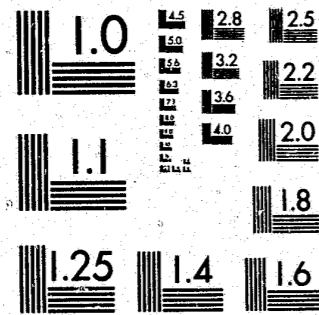


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JAIL OVERCROWDING:
The New York State Experience

January 20, 1982

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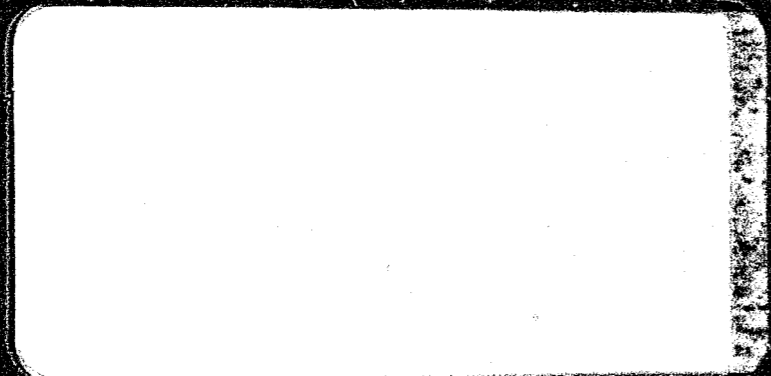
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Frank J. Rogers
Commissioner

William T. Bonacum
Deputy Commissioner

Henry Paquin
Director
Office of Program Development and Research



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Bureau of Program Development and Planning

Sherwood E. Zimmerman
Chief

Prepared by:

Kathleen Resnick
Valerie Willison

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INTRODUCTION

During the past several years, the growth in the population of county jails and penitentiaries in New York State has become a major source of concern; more offenders are being admitted to jail and they are being held for longer periods of time.¹ Local facilities have experienced tremendous population increases since 1978, with a notable surge in population occurring during 1981. Two inmate riots, which took place in Nassau and Westchester County facilities, caused extensive damage and were directly related to overcrowding.

To address the problem of overcrowding in local and State correctional facilities, State officials presented a \$500 million prison bond issue to the voters in November, 1981. The bond issue, which was defeated, was to have provided \$125 million to counties on a matching basis for capital construction, expansion and/or rehabilitation of local correctional facilities. In light of this defeat, jail overcrowding remains a serious problem and raises the specter of violence erupting in facilities where inmates must live in congested quarters, and where the lack of adequate programs results in forced idleness.

This report describes New York's experience with local jail overcrowding. The major focus is on issues relating to county jails, excluding New York City. The New York City correctional system is not included because of its unique structure--it is operated by the City Department of Corrections and is headed by a Commissioner of Corrections. County jails are operated by County Departments of Corrections or Sheriffs. Model

local programs that provide alternatives to incarceration with the direct purpose of reducing jail populations are also described. These model programs are located in both the pre- and post-adjudicatory phases of the criminal justice process. They are operating successfully in large and small counties, both upstate and downstate, and under a variety of funding sources. Counties interested in alleviating jail overcrowding through the provision of criminal sanctions other than incarceration may find these models helpful in achieving that goal.

JAIL OVERCROWDING IN NEW YORK STATE
An Overview

County jails and penitentiaries in New York State are currently experiencing overcrowding. In one year, the number of persons admitted to these facilities increased 22 percent from 88,076 in 1979 to 107,847 in 1980. A survey conducted in November, 1980 by the New York State Commission of Correction found that the population density of county facilities as a whole had grown to 85 percent of capacity.² The Commission of Correction regards 80 percent of capacity as the limit at which a county jail can operate and remain in compliance with the classification standards established in Section 500-c of the Correction Law. When the population of a jail surpasses 80 percent of its capacity, the facility must resort to utilizing special housing space, boarding inmates with other counties, or instead, fall out of compliance with the standards.

In cases in which a jail is unable to maintain proper classification of inmates, or their maximum population capacity has been reached, an order may be obtained from the Commission of Correction to board prisoners in other counties. According to a study conducted by the New York State Association of Counties and the Office of the Lieutenant Governor, at least half of the 57 counties in upstate New York were boarding-out inmates to other counties at the time of the study, and some did so on a regular basis.³ The cost for boarding an inmate was found to range from \$25 to \$75 per day. Monroe County, for example, spent \$118,750 during 1979 to board-out inmates in other counties.

Because of the severity of the overcrowding problem, counties have been forced to board inmates all over the State, and frequently must

compete for space by attempting to out-bid one another.⁴ Currently, there is no centralized system for providing information regarding the availability of jail space. Instead, each county must individually search for available space, request a substitute jail order from the Commission of Correction, and negotiate a price for the space.

An alternative to boarding-out inmates that has been used by some county jails in New York is to go out of compliance with the classification standards regarding housing. In some cases administrators have chosen to go out of compliance when it seemed that particular housing components will be overcrowded for only a short period. In other cases, when substitute jail space cannot be located, administrators have been forced to go out of compliance with the classification standards by housing inmates within their own facilities. An example of an extreme case is the Westchester County Jail which was, at one point, operating at 50 percent over its maximum capacity. Substitute jail space could not be found and, as a result, some inmates were forced to sleep on cots in a dayroom and some male prisoners slept in the basement of the women's facility. Accommodating the extra prisoners also resulted in sentenced and unsentenced offenders, and adults and minors⁵ being housed together. Nassau and Suffolk Counties are also suffering from problems of a similar magnitude and many other counties are experiencing some degree of overcrowding in their jails.

Another response to the problem of overcrowding has been the use of double-celling. Nassau County is the only county in New York State that has resorted to the practice of double-celling, and it has done so with the approval of a federal court judge. In order to obtain this permission

to double-cell inmates, Nassau County bypassed the Commission of Correction, which has prohibited double-celling of inmates in cells originally constructed or rated for single occupancy. However, in its report on double-celling, the Commission states that in emergency situations only, the use of double-celling could be considered in short-term facilities (jails) under certain guidelines.⁶

Factors Contributing to Jail Overcrowding

A number of factors have been identified as contributing to the overcrowding of New York's county jails. Among these are:

- pretrial detention
- inappropriate placements
- sentencing policies
- delays in processing
- State classification policies

The impact of each of these factors requires a more detailed discussion.

Pretrial Detention

According to a statewide survey of county jails conducted by the Commission of Correction in November of 1980, 57 percent of the weekday and 55 percent of the weekend jail population were detained for preliminary examination, grand jury hearing, or other pre-adjudicatory purpose.⁷ It was not known how many of these individuals were detained in jail because they could not afford to make bail. However, the most recent Census of Jails and Survey of Jail Inmates indicates that, on a nationwide basis, bail had been set for 80 percent of all unconvicted inmates who were being detained prior to trial, therefore suggesting that many of these individuals may have been unable to post the amount of bail set for them.⁸

Despite recent efforts of the bail reform movement, there is little evidence that non-monetary release policies providing alternatives to pretrial detention are widely utilized. A 1979 jail overcrowding study conducted in Monroe County included a survey of local judges' attitudes toward jail and alternatives to jail.⁹ The findings of this survey indicate that neither public opinion regarding an offense nor the existence of jail overcrowding were considered to be important factors involved in the pretrial release decision-making process. Judges most often cited the lack of background information on the offender as the reason for not using some form of non-monetary pretrial release.

The New York State Division of Criminal Justice Services (DCJS) has contracted with the Center for Governmental Research, Inc. to conduct a study of pretrial release practices in New York and to develop recommendations regarding the standardization of this practice throughout the State. This study will involve a review of existing pretrial practices in twenty-four sample counties in New York as well as other parts of the country.

Inappropriate Placements

The placement of mentally ill and mentally retarded individuals, public inebriates, and youth can compound the problem of jail overcrowding. These individuals are sometimes placed in jail because of the lack of appropriate alternative placements or programming.¹⁰

Mentally ill and retarded persons are sometimes jailed as the result of unusual behavior or for the commitment of petty offenses such

as loitering, vagrancy, or disturbing the peace. In addition, mentally ill or retarded individuals are sometimes held in jail either because they cannot be committed under the strict civil commitment laws, or because commitment proceedings are pending. The impact of the recent deinstitutionalization of psychiatric centers on jail populations is not known, as no empirical data have yet been collected regarding the number of deinstitutionalized individuals confined in jails.¹¹ It is known, however, that in 1979 55 percent of all suicides in State and local correctional facilities in New York State had been hospitalized for treatment of a mental disorder at least once.¹²

Public inebriates represent another category of persons who are inappropriately held in jails and, therefore, compound the problem of overcrowding. Although public intoxication has been decriminalized in New York, public inebriates continue to be arrested. They are now charged with such offenses as disorderly conduct, loitering, and disturbing the peace. The magnitude of this practice cannot be assessed since Sheriffs are not required to report whether those taken into custody are inebriated. However, other states that have studied jail suicides (North Carolina, Ohio, Michigan) have found that many suicide victims were held on alcohol-related offenses. The Michigan study found that 80 percent of the alcohol-related suicides were committed by offenders who were still drunk.¹³ Public inebriates often cannot get needed treatment while in jail and pose additional problems for jail administrators.

Youths also require special protections when they come into contact with the adult system. The initial impetus for the development of the

juvenile justice court in 1899 was to provide such protections and remove children from the adult criminal justice system.¹⁴ The Federal Juvenile Justice and Delinquency Prevention Act of 1974 encourages the removal of juveniles from adult jails and institutions (Section 223 (a)(14) and requires the separation by sight and sound of juvenile and adult offenders (Section 223 (a)(13). However, it has been found that youths aged sixteen and seventeen comprise approximately 15 percent of the population of adult jails in New York State.¹⁵ Negative conditions resulting from the placement of youth in adult jails include:

- the stigma produced by the "criminal" label which affects the availability of social, educational, and employment opportunities;
- the negative self-image adopted by or reinforced within the juvenile;
- the occurrence of physical harm and sexual abuse of juveniles by adults.

A recent study prepared for the Federal Office of Juvenile Justice and Delinquency Prevention indicates that youth held in jails commit suicide at a rate of 12.3 per 100,000, and 8.6 per 100,000 in police lock-ups.¹⁶ Both of these rates are significantly higher than the rate of 2.7 suicides per 100,000 youth in the general population. These figures provide testimony to the inappropriateness of the jail setting for the detention of young offenders.

Sentencing Policies

An examination of population trends in county jails from 1969 to 1980 found that the number of sentenced inmates increased from 19,268 in 1969 to 24,498 in 1980; an increase of 27 percent.¹⁷ In addition, it was determined that the length of sentence had also increased sharply.

While factors such as tougher attitudes toward crime and criminals may have been involved in these increases, specific practices such as the use of weekend or intermittent sentences and the mandatory sentences imposed by the new gun control legislation must also be considered for their impact on the population of jails.

The purpose of weekend sentences is to allow offenders to maintain their weekday responsibilities with limited disruption. However, these same individuals can pose additional administrative problems for the jails and add to the crowding problem by their weekend incarceration. A survey conducted by the Commission of Correction found that in the six-month period from April, 1980 to November, 1980, the weekend population count had risen 11 percent from 5,536 to 6,146.¹⁸ Since individuals serving weekend sentences presumably pose little threat to the safety of the community during the week, the possibility of using alternative sentencing (such as community service or restitution) should be considered. Rensselaer County recently experienced overcrowding in its jail on weekends and, in response, allowed over half of its fourteen "weekenders" to report to the jail on Friday and then go home. The county district attorney was highly critical of this practice, but this criticism was quelled when sentencing judges publicly approved of the action and the number of those with weekend sentences was reduced to three individuals.

The new gun control legislation (Penal Law, Article 265), which mandates a sentence of up to one year upon conviction of possession of a loaded weapon outside the home, has had a direct impact on county jails. During the six-month period from January 1, 1980 to June 30, 1980, a

total of 151 offenders were convicted of gun law violations and were subsequently sentenced to county jail. An analysis of the same six-month period for the year 1981 indicates that 373 persons were sentenced to county jail for gun law violations during that time.¹⁹ This represents an increase of 147 percent, and provides a basis for projecting approximately 746 such commitments per year. It is also likely that the impact of mandatory sentences for gun law violations will be greatest in those highly urbanized areas of New York where jail facilities are already severely overcrowded.

Delays in Processing

Delays in processing significantly affect pretrial incarceration time. In response to a survey conducted jointly by the New York State Association of Counties and the Lieutenant Governor's Office, local jail administrators and elected officials cited the following as major factors contributing to prolonged stays in jail:

- overloaded or inadequate defense services;
- lack of adequate staff for district attorneys' offices;
- inadequate information for use in processing pretrial and pre-sentence reports, and delays in processing necessary information;
- inadequate alternatives to incarceration; and,
- underutilization of existing alternatives to incarceration.²⁰

State Classification Policies

Section 500-c of the Correction Law establishes the following categories of inmates who may not be housed together:

- inmates who are twenty years old and under are not to be housed with those twenty-one and over;
- sentenced offenders are not to be housed with persons who are unsentenced;

- civil and criminal cases must be separated; and
- all inmates must be separated by sex.

As a result of the restrictions established by these classification standards, a county may be forced to board-out inmates of a certain category even though some areas of their own facility may be under-utilized at the time. Legislation which would amend Section 50-c of the Correction Law and allow for increased administrative discretion in the housing assignment process has been introduced for the past several years but has not been passed.²¹

Summary

In varying degrees, these factors contribute to jail overcrowding in most counties. While not all counties experience each of these problems collectively, they contribute to the statewide phenomenon of jail overcrowding.

ALTERNATIVES TO INCARCERATION: EXISTING PROGRAM MODELS

The need for more and better alternatives to incarceration that are realistically linked to the offense and the needs of the offender, and also consider public safety, is widely acknowledged. The overcrowded conditions of the State and local correctional systems and the recent failure of the \$500 million prison bond act, point to the need to develop and implement alternatives. While alternative sentencing may seem incongruent with the current public concern over rising crime rates, criminal justice theorists and practitioners have argued for the greater use of alternative sentences for non-violent offenders.²² On the other hand, judges desiring to use alternative sanctions often face resistance from the public, the media, and legislators. State Supreme Court Justice Joseph S. Mattina of Buffalo described his fellow judges as "frustrated" by sending people to prison.²³

In the face of this situation, there are several programs currently operating in New York State that provide alternatives to incarceration and that seem worthy of consideration by counties facing jail overcrowding problems. Programs that operate at the pre-arraignment or pretrial phase attempt to keep good-risk individuals out of jails, while programs that provide sentencing alternatives for convicted persons attempt to reduce the use of jail as a sanction.

The following section describes alternative programmatic ideas for reducing jail population and offers an example of each as it operates in a locality within the State. Each program conforms to State and local statutes and seemingly could be applied in other areas of the State.

Client Specific Planning

Client Specific Planning (CSP) is an alternative sentencing planning service offered to defense attorneys and their clients by the New York Center for Sentencing Alternatives located in Syracuse. The primary purpose of the CSP service is the systematic development of individualized, alternative-to-incarceration treatment plans for offenders who are found or plead guilty to charges and who are likely to be sentenced to jail or prison terms. At the request of an offender's defense attorney, CSP case developers prepare a comprehensive package of supervised community-based sanctions to be presented to the court as a sentencing plan that offers an alternative to the use of incarceration.

The concept of CSP was developed by the National Center on Institutions and Alternatives located in Washington, D.C., and implemented in October, 1979.²⁴ While the original pilot jurisdictions of CSP were Maryland, Virginia, and Washington, D.C., the program has since expanded to include the branch office in Syracuse as well as sites in several other states: Pennsylvania, California, Colorado, Texas, Tennessee, Kentucky, Florida, Indiana, Nebraska, and North Carolina.

The typical offender served by the Syracuse project is plea bargaining with the intention of pleading guilty, or has been convicted of a felony or serious misdemeanor and who, because of prior criminal history, the nature of the charge, or other factors, is likely to be incarcerated.²⁵ In addition, offenders facing revocation of parole or probation due to violations of their conditions of release may also be clients. Most plans developed by CSP include one or more of the following components: living arrangements, community service, employment, financial restitution,

therapy, substance abuse treatment, education, vocational training/ rehabilitation, medical treatment, supervision, or reporting--generally to a probation department. CSP plans emphasize the creative use of existing community resources and do not rely on the development of new programs.

Unlike other alternative sentencing programs that focus solely on rehabilitation, or that accept only less serious offenders who are unlikely to be incarcerated, CSP develops plans that emphasize restitution to the victim and/or the community. The plans are designed to assure the sentencing judge and the community that, without incarcerating the offender, two concerns will be satisfied: community safety and offender retribution. Plans developed by CSP are not intended to be an "easy way out" for offenders but, rather, involve a degree of restrictiveness dependent upon the circumstances of the individual case.

The inclusion of community service as a major component of most plans developed by CSP is integral to the program's function as an "equity-restoring mechanism." Because criminal activity normally results in something of value being extracted from the community, it is appropriate that the offender return something of value to the community. The originators of CSP believe that "treatment should recognize this link between the perpetrator and the community and should involve some actual as well as symbolic restoration of benefit to the community."²⁶

CSP does recognize that incarceration must be imposed in some cases, such as those involving mandatory sentences. Approximately 15-20 percent of the plans recommend placement in a secure setting. Where

"constructive incarceration" is available (such as house arrest, work release, split sentences, secure psychiatric facilities, or other short-term residential arrangements) it will be recommended. However, in cases involving mandatory incarceration, plans developed by CSP usually advocate that an offender serve the minimum term possible, followed by a community-based alternative sentence.

CSP should not be viewed as a program that replaces the function of probation departments, but rather as a parallel service. Pre-sentence investigation reports are prepared by probation department staff concurrently with the CSP interview and planning process. Pre-sentence investigation reports include extensive social and criminal histories and do not necessarily have a non-incarcerative focus. CSP plans are more comprehensive, and present sentencing strategies that go beyond the traditional alternative options of jail or probation. Although most CSP plans include supervision by probation departments as part of the sentence, these plans may also offer additional supervision in the form of a third party or advocate to oversee certain aspects of the plan. For example, an offender with a drug problem might be assigned a former addict as his third party supervisor. Since CSP staff do not supervise or monitor client performance, the program does not conflict with the supervisory role of probation departments.

During the first 18 months of operation of CSP, a total of 354 cases were referred to the National Center in Washington, D.C., with 225 resulting in presentation of plans to the court. Of these 225 completed cases, 128 (57 percent) were accepted in full, 25 (11 percent) were accepted in part, and 72 (32 percent) were rejected by the applicable

decision-making authorities (i.e., courts or parole boards). Thus, a total of 68 percent of the Client Specific Plans were adopted in some manner.²⁷ Plans for offenders involved in crimes against the person were accepted in full or in part 58 percent of the time, while those involving property offenses were accepted 74 percent of the time.

In January, 1981, the New York Center on Sentencing Alternatives (Syracuse) began accepting referrals. During the first six months of operation, 31 referrals were received, and in 18 of these cases alternative plans were presented to the court. Of the 18 plans presented, 17 were accepted by the courts in whole or in part, with only one rejection.²⁸

While it is too early to report follow-up data regarding the CSP effort in New York State, data are available from the National Center. A recently completed nationwide random sample of clients whose plans were accepted indicated that 87.5 percent of these individuals were complying with, or had successfully completed, the requirements of their plans.

The New York Center for Sentencing Alternatives is funded through a grant from the Edna McConnell Clark Foundation and this funding will expire in October, 1982. The project budget is \$100,000 per year for 100 cases and assumes an approximate per case cost of \$800 to \$900. These figures are based on an estimated daily cost of \$200 per case and assume three to three and one-half days of planning and one day for presentation of the plan in court. Offenders are charged a fee for CSP service on a sliding scale based on ability to pay; this approach not only helps support the program, but provides a means of emphasizing the personal responsibility of offenders for their acts.

New York Community Service Sentencing Project

From February, 1979, through April, 1981, almost 400 offenders were each sentenced by the New York City Criminal Courts to perform 70 hours of unpaid service for the benefit of the community under the supervision of the Community Service Sentencing Program staff.²⁹ As a group, they cleaned up badly neglected senior citizen centers, youth centers and neighborhood parks; repaired appliances; installed smoke alarms for the elderly; helped staff recreational programs for retarded children; painted and repaired community facilities, nursing homes, alternative schools and playgrounds; and performed other work in service-needy areas of the City. Some continued to volunteer their services after completing their court-imposed obligations.

In 1978, the Vera Institute of Justice established the Bronx Community Service Sentencing Project to test the feasibility of such a program that used community service sentences for offenders most likely to be sentenced to a short jail term.³⁰ In 1980, projects were started in Brooklyn and Manhattan, and the City Probation Department began a project in Staten Island.

Vera focused on offenders who otherwise would have gone to jail for short terms; defendants lacking at least one prior conviction are not accepted. This requirement was imposed after research showed that first offenders convicted of misdemeanors were considerably less likely to receive jail sentences in the Bronx and Brooklyn courts. Although a thorough evaluation has not been completed, preliminary data suggest that the Bronx pilot met its goal of drawing at least half of those given the community service sentence away from short jail terms. As a

group, the Vera offenders averaged more than 2.5 prior convictions and about six prior arrests. About one-third had prior felony convictions, and roughly half had been jailed on their last conviction. Over half received a community service sentence in a prosecution based on a felony arrest (all property offenses). Generally, these offenders were unskilled, unemployed minorities (95 percent Black or Hispanic), with prior records of conviction and multiple social problems.

Each weekday, project staff review the files for each misdemeanor and felony arrest coming into Criminal Court. When a case appears to meet the eligibility criteria, a staff member seeks out the Assistant District Attorney (ADA) and the defense attorney responsible for the case. (The latter would already have discussed with the defendant whether to contest the charge or to enter plea negotiations.) If the two attorneys consider the project's 70-hour community service sentence to be an appropriate disposition, the defense lawyer discusses the possibility with the client. If the lawyer reports that the disposition would be acceptable, the defendant is interviewed by the project staff. If this interview turns up no severe drug, alcohol, or other problems that would prevent the defendant from performing such a sentence, the ADA requests the judge to sentence the defendant to conditional discharge, with 70 hours of service under project supervision as the sole condition. The judge generally indicates to the offender, on the record, what the sentence would otherwise have been, and what to expect if brought back for resentencing based upon a failure to satisfy the community service obligation.

Thus far, the Bronx project has serviced 466 convicted offenders, 103 have participated in the Brooklyn project, and the new Manhattan project has processed 33 offenders. For the program year October 1, 1980, through September 30, 1981, the cost per participant in the Bronx project was \$921.³¹ Since an average of 14 days is required to complete the program, the average daily cost is about \$66, far below the cost of imprisoning an offender for a short period of time in a New York City jail.

Suffolk County Correctional Facility Overcrowding Policy Committee

In August, 1980, Suffolk County was awarded a federal grant from the Law Enforcement Assistance Administration to study jail overcrowding in that county and to generate information, recommendations and alternatives designed to alleviate the problem.³² An advisory committee established for this purpose consists of representatives from multi-service community organizations, criminal justice groups, and agency directors and commissioners responsible for implementing policies recommended by the group.

Two major strategies for dealing with the overcrowding problem have received full Committee endorsement and are currently being implemented. The Community Service Alternative Sentencing Program, initiated in August, 1981, provides judges with alternatives to incarcerative sentences. Offenders may be recommended for the program through the Suffolk County Probation Department, Legal Aid Society, private counsel, or the courts. Acceptance into the program is based upon established guidelines that consider factors such as prior criminal record and severity of crime. An offender may be assigned to this program as a condition of probation,

or as a requirement of conditional discharge. The number of hours to be spent performing community service work and the time in which the project must be accomplished are set by the sentencing judge. Through careful screening and placement interviews, the program staff match the time and talents of participants with the work needs of private, public, non-profit or community-based organizations. Program staff monitor the progress of participants and work with the probation department and courts in verifying and reporting individual outcomes. The Community Service Alternative Sentencing Program is designed to accommodate up to 100 offenders over a twelve-month period. It is expected that once judges and offenders become more familiar with the program they will be more inclined to make use of it. The Suffolk County Criminal Justice Coordinating Council is continuing to monitor and evaluate the program.

The second major strategy is the renovation of the former Children's Shelter in Hauppauge into a 100-bed pretrial detention facility. While the courts are located in Hauppauge, the current detention facility is located in Riverhead, fifty miles away. The renovation of the Children's Shelter will provide substantial savings to Suffolk County in transportation costs, and an abandoned, county-owned building will be utilized rather than incurring the cost of new construction. The new pretrial facility will also effect cost savings due to its 70 percent dormitory construction and minimum security classification. A further recommendation by the Policy Committee that the maximum period for pretrial detention be limited to seven days, would afford additional savings.

Several other strategies have been identified and implemented as a result of the efforts of the Suffolk County Correctional Facility

Overcrowding Policy Committee. Delays in the completion of psychiatric examinations pursuant to Article 730 of the Criminal Procedure Law have resulted in additional jail days for inmates. In recognition of this problem, the Commissioner of Mental Health and the judicial representatives of the Committee have agreed on procedures to expedite the return of inmates upon completion of psychiatric exams.

In addressing the issue of judicial over-reliance on jail for pretrial detention, informational meetings between judges and the probation department have been arranged. Through these meetings, the use of Vera Skill Guidelines for determining release on recognizance practices is being considered.

Finally, two sub-committees have joined together to coordinate efforts to establish a Treatment Alternatives to Street Crime Program in Suffolk County.

Westchester County Treatment Alternatives to Street Crime (TASC) Program

The Treatment Alternatives to Street Crime (TASC) Program operated by the Westchester County Department of Community Health was developed to reduce drug and alcohol related crimes and to impact the recidivism rate among drug and alcohol abusing offenders.³³ These objectives were to be achieved through the provision of referrals to community-based treatment programs in lieu of incarceration. In addition, TASC was designed to provide services for cases involving domestic violence.

In order to be eligible for inclusion in TASC, the offender must be over the age of sixteen, and charged with a misdemeanor or non-violent

felony. Participation in the program is on a voluntary basis. Case managers who work with the TASC program make contact with eligible offenders as soon as possible after their arrest or arraignment. If it is determined that an offender is an appropriate candidate for TASC, the case manager presents this recommendation to the court. While the most common disposition in these cases had been conditional discharge, TASC has also been included as a condition of probation, used in conjunction with fines and restitution, and as part of an adjournment in contemplation of dismissal (ACD). Clients accepted by the court for participation in TASC are referred to an appropriate community-based treatment facility.

TASC serves as a monitoring and referral service and does not directly provide supervision or treatment. The attendance and progress of clients is monitored by program staff and monthly progress reports are provided to the courts. Although clients may be terminated from the program upon violation of the TASC agreement or the rules of the treatment program in which they are participating, corrective measures usually occur prior to a recommendation for termination.

Since its inception in 1979, approximately nine hundred offenders have participated in TASC and have been referred to drug-free programs, methadone maintenance programs and alcoholism treatment facilities. Of this number, approximately 36 percent remained with TASC for the entire length of treatment and 42 percent were terminated for failure to adhere to their TASC agreement, while the remaining 22 percent were forced to discontinue treatment due to circumstances exclusive of the agreement (i.e., a client might be incarcerated for an offense committed prior to TASC involvement).³⁴

Community Dispute Resolution

Community dispute resolution programs enable citizens to reconcile conflicts within the community through the use of mediation and arbitration. As a result, such programs are potentially viable means of easing court caseloads.

The Center for Dispute Settlement in Rochester is based on a model developed by the American Arbitration Association.³⁵ Their "Arbitration as an Alternative" program handles adult criminal cases referred by the District Attorney's Office. During 1978, program staff worked with 897 cases involving offenses such as assault, menacing, petit larceny, unauthorized use of a motor vehicle, and bad checks. The average cost of a case brought to resolution was estimated to be \$56.68.³⁶

Bail Funds

According to Criminal Procedure Law, Article 500, bail funds may be established for the purpose of providing indigent defendants with the means for securing their release from jail prior to trial. In general, candidates must meet certain criteria in order to be eligible for the use of bail funds. These criteria, which are similar to those used in other pretrial release programs, are basically used to determine whether defendants have sufficient ties to the community to ensure their subsequent appearance at court.³⁷ A bail fund may be operated by a public or private agency, and the amount borrowed by a defendant is returned to the fund upon disposition of the case.

An example of such a program operated by a private organization is the Catholic Charities Bail Fund in Columbia County, New York. During

its first few months of operation, this program provided savings of approximately \$38,000 to the county by making bail funds available to 29 individuals who would have otherwise remained in the jail for a combined total of 832 days.³⁸ In addition to providing bail funds, the Catholic Charities program offers referrals to those defendants who are in need of counseling, housing, welfare, family help, and employment.

Conditional Release

Conditional release is a form of pretrial probation that allows defendants not considered reliable enough to be released on their own recognizance, but for whom jail would be too strict an alternative, to be released under a promise to meet certain conditions set by the court. In most cases, defendants are required to maintain periodic contact with an officer of the court. Because of this supervision requirement, conditional release costs more than release on recognizance, but it is much less expensive than incarceration.³⁹

The Nassau County Probation Department provides supervision to defendants released to its custody under the Conditional Release Program. The Nassau program is designed for defendants who are either released without bail, or those who have posted minimal bail, but whose background indicates that there may be some doubt as to whether they can be relied upon to return to court.⁴⁰ The program can also be used in cases where remand would impose extreme hardship, such as the termination of employment or inability to support dependents. A defendant is informed at the time of arraignment of his or her placement in the Conditional Release Program and is assigned a probation officer to whom he or she must report weekly. The nature of reporting may range from a phone call to the probation

Programs are usually operated by either a county probation department or a private non-profit pretrial service agency.⁴¹ Defendants are questioned by program staff about length of residence in the community, family ties, employment and any other information that would help determine their ties to the community. Responses to these questions are immediately verified in order to prevent the unnecessary detention of a defendant. When the information indicates that a person can be reasonably relied upon to appear at trial, a recommendation is made to the judge at arraignment that the defendant be released on recognizance.

The Monroe County Pretrial Services Corporation, which includes a release on recognizance program component, is an example of a private, non-profit agency that is funded totally by the county. Interviewers are sent to the county jail each morning (except Sunday) to screen individuals who may be potential clients for the program.⁴² When appropriate, the interviewer appears in court with the defendant to recommend that the judge release that person on his or her own recognizance. Of the 6,630 defendants interviewed by the Monroe County Pretrial Service Corporation during 1979, 4,104 were recommended for release on recognizance. A total of 2,434 (59 percent) of these cases were accepted by the court, and the failure to appear rate for this group was only 2.4 percent.

Employment Assistance

Many offenders have limited or no job skills and work histories, and therefore need assistance in locating training or employment opportunities.⁴³ In some cases, the court may refer an offender to an employment program as a condition of sentence. Such programs offer training in

seeking and securing a job, on-the-job training, or vocational rehabilitation.

As part of its Manpower Corrections Project, Monroe County contracted with a private company to provide job development and other services to individuals in jail and offenders on probation.⁴⁴ This program has four major components: vocational evaluation, academic instruction, counseling, and job placement with follow-up. Inmates and those on probation who participate in this program divide their time between vocational evaluation, academics, and counseling and then enter a placement cycle that includes reporting for job interviews, continued academics, and counseling. When clients find jobs, they are required to report one night a week for job coaching and job-related education.

In 1980, 73 inmates in the program earned a combined total of \$40,000. Of this amount, 15 percent was turned back to the jail to pay for room and board, \$1,400 was spent at the commissary, \$1,600 for family support and \$3,000 was used for expenses related to the program. In addition, an evaluation of this program, conducted by the National Council on Crime and Delinquency and the Rochester Governmental Research Center, found that 91 percent of those who completed training eventually found employment.

SUMMARY

The report was prepared to provide information about the overcrowding problem currently being experienced within the county jails of New York State. In addition, a group of local programs designed to relieve jail overcrowding through the use of alternatives to incarceration were identified and described. Those programs do not represent the full range of alternatives available, but rather a cross-section of those which may be replicable in other localities.

A number of factors have been identified which contribute to the overcrowding of New York's county jails. Among these are: pretrial detention; inappropriate placement of the mentally ill, mentally retarded, public inebriates and youth; sentencing policies; delays in the processing of defendants; and, State classification policies according to Section 500-c of the Correction Law. Because of overcrowding, jail administrators are often forced to utilize housing space inappropriately, board inmates with other counties, or fall into non-compliance with the standards promulgated in Section 500-c of the Correction Law.

A number of programs are operating within New York State that provide alternatives to the use of incarceration. Alternatives that have been successfully used include: bail funds; community service/restitution; community dispute resolution; conditional release; release on recognizance; employment assistance; and halfway houses.

The programs described in this paper suggest a range of alternatives to localities faced with overcrowding in their jail facilities. These programs provide viable alternatives to incarceration, as well as

constructive forms of justice which are appropriate for many offenders
and serve our communities at the same time.

FOOTNOTES

¹The number of persons admitted to jails and penitentiaries in New York State has increased from 73,974 in 1969 to 107,843 in 1980. In 1969, 46.3% of the persons detained spent two days or less in confinement. By 1980, that percentage had dropped to 40%. In 1969, 79% of those convicted of a crime completed their jail sentence in the same time period. Source: New York State Commission of Correction. A Report on Population and the Overcrowding of County Jails in New York State. Albany, NY. May, 1980.

²New York State Commission of Correction, Office of Program and Policy Analysis. An Analysis of the Findings of the Study on the Increasing Population in Local Correctional Facilities and Some Strategies to Reduce Overcrowding. Albany, NY. March, 1981. p. 1.

³New York State Association of Counties and Office of Lieutenant Governor. County Jail Project-Part I: County Jail Issues. (Draft). Albany, NY. March, 1981.

⁴New York State Association of Counties and Office of Lieutenant Governor. County Jail Project-Part I: County Jail Issues. (Draft). Albany, NY. March, 1981. p. 4.

⁵Section 500-c of the Correction Law establishes categories of inmates who may not be housed together. The age category requires that adults (those twenty-one years old and over) be housed separately from minors (those twenty and younger).

⁶New York State Commission of Correction, Office of Program and Policy Analysis. Examination of Density and Crowding in Correctional Facilities and Their Applicability to the Question of Double-Celling. Albany, NY. August, 1981.

⁷New York State Commission of Correction, Office of Program and Policy Analysis. An Analysis of the Findings of the Study on the Increasing Population in Local Correctional Facilities and Some Strategies to Reduce Overcrowding. Albany, NY. March, 1981.

⁸U.S. Department of Justice, Law Enforcement Assistance Administration. Census of Jails and Survey of Jail Inmates. Washington, D.C. 1978.

⁹Center for Governmental Research, Inc. Phase 1--Jail Overcrowding Study: County of Monroe. Rochester, NY. February, 1980.

- 10 National Coalition for Jail Reform. "Jail is the Wrong Place to Be for Juveniles, Public Inebriates, the Mentally Ill and Mentally Retarded." (pamphlet) Washington, D.C. Undated.
- 11 The New York State Office of Mental Health has been awarded a federal grant to study the relationship between deinstitutionalization and prison population levels in six states, including New York. Unfortunately, this study will not involve any analysis of jail populations.
- 12 New York State Commission of Correction, Medical Review Board. Suicide Study 1977, 1978, 1979 Systemwide. Albany, NY. January, 1981. p. 2.
- 13 Charle, Suzanne. "Suicide in the Cellblocks: New Programs Attack the No.1 Killer of Jail Inmates." Corrections Magazine. August, 1981. p. 9.
- 14 Community Research Forum. Removing Children from Adult Jails: A Guide to Action. University of Illinois at Urbana, Champaign. May, 1980. p. 16.
- 15 Statewide Youth Advocacy. "Incarceration of Juveniles in Adult Jails: Statewide Youth Advocacy-Position Paper." Rochester, NY. August, 1980. p. 1.
- 16 Charle, Suzanne. p. 9.
- 17 New York State Commission of Correction. A Report on Population and the Overcrowding of County Jails in New York State. Albany, NY. May, 1980. p. 1.
- 18 New York State Commission of Correction, Office of Program and Policy Analysis. An Analysis of the Findings of the Study on the Increasing Population in Local Correctional Facilities and Some Strategies to Reduce Overcrowding. Albany, NY. March, 1981. p. 1.
- 19 U.S. Department of Justice, Federal Bureau of Investigation. Crime in the United States: 1980. 1981. Crime in the United States: 1981. Unpublished. Washington, D.C.: Government Printing Office.
- 20 New York State Association of Counties and Office of Lieutenant Governor. County Jail Project-Part I: County Jail Issues. (Draft). Albany, NY. March 1981.
- 21 This proposed legislation has met with opposition from Sheriffs who would be personally liable in any case of litigation. However, unless such an amendment can be passed, counties will continue to be forced to pay for the boarding of inmates in other jails or, instead, go out of compliance with the existing classification standards.

- ²² See for example:
National Advisory Commission on Criminal Justice Standards and Goals. Corrections. Washington, D.C. 1973.
National Council on Crime and Delinquency. The Nondangerous Offender Should Not Be Imprisoned. Hackensack, NJ. 1973.
Newton, Anne. Alternatives to Imprisonment - Day Fines, Community Service Orders, and Restitution. Hackensack: National Council on Crime and Delinquency. 1976.
- ²³ Wakin, Edward. "Defining New Terms." American Way. November, 1981. p. 32.
- ²⁴ Rani, David. "Helping Attorneys Empty the Jails." New York Law Journal. November 23, 1981. p. 1.
- ²⁵ Grinter, Richard and Marsha Weissman, Co-Directors of New York Center for Alternatives. Interview. January 7, 1982.
- ²⁶ Berman, Leonard and Herbert J. Hoelter. "Client Specific Planning." Federal Probation. June, 1981. p. 42.
- ²⁷ The National Center on Institutions & Alternatives. Descriptive Analysis of Client Specific Planning Cases. Washington, D.C. August, 1981.
- ²⁸ Tables produced by New York Center for Alternatives. September 17, 1981. (mimeo).
- ²⁹ Vera Institute of Justice. The New York Community Service Sentencing Project: Development of the Bronx Pilot Project. New York, May, 1981. p. 2.
- ³⁰ McDonald, Douglas. "Community Service Sentences: The Vera Institute of Justice's New York City Projects." Judge's Journal. To be published.
- ³¹ Since the Bronx project is the oldest and therefore most stabilized, its cost figures are better indicators of program costs.
- ³² Suffolk County Correctional Facility Overcrowding Policy Committee. Phase I Report - November 1980 - June 1981. Hauppauge, NY. Undated. p. 1.
- ³³ Westchester County Department of Community Mental Health. "Overview of TASC." Information sheet. Undated.
- ³⁴ Carbone, Joseph. Director of TASC, draft. Letter to judges. Undated.

- 35 Genesee Judicial Process Commission. Alternatives to Incarceration, Genesee County. April 1, 1980. p. 22.
- 36 A new program established by the State Legislature in July, 1981, provides \$1.1 million to the State Office of Court Administration (OCA) to fund up to 50% of the cost of community dispute resolution centers in New York City as well as fourteen counties. Awards will be made to qualified private non-profit agencies in December, 1981, at which time standards of operation will be developed by OCA in conjunction with the selected programs. In addition, a uniform data collection and information process will be developed with results to be reported to the State Legislature on an annual basis.
- 37 New York State Association of Counties and Office of Lieutenant Governor. County Jail Project - Part II: County Officials Guide to Alternatives. (Draft). Albany, NY. March, 1981. p. 12.
- 38 New York State Office of Lieutenant Governor. "Catholic Charities Revolving Bail Fund for Columbia County Saves Taxpayers." SAVE. Albany, NY. January, 1981. p. 3.
- 39 A potential problem associated with the use of conditional release is the possibility of subjecting defendants to strict control when, in the absence of such a program, they might actually be released on their own recognizance.
- 40 Nassau County Probation Department, Pretrial Services Bureau. "Conditional Release Program." Information Sheet. Undated.
- 41 Center for Governmental Research, Inc. "Working Paper #3. Existing Pretrial Release Programs in New York State." (Draft). Rochester, NY. 1981.
- 42 Wood, Lee. Director, Monroe County Pretrial Services Corporation. Interview. September 16, 1981.
- 43 New York State Association of Counties and Office of Lieutenant Governor. County Jail Project - Part II: County Officials Guide to Alternatives. (Draft). Albany, NY. March, 1981. p. 32.
- 44 Benedetto, Al. Rehabilitation Director, Monroe County Sheriff's Department. Interview. February, 1981.

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