Mass Incarceration: A Solution

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Mass Incarceration
Reintegration of Convicted Felons
A Solution

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PLSC 319: Race and Ethnic Politics in the United States
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Introduction

Imagine running wild as a child around your neighborhood. You make the decision to push some of your peers down while running. Soon after the conflict, you are faced with the punishment for your wrong doing. Your entire family and community are distraught as the punishment that they concoct to serve as justice for your actions is being cut off from your family and community for the duration of a year. Your penalty consists of no financial, emotional, structural, or spiritual support from the family. Upon the completion of the year, you return to everyday life with your family. Unfortunately, your return is not as welcoming as you had hoped. Rather than receiving the privileges and lifestyle you possessed prior to the year of punishment, you are met with harsh resentment and exclusion. This story is a pristine metaphoric example of how one is objectified within the criminal justice system in America. Convicted felons are the object of a broken system that promotes the denigration of minority rights with a “box” long after they have paid their debt to society.

There have been multiple arguments against the criminal justice system in the United States. The policies of mass incarceration have led to accusations that the prison system is operating to generate profits for the states, and that people are being sentenced with income in mind rather than the welfare of citizens. This directly links into the idea of prisons not being able to adequately reform prisoners over punishing them, considering the high number of convicts who return to the prison system after serving their initial sentence. A main reason for convict's return to the prison system is their inability to reintegrate into the outside world through a failure to find career opportunities for themselves. This is heavily attributed as being a symptom of the felony checkbox. As this analysis proceeds, the policies for convicted felons in regard to voting,
housing, employment, and higher education in South Carolina and Virginia, as well as the history, concerns, and solution for the box will be discussed.

South Carolina

Gary Allen Washington, South Carolina native businessman, made quite clear in the title of his new business, Felons R Us, that he supports the societal reintegration of convicted felons. The moving company, first denied by the City of Columbia, was later granted licenship by the entire city council. Simply put, Washington stated “they are literally locked out, based on an incident that they recognize was wrong, paid for through incarceration, and yet it’s still tagged to them… So how else do we sustain our economy on fairness and opportunity if 35 to 40 percent of our minority brothers are ineligible to work” (Burris 2016)? Similar scenarios have occurred in South Carolina where businessmen and women have done their part to help alleviate the burden convicted felons have when reentering society. Nevertheless, the box that convicted felons are mandated to check as they apply for jobs, housing, higher education, and voting have proved to be a form of disenfranchisement of itself.

South Carolina has consistently taken its time when granting equal civil rights to groups of people, especially minorities and convicted felons. The state of South Carolina follows homogenous policies that 47 others follow as it restricts the right to vote of convicted felons once they are released. As stated in Title 7, Section 3 of the South Carolina Code of Laws, “In South Carolina, individuals convicted of felonies in state or federal court, or misdemeanors involving violations of election law, may not vote until full completion of sentence including incarceration, probation and parole. After completion of sentence the right to vote is automatically restored. If convicted of any other misdemeanor, an individual only loses the right to vote while incarcerated. The state allows counties to set their own regulations as to whether they will ask
people to provide documentation of completion of sentence” (ACLU 2008). Subsequently, the counties in South Carolina have taken such liberty to further disenfranchise convicted felons even after they have paid their debt to society.

Of the 46 counties in South Carolina, 39 require documentation of completed incarceration, probation, and parole prior to giving back the right to vote. Unfortunately, the study conducted by the South Carolina County Election Board found that 61% of election officials, those responsible for helping citizens carry out their right to vote, had inadequate knowledge about the policies, both federal and state, that dealt with the disenfranchisement of convicted felons. Once those reentering society have completed their sentences, whether it be in or out of prison incarceration, a new voter registration form must be completed and the process to register has to start over. In addition to filling out the form, convicted felons have been faced with the task of checking the box or signing the line labeled ‘I have never been convicted of a felony or offense against the election laws OR if previously convicted, I have served my entire sentence, including probation or parole, or I have received a pardon for the conviction’. The process of providing accurate documentation and re-registering can even discourage felons from putting in the effort to regain their right. The same applies to the lengthy processes of applying for housing and employment.

South Carolina law states that any member of a family who has committed “fraud, bribery, or any other corrupt or criminal act” is reason for losing one’s home (Berkowitz, et al, 2005). Similar laws make it much more difficult for convicted felons reentering society in South Carolina to gain access to everyday necessities, like housing. When applying for housing in South Carolina, in addition to checking the box on certain renters and mortgage loan applications, the South Carolina Manufactured Housing Board requires all persons to include a
background check from each state they have resided in during the past seven years. In addition, applicants must also include background checks for each partnership and corporation (SCMHB 2015). Added regulation and requirements for convicted felons reentering society in South Carolina extend the process and make it much more difficult to gain access to ordinary accommodations.

Jobs for Felons Hub, an organization whose primary goal is to make the reintegration process of convicted felons easier, maintains an updated list of resources for felons who reside in every state. In addition to the resources it provides, it gives employers the opportunity to hire felons and gives felons the opportunity to find legal representation and find jobs. According to JFH, “felons are viewed as a liability or potential risk to some landlords even though that assessment is often incorrect...as a result, a property manager is in his or her right to refuse housing if they believe an applicant could pose a threat or be viewed as a liability to a community” (JobsForFelonsHub 2015). As far as laws are concerned, none have been passed preventing property managers from disqualifying felon applicants, enabling property managers to discriminate based on criminal records. Derived from the JFH website, “According to the US Fair Housing Act, discriminating against a rental applicant is illegal if the decision to do so is based on the applicant’s ethnicity, race, disability, sex, national origin, religion or family status.”

Organizations such as JFH help make reintegration less painful. Nevertheless, the requirement of convicted felons to check a box labeling themselves as a risk or liability slow the process.

All were given the right to a primary education due to the precedent established by Mendez v. Westminster in 1947. Unfortunately, the decision of whether or not convicted felons would gain right to such franchise was left to be determined later on. In South Carolina, law permits that those who have committed felonies can be denied student loans and financial aid.
The Palmetto Fellows Scholarship, one created to award students of high merit, make certain in its eligibility requirements that one “has never been convicted of any felonies and has not been convicted of any second or subsequent alcohol or other drug-related misdemeanor offenses within the past academic year” (SCCHE 2015). The same follows suit for South Carolina need-based grants, diminishing many opportunities for reintegrated felons to support their efforts of receiving higher education. The issue with convicted felons being unable to receive assistance when attempting to pay for higher education is that they in turn have trouble finding well paying jobs.

Felons R Us, a moving company in Columbia, SC mentioned before for its efforts to hire felons, is an outlier in the vast set of companies and businesses who will not hire felons. While applying for jobs, convicted felons must obtain a record of their criminal history, which is not free and can make the task of finding a job eve more difficult. While men and women are incarcerated, South Carolina provides pre-release work programs however, they are only available to “minimum security, non-violent offenders” (HIRE 2015). South Carolina, along with 28 other states, does not impose any further restrictions beyond those required by the FCRA. Yet, the state of South Carolina has not followed the acts of some states with ‘ban the box’ legislation in getting rid of the box convicted felons must check on job applications. Despite their hesitation with getting rid of the box, there are federal and state laws and regulations that can make the job hunt less discriminatory for convicted felons. Per federal law, “Title VII of the Civil Rights Act of 1964 protects applicants and employees from discrimination in employment, including screening practices and hiring” and South Carolina law states that “a person may not be denied authorization to practice, pursue, or engage in a regulated profession or occupation based on a prior conviction, unless the conviction relates directly to the profession or occupation,
or the applicant is found unfit or unsuitable based on all available information, including the prior conviction” (Guerin 2016).

Furthermore, South Carolina has no law or mandate that restricts employers’ use of criminal records, meaning if a convicted felon was denied employment, their only legal recourse would be federal law. In the 121st session of the 2015-16 legislative year, the General Assembly of South Carolina proposed a bill, to be called the Ban the Box Act. Supported by representatives Rutherford, McKnight, McLeod, King, and Bamberg, it was submitted on January 20, 2015 and currently resides with the Committee on Judiciary. The Act states “To Amend the Code of Laws of South Carolina, 1976, so as to enact the “Ban the Box Act” by adding Section 41-1-25 so as to provide that no job application may include questions related to convictions of a crime, unless the crime for which he was convicted directly relates to the position of employment sought or the occupation for which the license is sought…” (McLeod et al. 2015). Although the Bill resides in the Committee on Judiciary, it is the right step towards re-enfranchisement of convicted felons in regard to employment opportunity.

Virginia

Similar to that of other states, Virginia holds supreme the Fair Housing Act in regard to housing. The Fair Housing Act protects individuals from being discriminated upon based on categories in which people have no choice in participation – sex, race, national origin, and persons with disabilities – or groups in which the choice should not be relevant to a landlord, such as religion or families with children. However, there are no protections under the Fair Housing Act for previously convicted felons. Because felony convictions are a result of choices that are made by the individual, to grant these individuals protection under the Fair Housing Act would be protecting them from penalties of their own actions. Today the Fair Housing Act does
not afford such protection to anyone (Wise 2015). With that being said some leasing tenants are not always open to housing previously convicted felons if they believe that the individual may pose a threat to other residents. Also, if the individual does get approved for renting the home or apartment, neighbors are not always welcoming.

In some cases felons are allowed to live with their family members upon their release. However, if individuals do not have this privilege, they often have a difficult time finding housing and turn to housing assistance programs for aid in finding residence. Assistance programs like Section 8 Housing, Housing Grants, and Halfway Houses offer aid to previously convicted felons to a certain extent. Section 8 Housing affords assistance with rent payments to private landlords. This benefit is available for felons as well as low-income recipients. Though felons that were previously convicted of certain categories of fraud, violent crimes, drug trafficking, and sex offenders are not able to benefit from Section 8 Housing. Former felons can also apply for Housing Grants as another means of finding reasonably priced housing. These grants are often set up by charitable organizations to help previously convicted felons with their adjustment back into society. Halfway Houses also aid felons in adjusting back into society and is often where most individuals go upon release. Halfway Houses are supported and paid for by subsidies so residents are not required to pay rent (Felon Opportunities 2014).

The right to vote for all citizens is established in the federal United States Constitution, however there are still restrictions in regard to felons’ voting rights on a state by state basis. The Constitution requires that voting rights cannot be curtailed by reason of race, color, sex, or age for those that are over the age of 18. Voting rights are established in the 15th, 19th, and 26th amendments of the Constitution. Though states still hold the right to disenfranchise individuals that have committed a felony. In the state of Virginia, persons with felony convictions are
allowed to have their voting rights restored by governor’s action or by court action (Underhill 2016). In August 2016, Virginia Governor Terry McAuliffe (D) announced the next steps to proceed with individually restoring the rights of individuals who have served their time and completed administered release. Governor McAuliffe directed the secretary’s office to process the necessary paperwork for restoration purposes for all individuals that meet the requirements of Governor McAuliffe for restoration. Citizens that did not reach out to the office, the Secretary of the Commonwealth will systematically identify other individuals who also meet the requirements for consideration of restoration. After the Governor has successfully restored voting rights to an individual, the individual will receive the completed restoration order by mail. Governor McAuliffe’s decision to restore the voting rights of felons emerge from his belief in granting second chances and his idea that these individuals should not be treated as “second class citizens.” The governor also believes that if a person is arbitrated to be safe to return to the community, he or she should have a complete voice in its governance (Thomasson 2016).

Upon release from prison, some felons may decide to pursue a higher education. Though many of these individuals are uneducated on the process of doing so. Felons apply to colleges the same way that individuals with no prior criminal record apply. Reading the application for the college of their choice and on the FAFSA is fundamental. Many colleges accept students with felonies and look beyond their past, but not all colleges are as open. Online colleges are also a popular option in society today. However wherever accepted, individuals should be mindful of the classes and courses that they concentrate in and be certain that they will be able to practice with their past convictions. These individuals should also be mindful that their financial aid may be limited. Though there is not a direct question on the FAFSA that asks if individuals have been convicted of a felony, there are other questions regarding criminal backgrounds. For example, on
the FAFSA there is a question that asks if you were convicted of drug related felony during the time of enrollment or while receiving federal student aid money. Previously convicted felons are still allowed enrollment if their felony was not drug related, if they were not enrolled in school at the time of conviction, or if they were not receiving any federal assistance at the time of conviction.

In order to survive in this society, you must have a job or a source of income. This can be particularly hard for felons that have to check the box notifying employers that they have a criminal record. The box serves as a barrier for previously convicted felons in obtaining a job. However, Virginia Governor Terry McAuliffe (D) signed an executive order which banned the state from asking about potential employees’ criminal histories at the initial application stage. This was done in an act to increase employment opportunities for individuals with criminal records. The “ban the box” order rids questions in regard to criminal histories from applications for state jobs, with exception to those state jobs with roles in which the individual’s criminal history relates directly to the job. Though the order still entails that criminal background checks are to be conducted, but only after an applicant has been deemed to be otherwise qualified for a particular position and the applicant has signed a waiver allowing the release of his or her criminal history. This order made Virginia the 15th state to “ban the box” (Relly, 2015). By doing so the state of Virginia has lifted the barrier and eased the adjustment to employment for previously convicted felons. Thus helping these individuals by granting them a better chance at employment so that they are then able to provide for themselves.

History

The felony checkbox or “the box,” is a section in a form for education or career application requiring the disclosure of any past convictions for criminal activity. This leads to a discrimination against candidates who would otherwise be qualified for a position they seek, as
some employers feel uncomfortable hiring those who have been involved in criminal activity despite them having served sentence. This same bias prevents candidates from entering several institutions of higher education which frequently require the disclosure of conviction history. Even if these hurdles were pass over, an individual is still restricted by housing applications which also include the felony checkbox. These restrictions make it difficult for ex-convicts to move into new careers or educational endeavors, and also serve as a way of leashing them to their old places of residence with their inability to move away from it. This leads them to fall into their old lifestyle and habits and end up returning into the prison system. While there are many protests from convicts about this system, it is hard for them to support representation as the rights for felons to vote is decided by individual states.

The system of felony disenfranchisement is rooted in the very earliest days of the United States. Even before the American Revolution was waged against the British, the colonies had argued over the rights of voting being considered as a right or a privilege. This argument proved problematic in the forming United States, considering the amounts of slaves and Native Americans that were present while white men debated conditions of voting. If voting was considered to be a natural right for all beings, this would mean that logically every American would be able to possess it even among the undesired populations. The Constitution had no definition of who was eligible to vote, and instead left the decisions up to the states. The majority of these restricted voting rights exclusively to white males, and some went further in requiring them to be property owners as well. This way of thinking permeated the idea of voting rights as being a privilege based upon both race and success during the very foundation of the country.

In 1792, a mere four years after the Constitution was ratified, Kentucky’s state constitution restricted voting rights from felons stating “Laws shall be made to exclude from […]
suffrage those who thereafter be convicted of bribery, perjury, forgery, or other high crimes and misdemeanors." (Kentucky). Vermont's state constitution would include a near identical article a year later, and into the mid-nineteenth century 23 more states would ratify laws preventing criminals from participating in voting. The passing of the 15th Amendment on February 3rd, 1870 both gave freed slaves the right to vote and banned the practice of restricting the rights of voters on a racial basis. While areas in southern states had methods of voter intimidation and disenfranchisement, the increasing scrutiny and control of these methods made them seek a new way of maintaining white supremacy. The Fourteenth Amendment was passed to protect the citizenship rights of former slaves and also ex-confederates, as Section 2 discussed acts of “crime, treason, and rebellion”. Alabama modified its constitution in 1901 to expand on the list of crimes that would permanently prevent voting, also including a way to target their undesirable elements by also taking away voting rights from a subjective group of “all idiots and insane persons”. While the combination of the Civil Rights Act of 1964 and the Fifteenth Amendment would give a great amount of protection to minorities, criminals continued to be disenfranchised by the government.

In the 1967 case of Green v. Board of Elections, the New York Supreme Court ruled that disenfranchising felon voting rights was constitutional with the argument that a criminal was no longer contributing to it. Because a criminal had decided to abandon following the rule of law in favor of their own, they should be interpreted as also giving up their right for participation in it (US Court of Appeals). After all, why should a criminal who ignored the laws have a say in choosing representatives to make new ones? This argument was taken to the federal level in Richardson v. Ramirez in 1974, with the defense of felons now being that denying their right to vote was a breach of the Equal Protection Clause of the Fourteenth Amendment. The Supreme
Court ruled that the language Section 2 of the amendment distinguished the criminal activities of crime and rebellion away from the other restrictions, meaning it was still up to the states to decide (Supreme Court).

However, the restriction of felon rights would not end at the political participation level, but would extend into the private sector. The Civil Rights Act of 1964 prevented employment discrimination in Title VII, banning disparate treatment and disparate impact. The case for criminals had been contested in this category, as hiring criminal record employees could risk damaging the company. In example, someone who had served a sentence for identity theft could apply as a banking clerk but would be put below other candidates as his past behavior meant they could be a risk factor if allowed access to customer financial information. The same sensibilities could be extended to education, as someone who had committed assault or other violent crime could be a risk factor to other students due to their past behavior of violence towards others. The 1985 unanimous *Hunter vs Underwood* ruling from the SCOTUS gave states the right to disenfranchise criminals as long as there was no racial intent. Several states banned felons from federal employment, and multiple businesses were allowed to restrict criminals from being employed. Others were more lenient in aspects of restriction with policies like requiring employers to examine the nature of the crime, sentences served, or time passed since the incident. This has lead into the environment for reformed criminals being varied across the United States, with little prospect of employment and no voting rights in one state while they have greater opportunities and voting rights in another.

**Pros and Cons**

Research suggests that there are numerous pros and cons of removing the felony checkbox from employment applications, housing applications, and college applications. Among
the cons of removing the felony checkbox from employment applications is the concern of racial discrimination against people of color who do not possess a criminal record. Amanda Agan and Sonja Starr, authors of “Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment,” conducted a study in 2016 in which they investigated the effects that the “Ban-the-Box” movement and its policies might have on applicants of color who do not have a criminal record (Agan and Starr 2016). The authors explain that “withholding information about criminal records could risk statistical discrimination: employers make assumptions about criminality based on the applicant’s race,” and therefore resulting in discrimination and prejudice regardless of a criminal history (Agan and Starr 2016). In their study, they found that before Ban the Box policies were implemented, white applicants received 7% more callbacks than similar black applicants, but after the Ban the Box policies were implemented, white applicants received 45% more callbacks than similar black applicants (Agan and Starr 2016). This gap can be explained by an employer’s reliance on statistical generalizations about groups in lieu of information about individuals, such as their criminal histories. Without information about criminal history, employers might use available information, such as race, ethnicity, or name, to discriminate and disqualify a viable candidate from employment.

In an analysis of fair chance hiring policies by Easy Backgrounds, Inc., the organization pointed out three main criticisms of the policies. First, the variability of the “Ban the Box” policies among different cities, counties, and states makes following the legislation difficult (Easy Backgrounds). Another criticism of fair chance policies is that it is overall a waste of time and money for employers. Some see no point in going through the entire hiring process only to realize that the applicant’s background deems them ineligible for the position. Finally, a third criticism of “Ban the Box” policies is that it challenges the employer's ability to provide a safe
and secure workplace, which could also result in liability lawsuits against the employer and company.

The pros of expanding employment, housing, and higher education opportunities to formerly incarcerated individuals includes reducing homelessness and recidivism among those individuals. The cons of expanding employment, housing, and higher education opportunities to formerly incarcerated individuals can result in higher rates of prejudice toward people of color, along with legislation differences between cities and counties, expensive for employers, and liability issues for employers. These are the general effects of removing the felony checkbox to which states, counties, and cities look at.

Banning the felony checkbox on job applications has had positive impacts. A 2011 study by the Economy League of Philadelphia found that expanding employment opportunities to formerly incarcerated individuals has had positive economic impacts in Philadelphia, Pennsylvania, such as increased earnings, increased tax revenues, and avoided costs. This 2011 study first examined increased earnings among formerly incarcerated individuals in Philadelphia. Through the Philadelphia Reentry Employment Program, the City of Philadelphia requires employers to pay employees 150 percent of the federal minimum wage or equal compensation and in return the employers receive tax credit. The study also examined the increased city wage and sales tax revenues in Philadelphia. Using a sample of 100 formerly incarcerated individuals and providing them with employment would “produce an additional $47,800 in annual City wage revenues and $1,900,000 in total post-release wage tax contributions over the employees’ lifetimes” (Economy League 2011). The study also examined the cost savings that would result from reduced recidivism. Reduced recidivism through employment will result in taxpayer
benefits and savings, including police cost savings, corrections cost savings, court cost savings, and probation and parole cost savings (Economy League 2011).

In a 2011 study that examined the relation of social ties, employment, and recidivism among formerly incarcerated individuals, Mark T. Berg and Beth M. Huebner, authors of “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” found that employment was one of the most important influences on decreasing recidivism. Among formerly incarcerated individuals, within two years after their release “twice as many employed people with criminal records had avoided recidivating than their unemployed counterparts,” (Berg and Huebner 2011). Again, this research suggests the personal and societal benefits of removing the felony checkbox.

**Conclusion**

Removing the felony checkbox on housing applications has also made the reintegration of convicted felons much easier for such individuals and their communities. The Fair Chance at Housing Act of 2016, which amends the Quality Housing and Work Responsibility Act of 1998, is a piece of legislation that would ensure that formerly incarcerated individuals would have a fair chance when applying for public housing. The bill would require public housing agencies to conduct a review of a housing application in its entirety before denying an applicant housing, regardless of a previous criminal background (U.S. Congress 2016). This piece of legislation would lower the risk of formerly incarcerated individuals of becoming homeless and/or recidivating.

Removing the felony checkbox from college applications is an additional strategy to guarantee equal opportunity for formerly incarcerated individuals. According to the Center for Community Alternatives, “criminal history screening of applicants during the admissions process
at colleges and universities serves no legitimate public safety purpose and violates the spirit of educational opportunity for all,” (Center for Community Alternatives). The Coalition analyzed the effects of higher education on reduced recidivism. Within three years of release, 67.8% of formerly incarcerated individuals are likely to recidivate, but with an Associates degree, that percentage drops to 13.7%; with a Bachelor's degree it drops to 5.6%; and with a Master’s degree it drops to less than 1%. Along with reducing recidivism, access to higher education increases employment rates and decreases reliance on public assistance. The Abolish the Box National Campaign is a campaign that advocates the removal of the felony checkbox on the Common Application’s undergraduate application for college admissions. The felony checkbox on college applications is often used to disqualify an applicant and overwhelmingly impacts poor people and people of color, as it contributes to the “systematic denial of access to education for those who have experienced lengthy histories of educational, social, and economic discrimination,” (Abolish the Box). Removing the felony checkbox from the Common Application opens opportunities to formerly incarcerated individuals, not only in acceptance to universities, but also in the initial application to college, as the checkbox itself can intimidate formerly incarcerated individuals from submitting an application.

As stated previously, convicted felons are the object of a broken system that promotes the denigration of minority rights with a “box” long after they have paid their debt to society. Such rights like voting, employment, housing, and educational attainment have been denied. Statistics prove that the stain left by a felony conviction leads to a systemic inequality that hinders the reintegration of convicted felons. The only way to correct the flaws within the criminal justice system is to ban the box across all the states to ensure that the civil rights and liberties of an individual are returned and protected after he/she pays their debt to society. In doing so, the
example set by Virginia will be replicated by every state and the reintegration of convicted felons will be made much simpler and effective for all of society.
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