Correctional officer, retaking inmate released in error

Number: INFORMAL

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Ms. Janet L. Anderson
Legal Counsel
Hernando County Sheriff's Office
Post Office Box 10070
Brooksville, Florida 34603-0070

Dear Ms. Anderson:

On behalf of Sheriff Richard B. Nugent of Hernando County, you ask whether a correctional officer who is employed by the private entity operating the county detention facility has the authority to retake custody of an inmate who has been released from the detention facility as the result of an administrative error.

Section 951.062(1), Fla. Stat., authorizes the governing body of a county, after consultation with the sheriff and upon adoption of an ordinance by vote of a majority plus one, to enter into a contract with a private entity for the provision of the operation and maintenance of a county detention facility[1] and the supervision of county prisoners. Pursuant to subsection (6) of the statute, private correctional officers responsible for supervising inmates within the facility shall meet the requirements necessary for certification by the Criminal Justice Standards and Training Commission pursuant to section 943.1395, Florida Statutes.

Section 943.10(2) defines "Correctional officer" as used in sections 943.085-943.255, Florida Statutes, to mean "any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates *within a correctional institution*[.]"[2] (e.s.) As you note, this office in Attorney General Opinion 98-31 stated that unlike law enforcement officers, correctional officers do not have broad arrest authority. Rather, correctional officers have only been authorized to arrest any convict who has escaped or any person who, without authority, interferes with or interrupts the work of a prisoner or the discipline or good conduct of a prisoner, or who by illicit means attempts to gain admission to a state correctional institution.[3]

Section 951.062(5), Florida Statutes, provides that in the case of a county prisoner's willful failure to remain within the supervisory control of the private entity, such action shall constitute an escape, punishable as provided in section 944.40, Florida Statutes. You refer to section 901.22, Florida Statutes, which provides that if a lawfully arrested person escapes or is rescued, the person from whose custody she or he escapes or was rescued or any other officer may immediately pursue and retake the person arrested without a warrant at any time and in any place. Neither statute would appear to be applicable to a county prisoner who has been released in error since the prisoner in leaving the facility has not "escaped."[4]

When a prisoner is released or discharged from prison by mistake, he may be recommitted if his sentence would not have expired had he remained in confinement.[5] While it does not appear that a correctional officer would have the authority to arrest the prisoner, I am not aware of any statute prohibiting the detention facility from sending a correctional officer to the county prisoner's location to inform that prisoner that he or she was released by mistake and needs to return to the facility. This office has been advised that such a procedure has been used by some sheriffs. Such a decision would appear to be an administrative or procedural matter. This office would note that the failure of the prisoner to voluntarily return may subject the prisoner to charges of escape.[6]

Accordingly, while it does not appear that a correctional officer could compel a county prisoner who had been mistakenly released from the county detention facility to return, this office is not aware of any prohibition against a correctional officer advising a county prisoner that he or she was mistakenly released from the correctional facility and needs to return to the facility.

I trust that the above informal advisory comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] *See* s. 951.23(1)(a), Fla. Stat., defining "County detention facility" to mean "a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor."

[2] The term "correctional officer," however, does not include any secretarial, clerical, or professionally trained personnel. *Compare* s. 943.10(1), Fla. Stat., which defines "Law enforcement officer" to mean

"any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency."

[3] *See* ss. 843.04 and 944.39, Fla. Stat.

[4] *See generally Hutchinson v. State*, 771 So. 2d 1287, 1288 (Fla. 4th DCA 2000) (for conviction under the escape statute, the state need show only (1) the right to legal custody and (2) a

conscious and intentional act of the defendant in leaving the established area of such custody); *Ramadanovic v. State*, 480 So. 2d 112 (Fla. 1st DCA 1985) (there are two elements to the crime of escape: The physical act of leaving, or not being in, custody coupled with the intent to avoid lawful confinement). *Cf. State v. Mendiola*, 919 So. 2d 471 (Fla. 3rd DCA 2005) (when a prisoner is released or discharged from prison by mistake, unless interrupted by violation of parole or some fault of the prisoner, the sentence continues to run while the prisoner is at liberty, and the prisoner's sentence must be credited with that time); *Waite v. Singletary*, 632 So. 2d 192, 194 (Fla. 3d DCA 1994); *Fraser v. State*, 602 So. 2d 1299, 1300 (Fla. 1992) (defendant entitled to credit for time on community control because "it would be unfair and inequitable to penalize [defendant] for a clerical mistake for which he was not responsible").

[5] *Carson v. State*, 489 So. 2d 1236 (Fla. 2nd DCA 1986).

[6] *Cf. State v. Williams*, 918 So. 2d 400 (Fla. 2nd DCA 2006) (Although failing to report back to a work release facility upon being notified to do so subjects a work release inmate to a charge of escape, the mere failure to report to work does not); *Early v. State*, 678 So. 2d 901 (Fla. 5th DCA 1996) (after defendant was advised that his furlough had ended upon his failure to report to work as directed, his failure to timely return to the work release facility constituted escape under the statute); *Ramadanovic v. State, supra* (even though a defendant may not possess the necessary mental element of intent at the time he leaves confinement or custody, he may subsequently do so and thereby render himself criminally liable).