

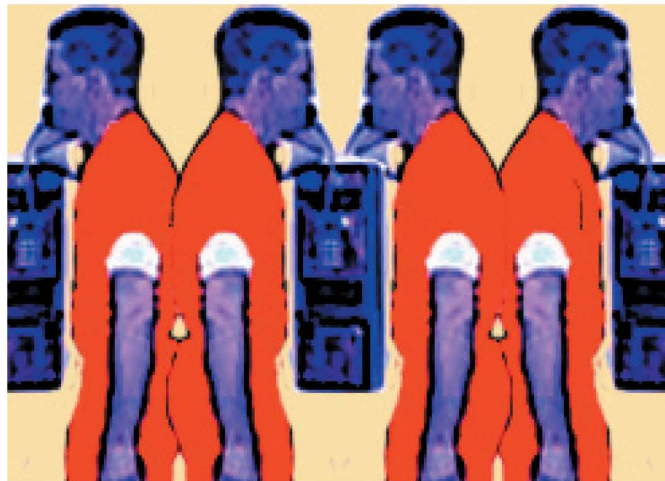
# NCPLS



# ACCESS

## NCPLS OPPOSES PAY PHONE SERVICE PROVIDERS' REQUEST FOR RATE INCREASE

In December 2007, three pay phone services providers that operate in North Carolina correctional facilities petitioned the State Utilities Commission for an increase in the rates they are permitted to charge for prisoner-initiated phone calls. *In the Matter of Pay Tel Communications, Inc., Evercom Systems, Inc., and T-Netix Telecommunications Services, Inc.:*



*Request for Waiver of Rule 13-9(d) of the Rules of the North Carolina Utilities Commission,* P100, sub 84 (December 27, 2007). According to the pay phone service providers (Petitioners), North Carolina Utilities Commission Regulations limit the cost of charges that may be billed for local calls to rates that are on average lower than 45 other states. The Petitioners contend that special costs associated with the provision of telephone services in a correctional setting and the cost of doing business since the existing regulations were implemented 20 years ago have vastly increased their expenses and threaten their capacity to continue to provide such services.

Among the special considerations and features Petitioners enumerate as an inherent cost of providing telephone services in a correctional

setting are: the capacity of the equipment to continuously record and preserve conversations (which they claim encompasses “[f]ull-time, full-channel recording and archiving of conversations;” “[r]eal-time monitoring of inmate conversations;” “[f]lag[ing] calls for alerts to monitor conversations in real time;” “[p]layback of inmate conversations;” and “[m]onitor[ing] calls by PIN, phone number, or cell block.”)

But this component of costs presents six iterations of the requirements prerequisite to the operation of a pay-phone system in a correctional setting. And though the equipment must provide these capabilities, the actual functions are [or should be] performed by correctional personnel. Petitioners also list what should be considered ordinary business costs,

including call completion (which one may assume is the basis for billing any customer), call time-limits, installation and expansion of the phone system, [consultation with respect to] new facility construction, and internal database screening/number blocking/fraud digit detection to prevent secondary dial tone (3-way call detection), all automated functions.

*(Continued on Page 4)*

***In this Issue:***

<i>NCPLS Opposes Pay Phone Service Providers' Request for Rate Increase</i>	1
<i>NCBA "4All Campaign"</i>	2
<i>NCPLS Sponsors Meeting of Citizens United for the Rehabilitation of Errants (CURE)</i>	5
<i>North Carolina Department of Correction Seeks ACA Accreditation</i>	6
<i>The Second Chance Act of 2007: A Congressional Response to the Re-Entry Crisis</i>	7
<i>NCCU Law School Students Won Regional Competition</i>	9
<i>"The State of Sentencing" A New Study Reports the Need for Reform</i>	10
<i>Filing a Lawsuit on Your Own: Petitions for Uncontested Divorce</i>	11

**ACCESS** is a publication of North Carolina Prisoner Legal Services, Inc. Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors who are designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

NCPLS serves a population of more than 38,600 prisoners and 14,000 pretrial detainees (with about 250,000 annual admissions), providing information, advice, and representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

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**Please Note:** ACCESS is published four (4) times a year.

Articles, ideas  
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## NCBA “4ALL CAMPAIGN”

The North Carolina Bar Association (NCBA) is an organization that has been voluntarily joined by more than 13,500 lawyers and legal assistants who are dedicated to serving the public and the legal profession by promoting the administration of justice and encouraging the highest standards of integrity, competence, civility and well-being of all members of the profession.

Attorney Janet Ward Black, who was recently installed as the President of the NCBA, has focused the attention and energy of the entire organization on that part of the pledge of allegiance that declares we are “one nation, living under God, with liberty and justice *for all*.” Thus, she has initiated the “**4All Campaign**” in an effort to bring our society and the citizens of North Carolina closer to fulfilling our commitment to providing equal justice to our people, without regard to status or financial standing.

The **4All Campaign** is comprised of four components: (1) *Educate* lawyers and others about the legal needs of people of modest means and those who are living in poverty; (2) *Legislate* – working in

partnership with officials of the Executive branch and legislators to pass laws and take action to address such problems in a systematic, comprehensive fashion; (3) *Donate* – The NCBA is strongly encouraging each of its members to make financial contributions to this effort, and will be undertaking other activities to raise funds to ensure that all North Carolinians have equal access to justice, including those who cannot afford a lawyer; and (4) *Participate* – The NCBA has set a date for a statewide, coordinated effort to provide the public free consultation and limited services from volunteer lawyers.

Spearheaded by NCPLS Staff Attorneys April Giancola and Ken Butler, NCPLS will work in partnership with the NCBA’s Professionalism Committee to *Participate* in the statewide day of service on Saturday, April 5, at which volunteer legal professionals will offer information, advice, and limited assistance to **formerly incarcerated people and to organizations that serve the formerly incarcerated community**.

Complete information appears on page 3.



# ***FREE LEGAL INFORMATION CLINIC***

*Sponsored by North Carolina Prisoner Legal Services, Inc., the North Carolina Bar Association's Justice 4All Campaign and Professionalism Committee*



**SATURDAY APRIL 5, 2008  
10:00 AM – 2:00 PM**

**North Carolina Prisoner Legal Services, Inc.  
1110 Wake Forest Road  
Raleigh, NC**

*(Route 1 and 3 CAT Bus Lines)  
(919) 856-2200*

Free legal consultations about civil legal matters governed by N.C. law will be offered at this clinic for people who have been formerly incarcerated and to organizations that serve the formerly incarcerated community. Volunteers will provide important information about your legal situation or refer you to an agency or organization that can provide the information you need. The volunteers will not offer to represent you, but if you are eligible, you may be referred to one of the legal or social service agencies in the Raleigh area to seek additional assistance and/or representation. Please understand that while we are anxious to assist you, we cannot guarantee that you will obtain legal representation or a conclusive answer to your legal questions, but we'll do our best to help.

***Please bring all of the documents concerning your legal problem to the Clinic***

For additional information and assistance, please visit [www.lawhelp.org/nc](http://www.lawhelp.org/nc)



## RATE INCREASE (CONTINUED)

*(Continued from Page 1)*

Costs listed under Client Support include what amount to technical support available by phone 24/7, as well as training. These costs are generally (and probably should be) borne by the correctional facility or agency. In most industries, the cost of customer support, including training and equipment operation are expenses built into or are options available as provided by contract.

The Petitioners also pointed out that other service providers have been permitted to charge higher rates for collect calls, and argued fairness requires that similarly situated parties be treated the same.

On February 29, 2008, NCPLS was permitted to file comments in opposition to the petition. NCPLS opposed the petition, among other reasons, because: (a) concerns of fairness and equal treatment as among service providers are secondary to those principles as they apply to the public they serve; (b) inmate-initiated telephone calls are not presently available at affordable rates as required by federal law; (c) under prevailing circumstances, the proposed rate is neither reasonable nor fair as required by federal law; and (d) limiting inmate-initiated calls to collect only, the most expensive means of placing a call, adversely impacts the availability of reasonably affordable local exchange service, as required by Rules of the North Carolina Utilities Commission.

NCPLS brought to the attention of the Commission that, for over 25 years, the American Bar Association (ABA) steadfastly has maintained that any limitations placed on "prisoners' communications should be the least restrictive necessary to serve the legitimate interests of institutional order and security and the protection of the public." *ABA Standards for Criminal Justice, Legal Status of Prisoners*, Standard 23-6.1(a). ABA Policy 113B encourages government at all levels to afford prison and jail inmates reasonable opportunities to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates. Essentially the same position is taken by a number of correctional associations, including the American Correctional Association. (The Resolution on Excessive Phone Tariffs (October 1996); Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (ACA 2001) and related standards (ACA 2002) (incorporated into standards manuals for 11 types of correctional facilities). Independent studies conducted by criminal justice experts support the same conclusion. See, for example, the report of the Vera Institute of Justice-sponsored Commission on Safety & Abuse In America's Prisons, "Confronting Confinement," pp. 36, 39, *passim* (June 2006) (n. 7, p.6).

It is neither the special costs of operating a phone system within a correctional facility nor the costs incurred in the ordinary cost of doing business that result in excessively high rates. Rather it is the extraordinarily high "commissions" that are paid to correctional facilities or entire systems for the exclusive right to operate such systems that result in ever-escalating costs. These "commissions" provide for the payment of up to 65% of revenue to facilities that grant exclusive rights to telephone service providers. For example, Evercom Systems, Inc., a petitioner in the present proceeding, provides exclusive services to almost 40,000 prisoners in custody of the North Carolina Department of Correction (DOC). According to a response received to our inquiry, the 2006 contract provided DOC a commission of 55% of revenue. These costs are, of course, borne by the families and friends of the prisoners. In addition, most of the people who are incarcerated are represented by government funded lawyers who must either devote limited resources to the payment of exorbitant telephone charges or decline to accept such calls. In either case, these excessive rates directly impact the quality of legal services available to prisoners and their access to the courts.

There is no legitimate reason that the payment of such commissions should be permitted. Neither is there any legitimate purpose in

*(Continued on Page 5)*

## RATE INCREASE (CONTINUED)

*(Continued from Page 4)*

limiting calling options to collect, only. One can imagine at least five possible approaches to more equitable telephone services for inmates: (1) allowing inmates to use a commercial calling card, collect calling platforms (800-COLLECT, 800-CALL-ATT), and pre-paid calling cards; (2) allowing inmates to direct-dial their calls (with call-blocking in place); (3) allowing inmates to place calls to “personal” 800 numbers that are billed to the called party; (4) allow-

ing competitive inmate calling service providers to provide service at the same facility simultaneously; and (5) prohibiting the practice of offering commissions for exclusive service contracts. These alternatives, alone or in combination, would provide meaningful and lasting relief for the Petitioners. It bears remembering that, after all, these businesses and the people who run them provide a service that well serves correctional officials (who can use telephone privi-

leges as a control mechanism and as an aid to rehabilitative efforts), that is a comfort to prisoners, and one that is a blessing to their families (but for the associated ruinous costs).

However, increasing rates will never resolve the legitimate business concerns of pay phone service providers so long as correctional facilities and systems continue to command ridiculously high commissions.

## NCPLS Sponsors Meeting of Citizens United FOR THE REHABILITATION OF ERRANTS (CURE)

On January 10, 2008, NCPLS sponsored an organizational meeting of a newly created chapter of CURE (Citizens United for the Rehabilitation of Errants). CURE is a grassroots, membership organization of families of prisoners, prisoners, former prisoners and other concerned citizens. CURE’s two goals are: (1) to advocate the use of prisons only for those who have to be in them, and (2) for those who have to be in them, to provide all the rehabilitative opportunities offenders need to turn their lives around.



CURE’s co-founder, who also serves as the Executive Director of International CURE, Charlie Sullivan, was on hand to speak with a group of some 30 people about the organization of a state chapter of CURE in North Carolina. NC-CURE, as the group will be known, will be headed by Milton C. Jordan, Sr., who can be reached at:

NC – CURE  
610 Douglas Street, Suite A-201  
Durham, NC 27705  
(919) 416-88276

*milton@miltoncjordansr.com*

Both CURE – National, and CURE – International can be contacted at:

CURE  
PO Box 2310  
Washington, DC 20013  
(202-789-2126)

*cure@curenatinal.org*  
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# NORTH CAROLINA DEPARTMENT OF CORRECTION SEEKS ACA ACCREDITATION

*By: Michael G. Avery, Esq.*



The American Correctional Association (ACA) is a national, private, nonprofit, multi-disciplinary organization of professionals representing all levels and facets of corrections and criminal justice. Among other activities, ACA develops standards and administers the only national accreditation program for all types of adult and juvenile correctional and detention facilities. The purpose of accreditation is to encourage voluntary compliance with professional standards that improve safety and operational policies, practices, and procedures that benefit correctional professionals and offenders, alike.

The ACA Standards Committee establishes and revises standards governing corrections practices and operations. The ACA Commission on Accreditation rules on applications for ACA accreditation, enforces operational standards nationwide and accredits institutions that comply with those standards. More than 1,500 correctional facilities and programs throughout the U.S. and Canada are involved in accreditation, a movement that began in correctional circles in 1978. Approximately 80 percent of all state departments of corrections and youth services are active participants. Also included are programs and facilities operated

by the Federal Bureau of Prisons, the U.S. Parole Commission, and the private sector (such as Corrections Corporation of America and the Geo Group).

For these agencies, the accreditation program offers the opportunity to evaluate their operations against national standards, to remedy deficiencies, and to upgrade the quality of correctional programs and services. The recognized benefits from such a process include improved management, increased accountability, enhanced credibility for administrative and line staff among the public, a safer and more humane environment for personnel and offenders, and the establishment of measurable criteria for upgrading programs, personnel practices, and the physical plant on a continuous basis. It must also be noted that accreditation can assist correctional agencies in the defense of lawsuits alleging unconstitutional policies, practices, or conditions of confinement through documentation and the demonstration of a "good faith" effort to comply with national standards.

We are pleased to report that the North Carolina Department of Correction (DOC) has embarked upon the long and difficult process of gaining accreditation at several institutions. The process requires a team approach that involves administrative personnel, officers, and prisoners, alike. (On average, it takes a facility between 12 and 18 months to meet ACA standards, even with technical assistance from

Standards & Accreditation Staff.) The achievement of accreditation often results in the development of a strong sense of community and shared pride in the operation of a correctional facility.

We extend our congratulations to the DOC's Division of Prison's Central Office, which was awarded accreditation in January 2008. Currently, the DOC is in the process of seeking ACA accreditation for additional facilities, including those at Central Prison, Foothills, Marion, Pasquotank, Scotland, Lanesboro, Alexander, Bertie, Maury, and the North Carolina Correctional Institution for Women. These facilities will likely be audited in late spring/early summer of this year.

Accreditation is an open process in which the ACA actively seeks comments from prisoners, officers, and the surrounding community. Comments and concerns may be directed to:

Standards & Accreditation Section  
American Correctional Association  
206 N. Washington St., Ste. 200  
Alexandria, VA 22314

**[Editor's Note:** NCPLS Interim Director Michael Hamden served as the American Bar Association's liaison to the ACA from 1998 to 2006. With ACA, he served two, 4-year terms on ACA's Commission on Accreditation for Corrections (elected as a member of the Commission's Executive Committee during a four-year period); and for three, 2-year terms on the ACA's Standards Committee.]

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# THE SECOND CHANCE ACT OF 2007: A CONGRESSIONAL RESPONSE TO EUHE RE-ENTRY CRISIS

By NCPLS Staff Attorney Ken Butler

On March 11, 2008, Congress passed H.R.1593, "An Act to reauthorize the grant program for reentry of offenders into the community in the Omnibus Crime Control and Safe Streets Act of 1968, to improve reentry planning and implementation, and for other purposes." The short title of the bill is "The Second Chance Act of 2007." At the time of this writing, the act has gone to President Bush for his signature, and all indications are that he will sign the act into law.

The Second Chance Act provides funding for a number of measures that are designed to address the problems faced by ex-offenders seeking to transition back into the community. Congress made a number of specific findings in the Second Chance Act that point to the severity of the re-entry problem in this country. Among those findings are:

-- 650,000 people are released from state and federal incarceration each year.

-- Recent studies show that over two-thirds of these individuals are expected to be re-arrested for a felony or serious misdemeanor within three years from release.

-- According to Bureau of Justice Statistics, expenditures on corrections alone rose from \$ 9 billion



dollars in 1982 to \$59.6 billion in 2002. This does *not* include the costs of arrest and prosecution, or the financial costs to crime victims.

-- The number of children with a parent in a federal or state correctional facility more than doubled between 1991 and 1999.

-- 57% of federal and 70% of state inmates used drugs regularly before going to prison. BOJ Statistics estimates that as many as 84% of offenders were using drugs or alcohol around the time of the offense that led to incarceration.

-- Less than 32% of state prison inmates have a high school diploma or higher education, compared with 82% of the general civilian population.

-- 15-27% of released inmates end up going to homeless shelters.

A major function of the Second Chance Act is to provide funding for states and local governments, as well as non-profit entities, to assist former prisoners in re-entering

society. The Act specifically seeks to build upon the state re-entry programs that were initially developed under the "Serious and Violent Offender Re-entry Initiative (SVORI)," which appropriated \$139 million in funding to develop and implement re-entry and rehabilitation programs for serious and violent offenders.

While SVORI funding ended after fiscal year 2005, the Second Chance Act will expand both the amount and types of funding available for such programs. It authorizes \$185 million for fiscal year 2008, and again in 2009 in grant funds for such programs. These are "matching" grants, meaning that the organizations that receive funds must ordinarily come up with an amount of money equal to the funding provided by the federal government. However, the Act does provide that "in kind" contributions, such as existing physical assets, can be used to calculate the value of "matching" funds raised by the grantee organization.

Among the types of programs eligible for funding are:

1. Programs to Improve Existing Adult and Juvenile Re-entry Demonstration Projects.

(Continued on Page 8)



# THE SECOND CHANCE ACT OF 2007

## (CONTINUED)

*(Continued from Page 7)*

- Providing educational, literacy, vocational and job placement services, as well as substance abuse treatment.
  - Providing coordinated supervision and comprehensive services upon release, including housing and mental/physical health care.
2. Initiatives to Improve Existing Residential Substance Abuse Treatment Programs for State Offenders.
- Residential substance abuse treatment program is a course of individual and group treatment services lasting for at least six months in residential facilities set apart from general population of a prison or jail.
3. Re-entry Courts.
- Grants to state or local governments that have either established such courts or are willing to establish such courts.
  - Grant funds can be used to:
    - Monitor offenders re-entering the community;
    - Provide coordinated and comprehensive re-entry services, including drug and alcohol testing, assessment, and treatment; and
    - Provide and coordinate delivery of community services to offenders including: housing, education, job training, conflict resolution training, batterer intervention, and other appropriate services.
4. Programs that Offer Prosecutors and Judges Drug Treatment Alternatives to Prison Sentences.
- Grants to prosecutors to develop drug treatment programs as an alternative to imprisonment.
  - Offenders eligible for this program must not have been convicted of or charged with crimes of violence, crimes involving use or possession of deadly weapons, or the use of force.
5. Family-Based Substance Abuse Treatment Programs.
- Grants to develop family-based treatment programs either as alternatives to prison for non-violent parent drug offenders, or as prison-based programs for incarcerated parents of minor children.
  - Prison alternative programs include clinically appropriate, comprehensive, and long-term family treatment, including treatment of the non-violent parent drug offender and any other appropriate family member.
  - Prison based programs will integrate techniques to assess strengths and needs of immediate or extended family of the incarcerated parent to support a treatment plan for the parent. Each participant is to have access to consistent and uninterrupted care if transferred to different prisons. Programs must be located in an area separate from the general prison population.
6. Programs that Evaluate and Improve Educational Methods at Prisons, Jails, and Juvenile Facilities.
- Includes grants to both public and private entities.
  - Evaluation of academic and vocational training required.
  - Identify and make recommendations to the Attorney General regarding best practices.
7. Technology Career Training Programs.
- Establish technology career training programs for offenders during the 3-year period prior to release.
8. Offender Re-entry Substance Abuse and Criminal Justice Collaboration Programs.
- To improve provision of drug treatment to offenders in prisons, jails, and juvenile facilities, and reduce the use of alcohol / drugs by long-term substance abusers during periods of confinement and after completion of parole or court supervision.
  - Grants can be used for:
    - Continuing and improving existing programs.
    - Develop and implement new programs that include substance abuse assessments, as well as coor-

*(Continued on Page 9)*



## THE SECOND CHANCE ACT OF 2007 (CONTINUED)

*(Continued from Page 8)*

minated and continuous delivery of drug treatment and case management services.

- Provide addiction support services.

### 9. Mentoring Grants to Nonprofit Organizations.

- Funds to be used for mentoring offenders during incarceration, through transition back to community, and after incarceration.

- Providing transitional services to assist in reintegration of offenders into the community.

### 10. Initiatives to Ensure the Responsible Reintegration of Offenders.

- Grants may be made by the Secretary of Labor to nonprofit organizations to provide mentoring, job training and placement services, and other, comprehensive transitional services.

- Eligible Offenders include those who:

- Are 18 or older;
- Were convicted as adult;
- Have no conviction for violent or sex-related offense;
- Have been released no more than 180 days before beginning to participate in such a program.

Of course, there is no guarantee that any of these programs may be available in a particular state or locality. Not every type of program may be deemed suitable for a particular state or locality, or there may be no organizations or community members who are willing and able to establish and operate eligible initiatives.

In order to receive funding, a government entity or non-profit must submit a grant application that contains a detailed plan for setting and meeting objectives, as well as a plan for how the program might be continued if federal money is not renewed. The legislation provides

discretion for the U.S. Attorney General to set priorities for awarding these grants.

The Second Chance Act is an encouraging step toward addressing what will be one of the most pressing social issues of the next decade – the need to assist over six million people transitioning out of prison (at a rate of about 650,000 people per year). Although it provides additional funding for programs to assist reentry efforts, far more money and other resources will be needed to adequately address this challenge. However, given the abject failure of the “lock-‘em up” philosophy of recent decades and the enormous societal and financial costs of a recidivism rate of about 60%, it is to be hoped that the success of reentry programs will lead to greater support and funding from federal, state and local governments, investing in people rather than building ever more prisons and imposing increasingly harsh, lengthy, and debilitating sentences.

## NCCU LAW SCHOOL STUDENTS WON REGIONAL COMPETITION

NCPLS has long enjoyed a close, productive relationship with North Carolina Central University (NCCU) Law School. For instance, our former Executive Director, Marvin Sparrow, was an honors graduate of that institution, and Law Professors Grady Jessup, Adrienne Fox, Fred Williams, and Ronald Steven Douglas

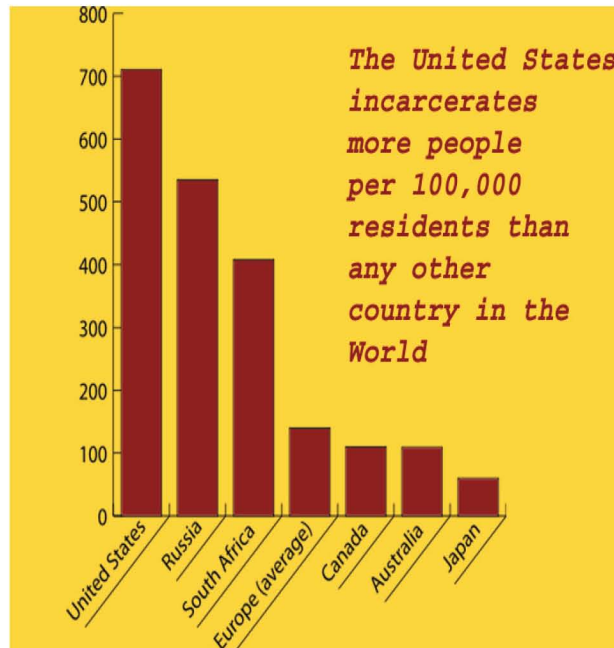
have all served as members of our Board of Directors. In fact, Professors Fox and Williams are former Presidents of the Board, while the Law School’s Assistant Dean for the Day Program, Ronald Steven Douglas presently serves as President of the Board.

Thus, we are pleased to report

that a team of NCCU law students, coached by NCPLS Board Member and immediate past Board President Fred Williams, won the Region IV Client Counseling Competition. Students Brian Elston and Corye Dunn (who placed third in the nation last year) are to compete in the nationals at White Plains, New York this spring.

## “THE STATE OF SENTENCING” A NEW STUDY REPORTS THE NEED FOR REFORM

Decades of “tough on crime” policies have had a dubious impact on the incidence of criminal activity, but the cost of such policies portends societal harms to people and governmental services. The escalating expense of housing an ever-burgeoning prison population means that essential governmental expenditures (such as health care and public education) have been and must be sharply curtailed or governmental revenue (taxes) must increase dramatically.



A new report by Ryan S. King, “The State of Sentencing in 2007: Developments in Policy and Practice” (2008), highlights a number of important criminal justice policy developments that occurred at the state level during 2007. These developments include:

- The creation of oversight committees or task forces to address sentencing laws, prison overcrowding, indigent defense, and /or the provision of reentry services;
- Limitations upon mandatory sentencing enhancement provi-

sions, including substantial reform proposals to mandatory sentencing provisions for drug crimes;

- Repeal of the death penalty (replaced with life in prison without the possibility of parole);
- Amended parole policies and enhanced reentry preparation;
- Reformed criminal justice policies pertaining to juveniles (including changing the age of majority for the purposes of criminal sentencing and addressing clemency practices for persons sentenced as

adults for crimes committed as juveniles); and

- Modification of “Romeo and Juliet” provisions of sexual offense laws.

Ryan S. King, author of the report, is a Policy Analyst of The Sentencing Project. Research assistance for the report was provided by Abbey Marshak. The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice policy issues. The Sentencing Project works for a fair and effective criminal justice system by promot-

ing reforms in sentencing law and practice and alternatives to incarceration. To these ends, it seeks to recast the public debate on crime and punishment.

For further information, or to obtain a copy of the report, contact the Sentencing Project:

The Sentencing Project  
514 10th St. NW  
Suite 1000  
Washington, D.C. 20004  
(202) 628-0871

[www.sentencingproject.org](http://www.sentencingproject.org)



## FILING A LAWSUIT ON YOUR OWN: PETITIONS FOR UNCONTESTED DIVORCE

As many of you know, North Carolina Prisoner Legal Services, Inc., has limited resources so we are unable to offer direct representation in prisoner divorce cases, most of which are uncontested and often involve little or no marital property.

We do provide information and the forms needed to file divorce actions on your own (*pro se*). Providing the necessary forms and detailed instructions, we try to provide our clients the ability to navigate the district court system successfully, and without unduly burdening the courts.

Once in a while, we receive notice that a clerk of court in some North Carolina county has a policy that prohibits prisoners from filing legal actions on their own. Such policies are inconsistent with state and federal constitutional guarantees, statutes, and court decisions.

Under the law, every person has a right to prosecute an action without the assistance of counsel. Indeed, the right is guaranteed by the Open Courts Clause of the North Carolina Constitution (Article 1, Section 18), statutory law (Gen. Stat. §1-11), and decisional law. *See, e.g., State v. Pritchard*, 227 N.C. 168, 41 S.E. 2d 287 (1947). Moreover, the right to represent oneself is guaranteed by the Sixth Amendment to the Constitution of the United States (made applicable to the states through the 14th Amendment). The right is also codified at 28 U.S.C. §1654, and reaffirmed by decisions of the United States

Supreme Court. *See, e.g., Faretta v. California*, 422 U.S. 806 (1975). In short, the court ordinarily may not prohibit or prevent a person from filing a lawsuit of any kind, even though the person is a prisoner or prefers to prosecute the matter without benefit of counsel.

Indeed, North Carolina law expressly allows for uncontested divorces granted by the clerk of court upon request of the petitioner. Gen. Stat. § 50-10(e) states that upon request of the plaintiff, the clerk of superior court may enter judgment for absolute divorce when the defendant has defaulted or “has answered admitting the allegations of the complaint . . . .” Although the word, “may,” appears in the statute, it simply conditions entry of judgment upon the clerk’s determination that all statutory prerequisites have been satisfied. Once the clerk has made that determination, the clerk is required to enter judgment for absolute divorce – a mandatory, ministerial act. The clerk does not have the discretion to choose not to enter judgment.

In essence, G.S. §50-10(e) relieves judges, court personnel, and all participants in the process of superfluous paper work, the needless expenditure of time, and unnecessary expense. It eliminates the need for the issuance of writs of *habeas corpus ad testificandum*, the transportation and attendance of the prisoner-plaintiff in such cases, as well as the escort provided by

Department of Correction officers, since disposition can be determined as a matter of law in a judgment on the pleadings by the Clerk. Indeed, so well established is this procedure that the Administrative Office of the Courts (AOC) has developed a form to facilitate the process: “Judgment for Absolute Divorce Before the Clerk,” AOC-CV-710, New [Form] 11/04, 2004 AOC. (A copy of that form is contained in our *pro se* divorce booklet.)

We also sometimes learn that a court may require that actions be filed on specific forms that the court provides. But according to the law, no particular form may be required to initiate a lawsuit. *See* Gen. Stat. §1A-1 Rule 8 General Rules of Pleadings (“All that is required is a short and plain statement of the claim sufficiently particular to give the court and the parties notice . . .”).

Should you encounter any such difficulties, we suggest that you write to the court expressing the view that you have the right to file suit in a form that satisfies the governing law. It will be helpful if you do so in respectful terms, and if you cite the legal authorities referenced in this article. If your letter does not resolve the problem, please write to NCPLS with a description of the difficulty and copies of all related documents. We believe such matters can be promptly resolved without the need for collateral litigation, but we will take such legal action as may be required to protect your rights.



**THE NEWSLETTER OF NORTH CAROLINA  
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