THE EFFECT OF EDUCATING PRISONERS

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TABLE OF CONTENTS

I. INTRODUCTION
II. INCARCERATION IN THE UNITED STATES
   A. America Leads the World in Imprisoning People
   B. Increased Incarceration in Texas
III. BUILD THEM AND THEY WILL COME
IV. ENTREPRENEUR
V. EDUCATION: A PREVENTIVE MEASURE THAT SIGNIFICANTLY IMPACTS RECIDIVISM RATES
   A. National Recidivism Rates
   B. Recidivism in Texas: Study Shows that Educating Texas Offenders has a Significant Impact on Recidivism
   C. The Effect of Correctional Education in other States
VI. PRIMARY, SECONDARY, AND POST-SECONDARY EDUCATIONAL PROGRAMS IN THE PENAL SYSTEM
   A. No Protected Liberty Interest in Education Programs
   B. The Privilege of Higher Education
   C. No Protected Liberty Interest in Federal Financial Aid
   D. Correctional Education: Existing Academic Programs and Expansion
VII. PROPOSAL
   A. Distant Education
VIII. CONCLUSION

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I. INTRODUCTION

The cost of rearresting and reincarcerating people is significantly high to Americans and our society. Reimprisonment is generally referred to as recidivism which occurs when a person once released from prison later returns to prison after being convicted for committing a new crime. There is significant data that shows that the high incidence of recidivism can be drastically reduced through correctional education, particularly academic studies. Education is far less expensive than the prison "recycling" policy currently employed. Annually, it costs twice as much to provide room and food for a prisoner than it would cost to educate the person while they’re in prison or under the supervision of the justice system.¹

Many persons who are sent to prison the first time are there for non-violent offenses. However, after their stay, their crimes become increasingly violent. It is important to stop recidivism, the costs of which include the expenses of maintaining room and board for the increasing population, and expenses of victimization which rises significantly as increased recidivism translates to increased crime. Victimization cannot only be measured in dollars, but must also be considered based on its impact on lives and extends far beyond the obvious. Prisoners increasingly leave children behind. Recent statistics show that in the last five years, fifty-five percent of state and sixty three percent of federal prisoners were parents of minor children.² In 1999, this totaled nearly 1.5 million children. Moreover, children who visit their parents in prison socially adjust to accepting prison as a viable social option. Many times women are left as the sole provider of the family, which deleteriously impacts the wealth and viability of a community and a nation and often results in increased impoverishment.³

¹ Michelle Tolbert, State Correctional Education Programs, National Institute for Literacy, http://novel.nifl.gov/nifl/policy/st correction, March 2002, last visited 11/8/03. As prison populations increase, state spending for correctional education has been reduced or lagged behind the growth in population. The effect is a less educated prison population and thus a more lethal recidivist.
³ Dr. Velma LaPoint, Prison’s Effect on the African-American Community, 34 How. L.J. 537, 1991
This article is written to show that if we are serious about eliminating recidivism then we must adopt education as a primary component of any crime eradication policy. Because this article is about eliminating the commission of crimes likely to be committed by already incarcerated individuals upon their release, it is an article on crime prevention. Yet, the article explores only one tool of crime prevention among existing prisoners—education, which we will show is by far, the most dramatically effective weapon in combating recidivism.

During two decades, the 1940s and 1960s, the prison population actually fell. Since the 1970s, however, the incarcerated population has mushroomed. The prison population alone, not counting jails, grew from 196,000 in 1972 to over 1.6 million in 1997. The incarceration rate increased by approximately 300% during the same period. In the 1990s alone, we added over half a million persons to the nation's prisons and jails. During the past decade, the practice of state and federal criminal justice systems has been to imprison more offenders and for longer periods of time, resulting in 2 million of America's population being in prison. Although this strategy has seemed to aid in the reduction of crime rates across the board, it has failed in one extremely significant aspect: reducing the rate of recidivism or repeat offenders. This obvious failure is likely the result of not accounting for the fact that one day these persons will get out of prison. There is little doubt that increased incarceration has the apparent effect of lowering crime rates because there are fewer offenders on the streets. But this method has a collateral damaging effect on offenders, their families and the general

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5 Id.
6 Id.
8 M.A. DuPONT-MORALES, MICHAEL K. HOOPER & JUDY H. SCHMIDT, HANDBOOK OF CRIMINAL JUSTICE ADMINISTRATION, p. 21, (2001). "Crime rates have declined annually since 1991. Many police commissioners, including William Bratton's former NY commissioner, attributed declining rates of crime to zero-tolerance policies and other 'get tough' policies that sought to fight crime. However, there is mounting evidence that these 'get tough' measures have done little to lower crime."
It is also problematic in that there is an enormous cost associated with using the increased incarceration model as an approach to preventing crime. Further, increasing incarceration does nothing to solve the "root problem." At the core of criminal behavior often lies something other than just a desire to be deviant. A key factor with respect to criminal propensity is the offender's educational background. This is not to say that all criminals commit crimes because of their socioeconomic or educational background, only that there is a strong correlation.

The majority of persons who are incarcerated are behind bars for non-violent offenses. In fact, Texas' violent crime rate has decreased 17% since the 1997. However, many inmates who go to prison as petty offenders are hardened by the system. At an alarming rate, these persons return to the prison system after release.

Clear options must be identified to reduce the revolving prison door. Studies show that early intervention and positive rehabilitative measures are successful in reducing criminal behavior. The focus of this paper is to spotlight the significant role of education as a feasible rehabilitative treatment for prisoners and

9. LaPoint, supra. "For all families it represents a unique set of circumstances: (1) parent/child separation, which is mandated by laws and policies; (2) children reside with other family members, frequently great distances from institutions; (3) parents reside in institutions where restrictions exist on routine behavior and freedom. As a result of these unique circumstances, both children and incarcerated parents are stigmatized. Thus, children of the prisoners are prisoners themselves."


11. FRANK ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA, Oxford University Press, p. 75 (1997). "The disparity of race can be accounted for terms of such things as the agglomeration of social disadvantages that beset the black areas and the long history of cultural adversity and its impact on the black family."

12. US DEPARTMENT OF JUSTICE, CRIME IN AMERICA, p. 10 (2001). The estimated number of crime index offenses for 2001 was 11,849,006. In 2001, violent crime comprised 12.1% and property crime accounted for 87.9% of the crime index total.

13. Id at 18. "Violent crime is down 17.4% per 100,000 inhabitants since 1997."

to demonstrate that it effectively and substantially aids in reducing recidivism rates.

II. INCARCERATION IN THE UNITED STATES

A. America Leads the World in Imprisoning People

In the year 2000 there were 284,796,887 persons residing in the United States. In 2001, the U.S. had nearly two million people either in jail or incarcerated in some type of correctional institution. Persons in this country are incarcerated at a rate of nearly 699 per 100,000. The majority of those incarcerated are people of color. The United States is the world leader in penal severity. The United States’ per capita incarceration rate is five times higher than that of the next highest Western nation. Simply put, the United States has the largest prison population in the world.

15 U.S DEPARTMENT OF JUSTICE, supra at 64.
16 GEST, supra n 8.
17 Thomas P. Eichler & Andrew Coyle. The Case for Drug Treatment: Common Sense Versus Inertia, 20 Delaware Lawyer 20 (Fall 2002).
18 BERNARD BOXILL, RACE AND RACISM, Oxford University Press, p. 145 (2001). “Statistically, blacks commit more crime and proportionally represent more heavily all categories of felony except those requiring access to large amounts of money such as stock fraud.”
19 Cole, supra.
20 Id.
21 Id.
The United States Department of Justice reported that in the year 2000 for every 100,000 Black men in the country, 4,848 were incarcerated while for White and Hispanic males, the total incarcerated for every 100,000 was 705 and 1,668, respectively. Various policies, including racial and geographic profiling and mandatory minimum laws have a substantial impact on increased incarceration levels. The State of Texas is a leader among several states that support increased incarceration as the solution to lowering crime rates.


B. Increased Incarceration In Texas

In 2001, 41.1% of all violent crimes occurred in the South, which is the Nation's most heavily populated region with 35.8% of the U.S. population. The closest regions are the western states with a population of 22.6% of the U.S. population and a total crime index of 23.7%. To address that problem, the Texas legislature authorized a $2.25 billion dollar department of corrections budget in 1998. At the same time, the inmate incarceration capacity reached 717 per 100,000 resident population. Texas prison capacity nearly tripled between 1990 and 1995. Compared to the 1998 national incarceration average of 461 inmates per 100,000 persons, Texas' incarceration average was 717 per 100,000.

<table>
<thead>
<tr>
<th>Incarceration Rate</th>
<th>Texas 144%</th>
<th>California 52%</th>
<th>Massachusetts 21%</th>
<th>New York 24%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime Rate</td>
<td>-35%</td>
<td>-36%</td>
<td>-35%</td>
<td>-43%</td>
</tr>
</tbody>
</table>

By the end of fiscal year 2001, 127,066 persons were incarcerated within Texas prisons. Both federal and state governments have supported increased incarceration measures as a method of crime prevention. Studies conclude that the crime rate

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26 Id.
28 Id at 53.
29 Id.
31 GEST, supra n. 8. Also see Tolbert, supra n. 2 stating that “nationally, more than 4 million adults fall under state-administered community corrections, such as probation or parole.” To maximize the benefits realized by education programs, educational requirements should be included as part of the conditions of probation and parole.
has declined annually since 1991.\textsuperscript{32} Some believe that this can be attributed to the substantial increase in the number of federal and state prisons\textsuperscript{33} as well as increased incarceration rates. However, a national study on the impact of incarceration on crime found that higher increases in incarceration were less effective in reducing crime.\textsuperscript{34} The 50-state report by The Sentencing Project shows that states with the greatest incarceration increases over the last decade had less impact on crime, including violent crime, than states with lower increases.\textsuperscript{35} The 20 states with the highest rise in incarceration between 1991-1998, averaging a 72\% increase, achieved a 13\% reduction in crime, while the 30 states with less than half that incarceration hike, averaging 30, generated crime rate declines at 17\% on average.\textsuperscript{36} The study concluded that while incarceration rose continuously at record levels from 1984-1998, crime rates fluctuated, indicating no strong relationship between imprisonment and crime.

\textbf{III. BUILD THEM AND THEY WILL COME}

Increase in the number of prisons and the number of prisoners supports a growing business industry. In 2002, Texas total expenditures were $55.7 billion.\textsuperscript{37} The Texas public safety expenditure is the fourth most expensive individual program in government spending.\textsuperscript{38} Spending rose from $590.9 million in fiscal 1990 to $2 billion in 2002 for the incarceration of adult prisoners within TDCJ's Institutional Division.\textsuperscript{39} Real spending dollars on correctional expenditures rose to $1.5 billion, a 153.1\% increase.\textsuperscript{40} Furthermore, corrections comprise the largest number

\begin{footnotesize}
\begin{enumerate}
\item DuPONT, \textit{supra}.
\item \textit{Id.}
\item David Richert, 84 \textit{JUDICATURE} 103, Briefs (September/October, 2000).
\item \textit{Id.}
\item \textit{Id.}
\item Carole Keeton Strayhorn, Unit Costs and the “Price” of Government: A New Way to Examine State Spending, Office of the Texas Comptroller (April 2003).
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item Incarceration expenditures includes the cost per inmate and FTE's salary, among others. TDCJ employs 540.36 FTE's, spending $15,512,288 in employee salary alone.
\end{enumerate}
\end{footnotesize}
of employees in the local justice system in Texas.\textsuperscript{41} CCA (Corrections Corporation of America), the nation's largest private prison firm, costs only 1\% less to run than a comparable state facility.\textsuperscript{42} Moreover, most savings from privatization come from reduced labor. Prison guards working for private companies are paid less, receive fewer fringe benefits and less training, and have fewer opportunities for promotion than guards working for the government.\textsuperscript{43} Notwithstanding, top officials of private companies receive lucrative six-figure salaries, in addition to money earned from stock holdings in their prison corporation firms. Private prisons usually charge their customers, the taxpayers, a daily rate for each prisoner. Like hotels, the prison companies have an incentive to keep every bed filled.\textsuperscript{44} In other words, there is a private market incentive to continue to increase prison population. Arguably, in the absence of strong rehabilitative measures, the industry will continue to grow. Compounded by a lack of measures to reduce recidivism the prison-building industry's financial outlook is strong.

To sustain growth, profitable companies target specific markets. The prison industry is no different. In Texas, black men are more likely to be stopped,\textsuperscript{45} their vehicles searched,\textsuperscript{46} to be

\textsuperscript{41} U.S. DEPARTMENT OF JUSTICE, \textit{supra} at 13.
\textsuperscript{43} \textit{Id}. In addition, "there is less accountability in running of private prisons than government prisons. A half-hour training video from a correctional facility in Texas, operated by Capital Correctional Resources, Inc., revealed correctional officers mistreating inmates and one officer had previously served prison time for beating an inmate when he was employed at a Texas state prison."
\textsuperscript{44} \textit{Id}.
\textsuperscript{45} Dale Lezon, Minorities Searched Most/Critics Say HPD Traffic Stop Data Show Racial Profiling, Houston Chronicle, May 5, 2003. "HPD report showed that police stopped 191,066 blacks in 2002, and searched 24,937 of those stops, 26,723 ended in arrests. By comparison, 158,874 Hispanics were stopped and 12,783 were searched, while 15,897 were arrested. For Anglos, 172,2,533 were stopped, 7,393 were searched and 10,560 were arrested." The SHSU study acknowledged that blacks were stopped at a greater rate their population would suggest.
\textsuperscript{46} \textit{Id}. 

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arrested,\textsuperscript{47} and to receive prison terms\textsuperscript{48} than any other ethnic and gender group. About 70\% of Texas's prisoners are African American or Hispanic.\textsuperscript{49} A study in California, Michigan and Texas found that whites were more likely to be permitted to plea bargain, were less likely to be sentenced to prison if convicted, and served, on average, shorter prison sentences than blacks or Hispanics.\textsuperscript{50} Targeting neighborhoods or geographic profiling is no less sinister than targeting racial groups for selective enforcement of the law. It violates the United States Constitution,\textsuperscript{51} the Texas Constitution\textsuperscript{52} and various Civil Rights Acts\textsuperscript{53} among other laws. Thus, while the state has a duty to exercise its police powers to protect the safety of its citizens, it must perform its duties within the constraints of the United States Constitution.\textsuperscript{54}

It is argued that increased incarceration in Texas was driven by public safety concerns since Texas was regarded as one of America's most crime ridden states during the late 1980's through the early 1990's.\textsuperscript{55} In augmenting greater incarceration, the State of Texas increased criminal prosecution, imposed harsher sentences, and lowered parole rates for convicted criminals.\textsuperscript{56} This is particularly true for persons of color.\textsuperscript{57} In doing so, Texas

\textsuperscript{47} Id.
\textsuperscript{48} David Benjamin Oppenheimer, Understanding Affirmative Action, 23 HSTCLQ 921, 1996.
\textsuperscript{49} Glen Maxey, Unfree, Non-Voting and all over Texas, Austin American-Statesman, March 14, 2001.
\textsuperscript{50} Id.
\textsuperscript{51} Flowers v. Fiore, 239 F. Supp. 2d. 173, D.R.I. 2003). "Selective enforcement of motor vehicle laws on basis of race, also known as racial profiling is a violation of the equal protection clause."
\textsuperscript{52} Tex.Code Crim Proc. Ann. Arts. 2.131, 3.05 (Vernon Supp. 2002). Statute states that a peace officer may not engage in racial profiling and defines racial profiling as a law enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
\textsuperscript{53} 42 U.S.C. § 1983. Affords civil relief for those who have been deprived of civil rights due to racial profiling.
\textsuperscript{55} GEST, supra.
\textsuperscript{57} Oppenheimer, supra.
intended to decrease crime by increasing both the likelihood of punishment and punishment per se.

Generally speaking, there are four recognized functions that prison or jail confinement tends to serve: as punishment, as deterrence for the offender or other potential offenders, as a rehabilitative measure for incapacitated persons, and as prevention from the commission of other crimes being committed by the offender. The underlying justifications for punishment are retribution and justice. Deterrence, in contrast, treats punishment as both a means for exercise of social control and a method of crime prevention. The theory behind deterrence is that offenders and potential offenders will fear the punishment mandated by state and federal governments to the extent that they will not engage in criminal acts. The third function that prison or jail confinement tends to serve is that of incapacitation. The objective of this form of punishment is to remove the offender from society in an effort to protect society from the harm that this person might otherwise cause. The fourth function mentioned here is that of rehabilitation. Rehabilitation is designed to assist the offender in making life-enhancing improvements that aim to reduce the offender's chances of recidivism and help to reintegrate him back in to society.

There was a point in the history of the American criminal justice system when rehabilitation was the dominant objective of incarceration. During the 1970's however, rehabilitation began losing its momentum. The focus shifted from rehabilitating the

58 Paul H. Robinson, One Perspective on Sentencing Reform in the United States, 8 Crim. L.F. 1, 2 (1997); see also Michele Cotton, Back With a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment 37 Am. Crim. L. Rev. 1313 (2000).
59 Id. at 1315-17.
60 See id.
61 Id.
62 Id
63 See id.
65 Id; see also Edward L. Rubin, The Inevitability of Rehabilitation, 19 Law & Ineq. 343 (2001). "During the 1970s and 1980s, American legislators claimed that they were repudiating the principle of rehabilitating prisoners. The
Although deterrence and incapacitation represent preventive measures, their focus is similar to that of rehabilitation—they are less concerned with reprisal but focus on protecting society as well as the offender himself.

Because the American public favors getting tough on criminals, measures that specifically aim to confer benefits upon the incarcerated offender—in an effort to reduce the likelihood of recidivism—are often criticized. While “get tough” policies and “increased incarceration” have been touted as effective strategies for reducing crime, it is evident that they are not working.

IV. EDUCATION: A Preventive Measure That Significantly Impacts Recidivism Rates

Studies consistently show that educating offenders serves as the single most effective crime prevention measure. Increased sentences only provide immediate gratification and a solution for a limited period of time. Disturbingly, often offenders are released with little hope for reintegration. They will go back to their communities time warped, many unskilled, and uneducated. For this reason, a majority of offenders who are released find themselves back in prison within three years of their release. Education, especially post-secondary education during imprisonment, has the potential to enhance both opportunities and an individual’s ability to function socially.

purposes of prisons, they declared, were just deserts and incapacitation— to punish prisoners for the crimes they committed and to keep them away from society so that they could not commit any further crimes.”

66 Id.
67 Richert, supra.
68 Id.
70 Patrick A. Langan and David J. Levin, Bureau of Justice Statistics Special Report: Recidivism Of Prisoners Released in 1994, NCJ 193427 (June 2002).
A. National Recidivism Rates

The Bureau of Justice tracked reconviction and reincarceration of 272,111 prisoners released in 1994.\textsuperscript{72} The 272,111 prisoners represented one third of all prisoners released in the United States in 1994.\textsuperscript{73} As part of this study, statisticians used four measures of recidivism rates of prisoners: re-arrest, reconviction, re-sentencing, and return with or without a new sentence. The study indicated that within 3 years of their release from prison, 67.5\% were arrested for a new offense,\textsuperscript{74} 46.9\% were convicted on the new criminal charge, 25.4\% were sentenced to another prison term for the new crime, and 51.8\% were reincarcerated either to serve time for the new offense or for violating restrictions on their release.\textsuperscript{75} The Bureau of Justice also provided the total number of arrest charges against the 272,111 individuals in the study, both before the 1994 discharge and after their discharge.\textsuperscript{76} There were a total of 4.1 million arrest charges prior to 1994 and 744,000 after the 1994 release.\textsuperscript{77}

\textsuperscript{72} Patrick A. Langan and David J. Levin, Bureau of Justice Statistics Special Report: Recidivism Of Prisoners Released in 1994, NCJ 193427 (June 2002).
\textsuperscript{73} Id.
\textsuperscript{74} Id. "Almost exclusively a felony or serious misdemeanor."
\textsuperscript{75} Id. Parole violations included failing a drug test, missing an appointment with a parole officer, or being arrested on a new crime.
\textsuperscript{76} Id. "The 272,111 offenders discharged in 1994 had accumulated 4.1 million arrest charges before their most recent imprisonment and another 744,000 charges within 3 years of their 1994 release."
\textsuperscript{77} Id. Among those released and part of this study, Blacks were more likely than Whites to be re-arrested, reconvicted, re-sentenced to prison or returning with or without a new prison sentence. The report also indicated that younger persons had a much higher re-incarceration rate than older individuals that were released. In addition, more than 80 percent of persons under eighteen years of age were re-arrested while only 45.3 percent of those over the age of forty-five were re-arrested. Although the study was conducted over a period of three years, 44.1 percent of those released had been re-arrested within the first year of exiting confinement. The Bureau of Justice conducted a similar study in 1983 tracking 108,580 individuals released from prison. The re-arrest rate for the three-year study conducted in 1983 was 62.5 percent as compared to 67.5 percent for the study conducted in 1994. Among those reconvicted in 1983, the ratio was very close to those reconvicted in 1994, 46.8 and 46.9 percent respectively.
The Criminal Justice Policy Council (hereinafter “Council” or “CJPC”) has reported on recidivism rates for the State of Texas since 1986.\textsuperscript{78} The Council calculates the rate of recidivism by following a group of offenders released in a fiscal year for a period of three years from the date of release.\textsuperscript{79} The latest recidivism rate reported was in the 1998 fiscal year. In 1998, offenders released from Texas prisons recidivated at a rate of 31.4%. In 1992 this rate was 49.1% and in 1986 the rate was 37.5%. Although the recidivism rate for Texas offenders has decreased significantly since 1992. This decrease could be significantly greater if prisoners received primary, secondary, and post-secondary education while they were in the criminal justice system.\textsuperscript{80}

In the year 2000, CJPC began evaluating the Windham School District\textsuperscript{81} that operates within the Texas prison system.\textsuperscript{82}

\textsuperscript{78} "The Criminal Justice Policy Council, a state agency created in 1983, provides public policy analysis to the Governor and the Legislature to use in developing and evaluating criminal and juvenile justice correctional policies. The agency is independent of the Texas Department of Criminal Justice or other criminal justice agencies. The agency’s mission is to generate through research, planning and evaluation, the knowledge needed by the Governor and Legislature to develop and monitor policies for improving the effectiveness of the adult and juvenile justice systems. CJPC is currently headed by Executive Director Dr. Tony Fabelo who has been with the agency since 1984. The Criminal Justice Policy Council acts as the Statistical Analysis Center in Texas for the U.S. Department of Justice, Bureau of Justice Statistics."

\textsuperscript{79} Texas Criminal Justice Policy Council, \textit{Criminal Justice Policy Council Biennial Report to the Governor and the ... Texas Legislature}, Jan. 1997. "The Criminal Justice Policy Council, a state agency created in 1983, provides public policy analysis to the Governor and the Legislature to use in developing and evaluating criminal and juvenile justice correctional policies. The agency is independent of the Texas Department of Criminal Justice or other criminal justice agencies. The agency’s mission is to generate through research, planning and evaluation, the knowledge needed by the Governor and Legislature to develop and monitor policies for improving the effectiveness of the adult and juvenile justice systems.

\textsuperscript{80} \textit{Id.}

\textsuperscript{81} The Windham School District was the first school system for prisoners in the nation when it began in 1969.
After conducting their evaluation, the Council issued reports during the months of February, April, June and August 2000. The August report was dedicated to examining the relationship between “educational achievement of prison inmates during incarceration and post release recidivism rates.” Unlike the study mentioned in the preceding section, (conducted by the Bureau of Justice) which tracked one third of all offenders released in the U.S. during 1994, the recidivism study conducted by CJPC specifically tracked educational achievement as it impacted re-incarceration. Moreover, the purpose of the study conducted by CJPC was to examine the effect that educating prisoners had on re-incarceration.

The report indicated that 25,980 inmates released between September 1996 and May 1998, were tracked for a period of two years. To control this examination, only those inmates released from prison for the first time were tracked. According to the study, only 16% of inmates who were educated in prison were re-incarcerated. An overwhelming 84% did not recidivate during this period. During the first year 1,126 recidivated and 3,048 during the second year of release. In reliance on this study, the Council suggested that prison education had a positive impact in reducing re-incarceration for inmates who made improvements in their educational level. In addition, they maintained that the higher the educational level, the greater the potential to find employment and attain higher wages.

According to other research conducted by the Center on Crime, Communities, & Culture, the overall recidivism rate for

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83 Id. The February 2000 report was dedicated to giving its readers an overview of the Windham School District; the April 2000 report evaluated the educational achievement of inmates participating in educational programs in Texas prisons; the June 2000 report examined the relationship between education in prison, post-release employment, and further, the wages earned during the first year after an inmate was released from prison. Id.
84 Id.
85 Id.
86 Id.
87 Id.
88 Id.
degree holders released from the Texas Department of Criminal Justice between September 1990 and August 1991 was 15%, while the recidivism rate of those inmates without degrees was four times higher. This study was not limited to account for educational achievements during the prisoners stay as did the study conducted by the Criminal Justice Policy Council, but the impact of education remains important.

Not only does educating prisoners have a positive impact on the reduction of recidivism, but corrections officials also report that it has a substantial impact on improving the prison environment.

C. The Effect of Correctional Education in Other States

Studies have made it clear that education as a rehabilitative function effectively deters criminal behavior. Results from a study

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89 Blumenson, supra. See also C. Tracy & C. Johnson, Review of Various Outcome Studies Relating Prison Education to Reduced Recidivism, Windham School System: Huntsville, TX 7 (1994).

in North Carolina Department of Corrections show that inmates who earned associate and baccalaureate degrees while incarcerated at the facility tended to become law-abiding individuals more often than those inmates without a degree upon release.91 Furthermore, a report on educational programs offered by the Virginia Department of Corrections revealed a positive and direct relation to post-release adjustment.92 Those inmates completing the educational program in the Virginia Department of Corrections, while incarcerated, had a higher employment rate than those who did not complete the educational program.93 In addition, a national study revealed that students who successfully completed the GED requirements while incarcerated had a lower rate of recidivism than students who failed to complete the GED requirement.94 It is also important to note that vocational education effected recidivism rates, especially when linked to jobs inmates might seek once they are released.95

V. PRIMARY, SECONDARY, AND POST-SECONDARY EDUCATIONAL PROGRAMS IN THE PENAL SYSTEM

A. No Protected Liberty Interest In Educational Programs

There is no constitutional right to education.96 However, federal and state governments have numerous policies, rules and

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93 Id.
95 Margaret Talbot, The Atlantic Monthly, January/February 2003, 97,100.
96 Ketzel v. Windham Independent School District, 2001 WL 167850, The Court noted that "prisons are not educational institutions; there is no federal constitutional right to participate in a prison educational program."
regulations in place that encourage, promote, and mandate schooling and educational programs.  

Because a constitutional right is nonexistent, attaining basic educational training or even higher learning is in essence a valued privilege. Given that education is a privilege, adequacy of and access to educational programs and opportunities for many destitute Americans remains disparately meager, and often insufficient.

Thus, the establishment of prison educational programs is a matter left within the rational discretion of prison administrators. In reviewing the exercise of a State's administration of their penal system, federal courts are reluctant to interfere unless there has been an extreme breach in administrative discretion. In a memorandum and order issued in 1970 by a Texas District Court Judge, the following statements were made regarding administrative discretion and education:

An extreme breach of administrative discretion is not shown solely because a prisoner's educational opportunities were encumbered. It is always unfortunate when a man's educational privileges are limited, but a limitation upon educational privileges does not constitute a denial of federal rights.

There have been numerous suits based on constitutional grounds brought by or on behalf of inmates challenging the availability of and accessibility to educational, vocational, and rehabilitative programs within prisons. Challenges have also been made concerning both the lack of such programs and their funding. In 1991, several inmates in Texas challenged the

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97 Harer, supra. Demonstrating that education and recidivism are substantially inversely related.  
99 See id [citing Granville v. Hunt, 411 F.2d 9, 12 (5th Cir. 1969)].  
100 Id. [citing for comparison Rose v. Haskins, 388 F.2d 91, 95 (6th Cir. 1968); cert. denied 392 U.S. 946, 88 S.Ct. 2300, 20 L.Ed.2d 1408 (1969)].  
practices and procedures of the Bureau of Prison’s transfer of inmates to “contract facilities.” The prisoners maintained, among other things, that they were transferred to facilities that lacked adequate educational programs. The court found that the inmates did not have a protected liberty interest in specific educational programs and recreation opportunities; thus no violation had occurred.

B. The Privilege of Higher Education

In 1965, Title IV of the Higher Education Act was passed to help finance college for persons who could show need. The Act created the Pell grant for financial aid. This legislation also permitted prison inmates enrolled in college courses to apply for federal financial aid. By the year 1990, however, legislation was introduced prohibiting such financial assistance to federal prisoners. Four years later, as part of the Omnibus Crime Control Bill, the Violent Crime Control and Law Enforcement Act was enacted to dismantle federal funding for prisoners incarcerated in correctional institutions. Prior to this enactment, Pell Grants were the primary source of support for inmates attending college courses. A specific provision within the Act, denies all prisoners access to federal financial aid.

Senator Kay Bailey Hutchinson of Texas introduced the Omnibus Crime Control Bill in November of 1993 proclaiming that despite earlier legislation barring death row inmates from receiving Pell Grants, other criminals still received as much as

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103 Lato v. Attorney General of the United States, 773 F.Supp. 973 (1991). The plaintiff inmates were designated to serve their sentences at the Reeves County Center which was one of the facilities utilized under contract by the Bureau of Prisons. All inmates a party to the action were aliens contesting being transferred to the Reeves facility alleging it was in violation of the Equal Protection Clause of the United States Constitution.

104 Id.

105 Id.; see also Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988).

106 Higher Education Act of 1965, § 401(b)(8).

107 Blumenson, supra.

108 Id.

109 Id.

110 Id.
$200 million in Pell Grant funds. The senator argued that this disbursement was a great injustice to the more than one million eligible students denied grant awards because of a shortage of funds in the program. Others opposing federal funding of post secondary education programs, charge to prisoners that funding prisoner education is a taxpayer rip-off. Statistics decry both these positions. On average, it is estimated that prisoners received between $34 to $45 million per school year between 1990 and 1994, while the total amount distributed to all students in 1994 was $6.3 billion. This means that roughly 7% of Pell Grant funds issued in 1994 went to prisoners meeting the income requirements (300,000 prisoners out of 4.3 recipients). The average Pell Grant award per prisoner was $1,500 and nearly 30,000 inmates received these grants between the 1993-1994 term. Furthermore, failure to provide education to prisoners using federal financial aid is far more costly to American taxpayers than the alternative.

About 147,000 people are now in Texas prisons at a cost of about $14,000 per prisoner per year. Assuming a three-year recidivism rate of 30.7%, taxpayers support of prisoners is far greater than payment for education. Specifically, the expansion of the TDCJ education programs could save Texas taxpayers almost $42,000,000 a year. Over a four-year period, Texas, using a 30.7% recidivism rate, could save as much as $59 million for every 1,000 inmates who complete a college education program. Using the national recidivism rate of 60%, the potential savings to taxpayers almost doubles to about $95,000,000.

Furthermore, these cost savings do not include the money that would also be saved from direct cost (employment wage loss, medical attention, etc.)

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112 Id.  
113 Blumenson, supra.  
114 Taylor, supra.  
115 Id.  
116 Houston Chronicle, Prison Population Rises 1.5% in Texas, December 18, 2002. "This continued increase in incarceration will cost $56 million more than expected over the next two years." This figure does not include special medical attention many prisoner receive.  
117 Janet Jacob, Study: Fewer Texas Felons are Going Back to Prison, Austin American-Statesman, June 3, 2002.
health care, pain and suffering) of recidivism crimes on the citizens of Texas nor the physical or the emotional cost to the victims of these repeat offenders.

C. No Protected Liberty Interest In Federal Financial Aid

After the 1994 amendments to the Higher Education Act, a ban on Pell awards to prisoners was enforced. A New York State prisoner challenged the prohibition as a violation of the Equal Protection Clause of both his procedural and substantive due process rights, and also the Administrative Procedures Act.118 The District Court held that the denial of Pell awards to prisoners solely on the account of their status as a prisoner did not violate equal protection because the prohibition was rationally related to a legitimate governmental purpose. Hence, whether the alleged underlying purpose were 1) the desire to increase funding available to law-abiding students,119 2) the fact that there were other sufficient sources of educational funding exclusively available to prisoners,120 3) the notion that prisoners and non-prisoners are not similarly situated with regard to the contemporaneous need for higher education121 or 4) the desire to shift such costs to the states. The court found the decision to distinguish between prisoners and non-prisoners when awarding Pell Grants rationally related to a

119 See id. (Citing Bowen v. Gilliard, 483 U.S. 587 (1987). "The Fifth Amendment gives the federal courts no power to impose upon [Congress] their views of what constitutes wise economic or social policy, by telling it how to reconcile the demands...of needy citizens with the finite resources available to meet those demands.")
120 Id. (Citing Cong. Rec., S 15746 (daily ed. Nov. 16, 1993)). In Texas, state funds come from the Foundation School Program and General Revenue; federal funds are provided through grants such as the Elementary and Secondary Education Act and the Disabilities Education Act; local funds come from several miscellaneous sources including interest income. The United States Department of Education also makes available grant awards. These awards are available to eligible offenders who are 25 years of age or younger and meet additional release and participation requirements. If the offender receives this grant all post-secondary education costs can be paid for by this grant and the offender is relieved of having to reimburse the system.
legitimate governmental purpose. The court reasoned that “a statutory distinction does not violate equal protection if any state of facts reasonably may be conceived to justify it.”

With respect to the procedural and substantive due process claims the court held 1) that plaintiff had no claim of entitlement to (property interest in) the great funds once the statute was amended and 2) that there was no fundamental interest implicated by the denial. While the plaintiff had argued that education had the effect of reducing recidivism, the court refused to substitute its policy judgments for that of the legislature. The plaintiff’s claims regarding violation the Administrative Procedure Act were also dismissed, as the court found that Congress had specifically addressed the question of Pell Grant awards thereby foreclosing any confusion about Congressional intent.

Undeniably, prisoners do not enjoy all of the same rights and freedoms as free citizens. Courts have consistently held that “when a prison regulation impinges on [an] inmate's constitutional rights, the regulation is valid if reasonably related to legitimate penological interests.” Further, a prisoner does not retain constitutional rights that are inconsistent with the legitimate penological objectives of the correctional system.” Although there is no protected liberty interest for prisoners with respect to recreation, education, or vocational training, states are free to adopt measures that are beneficial for prisoners.

D. Correctional Education: Existing Academic Programs and Expansion

It is an undisputed fact that a substantial proportion of America’s prison population is either uneducated or undereducated. While in prison, these offenders often learn either one of two lessons: how to become a more hardened criminal or some form of discipline that will enhance their learning

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124 Id. (citing Smith v. Bingham, 914 F.2d 740, 742 (5th Cir. 1990), cert. denied, 499 U.S. 910 (1991)).
125 Blumenson, supra.
and personal skills and perhaps open doors of opportunity upon release. If prisoners are to better themselves there must concurrently exist programs that provide realistic opportunity and incentives for taking advantage of the programs.

Before the Violent Crime Control and Law Enforcement Act was passed over 1,200 higher education programs were available to prisoners across the nation. After its enactment however, the number of available programs began to dwindle. Without financial aid most prisoners cannot afford to take college classes. Due to lack of available financial aid, the number of inmates enrolled in post-secondary programs has decreased significantly causing the majority of these programs to be terminated.

Currently, several state legislatures have implemented measures either requiring or making educational programs available to prisoners. These programs may include educational and/or vocational programs. Since the elimination of the Pell Grant, some states require that the tuition expenses be fully paid by the offender. Grants may also be available through state or other agencies.

Many states have prison education programs that vary in design, governance and coverage. Below, highlights of programs in four states, Arizona, Maryland, Ohio and Texas identify the form and scope of some of these prison education programs. Generally, these programs may include basic literacy skills, general education development (GED), post-secondary education, special education and english as a second language (ESL).

Arizona

Thirty one percent of the Arizona prison population did not meet the 8th grade functional literacy standard in 2001. Eleven

126 Id.
percent of the inmates under age 22 were assessed as having special education needs and over thirty percent lacked a high school diploma or GED.\textsuperscript{129}

The Arizona Department of Corrections operates its prison education program because it recognizes the importance of education in helping to reduce recidivism.\textsuperscript{130} It offers four programs. The functional literacy program is designed to bring prisoners up to a minimum 8\textsuperscript{th} grade score in reading, language or math. The GED preparation program provides assistance to inmates to help them pass the GED test. The vocational education program is a collaboration between the department of corrections and seven community colleges to provide vocational instruction to inmates who have a high school diploma or GED but who lack work skills. The special education program provides educational services to inmates who are less than 22 years of age who have disabilities that would impair their progress in standard educational classes.

The Arizona education programs are conducted by almost 200 certified educators including special education specialists. The system also provides library services and almost 40 librarian positions.

\textbf{Maryland}

Most of Maryland’s 24,000 prisoners are high school drop-outs and poor who will serve an average sentence of 12.9 years. This average term would allow a high school drop-out the time to earn a GED as well as a college degree and even post graduate studies. However, like most prison education programs access is limited. Only about forty percent of Maryland’s inmates are able to attend school but less than twenty percent are actually enrolled in classes daily.\textsuperscript{131} Because class space is limited, students often wait several months for an opening. Openings are filled based on a priority system managed by department of corrections case managers. Students who are serving sentences of at least 18

\textsuperscript{129} Arizona Department of Corrections, Inmate Programs: Prison Education, Prison Education Programs, http://www.adc.state.az.us/PrisonOps/Education\%20Programs.htm., last visited 11/8/03..

\textsuperscript{130} Id.

\textsuperscript{131} Tolbert, supra n. 2.
managers. Students who are serving sentences of at least 18 months and who lack a high school diploma are required to attend classes; and younger students get priority over older ones.\textsuperscript{132}

The Maryland program comes under the management of a school principal, almost 200 teachers, librarians, and other staff. Its programs include GED training, literacy and life skills programs, occupational programs, special education, and peer tutoring. Students have the opportunity to earn up to a high school diploma. In 2001, nearly 1000 inmates earned their high school diploma and another 800 completed an occupational program.\textsuperscript{133}

\section*{Ohio}

The average academic achievement is 8\textsuperscript{th} grade for Ohio’s more than 50,000 inmates about 80\% of whom are high school drop-outs. The majority are non-violent offenders who on average will be incarcerated for 3.14 years. Its education system, the Ohio Central School System is part of the Department of Rehabilitation and Correction. The school system is divided into thirteen regions that may include two or three correctional institutions and one or two community-based correctional facilities. The system maintains a teaching, administrative and non professional staff of about 550.\textsuperscript{134}

The school system enrolls more than a quarter of the inmate population providing literacy skills, vocational training, GED and Adult Basic Education. The system also has begun instituting a distance-learning program in an effort to reach more inmates within its system.\textsuperscript{135}

\section*{Texas}

Of the more than 150,000 inmates in Texas prisons, the average educational level is grade 7.9. The average inmate has been sentenced to serve in excess of twenty years. Only about 10\% of the prison population is served by the Texas correctional

\textsuperscript{132} Id.
\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Id.
education program while less than one percent of the population participates in the academic and vocational college credit programs.\footnote{Windham School District Annual Performance Report 2001-2002; School in the Texas Department of Criminal Justice}

The Texas Department of Criminal Justice offers college academic programs through the Windham School District operating within the state’s prison system.\footnote{The Windham School District is funded through appropriations to the Texas Education Agency and funds are earned according to formulas set by state law. Sources of revenue for the district include local, state, federal and other funding.} The district offers primary, secondary, and post-secondary academic programs; it currently offers college academic and vocational programs at 35 of its units throughout Texas. While placement in the vocational or junior college programs are likely to be accommodated, senior college courses are offered at only six units and inmates are often placed on a waiting list to participate in these academic programs. That notwithstanding, the Texas Department of Criminal Justice has recognized that educating offenders has the effect of reducing recidivism,\footnote{The district states that its mission is to provide appropriate educational programming and services to meet the needs of the eligible offender population in TDCJ and reduce recidivism by assisting offenders in becoming responsible, productive members of their communities. It further states that its goals are to reduce recidivism and the cost of confinement, to increase the success of former offenders in obtaining and maintaining employment, and to provide an incentive to offenders to behave in positive ways during confinement.} and has taken steps to make their programs more available.

During academic year 2001-2002, the district awarded 445 associate degrees, 57 bachelor’s degrees, 7 master’s degrees 1,763 junior college vocational credit certificates and 2,599 junior college vocational non-credit certificates.

VI. Distant Education

With new technology being introduced into education at a rapid rate, distance education is a viable alternative to the current facilities based means of educating prisoners. Although there might be significant initial investment costs associated with distance education, this cost over the long run will be significantly

\footnote{Windham School District Annual Performance Report 2001-2002; School in the Texas Department of Criminal Justice}
less than transportation and security costs associated with the transportation of inmates to college campuses. The ability of students to be educated at a remote site and earn a degree could be particularly appealing to the prison system. With distant education, there is no need to transfer inmates or for faculty members to visit on site. Costs for instructors would also be cut significantly.

There are several technologies that may be used to implement distance education. These include the use of the World Wide Web, Intranets, video conferencing, or instructional television. For security reasons videoconferencing, intranet or instructional television would be most appropriate, as it restricts access to the electronic classroom. According to the Texas Higher Education Coordinating Board there are currently 40 colleges and universities providing distance education courses through their electronic campus system. Distance education offers criminal justice systems the unique opportunity to rapidly expand higher education programs throughout the prison system.

Windham School District as part of the Justice Distance Learning Consortium recently announced that it would be providing SAFETY-NET (Systems Applications for Educating Troubled Youth Network) at two facilities in Texas. The network will make available video-based educational programs via direct broadcast satellite and will include lesson plans, classroom activities, and printed materials. It will enable instructors to teach their classes on-line. In utilizing this system these types of programs could be offered to prisoners in every unit increasing enrollment capacity. Even though not every prisoner will want to obtain an education, there are numerous inmates on waiting lists for programs. With classes being offered on-line, inmates would be accommodated and the state will be working toward decreasing recidivism.

VII. CONCLUSION

The United States has the largest incarceration rate in the world. Over two million of its people are behind bars. Within the United States, Texas leads the nation in imprisoning its citizens. Aside from the increased rate of incarceration in America, another problem loans for the general populace; once released from prison, ex-offenders offend again at the rate of 60%. By the time they are
returned to prison, they are likely to have committed on average 15 crimes over a three-year period.

Studies show that the implementation of educational programs in prisons significantly reduces recidivism. In fact, prisoners who are educated while in prison recidivate at remarkably decreased rates. Educating prisoners, even at taxpayer expense, results in a major financial savings to taxpayers to as much as $95,000,000 for every 1,000 inmates who complete a college education program.

To reach these goals that benefit the entire society, several measures should be taken:

1. Institute academic education programs in all prison systems
2. Establish distant learning programs for prisons
3. Provide incentives to prisoners who participate in the program including possibility of earlier releases for graduating degreed programs
4. Retreat from increasing prisons and instead use existing facilities for drug and mental health rehabilitation
5. Eliminate policies and patterns of racial discrimination in the justice and prison systems
6. Reinstate the Pell grant system of funding education where needed (the cost of education should be substantially decreased by employing distant learning classes)