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December 29, 2002, Sunday

NATIONAL DESK

Freed From Prison, but Still Paying a Penalty

By FOX BUTTERFIELD (NYT) 1700 words

CHICAGO -- Maurice Stewart finally got out of prison last summer after serving 14 years for armed robbery and manslaughter. He needed a place to live, so he called his mother.

Mr. Stewart, a husky 33-year-old, wanted to come home to Stateway Gardens, the decaying public housing project on Chicago's South Side where he had grown up.

It sounded simple enough. But his mother, Pamela Stewart, knew otherwise. Under a little-noticed provision of federal law, anyone convicted of a crime is barred from public housing, and if Mrs. Stewart took her son in, even for a visit, the Chicago Housing Authority could evict her.

The ban on living in public housing is among the penalties for criminals that are not spelled out at sentencing and do not begin until the sentence runs out. Most of the sanctions were passed by Congress and state legislatures in the 1990's to get tough on crime. Now, as the record number of men and women who filled prisons in the last decade are finishing their terms, the consequences of the penalties are being felt.

The penalties also include a lifetime ban on receiving welfare or food stamps for those convicted of drug felonies, prohibitions against getting certain jobs in plumbing, education and other fields, and the loss of the right to vote, for life in some states.

Felons with drug convictions are barred from receiving federal student loans, and women who serve more than 15 months in prison may be forced to give up their children to foster care.

When the laws were passed, supporters called them extra deterrents to crime. They carried no cost and in some cases even saved money by reducing the number of people in public housing or on welfare.

Representative E. Clay Shaw Jr., a Florida Republican who was one of the main architects of the lifetime ban on welfare for women convicted of a drug felony, said: "We were mostly aiming at the drug trade. The thought was that if someone was buying drugs, we don't feel an obligation to support them."

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Similarly, Mr. Shaw said, the bar on public housing for people convicted of a crime "was to deter people so they wouldn't get involved in drugs." Public housing tenants themselves wanted it, Mr. Shaw said, "so they didn't have drug deals going down in front of them and their children."

Although the sanctions were often passed with broad bipartisan support, some judges, prosecutors and advocates for the poor are now criticizing the laws as counterproductive and urging that they be re-examined.

"They make it even harder for newly released inmates to find jobs, housing and reunite with their families and therefore to lead productive lives," said Jeremy Travis, a senior fellow at the Urban Institute in Washington, who coined the phrase "invisible punishment" to describe such penalties.

Mr. Stewart put it more starkly in a furtive visit to his mother at Stateway Gardens.

"Basically, this stuff is telling me I've served my time, I'm out, but I'm never going to be allowed to be part of society again," Mr. Stewart said. "So what do you want me to do? I'm going to end up doing something wrong again."

The criminal justice section of the American Bar Association adopted new guidelines recently suggesting that the laws need to be re-examined. Margaret Love, a former Justice Department official who headed the committee, said all the punishments should be codified in one place and made part of sentencing, so that defendants, their lawyers and judges understand what is happening.

Even some conservatives have asked whether these penalties have gone too far. Anne Piehl, an associate professor of public policy at the John F. Kennedy School of Government at Harvard, said, "These laws tend to get passed independently without considering all the consequences, so the cumulative effect is greater than what was intended."

The consequences affect millions of Americans. Thirteen million felons who are in prison or have done their time live in the United States, according to an estimate by Christopher Uggen, a sociologist at the University of Minnesota. That is almost 7 percent of the adult population.

Robert Johnson, the prosecutor for Anoka County, in the suburbs of Minneapolis and St. Paul, says the new laws have begun to affect the way he does his job.

"Now you have to factor in these additional sanctions, almost as if they are part of a mandatory sentencing concept," said Mr. Johnson, a former president of the National District Attorney's Association. He said he had seen judges reduce charges to misdemeanors from felonies or expunge convictions entirely to avoid the sanctions.

In one recent case, he said, a judge with a tough-on-crime reputation allowed an 18-year-old man from El Salvador, who had already pleaded guilty to burglary and nearly completed his prison term, to withdraw his guilty plea and ask for a new trial. The reason for the unusual request, Mr. Johnson said, was that the man faced being deported as a convicted felon. Mr. Johnson objected to the maneuver but decided not to try the man again, since he had already served his time.

James Kalven, a writer who advises the residents of the Stateway Gardens apartments in Chicago, said the public housing eviction law had created a "whole group of guys who are essentially nomadic because of their felony convictions, getting out of jail and having nowhere to go."

It was Mr. Kalven who arranged for Mario Bailey, a 26-year-old at Stateway Gardens with several drug convictions, to be admitted to St. Andrew's Court, a residential center for men newly released from prison, so that he would not provoke the eviction of his grandmother and other relatives.

"They can't even go home for a visit; it is considered criminal trespass," Mr. Kalven said of men like Mr. Bailey, who has used a wheelchair since being shot and paralyzed by gang members.

Amy Hirsch, a supervising attorney with Community Legal Services, which provides legal assistance to low-income families in Philadelphia, said many female convicts are hurt by the lifetime ban on drug felons receiving welfare and food stamps, part of the 1996 welfare overhaul.

States are free to opt out of the ban, as New York and Connecticut have, but most states have kept some version of it.

"The ban is counterproductive because it makes it so much harder for women to stay off drugs once they are released from jail," Ms. Hirsch said. "A lot of the women I see come out of jail after being in drug treatment and they want to continue in treatment and reconnect with their kids, but then they run into this brick wall. They need money."

A spokesman for former Senator Phil Gramm of Texas, who was an architect of the lifetime ban on welfare, said Mr. Gramm still strongly supported the law. "Welfare shouldn't be used to support drug habits," Mr. Gramm said before resigning from the Senate in the fall to become a vice chairman of UBS Warburg, the investment bank.

In recent years the states have also passed legislation lengthening the list of jobs that bar people with a criminal conviction. In New York, there are more than 100 prohibited job categories, including plumbing, real estate, barbering, education, health care and private security.

In Pennsylvania, the Legislature in 1997 passed a sweeping law that prohibits people convicted of a long list of crimes, including the theft of two library books, from working in nursing homes or home health care for the elderly.

The new law caught Earl Nixon by surprise. Mr. Nixon had spent 30 years working in health care, rising to be the administrator of an assisted living center in Pittsburgh. But in 1971, when he was 18, he pleaded guilty to possession of marijuana and received probation.

So when he recently quit his administrator's post and tried to change jobs, he was shocked to discover he could not be rehired, despite a shortage of health care workers. Unable to find a new job, Mr. Nixon moved to Michigan.

Last December, a Pennsylvania appeals court ruled in a lawsuit brought on behalf of Mr. Nixon that the law had unconstitutionally deprived him of his right to earn a living.

But Pennsylvania's attorney general, Mike Fisher, a Republican who was defeated last November in the governor's race, has appealed the decision to the state Supreme Court.

"The General Assembly passed this law in an effort to protect some of our most vulnerable citizens from those who would prey upon them," Mr. Fisher said. The law should be upheld, he said, even if in some cases it may seem harsh.

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"The law makes no allowance for rehabilitation," Mr. Nixon said. "It just seems designed to go on punishing people forever."

The disenfranchisement laws do that in 13 states, where a felony conviction can result in a lifetime ban on voting.

Since the 2000 election, several states, including New Mexico, Delaware and Maryland, have abandoned or modified disenfranchisement laws.

Florida, which has not changed its laws, has the largest number of disenfranchised voters, estimated at more than 600,000 banned for life, according to a lawsuit by the Brennan Center for Justice at the New York University School of Law. The lawsuit maintains that the ban disproportionately affects Florida's African-American population, prohibiting about one quarter of the state's black men from voting.

Roger Clegg, of the Center for Equal Opportunity, a conservative research organization in Virginia, said there was no evidence that the disenfranchisement laws are racially discriminatory.

"We don't let everyone vote," Mr. Clegg said. "We don't let children or noncitizens vote. There are basic requirements of loyalty and trustworthiness that we have for letting people vote. People who have committed serious crimes don't meet that minimum threshold."

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Review Journal
Apr. 7, 2001

OTHER IDEAS

Restore felons' voting rights

With so many more people being sent to prison, and consequently so many more trying to fit into society after their release, we have to take a more constructive attitude toward ex-convicts.

That's why we support legislation pending in Tallahassee that would restore the voting rights of ex-felons.

Senators want to require a five-year wait after completion of a sentence before restoring voting rights to those who committed violent felonies. A nonviolent felon would have to wait one year.

The House version calls for a one-year wait for everyone.

The differences need to be resolved so this basic step toward reintegrating Florida's estimated 500,000 ex-felons into full citizenship can be taken. They forfeited that right when they committed a crime. But they served their time, and face a difficult time re-entering society without this constitutional stigma.

Voters would have to approve any change, if the Legislature places it on the ballot, because the state Constitution denies ex-felons the right to vote.

We strongly supported longer sentences and more prisons.

But that hard line has to be accompanied by constructive rehabilitation.

RJ 4/13/01

EDITORIALS

Felons and voting rights

Extended 'second-class citizenship' is counterproductive

Few would expect to find a photograph of Nevada Sen. Harry Reid in the dictionary of slang next to the phrase "pretty fly for a white guy." Thus, there was some laughter in the audience as Sen. Reid introduced NAACP President Kweisi Mfume to a news conference at the MGM Grand on Monday, asserting, "He and I are soul brothers."

Both gentlemen spoke of their ongoing efforts to restore voting rights in federal elections to convicted felons after they have served their sentences. Mr. Mfume said felony re-enfranchisement is currently one of the NAACP's top five priorities. Sen. Reid said he was inspired to push for the reform after a Las Vegas mother told Sen. Reid her son can't vote because of a crime committed 30 years ago.

The Sentencing Project and Human Rights Watch reveals that 13 percent of all African-American males are prohibited from voting.

The NAACP's involvement with this issue comes as no surprise. Thanks to the drug war, a whopping percentage of young black and Hispanic men will have some kind of serious run-in with the law before they turn 30. The Sentencing Project and Human Rights Watch reveals that 13 percent of all African-American males are prohibited from voting.

Even a nonviolent offense can cripple a person's ability to participate in his or her own government for the rest of his or her life — hardly an incentive for good

citizenship or involvement in the community.

What is the justification for denying people who have paid their debt to society the right to vote? After all, the rights guaranteed by the Constitution are equal, inseparable and take precedence over any subsequent enactments; they are the highest law of the land. Would anyone assert a felon, once released from prison and having successfully completed parole or probation, has no right to attend a church or temple — to exercise his freedom of religion — until those specific rights are restored in writing by some executive order? Of course not.

Likewise, no one would consider barring former prisoners from writing books or letters-to-the-editor after their release pending issuance of some document formally "restoring" this First Amendment right.

This notion that Americans become second class citizens — some of their constitutional rights selectively and permanently impaired — even after they have "done their time," is anathema in a free country, because it accustoms us to a dangerous precedent under which government bureaucrats are empowered to decide which rights shall be "restored," and when.

If Sen. Reid and Mr. Rep. Mfume can succeed in restoring these federal voting rights ... more power to them.

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