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FINAL REPORT

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AN ANALYSIS OF THE FINDINGS OF THE STUDY ON THE
INCREASING POPULATION IN LOCAL CORRECTIONAL FACILITIES
AND SOME STRATEGIES TO REDUCE OVERCROWDING

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STATE COMMISSION OF CORRECTION

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PROGRAM AND POLICY ANALYSIS

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EXECUTIVE SUMMARY

Notable population growth in local correctional facilities, first observed in 1979, surged into the 1980's at an even faster rate of growth. The average daily population of local correctional facilities, reported as 4638 in 1978 climbed to 5403 in April 1980 and to 5846 by November, 1980.

Although the findings of population surveys taken in April and November 1980, and trend data from 1978-1980 cover a short period of time, the message which emerges is persuasive. That message conveys a growing use of local correctional facilities for detained and sentenced persons, and an increasingly serious problem of overcrowding which threatens to push the statewide population beyond capacity.

The 1980 jump in population paralleled similar increases in the population of correctional facilities operated by the New York City Department of Corrections and the New York State Department of Correctional Services. Increased use of incarceration, however, exceeded advances in other Criminal Justice System indicators such as Reported Crime and Reported Adult Arrests.

Overcrowded conditions in local facilities also grew more serious between April and November, 1980. Although the number of facilities reported to be at or above their Maximum Prisoner Capacity - general housing space only - remained at 43%, those facilities grew even more crowded in November. The statewide population density in all local correctional facilities increased from 77% of capacity in April to 85% of capacity in November. Overcrowded conditions were even more serious in Nassau, Suffolk and Westchester Counties, where reported populations matched or exceeded their combined capacity of general housing and special housing.

Such conditions posed dangerous problems for both the persons incarcerated and corrections officers. A serious disturbance erupted in October in Nassau County, which resulted in injuries to inmates and officers and which was traced to overcrowding problems.

The November survey findings, together with an analysis of recent DCJS reports on felony sentencing, revealed that the number of persons sentenced to local correctional facilities rose markedly since 1976 and the frequency of lengthy jail sentences also increased. The growing use of local jail sentences, especially lengthy jail sentences, appears to contribute to the serious overcrowded conditions in local facilities.

The number of persons detained in local facilities also rose between 1976 and 1979 with a decided increase measured in the number of persons detained for longer time periods. This growth further added to the growing overcrowding problem.

Little exists to suggest a levelling-off or a decline in the population of local correctional facilities. Indeed, the mood of the public and efforts to expand the state correctional system lend support to an expanded use of local correctional facilities.

Since so many local facilities were built over 25 years ago and are now unable to house growing populations of persons or meet basic Minimum Standards, many counties may find it necessary to undertake major renovation or new construction projects.

Although major expansion is advisable in particular circumstances, it is also necessary to examine other approaches to reducing the population of local facilities and curtailing the overcrowding.

The State Commission of Correction is in a unique position to evaluate the effect of the laws, policies and procedures which determine whether or not persons are detained or sentenced to local facilities. The Commission is, therefore, favorably situated to comment upon ways to curtail overcrowding.

The following optional strategies are presented for consideration:

- A. Enlarge the capacity of local correctional facilities through renovation, new construction and acquisition.
- B. Decriminalize - legislatively remove from the Penal Law - certain behavior now considered criminal, thereby alleviating any need to incarcerate persons who engage in such activity.
- C. Eliminate - by legislation - the pre-adjudicatory detention and the post-adjudicatory sanction of incarceration for persons arrested or convicted of certain violations and Class B misdemeanor offenses. In such cases different forms of community-based supervision would be the only authorized sanctions.
- D. Amend laws and regulations governing the housing and classification of offenders and the sentencing of persons to county facilities.
- E. Expand the use of alternatives to pre-adjudicatory detention and to traditional post-conviction jail sentence.

What is needed is an affirmative commitment by all concerned, to evaluate all available options and to fashion a package of changes which will enable counties to address overcrowding problems for both the short-term and over the long-term.

I. INTRODUCTION

In December 1980, Program and Policy Analysis staff of the Commission prepared a report on the increasing population of local correctional facilities which revealed that the statewide November population count had increased substantially over the statewide population count reported in April 1980. The November survey found that the weekend population count had risen from 5536 to 6146 and that the population density of all facilities in the state had grown from 77% to 85% of capacity.

In addition to the November report's findings on population growth and density in local facilities, the report reviewed the ratio of sentenced and unsentenced persons; the number of persons serving intermittent sentences and the number of persons boarded in other correctional facilities because of overcrowded conditions.

The surge in the population of local correctional facilities reported in recent years, is an increasing cause of concern. Overcrowding conditions now present in a growing number of facilities threaten to engulf a great number of facilities if appropriate action is not taken.

Serious overcrowding invariably leads to calls to build new and larger correctional facilities. However, such calls today arise amidst demands for curbs on government spending resulting in an absence of a consensus on how to proceed. Overcrowding also raises the specter of serious violence erupting in facilities where inmates are forced to live in congested quarters, and where the lack of adequate programs results in enforced idleness.

This report will analyze the findings of the November survey and explore their meaning to the operation of local facilities, and to the effective regulation of those facilities by the Commission of Correction. The report will also focus on immediate and long-range changes in the criminal justice system which could be implemented to reduce the population of local correctional facilities and cut into the overcrowding, which looms as a potentially critical situation.

II. ANALYSIS OF MAJOR FINDINGS OF NOVEMBER 1980 SURVEY

The following section highlights the major findings of the November, 1980 survey and attempts to analyze their meaning and importance. The major findings relate to (A) Population of Local Correctional Facilities, (B) Density of Local Correctional Facilities and, (C) Proportion of Sentenced and Non-Sentenced Persons.

A. Population of Local Correctional Facilities

The population of local correctional facilities in the November survey revealed that the weekday population count grew from 5403 to 5846; and the weekend count from 5536 to 6146 between April and November. The rate of increase for the weekday count was 8% and 11% for the weekend count.

The population increases were reported in all size facilities in the state and in all regions of the state. Increases were most pronounced, however, in the 10 largest facilities in the state serving seven major counties where population jumps of 10% and 11% were recorded for the weekday and weekend counts, respectively.¹ These populations rose from 3133 to 3449 and from 3174 to 3551, accordingly.

These 10 facilities account for 55% of the total housing space in the state and housed 58% of all persons incarcerated in local facilities.

The next 7 largest facilities in the state - with capacities of between 101 and 200 - account for 14% of all space. These facilities reported increases ranging from 5% on the weekday count to 14% on the weekend count. These populations rose from 805 to 850 and from 809 to 921, respectively.

Growth in the smaller facilities was also evident, but in more modest proportions.

The growth in the population between April and November appeared to represent a continuation of the accelerated growth observed between 1978 and 1979. Between 1974 and 1978, a small

¹The ten facilities are located in Nassau, Suffolk, Westchester, Albany, Onondaga, Monroe and Erie Counties.

increase in the average daily population of local facilities was noted. Between those years the average daily population increased from 4548 to 4638.² However, between 1978 and 1979, the average daily population jumped from 4638 to 5172, a growth rate of 12%.³ That rate of growth continued into April, 1980, and again in November, 1980. The April weekday count was 5403 and the November weekday count totaled 5846.

The rapid increase in the population of local correctional facilities between 1978 and 1979 is partially reflected in the increases in both the number of persons detained in local facilities and in the number of persons sentenced to local facilities. The number of persons detained grew from 80,854 to 88,076 and the number of sentenced persons grew from 22,531 to 24,167.

The jump in the local facility population paralleled but exceeded other indicators of criminal justice activity. Between 1978 and 1979, the volume of Index Crimes reported to DCJS, outside of NYC, rose by approximately 3.5%; Felony arrests increased by 11.5%, and Total Adult Arrests climbed by nearly 10%.⁵

Growth in the correctional population is also reflected in the New York City Department of Corrections and the New York State Department of Correctional Services. In New York City, the average daily population in 1979 was 6750. In late 1980 it approached 8,000 and was rising. At the beginning of 1976, the DOCS population was reported as 16,074; in November 1980, the population had risen to 21,731. Projected growth patterns are compelling each to embark on major expansion programs.

Little exists to suggest either a levelling off or a decline in the growth of local correctional populations. The use of incarceration for detention and sentencing purposes is supported by the public's hardline attitude toward dealing with crime and buttressed by intensified calls for the death penalty and the proposed \$375 million bond issue to expand the capacity of the state correctional facilities.

²A Report on Population and Overcrowding, NYS Commission of Correction, May 1980

³Ibid.

⁴Ibid.

⁵Crime and Justice Annual Report, NYS Division of Criminal Justice Services, 1979.

The impact of continued growth on local correctional facilities in the state is potentially devastating. At present, the total housing capacity of local facilities in the state is 7208; modest expansion over the next five years will add approximately 300 cells. A 5% annual growth rate between November, 1980 and November 1985, however, would produce a problem of crisis proportions in which the projected population would outstrip the system's capacity. The system would no longer be confronted by individual facilities facing overcrowded conditions but by a statewide network of local facilities incapable of accommodating the persons charged to their care.

B. Density of Local Correctional Facilities

The density of all local correctional facilities increased from 75% to 81% of capacity for the weekday count and from 77% to 85% capacity for the weekend count between April and November.

The 10 largest facilities which serve the 7 major metropolitan areas of the state reflected the largest increases and reported the most densely populated facilities. Their weekday density rose from 79% to 87% of capacity and their weekend density rose from 80% to 90% capacity. Major increases in density were also reported in the next 7 largest facilities which grew from 77% to 82% for the weekend count. More modest increases were reported in the state's smaller facilities.

The number of local facilities operating at or above Maximum Prisoner Capacity remained at 26 - or 43% of all facilities counted - for both April and November.

The number of facilities which found it necessary to board persons out to other local correctional facilities, under substitute jail orders, climbed from 12 to 22; and the number of persons boarded out in such facilities grew from 81 to 165.

Population density is best understood when it is realized that the Commission regards 80% of capacity as the top limit at which a local facility can reasonably comply with the state classification requirements. When a facility's density surpasses the 80% index, the facility either utilizes special housing space, boards persons in other local facilities to maintain compliance with classification mandates, or falls into a state of non-compliance.

Population of Facilities in Major Counties:

The degree of overcrowding in the state's largest local facilities can be highlighted through a closer examination of the capacities of those facilities. Only the Erie County Penitentiary, Onondaga County Penitentiary, and Albany County Jail/Penitentiary

operated under less than crowded conditions in November. The penitentiaries in Erie and Onondaga Counties were both built to serve much larger populations than are now housed at those facilities, and the Erie County Penitentiary serves as a substitute jail and houses a large number of persons from other facilities. The Onondaga County Penitentiary is an obsolete facility in serious disrepair and must operate at a level far below its original capacity. Construction of a new penitentiary is scheduled to begin later this year.

While space does exist in Erie, Onondaga, and Albany Counties, the facilities in Nassau, Suffolk and Westchester Counties were dangerously overcrowded. Monroe County was reported as operating in excess of its Maximum Prisoner Capacity.⁶

The November weekend population counts in Nassau and Suffolk County surpassed the total housing space in both of those facilities. The Nassau weekend population reached 788, far in excess of the facility's 519 person capacity and 78 person capacity Work Release Center. The Suffolk County Jail weekend population reached 581, substantially greater than its 489 person capacity.

The Westchester County Department of Corrections (3 facilities), with a total capacity of 682, reported a November population count of 670, falling just short of its total housing capacity, but forcing the housing of 20 men in the women's facility.

Monroe County, with a total capacity of 324, reported a weekend population of 299, twenty-five above its Maximum Prisoner Capacity of 274.

The seriousness of the overcrowding problem in these four counties, therefore, is obscured by the average population density figures. Although high enough to deserve attention, the average figures belie a grave problem in four of the state's largest counties, which house 35% of all persons incarcerated in county facilities.

Facilities Operating At or Above Maximum Prisoner Capacity:

The 26 facilities in the state operating at or above their Maximum Prisoner Capacity - exclusive of special housing - is fairly evenly divided among the large and small facilities. The fact that the number of such facilities did not rise between April and November suggests that the population growth which did occur was largely confined to those facilities which were overcrowded

⁶Population Counts comprise all persons committed to the custody of the sheriff or Commissioner of Correction, including those persons boarded out to other correctional facilities, hospitals, etc. Total housing space includes all available space, Maximum Prisoner Capacity refers to general housing space exclusive of special housing.

in April. The bulk of the growth occurred in these counties and resulted in worse overcrowding conditions than were reported in April. These 26 counties represent 43% of all facilities in the state.

Use of Substitute Jails to Board Prisoners:

The impact of the overcrowding is also reflected in the number of facilities which found it necessary to board persons in other local correctional facilities. That number grew from 12 in April to 22 in November; the number of persons boarded out in that time climbed from 81 to 165.⁷ The greatest jump occurred in the ten largest facilities where the number of persons boarded out grew from 15 to 52.

However, as can be observed, the 52 persons boarded in other local facilities falls considerably shy of the number of persons who comprise the over-capacity of Nassau, Suffolk, Westchester, and Monroe facilities. It is likely that all of these facilities - despite some boarding out - were in various stages of non-compliance with the state's classification requirements in November.

The crowded conditions reported in November, especially those in the larger facilities, resulted in a major expenditure of funds, as well as posed dangerous problems for both the persons incarcerated and to correctional personnel.

Whenever a facility is unable to provide appropriate classification for its inmates in general housing, it must provide acceptable space either in a special housing area or board persons elsewhere. The former option offers only limited relief and the latter can prove very expensive. At an average cost of \$35 per day, 22 counties expended nearly \$5800 to board 165 persons in other local facilities on the November survey date.

Given a continued high population count, and only nominal expansion of the local system's capacity, this kind of cost can be expected to remain and probably grow. On an annualized basis, the cost of boarding out 165 persons would total \$2,117,000.

If a facility chooses not to comply with state classification requirements, it runs the risk of facing action by the Commission, including court action or possible civil litigation, if a prisoner is victimized under conditions in which the facility is in a state of non-compliance.

⁷Approximately 40 prisoners in April and November were boarded out because of closed or renovated facilities in Putnam, Fulton and Broome County.

A local facility also faces heightened risk of an inmate disturbance by fostering conditions which breed inmate unrest, employee discontent and overall institutional tension.

Loss of privacy for inmates, cutbacks in programs, general congestion and employee fatigue, all contribute to conditions which can erupt into grave violence. Nassau County, which reported the most severe overcrowding, experienced a serious disturbance in October which resulted in injury to both inmates and officers and was related to the overcrowding problems.

C. Proportion of Sentenced and Non-Sentenced Persons

The November survey identified 57% of the weekday population and 55% of the weekend population as persons detained for preliminary examination, Grand Jury, trial, or other pre-adjudicatory purpose. Forty-two percent of the weekday population were sentenced persons and 44% of the weekend population were sentenced persons. In both cases, 1% of the population did not fall into either category. Since no data was collected in April as to adjudicatory status, no comparison can be made.

Data collected by the Commission indicates that the number of persons detained on a pre-adjudicatory basis between 1977 and 1979 has risen from 80,000 to 88,000.⁸ The one clear trend between 1977 and 1979, however, was in the reduction in the proportion of persons who spent less than 10 days in detention, suggesting that the increasing number of detained persons were remaining for a longer time.

A review of the local facility annual reports submitted to the Commission in recent years, in conjunction with relevant correctional research, supports the proposition that the proportion of sentenced persons usually falls in the range of 30-40%. The increase in the sentenced population would seem to suggest a shift in the use of local facilities for sentenced persons.

Especially significant was the recent jump in the numbers of persons sentenced to local facilities and the extended duration of their sentence. Between 1978 and 1979, the number of persons sentenced to terms of more than 90 days in county jails - exclusive of local penitentiaries - increased by 20% from 1750 to 2097. Those sentenced to terms in excess of 200 days increased 44% from 386 to 557.

⁸Report on Population and Overcrowding, May, 1980.

⁹Summary of Local Facilities Annual Reports, Commission of Correction, 1978, 1979.

The number of persons sentenced to the four local penitentiaries also increased together with the length of sentence between 1978 and 1979. Although the number of persons sentenced to terms of three months grew only 6% from 1189 to 1266, the number of persons receiving maximum year sentences climbed from 563 to 684, a jump of 22%.¹⁰

The increase in the number of persons serving substantial definite sentences in local correctional facilities, may well represent a shift in the sentencing practices of judges toward a more punitive approach in deciding disposition. This notion is supported by data provided by DCJS which shows a general increase in the frequency of local jail sentences and a decreasing frequency of probation sentences for persons charged with felony crimes between 1976 and 1979, outside of New York City.¹¹

In that time period, DCJS reported that local jail sentences for persons charged with felony crimes increased 28% from 3004 to 3859, and probation sentences dropped 6% from 4904 to 4626. Between 1978 and 1979, local jail sentences increased from 3424 to 3859, a 12% rise, and probation sentences declined from 4820 to 4626, a drop of 4%. (State prison sentences increased only slightly between 1976 and 1979, but did show a definite increase between 1978 and 1979. State prison sentences jumped from 3309 to 3459, a rise of 5% in that time period).

The findings of the November 1980 survey, which showed an increasing proportion of sentenced persons, seems consistent with the above analysis. The continued growth in overall local facility populations, suggested in the November survey, may in fact reflect even greater use of substantial jail sentences in 1980 than occurred in prior years.

Use of Intermittent Sentences:

Interestingly, the November survey found a major decline in the number of persons serving intermittent sentences between April and November. That decline reinforced the impression that the high proportion of sentenced persons is not unduly inflated by the presence of persons serving intermittent sentences. Available evidence suggests that the presence of intermittent sentenced persons does exacerbate crowded conditions, but rarely causes such conditions.

The rise in the number of persons sentenced to local facilities and the clear increase in the length of sentences imposed closely, corresponds to the rapid increase in the statewide population of local correctional facilities. It further serves as a reasonable explanation for the growth and overcrowding, since sentenced persons - especially those serving substantial sentences - remain incarcerated for longer periods than do detained persons.

¹⁰Ibid.

¹¹Crime and Justice Report, 1979.

The increasing use of incarceration for both detained and sentenced persons and the decline in the use of probation sentences for persons charged with felonies, appears to represent a more punitive policy toward arrested and convicted persons. It is a policy which appears to underlie the population growth in the New York City Department of Corrections and the New York State Department of Correctional Services. And, it is a policy which threatens to help push the population of local correctional facilities beyond their capacity in the next few years.

III. CONCLUSION

Although the findings of the November survey and the trend information presented in this report cover a short period of time, the message which emerges is persuasive. That message conveys a growing use of local correctional facilities for detained and sentenced persons, and an increasingly serious statewide overcrowding problem which threatens to push the population of local facilities beyond their capacity.

The overcrowding problem is most severe in four of the largest counties in the state whose facilities house approximately 35% of all persons incarcerated in local facilities. Further, there is little evidence to suggest that the population growth will level off or decline. The apparent hardening of public policy toward the treatment of arrested and convicted persons will likely mean greater emphasis on punitive sanctions, such as incarceration.

The increasing propensity of judges to invoke jail sentences appears to represent the most immediate reason why local facilities are now experiencing severe overcrowding. Jail sentences have been increasing in number for four years and lengthy definite sentences jumped in frequency between 1978 and 1979. The November, 1980 survey results provide support for a continuation of this trend.

The modest proposals for capacity expansion will do little to accommodate the projected increase in population, especially in the immediate future. Counties may expect to continue to spend some \$5,800 per day to board inmates in other local facilities because of overcrowding conditions or inadequate facilities. The danger of violence occurring because of overcrowding will also heighten as conditions worsen. Already a serious incident has occurred in the Nassau County Jail which was attributed to overcrowding and which resulted in personal injury to both inmates and officers.

Inmate lawsuits alleging deprivation of statutory and constitutional rights also loom in those counties experiencing the most dangerous crowding conditions.

The problem of population growth and overcrowding begs for a solution. The most direct solution to the problem may well be to expand the capacity of local correctional facilities. Obsolete facilities intended to accommodate smaller populations of inmates, unable to comply with state minimum standards and the mandates of federal court actions, must give way to replacement or major renovation. However, this solution is of long range proportion and provides no immediate relief.

Although major expansion should be encouraged, it is also necessary to examine other approaches to reducing the population of local facilities and curtailing the overcrowding, especially those which can provide more immediate forms of relief.

The next section will review available options which could be implemented to cut jail populations and reduce overcrowding.

IV. STRATEGIES TO REDUCE OVERCROWDING

Since the Commission of Correction has little jurisdiction to determine what happens at the arrest, conviction and disposition stages in the justice system, only some of the options presented are within the jurisdiction of the Commission. However, in overseeing the operation of local correctional facilities, the Commission is in a unique position to observe and evaluate the results of the laws, policies and procedures which determine whether or not persons are detained or sentenced in local facilities. The Commission, is therefore, favorably situated to comment upon ways to reduce the population of local facilities, as well as curtail overcrowding problems.

There are essentially five approaches which can be implemented to address the problems of increasing population growth and overcrowding in local correctional facilities.¹² They are:

- Enlarge the capacity of local correctional facilities through renovation, new construction or acquisition.
- Decriminalize - legislatively remove from the Penal Law - certain behavior now considered criminal, thereby alleviating any need to incarcerate persons who engage in such activity.
- Eliminate - by legislation - the pre-adjudicatory detention and the post-adjudicatory sanction of incarceration for persons arrested or convicted of certain violations and Class B misdemeanor offenses. In such cases different forms of community-based supervision would be the only authorized sanctions.
- Amend laws or regulations governing the housing and classification of offenders and the sentencing of persons to county facilities.

¹²Excluded are any options which place an additional major responsibility on any governmental agency or which simply call for more judges, prosecutors, etc.

- Expand the use of alternatives to pre-adjudicatory detention and to traditional post-conviction jail sentences.

A. Enlarge the capacity of local correctional facilities through acquisition, renovation or new construction.

1. Major renovation or new construction projects are under way or are proposed for completion over the next five years in 10 counties in the state. However, the net gain in space is expected to be less than 300 beds. In addition to the modest gain in space, the principal drawback to this option lies in the time it will take to reach completion. Further, the bed space which will be largely accessible only to the counties in which expansion occurs and may not be beneficial to a beleaguered county many miles away.

Although major renovation and new construction programs should be encouraged where they are needed, they will not provide the relief necessary in the short-term.

2. Acquisition of existing institutional space or purchase of modular housing units are options which bear investigation since both offer possible relief in the short run.

State government, as well as some cities and counties, have given up use of a number of institutional-type buildings which might be adapted for local correctional purposes. The plausibility of using such facilities will depend on the short-term/long-term needs of the county, availability of space, adaptability of the facility to serve a correctional purpose, willingness of the jurisdiction to use such a facility for low risk offenders or other special conditions which apply in a given jurisdiction.

Purchase of modular housing units presents many of the same problems and advantages. They have been used in some jurisdictions to house low risk persons and may be an option for some counties. Where cost is not a factor, they also offer the advantages of early implementation.

Finally, any major undertaking to expand a facility's capacity should be predicated upon a finding that the jurisdiction is making reasonable use of alternatives to incarceration and that expansion is indeed necessary. Secondly, expansion plans should incorporate housing space which is flexible in its use and which includes mixed levels of security. All inmate housing need not be maximum security.

B. Decriminalize - legislatively remove from the Penal Law - certain behavior now considered criminal, thereby alleviating any need to incarcerate persons who engage in such activity.

Many observers favor the decriminalization of certain "victimless crimes" because of the nature of the offense and because it is believed that the efforts invested to arrest and prosecute such offenders could be better directed at more serious criminal activity.

By extension, the decriminalization of specific "victimless crimes" would also serve to reduce the number of persons detained or sentenced on such charges. Although arrests for "victimless crimes" do not typically lead to detention or jail sentences, decriminalization of minor offenses does offer some possibility of reducing the number of persons incarcerated.

C. Eliminate - by legislation - the pre-adjudicatory detention and the post-adjudicatory sanction of incarceration for persons arrested or convicted of certain violations and class B misdemeanor offenses. In such cases different forms of community-based supervision would be the only authorized sanctions.

Removal of the use of incarceration for persons accused or convicted of certain classes of offenses, e.g., Public Order Offenses - Class B Misdemeanors and Violations - may offer some relief to jail overcrowding.

Although it is difficult to estimate the number of persons who would be directly affected, it is fair to surmise that the inclusion of several offense categories would prevent the detention and sentencing to jail of some persons, who otherwise would be incarcerated for short periods of time. The real dilemma lies in selecting the offenses which would be included and the conditions which would have to hold to make incarceration illegal.

D. Amend the Statutes and Regulations governing the Housing and Classification of Inmates and Imposition of Intermittent Sentences.

1. Section 7040.4 of the Commission's Minimum Standards for local correctional facilities, provides that any prisoner housing unit, which contains 75 square feet or less floor space area, shall house only one person. Section 7040.5 provides that multiple occupancy housing units must provide a minimum of 75 square feet of floor space per person in the sleeping area. The above two standards prohibits the assignment of two persons to a conventional cell in local facilities.

While any effort to revise the single occupancy housing standard should be vigorously resisted, modification of the multiple occupancy housing standard might be worth exploring.

The Commission on Accreditation for Corrections, sponsored by the American Correctional Association, recommends that multiple occupancy cells be designed to provide a minimum of 50 square feet of floor space per inmate in the sleeping area. The standards recently promulgated by the U.S. Department of Justice recommend that 60 square feet be provided per inmate.

In light of the lower space requirements recommended by other standard-setting agencies, a reduction in the state standard might be considered. Conversion of the space requirement could represent an immediate, although limited means to accommodate the growing population in some facilities. Any move to reduce the space requirements should be tied to a facility's agreement to assign to such housing only minimum security inmates who do not need to be segregated, and who pose relatively little risk to the facility or other inmates.

2. Classification of Prisoners in Local Correctional Facilities is governed by Section 485, 500, 500-A, 500-B, 500-C, and 500-G of the Correction Law and Part 7013 of the Minimum Standards. Section 500-C provides that each of 12 classes of persons must not be confined in the same room or allowed to co-mingle in the corridor with prisoners of other classes.

Although the purposes and rationale of classification are not at issue, there are particular difficulties in complying with certain classification regulations which have led to certain recommendations for change. The Commission, in fact, has offered legislation to amend the Correction Law to authorize facility administrators to utilize greater responsibility and discretion to decide where prisoners should be housed.¹⁴

One of the most significant changes made by this proposal is for the elimination of the requirement of Section 500-C of the Correction Law, that persons under the age of 21 not be put or kept in the same room with persons 21 years of age or older.

Apart from other reasons given for eliminating this requirement, its removal would allow the administrator more latitude in making housing assignments. Such a change would contribute toward reducing overcrowding by facilitating more efficient use of available space. It would also obviate the need to transfer prisoners to another local correctional facility under a substitute jail order.

3. Article 85 of the Penal Law, authorizes the imposition of intermittent sentences to local correctional facilities.

¹⁴ 1981 Legislative Proposal, #1-81, Commission of Correction.

Although the intermittent or weekend sentence is often appealing to the sentencing judge and defendant alike, it does create many administrative and custodial problems for facility administrators.

Further, the November 1980 survey, disclosed that approximately 3% of the statewide population were persons serving intermittent sentences. Although the presence of such persons rarely causes overcrowding, their presence does exacerbate such problems.

Suspension of the provision of Article 85, holds out the possibility that persons otherwise sentenced to an intermittent term, would be sentenced to probation or other alternative to incarceration instead and thereby, provide some relief to facility administrators, if only on weekends.

However, a suspension of the provisions of Article 85 is proposed - rather than rescission - since experience will determine whether the absence of the intermittent sentence option results in more conventional jail sentences or more alternative sentences.

E. Expand the use of alternatives to pre-trial detention and to traditional post-conviction jail sentences.

In 1979, 88,076 persons were admitted to local correctional facilities in other than sentenced status. This figure represents a 10% increase over the prior year.¹⁵ Although the number of persons detained 10 or fewer days has decreased proportionately since 1976, still 75% of all persons detained remain 10 days or less. The formidable percentage of persons so held, therefore, continues to give strength to the contention that alternatives to detention should be viable options for many of these persons, none of whom are convicted.

In the same year, 24,167 persons received jail sentences in local correctional facilities; an increase of nearly 7% over 1978.¹⁶ In each year, however, approximately 13,000 persons were sentenced to jail terms of less than 26 days. As with detained persons, the large number of persons serving such short sentences strengthens the argument that community-based sanctions may be an appropriate disposition for many of the persons so sentenced.

In February 1980, the Commission of Correction issued a position paper stating that alternatives to incarceration are a viable and vital part of the criminal justice process and indicated its support for the further development of such programs. Other reports, such

¹⁵ Report on Population and Overcrowding, May 1980

¹⁶ Ibid.

the County Officers Guide to Alternatives released in March 1981, by the New York State Association of Counties, describe a vast array of pre and post-adjudicatory alternatives to incarceration.

The following represent particular alternative programs which, if carried out, could produce a direct and measurable impact upon overcrowded conditions in local correctional facilities.

1. Extend Use of Pre-Trial Release

(a) Greater use of Appearance Tickets, in which police officers issue citations to persons charged with misdemeanors, holds some potential for cutting down on unnecessary detention. Appearance Tickets direct the accused person to appear in court at a specified time, alleviating the need for the accused person to be detained pending his arraignment. The use of Appearance Tickets authorized by Section 150 of the Criminal Procedure Law.

(b) ROR programs have clearly demonstrated their utility and practicality and are established in most major jurisdictions.¹⁷ Where they are absent, efforts can be undertaken to establish such services.

Where ROR programs do exist and where they are established, efforts can be made to develop them according to the model which places greater emphasis on the supervision of releasees, Release Under Supervision (RUS). Where implemented, supervised release entails regular personal contact between the probation officer and releasee and is governed by a strict compliance with conditions of release.

Under RUS it is also possible for certain alleged offenders to make restitution, pay reparation or perform community work which would meet the needs of the victim, as well as satisfy the needs of retributive justice. Such conditions could be carried out under a tentative disposition of Adjournment in Contemplation of Dismissal (ACD), supervised by a probation officer.

(c) Judicial reviews of pre-trial population by superior court judges can be useful to identify persons who represent reasonable risks for release, but who fail to obtain their release on bail or otherwise. Regular contact between the facility administrator and the Public Defender/Legal Aid Society and the District Attorney, can help identify prospective releasees and regular reviews can result in the appropriate release of some prisoners. A regular review can also serve as an effective check on the bail decisionmaking practices of local magistrates. Any person so released would be assigned to an ROR/RUS caseload and treated accordingly.

¹⁷ NYS Division of Probation reimburses county probation departments for the provision of ROR services.

Traditional Forms of Incarceration.

(a) The use of community-based sanctions such as, restitution, reparation, fines, and community work can be expanded to serve as realistic options to incarceration.

The focus on restitution, reparations and community work may hold the key to transforming alternative programs into community-based sanctions which are perceived as true alternatives to incarceration.

Under such sentences the victim is not forgotten, the offender faces a punitive sanction and the public is reasonably protected through the regular supervision of the offender by the probation officer. Further, the order of the court is administered with the prospect of additional sanctions for non-compliance.

(b) Split sentences - combining short-term incarceration and probation sentences can serve as realistic alternatives to long-term sentences in county facilities. Section 60.01 of the Penal Law authorizes the imposition of a definite sentence of less than 61 days in conjunction with a term of probation or a conditional discharge.

Split sentences offer the advantages of combining a punitive sanction - jail - with community-based sanctions which could include restitution, reparations, community work, as well as probation supervision. Such a sentencing alternative would seem to offer judges more creative possibilities to punish the offender, assist the victim, protect the public and guide the offender, than is offered in a conventional jail sentence.

(c) The number of persons released from local facilities on Local Parole could be increased through legislative and administrative changes. Section 70.40 of the Penal Law authorizes the conditional release of persons serving definite sentences of imprisonment with a term or aggregate term of at least 90 days. Such release is referred to as Local Parole or Clasp and is administered by the State Division of Parole. Release decisions are made at the discretion of the Parole Board and all persons released are supervised by a parole officer for one year. A recent report compiled by the Division of Parole disclosed the following facts for 1979:

(1) 1,637 persons, or substantially fewer people than eligible under law, made application for release;

(2) 190 persons, or fewer than 12% were granted release

Recidivism rates are quite low. In 1980, 8.9% of all persons under parole supervision were returned to local facilities because of a technical violation or new conviction.

To date release on Local Parole has attracted few candidates and has been authorized for an even smaller number. Revisions in the statute governing eligibility requirement and parole conditions together with an administrative effort to stimulate interest, might result in creating a more viable option to long-term jail incarceration.

The optional strategies to reduce jail populations and curtail overcrowding, represent the broad range of alternatives available. Some offer long-range solutions, some require legislative action, and some are more worthy of consideration than others. All give credence to the fact that no single solution, or no level of government holds the answer to the complex problem of overcrowding.

What is needed is a recognition by each part of government as to the role it plays in determining incarceration decisions, and an affirmative commitment by all concerned to evaluate available options. Each must contribute toward fashioning a package of changes which will enable counties to address overcrowding problems for the short-term and for the long-term.

END