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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 22-H 7411, REPEAL OF THE “CIVIL DEATH” STATUTE March 3, 2022

“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 85-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.”

In 2022, Rhode Island remained the only state in the country enforcing a “civil death” law that barred prisoners serving life sentences from vindicating their civil rights in court. As a result of a R.I. Supreme Court decision issued yesterday, that is no longer the case, as the Court unambiguously struck down the statute as a violation of the Rhode Island Constitution’s guarantee of access to the courts.

Under the circumstances, there is no need for us to discuss, as we have in the past, the important policy reasons why the law should be repealed. Instead, we now ask the committee to simply approve this bill as a housekeeping measure. We have found that keeping unconstitutional laws on the books can sometimes generate unnecessary confusion, and formal repeal of the statute in light of yesterday’s court ruling will prevent that from happening.

In repealing this archaic – and now officially unconstitutional – statute, the committee can help make 2022 the year that “civil death” in Rhode Island finally gets its deserved burial.