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401.831.7171 (t)
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TESTIMONY IN SUPPORT OF 18-S 2269,
REPEAL OF THE "CIVIL DEATH" STATUTE
February 13, 2018

"With living men regarded as dead, dead men returning to life, and the same man considered alive for one purpose but dead for another, the realm of legal fiction acquires a touch of the supernatural under the paradoxical doctrine of civil death." So begins an 80-year-old Harvard Law Review article that called for the repeal of so-called "civil death" statutes in the 18 states, including Rhode Island, that then had such statutes. The article, published in 1937, noted that these laws, which declare individuals serving life sentences as "legally dead" for virtually all purposes and which have their origins in ancient English common law, were "outworn as a mode of punishment and ineffective as a deterrent to crime."

By 1976, thirteen states were left with a statute like this on the books. In striking down Missouri's civil death statute on First Amendment and due process grounds that year, a federal judge noted: "The court cannot fail to note that the concept of civil death has been condemned by virtually every court and commentator to study it over the last thirty years. … [It] has been characterized in recent years as 'archaic,' 'outmoded and medieval,' 'an outdated and inscrutable common law precept,' and 'a medieval fiction in a modern world.'"

Rhode Island's civil death statute was enacted in 1909. Almost a century later, Rhode Island now remains one of only three states that retain such a law on their books. We believe the time has come for Rhode Island to repeal this vestige of an ancient era. In light of its potentially enormous ramifications, it should come as no surprise that the statute is largely ignored. Unfortunately, occasionally it is not. That is why repeal of this law is needed.

Last year, a federal court ruled that the fiancée of an inmate at the ACI who is serving a life sentence could not marry because of this statute. More recently, the Department of Corrections initially sought to bar an inmate from bringing a civil rights suit over his living conditions at the ACI, saying that because he was civilly dead, he had no standing to sue.

The irony of the "civil death" statute is that a person who is sentenced to life imprisonment – and thus legally dead – may be eligible for parole after 20 years. On the other hand, there are many cases where a person not serving a "life sentence" is nevertheless sentenced consecutively for multiple, serious offenses of confinement greater than twenty years. Yet these multiple offenders retain their civil rights in property, marriage, etc., while the same rights are denied to a person serving a 20-year "life sentence."

We urge the committee to repeal this archaic statute.