

Rape victim parents: Pay claims or we'll sue for \$10 million

By RAYMOND A. WITTEK

The parents of a 7-year-old girl who was raped in Silver Lake Park nearly three months ago are to serve notices today that they intend to initiate two lawsuits—each seeking damages for \$5 million—unless the city and state pays their claims, their attorneys said.

In one case, a notice of intention to file a claim will be filed in the Court of Claims in Albany, charging that the state with negligence for permitting the alleged rapist, a 19-year-old resident of Willowbrook Developmental Center, to have "unsupervised, unrestrained and uncontrolled community status" despite "a history of violence, criminal behavior and deviate sexual propensities."

In the second action, a notice of claim will be filed in Brooklyn Federal Court, charging the city and state with being negligent for failing to provide "adequate" police protection in Silver Lake Park.

The alleged rapist, James Rich, a resident for of the center for the mentally retarded since 1964, is presently awaiting trial in Supreme Court on a six-count indictment that emerged from the incident.

The child was playing with a girl friend last April 3 about 6 p. m. in the park, near her Silver Lake home, when she rode off on a bicycle. When the girl failed to returned, her friend went home. Police found the girl at 7:20 p.m. near the old Silver Lake reservoir, where she was said to have been attacked.

The papers to be filed by the parents' attorneys, Bruce G. Behrins and Peter J. Napolitano, said that the girl suffered internal injuries that required surgery, cuts of the face and body "and other grave physical and mental personal injuries."

The Court of Claims case is directed against the state, Commissioner Lawrence Kolb of the state Mental Hygiene Department and Willowbrook Developmental Center.

The plaintiffs' papers that accompanied the notice charged that the defend-

dants "carelessly and negligently failed to foresee that their patient, James Rich...presented a hazard to be guarded against, and breached their duty by failing to provide adequate supervision, training and treatment, and allowing him community status although he was unprepared for such uncontrolled and unrestrained liberty."

The papers said the defendants had knowledge that Rich had a history of sexual misconduct, assaultiveness and of being a robber, his alleged victims including employes and other residents at Willowbrook and other state and private institutions.

The papers said Rich had "severe mental disorders" and "a low boiling point" which, it was claimed, made him dangerous or potentially dangerous to others.

The defendants were responsible for the rehabilitation and treatment of Rich. As such, the papers said, the defendants also had the responsibility of isolating him "until such time as he was able to be among the public without any danger to himself or the public."

In granting Rich what is known as community status privileges, whereby he was allowed to come and go from the center as he pleased, the plaintiffs charged the defendants with acting "negligently, carelessly and contrary to good medical and psychiatric practice."

The alleged failure of the defendants to carry out duties and responsibilities mandated by state law, rules and regulations of the Mental Hygiene Department, accepted medical practice and federal court rulings made them as much liable for Rich's alleged acts as if the acts "had been committed by them," the papers said.

In releasing Rich to community status, the plaintiffs said the defendants also committed malpractice. The papers said the defendants used "poor medical procedure and judgment" by allegedly failing to have Rich undergo psychiatric treatment to determine if he was prepared for community privileges or community placement, and "carelessly failed" to provide psychiatric services for the defendant.

The plaintiffs said that the defendants "should have foreseen the possible consequences of allowing him his unattend-

ed, unsupervised liberty" since he was "obviously unprepared" for it.

The notice to be filed in Brooklyn Federal Court names as defendants Mayor Beame, Gov. Carey, Police Commissioner Michael J. Codd, Kolb, Willowbrook Developmental Center, and the state and city. Any lawsuit, however, would be directed against the city.

These papers charge the city with being responsible for the maintenance and supervision of Silver Lake, as well as providing police protection.

The plaintiffs accused the city of failing to adequately light and design the park to eliminate areas which are hidden from view such as the one where they alleged attack on the child took place.

The city failed and continues to fail to "provide adequate police protection for the park in particular and Staten Island in general. "Furthermore, the papers said, the city was "grossly negligent in having reduced the size of the police force to an unreasonable level, particularly on April 3, 1977, thereby endangering the public welfare and health, welfare and safety" of the plaintiffs.

Papers filed in both courts charge that the girl's civil rights had been violated as a result of the various defendants' alleged conduct.

Willowbrook authorities had described Rich as a borderline, moderately retarded resident and said he was granted community status in the belief that he had the intellectual ability to live in the community.

Willowbrook said that Rich had been involved in two "assaultive-type" incidents at the center in the two weeks prior to his arrest, but that he had never been involved in an assaultive incident off the grounds of the institution. The court papers indicated otherwise.

Rich reportedly is undergoing court-ordered psychiatric tests at Kings County Hospital at present.

The civil cases and criminal matter may raise questions over the state's massive community placement effort for residents such as those at Willowbrook and similar institutions. Also certain to be raised are questions about the amount of psychiatric attention given to mentally retarded persons committed to state institutions.