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## Teaching a Prisoner to Fish: Getting Tough on Crime by Preparing Prisoners to Reenter Society

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Beth A. Colgan<sup>1</sup>

*What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each day's shift . . . We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all.*<sup>2</sup>

Over the past two decades, criminal justice policy in the United States has been shaped by the public's appeal to officials to get tough on crime. The conditions under which individuals convicted of crimes are kept provided an easy target. Prisons that offered programming activities such as education and job training were seen as coddling prisoners.<sup>3</sup> Such opportunities, which were often unavailable to segments of the general public, were seen as too costly to impart to those being punished for criminal activity. In response to this perception, Congress and state legislatures slashed prison budgets, and prison programming was in large part abandoned.<sup>4</sup>

Those cuts, along with legislation increasing sentencing periods, have led to skyrocketing prison populations and increased recidivism rates.<sup>5</sup> Currently, over 13.5 million people are incarcerated in the United States annually, which represents an expansion of over a half million people between 1994 and 2004 alone.<sup>6</sup> If changes are not made, America's prison population is projected to rise so that almost eight million people will be incarcerated by 2010.<sup>7</sup> Almost all of those prisoners—from 95 to 97 percent—will eventually be returned to society.<sup>8</sup> Whether those men and women will reenter society with the skills to avoid re-offending depends

largely on how public officials and society at large respond to the lessons of the last two decades. This realization has led to a unique alliance in which governmental officials and corrections administrators are joining prisoners' advocates in understanding that providing programming and treatment to prisoners to bolster rehabilitation is not only just, but also a cost-effective way to reduce crime and improve public safety. Put simply, reforming prisoner reentry systems is in the best interest of the public.

This article investigates the relationship between education, training, and treatment in Washington State prisons and recidivism rates.<sup>9</sup> In Part I, the article details why Washington warrants attention. While lower than national rates, Washington's increased incarceration and recidivism rates parallel trends throughout the nation. Further, recent legislation and reform efforts have set the stage for Washington to provide a template for much needed prison reform on a national basis. Part II presents arguments for a return to meaningful prison programs and treatments as a means of reducing recidivism by focusing on the areas of educational and vocational training and chemical dependency and mental health treatment.<sup>10</sup> Finally, Part III presents policy recommendations that would benefit all of Washington's citizens by returning the state's criminal justice system to one that balances punishment with rehabilitation.<sup>11</sup>

## I. THE WASHINGTON EXPERIENCE

### A. *Characteristics of Washington's Prison Population*

Over the past two decades, Washington's prison population has outpaced the growth of the state's adult population.<sup>12</sup> Between 1930 and 1980, Washington's prison population remained relatively stable.<sup>13</sup> Those rates began to rise dramatically in the early 1990s, with an increase of almost 59 percent between 1993 and 2003 alone.<sup>14</sup> Currently, Washington prisons and work release facilities house approximately seventeen thousand prisoners.<sup>15</sup>

The prisoner population is expected to continue to increase to over twenty-one thousand prisoners by 2015.<sup>16</sup>

While the cause of this dramatic upsurge in prison populations is likely related to an array of societal issues, including upward sentencing trends,<sup>17</sup> there is a growing consensus on the state and national level that increased recidivism rates—a major factor in prison population growth as a whole—are directly correlated to the failure to prepare prisoners to reenter society during periods of incarceration.<sup>18</sup>

*B. Societal Costs*

Relevant research supports this consensus and bears out that the increase in the number of prisoners is due in significant part to the return of former prisoners to the system; recidivism rates in Washington have been consistently increasing, regardless of the nature of offense.<sup>19</sup> By 2006, 37.6 percent of Washington's prison admissions were former prisoners readmitted to serve out new sentences.<sup>20</sup> A fifteen-state study of prisoners, released in 1994, shows how critical recidivism rates are to public safety; within three years of release, 67.5 percent of prisoners released were rearrested, and those individuals committed "an average of four new crimes each," of which:

over 100,000 were new charges for a violent crime, including 2,900 new homicides, 2,400 new kidnappings, 2,400 rapes, 3,200 other sexual assaults, 21,200 robberies, 54,600 assaults, and nearly 13,900 other violent crimes . . . . During the 3-year follow-up period, the released prisoners had new arrest charges for 40,300 burglaries and about 16,000 thefts of motor vehicles. They also had 79,400 new charges for drug possession, 46,200 new charges for drug trafficking, about 26,000 new charges for a weapons offense (such as illegal possession of a firearm), and approximately 5,800 new charges for driving while under the influence of drugs or alcohol.<sup>21</sup>

Further, the nature of offenses subsequent to release can increase in severity, with recidivists moving from non-violent to violent offenses.<sup>22</sup> These new crimes create an enormous fiscal burden for taxpayers by consuming public funds to investigate, prosecute, defend, and incarcerate the recidivists.<sup>23</sup> Additionally, the failure to curb recidivism results in the creation of new crime victims who bear significant direct costs as well as incalculable emotional costs.<sup>24</sup>

Just as there are immeasurable emotional costs to crime victims, there are also broad societal costs that are similarly difficult to measure. The effects of incarceration on the American family can be crippling. In the United States, 1.5 million children have a parent who is incarcerated.<sup>25</sup> “Nearly 60% of parents in State prison reported using drugs in the month before their offense, and 25% reported a history of alcohol dependence. About 14% of parents reported a mental illness, and 70% did not have a high school diploma.”<sup>26</sup> If these parents are unable to obtain meaningful programming and treatment—either before entering prison or once incarcerated—the cycle of institutionalization in some families may continue for generations.<sup>27</sup> It is estimated that “[c]hildren whose parents are incarcerated are five to six times more likely to be incarcerated than their peers.”<sup>28</sup> The effect of incarceration and re-incarceration is particularly great for Washington’s minority communities where incarceration rates are far greater than representation in the general population.<sup>29</sup> In addition, failing to stop recidivism in these families can result in significant secondary costs, including an increased burden on the foster care system.<sup>30</sup>

Under these circumstances, taking steps to curb recidivism rates may be money well spent, regardless of cost. Fortunately, as described in further detail below, providing meaningful training and treatment to prisoners is a *cost effective* means of crime control. As such, there is now a growing recognition that the treatment of prisoners must focus on rehabilitation, as opposed to mere punishment.<sup>31</sup> For example, there has been bipartisan support on the federal level—including encouragement from President

George W. Bush in his 2004 State of the Union address—to reform prisoner reentry systems.<sup>32</sup>

*C. Reform Efforts in Washington*

Washington is responding to this growing trend that urges rehabilitation, as opposed to punishment alone. Washington's Legislature took an important step toward instituting such reforms in passing Senate Bill 6308 (SSB 6308), which was signed into law in the spring of 2006.<sup>33</sup> The legislation created a joint legislative task force “to review offender programs, sentencing, and supervision of the offenders upon reentry into the community, with the stated goal of increasing public safety, maximizing rehabilitation of the offenders, and lowering recidivism.”<sup>34</sup> Throughout the summer and fall of 2006, Washington legislators, Department of Corrections (DOC) personnel,<sup>35</sup> prisoners' rights advocates, and interested citizens met to study and make recommendations for reforms. This endeavor included analyses of a broad array of issues, including treatment and programming in prisons and the community at large, barriers in obtaining housing, prisoner debt loads, and other impediments to full reintegration of former prisoners into society.<sup>36</sup> The task force then prepared a report to Washington's governor and full legislature; at the time of publishing, it was anticipated that several pieces of legislation would move forward as early as Washington's 2007 legislative session.<sup>37</sup> Washington's attention to prisoner reentry reform is well-founded. As detailed below, providing meaningful programming opportunities and treatment to prisoners has a significant effect on their ability to succeed upon release.

II. THE NEED FOR MEANINGFUL PROGRAMMING AND TREATMENT IN WASHINGTON'S PRISONS

Despite recent trends, it is possible to curb crime by reducing recidivism rates. Recent studies, a number of which were meta-analyzed by the

Washington State Institute of Public Policy, prove that providing meaningful programming and treatment to prisoners is not coddling them, but rather preparing those men and women to successfully transition back into society upon release.<sup>38</sup>

#### *A. Educational and Vocational Opportunities*

Alarming high numbers of prisoners have minimal educational and vocational training or work experience, which creates enormous barriers to finding legitimate employment upon release. Providing education and training during incarceration is, therefore, essential, as it is proven to reduce the risk of future criminal activity.

#### **1. Education and Training**

Prisoners—who are less likely to have completed high school or obtained a General Equivalency Diploma (GED) than the general population—typically enter prison with an educational disadvantage.<sup>39</sup> In fact, there is a direct correlation between a lack of education and the probability of incarceration. Of state prisoners throughout the United States, an estimated 40 percent have not received either a high school diploma or a GED.<sup>40</sup> Leaving prison with that same deficiency has been linked to increased rates of recidivism. In contrast, where educational services are made available to prisoners, recidivism is dramatically reduced.<sup>41</sup> In fact, providing adult basic education programs has been found to reduce recidivism by 5.1 percent.<sup>42</sup> Vocational education programs result in a 9.0 percent decline in recidivism.<sup>43</sup> Perhaps the most startling finding is that “post-secondary education can cut recidivism rates by nearly half.”<sup>44</sup>

Washington prisons have some structures in place to provide a basis for educational programming. For example, upon admission, counselors assess the educational and vocational needs of Washington prisoners based upon the prisoner’s educational history, release date, vocational skill level, prior work experience, and prior participation in relevant programs.<sup>45</sup> Counselors

then place prisoners in available programming, which includes adult basic education, GED preparation, English as a second language classes, vocational skills training, transition programs and services, and post-secondary education.<sup>46</sup> In Washington, the availability of programs can vary significantly from facility to facility.<sup>47</sup>

Unfortunately, the available funding for correctional educational services in Washington has been in sharp decline.<sup>48</sup> For example, between 1995 and 2006 the DOC prison population has risen 79.5 percent, while at the same time DOC education funding to the community college system, when adjusted for inflation, has decreased by 10.4 percent.<sup>49</sup> These cuts are exacerbated by significant cuts in federal funding which had previously made access to post-secondary education much more probable.<sup>50</sup> The lack of funding combined with the effects of legislation enacted in 1995, and the DOC interpretation thereof, have created numerous barriers to the actual attainment of education and vocational training in Washington's prisons.

Given the great need for even basic educational skills and the lack of available funding, there may not be enough space for those prisoners who qualify for and wish to pursue an education. Those circumstances have forced the creation of a priority system.<sup>51</sup> Prisoners under the age of twenty-two who have no high school diploma and have not obtained a GED are given first priority for adult basic education classes.<sup>52</sup> Prisoners over the age of twenty-two who test below a ninth-grade level are given second priority; those who test above a ninth-grade level are evaluated on a case-by-case basis.<sup>53</sup> Third priority is granted to prisoners aged twenty-two or over who have a high school diploma or GED but test below a ninth-grade level.<sup>54</sup> If the number of people in the prison population in need of adult basic educational services exceeds capacity, prisoners are excluded on the basis of this priority system.<sup>55</sup>

Limits are also built into Washington's vocational training and post-secondary education systems, due in large part to the requirements legislated in 1995's House Bill 2010 (codified as Washington's Correction



Reform Act of 1995) and the DOC's interpretation of that legislation.<sup>56</sup> One significant obstacle is the requirement that prisoners pay for most educational and vocational training beyond adult basic education. Prisoner wages in Washington range from \$0.35 to \$1.10 per hour.<sup>57</sup> Assuming a prisoner is able to obtain correctional employment, any wages he or she earns may be subject to a number of deductions.<sup>58</sup> The prisoner is also required to pay for basic hygiene supplies, postage, and medical care.<sup>59</sup> The requirement that prisoners must pay for educational or vocational training may put such programming out of reach for many prisoners.

Although the first vocational program a prisoner completes is free of charge,<sup>60</sup> prisoners must pay for any additional vocational programming, even where the prisoner is required to participate in such programming as part of his or her programming plan. If the subsequent vocational program is associated with the prisoner's correctional employment, the required payment is determined by reference to a sliding scale and is based on the prisoner's ability to pay.<sup>61</sup> The ability of a prisoner to pay is based upon the prisoner's monthly income and balance of funds in the prisoner's account.<sup>62</sup> The sliding scale requires payments by prisoners between 5 and 100 percent of the costs of each course.<sup>63</sup> If the program is not related to the prisoner's correctional employment, he or she must pay all costs for the course.<sup>64</sup> Charges for post-secondary education are calculated in the same manner.<sup>65</sup> The DOC blocks prisoners from participating in any of these programs unless payment in full can be made in advance.<sup>66</sup> Washington's Correction Reform Act allows for enrollment in vocational or post-secondary education programs by correspondence without the requirement that the programs relate to the prisoner's correctional employment.<sup>67</sup> However, the DOC's correspondence program policies restrict any correspondence courses that do not relate to a prisoner's correctional program or a placement decision by a counselor.<sup>68</sup> The byzantine nature of these requirements is highlighted in the following hypotheticals.

Prisoner A is employed as a metal shop worker. He has taken one vocational training course in welding. Prisoner A would like to continue to improve his welding skills by taking a second welding course. Although the course relates to his correctional employment, he is required to pay for at least a portion of the class, and that entire payment must be made in advance. He must choose to make that payment in lieu of other items—including basic hygiene and medical care—all of which are deducted from the funds in his account. He may also be required to forgo his income during the term of the welding course. If Prisoner A determines that he cannot meet the sliding scale requirement for advance payment, he is precluded from taking the course irrespective of whether it improves the productivity and skill levels brought to his current employment or improves his chance for post-release employment.

Prisoner B also works in the metal shop and has taken one vocational course. Prisoner B would like to earn a certificate in drafting in order to improve the breadth of her experience and, therefore, her likelihood of obtaining employment upon release. Because a drafting credential is not related to her current correctional employment, Prisoner B is required to pay for the class in advance in the entirety. Of course, Prisoner B must make the same choice between basic necessities and furthering her education as did Prisoner A. If a drafting class is offered in her facility, Prisoner B may take the course there; however, if the course is full (or is not offered at her facility), Prisoner B may only take drafting as a correspondence course. She is precluded from doing so unless her counselor agrees to placement in the course. If the counselor refuses to adjust Prisoner B's placement plan, she is forbidden from taking the course, even if she is able to pay in full.

## **2. Correctional Industries**

The drift away from accessible educational and vocational programming was further exacerbated in 2004 when a significant portion of Washington's correctional industries programs, which provided job training and

employment to prisoners,<sup>69</sup> was found to be unconstitutional. In *Washington Water Jet Workers Association v. Yarborough*, the Washington Supreme Court held that contracts between the DOC and private companies for the employment of prisoners—known as Class I Industries—violated the Washington Constitution.<sup>70</sup> The relevant article states that “the labor of convicts of this state shall not be let out by contract to any person, copartnership, company or corporation . . . .”<sup>71</sup> As a result, the approximately three hundred prisoners who were employed by private companies through the Class I correctional industries program were left without employment.<sup>72</sup> This made a significant difference in prisoners’ ability to pay for personal items, family support payments, and educational and vocational training; as Class I employees, the prisoners were paid wages comparable to those paid to the general public, whereas other correctional employment yields wages between \$0.35 and \$1.10 per hour.<sup>73</sup> The loss of Class I industries also resulted in a significant decline in funds which otherwise would have been deducted from prisoner accounts, including over \$600,000 in wage deductions for the cost of incarceration and over \$150,000 in wage deductions for crime victim benefits in 2004 alone.<sup>74</sup>

Although a major setback for the vocational programming did exist, in its opinion, the court took pains to stress the value of prisoner employment programs<sup>75</sup> and to emphasize that its holding applied only to private employment and not correctional industries through which prisoners were employed by the State.<sup>76</sup> The primary form of correctional industry employment remaining in Washington post-*Yarborough* are Class II, or tax reduction industries, which provide goods and services for governmental and nonprofit agencies.<sup>77</sup> Unfortunately, there are not enough jobs for Washington’s seventeen thousand prisoners; currently, “[t]here are 34 businesses operating at 12 sites with 1,400 offenders.”<sup>78</sup> The growth of Class II industries, and investigation into the feasibility of other correctional

industries programs, is essential, as evidence shows that participation in correctional industries results in a 5.9 percent decrease in recidivism.<sup>79</sup>

### **3. Work Release**

At the time of publication, the DOC maintained fifteen work release facilities.<sup>80</sup> Prisoners who request transfer to a work release facility must be referred by a classification committee, and the transfer must be approved by the DOC secretary based upon “the prisoner’s conduct, attitude and behavior within” prison and his or her criminal history.<sup>81</sup> Work release facilities allow prisoners to engage in full-time or part-time employment and vocational training programs,<sup>82</sup> and help to secure services to support their return to the community.<sup>83</sup> While housed in work release facilities, any income earned by prisoners is collected into a DOC maintained account, from which deductions are made for the prisoner’s room and board, as well as other debts including outstanding legal financial obligations and debts for medical care while incarcerated.<sup>84</sup> Work release programs ultimately result in a 4.3 percent reduction in recidivism rates.<sup>85</sup>

#### *B. Chemical Dependency and Mental Health Treatment*

Washington’s legislature has determined that “[p]ersons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders are disproportionately more likely to be confined in a correctional institution, become homeless, become involved with child protective services or involved in a dependency proceeding, or lose those state and federal benefits to which they may be entitled as a result of their disorders.”<sup>86</sup> This finding is of great import given the prevalence of chemical dependency and mental health disorders. About one in thirteen adults from the ages of eighteen to fifty-four in the United States has a clinically significant alcohol or drug disorder.<sup>87</sup> One in twenty-six adults is seriously mentally ill.<sup>88</sup> In light of these statistics, an increase in

accessibility to chemical dependency and mental health treatment in prisons should be a paramount concern.

### **1. Chemical Dependency**

The interrelation between substance abuse and criminal activity is well-recognized.<sup>89</sup> Nationally, at least 30 percent of convicted persons report they used illegal drugs at the time of their offense.<sup>90</sup> Bookings from Washington's largest metropolitan areas indicate that Washington may surpass national rates. In 1999, 59 to 66.3 percent of Spokane arrestees and 63.3 to 71.5 percent of Seattle arrestees tested positive for at least one drug.<sup>91</sup> Approximately 55 percent of prisoners nationwide reported use of drugs within one month of their offense,<sup>92</sup> at least 80 percent reported some past illicit drug use,<sup>93</sup> and almost two-thirds reported regular drug use.<sup>94</sup> Arrests for drug offenses have also risen dramatically in the past two decades.<sup>95</sup> But chemical dependency is not linked exclusively to convictions for crimes related to the use or distribution of drugs. When all crimes are considered, one in every six crimes was committed in order to obtain money for drugs.<sup>96</sup>

Not surprisingly, prison populations are saturated with chemically dependent inmates. In Washington, 75 to 85 percent of all prisoners—upwards of thirteen thousand people—have chemical dependency problems.<sup>97</sup> Yet, only about 2,500 prisoners completed substance abuse treatment programs in 2005.<sup>98</sup> Nationally, prisoners convicted of drug offenses make up approximately one-third of all prisoners released each year.<sup>99</sup> Upon release, many of these prisoners go on to re-offend.<sup>100</sup> In fact, “felony recidivism rates for drug . . . offenders have been increasing since 1986.”<sup>101</sup> Of those who do recidivate, twenty out of twenty-nine are for drug offenses.<sup>102</sup>

Fortunately, there is an opportunity to greatly reduce these trends by providing prisoners with meaningful chemical dependency treatment. Studies have shown that there is a 6.3 percent reduction in recidivism where

chemically dependent prisoners either are provided cognitive behavioral drug treatment or are housed in therapeutic communities and provided aftercare treatment.<sup>103</sup> Evidence-based treatment<sup>104</sup> has been shown to decrease, at least in the short-term, the probability of alcohol dependency by 15 percent and drug dependency by 22 percent.<sup>105</sup> In addition, program results from other jurisdictions indicate that prisoners who participate in drug treatment are more likely to obtain employment upon release.<sup>106</sup>

## **2. Mental Health**

In the United States, one in twenty-six adults has a serious mental illness.<sup>107</sup> As a result of the severe underfunding of community mental health services and lack of such services in numerous areas,<sup>108</sup> many of these individuals receive little to no mental health treatment. Perhaps unsurprisingly, the mentally ill often find themselves embroiled in the criminal justice system, which has left our prisons and jails serving as de facto mental health facilities.<sup>109</sup> The national prevalence rates for prisoners with mental illness “are two to four times higher than rates among the general public.”<sup>110</sup> In Washington, at least 15 percent of prison inmates are seriously mentally ill.<sup>111</sup>

Despite the pervasiveness of mental illness amongst prison inmates, a large number of those prisoners go without any form of treatment<sup>112</sup> and are often denied access to prison programming that may be beneficial to their mental health.<sup>113</sup> The failure to treat mentally ill prisoners arises due to understaffing and staffing of unqualified personnel, inadequate methods of identifying and tracking mental illness, and the dismissal of symptoms as “malingering.”<sup>114</sup> Prisons also do a poor job of appropriately medicating the mentally ill: some receive medication as the sole form of treatment, others are prescribed medication without proper evaluations or monitoring, and still others receive necessary medications only intermittently.<sup>115</sup> Without appropriate treatment and supervision, prison life for the mentally ill can be life-threatening. The consequences of failing to provide mental

health care include “suffering, self-mutilation, rage and violence, unnecessary placement in segregation, victimization, and suicide.”<sup>116</sup> Additionally, these men and women “are vulnerable to assault, sexual abuse, exploitation, and extortion.”<sup>117</sup> The symptoms of their illness and the effects of some anti-psychotic medications make mentally ill prisoners particularly susceptible to manipulation and attack and have led such prisoners to be “disproportionately represented among the victims of rape.”<sup>118</sup>

Mentally ill prisoners are also more likely than other prisoners to create disciplinary problems.<sup>119</sup> These prisoners are often punished severely for their behavior regardless of their inability to control their actions.<sup>120</sup> In many cases, mentally ill prisoners are placed in solitary confinement, known in Washington State as “segregation” or “intensive management units.”<sup>121</sup> Confinement in segregation can exacerbate a prisoner’s mental illness.<sup>122</sup> The problem has been described as “the mental equivalent of putting an asthmatic in a place with little air to breathe.”<sup>123</sup> “In the year 2000, 30 percent of prisoners in Washington’s Intensive Management Units had a serious mental illness, compared with illness rates among the general prison population ranging from 10 to 15 percent.”<sup>124</sup> Mental health professionals believe that mentally ill prisoners subjected to segregation can deteriorate rapidly and that their conditions worsen over time.<sup>125</sup>

The longer a seriously mentally disordered individual remains acutely disturbed, the worse the long-term prognosis. Rapid and intensive treatment of acute psychiatric disorders offers the best chance for rapid recovery and serves to minimize long-term symptomatology and disability. The problem of mental breakdown and disability in [isolation] units is thus two-fold: First, the conditions of confinement tend to exacerbate pre-existing psychiatric disorders to cause decompensation in individuals who are psychologically vulnerable under duress. Second, with continued confinement in these same conditions—particularly in the absence of meaningful psychiatric services—the afflicted

prisoner's condition tends to deteriorate even further, and the long-term prognosis worsens.<sup>126</sup>

The failure to provide adequate mental health services in prison can have disastrous consequences. A study of recidivism rates in Washington State showed that prisoners who had been housed in segregation were somewhat more likely to commit felonies and much more likely to commit violent crimes than other former prisoners regardless of whether they were mentally ill, which “suggests a link between recidivism and the difficult living conditions in segregation, where good rehabilitative and transitional programming are less available.”<sup>127</sup> This may be particularly problematic for mentally ill prisoners, whose recidivism rates are high; nationwide, 52 percent of state prisoners with mental illness “reported three or more prior sentences to probation or incarceration . . . .”<sup>128</sup> Further, the mentally ill are more likely than other repeat offenders to be violent recidivists.<sup>129</sup>

As with chemical dependency, these statistics are reversible. In fact, providing meaningful treatment to the mentally ill while in prison may have a tremendous effect on recidivism rates.<sup>130</sup> For example, by housing the mentally ill in therapeutic communities, recidivism rates have been shown to drop by 20.8 percent.<sup>131</sup>

### III. POLICY RECOMMENDATIONS

As detailed above, there is now strong evidence indicating that providing meaningful programming and treatment to prisoners can reduce recidivism. The question that remains is whether the citizens and elected officials of Washington—and the rest of the nation—have the political will to embrace the ideals of rehabilitation rather than punishment alone.

One step to adopting the principle that rehabilitation is essential is understanding that those who are incarcerated are not a distant unknown population, but the neighbors, classmates, and families of us all. By the close of 2001, “1 in every 37 U.S. adults, had ever served time in prison.”<sup>132</sup> Further, the United States Department of Justice has estimated that “[i]f



rates of first incarceration remain unchanged, 6.6% of all persons born in the United States in 2001 will go to State or Federal prison during their lifetime . . . .”<sup>133</sup> Unfortunately, recent trends indicate that the likelihood of incarceration rates remaining constant is unlikely; rates have been increasing steadily for decades.<sup>134</sup> As such, “the number of adults having ever served time in prison is projected to rise to 7.7 million by 2010.”<sup>135</sup>

Improving conditions of confinement and release for prisoners will not cure all of our society’s ills, but as United States Supreme Court Justice Anthony Kennedy has stated:

There are realistic limits to efforts at rehabilitation. We must try, however, to bridge the gap between proper skepticism about rehabilitation on the one hand and improper refusal to acknowledge that the more than two million inmates in the United States are human beings whose minds and spirits we must try to reach.<sup>136</sup>

In keeping with that ideal, the following recommendations, while a non-exhaustive list, are designed as policy changes which will assist in restoring the balance between rehabilitation and punishment.

#### *A. Initiate Reentry Efforts at Intake*

Efforts to reduce recidivism rates must begin at the earliest possible opportunity.<sup>137</sup> Currently, when a prisoner arrives at a Washington DOC facility, a Facility Plan or Offender Accountability Plan (hereinafter “Plans”) is created based upon his or her criminal history, length of incarceration, educational and vocational experiences, and other data.<sup>138</sup> This review and planning process should be analyzed to confirm that it involves a robust analysis of all areas where the prisoner may need assistance, training, or treatment. The Plans should not just identify gaps in education and employment, but should also take into consideration the social history of a prisoner, including issues that may affect his or her success in prison programming and reentry into the community. For

example, efforts should be made to determine whether a prisoner has suffered from a past history of abuse and how that may affect his or her ability to respond to programming effectively.<sup>139</sup>

Consideration should also be given to positive social ties, such as supportive family members and the network a prisoner may ultimately return to upon release, to ensure that such support systems remain intact.<sup>140</sup> Programs that encourage prisoner involvement with his or her family during the term of incarceration should also be expanded. An example of such programming is the Long Distance Dad course offered at three Washington facilities—McNeil Island Corrections Center, Stafford Creek Corrections Center, and Coyote Ridge Corrections Center.<sup>141</sup> Long Distance Dads, a twelve-week parenting program that is open only to prisoners who are not convicted of violent crimes involving children, focuses on educating prisoners about such issues as the growth and development of children as well as providing opportunities for prisoners to interact with their children.<sup>142</sup> Graduates of the program are allowed unique parenting opportunities, such as participating in parent-teacher conferences via telephone.<sup>143</sup> Likewise, the Oregon Department of Corrections has initiated The Children of Incarcerated Parents Project, which was developed to allow “regular, positive interaction between incarcerated parents and their children [to help] smooth the transition path.”<sup>144</sup> This project includes a twelve-week parenting course which specifically addresses reentry as it relates to family relationships; at the conclusion of the course parents who are approved “can participate in several therapeutic visits with their children and their caregivers, coached and supervised by a family therapist.”<sup>145</sup> The Project also includes an Early Head Start program through which children up to age three are allowed to spend extended visits in the facility where they participate in playgroups and receive physical and mental health services.<sup>146</sup> Finally, the Project addresses literacy needs of incarcerated parents and their children through the Even Start program, which includes bi-monthly family meetings and support for the children by an on-staff

family advocate who “works with school personnel and other community agencies to ensure their needs are being met while their parent is incarcerated.”<sup>147</sup> The support of positive familial relationships is important not only because of the potential benefit to prisoners’ children, but also because those relationships are linked to better behavior during incarceration and greater likelihood of success upon release.<sup>148</sup>

The intake process should also be formulated to identify how a prisoner’s areas of need overlap. By addressing a prisoner’s needs not as discreet problems, but as a set of interlocking issues, insight may be gathered regarding how to best address a prisoner’s likelihood of success or failure upon release. For example, the determination of which program is best suited to address a prisoner’s chemical dependency may be informed by the degree of the prisoner’s educational deficiencies or mental illness.<sup>149</sup>

[Programs that] are multi-modal in nature—are, in general, more likely to be effective than those that are not. Thus, if an inmate has vocational needs as well as substance abuse and life skills needs, the efficacy of any one of these interventions is enhanced if each of the offender’s needs is addressed. Moreover, program effectiveness is enhanced even more if treatment and services are well integrated, reducing redundancy within the system and ensuring that different programs do not work at cross-purposes with one another.<sup>150</sup>

By starting a prisoner with a Plan which identifies all of his or her needs and addresses them holistically, the likelihood of success while in prison and upon release are improved.

*B. Revise Washington’s Correction Reform Act to Eliminate Barriers to Educational and Vocational Training*

State legislation must be passed and signed into law to eliminate provisions of Washington’s Correction Reform Act, and the DOC interpretations thereof, that limit prisoner access to educational and vocational opportunities.<sup>151</sup>

First, the legislation must mandate that the DOC provide basic adult education to all prisoners who have not obtained a high school diploma or passed the GED, or who have not tested at a level equivalent to high school graduation, regardless of certification, and are capable of participating in such programming. The presumption in the Correction Reform Act that not all prisoners in need will have access to those services is inappropriate given the high number of prisoners in need of basic education and the significant reduction in recidivism that results from the provision of basic educational services.<sup>152</sup>

Second, given the significant reduction in recidivism related to the provision of vocational and post-secondary educational opportunities, those opportunities must be expanded. Reformation of the Corrections Reform Act should include requirements that the DOC work collaboratively with Washington's community college system and other educational agencies<sup>153</sup> to expand course options. Furthermore, reformation of the Act should ensure that the offered courses are sufficiently linked to programs and employment<sup>154</sup> available in the community so that prisoners may continue their training or pursue employment upon release.<sup>155</sup> The exercise of analyzing and updating course offerings should be conducted on a regular basis.<sup>156</sup>

Third, administrative barriers to participating in educational and vocational training must be eliminated. For example, the requirement that such training be linked to a prisoner's correctional employment should be purged.<sup>157</sup> By stripping away that requirement, the likelihood that a prisoner would be prevented from participating in programs conducive to obtaining educational or employment opportunities upon release merely because they do not relate directly to an available correctional job will be greatly reduced.<sup>158</sup> Likewise, the DOC's requirement that a counselor refer a prisoner to a vocational or post-secondary educational program should be altered.<sup>159</sup> Although it is important for the DOC to maintain some degree of control over prisoners' programming, the onus of the Correction Reform

Act must be reversed so that there is a presumption that educational and vocational training will be made available absent a finding that such training would be inappropriate.<sup>160</sup> Further, in order to complete ongoing coursework, prisoners should have an opportunity to opt out of a transfer—where safety and security allows—so that they do not experience a disruption of educational and vocational training.<sup>161</sup>

Fourth, the legislation must eliminate or at least reduce the requirement that a prisoner finance his or her educational or vocational training.<sup>162</sup> If not eliminated entirely, this existing presumption must be reversed; in general, such programming should be offered free of charge, absent a finding that a prisoner has outside support to pay for education or training. These programs have been shown to cut recidivism by 12 to 50 percent.<sup>163</sup> As such, creating financial disincentives for prisoners is not in the best interest of the public. Further, as discussed in more detail below, the participation by prisoners in educational and vocational training creates a significant cost benefit for Washington taxpayers.<sup>164</sup> Therefore, restricting access to such services as a cost-savings measure is nonsensical.

Fifth, reforms must require an analysis of all educational and vocational programs to ensure equal access to such programs for female prisoners and prisoners with disabilities. The failure to do so not only ignores the true characteristics of the prison population,<sup>165</sup> it also may subject the State of Washington to liability.<sup>166</sup>

Finally, whenever possible, prisoners confined to segregation units should be allowed to continue educational and vocational training to encourage rehabilitation.<sup>167</sup> The Federal Commission on Safety and Abuse in Prisons has recommended to the Senate Judiciary Committee that “[t]o the extent that safety allows . . . prisoners in segregation [should be given] opportunities to better themselves through treatment, work, and study, and to feel part of a community, even if it is a highly controlled community.”<sup>168</sup> As with the prison population generally, almost all prisoners housed in

segregation will be released back to the community, so their rehabilitation remains vitally important.

*C. Support Expansion of Correctional Industries*

Correctional employment allows an opportunity for prisoners to prepare to participate in Washington's economy and, therefore, must relate to the state's actual employment needs. As such, a market-based investigation of Washington's industries should be undertaken so that expansion of Correctional Industries correlates to real employment opportunities. Such a study was required in 1995, when the Correction Reform Act directed Washington's Correctional Industries Board to investigate market conditions to determine appropriate means of expanding correctional industries.<sup>169</sup> The DOC has announced plans to expand current industrial programs, re-evaluate market needs—in the state and out of state—and develop pre-apprenticeship programs with organized labor.<sup>170</sup> The DOC's efforts should be supported by reinstating the Correction Reform Act's mandate for such investigations on a periodic basis. Each periodic analysis should include an evaluation of employment opportunities likely to be available upon release so that internal correctional industries positions and vocational training can be designed to prepare prisoners to enter into Washington's current economy.<sup>171</sup> Potential partnerships with nongovernmental organizations to create employment training opportunities for prisoners that serve to benefit low-income communities should also be considered.<sup>172</sup>

In undertaking these reforms, the legislature should also consider amending Washington's Constitution to allow Class I Industries to be restored. In the alternative, the legislature should require a detailed analysis of the impact of Class I industries on private companies in Washington as compared to the loss of Class I industries on prison conditions and recidivism rates.<sup>173</sup> The findings of that study will allow for a meaningful

dialogue regarding the propriety of amending Washington's Constitution to remove the current prohibition on Class I industries.

*D. Reform the Treatment of Mentally Ill Prisoners*

Absent significant improvement in mental health services in the community, prisons will continue to operate as the largest mental health facilities in Washington.<sup>174</sup> As such, it is essential that Washington's prisons address the needs of the mentally ill.

First, as soon as a mental illness is identified, those prisoners should be housed separately from the general prison population. Housing units for mentally ill prisoners must be created or expanded to ensure that all mentally ill prisoners are provided with psychiatric services in a setting conducive to the therapeutic needs of individual prisoners.<sup>175</sup> Separating mentally ill prisoners from the general prison population and creating and expanding therapeutic housing units may also serve to lessen the violence experienced by mentally ill prisoners and improve the level of safety for all prisoners and correctional staff.<sup>176</sup> These separate facilities can work. Human Rights Watch recently reported an instance of this kind of separation:

In Washington State, the large McNeil Island prison includes a seventy-five bed medium-security living unit as well as over twenty segregation beds for seriously mentally ill prisoners. Within this facility, mentally ill prisoners have daily access to an array of mental health staff and psycho-educational classes ranging from anger management to relapse prevention. University of Washington researchers brought into the prison to monitor the success of the facility have found that "participants were substantially less symptomatic when they left the program than when they entered." Human Rights Watch visited McNeill Island in the summer of 2002 and found that staff and prisoners appeared to have a far less antagonistic relationship than was in the case in most prisons [Human Rights Watch] we visited.<sup>177</sup>

Second, evidence-based treatment of mentally ill prisoners must be expanded. Such treatment has been shown to reduce the probability of serious mental illnesses by 22 percent.<sup>178</sup> Perhaps in recognition of this potential, the DOC has expressed interest in expanding mental health services.<sup>179</sup> While the Washington State Institute of Public Policy has identified some successful mental health programs,<sup>180</sup> the legislature should commission further study to identify programs appropriate for the needs of Washington's prisoners and then require the implementation of those programs.<sup>181</sup>

Third, prison policies should be reformed to require, with very few exceptions, the incarceration of mentally ill prisoners without use of force, intimidation, or excessive confinement. Corporal punishment, use of restraints, or subjecting mentally ill prisoners to segregation can exacerbate the effects of mental illness and cause long term and extreme psychological damage to those individuals.<sup>182</sup> This type of reform was recently undertaken in New York, where the legislature unanimously passed a bill that prohibited the placement of mentally ill inmates in solitary confinement.<sup>183</sup>

Fourth, the DOC must be required to expand its executive, professional, and facility-level staff with personnel who are appropriately trained to identify and work with individuals with mental illness.<sup>184</sup> The DOC's administrative staff should include a mental health specialist who oversees the provision of mental health services within the DOC. Additionally, all doctors, nurses, and medical staff employed to work in the DOC must be required to be fully licensed and qualified to treat mental illness.<sup>185</sup> Correctional staff should receive training so that they are better equipped to identify prisoners who may be mentally ill and refer those prisoners to appropriate services.<sup>186</sup> Where recruiting and retention of qualified mental health professionals and staff is difficult, competitive salaries and incentives should be offered to ensure appropriate coverage.<sup>187</sup>



Fifth, any requirement that prisoners with mental illness pay for therapeutic services or necessary medications must be eliminated. It would be irresponsible to expect mentally ill prisoners to maintain correctional employment with wages sufficient enough to afford their treatment needs. Financial barriers should not prevent nor discourage prisoners from obtaining necessary treatment.<sup>188</sup>

Finally, policies and statutes that may result in longer incarceration periods for the mentally ill should be revised.<sup>189</sup> For example, Washington's Persistent Prison Misbehavior statute, which criminalizes certain infractions by making them punishable as felonies,<sup>190</sup> should be analyzed to determine if it is effectively criminalizing mental illness. Likewise, earned time policies should be revised to provide alternatives for mentally ill prisoners who are unable to engage in educational or vocational training or work programs to earn reduced time.<sup>191</sup>

#### *E. Expand Evidence-Based Chemical Dependency Treatment*

As with mental health treatment, chemical dependency treatment should also be expanded for prisoners. Washington should consider converting an entire facility—or designating sections of existing facilities—to be used exclusively as therapeutic units for prisoners who are chemically dependent. Illinois has taken this approach in its Sheridan facility, and the early results have been impressive.<sup>192</sup>

The Sheridan program targets offenders, with the exception of sex offenders and murderers, designated by clinicians as having a substance abuse problem that impacts their criminal behavior. Every inmate involved in the program is immersed into a therapeutic community environment that involves intensive drug treatment, cognitive skills development, counseling and mental health services. The goal of these services is to make the offender accountable for addressing both his drug addiction as well as to change the fundamental values and attitudes that have driven past criminal behavior.<sup>193</sup>

Delaware has combined chemical dependency treatment and work release into a three-part program.<sup>194</sup>

The first phase involves participation in an in-prison therapeutic community to address substance abuse issues. During the second component, inmates are released to a community work-release center where they are expected to hold a job while they continue to live at the facility and participate in drug treatment. This aftercare component, which lasts up to six months, requires complete abstinence from drugs and alcohol, attendance at group sessions, individual counseling, and drug testing. Graduates of the program are also required to return once a month to serve as role models for current participants. In the final phase of the program, individuals are released to the community under some form of continued supervision.<sup>195</sup>

This combined program has been highly successful in reducing both recidivism and drug dependency. An evaluation of the program compared participants to a control group eighteen months following release.<sup>196</sup> Of the program participants, 77 percent were arrest-free and nearly half were drug-free.<sup>197</sup> Of the control group, only 46 percent were arrest-free and all but 22 percent had relapsed.<sup>198</sup>

The development of any substance abuse treatment programs should take into consideration the diverse needs of chemically dependent prisoner populations. For example, treatment should be designed to address the unique alcohol and drug abuse patterns of female prisoners.<sup>199</sup> Likewise, prisoners who have a dual diagnosis of chemical addiction and mental illness may require specialized treatment.<sup>200</sup>

#### *F. Create Reentry Facilities to Provide Broad Transitional Services*

Rather than limit the availability of pre-release services such as work release to a portion of soon-to-be-released prisoners who have secured employment or can pay for vocational training, the system should be reorganized to provide longer term residency in reentry facilities where *all*

prisoners can obtain expansive transitional services, including education, job training and placement, life skills, family reunification services,<sup>201</sup> housing assistance, chemical dependency treatment, and mental health services.<sup>202</sup> Doing so would allow more substantive preparation for prisoners transitioning into Washington's communities.

Comprehensive transitional service programs have been successfully instituted in several jurisdictions. Tennessee's Department of Corrections has implemented a two-year transitional program which entails "six months of pre-release services including cognitive skills training, substance abuse treatment, and job readiness; six months of work-release; and a year of post-release case management."<sup>203</sup> Likewise, Hawaii's program combines substance abuse, family unification, and cognitive skills training.<sup>204</sup> New York's Project Greenlight provides prisoners with a family reintegration program, job development skills, and a community coordinator who assists in developing links between the prisoner and the community of release, such as locating appropriate housing.<sup>205</sup> Illinois works with the SAFER Foundation to provide "job preparedness services that begin in the prison and carry through to actual job placement in the community," and with other organizations to develop clinical reentry plans for "drug treatment, housing, mental health and anger management services, and then continues to work with [prisoners] and manage the plan throughout their parole term."<sup>206</sup> An analysis of the strengths and weaknesses of these programs, and those in other jurisdictions, would be an asset to Washington as it creates its own reentry facility strategies.

In addition to providing more comprehensive, holistic reentry services, Washington's reentry facilities should continue to address employment needs, but on a much broader scope. Rather than simply allowing a prisoner to temporarily leave the facility to work at a job in the community, job skill development courses must be designed to assist prisoners with basic skills. These courses should focus on interviewing skills, resumé development, appropriate behavior in the work place, operation of standard

office equipment (e.g., email systems or facsimile machines), and job search techniques.<sup>207</sup> Ideally, these courses would be offered within the six months prior to admission to a reentry facility so that those basic skills can be internalized prior to entering into employment through the reentry facility, along with opportunities to take refresher courses or tutorials while at a reentry facility.

These job readiness courses should be combined with programs designed to connect prisoners with potential post-release employers. For example, “[b]usiness associations in partnerships with departments of corrections could organize job fairs for soon-to-be-released offenders. (The Federal Bureau of Prisons has adopted this approach with considerable success.) Businesses often are reluctant to participate, but after attending the job fairs typically become enthusiastic supporters because of the direct benefits to them.”<sup>208</sup> Legislation should be introduced to support the development of such partnerships between the DOC and private employers and provide incentives to those employers who are willing to offer positions to former prisoners.<sup>209</sup>

Likewise, the DOC should work cooperatively with Washington’s community college network and other education agencies to ensure that necessary applications for admission and financial aid are completed and processed while prisoners are in reentry facilities. Collaboration between the DOC and the community college network would ensure that there is the minimum possible delay between release and initiation of educational programming. Further, community corrections officers should be encouraged to support prisoners who choose to pursue educational opportunities.

Along with processing educational forms, reentry facilities should assist prisoners in preparing to return to society by ensuring all other documentation is in order including, but not limited to, forms for Medicare, Medicaid, Social Security disability income, supplemental Social Security income, veterans’ benefits, identification documents (such as driver

licenses), voting rights restoration,<sup>210</sup> and the like.<sup>211</sup> Having such documents in place prior to release will assist prisoners in applying for employment and housing, as well as arranging for any necessary medical care or treatment.

At the same time, reentry facilities should employ specialists to assist prisoners in locating and funding transitional housing and, preferably, long-term housing upon release. Despite the likely connection between homelessness and recidivism,<sup>212</sup> the DOC determined in June 2006 that it would eliminate funding for even short-term transitional housing, which might have prevented releasees from becoming homeless.<sup>213</sup> The legislature should reverse that decision by either directing the DOC to expend a portion of its budget on post-release housing, or increasing funding to existing housing and homelessness agencies to provide such services. Assistance in these arenas improves the likelihood that necessary mental health, addiction, and medical treatment are continued upon release and increases stability for prisoners and the communities to which they are released.<sup>214</sup>

Reentry facilities should be available to all prisoners who are to be released, with only minor exceptions.<sup>215</sup> Obviously, the few bed spaces currently available in Washington's work release facilities are insufficient.<sup>216</sup> The legislature should direct the DOC to identify existing facilities and properties that could be converted to reentry facilities and other properties that may be acquired for those purposes. The locations of reentry facilities should be diverse enough to ensure that prisoners can be assigned to facilities that are near their community of release to ensure a continuity of services and easier access to employment and educational opportunities.<sup>217</sup>

The available research indicates that the programming proposed to occur at reentry facilities would significantly reduce crime in Washington communities.<sup>218</sup> If, however, Washington chooses to remain with traditional work release programming, an analysis should be undertaken to investigate whether there are additional or unnecessary administrative

hurdles, or other barriers, which are precluding eligible prisoners from participating in work release. For example, the study should consider whether charging room and board or allowing the collecting of legal financial obligations during work release is too great a financial disincentive for prisoners.<sup>219</sup> At the same time, the debt loads of people leaving prisons should be reviewed to determine whether additional legislative action is appropriate so that prisoners' financial positions upon release do not set them up for failure.<sup>220</sup>

*G. Improve the Availability of Services in the Community*

Washington should increase the availability of educational and vocational training and mental health and chemical dependency treatment services in the community at large. As described above, doing so increases the chance of successful reentry for those leaving prison. Additionally, it improves the social safety net in our communities so as to prevent crime and, therefore, reduce the need for incarceration.

As a first step, it is essential to know what community services currently exist. The State should provide technical assistance and funding to counties and local communities for the auditing of governmental and private services already in place.<sup>221</sup> By doing so, Washington can identify gaps in services, as well as identify potential partnerships with existing organizations to enhance opportunities for prisoners during and after incarceration, while also benefiting the community at large.<sup>222</sup> For example, by partnering with low-income housing services in a community where former prisoners are eligible to reside, or in-house treatment facilities where chemically dependent and mentally ill prisoners can be referred for therapy and aftercare,<sup>223</sup> the chance that a former prisoner will become homeless, or return to substance abuse upon release, is reduced.<sup>224</sup> Ensuring stable housing for releasees reduces the risk of recidivism.<sup>225</sup>

Second, once Washington has identified gaps in services, it must then address those deficiencies to ensure that people are not falling through the

cracks. For example, expanding community mental health services would identify people in need of help before they commit crimes and reduce the burden of treating the mentally ill in prison facilities.<sup>226</sup>

Third, Washington should link programming in prison with services in the communities where prisoners will return. Doing so can “significantly enhance” the effectiveness of prison programming.<sup>227</sup>

Continuity of services is especially critical for inmates returning to the community. Without continuity, treatment and training are likely to decline in efficacy or to be undermined by other factors (e.g., drug relapse will likely affect employment stability). Many of the services inmates receive—drug treatment, mental health counseling, educational or vocational training—provide a foundation upon which successful reentry can be facilitated. But taken alone, they are likely to be insufficient, especially given that there are additional issues inmates face during the transition into society, including difficulties finding housing or obtaining medical or health services. For this reason, a range of treatment and services provided during and after reentry into society can assist offenders to maintain or increase their progress and the likelihood of sustained employment and reduced recidivism.<sup>228</sup>

Finally, Washington should continue to study and develop diversion programs and mandate the expansion of those that are shown to work. For example, drug courts should be expanded so that eligible criminal defendants who are chemically dependent can be diverted to drug treatment programs rather than imprisoned.<sup>229</sup> Likewise, mental health courts should be expanded to divert mentally ill defendants into appropriate mental health services or facilities.<sup>230</sup>

#### *H. Create an Independent Commission to Oversee Reentry Systems*

Instituting the policy initiatives identified above will require a significant undertaking. As such, it may be essential to create an independent body, a “Reentry Commission,” to provide monitoring and oversight of reentry reform as has been recommended by both the Washington State Institute of

Public Policy and the Federal Commission on Safety and Abuse in America's Prisons.

The make-up of the Reentry Commission can be modeled on similar commissions that have been utilized during periods of transition in Washington's correctional history. For example, in 1979, Washington created a State Jail Commission to adopt rules and regulations regarding custodial care and facility standards, to establish mandatory and advisory standards, and to inspect jails for compliance with such standards.<sup>231</sup> In 1981, when Washington transferred authority for its prisons from the Department of Social and Health Services to the newly formed DOC, it created the Corrections Standards Board to replace the jail commission.<sup>232</sup> Both of these former oversight bodies were made up of geographically diverse voting and nonvoting members appointed by the governor and approved by the senate.<sup>233</sup>

An essential task of the Reentry Commission would be to develop criteria by which reentry reform programs, and the entities overseeing such programs, would be evaluated. Both the mandatory and advisory standards articulated by the Reentry Commission should be subject to approval by the legislature.<sup>234</sup> Once approved, the Reentry Commission should have the authority not only to identify any failures to comply with those standards, but also to enforce the mandatory standards.<sup>235</sup> Without such enforcement powers, the Reentry Commission would be without the teeth necessary to ensure that reforms are instituted properly and in a timely fashion. To develop those standards, it would be appropriate for the Reentry Commission to consider standards established by organizations such as the United States Department of Justice, American Correctional Association, American Medical Association, American Psychiatric Association, Correctional Education Association, and Commission on Safety and Abuse in Prisons.<sup>236</sup>

The Reentry Commission should be required to report annually to the governor, the state legislature, and the DOC to outline the standards that



have been applied as well as any variances in compliance with those standards and enforcement actions taken.<sup>237</sup> An essential component to this reporting responsibility will be the ability for the Reentry Commission to investigate and oversee reentry practices by inspecting prisons and other facilities involved in reentry programming on—at least—an annual basis. Like the jail commission and Correction Standards Board, the Reentry Commission should have unfettered access to all portions of prisons, as well as to the prisoners themselves.<sup>238</sup> This should include access to prisoners who participate in programming and those who are denied or refuse such services, as well as all grievances filed by prisoners and responses thereto by the DOC. This access will ensure the Reentry Commission's reports reflect not only the intended policy changes, but also how the implementation of those policies occurs on a ground level. The reports should also address ways in which reentry funding may be directed for the maximum possible benefit.<sup>239</sup>

Along with fulfilling the important role of monitoring and evaluating reentry reforms, the Reentry Commission would also afford a high degree of transparency for the general public. Through the requirement of periodic reporting, the public can be kept apprised as to the progress made as well as the cost of the reforms. In addition, the Commission can serve as a central hub not just for gathering, but also for sharing information regarding community resources and systems that support reentry efforts.

Given the complexity of reentry policy and related practices, it is essential that the Commission be given sufficient time to oversee the development of these new systems. Therefore, the Commission should be instituted for a minimum period of ten years, with an option for the legislature to renew the term of the Commission if appropriate.<sup>240</sup>

*I. Fully Fund Programs and Treatment in Washington Prisons and Communities*

The changes recommended in this article will require significant funding.<sup>241</sup> “Effective programming requires money, effort, and a recommitment to rehabilitation. But it is not only an investment in safe prisons and jails. It is also an investment in safe and healthy communities.”<sup>242</sup> There is already public support for these expenditures. “Results from a Zogby International poll released in April, 2006, show the public’s support for protecting public safety through better programming: **87 percent of Americans favor rehabilitative services for prisoners as opposed to punishment only.**”<sup>243</sup>

Recent studies indicate that the expense is justified not only because of the significant reductions in recidivism and corresponding increases in public safety, but also due to the economic benefit per dollar spent.<sup>244</sup> The return on such an investment is significant. Providing adult basic education and post-secondary education programs has been found to provide a cost benefit of \$10,669 per participant.<sup>245</sup> Vocational education programs produce a per participant cost benefit of \$13,738.<sup>246</sup> In fact, correctional education programming has been found to be twice as cost effective as increasing prison capacity for greater incarceration.<sup>247</sup> Likewise, correctional industries programs create a cost benefit of \$9,439 per participant.<sup>248</sup> Work release programs have been found to create approximately \$6.16 in benefits per dollar of cost.<sup>249</sup>

The cost benefit of providing meaningful treatment has also been documented. According to the DOC, “[c]ommunity-based substance abuse treatment programs typically produce about \$3.30 in benefit per dollar of cost.”<sup>250</sup> The Washington State Institute of Public Policy has also estimated that per participant cost benefits for cognitive behavioral therapy are \$10,299, for community drug treatment are \$10,054, and for drug treatment in prison are \$7,835; “[p]er dollar of treatment cost . . . evidence-based

treatment generates about \$3.77 in benefits for the people of Washington.”<sup>251</sup> Those benefits can be broken down as follows:

35 percent stem from the effect that the reduced incidence of a disorder has on the person’s economic earnings in the job market; 50 percent are linked to fewer health care and other costs incurred; 7 percent are due to the lowered costs of crime; and 8 percent are for miscellaneous benefits.<sup>252</sup>

Further, even assuming that only half of those who need but are not receiving treatment are placed in evidence-based treatment programs, “the total net benefits to Washington would be about \$1.5 billion.”<sup>253</sup> If a twenty to forty percent increase in education and employment programming and drug and mental health treatment were provided to adults and juveniles, along with proven prevention programs, the Washington State Institute for Public Policy estimates that state and local taxpayers in Washington “could save between \$1.9 to \$2.6 billion” in direct prison and criminal justice system costs between 2008 and 2030.<sup>254</sup> If other societal benefits, such as costs to victims, are factored in, those estimated savings reach \$3.8 to \$7.8 billion.<sup>255</sup> These savings would have a real impact on Washington families who currently spend an average of \$1,130 per year in taxes to fund Washington’s criminal justice system.<sup>256</sup> The alternative is to keep programming and treatment at current levels, which comes at a price. Based on current forecasts, the Washington State Institute for Public Policy has predicted “that Washington will need two new prisons by 2020 and possibly another prison by 2030,” requiring taxpayers to fund building costs of \$250 million per facility plus an additional \$45 million per year for operation costs.<sup>257</sup>

The provision of meaningful programming and treatment to prisoners is important not just because it is a sound financial investment, but also because of innumerable intangible benefits. For example, “[f]ew conditions compromise the safety and security of a correctional institution more than idle prisoners.”<sup>258</sup> As funding for and availability of prison programming

has decreased, prison violence has at best remained constant and in many forms has escalated, endangering the lives of both prisoners and correctional staff.<sup>259</sup> Providing prisoners with meaningful programming opportunities creates a safer and more secure environment in which prisoners' attitudes and behavioral patterns can be greatly improved.<sup>260</sup> As such, providing programming can decrease costs associated with correctional staff job satisfaction and turnover rates.

Washington may not need to go it alone in funding these programs. As of the publication of this article, the Federal government was considering providing funding for reentry programming through the Second Chance Act of 2005.<sup>261</sup> The Act, which "takes direct aim at reducing recidivism rates for our nation's ex-offenders and improving the transition for these offenders from prison back into the community,"<sup>262</sup> would provide "a competitive grant program to promote innovative programs to this out of a variety of methods aimed at reducing recidivism rates. Efforts would be focused on post-release housing, education and job training, substance abuse and mental health services, and mentoring programs, just to name a few."<sup>263</sup> Additionally, the Commission on Safety and Abuse in Prisons has recommended to the Senate that legislation be passed to eliminate restrictions on public benefits for prisoners.<sup>264</sup> Abolishing the restrictions on public benefits for prisoners would create a source of additional funding for, among other things, medical and mental health treatment in Washington's prisons. Washington's officials should seek out and support these types of funding opportunities.<sup>265</sup> However, given the significant public health and safety benefits that would result, it would be irresponsible to delay implementation of necessary changes in the interim. Washington should thus institute reentry reforms at the earliest possible opportunity.

#### IV. CONCLUSION

*Millions and millions of people are changed by their experience of prison and jail, and the public has a role in determining whether*

*they return home to their families and their communities and to all of us marked by exposure to violence and abuse, disease and trauma, or whether they are safe and healthy inside the walls, and perhaps changed for the better.*<sup>266</sup>

The failure to provide a meaningful chance for rehabilitation has had real costs: our prisons are more crowded, our tax dollars are stretched thinner, and our communities are less safe. The brunt of these systematic failures is being borne by some of our poorest and most vulnerable citizens: the mentally ill, the chemically dependent, the uneducated and untrained, and, of course, the children of the incarcerated, many of whom will be doomed to repeat this cycle. For too long, education, training, and treatment for prisoners has been disregarded. The research detailed in this article and the experience of the past two decades should reshape the debate by forcing recognition that improving those services is a cost-effective means of reducing recidivism and increasing public safety. Washington should take the lead in prison reform nationally by pursuing appropriate legislation and fully funding the services outlined herein in prisons and in Washington's communities. Punishment alone is not enough to stem this tide. Put simply, rehabilitating prisoners is not only the right thing to do in a just society, but is in the best interest of us all.

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<sup>2</sup> THE COMM'N ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT 11 (2006) [hereinafter CONFRONTING CONFINEMENT].

<sup>3</sup> See, e.g., "Club Fed" Cracks Down on Security, DAILY HERALD (Chicago), Nov. 7, 1986, §1, at 3; Art Ellis, Letter to the Editor, *Coddled Prisoners No Longer Funny*, POST STANDARD (Syracuse), May 7, 1981, at A8.

<sup>4</sup> See, e.g., Jenifer Warren, *National Movement Favors Rehabilitation of Prisoners*, L.A. TIMES, Mar. 28, 2005, at A1 (describing the historical decline in rehabilitation programs); Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, §§ 4,5,17,28 (codified in scattered sections of WASH. REV. CODE §§ 72.09, 72.10) (known in common industry parlance as “HB 2010”).

<sup>5</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 8 (“Congress and state legislatures have passed laws that dramatically increased prisoner populations without providing the funding or even the encouragement to confine individuals in safe and productive environments where they can be appropriately punished and, for the vast majority who are released, emerge better citizens than when they entered.”). See also SARAH LAWRENCE ET AL., URBAN INST. JUST. POLICY CENTER, THE PRACTICE AND PROMISE OF PRISON PROGRAMMING 2 (2002) (“Nationally, the adult prison population more than tripled between 1978 and 1998 . . . .”); JEREMY TRAVIS ET AL., URBAN INST. JUST. POLICY CENTER, FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 4-5 (2001) (describing historical growth of incarceration rates as related to changes in policies for sentencing and rehabilitation); *id.* at 11 (increases in sentencing periods mean prisoners released today have typically served longer sentences than in the past, and those “longer terms translate into further detachment from the communities to which they will return”). This trend is continuing in Washington, where increased sentences for crimes such as drunken driving and failure to register as a sex offender are expected to result in increased prison populations. See Joseph Turner, *Huge Prison Bill on Its Way*, TACOMA NEWS TRIB., Oct. 8, 2007, at A1.

<sup>6</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 11, 19, 70. See also *id.* at 8 (“We incarcerate more people and at a higher rate than any other country in the world.”); PAIGE M. HARRISON & ALLEN J. BECK, PH.D., U.S. DEP’T OF JUST., BUREAU OF JUST. STATISTICS, PRISONS AND JAIL INMATES AT MIDYEAR 2005, at 2 (2006) [hereinafter HARRISON & BECK (2006)] (“The rate of incarceration in prison and jail in 2005 was 738 inmates per 100,000 U.S. residents . . . . At midyear 2005, 1 in every 136 U.S. residents were in prison or jail.”); PAIGE M. HARRISON & ALLEN J. BECK, PH.D., U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., PRISONERS IN 2004, at 1 (2005) [hereinafter HARRISON & BECK (2005)] (“The rate of incarceration in prison at yearend 2004 was 486 sentenced inmates per 100,000 U.S. residents . . . .”); *id.* at 2 (“1 in every 138 U.S. residents were incarcerated in State or Federal prison or a local jail at yearend 2004.”).

<sup>7</sup> THOMAS P. BONCZAR, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974-2001, at 7 (2003).

<sup>8</sup> Nationally, 95 percent of prisoners are returned to the community, a disproportionate number of which return to African American and Latino communities. See CONFRONTING CONFINEMENT, *supra* note 2, at 11, 19. In Washington, 97 percent of prisoners are eventually released. See WASH. STATE DEP’T OF CORR., CORRECTION INDUSTRIES BUSINESS PLAN 2005-2007, at 1, available at <http://www.doc.wa.gov/BudgetAndResearch/ResearchData/Brsp/CI%20Business%20Plan.pdf> [hereinafter BUSINESS PLAN].

<sup>9</sup> Although this article focuses on adult institutions, the need for appropriate evidence-based programming in juvenile facilities is also important to curb recidivism by juvenile offenders, particularly in light of the fact that “73 percent of adult offenders in prison in

Washington have previously been in Washington's juvenile justice system." STEVE AOS, ET. AL., WASH. ST. INST. FOR PUB. POL'Y, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES, (Oct. 2006) [hereinafter AOS, PUBLIC POLICY OPTIONS]. Additionally, this article is limited to adult correctional facilities maintained by Washington State, rather than federal prisons, indefinite detention facilities, or county and municipal jails. While the information in this article may provide some guidance, further study should be undertaken to identify the best practices for meeting the educational, training, and treatment needs of prisoners housed in those facilities.

<sup>10</sup> The four specific programming and treatment needs primarily addressed in this article are not exhaustive. Reentry programming must be multifaceted and address a broad array of needs in addition to educational and vocational training and drug and mental health treatment. *See generally* CONFRONTING CONFINEMENT, *supra* note 2 (discussing, among other things, the impact of failing to provide appropriate medical care to prisoners as a concern for public health generally, the misuse of segregation in prisons, prison overcrowding, etc.). *See also infra* notes 137-150, 201-220 and accompanying text.

<sup>11</sup> "Rehabilitation was the organizing principle of the American penal system for much of the twentieth century. But beginning in the 1970s, politicians began to rhetorically devalue rehabilitation. The result was that prisons became, at least from the perspective of tough-on-crime policymakers and much of the public, places that should protect society from criminality by incapacitating and punishing instead of seeking to help and change . . . . While the prison population grew astronomically, funding for education, vocational training, and rehabilitative programming did not keep pace." CONFRONTING CONFINEMENT, *supra* note 2, at 27 (citing DAVID GARLAND, THE CULTURE OF CONTROL: CRIME & SOCIAL ORDER IN CONTEMPORARY SOCIETY (2001)).

<sup>12</sup> ROBERT BARNOSKI, WASH. ST. INST. FOR PUB. POL'Y, SENTENCES FOR ADULT FELONS IN WASHINGTON: OPTIONS TO ADDRESS PRISON OVERCROWDING, PART I (Historical Trends) (2004), at 1, 8 [hereinafter BARNOSKI, PART I]. *See also* ST. OF WASH. DEP'T OF CORRS., STRATEGIC PLAN: FISCAL YEARS 2005-2001 at 4, available at <http://www.doc.wa.gov/BudgetAndResearch/ResearchData/BRSP/2005%20New%20Strategic%20Plan%20and%20Cover.pdf> [hereinafter STRATEGIC PLAN] ("Between 1993 and 2003, the number of felony sentences imposed increased by 44%, or 8,348. Over the same time, the state population increased only 14%."); *id.* at 8 ("The average daily population of incarcerated offenders has increased almost 5 percent each year. The inmate population is growing at a faster rate than the general population."); HARRISON & BECK (2005), *supra* note 6, at 3-4 (in Washington in 2004, there was a 2.9 percent increase in state and federal prisoners equating to 264 people serving sentences longer than one year per 100,000 Washington residents; the average annual increase between 1995 and 2004 was 4.0 percent). Washington's incarceration rates are, however, lower than national rates. *See* AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 3.

<sup>13</sup> AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 3; STEVE AOS, WASH. ST. INST. FOR PUB. POL'Y, THE CRIMINAL JUSTICE SYSTEM IN WASHINGTON STATE: INCARCERATION RATES, TAXPAYER COSTS, CRIME RATES, AND PRISON ECONOMICS 2 (2003) [hereinafter AOS, INCARCERATION RATES]. In the same time period, incarceration rates in county and municipal jails have increased by 184 percent. *Id.* While juveniles incarcerated in

Washington state facilities has remained fairly constant since the 1980s, juvenile incarceration in county facilities has increased by approximately 35 percent. *Id.*

<sup>14</sup> STRATEGIC PLAN, *supra* note 12, at 4. *See also* AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 3 (“incarceration rates have roughly tripled in Washington since the mid-1970s”); *id.* at 13 (between 1980 and 2006 incarceration rates in Washington have grown by 165 percent to a rate of 6.1 prisoners per 1,000 people between the ages of 18 and 49).

<sup>15</sup> *Id.* at 6. Washington’s Department of Corrections operates eight major or multi-custody facilities, seven minimum security facilities, and fifteen work release facilities. *See* ST. OF WASH. DEP’T OF CORRS., *Introduction to 2005-2015 TEN-YEAR CAPITAL PLAN 2*, available at <http://www.doc.wa.gov/BudgetAndResearch/ResearchData/Brsp/Capital%20Plan%20Introduction.pdf>. [hereinafter CAPITAL PLAN].

<sup>16</sup> *See* CAPITAL PLAN, *supra* note 15, at 4 (“The 2004 Statewide Capital Master Plan, using projections from the Washington State Caseload Forecast Council, projects the offender populations to grow by 21 percent from over 17,000 offenders at the end of July 2004 to over 21,000 offenders by the end of June 2015.”). *See also* BUSINESS PLAN, *supra* note 8, at 11 (projecting an increase of prisoner population by 14.1 percent between fiscal year 2003 and fiscal year 2010); STRATEGIC PLAN, *supra* note 12, at 4 (“Between Fiscal Years 2003 and 2010, the incarcerated offender population is forecast to increase . . . 18 percent”); Turner, *supra* note 5 (“State analysts predict Washington’s prison population will grow from 18,157 inmates today to 20,159 by mid-2009, an increase of 2,002—enough to fill a prison.”).

<sup>17</sup> WASH. REV. CODE § 9.94A (2006) (codifying Sentencing Reform Act of 1981). *See also* The Honorable Michael H. Marcus, *Smart Sentencing: Public Safety, Public Trust and Confidence through Evidence-Based Dispositions* (2006), <http://www.ncsconline.org/WC/Publications/Trends/2006/SentenSmartTrends2006.pdf> (last visited Nov. 5, 2006).

<sup>18</sup> For example, the United States Senate Judiciary Committee convened in June 2006 to hear the findings of the Commission on Safety and Abuse in America’s Prisons, which recommended, among other policy changes, an increase in prison programming activities. *See generally* CONFRONTING CONFINEMENT, *supra* note 2. *See also* President George W. Bush, State of the Union Address, 40 PUB. PAPERS 101 (Jan. 20, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html> (last visited Nov. 6, 2006) (“America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.”); Danny Davis, Op-Ed., *Everybody Deserves a Second Chance*, THE HILL, July 25, 2006, at 23 (describing bi-partisan legislative efforts to pass the Second Chance Act); Warren, *supra* note 4 (describing recent bipartisan efforts in the federal and state governments to improve rehabilitative programming in prisons); Press Release, Office of Governor Rod Blagojevich, Governor Blagojevich Marks One-Year Anniversary of Sheridan National Model Drug Prison & Reentry Program (Jan. 2, 2005), available at [http://www.saferfoundation.org/docs/Sheridan\\_Press\\_Release\\_January\\_2005.pdf](http://www.saferfoundation.org/docs/Sheridan_Press_Release_January_2005.pdf); NINO RODRIGUEZ & BRENNER BROWN, VERA INST. OF JUST., PREVENTING HOMELESSNESS AMONG PEOPLE LEAVING PRISON 2 (2003) (“The active national debate on prisoner reentry has been encouraged by a number of developments, the most important of which seems to be a growing recognition by many policymakers of the axiomatic relation between success in reentry and recidivism.”).



<sup>19</sup> ROBERT BARNOSKI, WASH. ST. INST. FOR PUB. POL'Y, SENTENCES TRENDS FOR ADULT FELONS IN WASHINGTON: OPTIONS TO ADDRESS PRISON OVERCROWDING 5 (2004) [hereinafter BARNOSKI, PART II]. This is in keeping with the national experience. *See, e.g.*, TRAVIS ET AL., *supra* note 5, at 5 ("In 1985, 70 percent of parolees successfully completed their parole term; by 1998, the number had dropped to 45 percent. As a result, parole revocations now account for more than a third of prison admissions, up from 18 percent in 1980.").

<sup>20</sup> ST. OF WASH. DEP'T OF CORRS., STATISTICAL BROCHURE (May 2006), available at <http://www.doc.wa.gov/BudgetAndResearch/ResearchData/DOCStatisticalBrochureMay06P282.pdf> [hereinafter STATISTICAL BROCHURE]. *See also* Turner, *supra* note 5 ("Between July 1, 2005, and June 30, 2006, the courts sent 8,757 criminals into the state prison system. Forty-three percent, or 3,761, had been to prison before."). A national study which followed prisoners released in 1994 showed that within three years of release, "51.8% were back in prison, serving time for a new prison sentence or for a technical violation of their release, like failing a drug test, missing an appointment with their parole officer, or being arrested for a new crime." PATRICK A. LANGAN, PH.D. & DAVID J. LEVIN, PH.D., U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., RECIDIVISM OF PRISONERS RELEASED IN 1994, at 1 (2002). Of that 51.8 percent, 26.4 percent were returned for technical violations of release conditions and 25.4 percent were returned for prison for commission of a new crime. *Id.* at 7.

<sup>21</sup> LANGAN & LEVIN, *supra* note 20, at 1, 4. That rearrest rate represents an increase over the 62.5 percent for prisoners released in 1983. *See* TIMOTHY HUGHES & DORIS JAMES WILSON, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., REENTRY TRENDS IN THE U.S. (2003), available at <http://www.ojp.usdoj.gov/bjs/reentry/reentry.htm>. It should also be noted that these recidivism rates may be understated. *See* LANGAN & LEVIN, *supra*, note 20 at 2; TRAVIS ET AL., *supra* note 5, at 7 (noting that estimated recidivism rates account only for arrests, when "typically just over one-third of victimizations are reported to the police").

<sup>22</sup> MATTHEW R. DUROSE & CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., PROFILE OF NONVIOLENT OFFENDERS EXITING STATE PRISONS 2 (2004) ("Among nonviolent releasees, about 1 in 5 were rearrested for a violent crime within 3 years of discharge."); *Id.* ("Within 3 years of their release from prison, about 7 in 10 nonviolent releasees were rearrested for a new crime; nearly half were reconvicted; and more than a quarter were returned to prison...."). *Cf.* Warren, *supra* note 4 (quoting Reginald Wilkinson, head of Ohio's prison system, as saying: "I often ask the question, who would you rather sit next to on a bus? A person who is very, very angry about their prison experience and untrained and uneducated? Or a person who obtained a GED and vocational training in prison and is on his or her way to work?").

<sup>23</sup> *See, e.g.*, Davis, *supra* note 18 ("The fiscal burden on taxpayers of this revolving-door system is enormous. According to the U.S. Department of Justice's Bureau of Statistics, the costs associated with corrections have increased from \$9 billion in 1982 to \$60 billion in 2002. However, this figure does not take into account the additional costs of arrest, prosecution and defense, and health care and, perhaps most important, the cost to victims.").

<sup>24</sup> The Department of Justice has estimated that in 1992 alone, the direct costs to crime victims was \$17.6 billion. See PATSY A. KLAUS, U.S. DEPT OF JUST., BUREAU OF JUST. STATISTICS, THE COSTS OF CRIME TO VICTIMS (1994), available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/coctv.txt>. That estimate excluded medical costs incurred later than six months from the date of victimization, some psychological treatment, “[i]ncreases to insurance premiums as a result of filing claims, decreased productivity at work, moving costs incurred when moving as a result of victimization, intangible costs of pain and suffering, and other similar costs . . .” *Id.* at 2.

<sup>25</sup> CHRISTOPHER J. MUMOLA, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., INCARCERATED PARENTS AND THEIR CHILDREN 1 (2000) [hereinafter MUMOLA, INCARCERATED PARENTS] (“Parents held in U.S. prisons had an estimated 1,498,800 minor children in 1999, an increase of over 500,000 since 1991.”). See also TRAVIS ET AL., *supra* note 5, at 13 (“Sixty-five percent of female prisoners have a child below the age of 18.”). It is estimated that approximately 20,000 children in Washington have a parent who is in prison. Jennifer Sullivan, *Fathers Inside, Looking Out*, SEATTLE TIMES, June 15, 2006, at A1, A16 (interviewing Joenne Harrhy, the community involvement program coordinator at McNeil Island Corrections Center in Steilacoom, Washington). See also *id.* at 2 (as of 1999, “the number of children with a mother in prison nearly doubled (up 98%) since 1991, while the number of children with a father in prison grew by 58% during this period”); Marc Mauer, Assistant Director, The Sentencing Project, *Lessons of the “Get Tough” Movement in the United States*, Presented at International Corrections and Prison Association 6<sup>th</sup> Annual Conference, Beijing, China 6 (Oct. 25, 2004), available at <http://www.sentencingproject.org> (“For these children, the experience of shame, stigma, and loss of financial and psychological support becomes a profound aspect of their life experience.”).

<sup>26</sup> MUMOLA, INCARCERATED PARENTS, *supra* note 25, at 1. See also *id.* at 5 (“Parents in State prison were more likely to be serving a sentence for drug offenses (24 %) than non parents (17 %)”); *id.* at 7 (“[a] majority of parents in State prison used drugs in the month before their offense”); *id.* at 8 (“1 in 3 mothers in State prison committed their crime to get drugs or money for drugs”); *id.* at 9 (“About 1 in 7 parents in State prison reported indications of a mental illness.”).

<sup>27</sup> See, e.g., PAULA M. DITTON, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., MENTAL HEALTH TREATMENT OF INMATES AND PROBATIONERS 6 (1999) (in state prison facilities, 55 percent of mentally ill prisoners and 47 percent of other prisoners “reported a history of family incarceration”). Although available studies do not distinguish between consequences resulting from incarceration of parents and those resulting from other factors that create instability, there is “some evidence to suggest that children of incarcerated parents are at high risk of future delinquency and/or criminal behavior,” and “[t]wo studies have found that children of offenders are significantly more likely than other children to be arrested or incarcerated.” TRAVIS ET AL., *supra* note 5, at 39.

<sup>28</sup> OR. DEP’T OF CORR., THE CHILDREN OF INCARCERATED PARENTS PROJECT (May 2003), available at [http://egov.oregon.gov/DOC/PUBAFF/docs/oam/2003\\_childrens\\_project.pdf](http://egov.oregon.gov/DOC/PUBAFF/docs/oam/2003_childrens_project.pdf).

<sup>29</sup> For example, in Washington, African Americans make up 3.2 percent of the general population but 18.1 percent of the incarcerated population. HUMAN RIGHTS WATCH, INCARCERATED AMERICA (April 2003), <http://www.hrw.org/background/usa/incarceration/> [hereinafter INCARCERATED AMERICA] (last visited December 1, 2006). Washington is not unique in this regard; nationally, racial minorities are significantly more likely to be incarcerated than white populations. See BONCZAR, *supra* note 7, at 1, 5 (in 2001, “[t]he rate of ever having gone to prison among black males (16.6%) was over twice as high as among adult Hispanic males (7.7%) and over 6 times as high as among adult white males (2.6%).”); *id.* at 1 (“About 1 in 3 black males, 1 in 6 Hispanic males, and 1 in 17 white males are expected to go to prison during their lifetime, if current incarceration rates remain unchanged.”); HARRISON & BECK (2005), *supra* note 6, at 8 (“Expressed in terms of percentages, 8.4% of black males age 25 to 29 were in prison on December 31, 2004.”). See also Mauer, *supra* note 25, at 6 (“For African American children, 1 of every 14 has a parent behind bars on any given day.”); MUMOLA, INCARCERATED PARENTS, *supra* note 25, at 3 (“Nearly half of all imprisoned parents were black.”); HARRISON & BECK (2005), *supra* note 6, at 8 (“Black females (with an incarceration rate of 170 per 100,000) were more than twice as likely as Hispanic females (75 per 100,000) and 4 times as likely as white females (42 per 100,000) to be in prison on December 31, 2004.”).

<sup>30</sup> See MUMOLA, INCARCERATED PARENTS, *supra* note 25, at 1 (“10% of mothers and 2% of fathers in State prison reported a child now living in a foster home or agency”). The average length of sentences for parents in state prisons is 12 years. See *id.* at 6. As such, use of foster care is often unavoidable. Furthermore, the link between the lack of access to parents and future incarceration is worth noting—a quarter of mentally ill State prisoners lived in a foster home, agency or institution as children. See DITTON, *supra* note 27, at 6. See also DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 4 (2006) (estimating that 18 percent of state prisoners with mental health problems previously lived in foster homes, agencies or institutions).

<sup>31</sup> See *supra* note 18 and accompanying text.

<sup>32</sup> See Bush, *supra* note 18.

<sup>33</sup> Task Force on Offenders Programs, Sentencing and Supervision, 2006 WASH. SESS. LAWS, page no. 1242, ch. 267 (known as SSB 6308, which created the task force), available at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6308>.

<sup>34</sup> *Id.*; S.S.B. 6308 Final Rep. at 1 (relating to 2006 WASH. SESS. LAWS, page no. 1242 ch. 267), available at <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bill%20Reports/Senate%20Final/6308-S.FBR.pdf>.

<sup>35</sup> Washington’s DOC has prioritized an increase in prison programming and set the following strategic goal: “Reduce offender risk to re-offend – So that offenders have the capacity to be successful citizens when they leave prison or jail and return to the community. This starts with a safe and secure prison environment that supports appropriate programming.” STRATEGIC PLAN, *supra* note 12, at 1. See also *id.* at 7; CAPITAL PLAN, *supra* note 15, at 1. Further, the DOC has determined that programming, including educational services, correctional industries, chemical dependency treatment, and mental health treatment “help create a safe and humane environment for offenders,

staff, and visitors and also help reduce the risk to the community when offenders are released,” and that many such programs “show a positive return on investment.” STRATEGIC PLAN, *supra* note 12, at 9.

<sup>36</sup> The task force created by S.S.B. 6308 worked in four subgroups: (1) Education and Employment; (2) Transitional Programs & State/County Coordination; (3) Legal Barriers and Civil Liability; and (4) Community Partnerships.

<sup>37</sup> WASHINGTON JOINT TASK FORCE ON OFFENDERS PROGRAMS, SENTENCING & SUPERVISION, REPORT & RECOMMENDATION TO THE WASHINGTON STATE LEGISLATURE (Nov. 2006).

<sup>38</sup> *See, e.g., infra* note 48.

<sup>39</sup> CAROLINE WOLF HARLOW, Ph.D., U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., EDUCATION AND CORRECTIONAL POPULATIONS 2 (revised April 15, 2003). In some instances, incarceration led to the failure to obtain an education. *See id.* at 3 (“Approximately 1 in 6 jail inmates dropped out of school because they were convicted of a crime, sent to a correctional facility, or otherwise involved in illegal activity.”); LAWRENCE ET AL., *supra* note 5, at 2 (“Approximately half of all state and federal inmates have high school diplomas, compared with three-fourths of the general population.”).

<sup>40</sup> *See* HARLOW, *supra* note 39, at 2 (“Correctional populations report lower educational attainment than do those in the general population. An estimated 40% of State prison inmates, 27% of Federal inmates, 47% of inmates in local jails, and 31% of those serving probation sentences had not completed high school or its equivalent while about 18% of the general population failed to attain high school graduation . . .”). This disadvantage is most prevalent in minority prisoners. *See id.* at 6 (“About 44% of black State prison inmates and 53% of Hispanic inmates had not graduated from high school or received a GED compared to 27% of whites in State prisons . . .”).

<sup>41</sup> “Results show that inmates who actively participate in education programs have significantly lower likelihoods of recidivating.” M.D. HARER, FED. BUREAU OF PRISONS, PRISON EDUCATION PROGRAM PARTICIPATION AND RECIDIVISM: A TEST OF THE NORMALIZATION HYPOTHESIS (1995). In addition, prison programming serves to increase safety within institutions. The Commission on Safety and Abuse in Prisons has found that “few conditions compromise safety more than idleness. But because lawmakers have reduced funding for programming, prisoners today are largely inactive and unproductive. Highly structured programs are proven to reduce misconduct in correctional facilities and also to lower recidivism rates after release.” CONFRONTING CONFINEMENT, *supra* note 2, at 12. *See also id.* (listing as a violence prevention recommendation “invest[ing] in programs that are proven to reduce violence and to change behavior over the long term”).

<sup>42</sup> *See* STEVE AOS, ET AL., WASH. ST. INST. FOR PUB. POL’Y, EVIDENCE-BASED ADULT CORRECTIONS PROGRAMS: WHAT WORKS AND WHAT DOES NOT 3 (Jan. 2006) [hereinafter AOS, WHAT WORKS] (listing estimated percentage change in recidivism rates based upon a comprehensive meta-analysis of 291 rigorous evaluations of evidence-based programs for adult prisoners); *see also* AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9 (estimating that participation in general education, including adult basic education and post-secondary education, decreases recidivism rates by 7 percent); AUDREY BAZOS AND

JESSICA HAUSMAN, UCLA SCH. OF PUB. POL'Y AND SOC. RESEARCH, CORRECTIONAL EDUCATION AS A CRIME CONTROL PROGRAM 2 (Mar. 2004) ("Once correctional education participants are released, they are about 10 to 20% less likely to re-offend than the average released prisoner."). Further, providing correctional education programming is a more effective means of crime control than increasing incarceration rates. *Id.* ("One million dollars spent on correctional education prevents about 600 crimes, while that same money invested in incarceration prevents 350 crimes.").

<sup>43</sup> See AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9. See also AOS, WHAT WORKS, *supra* note 42, at 3 (estimating that participation in vocational education decreases recidivism rates by 12.6 percent); Washington's legislature has also "declare[d] that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities." WASH. REV. CODE § 72.62.010 (2006). "Vocational education" is defined as "a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production." § 72.62.020.

<sup>44</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 28 (citing WENDY ERISMAN & JEANNE BAYER CONTARDO, THE INST. FOR HIGHER EDUC., POLICY LEARNING TO REDUCE RECIDIVISM: A 50-STATE ANALYSIS OF POSTSECONDARY CORRECTIONAL EDUCATIONAL POLICY (2005)).

<sup>45</sup> WASH. DEP'T OF CORR. POL'Y 500.000 §§ II.D, III (2006) [hereinafter DOC 500.000]. All citations to DOC provisions are *available at*, <http://www.doc.wa.gov>.

<sup>46</sup> DOC 500.000 § II.B. Prisoners who are either physically or mentally unable to participate in programming are exempt from required programming. See Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(1), 5(3) (codified in WASH. REV. CODE § 72.09.460).

<sup>47</sup> Facility descriptions are *available at* <http://doc.wa.gov/facilities/facilitydescriptions.htm>.

<sup>48</sup> Washington's reduction of funding reflects a national decline in the provision of correctional education. See BAZOS & HAUSMAN, *supra* note 42, at 3 (citing P.M. HARRISON AND A.J. BECK, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., PRISONERS IN 2002 (2002)).

<sup>49</sup> See Data compiled by Washington State Board for Community and Technical Colleges (on file with author). Cf. LAWRENCE ET AL., *supra* note 5, at 2 ("Fewer than 15 percent of inmates receive programming that addresses their educational needs."); *id.* at 3 (reporting significant declines in prisoner participation in educational and vocational training between 1991 and 1997).

<sup>50</sup> See The Violent Crime Control and Law Enforcement Act of 1994, Pub.L. No. 103-322, § 20411, 108 Stat. 1796, 1829 (1994) (eliminating prisoner access to federal Pell Grants). Pell grants are federal student loans awarded on the basis of financial need which typically are not required to be repaid. See *The Student Guide*, *available at* <http://studentaid.ed.gov/>. See also LAWRENCE ET AL., *supra* note 5, at 3 ("Higher education programming was all but eliminated by federal legislation enacted in 1994.")

(citing S. LoBuglio, *Time to Reframe Politics and Practices in Correctional Education*, ANN. REV. OF ADULT LEARNING & LITERACY, VOL. 2. (2001)); *id.* at 14 (describing Iowa program that allowed prisoners to participate in community college classes via a state-wide fiber optics network, but which was effectively eliminated when federal funding for Pell Grants was cut).

<sup>51</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(1), 5(3) (codified in WASH. REV. CODE § 72.09.460).

<sup>52</sup> DOC 500.000 § V.B. *See also id.* § V.B.1.a (requiring prisoners under 22 years without high school diplomas or GEDs to participate in adult basic education). Additionally, Washington's constitution requires the provision of educational services for prisoners under the age of eighteen. *See Tunstall v. Bergeson*, 5 P.3d 691 (Wash. 2000).

<sup>53</sup> DOC 500.000 § V.B.1.b.

<sup>54</sup> *Id.* § V.B.1.c.

<sup>55</sup> This type of prioritization also exists for vocational training and post secondary educational programs. *See, e.g., id.* § VI.C (establishing priority levels for participation in vocational skills training programs).

<sup>56</sup> *See generally* Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19; DOC 500.000-100.

<sup>57</sup> *See* BUSINESS PLAN, *supra* note 8, at 5.

<sup>58</sup> *See, e.g.,* WASH. REV. CODE §§ 72.11.010-.040 (2006); *id.* §§ 72.65.010-.900.

<sup>59</sup> *See, e.g., id.* § 72.10.020 (2006).

<sup>60</sup> DOC 500.00 VI.F.

<sup>61</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(1), 5(3), § 5(4)(d) (codified in WASH. REV. CODE §§ 72.09.460); DOC 500.000 § VI.G.3. Although HB 2010 states that no prisoner shall be denied access to services on the basis of the inability to pay, that sentiment is reserved for *required* programs, rather than additional educational or vocational programs. Corrections Reform Act, *supra* § 4, (codified in WASH. REV. CODE § 72.09.450).

<sup>62</sup> DOC 500.000 § VI.G.4.

<sup>63</sup> *Id.* at 500.000a1.

<sup>64</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(4)(d) (codified in WASH. REV. CODE §§ 72.09.460); DOC 500.000 § VI.G.2. Prisoners must also pay for all books and supplies that are required for any correspondence courses. DOC 500.100 § V.F-G.

<sup>65</sup> Prisoners are required to pay a portion of post-secondary education costs when placed by a counselor into a degree program and must pay for all such costs if a courses are taken without such a placement. Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(4)(d) (codified in WASH. REV. CODE § 72.09.460).

<sup>66</sup> DOC 500.000 § VI.G.5; *id.* § III.A. *See also id.* § VI.G.9 (“An offender who is participating in a vocational skills training program will not be paid during the time s/he is participating in the program.”).

<sup>67</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(4)(d)(ii) (codified in WASH. REV. CODE § 72.09.460).

<sup>68</sup> DOC 500.000 § I.B.

<sup>69</sup> *Id.* at 2 (“Training offenders in community values, including job skills, job training, work ethic, and holding offenders responsible and accountable is an ongoing process. CI programs are an essential component for successfully transitioning offenders from prison to the community. CI staff are committed to creating, maintaining, and expanding offender worker programs that develop marketable skills, instill and promote a positive work ethic, and reduce recidivism.”).

<sup>70</sup> Wash. Water Jet Workers Ass’n v. Yarbrough, 90 P.3d 42 (Wash. 2004).

<sup>71</sup> WASH. CONST. art. II, § 29.

<sup>72</sup> BUSINESS PLAN, *supra* note 8, at 2, 8.

<sup>73</sup> *Id.* at 2, 5, 8, 20.

<sup>74</sup> *Id.* at 2, 8, 20.

<sup>75</sup> *See Yarbrough*, 90 P.3d at 44-45 (employment could encourage a strong work ethic and would allow prisoners to pay for taxes, victim compensation services, and child support).

<sup>76</sup> *See id.* at 474 (“We stress that there are other opportunities, in the form of state-run inmate labor programs, which would not run afoul of article II, section 29.”).

<sup>77</sup> Class II industries are defined as “any state-owned and operated enterprises designed to reduce the cost for services and goods for tax supported agencies and for nonprofit organizations which assist persons who are poor or infirm. Products of these enterprises may be sold to public agencies and to nonprofit organizations which assist persons who are poor or infirm. Inmates shall be paid for their work on a gratuity scale, approved by the director, which shall not exceed the federal minimum wage.” WASH. ADMIN. CODE § 137-80-020(5) (2006). Funds generated from Class II industries are to be “used exclusively, without appropriation, in the expansion and improvement of Class II industries.” WASH. ADMIN. CODE § 137-80-050 (2006).

<sup>78</sup> BUSINESS PLAN, *supra* note 8, at 2, 8. DOC anticipates increasing the availability of Class II jobs by 200 per year in 2006 and 2007, and is projecting the employment of over 3,000 prisoners by fiscal year 2010. *Id.* at 4, 10.

<sup>79</sup> *See AOS, PUBLIC POLICY OPTIONS, supra* note 9, at 9. *AOS, WHAT WORKS, supra* note 42, at 3 (estimating that participation in correctional industries results in a 7.8 percent decrease in recidivism); STEVE AOS, WASH. STATE INST. FOR PUB. POL’Y, CORRECTIONAL INDUSTRIES PROGRAMS FOR ADULT OFFENDERS IN PRISON: ESTIMATES OF BENEFITS AND COSTS, Jan. 2005, at 1 [hereinafter AOS, CORRECTIONAL INDUSTRIES] (“correctional industries programs can be expected to produce a statistically significant reduction in the future criminality of participating offenders”).

<sup>80</sup> *See supra* note 13. Descriptions of each work release facility are *available at* <http://www.doc.wa.gov/facilities/>.

<sup>81</sup> WASH. REV. CODE § 72.65.030 (2006) (application of prisoner to participate in work release); § 72.65.040 (approval or denial of application for work release and adoption of work release plan); § 72.65.200 (requiring that prisoner’s ability to participate in work release be authorized at sentencing or pursuant to WASH. REV. CODE § 9.94A.728 (2006)); WASH. ADMIN. CODE § 137-56-020 (2006) (secretary’s power to deny or grant transfer to work release); WASH. ADMIN. CODE § 137-56-050 (referrals to work release facilities are made by a classification review team based upon a prisoner request). Individuals who violate the conditions of their release may also be sent to work release

upon referral by a Community Corrections Officer. WASH. ADMIN. CODE § 137-56-030, 050 (2006).

<sup>82</sup> Prisoners may be required to pay for vocational training programs made available during work release. WASH. REV. CODE § 72.65.020(b) (2006).

<sup>83</sup> WASH. REV. CODE § 72.65.020 (2006); WASH. ADMIN. CODE § 137-56-030 (2006). *See also* Anne Fiala, *Work Release Acclimates Inmates to New Freedoms*, THE NEWS TRIB. (Tacoma), Sept. 28, 2006, Insight Magazine, at 3 (“Work release gives offenders the opportunity to perform community service, to begin supporting themselves, and to meet other financial obligations—including victim restitution and child support—by working at paying jobs in the community.”); *id.* (“Work-release offenders earned \$4.7 million on their jobs during fiscal year 2005. They also paid nearly \$110,000 in restitution and accumulated 8,800 hours in community service.”).

<sup>84</sup> WASH. REV. CODE § 72.65.050 (2006). *See also* WASH. ADMIN. CODE § 137-56-010 (2006) (requiring collection of earnings and deduction for room and board); Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 17(5)(a) (codified in WASH. REV. CODE § 72.10.020) (medical charges treated as debts); WASH. REV. CODE § 72.11.010 (2006) (defining “court-ordered legal financial obligations” as including “payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys’ fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.”); § 72.11.020 (granting the DOC secretary the authority to act as custodian of prisoner’s funds and to disburse money from a prisoner’s account for the purpose of satisfying legal financial obligations); § 72.11.030 (subordinating legal financial obligations to certain other debts).

<sup>85</sup> *See* AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9. *See also* AOS, WHAT WORKS, *supra* note 42, at 3 (estimating that participation in work release reduces recidivism rates by 5.6 percent). Fiala, *supra* note 83 (“about 80 percent of offenders are employed after release from work release, and they have a 25 percent higher employment rate the year after release than non-work-release offenders”).

<sup>86</sup> Mental and Substance Abuse Disorders Act, 2005 WASH. SESS. LAWS, page no. 2340, ch. 504, § 101 (S.S.B. 5763, codified in scattered sections of WASH. REV. CODE §§ 5, 10, 18, 71) *available at* <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5763>.

<sup>87</sup> STEVE AOS ET. AL., WASH. STATE INST. FOR PUB. POL’Y, EVIDENCE-BASED TREATMENT OF ALCOHOL, DRUG, AND MENTAL HEALTH DISORDERS: POTENTIAL BENEFITS, COSTS, AND FISCAL IMPACTS FOR WASHINGTON STATE 4 (2006) [hereinafter AOS, EVIDENCE-BASED TREATMENT]. Further, in a 2004 national survey, “110 million Americans age 12 or older (46% of the population) reported illicit drug use at least once in their lifetime; 15% reported use of a drug within the past year; 8% reported use of a drug within the past month.” DRUGS AND CRIME FACTS: DRUG USE, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS. (revised on Oct. 6, 2005).

<sup>88</sup> AOS, EVIDENCE-BASED TREATMENT, *supra* note 87, at 4.

<sup>89</sup> *See, e.g.*, FACT SHEET: DRUG-RELATED CRIME, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS. 1 (Sept. 1994) [hereinafter DRUG-RELATED CRIME] (“Drug use and crime are common aspects of a deviant lifestyle. The likelihood and frequency of involvement in illegal activity is increased because drug users may not participate in the legitimate



economy and are exposed to situations that encourage crime.”); *id.* at 1-2 (drug users are more likely than non-users to commit crimes).

<sup>90</sup> See, e.g., JAMES & GLAZE, *supra* note 30, at 6 (37 percent of State prisoners with mental health problems had used drugs at the time of their crimes); DORIS J. WILSON, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., DRUG USE, TESTING, AND TREATMENT IN JAILS 2 (revised Sept. 29, 2000) (36 percent of jail inmates were using illegal drugs at the time of offense); CHRISTOPHER J. MUMOLA, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., SUBSTANCE ABUSE AND TREATMENT, STATE AND FEDERAL PRISONERS 1997, 1 (Jan. 1999) [hereinafter MUMOLA, SUBSTANCE ABUSE] (in 1997, 51 percent of prisoners in the United States “reported the use of alcohol or drugs while committing their offense.”); *id.* (in 1997: “37% of State prisoners were drinking at the time of their offense.”); DRUG-RELATED CRIME, *supra* note 89, at 2-3 (“Incarcerated offenders were often under the influence of drugs when they committed their offenses.”); DUROSE & MUMOLA, *supra* note 22, at 1 (“[A]bout 4 in 10 [nonviolent offenders] reported using drugs at the time of the offense.”); TRAVIS ET AL., *supra* note 5, at 25 (“[M]ore than half of state prisoners report that they were using drugs or alcohol when they committed the offense that led to their incarceration.”).

<sup>91</sup> WASH. STATE DEP’T OF CORR., PREVALENCE OF CHEMICAL DEPENDENCY IN FELONS WITH JAIL SENTENCES 1 (Oct. 2003) [hereinafter PREVALENCE OF CHEMICAL DEPENDENCY]. See also DRUG-RELATED CRIME, *supra* note 89, at 2 (“Arrestees frequently test positive for recent drug use.”). A national study showed that “half or more of juvenile arrestees tested positive for at least one drug.” U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., DRUGS AND CRIME FACTS: DRUG USE AND CRIME (revised on July 11, 2006) [hereinafter DRUG USE AND CRIME].

<sup>92</sup> DRUG USE AND CRIME, *supra* note 91 (“In 2002, 55% of convicted jail inmates reported they had used illegal drugs during the month before their offense, unchanged from 1996.”); WILSON, *supra* note 90, at 1 (“Over half of jail (55% and State inmates (57%) said they had used drugs in the month before the offense.”); *id.* at 2 (55 percent of convicted jail inmates were using drugs in the month prior to the offense.); MUMOLA, SUBSTANCE ABUSE, *supra* note 90, at 1 (In 1997, 57 percent of U.S. prisoners were using drugs within a month of their offense.).

<sup>93</sup> MUMOLA, SUBSTANCE ABUSE, *supra* note 90, at 1 (In 1997, 83 percent of all prisoners in the United States reported past drug use); WILSON, *supra* note 90 at 2 (approximately 82 percent of all inmates admitted to drug use); TRAVIS ET AL., *supra* note 5, at 25 (nationally “[e]ighty percent of the state prison population report a history of drug and/or alcohol use, including 74 percent of those expected to be released within the next 12 months.”).

<sup>94</sup> Nora D. Volkow, *Treat the Addict, Cut the Crime Rate*, WASHINGTON POST, Aug. 19, 2006, at A17 (“It is estimated that 70 percent of the people in state prisons and local jails have abused drugs regularly, compared with approximately 9 percent of the general population.”); PREVALENCE OF CHEMICAL DEPENDENCY, *supra* note 91, at 1 (data collected nationally show that 64.2 percent of convicted jail inmates reported regular drug usage (defined as once per week for at least one month)); WILSON, *supra* note 90, at 1 (in 1998, 70 percent of jail inmates reported regular drug use); *id.* (reporting that two-thirds of jail inmates were actively involved with drugs prior to their admission to

jail); *id.* at 2 (64 percent of jail inmates reported regular drug use); DUROSE & MUMOLA, *supra* note 22, at 1 (“Nearly two-thirds of nonviolent offenders discharged from prisons indicated they had been using illegal drugs in the month preceding the commitment offense...”). Figures for alcohol dependence are lower than drug dependence. *See id.* at 1 (“About 1 in 4 nonviolent releasees were alcohol dependent prior to imprisonment.”); MUMOLA, SUBSTANCE ABUSE, *supra* note 90, at 5 (“24 percent of State prisoners reported experiences that are consistent with a history of alcohol abuse or dependence.”).

<sup>95</sup> In Washington, the drug offender prison population has had the most significant increase in recent years. BARNOSKI, PART I, *supra* note 12, at 8. *See also* AOS, INCARCERATION RATES, *supra* note 13, at 3 (“The incarceration rate for drug offenders grew significantly between the late 1980s and the mid-1990s and has been relatively stable in the last several years.”). That trend is also reflected in national crime rates. *See* U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., DRUGS AND CRIME FACTS: ENFORCEMENT (revised on Oct. 17, 2005) (“In 1987 drug arrests were 7.4 percent of the total of all arrests reported to the FBI; by 2004, drug arrests had risen to 12.5 percent of all arrests.”); INCARCERATED AMERICA, *supra* note 29 (“The number of incarcerated drug offenders has increased twelvefold since 1980. In 2000, 22 percent of those in federal and state prisons were convicted on drug charges.”)

<sup>96</sup> DRUG USE AND CRIME, *supra* note 91 (“In 2002 about a quarter of convicted property and drug offenders had committed their crimes to get money for drugs, compared to 5 percent of violent and public order offenders.”); DRUG-RELATED CRIME, *supra* note 89, at 3 (“Offenders often commit offenses to support their drug habit.”); WILSON, *supra* note 90, at 1 (16 percent of convicted jail inmates commit crimes to get money for drugs); *id.* at 2 (“Nearly 1 in 6 convicted jail inmates committed their offenses to get money for drugs.”); MUMOLA, SUBSTANCE ABUSE, *supra* note 90, at 1 (“In 1997... about 1 in 6 of [all state and federal prisoners] reported committing their current offense to obtain money for drugs.”). “The crimes associated with drug abuse include sale or possession of drugs; property crimes or prostitution to support drug habits; and violent crimes reflecting out-of-control behavior. In fact, offender drug use is involved in more than half of all violent crimes and in 60 to 80 percent of child abuse and neglect cases.” Volkow, *supra* note 94.

<sup>97</sup> STRATEGIC PLAN, *supra* note 12, at 4 (“as many as 75 percent have some sort of chemical dependency problem.”); PREVALENCE OF CHEMICAL DEPENDENCY, *supra* note 91, at 1 (as of 2002, “[o]f offenders who received a chemical dependency screening within six months of admission, 85 percent were presumed to be chemically dependent.”). American jails are also teeming with chemically dependent inmates. *See, e.g.*, DRUG USE AND CRIME, *supra* note 91 (“More than two-thirds of local jail inmates (68%) were found to be dependent on drugs or alcohol or abusing them, according to a 2002 survey of men and women held in local jails.”); *See also* TRAVIS ET AL., *supra* note 5, at 11 (“About three-quarters of [returning prisoners] have a history of substance abuse.”).

<sup>98</sup> STATISTICAL BROCHURE, *supra* note 20. Nationally, “only 10 percent of state inmates in 1997 reported receiving formal substance abuse treatment, down from 25 percent in 1991” and “[o]f those inmates who were alcohol-dependent at the time of their

incarceration, slightly more than one-fifth received in-prison treatment.” TRAVIS ET AL., *supra* note 5, at 26-27.

<sup>99</sup> DUROSE & MUMOLA, *supra* note 22, at 2.

<sup>100</sup> *See, e.g.*, BARNOSKI, PART II, *supra* note 19, at 3-4; HUGHES & WILSON, *supra* note 21.

<sup>101</sup> BARNOSKI, PART II, *supra* note 19, at 3. Drug offenders’ violent felony recidivism rates have remained fairly constant. *Id.*

<sup>102</sup> *Id.* at 4. *See also* HUGHES & WILSON, *supra* note 21 (rearrest rates for drug offenders increased from 50.4 percent in 1983 to 66.7 percent in 1994 and reconviction for drug offenders rose from 35.3 percent to 47.0 percent in the same period); LANGAN & LEVIN, *supra* note 20, at 8-9 (of prisoners released in 1994, within the first three years from release 30.3 percent were rearrested for drug offenses; of 1994 releasees who had been incarcerated for a drug offense, 41.2 percent were rearrested for a drug offense within three years); TRAVIS ET AL., *supra* note 5, at 26 (“an estimated two-thirds of untreated heroin abusers resume their heroine/cocaine use and patterns of criminal behavior within three months of their release”) (citing H.K. WEXLER ET AL., NAT’L INST. OF JUST., NCJ 113915, A CRIMINAL JUSTICE SYSTEM STRATEGY FOR TREATING COCAINE-HEROIN ABUSING OFFENDERS IN CUSTODY (1998)).

<sup>103</sup> *See* AOS, WHAT WORKS, *supra* note 42, at 3. The importance of appropriate aftercare is highlighted in this analysis; without aftercare, the decrease in recidivism drops to 5.3 percent. *Id.* *See also* AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9 (estimating recidivism reductions of 6.3 percent for participation in cognitive-behavioral treatment in prison or in the community, 9.3 percent for drug treatment in the community, and 5.7 percent for drug treatment in prison); Volkow, *supra* note 94 (describing a work release project in Delaware sponsored by the National Institute on Drug Abuse where prisoners who participated in prison-based treatment and post-release care “were seven times more likely to be drug-free and three times more likely to be arrest-free after three years than those who received no treatment”); *id.* (“The Substance Abuse and Mental Health Services Administration reports that substance-abuse treatment cuts drug abuse in half and reduces criminal activity by as much as 80 percent.”).

<sup>104</sup> For the purposes of this Article, “evidence-based treatment” is defined as “a program or policy supported by a rigorous outcome evaluation clearly demonstrating effectiveness.” AOS, EVIDENCE-BASED TREATMENT, *supra* note 87, at 1. *See also* AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 7.

<sup>105</sup> *Id.* at 4.

<sup>106</sup> *See, e.g.*, Press Release, Office of Governor Rod Blagojevich, *supra* note 18.

<sup>107</sup> AOS, EVIDENCE-BASED TREATMENT, *supra* note 87 at 4. “Serious mental illnesses” were defined for the purposes of this study as including “schizophrenia and other non-affective psychosis, manic depressive disorder, severe forms of major depression, and panic disorder.” *Id.*

<sup>108</sup> *See, e.g.*, SASHA ABRAMSKY & JAMIE FELLNER, HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS, September 2003, at 19-23, available at <http://www.hrw.org/reports/2003/usa1003/> [hereinafter ILL-EQUIPPED].

<sup>109</sup> See, e.g., *id.* at 18 (quoting Congressman Ted Strickland estimating that “between 25 and 40 percent of *all* mentally ill Americans would, at some point in their lives, become entangled in the criminal justice system.”); TRAVIS ET AL., *supra* note 5, at 27-28 (“[F]ollowing the widespread deinstitutionalization of mentally ill persons from state psychiatric hospitals in the 1960s and 1970s, more of these individuals are now involved in the criminal justice system.”).

<sup>110</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 43. See also TRAVIS ET AL., *supra* note 5, at 11 (“[A]n estimated 16 percent [of released prisoners] suffer from mental illness.”).

<sup>111</sup> STRATEGIC PLAN, *supra* note 12, at 4. This estimate may be quite conservative. See CONFRONTING CONFINEMENT, *supra* note 2, at 43 (“The most conservative estimate of prevalence—16 percent—means that there are at least 350,000 mentally ill people in jail and prison on any given day . . . . Other estimates of prevalence have yielded much higher rates, even of ‘serious’ mental disorders—as high as 36.5 percent or 54 percent when anxiety disorders are included.”); JAMES & GLAZE, *supra* note 30, at 1 (estimating that 56 percent of state prisoners have mental health problems); DITTON, *supra* note 27, at 1 (“At midyear 1998, an estimated 283,800 mentally ill offenders were incarcerated in the Nation’s prisons and jails.”).

<sup>112</sup> See JAMES & GLAZE, *supra* note 30, at 1, 9 (only 34 percent of state prisoners with mental health problems received treatment since admission); DITTON, *supra* note 27, at 1, 9 (only 60.5 percent of prisoners in state facilities receive any form of mental health treatment); ALLEN J. BECK & LAURA M. MARUSCHAK, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., MENTAL HEALTH TREATMENT IN STATE PRISONS 2000, at 3 (2001) (estimating that about 79 percent of mentally ill state prisoners receive mental health therapy on a regular basis); TRAVIS ET AL., *supra* note 5, at 11 (“[F]ewer than one-third of exiting prisoners receive substance abuse or mental health treatment while in prison.”).

<sup>113</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 45 (“Hospitalized prisoners and those in intermediate care centers have much less or no access to work and vocational training, education, and other types of programming that support good mental health.”).

<sup>114</sup> See ILL-EQUIPPED, *supra* note 108, at 94-109.

<sup>115</sup> See, e.g., *id.* at 109-127.

<sup>116</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 44.

<sup>117</sup> ILL-EQUIPPED, *supra* note 108, at 56.

<sup>118</sup> *Id.* at 56-57 (citing TERRY KUPERS, PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT (1999)). See also *id.* at 56-59; JAMES & GLAZE, *supra* note 30, at 10 (“A larger percentage of inmates who had a mental health problem had been injured in a fight since admission than those without a mental problem (State prisoners, 20% compared to 10% . . . .)”).

<sup>119</sup> See JAMES & GLAZE, *supra* note 30, at 1, 10 (58 percent of state prisoners with mental health problems, as compared to 43 percent of those without mental health problems, were charged with rule violations); DITTON, *supra* note 27, at 9; ILL-EQUIPPED, *supra* note 108, at 59-60.

<sup>120</sup> See ILL-EQUIPPED, *supra* note 108, at 56-69.

<sup>121</sup> See, e.g., WASH. DEP’T OF CORR. POL’Y § 320.200 (2006); *id.* § 320.250.

<sup>122</sup> See ILL-EQUIPPED, *supra* note 108, at 149-53.

<sup>123</sup> Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).

<sup>124</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 59 (citing David Lovell et al., *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 FED. PROBATION 33, 33-38 (2000)).

<sup>125</sup> See ILL-EQUIPPED, *supra* note 108, at 153-54.

<sup>126</sup> *Id.*

<sup>127</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 55. See also *id.* at 59-61 (subjecting mentally ill prisoners to segregation makes treatment in the community more difficult after release).

<sup>128</sup> DITTON, *supra* note 27, at 5.

<sup>129</sup> *Id.* See also *id.* at 1 (“About 53 percent of mentally ill inmates were in prison for a violent offense” as of midyear 1998.”); JAMES & GLAZE, *supra* note 30, at 7 (“State prisoners who had a mental health problem (61%) were more likely than State prisoners without (56%) to have a current or past violent offense . . . . Among repeat offenders, an estimated 47% of State prisoners who had a mental health problem were violent recidivists, compared to 39% of State prisoners without a mental problem.”). Of those incarcerated for violent offenses, mentally ill prisoners “were more likely to report that the victim of the offense was a woman, someone they knew, and under age 18.” DITTON, *supra* note 27, at 4. Additionally, “[i]ncarcerated veterans were more likely to report a mental illness” than other prisoners. CHRISTOPHER J. MUMOLA, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., VETERANS IN PRISON OR JAIL 12 (2000). In 1998, 225,700 veterans were incarcerated in prisons and jails. *Id.* at 1.

<sup>130</sup> See, e.g., AOS, WHAT WORKS, *supra* note 42, at 3.

<sup>131</sup> AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9. See also AOS, WHAT WORKS, *supra* note 42, at 3 (estimating a 27.4 percent reduction in recidivism rates where mentally ill prisoners are housed in therapeutic communities).

<sup>132</sup> BONCZAR, *supra* note 7 at 1, 3 (“Between 1974 and 2001 the number of former prisoners living in the United States more than doubled, from 1,603,000 to 4,299,000.”).

<sup>133</sup> *Id.* at 1, 7.

<sup>134</sup> See *supra* notes 4, 11, 13-15. See also THOMAS P. BONCZAR & ALLEN J. BECK, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., LIFETIME LIKELIHOOD OF GOING TO STATE OR FEDERAL PRISON 1 (1997) (estimating in 1997 that 5.1 percent of persons in the United States would be incarcerated in state or federal prisons during their lifetime).

<sup>135</sup> BONCZAR, *supra* note 7, at 7 (this will total 3.4 percent of the population of the United States).

<sup>136</sup> The Honorable Anthony M. Kennedy, Address at the American Bar Association Annual Meeting (August 9, 2003), available at [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_08-09-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html).

<sup>137</sup> See STRATEGIC PLAN, *supra* note 12, at 8 (“We recognize that reducing offender risk starts during incarceration.”). In some jurisdictions, the question of how to avoid recidivism is addressed at sentencing. See, e.g., Marcus, *supra* note 17. See also ALAN ROSENTHAL & ELAINE WOLF, PH.D., CENTER FOR COMMUNITY ALTERNATIVES, UNLOCKING THE POTENTIAL OF REENTRY AND REINTEGRATION (Oct. 2004), available at [http://www.communityalternatives.org/articles/unlocking\\_potential.html](http://www.communityalternatives.org/articles/unlocking_potential.html) (policy brief describing reentry planning as a six-stage approach: (1) decision making regarding

pretrial release; (2) plea bargaining and sentencing negotiations; (3) sentencing; (4) jail and prison programming; (5) the provision of supportive services at the time of release; and (6) decision making regarding parole revocation).

<sup>138</sup> See, e.g., DOC 500.000 § II.D. Prisoners also undergo a medical examination upon intake. WASH. ADMIN. CODE § 137-91-080 (2006). This medical examination must be sufficiently in depth to include “a systematic program for screening and evaluating inmates in order to identify those who require mental health treatment.” *Ruiz v. Estelle*, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980), *aff’d in part and rev’d in part on other grounds*, 679 F.2d 1115 (5th Cir.), *amended in part and vacated in part*, 688 F.2d 266 (5th Cir. 1982). See also *Inmates of Occoquan v. Barry*, 717 F. Supp. 854, 868 (D.D.C. 1989) (restricting the housing of prisoners with mental health problems with prisoners in punitive segregation); *Inmates of Allegheny County Jail v. Pierce*, 487 F. Supp. 638, 642, 644 (W.D. Pa. 1980) (county jail deliberately indifferent to inmate’s mental health needs due to delays in treatment, failure to make referrals, and lack of medical record keeping).

<sup>139</sup> One study found that 32.8 percent of mentally ill male prisoners and 13.1 percent of other male prisoners reported physical or sexual abuse in their past. See DITTON, *supra* note 27, at 1, 6-7. Of female prisoners, 78.4 percent of those with mental illness and 50.9 percent of other female prisoners reported past physical or sexual abuse. *Id.* Female prisoners are far more likely to suffer from mental illness, as well as to report histories of past sexual and physical abuse. As such, the “American Psychiatric Association recommends developing treatment programs especially for women prisoners that can address their history of trauma.” CONFRONTING CONFINEMENT, *supra* note 2, at 45. See also JAMES & GLAZE, *supra* note 30, at 1 (73 percent of female prisoners have mental health problems, as compared to 55 percent of male prisoners). Not only does past abuse potentially effect a prisoner’s mental health needs, but may also be related to chemical dependency. Reporting of illegal drug use at any time, as well as regular drug use, was higher for prisoners who reported past abuse than for other prisoners. See DRUG USE AND CRIME, *supra* note 91.

<sup>140</sup> See, e.g., Resolution on the Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663C (XXIV), U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. E/3048 (Jul. 31, 1957); E.S.C. Res. 2076 (LXII), U.N. ESCOR, 62d Sess., Supp. No.1, U.N. Doc. E/5988 (May 13, 1977) ¶ 61, available at [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm) [hereinafter Standard Minimum Rules] (“The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it . . . . There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies.”); *id.* ¶ 80 (“From the beginning of a prisoner’s sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.”).

<sup>141</sup> See Sullivan, *supra* note 25, at A16.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* See also Margaret G. Tebo, *A Parent in Prison*, 92 A.B.A.J. 12, 12-13 (2006).

<sup>144</sup> See THE CHILDREN OF INCARCERATED PARENTS PROJECT, *supra* note 28.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *See, e.g.*, TRAVIS ET AL., *supra* note 5, at 39.

<sup>149</sup> *See, e.g.*, HARLOW, *supra* note 39, at 9 (“Almost half of State prison inmates serving their sentences for selling or using illegal drugs had not graduated from high school or pass the GED.”); WASH. REV. CODE § 71.05.027 (2006) (“addressing mental health and chemical dependency in isolation from each other has not been cost-effective and has often resulted in longer-term, more costly treatment that may be less effective over time.”).

<sup>150</sup> LAWRENCE ET AL., *supra* note 5, at 10.

<sup>151</sup> *See* Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, §§ 4, 5, 27 (codified in scattered sections of WASH. REV. CODE §§ 4,9,72); DOC 500.000-100.

<sup>152</sup> *See supra* notes 137-150 and accompanying text.

<sup>153</sup> For example, working with Washington’s library system to “supply materials and resources for prison educators.” LAWRENCE ET AL., *supra* note 5, at 24.

<sup>154</sup> It is essential that the employment opportunities for which prisoners are being prepared offer a living wage. Without a means of becoming self-sufficient, prisoners are significantly more likely to recidivate. *See, e.g.*, TRAVIS ET AL., *supra* note 5, at 31 (“a 10 percent decrease in an individual’s wages is associated with a 10 to 20 percent increase in his or her criminal activity and the likelihood of incarceration.”) (citing J. Kling et al., *The Labor Market Consequences of ‘Mass’ Incarceration*, (unpublished paper for the Reentry Roundtable, Oct. 12-13, 2000) (on file with author)).

<sup>155</sup> *See* Standard Minimum Rules, *supra* note 140, ¶ 77(2) (“So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.”).

<sup>156</sup> *See* LAWRENCE ET AL., *supra* note 5, at 21 (noting that the Correctional Educational Association “has developed a set of standards that could provide the foundation for a systematic review”).

<sup>157</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(4)(d) (codified in WASH. REV. CODE § 72.09.450).

<sup>158</sup> *See supra* notes 137-150 and accompanying text.

<sup>159</sup> DOC 500.000 § I.B.

<sup>160</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(4)(b) (codified in WASH. REV. CODE §§ 72.09.450) (could be amended to include language reversing this presumption).

<sup>161</sup> *See* LAWRENCE ET AL., *supra* note 5, at 2 (frequent transferring between facilities is one reason that prison educational and vocational planning has been in decline); *id.* at 3.

<sup>162</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, § 5(4)(d) (codified in WASH. REV. CODE § 72.09.450).

<sup>163</sup> *See supra* notes 37-38.

<sup>164</sup> *See infra* notes 241-261 and accompanying text.

<sup>165</sup> In Washington, the average annual percentage of women incarcerated in state and federal facilities increased by 5.9 percent between 1995 and 2004, with a 3.3 percent

jump between 2003 and 2004. HARRISON & BECK (2005), *supra* note 6, at 5. Nationally, “[f]or women, the chances of going to prison were 6 times greater in 2001 (1.8 percent) than in 1974 (0.3 percent) . . . .” BONCZAR, *supra* note 7, at 1. The incarceration rates for females increased 53 percent between 1995 and 2004 alone, which exceeded the increased incarceration rates for men. HARRISON & BECK (2005), *supra* note 6, at 1, 4. The number of women in State or Federal prisons increased again by 3.4 percent between June 2004 and June 2005. HARRISON & BECK (2006), *supra* note 6, at 5.

<sup>166</sup> See, e.g., *McCoy v. Nevada Dep’t of Prisons*, 776 F. Supp. 521 (D. Nev. 1991) (denying prison’s motion for summary judgment in civil rights action in which female prisoners alleged equal protection violation for prison’s failure to provide them with equal access to educational, recreational, and vocational training programs); JAMES J. STEPHAN & JENNIFER C. KARBERG, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES 2000, 9 (2003) (reporting that disability issues “were important topics of court intervention”).

<sup>167</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 14-15 (“Between 1995 and 2000, the growth rate in the number of people housed in segregation far outpaced the growth rate of the prison population overall; 40 percent compared to 28 percent.”); *id.* at 53 (“The misuse of segregation works against the process of rehabilitating people and threatens public safety.”).

<sup>168</sup> *Id.* at 56.

<sup>169</sup> Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, §§ 27(1)(a)-(b), 27(3) (codified in scattered sections of WASH. REV. CODE §§ 4,9,72).

<sup>170</sup> BUSINESS PLAN, *supra* note 8, at 12-15. Further, the Correctional Industries Board “will develop a transition plan that includes Class II operations in minimum facilities. This helps to ensure offenders continue to develop and use job skills gained while incarcerated at higher custody levels.” *Id.* at 3.

<sup>171</sup> LAWRENCE ET AL., *supra* note 5, at 9 (“[F]ocusing on skills applicable to the job market is critical because employers hire people who can meet their particular needs. Thus, if prisons train inmates in trades or skills that are outdated or un-needed, prisoners’ job prospects are reduced.”).

<sup>172</sup> See, e.g., *id.* at 23 (“Local Chapters of Habitat for Humanity have worked with correctional programs in Iowa, Michigan, and Wisconsin to create opportunities for offenders to learn building skills and help the community.”).

<sup>173</sup> As part of this study, the eligibility requirements for the federal Prison Industry Enhancement Certification Program should be considered. See NANCY E. GIST, U.S. DEP’T OF JUST., BUREAU OF JUST. ASSISTANCE, PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM (2002) (e.g., requiring that participating jurisdictions have “[l]egislative authority to pay wages at a rate not less than that paid for similar work in the same locality’s private sector.”). If Washington were certified to participate in this program, it would be exempted from normal restrictions on the sale of prisoner-made goods in interstate commerce. *Id.*

<sup>174</sup> The two primary mental health facilities in Washington are Eastern State Hospital and Western State Hospital, which collectively house just over 1,000 people. See Eastern



State Hospital Fact Sheet, <http://www1.dshs.wa.gov/mentalhealth/eshfacts.shtml> (last visited Nov. 6, 2006); Western State Hospital Fact Sheet, <http://www1.dshs.wa.gov/mentalhealth/wshfacts.shtml> (last visited Nov. 6, 2006). In comparison, the DOC is estimated to house over 2500 prisoners with mental illness. See STRATEGIC PLAN, *supra* note 12, at 4.

<sup>175</sup> See CONFRONTING CONFINEMENT, *supra* note 2, at 44 (resources for the mentally ill should include, among other things, “psychiatric hospital beds to intermediate care housing separate from general prisoner population, from therapy and medication to targeted programming.”); *id.* at 61 (“Caring for those who cannot be housed in the general prisoner population requires investing in secure therapeutic units inside prisons and jails....”); Standard Minimum Rules, *supra* note 140, ¶ 82(2) (“Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.”); *id.* ¶ 82(3) (“During their stay in prison, such prisoners shall be placed under the special supervision of a medical officer.”). ABRAMSKY & FELLNER, *supra* note 108, at 13-14 (recommending that seriously mentally ill prisoners be housed in specialized facilities).

<sup>176</sup> See ABRAMSKY & FELLNER, *supra* note 108, at 56-59; CONFRONTING CONFINEMENT, *supra* note 2, at 20 (the quality of mental health care offered to prisoners is among the top three factors that “determine whether correctional facilities are safe and healthy or places where violence, abuse and degradation reign”). See also *id.* at 43 (regarding link between mental illness and lack of safety for staff and other prisoners).

<sup>177</sup> ABRAMSKY & FELLNER, *supra* note 108, at 132.

<sup>178</sup> AOS, EVIDENCE-BASED TREATMENT, *supra* note 87, at 4. In this report it is recommended that studies related to both mental illness and chemical dependency be expanded to include juveniles, deal with less serious disorders, identify specific types of treatment, and research a link between mental health disorders and childhood abuse and neglect. *Id.* at 5-6.

<sup>179</sup> See STRATEGIC PLAN, *supra* note 12, at 8 (DOC would like to “[i]ncrease mental health services to incarcerated offenders that prevent costlier institutional placement and facilitate re-entry into communities”).

<sup>180</sup> See generally AOS, WHAT WORKS, *supra* note 42.

<sup>181</sup> By providing improved mental health services, Washington reduces the likelihood that it will be held civilly liable for failure to provide proper treatment. See STEPHAN & KARBERG, *supra* note 166, at 9.

<sup>182</sup> ABRAMSKY & FELLNER, *supra* note 108, at 14 (recommending that prisons exclude seriously mentally ill prisoners from segregated confinement or supermax prisons). See also *e.g.*, *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995) (use of segregation on mentally ill prisoners unconstitutional). In addition, the improper use of restraints, force, and segregation may violate the Eighth Amendment and therefore subject prison staff and officials to liability. See, *e.g.*, *Hudson v. McMillan*, 503 U.S. 1, 6-7 (1992) (even where prisoner does not suffer serious injury, an Eighth Amendment violation occurs where prison staff use force to “maliciously and sadistically” cause harm); *Wells v. Franzen*, 777 F.2d 1258, 1261-62 (7th Cir. 1985) (summary judgment precluded regarding prisoner claim for damages for prolonged use of restraints); *Madrid v. Gomez*, 889 F. Supp. 1146, 1248-50 (N.D. Cal. 1995) (supervisory staff found liable

for Eighth Amendment violation due to deliberate indifference to a pattern of correctional staffs' use of force); Coleman, 912 F. Supp. at 1321-23 (prison officials found deliberately indifferent due to use of tasers and 37 mm guns on mentally ill prisoners). International standards disallow segregation for any prisoner absent examination by a medical officer and certification that the prisoner is physically and mentally fit to sustain close confinement. These standards also require daily visits by a medical officer to prisoners subject to segregation to determine whether the punishment should be terminated on the grounds of physical or mental health. See Standard Minimum Rules, *supra* note 140, ¶ 32(1)-(3).

<sup>183</sup> S.B. 2207 & Assemb. B. 3926, 2005 Leg., 228th Sess. (N.Y. 2005), available at <http://assembly.state.ny.us/leg/?bn=A03926>. The New York bill (passed in the Senate and the Assembly then vetoed by the Governor in August 2006) created treatment alternatives, provided mental health training for correctional officers, and established a mental health oversight committee. *Id.* The bill was supported by the correctional officers union because of the likelihood that the changes would increase safety. See Paul Grondahl, *Step Toward Ending Private Hell in Prison*, TIMES UNION, June 28, 2006, at A1.

<sup>184</sup> Ruiz v. Estelle, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980) ("Treatment requires the participation of trained mental health professionals, who must be employed in sufficient numbers to identify and treat in an individualized manner those treatable inmates suffering from serious mental disorders."). See also Standard Minimum Rules, *supra* note 140, ¶ 22(1) ("At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services... shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.").

<sup>185</sup> See CONFRONTING CONFINEMENT, *supra* note 2, at 40-41 (recommending full licensing of health professionals); *id.* at 61 (recommending that prisons be "staffed by mental health professionals who can handle troubled individuals without locking them in their cells all day"). Cf. Hoptowit v. Ray, 682 F.2d 1237, 1252-53 (9th Cir. 1982) (upholding conclusion of law that medical treatment at the Washington State Penitentiary was constitutionally deficient for, among other things, utilizing staff who were not sufficiently trained nor competent to provide medical care). The restriction forbidding the DOC from employing medical professionals who have restricted licenses should not be limited to mental health, but should also extend to medical and dental services. The failure to provide treatment for any serious medical needs, including mental health needs, opens DOC personnel and the state of Washington to liability under the Eighth Amendment and the Americans with Disabilities and Rehabilitation Acts. See, e.g., Rehabilitation Act, 29 U.S.C. § 794(a)-(e); Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134; United States v. Georgia, 546 U.S. 151 (2006) (holding that the ADA validly abrogates state sovereign immunity such that a prisoner may bring a private cause of action for damages for state conduct that amounts to an actual constitutional violation); Pa. Dep't of Corrs. v. Yeskey, 524 U.S. 206, 213 (1998) (ADA prohibition on disability discrimination applies to prisoners); Estelle v. Gamble, 429 U.S. 97, 104 (1976) (deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment); Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556, 560 (1st Cir. 1988)

(the *Estelle* rule applies to both physical and mental health needs). See also ABRAMSKY & FELLNER, *supra* note 108, at 12 (recommending the provision of qualified prison mental health staff).

<sup>186</sup> See CONFRONTING CONFINEMENT, *supra* note 2, at 40-41 (recommending staff training); ABRAMSKY & FELLNER, *supra* note 108, at 13 (“Effective training should be provided to all new officers in such areas as: signs of mental illness, different treatments for mental illness; effective interaction with mentally ill prisoners; defusing potentially escalating situations; recognition of the signs of possible suicide attempts; and training on the safe use of physical and mechanical restraints for mentally ill offenders.”); *id.* (“Staff should be trained to view suicide attempts and extreme acts of self-mutilation as probable signs of mental illness rather than indications that prisoners are ‘malingering’ or acting-out simply to gain attention or to be temporarily removed from their cell. Staff should be given guidance, working with mental health staff, to better distinguish between prisoners who deliberately and consciously break rules and undermine prison security, and prisoners whose conduct reflects a serious mental illness.”). See also Olsen v. Layton Hills Mall, 312 F.3d 1304, 1319-20 (10th Cir. 2002) (summary judgment precluded on claim that police officer was deliberately indifferent to the serious medical needs of an arrestee with obsessive compulsive disorder); Coleman v. Wilson, 912 F. Supp. 1282, 1320 (E.D. Cal. 1995) (correctional officers found to have inadequate training “in the signs and symptoms of mental illness”).

<sup>187</sup> See, e.g., ABRAMSKY & FELLNER, *supra* note 108, at 12-13 (“Recruiting qualified, competent mental health staff is often frustrated by salaries that are below community levels. Low pay also contributes to high rates of staff turnover, which diminishes the quality of care provided.”).

<sup>188</sup> See Corrections Reform Act, 1995 WASH. 1ST SPEC. SESS. LAWS, page no. 2493, ch. 19, at § 17(2) (codified in WASH. REV. CODE § 72.10.020) (establishing requirements for co-payments for medical services); *id.* § 17(5)(a) (co-payments not made at the time of service become debts of the prisoner). See also CONFRONTING CONFINEMENT, *supra* note 2, at 48-49. The Senate Commission on Safety and Abuse in Prisons found that co-payments do not off-set the costs of doctor visits and, in some cases, the cost of administering a co-payment system is greater than the amount of co-pays collected. *Id.* Washington does not track the costs of administering its co-payment system. See Letter from Pamela Moore, Public Disclosure Officer, to Beth A. Colgan, Managing Attorney of the Institutions Project at Columbia Legal Services (July 17, 2006) (on file with author). Additionally, the Commission also found that barriers to health care, such as co-pay requirements, should be eliminated as a matter of public health and safety because “[e]very year, more than 1.5 million people are released from jail and prison carrying a life-threatening contagious disease.” CONFRONTING CONFINEMENT, *supra* note 2, at 13.

<sup>189</sup> See JAMES & GLAZE, *supra* note 30, at 8 (mentally ill state prisoners are sentenced to a mean maximum sentence that is five months longer than prisoners without mental illness); *id.* at 9 (“State prisoners who had a mental health problem [are] expected to serve 4 months longer than those without.”); DITTON, *supra* note 27, at 8 (mentally ill prisoners serve an average of five to fifteen months longer than other prisoners).

<sup>190</sup> WASH. REV. CODE § 9.94.070 (2006).

<sup>191</sup> See WASH. DEP’T OF CORR. § 350.100 (2006).

<sup>192</sup> See, e.g., Press Release, Office of Governor Rod Blagojevich, *supra* note 18 (Illinois' Sheridan Correctional Center is a 1,300 bed facility which is fully-dedicated to drug treatment).

<sup>193</sup> *Id.*

<sup>194</sup> TRAVIS ET AL., *supra* note 5, at 26. See also State of Delaware Substance Abuse Treatment Program, <http://www.state.de.us/correc/Programs/treatmentprograms.shtml> (last visited Nov. 6, 2006).

<sup>195</sup> TRAVIS ET AL., *supra* note 5, at 26. See also State of Delaware Substance Abuse Treatment Program, *supra* note 194.

<sup>196</sup> TRAVIS ET AL., *supra* note 5, at 26.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* (citing a Federal Bureau of Prisons analysis of residential treatment programs showing that participants "were 73 percent less likely to be rearrested than untreated inmates" and "44 percent less likely than untreated offenders to use drugs within the first six months of release").

<sup>199</sup> See Neal P. Langan & Bernadette M. Pelissier, *Gender Differences Among Prisoners in Drug Treatment*, JOURNAL OF SUBSTANCE ABUSE 13 (2001), available at [http://www.bop.gov/news/research\\_projects/published\\_reports/drug\\_treat/oreprdap\\_gender.pdf](http://www.bop.gov/news/research_projects/published_reports/drug_treat/oreprdap_gender.pdf) ("Women used drugs more frequently, used harder drugs and used for different reasons than men. Women also confronted more difficulties than men in areas linked to substance abuse such as educational background, childhood family environment, adult social environment, mental health and psychical health.").

<sup>200</sup> Washington law already recognizes that "addressing mental health and chemical dependency in isolation from each other has not been cost-effective and has often resulted in longer-term, more costly treatment that may be less effective over time." Mental and Substance Abuse Disorders Act, 2005 WASH. SESS. LAWS, page no. 2340, ch. 504, § 101 (SSB 5763, codified in scattered sections of WASH REV. CODE §§ 5, 10, 18, 71) available at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5763>. There are significant numbers of prisoners who have both mental health and substance abuse problems. See JAMES & GLAZE, *supra* note 30, at 1, 6 (74 percent of state prisoners with mental health problems also report "dependence or abuse of alcohol or drugs").

<sup>201</sup> As detailed above, the impact of incarceration on Washington's families is significant. See *supra* notes 24-28; Mauer, *supra* note 25, at 6 ("Further, with so many people cycling in and out of prison each year, families are disrupted due to the loss of economic support, the burdens brought on by visiting and supporting loved ones in prison, and the social stigma of having a family member in prison."). These services can help prisoners "strengthen bonds with family members, reconcile their expectations with those of their families, and plan for how they would fit back into family life." RODRIGUEZ & BROWN, *supra* note 18, at 6. Although not all prisoners should be reunited with families, such as those who committed violent or sexual offenses against family members, where appropriate, efforts should be made to place prisoners in Reentry Facilities that are near their families to aid in these reconciliation services. Additionally, Washington should investigate whether barriers to family unification during incarceration impede prisoner transition. See, e.g., CONFRONTING CONFINEMENT, *supra* note 2, at 12 (regarding distance between families and expense of collect calling services); TRAVIS ET AL., *supra*

note 5, at 13 (“It may be more difficult for mothers to have personal visits with their children while incarcerated because they are typically located in distant facilities – an average of 160 miles farther from their children than are incarcerated fathers.”); *id.* at 39 (describing obstacles to maintaining parent-child relationships identified by the Women’s Prison Association, including a lack of clarity regarding visiting procedures and travel to facilities).

<sup>202</sup> Even without this reorganization, work release programming in Washington is insufficient. At the time of publication, “[n]early 500 prison inmates [were] eligible for work-release programs, but there’s no room for them.” Associated Press, *Prison officials want to expand work-release*, SEATTLE TIMES, Aug. 8, 2006, at B4.

<sup>203</sup> RODRIGUEZ & BROWN, *supra* note 18, at 6.

<sup>204</sup> *Id.* at 5.

<sup>205</sup> *Id.* at 6-10.

<sup>206</sup> See Press Release, Office of Governor Rod Blagojevich, *supra* note 18. The SAFER Foundation of Chicago links prisoners, upon release, with transitional jobs so that they are able to generate income while looking for a long-term placement. See Erik Eckholm, *Experiment Will Test the Effectiveness of Post-Prison Employment Programs*, N. Y. TIMES, Oct. 1, 2006, at 12, 18.

<sup>207</sup> LAWRENCE ET AL., *supra* note 5, at 17 (describing similar programs in several states). Creative programming in this arena was started in Texas through the Prison Entrepreneurship Program (PEP). This program provides four months of intensive business curriculum and entrepreneurial training to prisoners selected through an application process through which the prisoners are required to submit business plans for companies or employment they wish to pursue upon release. Ralph Blumenthal, *Thinking Outside the Cellblock: Inmates with Ambition*, N.Y. TIMES, July 1, 2006, at A13. Participating prisoners are matched with corporate volunteers who provide mentorship and business consultation. *Id.* Among other things, the project has successfully recruited over 150 business executives to participate in prison events including venture capital panels, has established partnerships with business schools at Harvard and Texas A&M Universities, and has launched a fund to assist prisoners in establishing businesses and obtaining transportation and housing upon release. See Pepweb.org, *Prison Entrepreneurship: Connecting Ideas from the Inside Out*, <http://www.pepweb.org> (last visited Nov. 6, 2006). Likewise, Indiana has launched an entrepreneurship program at the Plainfield Re-entry Educational Facility in partnership with Indiana’s community college network. Java Ahmed, *Job Training, Education and Money Management Give Offenders Hope*, July 19, 2006, <http://www.in.gov/indcorrection/news/071906pref.html> (last visited Dec. 1, 2006).

<sup>208</sup> LAWRENCE ET AL., *supra* note 5, at 21.

<sup>209</sup> To encourage employers to hire former prisoners, it may also be appropriate to build partnerships between businesses and community supervision services. Some employers “indicate a willingness to hire ex-prisoners if a third party intermediary or case manager is available to work with the new hire to help avert problems.” TRAVIS ET AL., *supra* note 5, at 33 (citing WELFARE TO WORK PARTNERSHIP, MEMBER SURVEY: TAKING THE NEXT STEP, 2000 Series, No. 1).

<sup>210</sup> In July 2006, the United Nations Human Rights Committee released a report expressing concern “that about five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications,” in violation of the International Covenant on Civil and Political Rights. Human Rights Comm’n, Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: United States, U.N. GAOR, 87th Sess., 2395th mtg. (Jul. 27, 2006).

<sup>211</sup> Indiana’s Plainfield Re-entry Educational Facility includes an onsite branch of the state’s Bureau of Motor Vehicles to work with prisoners on obtaining identification cards and driver’s licenses, and partners with the State’s health department to assist prisoners in obtaining birth certificates. See Ahmed, *supra* note 207. The Plainfield facility has also partnered with the DOH to provide health courses and with a bank to establish bank accounts for prisoners while at the reentry facility so that the accounts are available upon release to the community. *Id.* See also Standard Minimum Rules, *supra* note 140, ¶ 81(1).

<sup>212</sup> The relationship between homelessness and criminal activity is not fully understood, but some available statistics indicate that there is a connection. See RODRIGUEZ & BROWN, *supra* note 18, at 4 (“According to a study by the federal Bureau of Justice Statistics, 12 percent of state prisoners were homeless at the time of their arrest, and the Interagency Council on the Homeless has reported that 18 percent of all homeless people have spent time in a state or federal prison. Moreover, among parolees who have been reincarcerated, 19 percent were homeless upon their arrest.”). The connection between homelessness and crime appear to be particularly prevalent for the mentally ill; “[m]entally ill State prison inmates were more than twice as likely as other inmates to report living on the street or in a shelter in the 12 months prior to arrest (20% compared to 9%).” DITTON, *supra* note 27, at 1. See also *id.* at 5 (“Mentally ill offenders reported high rates of homelessness, unemployment, alcohol and drug use, and physical and sexual abuse prior to their current incarceration.”); *id.* (noting that about four in ten prisoners with mental conditions were unemployed prior to arrest). Failing to provide housing to persons convicted of sex offenses can be particularly problematic. In Washington, sex offenders are required to register with law enforcement officials, but if sex offenders are homeless it becomes practically impossible to track their location and enforce registration rules. See Christine Willmsen, *Dangerous sex felons: Address unknown*, SEATTLE TIMES, Dec. 11, 2005 A1.

<sup>213</sup> See Letter from Harold W. Clarke, Secretary of DOC to Don Pierce, Executive Director of WASPC (June 27, 2006) (on file with author) (explaining that an October 28, 2005 Attorney General Opinion advised the DOC not to provide funding; requests to obtain a copy of the Attorney General Opinion pursuant to Washington’s Public Disclosure Act, RCW 42.17, *et. seq.* have been denied).

<sup>214</sup> See, e.g., J. DAVID L. BAZELON, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, FOR PEOPLE WITH SERIOUS MENTAL ILLNESSES: FINDING THE KEY TO SUCCESSFUL TRANSITION FROM JAIL TO COMMUNITY, <http://www.bazelon.org/issues/criminalization/findingthekey.html> (last visited Nov. 10, 2006) (explaining the need to improve transitional systems for prisoners in need of federal Medicaid and disability programs).

<sup>215</sup> The need to maintain security and safety may reasonably prevent a small minority of prisoners from transitioning through Reentry Facilities. However, even those prisoners who are frequently housed in segregation can benefit from the programming, and allowing them an opportunity to normalize their relationships and activities before release, the greater the likelihood that they will be successful upon release. *See, e.g.*, CONFRONTING CONFINEMENT, *supra* note 2, at 52-61. *See also* Grondahl, *supra* note 183 (“Mentally ill inmates also face exceptionally high rates of recidivism because they commonly are released straight from solitary confinement into the community with little preparation.”). As such, a rebuttable presumption should exist that all Washington prisoners will transition through Reentry Facilities.

<sup>216</sup> *See, e.g.*, Fiala, *supra* note 83 (“Unfortunately, the department doesn’t have enough work-release beds to accommodate all the offenders who could benefit from the program.”). Washington’s work release facilities have a total capacity of only 673 prisoners. *See* POPULATION SUMMARIES: CONFINEMENT STATISTICS, STATE OF WASH. DEP’T OF CORR. 1 (June 30, 2006), <http://www.doc.wa.gov/BudgetAndResearch/ResearchData/StatCardJune2006.doc> (last visited Nov. 10, 2006).

<sup>217</sup> *See, e.g.*, ABRAMSKY & FELLNER, *supra* note 108, at 15 (“Moving the prisoners prior to their release to prisons in or near the counties to which they will return will allow prison mental health staff and parole officers to liaise more effectively with local mental health service providers to guard against the prisoner falling through the cracks.”).

<sup>218</sup> *See, supra* notes 132-261 and accompanying text.

<sup>219</sup> For example, pre-release systems in Maryland and Tennessee are designed to allow participants to build savings for use in obtaining permanent housing upon release. RODRIGUEZ & BROWN, *supra* note 18, at 5-6.

<sup>220</sup> For example, Washington should reconsider the breadth of legal financial obligations which may be ordered paid by individuals who are convicted of crimes and the policy which allows interest to accrue on legal financial obligations during the term of confinement. *See, e.g.*, WASH. REV. CODE. § 9.94A.760 (2006).

<sup>221</sup> *See, e.g.*, LAWRENCE ET AL., *supra* note 5, at 20 (recommending that interested constituencies collaborate on improving rehabilitation efforts).

<sup>222</sup> *See, e.g., id.* at 23 (“The Indiana University and Purdue University Reading Programs have partnered with the Department of Corrections in Indiana to provide tutoring for offenders in adult literacy programs.”).

<sup>223</sup> One treatment program in California provides housing in “sober living” residences for prisoners who complete a residential treatment program; the associate director of the programs has noted that “motivation increases... when inmates learn that post-release services, including housing, are available.” RODRIGUEZ & BROWN, *supra* note 18, at 5.

<sup>224</sup> Preventing homelessness is an important aspect of community supervision. “Of the total community supervision population in Washington State as of July 31, 2004, 5.4 percent or 2,847 offenders were homeless” and housing status was unknown for an additional 21.8 percent (11,443 people). WASH. ST. DEP’T OF CORR., HOMELESS OFFENDERS ON COMMUNITY SUPERVISION BRIEFING PAPER 1 (Nov. 2004), <http://www.doc.wa.gov/BudgetAndResearch/ResearchData/2004HomelessOffenderBriefingPaper.pdf>.

<sup>225</sup> *Id.* (“Research has shown that a lack of stable housing is linked to a greater risk of re-offending.”).

<sup>226</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 14 (“Finally, along with committing more funds to care for mentally ill prisoners, states and counties need to expand treatment in the community. Our jails and prisons should not function as mental institutions.”); *id.* at 46; *id.* at 61 (“We must also expand the capacity of community mental health resources to care for mentally ill persons before they become mentally ill prisoners.”).

<sup>227</sup> LAWRENCE ET AL., *supra* note 5, at 6 (citing G. Gaes et al., *Adult Correctional Treatment*, in PRISONS, CRIMINAL JUSTICE: A REVIEW OF RESEARCH (M. Tonry and Joan Petersilia, eds., 1999)) (“The research literature underscores the importance of linking programs offered in prison with those offered after release. For example, evaluations of in-prison drug treatment interventions have found that these interventions by themselves are only moderately effective in reducing drug use and recidivism. However, when combined with post-release treatment programs in the community, their effectiveness can be significantly enhanced.”); Volkow, *supra* note 94 (citing a National Institute on Drug Abuse report which recommended continuity of care for chemical dependency treatment after reentry into the community). *See also* CONFRONTING CONFINEMENT, *supra* note 2, at 42 (describing a community health partnership program that includes the correctional center in Ludlow, Massachusetts, which is designed to encourage early and appropriate treatment within the prison and continuity of care for prisoners upon release); Standard Minimum Rules, *supra* note 140, ¶ 83 (“It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.”); STRATEGIC PLAN, *supra* note 12, at 11 (“In addition, the effectiveness of drug treatment, education, and mental health are enhanced when combined with post-release programs, employment, and access to health services.”).

<sup>228</sup> LAWRENCE ET AL., *supra* note 5, at 10.

<sup>229</sup> *See* Neal Pierce, *King County’s Sensible Take on Drugs*, SEATTLE TIMES, Aug. 28, 2006, at B4 (drug courts used in King County, Washington have resulted in lower jail counts and significant financial savings). *Cf.* Volkow, *supra* note 94 (“In Cook County, Ill., for example, NIDA sponsors a pilot project that trains judges on how addiction affects the brain so they can be better prepared to place addicted defendants in adequate treatment environments.”). The Washington State Institute of Public Policy has estimated that on average, drug courts have a cost benefit value of \$4,767 per participant.

<sup>230</sup> These diversion programs are also necessary because Washington’s prisons are often overcapacity. Washington has reported that as of yearend 2004, its state and federal prisons were operating at 110 percent of their highest capacity. HARRISON & BECK (2005), *supra* note 6, at 7.

<sup>231</sup> *See* WASH. REV. CODE § 70.48-.48 (A) (2006) (codifying City and County Jails Act of 1985).

<sup>232</sup> *Id.* § 72.09-.99 (2006) (codifying Corrections Reform Act of 1981).

<sup>233</sup> *See id.* § 72.09.150 (repealed 1988); § 70.48.030 (repealed 1986).

<sup>234</sup> *See id.* § 70.48.050 (repealed 1987) (empowering the jail commission to adopt rules and regulations approved by the legislature including both mandatory and advisory care standards).



<sup>235</sup> In contrast, with one exception, the corrections standard board's recommendations were advisory only and could not be enforced by the board under WASH. REV. CODE § 72.09.160(2) (repealed 1987). However, the jail commission's power to adopt mandatory custodial care standards and enforce those standards was retained under § 72.09.170 (repealed 1987). That included the authority to close jails which did not meet mandatory custodial care standards. See WASH. REV. CODE § 70.48.080 (repealed 1987). See also WASH. ADMIN. CODE § 289-30-050 (decodified 2006) (procedure for issuing notice of noncompliance or partial compliance to standards for jails).

<sup>236</sup> See, e.g., WASH. REV. CODE § 72.09.160(1) (the correction standards board "shall consider the standards of the United States department of justice and the accreditation commission on corrections of the American corrections association and any other standards or proposals it finds appropriate).

<sup>237</sup> See *id.* § 70.48.050(3) (establishing a duty of the jail commission to make reports).

<sup>238</sup> See WASH. REV. CODE § 72.09.160(4) (directing the correction standards board to inspect each facility on an annual basis); § 70.48.050(6) (requiring annual inspection and certification of jails and allowing inspectors "access to all portions of jails, to all prisoners confined therein, and to all records maintained by said jails"). See also WASH. ADMIN. CODE § 289-30-030 (decodified 2006) (procedures relevant to inspection of jails which required inspection on an annual basis but allowed for additional inspections "as may appear necessary to ensure compliance with applicable mandatory custodial care standards or as requested by the governing unit in question").

<sup>239</sup> See, e.g., WASH. REV. CODE § 72.09.160(5)-(6).

<sup>240</sup> Compare WASH. REV. CODE § 72.09.180 (repealed 1995) (creating the correction standards board for a six year period with a possible extension upon recommendation by the legislature).

<sup>241</sup> See CONFRONTING CONFINEMENT, *supra* note 2, at 8 ("In addition to the recommendations in this report, the Commission urges legislators to take full responsibility for tough-on-crime policies that have swelled America's prisons and jails, filling them with poor, undereducated, and unhealthy individuals. Corrections administrators must have the resources and support to operate safe and effective prisons and jails. Better funding will not guarantee better results, but without it too many vital reforms will never be attempted."); *id.* at 17 ("[W]e cannot hold corrections administrators accountable for the safety of prisoners and staff, and for public safety, if we do not provide the resources necessary to effectively manage their facilities."). See also *id.* at 39 (based on testimony of medical experts and jail administrators, "the Commission urges lawmakers to adequately fund correctional health care"); *id.* at 46 (regarding funding for mental health treatment in prisons and communities); BUSINESS PLAN, *supra* note 8, at 17-19 (regarding start up and operational costs for prison programming).

<sup>242</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 28. See also *id.* at 13 ("Legislators and executive branch officials, including corrections administrators, need to commit adequate resources to identify and treat mentally ill prisoners and, simultaneously, to reduce the number of people with mental illness in prisons and jails.").

<sup>243</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 12 (emphasis added). Additionally, there are indicators that the public understands that improving programming and

treatment will be expensive. For example, “[w]hen asked about spending for various social problems, 56 percent of the respondents to a 2002 National Opinion Research Center (NORC) Poll said this country is spending too little to deal with drug addiction.” U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., DRUGS AND CRIME FACTS: PUBLIC OPINION ABOUT DRUGS (2003), available at <http://www.ojp.usdoj.gov/bjs/DCF/poad.htm>.

<sup>244</sup> See, e.g., AOS, INCARCERATION RATES, *supra* note 13, at 7 (“[S]ome research-based and well-implemented rehabilitation and prevention programs can produce better returns for the taxpayer’s dollar than prison expansion.”).

<sup>245</sup> See AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9; see also STRATEGIC PLAN, *supra* note 12, at 8. BAZOS & HAUSMAN, *supra* note 42, at 2 (“For each re-incarceration prevented by education, states save about \$20,000. One million dollars invested in education would prevent 26 re-incarcerations, for net future savings of \$600,000.”).

<sup>246</sup> See AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9.

<sup>247</sup> BAZOS & HAUSMAN, *supra* note 42, at 2.

<sup>248</sup> See AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 9. See also AOS, CORRECTIONAL INDUSTRIES, *supra* note 79, at 2 (estimating that correctional industries create \$6.65 in benefits per dollar cost). Further, by providing low cost goods and services to state agencies and nonprofits, Class II industries save Washington millions of dollars. See BUSINESS PLAN, *supra* note 8, at 2 (“Class II tax reduction industries saved the State of Washington \$7.2 million during fiscal year 2003 for the cost of goods and services to public agencies.”).

<sup>249</sup> STRATEGIC PLAN, *supra* note 12, at 10.

<sup>250</sup> *Id.* See also Volkow, *supra* note 94 (“It is estimated that every dollar invested in addiction treatment programs yields a return of \$4 to \$7 in reduced drug-related crimes. Savings for some outpatient programs can exceed costs by a ratio of 12 to 1.”); *id.* (“The estimated cost to society of drug abuse in 2002 was \$181 billion—\$107 billion of it associated with drug-related crime.”).

<sup>251</sup> AOS, EVIDENCE-BASED TREATMENT, *supra* note 87, at 4.

<sup>252</sup> *Id.* at 5.

<sup>253</sup> *Id.* at 5. Further, the “chance that evidence-based treatments would actually lose money (rather than generate benefits) was less than 1 percent.” *Id.* Although the enormity of these figures can be startling, they are also in keeping with studies conducted in other jurisdictions. For example, a study done in California focusing only on chemical dependency issues also determined that treatment could save the state \$1.5 billion over 18 months. See TRAVIS ET AL., *supra* note 5, at 27 (citing D.R. GERSTEIN ET. AL., EVALUATING RECOVERY SERVICES: THE CALIFORNIA DRUG AND ALCOHOL TREATMENT ASSESSMENT (CALDATA) (1994)).

<sup>254</sup> AOS, PUBLIC POLICY OPTIONS, *supra* note 9, at 12, 14.

<sup>255</sup> *Id.* at 15.

<sup>256</sup> *Id.* at 5.

<sup>257</sup> *Id.* at 1, 4, 13.

<sup>258</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 27. See also BUSINESS PLAN, *supra* note 8, at 1 (correctional industries programs “[r]educe idleness and provide a tool for the management of offenders”); *id.* at 15; CONFRONTING CONFINEMENT, *supra* note 2, at 15. Mary Livers, Maryland’s deputy secretary for operations has noted, “We’re moving away

from having that feeling of being safe when offenders are all locked up, to one where we're actually safer because we have inmates out of their cells, involved in something hopeful and productive." *Id.* See also *id.* at 22 (noting widespread recognition that denying meaningful programming to prisoners results in increased prison violence). The issue of both inmate and staff safety effects society at large. "More than half of Americans, 55 percent, are acquainted with someone who has been incarcerated or who has worked in a correctional facility." *Id.* at 29.

<sup>259</sup> STEPHAN & KARBERG, *supra* note 166, at 9 ("Approximately 34,400 inmate assaults on other inmates took place in confinement facilities under Federal or State authority during the annual period ending June 30, 2000."). While the rate of assaults on staff remained relatively stable, in actual numbers such assaults "rose approximately 27 percent from 14,200 in 1995 to 18,000 in 2000." *Id.*; "The number of major disturbances—incidents involving 5 or more inmates resulting in serious injury or significant property damage—was nearly twice as high in 2000 (606) as in 1995 (317)." *Id.* at 10.

<sup>260</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 67 ("One way to address the environment in a correctional setting is to work with prisoners to change their attitudes and behaviors. . . . [C]hange is more likely to take root and flourish in purposeful facilities, where prisoners are engaged in productive activities.").

<sup>261</sup> See, e.g., Second Chance Act of 2005, H.R. 1704, 109th Cong. (2005).

<sup>262</sup> Sen. Joseph R. Biden, Jr., Senate Floor Statement (Oct. 27, 2005), <http://biden.senate.gov/newsroom/details.cfm?id=249255&&> (last visited Dec. 1, 2006).

<sup>263</sup> *Id.*

<sup>264</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 49-51. See also ILL-EQUIPPED, *supra* note 108, at 9-10 (recommending that Congress reform laws, including Medicaid, Supplemental Security Income, and Social Security Disability Insurance, which are currently denied to prisoners).

<sup>265</sup> One role of the Reentry Commission could be to identify and pursue sources of potential funding as well as to recommend to the governor and legislature instances where legislative changes on the federal level should be addressed and supported.

<sup>266</sup> CONFRONTING CONFINEMENT, *supra* note 2, at 19-20.