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DEPARTMENT OF THE PUBLIC ADVOCATE
OFFICE OF INMATE ADVOCACY
ANNUAL REPORT 1975

Operations

As outlined in the Annual Report of the Office of Inmate Advocacy for 1974, the ordinary activities of the Office involved three major program categories:

1. Individual Complaints
2. Subject Matter Investigations
3. Litigation

As of July 1, 1975, the budget of the Office of Inmate Advocacy was reduced to a level which necessitated reduction of the Office's activity. Nevertheless, the Office processed 689 individual complaint files of which 574 were closed through action by this Office and 95 through referral to other divisions or agencies during calendar year 1975. Sixteen remained open and under investigation as of December 2, 1975. Four complaints became moot due to the release of the complainants from incarceration. The Office, due to the reduction of its resources, is phasing out its individual complaint response program, and as of June 30, 1976, activity in this area will be terminated.

In order to deal most efficiently with some types of individual complaints, the Office has developed a number of "form packages" for the perfecting of pro se appeals in the Appellate Division of the Superior Court by aggrieved inmates. These "packages" are sent to most inmates whose complaints involve appealable administration decisions. The Office has also initiated a policy of responding to a portion of individual complaints received from State

institutions with form letters notifying complainants that we cannot take action due to the recent reduction of our staff resources and, where appropriate, recommending alternative sources of assistance which may be available.

As of June 30, 1975, the Office terminated all activity upon individual complaints and subject matter investigations from county and municipal prisons and jails except for referral of individual complaints where appropriate. Form letters of acknowledgement are sent in response to complaints from county institutions which cannot be referred. From July 1 to December, 1975, the Office responded to a total of 85 individual complaints, both State and County, with such form letters. It should be noted that prior to the recent reduction of the Inmate Advocacy budget, the policy of the Office had been to respond to all appropriate individual complaints with personal interviews.

The Office entered into an agreement in March of this year, under which all pro se complaints filed in the U. S. District Court by inmates in New Jersey prisons are referred to us. One of our attorneys reviews each one, attempts to mediate the dispute where possible and/or advises the inmate on the appropriateness of his lawsuit. We have processed thirty-four suits in this program, with several being withdrawn as a result of our involvement.

The following is a summary of the status of subject matter investigations which had been opened at the time of our 1974 Report:

- 1) The sufficiency of medical facilities and treatment at New Jersey State Institutions. This investigation has been terminated at least

temporarily, due to lack of resources.

2) The legal propriety of disciplinary procedures at state and county institutions. Insofar as state facilities are concerned, the legal standards regarding discipline were determined by the New Jersey Supreme Court in Avant v. Clifford, 47 N.J. 496 (1975) (discussed infra). As regards county facilities, our investigation and efforts to promote compliance have been terminated due to lack of resources.

3) The conditions and regulations concerning the State Prison Readjustment Unit at the Vroom Building. This investigation resulted in the institution of litigation by this Office in the United States District Court sub nom. Wooten, et al. v. Klein, et al., which is further discussed infra.

4) State Parole practices regarding sex offenders at the Rahway Treatment Unit. In part as a result of our involvement, the Special Classification Review Board has reformed its procedures, more thoroughly reviewing each case, and giving reasons when parole recommendation is denied. Consequently, the State Parole Board is giving very substantial weight to S.C.R.B. recommendations.

5) Denial of certain First Amendment rights retained by inmates at the Union County Jail. As noted in our 1974 report, negotiations with responsible officials resulted in a tentative agreement to rectify the situation. Our periodic follow up investigations have been terminated due to lack of resources.

6) The confinement of juveniles in county adult facilities.

As noted in our 1974 report, this investigation resulted in the institution of litigation which is discussed infra. (Askins v. Board of Freeholders and Sheriff of Cumberland County; Howells v. Board of Freeholders and Sheriff of Cape May County).

7) Physical conditions at the Camden County Jail.

Although the County Penal Study Commission requested our involvement in this matter, we have been unable to pursue same due to lack of resources.

8) Conditions at the Mercer County Youth House. Our findings and recommendations were communicated to the Mercer County Board of Freeholders and other responsible officials, and were implemented to the satisfaction of this Office.

9) Mail procedures and other First Amendment issues at the Atlantic County Jail. Objectionable procedures were changed through negotiations with responsible officials.

10) Procedures affecting First Amendment rights in the Passaic County Jail. Some objectionable procedures were changed through negotiations with responsible officials.

11) The Tort Claims Act. Legislation (A2225) is presently pending which would repeal those sections arbitrarily discriminating against inmates. This legislation accords with the position of this Office as presented by the Public Advocate to the Office of the Governor prior to our 1974 report.

12) Mail and visitation procedures at the Cape May County Jail. Objectionable procedures were changed through negotiations with responsible

officials.

Subject matter investigations opened after December 1, 1974, but prior to July 1, 1975 are as follows:

1) Conditions at the Monmouth County Jail. Conditions in the Segregation Unit were changed, through negotiations with responsible officials, to conform to prevailing standards of decency.

2) Religious worship at Bordentown Reformatory. Objectionable practices were ameliorated through negotiations with responsible officials.

3) Allegations of brutality at the Hunterdon County Jail. Our investigation was terminated due to lack of resources.

4) Conditions at the Burlington County Jail. Our investigation was terminated due to lack of resources.

5) Availability of adequate psychiatric services in State prisons. Investigation and research are continuing.

6) Conditions at the Essex County Penitentiary. We investigated and made recommendations to the Warden regarding medical facilities and disciplinary procedures.

7) Law libraries at State institutions and access thereto by inmates. Negotiations were had with responsible officials and new standards were promulgated by the Department of Institutions and Agencies. Further, this issue was dealt with in Wooten v. Klein and McMillian v. Klein (discussed infra).

8) The methods and standards used by the Division of Correction and Parole in calculating pre-trial jail time for state incarcerated offenders. This matter was investigated by our Office. Our recommendations

caused the Division of Correction and Parole to calculate pre-trial jail time in a manner more favorable to inmates.

Since July 1, 1975, the Office has opened four subject matter investigations:

- 1) Furlough procedures at the State prison complex. This matter was pre-empted by investigations instituted by law enforcement agencies.
- 2) Allegations of frequent instances of brutality at the Annandale Reformatory. Investigation is continuing.
- 3) Sex offender transfers. The Office is presently investigating the propriety of criteria and procedures relating to the transfer of inmates sentenced under the Sex Offender Act out of the Rahway Treatment Unit and into facilities having no treatment capability.
- 4) Reformatory parole. The Office is presently investigating the criteria and procedures utilized by paroling authorities in youth complex institutions in an effort to determine whether such criteria and procedures comport with due process standards applicable to other paroling authorities.

SPECIAL MATTERS

- 1) Bail reform in New Jersey. In February, 1975, the Office completed drafting of a comprehensive revision of the New Jersey Court Rules relating to bail and issuance of summonses in lieu of arrest. The proposed revision was submitted to the Supreme Court Criminal Practice Committee by Commissioner Van Ness. Two subcommittees were appointed to consider the proposal, and a member of our legal staff was appointed as staff to both subcommittees.

The work of the subcommittees has progressed throughout the year, and it is anticipated that reports will be submitted to the Criminal Practice Committee within the next few months.

2) This Office has provided advice and analysis in detail to the State Parole Board regarding standards for Parole Revocation hearings and the entire gamut of parole release procedures and criteria utilized in New Jersey.

3) An attorney in our Office has been appointed by Commissioner Van Ness as his designated alternate to the Correctional Master Plan Policy Council of the Department of Institutional and Agencies.

LITIGATION

1) Avant v. Clifford, 67 N.J. 496 (1975).

As noted in our 1974 report, this Office appeared as amicus curiae in this case. In June, 1975, the State Supreme Court decided this matter in a 69 page opinion. The Court addressed itself, among other things, to due process standards and fairness requirements in prison discipline; "use" immunity in the prison discipline context; and the authority of the Commissioner of the Department of Institutions and Agencies to promulgate standards respecting prison discipline. The Court noted that the Office of Inmate Advocacy is the only statutory activity concerned with prison justice and inmate rights and indicated its hope that such programs will continue and "intensify", as well as noting per Judge Conford that public debate in these matters is salutary and recognized as such by the Legislature in its establishment of the Office of Inmate Advocacy.

2) McGinnis v. New Jersey State Parole Board (Superior Court, Appellate Division). This case involves due process requirements in parole

rescission proceedings. The appeal was dismissed as moot on December 3, 1975, and a Petition for Certification is presently being prepared for filing in the Supreme Court.

3) Askins v. Board of Freeholders and Sheriff of Cumberland County (Superior Court, Law Division). This matter has been dismissed by consent of the parties because of mootness. Construction of an appropriate detention facility was completed by Cumberland County.

4) Howells and Cooper v. Board Freeholders and Sheriff of Cape May County (Superior Court, Law Division). Our Motion for Summary Judgment in this matter was recently granted by the Superior Court Law Division, Cape May County. By virtue of this decision juveniles charged as delinquents or as being in need of supervision under the New Jersey Juvenile Law may no longer be detained in the County Jail. The County has not appealed.

5) Akida Bahati v. Alan R. Hoffman (Superior Court, Appellate Division). This is an appeal from a prison disciplinary proceeding with broad First Amendment and Due Process overtones. Our motion for a stay of the disciplinary action was granted, resulting in the inmate being released from lock-up, in order to preserve the issues for appeal. Briefs have been filed, and the case is awaiting argument on the merits.

6) State v. Wooten (New Jersey Supreme Court). This case is presently pending in the Supreme Court on certification. The matter includes, among other things, the applicability of the kidnap statute in a prison context and the constitutionality of New Jersey's mandatory minimum penalty for kidnapping.

7) Thomas Wooten, et al. v. Ann Klein, et al. (United States

District Court). This suit was filed on February 4, 1975, on behalf of most of the inmates at the prison system's "Readjustment Unit", located at the Vroom Building, Trenton State Hospital. It involves issues of due process in the procedures by which inmates are assigned to and released from the Unit, use of brutality against inmates, and lack of programs and facilities. The case is in discovery, with trial anticipated in the spring.

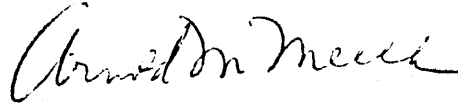
8) McMillian, et al. v. Klein, et al. (United States District Court). This is a class action on behalf of inmates at Trenton State Prison, regarding conditions in wing 1-left, the "hole", which is used for disciplinary confinement. It was originally filed by inmates pro se. This Office entered its appearance in June, 1975, and an amended complaint was filed in September. The answer on behalf of the defendants has not yet been filed.

Although the above reflects with some detail our present program, it should be noted that we are continually called upon by numerous State, county, and private agencies to render advice and assistance in matters regarding corrections and parole.

Total staff for the Office of Inmate Advocacy, as reduced, now includes two attorneys, an institutional coordinator, and a field representative. The Office Director has responsibility for the Office of the Public Defender Parole Revocation Defense program, as well as this program. Although the Office has jurisdiction involving approximately 290 institutions within the State of New Jersey, it is clear that its capability to act effectively compels non-involvement in the vast number of issues and problems facing corrections in this State.

Attached please find a breakdown of the number and type of complaints received by this Office from the various institutions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Arnold M. Mellk".

Arnold M. Mellk, Director
Office of Inmate Advocacy and
Parole Revocation Defense