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Recent Study Highlights U.S. Ex-Felon Disenfranchisement Crisis

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which we function. Judges are compelled to apply the law to specific situations often unforeseen by the scribes of the statutes. Life and death decisions have to be made, and those who disagree with our decisions in particular cases are inevitably upset. Suggesting retaliation for those decisions fosters an insecure political, social and physical environment. Every judge I know, and I know hundreds, tries to discern and then follow the law - often in the face of statutory or constitutional ambiguity. When we are wrong, as we inevitably are from time to time, appeals of our decisions frequently achieve the desired "correction." Legislative change and constitutional amendments - not personal attacks - are legitimate ways to alter the law as courts have interpreted it.

Finally, a word about mental illness: Any effort to address the violence which threatens judges and our families, as well as the violence directed against others, must confront and include an honest discussion of mental illness. My experience on the

bench convinces me that we, as a society, are failing the mentally ill. The ability of the medical profession to prescribe effective medication, as well as psychological treatment, is better than ever before. Yet, many mentally ill persons, often living alone without family support, become a danger to themselves and others. To reduce the danger they pose, we must find a way to provide a structured, caring environment for the mentally ill.

My goal here has been to suggest ideas to better protect judges and their families. Many of the ideas for upgrading judicial security may assist others in the legal community and beyond. We should, therefore, look for opportunities to coordinate our ideas and their implementation with as broad a spectrum of the public as possible. Although difficult to implement, reforms are required to reduce the chances of these tragic events being repeated.

*United States District Court, Northern District of Illinois.

Recent Study Highlights U.S. Ex-Felon Disenfranchisement Crisis

By Aisha Cornelius

A study released this past February reports that an estimated 4.7 million Americans are not allowed to vote due to felony disenfranchisement laws that are applicable in 48 states and the District of Columbia. The study, "Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States," was prepared by Marc Mauer and Tushar Kansal of the Sentencing Project, a nonprofit organization that seeks options other than incarceration when dealing with crime.

Most states prohibit voting while a person is incarcerated, on probation, or on parole. There are 14 states, however, that prohibit the right to vote even after completion of a sentence, and six states do so indefinitely. The eight remaining

states prohibit the right to vote for certain offenses or for certain time periods. The only way to restore voting rights is through action by the state through a pardon from the governor or board of pardons, or by legislative action. "Barred for Life" is the first national survey of the restoration processes of the 14 states that do not automatically restore voting rights.

According to the report, the restoration process in certain jurisdictions is difficult, confusing, and, as a practical matter, often unattainable.

Since 1996, 11 states have enacted legislation to alter their felony disenfranchisement policies, according to another Sentencing Project report, "Legislative Changes on Felony Disenfranchisement, 1996 - 2003." Most states

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have lessened the restrictions on restoration of voting rights, while three states have adopted stricter guidelines.

Florida, one of the most restrictive states with regard to voting rights, has recently changed its law in response to lawsuits. In 2001, a Florida court ruled that the Department of Corrections had failed to inform and assist 124,769 eligible persons about their rights and the restoration process. As a result of the decision, 14,527 persons had their rights restored and several others were expected to have their rights reinstated pending review by the Clemency Board. Despite the changes, the restoration process presents difficulties for many applicants, since they must undergo certain character tests and attend a hearing.

Since 1998, there have been 48,000 restorations among 613,524 disenfranchised persons in Florida. The state that comes closest to this accomplishment is Virginia with 5,043 out of 243,902, a number that dates back to 1982. Reports from other states regarding the number of persons whose rights have been restored indicate less advancement. As a result, these changes in the Florida voting laws make it the exception to the general finding that the number of individuals whose rights are restored after release is very low. For example, since 1992, only 107 out of 82,002 individuals in Mississippi have had their voting rights restored. In Nebraska, only 343 out of a possible 44,001 individuals have had their rights restored. In fact, less than 3 percent of former felons have had their voting rights restored out of 11 of the states surveyed.

The problems that hinder restoration of voting rights in states where it is not automatically granted after release include lengthy, arbitrary waiting periods and cumbersome requirements. In Virginia, for example, non-violent offenders have to wait three years before applying for their voting rights; individuals convicted of drug trafficking must wait five years. In Tennessee, frequent legislative changes have resulted in different restoration processes depending on which of five different time periods a felony conviction was

acquired.

In 1997 there were four states that allowed prisoners to vote while still incarcerated, and two of those states, Utah and Massachusetts, have since changed their laws to prohibit voting while in prison. In general, however, the national trend is toward expanding the right to vote.

Whereas the denial of voting rights may serve as a penal measure during incarceration, some question its efficacy post-incarceration. Mauer, the assistant director of the Sentencing Project, recently told the United Press International that there is no compelling reason to prevent the restoration of voting rights to ex-felons.

Most advocates in favor of the trend toward streamlined restoration processes or automatic restoration argue that disenfranchisement hinders the individual's integration back into the community, which increases recidivism rates.

"It doesn't help public safety and it confuses election officials," Mauer said in the UPI article. According to Mauer, deterrence is not a practical reason either, because most individuals are unaware of the implications that a conviction has on one's right to vote.

The support for increasing access to the right to vote is non-partisan and favored by the public. Most advocates in favor of the trend toward streamlined restoration processes or automatic restoration argue that disenfranchisement hinders the individual's integration back into the community, which increases recidivism rates. In a letter to the Arizona House of Representatives, Jessie Allen, associate counsel of the Brennan Center for Justice at New York University School of Law, a non-partisan institution that engages in legal action and scholarship, asserted that "voting

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is a fundamental right and a civic duty ... restoring the right to vote strengthens democracy by increasing voter participation."

According to Mauer, disenfranchisement "is not a partisan issue, it's a constitutional one." In addition to assisting the re-entry of the ex-felon into the community, streamlining or eliminating the process for regaining the right to vote would save significant amounts in administrative costs.

Human Rights Watch reports that no other Western country denies as many people the right to vote after felony convictions as in the United States. In fact, some countries still allow prisoners to vote while incarcerated. According to www.australianpolitics.com, the Australian government recently sought to disenfranchise prisoners while incarcerated. Human rights advocates successfully lobbied against the proposed change and emphasized such a move would be in contravention of the United Nations International Covenant on Civil and Political Rights. One advocate stated that "[by] removing voting rights, we take away a crucial ingredient of what it is to be a citizen and a human being." Advocates further noted that Croatia, the Czech Republic, Denmark, Germany, Japan, Norway, Poland, and Zimbabwe allow prisoners full voting rights. It was also noted that the prisons have an overrepresentation of young Aboriginal Australians, and that the proposed change was an indirect way to circumvent the Racial Discrimination Act of 1975.

Denying the right to vote while incarcerated has European roots: Prisoners were banished from the community and denied all privileges of society, including the right to own property, and were subject to terrible treatment including injury or death.

While stripping the right to vote from inmates has several hundred years of history on its side, the denial of the right to vote after incar-

ceration, heavily concentrated in southern states, has blatant racially discriminatory roots. According to the Brennan Center for Justice, Florida enacted a series of voting restrictions in 1868 to undermine the rights granted to African-Americans during Reconstruction.

The impact of these laws is clear today as the loss of the right to vote has a disproportionate effect on already underrepresented populations, specifically African-Americans and Latinos.

Although crime rates have decreased since the 1990s, the prison population has increased. According to an editorial from the Brennan

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Center for Justice, African-Americans are convicted of drug crimes at a significantly higher rate than white Americans, although the latter report higher rates of drug usage.

Statistics published by the Prison Index, purportedly the first index of statistics about the American criminal justice system, show that as many as 16 states disenfranchise more than 10 percent of their African-American population. Thirteen percent, or 1.4 million of adult black males, are denied the right to vote based on criminal convictions.

The report done by the Sentencing Project notes that the restoration process is "little used, overly cumbersome, and anti-democratic." The United States is virtually alone in denying the right to vote *after* a sentence is completed and, as noted previously, many countries allow the right to vote even while incarcerated. The report recommends that the right to vote be restored immediately and automatically following the completion of a sentence, after individuals have served their debt to society. At the very least, convicted persons should be notified upon release about the restoration process and assisted in obtaining the necessary application forms. Regaining the right to vote is a vital way to assist the individual in returning to the community and society in general.