Negative: First Step Act Recidivism Program Funding

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: The AFF plan says that recidivism/rehab programs that were supposed to be funded or created by the First Step Act of 2018 are not funded and not effective. They don’t have enough money, they exclude half the prisoners who should be getting them, and they don’t calculate rewarded time off from sentences correctly for prisoners who complete the programs (so prisoners lack incentive to participate). AFF will talk a lot about “evidence-based recidivism programs.” There’s one big problem: There’s no such thing. There are lots of “programs” but none that have undergone rigorous, replicated studies proving them effective at reducing recidivism.

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AFF Evidence Source. US Dept of Justice, March 2017. “PRISON REFORM: REDUCING RECIDIVISM BY STRENGTHENING THE FEDERAL BUREAU OF PRISONS” last updated 6 Mar 2017 ttps://www.justice.gov/archives/prison-reform (accessed 20 Dec 2021)



SOLVENCY

1. There are no successful “evidence based” recidivism reduction programs

Director of research at US Dept. of Justice admits: No re-entry programs meet the definition of “evidence based” success. Evidence standard: AFF must provide Randomized Controlled Trials (RCT) that are replicated in multiple studies

Dr. David Muhlhausen 2018 (PhD; National Institute of Justice, which is the research, development, and evaluation arm of the Department of Justice) 12 June 2018 “Research on Returning Offender Programs and Promising Practices” <https://nij.ojp.gov/speech/research-returning-offender-programs-and-promising-practices> (accessed 20 Dec 2021)

For the purposes of this review of the scientific literature, prisoner reentry programs are defined as programs that provide services to recently released inmates. By this definition, corrections programs that provide services only to currently incarcerated individuals are excluded from this review. However, programs that provided services inside prison and outside correctional institutions are included as prisoner reentry programs. Evidence-based programs are programs that have been demonstrated as effective by high-quality outcome evaluations that have been replicated and evaluated in at least three sites. This replication is crucial! High-quality outcome evaluations are those using rigorous, randomized controlled trials on programs implemented with fidelity.
Do Reentry Program Work?
So, what does the literature say about reentry programs and recidivism? The short answer is that it’s complicated. Due to the lack of RCTs and replications, no reentry programs meet the “evidence-based” definition.

The programs AFF calls “evidence based” really aren’t proven by valid studies

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All too often, there’s a lack of empirical research to support claims that a program works or doesn’t. As director of the Department of Justice’s research agency, I have no patience for anecdotal or non-rigorous evidence. Methods matter! This is particularly true for high-stakes issues like crime prevention and reentry. If a state adopts reforms and crime subsequently drops, we can’t consider that crime drop to be rigorous evidence that the reform is effective. If returning members of society report that they found a program helpful, this is only anecdotal evidence at best. It’s not representative of rigorous science. Anecdotal stories, rather than data and evidence, too often drive the narrative in what programs are deemed to be “evidence-based.”

Evidence-based program policy is “deceptive” because there aren’t any. All but 1 of the programs have never had a controlled study. The 1 with a controlled study found “modest” results

Emily Brubaker 2021. (master’s degree candidate in Criminal Justice, Liberty Univ. online) Helms School of Government Culture and Crisis Conference, “The First Step Act of 2018” March 6, 2021 <https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1005&context=hsgconference> (accessed 20 Dec 2021)

The second implementation problem of FSA is the deceptive reliance on evidence-based risk reduction programs. A foundational mandate of the bill is that every prisoner who is eligible will receive evidence-based recidivism reduction programming that is based on his or her specific criminogenic needs. The challenge arises, however, in identifying the programs that actually reduce recidivism. The BOP offers a wide assortment of programs at its institutions all across the nation, and those services are divided into more than 50 categories, 18 of which are considered “national models” that range from spiritual/religious models to cognitive behavioral ones. Out of all the BOP programs, the Residential Drug Abuse Program (RDAP) is the only one to ever undergo a controlled study with a follow-up evaluation period of at least one year. This initiative was operated between 1990 and 1995 and was only provided in halfway houses for those offenders who had a recorded history of serious substance abuse. The program included 9- 12 months of residential drug abuse treatment, which was delivered in a therapeutic and cognitive behavioral community format. Overall, the evaluators of RDAP deemed it to have a “positive but modest effect” on the inmates’ recidivism after a three-year follow up period.

FSA Independent Review Committee agrees in Dec. 2020: They can’t find any valid studies showing good “evidence based recidivism reduction”

FSA Independent Review Committee 2020. Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391) 21 Dec 2020 (Report to Congress required by FSA. The Committee consisted of: James M. Byrne, Ph.D. Univ of Mass. at Lowel.l Patti Butterfield, Ph.D. Southern New Hampshire University. Faye S. Taxman, Ph.D.- George Mason Univ. George J. Terwilliger - McGuireWoods LLP. John P. Walters - Hudson Institute. John E. Wetzel- Dept of Corrections, Pennsylvania) <https://firststepact-irc.org/wp-content/uploads/2020/12/IRC-FSA-Title-I-Section-107g-Report-12-21-20.pdf> (accessed 20 Dec 2021)

EVIDENCE-BASED PROGRAMMING
FSA requires BOP to offer “evidence-based recidivism reduction programs” (EBRPs) and “productive activities” (PAs), and to provide earned-time credits applicable toward earlier than-otherwise release for eligible inmates who successfully complete those programs and activities. (A Notice of Proposed Rulemaking governing practical administration of ETCs has been published in the Federal Register and the regulation at issue is currently open for public comment. See “FSA Time Credits,” below.) As Committee member James M. Byrne has pointed out in an exhaustive analysis conducted for the IRC in December 2019 (see “The Effectiveness 4 of Prison Programming: A Review of the Research Literature Examining the Impact of Federal, State, and Local Inmate Programming on Post-Release Recidivism,” https://firststepactirc.org/wp-content/uploads/2019/12/IRC-Effectiveness-of-Prison-Programming.pdf), most of the research theoretically relevant to inmate program offerings—where it exists at all—is extremely dated, drawn only inferentially from sometimes substantially different programs administered by non-federal correctional systems, or both. Congress should be aware of the current evidentiary limitations concerning “evidence-based recidivism reduction programs” as it continues to pursue and monitor criminal justice reform issues.

FSA Independent Review Committee looked at all 71 FSA “evidence based programs.” Their conclusion: Not enough evidence to prove any of them actually work

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DOJ and BOP were nevertheless obliged by law to identify and designate ETC [earned time credit] qualifying EBRPs [evidence based recidivism programs] and PAs [productive activities] from among the Bureau’s existing program offerings. A total of 71 such programs have so far been designated as either EBRPs and PAs. (Notably, facility-specific programming provided by local volunteers or organizations and regularly required inmate work assignments have not been included in these designations.) The IRC cannot overstate how strongly it believes that a much more robust evidentiary basis must be established for determinations about: a) which programs BOP should continue to offer, reform, replace, or add; b) which should be designated as ETC-qualifying EBRPs or PAs—and exactly why; c) which programs “work” to address inmate criminogenic needs while in custody; and d) what longer-term recidivism-reduction effects these programs have on participating inmates after they have been released to the community.

Source Indictment: National Institute of Justice (NIJ, part of Dept of Justice) list of “effective” programs is flawed

Dr. David Muhlhausen 2018 (PhD; National Institute of Justice, which is the research, development, and evaluation arm of the Department of Justice) 12 June 2018 “Research on Returning Offender Programs and Promising Practices” <https://nij.ojp.gov/speech/research-returning-offender-programs-and-promising-practices> (accessed 20 Dec 2021)

NIJ’s CrimeSolutions is a clearinghouse for rigorously evaluated criminal justice programs. It includes a number of reentry programs that have been rated “effective,” or show “promise” as being effective in facilitating successful reentry and reducing recidivism. It also can warn against implementing programs that have been shown to have no effects. However, I do have some concerns with CrimeSolutions. First, I have serious doubts about the number of programs rated as “effective” based on quasi-experiments. If you look at the 97 entries for Corrections and Reentry programs that attempt to reduce recidivism, you will find four programs rated as “effective.” Yet, none of these programs was assessed for effectiveness by an RCT. For 56 programs rated as “promising,” 11 — or 20 percent — were assessed by RCTs and 45 — or 80 percent — were assessed by quasi-experiments. Alternatively, 37 corrections and reentry programs are rated as “no effects.” More than 56 percent — or 21 of these programs — have been evaluated by at least one RCT.

2. Useless programs

Dept. of Justice expert admits: We know employment programs are useless for reducing recidivism

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To date, much of the discussion about how to help formerly incarcerated individuals is focused on employment and training assistance. Various types of employment programming are commonly implemented as reentry programs. I want to spend a few minutes talking about what we know regarding the effectiveness of employment programs. In a nutshell, there are very few employment programs that show promise for reducing recidivism. In particular, employment-focused reentry programs have had little success in reducing recidivism. This means that prisoner reentry efforts that rely mainly on job training and subsidized jobs are not likely to succeed.

Failure: 2 years after Dr. Muhlhausen at Dept of Justice admitted they don’t work, BOP was still offering Employment training on its First Step Act time credit rehab program list

“First Step Act Approved Programs Guide” 2020 (published by the US Dept of Justice) Oct 2020 <https://www.bop.gov/inmates/fsa/docs/fsa_program_guide_202010.pdf> (accessed 20 Dec 2021)



Impact: Funding failure

When AFF tells you they’re funding “evidence based programs,” they’re kind of right. The programs they’re funding have been studied and evidence has been found – and it finds that they don’t work.

Backup evidence: New York Randomized Controlled Trial study started to look good, but after 3 years, results showed no improvement from employment programs

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An RCT of the U.S. Department of Labor’s Reintegration of Ex-Offenders (RExO) Programs assessed the effectiveness of federal grants to 24 local employment-based reentry programs, many of which were operated by faith-based organizations. At the two-year follow-up, the RExO services failed to affect arrests and incarceration rates. The Center for Employment Opportunities (CEO) Prisoner Reentry Program is an employment-based program that immediately places recently released prisoners in transitional jobs, usually with New York City or New York government agencies. At the two-year follow-up period, CEO had no effect on arrests, although CEO did reduce convictions and incarcerations. However, these successful results did not continue during the three-year follow-up.

3. More study needed

Dept. of Justice expert admits: We must do more study to find out what works to reduce recidivism before funding more programs

Dr. David Muhlhausen 2018 (PhD; National Institute of Justice, which is the research, development, and evaluation arm of the Department of Justice) 12 June 2018 “Research on Returning Offender Programs and Promising Practices” <https://nij.ojp.gov/speech/research-returning-offender-programs-and-promising-practices> (accessed 20 Dec 2021)

The bottom line is that we simply don’t know enough about what works to help prisoners successfully reintegrate into society. We do know that employment programs are not a panacea, and that there’s a pressing need for additional research to help us better understand what works, what doesn’t work, and what’s promising. This will help us fund effective programs and defund programs that are not proven effective.

DISADVANTAGES

1. Moves us away from what actually works: Imprisonment

 Link: Locking offenders up is the only thing guaranteed to stop them from committing more crimes

Leonard Adam Sipes, Jr. 2019 (Retired federal senior spokesperson. Thirty-five years of award-winning public relations for national and state criminal justice agencies. Former Senior Specialist for Crime Prevention for the Department of Justice’s clearinghouse. Former Director of Information Services, National Crime Prevention Council. Former Adjunct Associate Professor of criminology and public affairs-Univ. of Maryland) 3 June 2019 Nothing Works For Offender Rehabilitation? <https://www.crimeinamerica.net/nothing-works-for-offender-rehabilitation/> (accessed 9 Sept 2021)

If not programs, what options do we have? The answer beyond sentencing reform is none. Decades of discussion have produced modest reductions in the prison population and most of the decrease is probably due to historical lows in crime over the last twenty years, [Incarceration](https://www.crimeinamerica.net/lowest-rate-of-incarceration-in-a-decade-why/). It’s either incarceration or programs or sentencing reform and all have less than stellar results. At least with incarceration, we know that while there, he’s not going to inflict additional harm on society.

Impact: More crime

Moving toward a policy that doesn’t work (rehabilitation) and away from what does (imprisonment) means we get less effective efforts against crime. The only possible result is more crime.

2. Justice abandoned

All considerations of rehabilitation and deterrence mean abandoning justice and the moral foundations of the universe

Dr. Stuart B. Babbage 1973 (PhD theology) “C.S. LEWIS AND THE HUMANITARIAN THEORY OF PUNISHMENT” (Spring 1973) <https://biblicalstudies.org.uk/pdf/churchman/087-01_036.pdf> (accessed 29 June 2021)



Justice is lost whenever we adopt any goal that looks forward to “what will be the results of the punishment?” rather than backwards at the question of “what punishment does that crime justly deserve?”

Prof. Peter Karl Koritansky 2012 (associate professor of history, philosophy, and religious studies at the University of Prince Edward Island, Canada) Thomas Aquinas and the Philosophy of Punishment <https://books.google.com/books?hl=en&lr=&id=CFZ6DKEw4wUC&oi=fnd&pg=PR7&ots=6Wg7jWFoUM&sig=TAefdc8Zs_mKI5C8DZqn0BCIPPo#v=onepage&q&f=false> (accessed 10 Aug 2021) (Note: Prof. Koritansky is referring to criticism in general of backward looking utilitarianism, but in the article he expresses agreement with this criticism, so this quote is being used consistently with author’s intent.)

