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Rulings Muddle Florida Drug Law

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By ASHBY JONES

Courts in Florida are casting doubt over the legality of the state's key criminal drug law, a development that is causing confusion among lawyers and could lead to thousands of drug convictions ultimately being overturned.

"It's a mess," said Ricardo Bascuas, a law professor at the University of Miami. "There are a lot of questions that need to be answered before we know how this is going to play out."

To win a conviction under the drug laws of most states, a prosecutor has to convince a jury that the defendant knew he owned or sold an illicit substance. But in 2002, Florida became the only state in the country to do away with the "knowledge requirement" in its main drug law.

A federal judge in Orlando was the first to strike a blow to the law late last month, ruling that a central part of Florida's Drug Abuse Prevention and Control law violated the U.S. Constitution's 14th Amendment, which prohibits states from depriving people of life, liberty or property without "due process of law."

Specifically, U.S. District Judge Mary Scriven, a George W. Bush appointee, said that "no individual should be subjected to condemnation and prolonged deprivation of liberty unless he acts with criminal intent."

Last week, a state judge in Miami cited Judge Scriven's opinion in overturning the drug-distribution convictions of 39 defendants. Judge Milton Hirsch acknowledged that the "overwhelming majority" of the 39 defendants "may have known perfectly well that their acts of possession or delivery were contrary to law." Nevertheless, he shot down the law on grounds that it "reaches beyond those who willfully do wrong...and includes within its wingspan those who meant no wrong."

Some Florida defense lawyers applauded the rulings. "These are basic bedrock criminal-appeal principles, and these judges are just following the law," said David Markus, a Miami criminal-defense lawyer who helped draft a brief supporting the challenge in the Orlando case. "Florida is the only state that has this wrinkle in its law, and it's time for it to go."

The office of the Florida Attorney General, Pam Bondi, has filed notices of appeals in both cases.

"This decision conflicts with binding state court precedent upholding Florida's drug law," said Ms. Bondi, shortly after Judge Hirsch issued his ruling on Wednesday. "This decision is flawed and it unduly hinders prosecutors' efforts to keep criminals off our streets."

Meanwhile, other courts in Florida have ruled to the contrary. Two state judges in Miami, another in Pensacola and a federal judge in Jacksonville have in recent weeks declined to toss out drug cases, saying either they weren't bound by Judge Scriven's ruling, or dis-

agreed with it.

The issue will likely be settled by a higher court—the Florida Supreme Court, the 11th U.S. Circuit Court of Appeals or, possibly, the U.S. Supreme Court. It is unlikely that Florida will see a mass exodus of its prison population until then.

But if the key part of the law is ultimately struck down, "it could get pretty chaotic," said James Felman, the lawyer for Mackle Vincent Shelton, whose conviction Judge Scriven overturned.

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According to the Florida Department of Corrections, nearly 94,000 people have been sent to state prisons for drug crimes since the start of 2002. Jo Elyn Rackleff, a department spokeswoman, said most of them were convicted under the Drug Abuse Prevention and Control law.

Statutes of limitations and other restrictions would prevent many inmates from getting their convictions overturned. But motions from other prisoners asking for relief have been flooding in, lawyers say.

The conflicting views on the law by different judges could have an impact on current cases as well. "Anyone currently fighting charges under [the challenged state law] should be amending their papers and citing these cases," Mr. Felman said.