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## RESTORATION OF DEPRIVED RIGHTS

### INTRODUCTION

Criminal procedure concerns itself primarily with securing justice for the accused. The rights of the accused are accorded strict observation to the end that no person be deprived of life, liberty, or property without due process of law. All too often, however, the prisoner, once convicted, is no longer served by uniform legal rights and procedural guarantees. He is subject not only to deprivation of certain rights, but to a wide variety of penal theories. It is highly unfortunate that too little attention is devoted to penal methods and rights of prisoners and ex-convicts generally in what might be referred to as the field of law proper. This field has been substantially left within the province of criminologists, penologists, and sociologists. It will be the purpose of this discussion to examine the loss of certain civil rights upon conviction of a felony, and further, how these rights might be restored while serving the best interests of justice.

### FELONY AND CIVIL RIGHTS DEFINED

To the layman, the word "felon" connotes a vividly unfavorable image. A felon is "one that is wicked . . . [a] villain."<sup>1</sup> The word originated in European feudalism—a social, economic, and military system based on mutual obligation between lord and vassal, in which the unforgivable sin was the breach of fealty. At that time feudal disloyalty was a threat to the entire social structure and therefore merited the sanctions of forfeiture of all property, in addition to capital or corporal punishment.<sup>2</sup> Breaches of feudal obligations thus punished were labeled felonies.

The English common law adopted this terminology to impose forfeiture for serious breaches of the peace and the word "felony" gradually came to signify crime rather than a form of punishment.<sup>3</sup> Parlia-

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1. WEBSTER'S NEW INTERNATIONAL DICTIONARY 836 (3d ed. 1961).

2. 4 TUCKER'S BLACKSTONE COMMENTARIES 94-96 (1803).

3. 2 HOLDSWORTH, A HISTORY OF ENGLISH LAW 357-58 (1923). One theory that the word "felon" is derived from the Latin term meaning "venomous" or "poisonous" is

ment enlarged the list of felonies, which was then carried to America by the colonists where further enlargement occurred.<sup>4</sup>

Because of the broad spectrum of acts that are classified as criminal, modern statutes tend to define "felony" simply in terms of punishment.<sup>5</sup> The Virginia statute is typical: "Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in the penitentiary are felonies; all other offenses are misdemeanors."<sup>6</sup> Since sentences to a penitentiary, as opposed to a city or county jail, generally must extend for a minimum of a one year period, such a statutory definition means that a felony is an offense punishable by imprisonment for at least one year. Some statutes explicitly so state.<sup>7</sup>

So defined, the term "felony" includes a wide variety of offenses. Along with such typical common law felonies as murder and forcible rape, statutory offenses such as seduction under promise to marry,<sup>8</sup> statutory rape,<sup>9</sup> and wife beating<sup>10</sup> are often included. Anyone found guilty of committing one of these offenses is, upon conviction, classified as a felon regardless of the punishment actually imposed,<sup>11</sup> and even when the sentence is actually suspended.<sup>12</sup> Once within this category, the convicted felon loses certain civil rights and becomes subject to certain civil disabilities which will follow him forever.

It is now appropriate to define exactly what is meant by the term civil rights. The loss of civil rights in this context does not involve the connotations that presently attach to the term, namely the freedom from discrimination and prejudice. Two basic categories of deprivations result from felonious criminal activity. First, certain basic rights

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consistent with early common law usage as an expression of the threat that outlawry posed to uncertain royal authority.

4. In America, the new states so expanded the number and types of crimes characterized as felonies that as early as the close of the eighteenth century, James Madison complained that felony had become a "term of loose significance" varying from state to state and changing "with every revision of its criminal law." THE FEDERALIST No. 42, at 260-61 (H. Lodge ed. 1892) (Madison).

5. The felony-misdemeanor distinction, it is said, is based "upon the sentence possible under a statute . . . and not at all upon the nature of the offense." United States v. Carrollo, 30 F. Supp. 3, 6 (W.D. Mo. 1939).

6. VA. CODE ANN. § 18.1-6 (1960 repl. vol.).

7. 18 U.S.C. § 1(1) (1958). "Any offense punishable by death or imprisonment for a term exceeding one year is a felony."

8. CAL. PEN. CODE § 268 (West 1955); N.Y. PEN. LAW § 2175 (McKinney 1967).

9. N.Y. PEN. LAW § 2010 (McKinney 1967).

10. CAL. PEN. CODE § 273(d) (West 1955).

11. State v. Bowser, 155 Kan. 723, 727, 129 P.2d 268, 271 (1942).

12. See, e.g., Whitlock v. State, 123 Tex. Crim. 279, 280, 58 S.W.2d 109, 110 (1933).

are lost automatically upon conviction of a felony. The loss of these rights arises by operation of law and is a simple consequence of conviction. This category includes the loss of such rights as suffrage. Rights lost in this manner may usually be restored by pardon. A second category concerns professional privileges. In this group, criminal activity may subject the convict to severe deprivations, but these deprivations rest in the discretion vested in a professional disciplinary agency. In this category are found cases involving loss of the right to practice medicine, law,<sup>13</sup> etc., and pardon does not restore the privileges lost. Restoration, like deprivation, rests within the discretion of the professional regulatory board.

### DEPRIVATION OF CIVIL RIGHTS

The rights lost upon conviction of a felony vary with the statutes and customs of each state. The following are some of the most common rights of which a felon is deprived.

#### *Suffrage*

The most common civil right lost upon conviction of a felony is the loss of the right to vote.<sup>14</sup> The states have rather broad powers to set voter qualifications, but statutes restricting the right to vote must be closely scrutinized against the framework of both the fourteenth and fifteenth amendments. The Supreme Court has upheld restrictions on the right to vote which were designed "to promote [the] intelligent use of the ballot,"<sup>15</sup> and in several cases has cited laws excluding felons from the electorate as example of statutes which serve this purpose.<sup>16</sup> Fairly early in American history, state courts approved such laws as

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13. Sometimes deprivation of the right to practice one's profession does not fit the crime. It is possible that neither the profession nor the public will suffer greatly if the convicted felon is allowed to continue practicing his profession once he has paid his debt to society. *See, e.g.,* *Page v. Watson*, 140 Fla. 536, 192 So. 205 (1939) (loss of right to practice medicine because of perjury); *Branch v. State*, 120 Fla. 666, 163 So. 48 (1935) (loss of right to practice law because of an assault.)

14. *See, e.g.,* FLA. CONST. art. 6, § 4; WASH. CONST. art. 6, § 3; CONN. GEN. STAT. ANN. ch. 9, § 45 (1958); ILL. ANN. STAT. ch. 46, § 3-5 (1965), *as amended*, Laws 1967, H.B. No. 693, § 1; MO. ANN. STAT. § 111.060 (1966); NEB. REV. STAT. § 29-112 (1964); N.Y. ELECTION LAW § 152(2) (McKinney 1964); VA. CODE ANN. § 24-18 (1964 repl. vol.).

15. *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 51 (1959).

16. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 673 (1966) (dissenting opinion); *Gray v. Sanders*, 372 U.S. 368, 380 (1963); *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 51 (1959).

an attempt to "preserve the purity of the ballot box" based on the premise "that one rendered infamous by conviction of felony, or other base offense indicative of great moral turpitude, is unfit to exercise the privilege of suffrage. . . ." <sup>17</sup> More recent decisions also have declared that such laws are enacted to serve a legitimate purpose. <sup>18</sup>

### *Right to Hold Public Office*

A loss closely related to the deprivation of suffrage is that of the right to hold public office and positions of public trust. Most states deprive the convicted felon of this right as a measure of public protection. <sup>19</sup> Once a person is rendered unqualified to vote, this will also have the effect of rendering him unable to hold public office because often a person must take an oath as a candidate for nomination that he is a qualified elector of the state. <sup>20</sup>

### *Right to Serve as a Juror*

Another right lost by virtue of a conviction for a felonious offense is the right to serve as a juror. <sup>21</sup> Again the deprivation is closely associated with voting rights and is usually effected by removing the offender's name from the list of qualified electors. <sup>22</sup> Since jury lists are usually taken from the roll of qualified voters, felons are excluded. Often statutes provide that the right to serve as a juror may be regained when the person is restored to his civil rights, <sup>23</sup> so this is usually a temporary loss.

Statutory provisions abrogating the right to serve on a jury have been upheld on the ground that any state has the power to prescribe the qualifications for the jurors who serve in its courts. <sup>24</sup> However, some of these statutes have been construed to hold that the previous convic-

17. *Washington v. State*, 75 Ala. 582 (1884).

18. *Otsuka v. Hite*, 64 Cal.2d 596, 603, 414 P.2d 412, 417, 51 Cal. Rptr. 284, 290 (1966).

19. ARIZ. CONST. art. 7, §§ 2, 15; FLA. CONST. art. 6, § 5; ILL. CONST. art. 7, § 7.

20. ARIZ. REV. STAT. ANN. § 16-101 (1956); FLA. STAT. ANN. § 99.021 (1961); N.Y. PUB. OFFICERS LAW § 30 (McKinney 1952), as amended, ch. 692, [1967] N.Y. Sess. Laws.

21. FLA. STAT. ANN. § 40.01(2) (1961); MONTANA REV. STAT. ANN. § 93-1303(2) (1947); NEB. REV. STAT. § 25-1601 (1943); WYO. STAT. ANN. § 1-78 (1957).

22. FLA. STAT. ANN. § 40.01(1) (1961); as amended, ch. 67-149, [1967] Fla. Sess. Laws.

23. *Id.*

24. See, e.g., *Duggar v. State*, 43 So.2d 860 (Fla. 1949); *People ex rel. Denny v. Traeger*, 372 Ill. 11, 22 N.E.2d 679 (1939); *Walter v. State*, 208 Ind. 231, 195 N.E. 268 (1935).

tion of a felony does not render the convicted person incompetent to sit as a juror, but merely constitutes a ground of challenge for cause.<sup>25</sup>

### *Right to Serve as a Witness*

In most states, the convicted felon does not lose the right to serve as a witness, although the conviction can generally be used to destroy the credibility of his testimony. However, in some states, certain specific crimes can deprive the felon of the right to be a witness; for example, in a few states the legislatures have specifically provided that a person is incompetent to serve as a witness where he has been convicted of perjury.<sup>26</sup>

### *Registration*

Another restriction often imposed is the limitation on freedom of movement. Many state, county, and city governments require that a convicted felon register with the appropriately designated authorities whenever he enters one of the various governmental areas with the intention of remaining longer than a certain specified length of time.<sup>27</sup> These statutes are justified on the theory that the interest of public protection outweighs the restriction of movement placed on the individual.

### *Right to Bear Arms*

In most states, a felony conviction severely limits the right to bear arms. For example, in Florida it is unlawful for a felon to own or to

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25. *Ford v. United States*, 201 F.2d 300 (5th Cir. 1953).

26. FLA. STAT. ANN. § 90.07 (1961); KY. REV. STAT. ANN. § 421.090 (1955); PA. STAT. ANN. tit. 18, § 4322 (1963).

27. See generally Cozart, *The Benefits of Executive Clemency*, 32 FED. PROB. 33 (June 1968). In this article there is a discussion of one of the most drastic registration requirements in existence. The City Council of Wilmington, Delaware, on February 3, 1966, passed an ordinance which provides that any resident of that city or anyone who is even passing through the city for as much as two hours, and who has been convicted of any one of a list of enumerated crimes within ten years of the date of enactment of the ordinance and has not been pardoned, must within two hours of his arrival in the city, register with the chief of police, furnish description of himself, be photographed and fingerprinted, give his past address and local address, birthplace and date, name of crime, place and date of conviction, penalty imposed, place of confinement, furnish a description of the present or temporary address (whether hotel, motel, apartment, residence, etc.) report all changes of residence, employment, etc., and carry with him at all times an identification card. Failure to comply with the statute carries with it for the first offender, a fine of up to one thousand dollars and ninety days in jail and for all subsequent offenses a mandatory jail sentence of thirty days to six months.

have in his care, custody, possession, or control any pistol, sawed-off rifle or sawed-off shotgun, unless he has been restored to his civil rights.<sup>28</sup> This type of statute is apparently upheld on the ground that a balancing of interests between the public good and the individual's rights justifies the restrictions placed on the individual's rights. Also, some of the weapons involved in this deprivation are of a particularly noxious character.

### *Professional Privileges*

In most states, a number of professional privileges are subject to forfeiture, usually at the discretion of special administrative boards. Statutes regulating professions or occupations may prevent the felon from qualifying as a chiroprapist,<sup>29</sup> engineer,<sup>30</sup> liquor salesman,<sup>31</sup> physician,<sup>32</sup> private detective,<sup>33</sup> real estate agent,<sup>34</sup> or veterinarian.<sup>35</sup> Other statutes give licensing authorities the discretion to exclude felons from architecture,<sup>36</sup> barbering,<sup>37</sup> nursing,<sup>38</sup> and pharmacology.<sup>39</sup> Furthermore, a felon cannot enjoy a career in the Army or Air Force, except in the extraordinary cases of intervention by the Secretaries of the respective branches.<sup>40</sup>

Such restrictions have long been allowed, the Supreme Court having recognized the right of the state to set up various standards for entry into professions affecting public interest. In *Hawker v. New York*,<sup>41</sup> the Court said:

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28. FLA. STAT. ANN. § 790.23 (1961); N.Y. PENAL LAW § 7897 (McKinney 1952). *But see*, CAL. PENAL CODE § 4852.17 (West 1956).

29. FLA. STAT. ANN. § 461.03 (1965); OKLA. STAT. ANN. tit. 59, § 144 (1963).

30. IOWA ANN. CODE § 114.14 (1949) *as amended*, ch. 87, § 1, [1957] Iowa Sess. Laws; KY. REV. STAT. ANN. § 322.050 (1963).

31. KY. REV. STAT. ANN. § 343.500 (1963); N.Y. ALCO. BEV. CONTROL LAW § 126 (McKinney 1946).

32. N.Y. EDUC. LAW § 6502 (McKinney 1952); OKLA. STAT. ANN. tit. 59, § 493 (1963), *as amended*, ch. 377, § 1, [1965] Okla. Sess. Laws. ("felony or crime involving moral turpitude").

33. IOWA ANN. CODE § 80A.5 (1949); N.Y. GEN. BUS. LAW § 74(2) (McKinney 1967).

34. N.Y. REAL PROP. LAW § 440-a (McKinney 1967); OKLA. STAT. ANN. tit. 59, § 847 (1963), *as amended*, ch. 97, § 5, [1968] Okla. Sess. Laws.

35. CAL. BUS. & PROF. CODE § 4846 (West 1956); N.Y. EDUC. LAW § 6702 (McKinney 1952).

36. N.C. GEN. STAT. ANN. § 83-9 (1965).

37. N.J. STAT. ANN. § 45:4-40 (1963).

38. OKLA. STAT. ANN. tit. 59, § 567.8 (1963).

39. OKLA. STAT. ANN. tit. 59, § 353.26(c) (1963).

40. 10 U.S.C. §§ 3253(a), 8253(a) (1958).

41. 170 U.S. 189 (1898).

[The state] may require both qualification of learning and of good character, and if it deems that one who has violated the criminal laws of the state is not possessed of sufficient good character, it can deny to such a one the right to practice . . . , and, further, it may make a record of a conviction conclusive evidence of the violation of the criminal law and of the absence of the requisite good character.<sup>42</sup>

Although there are indications that the Court is now willing to look more closely at the decisions of the state legislatures which deny certain of their citizens the right to enter professional life,<sup>43</sup> this general rule regarding convicted felons still seems to prevail.<sup>44</sup>

#### RESTORATION OF CIVIL RIGHTS

As can readily be seen, rights are lost through a variety of methods in many states. The magnitude of the loss is compounded by numerous and often ineffective methods of restoring these lost rights once the felon has served his sentence.

##### *Clemency*

The best known method by which the rights of convicted persons are restored is the exercise of clemency by the head of a state. It may take several forms: pardon, commutation, amnesty, specific restoration of rights, and specific remission of penalties. Pardon is probably the most often used type of executive clemency and in many cases, "courts have said that a pardon is a remission of guilt as well as of the punishment, that it blots out the offense, so that in the eyes of the law the offender is as innocent as if he had never committed the offense. . . . It makes him, as it were, a new man."<sup>45</sup> The courts have not always followed this assertion, however, and it seems proper to say [that] a pardon merely stops legal punishment for the offense but does not give the offender a better character.<sup>46</sup>

##### *By Operation of Law*

In some jurisdictions the restoration of civil rights is simple and automatic and is accomplished as a matter of law. In general these

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42. *Id.* at 191.

43. *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).

44. *DeVeau v. Braisted*, 363 U.S. 144 (1960).

45. S. RUBIN, *LAW OF CRIMINAL CORRECTION* 605 (1963).

46. *Id.* at 606.

statutes provide that the rights that were lost when the sentence was imposed are restored when the sentence is completed.<sup>47</sup> Completion of the sentence occurs when the term of imprisonment expires<sup>48</sup> or when a parolee finishes his term of parole, either by expiration or early discharge.<sup>49</sup> It has been submitted that such a method of restoring lost rights cannot be used effectively in conjunction with a conscientious program of correctional rehabilitation. Indiscriminate restoration is merely the reverse of indiscriminate deprivation, and might lead to a reinvestment of rights in persons who are not worthy of them. Such automatic action does not accomplish the "proper" objectives<sup>50</sup> and should be condemned.

### *By Administrative or Judicial Discretion*

In some jurisdictions the civil rights lost upon conviction or sentence are subject to restoration at the discretion of an administrative agency, usually a pardon or parole board,<sup>51</sup> or the court of conviction acting administratively.<sup>52</sup> The restoration may occur at the completion of probation or commitment,<sup>53</sup> but in this type of procedure the board has some discretion as to when and what rights may be restored.

### *Combination*

Often times a combination of one of the three above methods is used in restoring the felon's civil rights. For example, a board might recom-

47. Restoration by operation of law may occur from the language of the statute providing for the loss of rights. Frequently the statute provides for "suspension" (not loss) of rights during imprisonment. IDAHO GEN. LAWS ANN. § 18-310 (1948). Others specifically provide for restoration of rights upon completion of the term. CAL. PENAL CODE § 1203.4 (West 1956) (guilt set aside at the completion of probation); MO. REV. STAT. ANN. § 216.355(3) (1959); ORE. REV. STAT. §§ 137.240, 137.250 (1965); WISC. STAT. ANN. § 57.078 (1957).

48. S. RUBIN, *supra* note 45 at 566.

49. ORE. REV. STAT. §§ 137.240, 137.250 (1965); WISC. STAT. ANN. § 57.078 (1957).

50. See generally Note, *Criminals' Loss of Civil Rights*, 16 U. FLA. L. REV. 328, 337 (1963). Rehabilitation without undue or unnecessary danger to society is the proper objective of a penal theory.

51. See, e.g., FLA. CONST. art. 4, § 12; ALA. ANN. CODE tit. 42, § 16 (1959); FLA. STAT. ANN. § 940.05 (1961); N.Y. EXECUTIVE LAW § 242 (McKinney 1952), as amended, ch. 356, [1963] N.Y. Sess. Laws.

52. See, e.g., N.C. GEN. STAT. ANN. ch. 13, §§ 1-10 (1953); OHIO ANN. CODE tit. 29, § 2951.09 (1954).

53. See, e.g., CAL. PENAL CODE § 1203.4 (West 1956); CAL. WELFARE & INSTITUTIONS CODE § 1772 (West 1966); WASH. ANN. CODE § 9.95.240 (1961).

mend to the head of the state, after a specified parole or probation period, whether and what rights a felon is worthy of having restored.

It should be emphasized that in all of these methods of restoration, professional status is not restored. Whether one can reacquire such status or become licensed to practice a profession is still left to the discretion of the professional board or licensing agent.

#### PROPOSED STATUTORY SOLUTION

Because of the variety of methods used in restoring civil rights to convicted felons, it is not altogether surprising that many felons fail to have their rights restored, partly because of ignorance of the law and partly because of infirmities in the methods used. What is the best method for restoring rights in a way that will best promote rehabilitation without endangering society? It is contended that expungement and sealing statutes will best accomplish this purpose.

Expungement is used here in the sense of dismissal, by which the offender will be released from various penalties and disabilities resulting from the conviction. The sealing statute will provide not only for release from penalties, but also for the sealing of the record, so that no information concerning even the fact of conviction can be disclosed or made public. A suggested expungement statute would then read:

Every defendant who has been discharged from probation shall at any time after the lapse of one year from the date of discharge from probation, provided that he is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the order granting probation, lived an honest and upright life, and has conformed to and obeyed the laws of the land be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty. In either case the court shall thereupon dismiss the accusation or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The probationer shall be informed of the provisions of this section in his probation papers. The notification shall include the specific penalties and disabilities released by this section. The provisions of this section are applicable only to defendants who have not previously been convicted of any offense.<sup>54</sup>

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54. The general language of this proposed statute follows that in CAL. PENAL

The rights that would be restored by this type of statute would be determined by weighing the anti-rehabilitative effects of the offender if the penalty is not removed, against the threat to the public if the penalty is removed. This requires that the competing interests of the offender and the public be weighed in situational, rather than categorical, terms.

This statute would be a pronounced step forward in the process of rehabilitation. However, even though a person has had his civil rights restored, if an employer looks at an applicant's record and discovers that the applicant has been convicted of a felony, such knowledge may result in the employer's failure to hire the ex-convict. In order to eliminate this situation, a convict must be offered a reward which he feels justifies his temporary difficulties. That reward should be the sealing of the criminal's record. By statute it could be provided that:

Any person who has received relief pursuant to the provision of the expungement statute may, seven years after the ordering of such relief, petition the court granting the motion, or any court of equal jurisdiction, to order the record of the conviction and all other official records of the case to be destroyed, upon a showing that the petitioner has lived an honest and upright life and has conformed to and obeyed the laws of the land. Thereafter, such arrest and all proceedings related thereto, including the dismissal under the expungement statute, shall be deemed not to have occurred and the petitioner may answer accordingly any questions relating to their occurrence, and may, if asked, deny that relief has been sought or granted under this section.<sup>55</sup>

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CODE § 1203.4 (West 1956). The automatic relief granted by this statute would be limited to first offenders. Traffic offenses, except drunk driving and vehicular homicide, would not be offenses imposing the specific restrictions of the statute. Another provision could be made so that second or third offenders are provided some type of relief, but not automatically. Whether relief should be granted to the multiple offender would be left entirely to the discretion of a parole or probation board.

55. This proposed sealing statute is basically an extension of the California sealing statutes. CAL. PENAL CODE § 1203.45 (West Supp. 1967); CAL. WELFARE & INSTITUTIONS CODE § 781 (West 1966), *as amended*, ch. 1649, 1650, [1967] Cal. Sess. Laws. There is no data to submit as sufficient support for the suggested waiting period. However, most felons who are recidivists, become so in the first years out of prison. These felons generally will be caught and re-incarcerated or they will not be seeking employment which will better their station in life; consequently, it is the felon that is making an honest attempt who is penalized most by his failure to be hired when he seeks better employment. This statute is proposed for the latter's benefit. See generally R. CALDWELL, CRIMINOLOGY 100-01, 358-60 (2d ed. 1965).

Restoring one to his professional status after a conviction for a felony is the area which is considered the greatest threat to the public. It has been rationalized when one is convicted of a felony, he is not worthy to occupy a position of public trust or to be an active member of the profession. In most instances, even a pardon does not restore professional privileges. This is usually left to the discretion of the professional licensing or disciplinary board and all too often this board does not inquire into the circumstances of the offense to determine whether moral turpitude is involved. To remedy this situation, each state should have a statute similar to the following:

In a proceeding conducted by a board pursuant to law, to deny any application for a license or to suspend or revoke a license, or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime involving moral turpitude, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is of any offense involving moral turpitude. The board shall not be bound to disregard a conviction which has been dismissed under the expungement statute, but the board shall be required to determine whether the offense is related to the occupation under the license, and where the relationship is unsubstantial and the danger to the public is remote, the rehabilitation evidenced by a dismissal under the expungement statute shall be conclusive.<sup>56</sup>

#### CONCLUSION

In simple economic terms, it is entirely too expensive to imprison people when it is not necessary. The cost is approximately \$2500 per year per inmate.<sup>57</sup> This is a tremendous and perhaps unnecessary drain on our economy. Too often, former prisoners will leave the institution with their criminal behavior patterns more deeply entrenched.<sup>58</sup> In addition, they will probably be shunned by a respectable society, and,

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56. This proposed statute is an extension of CAL. BUS. & PROF. CODE § 117 (West 1962).

57. See generally, Article, *Criminals Should be Cured, not Caged*, 6 AM. CRIM. L.Q. 133 (1968); Sultan, *Prisons and the Public Purse*, 4 CRIM. L. BULL. 90 (1968).

58. Margolin, *Postinstitutional Rehabilitation of the Criminal Offender: A Community Effort*, 31 FED. PROB. 46 (March 1967).

as a result, the stage is set for the re-enactment of criminal behavior.<sup>59</sup> To avoid this, the whole community can assist by becoming a therapeutic partner.<sup>60</sup> The three statutes proposed here would help establish this therapeutic partnership.

Admittedly, it will not be easy to put these statutes into operation. It is conceded that many more psychologists, psychiatrists, penologists, and criminologists will have to work much more closely with our courts on each individual case. More case workers and probation officers will be required. But if rehabilitation is to work at all, the offender must be able to feel that he is a respectable human being. Restoring his deprived rights through use of the suggested statutes will come closest to accomplishing these ends.

JOSEPH H. KELLEY

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59. *Id.* at 47.

60. *Id.* at 48-50.