

## **The Second Chance Act of 2007**

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### **Introduction**

Crime has always been among us, whether it was a caveman stealing food that didn't belong to them or the most recent news story about an individual who committed grand theft auto. The act of committing crime is nothing new and neither is recidivism, the act of reoffending. Many researchers have racked their brains trying to figure out why people reoffend once they've been released from incarceration. There's no exact answer to this question because each individual who commits a crime has a unique reason for doing so. However, even though there isn't one answer to the problem of recidivism, researchers have begun studying the effects of invisible punishments to try and explain why people reoffend.

Invisible punishments was a term coined by former Director of the National Institute of Justice (NIJ) Jeremy Travis. He stated, "Invisible punishments are laws that limit the rights and privileges of ex-offenders" (Travis, 2002). The laws vary from not being able to obtain public housing to not being able to get a job because of one's criminal history. This means that despite ex-offenders being released from incarceration, they're still trapped by these invisible punishments that make their lives more difficult by introducing new barriers for them to overcome. As a result of these invisible punishments, ex-offenders will reoffend because they are unable to properly reintegrate into society.

For example, if there's only one store in a neighborhood to work at and the employer at that store conducts a background check and discovers the candidate who applied for the job was charged with a crime, they may not hire that person, but that person still needs money to pay for clothes

and food. As a result, they may resort to an illegal way of making money or stealing in order to get the items they need. This is the unfortunate reality some people must face when they have invisible punishments holding them back.

Another term used to describe invisible punishments is collateral consequences. These are outcomes that result from a criminal conviction and they include: difficulty obtaining employment, ineligibility for public and government-assisted housing, disenfranchisement, and many more obstacles (Pinard, 2010). Employment opportunities drastically decrease when one has a criminal record, especially when trying to obtain very lucrative jobs and potential careers. Most employers will conduct a background check which usually includes a criminal-history check and tells the employer if the candidate has ever been convicted of a crime (both felonies and misdemeanors), has ever been incarcerated, and has any pending charges against them (Collatz, 2018). Studies have shown that employers are more likely to choose candidates without a criminal record than a candidate with one. So many studies have been conducted on this topic that advocacy groups have started a new campaign called “Ban the Box” to remove the question that asks applicants if they have a criminal record during the hiring process. 35 states within the United States (U.S.) have adopted Ban the Box policies to help rid the stigma of criminal convictions and give ex-offenders more employment opportunities (Avery & Hernandez, 2020).

Obtaining housing is another obstacle ex-offenders face after leaving incarceration. Public housing is property (this “property” can vary in forms from single family homes or entire apartment buildings) owned by the government and provided to low-income families and individuals (U.S. Department of Housing and Urban Development, 2020). For people returning home post-incarceration, public housing or government assisted housing is very beneficial to them

because immediately after release, most previously incarcerated individuals do not have jobs. This housing assistance gives them the opportunity to have a place to live while they find reliable work. Housing restrictions imposed by the federal government make receiving public housing very difficult or impossible for individuals with a past conviction (Pinard, 2010). Restrictions include: federal laws banning sex offenders from receiving government assisted housing for life and giving housing authorities discretion to disqualify any individual with a criminal history at all (regardless of the offense) from receiving housing.

Disenfranchisement is yet another obstacle ex-offenders face when it comes to leaving incarceration. Disenfranchisement is a fancy word used to describe someone who is deprived of the right to vote. Unlike the other two obstacles previously mentioned, this one varies tremendously depending on which state the ex-offender lives in. For example, there are only two states (Maine and Vermont) where people who enter jails and prison never lose their right to vote (National Conference of State Legislatures, 2020). In Colorado, Illinois, and other states people lose their right to vote when they're incarcerated but their right to vote is reinstated as soon as they finish their sentence. In California, Connecticut, and other states voting rights are restored only after parole or probation have been completed. This is a problem because there's a significant percentage of people being released from jails and prisons who cannot participate in one of the country's oldest, most respected and important decision-making processes which dictate their future. Prisoner and ex-offender rights are important, especially to those who are or have been directly affected by the loss of them. Disenfranchisement takes opportunities away from ex-offenders whose votes could change the country's future in a monumental way.

Mass incarceration, a term used to discuss the extremely

high rates of imprisonment and retention of inmates within the U.S., has persisted for a number of reasons. One of those reasons being a lack of resources. As mentioned above, individuals sometimes face no other option but to turn to crime. One may turn to crime as a way to financially support themselves, or they may commit a crime due to poor mental health or substance abuse issues. And the reason they don't have money or proper treatment is because there's a lack of resources where they live and they don't have the means (available work, money, accessible health care, etc.) to get what they need. Incarceration is a punishment that happens after the crime has been committed as a way to deal with the offender, but why do people commit crimes in the first place? Up until 2005, nobody was addressing this question. Findings brought to light by the Bureau of Justice Statistics showed people that the underlying problem of why people were committing and re-committing crimes was something that needed to be looked into.

In 2005, the Bureau of Justice Statistics gathered information from 30 different states throughout the U.S. concerning recidivism rates. The statistics showed that 67.8% of those released from prison returned in 3 years and over 76% returned within 5 years (Durose et. al, 2014). Recidivism rates were very high and it was clear why. Ex-offenders were being sent back to their communities with a multitude of additional obstacles and without real plans or treatment to help them rehabilitate and stop committing crimes. Many non-profit organizations and elected officials believed change needed to occur to combat the high recidivism rates and this was how the Second Chance Act (SCA) came to be.

## **Policy Goals, Design, & Implementation**

Many people were supportive of reducing recidivism rates and helping ex-offenders and as a result, there were many

stakeholders who worked on getting the SCA passed into law. The SCA was first sponsored in 2007 by Illinois Congressional Representative Danny K. Davis (Congressional Record, 2008). The act was met with an immense amount of support from other Democrats and Republicans alike, and was ultimately passed through a true bipartisan effort. There were 92 cosponsors of this act as well, including: Rep. Donald Payne, Rep. Mike Pence, Rep. Barbara Lee, and 89 others. Many non-profits who specialized in criminal justice reform also advocated for the act to get passed. Some non-profits who supported the SCA were: The Sentencing Project, The Connection Inc, and Prison Fellowship. These organizations, along with newly created ones continue to support the SCA.

Although a majority in the house and senate supported the SCA, not everyone did. A popular view expressed by those who opposed the act was that it wasn't the federal government's role to deal with increasing recidivism rates and giving offenders a "second chance" would be too lenient. Rep. Gohmert of Texas was one of the individuals who opposed the SCA. He stated in his closing opinion, "We don't have enough information on how successful they [reentry programs] are, there are provisions in the act that allow for too much administration, and dismissing charges for someone who completes drug rehab is ridiculous; how will people be kept in line?" (Gohmert, 2007). Many underlying assumptions about the SCA believed it would dismantle law and order. But those who favored the act saw it as a potential way of fixing a flawed system that merely cycled people back into incarceration.

The Second Chance Act (SCA) was a law passed in 2008 by the 110th congress and signed into order by President George W. Bush (Congressional Record, 2008). The SCA was an amended version of a previous law called The Omnibus Crime Control and Safe Streets Act of 1968 (Congressional Record, 2008). Both laws had the same goal of improving

reentry programs to reduce recidivism rates, and ultimately enhancing public safety. The amendments written in the SCA included: reauthorizing federal funds to state and local agencies for reentry programs, improving substance abuse treatment programs, redefining who is a “violent offender” for drug court grant programs, and more. The primary objective of the SCA is to reauthorize funds to different institutions and entities for the purpose of creating or improving reentry programs (Congressional Record, 2008). The long-term goals that will come out of these reentry programs are reducing recidivism, so people don’t return to state or federal prisons, jails, and juvenile facilities and also increasing public safety as a whole.

Reentry programs are programs tailored to help adult and juvenile ex-offenders successfully reintegrate into society post-incarceration. Reentry programs can assist with any barrier ex-offenders face. Examples are: vocational classes that can help ex-offenders receive employment, addiction counseling or treatment to help them stop using drugs or treat their mental health problems, and housing workshops that can help them find affordable and accessible housing with a criminal conviction. These programs can be offered to those currently incarcerated who are in the process of transitioning out of incarceration and can also be offered to ex-offenders after they’ve already been released.

The SCA does not appropriate funds meaning the federal government does not decide where specifically funds go, but the SCA does reauthorize funds in the form of grant programs which entities may apply for and use towards reentry programs (Nelson & Turetsky, 2008). Only states, units of local governments, territories and federally recognized Indian Tribes are eligible to apply for SCA grants (Congressional Record, 2008). Applications must be sent to the Attorney General because they’re responsible for administering the grants (Center for Law and Social Policy,

2008). The application itself must encompass three key components in order to be approved. It must include: a long-term strategic plan describing in detail what will take place throughout the program, the roles of the task force (trained professionals) that will be working for the entity to help implement the program, and a means of evaluating their work to determine if the reentry program is successful or not.

The great thing about the SCA is that it isn't only for adult ex-offenders or only for juvenile ex-offenders—it's for both. The Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) both award grants for adult reentry programs and juvenile reentry programs. This means regardless of age, gender, ethnic background, criminal history, etc., all people who are returning to their communities can receive assistance because of the SCA and because of these departments who approve the grants. The U.S. Department of Justice has many subsidiaries that work under it and handle different policies. When it comes to the SCA, the Office of Justice Programs (OJP) delegates the BJA to administer grant funds to adult reentry programs and the OJP delegates the OJJDP to properly administer funds to juvenile reentry programs because they work specifically with juvenile delinquency programs.

As stated previously, the SCA does not appropriate funds, so they don't tell grant recipients what specific programs to create or how specifically to spend their money. But, they do have provisions concerning the kind of initiatives they'd like the grants to be used towards. The initiatives stated in the SCA were the same ones included in the Serious and Violent Offender Reentry Initiative (SVORI). They are as follows:

Improving quality of life for ex-offenders through employment, housing, family and community involvement, improving health by

addressing substance abuse (sobriety and relapse prevention) as well as physical and mental health, and achieving systems change through multi-agency collaboration and case management strategies. (Youth.gov, 2008).

Despite SVORI being terminated in 2005, the initiatives it introduced are still accepted as appropriate uses for the grants and those initiatives along with new creative ideas are welcomed by the SCA.

### **Policy/Program Critique & Proposed Modifications**

The SCA has been very successful in many cases. So successful that in 2018 it was revamped and now accompanies a new law called The First Step Act (FSA). The FSA is very similar to the SCA because it also aims to reduce recidivism through reentry programs, but they're different because the FSA has also made changes to federal sentencing laws to enhance criminal justice reform (CSG Justice Center Staff, 2018). The most successful part of the SCA is that it has actually helped to lower recidivism rates as a whole. A study was conducted in Alabama, Mississippi, and Georgia to analyze the effects of the SCA on recidivism rates (Amasa-Annang & Scutelnicu, 2016). The study was conducted over a three-year time period and compared recidivism figures from the previous three years (2004-2007) to the three years after the SCA had been implemented (2008-2011). The results showed that in Georgia and Mississippi there was a reduction in recidivism rates. And although Alabama didn't reduce their recidivism rates, it's important to keep in mind that this study only monitored and evaluated the SCA within the first three years of implementation. It's possible that if more time was given between the SCA being used and the evaluation, the results could have been different for Alabama.

Not all SCA funded reentry programs were successful. An evaluation was conducted in 2011 on Project Greenlight, a SCA funded reentry program in New York. The program intended to reduce recidivism through a cognitive-behavioral program (Wilson & Zozula, 2011). The results showed that less than half (47.5%) of the participants (a total of 345 people) were not rearrested within 30 months after the program had concluded. This means that more than half of the participants were rearrested and recidivism continued to occur at a high rate, despite the use of a transitional reentry program.

There were many unintended problems that developed in both the successful and failed SCA funded programs. In the first evaluation conducted by Amasa-Annang and Scutelnicu, the reentry programs were all voluntary so ex-offenders were not required to participate in them after being released. This means, out of the hundreds of ex-offenders who were released annually, there were hundreds not receiving vital resources to help them properly reintegrate into their communities. In the second evaluation mentioned, Project Greenlight was originally intended for small groups of eight to 10 people but each Greenlight class had 26 participants in them. It's also evident that high-risk offenders were rearrested more than low-risk offenders. This tells us that there were very large classes and there was a lack of diversity in program content that wasn't specific for different types of offenders.

There are many ways to combat the problems that arose from SCA funded reentry programs. To begin, it would be in the program's best interest to partner with the local jail or prison and make the program a requirement for all ex-offenders leaving incarceration. This could help prevent ex-offenders from cycling back into jail or prison because they will be obligated to join the program and will have the resources they need to reintegrate. Next, class sizes are extremely important. Smaller class sizes would be better for

ex-offenders as opposed to larger ones. Fewer students would allow the participants to get one-on-one time with their program instructors to really understand their options and learn important information about how they can start rebuilding their lives. Lastly, programs need to be specific. They shouldn't be broad, but rather they should be tailored to help the individual. All ex-offenders' needs are different; some will need to find housing, some will need to receive more education, some will have both of those and may just need to find work. It's important to address the individuals needs in order for the program to be successful. This also includes addressing challenges that high-risk offenders will endure compared to low-risk offenders. High-risk offenders may need more time within the programs than low-risk offenders so the duration of the program needs to fit the individual as well. All of the problems that were introduced are remediable and could be resolved to create more successful SCA funded programs.

The federal government also realized change was needed to combat some of the problems that emerged from these programs. In 2018, the SCA was amended to include more provisions on what grant recipients now needed to use the money for. Some of the new provisions include: establishing a memorandum of understanding with the partner correctional agency from which the participant was recruited, using a criminogenic needs assessment, serving a minimum of 150 who are assessed as medium or high risk reoffenders or serving a minimum of 75 people if the operating budget from the grant is less than one million dollars (National Reentry Resource Center, 2018). All of these revisions to the SCA will help improve reentry programs so financial resources are adequately used. And as a result, the SCA will continue reducing recidivism and ultimately enhance public safety as intended.

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