

AMERICA'S WAR ON RECIDIVISM: HOW CORRECTIONAL EDUCATION CAN SAVE A COUNTRY

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I. Introduction

The United States has the highest incarceration rate in the world, housing around 25% of the world's prisoners, while only making up about 5% of the world's population.² Housing a large amount of prisoners results in the inevitable reality of recidivism.³ In 2014 a study tracking 404,638 prisoners from 30 states that were released in 2005 revealed a horrifying rate of recidivism.⁴ The same study also revealed a correlation between recidivism and age.⁵ Many experts, who have studied the rate of recidivism over the years, find the programs and policies in place to be at the root of the problem.⁶ The old ideology of building more prisons to fight crime has become a thing of the past; now, there is a focus on new technologies and strategies to put a dent in the recidivism rate.⁷

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² *Criminal Justice Fact Sheet*, National Association for the Advancement of Colored People (2014), archived at <http://perma.cc/6239-KRBH> (comparing the incarceration population in the U.S. versus the rest of the world).

³ See Caitlin Dickinson, *America's Recidivism Nightmare* (April 2014), archived at <http://perma.cc/TFN8-RDZY> (discussing the shocking rates of recidivism after a convict has been released from prison).

⁴ See *Id.* (finding that 67.8% of ex-convicts were re-arrested within three years of their release and 76.6% of were re-arrested within five years after release); See Bryan A. Garner, *Black's Law Dictionary*, 628 (Jeff Newman et al. eds., 4th ed. 2006) (defining recidivism as a tendency to relapse into a habit of criminal activity or behavior).

⁵ See *Id.* (explaining recidivism rates decline with age).

⁶ See Greg Blustein, *Pew Study: Prison Recidivism Rates Still High* (April 2011), archived at perma.cc/YAP5-S95J (highlighting that the corrections department has increased spending to about \$52 billion annually from \$30 billion a decade ago).

⁷ See *Id.* (suggesting alternative sentencing for non-violent offenders); See also Alison D. Anders, Ph.D. and George W. Noblit Ph.D., *Understanding Effective Higher Education Programs in Prison: Considerations from the Incarcerated Individuals in North Caroling*, *The Journal of Correctional Education* 62(2) (June 2011) (finding secondary and basic educational

Studies have shown that the cost-benefit of correctional education systems in prison are prevalent enough that they should not be ignored.⁸ The reoccurring flaw with implementing educational programs in prisons is the lack of participation in the programs themselves.⁹ However, the number of inmates who participate in these programs have been steadily increasing.¹⁰ Another 2014 study focusing on the Youth Offender Program (YOP) in North Carolina, specifically analyzed offenders who are 25 years old and younger because of that age groups' high rate of recidivism.¹¹ The rationale behind implementation of educational programs is that teaching cognitive thinking skills to inmates will help them make better societal choices once they are released, in turn lowering the rate of recidivism.¹²

This note argues that the implementation of higher educational program for inmates, via new technology and strategies, should be at the forefront of the fight against recidivism. The outdated method of building more prisons and "being tougher on crime" has proven to be a waste of the tax-payers money and an outright failure. I will analyze the results of educational programs

programs revealed that participation reduced recidivism, and produced a positive effect on post-release employment success).

⁸ See Anders and Nolbit, *supra* note 7 (acknowledging that in 2008 over 365 students were enrolled in 36 college courses in fourteen correctional facilities in North Carolina and has lowered the rate of those inmates who participate in the program from returning to prison).

⁹ See Caitlin Dickinson, *America's Recidivism Nightmare* (April 2014), archived at <http://perma.cc/TFN8-RDZY> (pointing out that 27% of prisons offer higher education programs but only 10% of inmates participate).

¹⁰ *Id.* (finding that from 1998 to 2008 the number of participating inmates in a North Carolina prison grew from 207 to 369 students).

¹¹ *Id.* at 6 (examining the effects of the Federal grant on the YOP, given by the United States Department of Education, which expanded the program from six facilities to fourteen).

¹² See Matthew J. Conway, "Education and its effects on recidivism" (January 1, 2000) *Doctoral Dissertations Available from Proquest*. Paper AAI9978487

scholarworks.umass.edu/dissertations/AAI9978487 (stating law abiding citizens, via cognitive thinking skills, have the ability to rationalize the cost of the punishment versus the social harm caused by committing a crime).

in prisons that have already implemented these programs and the deterrence they had on prisoners being re-incarcerated.

Understanding of this problem will only be developed by examining the long history that has lead us to where the issue stands today. Combining everyday technology with historical rehabilitative ideologies is the answer to defeating high rates of recidivism. The proceeding sections of this note will support my conclusion that technology and education should be put to greater use in order to put a dent in our Nation's lofty recidivism statistics.

II. History

A. The Early History of the American Prison System

The idea of punishment by incarceration is deeply rooted in the history of the United States.¹³ Albeit an "ancient" practice by our young country, individuals were only incarcerated for certain acts in the beginning ages of this practice.¹⁴ The eighteenth century marked the transition from corporal punishment to imprisonment.¹⁵ This period in the United States produced two institutions, which still have deep roots in today's modern prison system.¹⁶ Jails originated in order to detain criminals, and "workhouses" were used to rehabilitate criminals.¹⁷ The West Pennsylvania Quakers, who receive attribution for the founding of the American Penal System,

¹³ See Harry Elmer Barnes, *The Historical Origins of the Prison System in America*, Journal of the American Institute of Criminal Law and Criminology, Vol. 12, No.1 (May 1921) at 35, 36 (stating the idea of incarceration for punishment dates back to the age of cannibalism).

¹⁴ See *id.* at 36. (conceptualizing the idea that only political and religious offenders and debtors were normally incarcerated).

¹⁵ See *id.* (finding before the 18th century criminal offenders received corporal punishment).

¹⁶ See *id.* (explaining the Colonial periods influence on the modern day prison system by implementing jails and workhouses). Jails or prisons were primarily used for detaining those accused of crimes while awaiting trial, they were rarely used for incarceration. Workhouses served the purpose of detaining vagrants who could not safely be house with felons. *Id.*

¹⁷ See *id.* (stating the institutions of punishment that still exist today that were implemented during the founding of this country).

put criminals to “hard labor” finding it the best vehicle for rehabilitation.¹⁸ A century after the Quakers contributed this ideology, it was decided that hard labor and imprisonment should stand at a “cellular separation” thus producing the modern prison system in its entirety.¹⁹

As colonial America was slowly detaching itself from the political ideologies of England, it was also developing its own philosophy in regards to social reform.²⁰ Arguably the most important change in the American penal system came in 1791 with the idea that imprisonment should serve the purpose of rehabilitating the convicted individual, not strictly punishing him.²¹ The old ways of barbaric punishment could not survive in a time of enlightenment; and thus, a more humane way to punish criminally convicted individuals was established.²² The earliest method that was used in an effort to reform prisoners was “hard labor.”²³ Labor by inmates

¹⁸ See Barnes, *supra* note 13, at 37 (attributing the idea of imprisonment as the typical mode of punishing crime and putting inmates to work at “hard labor” to the West Pennsylvania Quakers). A century after the Quakers contributed this ideology, it was decided that hard labor and imprisonment should stand at a “cellular separation” thus producing the modern prison system in its entirety.

¹⁹ See *id.* at 37 (explaining the ideology that led to the American prison system we have today).

²⁰ See *id.* at 40 (stating that colonial America was establishing social reforms that would attain happiness for the maximum amount of people) The old ways of barbaric punishment could not survive in a time of enlightenment and thus a more humane way to punish criminally convicted individuals was established. French influence helped make way for enlightened colonial reforms in the penal system. Influences such as adoption of a penal code and adapting punishment that more closely fit the crime committed were at the forefront of this progressive social reform. Additionally, these social reforms advocated for a larger use of imprisonment in the punishment of crime and an overall improvement in the administration of prisons. *Id.*

²¹ See *id.* at 42 (explaining that the adoption of the French Revolutionary Penal Code meant that the American penal system would now focus on the idea that through incarceration a criminally convicted individual could be reformed to a law abiding citizen in society) The social reforms being implemented in colonial America were securing a new and more humane criminal jurisprudence. *Id.*

²² See *id.* (examining an era of social enlightenment and societies detachment from archaic practices).

²³ See *id.* at 43 (establishing that putting prisoners to hard labor would be a humane punishment that would mobilize a deterrent from committing a future crime once the individual was released from custody). Labor by inmates became the chief aim of incarceration, however, at this time few prisons practiced this ideology. The works of English prison reformer, John Howard, was

became the chief aim of incarceration, however, at this time few prisons practiced this ideology.²⁴ The influences from France and the movement for more enlightened social reform undoubtedly laid the framework for the penal system we have today. However, it is important to note that the goal of rehabilitation is still the desired result of incarceration and yet after generations of trying to achieve the same goal, recidivism still remains at an all time high.

B. The History of Prison Education: A Tool to Rehabilitate

Father William Rogers, a Philadelphia clergyman, was at the forefront of the Correctional Educational Movement when he began to educate inmates.²⁵ Father Rogers' first implementation came in 1826, in the form of Bible studies that were held for New York's Auburn Prison

one of the reasons why the ideology of reforming prisoners spread throughout the country. Prison administration reforms, as a result of Howard's works as well as others, came in the form of; separation of sexes and of hardened criminals from first and petty offenses, separate cells for all prisoners at night, and workshops for the employment of able-bodied prisoners. Howard's studies and suggested prison reforms are evident in colonial America, specifically in Philadelphia. Additionally, as evidence that society has moved away from the barbaric practices of its European ancestors, a group named "The Society for Alleviating the Miseries of Public Prisons" were at the helm of adopting Howard's ideas in Philadelphia. Along with hard labor, we see for the first time an introduction of education being provided in the prison system, in an effort to achieve the overarching goal of reforming prisoners. The existence of this society was so impactful that New York State, from 1796-1830, imitated the Pennsylvania precedent. If not for the outbreak of the Revolutionary War and British occupation of American cities, the spread of this prison reform would have taken flight much sooner. *Id.*

²⁴ See *id.* (explaining the theory on how to reform prisoners versus what was actually being practiced at the time).

²⁵ See Rothman, D., & Morris, N. Eds., *The History of the Prison: The Practice of Punishment in Western Society*, Oxford University Press (2008), archived at <http://perma.cc/R89X-XFYM> (explaining the inception of prisoner education in Philadelphia's Walnut Street Jail); See also Gherig, T., "The History of Correctional Education," archived at <http://perma.cc/R89X-XFYM>. (finding the inception of prisoner education was started by William Rogers).

inmates.²⁶ The movement started by Father Rogers sparked major educational advancements throughout the seventeenth and eighteenth centuries in American prisons.²⁷ Only seven years after Father Rogers began his Bible study, the Boston Prison Discipline Society created the “Sabbath School Movement” which entailed 700 tutors in ten prisons teaching 1,500 “prison-scholars.”²⁸ Although rapidly evolving since the 17th and 18th centuries, the American Penal

²⁶See *id.* (discussing Father Rogers cavalier idea of combining religion and education).

²⁷ See *id.* (procuring a timeline of educational advancement in American prisons during the 17th and 18th centuries) In 1826 Father Rogers taught thirty-one classes to roughly 160 inmates. During Andrew Jackson’s presidency, America was faced with high crime rates posing a serious threat to society, giving rise to the ideology that education could rehabilitate prisoners to functioning members of society. In 1870, after two decades worth of prison studies, the country’s “prison reformatory movement” began. At the turn of the 1900’s the “Progressive Era” began which emphasized the education of prisoners. In 1913, Thomas Matt Osborne posed as a prisoner to learn first-hand the conditions of an inmate, he later became a warden of Sing Sing Prison where he instituted the “Mutual Welfare League”- a system of self-government run by and for the inmates. A decade later, due to political rebuke, the Mutual Welfare League system was dissolved. In 1929, the same year as the dissolution of the Mutual Welfare League, the Federal Bureau of Prisons “turned rehabilitation into a legislated policy concerned with developing an effective classification system and individualized decisions regarding discipline and treatment.” Two years later, in 1931, Austin McCormick founded the Correctional Education Association, which is still in existence today. In 1937, a scholarly journal was founded to document the effects and uses of education on inmates, it was named the “Journal of Correctional Education.” By the 1950’s, the ideal of rehabilitation had be so engrained in the American Penal System that prisons would be called “correctional facilities” nationwide. Additionally, this decade brought many important reforms to the American prison system including; the United Nations Minimum Rules for the Treatment of Prisoners and the Prisoner’s Rights Movement (which focused on constitutional rights and the Civil Rights Act). The Texas Prison College System, founded in 1965, was a major development in prisoner education; it emphasized higher education for inmates. However, in the 1970’s, a movement arose to discredit and oppose the rehabilitative methods that were a result of 200 years of effort. The movement imposed the idea that “the therapeutic model of rehabilitation led to the abuse of intrusive therapies.” This movement led to a backlash in prisons and less of an emphasis on rehabilitative methods; namely prisoner education. Rothman, D., & Morris, N. Eds., *The History of the Prison: The Practice of Punishment in Western Society*, Oxford University Press (2008), archived at <http://perma.cc/R89X-XFYM>.

²⁸ See *id.* (explaining the rapid advancement in prisoner education rehabilitation in the 17th and 18th centuries).

System's focus on rehabilitative methods greatly diminished in the 1990's.²⁹ The repealing of inmate classes and workshops has led to infamous prison riots, such as the Attica State Prison Riot in 1971.³⁰ After the downsizing of prisoner education, rates of recidivism steadily began to rise, leading us to where we are today.³¹ The "tough on crime" ideology, that was born during the

²⁹ See Zoukis, Christopher, *Education Behind Bars: A Win-Win Strategy for Maximum Security* at 11 (2012) (recounting the prison riot in Attica State Prison in 1971 in response to inhumane living conditions and no access to educational programs or true rehabilitative programs). The uprising that took place in Attica State prison, where twenty-nine prisoners and ten guards were killed, swayed public opinion that the concept of prison must accompany rehabilitation as well as punishment. In direct response, prison administrators and community leaders along with Marist College established a four-year Bachelor's degree program funded by a Federal Pell Grants. By 1982, more than 350 educational programs flourished in prisons throughout the country. These education programs taught "math, reading, and vocations such as horticulture, food service, auto mechanics and others to 27,000 prisoners, or 9% of the prison population at the time." Higher education also began to establish a foothold in prisons, "two-year community colleges and technical/vocational schools sponsored 75% of the courses, and most classes were held live, inside prisons..." Unfortunately, due to provisions of the 1994 Crime Act, Congress withdrew federal support for these programs. By the early nineties, a number of colleges were offering Associate's, Bachelor's, and in some instances Master's Degrees. However, the introduction of the 1994 Crime Bill led to legislators deliberately reducing education opportunities in spite of strong statistical evidence that inmates who received these degrees rarely returned to a life of crime post-release. The societal ideology driving the reduction in educational opportunities for inmates stated "the prison life was too 'soft' and the Pell Grants were taking available monies away from law-abiding students." Zoukis and many other prison educators argued that "when these Pell Grants were available to prisoners, no traditional students were ever denied a Pell Grant because of prisoner participation." Additionally, when the Pell Grants barred prisoner participation, "no additional grants were awarded to traditional students." In fact, only one-tenth of Pell money funded prison education programs; See also Rothman, D. & Morris, N., *supra* note 21 (stating from 1995 till present day, "[a] conservative approach to the treatment of prisoners, with an emphasis on increased severity of punishment, reintroduction of capital punishment, lengthening of prison terms, and continued incarceration for drug-related offenses" has supplanted the rehabilitation ideology).

³⁰ See *id.* (discussing the repeal of prisoner's rights that led to infamous prison riots, specifically the Attica State Prison Riot in 1971).

³¹ See *id.* (correlating the downsizing of federal funds for prisoner education with the high rates of recidivism seen today).

nineties, “ended the presence of the most affordable and effective program in the history of the American criminal justice system.”³²

Although funding has been limited significantly, education rehabilitative programs still exists, and New Hampshire State Prison For Men is at the forefront of combining technology with rehabilitative education.³³ New Hampshire State Prison For Men administers a voluntary test called Test of Adult Basic Education (“TABE”).³⁴ The Technology Education Program, implemented in the New Hampshire State Prison for Men, provides the inmate-student with an introduction to technology systems along with “survey tools, materials, processes, and career paths used by the system.”³⁵ The program has a series of courses specific to four clusters of the field; (1) Communication Technology; (2) Materials Processes Technology (Construction and Manufacturing); (3) Energy, Power, and Transportation Technology, and; (4) Technology Practicum.³⁶ TABE then “makes recommendations for placement in academic and

³² See Zoukis, *supra* note 23, at 12 (finding that after the Pell Grants were taken away from prisons nearly all of the 350 educational programs established had collapsed). The effects of prohibiting prisons to receive Pell Grant money was not just felt by prisoners, but also the institutions that participated in providing educational services to these inmates. Furthermore, after the ban on prisoner education rates of recidivism steadily began to rise, leading us to where we are today. The fraction of federal money that was being spent on educational programs for prisoners pales in comparison to the money this country spends to re-incarcerate an individual. *Id.*

³³ See Robert A. Hall and Mark W. Mck. Bannatyne, *Technology Education and the Convicted Felon: How It Works Behind Prisons Walls*, Journal of Correctional Education Vol. 51 Iss. 4 (December 2000) (describing technology based educational programs and their impact on recidivism).

³⁴ See *id.* (explaining the use of the voluntary test administered by a New Hampshire state prison).

³⁵ See *id.* (discussing the how the Technology Education Program in New Hampshire State Prisons is employed).

³⁶ See Robert A. Hall and Mark W. Mck. Bannatyne, *Technology Education and the Convicted Felon: How It Works Behind Prisons Walls*, Journal of Correctional Education Vol. 51 Iss. 4

vocational/technical programs.”³⁷ The foundation of New Hampshire State Prison’s Program is to provide inmates with marketable skills so they can obtain employment upon their matriculation into society.³⁸ The Program has been so successful at providing inmates these skills that the International Technology Education Association (ITEA) awarded the prison with a “Program Excellence Award” in 1994.³⁹ In 2000, the program was expanded and was implemented in the Concord and Laconia prisons in New Hampshire.⁴⁰ Observers of this program have noticed attitude changes amongst participating inmates, these changes in attitude seem to be correlative with academic achievement.⁴¹ The program, which makes inmates work in teams on group projects, helps these inmates with social skills that are necessary for post-release success in society.⁴² The reoccurring theme associated with prison education is a low rate of recidivism and New Hampshire State Prison’s technology program seems to bolster the validity of this result.⁴³ The recidivism rate can be as low as “10.8% for positively terminated inmates

(December 2000) (describing the technological areas inmates can be educated in and which area best fits their individual skills).

³⁷ *See id.* (discussing how the “TABE” test suits individual prisoners based on their level of education).

³⁸ *See id.* (commenting that the foundation of the New Hampshire State Prison program is founded on the ultimate goal of inmate rehabilitation, re-assimilation).

³⁹ *See id.* (finding the success of the program was so well established it was awarded an international technology education award).

⁴⁰ *See id.* (stating the program had such success the state of New Hampshire implemented it throughout all state prisons).

⁴¹ *See id.* (analyzing the affects of academic achievement and the correlation to attitude changes in participating inmates).

⁴² *See* Robert A. Hall and Mark W. Mck. Bannatyne, *Technology Education and the Convicted Felon: How It Works Behind Prions Walls*, *Journal of Correctional Education* Vol. 51 Iss. 4 (December 2000) (articulating the program forces the inmates to work along side one another which is a core aspect of being a functional member of society).

⁴³ *See id.* at 319 (comparing the propensity for an inmate to return to prison who has successfully completed the technology program from those who have not); *See also* Susannah Bannon, Article, *WHY DO THEY DO IT?: MOTIVATIONS OF EDUCATORS IN CORRECTIONAL FACILITIES*, 33 *St. Louis U. Pub. L. Rev.* 301 (2014) (explaining the motivation behind

(those who have successfully completed training) and as high as 70% or more for those that do not.”⁴⁴

Other prisons in the United States who have “correctional schools” also use technology as classroom aids, although not as prevalent as the aids found in the New Hampshire State Prison Technology Education Program.⁴⁵ These classroom aids consist of: “(1) CD’s/DVD’s; (2) closed circuit television; (3) intranet; (4) file servers; (5) computers (stand alone or networked); (6) Local Area Networks (LAN); (7) Wide Area Networks (WAN); (8) two-way audio/video conferencing; (9) internet protocol TV; (10) satellite; (11) instructional TV fixed service (microwave) and; (12) learning content systems such as NovaNet, WebCT, or Blackboard.”⁴⁶

teachers who choose to educate prisoners) “The most common motivations reported by faculty when deciding to teach in prison rather than the traditional college are characteristics perceived in the incarcerated student: eagerness to learn and willingness to engage in discussion. Yet, it is not just students who benefit from educational opportunities in prisons; teachers report satisfaction through: potentially transforming the lives of their students and the institutions where they work; contributing to the rehabilitation of prisoners; providing educational opportunities to the under resourced; and contributing to their own self-improvement. Intrinsically motivated teachers who choose to work in the prison system, despite lacking funding, insufficient materials, and organizational obstacles, serve as a lens for better understanding the larger contributions and outcomes of the prison student-teacher relationship.”; *See also* Justin Brooks, ADDRESSING RECIDIVISM: LEGAL EDUCATION IN CORRECTIONAL SETTINGS, 44 Rutgers L. Rev. 699 (1992) (addressing the everyday problems faced by an ex-convict once he is released from prison) Lack of employment, family problems, and restrictions imposed by parole stipulations are everyday obstacles standing in the way of a ex-convict trying to re-assimilate into society. Being unable to deal with these problems in a positive manner leads the parolee back to a life of crime. Cognitive thinking skills provided to inmates pre-release give them the requisite skills to deal with the problem in a way a law-abiding citizen would. *Id.*

⁴⁴ See Robert A. Hall and Mark W. Mck. Bannatyne, *Technology Education and the Convicted Felon: How It Works Behind Prisons Walls*, Journal of Correctional Education Vol. 51 Iss. 4 (December 2000) (quantifying the success rates of prisoners who partake in the technology education program).

⁴⁵ See Cindy Borden, Article, *The Effective Use of Technology in Correctional Education*, Reentry Roundtable on Education at 3, (Spring 2008) (explaining the different technologies currently available in “correctional schools” that aid in teaching inmate-students).

⁴⁶ See *id.* (finding the different technologies currently available in “correctional schools” that aid in teaching inmate-students).

These technological aids exist in some combination in even the most remote and barren prison schools.⁴⁷

Unfortunately, the effects of the 1994 Crime Bill are still felt today and is limiting the overall effect prisoner education could have on our nations high rate of recidivism.⁴⁸ The introduction of the 1994 Crime Bill lead to legislators deliberately reducing education opportunities in spite of strong statistical evidence that inmates who received these degrees rarely returned to a life of crime post-release.⁴⁹ Although the Legislative branch of our government deserves much of the blame for the restraints placed on rehabilitative education, the Judicial branch has also played a significant role.

⁴⁷ See *id.* (discussing the use of technology, albeit limited technology, in “correctional schools” across the country).

⁴⁸ See Robert A. Hall and Mark W. Mck. Bannatyne, *Technology Education and the Convicted Felon: How It Works Behind Prions Walls*, *Journal of Correctional Education* Vol. 51 Iss. 4 at 322 (December 2000) (stating the limitations placed on rehabilitative prisoner education due to lack of funding and prison overcrowding). Although restraints are felt from lack of funding, rehabilitative education seems to be the most cost-effective way of combatting a high recidivism rate and an over-population in the American prison system; See also Brian Walsh, Using Technology to Reduce Recidivism of Prisoners, *Thewhitehouse.gov*, *archived at* <http://perma.cc/83Q2-2WCT> (2013) (articulating the cost of incarceration for one prisoner). Reducing the recidivism rate is vital to America’s correctional public policy. Washington spends roughly \$32,000 per year to incarcerate one individual. “A recent meta-analysis by RAND found that offenders who participated in education programs while incarcerated were 43% less likely to return to prison and 13% more likely to become employed. The Washington State Institute for Public Policy has found that adult basic education, post-secondary education, and vocational education programs, have a net return to taxpayers and society of at least \$13 per \$1 spent. Prison education programs help offenders prepare for reentry and are effective tools in reducing future crime. *Id.*

⁴⁹ See Zoukis, Christopher, “Education Behind Bars: A Win-Win Strategy for Maximum Security,” at 11 (2012) (explaining the adverse effects still felt from the 1994 Crime Bill).

C. The Legal Precedents of Prisoner Education: A Right to Education?

The few cases documented in this section exemplify the Judicial Branch's impact on limiting educational opportunities to inmates. The conditions that are to be provided to an inmate once he/she is incarcerated incorporate rehabilitative programs (as well as humane living conditions, etc.), as a result most cases brought before a court by a prisoner cite a violation of the Eighth Amendment as the basis of the claim.⁵⁰ In other cases, the Equal Protection Clause of the Fourteenth Amendment has been employed to seek educational programs for incarcerated juveniles and women.⁵¹ For example, an incarcerated juvenile plaintiff brought suit against the Pennsylvania Department of Education because of a state statute that permitted the denial of "school-aged persons incarcerated in county correctional institutions, but not those incarcerated

⁵⁰ See *Estrada v. Gomez*, 1995 U.S. Dist. LEXIS 14239 (N.D. Cal. Sept. 13, 1995). (finding the prisoner had meritorious claims for conditions of confinement under the 8th Amendment but could seek no reprieve for the prison's lack of an educational program under the Amendment).

⁵¹ See *Brian B. v. Pennsylvania Dep't of Educ.*, 51 F. Supp. 2d 611 (1999) (dismissing the juvenile inmates claim that the state of Pennsylvania should not be allowed to deny high school aged inmates a right to education while incarcerated) An incarcerated juvenile plaintiff brought suit against the Pennsylvania Department of Education because of a state statute that permitted the denial of "school-aged persons incarcerated in county correctional institutions, but not those incarcerated in state correctional institutions." The court concluded that the state of Pennsylvania had a legitimate government interest in implementing this statute; *But see Jeldness v. Pearce*, 30 F.3d 1220, 1224 (9th Cir. Ct. 1994) (holding state prisons that receive federal funding must provide equal educational opportunities to both men and women inmates because they are subject to the regulations of Title IX) A class of women incarcerated in Oregon State Prison brought suit against the Oregon State Department of Corrections, via the Equal Protection Clause of the 14th Amendment, claiming they had been denied equal educational opportunities which male prisoners were being provided. The court concluded that since Oregon State Prisons were the recipient of federal funding they must adhere to the stipulations of Title IX and provide "similar" educational opportunities to incarcerated women; *See also* 20 U.S.C. § 1681(a). (quoting in relevant part:

(a) "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance") The "Federal financial assistance" language in section (a) of Title IX makes prisons receiving federal aid applicable to Equal Protection scrutiny in the administration of their programs.

in state correctional institutions.”⁵² The court concluded that the state of Pennsylvania had a legitimate government interest in implementing a statute that denied an education to incarcerated youths.⁵³ However, courts have ruled differently when dealing with gender and Title IX.⁵⁴ Lastly, inmates seeking judicial enforcement of educational programs have received minimal help from the courts.⁵⁵ Courts have repeatedly held that there is not a fundamental right to education, and thus when a prisoner is denied an educational opportunity, no violation of civil rights occurs.⁵⁶ Although neither branch deserves all the blame for slowing the progress

⁵² See *Brian B. v. Pennsylvania Dep't of Educ.*, 51 F. Supp. 2d 611 (1999) (exemplifying Equal Protection claims of incarcerated juveniles seeking a high school education).

⁵³ See *id.* (stating why the juveniles Equal Protection claim failed).

⁵⁴ *Jeldness v. Pearce*, 30 F.3d 1220, 1224 (9th Cir. Ct. 1994) (holding equal educational opportunities must be given to both incarcerated men and women).

⁵⁵ See *Johnson v. Jones*, 2010 U.S. Dist. LEXIS 14191, 2010 WL 623704 (W.D. Mich.Feb. 18, 2010) (establishing no fundamental right to education exists in either the Michigan nor the United State Constitutions) This suit was brought by an inmate who was forcefully removed from his General Equivalency Diploma (GED) test over a disagreement about his obligation to complete portions of the exam. Due to this removal, the inmate was placed on cell restriction and did not receive any of his GED work assignments. The court held that the inmates civil rights were not violated because there is no fundamental right to education found in the U.S.

Constitution. See also 42 U.S.C.S. § 1983. (quoting in relevant part:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia”).

The claim brought by the inmate in *Johnson* was based on a civil rights violation, specifically 42 U.S.C.S §1983. The reading of the applicable statute will not allow a claim to be made unless it is a “right, privilege, or immunity” guaranteed in the Constitution. As you can see a claim for access to rehabilitative education is significantly limited by the ruling made in *Johnson*.

⁵⁶ See *Johnson v. Jones*, 2010 U.S. Dist. LEXIS 14191, 2010 WL 623704(W.D. Mich.Feb. 18, 2010)

rehabilitative education had made with the recidivism rate, they both share the brunt of the responsibility. However, the American public should not go blameless in this war against recidivism. After all, we are the ones who influence these branches of government to make decisions such as the ones discussed above.

III. Premise

The 1994 Violent Crime Control and Law Enforcement Act (A/K/A “The Crime Bill”) gave birth to a conservative “tough on crime” incarceration ideology in the United States.⁵⁷ When President Clinton signed the 1994 Crime Bill, federal Pell Grants and other federal money caused prisoner education to disappear.⁵⁸ The implementation of the Crime Bill, which Democratic President Bill Clinton chose to enact was a response to the criticism the Democratic Party was facing for being too lenient on criminal offenders.⁵⁹ Few other issues like criminal-

⁵⁷ See Marlene Martin SocialistWorker.org *What Happened to Prison Education Programs?*, 2009, archived at <http://perma.cc/XY2G-GFF6> (noting the ideological shift in the United States practice of incarceration post 1994) The government’s approach to prisons and prisoners became distinctly conservative; instead of incarceration being rehabilitative in nature it became “a place where people were thrown away to pay for their crimes.” *Id.* Numerous studies have proven that prison education has a direct correlation to lowering the rates of recidivism and the cost of educating a prisoner is 1/10th the cost of incarcerating him. *Id.* The controversy that swirls around this topic stems from the concern of citizens that are paying for their children’s education and find it hard to justify why a prisoner should get that same education for free; See also H.R. Con. Res. 3355, 103rd Cong. (1994) (enacted) (quoting in relevant part:

“(a) IN GENERAL- Section 401(b)(8) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(8)) is amended to read as follows:

“(8) No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.”

(b) APPLICATION OF AMENDMENT- The amendment made by this section shall apply with respect to periods of enrollment beginning on or after the date of enactment of this Act.”)

⁵⁸ See Marlene Martin SocialistWorker.org *What Happened to Prison Education Programs?*, 2009, archived at <http://perma.cc/XY2G-GFF6> (discussing the effects of the 1994 Crime Bill).

⁵⁹ See Ronald Brownstein, *Coming Together on Crime: Reforming the criminal-justice system has become a point of political convergence Who would have thought it?*, National Journal (2014), archived at <http://perma.cc/U94F-TXDZ> (summarizing the political atmosphere

justice reform did more to impact the Democratic Party, and drive blue-collar Democrats to vote for Republican candidates.⁶⁰ The 1988 presidential race displayed Democratic candidate Michael Dukakis and his hesitancy to defend his views on the death penalty or the Massachusetts prison furlough program.⁶¹ The relevance of the Massachusetts furlough program was the release of infamous criminal Willie Horton, who was a convicted murderer and raped a woman, while on furlough from prison.⁶² The societal climate in the late 1980's focused on controlling a rampant crime rate, mandatory minimum sentencing, and "three-strike laws".⁶³ The election of Republican candidate George H.W. Bush in the 1988 election forced the Democratic Party to re-evaluate their stance on criminal-justice reform in the United States.⁶⁴

The emphasis on harsher penalties for criminal offenders was not solely derivative of the battle for the presidency; influence from law enforcement agencies played a roll as well.⁶⁵ The 1970's exhibited low prison populations and a penal philosophy that was rehabilitation centric.⁶⁶

surrounding the Democratic Party's past stance on incarceration and the role it played on the 1994 Crime Bill's enactment).

⁶⁰ *See id.* (discussing the political atmosphere of the early 1990s)

⁶¹ *See id.* (arguing Michael Dukakis's statements about the death penalty lead to the ideological shift in the Democratic Party's stance on incarceration).

⁶² *See id.* (explaining the historical political significance of Willie Horton and the Massachusetts furlough program).

⁶³ *See id.* (advancing the idea that the societal climate post Willie Horton and Michael Dukakis was derivative of these two aforementioned events).

⁶⁴ *See id.* (marking the election of George H.W. Bush as the pivotal moment for the Democratic ideological shift in regards to incarceration).

⁶⁵ *See* Cyrus Tata and Neil Hutton, Sentencing and Society: International Perspectives, *GETTING TOUGH ON CRIME: THE HISTORY AND POLITICAL CONTEXT OF SENTENCING REFORM DEVELOPMENTS LEADING TO THE PASSAGE OF THE 1994 CRIME ACT*, Sentencing and Society: International Perspectives (2002), *archived at* <http://perma.cc/7MJU-EVW6> (commenting on the ideological change in the U.S. in regards to it's "tough on crime" era).

⁶⁶ *See id.* at 2 (discussing the "golden era" of United States Penal System).

Additionally, legislatures shunned mandatory sentencing provisions.⁶⁷ In 1974 the FBI reported a spike in the United States' crime rate and the blame was placed on lenient judges, the prison reform movement, and the rehabilitation ideology.⁶⁸ By 1976 every state in the country, except California, had reported an increase in their State and Federal prison population.⁶⁹ A quarter of a million prisoners were held in state and federal prisons in 1976.⁷⁰ At the turn of the 1970's mandatory sentencing laws had been shunned by nearly every state; but, by the end of the decade, every state in the U.S. had passed at least one such law.⁷¹ By 1987, the federal government implemented mandatory sentencing guidelines that sought to extend the use of imprisonment.⁷² These mandatory sentences undoubtedly lead to overpopulation in the prison system, so much so abandoned military bases and other federal property were converted in correctional facilities.⁷³ An opinion poll taken during 1983 revealed that "... the fear of crime had risen to the top of the public's list of domestic concerns," and the liberal philosophy about crime and justice lacked any legitimate support.⁷⁴ During the 1988 Presidential Election, Republicans campaigning efforts focused on anti-crime and pro-victim rights; resulting in the

⁶⁷ See *id.* (explaining the repugnance law makers felt for mandatory minimum sentencing at the time).

⁶⁸ See *id.* at 4 (marking the events that changed law maker's opinions about mandatory minimum sentencing).

⁶⁹ See *id.* at 6 (promoting the benefits of mandatory minimum sentencing by comparing California, a state with mandatory minimum sentencing, with the rest of the country).

⁷⁰ See *id.* (quantifying the prison population in 1976).

⁷¹ See Tata, *supra* note 54 (commenting on the ideological change in the U.S. in regards to it's "tough on crime" era).

⁷² See *id.* at 14 (explaining the impact mandatory minimum sentencing had on U.S. Penal System).

⁷³ See *id.* (arguing that mandatory minimum sentencing played a large role in overpopulating U.S. prisons).

⁷⁴ See *id.* at 16 (discussing the rampant fear of crime that plagued the public in 1983).

election of President George H.W. Bush.⁷⁵ The overcrowding in prisons, due to mandatory sentencing guidelines, resulted in the construction of more prisons and affirmed that rehabilitative incarceration was an ideology of old.⁷⁶

Social scientists will argue that the United States has always had a “tough on crime” policy that pre-dates the “tough on crime movement,” however, the prison system the U.S. has today is a result of conservative politicians who were major catalysts during the “tough on crime movement.”⁷⁷ The idea that crime was “allowed to happen” was a conservative view on crime and incarceration, existing long before the passing of the Crime Bill.⁷⁸ The conservative

⁷⁵ See *id.* (promulgating that Republicans were able to capitalize on the societal fear of crime and provided their “tough on crime” ideology as the solution).

⁷⁶ See Tata, *supra* note 33 (discussing the Democratic Party’s need to establish a conservative stance on criminal-justice reform in order to win the Presidential election) The 1992 presidential campaign exemplified the Democratic Party’s ideological change in prison reform, as Bill Clinton consistently stood tough on crime issues and adamantly supported the death penalty. *Id.* at 20. All prison resources were now being used in the most effective manner possible due to overpopulation, recommendations such as “ending pretrial own-recognizance release (ROR); mandatory minimum sentences for serious offenses (including "Three Strikes, You're Out"); imposing the 85 percent truth in sentencing rule for all prison sentences imposed by state court judges; treating juveniles as adults for serious criminal conduct; and using all available strategies, such as prison privatization, electronic home detention, boot camps for juveniles, and video remote arraignment” were being implemented. *Id.* at 23.

⁷⁷ See Katherine Beckett, Ph.D. and Theodore Sasson, Ph.D., *The Origins of the Current Conservative Discourse on Law and Order*, archived at <http://perma.cc/9282-89EN> (discussing the conservative agenda behind the “tough on crime” movement). “[P]olitical elites were not simply responding to popular beliefs and sentiments about crime and punishment, although they did help to shape the public’s perceptions of the crime problem and preferences regarding what to do about it. Rather, their activities were part of a larger effort to realign the electorate in ways that favor the GOP and, even more significantly, to reorient state policy around social control rather than social welfare.”

⁷⁸ See *id.* (explaining the conservative approach on being tough on crime originated with the idea that “poverty and crime were caused by a combination of bad people and excessive permissiveness”).

argument rebuts the idea that criminal acts are the result of societal influences and rather derivative of irresponsible choices by individuals.⁷⁹ Conservatives believed “that social pressures such as racism, inadequate employment, lack of housing, low wages, and poor education do not cause crime.”⁸⁰ The liberal approach regarding crime and incarceration is one that examines social conditions upon criminal offenders, and thus an apparent discrepancy on how to solve the problem appreciated.⁸¹ For example, social conditions such as racial inequality and limited opportunities for the youth were at the heart of the problem.⁸² History stipulates that liberals and conservatives have disagreed on how to approach crime and incarceration for decades, however, we see an unprecedented unification of ideology with the inception of the Crime Bill. It can be argued that the Democrats enacted this Bill in order to prevent registered Democrat voters from voting for Republican presidential candidates.

The current state of prison education mirrors the resurgent corporal punishment ideology; “People who commit crimes should be caught, convicted, and punished.”⁸³ The passing of the

⁷⁹ *See id.* (discussing the counterargument presented by the conservative approach on crime and punishment).

⁸⁰ *See id.* (explaining conservative beliefs on why crime takes place).

⁸¹ *See id.* (contrasting the liberal ideology from the conservative ideology on the causes of crime). Liberals believed that social conditions such as racial inequality and limited opportunities for the youth were at the heart of the problem. *Id.* Conservatives on the other hand believed “that social pressures such as racism, inadequate employment, lack of housing, low wages, and poor education do not cause crime. Instead, people are poor, criminal, or addicted to drugs because they made irresponsible or bad choices. Ironically, social programs aimed at helping the poor only encourage them to make these choices by fostering a culture of dependency and predation.” *Id.*

⁸² *See id.* (exemplifying what liberals believe to be what causes crime).

⁸³ *See* Brian Mann, *N.Y. Governor Says College For Inmates Will Pay Off For Tax Payers*, archived at <http://perma.cc/6RC7-7QD6>. (explaining the current state of prison education). Since 1994, prison education has been almost non-existent. The passing of the 1994 Crime Bill stood

1994 Crime Bill stood for the idea that the government was on the side of the law abiding public and not the side of the inmates.⁸⁴ However, New York Governor Andrew Cuomo sees the issue quite differently, and believes the reinstatement of prison education is in the best interest of the law-abiding public.⁸⁵ Governor Cuomo states that it costs roughly \$60,000.00 of taxpayer money for one prison cell per year.⁸⁶ Therefore, if an inmate is in that prison cell for ten years that is a \$600,000.00 bill paid for by taxpayer money.⁸⁷ Education can fix this problem, by reducing the rate at which that \$600,000.00 inmate returns to prison.⁸⁸ At the current moment there is almost a fifty percent chance a convict will return after his release, and by comparison the cost of getting an inmate a college education would be \$5,000.00 a year per person.⁸⁹ Governor Cuomo argues that this is “chump change,” especially if it affects the recidivism rate.⁹⁰ The opponent’s argument against prisoner education has been the same since the inception of the Crime Bill, and the current economic crisis facing this country only proves how illusory that argument is.⁹¹ The

for the idea that the government was on the side of the law abiding public and not the side of the inmates.

⁸⁴ *See id.* (arguing that the government was able to instill confidence in the law abiding public by passing the 1994 Crime Bill).

⁸⁵ *See id.* (discussing the cost of incarceration versus the cost of providing education to prisoners).

⁸⁶ *See* Brian Mann, *N.Y. Governor Says College For Inmates Will Pay Off For Tax Payers*, archived at <http://perma.cc/6RC7-7QD6> (calculating the cost of incarceration for one prison cell for one year).

⁸⁷ *See id.* (articulating the enormous bill paid for by the taxpayer for a common prison sentence).

⁸⁸ *See id.* (quoting Governor Cuomo on the cost of incarceration versus the cost of education).

⁸⁹ *See id.* (quantifying the current rate of recidivism).

⁹⁰ *See* Brian Mann, *N.Y. Governor Says College For Inmates Will Pay Off For Tax Payers*, archived at <http://perma.cc/6RC7-7QD6> (quoting Governor Cuomo’s thoughts on the financial difference between educating a prisoner versus re-incarceration).

⁹¹ *See id.* (challenging the liberal idea of providing prisoners access to higher education by stating this action would slight the law abiding tax payer) New York State Assemblywoman Addie Russell believes that tax payers will not stand to see their money used to educate inmates, while they themselves struggle to pay tuition for their own children. This argument is the “carbon copy” of the national debate that took place twenty years ago over the same issue. You

only counter-argument is a cost-benefit analysis.⁹² This issue presents a unique analysis of economic cost versus human cost; in order for society to benefit a balance between the two must be found.

IV. Analysis

A. If It's Broke, Fix It!

The recidivism rate in the United States has reached such a debilitating high that it has affected all aspects of our society. From the largest city to the smallest town, the rate in which a convict returns to prison cripples the United States' growth as a country. Numerous studies have been conducted on the recidivism rate in the United States.⁹³ A 2014 study took a sample size of over 400,000 prisoners from thirty states that were released from prison, and found 67.8% of ex-convicts were re-arrested within three years of their release while 76.6% within five years after release.⁹⁴ These startling results, taken from over half the states in the Country, demonstrate that

would be hard pressed to find a politician who would openly combat the argument made by Ms. Russel. *Id.*

⁹² *See id.* (concluding that both parties to the debate are seeking the same result and that this result can be accomplished by providing prisoners with college education) Gerald Gaes, an expert for the Federal Bureau of Prisons since the 1990's, states that it is "cost-effective to design prisons that have a long-term benefit..." Additionally, there are studies that support Mr. Gaes statements; "[a] 2013 joint study by the RAND Corporation and the Department of Justice also found that participants in prison education programs, including GED education, college courses and other types of training, were less likely to return to prison after their release." Governor Cuomo, who clearly shares the same sentiment as Mr. Gaes, has approved funds for college classes in 10 New York prisons as a trial program. *Id.*

⁹³ *See Dickinson, supra* note 4 (explaining the research that has been conducted on recidivism and the time amount of time it takes a convict to return to prison after release).

⁹⁴ *See Dickinson, supra* note 4 (discussing empirical data that showed a staggering recidivism rate).

our current system of incarceration is broken.⁹⁵ Clearly, the ideology of “severe punishment to deter crime” has failed and to continue along this path would only put this country into a deeper economic hole.

The issue of providing prisoners with access to not only educational opportunities, but college and post-graduate opportunities has been debated for decades; however, statistics show no support for the current system.⁹⁶ The plan to build more prisons to deter crime has proven to be an archaic and wasteful idea that has only dug this country into a deeper economic hole.⁹⁷ A decade ago the corrections department in the United States spent \$30 billion annually.⁹⁸ Currently that number has almost doubled to \$52 billion annually.⁹⁹ The outrageous expenditure of money is being used to build more prisons and hire more prison personal.¹⁰⁰ The building of more prisons signifies the prison population is expanding.¹⁰¹ If the current system of the fear of punishment to reduce crime was affective, then why the need for more prisons?¹⁰² The proof that the system currently in place is a failure is evident; if the plan of building more prisons and making punishments more severe were successful the annual expenditure by the corrections

⁹⁵ See Dickinson, *supra* note 4 (stating that empirical date supports the conclusion of an ineffective rehabilitation system).

⁹⁶ See Dickinson, *supra* note 4 (quantifying the rate at which a pool of convicts from thirty states returned to prison).

⁹⁷ See Blustein, *supra* note 6 (contrasting the money expenditure made by the corrections department from a decade ago until current times).

⁹⁸ See Blustein, *supra* note 6 (stating the annual budget spent on incarceration a decade ago).

⁹⁹ See Blustein, *supra* note 6 (comparing the annual budget spent on incarceration today versus ten years ago).

¹⁰⁰ See Blustein, *supra* note 6 (commenting that the taxpayer money being spent is only being used to manage the problem not fix it).

¹⁰¹ See Blustein, *supra* note 6 (analyzing the correlation between expansive prison construction and overall population growth).

¹⁰² See Blustein, *supra* note 6 (questioning the validity of the current plan to fix the problem when the results do not support staying on the current course of action).

department would have decreased over the last decade, not nearly doubled.¹⁰³ The answer is clear that the system is broken and the use of tax-payer money is being wasted on building more institutions that perpetuate career criminals.

Opponents to offering prisoners access to higher education state that even if federal money is once again given to fund educational courses in prison, it does not mean the inmates will participate.¹⁰⁴ A 2000 study of the North Carolina Prison System showed that twenty-seven percent of prisons offer higher education programs but only ten percent of inmates participate.¹⁰⁵ This study supports the opponent's argument that even if money was spent to give inmates the opportunity to educate themselves, they are not likely going to take advantage of the opportunity.¹⁰⁶ Although this study supports the opponent's argument, empirical data has proven increased participation in prisoner education programs.¹⁰⁷ A 2014 study done in a North Carolina prison found the number of inmates enrolled in educational programs grow from 207 inmates in 1997 to 369 in 2008.¹⁰⁸ Although, this study dealt with a small sample size it demonstrates that there is promise for growth in enrollment in prison educational programs.¹⁰⁹

¹⁰³ See Blustein, *supra* note 6 (arguing the current system in place for correctional rehabilitation is a failure).

¹⁰⁴ See Dickinson, *supra* note 9 (supporting the argument that there is a lack of participation by inmates in prisons that offer educational programs).

¹⁰⁵ See Dickinson, *supra* note 9 (discussing inmate participation in correctional education programs).

¹⁰⁶ See Dickinson, *supra* note 9 (summarizing the opponent's argument on why money should not be spent on correctional education programs).

¹⁰⁷ See Blustein, *supra* note 6 (finding that although participation in educational programs started off low it has steadily increased).

¹⁰⁸ See Blustein, *supra* note 6 (demonstrating a growth in inmate education program participation).

¹⁰⁹ See Blustein, *supra* note 6 (arguing that inmates are seeking to rehabilitate themselves and an education in technology seems to be the most attractive tool).

The proponents of implementing education argue that with receiving an education a person, convict or otherwise, develops rational cognitive thinking skills.¹¹⁰ The idea behind giving inmates access to higher education is based on improving cognitive thinking skills, given these skills an ex-convict will be able to make better societal choices.¹¹¹ The reason why the current system is failing is because inmates who are released do not see the social harm element in their actions.¹¹² Most crimes are committed out of desperation, for example either to feed or cloth oneself or family.¹¹³ Releasing an inmate back into society in a better position than he was before is the ultimate goal of rehabilitation.¹¹⁴ An education, specifically a higher education or an education in technology, allows that inmate a greater opportunity to get and keep a job.¹¹⁵ Having an income generally would allow a person to afford the essentials in life (cloths, food, shelter, etc.), thus removing the feeling of being desperate from that person's life.¹¹⁶ Additionally, being in an academic setting increases cognitive thinking skills, which allows a person to weigh the consequences of their actions.¹¹⁷ This is why the current system fails; convicts without an education fail to see the surrounding consequences of their actions, they only

¹¹⁰ See Conway, *supra* note 12 (articulating the proponents rational on the inherent benefits of educating an inmate).

¹¹¹ See Conway, *supra* note 12 (explaining cognitive thinking skills give a person the ability to weigh the cost of punishment versus the social harm caused by committing a crime).

¹¹² See Conway, *supra* note 12 (arguing education, especially an education in an highly cognitive area such as technology, will help inmates realize the social harm of their actions).

¹¹³ See Conway, *supra* note 12 (discussing that most crime arises from desperation, education leads to an income eradicating desperation).

¹¹⁴ See Conway, *supra* note 12 (formulating the idea that an adequate education or an education in a field with great demand, such a the technology field, advances the goal of rehabilitation greatly).

¹¹⁵ See Conway, *supra* note 12 (articulating the skills acquired when receiving an education assists a person, inmate or otherwise, in maintaining employment).

¹¹⁶ See Conway, *supra* note 12 (arguing that training in any field makes a person more attractive to employers, thus in the case of an ex-convict, alleviating the necessity to commit crimes in order obtain the essentials in life).

¹¹⁷ See Conway, *supra* note 12 (analyzing the cognitive skills that are inherently obtained when receiving an education of any kind).

see immediate “benefit” of their actions.¹¹⁸ Thus, a “tough on crime,” more severe punishment ideology does not return a positive result because the re-offending convict lacks the cognitive skills to see past his immediate actions, he is only focused on the immediate “benefit” of his action.¹¹⁹

The practice of providing inmates with a college education is not a novel idea. However, many will argue that high school level or GED courses are sufficient enough to give inmates the opportunity to succeed post-incarceration, however, this idea is contrary to our current societal educational pattern.¹²⁰ In 1965, the Texas Prison College System emphasized higher education for inmates.¹²¹ The system was unfortunately terminated because it was deemed that it was making prison life “too soft.”¹²² The idea that was being emphasized by the Texas Prison College System is exactly what the prison system needs today.¹²³ The societal trend of law-abiding students today is to attend college.¹²⁴ It is bread into the minds of young students that in order to be successful, you must go to college.¹²⁵ In society today, a young person without a college diploma is extremely disadvantaged.¹²⁶ Now taking our inmate student into account, opponents

¹¹⁸ See Conway, *supra* note ¹² (emphasizing the need of convicts to learn these cognitive skills in order to be fully rehabilitated).

¹¹⁹ See Conway, *supra* note ¹² (discussing why the “tough on crime” ideology has been inherently broken from its inception).

¹²⁰ See Rothman, *supra* note ²³ (explaining the rise and fall of higher education in the prison system).

¹²¹ See Rothman, *supra* note ²³ (recalling the Texas Prison College System).

¹²² See Rothman, *supra* note ²³ (discussing the societal stigma that ended the Texas Prison College System).

¹²³ See Rothman, *supra* note ²³ (arguing that higher education is what is needed for successful rehabilitation).

¹²⁴ See Rothman, *supra* note ²³ (reiterating the idea that a college education is necessary in today's world).

¹²⁵ See Rothman, *supra* note ²³ (explaining the societal pressures that push students into a college education, thus leading to large enrollment in colleges and a saturated workforce).

¹²⁶ See Rothman, *supra* note ²³ (promulgating that lack of a college education is a severe disadvantage in 2015).

to a higher education state that offering a high school level education will surely provide the inmate with ample opportunity to succeed post-incarceration.¹²⁷ This argument is flawed because a person with a criminal record and a lower level of education cannot reasonably compete for employment opportunities with a person who has a college education and no criminal record.¹²⁸ In the year 2015, the college diploma has been relegated to a high school diploma.¹²⁹ The availability of loans and financial aid has made enrollment in college not just for the rich children of society.¹³⁰ An ex-convict, with a G.E.D. and who has just been released from prison, now must compete for job opportunities with a majority of individuals who have a college diploma and a clean criminal record.¹³¹ The methods of incarceration currently in place only perpetuates career criminals, because first time offenders leave prison worse than when they entered.

The best way to implement this program and gauge its result would be to offer it to the age group with the highest rate of recidivism.¹³² Statistics have proven that inmates twenty-five years and younger have the highest rate of recidivism.¹³³ If higher education programs were available to this age group only, as test subjects so to speak, it would be a compromise between those in

¹²⁷ See Rothman, *supra* note ²³ (combining the above sentiments and comparing them with an inmate who has to overcome a criminal record and lack of education to find employment).

¹²⁸ See Rothman, *supra* note 22 (arguing that the lack of education and a criminal record leaves the ex-convict with limited opportunities to make a legitimate income).

¹²⁹ See Rothman, *supra* note ²³ (arguing that the college diploma has become the equivalent of what the high school diploma was for the previous generation).

¹³⁰ See Rothman, *supra* note ²³ (discussing the availability of federal funds that make it possible for just about any non-incarcerated person to be able to attend college).

¹³¹ See Rothman, *supra* note ²³ (comparing the difficulty of traditional students to find a job versus inmate students who must overcome a criminal record and a lesser degree of education to gain employment).

¹³² See Rothman, *supra* note²³(arguing for a “test group” of inmates to gauge the results of education on the recidivism rate).

¹³³ See Rothman, *supra* note ²³ (explaining which group of inmates should make up this “test group” and why).

favor and those opposed to this method of rehabilitation.¹³⁴ The money expenditure would not be as great since the inmates who are eligible are a small group and it would be the best method to see if educational rehabilitation works the way studies have said it does.¹³⁵ Additionally, if successful the implementation has tackled the group of whom re-offends most frequently, thus putting a significant dent in the United States' recidivism epidemic. The war against recidivism is currently being lost in this country, in order to fix the problem we must reflect as a country and see where we took a turn for the worse.

B. Past Decisions Derivative Of The Current Problem

In order to reconcile our current problem with the American Penal System, we must examine the decisions that got us to where we are today. The current problems with the American Penal System and the high rates of recidivism stem from the Crime Bill.¹³⁶ By the early 1990's, many

¹³⁴ See Rothman, *supra* note 23 (promulgating compromise between those for and against correctional education).

¹³⁵ See Rothman, *supra* note 23 (discussing the benefits of the compromise).

¹³⁶ See Zoukis, *supra* note 24 (discussing the adverse effects the 1994 Crime Bill had on prisoners and rehabilitation). Programs were cut and the educational opportunities given to inmates were extinguished. The strong statistical evidence that supported educational opportunities for inmates and the effect it had on reducing the recidivism rate was completely ignored by the implementation of the 1994 Crime Bill. The enactment of the Bill was a result of the reaction of a few horrific incidents that involved inmates who were released or on furlows (i.e. Willie Horton). The blame, however, should not be solely placed at the feet of the politicians who pushed for the bill but also the American public. The idea that prison life had become too "soft" was the driving force behind the Bill and returning to a modern day "corporal" punishment practice. Since the inception of a prison system in the United States, there always has been two ideologies; rehabilitative punishment and pure punishment. As one may correctly assume, the former is a more liberal ideology, where the latter is more conservative. For years Republicans and Democrats has debated over which method of punishment is most effective but it was not until 1994 that we see the two political parties push for the same method of incarceration. Political pressure and Democratic presidential candidate Michael Dukakis's fumbled debate against President George H.W. Bush, lead the Democratic Party to attack the incarceration issue differently. Democrats feared loosing votes and the presidency because the public viewed their stance on incarceration as too "soft," thus the 1992 presidential campaign produced a "tough on crime" slogan that branded this country until present times. *Id.*; See also Rothman, *supra* note 21 (explaining the conservative approach to the treatment of prisoners)

higher education institutions were offering Associate and Bachelor Degree courses in prisons.¹³⁷ Pell Grants and other federal monies were used to float the coast of these programs.¹³⁸ However, by 1994, all federal funding of these programs were cut and the educational opportunities given to inmates were extinguished.¹³⁹ Prior to the Crime Bill, the rehabilitative ideology was gaining support and better yet was producing results.¹⁴⁰ From 1971 until 1994, the American Prison System experienced a rush of federal funding that establishes educational programs; these

Supplanting the rehabilitation ideology has brought an emphasis on increased severity of punishment and longer prison terms (i.e. mandatory minimums), the reintroduction of capital punishment, and a booming prison population. The argument that prison life is too “soft” can no longer be made in 2015, twenty-one years has passed since the inception of the Crime Bill yet more prisons are still needed to keep up with the ever-growing prison population. The idea that fear of losing one’s liberty will deter anyone and everyone from breaking the law is a misguided concept. Yes, this fear likely makes a law-abiding citizen exactly that but we are not dealing with law-abiding citizens when discussing how to reduce the recidivism rate. To say that this “tough on crime” method has failed would be an understatement, if anything this conservative ideology has only grouped generally law-abiding citizens in with recidivists (i.e. mandatory minimums, sentencing, etc.) Rothman, *supra* note 21.

¹³⁷ See Zoukis, *supra* note 24 (noticing that education institutions were providing programs to inmates).

¹³⁸ See Zoukis, *supra* note 24 (explaining where the funds originated to fund these educational programs by outside educational institutions).

¹³⁹ See Zoukis, *supra* note 24 (finding all federal monies evaporated once the 1994 Crime Bill was passed).

¹⁴⁰ See Zoukis, *supra* note 24 (depicting prison education before the enactment of the 1994 Crime Bill) The 1971 Attica State Prison riot helped to sway public opinion that the concept of prison must be accompanied by rehabilitative programs. Educational opportunities assured the inmate-students who participated that they would not leave prison in a worse position than when they entered. Education produces opportunity, and when you have opportunity you have the ability to make a choice. Inmates today rarely have any opportunity when they leave prison and thus fall back into making the same choices they made that landed them in prison initially. This cycle is just as vicious as it is real, and the idea of “pure punishment” only perpetuates the cycle even more. Rehabilitative education is the key to putting an end to this cycle, and although many people may be against it, the overall result is beneficial to the law-abiding public; See also Brooks, *supra* note 26 (discussing the post-release challenges of an ex-convict). Problems such as lack of employment, family issues, and parole stipulations are challenges that stand in the way of an ex-convict re-assimilating into society. Now if a convict leaving prison and faced with the same problems, mentioned previously, was equipped with an education he would have the know-how to solve these problems without resorting to crime. Cognitive thinking skills that are improved when in an academic setting, coupled with a stronger chance of being employed gives the ex-convict reasonable choices to solve his post-release problems. Brooks, *supra* note 26.

programs consisted of all types of education from vocations to four-year Bachelor's degree programs.¹⁴¹ Rehabilitative education is the key to putting an end to a vicious recidivist cycle, and although people may be against it, the overall result is beneficial to the law-abiding public.¹⁴² The fact that is most debilitating to the opponent's argument is the cost of incarcerating an individual substantially outweighs the cost of educating a prisoner; this gives the rehabilitative method certifiable validity.¹⁴³ Despite statistical and economic validity, the rehabilitative incarceration method is still met with strong rebuke; many in society feel a free

¹⁴¹ See Zoukis, *supra* note 24 (explaining the higher education programs once available to inmates).

¹⁴² See Zoukis, *supra* note²⁴ (promulgating the idea that correctional education best serves society, even if there is some rebuke).

¹⁴³ See Zoukis, *supra* note 24 (comparing the amount of money that it takes to incarcerate versus educate) The Federal Government spends roughly \$52 billion on its penal system a year, yet recidivism rates continue to climb. Why not educate prisoners and cut that annual number down, effectively lowering the recidivism rate and freeing up money for a country that is in severe debt? *Id.*; See also Hall, *supra* note 27 (explaining the restrictions on rehabilitative prisoner education) Lack of funding, brought upon by the 1994 Crime Bill, and the overcrowding of prisons are the main restraints placed on rehabilitative prisoner education. If funding were to return to the way it was pre-Crime Bill, a major restraint would be extinguished. However, the population in our prison system today is larger than it was twenty-one years ago and thus would still pose a major restraint. Yet there is still \$52 billion of tax-payer money that is being used to support a system that produces poor results, this expenditure can be used in a much more effective way by returning funding to rehabilitative prisoner education programs. Educating prisoners is about one-tenth the cost of incarcerating them, making it the most cost effective method of preventing crime. The higher the level of education received by the inmate, the lower the rate of recidivism:

“For prisoners who attain an AA degree: 13.7% recidivism;

For prisoners who attain a Bachelor's degree: 5.6% recidivism;

For prisoners who attain a Master's degree: 0% recidivism!”

The statistics do not lie, and neither does the amount of money it takes to make this happen. Why should we continue to burn an exuberant amount of money when the results do not warrant it? This country could be spending one-tenth the amount of money and win the war against recidivism. This change in ideology would free up roughly \$30.1 billion in prison construction costs and produce functioning members of society who would gain employment and pay taxes. Hall, *supra* note 27.

education to those who broke the law is an injustice to the law-abiding public.¹⁴⁴ Many argue why should a law-breaker receive a free education when there are law-abiding families who struggle to put their children through college.¹⁴⁵ However, this argument is flawed because it is factually incorrect.¹⁴⁶ When Pell Grants or federally funded grants were given to inmate-students, no traditional students were ever denied Pell Grants because of prisoner participation.¹⁴⁷ Additionally, when the Pell Grants barred prisoner participation, no additional grants were awarded to traditional students.¹⁴⁸ Only one tenth of Pell Grant money funded prison education programs.¹⁴⁹ Thus, the argument that would seem to be the biggest combatant to the rehabilitative incarceration method is meritless.

C. Technology & Inmate Education

The advancements in technology revolutionized every aspect of the American culture and perhaps, most importantly, changed the education system as a whole. Use of technology in the prison education system is not a new concept, albeit technology we would consider “primitive” today.¹⁵⁰ Since funding for prisoner education was cut in 1994, rehabilitative education programs

¹⁴⁴ See Zoukis, *supra* note ²⁴ (discussing the rationale behind removing federal funding from prison education programs) Besides the idea that rehabilitative incarceration makes prison time too “soft,” an argument exists that when federal funding is being sent to prisoner education programs it is diverting money away from law-abiding students.

¹⁴⁵ See Zoukis, *supra* note ²⁴ (expressing the antagonist’s view on why a free education should not be given to law breakers).

¹⁴⁶ See Zoukis, *supra* note²⁴ (countering the antagonist’s argument with the availability of federal grants, or the lack thereof).

¹⁴⁷ See Zoukis, *supra* note ²⁴ (finding that traditional students were not denied federal monies when Pell Grants were awarded to inmate students).

¹⁴⁸ See Zoukis, *supra* note ²⁴ (explaining that once the grants for correctional education were extinguished, those monies were not transferred to student financial aid).

¹⁴⁹ See Zoukis, *supra* note ²⁴ (quantifying the percentage of Pell Grant money that actually went to inmate students).

¹⁵⁰ See Hall, *supra* note ²⁶(explaining the use of technology in prison education).

in prisons never received the benefit of the “new age” technology our generic classrooms enjoy currently.¹⁵¹ Technology such as DVD’s, closed circuit televisions, and Wide Area Networks have been seen in prison classrooms before.¹⁵² Technologies taken for granted today like computers have even existed in the most remote prisons.¹⁵³ However, when tax-payer money was being used to fund the purchase of something as basic as computers, the expense was astronomical because of its novelty at the time.¹⁵⁴ Today a computer can be purchased for as cheap as \$200.00 versus \$7,000.00 in 1991.¹⁵⁵ The most basic technologies cannot only assist in education but can be purchased for pennies on the dollar compared to over two decades ago.¹⁵⁶ An inmate sentenced to a ten-year sentence will be an expense of roughly \$600,000.00 to the state in which he is incarcerated and to the tax-payers of that state.¹⁵⁷ This \$600,000.00 prisoner has a 67.8% chance of returning within three years, and likely for a longer stay due to mandatory minimum sentencing.¹⁵⁸ The cost of this one prisoner, for his first stint in prison alone, could have purchased 3,000 HP laptop computers. Therefore not only is it cheaper to educate and rehabilitate inmates but it is now more cost effective to do so than in times passed.

¹⁵¹ See Hall, *supra* note 27 (quantifying the propensity for an inmate to return to prison after participating in a technology education program).

¹⁵² See Boren, *supra* note 26 (discussing prior technology that was available to prison classrooms).

¹⁵³ See Hall, *supra* note 26 (finding that technology has always had a presence in prison education).

¹⁵⁴ See Mann, *supra* note 73 (discussing why tax-payer money was spread so thin when tax money was used to promote the use of technology in prison education).

¹⁵⁵ See Mann, *supra* note 73 (comparing the price of a computer in 2015 to 1991).

¹⁵⁶ See Mann, *supra* note 73 (identifying the validity in Governor Cuomo’s argument on why it is cheaper to educate prisoners today).

¹⁵⁷ See Mann, *supra* note 73 (articulating the cost spent on one prisoner for one year is roughly \$60,000.00).

¹⁵⁸ See Dickinson, *supra* note 9 (quantifying the rate of recidivism in the first three years after release and the cost it has on the law-abiding public).

The world has become dominated by technology and not knowing how to use these devices is today's definition of illiteracy.¹⁵⁹ Programs such as the one's found in New Hampshire State Prison, which focuses on teaching inmates how to use today's technology, is one of the most effective programs combatting recidivism.¹⁶⁰ The recidivism rate for those inmates who have completed this program has been as low as 10.8%; numbers such as these cannot be ignored.¹⁶¹ The United States has implemented technology in classrooms for all age groups, it necessary to do the same in prison-classrooms.¹⁶² This note has discussed the obstacles faced by ex-convicts once released, but potentially the most difficult hurdle is adjusting to a world that changes daily.¹⁶³ Inmates who have been locked up for several years have no way of keeping up with the fast pace of this country nor can they keep up with the changes in technology that seemingly happen over night.¹⁶⁴ The benefit of the technology we have in 2015 could assist in educating inmates at a much higher rate than was ever imaginable twenty-one years ago.¹⁶⁵ Implementing the internet, computers, power point and things of that nature would enhance the classroom setting and give educators the opportunity to teach more inmates than ever before.¹⁶⁶ An education in communications technology; material processes technology; energy, power, and

¹⁵⁹ See Hall, *supra* note²⁷(arguing that “illiteracy” has taken on a new definition in the twenty-first century).

¹⁶⁰ See Hall, *supra* note ²⁷ (discussing the benefits of teaching inmate students the uses of technology).

¹⁶¹ See Hall, *supra* note ²⁷ (quantifying the success rate of technology programs in New State Prisons).

¹⁶² See Hall, *supra* note²⁷ (advocating for a universal overhaul of educational technology in all classrooms, including prison classrooms).

¹⁶³ See Rothman, *supra* note 23 (finding the universal difficulties faced by inmates attempting to re-assimilate into society).

¹⁶⁴ See Hall, *supra* note ²⁷ (explaining how the pace of technology plays a factor in ex-convict assimilation).

¹⁶⁵ See Hall, *supra* note²⁷ (promulgating the notion that educational technology never had a chance to reach its potential in the prison education system).

¹⁶⁶ See Boren, *supra* note ²⁶ (discussing “everyday” technologies society takes for granted that could positively impact a prison classroom).

transportation technology; and technology practicum would provide a niche education to inmates who must compete with the highly educated, non-offending public.¹⁶⁷

In 2015 it is hard to take a step without bumping into some type of technology, and this exact sentiment is another avenue that is being explored to fight recidivism.¹⁶⁸ Teaching inmates how to use and fix technology is a very logical avenue that would help an ex-convict assimilate back into society.¹⁶⁹ When a person feels alienated, the natural tendency is to seek out something or someone familiar; in this case an ex-convict who cannot find a job, cannot re-adjust into society, and cannot keep up with the pace of society will surely fall back into the familiar circumstances that landed him in prison initially.¹⁷⁰ Classes in web design, application training, operating systems courses, systems engineering, network security, and computer programming would provide an education in a field with high demand but low supply.¹⁷¹ With the pace in which technology changes, the skills learned from these types of classes would surely provide the inmate with a legitimate chance of securing gainful employment.¹⁷²

Although returning to the days before the Crime Bill is out of the question, we can still return to the amount of funding that was available then for prisoner education.¹⁷³ The amount of money spent to incarcerate a single individual is much more expensive than to educate one, and with

¹⁶⁷ See Hall, *supra* note 33 (arguing for an education in technological fields as it would provide inmates with a competitive edge in the search for employment).

¹⁶⁸ See Hall, *supra* note 26 (explaining that technology can be the vehicle as well as the subject of inmate learning).

¹⁶⁹ See Hall, *supra* note 26 (stating that an educational background in uses and forms of technology would assist an inmate in assimilating back into society successfully).

¹⁷⁰ See Hall, *supra* note 26 (observing the causes of pushing an inmate back into a life of crime).

¹⁷¹ See Hall, *supra* note 26 (contesting classes that teach technology use has the direct ability to get the inmate student a job post-release).

¹⁷² See Hall, *supra* note 26 (promulgating the benefit of teaching inmates skills that have practical applicability post-release).

¹⁷³ See Hall, *supra* note 28 (explaining the limiting effects on prisoner education due to lack of funding brought on due to the passing of the 1994 Crime Bill).

inmates returning to prison at such a high rate the only reasonable conclusion is to abandon a very broken, expensive methodology.¹⁷⁴ The idea behind incarceration should be rehabilitation and not solely punishment; in fact those inmates who participate in education programs while in prison are 43% less likely to return to prison.¹⁷⁵ Not only would this plan help inmates and better our society, it would have a net return to the taxpayers of \$13 per \$1 spent.¹⁷⁶ The long-term goal of reducing future crime rate and giving inmates the tools necessary to re-enter society successfully should be inseparable.¹⁷⁷

V. Conclusion

The results of a rehabilitative incarceration system are undeniable, however, we cannot revert back to the system that was in place pre-passing of the Crime Bill. Rehabilitating inmates through education is the cheaper and more effective avenue in the fight against recidivism. In 2015, the combination of technology and education can transcend prison education, just as it has transcended our everyday classroom education. If our views on incarceration as a nation do not change, then we as a society will pay the price not the inmates. The new rehabilitative education system for prisoners must resemble a classroom of the 21st century; the answer to how this is accomplished can be summed up in one word, technology.

¹⁷⁴ See Walsh, *supra* note²⁸ (stating that Washington spends roughly \$32,000 per year to incarcerate one individual).

¹⁷⁵ See Walsh, *supra* note²⁸ (measuring the success rate of prisoners who participate in educational programs and their propensity to return to prison after release).

¹⁷⁶ See Walsh, *supra* note²⁸ (examining the cost benefit analysis of providing adult basic education, post-secondary education, and vocational education programs to prisoners).

¹⁷⁷ See Walsh, *supra* note²⁸ (stating the cognitive tools necessary to combat recidivism)