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Counseling in Federal Probation: The Introduction of a Flowchart into the Counseling Process ..... John S. Dierna

Probation Officer Burnout: An Organizational Disease/An Organizational Cure, Part II ..... Paul W. Brown

Experimenting with Community Service: A Punitive Alternative to Imprisonment ..... Richard J. Maher  
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Local Impact of a Low-Security Federal Correctional Institution ..... George O. Rogers  
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Delinquents and the Adult Children ..... JAN 7 1988 ..... Eric T. Assur  
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# Federal Probation

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## This Issue in Brief

In this issue, the editors are pleased to feature three articles authored by United States probation officers. In that the manuscripts were sent unsolicited, we believe that they offer good indication of issues that are of real interest and concern to persons working in the Federal Probation System. The articles, the first three presented in this issue, discuss counseling offenders, preventing job burnout, and employing community service as a sentencing alternative—information valuable not only to probation officers but to professionals in all phases of criminal justice and corrections.

**Counseling in Federal Probation: The Introduction of a Flowchart into the Counseling Process.**—In many probation officer-probationer/parolee relationships, the potential problems facing clients are not addressed, often because the client does not understand or consciously accept the problem or focus area. To assist Federal probation officers and other change agents in using counseling methods and problem-definition skills, author John S. Dierna introduces a systematic framework. The tool is a flowchart—which defines a variety of processes and decisions which may be pertinent in addressing issues such as, "What is the problem?" The flowchart—which the author applies to an actual probation case—offers a flexible yet structured approach to defining problem areas and defusing the resistive barriers which initially inhibit steps toward problem resolution.

**Probation Officer Burnout: An Organizational Disease/An Organizational Cure, Part II.**—Paul W. Brown authors his second article for *Federal Probation* on the topic of burnout. While the first article (March 1986) discussed the influence of the bureaucracy on probation officer burnout, this second part emphasizes some specific approaches that management can take to reduce organizationally induced burnout. Noting that organizational behavior can influence staff burnout, Brown points out that the role of the supervisor is vital in reducing the

stress which can lead to burnout. Much can be done to provide a work environment which is healthier for the employee and more productive for the organization.

**Experimenting with Community Service: A Punitive Alternative to Imprisonment.**—For the past

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# The Collateral Consequences of a Felony Conviction: A National Study of State Statutes

BY VELMER S. BURTON, JR., FRANCIS T. CULLEN, AND LAWRENCE F. TRAVIS III\*

“NOWADAYS,” OBSERVES Rubin (1971:3), “after a man has completed the sentence of the courts—presumably a rehabilitative sentence—the law is not through punishing him.” In many states, for example, the convicted criminal may lose such rights and privileges as voting, holding offices of public and private trust, and serving as a juror (Grant, Lecornu, Pickens, Rivkin, and Vinson, 1970:939). Equally important rights such as employment opportunities (Finn and Fontaine, 1985; Rubin, 1963; Schwartz and Skolnick, 1962), professional licenses (Davidenas, 1983; Kline, 1975), and domestic rights (Jackson, 1979) may be relinquished as well. These restrictions are called “collateral consequences” because they refer to the rights or privileges that are lost upon conviction, as mandated by state and Federal statutes. That is, these consequences are the associated effects of conviction—in addition to any penalty imposed by the courts.

Yet, as Singer (1983:243) notes, “for many criminals—particularly for the 50 percent of convicted persons who are never imprisoned—[these consequences] are anything but collateral; they are, in fact, the most persistent punishments that are inflicted for crime.” Moreover, the number of convicted persons suffering from collateral consequences is substantial. Previous studies conservatively estimate that there are at least 50 million convicts in this country (Davidenas, 1983), of which nearly 14 million persons have been convicted of a felony.<sup>1</sup>

Previous attempts to specify the legal rights that have been lost as a result of a felony conviction have tended to be limited in scope. Thus, much of this research has investigated only a single jurisdiction

(Bryan, 1963) or has focused on only one specific type of rights, such as voting (Rebeck, 1973; Tims, 1975; Vile, 1981), parental rights (Jackson, 1979), holding office (Avins, 1967), public employment (Miller, 1972; Taggart, 1972), or civil death (Saunders, 1970). Moreover, earlier studies which examined more than a single right, while still valuable, have often become outdated by everchanging legislation (Grant, et al., 1970; Kerper and Kerper, 1974; Killinger, Kerper, and Cromwell, 1976; Krantz, 1973; Rubin, 1973; Rudenstine, 1979). Despite this fact, recent discussions in the area of “collateral consequences” continue to cite the findings of earlier studies without examining the current status of the statutes (Cole, 1986; Cromwell, Killinger, Kerper, and Walker, 1986).

In light of these considerations, the present study presents a survey of existing statutes dealing with collateral consequences of a felony conviction. An attempt will be made to provide an updated, comprehensive analysis of the legally mandated collateral consequences of a felony conviction across all 50 states and the District of Columbia.

## Methodology

This study provides a systematic review of the civil rights and privileges that felony offenders relinquish after a conviction. Specifically, the following rights were analyzed: voting, parenting, divorce, public employment, jury duty, holding public office, firearm ownership, criminal registration, and civil death. The status of these civil rights were analyzed in the 1986 legal codes for all 50 states and the District of Columbia.

In order to accomplish this task, several procedures were utilized. First, attention was focused on

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<sup>1</sup> While it is difficult to estimate the exact total of convicted felons, data from the Department of Justice's *Case Filings in State Courts* (1984) report that there were 710,972 felony case filings for the 24 states that responded to the study. In order to provide a rough estimate of the national felony filing total, the figure of 710,972 was multiplied by two ( $710,972 \times 2 = 1,421,944$ ). This estimate of 1,421,944 felony filings, coupled with an average prosecution rate of 50.2 percent (as indicated by the 1983 Department of Justice's *Report to the Nation on Crime and Justice: The Data*, left a total of 713,815 estimated prosecuted cases per year in the United States. This total, multiplied by a conservative 20-year timespan results in a total of 14,276,300 possibly convicted felons. As indicated, this total is a conservative figure, and the actual number of convicted felons is probably higher.

all state and Federal statutes to determine the status of the rights. Second, in certain instances it was necessary to consult the constitutions of several states when there was a lack of legislation for a particular right. In addition, when statutes were vague, and efforts to locate similar interpretations from a constitution were unsuccessful. Judicial rulings in case law were employed to obtain a clearer understanding of the right in question. For example, the distinction between "public office" and "public employment" is often unclear. In these instances, case law was consulted to clarify the intent of the statute as to whether the two are the same or mutually exclusive. Finally, there were instances when it was necessary to consult prior attorney general opinions to assist in the interpretation of a statute.

Although the study's primary methodology was the analysis of legal codes, we took the extra precaution of contacting by mail each state's attorney general office. In this individualized survey, we asked the attorney general to clarify any ambiguity we had regarding his or her state's code. Since most codes were relatively clear, we typically did not have to ask the attorneys general to comment on more than three issues surrounding particular civil rights. Twenty-six states<sup>2</sup> chose not to respond, and another six states<sup>3</sup> indicated that state law precluded their providing legal opinions. In these instances, we reported our best interpretation of the legal codes. Eighteen attorney general offices, however, did choose to furnish additional clarification of their state's codes.<sup>4</sup> Finally, one jurisdiction, the District of Columbia, was not included in this mail survey.

In an attempt to summarize in an accessible way which jurisdictions impose the greatest consequences on offenders—that is, "restrict rights"—we constructed table 1. For each state, table 1 indicates which civil rights are restricted or denied for felony offenders. Some comments on our system of coding are in order. For example, in the category of voting, we coded jurisdictions as "restrictive" if they permanently restrict this right (unless the offender is pardoned or restored to full citizenship). These jurisdictions are identified in table 1 by an "X" placed next to them. Jurisdictions which automati-

cally restore the right after completion of sentence or after an additional delay subsequent to the completion of the offender's sentence are considered not to be restrictive. For these jurisdictions, the space next to them is empty.

When distinguishing restrictive from non-restrictive states in the category of parental rights, we coded as restrictive jurisdictions which permit the termination of this right for a felony conviction or imprisonment. These jurisdictions are identified by an X placed next to them on table 1. States which have no statutory restriction governing the right are considered non-restrictive and are not identified with an X.

When categorizing divorce, states which grant a divorce for a felony conviction or imprisonment are considered restrictive. These states are identified on table 1 by an X placed next to them. States which do not have this type of statute are considered non-restrictive and, again, are not identified with an X.

With public employment, states are considered restrictive (X in table 1) when the right is permanently lost or restorable only through a pardon or other procedure. Jurisdictions not designated as restrictive are those which eventually restore the right to the offender.

Jurisdictions which permanently deny offenders the rights of serving as a juror and holding public office, unless pardoned or restored to citizenship, are considered restrictive and are identified by an X placed next to them. On the other hand, jurisdictions which eventually restore the right or rights are considered less restrictive.

With the right to own a firearm, table 1 divides jurisdictions between those which restrict the right for "any" felony and those which require a "violent" felony conviction for the restriction. States which restrict the right for "any" felony are considered to be restrictive and are identified by an X. Jurisdictions which only restrict the right for "violent" felony convictions are not identified by an X since they are considered less restrictive of the right.

States which have a statutory requirement for any type of criminal registration or civil death for a felony conviction are considered to be restrictive and are identified by an X placed next to them on table 1. The remaining jurisdictions which do not require either criminal registration or civil death are considered to be less restrictive.

It is necessary to mention that this study only investigated civil rights that are lost for first-time felony offenders. Also, focus was centered on traditional offenses such as most personal and property

<sup>2</sup>The 26 states which did not respond to the attorneys general survey were Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Iowa, Kansas, Kentucky, Maine, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Washington, Wisconsin, and Wyoming.

<sup>3</sup>The six states which were precluded by state law from rendering legal opinions were California, Georgia, New York, North Carolina, South Carolina, and Virginia.

<sup>4</sup>The following 18 state attorney general offices completed the survey: Alaska, Florida, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, Oregon, Pennsylvania, Texas, Utah, Vermont, and West Virginia.

offenses in which the majority of offenders engage. Given these criteria, offenses such as treason, bribery, perjury, dueling, and election fraud were excluded from the analysis, since most states permanently deny these offenders their civil rights unless restored citizenship by pardon.

### Results

#### *Voting*

Table 1 reveals that 11 states permanently deny convicted felons the right to vote unless pardoned or restored to citizenship through expungement, vacation of sentence, or some other judicial procedure. The remaining 40 jurisdictions limit the right in varying degrees.

In this latter regard, our research revealed that 20 of the 40 jurisdictions restrict the right only until final discharge from state or Federal supervision, which may include prison, parole, or probation (Alaska, Arizona, Connecticut, Georgia, Kansas, Louisiana, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Washington, West Virginia, Wisconsin, and Wyoming). While the majority of states restrict the right of suffrage to an offender who is serving his or her sentence, several states (California and Illinois) only apply the restriction to prisoners and parolees, while permitting probationers to vote.

In 12 jurisdictions, the right to vote is suspended only until the offender is released from imprisonment (Colorado, District of Columbia, Hawaii, Idaho, Indiana, Michigan, Missouri, Montana, North Dakota, Ohio, Oregon, and Pennsylvania). Moreover, it was found that in two states, there is an additional delay before an offender is eligible to vote: Delaware requires a 10-year waiting period, while Texas calls for 2 years subsequent to completion of the sentence.

Finally, four states (Maine, Massachusetts, Utah, and Vermont) do not statutorily restrict the right to vote except for convictions of treason, bribery, or other specified election offenses. Interestingly, it was found that in Vermont, confined offenders could vote if they had established proper residence prior to the election, had not been convicted of one of the above offenses (e.g., treason), and had met other voter registration criteria.

In sum, over three-fourths of the jurisdictions surveyed returned the right to vote after varying lengths of time, while the remaining states permanently exclude felons from the franchise unless pardoned or restored to citizenship.

#### *Parental Rights*

The impact that a felony conviction or imprisonment has on offenders retaining their parental rights was investigated in the statutes (see table 1). It was discovered that in 16 states, a court may terminate the parent's custodial rights over his or her child upon conviction or imprisonment of the parent. Also, it was found that a conviction or imprisonment could serve as criteria to show the parent's unfitness in custody and adoption proceedings.

In six states, a single felony conviction is sufficient to warrant the termination of the offender's parental rights. Thus, in Arizona, California, Michigan, and Nevada, a felony conviction could be utilized to show the parent's unfitness to care properly for the child. In Indiana, a list of specific offenses could permit the court to terminate the parent-child relationship. Wisconsin only requires the conviction of any felony to terminate the relationship if the court determines that ending the parent's custodial rights is in the best interests of the child.

Ten states require that a felony conviction be followed by imprisonment in order to terminate parental rights. Thus, Alabama, Colorado, Mississippi, and Rhode Island may terminate the relationship for "any" felony incarceration of the offending parent. Tennessee and Oregon, however, require that the parent be incarcerated for a specified length of time. Tennessee permits termination after 2 years of confinement, while a 3-year sentence is necessary in Oregon. Incarceration in two states, Massachusetts and South Dakota, risks the possibility that an offender's parental rights may be terminated by a court without his or her consent. Finally, in Kansas and Wyoming, conviction followed by imprisonment will successfully prove that the offender is unfit to be a parent.

After surveying the statutes, it appears that a felony conviction or imprisonment has adverse effects on an offender's right to be a parent in nearly a third of the jurisdictions (16 states) in the United States.

#### *Divorce*

Another right which is often jeopardized as a consequence of a felony conviction is divorce—or put another way, the right to remain married. It was found that in 28 jurisdictions, a conviction or the imprisonment of a felony was grounds for divorce by a spouse (see table 1).

In 12 states, a single felony conviction is all that is required for a spouse to successfully divorce an of-

TABLE 1. RESTRICTIONS OF FELONY OFFENDERS' CIVIL RIGHTS  
Restrictive vs. Less Restrictive, by Right & Jurisdiction

Jurisdiction	Voting	Parental	Divorce	Public	Juror	Holding	Firearm	Criminal	Civil
	Permanently Lost vs. Restorable	Yes vs. No	Yes vs. No	Employment Permanently Lost vs. Restorable	Permanently Lost vs. Restorable	Office Permanently Lost vs. Restorable	"Violent" Felony vs. "Any" Felony	Registration Yes vs. No	Death Yes vs. No
Alabama	X	X	X	X	X	X		X	
Alaska			X		X		X		
Arizona		X					X	X	
Arkansas	X		X		X	X	X		
California		X			X	X <sup>1</sup>	X	X	
Colorado		X							
Connecticut			X				X		
Delaware				X	X	X	X		
D.C.			X		X	X <sup>1</sup>	X		
Florida	X				X	X	X	X	
Georgia			X		X	X	X		
Hawaii					X		X		
Idaho			X		X				X
Illinois			X				X		
Indiana		X	X		X		X		
Iowa	X			X	X	X	X		
Kansas		X					X		
Kentucky	X				X	X	X		
Louisiana			X						
Maine						X <sup>1</sup>	X		
Maryland			X		X				
Massachusetts		X				X <sup>1</sup>	X		
Michigan		X					X		
Minnesota			X						
Mississippi	X	X	X	X		X	X	X	X
Missouri					X				
Montana					X		X		
Nebraska					X		X		
Nevada	X	X			X	X	X	X	
New Hampshire			X				X		
New Jersey			X		X	X			
New Mexico	X				X	X	X		
New York			X		X	X	X		X
North Carolina									
North Dakota			X						
Ohio			X		X	X			
Oklahoma			X		X		X		
Oregon		X					X		
Pennsylvania			X		X		X		
Rhode Island	X	X	X	X	X	X			X
South Carolina				X	X	X			
South Dakota		X	X						
Tennessee	X	X	X		X	X		X	
Texas			X		X	X	X		
Utah			X		X			X	
Vermont			X						
Virginia	X		X		X	X			
Washington									
West Virginia			X				X		
Wisconsin		X				X	X		
Wyoming		X			X				

X = right is restricted or jeopardized

1 = right is restricted for specific offenses

fender (Alaska, Arkansas, Idaho, Illinois, Indiana, Maryland, North Dakota, South Dakota, Tennessee, Texas, Utah, and West Virginia). Further, seven jurisdictions (District of Columbia, Louisiana, Minnesota, Mississippi, New Hampshire, Ohio, and Oklahoma) additionally require that the conviction be followed by imprisonment. New Jersey and Virginia will grant a divorce when the offender has been incarcerated for 1 year or more, while Alabama, Georgia, and Pennsylvania require that the imprisonment last at least 2 years. New York and Utah will grant a divorce for confinement of 3 years or more, and Connecticut and Rhode Island call for a life sentence.

Thus, 12 states explicitly provide for a divorce to be granted when either spouse has been convicted of a felony. The remaining 16 jurisdictions require that the conviction be followed by a period of incarceration.

#### *Public Employment*

As indicated in table 1, public employment is permitted in all but six jurisdictions. To determine which states place a restriction on this right, attention was focused on civil service statutes, case law, the findings of the attorney general survey, and statutory provisions which restore the rights of offenders after completion of their sentence. Also, it is necessary to note that many states did not distinguish between public office and public employment. Thus, it was assumed that when offenders were permitted to hold office, they were permitted to be a public employee as well. Similarly, when the right to hold office was forbidden, unless there was a statutory provision which explicitly allowed public employment, the right was considered restricted to felons. Using these criteria, we found that Alabama, Delaware, Iowa, Mississippi, Rhode Island, and South Carolina permanently deny convicted felons the right to hold public employment in their states unless pardoned or restored to citizenship.

The remaining jurisdictions permitted public employment in varying degrees (see table 1). Thus, in Georgia, earlier opinions of the state's attorney general permit public employment for convicted felons. In Indiana and Texas, the results of the attorney general survey indicate that offenders are permitted to hold public employment after completion of sentence. Further, eight states permit public employment of ex-offenders but leave the actual hiring up to the discretion of the hiring agency or civil service commissioner (Arkansas, California, Massachusetts, Nevada, Ohio, Tennessee, Virginia, and

West Virginia). These states generally permit the employer the exclusive right to deny public employment based solely on a felony conviction.

In Arizona, Florida, Pennsylvania, and Wisconsin, an offender is not to be denied public employment solely on the grounds of a felony conviction, unless the offense bears a direct relationship to the position sought. Further yet, eight states require a direct relationship test and consideration of other factors such as the offender's degree of rehabilitation prior to the offense, any contributing negative social factors at the time of the offense, lapse of time since conviction, the offender's age at the time of conviction, and the nature and seriousness of the offense (Colorado, Connecticut, Kentucky, Minnesota, New Jersey, New Mexico, New York, and Washington).

Seventeen states permit public employment after offenders are discharged from their sentence, since the offenders' civil rights are restored (Alaska, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maryland, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, and Wyoming). As mentioned previously, some of these states do not distinguish public office from public employment; therefore, we assumed that if offenders are able to hold office, they may also be public employees.

Finally, there are no statutory restrictions on the right to hold public employment in four jurisdictions (District of Columbia, Maine, Utah, and Vermont).

#### *Right to Serve as a Juror*

As found in table 1, the right to serve as a juror is permanently restricted in 31 jurisdictions. Twenty states, however, do not deny offenders this right. Eleven of these states permit convicted felons to serve as jurors after they have fully completed their sentence (Arizona, Illinois, Kansas, Louisiana, Michigan, Minnesota, North Carolina, South Dakota, Washington, West Virginia, and Wisconsin). For example, Wisconsin restores civil rights upon the completion of sentence and with it the right to vote. Since Wisconsin's jurors must be qualified electors, felons would be permitted to serve on a jury unless challenged for cause.

In three states (Colorado, North Dakota, and Oregon) the right is suspended only until the offender is released from confinement. Afterwards, the right is fully restored to the offender. The state of Vermont disqualifies offenders only if they are convicted and imprisoned within the state. Thus, if offenders have completed their sentence of felony probation within Vermont or were sentenced outside the state, they

are eligible to serve as a juror in Vermont courts.

In two states (Connecticut and Mississippi), there is an additional delay before an offender is eligible to serve as a juror. Mississippi would permit only certain felons to serve as jurors since a list of offenses disqualify certain offenders from voting and that is how jurors are selected—from voter registration lists. In Maine there are no statutory restrictions placed on offenders to serve as jurors. Finally, Massachusetts and New Hampshire place the right in the hands of the trial judge who determines whether the offender is qualified to serve as a juror.

*The Right to Hold Public Office*

The right to hold office has traditionally been denied to convicted felons by many states. Table 1 reveals that 19 states permanently restrict this right to felony offenders unless they receive a pardon or are restored to citizenship. Also noted in table 1, four jurisdictions (California, District of Columbia, Maine, and Massachusetts) generally permit convicted offenders to hold office, except when convicted of specific offenses such as bribery, perjury, embezzlement, election offenses, and treason.

Twenty-one states return the right to hold office immediately following the offender's discharge from supervision of parole, probation, or prison. Kansas permits offenders to run for and hold an elective office while serving their sentence of probation; North Dakota, Oklahoma, and Oregon restrict the right only during actual confinement. Finally, as indicated by attorney general opinions and case law—and despite the fact that their statutes expressly forbid the practice—three states (Michigan, Pennsylvania, and West Virginia) permit office-holding for convicted felons.

*Right to Own a Firearm*

Even though there is Federal legislation preventing convicted felons from owning or possessing a firearm, nearly every jurisdiction (except Idaho and Vermont which rely on Federal law) currently has statutory restrictions equal to or more stringent than the Federal law (see table 1).

The statutes indicate that 31 jurisdictions restrict the ownership of firearms to a person convicted of "any" felony. By contrast, in 18 states, only the conviction of a serious crime or a crime of violence prevents the offender from possessing a firearm. In table 1, these are considered "less restrictive" states. Waiting periods for the restoration of this right range from 5 years in North Carolina to 15 years in South Dakota.

*Criminal Registration*

Offenders are currently required by statute to register with a law enforcement agency in eight states. The types of offenses designated for registration vary by jurisdiction. Registration is required of felons, sex offenders, arsonists, and drug addicts in certain states.

Florida, Mississippi, Nevada, and Tennessee require the registration of offenders convicted of any felony. Alabama, on the other hand, seeks to control habitual offenders by requiring anyone with two felony convictions to register. Sex offenders are required to register in Arizona, California, Nevada, and Utah. In addition, California statutorily requires registration of convicted arsonists and drug addicts.

*Civil Death*

As indicated in table 1, there are presently only four states which continue to practice civil death. Three of these states (Idaho, New York, and Rhode

TABLE 2. RESTRICTED RIGHTS BY JURISDICTION

Number of Rights That Are Restricted	Jurisdictions
9	None
8	Mississippi
7	Alabama and Rhode Island
6	Nevada and Tennessee
5	Arkansas, California, Florida, Iowa, and New York
4	Delaware, District of Columbia, Georgia, Indiana, Kentucky, New Mexico, Texas, and Virginia
3	Alaska, Arizona, Idaho, Massachusetts, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah, and Wisconsin
2	Connecticut, Hawaii, Illinois, Kansas, Maine, Maryland, Michigan, Montana, Nebraska, New Hampshire, Oregon, South Dakota, and Wyoming
1	Colorado, Louisiana, Minnesota, Missouri, North Dakota, Vermont, and West Virginia
0	North Carolina and Washington

\*Rights considered were in the areas of voting, parenting, divorce, public employment, jury duty, holding public office, owning firearms, criminal registration, and civil death.

Island) only enact civil death when the offender is sentenced to life imprisonment. There are currently no civil death statutes for offenders sentenced to less than life imprisonment, except for the state of Mississippi which attaches civil death for a conviction of bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy.

### *Restrictions by Jurisdictions*

Table 2 lists the number of rights restricted in each jurisdiction. As noted, we examined nine civil rights: voting, parenting, divorce, public employment, jury duty, holding public office, owning a firearm, criminal registration, and civil death.

As seen in Table 2, there are no jurisdictions that restrict all nine rights. Mississippi, however, restricts eight of the nine rights, while Alabama and Rhode Island deny seven. Nevada and Tennessee place a restriction on six rights, while Arkansas, California, Florida, Iowa, and New York restrict five. Eight jurisdictions deny four of the nine rights and 11 others restrict three of the rights. Thirteen states restrict two of the rights and seven states deny only one of the rights. Finally, North Carolina and Washington do not permanently restrict any of the civil rights examined.

### *Discussion*

#### *Rights Which are the Most Restricted*

After surveying the statutes, it can be said that rights which involve trust (serving as a juror) are the most restricted. It was found that 31 jurisdictions permanently exclude convicted felons from serving as jurors unless pardoned or restored to citizenship. The intention behind this restriction is that preventing offenders from serving as jurors keeps them from "letting criminals off the hook" during a trial. Another reason for the restriction is that once individuals commit an offense involving moral turpitude, they can no longer serve in a position of trust.

Another right which is restricted by all jurisdictions is the right to own a firearm after a conviction. The majority of states restrict this right for any felony conviction, while the minority requires a violent felony conviction for the right to be restricted. The rationale behind this restriction, of course, is to keep weapons out of the hands of dangerous individuals and to protect an unsuspecting public.

The right to remain married after a conviction is lost in many jurisdictions. This right is jeopardized in some jurisdictions by the very fact of a felony conviction, while in others actual imprisonment is necessary. Granting a divorce for a felony conviction ostensibly is intended to free innocent spouses from the stigma of offenders.

The future trend of this right appears to be one in which states will be less likely to grant a divorce for a felony conviction. This assertion is based on the reduction in the number of jurisdictions which permit a divorce for a felony conviction since the 1961 statute survey in the South Dakota case of *Ness v. Ness*. In that survey, all but eight jurisdictions permitted a divorce for a felony conviction or imprisonment, while this research indicates that 28 jurisdictions presently continue the practice.

#### *A Right Which Is Becoming More Restricted*

Roughly a third of the states restrict parental rights. This study revealed that states are beginning to place greater restrictions on this area of a person's civil rights. Jackson's (1979) study on parental rights reported only six states in which the right was affected by an express statutory provision. (She did indicate, however, that other states permit the use of imprisonment as a factor to show abandonment or neglect, even though they have no definite statutory denial of parental rights in these jurisdictions.) By contrast, we discovered that in 16 states, the right is jeopardized or lost, illustrating a clear trend toward restricting parental rights through statutory provisions. This trend may be the result of the increased awareness of the abuse and neglect of children.

#### *A Right Which Is Becoming Less Restricted*

According to the statutes, holding public office is becoming more of a possibility for offenders. Over half of the jurisdictions permit this right. Many states automatically restore the right to hold office upon completion of the sentence.

One rationale for permitting offenders to hold office is that once they have "paid their debt to society," they should not be denied rights which other citizens enjoy. This thinking was reflected in the 1933 case of *Webb v. County Court of Raleigh County*, where a West Virginia court decided that convicted felons could hold office after they completed their sentence and had paid their debt. A second rationale is that the electorate should be granted the power

to elect to office whomever they want. In the Pennsylvania case of *Hazel v. Flannery* (1979), the state supreme court held that a convicted felon could hold office if the public knew of the conviction and elected him or her despite the conviction. Notably, this judicial reasoning typifies the logic that is employed in Sweden where the public may elect a former offender (Demaska, 1968).

### *Least Restricted Rights*

The right to vote or obtain public employment is becoming less restricted among the states, perhaps because legislators believe that offenders must become contributing members of society, and voting and holding a job are two effective methods by which to obtain this goal. Most states permit voting after the completion of the offender's sentence. As for obtaining public employment, all but six jurisdictions permit this right. When contrasted to an earlier study of public employment where nearly a third of the states expressly restricted the right (Miller, 1972), our study indicates clearly that the right is being restricted less often.

Another right which is least restricted among those examined in the statutes is having to register as a criminal after a felony conviction. Criminal registration is used by law enforcement agencies to keep track of the offenders within their jurisdiction. Although this policy may serve crime control ends (if offenders actually register), the risk in this restriction is that offenders who were convicted of crime many years earlier and who have successfully been rehabilitated must continually face degradation by having to register at a police station.

As noted, only four states impose civil death. One of these states, Rhode Island, gives as the purpose of civil death the need to allow relatives to disperse the property of incarcerated offenders. Other reasons for this policy are to enable spouses to win divorces and to permit the children of offenders to be adopted and cared for properly. Alternatively, a potential flaw with the civil death statutes is that they fail to address the issue of offenders who are sentenced to life imprisonment and later paroled. For example, what happens with regard to their regaining lost property or assets? Regardless, the trend with this restriction is clearly one in which states are repealing civil death statutes: in 1973, 13 states had civil death statutes (Rubin (1973), while today only four states continue this practice.

### *States Which Are the Most and Least Restrictive*

Table 2 is useful in allowing us to assess which region of the nation most restricts an offender's civil rights. We can see that of the 10 states which are the most restrictive, five are located in the South. Of this group, Mississippi places the most restrictions on an offender's civil rights.

This finding that the southern region is the most restrictive of an offender's civil rights coincides with previous research indicating that general punitiveness towards offenders is highest in the South. Thus, the South has a higher rate of incarceration than other regions, and southern prisons house the greatest number of offenders on death row (Camp and Camp, 1986).

The finding that the southern region of the nation is generally the most restrictive of civil rights is not uniformly applicable to all southern states: some of these states take a more progressive approach to upholding the civil rights of offenders. For example, North Carolina restores all civil rights upon offenders' completion of their sentences, while Louisiana automatically pardons first felons after sentence completion. In other states such as Florida and Kentucky, there are statutory provisions which mandate that offenders are not to be discriminated against in public employment based solely on a felony conviction.

Rhode Island is a state which is very restrictive of a felon's civil rights and, as such, stands alone in its region of the country. An act of the Rhode Island General Assembly is required to restore an offender's right to vote or hold office. The chances of this occurring are probably slight, since the procedure would be disruptive to the legislature, time-consuming, and cumbersome. It seems likely that most of the ex-offenders in Rhode Island will permanently be denied their civil rights.

The statutes indicate that many of the northeastern states and states west of the Mississippi River tend to be less restrictive in depriving civil rights. It is difficult to identify the least restrictive region of the country, since even contiguous states vary in their restrictiveness. For example, Iowa is a restrictive state, while the neighboring states of Minnesota, South Dakota, Kansas, Missouri, and Illinois are much less restrictive. Another example is the state of North Carolina, which only restricts civil rights until the completion of the sentence, while Tennessee is very restrictive. As a result, no clear pattern of restrictiveness exists with the exception that southern states tend to be more restrictive (most notably, Mississippi and Alabama).

### Final Considerations

This research suggests an important trend: with few exceptions (parental and firearm rights) and despite a broader swing recently toward "get tough" criminal justice policies, states generally are becoming less restrictive in depriving the civil rights of offenders. In part, this trend reflects the influence of the due process movement and the concomitant inclination of the courts to be sensitive to the rights of ex-offenders. For example, in the 1978 California Supreme Court case of *Heatherington v. California State Personnel Board*, Justice Reynoso, in his dissenting opinion, held that offenders should not be denied the right to obtain public employment based solely on a felony conviction. This case, interestingly, addressed an ex-offender's right to be a "peace officer" and not just any type of public employment. In another case, *Ramirez v. Brown* (1973), the California Supreme Court decided that it was unconstitutional to deprive convicted felons the right to vote.

This trend may also reflect a greater awareness that historical practices depriving offenders of their rights are neither equitable nor utilitarian. Thus, a number of scholars suggest that depriving offenders of rights, when no direct relationship exists between the conviction and the right which is restricted, is an unnecessarily punitive approach that serves no legitimate state purpose (Grant, et al., 1970; Rudenstine, 1979). Other commentators have observed that restrictions on civil rights run counter to the rehabilitation efforts of correctional agencies. After all, nearly all imprisoned offenders will eventually be released, and depriving them of their civil rights may make their reintegration into society more difficult and increase chances of recidivism. And still other commentators have argued that repealing restrictive statutes lends credibility to the adage that "after the sentence is served the offender has paid his or her debt to society." As we have seen, in some states convicted offenders are never free from the debt imposed upon them and are never allowed to resume fully their citizenship with all the rights—and duties—this status carries.

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