

Willowbrook decree may be costliest court ruling ever

By BRUCE ALPERT

Court decisions mandating improved care for Staten Island Developmental Center residents may be the costliest ever rendered by a federal court.

Clearly the decisions, which culminated in the signing of a detailed consent decree by Gov. Carey in 1975, are responsible for legal precedents that have resulted in new constitutional standards for the care of the disadvantaged.

The rulings, like earlier decisions in Alabama by Federal Judge Frank M. Johnson Jr., paved the way for dozens of court orders that have thrust the judiciary into the role of activist — forcing states to increase allocations for the retarded and mentally ill.

Nowhere, according to an Advance survey, has more money been spent as a result of court rulings than at the Staten Island Developmental Center, formerly known as the Willowbrook State School.

Civil rights attorneys and economists who have studied litigation in a dozen states say they cannot conceive of any court order costing more than \$336 million, the figure state officials say has been spent on court-mandated improvements for more than 5,000 former and current residents of the Willowbrook institution.

The \$336-million cost attributed to court orders dating back to 1972 was revealed in a study by state budget aides reported in the Sunday Advance.

By comparison, a series of decisions by Federal Judge W. Arthur Garrity Jr., ordering the desegregation of Boston's public schools, has cost between \$50 and \$60 million, according to a Christian Science Monitor survey. Much of that money was allocated for new buses and police overtime needed to combat violent demonstrations by those opposed to the orders, issued from 1974 through 1978.

In Alabama, cost estimates range from \$75 million to \$250 million for implementation of a series of decisions by Johnson ordering an overhaul of the state's facilities for the retarded and mentally ill, as well as state prisons.

Anthony Crow, spokesman for the Alabama Department of Mental Health, said no one is sure of the exact figure. "It's been expensive, that's all I can tell you," Crow said. "For instance, it has cost us 100,000 man hours or \$1 million just to prepare for hearings now under way on whether we are in compliance with the federal court orders."

Indeed, few attempts have been made to determine the costs of federal court decisions, according to Jeffrey Rubin, associate professor at Rutgers University who has studied the role of the judiciary on mental health programs.

Only recently, the federal government began a study to determine the cost of implementing a Pennsylvania court decision ruling institutions for the retarded unconstitutional and ordering the Pennhurst State School near Philadelphia closed as soon as a court-appointed master deems it possible.

"But the courts have pretty much ignored the cost implications in their decisions," Rubin said. "When it is a question of constitutional rights, arguments by states about fiscal restraints have not been deemed viable by the courts."

In ordering sweeping changes at Alabama's institutions, Judge Johnson, who turned down an appointment by President Carter to be FBI director, said that in most cases only state legislatures have the authority to allocate state funds.

But in cases where the legislature has not met constitutional responsibilities to provide humane care, Johnson said the courts have an obligation to order action.

"This is particularly true in instances we have recently confronted, where the state's mentally ill, retarded and criminally convicted citizens are involuntarily confined in institutions where conditions justly have been described as barbaric and shocking," the judge said in a speech following one of his decisions.

The Willowbrook decisions by Brooklyn Federal Court Judge Orrin G. Judd and a subsequent consent decree agreed to by Gov. Carey and plaintiffs in the case went a step further than Johnson's Alabama ruling, according to Paul Friedman of the Mental Health Law Project in Washington.

Judd, who died in 1976, ruled that the retarded had a constitutional right to humane treatment, even though, in most cases, they were residents at the Willowbrook State School voluntarily. In Alabama, Johnson's decisions were concerned mostly with patients and prisoners incarcerated against their will, Friedman said.

In addition, the consent decree, signed voluntarily after it appeared that Judd was about to order more far-reaching

steps, set up specific timetables for transferring residents out of institutions to community residences.

The Willowbrook decree set the tone for federal court decisions in other states. The rulings, Friedman said, expanded on the premise that the mentally retarded have a right to live in small community facilities where mental health experts say they have the best chance of leading productive lives.

Such decisions have included orders to shut down a hospital for the mentally ill in Washington, D.C., and the Pennhurst State School for the mentally retarded in Pennsylvania.

Civil rights attorneys say cost to taxpayers will actually go down once community residences are established, replacing large institutions.

David Furrliiger, the attorney who brought the Pennhurst case on behalf of residents there, said the high cost of the Willowbrook consent decree and other federal court decisions is the result of a "dual-system" of mental health facilities in effect in many states.

"The problem is that you have the cost of setting up community residences while you still have the huge overhead of the large institutions," Furrliiger said. "Once the institutions are closed down, there will be a big savings because it costs less to care for someone in the community than an institution."

Furrliiger also said he believes the cost of monitoring a court judgment can be reduced by naming a master to handle implementation of a federal judge's order.

"Without being critical of the Willowbrook Review Panel, which is responsible for monitoring conditions in the Willowbrook case," Furrliiger said, "in my experience I find one individual responsible expedites things considerably."

Civil rights attorneys say they are worried that pressure from cost-conscious taxpayers might make courts more reluctant to order improvements at Willowbrook-like institutions still in existence across the country.

"The courts have said that you can't lock a retarded person in a ward and throw away the key regardless of how much it costs to provide humane care," said Friedman from his Washington office. "I just hope they'll stand firm in the face of increased competition for what we all know is a limited amount of government funds."