Restoring Pell Grants For Prisoners—Growing Momentum For Reform

IHELG Monograph

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CHAPTER 19

RESTORING PELL GRANTS FOR PRISONERS—GROWING MOMENTUM FOR REFORM

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INTRODUCTION

This chapter explores the growing momentum for reforming higher education in prison. Specifically, it focuses on advocacy efforts to restore Pell Grants for prisoners. The chapter begins with a brief history of the law that precluded prisoners from this source of funding and considers how the law affected higher education in prison. Next, it assesses whether the ban has brought any tangible benefit to the penal system or society. The uncertainties in this area are contrasted with the documented benefits of education in prison. Finally, the chapter examines recent advocacy efforts that have breathed new life into this issue. Taken wholly, the evidence suggests that the time is ripe for prisoners to have Pell eligibility restored. When the ban was enacted, there were voices decrying the move as a mistake, today, however, they are stronger, armed with better knowledge, and more determined than ever to create change.

I: EXCLUDING PRISONERS FROM PELL GRANT FUNDING

The beginning of the end for higher education in prison came when Congress excluded prisoners from Pell eligibility in 1994. The ban was part of a massive omnibus crime bill that created new crimes, stiffened penalties, and funded greater law enforcement efforts. One short provision was included that amended the Higher Education Act of 1965. It read, “[n]o basic grant shall be awarded . . . to any individual who is incarcerated in any Federal or State Penal institution.”

Prisoners first became eligible for basic grant funding in 1972. As the principal design of the Pell Grant was to help low-income individuals attain post-secondary education, including prisoners was consistent with the goal. The grant aimed to reach those who might not otherwise have an opportunity to enroll in college study or vocational training programs. Including prisoners for funding was based on the notion that higher education improved inmates, reduced recidivism, and contributed to a more orderly institution.

Critics challenged these notions, however, and in due time they were replaced by a more pessimistic view of prisoner rehabilitation. Indeed, by the time the ban was enacted, the phrase “nothing works” dominated the penal landscape, despite growing evidence that some programming indeed helped inmates. This skeptical ideology contributed to what was to become the harshest era of punishment the country had ever known.

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This slogan was made reality when prisoners were banned from Pell funding. The logic supported the move, after all, if “nothing works,” why bother to fund education? To be sure, debates about higher education funding were misleading, and outright falsities influenced the debate. For instance, one senator claimed that giving Pell Grants to prisoners shortchanged 100,000 students with no criminal record that were denied because of lack of funds. The claim, however, was debunked by the General Accounting Office, which claimed, “[i]f incarcerated students received no Pell grants, no student currently denied a Pell award would have received one and no award amount would have been increased.”

At the time the ban was enacted, less than one tenth of one percent of the federal Pell Grant budget supported higher education in prison. This tiny slice supported a robust infrastructure of postsecondary programming with universities across the country involved. Thus, it was no coincidence that after the ban was enacted, nearly all of the existing college programs closed their doors, reducing hundreds of programs to a mere dozen or so.

The ban did not go unchallenged, and was immediately put to test after its enactment. In Nicholas v. Riley, a New York State prisoner who had been receiving Pell funding found himself suddenly ineligible because of the change in law. In his suit against the Department of education, a federal court granted the Department’s motion to dismiss and held that denial of Pell funding to prisoners because of their incarcerated status was not a violation of equal protection, due process, or the Administrative Procedure Act. The following year in Tremblay v. Riley, the court reiterated the decision in Nicholas and further rejected the claim that denying Pell funding violated the ex post facto clause and the Eighth Amendment’s prohibition on cruel and unusual punishment. Together, these cases thus stood as early signals that litigation was fruitless for redressing the issue.

II: LITTLE PUBLIC OR PENAL BENEFIT

Unlike the 1994 legislation’s leveling of higher education in prison, the law’s social and penal impacts are less certain. For example, in terms of public safety, one study has shown that between 1994 and 2007, recidivism rates remained stagnant. This is not a welcome outcome since according to a different study that focused on thirty states, 75 percent of released prisoners were rearrested within five years of their release. These significant figures mean that new offenses and social harms continue to burden society at unsettling rates.

Like uncertainties about the legislation’s impacts, whether the ban makes fiscal sense is equally open. For one, it is difficult to weigh the savings that result from banning prisoners from Pell funding against the costs of forsaken college and vocational training. More concretely, research indicates that Pell funding results in a net savings of taxpayer funds and that there is “overwhelming consensus among public officials that postsecondary

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education is the most successful and cost-effective method of preventing crime.”\(^6\) For example, one government study claimed that every dollar spent on education returned more than two dollars to the citizens in reduced prison costs;\(^7\) another concluded that for every dollar spent on prisoner education, five dollars are saved on reincarceration costs.\(^8\) The figures suggest that restoring Pell funding would reduce the strain on society by reducing costs and the cost of crime.

### III: THE POTENTIAL OF HIGHER ED

Growing research associates education with a number of positive outcomes for prisoners, the institution, and society. Although at the time of the ban’s enactment there was limited knowledge about the relationship between education and recidivism, there is growing merit to idea that education in prison is a preventative to reincarceration.

Several studies help illustrate the point. For example, one study in 1997 that focused on 3,200 prisoners in Maryland, Minnesota, and Ohio, showed that simply attending school behind bars reduced the likelihood of reincarceration by 29 percent.\(^9\) In 2000, the Texas Department of Education conducted a longitudinal study of 883 men and women who earned college degrees while incarcerated, finding recidivism rates between 27.2 percent (completion of an AA degree) and 7.8 percent (completion of a BA degree), compared to a system-wide recidivism rate between 40 and 43 percent.\(^10\) One report, sponsored by the Correctional Education Association, focused on recidivism in three states, concluding that education prevented crime.\(^11\) More recently, a 2013 Department of Justice-funded study from the RAND Corporation found that incarcerated individuals who participated in correctional education were 43% less likely to return to prison within 3 years than prisoners who did not participate in such programs.\(^12\) The research implies that education has the potential to impact recidivism rates positively by lowering them.

More practically, education helps with the most onerous obstacle to keeping out of prison—finding gainful employment. Legitimate employment is the basis for other requirements on the outside, including the ability to pay for housing and food. Holding a degree or certificate is a boost to these efforts, which is reflected in the above RAND study.

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\(^12\) Rand, *Education and Vocational Training.*
that found that individuals who participated in vocational training programs had a 28% better chance of obtaining post-release employment than individuals who did not.\textsuperscript{13}

Pell funding holds an added potential of making religious programming, study, and training more widely available. The expansion of religious programming is a boon for prison culture since involvement in religion is associated with positive outcomes for prisoners, including lower recidivism, improved self-esteem, and movement away from gang subcultures.\textsuperscript{14} Increased opportunity for religious study is a unique aspect of education known to transform the lives of inmates. This is likely due to the content of religion itself. As religion deals with ultimate issues, including one’s worldview and morality, religious education may be a special ally in the quest for rehabilitation.

Of course, when interpreting any data that tries to measure the success of prisoner-programming, the problem of self-selection haunts any attempt.\textsuperscript{15} Self-selection arguments posit that better-dispositioned prisoners will be the type to take advantage of prison education in the first place. The phenomenon cautions against crediting the program for reductions in recidivism rates when it may be due to the prisoner himself, who was less likely to recidivate even before participation. Accordingly, success in reducing recidivism may not reflect the program’s value as much as it does the goodness of the prisoner.

The point that better-to-do prisoners self-select into college programs may be academic since even such a prisoner needs help to survive outside. That is to say, even if positive outcomes are also about prisoners and not simply programming, it is difficult to find fault with programming that helps this class of inmate improve its chances of succeeding on the outside. The vast majority of ex-prisoners struggle in this task, and it has less to do with their disposition than society’s. If self-selection leads prisoners to degrees and certificates that can make them marketable, it is a practical benefit regardless of what led the prisoner to the program.

Self-selection arguments are also tautological since qualifying for Pell funding first requires one to have a high school diploma or a GED. Hence, there is already a type of self-selection that must occur for any individual seeking college or vocational education in prison. Such individuals have already achieved a certain level of intellectual accomplishment that makes them eligible. Charging the phenomenon as a form of self-selection is ingenious when considering that the Pell is designed for post-high school education, which necessarily applies only to a select portion of the population. Hence, the problem of self-selection hardly looms for prisoners like the problem of having no program to select in the first place.

**IV: GROWING MOMENTUM FOR REFORM**

Today, advocacy for this issue is at an all-time high. The momentum of the present traces back to the ban’s enactment. Among the earliest critiques came from the U.S. Department of Justice in a publication entitled, “Pell Grants for Prisoners in 1995.” In that

\textsuperscript{13} Id.
document, the Department of Justice lamented Congress’ decision to exclude prisoners from Pell funding and extolled higher education’s benefits to prisoners and society.

In time, other organizations and individuals would join the chorus. For example, the NAACP formally adopted a resolution in 2007 to urge Congress to restore Pell Grant eligibility to prisoners. The resolution stressed that African-Americans are disproportionately impacted by the ban since they are disproportionately incarcerated. Even Senator Pell’s daughter has urged Congress to honor her father’s legacy by restoring Pell funding to prisoners. The Pell Grant, she writes, “strengthens underserved communities as formerly incarcerated people are most often released into communities that lack the capacity to provide them with employment or reentry assistance.”

An even greater push for the cause came in Spring 2015, when members of the U.S. House of Representatives introduced a bill to reverse the ban. Congresswoman Donna Edwards spearheaded the proposed legislation, the Restoring Education And Learning (“REAL”) Act of 2015. Currently, the Subcommittee on Higher Education and Workforce Training is reviewing the bill, and as of November 2015, the legislation has the support of 49 Democrats and no Republicans.

Other developments indicate that the issue is gaining steam. Among these is a Department of Education announcement in 2014 that clarified that individuals confined in juvenile justice facilities are indeed eligible for Pell Grants. The clarification also reiterated that individuals in local or county jails, penitentiaries, and correctional facilities are likewise eligible. Taken wholly, the announcement worked to expand educational opportunities by drawing a bright line around some inmates who were outside the ban’s scope.

The Department followed up in 2015 with an announcement about a project that would lift the ban for some prisoners. Dubbed the Second Chance Pell Pilot, the project aims to understand the empirical relationship between higher education and recidivism rates. In effect, the program would reverse the ban for some prisoners in order to study the effect of education on recidivism. Shortly after this announcement, the House of Representatives of the State of Illinois drafted a resolution that urged the Illinois Department of Corrections to collaborate with institutions of higher learning and submit an application to host a pilot program.

Likewise in 2015, the American Bar Association passed a formal resolution urging Congress to restore Pell Grants to prisoners who qualify under existing, need-based criteria. The report that supported the resolution stressed the strong correlation between education and the ability to find a job.

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16 NAACP, 2009 Resolutions, http://naacp.3cdn.net/e1d563e1232bbae4a0_hbm6id5u7.pdf.
19 2015 Bill Text IL H.R. 690.
**CONCLUSION—THE TIME IS Ripe**

As these developments suggest, the time is right for Congress to restore Pell eligibility to prisoners. There is little doubt that the stigma of being a criminal by itself is enough to thwart success on the outside, regardless of one’s intellectual abilities or skills. Education represents an opportunity to take the straight and narrow, to break the cycle. With well over 700,000 individuals exiting state and federal prisons each year, the time is ripe to embrace educational opportunity as convergent with both penal and public interests.

Looking forward, even if Congress moves to restore funding to prisoners, advocates would do well to avoid thinking that Pell funding is a cure-all for the question of higher education in prison. It is not the end of the conversation, only the beginning. Likewise, there should be no pretentions that education is a cure-all for recidivism. A more sober analysis must recognize that education is never the sole ingredient for successful reentry. There are always a number of important factors that help determine whether an individual succeeds on the outside, of which, for example, reentry programming is often critical.

Still, there is little denying that education is often a part of what rehabilitates. This fact makes Pell Grants and increased educational opportunities better public policy. This is more so for prisoners since the vast majority are indigent and thus have the financial need that the grant was intended to assist; that higher education increases public safety and lessens spending adds urgency to the momentum.