

# MEASURING UP THE CURRENT POSTURE OF PRISONS IN THE COUNTRY OF GEORGIA VIS-AVIS PRISONS IN THE UNITED STATES AND MORE PARTICULARLY IN THE STATE OF FLORIDA

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I have served as an elected Circuit Court Judge in Fort Lauderdale, Broward County, Florida for the past 36 years. This region is the second largest residential area in the state with a population of 1.6 million people and is known as the 17th Judicial Circuit. For a number of years I have been assigned to the Criminal Felony Division presiding over felony cases meaning that if the accused is convicted following a jury trial, I am empowered to either place the defendant on probation, community control (house arrest), or alternatively sentence the defendant to prison for a term in excess of one year up to life. In certain instances, if the defendant is convicted of capital first degree murder I can impose a sentence of either life in prison or death. Florida is one of 35 states in the United States that permits imposition of the death penalty. Florida has the third largest prison population (approximately 100,000 inmates) in the United States and the judicial circuit where I preside annually sends the second largest number of prisoners to state prison. Needless to say the region where I preside as a judge experiences a very high crime rate.

After serving as a criminal judge for several years and having sentenced a large number of convicted felons to state prison I encountered

a personal epiphany (a sudden and striking realization) that for a significant period of time I have been depriving people of their liberty without having any personal insight as to what imprisonment really entailed, what risks and perils inmates encountered and whether prison life offered any future hope for salvation or rehabilitation. I arranged for tours for myself and other judges to visit and observe a wide spectrum of detention facilities under the control of the Florida Department of Corrections ranging from classification, intake and reception centers through which all inmates sentenced to prison must matriculate, to prisoner work camps, work release centers, minimum, medium and maximum prisons, and the two prisons that house death row inmates and the execution chamber.

This undertaking was unquestionably an eye-opening experience, walking among and talking to the inmates, viewing their cells, dining halls and working factories within the prisons as well as interacting with the correction officers and administrative staff that oversee the detainees. Prison life in Florida is no easy challenge and should be avoided at all cost. The deterrent value these visits can provide would undoubtedly leave an overwhelming and an invaluable impression upon any juvenile or adult teetering on the brink of criminality.

There is substantial truth to the maxim that “seeing is believing”! In many instances tough, lengthy sentences are clearly mandated and absolutely necessary for habitual, violent, recidivist offenders lacking any hope for salvation. However in the majority of criminal cases judges have discretion or leeway in their sentencing decisions when mandatory minimum sentences are not required to be imposed. Prison tours where judges can experience the climate and conditions existing in a penal institution may serve to temper what many civil rights activists characterize as “blind sentencing” by judges. In essence seeing firsthand what the loss of liberty and freedom of movement entails and the depressing and degrading culture that defines prison life might generate more enlightened sentencing by judges no matter what country or jurisdiction they serve.

In my many years of teaching at law schools and lecturing to lawyers overseas, primarily in former Soviet block countries, I have sought out opportunities to visit and experience prison conditions in foreign environments. I have seen prisons in Russia, Ukraine, Lithuania, Israel and Georgia. The balance of this article will focus upon similarities and differences between prisons in Georgia and the State of Florida. At the behest of the European University School of Law, the Georgia Ministry of Corrections and Probation arranged for me to visit two separate prisons, one for female inmates and the other a medium custody male detention facility in the Rustavi region, and another institution for men in Tbilisi that also had a medical facility to treat both convicted and accused defendants.

According to a recent publication, there are currently 15 penal institutions in Georgia with a current inmate population of approximately 9,451 inmates. 97.1% are male and 2.9% are female.<sup>1</sup> By comparison the State of Florida alone has approximately 100,000 inmates in its 148 correctional facilities. 93% of the inmates were male and 7% were female. 49% of the male inmates were black, 38% white, 13% were Hispanic and under 1% were other non-Hispanics. 64% of the female inmates were white, 30% black, 5% were Hispanic and under 1% were other non-Hispanics.<sup>2</sup>

Unquestionably, serving prison time is a very daunting and harrowing experience no matter what state in the United States or what country in the world one is incarcerated. In Georgia noteworthy systematic prison concerns that have been targeted by human rights groups are physical mistreatment and abuse of inmates by prison staff<sup>3</sup>. Poor inmate healthcare for prisoners

1 GEORGIA/WORLD PRISON BRIEF, <http://www.prisonstudies.org/country/georgia>

2 FLORIDA DEPARTMENT OF CORRECTIONS, QUICK FACTS ABOUT THE FLORIDA DEPARTMENT OF CORRECTIONS, REVISED DECEMBER, 2017, <http://www.dc.state.fl.us/oth/quickfacts.html> THE COLOR JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, JUNE 12, 2016, ASHLEY NELLIS, Ph.D. <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

3 DESPITE PRISON REFORMS, ABUSES STILL

reached such an alarming level that an authoritative figure in the Georgian Orthodox Church characterized the Country's prisons as "a dangerous breeding ground for tuberculosis".<sup>4</sup>

However similar and additional criticisms of the Georgia prison system are also frequently lodged against Florida prisons as well. Prison reformists and national and state prison accrediting and oversight boards oftentimes highlight that significant reforms are essential in Florida penal institutions as well. In 2017, 428 prisoners died in Florida prisons. At least 145 were from suspicious deaths such as inmate-on-inmate violence, excessive use of force by staff and lack of appropriate health care. Florida prisoners have oftentimes gone on strike to protest prison slavery and the deplorable conditions they have to endure.<sup>5</sup>

Georgia's determined and praiseworthy effort to gain access to the European Union has triggered significant reforms and improvements in the sphere of judicial independence and prison infrastructure. In large measure this is a product of the European Union providing Georgia with several financing agreements to support these reforms as well as the appointment of the former European Commissioner For Human Rights as an advisor to Georgia on these two issues that the European Union deems necessary to address before Georgia can become more aligned with the European Union.<sup>6</sup>

Several immediately noticeable differences exist concerning the inmate population comprising the Georgia and Florida prisons that merit

commentary. Significantly, there is a defined absence of racial, ethnic, cultural and religious diversity among the prisoners in the Georgia prisons I visited. The overwhelmingly vast majority of inmates were racially white, Georgian nationality, religiously Orthodox and culturally Soviet. Equally relevant is that the prison officers and staff were almost exclusively of the same race, ethnicity, culture and religion as the inmates they guarded. This absence of diversity in the composition of the prison population in the Georgia prisons undoubtedly reduces potential strife, conflict and aggression between the inmates themselves as well as the prisoners and the corrections personnel responsible for guarding them.

A prison in and of itself is a social system with its own cultural mores, norms and expectations very much like society itself. In Florida, prisons are imbued with fear, mistrust, high levels of physical and verbal victimization and intimidation, physical and emotional deprivation, boredom, overcrowding and an intense lack of privacy. With this backdrop, it is clear that although diversification is a positive trait and character of successful societies, in the context of a closed and confined prison environment, the greater the differences and diversification of both the inmate population and corrections officers the more likely conditions of conflict and disorder will prevail.<sup>7</sup>

Unlike the Georgia prisons where relative tranquility is apparent, Florida prisons are a marked contrast. Florida is the third largest state prison system in the United States. In Florida prisons racial, ethnic, religious and cultural differences exist on a large scale. In Florida, the majority of inmates are black followed in descending order, by members of the White, Hispanic and Asian races. Religious diversity is equally present in the form of Catholic, Protestant, Muslim, Buddhist, Jewish and other religious and non-religious (atheist, agnostic) minorities. A multitude of languages are spoken such as English, Spanish, Creole, Portuguese, French, Arabic, He-

COMMON IN GEORGIA, OCTOBER 20, 2014, <http://www.refworld.org/docid/5448fbc54.html>

4 GEORGIA'S CRAMMED PRISONS, TEA TOPURIA, <http://www.iwpr.net/global-voices/georgias-crammed-prisons>

5 RECORD NUMBER OF INMATES DIED IN FLORIDA LAST YEAR, SARAH BLASKY, THE MIAMI HERALD, JANUARY 28, 2018 FLORIDA INMATES TO STRIKE AGAINST PRISON SLAVERY AND INHUMANE CONDITIONS ON MARTIN LUTHER KING DAY, NEWSWEEK, U.S. EDITION, CHANTAL DA SILVA. [www.newsweek.com/us-inmates-strike-against-prison](http://www.newsweek.com/us-inmates-strike-against-prison)

6 GEORGIA'S BUMPY TRANSITION: HOW THE EU CAN HELP, JANA KOBZOUA, APRIL, 2013. EUROPEAN COUNCIL ON FOREIGN RELATIONS ([ecfr.eu](http://ecfr.eu)).

7 ETHNICITY, IDENTITY AND COMMUNITY COHESION IN PRISON, CORETTA PHILLIPS, LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE <http://eprints.lse.ac.uk>

brew and other European dialects. Its proximity to Central and South America coupled with the wave of legal and illegal immigrants entering the United States through Florida has contributed to inmates coming from over 30 countries each with their own unique cultures and nationalities.

Six major prison gangs nationally known for their participation in violence and organized crime exist in Florida prisons.<sup>8</sup> These gangs facilitate illegal profit making activities both within and outside the prisons where they operate. By verbal threats and physical intimidation and beatings, new prisoners' are forced to join these gangs. Inmates form gangs for a sense of security and protection.

In addition to the enormous diversity of inmates and the lack of community cohesion it breeds among inmates, as well as the large scale presence of gangs, a third contributing factor to the strife and morbid conditions in Florida prisons is the recurring occurrence of abuse and corruption by administrative personnel and the correction officers staff employed by the prison system. Newspapers frequently document the arrest or dismissal of prison personnel who fail miserably in maintaining a safe and stable prison environment.<sup>9</sup> This lack of professionalism by individuals hired by the State of Florida to operate safe, secure and stable penal institutions is in large measure a product of the meager salaries they are paid, the violence prone environment of their workplace and the inadequate training they receive.

While visiting the two prisons in Rustavi and more particular the woman's facility, I was immediately impressed by the positive and respectful interaction that existed between the warden and her staff of correction officers, and the inmates

they were overseeing. At the female prison the staff were congenial and warm. Although as in all prisons an invisible line of demarcation distinguishes the authority of the correction officers from the obligatory obedience and respect that must be exhibited by the inmates, my overall impression was quite favorable. In fact, if unfortunately you had to be incarcerated, this particular facility was relatively tolerable and not a horrible place to be situated. The exterior and interior grounds of the prison were clean and well maintained, the prison staff and inmates interacted favorably, and the prison library, arts and crafts, and other programs were very impressive. The corrections officers and prison population appeared to be racially, ethnically and culturally identical, and similar. These factors undoubtedly contributed to a healthy, safe and positive environment that prevailed in this institution.

Two significant observations impressed me during my tour of the Rustavi woman's prison that merit discussion. In my years of visiting prisons both in Florida and the foreign countries I previously identified, I had never observed a prison nursery, nor did I know they were ever in existence. Admittedly, I was quite impressed with the separate structure created to house and service up to ten mothers and their babies as well as the contingent of nurses and correctional staff assigned to this unique facility. Florida does not allow such an arrangement in its state prisons. My research indicates that only nine of the fifty states in the United States currently have operating nurseries in their female prisons.<sup>10</sup>

The concept of "babies behind bars" is apparently an evolving trend in the United States.<sup>11</sup>

8 PRISON GANGS, FLORIDA DEPARTMENT OF CORRECTIONS. <http://state.fl.us/pub/gangs/prison.html> TERRIFYING REPORT ON PRISON GANGS IN FLORIDA FROM A "LIFER" WHO'S SEEN IT ALL, CHARLES NORMAN, PRISON WRITERS, <http://prisonwriters.com/prison-gangs-in-florida/>

9 FLORIDA DEPARTMENT OF CORRECTIONS: A CULTURE OF CORRUPTION, ABUSE AND DEATHS, CHRISTOPHER ZOUKIS. <http://www.prisonlegalnews.org/news/2016/feb/2/floridias-department-corrections-culture-corruption-abuse-and-deaths>

10 CALIFORNIA, ILLINOIS, INDIANA, NEW YORK, NEBRASKA, OHIO, SOUTH DAKOTA, WASHINGTON, WEST VIRGINIA. IN ADDITION, RESIDENTIAL PARENTING PROGRAMS EXIST FOR MOTHERS WITH INFANTS IN FEDERAL PRISONS LOCATED IN FIVE STATES.

11 PRISON NURSERY PROGRAMS A GROWING TREND IN WOMEN'S PRISONS, JULY 13, 2009. <http://www.corrections.com/articles/21644-prison-nursery-programs-a-growing-trend-in-women-s-prisons> RAISED BEHIND BARS: INSIDE AMERICA'S MAXIMUM SECURITY PRISONS WHERE BABIES GET TO STAY WITH THEIR FELON MOTHERS WHILE THEY SERVE THEIR JAIL SENTENCES, DARREN BOYLE, MAY 25, 2016,

The support behind this impetus is grounded on studies demonstrating that such a program reduces the rate of recidivism among participating mothers. Furthermore, providing babies with the opportunity to have a strong bonding relationship with their mother from birth fosters improved cognitive skills, school preparedness and a positive mental health aptitude that evolve from a full-time nurturing mother-child continuum. As a Roman Catholic Nun who runs the non-profit organization that operates the prison nursery at New York State's maximum security Bedford Hills Correctional Facility observed:

**Babies belong with their mothers. In a palace or a prison, they don't know and don't care as long as they feel loved and supported.**

In the nine states and the federal prisons in the United States as well as those other countries, including Georgia, that allow prison nurseries, the maximum stay for the babies is for a period ranging from 18 months – 36 months. A pregnant mother entering prison with a sentence in excess of this time-frame generally would not be a candidate for this program. In each instance, including the Rustavi prison, once the eligible pregnant female inmate gives birth to her child in a normal hospital setting the mother and infant, assuming both are healthy, are transported to the prison nursery.

Despite the praiseworthy and commendable effort of the Georgia Ministry of Corrections in creating this prison nursery, this acclaimed undertaking unfortunately is not without its critics and doubters. The 10<sup>th</sup> General Report of the Committee for the Prevention of Torture issued by the United Nations Convention on the Rights of Children based upon a treaty subscribed to by forty countries in Europe including Georgia noted:

**The need to maintain contacts between inmate mothers and a new born infant should not expose the child to the ill-effects of the prison experience or prevent the mother from receiving vital training for her return to work.**

### RESPONSIBILITY TOWARDS CHILDREN OF IMPRISONED MOTHERS CAN NOT BE ONE-SIDED.

This report strongly suggests/implies that although a prison nursery is a righteous step and an altruistic undertaking in the opinion of the report's author, a better approach to housing babies in prison nurseries would be to construct special living units outside the prison grounds to house eligible convicted mothers and their newborn children. This proposal would not expose infants to the prison atmosphere and environment, yet allow through correctional supervision with the aide of ankle monitors (i.e. house arrest) the baby's mother limited outside community movement and possibly secure a paying job as a laborer.<sup>12</sup> The primary shortcoming of this proposal would be the cost factor of funding such an endeavor including the construction/purchase of a dedicated living facility, the higher costs of more personnel to monitor the mother in the outside world, and higher costs of food and nutrition.

An equally eye-opening idea that I left with after my tour of the Rustavi woman's prison was affording its inmates the opportunity to have overnight/weekend conjugal visits in a separately designated facility on the prison grounds. This free standing structure with eight small apartment units allows selected inmates to have their legal spouse and/or children stay with them for overnight visits.

Florida, does not allow any conjugal or extended family visits in any of its state prisons.<sup>13</sup> Conjugal visitations are currently allowed only in the following four states: California, Connecticut, New York and Washington.<sup>14</sup> In 2007, the

12 CHILDREN INSIDE PRISON, JAN C.M. WILLIAMS, pp.191-207, <http://childrenofprisoners.eu/wp-content/uploads/2013/12/wolleswinkelfulltext.pdf>

13 IN FACT, IN LYONS V. GILLIGAN, 382 F. SUPP.198 (N.D. OHIO 1974), THE UNITED DISTRICT COURT HELD THAT PRISONERS HAVE NO CONSTITUTIONAL RIGHT TO CONJUGAL VISITS WITH THEIR SPOUSES WHILE SERVING A PRISON SENTENCE IN ANDERSON V. VAZQUEZ, 827 F. SUPP. 617 (N.D. CALIF. 1992) ANOTHER UNITED STATES DISTRICT COURT REACHED THE SAME CONCLUSION.

14 STATES THAT ALLOW CONJUGAL VISITS, DEBORAH ENGLAND, [www.criminaldefenselawyers.com](http://www.criminaldefenselawyers.com)

DAILY MAIL. <http://www.dailymail.co-uk/news/article-3608322/born-bars-inside-america-s-maximumsecurity-prisons-babies-stay-felon-mothers-serve-jail-sentences.html>

California legislature extended conjugal visits to same sex couples in order to comply with a prior enacted state law obligating state agencies to give the same rights to registered domestic partners who are not themselves incarcerated that heterosexual couples receive. The registered domestic partnership must have existed before one of the partners was incarcerated. The Federal Bureau of Prisons does not allow any conjugal visits in any of its prisons.

Advocates for conjugal visits in the four states where they are allowed in the United States argue that they help to maintain a connection between the prisoner and their family, reduce recidivism, and provide an incentive for good behavior. Unfortunately the vast majority of prisoner administrators in American have not been persuaded to support and implement conjugal visits. The current prevailing attitude in the United States is that inmates are in prison to pay a debt to society and conjugal visits should not be part of the deal!!

Outside the United States conjugal visits are more prevalent and acceptable. Nearly 20 countries have joined Georgia in extending to their eligible prison inmates this privilege. The more permissive attitude of European countries that allow well-behaved inmates to have intimate visits is attributable to their less rigid attitude towards sex and their stronger emphasis on maintaining

family values even though one family partner may nevertheless be incarcerated.<sup>15</sup>

As I was leaving the Rustavi prison, I asked a prison guard through a translator why all the inmates seemed calm, mellow and so well behaved. His response was to point to the conjugal visit facility and explain to me that the incentive for good behavior was to earn an overnight visit to the conjugal unit.

Prison life is a dreadful existence and experience with more risks than benefits. The loss of freedom, restriction of movement, and total forfeiture of rights and dignity that incarceration demands is a walk that should be avoided and path that should not be taken. New ideas that improve survival, minimize risks of harm and danger and provide inspiration and hope to the prisoners of our society are essential if we are to expect inmates to leave confinement no worse off than when they entered incarceration. Georgia's Ministry of Corrections appears to be headed in the right direction by implementing positive forward thinking, innovative programs and opportunities for its inmate population.

15 CONJUGAL VISITS/THE MARSHALL PROJECT, DANIA GOLDSTEIN [www.themarshallproject.org/.../02/11/conjugal-visits](http://www.themarshallproject.org/.../02/11/conjugal-visits)