



128 Dorrance Street, Suite 400
Providence, RI 02903
Phone: (401) 831-7171
Fax: (401) 831-7175
www.riaclu.org
info@riaclu.org

ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 21-H 5875, REPEAL OF THE “CIVIL DEATH” STATUTE March 17, 2021

“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 84-year-old Harvard Law Review article that called for the repeal of so-called “civil death” statutes in the 18 states, including Rhode Island, whose laws then contained 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 [It] has been characterized in recent years as ‘archaic,’ ‘outmoded and medieval,’ ‘an outdated and inscrutable common law precept,’ and ‘a medieval fiction in a modern world.’”

Yet Rhode Island’s civil death statute, well over a century old, persists. To the best of our knowledge, Rhode Island is the only state left that retains and enforces such a law on their books. We believe the time has come 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.

Recently, the Department of Corrections 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. Only after the ACLU intervened did the state drop that defense to the lawsuit.

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 that will ensure confinement for 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 and make 2021 the year that “civil death” in Rhode Island finally gets its deserved burial.