



CHAIRMAN'S MEMORANDUM

NO. 4-99

February 22, 1999

TO: SHERIFFS, JAIL ADMINISTRATORS, TRAINING COORDINATORS AND COMMISSIONERS OF CORRECTION

RE: Annual Reporting Requirements

The Commission has received several calls from agencies using DCJS's Jail Management System (JMS) asking about error messages received when attempting to produce an annual report for the Commission on their computer systems. The basis for the error message has been consistent - a defendant is sentenced to a definite sentence of imprisonment upon conviction of a class A or class B felony, or a class C felony other than one specified in Article 220 or 221 of the Penal Law.

Pursuant to section 70.00 of the Penal Law, a sentence of imprisonment for a felony must generally be an *indeterminate or determinate* sentence. Pursuant to Criminal Procedure Law section 430.20(2), a defendant sentenced to an indeterminate or determinate sentence must be committed to the custody of the State Department of Correctional Services. However, section 70.00 also authorizes a court to impose a *definite* sentence of imprisonment upon a person, other than a second or persistent felony offender, convicted of a class D or class E felony, or to a class C felony specified in Article 220 (controlled substances offenses) or 221 (offenses involving marijuana) of the Penal Law.

The error messages arises from JMS not recognizing these commitments, since they are unlawful by their very nature and as such cannot be accepted by the Commission for its annual report. The JMS system is designed to not accept an illegal commitment. (Note also on the hard copy of the Annual Report that is sent to each facility the area for sentencing to a local facility does not include A or B felonies, and the only area in the C felony category that is allowed is under the "Control Sub Art 220" section, which would include qualifying Article 220 controlled substance offenses or 221 offenses involving marijuana convictions. This reflects the law as it currently stands).

Every effort should be made by the facility staff to ensure that all commitments are legally accurate. Minimum Standard section 7002.2(a)(5), states "Prisoners shall be admitted to a facility only when... it has been determined that the commitment document is not otherwise defective as to render the admission of a prisoner unlawful. (*Emphasis added*)

This section makes it incumbent on staff to confirm that the sentence to a local facility for a qualifying crime (not an A, B or most C felony) and that the inmate should not be sentenced to a state facility. Failure to do so could put the facility in violation of Minimum Standards.

A court that attempts to sentence an inmate to county time for an A, B, or non-qualifying C felony should be advised that the sentence is unlawful and all efforts should be made to bring the inmate back to the sentencing court for a proper and legal sentencing as soon as the defect is determined. Questions concerning the legality of a sentence may be made to your county attorney, the District Attorney or by calling Mark Bonacquist at the Commission.

Please advise your staff that they should be aware of the above sentencing criteria when reviewing commitments on a person who is sentenced to A, B or non-qualifying C felonies and that efforts need to be made to rectify an improper sentence to a local facility on one of these A, B or non-qualifying C felonies. For those facilities not using JMS, please confirm with your staff or software vendor that the system in use at your facility will not report these crimes on your annual report.

Alan J. Croce, Chairman/Commissioner