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Convicted Felons and Voting

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Convicted Felons and Voting

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UK Martin School of Public Policy and Administration

BA in Public Policy Capstone

April 14, 2023

Executive Summary

Felony disenfranchisement impacts nearly 4.6 million individuals in the United States with low-income communities and communities of color disproportionately affected. This policy is a practice that restricts the voting rights of individuals who have been convicted of a felony. This brief provides an overview of the challenges faced by those affected by felony disenfranchisement, as well as the implications for democracy in the United States. Highlighting a 50-state scan of state voter restrictions, I showcase the different laws and policies that restrict the voting rights of individuals with felony convictions across the United States. The history of felony disenfranchisement in the United States is examined, including its roots in the disenfranchisement of African Americans during the Voting Rights Act of 1965, the Fifteenth Amendment, and the Literacy Tests era. The impact of felony disenfranchisement on individuals is also discussed, including the barriers it creates for re-entry and full participation in society. The analysis of the problem at the national level and a specific focus on the state of Kentucky reveals the stringent restrictions on voting for individuals with a felony conviction- including the various felonies that qualify to block an individual's vote. Lastly, alternatives to the current system and considerations for reform are discussed. The significance of this issue is to promote greater awareness of the challenges faced by those affected by felony disenfranchisement and to encourage reform to promote greater inclusivity. I conclude with recommendations for policymakers to consider, including the restoration of voting rights for all individuals who have completed their sentence and the elimination of barriers to re-entry and full participation in society.

Purpose and Overview

The significance of this brief is to explore the issue of felony disenfranchisement, analyze and suggest solutions, as well as provide a comprehensive overview of the voter restrictions in all 50 states of the United States. Felony disenfranchisement is the practice of restricting the voting rights of individuals who have been convicted of a felony. This issue has been a contentious topic in the United States, with some advocating for the restoration of voting rights for all felons, while others believe that such individuals should be permanently barred from voting. By examining the problem at the national level, with a specific focus on the state of Kentucky, this brief will provide a detailed background on the history of voting, particularly among the African American community, and the implications of felony disenfranchisement. Particularly, in the state of Kentucky, the restrictions on voting for individuals with a felony conviction are particularly stringent. This brief will closely examine the various felonies that qualify to block an individual's vote. This analysis of the problem at the national and state level will provide a foundation for understanding the complexity of this issue and the opportunities for reform. To conclude, through an exploration of the background, implications, and alternatives to the current system, this brief will offer insights into the challenges and opportunities for reform to promote greater inclusivity and democracy in the process to re-enfranchise individuals.

Problem Definition

Introduction

In the United States, individuals currently incarcerated within the criminal justice system are at a much higher disadvantage, compared to individuals who possess no criminal record, when it comes to their fundamental right to vote. Although nearly 4.6 million Americans, with felony convictions, feel these effects, it has a disproportionate impact on the African American population. In this same report, from the Sentencing Project, it is said that “Among the adult African American population, 5.3 percent is disenfranchised compared to 1.5 percent of the adult non-African American population”.¹ Disenfranchised refers to an individual who has been deprived of their right to vote. However, felony disenfranchisement refers to denying the right to vote to any individuals who have been convicted of a felony.

According to The Sentencing Project,

1 in 19

African American, age-eligible voters are currently restricted from their right to vote.

¹ Christopher Uggen et. al, “Locked Out 2022: Estimates of People Denied Voting Rights”, The Sentencing Project, October 25, 2022, <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

Voting History among African Americans

Barriers facing African Americans and their voting rights have a long history. It wasn't until the year 1870 that Congress passed the Fifteenth Amendment. This amendment and subsequent federal legislation were supposed to combat this problem. Men, of all races, were now given the opportunity to cast a ballot, but that wasn't going to be enough. African Americans were still being denied the right to vote. Whether it was a state's constitution, polling taxes, or literacy tests, there was always a barrier that came between the African American community and their fundamental right to vote- particularly men. Literacy tests, administered by State Legislators or board electors, were just one of the barriers that these individuals faced. These tests, which were focused on targeting African Americans, were given ostensibly to test one's ability to read, write, and understand English. Because of such a high rate of illiteracy among the African American population due to "oppression and poverty", many of these African American individuals failed.² It wasn't until 1965 that African Americans would start to feel a sense of relief. During this year, 36th President Lyndon B. Johnson signed the Voting Rights Act of 1965 into law. The goal of this legislation was to conquer any and all barriers, at the state and local level, that were in the way for African Americans to cast their right to vote.

Present Day Voting among African Americans

Right now, there are many states, primarily the ones located in the south, where the African American felony disenfranchisement rates "now exceed 15 percent of the adult voting eligible population".³ What this means, is that in the state of Tennessee for example, the disenfranchisement rate among African Americans is currently exceeding over 15 percent of the eligible voting population. In Florida, the disenfranchisement rate of African Americans is roughly 10 percent of the eligible voting population. And these rates have been growing rapidly over time. Now, as we have seen, the impact that voting restrictions have on African American individuals is negative, but the overall effect that it has on nearly 5 million Americans is just as impactful. As of 2023, with the exception of Maine and Vermont, all states including the District of Columbia, restrict voting rights for incarcerated individuals for a duration of time. Whether a state automatically restores an individual's right to vote upon release, restores the right under circumstances- such as completion of parole or probation, or only restored with a governor's executive order, Americans that are or have

According to data compiled from The Sentencing Project, the 2022 felony disenfranchisement rates in southern states almost doubled since 1980.

² HISTORY.COM EDITORS, "Voting Rights Act of 1965", HISTORY, November 9, 2009, <https://www.history.com/topics/black-history/voting-rights-act>

³ Christopher Uggen et. al, "Locked Out 2022: Estimates of People Denied Voting Rights", The Sentencing Project, October 25, 2022, <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

been imprisoned within these 48 states are being blocked from their fundamental right to cast a ballot and let their voice be heard.

Although the disenfranchisement rate among individuals throughout these 48 states is alarming, it is important to note that over the course of recent years, the overall disenfranchisement rate slowly began to decrease. Policy changes have partially driven this decrease, but the COVID-19 pandemic has also played a role. When the COVID-19 pandemic hit during the early parts of 2020, many prisons and jails were forced to reduce their population size. It may not have declined at a rate that government officials and leaders were hoping to see, but considering the circumstances, it did play a role in the decrease in disenfranchisement rates. Studies, from The Sentencing Project, did in fact show that the total disenfranchisement rate of 2022 at 1.99 percent, declined from two years prior in 2020 from 2.7 percent.⁴

Why it's Important

The restoration of voting rights among former felons is known to be “one of the key civil rights issues of our time”, says the deputy director of litigation at the NAACP Legal Defense and Education Fund, Leah Aden.⁵ With 4.6 million individuals affected, and their right to vote denied, many of these individuals may never have the chance to regain this right, whereas some, only have the option to pay a fine that would help them regain their right. Either way, many people believe the right to vote, as laid out in the Constitution, under Section 1 of the Twenty-Sixth Amendment, is important for all individuals regardless of their criminal history and background.

According to the Brennan Center for Justice, laws like these, in place to restrict disenfranchised individuals, are not only anti-democratic but also send the message that the voice of these people doesn't count or matter in the electoral process.

In 2019, presidential candidate Bernie Sanders, who ran during the 2016 election, announced his position on voting for formerly incarcerated individuals and why he believes it to be important. Sanders stated that “voting is inherent to our democracy...Yes even for terrible people”.⁶ People like Bernie Sanders, along with many other individuals, and organizations such as The Brennan Center for Justice, believe that an important reason why individuals should have their right to vote reinstated is because of “democracy”. Based on a report from the Brennan Center for Justice at *New York University School of Law*, one of the reasons, as to why it's important in terms of post-incarceration voting rights restoration, is because it builds a

⁴ Christopher Uggen et. al, “Locked Out 2022: Estimates of People Denied Voting Rights”, The Sentencing Project, October 25, 2022, <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>

⁵ Courtney Connley, “Why restoring voting rights to former felons is “one of the key civil right issues of our time”, CNBC make it, October 20, 2020, <https://www.cnbc.com/2020/10/20/restoring-voting-rights-to-former-felons-is-one-of-the-key-civil-right-issues-of-our-time.html>

⁶ Common Cause, “Zero Disenfranchisement: The Movement to Restore Voting Rights”, Retrieved February 25, 2023, <https://www.commoncause.org/page/zero-disenfranchisement/>

“stronger democracy”.⁷ When you start to deny an individual their right to vote, you are ultimately denying them the right to take part in the democratic process. When you take away their right in the democratic process, you are taking away their right to cast a vote and opinion on who that individual thinks should govern. Even though these are individuals who hold previous criminal convictions, the world is basically telling them that even when they are released and allowed to live in society, they are not to have an opinion in the society that they live in. We can make our democracy stronger by giving this right back to individuals.

Restoring the right to vote holds great significance not only in terms of upholding democracy but also for the African American community, which has been disproportionately impacted by the criminal justice system. This issue is intricately linked to the historical context of racial discrimination and the Jim Crow era. The right to vote of African Americans was severely curtailed prior to the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution, and even after their ratification, significant obstacles remained in place. In the present day, a number of disenfranchisement laws exist across different states, prompting advocacy groups such as the Brennan Center for Justice to argue that restoring voting rights post-incarceration would represent a key step in “advancing civil rights”.⁸

When people are released from prison, it can be very hard for them to reacclimate back into society. Many times people in the community and employers tend to look at these individuals in a different manner because of the felony conviction that they hold. Some think that they’ll relapse and end up back in prison, that maybe they won’t be good at holding down a job, or even able to provide within the community, and for this, they are known to be treated as “second-class citizens”. Formerly incarcerated individuals are treated, by the same community in which they once lived, as if they are no longer a part of that community because of their previous criminal background. To avoid this feeling for individuals who are matriculating back into society after incarceration, many researchers are arguing that not only stable employment and support from one’s family is important, but it is also just as important to having neighborhood involvement, volunteer work, and even voting. If we push to include more civic reintegration in re-entry models, it would work to “transform one’s identity from deviant to law-abiding citizen”.⁹

As mentioned before, having family support for previously incarcerated individuals is a very important thing. Ultimately, it is what can make them become better people, and help transform them better into society. When an individual is incarcerated, especially for a period of time, it can sometimes have a negative effect on that family and the community in which that individual is from. According to Wood, “denying the vote to one person has a ripple effect, dramatically decreasing the political power of urban and minority communities”.¹⁰ Many researchers have determined that political engagement from a child is mainly determined by the parents in that household. The only problem with that is, when that parent is now incarcerated and disengaged from the household, the child or children in that household then become disengaged in the

⁷ Erika Wood, “RESTORING THE RIGHT TO VOTE” (New York, NY: The Brennan Center for Justice, 2009), pp, 1-31.

⁸ Wood, “RESTORING THE RIGHT TO VOTE”

⁹ Wood, “RESTORING THE RIGHT TO VOTE”

¹⁰ Wood, “RESTORING THE RIGHT TO VOTE”

voting process and civic participation. Disenfranchised individuals can really have an effect on voter participation among not only their family members but the community as well. Although fewer votes may be cast among communities with higher rates of people with felony convictions, if we work to empower families and communities, we will begin to see more parental political involvement that in the end, will boost civic engagement.

Policy Background

In the absence of federal guidelines concerning the voting rights of individuals with felony convictions, the discretion to establish policies is relegated to individual states. It should be noted that such policies exhibit significant variability both among states and over time. With voting rights among felons being more of a state issue, there are currently no national policies that are in place in order to help these individuals. For example, here in the state of Kentucky, a governor's executive order is needed in order to restore voting rights among many individuals that have been convicted of a felony. However, if an individual was convicted of what is called a "violent felony" their right to vote is not restored or "protected" under Gov. Andy Beshear's executive order. Voting rights among individuals who are incarcerated for felony convictions can be broken down into four different categories according to the National Conference of State Legislatures.¹¹

"Never Lose Right to Vote".

Category number one includes two states, Maine and Vermont, as well as the District of Columbia. These territories state that a felon will never lose their right to vote while they are incarcerated. That means individuals can even vote behind bars too.

"Lost Only While Incarcerated; Automatic Restoration After Release".

As of February 2020, there were 21 states that were included within this category. Just as it says, individuals convicted of a felony are not able to vote and therefore do lose their rights during the time of incarceration, but their rights are then automatically restored after they are released. In particular, there are no southern states that fall within this category.

"Lost Until Completion of Sentence (Parole and/or Probation); Automatic Restoration After".

In this category, there are currently 16 states that are clustered in this group. This category means that not only are the felon's voting rights lost during the time of incarceration but they are also lost for a time period of time after, usually, while they are on parole or probation. Once this time period comes to an end, their voting rights are automatically restored.

"Lost Until Completion of Sentence; In Some States a Post-Sentencing Waiting Period; Additional Action Required for Restoration".

¹¹ NATIONAL CONFERENCE OF STATE LEGISLATURES, "Felon Voting Rights", NCSL, March 7, 2023, <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>

This cluster contains 11 different states and is considered to be more of a complex category. This category means that felons lose their voting rights indefinitely, for particular crimes, or many times require a governor’s pardon in order for voting rights to be restored. These individuals convicted of a felony offense can also face additional waiting periods, even after completion, or that additional action as well. This category tends to encompass many of the Southern states.

All in all, policies for the restoration of rights are different between each and every state, but there are numerous groups around the world that are fighting for fairness and voting rights. One prominent group is the Brennan Center for Justice. The Brennan Center for Justice is a nonpartisan law and policy institute that is focused on fighting for equal justice and upholding the values of democracy. With their fight for voting rights restoration, they are passionate about re-enfranchising Americans who live here today. The Brennan Center for Justice understands the impact that disenfranchisement laws have on African Americans, and because of that, they are very focused on state reform and restoring voting rights among all Americans. Because of work from advocacy groups, like The Brennan Center, there have slowly been changes. During 2018 in Florida, a ballot was passed that would re-enfranchise nearly 1.4 million Floridians. Not only are there advocacy at the national level, like The Brennan Center, but there are also advocacy groups such as Kentuckians For The Commonwealth or ACLU KY at the state and local levels.

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Felony Disenfranchisement Restrictions by State



Data Source: <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>
 Note:

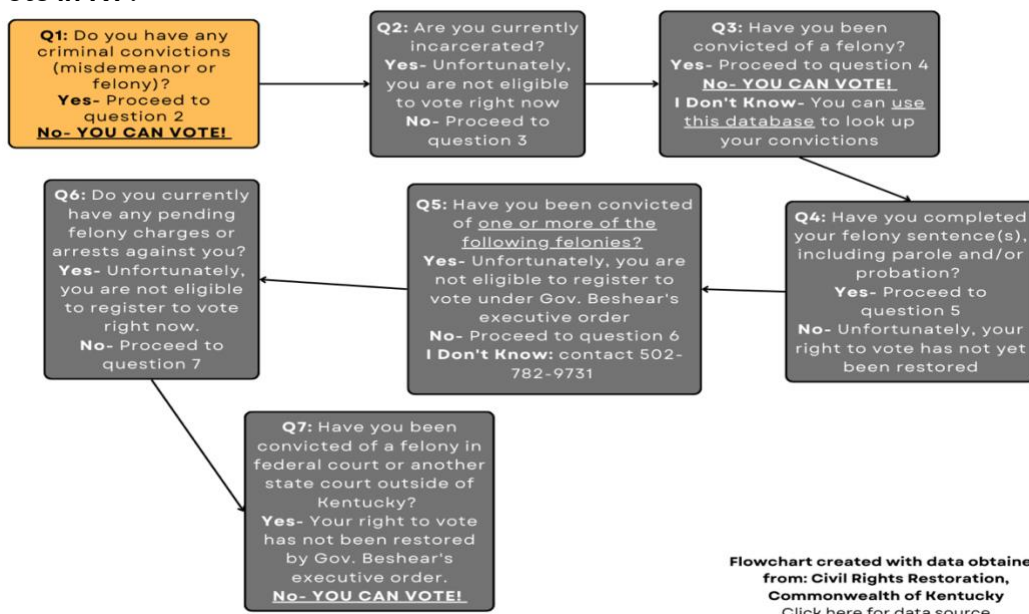
¹² NATIONAL CONFERENCE OF STATE LEGISLATURES, “Felon Voting Rights”, NCSL, March 7, 2023, <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>

Kentucky Voting among Felons

Overview

Over the years, the process of voting for individuals convicted of a felony charge in Kentucky has undergone significant changes. In 2015, while Steve Beshear was serving as the Governor of Kentucky, he signed an executive order that aimed to restore voting rights to nearly 100,000 ex-felons. However, when the next election cycle came later that year, former Governor Matt Bevin undid the executive order, taking away the voting rights that had just been granted to ex-felons by the previous administration. This meant that Kentuckians who had a felony conviction were unable to cast their vote in elections. After Bevin lost reelection, the current Governor of Kentucky, Andy Beshear, took it upon himself to restore those voting rights that his father had once put in place. Under Governor Beshear, voting rights “of more than 140,000 people with felony convictions” have now been restored.¹³ Because Kentucky is known to have one of the strictest laws in terms of disenfranchising people that have felony records, a governor's order like this is crucial for these felons to obtain their right to vote back. Even with this, things in the state are not perfect. There are still thousands of Kentuckians that have their right to vote still blocked because of certain felony convictions that did not apply to Governor Beshear's executive order. Because of this, the state of Kentucky denies the right to vote to more people with a felony conviction than 39 other different states.¹⁴

Can I Vote in KY? ¹⁵



¹³ German Lopez, “Kentucky’s new governor is giving the right to vote back to 140,000 ex-felons”, Vox, December 12, 2019, <https://www.vox.com/policy-and-politics/2019/12/12/21011099/kentucky-governor-felon-voting-rights-andy-beshear>

¹⁴ Stamen, “Kentucky Bars Over 152,000 Citizens from Voting”

¹⁵ Commonwealth of Kentucky: Civil Rights Restoration, “Can You Vote?”, ky.gov, Accessed on March 22, 2023, <https://civilrightsrestoration.ky.gov/Pages/qualify.aspx#:~:text=If%20you%20have%20been%20convicted%20of%20a%20Kentucky%20state%20felony,convicted%20of%20a%20violent%20felony.>

Racial Injustice in the Kentucky Voting System

Since Kentucky is one of the stricter states in regard to disenfranchising, people of color in this state are particularly disproportionately disenfranchised here. In the state, the African American population only makes up around 9% of the entire Kentucky population, however, as of 2022, African Americans are currently making up 21% of the corrections population and 18% of the people who are disenfranchised due to being under the strict felony probation and parole rules. With this, the rate of disenfranchisement for African American Kentuckians is more than “twice the national average for Black Americans”¹⁶

Policy Alternatives

Encourage Kentucky to reconsider felony conviction restrictions

While the state of Kentucky, and the current Governor Andy Beshear, have restored voting rights to nearly 170,000 individuals, there are still thousands of individuals that do not have them restored. A huge point of frustration is the fact that there are still restrictions to certain felonies, such as violent felonies, that are not taken into consideration with Governor Beshear's new executive order. Under Kentucky state law, there are still several felonies that make an ex-felon ineligible to vote. Such felonies include:¹⁷

- Treason
- Bribery in an offense
- A violent offense defined in KRS 439.3401
- Any offense under KRS Chapter 507 or KRS Chapter 507A
- Any assault, as defined in KRS 508.020 or KRS 508.040
- Strangulation in the first degree, as defined in KRS 508.170
- Human trafficking, as defined in KRS 529.100
- Any felony conviction in another state or in the federal system

The number of felonies that are listed above, it not only restricts numerous individuals but also explains why this state has one of the strictest disenfranchisement laws. An alternative, that would give all convicted felons the chance to vote, would be to incorporate these specific felonies into the executive order that needs to be signed for their rights to be restored.

¹⁶ Emma Stamen, “Kentucky Bars Over 152,000 Citizens from Voting” (The Sentencing Project, 2023).

¹⁷ Commonwealth of Kentucky, “Can You Vote?”, Civil Rights Restored- Restoration of Civil Rights for the Justice-Involved Population (Commonwealth of Kentucky Civil Rights Restoration), accessed March 28, 2023, <https://civilrightsrestoration.ky.gov/Pages/qualify.aspx#:~:text=If%20you%20have%20been%20convicted%20of%20a%20Kentucky%20state%20felony,convicted%20of%20a%20violent%20felony.>

Encourage Kentucky to adopt the same model that Vermont, Maine, and The District of Columbia currently have

As we know, Vermont, Maine, and the District of Columbia have this “model” that doesn’t strip felons from their right to vote. With this model implemented among prisons in these areas, we are giving the opportunity for individuals to still cast their fundamental right to vote in elections. If the state of Kentucky, also known as one of the strictest states, worked with prison and elected officials, both in Maine and Vermont, along with the District of Columbia, to draw up a plan that would allow them to slowly start shifting toward a more open plan for inmates to vote while incarcerated, especially inmates that have been released and are currently waiting to finish their parole sentence or a Governor’s executive order.

Notify all individuals before and after release about their status

Many individuals are unaware of their voter registration status after they are released from prison, but there are a good amount of individuals that are unaware of what happens to their status when they arrive at the prison. With varying policies in place differing by state, it can oftentimes cause a lot of confusion among individuals who are being released and when they enter. First, in order to avoid confusion about whether a convicted felon has their right to vote restored after prison, whether automatically or with completion of parole and probation or a governor’s executive order, the state, in which the individual was incarcerated, should be required to alert and notify them about their status. At least this way, if a previously released felon doesn’t have their right to vote automatically restored, they can at least make plans and take initiative to understand their status and complete all required steps in order to get that status restored. On the other hand, the state, in which the individual is expected to serve their sentence, should be required to also notify them about what their status will be like during prison. For example, if an individual is from Maine, but commits a felony in Florida, they may not know that their right to vote is stripped during their prison sentence because Maine allows individuals to vote during their prison sentence.

Guarantee automatic voter restoration after an individual is released from prison

In the state of Kentucky, the only way for an individual to have their voting rights restored is with a governor’s executive order. Sometimes the completion of parole and probation still isn’t enough. This state has permanent disenfranchisement for people with felony convictions unless there is government intervention. An alternative to a rule like this would be to implement an automatic restoration of an individual's right to vote after their prison sentence has been completed. This is a policy that would most likely need to be implemented on the national level so that way there is a cohesive agreement between all 50 states. Efforts like this are only possible with interventions from the Federal Government and policy lawmakers.

Discussion

My criteria for evaluating the effectiveness of policies and reforms in addressing felon disenfranchisement are simple. First, any policy or reform should be inclusive and not discriminatory towards any group of people. Second, it should be easy to understand and implement. Finally, any policy or reform should have a positive impact on the political participation of felons. Voter disenfranchisement is a real issue that affects millions of Americans across the nation. The right to vote is fundamental to our democracy, and any barriers to that right should be addressed and resolved. With the increasing number of people being incarcerated in the United States, the issue of felony disenfranchisement has become even more pressing. Many states have implemented policies and laws that restrict the voting rights of felons, which can create a sense of disenfranchisement and exclusion from the political process. Kentucky is one of the states that impose restrictive policies on felons' voting rights. However, the state could reconsider these policies and adopt a more inclusive approach. Several other states, including Vermont, Maine, and The District of Columbia, have already done so by eliminating restrictions on voting rights for felons. Kentucky should follow in the footsteps of these states and implement a similar model to ensure that all citizens can participate in the democratic process.

Encouraging Kentucky to reconsider felony conviction restrictions could have positive outcomes for the state, as it would allow more individuals to participate in the democratic process. The current restrictions disproportionately affect people of color and low-income communities, leading to a lack of representation in government. By lifting these restrictions, Kentucky could increase voter turnout and promote greater equity in its political system. However, some individuals may argue that those convicted of felonies should not be allowed to vote, as they have violated the law and may not be trustworthy. Additionally, this policy change may face opposition from conservative lawmakers who believe that voting is a privilege, not a right.

Encouraging Kentucky to adopt the same model as Vermont, Maine, and The District of Columbia, where felons can vote while incarcerated, could also have positive outcomes. This model promotes democratic participation and recognizes that all individuals, regardless of their incarceration status, deserve a voice in government. This policy change could reduce recidivism rates, as individuals would be more invested in their communities and would have a greater sense of responsibility to society. However, this policy change may face opposition from conservative lawmakers who believe that felons should not be allowed to vote while they are serving time for their crimes.

Notifying all individuals before and after release about their status could help ensure that individuals are aware of their voting rights and can exercise them effectively. This policy change could increase voter turnout and promote greater equity in Kentucky's political system. However, some individuals may argue that this policy change would be too costly or impractical, as it would require significant outreach efforts and may not be effective in reaching all individuals who have been convicted of felonies. Studies from The Sentencing Project have

shown that “...voter turnout is greater in states that actively inform formerly incarcerated people of their rights”¹⁸

Guaranteeing automatic voter restoration after an individual is released from prison could help streamline the process of restoring voting rights and ensure that individuals can exercise their democratic rights immediately upon release. This policy change could also increase voter turnout and promote greater equity in Kentucky's political system. However, some individuals may argue that this policy change may not provide sufficient accountability for those who have violated the law.

Conclusion

This brief shows that, with an analysis of a 50-state scan, restrictions on voting policies and laws vary between states. Because of practices in place and the challenge of removing them considers growing, through work, along with advocacy groups and policymakers, we can slowly start to shift the narrative that is circulating among these incarcerated individuals.

Several states have already implemented policies that guarantee automatic voter restoration after an individual is released from prison. This is a positive step towards inclusivity and removing barriers to political participation for felons. Kentucky should follow suit and implement similar policies to ensure that all citizens have the opportunity to participate in the democratic process. In conclusion, there is a clear need for comprehensive policy reform in Kentucky to address felon disenfranchisement. The state should reconsider its restrictive policies and adopt the same model that Vermont, Maine, and The District of Columbia have implemented. With the support of advocacy groups like The Brennan Center for Justice and Kentuckians For The Commonwealth, Kentucky has the opportunity to create a more inclusive and democratic society. The evidence from other states shows that it is possible to remove barriers to political participation for felons, and Kentucky, as well as other states, should take the necessary steps to do so.

¹⁸ Stamen, “Kentucky Bars Over 152,000 Citizens from Voting”

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Olivia Corley

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