FLORIDA PRISON LEGAL

Perspectives

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Florida Ex-Offender Task Force Says Change is Needed

Quietly, almost under the radar, for the past two years a task force put together by former Gov. Jeb Bush has been examining why so many people who are released from prison return. The task force, called the Governor's Ex-Offender Task Force, was also charged by Gov. Bush with coming up with ideas and suggestions that might interrupt that pattern and at least reduce recidivism in Florida. Recently that task force, made up of corrections and parole officials, attorneys, educators, community leaders, prison ministers and a couple of ex-offenders, submitted its final report and recommendations. Whether the task force's work has any impact only time will tell, but it is clear from its report that something needs to be done to disrupt the revolving prison doors.

Every year 31,000 people are released from Florida prisons back into society. Within 36 months of their release approximately one third, 25.7%, of them will be back in prison. The cost to keep each of them incarcerated is $18,000 a year with the overall estimated cost to taxpayers being nearly $148 million a year—not counting capital costs, court costs or costs to local governments. And, just for perspective, if each of those prison returnees receives the average 4.6 year sentence, Florida taxpayers will have to, no—are being required to, shell out over $670 million for a single year's worth of recidivists over that sentence period.

Florida Department of Corrections Secretary Jim McDonough says that the reason so many reoffend is simple, "they're not prepared to live a life without crime."

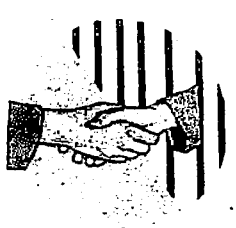
Finding ways to help offenders change that pattern was the task force's job. Their findings and recommendations essentially mirrored the common sense observation of Secretary McDonough: Florida needs to do more to help ex-offenders succeed in living a crime-free life after prison. Otherwise, the cost imposed on society will remain unacceptably high, both financially and in terms of new crimes being committed and victims being created.

"The point of getting drug-addicted offenders clean, mentally ill prisoners on medication and undereducated felons into employment training is not simply to make life easier for prisoners," said Robert Blount, vice-chairman of the Ex-Offender Task Force. "This is a public safety issue, and all of us will be better off if we can keep more ex-offenders on the straight and narrow path to legal, gainful employment."

The task force's recommendations call for broad changes in the way that Florida deals with prisoners and newly released ex-offenders and a break from the fixation with mass warehouse incarceration and punishment masquerading as social and economic policy that the recidivism rate shows is not working to make communities safer.

Those recommendations include:

FAMILIES ADVOCATES PRISONERS



ON THE INSIDE

FLORIDA PRISON LEGAL PERSPECTIVES

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- Improving and expanding job training and education for prisoners.

- Begin prerelease planning from the day that a prisoner is sent to prison and develop individualized community reentry plans.

- Create an prisoner-discharge handbook containing individualized reentry plans and programs and services available in the ex-offender's home community.

- Help prisoners sign up for Social Security cards, driver licenses and state identification cards before they are released.

- Assist disabled prisoners apply for disability and/or Medicaid benefits before they are released.

- Limit the requirement that ex-offenders have their civil rights restored as a condition for employment or licensing.

- Expand faith-based programs within the prisons by converting at least six conventional prisons into faith-based prisons within two years.

That last recommendation has raised some eyebrows. The task force could not point to any proof that faith-based programs work any better at reducing recidivism than other programs.

Florida created the nations first faith-based prison three years ago and now has three faith-based facilities—two for men and one for women—and seven other prisons with faith-based dormitories. The programs serve over 3,500 prisoners, or about 4% of the prison systems 90,000+ prison population.

Proponents of faith-based programs claim that the prisoners in them have fewer disciplinary problems and a lower recidivism rate than the general prison population.

However, researchers say that a variety of mitigating factors may have more to do with lower disciplinary problems than the religious instruction itself as those who volunteer to attend such programs are usually those less likely to be disciplinary problems and they receive services not provided in conventional prisons as motivation. Simply put, there is no scientific evidence showing that ex-offenders who leave faith-based prisons are less likely to end up back in prison.

Faith-based programs are fine, said FDOC Secretary McDonough, but the most important component to reducing recidivism is education, followed by job training, mental health and drug abuse treatment and life-management skills. More than 4,000 prisoners read at a first—or second-grade level, said McDonough.

"They have to have a job. You can eat if you have a job, but you can't eat faith. It gives you the moral stability, but the facts of life are you need to survive," McDonough pragmatically said. McDonough has previously suggested that education, vocational, mental health and substance abuse programs, all of which were drastically reduced in Florida prisons in recent years, need to be expanded. Florida Tax Watch, a taxpayer watchdog group, has previously found that for every dollar spent on such programs, $1.66 is returned in the first year and $3.20 in the second.

Although recommending limits on civil rights restoration being tied to specific job employment or licensing, the task force avoided directly addressing automatic restoration of civil rights for ex-offenders in its report, perhaps because Gov. Bush was opposed to automatic restoration.

Gov. Charlie Crist, on the other hand, who will be instrumental (along with the Legislature) in implementing any changes to the prison system and ex-offender reentry efforts, has said that he believes ex-felons should regain their civil rights when they finish their sentence. Two other Cabinet members, Agriculture Secretary Charles Bronson and newly elected Chief Economic Officer Alex Sink, have stated they could support automatic restoration if it contained exemptions for certain crimes such as homicide, sex offenses and selling drugs to minors. Crist said he thought those exemptions were reasonable at a December '06 clemency board meeting that he attended.

Florida is only one of three states that still withholds the civil rights of all felons even after they have completed their sentence. The other two states are Virginia and Kentucky. As noted by the task force, Florida by far leads the nation in the number of people who are disenfranchised, the list now includes more than 700,000 Floridians, more than twice the number of any other state, and a number continuing to grow year by year.

Under current law in Florida, until the Clemency Board, made up of the Governor and Cabinet, grants ex-felons their civil rights back, those people cannot vote. A process that can take many, many years.

The more immediate concern for ex-offenders being released from prison, however, is that until their rights are restored they are barred from a long list of jobs, including being a nurse, dental hygienist, physical therapist, licensed pest exterminator, bartender, paramedic, lottery vender, athletic trainer, auctioneer, and dozens of more jobs that require a state license.

As Vicki Lopez Lukis, chairwoman of the Ex-Offender Task Force, and a former Lee County commissioner who once served 16 months in federal prison for mail fraud, said, "if you've committed certain crimes, you can never be a Fish and Game Warden, but you can still be a Highway Patrol Officer. What sense does that make?"

In fact, according to the task force, of 7.6 million jobs in Florida, 2.9 million—39.2%—are positions that state laws prohibit former felons from holding or for which they must receive a special dispensation to hold, which is very rarely granted. This is a major, sometimes insurmountable, roadblock for ex-offenders reentering society only to find they can't get a job that pays enough to make a decent, sustainable living.

Except for a few missteps, the task force's recommendations are viable. While most of the weight and responsibility would fall on the Department of Corrections, Secretary McDonough has said it wouldn't cost much more than an additional $6-million to increase reading levels and provide substance abuse treatment to Florida prisoners, and he claims that the state would see as much as a six-fold return in money saved and crimes averted.

The ball is now in the Legislature's court. Lawmakers will have to be the ones to fund any changes and move to amend the laws to establish automatic restoration of civil rights.

The challenge, however, will be fore lawmakers to change their punishment-and-damn-the-cost mentality. Lawmakers need to wake up to the reality that continuing to cut ex-offenders off from being able to change their lives and have a reasonable opportunity to be productive citizens only leads to more crime and victim suffering. The right man is in charge of the DOC to effect the needed changes, and there will never be a better time for them than right now.

[Note: As an aside, approximately two weeks before the Ex-Offender Task Force's final meeting in Nov. '06 to vote on what recommendations should go into its final report, Florida Prisoners' Legal Aid Organization's Chairwoman Teresa Burns Posey learned that the suggestion had been made by Florida Parole Commission Chairwoman Monica David, a member of the task force, that the Parole Commission should be placed in total charge of all ex-offender reentry efforts in the state. Mrs. Burns Posey also learned that the task force was seriously considering a recommendation to that effect. Mrs. Burns Posey contacted the task force's members before their final meeting and provided them with numerous reasons, back up by evidence from a variety of authoritative sources, as to why the Parole Commission should not be considered qualified or competent to handle any reentry effort, much less a statewide effort. Acting on behalf of FPLAO and its members, Mrs. Burns Posey suggested just what the task force ultimately did recommend, that the DOC was in the best position to implement and lead reentry efforts. Mrs. Burns Posey later learned that her information about the Parole Commission created much debate at the task force's final hearing, resulting in Monica David's suggestions being shot down. Mrs. Burns Posey wishes to

thank those task force members who kept her informed, they know who they are. —editor.] ■

—Commentary—
Building a Prison Empire

by Kinlock C. Walpole

Our elected officials have unhinged criminal justice and turned it into a massive poverty program that breeds criminality. Prisons alone have consistently consumed a steady eight to 10 percent of an upward-spiraling state budget for decades. The only visible return is a relative political stability for those in power.

Florida is investing $2,25 billion in prisons this year, and the prisons' only job is to provide a secure environment with room and board for about 90,000 men, women and children. The State's version of doing "hard time" is so appealing that about 45 percent of inmates have been returning to prison. In fact, there will be more inmates with previous time in state prison this year than were in prison 20 years ago.

You could say that Florida state prisons are nothing more than a rest period where inmates often get much required medical attention while honing skills and broadening contacts in preparation for their next round of criminality. By the way, medical attention accounted for over 20 percent of the inmate cost per day for the FY 2005-06.

It appears our elected officials get a better return on their investment of our tax dollars than we taxpayers. Doing "hard time" is nothing more than an excuse for a rural poverty program in the form of a prison industrial complex and an urban poverty program for the criminal justice community. The big payback is the electoral gold of campaign funds and votes.

There are two lynch pins that can reduce the size of our state prison population in half. The first is to address the war on drugs as a medical problem, much as we do with alcohol. And the second is by measuring drops in the recidivism rates.

Every argument used to justify the war on drugs was used to justify prohibition. We are suffering identical consequences in the war of drugs as we did prior to the repeal of prohibition.

The saddest consequence is that we are, and have been, sending more men, women and children to prison for drug law violations than we have for violent crimes over the last five years. Violent crimes include murder, forcible rape, robbery, and aggravated assault.

The National closure rate for violent crimes in the same period was less than 50 percent. That means no one is captured, convicted and incarcerated for over half of the violent crimes committed.

It seems we could better protect Floridians by focusing more on violent crime. However, civil forfeitures associated with violent crimes pale in comparison to drug crimes, which probably accounts for the emphasis on drug crimes by the criminal justice community.

Our politicians argue that crime statistics have decreased over the last 14 years. What they are not telling you is that Florida has consistently been above the national averages in violent crimes since 1960.

Studies show that the simple earning of a GED functionally reduces recidivism. Can elected officials justify why they cut the Department of Corrections' capability to provide education to inmates by 50 percent?

The criminal justice codes can be modified so that every time a person is convicted of a felony, they must graduate at the next higher level of schooling. Coupled with this is the requirement to obtain a vocational degree with its corresponding license or certification.

This would not be in lieu of a sentence, but in conjunction with it. It would mean that both sentence and educational performance criteria must be met prior to release.

The DOC does not have the skill to implement such a broad educational mandate. Our state secondary school systems have already failed these people once, and there is no reason to believe they have the desire or ability to redress those failures.

That leaves the community college system. This is a system that has decades of experience in remedial education for thousands of students from a dysfunctional state school system. They also have the skills and experience of teaching vocational programs.

The question of who should pay is simple enough. The state failed in its responsibilities for a secondary education, and so it pays. The vocational programs can be paid by the inmate in the form of a student loan.

There are definite pluses to such a program. Research by both Florida Tax Watch and the DOC shows that inmates participating in educational and vocational programs have higher performance levels, lower disciplinary rates, lower recidivism rates, and are more likely to stay off of public dole. Further, these studies also show there is up to a $3.20 return on each dollar invested within two years.

The single biggest minus is that politicians lose the political gold from the criminal justice community and the prison industrial complex. In the end, this is why such a concept will never become a reality.

Kinlock C. Walpole is Director of the Gateless Zen Center, a Gainesville-based group that works with prison inmates. This commentary originally appeared in the *Gainesville Sun* on Sept. 24, 2006. ■

FDOC Secretary McDonough Nominated to Continue

On Wednesday, January 10 newly-elected Governor Charlie Crist named Florida Department of Corrections (FDOC) Secretary Jim McDonough to remain in charge of the state's prison system. Crist praised McDonough for doing a good job cleaning up and reforming the department, which has been repeatedly rocked over the past two years by scandal. In fact, McDonough was picked last year to take over and clean up the prison system by former Gov. Jeb Bush after disgraced secretary James Crosby was forced to retire while under investigation for corruption.

McDonough, a former army commander who served in Vietnam and Bosnia, and who before taking over at the FDOC acted as the state's drug czar, wasn't guaranteed to remain at the FDOC's helm when Charlie Crist became governor in January. He has taken some heat from critics within the department and their union for his no-nonsense management style and his intolerance of corruption, incompetence and cronyism among employees. Among his policies that have disturbed some employees was his implementation of random drug testing and physical fitness requirements. That latter has caused the most upset among out-of-shape employees.

Those same policies, however, have garnered praise for Secretary McDonough from state lawmakers and Gov. Crist.

"He came into the agency under very difficult circumstances and did a remarkable job re-instilling integrity, honor and discipline to an agency in bad need of it," Crist recently said.

The Florida Police Benevolent Association, the union that represents about 17,000 prison employees and almost 3,000 probation officers, is protesting McDonough's physical-fitness requirements. David Murrell, executive director of the PBA, said that the union is not against physical-fitness requirements for prison guards but that the department (i.e., McDonough) ignored collective bargaining requirements by not negotiating with the PBA over work rules.

"I think he's doing a good job of cleaning up the department, but we have some problems with his management style. We wish it would be more inclusive than it's been," Murrell said.

McDonough also earned praise from prisoners and their families in mid-January when he followed through on his promise to do something about the excessively high prices being charged prisoners for commissary items by Keefe Commissary Network, a private contractor whom former Secretary Crosby brought in to operate the prisoner and visitor canteens in 2003. In mid-January prices for items sold in the canteens dropped about 20% for most of the items.

McDonough had threatened to rebid the canteen contract last year, and went so far as to put out invitations to bid on a new contract. Apparently, Keefe was allowed to keep the contract by reducing its prices to a more reasonable level comparable to prices *outside* the prisons.

McDonough had the distinction of being the first department head holdover that Crist chose to continue from Gov. Bush's administration. Upon being named by Crist, McDonough said he will press on with reforming the prison system.

"I commit myself to fulfilling our missions, the foremost of which is public safety," McDonough said. ■

Ex-Wife of Ex-FDOC Secretary Named in Lawsuit

In December '06 the Florida Department of Management Services filed suit against Leslie Crosby, the ex-wife of former Florida Department of Corrections (FDOC) Secretary James Crosby. The lawsuit alleges that the pair intentionally tried to defraud the state after James Crosby was ousted as head of the prison system last year for corruption.

The lawsuit, that was filed in the circuit court in Tallahassee, alleges that once James Crosby believed that he was going to be indicted on federal corruption charges that he and his wife conspired to shield his state retirement benefits from forfeiture by divorcing and with Leslie Crosby then using those benefits to buy a new home.

Leslie Crosby's attorney Terrence Brown claims that she never spent or received any of *her* ex-husbands retirement money. She instead bought a Starke house with money the couple received from selling their home in Tallahassee, Brown said.

Records show that the Crosby's sold the Tallahassee house in May, about three months after James Crosby was forced to retire under investigation that he had been involved in criminal activities, including taking kickbacks from a contractor given a contract by Crosby to operate commissaries in prison family visiting areas. The Tallahassee home was sold for $209,000 in May and Leslie Crosby bought the Starke house in June, just one day after James Crosby signed a deal to plead guilty to federal charges that he had received illegal kickbacks while secretary of the third largest state prison system in the U.S.

When Crosby was first indicted he was given notice that the state intended to stop his retirement benefits and seek recovery of almost a quarter million dollars that he received when he left the FDOC.

The lawsuit filed by the DMS seeks more than $191,000 from the Crosby's'. Leslie Crosby's attorney claims the lawsuit is "shameful" and filed a motion to have it dismissed. ■

A Crack in The "Some Evidence" Standard Armor Put A Pry Bar To It Comrades

by John Cox

While going thru the November 2006 issue of *Prison Legal News* (Page 40), I came across an article that describes how an inmate in the Minnesota DOC successfully petitioned to the Minnesota Supreme Court for a violation of due process. (Carillo v. Fabian, 701 N.W. 2d 763 (Minn 2005))

The Scenario is familiar to FDOC inmates; an officer writes a DR, you present witnesses and/or evidence that completely precludes or exonerates you. Presto! Guilty "Based on the Officer's Statement". DC time, loss of gain time.

In this case, he had a witness who said he didn't do it, and his alleged victim said he didn't do it. Bam! Guilty, based on the Officers statement. DC time, loss of gain time.

Carillo's petition argued that his term of imprisonment was extended without providing Sufficient Procedural Due Process. The court concluded it was inappropriate to analyze Carillo's liberty interest by looking solely to Statutory Language; rather it must examine the nature of the deprivation and that extent to which the deprivation departs from the basic conditions of Carillo's sentence. (he lost only 7 days.)

Part of the decision is based on the makeup of Minnesota Law. But other, pertinent parts could, and SHOULD be used as the basis for an argument to the Florida Courts. The Minnesota Supreme Court held that the "Some Evidence" standard of Superintendent, Massachusetts Correctional Institution at Walpole v. Hill, 472 U.S. 445 (1985) addressed only a standard of appellate review, not a standard of proof. (!) Whether a standard of proof satisfies due process requires a 3 part test:

1. The private interests affected;
2. The risk of erroneous deprivation of such interest; and
3. The Government's interest.

Carillo satisfied the first test. The court said that "The risk of an erroneous deprivation of an interest is high when the fact-finder uses the "Some Evidence" Standard." As to the final test, the government has an interest in promoting fair procedures. The court further stated:

"The "Some Evidence" standard sends the message to prisoners as well as society at large that once an individual is convicted of a crime, he is presumed guilty of every subsequent allegation."

The Minnesota Supreme Court's decision was that Hearing Officers must find by a preponderance of evidence that [Carillo] had committed a disciplinary offense before the MDOC can extend his release date.

Several others more worthy than I have stated on many occasions that you should "Adopt the language of the Law/Courts" when writing requests, filing grievances or petitions, motions and complaints. This is an excellent case to adopt language from, and to cite, even though it's in Minnesota.

The "Some Evidence" standard that the FDOC uses is outlined in Superintendent v. Hill, and is based on that adopted by the Federal Jurisprudence, which is probably the lowest possible standard. Until now, what most courts failed to recognize or address is that the "Some Evidence" standard is one of Judicial review NOT THE BURDEN OF PROOF AT THE HEARING ITSELF. Florida Courts have failed to even mention this distinction. See Newell v. Moore, 767 So. 2d 1240 (Fla. 1st DCA 2000)

In Redman v. FDOC, 7 F.A.L.R. 2641 (DOAH, 84-1916R, 1985) it was held that "Evidence" in a DR hearing means evidence as defined by the Florida Evidence Code, § 90, FL. Statutes.

The evidence code doesn't define evidence, but it does define RELEVANT EVIDENCE: "Evidence tending to prove or disprove a material fact." § 90.401.

The burden of proof and a standard of review are totally different. The former is a burden that's carried by the fact finder (DR Hearing) while the latter is a standard the court applies when reviewing a DR Hearing and record. Hill at 457.

In Plymel v. Moore, 770 So. 2d 242 (Fla. 1st DCA 2000), the court held that, "The standard of review applicable to circuit court review of a decision of an administrative agency is:

1. Whether procedural due process was accorded;
2. Whether the essential requirements of law were observed; and
3. Whether the administrative findings and judgment are supported by competent substantial evidence."

Because prisoners in Florida are required to use Mandamus to review administrative decisions. The "Competent Substantial Evidence" standard of review has supplanted the "Some Evidence" standard of Hill. In order to avoid creating bad precedent for all prisoners in Florida, be prepared to argue burden of proof issues. RELEVANT EVIDENCE OF MATERIAL FACT, i.e. witnesses.

Common sense dictates that the preponderance of evidence standard is required because due process itself mandates that an inmate be permitted to marshal the facts, call witnesses, and present evidence. All of this would be negated by a "Some Evidence" standard that allows a finding of guilt on any evidence at all regardless of the presence of exculpatory evidence in any amount. In fact, under the some evidence standard, Courts will not "Make an independent assessment of the credibility of witnesses", Hill at 455.

If that standard is the same at the hearing itself it negates the right to call witnesses at all. Likewise, the some evidence standard, as a standard of review, prohibits the "Weighing of Evidence", Cummings v. Dunn, 630 F. 2d 649 at 650 (8th CIR 1980) Hamilton v. Scott, 762 F. supp 794 at 800 (N.D. ILL 1991).

Applying this as a hearing standard again negates the right to present evidence at all because it will not be weighed by the team when the only issue is if any evidence exists to support a finding of guilt!

Both Article I, Section 9 of the Florida Constitution and the 14th Amendment of the U.S. Constitution provide for due process which "serves as the vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue." Dept of Law Enforcement v. Real Property, 588 So. 2d 957 at 962-964. In LaFaso v. Patrissi, 633A.O. 2d 695 the court said,

"...We find incredible the suggestion that a De Noud proceeding intended to determine the guilt or innocence of any

individual could dispense with these procedures and retain a semblance of fundamental fairness."

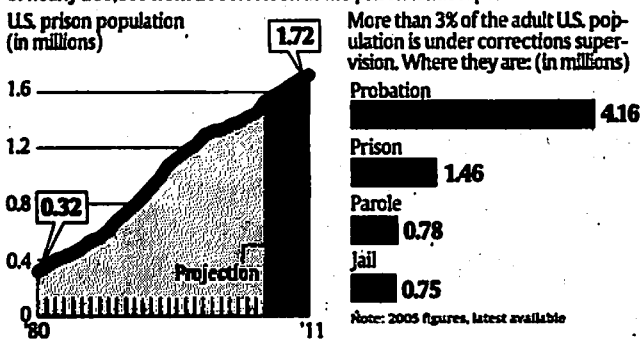
LaFaso at 698, commenting on Hill and Goef v. Dailey, 991 F. 2d 1437 (8th Cir 1993)

Bringing a fairness/due process claim under the State Constitution will have extremely favorable precedent behind it. Claims against faulty DR hearings should attack the State right to due process, attack the fundamental bias of being found guilty no matter what, and be vigilant to procedural errors that can get you a new hearing, or even have it thrown out. ■

Corecia J. Woo, Attorney at Law is publishing a collection of letters to and from inmates. We are looking for letters to or from your loved incarcerated family member to review and consider for the collection. A release will be needed giving your express written consent to publish these letters. For more information and to download the release, please email: coreciawoo@yahoo.com .

Forecast: More people in prison

A study projects major growth in the U.S. prison population. The Pew Charitable Trust says more than 1.7 million adults will be in prison by 2011 — an increase of nearly 200,000 from 2006. A look at the prison landscape:



Projected increase of prison populations in all 50 states

Mont.	41%	N.M.	21%	Okla.	13%	Ala.	7%
Ariz.	35%	Maine	21%	Kan.	13%	R.I.	7%
Alaska	34%	Ohio	20%	Ore.	13%	Mass.	6%
Idaho	34%	Fla.	18%	Neb.	12%	Mo.	6%
Vt.	33%	Pa.	17%	Va.	12%	Tenn.	5%
Colo.	31%	Ark.	17%	Mich.	11%	Wis.	5%
Wash.	28%	Iowa	16%	Ga.	11%	La.	4%
Wyo.	27%	N.H.	16%	Calif.	9%	Md.	1%
Nev.	27%	W.Va.	16%	Texas	9%	Conn.	0%
Utah	25%	S.C.	16%	N.C.	9%	N.Y.	0%
S.D.	23%	Indiana	15%	Ill.	8%	Del.	0%
Ky.	22%	N.D.	14%	N.J.	8%		
Hawaii	21%	Minn.	13%	Miss.	8%		

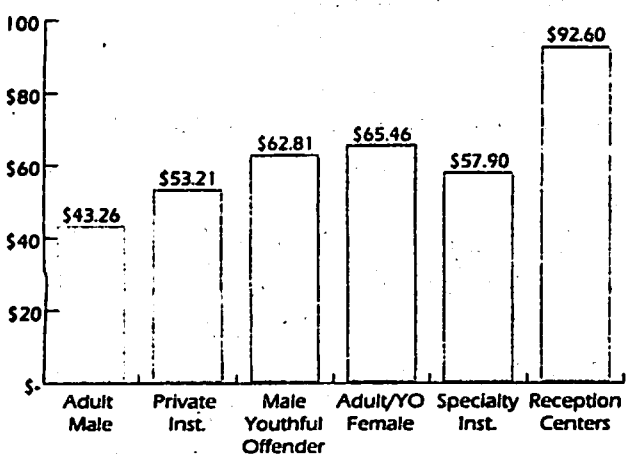
Sources: Pew Charitable Trusts, Bureau of Justice Statistics

FLORIDA CLEMENCY SPECIALIST FOR ASSISTANCE INFORMATION WRITE OR CALL:

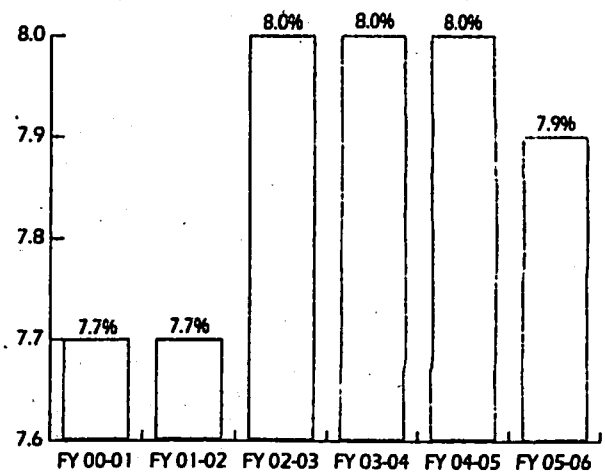
NATIONAL CLEMENCY PROJECT
8624 CAMP COLUMBUS ROAD
HIXSON, TENNESSEE 37343

Florida Department of Corrections

Inmate Cost Per Day by Type of Facility



Percent of State General Revenue Budget Appropriated to Corrections



POST CONVICTION CORNER

by Loren Rhoton, Esq.

Every person who is accused of a criminal offense must be competent to face the charges against him before a trial can be held. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from proceeding with trial, or any other critical stage of the criminal process, when the defendant is incompetent. Pate v. Robinson, 383 U.S. 375, 378 (1966); Florida Rule of Criminal Procedure 3.210(a); and, Carrion v. State, 859 So.2d 563 (Fla. 5th DCA 2003). Florida courts have also held that failure to so abide results in deprivation of a defendant's constitutionally guaranteed right to a fair trial. Brockman v. State, 852 So.2d 320, 332 (Fla. 2d DCA 2003) *citing* Hill v. State, 473 So.2d 1253, 1259 (Fla. 1985). Usually, when competency of a defendant is in question, either defense counsel or the trial court will initiate a competency evaluation of the defendant. However, sometimes the courts will use inappropriate or insufficient procedures to determine a defendant's competency. Other times counsel may disregard clear indications of a lack of competency. In such cases it is proper to vacate the judgment and sentence and remand the case to the trial court for retrial after conducting a proper competency evaluation.

If an attorney is aware of facts which indicate that his client may be incompetent to understand the proceedings against him, it is that attorney's duty to alert the court to such incompetence and initiate a competency evaluation. Some factors which should be warning signs for defense counsel would be prior hospitalizations for mental health problems or the client's use of prescribed psychotropic medications. Likewise, warnings from the defendant's family or friends can alert an attorney to the fact that a client may not be competent to understand and assist with the proceedings. An attorney's failure to explore a client's ability to understand the nature of the proceedings against him, when the attorney has reason to believe that the client may not be competent, can amount to ineffectiveness of counsel which is sufficient to warrant postconviction relief. *See*, Williams v. State, 685 So.2d 1317 (Fla. 2nd DCA 1996) [summary denial of postconviction relief was improper where defendant alleged that his use of prescriptive medication interfered with his ability to understand the nature and consequences of his plea agreement]; and, Broomfield v. State, 788 So.2d 1043 (Fla. 2nd DCA 2001) [counsel ineffective for failing to investigate client's competency where attorney had reason to believe client may be incompetent to proceed].

Sometimes a trial court is aware of possible competency concerns about a defendant and orders a competency evaluation. In fact, the United States Supreme Court has placed the burden on the trial court to, on its own motion, make an inquiry into and hold a hearing on the competency of a defendant when there is evidence that raises questions as to that competency. Hill v. State, 473 So.2d 1253, 1257 (Fla. 1985) *citing* Pate v. Robinson, 383 U.S. 375 (1966). A trial court is further burdened with the responsibility of ensuring the defendant remain competent throughout the course of the proceedings. Kilgore v. State, 688 So.2d 895 (Fla. 1996), *reh'g denied*, (Fla. 1997). Such an obligation is ongoing and the trial court must remain receptive to changes in circumstances. Culbreath v. State, 903 So.2d 338 (Fla. 2d DCA 2005). This burden is "a great one" and requires trial courts to be "very diligent in ascertaining competency." Fuse v. State, 642 So.2d 1142, 1146 (Fla. 4th DCA 1994).

When a reasonable ground to doubt the defendant's competency arises, the court must immediately order a time for a hearing. Fla. R. Crim. P. 3.210(b). Within twenty days of the order, a hearing must be conducted. Id. But prior to the hearing, the defendant must be examined by no more than three, and no fewer than two experts. Id., *see also* Fla. Stat. § 916.115(1)(b). When fewer than two experts are appointed, the Florida Supreme Court has ruled that "there is no doubt that the trial judge erred." D'Oleo-Valdez v. State, 531 So.2d 1347, 1348 (Fla. 1988). Such error constitutes reversible error so long as the defense properly objects. Graydon v. State, 502 So.2d 25, 26 (Fla. 4th DCA 1987), *and* D'Oleo-Valdez, 531 So.2d at 1348 (holding that a failure to object waives the two expert minimum requirement).

Recently, my office has seen cases where improper competency evaluations conducted in several different counties' circuit courts. For example, in one Pinellas County case, we observed a competency procedure whereby the court ordered a competency evaluation by only one expert and thereafter found the defendant to be competent without the benefit of an actual competency hearing. A similar procedure was recently observed in an Orange County case. Likewise, my office has reviewed numerous cases where trial attorneys have either disregarded clear warning signs indicating incompetency, or, just as bad, taken it upon themselves to make a determination of competency without the benefit of a mental health expert. Such errors potentially deprive criminal defendants of the ability to face the charges against them while competent. This means that an abuse of the required competency procedures can result in a defendant facing trial while unable to adequately communicate with or assist defense counsel with trial preparation.

When a defendant's competency is reasonably in question, a competency **hearing** is absolutely required. Fowler v. State, 255 So.2d 513 (Fla. 1971); *see also* Boggs v. State, 575 So.2d 1274, 1275 (Fla. 1991) (when doubt as to competency exists, the procedures set forth in the Rule are "mandatory."). Failure to conduct said hearing denies the defendant his fundamental right to a constitutionally adequate determination of competency. Watts v. State, 593 So.2d

198 (Fla. 1992). When the trial court fails to act in accord with the dictates of Rule 3.210, or when defense counsel is ineffective for failing to see that the proper competency procedures are followed, the remedy should be vacation of the judgment and sentence with directions to the State that re-prosecution can only occur after a full and adequate determination of competency to stand trial. This is because a hearing on competency to stand trial cannot be held retrospectively. State v. W.S.L., 485 So.2d 421 (Fla. 1986); Pridgen v. State, 531 So.2d 951 (Fla. 1988); and, Finklestein v. State, 574 So.2d 1164 (Fla. 4th DCA 1991).

The case of Hill v. State, 473 So.2d 1253 (Fla. 1985) is illustrative of the above-addressed issues. In Hill v. State, 473 So.2d 1253 (Fla. 1985), the defendant was convicted of first degree murder. Hill filed a Rule 3.850 Motion for Postconviction Relief. Id. at 1254. In his 3.850 Hill challenged his conviction on the grounds that circumstances existed at trial which required the trial court to hold a hearing on his competency to stand trial. Id. The trial court conducted a modified evidentiary hearing on Hill's competency to stand trial. At said hearing the court heard testimony from Hill's trial counsel and defense investigator, but directed that all other testimony be submitted in the form of depositions.

At Hill's evidentiary hearing a litany of information was presented that demonstrated that at the time of his trial Mr. Hill was mentally retarded and suffered from grand mal epileptic seizures. Id. at 1254. The defense investigator testified that he had trouble extracting sufficient information from Hill in order to conduct an investigation. Id. at 1255. Additionally, there was a psychological evaluation of Mr. Hill by a prison psychologist and classification specialist that reflected that Hill was of borderline intelligence, illiterate, and epileptic. Id.

The record in Hill further reflected that Hill's trial counsel did not understand the distinction between competency to stand trial and competency at the time of the offense. Hill's trial counsel testified that he resolved the issue of Hill's sanity by interviewing Hill and his family. Id. at 1256. Counsel stated that he was able to determine that Hill knew right from wrong and therefore eliminated any possibility of an insanity defense as well as any claim that Hill was not competent to stand trial. Id.

At Hill's 3.850 evidentiary hearing, the trial court also heard testimony from the investigating police officers. The officers testified that they had no problem communicating with Mr. Hill. The State relied on the police officers' testimony and the prison psychologist's report to support their contention that Hill was not entitled to a competency hearing.

After hearing all evidence the trial court denied Mr. Hill postconviction relief. The Hill Court held that the initial failure of the trial court to hold a competency evaluation, prior to trial, deprived Mr. Hill of a fair trial. Id. at 1259. Such a competency hearing was constitutionally required under the circumstances. Id. Furthermore, the Hill Court held that such a competency hearing cannot be held retroactively because "a defendant's due process rights would not be adequately protected under that type of procedure." Id. at 1259, quoting Drope v.

Missouri, 420 U.S. 164 (1975). As such, Hill's Judgment and Sentence was reversed and his case was remanded for a new trial if Hill was found to be competent to once again face the charges.

For any defendants that have been convicted in circumstances where competency to proceed to trial was questionable, I would recommend further researching the above addressed authorities. It may turn out that the trial court used inadequate procedures to evaluate the competency or that trial counsel was ineffective in failing to properly investigate competency. In either case, postconviction relief may be available via a Florida Rule of Criminal Procedure 3.850 Motion for Postconviction Relief.

Loren Rhoton is a member in good standing with the Florida Bar and a member of the Florida Bar Appellate Practice Section. Mr. Rhoton practices almost exclusively in the postconviction/appellate area of the law, both at the State and Federal Level. He has assisted hundreds of incarcerated persons with their cases and has numerous written appellate opinions. ■

Friends, the Florida Governor's Commission in the Administration of Lethal Injection met Monday, Feb. 19, 2007. The Commission was ordered by former governor Bush to investigate the botched execution of Angel Diaz on Dec. 13, 2006 and to recommend changes to Florida's lethal injection method of putting prisoners to death. There was testimony from a secret Execution Medical Team member. The Commissioners and audience were visibly rattled by his menacing testimony. He has been involved in 84 executions for 5 states and the Federal Government. This is the true nature of the death chamber. Executions are not solemn, medical or humane events. Mark Elliott Director, Floridians for Alternatives to the Death Penalty mark@fdap.org

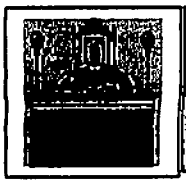
Dear FPLP, I was recently given a copy of your "Special Parole Issue" to read. I have a friend who has been in the Florida Prison System for 27 years and I am very interested in how the Florida Parole Commission works (and doesn't work). I am grateful to see that they are being exposed. This may just be a little thing to mention but I do not think there is any notification to families and/or others sending money to prisoners accounts that part of the money is going to be deducted and I do not know how much is deducted if it is a flat fee or if it is a percentage of what is sent to them. It would seem to me this information should be given by phone or on the DOC website. Folores F. VB FL

Dear FPLP, I want to address a few issues pertaining to the lack of faith in grievances and lack of unity amongst inmates serving time in FDOC. I have been incarcerated almost 2 decades and at one time inmates of all cultures, ethnic backgrounds have fought for prison rights and each other when it comes to misconduct by staff. This breed that has overflowed Florida prisons since 1995 need to be segregated, they don't know what doing time is about. The system loves you guys,you bring all this slime into the system, hating on each other, too ignorant to pick up a book, dictionary or even go to school. What is wrong with you? Mexico

FPLP, I have done many years in prison and I have learned only one thing from this so called rehabilitation that is hate, something I never really knew till I came to prison. We are sent to prison to correct negative behaviors and gain some form of rehabilitation but at FDOC no one receives any form of rehabilitation. Because any self esteem or self help we may receive is shot down from the constant abuse from the staff and officers. Most of the women in prison have been beaten and battered all their lives in one form or another. They are women who need nurturing and care to learn to love themselves'. So they can realize they are someone special and important in life. How does anyone expect us to heal and change and return to society to become normal citizens when we are belittled, beaten, battered, raped and sexually violated on a daily basis. I and two other female inmates were sexually violated with DNA to prove it, it was reported and nothing was done. All three of us wrote grievances and nothing was done. The response to our grievance was that the inspector general's office would deal with it, still nothing has been done. There are a few of us who have the courage to speak out,they cannot break our spirit. R LCI

Dear FPLP, I wanted to let your readers know some of the things going on with the visiting at Apalachee CI E. The visiting is very controlling. Upon arrival the officer assigns the visitor a table to sit at, smoke breaks are given one per hour for 15 minutes at a time outside. The inmate sits in a "special" chair facing the officer's desk. Outside is the same, there are wooden benches and you cannot sit on the bench next to the inmate you are visiting, he sits on a metal chair. If I'm not mistaken none of this is in Chapter 33 rules. DG

Letters sent to FPLP may be used in this section. All letters are subject to editing for length and content. Only initials will be used to identify senders and their location. Letters are welcome from all FPLP members. Address letters to: Editor, FPLP, P.O. Box 1511, Christmas, FL 32709.



NOTABLE CASES

ANTHONY STUART

The following are summaries of recent state and federal cases that may be useful to or have a significant impact on Florida prisoners. Readers should always read the full opinion as published in the Florida Law Weekly (Fla. L. Weekly); Florida Law Weekly Federal (Fla. L. Weekly Federal); Southern Reporter 2d (So. 2d); Supreme Court Reporter (S. Ct.); Federal Reporter 3d (F.3d); or the Federal Supplement 2d (F.Supp. 2d), since these summaries are for general information only.

FLORIDA SUPREME COURT

Corbblin v. State, 31 Fla.L.Weekly S879 (Fla. 12/21/06)

Corbblin Bush's caw presented the Florida Supreme Court with the questions of what remedy a prisoner is to use and which circuit court to file it in when challenging a sentence—reducing credit determination made by the Department of Corrections (DOC) (i.e. loss of gain time, provisional credits, etc., that is determined by DOC).

DOC had denied Bush additional provisional credits he claimed he was entitled to through administrative remedies. After exhausting those remedies, Bush filed a petitioner for writ of mandamus regarding DOC's denial in the Leon County Circuit Court. The circuit court dismissed his petition for lack of jurisdiction, citing *Schmidt v. Crusoe*, 878 So.2d 361, 361-62 (Fla. 2003) (which held that "an inmate's petition for writ of mandamus challenging a loss of gain time is a collateral criminal proceeding and not a civil lawsuit as contemplated by the Prison Indigency Statue"). The circuit court opined that it did not have jurisdiction over collateral criminal proceedings stemming from a conviction and sentence rendered by another circuit court.

Consequently, Bush followed the circuit court's opinion and filed his petition in his original sentencing court, the Seminole County Circuit Court. That court also dismissed Bush's petition, stating, "The court cannot entertain a civil petition in a criminal case...Seminole is not the appropriate venue for this cause of action." The appellate court affirmed, ruling that a petition for writ of mandamus "is a civil action" and that venue properly lies in Leon County, where DOC's headquarters is located. See: *Bush v. State*, 886 So.2d 339 (Fla. 5th DCA 2004). Thus, the Florida Supreme Court granted review of Bush's case based on the apparent conflict with *Schmidt*. There, Bush claimed that the appellate court erred in affirming the dismissal of his petition; he contended that the petition should have been transferred to the proper circuit court. In reply, the State contended that *Schmidt* should be overruled because it has created confusion concerning both the proper remedy and the proper venue for adjudicating such claims.

The first issue the Florida Supreme Court looked at was "The Proper Remedy." Under that issue it was explained that such claims as Bush's that regarded a gain time or provisional release credit that was determined by DOC, after the prisoner exhausted administrative remedies, he or she generally may seek relief in an original proceeding filed in circuit court as an extraordinary writ petition. In such a case, if the prisoner alleges entitlement to immediate release, a petition for writ of habeas corpus is the proper remedy; whereas if the prisoner is not alleging entitlement to immediate release, then a petition for writ of mandamus is the proper remedy.

The State, in its contention that *Schmidt* should be overruled, stated that the language in *Schmidt* may be read as authorizing prisoners to challenge sentence-reducing credit determinations via collateral remedies rather than extraordinary writ petitions. The Florida Supreme Court disagreed with the State's contentions and stated that the *Schmidt* case has no such language. First, although in *Schmidt* it stated that a "gain-time challenge is *analogous* to a collateral challenge to a sentence in a criminal proceeding; it did not state that it *is* a collateral challenge. Second, although it was stated in *Schmidt* that "[this] gain-time challenge should be considered a 'collateral criminal proceeding,'" the *Schmidt* court did so in the context of the prisoner indigency statue, and the statement was limited to that context. Accordingly, to clarify this part of the issue, the Florida Supreme Court held that the proper remedy for such sentence—reducing credit determinations by the DOC, where administrative remedies have been exhausted and entitlement to immediate release is not alleged, continues to be a mandamus petition filed in circuit court.

The next issue the Florida Supreme Court looked at was "The Proper Venue." Under this issue the difference between venue and jurisdiction in regard to the filing of a mandamus petition was explained first: "Venue is one thing; jurisdiction is another. They are not synonymous. Venue concerns 'the privilege of being accountable to a Court in a particular location'. Jurisdiction is 'the power to act,' the authority to adjudicate the subject matter." See: *Williams v. Ferrentino*, 199 So.2d 504, 510 (Fla.

2d DCA 1967). It was explained in the *Bush* review that although all circuit courts in the state have jurisdiction to issue writs of mandamus, see article V, section 5(a), Florida Constitution, the question in Bush's case is where in the state a party should be held to answer such a petition, which is a question of venue.

On this issue, the Florida Supreme Court held that because such claims as Bush's were determined by DOC, the county for which DOC's headquarters is located in the county in which to file the petition, Leon County Circuit Court.

Finally, the last issue the Florida Supreme Court reviewed was the "Transfer versus Dismissal" of a mandamus petition when filed in the wrong circuit court. After citing to several analogous issues addressed in the Florida Constitution it was concluded that transfer to the proper court rather than dismissal is the preferred remedy in such a case.

Accordingly, the Fifth District's opinion that Bush's case should be held in the Leon County Circuit Court was affirmed; however, the order that affirmed the dismissal of Bush's petition was quashed. The case was remanded with instructions to transfer it to the Second Judicial Circuit Court in Leon County for further proceedings.

DISTRICT COURTS OF APPEAL

Simmons v. McDonough, 31 Fla.L.Weekly D2920 (Fla. 1st DCA 11/21/06)

Johnny Simmons sought certiorari review from a circuit court's order imposing costs and fees against his prison account after he filed a mandamus petition that constituted a collateral criminal proceeding pursuant to 57.085(10), Fla. Statues.

The First District Court of Appeals granted review of Simmons' case and opined that the lower court had improperly imposed costs and fees against the prisoner's trust fund account.

Accordingly, the lower court's order imposing the lien against Simmons' prison account was quashed. It was also instructed that the lower court should direct an order to reimburse any funds withdrawn to satisfy the improper lien. See: *Cason v. Crosby*, 892 So.2d 536 (Fla. 1st DCA 2005). Also see other recent related cases: *Gaffney v. McDonough*, 31 Fla.L.Weekly D2919 (Fla. 1st DCA 2006); *Delgado v. McDonough*, 31 Fla.L.Weekly D2919 (Fla. 1st DCA 2006); *Hill v. McDonough*, 31 Fla.L.Weekly D3016 (Fla. 1st DCA 2006); and *Finn v. McDonough*, 31 Fla.L.Weekly D3019 (Fla. 1st DCA 2006).

Santiago v. State, 31 Fla.L.Weekly D2925 (Fla. 4th DCA 11/22/06)

Nomar Santiago appealed the denial of his motion to suppress evidence found following an investigatory traffic stop. Santiago had preserved the issue for appellate review prior to entering his guilty plea in the lower court.

The background of this case began when a police officer was working an unrelated case, observed Santiago flash his vehicle's headlights as another vehicle entered the parking area where Santiago was parked. Afterward, the other vehicle drove toward and parked next to Santiago's vehicle. Santiago walked over and briefly spoke with the other vehicle's occupant, then walked back to his own vehicle, soon returning to the other vehicle again, on the passenger side. Thereafter, both vehicles left the area, with the observing officer following Santiago. While the officer followed and stopped Santiago, he directed another officer to follow and stop the other vehicle involved. [Apparently a search took place and contraband was found in one or both of the vehicles causing Santiago's arrest, the case did not elaborate on that subject.]

At trial, the arresting officer testified that he was not sure of what, if anything, passed between Santiago and the occupant of the other vehicle, but concluded that he had witnessed a hand-to-hand drug transaction. Consequently, Santiago introduced a dispatch tape recording of the incident where the officer was heard stating, "I don't know if that's a hand-to-hand or what the story is". Subsequently, Santiago sought and was denied suppression. The trial court reasoned that the totality of circumstances, "as interpreted by an experienced officer," established a reasonable suspicion to stop Santiago's vehicle.

The appellate court cited to numerous cases that involved interpretations of the law regarding whether an officer has the reasonable suspicion needed to justify an investigatory stop. Following the analysis of those cases and Santiago's, it was concluded that there was not a reasonable suspicion to justify a stop in Santiago's case. While the officer believed that he was acting on "more than a hunch" in making the stop, the blinking of car lights and followed by an apparent exchange of something, otherwise completely innocent acts, are not, alone, sufficient to support a reasonable and founded suspicion that a crime had occurred.

Therefore, it was concluded that the trial court erred in denying Santiago's motion to suppress. Thus, Santiago's conviction was reversed and the case remanded for further proceedings.

Wilson v. State, 31 Fla.L.Weekly D2957 (Fla. 2d DCA 11/29/06)

Anthony J. Wilson petitioned the Second District Court of Appeal for certiorari review of a circuit court's order denying his habeas corpus petition that contested the revocation of his conditional release by the Florida Parole Commission (Commission).

A circuit court, sitting in an appellate capacity, is required to review the record considered by the Commission prior to entering a final order. In Wilson's case however, the Commission failed to provide the complete record for the circuit court to review, as it is required to do. See: *Welsch v. State*, 823 So.2d 310, 311-12 (Fla. 2d DCA 2002) and *Williams v. Fla. Parole Commission*, 625 So.2d 926, 940 (Fla. 1st DCA 1993).

The circuit court had relied only on the Commission's revocation order in denying Wilson's habeas petition. Therefore, it was opined that in denying the petition without full and accurate information, the circuit court violated Wilson's procedural due process rights, and thus departed from the essential requirements of law.

Accordingly, Wilson's petition for certiorari was granted, quashing the circuit court's order. It was further instructed that on remand, the circuit court was to reconsider Wilson's petition with the required Commission's response, which should contain all records from Wilson's file and was considered when the Commission revoked the conditional release.

Zink v. State, 31 Fla.L.Weekly D2972 (Fla. 4th DCA 11/29/06)

Joseph J. Zink appealed the denial of his rule 3.800(a) motion filed in a lower court. In the motion he had claimed that his 1990 written habitual offender sentence to concurrent forty-year prison terms for kidnapping and robbery did not comport with the sentencing court's oral pronouncement.

In Zink's case it was found that although the lower court failed to expressly state that the sentences were habitual offender sentences, the records did reveal that the lower court found Zink to be a habitual offender. In its analysis, the appellate court cited to a prior case that was similar, *Scanes v. State*, 876 So.2d 1238 (Fla. 4th DCA 2004), which was on appeal from an order denying a rule 3.800(a) motion. As in Zink's case, the trial court in *Scanes* made oral findings that the defendant qualified as a habitual offender and imposed enhanced sentences, but did not say the sentences were imposed "as" habitual felony offender sentences. The records of Scanes' case in the lower court revealed that the sentencing court intended to, and did, contemporaneously sentence the defendant as a habitual offender. "*Magic words* are not necessary to establish what the court intended." *Id.* at 1239-40.

Consequently, the same conclusion was made in regard to Zink's case. It was further noted that under the circumstances, Zink had failed to even allege what would amount to a variance between the oral pronouncement and that of the written one.

Accordingly, Zink's habitual felony offender sentence was affirmed.

Davis v. State, 31 Fla.L.Weekly D3165 (Fla. 1st DCA 12/18/06)

Keith Davis presented the appellate court with an issue that involved whether a search and seizure that was preformed on him was legal.

The background of this case involved Davis as a passenger of a vehicle that was stopped by law enforcement. After the officer received consent from the driver to search the vehicle, he went to the passenger side and asked Davis to exit the vehicle. As soon as Davis opened the car door, the officer told Davis to place his hands on the top of the car. While in that position, the officer inquired whether he had anything illegal on his person, and Davis responded that he did not. The officer then asked and received consent from Davis to search his person. The search of Davis revealed a bag that contained a quarter pound of marijuana. Subsequently, Davis was arrested.

At trial, it was undisputed that, until Davis had been frisked, the officer had no reason to believe that Davis had committed any crime, or that he was armed. Consequently, Davis sought and was denied suppression of the marijuana found, and the appeal followed.

A very lengthy review and analysis of several cases involving similarity to Davis', and it was concluded that Davis' consent immediately after being asked to get out of the car and place his hands on the roof of the car was no more than submission to authority. Therefore, the consent was involuntarily given and Davis was illegally seized for Fourth Amendment purposes. Thus, it was opined that the marijuana found should have suppressed, and that it was error for the trial court to have denied Davis' motion.

It was found that the trial court's ruling on the motion to suppress was dispositive, as such, Davis' conviction was reversed and the case was remanded with directions that the trial court enters an order discharging Davis.

Anderson v. State, 31 Fla.L.Weekly D3032 (Fla. 2d DCA 12/6/06)

Philip Anderson appealed an order that revoked his community control for not completing a drug program he was ordered to complete, but was not ordered to complete it within a specified time limit, where sufficient time remained within his community control period to do so.

The appellate court stated that it has consistently held that, if sufficient time in a probationary period remains for a probationer to complete a drug treatment program, a trial court may not revoke probation for failure to complete the program when the conditions of probation or community control did not specify that the program be completed within a certain time frame or within a certain number of attempts.

The State had further contended that Anderson had also violated a condition that he was to

"comply with all rules and regulations of the program and...participate" in the assigned activities. However, the appellate court found that no such condition was ever imposed by the sentencing court.

Accordingly, Anderson's revocation was reversed and the case remanded for further proceedings.

Baptiste v. Guffanti (a Public Defender), 31 Fla.L.Weekly D3055 (Fla. 3rd DCA 12/6/06)

Rillio Baptiste sought a rehearing in the appellate court regarding its denial of a mandamus petition he filed seeking to compel a specially appointed public defender (SAPD), who had filed an *Anders* brief and motion to withdraw in Baptiste's direct appeal, to provide him with a copy of the record on appeal without charge. (See original appellate opinion denying Baptiste's petition at 29 Fla.L.Weekly D5886 (Fla. 3d DCA 3/10/04)).

On consideration of Baptiste's motion for a rehearing, the appellate court withdrew its original opinion and substituted the following opinion: "As a result of this case, the court has revised its standard order for *Anders* proceedings. The revised order now specifies that in *Anders* proceedings, the attorney who has moved to withdraw must supply the defendant with a copy of the complete record on appeal in addition to the *Anders* brief." It was also noted that "record on appeal" includes transcripts and that the SAPD is entitled to reimbursement for the expenses of copying and mailing the record on appeal at no charge to the defendant, as these expenses are incurred in the course of the appointed representation.

Therefore, Baptiste's petition was granted, but formal issuance of the writ was withheld, being the appellate court was "certain that the SAPD will comply with this opinion."

Shelton v. State, 31 Fla.L.Weekly D3066 (Fla. 4th DCA 12/6/06)

Clifford Shelton appealed a trial court's order that denied his rule 3.800(a) motion where he claimed he was entitled to credit for time served in jail prior to sentencing and after sentencing but before transport to prison.

One who is sentenced to prison is not entitled to seek jail credit in the trial court for post-sentencing time served. Such issue is properly raised with the Department of Corrections. See: *Schuettler v. State*, 931 So.2d 1044 (Fla. 4th DCA 2006); *Milne v. State*, 807 So.2d 725 (Fla. 4th DCA 2002).

However, the appellate court did find that the trial court did err insofar as summarily denying the portion of Shelton's motion where he claimed entitlement to pre-sentencing jail time served.

Accordingly, the appellate court reversed and remanded for the trial court to consider Shelton's claim for jail credit on time served *prior* to sentencing and affirmed the denial of post-sentencing jail credit.

Epps v. State, 31 Fla.L.Weekly D2873 (Fla. 4th DCA 11/15/06)

Felton Epps sought certiorari review of a trial court's order prohibiting him from filing further pro se motions. He complained that the trial court entered the order without giving him notice and without issuing an order for him to show cause why he should not be prohibited from appearing pro se.

It has been held by the Florida Supreme Court that before prohibiting further pro se filings, the court must give a pro se litigant notice and an opportunity to show cause why sanctions should not be imposed. See: *State v. Spencer*, 751 So.2d 47 (Fla. 1999).

The appellate court refused to accept the State's contentions that Epps had adequate notice by the order and opportunity to respond by way of a motion for rehearing. It was opined that a motion for rehearing is not a sufficient, meaningful opportunity to be heard. To be fair or meaningful, the opportunity to be heard must be provided "before rights are decided." See: *Peoples Bank of Indian River County v. State Dept. of Banking & Finance*, 395 So.2d 521, 524 (Fla. 1981).

Therefore, Epps' petition was granted, the trial court's order was quashed, and the case was remanded for further proceedings.

Yarusso v. State, 31 Fla.L.Weekly D2900 (Fla. 2d DCA 11/17/06)

Corey Yarusso appealed his conviction and sentence for resisting or obstructing an officer with violence. He contended that the trial court should have granted his motion for judgment of acquittal because the State failed to prove all of the elements of the offense.

The background of this case began when Yarusso was observed by two plain clothed officers driving around in a well lit dealership's car lot that was closed around 10:45 p.m. one night. Yarusso finally stopped his truck, got out, and proceeded to walk down a row of cars. The two officers then approached Yarusso and one of them asked him if he was "just shopping" and Yarusso responded that he was. Yarusso was then asked if he had any identification, whereupon Yarusso inquired whether they were "cops or something." Yarusso was answered in the affirmative and was shown law enforcement badges by both officers. Yarusso then replied that his identification was in his truck and he proceeded in that direction with the officers following. Upon reaching where the truck was parked, one officer went to the rear to view the tag number while the other officer stayed near Yarusso. Yarusso opened the driver's door and, after fumbling around by the front seat, he jumped in the driver's seat, locked the door, started the ignition, and began backing up. The officer that had been near him yelled for Yarusso

to "Stop. Don't do that. Stop." However, Yarusso put the truck in drive and sped off. While taking off, the truck's rearview mirror struck the hand of the yelling officer. Following a high-speed chase, Yarusso was arrested.

On appeal, Yarusso contended, and the State did not dispute that the interaction between him and the officers was a consensual encounter rather than an investigative detention. Indeed, one of the officer's testimony was that Yarusso's action of being at a closed dealership was not necessarily unusual because "they have found other people even at 2:00 a.m. shopping for cars so they don't get bothered by a sales person." As such, the appellate court opined then that the question was whether Yarusso's actions can support a conviction for resisting or obstructing an officer with violence.

It was opined that to prove such offense, the State must show that the defendant: (1) knowingly (2) resisted, obstructed, or opposed a law enforcement officer (3) who was in the lawful execution of any legal duty (4) by offering or doing violence to his person. See: Section 843.01, Fla. Statues (2004); and *State v. Henriquez*, 485 So.2d 414, 415, (Fla. 1986). Of those requirements, what was disputed in Yarusso's case was whether the officers were "engaged in the lawful execution of a legal duty" when the violent act occurred and whether Yarusso's act of driving away constituted "resisting."

It was opined that the hallmark of a consensual encounter is a citizen's right to either voluntarily comply with the officers' requests or terminate the encounter at any time. See: *Terry v. Ohio*, 392 U.S. 1, 31-33 (1968); and *Popple v. State*, 626 So.2d 185, 186 (Fla. 1993). Accordingly, when a citizen either verbally ends a consensual encounter or takes some action that unequivocally demonstrates an intent to end the encounter, the consensual encounter ceases. Any effort by the officers to continue to detain the citizen after that point falls outside the lawful execution of the officers' legal duties absent some founded suspicion that the citizen has committed, is committing, or is about to commit a crime. See: *Tillman v. State*, 934 So.2d 1263, 1273 (Fla. 2006).

In this case, when Yarusso got into his truck, locked the door, and started the ignition, he clearly and unequivocally expressed his intention to terminate the consensual encounter. It was opined that at that point, because the officers had no reasonable, articulable suspicion that Yarusso was involved in criminal activity, the officers' effort to continue the encounter by telling Yarusso to stop was improper. Thus, when the alleged "act of violent resistance" occurred as Yarusso drove away, the officers were no longer engaged in the "lawful execution of their legal duties" vis-à-vis Yarusso.

As to the dispute of whether Yarusso resisted when he drove away, it was noted that when there is no basis for a temporary detention of the individual under *Terry*, a citizen's act of walking away from a police officer cannot, as a matter of law, constitute resisting or obstructing an officer.

Accordingly, and after a review of other case law regarding the issues, the appellate court concluded that under the facts that were presented, Yarusso's conduct was legally insufficient to support a conviction for resisting an officer with violence. Thus, Yarusso's conviction and sentence was reversed and the case remanded.

Daly v. State, 31 Fla.L.Weekly D2645 (Fla. 2d DCA 10/25/06)

Ronald James Daly appealed his resentencing, claiming he should have had counsel at the resentencing hearing.

Daly's resentencing was the relief the lower court granted him from the filing of his motion for post-conviction relief. The relief was granted based on a judicial error in Daly's original sentence. Although Daly did not waive his right to counsel, in fact, he told the lower court that he wanted counsel but could not afford one, the lower court resentenced him without counsel.

The appellate court opined that a criminal defendant has the right to counsel at a resentencing hearing when the original sentencing error was a judicial error rather than a clerical error. See: *Nickerson v. State*, 927 So.2d 114, 117 (Fla. 2d DCA 2006); see also *Wells v. State*, 789 So.2d 1092, 1093 (Fla. 2d DCA 2001) ("An indigent prisoner is entitled to the appointment of counsel at resentencing following a successful motion for post-conviction relief.")

Therefore, Daly's sentence was reversed and remanded for resentencing, with counsel.

Carter v. State, 31 Fla.L.Weekly D2662 (Fla. 4th DCA 10/25/06)

Kevin Carter presented the appellate court with the denial of his rule 3.800(a) motion from the lower court. He claimed that the severity level enhancement for the use of a weapon or firearm should not have been applied to his sentence.

Carter's offense occurred on November 22, 1996. Following two successful prior rule 3.800(a) motions, the first pursuant to *Heggs v. State*, 759 So.2d 620 (Fla. 2000), he was resentenced to 308 months. What Carter claimed in this case was that the 1994 scoresheet under which he was resentenced was miscalculated because the primary offense, a second degree felony murder with a firearm, should have been scored at level 9, with 91 points, but instead it was scored at level 10, with 116 points.

The trial court had denied Carter's motion based on a response by the State which *admitted* that second degree felony murder *is* a level 9 offense, buf agued that section 775.087(1), Fla. Statues, (1994), provides that, when the level

of an offense is reclassified for use of a weapon or firearm, the sentencing level is increased.

The appellate court pointed out, however, that the raising of the sentencing level of an offense pursuant to section 775.087(1) was added by Chapter 95-184, sec. 19, at 1708 Laws of Florida. Chapter 95-184 is the same session law that was held to violate the single subject requirement in *Heggs*. Thus, the severity level enhancement should not have been applied to Carter's resentencing. See: *Reid v. State*, 799 So.2d 394, 400 (Fla. 4th DCA 2001) (which held that the one-level increases for use of a firearm are not applicable to a defendant who committed the charged offense within the window period between October 1, 1995 and May 24, 1997).

After noting that the error was not harmless, the appellate court opined that resentencing was required in Carter's case, even under the "could-have-been imposed" test which the Fourth District has applied to prior rule 3.800(a) motions, see *Brooks v. State*, 930 So.2d 835 (Fla. 4th DCA 2006), which certified conflict with *Wilson v. State*, 913 So.2d 1277 (Fla. 2d DCA 2005). But compare *State v. Anderson*, 905 So.2d 111 (Fla. 2005) (where it was held that if the scoresheet error is raised either on direct appeal or by a rule 3.850 motion; the test is whether the error was harmless under the "would-have-been-imposed test).

Apparently the State tried to argue that Carter's motion was untimely because it was filed more than two-years after the most recent resentencing became final, because the appellate court opined that that argument was without merit. See: *Higgins v. State*, 890 So.2d 519, 519-20 (Fla. 4th DCA 2005) ("Scoresheet calculation errors may be corrected pursuant to rule 3.800(a) 'at any time.'").

Accordingly, Carter's sentence was reversed an the case was remanded for further proceedings. ■

MEMBERSHIP RENEWAL

Please check the mailing label on this issue of FPLP to determine when you need to renew so you don't miss an issue. On the top line of the mailing label will be a date, such as ***Nov 07*. That indicates the month and year that your FPLAO membership dues are paid up to. Please renew your membership by completing the above form and mailing it and the appropriate dues amount to the address given a month or two before the date on the mailing label so that the membership rolls and mailing list can be updated within plenty of time. Thanks!**

Resource List
February 2007

FLORIDA
Government

Governor (Charlie Christ)
PL-05, The Capitol
Tallahassee, FL 32399-0001
850/ 488-4441
www.myflorida.com

Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850/ 487-1963
www.oag.state.fl.us

Department of Corrections
Secretary Jim McDonough
2601 Blair Stone Rd.
Tallahassee, FL 32399-2500
850/ 488-7480
www.dc.state.fl.us

Department of Health
2585 Merchants Row Blvd.
Tallahassee, FL 32399
850/ 245-4321
www.doh.state.fl.us

Department of Law Enforcement (FDLE)
PO Box 1489
Tallahassee, FL 32302-1489
850/ 410-7000
www.fdle.state.fl.us

Department of State
PL-02, The Capitol
Tallahassee, FL 32399-0250
850/ 245-6500
www.dos.state.fl.us

Website contains all state agencies' rules (Florida Administrative Code) and "Florida Administrative Weekly" detailing current agency rulemaking info.

Office of Executive Clemency
(Parole Commission)
2601 Blair Stone Rd.
Bldg. C. Room 229
Tallahassee, FL 32399-2450
850/ 488-2952

Office of Vital Statistics
PO Box 210
Jacksonville, FL 32231-0042
904 /359-6900

Maintains state birth/death certificates, etc.

Parole Commission
2601 Blair Stone Rd., Bldg. C
Tallahassee, FL 32399-2450
850/ 922-0000
www.fpc.state.fl.us

Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
850/413-6055
www.floridapsc.com

Regulates in-state utilities, including telephone services.

Florida House of Representatives
402 S. Monroe Street
Tallahassee, FL 32399-1300
850/ 488-1157 (Clerk)
www.myfloridahouse.gov

Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100
850/ 487-5270 (Secretary)
www.flsenate.gov

Website contain contact info for all state legislators; a copy of all current Florida laws (statutes); and bills that have been introduced in the Legislature and their history, including in many instances "staff analyses" valuable for understanding legislative intent.

FLORIDA
Legal Aid / Advocacy Organizations

Florida Prisoners' Legal Aid Org., Inc.
PO Box 660-387
Chuluota, FL 32766
www.floridaprisons.net
fplp@aol.com

Services: Membership-based organization. Provides information / advocacy to state prisoners and their families and advocates. Conducts grassroots organizing of prisoners' families and handles impact litigation concerning civil rights / administrative law affecting prisoners, their families and children. Publishes bi-monthly news journal, "Florida Prison Legal Perspectives."

Florida Justice Institute
2870 First Union Financial Ctr.
200 S. Biscayne Blvd.
Miami, FL 33131-2310
305/ 358-2081
Fax: 305/ 358-0910
www.FloridaLawHelp.com

Services: Handles civil rights litigation concerning jail / prison conditions. Makes referrals for damage / civil-rights cases. Prison advocacy, lobbying, develops strategies for alternatives to incarceration.

Florida Institutional Legal Ser., Inc.
1110-C NW 8th Street
Gainesville, FL 32601
352/ 955-2260
Fax: 352/ 955-2189
www.criminaljusticeforum.com/Prison_Issues_Files/FILS

Services: Legal assistance to Florida state prisoners. Post conviction assistance to three prisons only: FSP, UCI and FCI. Impact litigation: conditions of confinement, civil rights, medical, etc. Some individual services.

Families & Friends for Committed Victims, Inc.
P.O. Box 1426
Pinellas Park, FL 33780-1426
727/545-9268 or
727/424 -249
www.abettersolution.org
FFCV2001@aol.com

Organizes family members and friends of inmates civilly committed or detained under Florida's Jimmy Rice Act. Works to improve conditions at the Arcadia Civil Detention Center. Publishes

newsletter. Needs members and, donations. Contact for more info.

FLORIDA
Attorneys

Loren Rhoton, Attorney
Rhoton & Hayman, P.A.
412 E. Madison St., Ste. 1111
Tampa, FL 33602
813/ 226-3138
E-mail: rhoton167@aol.com

Specializes in Florida post conviction, direct appeals, sentence corrections, new trials, federal habeas corpus, 3.850, 3.800

David W. Collins, Attorney
PO Box 541
Monticello, FL 32345
850/ 997-8111

Specializes in all area of post conviction relief, including, appeals, 3.850, 3.800 state-federal habeas corpus, parole hearings, clemency, etc.

Daniel D. Mazar, Attorney
2153 Lee Road
Winter Park, FL 32789
1-888-645-5352 (Toll free)
407/645-5352
407/645-3224 (Fax)

Provides representation in Direct Appeals, Belated Appeals, 3.850 motions, 3.800 motions, State and Fed Habeas Corpus, Detainers, and other Post Conviction matters. Over 30 yrs. exp. in criminal law.

Michael Ufferman, Attorney
660 E. Jefferson St
Tallahassee, FL 32301
850/386-2345
www.uffermanlaw.com

Provides representation in State and Federal Criminal Post Conviction Motions. Payment plans available.

**The hiring of an attorney is an important decision that should not be based solely upon advertisements. Before you decide, ask the attorney to send you free written information about their qualifications.*

FLORIDA
Books/Publications/Journals

Legal

Continuing Legal Education Publications (CLE)

CLE publications are produced by the Florida Bar in collaboration with LexisNexis. These are excellent books covering Florida-specific legal topics, such as Administrative Law, Appellate Practice, Family Law, Legal Research Legal Writing, Trial Practice, Civil Law. Rules of Court, etc. To obtain more info and prices for available publications in the CLE series contact: LexisNexis, Attn: Order Fulfillment, 1275 Broadway, Albany, NY 12204 (Ph# 800/ 562-1197). Ask for Fla. Bar CLE Publication catalog.

"Post Conviction Relief for the Florida Prisoner"

A collection in book form of Tampa attorney Loren Rhoten's Postconviction Corner articles based on professional experience, to relevant rules of procedure. Price $20. To order send money order, cashier's or inmate bank check to Loren Rhoten, Attorney (address listed in "FLORIDA Attorneys" section above) or order online at www.rhotonpostconviction.com .

"2007 Government-in-the-Sunshine Manual"

Manual covering Florida Sunshine Laws (open public meetings and records laws) published by The First Amendment Foundation. Price $15.95 check or money order to: First Amendment Foundation, 336 E. College Ave., Ste 101, Tallahassee, FL 32301. Credit card orders call 850/224-4555 or order online at www.floridafaf.org . Add 7.5% state sales tax to $15.95 payment.

FLORIDA
Other Groups / Organizations

Citizens United for Alternatives to the Death Penalty
177 N. US Hwy 1, Ste. B-297
Tequesta, FL 33469

Services: Grassroots organizing of people opposed to death penalty.

Aleph Institute
9540 Collins Ave.
Surfside, FL 33154
305/ 864-5553
www.aleph-institute.org
admin@aleph-institute.org

Services: Provides Jewish religious education, counseling, emergency assistance and referrals to Jewish prisoners and their families.

Time for Freedom
Pastor Bernie DeCastro
PO Box 819
Ocala, FL 34470
352/ 351-1280
Email: tff@gate.net

Services: Provides parent education; self-help support; info; referrals; mentoring; religious ministry; advocacy for male prisoners, ex-prisoners and their families.

Kairos Outside
140 N. Orange Ave., #180
Winter Park, FL 32789
407/ 629-4948
www.kiarosprisonministry.org
kairosjo@aol.com

Services: Provides mentoring, religious ministry, family reunification support and weekend retreats for female adults with incarcerated loved ones.

Prison Connection, Inc.
1859 Polo Lake Dr. East
Wellington, FL 33414
888/ 218-8464
www.theprisonconnection.com
seeacon@aol.com

Services: Provides bus transportation and meals to prison visitors. Also provides gifts for prisoners' children.

NATIONAL
Newsletters/Journals

California Prison Focus
2940 16th Street, Ste. B5
San Francisco, CA 94103
www.prisons.org

Quarterly news journal reports on issues/conditions in CA SHU prisons.

Florida Prison Legal Perspectives

Some national info. Prisoners $4 per yr., all others $20. Sample copy $1.

Prison Book Project
P.O. Box 1146
Sharpes, FL 32959

Subterranean Prison Books
9 E. Gregory
Pensacola, FL 32501

Wayward Council Books
Gainesville Books for Prisoners
P.O. Box 12164
Gainesville, FL 32604

Books 4 Prisoners
c/o Groundwork's Books
0323 Student Center
La Jolla, Ca. 92037

Book 'em
P.O. Box 71357
Pittsburg, PA 15213

MEP
P.O. Box 5311
Madison, WI 53705

DC Prisoners Book Project
P.O. Box 5206
Hyattsville, MD 20782

Bound Together Bookstore
Prison Literature Project
1369 Haight St.
San Francisco, CA 94117

Upendra Dasa
P.O. Box 9116
Boise, ID 83707-9116
Free materials on Krishna Consciousness

Liberation Prison Project
P.O. Box 31527
San Francisco, CA 94131
Offers Buddist Materials

Human Kindness Foundation
P.O. Box 61619
Durham, NC 27715
Free interfaith spiritual books and newsletter.

Coalition for Prisoners Rights Newsletter
PO Box 1911
Santa Fe, NM 87504-1911

Prison-related newsletter published monthly. Free to prisoners and their families, all others $12 per yr. Donations/stamps appreciated to help with publishing/mailing.

FAMMGram
1612 K. St., NW, Ste. 1400
Washington, DC 20006
www.famm.org

Quarterly news journal focused on fight against mandatory minimum prison sentences. Published by Families Against Mandatory Minimums – a National organization. Prisoners $10 individuals $25, professionals $50. Membership-based organization.

Fortune News
53 W. 23rd St., 8th Floor
New York, NY 10010
www.fortunesociety.org

Quarterly magazine of the Fortune society carrying wide variety of articles and info about prisons, prisoners, criminal justice, rehabilitation, etc. Free to prisoners.

Hepatitis C Awareness News
PO Box 41803
Eugene, OR 97404

Bi-monthly newsletter published by hepatitis C Prison Coalition with news and info about Hep C and HIV/HCV. Free upon request, but stamp donations needed and welcomed.

Justice Denied Magazine
PO Box 68911
Coquille, OR 98168

Magazine dedicated to exposing wrongful conviction cases. Prisoners $10 per 6 issues, $20 for others

Justice Matters
PO Box 40085
Portland, OR 97240-0085

Quarterly newsletter published by the Western Prison Project. Prisoners $7 per year, $15 all others. Good resource info.

Prison Legal News
2400 NW 80th St. #148
Seattle, WA 98117
Web site: www.prisonlegalnews.org

Monthly journal carries summaries and analysis of recent prisoner rights cases, self-help litigation articles, prison-related news. Prisoners $18 per year, $25 others. Sample copy $1.

Nolo News
50 Parker St.
Berkeley, CA 94710

Quarterly self-help newsletter covers (non-prison) civil litigation issues. Two-year subscription $12.

DISCOUNT MAGAZINE SERVICE

Grant Publications
Alice S. Grant
P.O. Box 28812
Greenfield, WI 53228-0812

Sun Subscriptions
915 Desmore Dr.
Winter Park, FL 32972

NATIONAL
Book Projects

The following sources provide free books to prisoners. However, these projects rely on volunteers and donations to operate. Whenever possible, prisoners should help these projects when requesting free books by sending a few stamps for postage. Requests for specific books can rarely be honored, instead, request books by type, e.g. mystery, legal, historical, novel, etc. Requests are usually limited to 2 or 3 books at a time.

Books Through Bars
4722 Baltimore Ave.
Philadelphia, PA 19143-3503

Prison Book Program
c/o Lucy Parsons Ctr. & Bookstore
1306 Hancock St., Ste 100
Quincy, MA 02169

Prison Book Project
PO Box 396
Amherst, MA 01004-0396

NATIONAL
Resource Lists

"ACLU Prisoner Assistance Directory"
(Florida prisoners see Volume 4 of "Prisoners and the Law" in major institutions' law library – contains above directory.)

"Resource Directory for Prisoners"
Naljor Prison Dharma Service
PO Box 7417
Boulder, CO 80304
www.naljor.com
(Directory can be printed off website for free.)

"National Prisoner Resource List"
available free from:
Prison Book Program
1306 Hancock St, Ste 100
Quincy, MA 02169

"Resource and Organizing Guide"
available from:
Prison Activist Resource Center
PO Box 339
Berkeley, CA 94701
(Donation/stamps requested to help offset printing/mailing costs.)

"Directory of Programs Serving Families of Adult Offenders"
available free from:
National Institute of Corrections
Information Center
1860 Industrial Circle, Ste. A
Longmont, CO 80501

NATIONAL
Groups/Organizations

The Sentencing Project
918 F. St., NW, Ste. 501
Washington, DC 20004
202/ 628-0871

Services: Provides technical assistance to develop alternative sentencing programs and conducts research on criminal justice issues. No direct services to prisoners.

Stop Prisoner Rape
3325 Wilshire Blvd., Ste. 340
Los Angeles, CA 90010
www.spr.org

SPR works to end sexual violence against prisoners. Counseling resource guides for prisoners and released rape victims and advocates are available for: AL, AZ, CA, CO, FL, GA, IL, LA, OK, OR, MI, MS, NC, NY, TX, WI or nationwide. Specify state with request.

Amnesty International, USA
322 Eighth Ave.
New York, NY 10001
www.amnesty.org

AI is an independent, international organization that works to protect human rights.

CURE (Citizens United for Rehabilitation of Errants)
National Capitol Station
PO Box 3210
Washington, DC 20013
202/ 789-2126
www.curenational.org

Services: Organizes prisoners and their families to work for criminal justice reform. Many state chapters.

Vietnam Veterans of America
8605 Cameron St., Ste 400
Silver Spring, MD 20910
www.vva.org

Publishes "From Felon to Freedom" a pre-release guide for imprisoned veterans. Write for more info.

Salvation Army
P.O. Box 269
Alexandria, VA 22313

Has parole/probation programs in almost every major city. Write for info.

Correct HELP
P.O. Box 46267
West Hollywood, CA 90046
HIV Hotline 323/822-3838

Provides info related to HIV. Contact if you can't access programs or are not receiving proper medications.

NATIONAL
Services

Let My Fingers Do Your Typing
PO Box 4178-FPLP
Winter Park, FL 32793-4178

Services: Professional typing services by mail. Computer, typewriter, transcription, black/color printing and photocopying. Free price list upon request. Special rates for prisoners.

Center for Constitutional Rights
666 Broadway
New York, NY 10012
www.jailhouselaw.org

CCR is one of the organizations that cooperates to produce the "Jailhouse Lawyer's Manual." Copies of the manual are provided to prisoners at no charge. The JLM can also be downloaded and printed from the above website at no cost.

Grant Publications
Alice S. Grant
P.O. Box 28812
Greenfield, WI 53228-0812

Discount magazine subscription service for prisoners. Send SASE for price list.

Sun Subscriptions
915 Densmore Dr.
Winter Park, FL 32792

Discount magazine subscription service. Write for price list.

[When contacting the above discount magazine services, please let them know that you learned about them in Florida Prison Legal Perspectives.]

INTERNET RESOURCES

Information on the Internet is available to prisoners with family or friends on the outside with online access who will print and mail material in. The amount of info on the 'Net' is tremendous. Info on almost any subject can be found online. The following lists some websites that may be useful for info.

Legal/Legislative

General

www.lawcrawler.com
Searches government and other sites for law.

www.nolo.com
Provides some general legal info and sells books on wide variety of legal topics useful to the public.

www.findlaw.com
Good site for searching out federal and state law.

www.washlaw.edu
Legal search engine for locating primary legal sources at the federal and state levels.

www.prisonactivists.org
Provides wide variety of prison-related info. Includes large "Link" section to many other related legal and nonlegal websites.

www.martindale.com
Provides info on lawyers nationwide, including contact info, area of practice, how long, etc.

Federal

www.thomas.loc.gov
Source for federal legislative material.

www.uscourts.gov
Links and information about U.S. Supreme and other federal courts.

www.ca11.uscourts.gov
Eleventh Circuit Court of Appeal website.

www.flnd.uscourts.gov
U.S. District Court, Northern District of Florida website.

www.flmd.uscourts.gov
U.S. District Court, Middle District of Florida website.

www.flsd.uscourts.gov
U.S. District Court, Southern District of Florida website.

Florida

www.myflorida.com
Links to state agency and government offices' websites.

www.flsenate.gov
www.myfloridahouse.gov
Florida Legislature's websites. Provides directory of state legislators; complete Florida statutes (laws); Senate and House bills, bill histories and analyses.

www.flcourts.org
Provides directory and links to Florida courts' websites.

www.FCLA.edu
Florida State University law library website.

www.law.miami.edu/library
University of Miami law library website.

www.law.ufl.edu
University of Florida law library website.

www.stetson.edu/departments/library/law
Stetson University law library website.

www.legal.firn.edu
Posts the "Government in the Sunshine Manual" (Public meetings and public records manual).

www.flabar.org/newflabar/memberservices/CLE
Sells continuing Legal Education series of legal books concerning Fla. law.

Florida Supreme Court:
www.flcourts.org

District Courts of Appeal:
First DCA: www.1dca.org
Second DCA: www.2dca.org
Third DCA: www.3dca.flcourts.org
Fourth DCA: www.4dca.org
Fifth DCA: www.5dca.org

Circuit Courts:
1st Circuit: www.firstjudicialcircuit.org
2nd Circuit: www.2ndcircuit.leon.fl.us
3rd Circuit: www.jud3.flcourts.org
4thCircuit:www.coj.net/Departments/Fourth+Judicial+Circuit+Court/default.htm
5thCircuit
http//jud5.flcourts.org/courts/index.htm
6th Circuit: www.jud6.org
7th Circuit: www.circuit7.org
8th Circuit: www.circuit8.org
9th Circuit: www.ninja9.org
10th Circuit: www.jud10.org
11th Circuit: http://jud11.flcourts.org
12th Circuit: http://12circuit.state.fl.us
13th Circuit: http://jud13.flcourts.org
14th Circuit: for information call 850-747-5327
15thCircuit:www.co.palmbeach.fl.us/cadmin
16th Circuit: www.jud16.flcourts.org
17th Circuit: www.17th.flcourts.org
18th Circuit: www.jud18.flcourts.org
19th Circuit: www.circuit19.org
20th Circuit: www.ca.cjis20.org

County Clerks of Court:
Alachua:www.clerkalachuafl.org/clerk/index.html
Baker: http://bakercountyfl.org/clerk
Bay: www.baycoclerk.com
Bradford: www.bradfordclerk.com
Brevard: www.clerk.co.brevard.fl.us
Broward: www.browardclerk.org
Calhoun: www.calhounclerk.com
Charlotte:www.co.charlotte.fl.us/cirkinfo/clrek_default.htm
Citrus: www.clerk.citrus.fl.us
Clay: http://clerk.co.clay.fl.us
Collier: www.clerk.collier.fl.us
Columbia: www.columbiaclerk.com
Dade
:www.miamidadeclerk.com/dadecoc
Desoto: www.desotoclerk.com
Dixie: www.dixieclerk.com
Duval: www.duval.fl.us.landata.com
Escambia: www.clerk.co.escambia.fl.us
Flagler: www.myflaglercounty.com
Franklin: www.franklinclerk.com
Gadsden: www.clerk.co.gadsden.fl.us
Gilchrist: www.gilchristclerk.com
Glades: www.gladesclerk.com
Gulf: www.gulfclerk.com
Hamilton: www.myhamiltoncounty.org
Hardee: www.hardeeclerk.com
Hendry: www.hendryclerk.org
Hernando: www.clerk.co.hernando.fl.us
Highlands:www.clerk.co.highlands.fl.us/index_new.html
Hillsborough: www.hisclerk.com
Holmes: www.holmesclerk.com
Indian River: www.clerk.indianriver.org
Jackson: www.jacksonclerk.com
Jefferson: www.jeffersonclerk.com
Lafayette: www.lafayetteclerk.com
Lake: www.clerk.lake.fl.us
Lee: www.leeclerk.org
Leon: www.clerk.leon.fl.us
Levy: www.levyclerk.com
Liberty: www.libertyclerk.com
Madison: www.madisonclerk.com
Manatee: www.manateeclerk.com
Marion: www.marioncountyclerk.org
Martin:http://clerkweb.martin.fl.us/ClerkWeb
Monroe: www.monroe.fl.us.landala.com
Nassau:www.nassauclerk.com/clerk/clerk_main.htm
Okaloosa: www.clerkofcourts.cc
Okeechobee:www.clerk.co.okeechobee.fl.us
Orange: http://orangeclerk.onetgov.net
Osceola: www.osceolaclerk.com

Palm Beach: www.pbcountyclerk.com
Pasco: www.pascoclerk.com
Pinellas: www.pinellasclerk.org
Polk: www.polkcountyclerk.net
Putnam: www.putnam-fl.com/clk
St. Johns: www.co.st-johns.fl.us/Const-Officers/Clerk-of-Court/index.htm
St. Lucie: www.slcclerkofcourt.com
Santa Rosa: www.santarosaclerk.com
Sarasota: www.sarasotaclerk.com
Seminole: www.seminoleclerk.org
Sumter: http://home.earthlink.net/%7Esumtercco
Suwannee: www.suwclerk.org
Taylor: www.taylorclerk.com
Union: www.unionclerk.com
Volusia: www.clerk.org/index.html
Wakulla: www.wakullaclerk.com
Walton: www.co.walton.fl.us/clerk
Washington: www.washingtonclerk.com

FPLP **intends to update this list on a continuing basis as a service to readers. Please let us know if you are aware of other resources that prisoners, their families or advocates maybe interested in at the below address or by email:**

FPLP
Attn: Resource List
PO Box 660-387
Chuluota, FL 32766
fplp@aol.com

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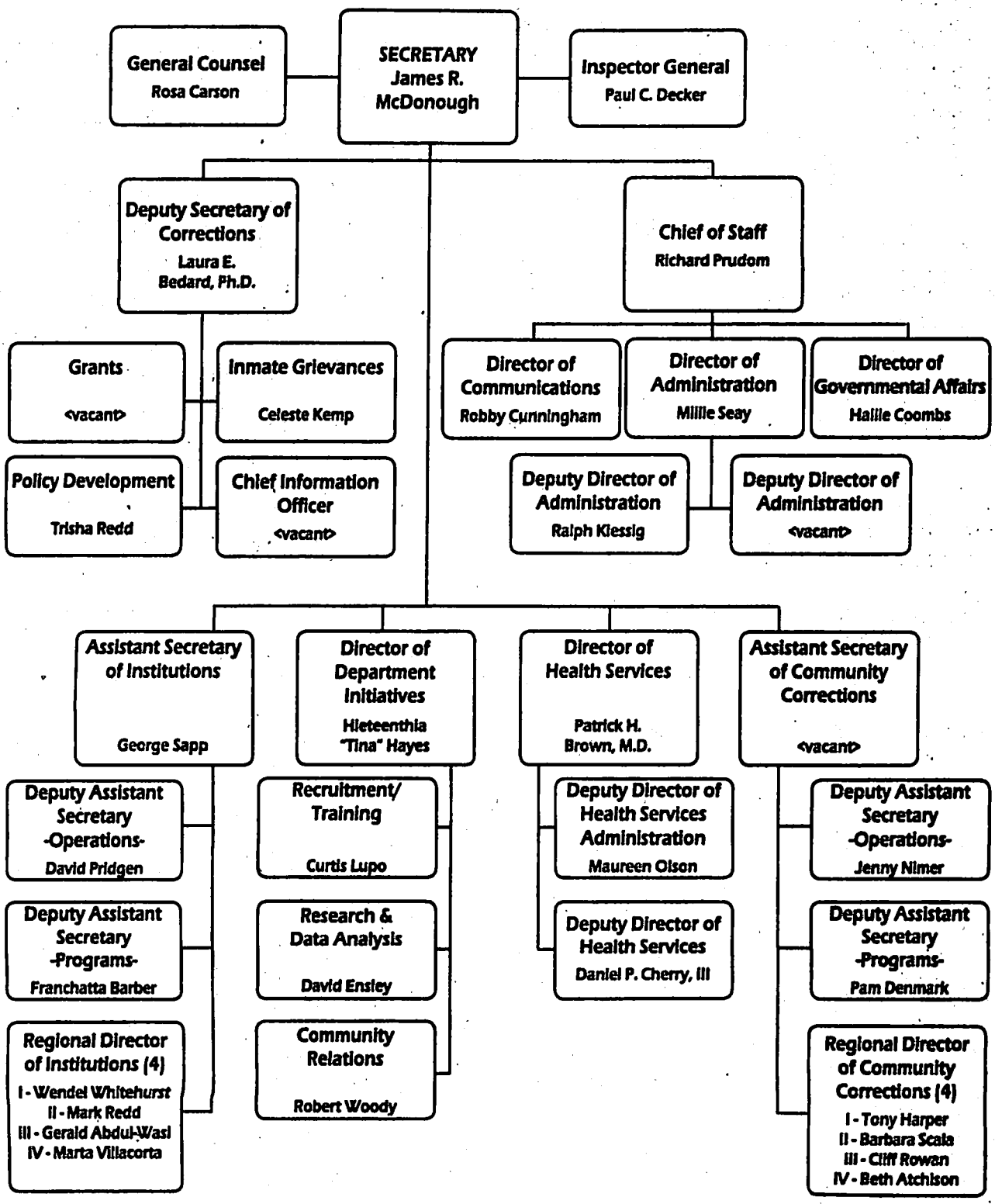
Florida Department of Corrections

Organization Chart



Budget

DEPARTMENT OF CORRECTIONS
BUDGET SUMMARY
(FY 2005-06)

Operating Funds

Expenditures by Budget Entity:

Department Administration	$	58,510,056
Security and Institutional Operations	$	1,351,434,076
Health Services	$	340,867,844
Community Corrections	$	251,003,879
Information Technology	$	18,555,594
Programs	$	44,166,212
Total Operating Funds	$	2,064,537,661

Fixed Capital Outlay Funds

To Provide Additional Capacity	$	71,973,152
To Maintain Existing Facilities	$	2,992,208
Total Fixed Capital Outlay Funds	$	74,965,360
Total	$	2,139,503,021

Local Funds

Collection Activities:

Cost of Supervision Fees	$	26,845,517
Restitution, Fines, and Court Costs	$	57,940,199
Subsistence, Transportation, and other Court-Ordered Payments	$	20,912,359

Inmate Banking Activities:

Total Deposits	$	94,664,986
Total Disbursements	$	94,257,347
June 30, 2006 Total Assets	$	10,563,661

Other Activity:

Revenue from Canteen Operations	$	23,609,862
Inmate Telephone Commissions	$	15,272,896

Florida Department of Corrections

Inmate Programs

Inmate Workforce Development Programs Offered Statewide

Facility/ # of Programs	Workforce Development Education Programs
Apalachee CI - East (3)	(1) Auto Collision Repair & Refinishing, (2) Cabinetmaking, (3) Welding Technology.
Avon Park CI (6)	(1) Automotive Service Technology, (2) Cabinetmaking, (3) PC Support Services, (4) Printing/Graphic Arts, (5) Turf Equipment Technology, (6) Welding Technology.
Baker CI (4)	(1) Cabinetmaking, (2) Electricity, (3) Masonry, (4) Plumbing Technology.
Brevard CI (5)	(1) Autotronics/Automotive Service Technology, (2) Carpentry, (3) Electronics Technology, (4) Masonry, (5) Welding Technology.
Broward CI * (3)	(1) Commercial Art Technology, (2) Fashion Design & Production, (3) PC Support Services.
Calhoun CI (1)	(1) Printing/Graphic Arts/WEB Design Services.
Columbia CI (2)	(1) Masonry, (2) PC Support Services.
Cross City CI (4)	(1) Auto Collision Repair & Refinishing, (2) Cabinetmaking, (3) Plumbing Technology, (4) PC Support Services/Business Supervision/Computer Programming & Technology.
DeSoto Annex (3)	(1) Carpentry, (2) Masonry, (3) Welding Technology.
Franklin CI (1)	(1) Masonry.
Glades CI (2)	(1) Computer Electronics Technology, (2) PC Support Services.
Hamilton CI (3)	(1) Cabinetmaking, (2) Electricity, (3) Masonry.
Hamilton CI Annex (2)	(1) Computer Electronics Technology, (2) PC Support Services.
Hardee CI (1)	(1) Carpentry.
Hernando CI * (1)	(1) Digital Design.
Hillsborough CI * (2)	(1) Carpentry, (2) Commercial Foods & Culinary Arts.
Holmes CI (3)	(1) Auto Collision Repair & Refinishing, (2) PC Support Services, (3) Welding Technology.
Homestead CI * (3)	(1) Autotronics, (2) Automotive Service Technology; (3) PC Support Services.
Indian River CI (3)	(1) Environmental Services, (2) Masonry, (3) PC Support Services.
Lake CI (3)	(1) Cabinetmaking, (2) Gas Engine Service Technology, (3) Wastewater/Water Treatment Technologies.
Lancaster CI (6)	(1) Autotronics/Automotive Service Technology, (2) Carpentry, (3) Commercial Foods & Culinary Arts, (4) Environmental Services, (5) Small Gas Engine Service, (6) Printing/Graphic Arts.
Lawtey CI (1)	(1) Drafting Architectural.
Lowell CI * (3)	(1) Cosmetology, (2) Drafting Architectural, (3) PC Support Services.
Lowell CI Annex * (1)	(1) Fashion Design & Production.
Lowell CI Forest Hills * (2)	(1) Equine Care Technology; (2) Small Gas Engine Service.
Marion CI (5)	(1) Cabinetmaking, (2) Drafting Mechanical, (3) Electricity, (4) PC Support Services, (5) Water/Wastewater Treatment Technologies.
Marion CI Work Camp (1)	(1) Equine Care Technology.
New River CI - East (4)	(1) Consumer Electronic Repair, (2) PC Support Services, (3) Plumbing Technology, (4) Printing/Graphic Arts.
New River CI - West (2)	(1) Small Gas Engine Service, (2) Welding Technology.
Polk CI (4)	(1) Auto Service Technology, (2) Computer Electronics Technology, (3) Consumer Electronic Repair, (4) Plumbing Technology.
Sumter CI (4)	(1) Automotive Service Technology, (2) Drafting Architectural, (3) Electronics Technology, (4) Masonry.
Taylor CI Annex (2)	(1) Masonry, (2) PC Support Services.
Tomoka CI (2)	(1) Diversified Career Technology/Blind Services, (2) Wheelchair Repair.
Wakulla CI (1)	(1) Environmental Services.

* Denotes female facility

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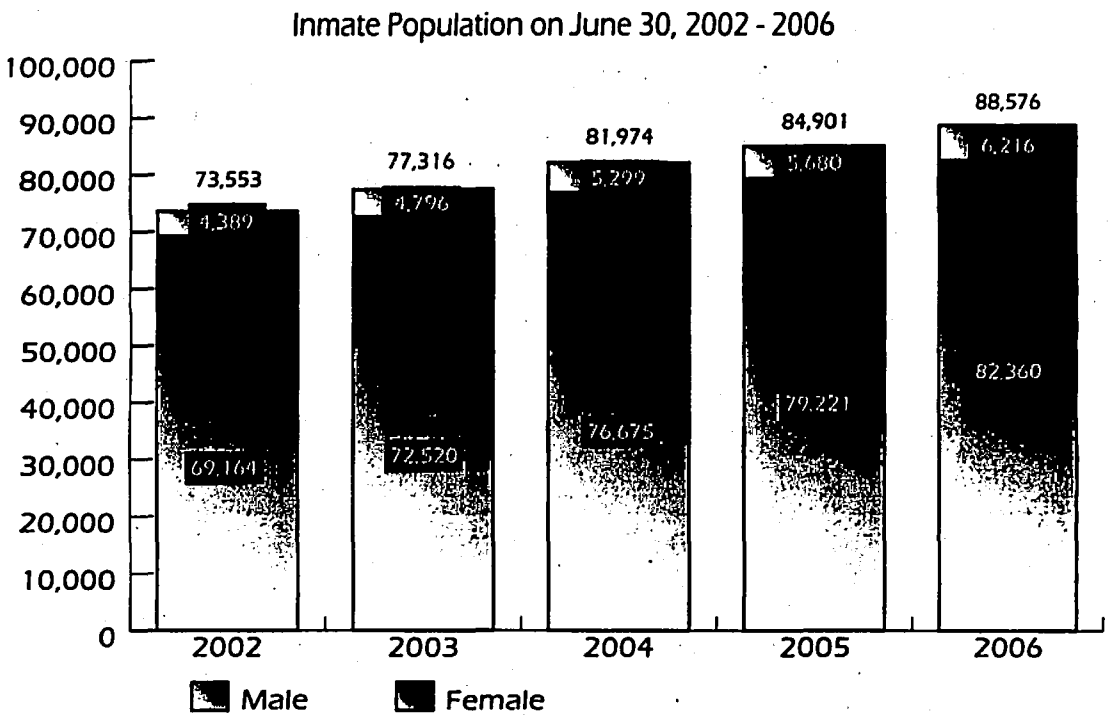
Florida Department of Corrections

Inmate Population on June 30, 2006

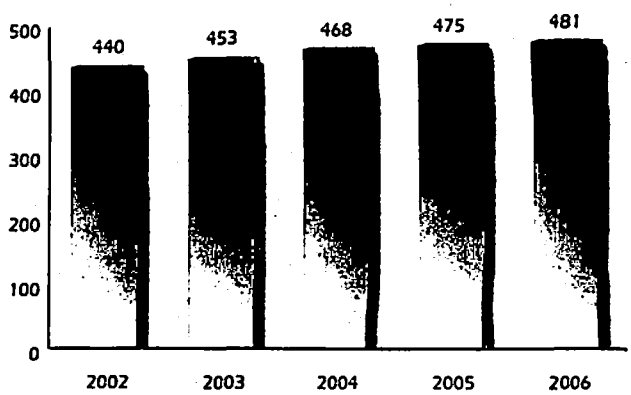


Florida prison population jumps 4.3% since last fiscal year

Inmate population refers to the 88,576 inmates who were present in the Florida prison system on June 30, 2006. The following tables and charts will detail the characteristics of these inmates. Other fiscal years are also featured to illustrate trends.

- The number of inmates in prison rose 20.4% over the last 5 years from 73,553 in June 2002 to 88,576 in June 2006. There was a 4.3% increase since last fiscal year.
- The majority of inmates in prison on June 30, 2006 are male (82,360 or 93.0%) and black (44,674 or 50.4%). However, the percentage of black inmates in prison is decreasing (53.3% in June 2002 to 50.4% in June 2006).
- The top five categories of primary offenses for which inmates are incarcerated are: drugs (20.2%), burglary (14.5%), murder/manslaughter (12.8%), violent personal offenses such as carjacking and aggravated assault (12.3%), and robbery (12.0%).
- On June 30, 2006, 481 of every 100,000 Floridians were incarcerated compared to 440 in 2002.

Inmates Incarcerated on June 30
(Per 100,000 Florida Population)



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Florida Department of Corrections

Inmate Population on June 30, 2006

Prior Commitments to the Florida Department of Corrections
(Inmate Population on June 30, 2006)

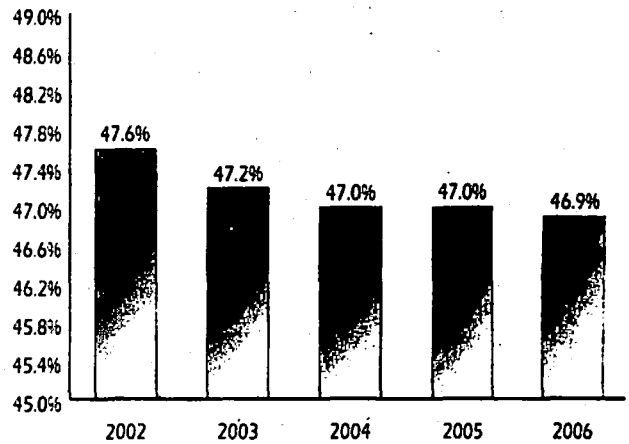
Category	White Males	White Females	Black Males	Black Females	Other Males	Other Females	Total	Percent	Cumulative Percent
None	23,022	2,609	17,768	1,448	1,934	239	47,020	53.1%	53.1%
1	7,328	459	9,354	460	422	39	18,062	20.4%	73.5%
2	3,354	209	5,854	248	190	10	9,865	11.1%	84.6%
3	1,815	78	3,716	161	75	4	5,849	6.6%	91.2%
4+	1,990	65	5,476	182	55	2	7,770	8.8%	100.0%
Data Unavailable	1	2	6	1	0	0	10		
TOTAL	37,510	3,422	42,174	2,500	2,676	294	88,576	100.0%	100.0%

46.9% of inmates in prison on June 30, 2006 had been in Florida prison before

Prior commitment refers to any previous occasion that an inmate served time in the Florida prison system. This does not include supervision, such as probation. Nor does it include inmates who may have been in county jails in Florida, in other state systems or in the Federal prison system.

- The percentage of inmates in prison on June 30 who had been in Florida prisons previously has decreased slightly over five years from 47.6% in 2002 to 46.9% in 2006.
- The percentage of inmates in prison with a prior commitment (46.9%) is slightly less than last year (47.0%).
- Of the 47,020 (53.1%) inmates in prison on June 30, 2006 who had no prior Florida prison commitments, 54.5% were white, 40.9% were black and 4.6% were other races.
- Of all inmates, 20.4% had been in prison in Florida once before, 11.1% had been in twice before, and 15.4% had been in three or more times before.

Percent of Inmate Population with Prior Commitments to Florida's Prison System on June 30, 2002-2006



Florida Prisoners' Legal Aid Organization Inc.

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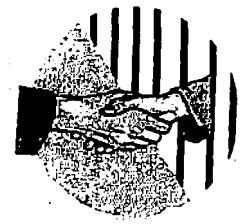

YES ! I wish to become a member of Florida Prisoners' Legal Aid Organization, Inc.

1. Please Check ✓ One:

- ☐ Membership Renewal
- ☐ New Membership

2. Select ✓ Category

- ☐ $15 Family/Advocate/Individual
- ☐ $10 Prisoner
- ☐ $30 Attorneys/Professionals
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3. Your Name and Address (PLEASE PRINT)

_____ DC#_____
Name

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Agency/Library/Institution /Org/

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Address

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City State Zip

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Email Address and /or Phone Number

☞ Please make all checks or money orders payable to Florida Prisoners' Legal Aid Org., Inc. Please complete the above form and send it along with the indicated membership dues to: FPLAO, Inc., P.O. Box 1511, Christmas FL 32709-1511. For family members or loved ones of Florida prisoners who are unable to afford the basic membership dues, any contribution is acceptable for membership. Memberships run one year. If you would like to make a donation to FPLAO, Inc., to help the organization continue its work for prisoners and their families, send donations in any amount to the same address. Thank You. All members receive *Florida Prison Legal Perspectives*.

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Seattle, WA 98117
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