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ANNUAL REPORT
of the
OFFICE OF INMATE ADVOCACY
DEPARTMENT OF THE PUBLIC ADVOCATE

Submitted to the Governor and the members of the Legislature pursuant to P.L. 1974,
c.27, sec. 47 (N.J.S.A. 52:27E-46)

December 1, 1981

INTRODUCTION

The problem of overcrowding in the county jails which reached proportions of the utmost gravity during this year consumed the bulk of the resources of the Office of Inmate Advocacy in this period and also resulted in some setback of the achievements which had been gained in past years. Jails have found it difficult to maintain some of the minimum basic conditions which they provided in the past when the essential function was to simply provide a space to house the increasing number of inmates for whom they were responsible. It is a remarkable achievement for which this Office perhaps deserves some credit that no major incidents involving loss of life or destruction of property occurred in the county jails throughout this year. Certainly the administrators and personnel of those institutions are greatly deserving of appreciation for that achievement.

The funding arrangements for the Office also were changed during the year in that the appropriation from the State Law Enforcement Planning Agency expired after a period in excess of five years. However, a grant for specialized services to the county jails was obtained from the National Institute of Corrections, an agency of the United States Department of Justice, and additionally an appropriation was included in the New Jersey State Budget for the first time in five fiscal years. As a result the Office will be able to continue providing services within its legislative mandate through the end of fiscal 1982.

LITIGATION

The overcrowded conditions existing in the county jails resulted in the principal litigation activities of the Office for this year in the form of test litigation filed against the appropriate officials of Union and Middlesex Counties, challenging the conditions in the jails of those counties as being constitutionally overcrowded. In an effort to responsibly bring in all of the parties to the criminal justice system, the county administrative officials, jail administrators and the principal members of the judiciary were named as defendants. The latter sought to be released from the case on the grounds that they could not be subject to be control of the federal courts, and in July United States District Judge Harold Ackerman granted that motion. This action has made conclusion of these lawsuits more difficult, since a principal party to the jail overcrowding problem is no longer a party to the lawsuits.

Both Union and Middlesex Counties filed third-party complaints naming the Commissioner of the Department of Corrections as a defendant, on the ground that the state prison inmates who are held in the county jails rather than being transferred to state prison are largely responsible for the overcrowded conditions which exist there. The Corrections Department has vigorously fought this effort to hold them responsible for the overcrowding problem, and since the signing of the executive order by Governor Byrne which grants the Commissioner substantial authority in determining who shall be held in what institution, they have asserted that the Commissioner is to a large degree outside of the control of any other processes. Both the plaintiffs and the county officials assert that the constitutional limitations on conditions in the institutions take precedence over any emergency order and that the court may issue such orders against

the jail officials of the counties as well as the Commissioner of Corrections as are necessary to ensure that constitutional limitations are preserved.

After several months of negotiation, settlement was entered into with the officials of Union County on October 22, 1981. However, the court declined to take any further action until the validity of the executive order has been determined in the New Jersey Supreme Court. As a result, the county has declined to abide by its obligations under the consent order. At the close of the year the Office had moved on behalf of the plaintiffs to have the county officials held in contempt because of this.

In related matters the Office has remained in close touch with the litigation brought by county officials involving the question of state prison inmates being retained in the county jails. During the early part of the year this litigation had led to several orders requiring the Department of Corrections to remove such inmates. Following the issuance of the executive order, this changed to a challenge of that order and its validity. This matter remains unresolved as of this writing.

The 1977 suit against Passaic County involving general conditions was revived this year when it became apparent that they were not abiding by some of the provisions of the consent order to which they had agreed. While a fresh agreement was reached on some of these points, it became clear that they were unable or unwilling to provide recreation on a twice-a-week basis as the consent order mandated. County officials sought to have the order modified before Judge Stern. As of this writing this matter has not been resolved, however it appears that an agreement will be reached whereby the availability of recreation will be maximized substantially, although probably not to the level of an opportunity being afforded two times a week to all inmates. Again, this problem is

a direct result of the extraordinarily overcrowded conditions at the Passaic County Jail in that there are simply too many inmates housed there for the services agreed to at the time the consent order was signed in 1977 to be afforded in full.

TECHNICAL SERVICES

Under the grant received from the National Institute of Corrections, effective July 1, 1981, the Office is funded to review conditions in the county jails which could lead to litigation and to assisting officials in those institutions in developing procedures which may reduce this possibility from occurring. The principal function of the project is to try to promote the development of effective grievance resolution mechanisms in each of the counties so that inmates housed there may have a procedure for the resolution of matters of concern, without the necessity of their resorting to litigation, or to unlawful means of protest. We are also seeking to promote improvements through the provision of technical assistance and advice in certain basic areas such as medical care, recreation, access to legal services, and the like, the denial of which has often resulted in litigation in comparable situations in other areas. This project began with a comprehensive survey of each and every county jail in the state, and has overall been very well received by the administrators of those counties. Most of them recognize that it is in their interest to reduce the likelihood that they will be subject to lawsuits, and that they will be better able to run their institutions if the basic services mandated by law are afforded.

It is anticipated that throughout the remainder of the fiscal year for which this grant has been provided it will be possible to encourage the development of effective grievance mechanisms, as well as improvement in the other areas mentioned, in a substantial proportion of New Jersey's county jails.

NEW JAIL CONSTRUCTION

This year saw the successful culmination of the efforts of two of the counties, with which we have worked for several years, to bring about replacements for physically unacceptable jail buildings. Ground was broken in Hunterdon County in June, and in Gloucester County in October, for new criminal justice complexes including jails which meet all minimum professional standards and which will allow the counties to afford to the persons committed to their custody the minimum facilities mandated by law and administrative requirements.

Progress toward the replacement of obsolete jails has continued in Atlantic, Middlesex, Monmouth, Ocean, Somerset and Warren Counties. We have worked with officials in all of those places in an effort to ensure that the new buildings are optimally functional at the minimum possible cost.

INMATE COMPLAINTS

As noted previously, the overcrowded conditions in the jails of the state have resulted in an increase in both the number and the nature of the complaints which we receive, as well as a reduction in the ability of this Office and of the administrators of the county jails to successfully resolve those complaints. While the resources of the Office to respond to individual complaints have been reduced by the fact that the personnel are committed to specialized projects, the need for this service has if anything increased. The Office staff thus finds itself increasingly in the position of being unable to provide the necessary assistance to inmates with legitimate concerns about problems they are facing. This can only result in an increase in the tension level at these institutions.

MISCELLANEOUS ACTIVITIES

The high regard in which the Office is held was demonstrated repeatedly throughout the year by the frequent requests for advice and assistance, and invitations to participate in various activities. Office personnel participated in the conference on the "Crisis in Corrections" held with senior state and local officials, as well as private citizens, under the sponsorship of two national organizations, and at a national conference on the administration of justice as well. Attorneys, judges, and public officials have regularly called on the Office for advice and assistance on matters relating to the rights and interests of persons in confinement.

CONCLUSION

With the conditions in our penal institutions growing more serious as the populations housed there increase, it seems of great importance that an independent office with authority to ensure that the law is observed be maintained. It therefore seems especially important that the Office of Inmate Advocacy be continued to carry out the responsibilities defined in the statute.

Respectfully submitted,

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