

Consent decree unaffected by ruling, official says

By BRUCE ALPERT
Of our Albany Bureau

ALBANY — A U.S. Supreme Court decision narrowing the rights of retarded persons won't lessen the state's commitment to move residents out of institutions such as the Staten Island Developmental Center, State Mental Retardation Commissioner James E. Introne said yesterday.

The high court, in a split decision, ruled Monday that a 1975 federal law intended to prohibit the "warehousing" of the retarded in large institutions, does not require states to place patients in neighborhood settings where experts believe they can achieve maximum personal growth.

Introne said the state has agreed to move all but 250 residents of the Willowbrook institution under terms of a 1975 consent decree, which is not in any way affected by the Supreme Court ruling. In any case, he said, Gov. Carey is committed to deinstitutionalization regardless of court or federal mandates.

The commissioner said, however, that the decision may give the state more flexibility in choosing community residences for the retarded. Introne complains that the Willowbrook Consent Decree specifies facilities housing eight residents or less.

"Overall, though, the decision

should not have much of an effect," Introne said.

But Robert Schonhorn, executive director of United Cerebral Palsy of New York, a private provider of services for the retarded, said that the court decision is "devastating" because it places the disabled at the mercy of state officials.

"My hope is that the governor will live up to the statements he has made that the state does what is humane and what is best for the people living in state institutions and it doesn't matter what the courts mandate," Schonhorn said.

Schonhorn, whose agency operates a facility for about 500 retarded residents on the grounds of the Staten Island Developmental Center, predicted that "less progressive" states will use the court decision to reduce its commitment to mental retardation programs.

But Chris Hansen, an attorney who has represented the retarded at the Island developmental center and other institutions, said the decision will not "do serious damage to the rights of retarded people."

Hansen, affiliated with the New York Civil Liberties Union, noted that the decision only dealt with a narrow legal interpretation of a 1975 federal law, and not with the basic constitutional rights of the retarded.

In the Willowbrook case, for example, Hansen noted that it was the issue of basic civil rights violations that served as the major argument of plaintiffs moving to close the Staten Island institution. The plaintiffs had argued that the state had denied the center's residents their basic rights by warehousing them in a large impersonal institution, termed a "snakepit" by the late Sen. Robert Kennedy. That case, filed in 1972, led to the signing of the Willowbrook Consent Decree three years later.

Hansen said attorneys for the retarded can still move in the courts to correct inhumane treatment under the rights granted all citizens by the U.S. Constitution. In addition, he said, the Supreme Court did not even consider a provision of the 1975 federal "bill of rights" for the retarded that mandates a cutoff of federal funds to states that fail to provide humane care for the retarded.

The Supreme Court decision overturned a lower court ruling under which the Pennhurst State School in Pennsylvania was said to be operating in violation of the 1975 federal law.

The lower courts had ruled that the 1,200 residents of Pennhurst, a state institution, were being denied their right under the 1975 law to live under the least restrictive setting

possible. But the U.S. Supreme Court rejected the lower court's interpretation that the law mandated the closing of the Pennsylvania institution and the placement of its residents into small neighborhood facilities.

"Congress intended to encourage, rather than mandate the provision for better services to the disabled," Justice William B. Rehnquist said, in writing the majority opinion for the 6-3 decision.

New York, New Jersey and Connecticut, three states facing lawsuits against its institutions for the retarded, had filed briefs in urging that the Pennhurst decision be overturned by the Supreme Court.

Introne said the brief was filed in order to discourage courts from imposing rigid requirements on states, not because of basic opposition to deinstitutionalization.

"Maybe, the Supreme Court decision will make our arguments more receptive," Introne said. "But it isn't going to have a profound effect on policy."

Introne has argued, for example, that he should be free to move retarded residents of the Staten Island Developmental Center into 10 and 20-bed facilities, not only the three- to eight-bed facilities sought by the Willowbrook Review Panel, which monitors compliance with the Willowbrook Consent Decree.