

**Testimony of Jesse Wiese**  
**Prison Fellowship**  
**Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security**  
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Prison Fellowship® is the nation’s largest Christian nonprofit serving prisoners, former prisoners, and their families, and a leading advocate for criminal justice reform. The organization was founded in 1976 by Charles Colson, a former aide to President Nixon who served a seven-month sentence for a Watergate-related crime. For over 40 years, Prison Fellowship has shared hope and purpose with men and women in prison. Those who once broke the law are transformed and mobilized to serve their community, replacing the cycle of crime with a cycle of renewal.

Our prison events, classes, and programs reach more than 375,000 prisoners each year. We have over 11,200 Prison Fellowship volunteers across the United States who make it possible to serve people in prison and more than 300,000 children of incarcerated parents annually. One hundred and thirty federal prisons participate in our Angel Tree program and several federal prisons have Prison Fellowship connection classes, which include Bible studies, recovery groups, and seminars on topics covering marriage, anger management, and more.

### **FACING OUR REENTRY CRISIS**

Prison Fellowship commends this subcommittee for highlighting the failure of our society to provide a realistic pathway for those walking out of the criminal justice system. In its simplest form, reentry is about a return to full citizenship. Ideally, this pathway ends with those on that path being afforded the same rights and opportunities as every American citizen. Any exceptions to this end goal must be grounded in due process and have a clear, demonstrated relationship to public safety. Today, that pathway, at least by way of structure, does not exist in any clear, straight-forward way for formerly incarcerated men and women. Success stories, including my own, are primarily the result of grit, self-determination, the kindness of others, and, frankly, beating the odds. Success stories are the exception, not the rule<sup>1</sup> and apart from a pardon, even success stories remain rife with arbitrary and punitive barriers. Both the federal government and states are moving beyond the “lock-em-up and throw away the key” era, but reentry policy continues to yield ineffective results, creating an opportunity for significant reform. To pave a systemic pathway to reentry, it takes hard work and dedication on the part of the individual and it takes acceptance and emancipation from the community—reentry is a two-way street. To successfully pave this two-way street, it is critical to understand and address two issues: prison culture and collateral consequences.

### **BUILDING A REENTRY PATHWAY IN PRISON: CHANGING PRISON CULTURE**

Typically, “reentry” is understood to be the transitional timeframe from walking out of prison and assimilating back into the community. While this timeframe is crucial, as most people return to the criminal justice system within the first year of release,<sup>2</sup> it is an incomplete view of reentry.

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<sup>1</sup> Mariel Alper & Matthew R. Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*, Bureau of Justice Statistics (May 2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

<sup>2</sup> *Id.*

While many are familiar with the statistic that each year more than 600,000 state and federal prisoners come home to our communities,<sup>3</sup> what many don't know or understand is that most, if not all, were subjected to a prison culture with norms that are antithetical to the norms of success. Prison culture generally applauds values such as dishonesty and distrust, and this culture plays a significant role in reentry outcomes. Questions like, "How are people spending their time in prison?" and, perhaps more importantly, "How are people *able* to spend their time in prison?" are critical when considering a successful transition back into society. The habits and values a person practices in prison will be their same habits when reentering. We cannot expect that crossing the threshold of the prison gates back into the community magically eliminates the anti-social attitudes and behaviors that are prevalent within the culture of prison. We must no longer think of reentry as a timeframe, but rather as a frame of mind. Successful reentry requires a culture shift and begins at arrest.

For over 40 years, Prison Fellowship has operated from the premise that a person's character is not static—it can change. In order for that change to occur, there are necessary components (or pressures) that must be present. In other words, change doesn't occur spontaneously—it must be cultivated—and it requires intentionality. Currently, most prison environments and cultures are not conducive to producing this change. For example, we know through research that learning best occurs in a transparent and trust-centric environment, but these characteristics are the antithesis of prison culture. We also know that the more observations and interactions that people have of role models, the more likely they are to emulate and adopt those behaviors and attitudes—change is more "caught" than "taught". Sadly, positive examples are also not a constant occurrence in prison culture. Lastly, research supports the adage that "practice makes perfect." The more frequently people practice positive behaviors, the more likely they are to adopt them as their own, yet there are few purposeful opportunities in prison to practice positive behaviors.

Part of the discussion on prison culture change must involve metrics. Currently, our prison system's success metrics are mostly framed by constitutional violations, violence rates, contraband capture rates, and recidivism. Recidivism, however, measures failure, not success. The data points that are glaringly missing are related to cultural assimilation and contribution, i.e., the outcomes that we actually want. While recidivism is certainly an important data point, it is not the primary outcome we should be chasing. Think about how this measurement system would work across other social service sectors. Would you want to go to a hospital that only posted a success metric of its death rate? While that is important, you would also want to know how many people recovered and specifics to their recovery outcome. Did they go into remission, have to maintain medication, or require ongoing medical assistance? In other words, you would want to know the hospital's success rate related to retaining or advancing a patient's *quality* of life.

In the same light, why would we be satisfied with a low recidivism rate if the majority of those not returning to prison were heavily reliant on safety net programs, addicted, or homeless? At Prison Fellowship and as a society, we want more for people coming out of prison. We want them to be engaged in civic activities; we want them to be positive public actors, invested in their communities and advancing a pro-social worldview in the public square. We want people to work, pay taxes, take care of their families, volunteer, and be positive catalysts in our communities.

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<sup>3</sup> Jennifer Bronson & E. Ann Carson, *Prisoners in 2017*, Bureau of Justice Statistics (April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

We want people to be good citizens.

Prison Fellowship has long recognized that prison culture is one of the leading causes of poor criminal justice outcomes. Established in prisons across the country, the Prison Fellowship Academy® guides incarcerated men and women through a yearlong, transformational journey. Using evidence-based practices and life-changing curriculum, Academy participants develop and practice the biblically based values of Good Citizenship<sup>SM</sup>: responsibility, integrity, restoration, community, productivity, and affirmation. In the Academy's healthy community environment, participants overcome the life-controlling issues that led to their incarceration. As they adopt and apply the values of Good Citizenship, they acquire new life skills and *replace* criminal thinking and behaviors with a renewed value system and life purpose. Academy graduates complete the program as change agents, prepared to take their places as good citizens—productive and positive contributors to their communities inside and outside of prison.

The reality of prison culture has directly informed the methodology of our Academy program. In its more intensive versions, the Prison Fellowship Academy utilizes a full-time program manager to develop and foster a pro-social community inside of prison. Prison Fellowship staff intentionally work to carve out a pro-social space for men and women to practice prosocial values. The Academy not only measures recidivism,<sup>4</sup> but also measures the adoption of the values of Good Citizenship.<sup>5</sup> The Academy as well as other evidence-based programs and productive activities are a critical foundation to building a constructive prison culture. The First Step Act of 2018, first passed by the House Judiciary Committee, seeks to build this foundation, requiring that every person incarcerated in the Bureau of Prisons is provided with opportunities to participate in programs that meet his or her risks and needs.

The First Step Act recognizes that we can no longer afford to ignore the reality that prison culture is a primary catalyst in poor reentry outcomes. Prison Fellowship believes that communities and taxpayers want a better outcome from their criminal justice system and in order to see that outcome, prisons must first and foremost provide a place for people to practice Good Citizenship, fail, and then practice again. Once a culture of Good Citizenship is established, not only can personal change be cultivated, but those who are changed (and changing), become change-agents. They bring about a values-based shift within the larger prison culture and are able to seamlessly fold into our communities, to which most of them will one day return. With programs like the Academy at hand, people who were once part of the problem become powerful pieces to the solution.

The criminal justice system has become a social shaper in the United States that impacts millions of people every year. It's time we talk about the culture of that social shaper. When I entered the

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<sup>4</sup> Executive Administrative Services, *Evaluation of Offenders Released in Fiscal Year 2013 That Completed Rehabilitation Tier Programs*, Texas Department of Criminal Justice (October 2017) (posting the Academy as the best performing program to reduce three-year recidivism); Department of Corrections, *An Outcome Evaluation of the InnerChange Freedom Initiative in Minnesota*, Minnesota Department of Corrections (February 2012); Byron R. Johnson & David B. Larson, *The InnerChange Freedom Initiative, A Preliminary Evaluation of a Faith-Based Prison Program*, Baylor University (2008), <https://www.baylor.edu/content/services/document.php/25903.pdf>.)

<sup>5</sup> Thomas C. Reeves, et al., *Evaluation Report: Prison Fellowship Tier-2 Academy at Kate Barnard Correctional Center (KBCC)*, University of Georgia (2019), [https://research.franklin.uga.edu/good-citizenship/sites/research.franklin.uga.edu/good-citizenship/files/inline-files/Academy%20Eval%20Report%20KBCC\\_insert\\_web.pdf](https://research.franklin.uga.edu/good-citizenship/sites/research.franklin.uga.edu/good-citizenship/files/inline-files/Academy%20Eval%20Report%20KBCC_insert_web.pdf).

criminal justice system in 1999, I was quickly confronted with prison norms. Adapting to this culture offered some sense of short-term safety and security, yet, my journey towards Good Citizenship was perplexing. On one hand, it was easier to just live by the “prison code,” but I knew that if I didn’t stretch my Good Citizenship muscles, I wouldn’t be as successful upon release. However, when I tried to live by pro-social values, it put me at odds with the larger prison culture, and the risk of that action was a loss in comfort and potentially safety. When confronted with this choice, many will take the path of least resistance and remain stuck in a place that always looks toward “tomorrow” to start the process of change. I believe hundreds of thousands of people are stuck in this “in between,” and only by intentionally addressing the prison culture issue will we provide true pathways to reentry—a pathway that begins with “today.”

## **MY REENTRY JOURNEY**

I was twenty-one years old when I robbed a bank at gunpoint. I was sentenced to serve fifteen years in the Iowa penal system. My actions were a result of personal despair, selfishness, and hopelessness. It caused harm to my victim, myself, the community, and my family and friends. There are few helpful hands in prison, yet I was fortunate to find a few. Through those interactions, I began to find purpose, value, and hope, and quickly realized that actions do not take place in a vacuum. Crime harms people, breaks relationships, and has life-long consequences. I deeply regretted my actions and looked forward to satisfying the debt that I owed.

During my incarceration, I did my best to prepare for my opportunity at a second chance. I had confronted my actions, reconciled with my victim, graduated with honors with my undergraduate degree, helped other men in prison obtain their GED, graduated from the Prison Fellowship Academy program, spent time encouraging and challenging incarcerated adolescents, and spent the last three months of my sentence studying for the law school admission test.

I walked out of the Iowa prison system thinking two things: I wasn’t the same man walking out that I was walking in, and I wanted to make a positive difference. I deeply wanted to expiate my guilt and prove to society that I could once again be a trusted and valued citizen.

When I was released, I began to put into practice what I had been taught. I sought out mentors, engaged in the community, developed a new social network, got a job, and encouraged others to do the same. Those practices and relationships led to other opportunities. I was accepted to law school where I interned with a state juvenile court judge, served as president of the Honor Council, drafted statutory reforms to eradicate domestic child-sex trafficking, and graduated *magna cum laude*. I passed the Virginia bar exam (twice) and joined Prison Fellowship to advance the values of hope and justice in the criminal justice system.

Though my name may be attached to these achievements, a very small amount of the recognition, if any, should be attributed to me. The accolades belong to those along the way that sowed into the soil of my life and believed that I could “make good” on my second chance. These are much-deserved dividends earned on the thousands of dollars Iowa taxpayers paid for my bad decision and the countless hours and resources several mentors gave to me along the way.

The truth is, however, that achieving these successes was not an easy task and there are still obstacles to overcome. I had to fight every step of the way to get where I am today. This is not to say that it should be easy, but it is an arduous and continual process convincing landlords, universities, professional licensing boards, churches, and even criminal justice officials that the system can actually work, and that men and women can change with the right accountability, resources, and opportunities. I learned early that my voice and accomplishments were not enough to erase the vestiges of a felony conviction. I pursued relationships with judges, lawyers, faith leaders, and other upstanding members of the community who often advocated on my behalf. Even with their voices, however, my inability to obtain a license to practice law required a decade of perseverance that included taking and passing the Virginia bar exam for a second time, hundreds of pro-bono legal hours, six administrative hearings, and two appeals to the Virginia Supreme Court. Despite this difficult path, I continued to challenge the men and women in our prisons to reach for the stars, dream big, and take hold of their second chance, though there were times where I wondered if my promoting such an unattainable challenge was unethical. Many of us who have been in the criminal justice system have never envisioned ourselves beyond government subsidies or a minimum-wage job. Unfortunately, even with supporting research<sup>6</sup> and the tools and vision to achieve personal success, we often remain relegated to places of continual failure or hit a glass ceiling because of arbitrary collateral consequences.

After my release, I had the opportunity to assist men with basic reentry issues as they were transitioning back into society from a period of incarceration. Time and time again, I witnessed the majority of them give up on their dreams of success because of the second chance barriers that clearly lay before them. The goals that we encourage men and women to set and work towards during their incarceration quickly become shattered when faced with the uphill battles of housing, employment, and social stigma. In most cases, giving up on these dreams did not result in recidivism, but it did result in them accepting their place in society as second class citizens who are unworthy of achieving certain levels of success or even representation.

Earning back the public's trust after committing a crime should not be an easy task, but it must be a realistic and attainable one if we want to increase public safety. The billions of taxpayer dollars poured into rehabilitation programs every year amount to nothing more than a colossal waste if we as a society don't allow the men and women walking out of prison doors to practice the rehabilitation we are so adamantly preaching. In effect, we spend billions of dollars teaching incarcerated men and women how to build a new car (i.e., a new life), provide the appropriate parts, and give them the keys, but when the prison doors open, there are no roads. And where the brave forge ahead to make their own roads, they quickly run out of gas. This proverbial "pulling the football from Charlie Brown" approach only seeds discontent and distrust and reinforces the anti-social behaviors that many in the corrections arena are working so hard to reduce.

When I walked out of the prison system, the most impactful thought I left with was that if we want people in prison to succeed, we need to change the way we "do" prison in the United States. The pathway to successful reentry begins with providing opportunities to practice Good Citizenship in

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<sup>6</sup> See, e.g., Alfred Blumstein & Kiminori Nakamura, *'Redemption' in an Era of Widespread Background Checks*, NAT'L INST. JUST. J. No. 263 (June 2009), <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf> (stating that after a certain time period, the likelihood that a person with a prior conviction will commit another crime will diminish to that of society, thus limiting the risk of recidivism and the need for some collateral consequences).

prison. However, as I began to pursue my second chance after my release and work with others, it became quickly evident that the reentry pathway cannot stop at the prison gate.

## THE PATHWAY PAST PRISON: ADDRESSING COLLATERAL CONSEQUENCES

The overuse and general acceptance of collateral consequences is cause for genuine concern. Taxpayers and victims of crime count on a return for their investment in the criminal justice system and imposing arbitrary and perpetual civil punishments as a result of a criminal conviction greatly diminishes that return. Under the Constitution, each reentry story begins with due process. To protect that formative American belief, we should apply serious scrutiny to processes that restrict “life, liberty, and the pursuit of happiness.”<sup>7</sup> The reach of due process to limit one’s liberty, however, cannot stretch beyond the point when the punishment is paid in full. The scope of limiting a person’s “liberty” was never meant to be applied for a lifetime or to keep people in an indefinite second prison; however, that is the reality in the criminal justice system. Most criminal defendants are not aware of the breadth and longevity of the consequences of a guilty verdict or pleading guilty. Collateral consequences are hidden, life-limiting restrictions on personal liberty, and whether those restraints need additional due process should seriously be considered.<sup>8</sup>

Even after paying their debt to society, the 70 million men and women with criminal records in America continue to face systematic and often life-long barriers to second chance opportunities. After someone has completed their traditional sentence, Prison Fellowship believes only restrictions to personal liberty that have a demonstrated and substantial link to protecting public safety should be permissible. Even in these limited cases, the restrictions should be anticipated at the time of sentencing as part of the defendant's proportional punishment, and notification of all such consequences should be given to the defendant during the trial process.

The term “collateral consequences” is a fairly new term referring to the “wide-range of status-related penalties, sanctions, and restrictions that are permitted or required by law because of a criminal conviction even if not included in the court’s sentence.”<sup>9</sup> As this subcommittee is aware, collateral consequences include, among other limitations, the loss or restriction of employment or professional license, eviction from public housing, ineligibility for welfare benefits, loss of right to hold public office, serve in the military, volunteer, or sit on a jury. Collateral consequences may also include the loss of parental rights, exclusion from government contracts, and the inability to live in certain areas. Practically, the stigma associated with a criminal conviction almost always results in the permanent loss of standing within the community.

Collateral consequences have been a familiar feature in the American justice system since colonial times and garnered some reform interest among legal scholars in the 1970s.<sup>10</sup> Recently, however,

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<sup>7</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>8</sup> See e.g., *Padilla v. Kentucky*, 559 U.S. 356 (2010) (finding that defense attorneys have an affirmative duty to advise clients about mandatory deportation consequences of a criminal conviction); *People v. Hughes*, 2012 I.L. 112817 (2012) (applying *Padilla* disclosing requirements to involuntary civil commitment); *Calvert v. State*, 342 S.W.3d 477 (TN 2011) (applying *Padilla* disclosing requirements to lifetime supervision).

<sup>9</sup> Margaret Colgate Love, et al., COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE 25 (2013).

<sup>10</sup> See, e.g., Margaret Colgate Love, *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705 (2002) <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1880&context=ulj> (discussing the history and reform trends of collateral consequences).

there has been an increasing awareness on the issue of collateral consequences.<sup>11</sup> The reasons for this increased concern are likely related to the rising prison population, the ballooning of the criminal justice system, and technological advances in providing background searches.<sup>12</sup> Today, the Justice Center at the Council of State Governments has identified over 44,000 legal collateral consequences in existence<sup>13</sup> and approximately sixty-five to seventy million Americans (1 in 3 adults) have a criminal conviction.<sup>14</sup> Additionally, the expanse of the administrative governmental agency has created a bureaucratic web making the reprieve from collateral consequences much more difficult to successfully navigate. In fact, one of the most misunderstood aspects of collateral consequences is that the majority of them are not legally or statutorily imposed.<sup>15</sup> The limited number of collateral consequences that are actually enforced are imposed legally through legislative action and are typically the most commonly known, including prohibitions on firearms, voting, serving on a jury, and holding public office. The majority of collateral consequences, however, are imposed by independent rulemaking through administrative agencies that classify a criminal conviction or a corresponding lack of “moral character” as the means for disqualification from some type of governmental assistance or benefit. In addition, there is a powerful cultural element to the stigma of a criminal conviction, which is mostly seen in the form of background checks conducted for employment, housing, and volunteer opportunities and poor use of this information by decision makers.

Additionally, the internet has increased access to criminal record information and the ease at which background checks can be conducted. This has extended collateral consequences to simple arrests, even in instances where the case is dismissed, an individual successfully pursues a diversion program, or there is a not-guilty verdict. States have begun to reconcile this unjust outcome by attempting to keep arrest records confidential from public purview,<sup>16</sup> providing certificates of rehabilitation,<sup>17</sup> or passing policies that automatically clear certain criminal records known as Clean Slate laws.<sup>18</sup>

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<sup>11</sup> Justice Center, *National Inventory of Collateral Consequences of Conviction*, The Council of State Governments (2019), <https://niccc.csgjusticecenter.org/>; U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, United States Commission on Civil Rights (June 2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>; NACDL, *Collateral Damage: America’s Failure to Forgive or Forget in the War on Crime*, National Association of Criminal Defense Lawyers (May 2014), <https://www.nacdl.org/Document/CollateralDamageARoadmaptoRestoreRightsandStatus>; Memorandum from Att’y Gen. Eric Holder on Consideration of Collateral Consequences in Rulemaking (Aug. 12, 2013); =

<sup>12</sup> U.S. Sentencing Commission on Civil Rights, *supra* note 12.

<sup>13</sup> Justice Center, *supra* note 12.

<sup>14</sup> Anastasia Christman & Michelle Natividad Rodriguez, *Research Supports Fair Chance Policies*, The National Employment Law Project (August 2016), [https://www.nelp.org/publication/research-supports-fair-chance-policies/#\\_edn1](https://www.nelp.org/publication/research-supports-fair-chance-policies/#_edn1); Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2010*, U.S. Department of Justice (November 2011), <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>; Office of the Attorney General, *The Attorney General’s Report on Criminal History Background Checks*, U.S. Department of Justice (June 2006), [http://www.justice.gov/olp/ag\\_bgchecks\\_report.pdf](http://www.justice.gov/olp/ag_bgchecks_report.pdf).

<sup>15</sup> Justice Center, *supra* note 12.

<sup>16</sup> E.g., S.B. 14-206, 69th Gen. Assem., 2d Sess. (Colorado 2014).

<sup>17</sup> Information Center, *Certificates of Rehabilitation*, National Institute of Corrections (May 2016), [https://s3.amazonaws.com/static.nicic.gov/UserShared/2016-05-18\\_nic\\_certificates\\_of\\_rehabilitation.pdf](https://s3.amazonaws.com/static.nicic.gov/UserShared/2016-05-18_nic_certificates_of_rehabilitation.pdf); Ram Subramanian, et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, Vera Institute of Justice (December 2014), [https://www.vera.org/downloads/Publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014/legacy\\_downloads/states-rethink-collateral-consequences-report-v4.pdf](https://www.vera.org/downloads/Publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014/legacy_downloads/states-rethink-collateral-consequences-report-v4.pdf).

<sup>18</sup> Clean Slate Bill, H.B. 1419, 2018 Reg. Sess., (PA 2018); H.B. 431, 63rd Gen. Sess. (Utah 2019);

## PERVERSE FEDERAL INCENTIVES AND COLLATERAL CONSEQUENCES

In certain instances, the federal government has incentivized states to adopt collateral consequences by withholding federal dollars if those collateral consequences are not properly implemented. For example, states face a reduction of federal transportation funding if they do not revoke or suspend “for at least 6 months, [] the driver’s license of any individual who is convicted . . . of any violation of the Controlled Substances Act, or any drug offense.”<sup>19</sup> This restriction is not directly related to any driving offense and is a classic example of a collateral consequence that does not have a nexus to the criminal conduct.

Additionally, as a result of the “War on Drugs,” the federal government began to implement “user accountability” provisions that precluded men and women with a drug conviction from certain federal benefits. Under the Anti-Drug Abuse Act,<sup>20</sup> these provisions denied certain federal benefits such as access to grants, federal student loans, and professional licenses to people convicted of drug offenses. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act<sup>21</sup> (the Welfare Reform Act) instituted a lifelong ban on Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps) for people convicted of drug crimes. Realizing that these post-conviction sanctions did not address the drug issue, Congress eventually lessened the rigid restrictions under the Drug Abuse Act, but the lifelong restrictions related to SNAP benefits remain in force unless state legislatures reject or modify it.<sup>22</sup> Punishing men and women by refusing to allow them life-sustaining benefits is an immoral and regressive approach to criminal punishment. Again, instituting consequences that are not rationally related to the crime impedes public safety and is a disproportionate response to criminal behavior.

These federal examples highlight the fact that several, if not most, of collateral consequences are not rationally related to the criminal conduct. One of the strongest examples of that disconnect involves victim compensation funds. State victim compensation funds are funded by criminal fines and taxpayer dollars and offer monetary assistance to victims and survivors of violent crime. Unfortunately, eleven states disqualify a victim’s ability to receive compensation if that person has a felony conviction.<sup>23</sup>

The encouraging news is that both Republicans and Democrats are beginning to see the hypocrisy in spending millions of taxpayer dollars on reentry services in one bill but creating overwhelming obstacles with another. As former Virginia Attorney General Ken Cuccinelli stated, “If we really believe no one is beyond redemption we need to stop throwing away that key.”<sup>24</sup> Refraining from the arbitrary expansion of collateral consequences is a good step in that direction, and Congress is increasingly committing to that goal. Prison Fellowship was pleased to see the passage in December 2019 of the Fair Chance Act (H.R. 1076). This legislation, introduced by Ranking Member Doug Collins (R-GA) and the late Elijah Cummings (D-MD), delays inquiries into an

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<sup>19</sup> 23 U.S.C. §§ 159(3)(A)(i), (3)(B)(ii) (2012). The Governor of the state can opt-out of the requirement by sending a letter to the Secretary of Transportation certifying “that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to [the] law . . . .”

<sup>20</sup> 21 U.S.C. § 1501 (1988).

<sup>21</sup> 42 U.S.C.A. § 1305 (1996).

<sup>22</sup> U.S. Sentencing Commission on Civil Rights, *supra* note 12.

<sup>23</sup> Justice Center, *supra* note 12.

<sup>24</sup> Beth Reinhard, *Ken Cuccinelli Moves to the Center*, National Journal (Mar. 14, 2013), <http://www.nationaljournal.com/politics/at-epac-ken-cuccinelli-moves-to-the-center-20130314>.



applicant’s criminal history by federal agencies and among federal primary contractors.<sup>25</sup> By doing this, the Fair Chance Act, building off the positive policy outcomes of comparable laws in states and municipalities, provides formerly incarcerated individuals with the opportunity to present their aptitudes and skills during the federal hiring process.<sup>26</sup>

## ECONOMIC IMPACTS OF POOR REENTRY POLICY

Perhaps the greatest impact of failed reentry policy is found in the employment sector. More than half of former prisoners make no earnings in the first year after incarceration.<sup>27</sup> At the height of the Great Recession, the 27 percent unemployment rate of the formerly incarcerated was five times the national rate and “higher than the total U.S. unemployment rate during any historical period, including the Great Depression.”<sup>28</sup> Lacking access to meaningful work and the social capital, pride, and new skills such work provides, old cycles of crime and addiction trap all too many returning citizens.<sup>29</sup> Additionally, prison culture impedes the development of soft or non-cognitive skills like empathy, integrity, and responsibility, which impacts the opportunity to move outside the margins and up the economic ladder.<sup>30</sup>

These frustrating data points do not signify only losses for returning citizens. This subcommittee should likewise consider how our economy suffers as a result of our failure to unlock employment opportunities for individuals with a criminal record. A four-year study of the John Hopkins medical system found how employees with a criminal record “were more likely to stay in their jobs for more than three years” than their peers without prior convictions.<sup>31</sup> Research from Northeastern University highlights the comparable, and sometimes greater, rates of length of tenure, loyalty to employer, and workplace conduct among individuals with a criminal record relative to other colleagues.<sup>32</sup> Our nation’s single largest employer—the military—has long benefited from the contributions of formerly incarcerated men and women. A detailed study of 1.3 million enlistment records found that “individuals who have been arrested for felony-level offenses have similar attrition rates to those with no criminal record.<sup>33</sup> They are no more likely to be discharged for the negative reasons employers often assume (such as misconduct or poor work performance) . . . individuals with felony-level criminal backgrounds *are promoted more quickly and to higher ranks*

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<sup>25</sup> Fair Chance Act of 2019, H.R. 1076, 116<sup>th</sup> Cong. (2019).

<sup>26</sup> Stan Veuger & Daniel Shoag, “*Ban the Box*” Measures Help High Crime Neighborhoods, American Enterprise Institute (March 11, 2019), <https://www.aei.org/wp-content/uploads/2019/03/Ban-the-Box-March-2019-update.pdf>.

<sup>27</sup> Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, Brookings Institution (March 2018), <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>.

<sup>28</sup> Lucius Couloute & Daniel Kopf, *Out of Prison and Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Policy Institute (July 2, 2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

<sup>29</sup> Mariel Alper, *supra* note 1.

<sup>30</sup> See e.g., Raj Chetty, et al., *The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility*, 63, United States Census Bureau (2018), [https://opportunityinsights.org/wp-content/uploads/2018/10/atlas\\_paper.pdf](https://opportunityinsights.org/wp-content/uploads/2018/10/atlas_paper.pdf) (finding a strong correlation between incarceration and income).

<sup>31</sup> Sophie Quinton, *Matching Ex-Offenders With Hard-To-Fill Health Care Jobs*, The Pew Charitable Trusts (April 19, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/04/19/matching-ex-offenders-with-hard-to-fill-health-care-jobs>.

<sup>32</sup> Dylan Minor, et al., *Criminal Background and Job Performance*, Northwestern University (May 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2851951](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2851951).

<sup>33</sup> Jennifer Lundquist, et al., *Does a Criminal Past Predict Worker Performance? Evidence from America’s Largest Employer*, 96 Soc. Forces 1039 (2018), <https://nicic.gov/does-criminal-past-predict-worker-performance-evidence-america-s-largest-employer-2016>.

*than other enlistees* [emphasis added].”<sup>34</sup> Successful integration of former prisoners could yield gains of \$78 to \$87 billion annually to the United States gross domestic product.<sup>35</sup> The overwhelming majority of returning citizens stand ready to energetically contribute to our economy. They now await our collective decision to create avenues of second chances and restoration.

## RECOMMENDATIONS

There are several legislative actions Congress can take that will improve our reentry outcomes.

First, Congress can create some guidelines for agencies regarding the administration and relief requirements for collateral consequences. Providing clear definitions for phrases such as “crime of moral turpitude” as well as requiring that all collateral consequences be “substantially related to the criminal conduct” are small first steps that can have a big impact.

Second, Congress can implement a “collateral consequences impact statement” that would provide necessary scrutiny to any new collateral consequence. Congress could likewise consider a sunset provision requiring any new collateral consequence to be revisited after a certain number of years and repealed if the barrier showed no substantial evidence of public safety benefit. Both of these options would provide a check against the growth of collateral consequences as well as reinforce their proper role within the law. Additionally, Congress can proactively pass reforms to remove unnecessary federal collateral consequences already in existence. For example, individuals with a state or federal drug felony conviction are not eligible for the American Opportunity Tax Credit. Prison Fellowship asks Congress to remove this collateral sanction that makes it more difficult for formerly incarcerated individuals, who have already paid their debt to society, to pursue higher education and provide for their families (e.g. ED ACCESS Act).<sup>36</sup>

Third, Congress should pass bipartisan reforms that will infuse greater opportunities for transformation in American corrections culture, specifically Pell Grant restoration for incarcerated students. A RAND study showed that participants in correctional education had 48 percent lower odds of recidivating than those who did not.<sup>37</sup> Today, an unprecedented range of organizations, including Prison Fellowship, the National District Attorneys Association, Business Roundtable, U.S. Chamber of Commerce, and higher education leaders, including HELP Chairman Lamar Alexander, Education and Labor Chairman Bobby Scott, and Secretary of Education Betsy DeVos, have expressed their support for restoration of Pell Grant eligibility for incarcerated students. It’s important to note that just because an incarcerated student receives a Pell Grant does not mean that opportunities will shrink for other students. “[B]y law, all eligible students who apply for Pell grants receive them.”<sup>38</sup> Indeed, the amount or availability of a Pell grant bears no relationship to

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<sup>34</sup> *Id.*

<sup>35</sup> Cherrie Bucknor & Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Economic and Policy Research (June 2016), <http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5>.

<sup>36</sup> Eliminating Discrimination and Creating Corridors to Expand Student Success Act of 2019, H.R. 4518 & S. 2553, 116<sup>th</sup> Cong. (2019);

<sup>37</sup> Robert Bozick, et al., *Does Providing Inmates with Education Improve Postrelease Outcomes?*, Rand Corporation (July 2018), [https://www.rand.org/pubs/external\\_publications/EP67650.html](https://www.rand.org/pubs/external_publications/EP67650.html).

<sup>38</sup> 140 Cong. Rec. H2546 (1994).

the number of applicants, but instead is based on the “total maximum Pell grant minus the student’s [Expected Family Contribution]; or the Cost of Attendance minus the student’s [Expected Family Contribution].”<sup>39</sup> By providing a clear mechanism of federal financial aid, Pell Grant restoration will enable more of our incarcerated neighbors to pursue avenues of redemption within and beyond prison walls. We urge members of this committee to consider cosponsorship of the bipartisan REAL Act (H.R. 2168), introduced by Congressmen Jim Banks (R-IN) and Danny Davis (D-IL).<sup>40</sup>

Fourth, we request that Congress exercise its funding and oversight powers to ensure the historic, bipartisan First Step Act truly achieves its goal of creating more constructive culture in federal prisons. We urge members of Congress to fully fund the legislation and press the Bureau of Prisons (BOP) to address the clear gaps in evidence-based programming and productive activities.<sup>41</sup> Additionally, Congress should ensure the Bureau of Prisons complies with the First Step Act’s focus on expanded BOP partnerships with non-profit and faith-based organizations providing effective, evidence-based programming.<sup>42</sup> Prison Fellowship eagerly awaits the opportunity to expand the Academy program in federal facilities. Finally, the legislation recognizes that new programming will have more positive outcomes when combined with meaningful incentives for participation and successful completion, whether through certain privileges during incarceration or, depending on a prisoner’s recidivism risk level and sentence type, changes in pre-release custody level.<sup>43</sup> Congress must ensure the BOP and Department of Justice meaningfully develop and implement these incentives.

Fifth, we ask for support of federal certificates of rehabilitation and entrepreneurship funding. Returning citizens in at least sixteen states and the District of Columbia can apply for a certificate of rehabilitation to better access employment and housing opportunities and obtain waivers for collateral sanctions.<sup>44</sup> Congress should likewise create a pathway for obtaining a certificate of rehabilitation for individuals with federal convictions who seek to demonstrate their commitment to law-abiding citizenship and successful reentry (e.g. RE-ENTER Act).<sup>45</sup> Prison Fellowship also supports legislation that would expand access for current and former federal prisoners to small business mentor and training programs (e.g. Prison to Proprietorship for Formerly Incarcerated Act; Prison to Proprietorship Act).<sup>46</sup>

Lastly, in order for there to be a shift in how our society views men and women with a criminal conviction, there must be a cultural transformation that extends beyond the halls of Congress and

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<sup>39</sup>Cassandra Dortch, *Federal Pell Grant Program of the Higher Education Act: Primer*, Congressional Research Service (November 2018), <https://fas.org/sgp/crs/misc/R45418.pdf>.

<sup>40</sup> REAL Act of 2019, H.R. 2168, 116<sup>th</sup> Cong. (2019).

<sup>41</sup> Office of the Attorney General, *The First Step Act of 2018: Risk and Needs Assessment System*, U.S. Department of Justice (2019), [https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system\\_1.pdf](https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf)

<sup>42</sup> Nathan James, *The First Step Act of 2018: An Overview*, Congressional Research Service (March 2019), <https://fas.org/sgp/crs/misc/R45558.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> Information Center, *Certificates of Rehabilitation*, National Institute of Corrections (May 2016), [https://s3.amazonaws.com/static.nicic.gov/UserShared/2016-05-18\\_nic\\_certificates\\_of\\_rehabilitation.pdf](https://s3.amazonaws.com/static.nicic.gov/UserShared/2016-05-18_nic_certificates_of_rehabilitation.pdf); Ram Subramanian, et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, Vera Institute of Justice (December 2014), [https://www.vera.org/downloads/Publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014/legacy\\_downloads/states-rethink-collateral-consequences-report-v4.pdf](https://www.vera.org/downloads/Publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014/legacy_downloads/states-rethink-collateral-consequences-report-v4.pdf).

<sup>45</sup> RE-ENTER Act, S. 2931, 116<sup>th</sup> Cong. (2019).

<sup>46</sup> Prison to Proprietorship Act, H.R. 5078, 116<sup>th</sup> Cong. (2020); Prison to Proprietorship for Formerly Incarcerated Act, H.R. 5065, 116<sup>th</sup> Cong. (2020).

into our places of worship and communities. Examining the issue from a moral lens is necessary to achieve the desired change. Excluding someone from a clear and just path to restoration takes away that person's incentive to transform their life, take responsibility for their own affairs, and provide for their own family.

This cultural transformation starts with changing our language. Labels are powerful, and our society has plenty for people who have been through the criminal justice system and have the record to show for it: *Felon. Offender. Convict. Criminal.* Even *inmate* casts a dark shadow in its rightful context. An *inmate* is just a number—identified by numbers on a uniform. Personhood is revoked. When we call people offenders and convicts, we identify them by what they have done, not by their basic human dignity. Similar sentiment has helped fuel changes in how we refer to people with disabilities. The term “returning citizen” has grown in popularity, but recent Barna polling commissioned by Prison Fellowship shows that less than one-quarter of Americans are familiar with this more positive label and one-third of Americans prefer to continue using stigmatizing language like ex-offender.<sup>47</sup> To overcome these deep-seated views about people with a criminal record, intense education and awareness-building campaigns are necessary.

Countries including Singapore<sup>48</sup> and Fiji<sup>49</sup> have taken on the cultural aspects of collateral consequences and have had striking results. Prison Fellowship's Second Chance® Month has created spaces for just this cultural reimagining. Since launching in April 2017, Prison Fellowship has spearheaded the nationwide effort to raise awareness about collateral consequences and unlock brighter futures for people with a criminal record. Over 360 businesses, churches, and organizations<sup>50</sup> have joined Prison Fellowship to raise awareness about the restrictions and stigma facing individuals with a criminal record and to celebrate second chances during April through press, policy briefings, "Second Chance Sunday" services held by churches, prayer walks, social media campaigns, and annual resolutions and proclamations. In April 2019, 23 state governors, the District of Columbia, and the White House issued Second Chance Month proclamations. With the expected reintroduction of these resolutions in the coming month, members of this committee can take a simple but meaningful step to promote conversations in public policy and our communities about second chances and restoration.

## CONCLUSION

“There is a latent, pervasive attitude in our society which stresses the generic unworthiness of the criminal—his permanent unfitness to live in ‘decent society.’ He is seen as an unredeemable, permanently flawed, ever-threatening deviant. Proper citizens are felt to be menaced or degraded by consorting with him, whether or not he has ‘paid his debt.’”<sup>51</sup>

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<sup>47</sup> Barna, *A Survey of Christian Perceptions on Incarceration & Justice Reform*, Fielded by Barna for Prison Fellowship (October 2019), <https://www.prisonfellowship.org/wp-content/uploads/2020/01/Prison-Fellowship-Christian-Barna-Polling-Results-2019.pdf>.

<sup>48</sup> YRP, *Why Give 2nd Chances?*, Yellow Ribbon Project (2019), <http://www.yellowribbon.org.sg/>.

<sup>49</sup> Fiji Corrections Service, *Rehabilitation*, Fiji Corrections Services (2019), <http://www.corrections.org.fj/pages.cfm/yellow-ribbon/communities/giving-offenders-second-chance.html>.

<sup>50</sup> Prison Fellowship, *Second Chance Month*, Prison Fellowship (2019), <https://www.prisonfellowship.org/about/justicereform/second-chance-month/>.

<sup>51</sup> Bernard Cogan & Donald L. Jr. Loughery, SEALING AND EXPUNGEMENT OF CRIMINAL RECORDS—THE BIG LIE, 61 J. CRIM. L. & CRIMINOLOGY 389 (1971).

Though the notion of second chances is a concept deeply rooted within the fabric of American society, extending this hope to the millions of adults with a criminal conviction in this country remains a work in progress. Counterproductive cultural norms in our prisons and arbitrary collateral consequences place irrational limitations on the ability of men and women to effectively reentry society at their highest potential and relegate millions of Americans to second class citizenship. Prison Fellowship is committed to the presupposition that all people have intrinsic value and are salvageable, and we are committed to paving the road of reconciliation from our prisons into our communities. We hope to see you on that road.

Respectfully submitted,

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