

## MEMORANDUM

TO: Chairman Daniel L. Stewart

FROM: Brian M. Callahan

RE: Foreign state commitments to local correctional facilities

DATE: January 28, 2008

This memorandum is offered with regard to the practice of local correctional facilities in New York State that have allegedly accepted and incarcerated inmates pursuant to a commitment issued by a court of a foreign state. For the reasons set forth below, it is the opinion of Counsel's Office that such a practice is a violation of Correction Law §500-a.

Correction Law §500-a provides for the allowable uses of county jails. Therein, five categories of detainees exist: 1) persons held pursuant to a material witness order; 2) persons "charged with crime, and committed for trial or examination;" 3) persons awaiting the availability of a court held pursuant to an indictment, superior court bench warrant, or a violation of probation warrant; 4) persons held for civil contempt; and 5) persons "convicted of any offense and sentenced to imprisonment therein."

As provided in subdivision (6) of Penal Law §10.00, the term "crime" means either a misdemeanor or felony, whose definitions in subdivisions (4) and (5) denote inclusion under the term "offense." Defined in subdivision (1) of Penal Law §10.00, the term "offense" includes conduct for which punishment "is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state ... [emphasis added]." Given the exclusive use of the terms "crime" and "offense" in Correction Law §500-a, it is the opinion of Counsel's Office that such statute provides only for the commitment or sentencing of persons pursuant to the laws of the State of New York.

It is well settled in New York State that the failure of the Legislature to include a matter within the scope of a statute shall be construed as an indication that its exclusion was intended [See McKinney's Statutes §74; Matter of Thomas, 216 N.Y. 426 (1916)]. For this reason, prior to 1994, it was common opinion in New York State that only the above five categories of

detainees set forth in Correction Law §500-a were allowed within a county jail. See Pelgrin, Practice Commentary, McKinney's Correction Law, §500-a; Op. Atty. Gen. No. I87-41. This opinion was commonly held despite the fact that Correction Law §500-a provided that a county jail "shall be used for" the confinement of the five categories of prisoners, but seemingly did not expressly prohibit other uses.

In 1994, the above opinions of Pelgrin and the Attorney General were further settled when the Legislature allowed that "[t]he Onondaga county jail may also be used for the detention of persons under arrest being held for arraignment." Correction Law §500-a(2). Since that time, similar amendments have been made to Correction Law §500-a to allow pre-arraignment detention in the Chemung County Jail [Correction Law §500-a(2-a)] and the Erie County Holding Center [L. 2002, Ch. 413]. Pursuant to McKinney's Statutes §74 and Thomas, the Legislature's inclusion of instances in which a county jail shall and may be used, as set forth in Correction Law §500-a, serves to exclude all other uses not expressly provided for in the statute. Simply stated, if Correction Law §500-a did not serve to exclude uses not expressly set forth in the statute, there would have been no reason for the Legislature to make successive amendments to allow additional uses in Onondaga County (1994), Chemung County (1997), and Erie County (2002).

It should be noted that, in addition to the above provisions of Correction Law §500-a, the Consolidated Laws of New York set forth additional instances wherein a prisoner may be detained in a county jail. For instance, a county jail must receive and keep any person committed by a court or officer of the United States (Correction Law §500-g) and may temporarily confine an extradited person passing through the state (Criminal Procedure Law §570.30). Because any such exceptions are statutory in nature, it does not negate the otherwise limiting provisions of Correction Law §500-a.

As such, it is the opinion of Counsel's Office that, absent specific statutory authority, county jails may only be used in a manner consistent with the express provisions of Correction Law §500-a. Since it does not allow for the detention, in a county jail, of prisoners committed or sentenced by a court of a foreign state, it is the opinion of Counsel's Office that any such practice would constitute a violation of Correction Law §500-a.