate | 91.1 | 95.1 | 96.0 | 96.1 | 97.3 | 96.8 | 91.9 |
| Personal larceny with contact | | | | | | | |
| Number | 504,000 | 520,000 | 524,000 | 497,000 | 461,000 | 549,000 | 511,000 |
| Rate | 3.1 | 3.1 | 3.1 | 2.9 | 2.7 | 3.1 | 2.9 |
| Personal larceny without contact | | | | | | | |
| Number | 14,466,000 | 15,369,000 | 15,770,000 | 16,022,000 | 16,472,000 | 16,501,000 | 15,871,000 |
| Rate | 88.0 | 92.0 | 92.9 | 93.2 | 94.6 | 93.6 | 89.0 |
| Total population age 12 and over | 164,363,000 | 167,058,000 | 169,671,000 | 171,901,000 | 174,093,000 | 176,215,000 | 178,284,000 |
| Household sector | | | | | | | |
| Household burglary | | | | | | | |
| Number | 6,458,700 | 6,720,600 | 6,743,700 | 6,663,400 | 6,764,900 | 6,704,000 | 6,685,400 |
| Rate | 91.7 | 93.1 | 91.7 | 88.9 | 88.5 | 86.0 | 84.1 |
| Household larceny | | | | | | | |
| Number | 7,537,300 | 8,933,100 | 9,223,000 | 9,300,900 | 9,418,300 | 9,351,900 | 10,630,100 |
| Rate | 107.0 | 123.8 | 125.4 | 124.1 | 123.3 | 119.9 | 133.7 |
| Motor vehicle theft | | | | | | | |
| Number | 1,343,900 | 1,358,400 | 1,433,000 | 1,234,600 | 1,296,800 | 1,365,100 | 1,392,800 |
| Rate | 19.1 | 18.8 | 19.5 | 16.5 | 17.0 | 17.5 | 17.5 |
| Total number of households | 70,442,400 | 72,162,900 | 73,559,600 | 74,956,100 | 76,412,300 | 77,980,400 | 79,498,600 |

NOTE: Detail may not add to total shown because of rounding.

Table 2. Personal and household crimes: Change in police reporting rates, by type of crime, 1978-79

| Sector and type of crime | Percent of victimizations reported to the police | | Percent change ¹ |
|----------------------------------|--|------|-----------------------------|
| | 1978 | 1979 | |
| Personal sector | | | |
| Crimes of violence | 44.2 | 45.1 | +1.9 |
| Rape | 48.8 | 50.5 | +3.6 |
| Robbery | 50.5 | 55.5 | +9.8 |
| Assault | 42.7 | 42.4 | -0.5 |
| Aggravated assault | 52.7 | 51.3 | -2.8 |
| Simple assault | 37.0 | 37.4 | +1.1 |
| Crimes of theft | 24.6 | 24.0 | -2.5 |
| Personal larceny with contact | 33.7 | 35.6 | +5.6 |
| Personal larceny without contact | 24.3 | 23.6 | -2.9 |
| Household sector | | | |
| Household burglary | 47.1 | 47.6 | +1.0 |
| Household larceny | 24.5 | 25.1 | +2.8 |
| Motor vehicle theft | 66.1 | 68.2 | +3.3 |

¹None of the changes was statistically significant at minimum confidence level of 90 percent.

Table 3. Personal and household crimes: Comparison of changes in victimization rates, by type of crime, 1973-79

| Sector and type of crime | Percent change in victimization rate | | | | | |
|----------------------------------|--------------------------------------|---------|---------|---------|---------|---------|
| | 1973-79 | 1974-79 | 1975-79 | 1976-79 | 1977-79 | 1978-79 |
| Personal sector | | | | | | |
| Crimes of violence | *+6.1 | **+4.7 | **+5.2 | *+6.0 | +1.9 | +2.4 |
| Rape | +13.7 | +10.2 | +18.7 | +28.6 | +21.3 | +11.3 |
| Robbery | (-7.1) | *-12.8 | -7.4 | -3.1 | +0.6 | +6.3 |
| Assault | *+9.4 | *+9.6 | *+8.1 | *+7.7 | +1.6 | +1.3 |
| Aggravated assault | -1.5 | -4.5 | +3.2 | +0.6 | -0.6 | +2.4 |
| Simple assault | (*)+16.8 | *+19.7 | *+11.1 | *+12.2 | +2.9 | +0.8 |
| Crimes of theft | +0.9 | *-3.4 | *-4.3 | *-4.4 | *-5.5 | *-5.0 |
| Personal larceny with contact | -6.5 | -7.7 | -7.1 | -0.7 | +8.3 | -8.0 |
| Personal larceny without contact | +1.1 | *-3.2 | *-4.2 | *-4.5 | *-5.9 | *-4.9 |
| Household sector | | | | | | |
| Household burglary | (*-8.3) | *-9.7 | *-8.3 | *-5.4 | *-5.0 | -2.2 |
| Household larceny | (*)+25.0 | *+8.0 | *+6.6 | *+7.8 | *+8.5 | *+11.5 |
| Motor vehicle theft | -8.2 | -6.9 | *-10.1 | +6.4 | +3.2 | +0.1 |

*Statistically significant at the 95 percent confidence level.

**Statistically significant at the 90 percent confidence level.

Glossary

Age—The appropriate age category is determined by each respondent's age as of the last day of the month preceding the interview.

Aggravated assault—Attack with a weapon, irrespective of whether or not there was injury, and attack without a weapon resulting either in serious injury (e.g., broken bones, loss of teeth, internal injuries, loss of consciousness) or in undetermined injury requiring 2 or more days of hospitalization. Also includes attempted assault with a weapon.

Annual family income—Includes the income of the household head and all other related persons residing in the same household unit. Covers the 12 months preceding the interview and includes wages, salaries, net income from business or farm, pensions, interest, dividends, rent, and any other form of monetary income. The income of persons unrelated to the head of household is excluded.

Assault—An unlawful physical attack, whether aggravated or simple, upon a person. Includes attempted assaults with or without a weapon. Excludes rape and attempted rape, as well as attacks involving theft or attempted theft, which are classified as robbery. Severity of crimes in this general category range from minor threats to incidents that bring the victim near death.

Attempted forcible entry—A form of burglary in which force is used in an attempt to gain entry.

Burglary—Unlawful or forcible entry of a residence, usually, but not necessarily, attended by theft. Includes attempted forcible entry. The entry may be by force, such as picking a lock, breaking a window, or slashing a screen, or it may be through an unlocked door or an open window. As long as the person entering had no legal right to be present in the structure, a burglary has occurred. Furthermore, the structure need not be the house itself for a household burglary to take place. Illegal entry of a garage, shed, or any other structure on the premises also constitutes household burglary. In fact, burglary does not necessarily have to occur on the premises. If the breaking and entering occurred in a hotel or in a vacation residence, it would still be classified as a burglary for the household whose member or members were staying there at the time.

Central city—The largest city (or "twin cities") of a standard metropolitan statistical area (SMSA), defined below.

Ethnicity—A distinction between Hispanic and non-Hispanic respondents, regardless of race.

Forcible entry—A form of burglary in which force is used to gain entry (e.g., by breaking a window or slashing a screen).

Head of household—For classification purposes, only one individual per household can be the head person. In husband-wife

households, the husband arbitrarily is considered to be the head. In other households, the head person is the individual so regarded by its members; generally that person is the chief breadwinner.

Hispanic—Persons who report themselves as Mexican-American, Chicanos, Mexicans, Mexicanos, Puerto Ricans, Cubans, Central or South Americans, or other Spanish culture or origin, regardless of race.

Household—Consists of the occupants of separate living quarters meeting either of the following criteria: (1) Persons, whether present or temporarily absent, whose usual place of residence is the housing unit in question, or (2) Persons staying in the housing unit who have no usual place of residence elsewhere.

Household crimes—Burglary or larceny of a residence, or motor vehicle theft, crimes that do not involve personal confrontation. Includes both completed and attempted acts.

Household larceny—Theft or attempted theft of property or cash from a residence or its immediate vicinity. For a household larceny to occur within the home itself, the thief must be someone with a right to be there, such as a maid, a delivery person, or a guest. Forcible entry, attempted forcible entry, or unlawful entry are not involved.

Incident—A specific criminal act involving one or more victims and offenders. In situations where a personal crime occurred during the course of a commercial crime, it is assumed that the incident was primarily directed against the business, and, therefore, it is not counted as an incident of personal crime. However, details of the outcome of the event as they relate to the victimized individual are reflected in data on personal victimizations.

Larceny—Theft or attempted theft of property or cash without force. A basic distinction is made between personal larceny and household larceny.

Marital status—Each household member is assigned to one of the following categories: (1) Married, which includes persons in common-law unions and those parted temporarily for reasons other than marital discord (employment, military service, etc.); (2) Separated and divorced. Separated includes married persons who have a legal separation or have parted because of marital discord; (3) Widowed; and (4) Never married, which includes those whose only marriage has been annulled and those living together (excluding common-law unions).

Metropolitan area—Abbreviation for "Standard metropolitan statistical area (SMSA)," defined below.

Motor vehicle—Includes automobiles, trucks, motorcycles, and any other motorized vehicles legally allowed on public roads and highways.

Motor vehicle theft—Stealing or unauthorized taking of a motor vehicle, including attempts at such acts.

Nonmetropolitan area—A locality not situated within an SMSA. The category covers a variety of localities, ranging from sparsely inhabited rural areas to cities of fewer than 50,000 population.

Non-Hispanic—Persons who report their culture or origin as other than "Hispanic," defined above. The distinction is made regardless of race.

Nonstranger—With respect to crimes entailing direct contact between victim and offender, victimizations (or incidents) are classified as having involved nonstrangers if victim and offender either are related, well known to, or casually acquainted with one another. In crimes involving a mix of stranger and nonstranger offenders, the events are classified under nonstranger. The distinction between stranger and nonstranger crimes is not made for personal larceny without contact, an offense in which victims rarely see the offender.

Offender—The perpetrator of a crime; the term generally is applied in relation to crimes entailing contact between victim and offender.

Offense—A crime; with respect to personal crimes, the two terms can be used interchangeably irrespective of whether the applicable unit of measure is a victimization or an incident.

Outside central cities—See "Suburban area," below.

Personal crimes—Rape, robbery of persons, assault, personal larceny with contact, or personal larceny without contact. Includes both completed and attempted acts.

Personal crimes of theft—Theft or attempted theft of property or cash by stealth, either with contact (but without force or threat of force) or without direct contact between victim and offender. Equivalent to personal larceny.

Personal crimes of violence—Rape, robbery of persons, or assault. Includes both completed and attempted acts. Always involves contact between the victim and offender.

Personal larceny—Equivalent to personal crimes of theft. A distinction is made between personal larceny with contact and personal larceny without contact.

Personal larceny with contact—Theft of purse, wallet, or cash by stealth directly from the person of the victim, but without force or the threat of force. Also includes attempted purse snatching.

Personal larceny without contact—Theft or attempted theft, without direct contact between victim and offender, of property or cash from any place other than the victim's home or its immediate vicinity. The property need not be strictly personal in nature; the act is distinguished from household larceny solely by place of occurrence. Examples of personal larceny without contact include the theft of a briefcase or umbrella from a restaurant, a portable radio from the beach, clothing from an automobile parked in a shopping center, a bicycle from a

schoolground, food from a shopping cart in front of a supermarket, etc. In rare cases, the victim sees the offender during the commission of the act.

Physical injury—The term is applicable to each of the three personal crimes of violence, although data on the proportion of rapes resulting in victim injury were not available during the preparation of this report. For personal robbery and attempted robbery with injury, a distinction is made between injuries from "serious" and "minor" assault. Examples of injuries from serious assault include broken bones, loss of teeth, internal injuries, and loss of consciousness, or undetermined injuries requiring 2 or more days of hospitalization; injuries from minor assault include bruises, black eyes, cuts, scratches, and swelling, or undetermined injuries requiring less than 2 days of hospitalization. For assaults resulting in victim injury, the degree of harm governs classification of the event. The same elements of injury applicable to robbery with injury from serious assault also pertain to aggravated assault with injury; similarly, the same types of injuries applicable to robbery with injury from minor assault are relevant to simple assault with injury.

Race—Determined by the interviewer upon observation, and asked only about persons not related to the head of household who were not present at the time of interview. The racial categories distinguished are white, black, and other. The category "other" consists mainly of American Indians and persons of Asian ancestry.

Rape—Carnal knowledge through the use of force or the threat of force, including attempts. Statutory rape (without force) is excluded. Includes both heterosexual and homosexual rape.

Rate of victimization—See "Victimization rate," below.

Robbery—Completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon.

Robbery with injury—Completed or attempted theft from a person, accompanied by an attack, either with or without a weapon, resulting in injury. An injury is classified as resulting from a serious assault, irrespective of the extent of injury, if a weapon was used in the commission of the crime or, if not, when the extent of the injury was either serious (e.g., broken bones, loss of teeth, internal injuries, loss of consciousness) or undetermined but requiring 2 or more days of hospitalization. An injury is classified as resulting from a minor assault when the extent of the injury was minor (e.g., bruises, black eyes, cuts, scratches, swelling) or undetermined but requiring less than 2 days of hospitalization.

Robbery without injury—Theft or attempted theft from a person, accompanied by force or the threat of force, either with or without a weapon, but not resulting in injury.

Simple assault—Attack without a weapon resulting either in minor injury (e.g., bruises, black eyes, cuts, scratches, swelling) or in undetermined injury requiring less than 2 days of hospitalization. Also includes attempted assault without a weapon.

Standard metropolitan statistical area (SMSA)—Except in the New England States, a standard metropolitan statistical area is a county or group of contiguous counties that contains at least one city of 50,000 inhabitants or more, or "twin cities" with a combined population of at least 50,000. In addition to the county, or counties, containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are socially and economically integrated with the central city. In the New England States, SMSAs consist of towns and cities instead of counties. Each SMSA must include at least one central city, and the complete title of an SMSA identifies the central city or cities.

Stranger—With respect to crimes entailing direct contact between victim and offender, victimizations (or incidents) are classified as involving strangers if the victim so stated, or did not see or recognize the offender, or knew the offender only by sight. In crimes involving a mix of stranger and nonstranger offenders, the events are classified under nonstranger. The distinction between stranger and nonstranger crimes is not made for personal larceny without contact, an offense in which victims rarely see the offender.

Suburban area—The county, or counties, containing a central city, plus any contiguous counties that are linked socially and economically to the central city. On data tables, suburban areas are categorized as those portions of metropolitan areas situated "outside central cities."

Tenure—Two forms of household tenancy are distinguished: (1) Owned, which includes dwellings being bought through mortgage, and (2) Rented, which also includes rent-free quarters belonging to a party other than the occupant and situations where rental payments are in kind or in services.

Unlawful entry—A form of burglary committed by someone having no legal right to be on the premises even though force is not used.

Victim—The recipient of a criminal act; usually used in relation to personal crimes, but also applicable to households.

Victimization—A specific criminal act as it affects a single victim, whether a person or household. In criminal acts against persons, the number of victimizations is deter-

mined by the number of victims of such acts; ordinarily, the number of victimizations is somewhat higher than the number of incidents because more than one individual is victimized during certain incidents, as well as because personal victimizations that occurred in conjunction with commercial crimes are not counted as incidents of personal crime. Each criminal act against a household is assumed to involve a single victim, the affected household.

Victimization rate—For crimes against persons, the victimization rate, a measure of occurrence among population groups at risk, is computed on the basis of the number of victimizations per 1,000 resident population age 12 and over. For crimes against households, victimization rates are calculated on the basis of the number of incidents per 1,000 households.

Victimize—To perpetrate a crime against a person or household.

Victimization rate per 1,000 for persons
age 12 and over, New Jersey compared with United States*

| | <u>N.J.</u> <u>1974</u> | | <u>N.J.</u> <u>1975</u> | | <u>N.J.</u> <u>1976</u> | | <u>N.J.</u> <u>1977</u> | | <u>N.J.</u> <u>1978</u> | | <u>N.J.</u> <u>1979</u> | |
|-----------------------|----------------------------|--------|----------------------------|--------|----------------------------|--------|----------------------------|--------|----------------------------|--------|----------------------------|--------|
| Violence | 19.7 | (33.0) | 20.1 | (32.8) | 23.0 | (32.6) | 19.3 | (33.9) | 23.2 | (33.7) | 23.0 | (34.5) |
| Burglary | 5.9 | (7.2) | 6.3 | (6.8) | 6.3 | (6.5) | 5.5 | (6.2) | 6.0 | (5.9) | 5.9 | (6.3) |
| Assault | 13.6 | (24.8) | 13.4 | (25.2) | 16.2 | (25.3) | 12.9 | (26.8) | 16.7 | (26.9) | 16.2 | (27.2) |
| Aggravated Assault | 4.2 | (10.4) | 4.0 | (9.6) | 6.0 | (9.9) | 4.8 | (10.0) | 5.4 | (9.7) | 6.4 | (9.9) |
| Simple Assault | 9.4 | (14.4) | 9.4 | (15.6) | 10.2 | (15.4) | 8.1 | (16.8) | 11.3 | (17.2) | 9.8 | (17.3) |

U.S. rates in parentheses

Source: Robert Tenari, U.S. Census Bureau
(202) 763-1735



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TESTIMONY OF JOHN M. FARRELL, NEW JERSEY
EXECUTIVES' COMMITTEE, BEFORE THE SENATE
INSTITUTIONS, HEALTH AND WELFARE COMMITTEE
ON THE "CRISIS OF OVERCROWDING IN THE
STATE PRISONS AND LOCAL JAILS" - FEB. 18, 1982

My name is John M. Farrell, and I am Senior Vice-President of Beneficial Management Corporation. I am speaking today as the Chairman of the New Jersey Executives' Committee of the National Council on Crime and Delinquency. The Executives' Committee represents a broad array of New Jersey corporations, which seek to improve the effectiveness of the state's criminal justice system.

The primary program objectives of the Executives' Committee are two-fold:

- 1) to encourage the use of cost-effective alternatives to incarceration for non-dangerous offenders, thereby lowering the continuing budget burden of the state's corrections system to the taxpayer; and
- 2) to encourage the development of community-based crime prevention programs to reduce the incidence of criminal and delinquent activity that create enormous losses to the state's residents and businesses.

The crisis of overcrowding in our state prisons and county jails is clearly one of the most pressing problems with which our state officials must deal. The bulging prisons, and the predictions that the problem will con-

tinue to escalate into the foreseeable future, makes other problems in the criminal justice area pale by comparison.

Even the most cursory review of the numbers involved leads to the inescapable conclusion that dramatic steps must be taken in very short order -- this is not a problem which will disappear if we ignore it long enough! I would like to review some of those numbers at this time:

. According to the December 3 report of Governor Byrne's official Task Force on Prison Overcrowding, chaired by former State Attorney General George F. Kugler, Jr., the number of persons sentenced to the state prison complex since the passage of 2-C has increased by 70%, with the additional impact of a 61% increase in actual length of stay.

. A report in last Sunday's New York Times indicated that, while the state prisons can accommodate perhaps 7500 inmates, the prison population right now is 8920. Of that figure, 7794 are actually being housed in the state prisons, while another 1108 are backed up in the county jails, as the result of the Governor's Emergency Proclamation.

. The number of state-ready prisoners backed up in the county jails has risen by more than 160 over the past month alone. The result of this enforced overcrowding on the county level has been the temporary shutting down of the Essex and Passaic jails, refusing to accept any further prisoners from the municipal courts. (In Essex, one further result has been a lawsuit by the City of Newark, naming both the county and state as defendants.)

. According to the official projections of the Administrative Office of the Courts, the state prison population could double by 1983, and triple by 1990!

While it is almost impossible to grasp the significance of these

figures, the immediate problem was well expressed in the report of the Task Force on Prison Overcrowding, when they noted that: "THE MORE URGENT MESSAGE IS THAT DURING 1982 THE PRISON POPULATION WILL INCREASE BY APPROXIMATELY 635 INMATES EVERY THREE MONTHS." (emphasis added.)

In practical terms, what do those figures mean? The bottom line is: it is absolutely impossible for the State of New Jersey to build its way out of the current overcrowding crisis. At present there are plans on the drawing board for a new 400-bed prison to be constructed in Camden -- from funds voted in the bond referendum of November 1980. That prison cannot be ready until at least 1985, and it will obviously open overcrowded. With the kinds of numbers that we are seeing now, and with the projections of the AOC and the Task Force, we estimate that we would have to be able to build 10 new 400-bed prisons by the end of this year if we are only to alleviate the current population crunch, and what can be expected by the end of 1982. (That figure is derived from adding the 635 increase every three months, plus the current population over capacity, with the addition of state prisoners held in the overcrowded county jails = a total of approximately 4000.)

It is of course perfectly obvious that it is impossible to construct one prison by the end of the year, much less ten -- even were we to determine that course of action would be the most desirable, and affordable. And we of the Executives' Committee believe that course, if possible, would be neither desirable nor affordable.

In view of the overwhelming evidence that indicates that heavy reliance on incarceration and lengthy sentences have no discernible

positive effect either on the incidence of crime or the rate of recidivism, we believe the policy of responsibly limiting the use of institutions should become paramount in justice planning by the state. While it is clear that there will continue to be a need for institutionalization of dangerous and particularly violent offenders, every effort must be made to develop non-incarcerative sanctions and programs for the many offenders who do not fall within that category.

This conclusion is reinforced when we examine the costs of continually expanding the state corrections system. Construction costs for each new prison cell run anywhere from \$60,000 to \$80,000 per cell, and operating costs per prisoner are estimated (probably conservatively) to be more than \$14,000 every single year. Utilizing the current population figures and projections through the end of this decade, the Task Force on Prison Overcrowding conservatively estimated (since they considered the low construction figure of \$60,000) that capital needs for buildings could amount to \$480 million by 1990, and annual operating costs for the Department of Corrections would amount to more than \$150 million per year.

continued

As businessmen and women, we cannot countenance the expenditure of these kinds of sums, to expand a demonstrably ineffective system -- and especially in light of current economic realities. Money is among our scarcest resources at present. In light of massive cutbacks in social service program funding, it would be unconscionable to grant ever increasing slices of the budget pie to the correctional apparatus.

The members of the New Jersey Executives' Committee would therefore recommend that several proposals made by Governor Byrne's Task Force be acted upon immediately:

1) The legislature should pass a statute similar to one which has been utilized by Michigan to successfully defuse their prison overcrowding crisis -- without enormous financial outlays, and without endangering public safety. Such an emergency overcrowding statute would accelerate parole eligibility by three months, allowing the reduction of the incarcerated population in an orderly fashion while selecting for release those inmates who would shortly be released in any event. As businesspeople, we support the concept of a planned reduction of the overcrowded population. Given the magnitude of the problem currently facing the state, such a mechanism appears to be the only rational immediate response to the problem at hand, and there seem to be no grounds for the often expressed fear that releasing those who are near release anyway will present any increased danger to the public.

2) Within the state's prison system right now, there apparently are an estimated 500 individuals who have been denied parole release, for the sole reason that no suitable residential or non-residential mental health and substance abuse programs are available. Funding of these kinds of community programs should be accomplished, to eliminate this problem in the future, thereby eliminating the need for one entire new prison.

3) We further recommend that the legislature appropriate funds where applicable for the purpose of establishing viable alternatives to incarceration for those who do not require imprisonment, and who are currently eligible under the criminal code for non-incarcerative sanctions. We understand the AOC is now investigating the feasibility of instituting Intensive Probation Supervision programs in this state, as well as a statewide program of community service sentencing. If

these practical alternative programs are created, and adequately funded, the state will have gone a long way towards a planned response to its correctional needs.

4) While we understand the legislature's reluctance to consider the possibility of revising the mandatory sentencing clauses of the criminal code (although we would contend such a re-examination is essential, given the criminal code's disastrous impact on the prison population), we urge you, most emphatically, not to give any credence to any further call for increased sentence lengths or additional mandatory sentences. The impact of 2-C's harsher provisions is all too evident in the current crisis of overcrowding; to increase the severity of those provisions in the light of current experience would only exacerbate disastrously an already impossible situation.



**COUNTY OF MIDDLESEX
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COURT HOUSE, ROOM 504
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JOSEPH A. FECONDA
DIRECTOR
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February 16, 1982

Senator Richard J. Codey
Chairman, Committee On
Institutions, Health and Welfare
CN-042
State House
Trenton, New Jersey 08625

Dear Senator Codey:

The crisis of overcrowding in our county and the state correctional institutions continues to escalate. The pressures of overcrowded conditions and unabated crisis management has strained many of our institutions beyond the breaking point. These conditions are an undeniable receipt for a major disaster. It is critical that definitive leadership be exerted in order to contain and manage the crisis. It is widely hoped that the present hearings will lead to action which will effectively address the emergency conditions.

In order to assist the committee's investigation of the correctional population crisis, I attach herein two documents which had previously been prepared.

The first addresses the issue of crisis management itself. The separate state and county correctional administration have failed to work together in addressing the crisis. Together the result has been an adversarial relationship with each jurisdiction pitted against the other. The adversarial positions taken and increasingly engaged establish only short-term relief and cannot form lasting solutions. Further, and more importantly, the bitterness which results from such adversity will create side effects which will impede the correctional community for years to come.

No one element of the correctional system can act unilaterally to maintain its own best interest without dire consequences. The state must not continue its policy of pre-determining capacity and closing its doors while inmates backup in county institutions. The

Senator Richard J. Codey
February 16, 1982
Page 2


counties cannot close their doors without dramatic disruption to the local criminal justice systems, however, in the present adversarial atmosphere more counties may engage in such action on the same unilaterally self-serving basis presently exercised by the state.

This problem will not go away by itself. The extremity of the problem necessitates new working rapport between the state and the counties. As the second document indicates, the state could make a greater contribution to crisis response by short-term use of selective double bunking.

The state could take greater direct responsibility for their inmates and also provide decisive leadership for a cooperative crisis response management coalition to establish comprehensive use of existing space in all institutions. This would minimize adversarial leadership and create a cooperative atmosphere which will be a necessary aspect of any potentially successful approach to relieving the present crisis.

It is our sincere hope that the positions established in these documents will be of assistance to the work of the committee.

Very truly yours,


JOSEPH A. FECONDA, DIRECTOR
Adult Corrections Department

JAF:jmm
Enclosures

cc: Freeholder Donald J. Wernik
John J. Hoagland, Esq., County Counsel
John T. McHugh, County Administrator

IMPROVING RELATIONSHIPS BETWEEN STATE AND COUNTY CORRECTIONAL OPERATIONS

Our criminal justice system is facing unprecedented problems. The jails and prisons are filled beyond capacity. The new criminal code, patterns of stricter sentencing, and changes in our mental health systems have all resulted in a dramatic deterioration in institutional conditions and severe overcrowding. At the same time, new standards and regulations have been promulgated and a continuing wave of prisoners' rights litigation all serve to overwhelm the institutional administrators. This crisis of combined problems, however, does not excuse our absolute responsibility to operate effective correctional institutions. The potential criminal must know that punishment will follow the crime. The convicted criminal must be dealt with firmly within a system which is able to prepare him to return to society. The citizens have the right to believe that our jails and prisons will accomplish these tasks so that we can all feel more secure in our homes and communities. In order to ensure that these basic conditions are upheld, the state must take a new and dynamic leadership role.

In the past, the tasks of county and state correctional institutions were separate and distinct. The state institutions held serious offenders who had been sentenced to major terms of incarceration, while the counties held detainees and minor offenders serving short terms. In more recent years, the degree of disparity between state and county institutions has narrowed considerably. Many minor violations

such as public intoxication have been decriminalized and in other cases, alternatives to incarceration have been established. These trends, in combination with the incarceration of greater numbers of serious offenders, have produced dramatic shifts in sentencing patterns. Now the counties hold inmates sentenced on far more serious charges, and in this, the county institutions are now significantly more similar to the state institutions. Although this developing similarity might have produced closer working rapport between state and county institutions, in fact, there has been a serious deterioration of mutual cooperation.

The impact of the multiple problems which face the correctional institutions has been to stretch the administrators' resources above and beyond the breaking point. Overcrowding strains every element of facility and staff resources, and many institutions are literally operating under emergency conditions. Unfortunately though, all too often the institutions have pursued self-serving responses to their individual crises. The result of such narrow leadership has been increased friction and factionalization. The state institutions have attempted to relieve their overcrowding problems at the expense of the county institutions by allowing inmates sentenced to state institutions to languish in the county jails. Moreover, the state has started placing their inmates in a county jail. For their part, the counties have responded in equally confrontational and self-serving actions. A number of counties have turned to the courts to sue the state. The recent press conference held on the State House steps wherein county officials condemned the state for its self-serving practices speaks for itself.

There is an atmosphere of desperation in the jail and prison administrations. There is a sense that the current problems and trends will continue to escalate and that nothing will be done to reverse the constant escalation of these dangerous conditions. There is a feeling that no change in the narrow policies and the self-serving practices will occur until some disaster focuses the public's attention on these dangerous conditions.

There is no real need, however, for New Jersey to experience an Attica or a New Mexico State Prison rebellion. There is no real need to feel that conditions are irrevocably pointed towards disaster. However, in order to reverse these conditions, a new relationship between the state and county institutions must be established. The state must move decisively in an effort to establish a working coalition. Through mutual effort, we can identify the available bed space throughout the institutions and develop a full utilization plan which uses these resources to their best advantage. The local jails may remain at capacity levels in order to reduce the pressure throughout the system. However, the jails would be more able to cope with capacity housing because the state institutions would take the most troublesome inmates. The hard-core troublemakers, the medically incapacitated, and the more seriously emotionally disturbed inmates may represent a fraction of the total number of inmates in the jails, but they create a very disproportionate drain on staff and physical plant resources. The large state institutions are far more adequately prepared to deal with such inmates and with the state taking them, the jails would be able to cope with capacity housing levels.

More important than even the improved use of physical resources, the establishment of such a partnership would instill a dramatic impact upon the administrators themselves. No longer would the individual institutions feel isolated and helpless. New directions and major decisions would be made on the basis of mutual support and common goals rather than through self-serving unilateral action. The state could provide the catalytic leadership for such a coalition and could either work through existing groups such as the Wardens' and Sheriffs' Associations or through some new vehicle created expressly for this purpose. Within the context of such state leadership and a new coalition, each administrator would acknowledge the role that they could best play and experience the support that they, in turn, could expect. Such a positive atmosphere would alleviate the sense of despair which presently exists.

Such a plan would require immediate action in the establishment of a new leadership role for the State Department of Corrections. This plan is not, however, a distant utopian possibility. The enabling legislation for transfers from county to state institutions already exists (NJSA 30:4-85.1). Under a priority mandate, the next administration could have such a mutually cooperative venture initiated within three months and firmly established within six to nine months. This would be a crisis response which would be effective in meeting the sentencing requirements of the courts, in maximizing the utilization of existing resources and in alleviating the current sense of impending disaster. It would be a response which would satisfy the citizens' expectation by reducing the current potential for disaster and by gradually addressing the current crisis in the correction institutions.

SELECTIVE USE OF DOUBLE BUNKING
AS A SHORT-TERM RESPONSE TO THE OVERCROWDING CRISIS

Overcrowding in the jails and prisons of New Jersey has reached crisis proportions. Though not a popular issue with the public, overcrowding has long been recognized as a foundational cause in virtually every major prison disaster. We must acknowledge the seriousness of the issue and the urgent need for meaningful and effective response. The state institutions are so overcrowded that they are unable to accept new inmates in a timely manner. The same forces which create the overcrowding in the state institutions have worked to fill the county jails and in addition, the counties must continue to hold the state's inmates until their transfers can eventually be arranged. Fourteen of the county institutions have been operating above their legitimate maximum capacity and in one case, a jail has had to operate at 160 percent of capacity. In order to respond to this crisis, the state must take dramatic steps and consider extreme alternatives such as the use of double bunking.

The need for additional bed space throughout the county jails and state prisons has been thoroughly documented. Millions of dollars will be required for the construction and subsequent operation of the needed cell space. Bond issues have already been approved for such construction but the opening of any new institution remains some years in the future. We are, therefore, pressed to develop interim plans which can respond immediately to this urgent problem. The correctional

institutions must be able to remain responsive to the needs of the courts for the sentencing of serious offenders. At no time can we allow violent offenders to avoid incarceration due to the lack of available cells. On the other hand, however, we must maintain the safety of the public and the security of the institutions in a manner which is consistent with both the overall goals of effective correctional programming and with cost-effective fiscal considerations.

New Jersey's state institutions operate under standards which generally maintain single occupancy in cells. This is a proper standard and should be supported under normal circumstances. However, we must recognize the seriousness of the present crisis, and we must implement provisions which alleviate the potential for major disruptions. To fail to act in a responsible manner in these conditions would be a breach of the public trust. In the recent *Rhodes vs. Chapman* ruling, the United States Supreme Court established that where an inmate has access to proper institutional programming and services, there is no constitutional guarantee of single occupancy cells. Thus, though single occupancy conditions would be preferable, New Jersey could explore a limited and strictly controlled use of double bunking which could serve as an interim provision which would alleviate the current population crisis. If the state institutions could identify even as few as one out of every fifteen cells as being appropriate for double bunking, and additional 450 cells (the equivalent of a new institution) could be made available within a matter of four to eight weeks. Such an expansion of capacity would make a major contribution to the relief of present circumstances.

Since the selection of appropriate inmates would be absolutely critical to the success of such a plan, a specialized classification process would be required. The prime candidates would be those inmates who already demonstrate their responsibility through regular participation in institutional programming and job assignments. Such inmates regularly spend little time in their cells beyond sleeping hours. Additionally, responsive grievance procedures would be maintained in order to account for the additional tensions which are incumbent with such a procedure.

Identifying appropriate inmates and cells, however, is only an initial aspect of such a plan. A careful review of institutional provisions would be necessary and where any element of the institution is already strained, additional staff or physical resources would have to be established. The security staff may need to be strengthened and the program staff would necessarily have to be expanded. The adequacy of social and educational programs, medical services, recreation and food services are all critical to the adequacy of the implementation of this crisis response provision. Double bunking must not be viewed as a panacea or a "quick-fix." If this were to be the case, the leadership would be designing a time bomb rather than defusing one. Staff and resources unquestionably must be added and the budgetary ramifications must be addressed in order to adequately deal with the increased workload and the additional tensions introduced by double bunking.

Double bunking is not in itself desirable, but properly implemented as a short-term practice, it may serve as an effective

crisis response by providing manageable relief from overcrowding within a cost effective context. In this way, New Jersey's need for correctional incarceration of offenders can be met on an interim basis with respect to the security of the institutions and the effectiveness of correctional programming. Failure to move in the direction of such a planned implementation would result in the continuation of overcrowding, the inefficient use of available resources, and the escalation of tensions; in short, a formula for major disturbances. Thus, in light of this grim alternative, the selective implementation of double bunking in New Jersey's correctional institutions on a short-term basis is a provision which is worthy of consideration as a means of addressing the present crisis.

