

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENT TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE

CASE NUMBER:

OUT-OF-CYCLE REPORT OF THE FLORIDA BAR CRIMINAL
PROCEDURE RULES COMMITTEE TO AMEND RULE 3.172(C)

John F. Harkness, Jr., Executive Director of The Florida Bar, and Thomas H. Bateman III, Circuit Judge, 2004/2005 Chair of The Florida Bar Criminal Procedure Rules Committee (CPRC), file this report under Rule 2.130(f), Florida Rules of Judicial Administration. This report recommends adding a subdivision to Rule 3.172(c). That proposed amended rule is shown in Appendix A with the additional subdivision shown by underlining. The proposed new subdivision appears again in Appendix B in the first column of a two-column chart. The second column provides the reasons for the proposed new subdivision. Materials considered by the CPRC are provided in Appendix C.

The amendment to Rule 3.172(c) was approved by the CPRC by a vote of 25 to 2. The Executive Committee of The Florida Bar's Board of Governors has reviewed the amendment and has approved it by a vote of 10 to 0.

The proposed amendment to Rule 3.172(c) is in response to a referral to the CPRC from the court. On March 17, 2004, Thomas D. Hall, Clerk of Court, Florida Supreme Court, requested on behalf of the court that the CPRC consider the need for an amendment to rule 3.172(c) that would address the need to inform defendants of the possible consequences of the Jimmy Ryce Act (sections 394.910-.931, Florida Statutes (2003)).@ See Appendix C, pages 2 and 3. Additionally, Mr. Hall cited *Watrous v. State*, 793 So. 2d 6 (Fla. 2d DCA 2001) and *State v. Stapleton*, 764 So. 2d 886 (Fla. 4th DCA 2000). Both cases involved defendants who were not advised by the trial court of the consequences of the Jimmy Ryce Act at the time of entering a plea. The *Watrous* court specifically requested that the supreme court amend rule 3.172 to require trial courts to advise defendants of the consequences

of the Act. @ Id. at 11.

After reviewing Mr. Hall's letter, *State v. Harris*, 881 So. 2d 1079 (Fla. 2004), *Watrous v. State*, 793 So. 2d 6 (Fla. 2d DCA 2001), and *State v. Stapleton*, 764 So. 2d 886 (Fla. 4th DCA 2000), the CPRC proposes that the following subdivision be added to Rule 3.172(c), Florida Rules of Criminal Procedure:

(9) that if the defendant pleads guilty or nolo contendere, and the offense to which the defendant is pleading is a sexually violent offense, or if the defendant has been previously convicted of a sexually violent offense, the plea may subject the defendant to involuntary civil commitment as a sexually violent offender upon completion of his or her sentence.

The proposed amendment addresses the concern of one of the CPRC members that the advice should also be given to defendants who are not currently pleading to a sexually violent offense but who may have previously been convicted of a sexually violent offense.

Additionally, in an effort to direct people to applicable law supporting the proposed amendment, the CPRC proposes that the court approve the following committee note:

2004 Amendment. Rule 3.172(c)(9) added. See section 394.910, et seq., Fla. Stat.; and *State v. Harris*, 881 So. 2d 1079 (Fla. 2004).

The CPRC used its fast track procedure to expedite the court's referral. Paragraph 14 of the CPRC's Internal Operating Procedures provides that "Unless a minimum of one third of the full Committee opposes the proposed rule or amendment within 10 days after its publication, the proposed rule or amendment to a rule shall be submitted to the Supreme Court of Florida. Votes in opposition shall be in writing, by mail or electronically, and submitted to the Chair of the full Committee." Accordingly, the CPRC approved the proposed amendment and committee note by a vote of 25 to 2.

No minority view, recommendation, or report was requested or prepared for inclusion in this report.

Wherefore, the committee and The Florida Bar respectfully request that the court adopt the proposed amendment to Rule 3.172, Florida Rules of Criminal Procedure, as proposed in this out-of-cycle report.

Respectfully submitted on November____, 2004.

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