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## RIGHTS RESTORATION

The automatic restoration of civil rights to virtually all felons is counter-intuitive to public safety and the public good.

The emotional passion of those supporting the concept that offenders have served their sentence and must be fully restored is noble. However, ignoring the facts of reoffending in the felon population (as well as the prevalence of mental illness, lower literacy rates, lower education attainment and substance abuse in this population) creates a strong risk to the State of Florida.

To find a felon guilty in Florida we must attain a threshold of proof of guilt "beyond a reasonable doubt." Yet, under the new policy adopted by the Governor and Cabinet (Attorney General McCollum dissenting) we are now asked to accept on blind faith that the felon is through with their offending behaviors and must be permitted to acquire licensing for employment, sit on juries, vote and hold public office; in a word, we are to trust the offender.

The State Department of Corrections (DOC) suggests that felons in the state are reoffending at the rate of 40 percent as measured by reconviction and reincarceration or commitment to supervision. The DOC explicitly rejects all other measures of recidivism commonly used in national studies by the Department of Justice (reoffending measured by re-arrest) and states that rearrest does not imply a new offense!<sup>1</sup> Beyond the affront to law enforcement that an arrest does not "imply" criminal activity, we would do well to remember that the legal standard that is met by a professional law enforcement officer in this state for an arrest is "probable cause." Such "probable cause" is defined as a reasonable belief by the law enforcement officer that the person arrested committed the crime alleged. Thus, the state test for a probable cause arrest is well beyond mere implication.

Many of the arrests that are made in this state are also based on warrants for arrest that have been reviewed by the State Attorney Offices of the Circuits and by a judge who signs the warrant. Therefore, in this circumstance the arrest is supported by three independent reviews of the alleged offense before the arrest is made. This demonstrates sufficiently that not only is a crime

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<sup>1</sup> Florida Department of Corrections, "Recidivism Report July 2003", Data and Methods: Recidivism Measures, page 5. "Arrests are the broadest measure of crime available, but an arrest does not imply that a new offense actually occurred." (emphasis added) The report disqualifies rearrest as a recidivism measure and instead uses "conviction for a new, serious offense (reoffense), and commitment to prison for a new offense (reimprisonment)" as its' measure. (emphasis added)

“implied” but that the crime occurred and the person arrested on a warrant is believed by persons with knowledge, skills, ability and training (law enforcement officers certified by the state, State Attorneys and judges) to have committed the crime.

With this discussion in mind I would find that the “recidivism” rate reported by the DOC in its study is unique in such studies, is flawed by reasoning implied and explicit and is artificially low by all standard measures of recidivism.

Recidivism is the measure of “rearrest, reconviction, resentence to prison, and return to prison with or without a new sentence” as defined by the U.S. Department of Justice, Office of Justice Programs and the Bureau of Justice Statistics. Recidivism is not just re-conviction and re-sentence to prison as published by the DOC of Florida. Clearly, we all know that many variables may be in play after an arrest. A failure to convict on a probable cause charge against a person does not mean that the person is not guilty of the charged crime rather there may be many reasons that a prosecution and conviction does not occur. For instance, an insufficient staffing of State Attorneys, Judges and Public Defenders cause delays in trials; delays in trial frequently results in disappearance, death, unavailable witnesses and victims for trial; insufficient staffing of courts may result in pleas to lesser charges and withholding of adjudication by judges; delays in court proceeding may result in nolle prosequi (no further prosecute order offered by State Attorney) of cases. In other words, a failure to convict should not be construed as evidence of innocence when it may well signal probable symptoms of system difficulty in furthering prosecution, technical (though legal) manipulation of evidence in court by defense, jury vagaries in understanding charge information and evidence submitted, jury prejudicial opinion or bias not discovered in voir dire challenges, failure to bring forward evidence by the prosecution and a host of other technical and human errors or manipulations.

Therefore, I believe that all measures of recidivism posited by the national studies appear to be valid measures of criminal behaviors intended for study in recidivism reviews and the State of Florida should also utilize these consistent measures for uniformity of comparison.

The national studies measuring recidivism by the common measures cited above, which included data from the State of Florida, report recidivism of prison populations at 63 percent (1983-1986) and 68 percent (1994-1997). (Bureau of Justice Statistics (BJS); “Recidivism of Prisoners Released in 1983” and “Recidivism of Prisoners Released in 1994”.) These same studies reported a correlation between the number of prior “arrests” and recidivism ranging from a low of 41 percent and 38 percent (respectively for 1983 and 1994) for 1 prior arrest to 82 percent (both studies) for 16 or more prior arrests.

Our own local experience is more remarkable in measuring recidivism (the Department of Juvenile Justice, another branch of Florida Corrections element, uses re-arrest as a measure of recidivism, thus there is not consistency even within Florida relative to recidivism measures). The Collier County Sheriff's Office operated a juvenile shock incarceration facility from 1996 to 2005. Known as the D.R.I.L.L. Academy we studied the outcomes of 165 moderate risk juveniles from the facility (the whole population falling within the study period). Our findings were startling. Though the State of Florida ranked us as one of the most successful facilities in the state with a recidivism rate of only 25 percent on average (for program graduates reviewed through one year after graduation) our findings were significantly different for years two through five after graduation. At 24 months after graduation the former inmate rate of recidivism was 63 percent. At 36 months after graduation (same period of study as in the national studies of adults, above) our recidivism rate was 90 percent. The recidivism rate at 60 months after graduation was a tragic 97 percent, suggesting absolutely no rehabilitative effect for the inmates whatsoever. In other words, other than the punishment effect of incarceration and imposed conditions of supervision, there was no positive outcome. Certainly there was no lasting confidence that the former inmate would not reoffend. In fact the opposite is true, there is significant proof that the moderate risk juvenile offender will reoffend. The 165 former graduates contributed 965 misdemeanors and 1,120 felonies for which they were arrested. Though only 31 percent (51 graduates) received a state prison sentence for their post program criminal behavior we would be ill advised to consider the remainder who remained outside prison walls as "non-offenders." I would hypothesize that the adult criminal prison inmate population would experience at least the same outcomes as our less hardened juvenile offenders. The limited bed space in our state prisons would suggest that only our worst offenders are being committed to state prisons. Surely, this fact would impose a duty on the state criminal justice system and the State Clemency Board to study the inmate population for evidence of law compliance and behavioral change before conferring coveted rights back to the offender.

By adopting the new policy of full and automatic restoration of civil rights on the majority of the former felon population, we are not imposing a standard of any level of due care or of proof of future behavior even though the state has historical records sufficient to better predict future behavior if hearings are conducted. For instance, rather than simply allowing full restoration of rights to felons in an automatic fashion logic would suggest that we review the complete criminal history of the offender (not just the last offense), mental health / personality inventories available in inmate files, prison disciplinary records and history of substance abuse, at a minimum. Intentional state action restoring rights of felons to acquire employment in professions and

trades of trust when clear and compelling evidence (published recidivism rates / prison behavior profiles / personality profiles / substance abuse reports of record) exists to convince us of probable future criminal behavior implies negligent and reckless behavior of the system.

Punishment and rehabilitation / habilitation in the penal process are elements of a step down process. A person is incarcerated upon conviction, punished by loss of freedom (incarceration), released to community supervision (step down restoration of some freedom) and ultimately restored, if proper, to full participation in society. The delays built into the former policies of the Clemency review process were proper protections for Florida to reassure citizens that former felons were capable of law compliance and worthy of trust over the long term.

There are implications that a former felon with fully restored civil rights may now qualify for full employment licensing in the State of Florida. I believe that this would be incorrect. Certainly the qualifications for law enforcement and corrections certifications within statutes would be instructive. Accordingly, F.S. 943 requires that a person be free of prior felony convictions or of convictions for crimes of moral turpitude to qualify for law enforcement and corrections' certifications.

If a person's criminal history includes felony violations, the person should not be bondable in Florida. The public trust and high standards within the bonded and certificated professions must be preserved. Many of the state's professions and trades require a bondable history of conduct. I am of the opinion early on, first impression, that the recent action to automatically restore the civil rights of felons does not translate into employment in the bonded and certificated employment realm controlled by various professional certification boards (banking, medicine, cosmetology, funeral director, real estate, CPA, alarm installers and others) and therefore does not accomplish the employment goals desired by advocates of clemency reform and automatic restoration of civil rights. I would also note that national studies clearly evince that 70 to 75 percent of inmates in state prison were employed in the month prior to their last arrest.<sup>2</sup> Employment and criminal activity is not a dichotomy of mutually exclusive behaviors. A person can be gainfully employed (and generally is according to prisoner statistics) and commit additional crimes. Further formal and respected studies document that the prison inmate population has a lower literacy rate and lower rate of high school graduation than the general population (which would affect employment options).<sup>3 4</sup>

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<sup>2</sup> Bureau of Justice Statistics, "Mental Health Problems of Prison and Jail Inmates", September 2006, NCJ 213600, page 4.

<sup>3</sup> 1992 National Adult Literacy Survey, pages 48-52.

I concur with the considered opinion of Attorney General Bill McCollum:

- Hearings before the Clemency Board before full restoration of civil rights is a rational, logical and public safety oriented process.
- Any delays experienced with the rights restoration process should be addressed with sufficient resource to ensure timely review; we should not simply surrender all efforts to protect the public due to need for review resources.

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<sup>4</sup> Journal of Forensic Economics Volume 16, Number 3, 2003, Page 276 – 277.