

# Rehabilitation or Recidivism: The Difference is Education

*Ben Beaird*

## I. Introduction

In 2005, the Bureau of Justice Statistics (BJS) tracked around 400,000 inmates released from prison in 30 states.<sup>1</sup> The study found that 77% of prisoners were arrested again within five years.<sup>2</sup> This includes just under half within the first year (44%).<sup>3</sup> The numbers dropped precipitously the longer these former prisoners stayed out of jail.<sup>4</sup> This is of particular concern because in 2013 — the last BJS census — there were 2,266,800 adults incarcerated in the U.S. federal and state prisons (with an additional 4,814,200 on probation or parole).<sup>5</sup> Just one more number: \$31,286. This is the average amount per year it costs U.S. taxpayers to incarcerate each prisoner.<sup>6</sup> It does not take a statistician, economist or sociologist to recognize these numbers and trends pose serious problems for both the country as a whole, and its individual citizens. The incarceration problem in the United States is a complex web of myriad contributing factors, and solutions will always

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<sup>1</sup> Matthew R. Durose et. al, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, U.S. Dep't. of Justice (April 2014) available online at <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 1 (showing graph with plateaued recidivism rate over time).

<sup>5</sup> Lauren E. Glaze & Danielle Kaebler, *Correctional Populations in the United States, 2013*, U.S. Dep't. of Justice (Dec. 2014).

<sup>6</sup> Marc Santora, *City's Annual Cost Per Inmate is \$168,000, Study Finds*, N.Y. Times (Aug. 23, 2013) (citing Vera Inst. Of Justice Study from 2012). This same study reported state costs ranging from \$14,823 in Indiana to \$60,076 in New York. The Times article points out that incarceration costs per inmate in New York City itself reach an astounding \$168,000.

attack small parts of the whole.<sup>7</sup> This paper intends to address one specific link in the chain that implicates the prison system at large: access to in-prison college education. Simply put, the U.S. government needs to increase funding for prisoners to receive a college education and thus greatly diminish the probability that they will end up as repeat offenders.

Last year, New York Governor Andrew Cuomo issued a proposal for the state to fund college degrees for its incarcerated citizens.<sup>8</sup> The plan cited the \$60,000 average annual cost per prisoner in the state and then countered it with a modest \$5,000 per incarcerated individual to fund a college education.<sup>9</sup> The hope was that education would “stand a much better chance of successfully integrating back into society when they are released.”<sup>10</sup> Initially, the proposal was applauded (literally<sup>11</sup>), but it was not long before the discourse became dominated by a particular philosophical undercurrent that runs deep in this country’s views on prisoners: strict punishment. Opponents to the proposal cite concern for spending money to educate prisoners when law-abiding citizens who struggle to finance higher education costs do not receive similar benefits.<sup>12</sup> This notion derives from the belief that individuals should not gain access to a free education by virtue of committing crimes. From their perspective, the punitive nature of prison is a deterrence,

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<sup>7</sup> Some examples include reforms of anti-drug laws through flexible and individualized sentencing rather than mandatory sentencing laws, elimination of for-profit, private prisons, and incentives for employers to hire ex-convicts.

<sup>8</sup> *Governor Cuomo Launches Initiative to Provide College Classes in New York Prison*, Governor.ny.gov, (Feb. 16, 2014), available online at <https://www.governor.ny.gov/news/governor-cuomo-launches-initiative-provide-college-classes-new-york-prison>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> It was originally offered as a parting line in a speech to black and latino lawmakers.

<sup>12</sup> Editorial Board, *Gov. Cuomo Drops the Ball*, N.Y. Times (Apr. 8, 2014).

not an incentive, and offering opportunities to prisoners that would not otherwise be available to a similarly situated law-abiding citizen is an injustice. There is some merit to this argument, superficially. The deficit in this country is astounding, and the state and federal governments struggle to provide basic funding or loan-protection for the education of its citizens.<sup>13</sup> Why should law-abiding taxpayers bankroll college educations for criminals, when they themselves cannot afford degrees and are already funding the mechanisms required to place — and keep — prisoners in jail? Facially, it is a compelling argument, but practical solutions to the biggest issues facing a large society often involve more nuanced ideas. The bottom line is that this country cannot afford to incarcerate such a large population of its citizens, and reducing recidivism rates will benefit the U.S. economically and socially.

## II. Cost and Funding

Regarding Governor Cuomo’s proposal: the dissenter’s won out.<sup>14</sup> In truth, dissenters have been winning since the passage of the Violent Crime Control and Law Enforcement Act of 1994.<sup>15</sup> Prior to the VCCLE, there were 350 “college-in-prison” programs operating within the U.S.<sup>16</sup> Then, section 20411 of the VCCLE implemented a prohibition on awarding Pell Grants to prisoners.<sup>17</sup> Upon statutory obliteration of all

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<sup>13</sup> See e.g. U.S. Dep’t of Ed., *More Than 40% of Low-Income Schools Don’t Get a Fair Share of State and Local Funds, Department of Education Research Finds*, (Nov. 30, 2011) (citing unequal distribution of school funding for schools in low-income neighborhoods).

<sup>14</sup> Editorial Board, *supra* note 11.

<sup>15</sup> 42 U.S.C. § 13701 *et seq.*

<sup>16</sup> Gregory A. Knott, *Cost and Punishment: Reassessing Incarceration Costs and the Value of College-In-Prison Programs*, 32 N. Ill. U. L. Rev. 267, 281–82 (2012).

<sup>17</sup> Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322 § 20411. The relevant language amends the Higher Education Act of 1965, stating “[n]o basic grand

federal funding, only three remained: Boston University, Bard College, and Saint Louis University.<sup>18</sup> Gregory Knott notes in his article that the legislative history behind the removal of federal funds “exhibit a less cost-benefit-based rationale, emphasizing instead the fundamental unfairness of giving grants to prisoners when law-abiding citizens could not get them.”<sup>19</sup>

A proper examination from an economic perspective is necessary to provide counterpoint to the punitive-centric approach. As indicated above, the average cost per annum to feed, house and secure a prisoner is over thirty thousand dollars. It should be noted that this figure does not incorporate the total cost to the taxpayer: it does not take into account the cost of actually trying and convicting prisoners. Varying studies have attempted to quantify this cost, some have focused on specific crimes — burglary costs taxpayers \$41,288; aggravated assault costs \$145,379; rape costs \$448,532; and murder costs “a whopping \$17,252,656”<sup>20</sup> — meanwhile others have placed an hourly rate of court proceedings prosecuting adult criminal cases upwards of \$42,000.<sup>21</sup> These costs include every step leading to a prisoner’s entry into the jailhouse gate, from investigation to prosecution. Some cost is assuredly mitigated by the creation and support of jobs for

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shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.”

<sup>18</sup> Knott, *supra* note 15 at 282–87.

<sup>19</sup> *Id.* at 282. The article quotes former U.S. Senator Kay Bailey Hutchison stating it was “not right [that prisoners jailed for] offenses like carjacking, armed robbery, rape, and arson received as much as \$200 million in Pell . . . funds, courtesy of the American taxpayer.” Knott points out that this is a gross exaggeration, as only thirty-six million dollars of the 6 billion dollar total Pell Grant funding went to prisoners.

<sup>20</sup> Annie Lowrey, *True Crime Costs*, Slate Magazine (Oct. 21, 2010) (citing study from researchers at Iowa State University) *available at* [http://www.slate.com/articles/arts/everyday\\_economics/2010/10/true\\_crime\\_costs.html](http://www.slate.com/articles/arts/everyday_economics/2010/10/true_crime_costs.html).

<sup>21</sup> Eli Braun, *\$42,00 for a Courthouse Hour: The Cost of Processing Adult Criminal Cases in Hamilton County, Ohio*, Ohio Justice & Pol’y Center (2010).

those working in the criminal justice system, but the point is that prosecuting and incarcerating a criminal is a tremendous burden on the American taxpayer. Much of these expenditures will remain, but offering college degrees to inmates can severely reduce numbers of repeat offenses.<sup>22</sup> Effectively, lowering recidivism rates cancels the cost multiplier of court proceedings for individuals, and removes them from an expensive prison system for good.

Now for some simplified mathematics. For our purposes, let us say we have 100,000 first-time inmates all scheduled to be released at once; their prior cost of prosecution and incarceration are sunk. The expense for each to earn a degree, under a plan like Governor Cuomo's, would cost \$5,000, for a total cost of \$500,000,000. Using the recidivism rate in the BJS study, normally around 77,000 of these inmates would be back in prison within five years. If each of the 77,000 costs \$30,000 a year to keep in prison, how many prisoners does the education program need to help in order to pay for itself? Under 17,000.<sup>23</sup> Now, even this 17,000 number is unrealistically high, because the math only utilizes cost for one year of incarceration, and does not incorporate cost of court proceedings, meaning any sentence longer than one year on a repeat offense reduces the amount of would-be recidivists necessary to pay for the program.

One study showed that inmates who participated in these programs were 43% less likely to return to a life of crime.<sup>24</sup> There are societal and normative implications to this result which will be discussed later in this paper, but from a purely economic perspective,

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<sup>22</sup> It is important to note that this paper does not define "repeat offenses" as a repetition of the same offense, but simply a label for recidivism.

<sup>23</sup>  $500,000,000/30,000 = 16,666$ .

<sup>24</sup> Lois M. Davis et al., *Evaluating the Effectiveness of Correctional Education*, Rand Corp. (Spons. by Bureau of Justice Assistance) (2013).

this represents an incredible return on investment. Using the earlier numbers (again assuming only one year of repeat incarceration), a \$500M investment would net \$993M in savings. At a nearly 50% return on investment, not only does the program pay for itself, *it nearly pays for the remaining individuals who do end up back in prison.*<sup>25</sup> Again, it must be stressed: this is only for the first year of the repeated incarceration; the savings grow exponentially each subsequent year.

Currently, the few college-in-prison programs available are funded primarily by private donations. Certain programs, like Adams State University in Colorado offer discounts for incarcerated individuals, and charge the student directly for each credit hour taken.<sup>26</sup> This essentially operates as any online or correspondence course would, and acts as an alternative for government funding. Those who oppose free tuition have no quarrel with programs paid for by the prisoners themselves. The obvious issue here is that many prisoners cannot afford tuition; many never had much money, or utilized enormous expenses to combat charges, or need what money they have to provide for family members on the outside, and so on. Some prison facilities offer work programs that allow prisoners to receive some income while they are incarcerated, and allocating this income towards online college courses is, of course, a viable way for prisoners to fund

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<sup>25</sup> The remaining 57% of 77,000 cost 1.31B.

<sup>26</sup> See Adams State University Prison College Program information, *available at* [http://www.adams.edu/extended\\_studies/undergrad/prisoncollegeprogram.php](http://www.adams.edu/extended_studies/undergrad/prisoncollegeprogram.php). The Adams State program costs \$165 per credit hour per semester. The application fee is waived for prisoners.

their own education.<sup>27</sup> Again here, however, priority for the use or savings of this money varies from inmate to inmate.

The U.S. deals with overcrowded, underfunded, expensive public and private prison facilities. From the purely economic perspective, offering government-funded college tuition to inmates who desire it is just good business. By reducing the rate of recidivism through relatively inexpensive initiatives (a one-time cost of \$5,000 pales in comparison to the cost of multi-year incarceration), one stone can kill many birds. Each inmate kept out of prison saves an average \$30,000 a year, frees up much needed space in those facilities, and the former inmate becomes a contributing member of the economy instead of a burden.

### III. Societal Concerns

The economic argument is an easy one to make. There are counterpoints to be made, for sure, but it only amounts to prudence in allocation: what goes where. At the heart of the issue, and within its dissenters, is a philosophical difference of opinion. On one hand, there are those searching for ways to improve and rehabilitate inmates using opportunity; who want incarceration to be a necessary rebooting of anti-social behavior and want to promote reintegration. On the other, there are those who firmly believe in the punitive nature of prison and its effect as a deterrent for future crime. The latter group fundamentally disagrees with the notion that free education should be provided to prisoners when it might otherwise go to a law-abiding citizen. The former group believes a college education in prison would produce *more* law-abiding citizens and seeks to

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<sup>27</sup> For example, the South Dakota prison system sets up bank accounts for its prisoners who are involved in “work release, Community Transition Program, traditional Prison industries or Private Sector Prison Industries.” <http://doc.sd.gov/about/faq/finances.aspx>.

remedy criminal behavior not by focusing on past bad conduct but by preventing it in the future.

The “tough on crime” approach has been politically viable since the Nixon administration.<sup>28</sup> The movement is characterized by “a set of policies that emphasize punishment as a primary, and often sole, response to crime. Mandatory sentencing, Three [sic] strikes, truth-in-sentencing, quality of life policing, zero tolerance, and various other proposals that result in longer and harsher penalties and the elimination of rehabilitation and other programs . . . .”<sup>29</sup> It provides a good platform for a candidate, especially considering in all but two states,<sup>30</sup> incarcerated individuals cannot vote. Furthermore, advocating for lowered sentencing standards and rehabilitative mechanisms for prisoners is easily spun to make a politician look “soft on crime.”<sup>31</sup> Belief in the punitive nature of prison constitutes half the argument against government-funded college education for prisoners. The other half concerns the notion of “fundamental unfairness.”

Access to free education conditioned on the fact that an individual has committed a serious crime does, on its face, seem irresponsible. More than that, they are funds that will invariably be culled from other programs intended to aid those members of society who do not break the law. As one U.S. Senator put it: “rob a store, go to jail, and get

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<sup>28</sup> Katherine Beckett & Theodore Sasson, *Conservative Agendas: The Rise of the Modern “Tough on Crime” Movement*, Political Research Associates, available at <http://www.publiceye.org/defendingjustice/pdfs/chapters/toughcrime.pdf>

<sup>29</sup> *Id.* at 1.

<sup>30</sup> Vermont and Maine.

<sup>31</sup> See Steven A. Krieger, *Do “Tough on Crime” Politicians Win More Elections? An Empirical Analysis of California State Legislators from 1992 to 2000*, 45 CREIGHTON L. REV. 131 (2011) (demonstrating that there is no empirical correlation that proves “tough on crime” candidates win more often, but that the perception is prevalent among politicians that they do, so many do not want to campaign otherwise).

your degree.”<sup>32</sup> When Congress repealed funding for Pell Grants to prisoners in 1994, theories were floated on the congressional floor that offering free education to prisoners might actually *entice* someone who could not afford an education to commit a crime in order to take advantage of the program.<sup>33</sup>

Those in favor of government-funded educational programs in prison point to one overarching sense: the prison system in America is broken. The U.S. far outpaces the rest of the world in number of incarcerated citizens; almost twice that of second-place China (which has four times the general population) and nearly four times Russia (ranking third).<sup>34</sup> The total cost to the U.S. taxpayers is \$63 billion.<sup>35</sup> One out of every one hundred people in the U.S. is in prison.<sup>36</sup> The rate of incarceration jumps exponentially in underserved and minority communities.<sup>37</sup> The Bureau of Justice Statistics noted that the percentage of incarcerated citizens with some postsecondary experience is a fraction of the general public: 11% of state prison inmates, 24% of federal inmates, and 14% of jail inmates, compared to 48% of the general public.<sup>38</sup> All signs point to a serious need to reduce these numbers, both because it is an economic drain and a societal one.

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<sup>32</sup> Joshua Page, *Eliminating the Enemy: The Import of Denying Prisoners Access to Higher Education in Clinton's America*, 6 PUNISHMENT & SOCIETY: THE INT'L J. OF PENOLOGY 357 (2004) (quoting Senator Kay Hutchison).

<sup>33</sup> *Id.*

<sup>34</sup> International Centre for Prison Studies, “Highest to Lowest – Prison Population Total” Chart, *available at* [http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All).

<sup>35</sup> Vera Inst. Study, *supra* note 6.

<sup>36</sup> Glaze, *supra* note 5.

<sup>37</sup> *Id.* One study found that one out of every three black men will go to prison in their lifetime. See Christopher J. Lyons & Becky Pettit, *Race, Incarceration, and Wage Growth* (2011).

<sup>38</sup> U.S. Dep't of Justice, Special Report: Education and Correctional Populations NCJ 195670 (2003).

Funding is a zero-sum game; there will always be programs that lose out based on allocation, so it is logical to believe that educational priority should go to those who have not committed crimes. On the other hand, this country must act swiftly to address the problem; we must perform triage. Behind both the punitive and rehabilitative philosophy on crime is one basic ambition: to lower crime rates. The problem with the punitive approach is that it simply is not working. Offering federally funded college education to prisoners would significantly reduce recidivism rates and inherently lower crime rates as well. When an inmate whose prison term is concluding is invariably reintegrated into society, he or she might become your neighbor. The real question that needs to be asked is: who do you want living next door? The ex-con who was offered no rehabilitative services while in prison and will have an extraordinarily hard time finding a job or the college-educated citizen with the door to opportunity finally cracked open?