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MYTHBUSTERS: PELL GRANT ELIGIBILITY FOR INCARCERATED STUDENTS

Between 1965 and 1994, Pell grant eligibility for incarcerated individuals made continuing education part of American prison life. In 1982, nine percent of the nation's incarcerated population was enrolled in post-secondary education programs.¹ Access to higher education allowed incarcerated students to learn, study, and prepare for a successful life after their sentence.

THE IMPORTANCE OF PRISON EDUCATION IS BASED ON FOUR CONCEPTS:

1. Prisoners have the capacity to become productive workers and engaged citizens;
2. In-prison education makes prisons safer and reduces risks for corrections staff and incarcerated men and women;
3. When incarcerated individuals are provided with education and training in prison, they become less likely to re-offend when they are released; and
4. The reduced recidivism translates into increased public safety and reduced corrections costs – the savings of which can be used toward effective strategies to reduce violent crime.

However, an amendment to the 1994 Violent Crime Control and Law Enforcement Act excluded all state and federal prisoners from access to the Pell grant program.² Subsequent enrollment in prison educational programming declined considerably, to the point where, in 1997, “it is estimated only eight college-in-prison programs” existed nationwide.³

For the past decade, criminal justice reform has been advancing on a bipartisan basis—both in the states and in Washington, D.C. The passage of the First Step Act was the culmination of efforts by leaders on both sides of the political aisle. Restoring Pell grant eligibility for incarcerated students is consistent with the goals of the First Step Act and the White House's efforts on criminal justice, and thus, is the next logical step in improving reentry policy.

Unfortunately, there are a number of myths about improving prisoner access to education through the Pell grant program. The purpose of this paper is to refute these myths with data and evidence showing the value of prison education.

¹ Gerard Robinson & Elizabeth English, *The Second Chance Pilot Program: A Historical Overview*, *The Second Chance Pilot Program: A Historical Overview*, American Enterprise Institute (September 2017), <http://www.aei.org/publication/the-second-chance-pell-pilot-program-a-historical-overview/>.

² Robinson, *supra* note 1.

³ Max Kremer, *The Long History of College-in-Prison*, in *EDUCATION FOR LIBERATION: THE POLITICS OF PROMISE AND REFORM INSIDE AND BEYOND AMERICA'S PRISONS* 19, (Gerard Robinson & Elizabeth English eds., Rowan & Littlefield, 2019).

1. MYTH: Pell grants for incarcerated students comes at the expense of law abiding, low-income students.

The bottom line is that the honest and hard-working students are being elbowed out of the way by “the criminals.”

REALITY: This claim misunderstands the very structure of Pell grant financing. The Pell grant program is not a zero-sum game.

Just because one American receives assistance doesn't mean that opportunities shrink for others.

“[B]y law, all eligible students who apply for Pell grants receive them.”⁴ A 2018 Congressional Research Service report notes that the amount or availability of a Pell grant bears no relationship to the number of applicants, but instead is based on the “total maximum Pell grant minus the student's [Expected Family Contribution]; or the Cost of Attendance minus the student's [Expected Family Contribution].”⁵

Additionally, the Pell grant program is funded primarily through discretionary funds. If the discretionary appropriation does not match the applicant need, the program carries a shortfall but if the discretionary appropriation is too large, the program carries a surplus the following year. Since FY2012, the program has maintained a surplus, which has variably been used to increase Pell Grant awards, expand eligibility, fund other programs, etc.⁶ The projected FY2020 surplus is nearly \$8 billion.⁷

2. MYTH: Pell grants will incentivize people to commit crimes as a way to get free educational assistance: Pell grant access creates incentives for law-breaking.

In a 1991 speech, the Governor of Massachusetts exclaimed that policymakers had to stop “giving a free college education to prison inmates, or else the people who cannot afford to go to college are going to start committing crimes so they can get sent to prison to get a free education!”⁸ A Republican Senator similarly warned how clever law-breakers recognized Pell grants as “a great scam: rob a store, go to jail, and get your degree.”⁹

REALITY: Qualification for Pell grants is based on financial need. Committing a crime and going to prison does not put the individual in any better position to obtain educational assistance than never having committed a crime in the first place.

Additionally, it is common knowledge that anyone with a criminal record faces extraordinary barriers to meaningful employment.¹⁰ Indeed, “the employment rate for formerly incarcerated people is nearly five times higher than the unemployment rate for the general United States population, and substantially higher than even the worst years of the Great Depression.”¹¹ The idea that people would be willing to forgo their freedom and be saddled with the lifetime disadvantages associated with having a criminal record makes no sense. The advantages of having college course work are far outweighed by the difficulties—indeed, often impossibilities, due to occupational licensing requirements—of having a criminal record. Even if we accepted the myth that people are incentivized to commit a crime to get “free education,” they will still be at a significant disadvantage in the workforce as a result of their criminal record.

4 140 Cong. Rec. H2546 (1994).

5 Cassandra Dortch, *Federal Pell Grant Program of the Higher Education Act: Primer*, Congressional Research Service (November 2018), <https://fas.org/sgp/crs/misc/R45418.pdf>.

6 CBO, *Pell Grant Program, Discretionary and Mandatory Program Costs: CBO's May 2019 Baseline*, Congressional Budget Office (May 2019), <https://www.cbo.gov/system/files/2019-05/51304-2019-05-pellgrant.pdf>.

7 *Id.*

8 Joshua Page, *Eliminating the Enemy: The Import of Denying Prisoners Access to Higher Education in Clinton's America*, 6 *Punishment and Society* 357, 358 (2004), <http://www.educationjustice.net/home/wp-content/uploads/2012/09/Joshua-Page-Punishment-Society-2004-Page-357-78.pdf>.

9 *Id.*

10 Amanda Agan and Sonya B. Starr, *The Effect of Criminal Records on Access to Employment*, 107 *American Economic Review: Papers and Proceedings* 560 (2017), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2892&context=articles> (Those with criminal records are 60% less likely to get a call-back after applying for employment).

11 Lucius Couloute and Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Policy Initiative (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

3. MYTH: Higher education classes in prison is not a proven policy for improving public safety or reducing recidivism.

Pell grants for prisoners fails any sort of cost-benefit test. “Just because one blind hog may occasionally find an acorn does not mean many other blind hogs will. The same principle applies to giving Federal Pell grants to prisoners. Certainly, there is an occasional success story, but when virtually every prisoner in America is eligible for Pell grants, national priorities and taxpayers lose.”¹²

REALITY: An exhaustive 2018 RAND study found that participants in correctional education had 48 percent lower odds of recidivating.¹³

RAND also found that every \$1 spent on correctional education provides \$5 in savings on reincarceration costs—resources better used for law enforcement, drug treatment and prevention, and effective public safety measures.¹⁴ Research in North Carolina, Texas, Indiana, and Texas prisons documents increased positive post-release outcomes for participants in postsecondary coursework.¹⁵ The completion of a college degree remains one of the best predictors of successful reentry. According to a 2016 United States Sentencing Commission report of 25,431 people who left federal prison in 2005, only 19.1% of those with a college degree would recidivate—a stark contrast to individuals with only a high school degree (50.7%) or less (60.4%).¹⁶ In other words, declining to invest in higher education in prison is essentially a nod to the status quo for crime and victimization, whereas restoring Pell grant eligibility is an opportunity to get tough on rehabilitation and increase public safety.

In fact, participants in the 1994 debate—specifically those with direct knowledge of prison culture—recognized the value of Pell grant access for public safety. At that time, the American Correctional Association, the Association of State Correctional Administrators, and the North American Association of Wardens and Superintendents came out with a public letter opposing Pell grant exclusion. For these corrections experts, postsecondary education in prison ensured “that many released offenders are returned to the community with knowledge, skills, and abilities that will enable them to obtain employment. Moreover, the impact of providing educational opportunities under the authority of the Pell grants enhances the capacity of corrections officials to manage the complex needs of a changing prison population.”¹⁷

Meanwhile, more than 60 Second Chance Pell Pilot Sites, established in 2015 and supported by the Department of Education during the Obama and Trump administrations, already prove how the number of talented incarcerated students is far more than a “few acorns.”¹⁸ In the past three years, 954 credentials have been awarded at Second Chance Pell sites, with 578 students graduating from certification, associates, and bachelors programs.¹⁹ Over 200 colleges and universities applied to participate in the Second Chance Pell Pilot Program—a clear sign that American higher education institutions recognize, and are eager to cultivate, the academic talent of students in prison.

12 140 Cong. Rec. H2546 (1994).

13 Robert Bozick, et al., *Does Providing Inmates with Education Improve Postrelease Outcomes?: A Meta-Analysis of Correctional Education Programs in the United States*, RAND Corporation (July 2018), https://www.rand.org/pubs/external_publications/EP67650.html.

14 Lois M. Davis, et al., *Correction Education in the United States: How Effective is It, and How Can We Move the Field Forward?*, RAND Corporation (2014), https://www.rand.org/pubs/research_briefs/RB9763.html.

15 Hayne Yoon, *Back to School: A Common-Sense Strategy to Reduce Recidivism*, Vera Institute of Justice (September 2019), <https://www.vera.org/blog/back-to-school-a-common-sense-strategy-to-lower-recidivism>; Laura Winterfield, et. al, *The Effects of Postsecondary Correctional Education*, Urban Institute (May 2009), <https://www.urban.org/sites/default/files/publication/30626/411954-The-Effects-of-Postsecondary-Correctional-Education.PDF>; Jesse Kelly, *Postsecondary Education in North Carolina: An Overview*, R Street Institute (May 2019), <https://www.rstreet.org/wp-content/uploads/2019/05/Final-Short-No.-71.pdf>.

16 USSC, *Recidivism Among Federal Offenders: A Comprehensive Overview*, The United States Sentencing Commission (March 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

17 140 Cong. Rec. H2546 (1994).

18 Robinson, *supra* note 1.

19 Department of Education, *Secretary DeVos Builds on 'Rethink Higher Education' Agenda, Expands Opportunities for Students Through Innovative Experimental Sites*, U.S. Department of Education (May 2019), <https://www.ed.gov/news/press-releases/secretary-devos-builds-rethink-higher-education-agenda-expands-opportunities-students-through-innovative-experimental-sites>.

4. MYTH: College-in-prison is a laudable goal, but it should solely be a prerogative of state governments.

Prison education is a state issue.

REALITY: The federal government already provides financial assistance to students.

If grants for education were strictly the responsibility of state governments rather than the federal Department of Education, then Congress should do away with the Pell grant program altogether. But since it is going to support higher education opportunities, there is no reason to arbitrarily exclude opportunities for those behind bars while continuing to subsidize others.

Additionally, Congress is charged with ensuring constructive, rehabilitative programming in the federal prison system, which houses roughly 180,000 prisoners and is larger than any state system.²⁰

Further, history documents how higher education in state prisons remains vulnerable absent federal investment. In the single year following the 1994 crime bill, enrollment in educational programs in prison declined by 40 percent.²¹ State support for correctional education often finds itself vulnerable to drastic cuts in tough economic climates. Following the Great Recession, Texas and California reduced their correctional education spending by 27 and 30 percent, respectively; Oklahoma had to lay off 1/3 of its correctional education staff.²² Thirty-three states place restrictions on state financial aid eligibility for people in prison. In some cases, this is because state funds follow Pell eligibility requirements; therefore, Pell restoration would arguably promote greater state investment in this space.²³ Congress can play a critical, but not exclusive, role in ensuring higher education is within reach for students incarcerated in state institutions.

5. MYTH: Restoring Pell grant eligibility for prisoners will exercise substantial financial costs on the federal taxpayer.

Pell grant access for the incarcerated is a serious burden on taxpayers.

REALITY: The data does not support this contention. In reality, Pell grant access to the incarcerated never exerted a serious constraint on Department of Education spending. During the 1993-1994 academic year, less than 1% of Pell grant funding went to incarcerated students.²⁴

Even if every Pell-eligible state prisoner pursued and received a grant—a highly improbable outcome—they would make up less than 6.5% of the total number of recipients.²⁵ Moreover, the projected fiscal gains from greater post release employment, reduced public assistance, and reduced recidivism costs make Pell grant restoration an obvious win for taxpayers.²⁶ A study from the Vera Institute predicts Pell restoration would yield over \$365.8 million annually in savings from reducing recidivism and reincarceration costs for state corrections budgets.²⁷

Restoring Pell grant access does not make college education automatically available to all prisoners. The adjustment would not mandate federal or state correctional institutions to provide postsecondary education. College and universities would be able to set academic and behavioral criteria for enrollment, and prisons could make participation

20 Danielle Kaeble and Mary Cowhig, *Corrections Populations in the United States, 2016*, Bureau of Justice Statistics Bulletin (April 2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.

21 Kremer, *supra* note 3 at 19.

22 Lois Davis, et. al, *Evaluating the Effectiveness of Correctional Education*, RAND Corporation (2013), https://www.rand.org/pubs/research_reports/RR266.html.

23 Lauren Hobby, et al., *A Piece of the Puzzle: State Financial Aid for Incarcerated Students*, Vera Institute (July 2019), <https://www.vera.org/downloads/publications/a-piece-of-the-puzzle.pdf>.

24 Robinson, *supra* note 1.

25 Patrick Oakford, et. al, *Investing in Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison*, Vera Institute of Justice (January 2019) <https://www.vera.org/publications/investing-in-futures-education-in-prison>.

26 Oakford, *supra* note 24 at 21-37.

27 Oakford, *supra* note 26, at 3.

in higher education contingent on continued, responsible conduct during sentences. These and other factors —such as limitations in facility spacing and staff, the financial challenges of developing a higher education program in prison even with Pell dollars, and the need to prioritize other rehabilitative programs like cognitive behavioral therapy and drug treatment—will lead to a substantial difference between the number of eligible prisoners and the number of actual incarcerated students receiving Pell Grants.²⁸ These variables explain why—even with Pell eligibility—only two percent of incarcerated individuals received Pell funding in the 1993-1994 academic year.²⁹

6. MYTH: Why should taxpayers have to foot the tuition bill for people who caused significant harm in their communities? Federal educational assistance for those in prison is unfair to those who don't break the law.

During the 1994 debate, one Senator argued that prisoner access to Pell was simply not “fair to law-abiding citizens [or] the victims of crime.”³⁰

REALITY: Accountability for crime should not only involve completing a sentence, but also making amends to the victims, families, and communities harmed by crime. Higher educational opportunities give prisoners the skills and human capital to do just that.

They also help ensure that people who are released are less likely to victimize more people in the future. Policymakers must reject a false choice between accountability for crime and a constructive prison culture that prepares incarcerated men and women for life after crime.

In fact, victims of crime support rehabilitative programs in prison. According to an Alliance for Safety and Justice survey of crime victims, respondents by a 2:1 margin want to see a greater focus on rehabilitation in the criminal justice system, including majorities of both independent and Republican respondents.³¹

People of good faith often have legitimate arguments about the appropriate and just length of prison terms based on offense type. But we should bear in mind that Pell grant restoration does not change when a prisoner completes their sentence, but what kind of person they will be upon their return. Ninety-five percent of prisoners will one day return to our neighborhoods and communities.³² The question for policymakers is whether we want them prepared to re-enter society as good, law-abiding citizens, so they can find a meaningful job and stay crime-free. Increasing access to education for those in prison does just that—and therefore should be supported by all who desire safe streets and fewer victims. To categorically rule out a prisoner for access to a valuable tool for successful reentry based on conviction type would undermine public safety, leading to higher than necessary recidivism and the substantial costs associated with it.

There is a strong case for expanding Pell grant access to prisoners sentenced to life without parole, even if the arguments concerning recidivism reduction are not guaranteed. For one, eligibility for parole can fluctuate—the trend in many states is to expand eligibility. Individuals with a life sentence without parole eligibility comprise roughly 3.5% of the nation's prison population.³³ Thus, the cost of making such men and women eligible for Pell Grants will not be a significant financial burden. Moreover, prisoners with a life sentence play a crucial role in determining, for better

28 Lois Davis, Higher Education in Prison: What We Know Now and What We Should Focus On Going Forward, RAND Corporation (August 2019), <https://www.rand.org/pubs/perspectives/PE342.html>, 3-4, 7.

29 Government Accountability Office, Pell Grants for Prison Inmates (August 1994), <https://www.gao.gov/assets/90/84012.pdf>.

30 Page, supra note 8 at 366.

31 Alliance for Safety & Justice, Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice, Alliance for Safety & Justice (2016), <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

32 Council of State Governments Justice Center, *NRRC Facts and Trends*, https://csgjusticecenter.org/nrrc/facts-and-trends/#_ftn4.

33. Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, The Sentencing Project (May 2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.

or worse, the culture of prisons. Opportunities for higher education can allow these individuals to pursue avenues of leadership and redemption even in the confines of prison walls, with positive effects on their peers who will return to society one day.³⁴ Additionally, program exclusion for this population would not serve the safety and well-being of wardens and corrections officers; research documents that access to educational opportunities actually reduces rates of violence and misconduct during incarceration.³⁵

A growing bipartisan political coalition and a wide range of constituencies—from victims of crime and law enforcement to correctional officials and communities of faith—understand why correctional programming is an imperative of justice and public safety.

³⁴ Arthur Kelley & Jesse Kelley, Op-Ed, Why 'Lifers' Need Access to Postsecondary Correctional Education, Wash. Examiner, April 26, 2019, <https://www.washingtonexaminer.com/opinion/why-lifers-need-access-to-postsecondary-correctional-education>.

³⁵ Laura Winterfield, et. al, The Effects of Postsecondary Correctional Education, Urban Institute (May 2009), <https://www.urban.org/sites/default/files/publication/30626/411954-The-Effects-of-Postsecondary-Correctional-Education.PDF>; Amanda Pompoco et. al, Reducing Inmate Misconduct and Prison Returns with Facility Education Programs, Criminology and Public Policy (May 2017), <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12290>.