FLORIDA PRISON LEGAL

Perspectives

VOLUME 12 ISSUE 4 ISSN# 1091-8094 JULY/AUG 2006

Ex-prisons' Chief and Crony Face Prison Time for Corruption

by Bob and Teresa Burns Posey

■ Former FDOC Secretary James V. Crosby, Jr, and his right-hand man Allen Clark were charged with accepting kickbacks from a subcontractor of the state's privatized prison canteen business in July. Both pleaded guilty and are facing up to 10 years in prison and a $250,000 fine.

JACKSONVILLE—The former head of the Florida Department of Corrections (FDOC), James Crosby, and his protégé, friend and former FDOC regional director, Allen Clark, were charged July 5, 06, with jointly accepting over $135,000 in kickbacks from a Gainesville businessman in return for a piece of the prison system's privatized commissary business.

In return for favorable consideration at sentencing and dropping other unspecified criminal charges against them, Crosby, 54, and Clark, 40, agreed to plead guilty to the single charge of accepting corrupt kickbacks. Clark appeared before a federal judge on July 6 and entered his guilty plea, Crosby did the same on July 11. Both also agreed to cooperate with the FBI in a continuing investigation of others connected with the prison system.

In addition to Crosby and Clark, eight other current or former FDOC employees were also indicted by a statewide grand jury on July 5 on grand theft charges involving stealing state property and/or illegally using prisoners to perform personal work for them.

The charges filed on July 5 brings the total to 21 people who have been prosecuted on charges related to corruption within the Florida prison system. In anticipation that charges were going to be brought against them, Crosby was forced to resign as the department's Secretary in February and Clark had been forced to resign in August 2005.

Gov. Jeb Bush who had appointed Crosby in 2003 to run the state's huge prison system and who later asked him to resign, issued a statement: "I am disappointed by this violation of the public's trust and by the abuses committed by those in leadership positions. Our work requires the highest level of integrity. Anything less is unacceptable and undermines the good work done by many capable and committed state employees." But Bush, who Crosby had campaigned for in both elections to become governor, seems to have been blind to the fact that Crosby was rotten all along.

Bush ignored the fact that Crosby had been the warden at Florida State Prison in 1999, when a gang of prison guards brutally murdered death row prisoner Frank Valdes for trying to stop the guards from beating other prisoners, when he appointed him to take over the prison system. When Crosby admitted last year to dining in New York with executives seeking privatized service prison contacts and

ON THE INSIDE

FLORIDA PRISON LEGAL PERSPECTIVES

P.O. BOX 1511
CHRISTMAS, FLORIDA 32709

Publishing Division of:
FLORIDA PRISONERS' LEGAL AID ORGANIZATION, INC.

A 501 (c) (3) Non-profit Organization

E-mail:
Website:

FPLAO DIRECTORS

Teresa Burns-Posey
Bob Posey, CLA
David W. Bauer, Esq.
Loren D. Rhoton, Esq.

FPLP STAFF

Publisher	Teresa Burns-Posey
Editor	Bob Posey
Research	Sherri Johnson
	Anthony Stuart

Florida Prisoners' Legal Aid Organization, Inc., P.O. Box 1511, Christmas, FL 32709, publishes FLORIDA PRISON LEGAL PERSPECTIVES (FPLP) up to six times a year. FPLP is a non-profit publication focusing on the Florida prison and criminal justice systems. FPLP provides a vehicle for news, information, and resources affecting prisoners, their families, friends, loved ones, and the general public of Florida. Reduction of crime and recidivism, maintenance of family ties, civil rights, improving conditions of confinement, promoting skilled court access for prisoners, and promoting accountability of prison officials are all issues FPLP is designed to address. FPLP's non-attorney volunteer staff cannot respond to requests for legal advice. Due to the volume of mail that is received and volunteer staff limitations, all correspondence that is received cannot be responded to, but all mail will receive individual attention. Permission is granted to reprint material appearing in FPLP that does not indicate it is copyrighted provided that FPLP and any indicated author are identified in the reprint and a copy of the publication in which the material is published is provided to the FPLP publisher. This publication is not meant to be a substitute for legal or other professional advice. The material in FPLP should not be relied upon as authoritative and may Not contain sufficient information to deal with a legal problem. FPLP is automatically sent to all members of FPLAO, Inc. as a membership benefit. Membership dues for FPLAO, Inc., operate yearly and are $10 for prisoners, $15 for family members and other private individuals, $30 for attorneys, and $60 for agencies, libraries, and institutions.

hobnobbing with lobbyists at concerts and ball games, Gov. Bush had no problem with it. When investigators discovered a steroid trafficking and distribution ring operated by prison guards and employee-on-employee assaults, a phantom employee hired as a ringer for a prison employee softball team, and theft of state property by employees during Crosby's tenure as top dog, Bush had little to say. Even after investigators took state property from Crosby's home last Fall, Bush called him "a good person, a good leader" and told him "don't let the 'blanks' get you down." Court records now show that within months of Gov. Bush appointing him as prisons' Secretary, Crosby had started taking kickbacks.

Federal court documents say Crosby and Clark hatched a deal with Keefe Commissary Network, a St. Louis company hired in 2003 by Crosby to run the prison canteen system, to subcontract some of the business to a Gainesville business man. The court documents do not name the Gainesville man, but prison officials identified the subcontractor as Edward L. Dugger, who set up American Institutional Services just to get the subcontract. FBI and state officials raided the Gainesville offices of AIS on June 7 taking records and the company was banned from state prisons the day after the raid took place. Dugger is a longtime friend of Crosby.

According to court documents, the deal was worked out in the summer of 2004 at a Suwannee River retreat where Crosby and Clark met with Dugger an Keefe officials to persuade Keefe to give Dugger a subcontract to operate canteens at prison visiting parks.

Once the deal was set up, Clark began receiving monthly payments from Dugger and delivered half to Crosby, according to federal prosecutors. The kickback payments grew from $1,000 a month to about $12,000 a month between November

2004 and February 2006 and totaled more than $135,000. Following Clark's resignation from the prison system in August 2005, after a scandal involving Clark reportedly assaulting a former FDOC employee at a party, Crosby told Clark to keep Crosby's share of the kickbacks because federal officials were investigating the deal, say court records.

After entering their guilty pleas, both Crosby and Clark remained free on bond until they are sentenced, which is expected within 90 days of their pleas. The two face up to 10 years in federal prison and a $250,000 fine.

Crosby and Clark's downfall could have political implications for state Senator Rod Smith, D-Alachua, a candidate for governor. When Crosby was appointed FDOC secretary in 2003, Smith (who was the state prosecutor in 1999 who many feel intentionally botched the trial of the FSP prison guards who killed Frank Valdes, leading to an acquittal), said "it's a dream come true." For Smith, who later ran for and was elected as state senator for the heavily prison-dominated North Central Florida area and is now one of two democrats running for governor this year, it may have turned into a "nightmare."

Smith is a longtime friend of both Crosby and Edward Dugger, the subcontractor who apparently was paying the kickbacks to Crosby and Clark. Smith admits that Dugger is a close friend who has helped him raise campaign money in every political race he has entered. When it was discovered that Dugger and his company AIS had made donations to Smith's gubernatorial run after the FBI raid on AIS offices in June, Smith quickly returned the money. It was also discovered that AIS was funneling money to a political campaign group set up by an Orlando businessman to campaign for Smith. That group, Floridians for Responsible government, was also shut down after the FBI raid. (See: FPLP, Vol. 12, Iss. 3)

From appearances, it seems that the scam was set up to bilk money out of prisoners' families who visit prisoners and purchased the high priced food and drinks from the AIS visiting park canteens so everyone got a piece of the action. Keefe got a profit off the low quality, high priced sales to prisoners' families, AIS and Dugger got a cut of the sales, Crosby and Clark got their kickbacks, and part of the money was gambled on a political campaign that was expected to reap future benefits to everyone involved.

The current and former FDOC employees who were also indicted on July 5 by the statewide grand jury for grand theft are:

- Richard A. Frye Jr., 37, former corrections colonel.
- Paul L. Miller, 33, former corrections guard.
- Theodore J. Foray, 46, former corrections sergeant.
- Bryan K. Griffis, 36, former corrections sergeant.
- Christopher P. Taylor, 34, current corrections sergeant.
- Bobbie D. Ruise, 41, current corrections lieutenant.
- Stephen R. Parker, 32, current corrections guard.
- Lamar E. Griffis, 49, former corrections sergeant, charged with accepting unlawful compensation.

The three "current" employees were fired on the same day the indictments were returned.

James McDonough, who was appointed by Gov. Bush to take over running the FDOC in February when Crosby was ousted (the "interim" was removed from his title as FDOC Secretary in July), commenting on the recent charges said, "Did rot enter into the system? Yes. Are we purging it out? Yes. Are we ashamed of what they did? Yes." Since taking over as Secretary, McDonough, a former Army colonel, 40, FDOC employees have been fired, demoted or been forced to resign.

[Sources: *St. Petersburg Times*, 7/6/06, 7/7/06; *Gainesville Sun*, 7/7/06; *Tampa Tribune*, 7/8/06] ■

Ex-FDOC Secretary Crosby to Face Federal Civil Trial in Prisoner Murder Case

In 1999 James V. Crosby, Jr., was the warden at Florida State Prison. While he was the warden there a gang of prison guards, under the guise of needing to force death row prisoner Frank Valdes to leave his cell, beat Valdes to death. An autopsy report following Valdes' death concluded that he had suffered a massive physical beating, while the involved guards claimed that Valdes killed himself by repeatedly throwing himself off his bunk onto the floor. The guards were later acquitted of killing Valdes at a trial held in the small town near the prison where almost the entire economy is dependant on the surrounding prisons.

Although the murder occurred while Crosby was warden and supposedly responsible for the "care and custody" of all prisoners at FSP, he was never held responsible for the murder having occurred while he was suppose to be in charge. Instead, almost immediately after Valdes was killed, Crosby was promoted to being director over one-fourth of the state's prisons. And less than four years after Valdes was murdered, Crosby was appointed by Gov. Jeb Bush to be the head of the entire prison system. Crosby never paid any penalty for the murder happening under his watch, in fact, to all appearances he was rewarded. That may be about to change.

In 2001 Frank Valdes' father, Mario Valdes, filed a federal lawsuit against Crosby and other FSP employees alleging that they violated the Eighth and Fourteenth Amendment rights of his son by subjecting him to an excessive and unjustified use of force, which led to his death while he was incarcerated at FSP.

According to the allegations in the suit, while Crosby was warden of FSP, Frank Valdes was a death row prisoner housed on X-Wing at the prison, where prisoners with the most serious disciplinary problems were assigned. Valdes had been sent to death row at FSP after being convicted of killing a prison guard during a botched attempt to help a prisoner escape from a prison transport van. On July 17, 1999, Valdes died after suffering extensive beating wounds all over his body.

In an amended complaint filed in the lawsuit, it was alleged that prison guards beat Valdes to death, and that Crosby knew about the general propensity for violence against prisoners by guards at FSP, especially by certain prison guards, some of whom were involved in beating Valdes to death, but that Crosby was deliberately indifferent to the risk of abuse.

In the district court, Crosby moved for summary judgment, claiming that he was entitled to qualified immunity. The district court denied Crosby's motion and he appealed. The Eleventh Circuit Court of Appeals has now issued a decision affirming the lower court's denial of qualified immunity and held that more than adequate evidence exists for the case to go to trial where Crosby's deliberate indifference and liability becomes a question for a jury to decide. According to the evidence against Crosby, discussed in the appeal court's May 31, 2006, opinion, Crosby maybe in more serious trouble when the case goes to trial.

Qualified immunity gives protection to government officials sued in their individual capacities so long as their conduct violates no established constitutional rights of which a reasonable person would have known. However, if the conduct violates federal law that was clearly established at the time of the incident, then qualified immunity is not available to protect the official.

The appeal court noted that government officials can be held liable for subordinates' excessive use of force against prisoners in violation of the Eighth Amendment's prohibition against cruel and unusual punishment when the supervisor either personally participates in the constitutional violation, or when the official knows there is a history of abuse and does nothing to stop it, or when the official's custom or policy results in deliberate indifference to the abuse. The appeal court agreed with the district court that there was insufficient evidence that Crosby personally participated in or directed others to beat Valdes, but found there was more than sufficient evidence that Crosby knew or should have known that guards were abusing and beating prisoners at FSP and did little or nothing to stop it.

In its opinion, the appeal court first discussed the facts leading up to, during, and immediately after Frank Valdes' death and decided that, based on those facts (which are detailed in the opinion), "we have no difficulty ruling that Mario Valdes has sufficiently states a claim that guards at FSP committed a constitutional violation." The court then turned to the issue of whether Crosby could be held liable as a supervisor.

The appeal court noted that Crosby's immediate predecessor as warden at FSP, Ron McAndrew, had testified extensively against Crosby. McAndrew testified that when Crosby succeeded him as FSP warden he repeatedly tried to warn Crosby about certain guards at the prison who he believed were abusing prisoners and who needed to be kept out of areas where they could harm prisoners. McAndrews testified that Crosby refused to meet with him to discuss those problem officers, some of whom were later involved in beating Frank Valdes.

McAndrew also testified that instead of listening to his advice about some of abusive guards, after Crosby took over he promoted some of them to high positions of authority, transferred a deputy warden that McAndrew had specifically brought in to help quell prisoner abuse, and brought in other guards from other prisons who had documented histories of abusing prisoners, including one who "trained" other guards how to abuse prisoners and get away with it.

Further, McAndrew testified that it was the policy while he was warden that all use of force and cell extractions of prisoners by guards were required to be videotaped to help reduce excessive use of force. But McAndrew testified that when Crosby took over the prison he stopped the videotaping. The appeal court noted that from that it might be inferred that Crosby "sent a message to corrections officers that the administration at FSP was going to permit further abuse of inmates."

A prison chaplin, Andrew MacRae, who worked at FSP between 1994 and August 1999, testified that after Crosby became warden there was a marked difference in the culture at FSP, that Crosby had a more "hands off" approach, permitting the "good old boys" network of guards to mistreat prisoners. MacRae also testify that after Crosby *became* warden, there were instances where MacRae was prevented from seeing prisoners following uses of force.

Evidence was also provided that Crosby had a practice of allowing his secretary, who had no law enforcement background, to handle and respond to prisoners' complaints about use of force and guards' use of force incident reports. Crosby never read the complaints or reports. McAndrew testified that he

had warned Crosby about that secretary and that he had reasons to believe that same secretary was obstructing prisoner abuse investigations.

Included in the numerous complaints and injury reports sent to Crosby between Dec. 1998 and July 1999 (Valdes was killed July 17, 1999), but that were handled by his secretary, was a request from prisoner Seburt Connor on June 16, 1999, informing Crosby that Connor had been told by a guard that Frank Valdes was going to be killed. Connor also relayed that he had witnessed four guards handcuff and shackle Valdes, then kick him and hold a wet towel over his mouth and nose while holding him down. Numerous other complaints from prisoners alleging that guards had threatened to kill them or who had abused them were filed during that period.

The appeal court held that all that evidence taken together is sufficient to overcome Crosby's claim of qualify immunity and to allow a jury to decide whether Crosby had established customs and policies that resulted in deliberate indifference to constitutional violations and whether Crosby failed to take reasonable measures to correct the alleged violations. The appeal court pointed out that it was well established by law by 1999 that prison wardens could be held liable for failing to take reasonable steps to curb prisoner abuse.

The appeal court affirmed that district court's denial of qualified immunity to Crosby, which will allow the case to now go to trial.

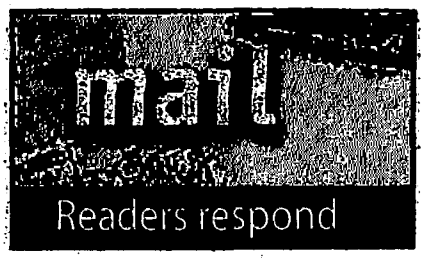
Valdes v. Crosby, Giebeig, et al., 19 Fla.L.Weekly Fed C612 (11th Cir. 5/31/06) ■

– Parole Project – Donations Needed

The FPLAO Parole Project continues to work to change the existing parole system and Parole Commission in Florida so that it actually works the way it should to give all parole-eligible prisoners a fair, unbiased, and objective opportunity to make parole. The last two issues of *FPLP* explained what is being done by the Project to force change to happen. The Project, however, is limited in what it can do by the amount of support it receives. Donations have been requested from parole-eligible prisoners to help fund the Project. As previously explained, if every parole-eligible prisoner, approximately 5,200 of them left, will donate just $5 a year to the Parole Project, there will be a substantial war chest for the Project to work from and to keep continuous pressure on the Parole Commission and legislators to abolish the current system in favor of one that works.

So far, a few hundred dollars in donations have been received, which certainly helps and is much appreciated, but more is needed. If you can't donate $5 at one time, donate what you can as you can. If you can donate more than $5, to help make up for those who have nothing, then please do so. Every penny donated to the Parole Project will go towards working to make parole more available to parole-eligible prisoners. Your donations are needed today. Send them to:

Florida Prisoners' Legal Aid Org., Inc.
Attn: Parole Project
P.O. Box 1511
Christmas, FL 32709-1511



Dear FPLP: I wanted to write and let you know I'm being released to a halfway house and will not be able to receive FPLP. I want to thank you for all you and those involved do for the prisoners locked in the DOC. I am committed to getting involved in every way I can on prison reform. Believe me when I say after 30 years I'm going to do something to change things, if I can. In any case, thank you and every one for all you do to try and help the ones with out champion or protector. David D. CCI

FPLP: I have recently had the privilege to read one of your newsletters. It was quite informative and has drawn my attention to a new view of DOC. JR SRCI

Dear FPLP: Greetings! I just want to commend you all for the newsletter as it was very instrumental in helping me overturn my conviction which I was sentenced to life for. I recently plead to a lesser included (2nd murder) and got a 20 year sentence. I'll now be home with my children in 7 yrs. Loren Rhoten and Post Conviction Corner is an asset to those of us fighting the Florida Judicial systems. I'll still subscribe to your mag/newsletter. It is a necessity for Florida chain gang life style, plus I want to be a supporter for the cause. RC LCI

Dear Staff of FPLP: I have been receiving the FPLP for 5 years now. Your publication has been a real blessing to me, the reason I am writing you is to thank you for all you have done, and are doing for us behind the fences. I know it had to be from your fighting the FDOC on the phone prices that made them bring them down to a reasonable price for our families to be able to accept our calls. It is so very important to keep in touch with others on the outside. I would like to humbly extend my gratitude and appreciation for a great job you all are doing to help us fight a corrupt system that cares nothing about any of us. WK ACI

Dear FPLP: I just finished reading the newest FPLP and I am very sick of heart on the Parole Commission receiving another budget. I feel the Parole Commission is fighting to keep "Job Security," nothing more, by keeping us old timers in with 25 to 35 year's in prison. I feel 90% or better should be given at least one chance, if we mess up lock the door forever. But this is a farce and inhuman to keep us locked up until we are too old to work or to be any good to anyone. How can the Senate and Governor not see the Parole Commission for what it is? I want to thank the FPLAO Parole Project team. Robert E

Dear FPLP: I would like to point out a very important point in your magazine. You should have an "old con" corner in your magazine, offering issues involving pre-1983 help, such as gain-time forfeitures due to technical parole violations, parole issues and some form of help (case numbers) of other prisoners from that "barbaric" era, who have had similar problems dealing with the courts on these issues. I can respect that 85% of the Florida prisoners are guideline sentences, but we were around and subscribing to the "birth" of the Florida Prison Legal Perspectives and deserve to read something in your magazine that might help us! Old Con BJ NRCI

Dear FPLP: Greetings I would like to acknowledge the help your publication has been to us through the years. FPLP has been instrumental in making us aware and keeping us informed of the actions taken by DOC and the courts. By your faithful and honest presentations of the facts and issues involved, we have come to respect rules and policies of institutions and the courts. Your articles have often been alarming, but true. Thank you for your dedication, courage, and vigilance. MB BCI

FPLP: I've been a part of FPLP for a very long time and wish to thank you for all the work and news that you have provided me with through out the years. I'm starting my 20th calendar year and the news of what's going on in the system is vital to me and you're the only one that provides it like it is...with out the sugar coating. So sincere thanks to all of you there for a job that's well done. JH ZCI

Dear FPLP: I just got my Legal Perspective yesterday in the mail and was outraged to see that the Florida Parole Commission did not get the ax. I have followed this since before last year, working with my Senator from this area as well as my House of Rep. I saw the initial bill 5017 where it did in fact abolish the Parole Board and then the amendment, but we thought that the amendment was an addition to the bill not to take away part or all of the bill. So here we sit another year. I am so sick of this I could spit nickels and we would all be rich, but I know I have to continue to fight for him as well as others. BSC Lehigh Acres

FPLP: Today a friend of mine received a necklace that she'll never have to worry about losing. Her throat was cut from ear to ear, by another inmate. If she lives..., each time she looks into the mirror, the necklace around her throat will remind her of just another part of her REHABILITATION that went wrong. Ironically..., my friend knew something bad was going to happen to her, the threats had been coming all week and her days were consumed with trying to get help. She had asked several officers to place her in Protective Custody just earlier in the morning. The Colonel, S. Snell, had told her to "shut up" and go back to her dormitory. There were 25 task members here, appointed by Governor Bush to investigate BCI's wrongdoings. I guess the White Shirts didn't want any drama, and God forbid, the Colonel and her cohorts certainly didn't need an inmate to announce that she was in fear of her life; after all."Custody, and Care, and Control is the DOC's motto. The incident happened under the pavilion, approximately 20 feet in front of the Colonel's office and the control room. Not only was my friend's throat slashed, but her attacker began to brutally kick her in her head and ribs. Where were all the white shirts? Some said trying to convince the Task Unit that Broward CI was a fine establishment. Others said the Colonel had all her officers shaking some poor soul down for colored pencils and extra shorts. Still others said she had her officers once again in the maintenance building looking for hidden coke-colas. Whatever the reason, the fact remaining that Broward's Security Staff obviously were not practicing Custody, Care, and Control under the pavilion today. Approximately 75 inmates were left unattended. As I write about my friend, my anger over Security's priorities threatens to consume me. Our Justice system within corrections has become jaded; our safety has taken a backseat to contraband. An anonymous request, or tip, regarding alleged contraband, whether it involves extra clothes, hobby craft items, etc... warrants a full scale search, involving the Colonel and her cobra team, but a sincere request for protection is denied. As I watched the helicopter air lift my friend to the hospital, I prayed for her to live, as I sit writing this tonight, I'm praying that our Almighty God, imparts wisdom to Governor Bush's task unit who are here investigating BCI so that the truth is clearly revealed. SJ BCI

To FPLP: This letter is in regards to the $5 donation that was requested in the article "FPLAO Parole Project Will Continue,Your Help Is Needed," so I am having a donation made in my name regardless if it ever helps me personally in my own mandatory sentence. I am unable to do more than this, but what I lack in finances , I can make up for in my brains to help you to get your message out to hundreds of ladies here. Thank you for keeping the good fight up for all of us. KN LCI

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.

—US SUPREME COURT— Okays Pennsylvania Prison Policy Banning Newspapers, Magazines and Photographs From Most Violent, Disruptive Prisoners

In a 6 to 2 decision, the U.S. Supreme Court upheld a policy enacted by Pennsylvania prison officials that bans the state's most dangerous and recalcitrant prisoners from having newspapers, magazines or photographs. The Court held that such a ban does not violate prisoners' First Amendment free speech rights.

Pennsylvania houses its 40 most violent and disruptive prisoners in a Long Term Segregation Unit (LTSU). Prisoners placed in the LTSU begin in Level 2, which has the most severe restrictions, but eventually they may graduate to Level 1, which offers a few more privileges. While on Level 2 prisoners cannot make phone calls, except in an emergency, can have only one visitor a month (an immediate family member), and are not allowed access to newspapers, magazines, or photographs.

In 2001, Ronald Banks, then a prisoner confined to LTSU Level 2, filed a federal lawsuit against Jeffrey Beard, the Secretary of the Pennsylvania Department of Corrections, claiming that the Level 2 policy of denying prisoners access to newspapers, magazines, and photographs bears no reasonable relation to any legitimate penological objective and consequently violates First Amendment free speech rights.

In the District Court, the PA Secretary filed an answer. The Court then certified as a class all similarly situated Level 2 prisoners, and assigned to case to a Magistrate for discovery.

Banks (who was represented by counsel throughout the case) deposed a deputy superintendent at the prison and both parties introduced various prison policy manuals and related documents into the record. The Secretary then filed a motion for summary judgment and a statement of material facts not in dispute, to which was attached the deputy superintendent's deposition.

Instead of filing an opposing response to the summary judgment motion, Banks filed a cross-motion for summary judgment. However, neither that cross-motion nor any other filing by Banks sought to place any significant facts in dispute. Instead, Banks claimed that the undisputed facts, including the deposition, entitled him to summary judgment.

Based on the record, the Magistrate recommended that the District Court grant the Secretary's summary judgment motion and deny Banks' cross-motion. The District Court followed the recommendation, and Banks appealed.

On appeal the Third Circuit Court of Appeals reversed the District Court's granting of summary judgment to the Secretary, holding that the prison regulation "cannot be supported as a matter of law by the record in this case." *Banks v. Beard*, 399 F.3d 134 (3rd Cir. 2005). The Secretary then sought review by the Supreme Court, which granted review and reversed the Third Circuit's decision and remanded for further proceedings with a fairly lengthy opinion.

The high Court relied on the standards set out in two prior cases, *Turner v. Safley*, 482 U.S. 78 (1978), and *Overton v. Bazzetta*, 539 U.S. 126 (2003), to examine the *Beard v. Banks* case. In *Turner*, the Court held that while imprisonment does not automatically deprive a prisoner of constitutional protections, the Constitution sometimes permits greater restriction of such rights in a prison than would be allowed elsewhere. In *Overton*, the Court pointed out, courts must give "substantial deference to the professional judgment of prison administrators." Under *Turner*, restrictive prison regulations are allowable, if they are "reasonably related to legitimate penological interests." Within that framework, the Court had little difficulty in finding that the Pennsylvania restrictions are constitutional.

In the District Court the case was decided for the Secretary on his motion for summary judgment, which went unopposed by Banks. The Secretary's motion was based primarily on the undisputed facts statement and the affidavit of the deputy superintendent, Dickson. The first justification given by the Secretary for the Policy—the need to motivate better behavior on the part of difficult prisoners—satisfies *Turner's* requirements, the high Court found. The statement and affidavit set forth a "valid, rational connection" between the Policy and "legitimate penological interests," according to the Court.

Dickson's affidavit noted that prison officials are limited in what they can and cannot deny to Level 2 prisoners, who have already been deprived of most privileges, and that officials believe that prohibiting the items at issue are legitimate incentives to encourage the prisoners to improve their behavior. The undisputed facts statement added that the Policy encourages progress and prevents backsliding (to Level 2 status) by Level 1 prisoners. The statements pointed to evidence that the regulations work. The deprivation of virtually the last privilege left to a prisoner which serves as an incentive to improve behavior has a logical connection, wrote the Court. And that, added to the deference courts must show to prison officials' professional judgment, provided sufficient support for finding that the Policy is allowable and constitutional.

Although summary judgment rules had given Banks an opportunity

to have opposed the undisputed facts statement and affidavit, he didn't do so. Instead, he let them stand unopposed and filed a cross-motion for summary judgment, arguing that the Policy fell of its own weight. However, neither the cases that he cited nor the statistics he noted, intended to show the Policy doesn't work, supported his argument, according to the Court. The Third Circuit erred by placing too high an evidentiary burden on the Secretary and gave too little deference to the prison officials' judgment, the Court held, but claimed that such deference does not make it impossible for prisoners challenging prison policies to ever succeed. Prisoners may, in some circumstances, be able to marshal substantial evidence, for example through depositions, that a policy is not reasonable, or that there is a genuine issue of material fact in dispute requiring a trial, noted the Court.

Justice Breyer delivered the opinion for the Court, in which Justices Roberts, Kennedy and Souter joined. Justice Thomas wrote a concurring opinion, in which Justice Scalia joined. And Justice Stevens gave a dissenting opinion, in which Justice Ginsburg joined. Justice Alito took no part in the decision as he had been involved at a lower level in the case before coming to the Supreme Court.

The Third Circuit's decision was reversed and the case remanded for further proceedings.

Beard v. Banks, ___ S.Ct. ___, 19 Fla.L.Weekly Fed. S402 (6/28/06). ■

—SUPREME COURT— Opens Door to New Death Penalty Challenges

On June 12, 2006, in two death penalty cases, the Supreme Court opened the door to new challenges to states' lethal injection methods and held that a prisoner offering DNA evidence that might prove his innocence should get a new hearing.

The latter case was the more divisive among the Court's justices. Decided 5-3 over a dissent, by Chief Justice Roberts it was the Court's first ruling involving DNA testing. The ruling focused narrowly on Tennessee prisoner Paul House's case. Under the ruling, House, who was convicted of the 1985 murder of a neighbor, will be permitted to go before a U.S. judge to assert that his trial was constitutionally flawed. Based on new DNA evidence and witness testimony House, who lower courts had barred because he had exhausted his regular appeals, will be allowed to argue that the new evidence casts suspicion on the victim's husband. If the jury had been aware of that evidence, the high Court noted, it's likely they would not have found House guilty beyond a reasonable doubt. Justices Roberts, Scalia and Thomas dissented to the majority ruling, which was penned by Justice Kennedy.

In the former case, involving Florida death row prisoner Clarence Hill, the Court unanimously voted to allow prisoners who have exhausted their regular appeals to invoke a civil rights law, 42 U.S.C. § 1983, to challenge the drugs and methods states use for lethal injections. That method of execution, used by almost all of the 38 states that allow capital punishment, has been a recent target in lawsuits alleging it is unconstitutional "cruel and unusual punishment."

Hill, who was convicted of the 1983 shooting death of a Pensacola police officer, asserts that the three-drug combination that Florida uses to execute could cause needless pain. Hill had filed a federal civil rights lawsuit to challenge the drugs and method. The 11th Circuit Court of Appeals had denied Hill's challenge, saying it was an improper challenge to the constitutionality of his sentence, which could not be brought in a civil rights action. The Supreme Court disagreed.

The high *Court* did not address the merits of Hill's claims against the drug combination, but said allowing his *claims to be heard* as a civil rights action was permissible. The Court reversed the appeal court's decision and remanded the case for further proceedings.

For more info on these cases see *FPLP*, Vol. 12, Iss. 1, pgs. 3-4, and Vol. 12, Iss. 2, pg. 8. ■

Institutional Transfers

by Glenn Smith

Many prisoners in Florida's prison system find themselves (apparently) arbitrarily transferred to the opposite end of the state from family and friends, making visits practically impossible.

While existing case law and Florida Department of Correction's (FDOC) rhetoric appear to claim that the FDOC may transfer a prisoner to any institution, for any reason, at any time, there appears to be support for a mandamus cause of action that would require the Secretary of the FDOC to place a prisoner in an institution closest to his place of permanent residence or county of commitment.

Without reference to any FDOC rule, classification officers routinely inform prisoners that they must be at least one year free of disciplinary action before they will be considered for a transfer (with additional various ranges of time at the current institution). Family medical hardship transfers being the only noted exception. However, those unwritten practices cannot override the Secretary's legal duty.

Exhaustion of the FDOC administrative grievance procedures, following a denial of a request for transfer closer to family and friends, is necessary before filing a petition for writ of mandamus in the circuit

court. The following suggested Memorandum of Law sets out the basis of the position that should be taken in the grievance process and in support of the mandamus position, if it is necessary to go that far. (The author of this article was transferred shortly after filing his grievance appeal to Tallahassee, using this position.)

Memorandum of Law

Application of the reasoning of the Court in *Florida Caucus of Black Legislators v. Crosby*, 877 So.2d 861 (Fla. 1st DCA 2004) to the facts of this case compels the conclusion that a mandamus cause of action lies for transfer of [Petitioner] to _____ Correctional Institution against the Secretary of Corrections.

In that case the Court, citing § 20.315(3), Florida Statues, emphasized that the [Secretary of Corrections]:

"[S]hall ensure that the programs and services of the department are administered in accordance with *state* and federal laws, rules, regulations, with established programs, *and consistent with legislative intent.*"

877 So.2d § 864 (emphasis added by court).

Florida Statutes show:

944.611 **Legislative Intent.** – The legislature finds and declares that:
(1) It is desirable that each inmate be confined in and released from an institution or facility as close to the inmate's permanent residence or county of commitment as possible...

See also, legislative intent set forth in § 944.8031, Florida Statutes.

In this case, _____ *Correctional Institution* is the FDOC institution closest to [Petitioner's] place of permanent residence [or county of commitment, as the case may be]. The combination of mandatory language and clearly stated legislative intent appears to establish a clear legal right to have Secretary _____ assure that [Petitioner] is confined at _____ Correctional Institution during his [or her] incarceration. Cf. *Florida Caucus of Black Legislators*, 877 So.2d § 863.

Generally, an "extraordinary writ of mandamus may not be used to establish the existence of an enforceable right, but rather to enforce a right already and certainly established at law." *Sancho v. Joanos*, 715 So.2d 382 (Fla. 1st DCA 1998). However, "[t]he fact that we may need to examine and interpret the statute in order to determine there is such a right [for the petitioner] does not make the right any more or less 'clear.'" *Schmidt v. Crusoe*, 878 So.2d 361, 363 n.2 (Fla. 2003).

There also appears to be an additional cause of action in regard to Rule 33-601.210(1)(a), Florida Administrative Code, which states:

(1)(a) An inmate *shall be assigned to a facility* that can provide appropriate security and supervision, that can meet the health needs of the inmate as identified by the department's health services staff, and to the extent possible can meet the inmate's need for programs and *is near the location of the inmate's family.* (emphasis added)

It is well established that "[a]n agency must comply with its own rules." *Kearse v. Dept. of Health and Rehabilitative Services*, 474 So.2d 819 (Fla. 1st DCA 1985); *Gadsden State Bank v. Lewis*, 348 So.2d 343 (Fla. 1st DCA 1977). See also, *Buffa v. Singletary*, 652 So.2d 885, 886 (Fla. 1st DCA 1995), receded from on other grounds, *Singletary v. Jones*, 681 So.2d 837 (Fla. 1st DCA 1996) (in re, FDOC rule gaintime awards provision); *Smith v. FDOC*, 30 Fla.L.Weekly D2096 (Fla. 1st DCA 9/2/05) ("the appellant is entitled to mandamus relief compelling that appellee to follow its own rules...").

For those prisoners who were committed in a county far away from their family, the above rule appears to be authority mandating that the FDOC transfer them to an institution close to family.

[Note: Glenn Smith is a Florida prisoner and activist who in addition to prevailing in the above-cited *Smith v. FDOC* case, also prevailed in the recent case finding that the FDOC never had statutory authority to charge or impose liens on prisoners for the cost of legal photocopies. *Smith v. FDOC*, 920 So.2d 638 (Fla. 1st DCA 2005), cert. den., *FDOC v. Smith* 923 So.2d 1162 (Fla. 2006). - ed] ■

Microchip Implants Rejected For Now

by Richard Geffken

On May 31, 2006, Wisconsin's Governor Jim Doyle signed a law which makes it a crime to require anyone be implanted with a microchip. As liberals cheered, many Republicans vowed the day will come when everyone sentenced for a crime or suspected of unwanted political activity will receive a VeriChip human microchip implant.

The VeriChip is a Radio Frequency Identification (RFID) device in a glass capsule which can be easily injected into the flesh of criminals and other subversives. The tags are read by invisible radio waves even through clothing to number, identify, and locate people. An ex-felon in a pawn shop might be arrested for being near guns. Subversives can be traced to meetings, making it possible to identify more political dissidents. Whore houses, dope dealers, and prolonged drinking at a bar can all be detected for immediate police action. Satellite tracking *can* reveal every person someone tagged spoke to for further questioning. These can then be warned the person is dangerous

and the risks involved in associating with them.

Corporations have fueled a War on Crime since the Reagan Administration. They not only receive contracts to construct new prisons and to staff them, they profit from new products like the infamous black box. The ALEC lobby has been instrumental in getting new laws legislated which create new crimes, and provide longer sentences for everything. The result has vastly increased the prison population for profit. Over 2.3 million Americans are now behind bars, 25% of the world's prison population.

Ways of increasing the number imprisoned are developed at think tanks. The world's most famous is Rand Corporations facility in Santa Monica, California. A spokesman for Rand, Robert D. Sprecht recently explained the joint goal of the corporate alliance with the Republican Party, "Under any conditions anywhere, whatever you are doing, there is some ordinance under which you can be booked."

VeriChip Corporation has not done as well as other ALEC corporations. They began by trying to sell RFID chips to the Pentagon to replace use of military dog tags. Locating wounded soldiers and POWs was part of its sales strategy. The military believed it might have an adverse affect on recruiting.

Using it to tag medical patients produced some profit, and credit card companies like the idea to ensure receiving payments when they are due. Requiring an implant as a condition for granting a loan was one of the factors involved in the Wisconsin law.

VeriChip has also suggested uses for controlling immigration. Guest workers can be registered, have their backgrounds checked, and the VeriChip "used for enforcement purposes at the employer level," says VeriChip CEO Scott Silverman. Limiting coffee breaks is one of the nicer uses. Workers will provide a full day's work for their pay. When an immigrant's time is up, their entire family can be rounded up.

Naturally, one the public accepts its use for these purposes; RFID devices can be introduced to any workplace.

The Wisconsin law sets back Republican plans, but it is believed only temporarily. In Florida, for example, the implants are being widely suggested for every sex offender and anyone with a history of gang related activity. "Liberals" are so unpopular in many places there is little they can do to stop the spread of RFID devices. ■

FDOC Proposes to Reduce Prisoner Canteen Purchases and Service Charges on Inmate Accounts

The Florida Department of Corrections is proposing to reduce the amount that prisoners can spend each week in the prison canteens from $100 to $65, in addition to lowering the inmate account processing fee from $1.00 each week to one percent of the total weekly canteen purchases (maximum $0.65) and eliminate the $0.50 charge for special withdrawals from the inmate account. US armed forces veterans will not be charged any fees under the proposal.

The FDOC's proposal came less than a month after Florida Prisoners' Legal Aid Organization Chairwoman Teresa Burns Posey and approximately 20 other family members met in Orlando with staff from the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) in June 2006 to discuss how prisoners' families are negatively impacted by FDOC policies. The burdens placed on families by FDOC raising the amount of money prisoners can spend in the canteens, so the canteens can increase prices by 10% every six months, on top of the inmate account processing fees that families have to send more money to prisoners to cover, were discussed at the Orlando meeting. FPLAO also presented evidence to the OPPAGA staff detailing the outrageous 60 to 76% markup that the FDOC places on Access Catalog orders by prisoners to purchase radios, shoes, underwear, etc., which markup profit the FDOC keeps as a "middleman" in the sales.

The FDOC's proposal to reduce the weekly spending limit and processing fees was made in two Notices of Proposed Rule Development indicating the intent to amend Rules 33-203.101 and 33-203.201, Florida Administrative Code. Those first rule development notices in the two-notice rulemaking process were published and posted at all correctional facilities on July 21, 2006. The second and final notice was published and posted on August 18, 2006. Barring any delays, the proposals should become effective about the middle of September.

Many other issues were discussed at the Orlando meeting with OPPAGA, including problems with family visitation. It is hoped more positive changes will develop as we all continue to work together on these issues.

In other news, the contract to operate the prison canteens is being rebid. The new contract, which will go into effect in October, will require a 20% reduction in prices *currently* being charged, and prices can only be raised once a year and must be comparable to street prices. ■

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

In Re: Standard Jury Instructions in Criminal Cases (Fla. 5/25/06)

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (the Committee) petitioned to amend the Florida Standard Jury Instructions in Criminal Cases.

The proposed change involved Florida Standard Jury Instructions 3.6(f), "Justifiable Use Of Deadly Force," and 3.6(g), "Justifiable Use Of Non-deadly Force." The changes that were proposed are as follows.

With regard to Standard Jury Instruction 3.6(f), "Justifiable Use of Deadly Force," the Committee recommended: (1) substituting the words "deadly force" for "force likely to cause death or great bodily harm"; in the various parts of the instruction; (2) adding an instruction defining "deadly force" for "force likely to cause death or great bodily harm"; (3) combining subparts 3 and 4 into a new subpart 3 in the portion of the instruction dealing with claims of self-defense predicated on section 782.02, Florida Statues (2005); (4) expanding the explanation of when the first part of the "aggressor" exception should be given;
(5) deleting those subparts of the instruction concerning the necessity to avoid the use of deadly force, the necessity to retreat, the defense of the home, and the defense of the home against co-occupant; (6) adding new subparts concerning the lack of duty to retreat and the presumption of fear when the defendant was in the dwelling, residence, occupied vehicle, or place where he had a right to be; (7) adding definitions of "dwelling," "residence," and "vehicle"; (8) amending the subpart addressing prior threats to make it mesh with the absence of a duty to retreat; (9) adding the current year of revision to the comment section; and (10) deleting the second sentence in the comment, which refers to the instruction for defense of the home against a co-occupant, which instruction was deleted.

With regard to Standard Jury Instruction 3.6(g), "Justifiable Use of Non-deadly Force," the Committee recommended: (1) substituting the words "non-deadly force" for "force not likely to cause death or great bodily harm" in the various parts of the instruction; (2) adding an instruction defining "non-deadly force" as "force not likely to cause death or great bodily harm"; (3) substituting the words "another person" for "other person" in the "In Defense of Person" instruction; (4) adding the words "to be" to the instruction for "In Defense of Person"; (5) adding new subparts on the lack of duty to retreat when the defendant is in a dwelling, residence, vehicle, or place where he has a right to be; (6) adding definitions of the words "dwelling," "residence," and "vehicle"; and (7) adding the current year of revision to the comment.

After consideration of the Committee's proposed changes, the Florida Supreme Court authorized the publication and use of the revised instructions without any changes from the Committee's recommended changes. Those changes were made effective the day the opinion was final, 5/25/06.

DISTRICT COURTS OF APPEAL

Santana v. State, 31 Fla.L.Weekly D1309 (Fla. 3d DCA 5/10/06)

Ronnie Steven Santana's case presented an issue where a trial court enhanced Santana's sentence for his count one offense by inferring a finding of the requisite to enhance from Santana's count two offense without a jury's finding of such requisite for count one's enhancement.

On appeal, the Third District Court of Appeal pointed out that the Florida Supreme Court has found it to be improper to infer a requisite finding for enhancement of one count from the conviction on a second count of the indictment. See: *State v. McKinnon*, 540 So.2d 111 (Fla. 1989).

Santana had been charged in count one of attempted first degree murder by discharging a firearm, and in count two of unlawfully shooting into an occupied vehicle. After trial by jury, the verdict form showed he was found guilty in count one of aggravated battery, as a lesser included offense, with a firearm. In count two, Santana was found guilty of the crime charged.

The jury had not found that the weapon was discharged in count one's verdict, only possession of a firearm. In section 775.087(2)(a)2., Florida Statutes (1999), it provides three levels of mandatory minimum sentence depending on the fact-based distinctions of "possession," "discharge," or "as a result of discharge, death or great bodily harm was inflicted." Those distinctions have a consequence of receiving

FOR CLEMENCY ASSISTANCE INFO.
WRITE TO:

NATIONAL CLEMENCY PROJECT
8624 CAMP COLUMBUS ROAD
HIXSON, TENNESSEE 37343

- NOTICE -

The mailing address for FPLAO, Inc., and *Florida Prison Legal Perspectives* (*FPLP*) has changed. The new address is as follows. Please send all mail for either FPLAO, Inc., or FPLP to this new address:

P.O. Box 1511
Christmas FL 32709-1511

either a ten, twenty, or 25 year to life mandatory minimum sentence.

The rule in Florida is that before a trial court can enhance a sentence or apply a mandatory minimum sentence, the jury must expressly determine the requisite statutory fact necessary for application of a mandatory minimum sentence. See: *State v. Overfelt*, 457 So.2d 1385 (Fla. 1984).

Because the jury in Santana's case did not make a finding that the weapon was "discharged" in count one's verdict, it was error for the trial court to infer the requisite from count two's offense to enhance the sentence to a twenty year mandatory minimum for count one.

As a result of the concluded opinion, conflict was certified with the Fourth District's opinion in *Amos v. State*, 833 So.2d 841 (Fla. 4th DCA 2002) (where it applied enhancement for "discharge" of a weapon was proper because reference to the information supported inference that count one's conviction rested solely on the findings of the use of a firearm in count two.)

Santana's sentence was reversed and the case remanded for re-sentencing on count one to a ten year mandatory minimum sentence.

[Note: Also see: *Wallace v. State*, 31 Fla.L.Weekly D1438 (Fla. 4th DCA 5/24/06), where on appeal it was shown that a jury is required to find actual possession to justify imposition of the...mandatory minimum sentence, citing from *Overfelt*, 457 So.2d 1385 (Fla. 1984).]

Jefferson v. State, 31 Fla.L.Weekly D1327 (Fla. 4th DCA 5/10/06)

Quincy Jefferson's case presented an issue where a trial court applied the firearm enhancement statue to Jefferson's sentence for shooting a deadly missile.

It was pointed out by the appellate court that although some cases hold to the contrary, it opined that the use of the firearm in Jefferson's case was the essential element of the crime. Consequently, it was error for the lower court to impose the firearm enhancement statute.

Section 775.087(1), Florida Statutes (2001), the firearm enhancement statue, provides for enhancement to a higher degree of felony except for "a felony in which the use of a weapon or firearm is an essential element."

Accordingly, Jefferson's case was reversed and remanded for resentencing.

State v. Grandstaff, 31 Fla.L.Weekly D1336 (Fla. 4th DCA 5/10/06)

In David Grandstaff's case the State appealed the lower court's judgment of granting Grandstaff's Rule 3.800(c) motion after expiration of the sixty-day period.

Grandstaff had filed a timely motion to mitigate his sentence. Hearing of the motion was delayed due to confusion within the lower court's administration. It was not known which judge was going to hear Grandstaff's case and consequently, by the time the motion was heard and ruled on, the sixty-day time limitation had already past.

The appellate court opined that the absence of a judge to act on the motion promptly was not the fault of Grandstaff. In fact, Grandstaff diligently sought to gain a hearing prior to the expiration of the time period. Where the lower court itself is at fault for failing to timely consider motions before it, strict adherence to procedural niceties leads to an inequitable result. To find that jurisdiction was ultimately lost simply because no judge was available does not comport with the equitable intent of the Florida Rules of Criminal Procedure. Such a finding would deal an injustice to those who properly comply with the terms of the Rules, but are thwarted in obtaining relief due to circumstances beyond their control. Thus, the concluded opinion of the appellate court was that the lower court acted within the essential requirements of the law in granting Grandstaff's motion.

It was also found that the issue presented was one of great public importance and would have a great effect on the proper administration of justice. Therefore, a question was certified to the Florida Supreme court: "where defendant timely files a motion for reduction or modification of sentence pursuant to Florida Rule of Criminal Procedure 3.800(c), but, through no lack of diligence in obtaining a hearing date or no fault of his or her own, the hearing does not take place until after the expiration of the sixty-day period as provided in the Rule, is the Court divested of jurisdiction to consider and rule upon the timely filed motion?"

The lower court's granting Grandstaff's motion was affirmed.

Trout v. State, 31 Fla.L.Weekly D1339 (Fla. 4th DCA 5/10/06)

The issue presented to the appellate court in Louis Blaine Trout's case prompted an opinion that gives one a clearer understanding of when a person is entitled to jail credit for time served in another county jail on pending charges.

A defendant has been found to be entitled to jail credit for time spent in a county jail when he has been arrested pursuant to a warrant from another county. See: *Gathers v. State*, 838 So.2d 504 (Fla. 2003); *Daniels v. State*, 491 So.2d 543 (Fla. 1986); and *Norman v. State*, 900 So.2d 702 (Fla. 2d DCA 2005). The *Gethers'* court drew the distinction between execution of an arrest warrant and the issuance of a detainer by another county, and further held that *absent the execution of an arrest warrant*, a defendant who is in jail in a specific county pursuant to an arrest on other charges need not be given credit for time served in that county on charges from another county when only a

detainer has been lodged against the defendant.

Section 901.04, Florida Statutes, provides for the direction and execution of a warrant, in that "a warrant shall be directed to all sheriffs of the state. A warrant shall be executed only by the sheriff of the county in which the arrest is made...An arrest may be made on any day and at any time of the day or night."

Section 901.16, Florida Statutes, provides for the method of making an arrest with a warrant in that "A peace officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued...The officer need not have the warrant in his or her possession at the time of the arrest but on request of the person arrested shall show it to the person as soon as practicable."

Both statutory sections show that a warrant may be executed merely by a peace officer informing the person that a warrant had been issued. This was the case with Trout's arrest. He was informed of a warrant for his arrest on a violation of probation. Therefore, Trout was entitled to jail credit from the time he served in the county where he was arrested for the violation of probation from another county.

Because Trout's lower court refused to grant the credit due to reasons contrary to the appellate court's opinion, Trout's case was reversed with directions to the lower court to credit Trout with the jail time he spent in the other county.

Green v. Florida Parole Commission, 31 Fla.L.Weekly D1461 (Fla. 1st DCA 5/25/06)

Jammie Dwight Green had filed a petition for writ of mandamus in the lower court alleging that the Florida Parole Commission failed to consider his entire official inmate file in making its decision to suspend his presumptive parole release date.

Apparently, when the commission responded to the lower court's order to show cause, it failed to include the complete inmate file relevant to Green's allegation. However, the lower court denied Green's petition anyway. Consequently, Green filed a petition for writ of certiorari in the First District Court of Appeals.

Green argued in the appellate court that it was error for the trial court to deny him relief when it failed to review the portions of his file that were relevant and material as to the Commission's cited reasons and the issues presented in the petition for writ of mandamus, pursuant to *Williams v. Fla. Parole Commission*, 625 So.2d 926 (Fla. 1st DCA 1993)

The appellate court found that the Commission had not provided the entire inmate file, which was relevant also to Green's initial argument in the lower court. Therefore, the lower court's order of denial was found to be error and the order was quashed. Green's petition for writ of certiorari was granted and the case was remanded with directions for the Commission to supplement its response to the writ of mandamus in the lower court with *all* relevant and material documents from Green's *complete* official inmate file. Further, the lower court was instructed to reconsider Green's request for mandamus relief once the Commission complied with its directed order.

[1] *Vega v. Kilhefner*, 31 Fla.L.Weekly D1636 (Fla. 1st DCA 6/14/06)

Prisoner Juan Vega appealed a circuit court order dismissing his petition for writ of mandamus based on his allegedly failing to pay the filing fee or submit indigency information as required by a case management order. The appeal court noted that the record reflected that Vega did attempt to comply with the case management order before dismissal, as conceded to by the appellee, but that the lower court may have overlooked that attempt. Accordingly the appeal court reversed the order dismissing Vega's petition and remanded for further proceedings with instructions to allow Vega to correct any deficiencies in his filings.

Further, the appeal court addressed another issue raised by Vega in his appeal: the fact that the trial court found him indigent for purposes of the appeal, but then directed that a [§ 57.085(2), F.S.] lien be placed on his inmate account to recover the appeal's filing fees and costs. Because this issue involved indigency for *appellate purposes*, the appeal court elected to treat this portion of Vega's appeal brief as a "motion for review" pursuant to Rule 9.430, Fla.R.App.P. And because Vega's underlying action must have been a collateral criminal proceeding, to which the lien provisions of § 57.085, F.S., do not apply, the appeal court quashed the imposed lien on the authority of *Wagner v. McDonough*, 31 Fla.L.Weekly D1223 (Fla. 1st DCA 5/2/06).

[Editor's Note: Although Florida prisoners are almost always required to file any legal challenges to FDOC or Parole commission actions in the Second Judicial Circuit Court in Tallahassee, most of the judges in that Court do everything they can to discourage such filings. Those judges' latest deal seems to be ignoring the Florida Supreme Courts' decision in *Schmidt v. Crusoe*, 878 So.2d 361 (Fla. 2003), which held that the indigency provisions of § 57.085, F. S. (placing liens on inmate accounts, requiring six-month account statements to be filed, etc.), do not apply to any type collateral criminal proceeding. Such proceedings include mandamus petitions challenging prison disciplinary action, gaintime issues, parole issues, and any other issue that affects the *duration of* a prison sentence. In *Schmidt* the high Court noted that § 57.081 *not* § 57.085

indigency provisions apply in collateral criminal writ petition cases. However, at the time of that decision, § 57.081 provided for *waiver* of fees and cost. Last year § 57.081 was amended to delete "waiver" and substitute "deferral" and § 57.082 was created to provide a procedure for monthly payments, based on ability to pay, of court costs and fees for those persons found to be indigent under § 57.081.

Since then many judges of the Second Judicial Circuit Court, and even the Clerk of that Court, apparently feeling that it is not practicable to expect that prisoners will voluntarily pay monthly payments under §§ 57.081 and 57.082, have taken to forcing prisoners who file collateral criminal proceeding petitions to comply with a hybrid mixture of §§ 57.081, 57.082 *and* 57.085, F.S. Specifically, they are threatening prisoners with dismissal of their petitions if they do not file § 57.085 six-month account statements, and then when prisoners do that the judges are directing the FDOC to place § 57.085 liens on their inmate accounts, instead of setting up a payment plan under § 57.082.

In that way prisoners, like Juan Vega, above, are sidetracked from the merits of their petitions to having to challenge the improperly imposed indigency requirements, causing delay, frustration, and waste of taxpayers' money and court resources. See, *Cason v. Crosby*, 892 So.2d 536 (Fla. 1st DCA 2005); *Thomas v. State*, 904 So.2d 502 (Fla. 4th DCA 2005); *Muhammad v. Crosby*, 30 Fla.L.Weekly D2552 (Fla. 1st DCA 2005). See also, *Cox v. Crosby*, 31 Fla.L.Weekly D 310 (Fla. 1st DCA 1/26/06), rev. granted sub nom. *McDonough v. Cox*, 924 So.2d 809 (Fla. 2006) (unpublished table opinion); and following cases, herein.]

Babji v. Department of Corrections, 31 Fla.L.Weekly D1699 (Fla. 1st DCA 6/22/06)

Prison Johathan Babji (mistakenly) filed a motion pursuant to Rule 9.430, Fla.R.App.P., seeking review of the Second Jud. Cir. Court's order denying him relief from an order that found him to be indigent but placed a lien on his inmate account to recover costs and fees for his filing a petition for writ of mandamus in the circuit court (presumably a collateral criminal proceeding, see prior case and note thereto, herein).

The appeal court noted that Rule 9.430 only authorizes review of an order of a lower court concerning a request to proceed as indigent in *appellate proceedings*. Quixotically, the appeal court therefore treated Babji's motion for review as a certiorari petition, but then said that remedy is inappropriate since Babji can raise the indigency issue once a final order is issued in his mandamus case (which will leave the improper lien on his account just that much longer).

[**Editor's Note**: No doubt before having the lien placed on Babji's account the clerk or court made him file a six-month account statement. If he had refused to file such statement and immediately filed a Petition for Writ of Prohibition to stop the clerk or court from requiring him to comply with § 57.085 provisions, which do not apply to collateral criminal proceedings, and which the clerk or court do not have jurisdiction to require, then he could have stopped the imposition of the lien, before it was imposed.]

Flowers v. McDonough, 31 Fla.L.Weekly D1808 (Fla. 1st DCA 7/3/06)

Prisoner Gary Flowers petitioned the appeal court to find that the Second Jud. Cir. Court departed from the essential requirements of law in denying his petition for writ of mandamus and in having a lien placed on his inmate account for costs and fees of filing the mandamus petition.

The appeal court held that Flowers' argument challenging the order denying the mandamus petition was without merit, but found that because the petition was a "collateral criminal proceeding" pursuant to § 57.085(10), Fla. Stat., that the lower court improperly imposed the lien (citing to *Cox* and *Schmidt*, *supra*). Accordingly, the appeal court quashed the lien order and directed the trial court to direct the reimbursement of any money that had been taken from Flowers' inmate account "to satisfy the improper lien orders."

McCaskill v. McDonough, 31 Fla.L.Weekly D1811 (Fla. 1st DCA 7/3/06)

In this case the appeal court denied prisoner Obidiah McCaskill's petition for writ of certiorari, but found that because the underlying petition for writ of mandamus was a "collateral criminal proceeding" the appeal court remanded with directions that the trial court remove the [improperly imposed] lien from McCaskill's inmate account or direct the reimbursement of any funds that had been taken to satisfy the lien (Citing *Cox*, *supra*). ■

A Toast... To Our Health

by Mark Osterback

For the past ten years, prisoners in Florida haven't had any means of challenging environmental health conditions in their living areas. During that time, health conditions, at least in the Dept. of Corrections (DOC), were governed by American Correctional Association standards, which are unenforceable in court. As such, we had been at the mercy of our keepers in regard to said conditions. That was the case until July 2006. According to a letter from William Harrold at the Florida Legislature's Joint Administrative Procedures Committee (JAPC), who informed this author that based on the recent voiding of Chapter 10D-7's repeal "the Department of Health [DOH] filed the necessary information with the Division of Library and Information Services. Chapter 10D-7, F.A.C., will be published in the supplement to the code, which will be available in August." That notice was the culmination of considerable effort expended over the past 10 years, authoritatively settled by Chief Judge Kahn's scathing rebuke of the Dept. of Health's second appeal. *See*, *François v. Osterback*, 928 So.2d 396 (Fla. 1st DCA 2006).

Now that part of the struggle has concluded, the questions arise: But what is the significance? What to do now? Here are the answers.

Chapter 10D-7, F.A.C., codifies in rules the intent of § 386.006, Florida Statutes, and regulates, among other things, environmental health conditions in prisoner housing areas; e.g., the number of sanitary fixtures-to-number-of-prisoners in a dormitory, the amount of spaces required to be between bunks, the washing and sanitation of clothing and bedding, and the amount of required airflow.

Many of us who had been imprisoned prior to the [illegal and invalid] repeal in 1996 will recognize that 10D-7's provisions weren't being followed in many cases by the DOC then, so why would it be any different now? Two reasons: First, back then, the rules' existence was largely unknown but to a select few prisoners and, of those, fewer still acted on their knowledge. With the publication of this article, and the others preceding it in *FPLP*, an entire new generation of prisoners has been educated about 10D-7. Second, once made aware, its import becomes self-evident, and hopefully more prisoners will (or should) seek enforcement of its provisions to protect their health where the DOC does not do so. The new DOC Secretary, James McDonough, seems committed to righting many of the numerous wrongs which permeate the entire Department, and making it respected. This means following the law.

Chapter 10D-7, F.A.C., had been repealed back in 1996 at the request of the DOC, which deceptively told the Dept. of Health that chapter was "duplicative" of DOC rules (that did not exist) on health issues. In the past the DOC has always tried to avoid having to follow inconvenient laws or resist for as long as possible, all the while consciously delaying justice as long as possible when challenged in the courts. Lately, however, there have been major shakeups in Tallahassee, one being the departure of long-time General Counsel (DOC) Lou Vargus. Already, it seems the DOC's attitude towards litigation is shifting. Since the new Secretary believes in "Honesty in all things," we should at least make an attempt to hold him and the DOC to it. Especially where our health is concerned.

Throughout the litigation to have 10D-7 revived, the DOH has also been less than honest and continues to obfuscate and delay implementation of 10D-7. Under the Administrative Procedures Act (APA), not only is the DOH required to publish the circuit court's *order voiding* the repeal in the Florida Administrative Weekly (*See*, § 120.56(3)(b), Fla. Stat.), but it is also required to give notice to the particular class of persons affected by 10D-7 (*See*, § 120.54(3)(c)3.) when charges are made thereto. Neither of those statutory duties are being performed. Recently a Motion for Supplemental Relief was filed (pursuant to § 86.061, Fla. Stat.) in the circuit court as to the former statute, and a Petition to Initiate Rulemaking (pursuant to § 120.54(7), Fla. Stat.) was filed with the DOH as to that latter statute.

Circuit Judge Rassmussen has yet to enter an order on the Motion for Supplemental Relief, but DOH has already denied the rulemaking petition on perhaps the most specious (but characteristic) reasoning imaginable.

The petition sought adoption of a rule similar in nature to Rule 33-102.201(7) (d), F.A.C., which prescribes the manner in which rulemaking notices of the DOC are to be posted for prisoner viewing in DOC facilities. Eric Grimm, the DOH's Bureau Chief of the Bureau of Community Environmental Health, denied the petition claiming that under the APA, the DOH was unable to adopt such a "rule of Procedure," that only the Administration Commission could. That position is patently false and blatant misinterpretation of § 120.54(5), Fla. Stat. Mr. Grimm's denial order has been brought to the attention of the JAPC, which, in addition to having a duty under § 120.545(1) (e) to review all state agencies' proposed rules or rule changes to ensure that affected persons receive adequate rulemaking notice, but that also has authority to review the manner in which the petition was denied by Mr. Grimm. What this will ultimately yield is uncertain, as the JAPC has traditionally sided with agencies against individuals, and as a prisoner action, even less is expected.

Another matter which must be addressed if 10D-7's provisions are ever to be invoked for our protection, is to actually be able to view a copy of them. As it stands right now none of the DOH's rules nor 10D-7 is available in

DOC law libraries. And since the DOH refuses to adopt a rule to give us notice of any future amendments to 10D-7, we will remain ignorant of such. However, there is another solution.

Any prisoner wishing to obtain a copy of 10D-7, F.A.C., should write to the man responsible for the subject matter of that section of rules and whose office would be responsible for enforcement, Eric Grimm. Send requests for copies of 10D-7, F.A.C., and any rule it might be renumbered as, and explain your inability to obtain access in the DOC law libraries, to:

Eric Grimm, Chief
Bureau of Community Envir. Health
4052 Bald Cypress Way, BIN #A0
Tallahassee, FL 32399- 1703

While Mr. Grimm has refused to adopt a rule whereby prisoners would be given notice of any future changes to 10D-7, the APA also provides a solution to that. The APA provides that any person who desires to receive notice of *any* state agency's rulemaking activities only have to write to the agency to get on a mailing list to receive, by mail, all rulemaking notices of the agency. *See*, § 120.54(3) (a) 3., Fla. Stat., and Rule 28-103.001, F.A.C. You can get on the DOH's rulemaking notice mailing list by writing to the Secretary of the DOH, M. Rony Francois, and requesting to be placed on the list.

If enough prisoners make the above requests, they will substantially burden the DOH and probably cause it to adopt a rule to have notice of its rulemaking activities related to 10D-7 posted in all the institutions. That would be in all prisoners' best interests.

One benefit of a rule requiring posting, is that 10D-7 *could not* again be quietly and nefariously repealed as in 1996. Notice by posting would also give prisoners an opportunity to provide input into any efforts of the DOH to change 10D-7 in the future. It is hoped that, should this author's efforts to have a rule adopted to provide such notice, be unsuccessful, that the number of requests to be included on the DOH's rulemaking notice mailing list will tip the scales of reason in our favor.

Consider this, if only 1 percent of the prison population (which is approaching 90,000)request to be placed on the DOH mailing list, that's 9,000 notices. Just paper, envelopes and postage to mail all those notices would cost thousands of dollars. Not that I would ever advocate wastefulness simply for the sake of depriving DOH's resources, but the expenditure of such should cause pragmatism to trump the DOH's pigheadedness and reason may prevail under such conditions.

Once informed of the rule (and any attempts to change it) prisoners should begin to seek enforcement of its provisions by the DOH.

Complaints concerning DOC violations of 10D-7 should be made first to the director of the respective County Health Unit in which the facility is located. Any move by DOH staff to delegate inspection or enforcement duties to DOC officials, or refusal to inspect or enforce, should be protested, in writing, and challenged as well. Again, Mr. Grimm, at the DOH Central Office, would be the person to write concerning such local shenanigans to circumvent 10D-7, and the DOH's responsibilities thereto.

Should such an informal complaint (which can be in simple letter format, keep a copy) not yield satisfactory results, then mandamus relief should be sought in the local circuit court in which the prison is located (*not* in Leon County – by rule, the DOH could request transfer of venue to where its central office is located in Leon Co., but should not be encouraged to do so since enforcement is sought locally, not in Leon Co.).

Mandamus can be sought immediately, after your informal complaint is not adequately responded to or followed up on, as DOH does not have, to this author's knowledge, any formal grievance procedure available to prisoners to redress violations of 10D-7. A petitioner would seek DOH performance of its duties under the rule and relief would be that DOC (or a private prison company or detention center) be coerced by DOH to comply with the rules' provisions.

A more difficult question is whether the DOC has a ministerial duty to comply with 10D-7 provisions. Perhaps the most prudent course of action would be a joint action against the DOH and DOC simultaneously, after DOC grievance procedures *and* the informal complaint to DOH have been exhausted. Either DOH has a duty to coerce the DOC to comply with 10D-7; or the DOC (and private prisons) has a duty to comply of its own accord.

So, what are we to do? Will this be another opportunity to improve our safety and conditions squandered? If so, then I would remind you that 10D-7's provisions act as a check against overcrowded dormitories, inadequate ventilation, infectious diseases spreading unchecked, etc. While there may be no way to guard against most pathogens taking hold within our ranks, 10D-7's provisions exist (again) to prevent and/or minimize the spread of same. That is why they are so very important and warrant all prisoners' interest and efforts to ensure they are enforced. ■

Health Rules Are Again in Effect

Shortly after Mark Osterback wrote the above article the Department of Health did have (former) Chapter 10D-7 reinserted into the Florida Administrative Code (F.A.C.) renumbered, however, as Chapter 64E-26, F.A.C. Since the FDOC does not have that chapter of rules in the institutional law libraries, and because of the rules' importance, *FPLP* staff did obtain a copy of the revived, renumbered rules which are printed in the following pages of this issue in their entirety. The following rules, as of mid-August 2006, are, again, active and in effect. It will largely be up to prisoners to ensure that they are followed and enforced. – Editor, Bob Posey ■

FLORIDA DEPARTMENT OF HEALTH

CHAPTER 64E-26 STATE AND LOCAL DETENTION FACILITIES

Editorial Note: Chapter 10D-7 was reinstated by Decision of the First District Court of Appeals in François v. Osterback.

64E-26.001 General.
Sanitary practices relating to construction, operation and maintenance of State and Local Detention Facilities.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.01.

64E-26.002 Definitions.
(1) Detention Facilities: A municipal, county or state facility used for the incarceration of prisoners or inmates charged with or convicted of either a felony, misdemeanor, or a municipal offense.
(2) Prisoner or Inmate: A person who is lawfully incarcerated in a detention facility.
(3) Cell: Housing space designed to accommodate one (1) or more inmates.
(4) Dormitory: Housing area designed to accommodate more than four (4) prisoners with common bathroom facilities.
(5) Department: The Department of Health and its representative county health departments.
(6) Secretary: The Secretary of the Department of Health and its representative county health departments.

Specific Authority 3381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.02.

64E-26.003 Water Supply.
Water supplies shall be adequate to serve the demands of the detention facility and should be from an approved existing public supply where possible. When an on-site water supply is developed, the system shall be constructed, operated, and maintained in accordance with requirements of Chapters 62-550, 62-555, and 62-560, F.A.C., to insure that the water supply is of safe bacteriological and chemical quality. Routine water samples shall be submitted to determine that the quality of the water does not deteriorate.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.03.

64E-26.004 Food Service.
Food supplies must be obtained from approved sources and be prepared and served in approved facilities in a safe and sanitary manner as prescribed by Chapter 64E-11, F.A.C. If prepared food is catered from outside sources, these must comply with Chapter 64E-11, F.A.C.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.04.

64E-26.005 Sanitary System, Facilities and Fixtures.
(1) All sewage and liquid waste shall be disposed of into an approved public sewage system, if available. If the facility has 2,000 gallons or less flow per day, and public sewage is not available, the disposal system shall meet requirements stated in Chapter 64E-6, F.A.C. If greater than 2,000 gallons flow per day, it shall meet requirements of Chapters 62-601 and 62-600, F.A.C.
(2) All plumbing shall comply with requirements stated in Florida Building Code, 2004, Plumbing and the Florida Building Code, Plumbing Supplement.
(3) Drinking water shall be accessible to all inmates. When drinking fountains are available, the jet of the fountain shall issue from a nozzle of non-oxidizing impervious material set at an angle from the vertical. The nozzle and every other opening in the water pipe or conductor leading to the nozzle shall be above the edge of the bowl so that such nozzle or opening will not be flooded in case a drain from the bowl of the fountain becomes clogged. The end of the nozzle shall be protected by non-oxidizing guards to prevent

persons using the fountain from coming in contact with the nozzle. Vertical or bubbler drinking fountains shall be replaced with approved type water fountains or be disconnected. Inmates in areas where no approved drinking fountains are available shall be provided with single service cups which shall be stored and dispensed in a manner to prevent contamination. Common drinking cups are prohibited.

(4) Plumbing fixtures such as toilets and lavatories shall be constructed of smooth, non-absorbent, easily cleanable material and be kept in good repair. Penal or security type fixtures may be used if construction meets the above requirements. If conventional toilets are installed, they shall be equipped with open front seats.

(5) Mop sinks or curbed areas with floor drains equipped with hot and cold running water shall be available in convenient locations throughout the facility for the proper disposal of cleaning water and to facilitate cleaning.

(6) Showers shall have tempered running water under pressure and shall be available for inmates to take showers at least twice weekly (daily access to showers preferred). The hot water supply to the shower shall not exceed 120° F. to prevent scalding.

(7) In secure housing areas there shall be at least one (1) lavatory and one (1) toilet in each cell. Dormitories and multiple occupancy cells shall have at least one (1) toilet and one (1) lavatory for each eight (8) inmates or fraction thereof. One (1) shower head with tempered water shall be provided for each sixteen (16) inmates or fraction thereof.

(8) All floor drains shall be kept clean and equipped with tamper proof drain covers at all times. If self-priming floor drains are utilized, proper backflow devices shall be installed to prevent siphonage. All floor drain traps shall be kept wet to prevent sewer gas from entering the building.

(9) Plumbing fixtures shall be kept clean and sanitary at all times and shall be properly maintained.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.05.

64E-26.006 Garbage and Rubbish.

(1) All garbage, trash and rubbish from inmate residential areas shall be collected daily and taken to storage facilities. Garbage shall be removed from storage facilities at least twice per week. Wet garbage shall be collected and stored in impervious, leak proof, fly tight containers pending disposal. All containers, storage areas and surrounding premises shall be kept clean and free of vermin.

(2) If public or contract garbage collection service is available, the detention facility shall subscribe to these services unless the volume makes on-site disposal feasible. If garbage and trash are disposed of on premises, the method of disposal shall not create sanitary nuisance conditions and shall comply with Chapter 62-701, F.A.C.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.06.

64E-26.007 Housing.

(1) Floors, walls, ceilings, windows, doors and all appurtenances of the structure shall be of sound construction, properly maintained, easily cleanable and shall be kept clean. Walls, ceilings, and area partitions shall be of light color.

(2) All areas of the detention facility other than closets or cabinets shall be well lighted. Cell areas, dormitories, toilets and dayrooms shall have light fixtures capable of provding at least twenty (20) foot candles of illumination to permit observation, cleaning, maintenance and reading. Light fixtures shall be kept clean and maintained.

(3) Sufficient space shall be provided in all living and sleeping quarters to satisfy sanitary needs of all individuals incarcerated. Every bed, cot or bunk shall have a clear space of at least twelve inches (12") from the floor. There shall be a clear ceiling height of not less than thirty-six inches (36") above any mattress and there shall be a clear space of not less than twenty-seven inches (27") between the top of the lower mattress and the bottom of the upper bunk of a double deck facility. Single beds, cots or bunks shall be spaced not less than thirty inches (30") laterally or end to end and double-deck facilities shall be spaced not less than thirty-six inches (36") laterally or end to end. Sleeping arrangements shall insure that a minimum distance of six feet (6') is provided between inmate heads.

(4) All housing facilities shall be kep free of offensive odors with adequate ventilation.

(a) If natural ventilation is utilized, the opened window area for ventilation purposes shall be equal to one-tenth (1/10) of the floor space in the inmate residential area.

(b) When mechanical ventilation or cooling systems are employed, the system shall be kept clean and properly maintained. Intake air ducts shall be designed and installed so that dust or filters can be readily removed. In inmate residence areas and segregation cells with solid doors, mechanical ventilation systems shall provide a minimum of ten (10) cubic feet of fresh or purified recycled air per minute for each inmate occupying the area.

(c) All toilet rooms shall be provided with direct openings to the outside or provided with mechanical ventilation to the outside.

(d) Adequate heating facilities shall be provided to maintain a minimum temperature of 60° F. at a point twenty inches (20") above the floor in inmate sleeping areas.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.07.

64E-26.008 Laundry and Dry Cleaning.
Where laundry facilities are provided, they shall be adequate to insure an ample quantity of clean clothing, bed linens and towels. Laundry facilities shall be of sound construction and shall be kept clean and in good repair. Laundry rooms shall be well lighted and properly ventilated. Clothes dryers and dry cleaning machines shall be vented to the exterior. Exposure to dry cleaning solvents shall not exceed threshold limit values set by the American Conference of Governmental Hygienists. If laundry facilities are not available, sheets and blankets shall be sent to commercial laundries.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.08.

64E-26.009 Bedding, Clothing and Personal Items.
Beds and bedding shall be kept in good repair and cleaned and sanitized regularly. Used mattress and pillow covers shall be laundered or washed and sanitized before issued. Sheets and personal clothing shall be washed at least weekly and blankets washed or dry cleaned at least quarterly. Sheets and blankets shall be stored in a clean, dry place between laundering and issue. Inmates to be held longer than twenty-four (24) hours should be issued clothing and personal comfort items, such as soap, towels, toothbrush and toothpaste. Razors and blades may be issued on a controlled basis.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.09.

64E-26.010 Housekeeping.
Inmate residential areas shall be kept clean and sanitary at all times. Floors, walls, ceilings and bars shall be kept clean. Urinals, showers, toilets and lavatories shall be cleaned daily. Mops, brooms and other cleaning equipment shall be stored in well ventilated areas. Mop sinks and other janitorial facilities shall be kept clean. Inmates shall not store perishable foods in their lockers or living areas.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.10.

64E-26.011 Insect and Rodent Control.
Detention facilities shall be kept free of all insects and rodents. All outside openings shall be effectively sealed or screened to prevent entry of insects or rodents. All pesticides used to control insects or rodents shall be applied in accordance with instructions and cautions on the registered product label. Persons applying restricted use pesticides shall be certified by the Department of Agriculture and Consumer Services. Facilities not having certified pest control operators shall utilize commercial licensed pest control companies.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.012.

64E-26.012 Outdoor Areas.
If a facility as an outdoor exercise area, it shall be kept free of litter and trash and be well drained. If toilet and lavatory facilities are provided, they shall be kept clean and maintained.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.012.

64E-26.013 Industries.
Industrial areas shall be kept clean. Noise levels shall not exceed an average of 90dBA on a time weighted average for an eight (8) hour day as measured on the A scale of a sound level meter set at slow response, unless proper ear protection is provided. Thirty (30) foot candles of illumination shall be provided at task levels. Adequate ventilation shall be provided to prevent exposure to dust and toxic gases or fumes.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.013.

64E-26.014 Plan Review.
Prior to any detention facility being built or extensively remodeled, the department shall review plans and make comments on aspects affecting sanitary practices or conditions.

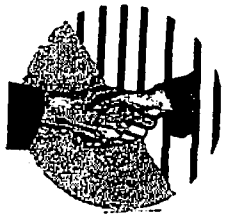
Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.014.

64E-26.015 Inspection of State and Local Detention Facilities.
The health authority shall inspect all state and local detention facilities to determine sanitary practices and conditions as often as necessary for enforcement of the provisions of this chapter.

Specific Authority 381.006 FS. Law Implemented 381.006(6) FS. History–New 11-18-76, Formerly 10D-7.015. ■

Florida Prisoners' Legal Aid Organization Inc.

BECOME A MEMBER



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
- ☐ $60 Gov't Agencies/Libraries/Orgs./etc.

3. Your Name and Address (PLEASE PRINT)

_____ DC#_____
Name

_____
Agency/Library/Institution /Org/

_____
Address

_____
City State Zip

_____
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*.

SUBMISSION OF MATERIAL TO *FPLP*

Because of the large volume of mail being received, financial considerations, and the inability to provide individual legal assistance, members should not send copies of legal documents of pending or potential cases to *FPLP* without having first contacted the staff and receiving directions to send same. Neither *FPLP*, nor its staff, are responsible for any unsolicited material sent.

Members are requested to continue sending news information, newspaper clippings (please include name of paper and date), memorandums, photocopies of final decisions in unpublished cases, and potential articles for publication. Please send only copies of such material that do not have to be returned. *FPLP* depends on YOU, its readers and members to keep informed. Thank you for your cooperation and participation in helping to get the news out. Your efforts are greatly appreciated.

PRISON LEGAL NEWS

Prison Legal News is a 48 page monthly magazine which has been published since 1990. Each issue is packed with summaries and analysis of recent court decisions from around the country dealing with prisoner rights and written from a prisoner perspective. The magazine often carries articles from attorneys giving how-to litigation advice. Also included in each issue are news articles dealing with prison-related struggle and activism from the U.S. and around the world.

Annual subscription rates are $18 for prisoners. If you can't afford $18 at once, send at least $9 and *PLN* will prorate the issues at $1.50 each for a six month subscription. New and unused postage stamps or embossed envelopes may be used as payment.

For non-incarcerated individuals, the year subscription rate is $25. Institutional or professional (attorneys, libraries, government agencies, organizations) subscription rates are $60 a year. A sample copy of *PLN* is available for $1. To subscribe to *PLN* contact:

Prison Legal News
2400 NW 80th ST. #148
Seattle, WA 98117
(206)246-1022
http://www.prisonlegalnews.org
(Orders accepted by phone or online)

HAVE YOU MOVED OR BEEN TRANSFERRED?

If so, please complete the below information and mail it to FPLP so that the mailing list can be updated:

NEW ADDRESS (PLEASE PRINT CLEARLY)

Name _____

Inst. _____

Address _____

City _____ **State** _____ **Zip** _____

☐ **Mail to: FPLP,** P.O. Box 1511, Christmas, FL 32709-1511

VOLUME 12 ISSUE 4 JULY/AUG 2006

Florida Prison Legal Perspectives
P.O. Box 1511
Christmas, FL 32709-1511