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# Reforming Recidivism: Making Prison Practical Through HELP

Katelyn Copperud

*St. Mary's University School of Law*, [kcopperud@mail.stmarytx.edu](mailto:kcopperud@mail.stmarytx.edu)

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## COMMENTS

### REFORMING RECIDIVISM: MAKING PRISON PRACTICAL THROUGH HELP

KATELYN COPPERUD\*

INTRODUCTION .....	148
I. RECIDIVISM .....	150
II. THE TEXAS PRISON SYSTEM .....	152
A. Early Beginnings .....	152
B. What’s a Texas Prison Without a Rodeo? .....	153
C. Texas Prison Reform Moving Forward .....	153
III. EDUCATION PROGRAMS CURRENTLY AVAILABLE TO TEXAS INMATES .....	155
A. The Windham School District .....	155
B. Blackstone Career Institute .....	156
C. Adams State University’s Prison College Program .....	156
D. Issues Associated with the Available Opportunities .....	157
IV. THE JAILHOUSE LAWYER AS AN ALTERNATIVE .....	158
V. PRISON LAW LIBRARIES .....	158
VI. HELPING EDUCATE THE LAW TO PRISONERS .....	160

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\* J.D. Candidate, May 2019; B.B.A., University of North Dakota. The author thanks her family for their unconditional support during law school. The author also thanks Ana C. Amici, General Administrative Counsel, Bexar County Criminal Court Administration, for providing the author with the opportunity to work in criminal law and her continued support.

A. Understanding the Legal System..... 160  
 B. Remediating the Past..... 161  
 C. Educating for the Future..... 163  
 CONCLUSION..... 164

INTRODUCTION

Stakes are high for lawyers representing criminal clients.<sup>1</sup> Stakes are personal when you're an inmate, confined to the jailhouse walls, representing yourself in the American justice system.<sup>2</sup> The inmate's performance as a "lawyer" determines whether they go home to their family or to their cellmate, whether they eat a home-cooked meal or chi-chi,<sup>3</sup> whether they rest soundly<sup>4</sup> or fear the possibility of being

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1. See generally DAVID R. DOW, EXECUTED ON A TECHNICALITY: LETHAL INJUSTICE ON AMERICA'S DEATH ROW 138 (2005) ("[Johnny Martinez and Carl Johnson] received the death penalty not because a jury considered all the details of their lives and deemed the men irredeemable, but because their lawyers did not do their jobs.") (emphasis original); see also MICHEL FOUCAULT, DISCIPLINE & PUNISH: THE BIRTH OF THE PRISON 15-16 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1975) ("[R]ationing of food, sexual deprivation, corporal punishment, solitary confinement . . . imprisonment has always involved a certain degree of physical pain.").

2. See Johnson v. Avery, 393 U.S. 483, 484, 487-88, 490 (1969) ("Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited. . . . In most federal courts, it is the practice to appoint counsel in post-conviction proceedings only after a petition for post-conviction relief passes initial judicial evaluation and the court has determined that issues are presented calling for an evidentiary hearing. . . . It has not been held that there is any general obligation of the courts, state or federal, to appoint counsel for prisoners who indicate, without more, that they wish to seek post-conviction relief. . . . Accordingly, the initial burden of presenting a claim to post-conviction relief usually rests upon the indigent prisoner himself with such help as he can obtain within the prison walls or the prison system. In the case of all except those who are able to help themselves—usually a few old hands or exceptionally gifted prisoners—the prisoner is, in effect, denied access to the courts unless such help is available."); see also ANTHONY LEWIS, GIDEON'S TRUMPET 102-03 (The Notable Trials Library 1991) (1964) ("Probably no one can adequately appreciate the need for a lawyer in a criminal case until he himself is a defendant. The sense of loneliness, the confusion of guilt and outrage, the feeling that one is caught up in machinery he does not understand—all those emotions well up in a person who finds himself arrested for even a moderately serious traffic offense.").

3. See, e.g., LancasterOnline, *How to Make Chi Chi—Lancaster County Prison Food*, YOUTUBE (May 23, 2013), <https://www.youtube.com/watch?v=uq2DS6qqMTQ> [<https://perma.cc/X6RY-PCNS>] (requiring one bag of crushed Top Ramen noodles, one bag of crushed Hot Cheetos, one packet of Slim Jim beef and cheese sticks ripped into bite-size pieces, sugar, pepper, and two cups of hot tap water).

4. See, e.g., *Sleeping in Prison*, PRISON TALK, <http://www.prisontalk.com/forums/archive/index.php/t-132127.html> [<https://perma.cc/S6Y3-QQCK>] (contrasting bedtime experiences as

attacked in their sleep,<sup>5</sup> and most importantly—the difference between life<sup>6</sup> and death.<sup>7</sup> The disparity between these outcomes highlights the need for legal education in prison. For inmate “lawyers,” the practice of law is more than just their work, it is literally their life. Legal materials and education have long been available to inmates.<sup>8</sup> However, the sufficiency of those programs and materials have long been questioned.<sup>9</sup> Injudiciously, many of these methods are still used in today’s prisons.

To combat the recidivism rate, and increase reform efforts, I propose we HELP: Help Educate the Law to Prisoners. HELP is an educational course I developed that is essential to prisoners and must be offered through the Texas Department of Criminal Justice (TDCJ) for the department to meet its reform goals. HELP creates a pathway from the confines of a prison to the courts, and eventually to the outside world of freedom and renewed opportunities. Through educational class settings, HELP will reduce recidivism rates and preserve judicial economy by teaching inmates the ins and outs of the American legal system. Three curriculum phases of HELP will present inmates a realistic option to learn

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“one of the better times of the day” for one inmate and “the hardest thing” for another due to cell privacy, choice of bunk, plumbing sounds, mattress quality, and light settings).

5. See, e.g., Julie K. Brown, *Young Inmates Beaten and Raped in Prison Broomstick Ritual*, MIAMI HERALD (Sept. 12, 2015, 3:09 PM), <http://www.miamiherald.com/news/special-reports/florida-prisons/article35039946.html> [<https://perma.cc/XEJ7-JVFD>] (detailing an inmate’s experience of getting attacked in his sleep); see also, e.g., Christie Thompson & Joe Shapiro, *The Deadly Consequences of Solidarity With a Cellmate*, MARSHALL PROJECT (Mar. 24, 2016, 7:00 AM), <https://www.themarshallproject.org/2016/03/24/the-deadly-consequences-of-solidarity-with-a-cellmate> [<https://perma.cc/PJC2-JEJV>] (describing instances of fatal violence between double-celled solitary inmates).

6. See *McCoy v. State*, 112 A.3d 239, 271 (Del. 2015) (overturning a pro se inmate’s death sentence).

7. Compare *Knight v. State*, 211 So. 3d 1, 19 (Fla. 2016) (affirming an inmate’s conviction of first degree murder and death sentence despite his controversial pro se proceeding), with *Gordon v. State*, 75 So. 3d 200, 201 (Fla. 2011) (forbidding death sentenced appellants to proceed pro se in any post-conviction proceedings). See Hamilton Nolan, *Letters from Death Row: Jeffery Wogenstahl, Ohio Inmate A269-357*, GAWKER (Jan. 15, 2015, 1:53 PM), <http://gawker.com/letters-from-death-row-jeffrey-wogenstahl-ohio-inmate-1679719212> [<https://perma.cc/B8VC-KH55>] (describing a death row inmate’s frustrating pro se experience as he filed numerous pro se motions and struggled to understand the law and appellate system for a crime he continuously maintained he did not commit).

8. Jonathan Abel, *Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries*, 101 GEO. L.J. 1171, 1179 (2013) (stating one of the first known prison libraries was in 1790).

9. *Id.*

the law and change their life course. The three phases of HELP are: Understanding the Legal System, Remediating the Past, and Encouraging the Future.

### I. RECIDIVISM

The National Institute of Justice defines recidivism as “a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”<sup>10</sup> Recidivism is measured by criminal acts that result in a second arrest or a return back to prison within a three-year period.<sup>11</sup>

High recidivism rates negatively impact many social and economic facets of communities.<sup>12</sup> Numerous factors contribute to recidivism, such as a decreased likelihood of gaining lawful employment, limited access to education opportunities, and legally-permitted discrimination in housing and benefits.<sup>13</sup> Targeting these obstacles before release through inmate learning programs like GED courses, workforce training, and family education classes can reduce the likelihood that an inmate will resort to crime upon release.<sup>14</sup> When we reduce recidivism, we reduce crime and allocate taxpayer funds more effectively as recidivism is enormously expensive.<sup>15</sup> Fortunately, inmate education programs have

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10. *Recidivism*, NAT’L INST. JUST. (June 17, 2014), <https://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx> [<https://perma.cc/WH5B-LNPN>].

11. *Id.*

12. *See generally* Maria Foscarinis & Rebecca K. Troth, *Reentry and Homelessness: Alternatives to Recidivism*, 39 CLEARINGHOUSE REV. 440, 441-44 (2005) (showing the repeating cycle of incarceration and homelessness); *see also* LOIS M. DAVIS ET AL., *EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS* 38 (2013) (using a hypothetical pool of 100 inmates, “[w]e estimated that 43.3 percent of individuals who did not receive correctional education would be reincarcerated within three years, leading to reincarceration costs of between \$2.94 million and \$3.25 million[.]”).

13. *See generally* Shristi Devu, Comment, *Trapped in the Shackles of America’s Criminal Justice System*, 20 SCHOLAR 217, 225-40 (2018) (“Over 300 restrictions in the form of statutes, administrative rules, and state court rules serve as barriers to ex-offenders attempting to reintegrate into society.”).

14. *See* DAVIS ET AL., *supra* note 12, at 39 (“[C]orrectional education would reduce reincarceration rates by 12.9 percentage points on average, although effectiveness does appear to differ by program.”).

15. *Id.* at 38 (averaging reincarceration costs per 100 inmates between \$2.94 million and \$3.25 million); *see also, e.g.*, TEX. DEP’T OF CRIMINAL JUSTICE, FY 2017 STATISTICAL REPORT 1

been proven to significantly reduce recidivism.<sup>16</sup> In fact, recidivism rates decrease as educational opportunities in prisons increase.<sup>17</sup> Therefore, implementing a course such as HELP, for around \$4.31 per inmate per day, can reduce recidivism and save taxpayers money.<sup>18</sup>

For instance, family education classes help inmates strengthen family relationships and provide opportunities for inmates to learn the necessary skills to care for their families and avoid reoffending.<sup>19</sup> Studies show that a parent's incarceration can harm their child's development and family experience.<sup>20</sup> The Texas Department of Criminal Justice (TDCJ) offers a program to aid an inmate's reentry into society by allowing them to maintain familial ties while incarcerated, because they recognize the strain that families of incarcerated offenders endure.<sup>21</sup>

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(2017), [http://www.tdcj.state.tx.us/documents/Statistical\\_Report\\_FY2017.pdf](http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2017.pdf) [<https://perma.cc/KB8N-VUUU>] [(listing 145,341 total inmates incarcerated in 2017) [hereinafter TDCJ, FY 2017].

16. Justin Brooks, *Addressing Recidivism: Legal Education in Correctional Settings*, 44 RUTGERS L. REV. 699, 709, 714-15 (1992).

17. *Id.*

18. See DAVIS ET AL., *supra* note 12, at 38-39 (finding the implementation of correctional education programs reduced the average reincarceration costs per 100 inmates to between \$2.07 million and \$2.28 million; further finding the annual cost of a correctional education program per inmate to be between \$1,400 to \$1,744; additionally finding that in order to break even, the program must reduce three-year reincarceration rates by a range of 1.9% to 2.6%; analyzing studies that reveal correctional education programs lower three-year reincarceration rates by 13%); see also TEX. PUB. POLICY FOUND., LEGISLATOR'S GUIDE TO THE ISSUES: CORRECTIONS BUDGET AND PRISON OPERATIONS (2015-2016), <https://www.texaspolicy.com/library/doclib/Corrections-Budget-and-Prison-Operations-0.pdf> [<https://perma.cc/H2PM-MUQM>] ("Prisons cost Texas taxpayers \$50.79 per inmate per day[.]").

19. See Shirley R. Klein et al., *Family Education for Adults in Correctional Settings: A Conceptual Framework*, 43 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 291, 292 (1999) (summarizing studies finding educational programs that help inmates strengthen family ties reduce disciplinary problems within the system, positively affect post-release success, and have the potential to be rehabilitative).

20. See Amanda Geller et al., *Beyond Absenteeism: Father Incarceration and Child Development*, 49 DEMOGRAPHY 49, 62 (2012) (finding children with fathers who were previously incarcerated were significantly more aggressive than children whose fathers were never incarcerated); see also Christopher Wildeman & Sarah Wakefield, *The Long Arm of the Law: The Concentration of Incarceration in Families in the Era of Mass Incarceration*, 17 J. GENDER, RACE & JUST. 367, 369-70 (2014) (noting the racially disparate effect of mass incarceration on children which increases the likelihood of behavioral and mental health problems, infant mortality, and homelessness; while also finding that families experiencing incarceration often have multiple family members incarcerated).

21. *Giving Offenders' Kids Incentive and Direction to Succeed*, TEX. DEP'T CRIM. JUST., <https://www.tdcj.state.tx.us/gokids/index.html> [<https://perma.cc/9FHP-CZSW>].

The likelihood of reoffending also increases without access to lawful employment, a critical element of societal reintegration.<sup>22</sup> Without meaningful work, high costs of living coupled with the responsibility of providing for a family can lead ex-offenders to believe there is no other choice but to re-offend.<sup>23</sup> Unfortunately, when an employer must choose to offer employment to one of two otherwise identical candidates, with the exception of one having a criminal history, it is easy to see who the employer might choose.

## II. THE TEXAS PRISON SYSTEM

### A. *Early Beginnings*

In 1848, the State of Texas broke ground on its first penitentiary in Huntsville.<sup>24</sup> Shortly thereafter, the penitentiary established a cotton and wool mill to make the prison self-sufficient.<sup>25</sup> When the Civil War broke out, cotton and wool sales to the Confederate Government generated a profit.<sup>26</sup> After the war, as the demand for cotton and wool decreased, the prison implemented the “convict lease system” which leased inmates to private parties for work in exchange for payments to the State.<sup>27</sup> The first official leases began with railroad companies, but soon expanded to large labor companies that serviced a variety of industries.<sup>28</sup> In 1914, after mass public outcry against the deplorable maltreatment leased inmates received, all prisoners returned to the exclusive control of the state.<sup>29</sup>

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22. Eniola O. Akinrinade, Comment, *Caught Between a Rock, Negligence, Racism, and a Hard Place: Exploring the Balance Between the EEOC's Arrest and Conviction Investigation Guidelines and Society's Best Interest*, 2 TEX. A&M L. REV. 135, 147-48 (2014).

23. *Id.* See WENDY ERISMAN & JEANNE BAYER CONTARDO, THE INST. FOR HIGHER EDUC. POLICY, LEARNING TO REDUCE RECIDIVISM 7-8 (2005) (“For prisoners with children, as well as those without, the most important benefit of postsecondary correctional education is the prospect of improved chances for employment after release from prison.”).

24. Paul M. Lucko, *Prison System*, TEX. ST. HIST. ASS'N (June 15, 2010), <https://tshaonline.org/handbook/online/articles/jjp03> [https://perma.cc/74VA-9DGN].

25. *Id.*

26. *Id.*

27. Donald R. Walker, *Convict Lease System*, TEX. ST. HIST. ASS'N (June 12, 2010), <https://tshaonline.org/handbook/online/articles/jnc01> [https://perma.cc/2Z4V-7VUM].

28. Lucko, *supra* note 24; Walker, *supra* note 27.

29. Walker, *supra* note 27.

### B. *What's a Texas Prison Without a Rodeo?*

What started as recreation for inmates and entertainment for staff,<sup>30</sup> the Texas Prison Rodeo quickly gained attention and became nationally known as the “Wildest Show Behind Bars.”<sup>31</sup> In 1931, the Texas Prison Rodeo was instituted within the Huntsville Unit grounds.<sup>32</sup> The event soon began to draw a much larger crowd compared to the original guest list of only inmates and employees.<sup>33</sup> The increased interest of this event prompted prison officials to begin charging admission for the event, which funded efforts to educate inmates.<sup>34</sup> At its peak, the rodeo was estimated to have grossed \$450,000, with an estimated 50,000 spectators.<sup>35</sup>

### C. *Texas Prison Reform Moving Forward*

In the 1930s, federal prison systems required inmates to attend educational courses.<sup>36</sup> Soon after this decision, many other reform efforts swept Texas.<sup>37</sup> In 1949, the Texas Legislature appropriated more than \$4 million to prison reform efforts, including funds for revived vocational and rehabilitation programs.<sup>38</sup> In 1969, the Texas Legislature created the Windham School District to offer GED certificates to inmates.<sup>39</sup>

30. Sylvia Whitman, *Texas Prison Rodeo*, TEX. ST. HIST. ASS'N (June 15, 2010), <https://tshaonline.org/handbook/online/articles/xtt01> [<https://perma.cc/3FU7-C7Z2>].

31. Michael Graczyk, *The 'Wildest Show Behind Bars' Wrecked*, SAN ANTONIO EXPRESS-NEWS (Jan. 11, 2012), [https://www.expressnews.com/news/local\\_news/article/Wildest-Show-Behind-Bars-wrecked-2478183.php](https://www.expressnews.com/news/local_news/article/Wildest-Show-Behind-Bars-wrecked-2478183.php) [<https://perma.cc/AZ97-U2YA>].

32. Whitman, *supra* note 30.

33. *Id.*

34. *Id.*; Graczyk, *supra* note 31; *Reform and Reaction, in Fear, Force, and Leather: The Texas Prison System's First Hundred Years, 1848-1948*, TEX. ST. LIBR. & ARCHIVES COMM'N, <https://www.tsl.texas.gov/exhibits/prisons/reform/page1.html> [<https://perma.cc/EH3Q-XHY6>] (last updated Jan. 11, 2016) [hereinafter *Reform and Reaction*].

35. Whitman, *supra* note 30; Graczyk, *supra* note 31 (demonstrating the popularity of the event led to celebrity appearances from stars like Dolly Parton, Willie Nelson, and George Strait).

36. Brooks, *supra* note 16, at 740-41.

37. *Records, in An Inventory of Records at the Texas State Archives, 1849-2004*, TEX. ST. LIBR. & ARCHIVES COMM'N, <http://www.lib.utexas.edu/taro/tslac/20127/tsl-20127.html> [<https://perma.cc/64CM-H7VU>] [hereinafter *Records*].

38. *Reform and Reaction, supra* note 34.

39. *Records, supra* note 37; *About Us*, WINDHAM SCH. DISTRICT, <http://windhamschool.district.org/about-us> [<https://perma.cc/788Q-L4PF>] [hereinafter WINDHAM SCH. DISTRICT, *About Us*].



In 1982, the Fifth Circuit upheld an injunction requiring the TDCJ to implement substantial reforms, after finding many conditions in the prison, including confinement areas and recreational facilities, violative of the Eighth Amendment.<sup>40</sup> The injunction also required an improvement in inmate access to legal education within the Texas prison system.<sup>41</sup> Thereafter, Texas substantially reformed existing prisons and opened several new ones.<sup>42</sup>

The 2000s sought to increase programs aiding substance problems and mental health issues through legislative reform.<sup>43</sup> As a result of the reform efforts, the recidivism rates dropped from 31.9% for inmates released in 2004, to 24.3% for inmates released in 2007.<sup>44</sup> In 2011, the legislature created the Diligent Participation Program, which allows state jail felony inmates to earn credit for up to 20% of their sentence by working in prison, participating in education programs, or going through substance abuse treatment.<sup>45</sup> Probationers may also participate in the program by earning a GED or pursuing an associate degree.<sup>46</sup> This

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40. Ruiz v. Estelle, 666 F.2d 854-58 (5th Cir. 1982) (“Whether confinement of prisoners results in cruel and unusual punishment depends not only on the size of the area in which they are confined, but also on the conditions attending their confinement in that area including sanitation, provision of security, protection against prisoner violence, and time and facilities available for work and exercise.”).

41. Ruiz v. Estelle, 503 F. Supp. 1265, 1370-73 (S.D. Tex. 1980), *aff’d in part, vacated in part*, 679 F.2d 1115 (5th Cir. 1982); *see also* William Wayne Justice, *The Origins of Ruiz v. Estelle*, 43 STAN. L. REV. 1, 1 (1990) (“[T]he problem the Texas prison case posed for our judicial system—specifically, how our courts can provide meaningful access to legal institutions for the most disadvantaged members of our society—is one of the most important and intractable issues that face judges, policymakers, and concerned lawyers of this generation.”)

42. Lucko, *supra* note 24.

43. JUSTICE CTR., JUSTICE REINVESTMENT IN TEXAS: ASSESSING THE IMPACT OF THE 2007 JUSTICE REINVESTMENT INITIATIVE 1 (2009), <http://www.ncsl.org/portals/1/Documents/cj/texas.pdf> [<https://perma.cc/3KZM-7HBK>].

44. Gary Cohen, *Punishment and Rehabilitation: A Brief History of the Texas Prison System*, 75 TEX. B.J. 604, 605 (2012).

45. Tex. H.B. 2649, 82d Leg., R.S. (2011); *see also* *Frequently Asked Questions*, TEX. DEP’T OF CRIMINAL JUSTICE, [http://www.tdcj.texas.gov/faq/diligent\\_participation.html](http://www.tdcj.texas.gov/faq/diligent_participation.html) [<https://perma.cc/4WKZ-RCLP>] (stating judges may, when awarding credit, take into account the times inmates committed disciplinary actions within the jail and the severity of the action; additionally, infractions like refusing to work or refusing to complete school assignments can result in an inmate being ineligible for credit).

46. Tex. H.B. 1250, Chapter 961, 82d Leg., R.S. (2011); *see also* *House Bill 1250: A “How To” Implementation Brief*, TEX. CRIM. JUST. COALITION, <https://www.texascjc.org/system/files/publications/HB%201205%20Implementation%20Brief%20%28Sep%202011%29.p>

legislation incentivizes the pursuit of education, while freeing up resources to focus on higher risk cases.

### III. EDUCATION PROGRAMS CURRENTLY AVAILABLE TO TEXAS INMATES

Educational opportunities currently offered to inmates in TDCJ custody include the Windham School District's programs, the Blackstone Career Institute's paralegal certificate, and the Prison College System offered through Adams State University. These programs, however, do not provide inmates with a legal education sufficient to proceed *pro se*. Rather, the programs are primarily offered for those who wish to obtain an associate or bachelor's degree—thus leaving the gap between the cell and the courts unfulfilled.

#### A. *The Windham School District*

The Windham School District provides educational opportunities to eligible offenders incarcerated in TDCJ facilities.<sup>47</sup> GED preparation, special education for students with disabilities, English as a Second Language, and Career and Technical Education (CTE) are just some of the programs offered by Windham.<sup>48</sup> CTE provides occupational training in a variety of fields such as automotive, business, hospitality and tourism, and plumbing.<sup>49</sup> Windham produces statutorily required biennial program evaluations that measure the effect of the academic, vocational, and life skills programs on recidivism.<sup>50</sup> The evaluations determine whether the programs reduce recidivism, reduce the cost of imprisonment, increase the success of former inmates in securing

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df [<https://perma.cc/X9HX-5JUC>] (“[E]vidence suggests that positive reinforcements are optimal for promoting behavior changes.”).

47. WINDHAM SCH. DISTRICT, *About Us*, *supra* note 39.

48. *Division of Instruction*, WINDHAM SCH. DISTRICT, <https://wsdtx.org/en/about-us/divisions-home/instruction-divisions> [<https://perma.cc/UKB4-U78D>]; *see also* WINDHAM SCH. DIST., ANNUAL PERFORMANCE REPORT SCHOOL YEAR 2016-2017, at 2 (2017), [http://wsdtx.org/images/PDF/APR/2017/WSD-APR\\_2017-LR.pdf](http://wsdtx.org/images/PDF/APR/2017/WSD-APR_2017-LR.pdf) [<https://perma.cc/S283-SZS8>] (increasing the number of programs offered to reflect the demand for employees with science, technology, and engineering backgrounds; new programs include “computerized numerical control machining, fiber and copper cabling, computer controls programming, and telecommunications”) [hereinafter WINDHAM SCH. DIST., ANNUAL PERFORMANCE REPORT].

49. *See Career and Technical Education*, WINDHAM SCH. DISTRICT, <http://wsdtx.org/en/students/services/classes-new> [<https://perma.cc/EV6V-LDD5>] (listing thirty-seven full-length courses as part of the CTE program).

50. TEX. EDUC. CODE ANN. § 19.0041(a) (West 2019).

employment, and provide incentives for inmates to behave positively during imprisonment.<sup>51</sup> Although participation in the GED courses is free of cost for the inmates, the State of Texas appropriates about \$865.94 per participant.<sup>52</sup>

### B. Blackstone Career Institute

Blackstone Career Institute, an online learning school, offers inmates the opportunity to earn a paralegal certificate.<sup>53</sup> The information learned in the year-long course is applicable both while incarcerated and once released.<sup>54</sup> Enrollment in Blackstone's Paralegal Certificate Program begins with an online application and a sponsor—thereby presenting the first hurdle to many inmates.<sup>55</sup> After acceptance into the program, Blackstone mails the course materials, which are made of soft substances for the purpose of passing prison security requirements.<sup>56</sup> Additionally, internet access, computers, proctors, and instructors within the facility are not necessary for the course, facilitating inmate success despite the interference of restricted privileges.<sup>57</sup> The cost to the inmate for the program is \$826.<sup>58</sup>

### C. Adams State University's Prison College Program

Adams State University, through its print-based "Prison College Program," offers a range of law-related courses that are transferrable to a bachelor's or associate degree.<sup>59</sup> For example, a course in constitutional

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51. TEX. EDUC. CODE ANN. § 19.003 (West 2019).

52. WINDHAM SCH. DIST., ANNUAL PERFORMANCE REPORT *supra* note 48, at 27.

53. *Paralegal Certificate for the Incarcerated*, BLACKSTONE CAREER INST., <https://blackstone.edu/paralegal-courses-inmate-information/> [<https://perma.cc/E4P7-9MTY>].

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Prison College Program*, ADAMS ST. UNIV., <https://www.adams.edu/academics/print-based/prison-college-program/> [<https://perma.cc/N46X-ZHNV>]; *see also* ADAMS STATE UNIV., CORRESPONDENCE EDUCATION PROGRAM 7-9, [https://drive.google.com/file/d/16JDkTbk-KfzEAm\\_RVC6e0W2-Cp87iU4/view](https://drive.google.com/file/d/16JDkTbk-KfzEAm_RVC6e0W2-Cp87iU4/view) [<https://perma.cc/UD5S-ACL6>] (offering courses in education law, constitutional law, family law, immigration law, employment law, real property law, criminal law, criminology, business law, estate planning, alternative dispute resolution, water law, victim advocacy, advanced legal research, "Women, Crime and the Law" and two different paralegal certificates) [hereinafter ADAMS STATE UNIV., CORRESPONDENCE].

law aims to provide inmates with an understanding of the fundamentals of the U.S. Constitution while focusing on civil liberties and criminal justice.<sup>60</sup> A course called “Advanced Legal Research and Writing” seeks to teach students “to utilize the legal resources available in a law library” and to use Westlaw.<sup>61</sup>

The cost for these classes ranges from \$645 to \$729 per class.<sup>62</sup> If an inmate takes four classes, they would pay at least \$2,580 in the course costs alone, not including student fees and other miscellaneous costs.<sup>63</sup> Furthermore, these four classes do not equate to a certificate or degree.<sup>64</sup> To obtain a certificate or degree, the inmate would need to pay for, and complete, additional courses.<sup>65</sup>

#### D. Issues Associated with the Available Opportunities

These programs can be prohibitively expensive for some inmates. The State of Texas covers the cost for the first two college courses each semester, however, the inmates must pay this “loan” back upon their release as a condition of their parole.<sup>66</sup> If the inmate chooses to take more than two courses, they must pay for the additional classes upon registration.<sup>67</sup>

Another issue is the attainment of a GED. Of the 65,739 inmate releases from the TDCJ in 2017, 12,366 had a high school diploma or GED.<sup>68</sup> Therefore, only a mere 18% of inmates released had the

60. ADAMS STATE UNIV., CORRESPONDENCE *supra* note 59, at 9, 23 (focusing on “individual civil liberties and 42 U.S.C. section 1983 claims, emphasizing redress for violations of the Fourth, Fifth, and Eighth Amendments”).

61. *Adams State University - Advanced Legal Research and Writing*, CTR. FOR LEGAL STUD. (2019), <https://www.legalstudies.com/product/adams-state-university-advanced-legal-research-and-writing/> [<https://perma.cc/8T5F-DT7N>] (covering citation and writing, as well).

62. ADAMS STATE UNIV., CORRESPONDENCE *supra* note 59, at 19-24.

63. *Id.*

64. *See id.* (showing each class is worth three credit hours).

65. *See Print-based (Prison College Program): Associate Degrees*, ADAMS ST. UNIV., <https://www.adams.edu/academics/print-based/associate-degree/> [<https://perma.cc/N652-GPAY>] (requiring 60 credits for an associate degree); *see Print-based (Prison College Program): Bachelor's Degrees*, ADAMS ST. UNIV., <https://www.adams.edu/academics/print-based/bachelors-degrees/> [<https://perma.cc/55LY-FUXJ>] (requiring 120 credits for a bachelor's degree).

66. TEX. DEP'T OF CRIMINAL JUSTICE, OFFENDER ORIENTATION HANDBOOK 45 (2017), [https://www.tdcj.texas.gov/documents/Offender\\_Orientation\\_Handbook\\_English.pdf](https://www.tdcj.texas.gov/documents/Offender_Orientation_Handbook_English.pdf) [<https://perma.cc/5GYB-DZV4>].

67. *Id.*

68. TDCJ, FY 2017, *supra* note 15 at 3.

education level of a high school senior, a common requisite for acceptance into an inmate college program.<sup>69</sup>

#### IV. THE JAILHOUSE LAWYER AS AN ALTERNATIVE

Strained for resources, inmates often look to jailhouse lawyers for legal assistance.<sup>70</sup> Jailhouse lawyers are inmates who provide legal advice and aid in drafting court documents for other inmates.<sup>71</sup> Recognizing the issue with this practice is palpable. While these acts are illegal outside of prison, the unique confines of prison life encouraged the Supreme Court to permit inmates to essentially practice law behind bars.<sup>72</sup>

#### V. PRISON LAW LIBRARIES

Prison libraries date back as far as 1790.<sup>73</sup> Until the mid-nineteenth century, prisons predominately used their libraries to religiously rehabilitate their inmates.<sup>74</sup> In the early twentieth century, riding a trend favoring vocational rehabilitation, prison law libraries began to emerge.<sup>75</sup> More recently, many prison law libraries have modernized by providing internet-based legal research through LexisNexis and Westlaw.<sup>76</sup> This change, however, re-entrenched some of the long-

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69. BLACKSTONE CAREER INST., *supra* note 53; ADAMS STATE UNIV., INCARCERATED APPLICATION 2, [https://drive.google.com/file/d/1ahZrkvZHW4R1sS9-AG7C7sYkYS02bH\\_/view](https://drive.google.com/file/d/1ahZrkvZHW4R1sS9-AG7C7sYkYS02bH_/view) [<https://perma.cc/R365-K7UZ>].

70. Evan R. Seamone, *Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America's Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries*, 24 YALE L. & POL'Y REV. 91, 96-104 (2006); *see, e.g.*, Beth Schwartzapfel, 'For \$12 of Commissary, He Got 10 Years off His Sentence.', MARSHALL PROJECT (Aug. 13, 2015, 3:40 PM), <https://www.themarshallproject.org/2015/08/13/for-12-of-commissary-he-got-10-years-off-his-sentence> [<https://perma.cc/CLL6-8RZ9>] (explaining creative ways to compensate jailhouse lawyers, like depositing money in their commissary accounts or smuggling in food for them).

71. Seamone, *supra* note 70 ("They are almost always self-taught or trained by experienced jailhouse lawyers while in prison.").

72. *Compare* TEX. GOV'T CODE ANN. § 81.102(a) (West 2019) ("[A] person may not practice law in this state unless the person is a member of the state bar."), *with* Johnson v. Avery, 393 U.S. 483, 487 (1969) ("If such prisoners cannot have the assistance of a 'Jail-House lawyer,' their possibly valid constitutional claims will never be heard in any court.").

73. Abel, *supra* note 8.

74. *Id.* at 1179-80.

75. *Id.* at 1181-82.

76. *Id.* at 1211-15.

standing problems with prison law libraries.<sup>77</sup>

The vast history of prison libraries is partially accredited to a prisoner's fundamental right to access the court system.<sup>78</sup> Contrary to popular belief, however, that right does not necessarily entitle them to a law library.<sup>79</sup> Yet, in many cases, prisons choose to serve this right by offering a legal library because the alternative is offering legal assistance to offenders, which is likely to be much more costly and would create a heavier burden on jail administrations.<sup>80</sup> Without giving much further guidance, the Supreme Court encourages States to experiment with alternative methods of facilitating this right to access.<sup>81</sup>

Sometimes clinical programs at law schools fill the gaps between prisons and courtrooms, but very few clinics focus on educating prisoners to proceed pro se. The Prison Reform Education Project's Prison Teaching Project at New York University School of Law, however, uses law students to teach inmates legal research skills, similar to those covered in a typical 1L legal research and writing curriculum.<sup>82</sup> The

77. *Id.* (“Computers make research easier for the computer literate, but they add another hurdle for those inmates without computer skills.” “[N]o one has ever seen prison libraries as effective tools for accessing the courts, but these libraries proliferated nonetheless.”).

78. *Bounds v. Smith*, 430 U.S. 817, 828, 830 (1977) (“[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law[.]” however, “while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts, our decision here . . . does not foreclose alternative means to achieve that goal.”); *Lewis v. Casey*, 518 U.S. 343, 351 (1996) (“[P]rison law libraries and legal assistance programs are not ends in themselves, but only the means for ensuring ‘a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.’”) (quoting *Bounds*, 430 U.S. at 817, 825).

79. *Bounds*, 430 U.S. at 828, 830.

80. Abel, *supra* note 8, at 1203 (“States quickly warmed to law libraries as a way of complying with their access-to-courts responsibilities”).

81. *Bounds*, 430 U.S. at 831 (“Among the alternatives are the training of inmates as paralegal assistants to work under lawyers’ supervisions, the use of paraprofessionals and law students, either as volunteers or in formal clinical programs, the organization of volunteer attorneys through bar associations or other groups, the hiring of lawyers on a part-time consultant basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal services offices.”); *Lewis*, 518 U.S. at 352 (“One such experiment, for example, might replace libraries with some minimal access to legal advice and a system of court-provided forms . . . that ask[] the inmates to provide only the facts and not to attempt any legal analysis.”).

82. *Prison Reform and Education Project*, N.Y.U. L. (2019), <http://www.law.nyu.edu/studentorganizations/prisonreformandeducationproject> [<https://perma.cc/5ZQS-VYXH>].

seven-week course is taught in a prison classroom or library.<sup>83</sup>

Imagine trying to manage law school, pass the bar, and try your first case without ever having attended a lecture. Imagine trying to navigate the world of legal relief with only limited access to legal materials that are outdated at best. Imagine trying to understand basic legalese, legal procedure, and filing of legal documents without ever graduating high school. These scenarios put you in the shoes of the typical inmate, striving to fight their case with their only resource being the outdated prison law library and the limited education they came in with. Prison law libraries merely scratch the surface of what is actually needed for pro se inmates to navigate the courts effectively.<sup>84</sup>

## VI. HELPING EDUCATE THE LAW TO PRISONERS

HELP consists of three components: 1) Understanding the Legal System, 2) Remediating the Past, and 3) Encouraging the Future. The program is tailored to those who wish to, or have no other choice but to, represent themselves pro se. Coming out of prison with a skillset learned through HELP makes the former inmate less likely to resort to crime, and therefore less likely to return to prison.<sup>85</sup>

### A. Understanding the Legal System

While inmates most likely heard terms like “burden of proof” and “defendant” during their court proceedings, the meaning of these terms and their place within the court structure can be confusing.<sup>86</sup> Other terms like “petition,” “affidavit,” or “motion” may be even less clear.<sup>87</sup> Defining and explaining these terms can help inmates feel more confident accessing the courts. Also, with access to the educational materials provided by HELP, the inmate’s time in court may be more beneficial because they will be better able to explain their claims. Furthermore,

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83. *Id.*

84. *See generally* Abel, *supra* note 8.

85. ERISMAN & CONTARDO, *supra* note 23.

86. *See The Legal System and Legal Research*, in THE JAILHOUSE LAWYER’S HANDBOOK 113 (Rachel Meeropol & Ian Head eds., 5th ed. 2010), [https://www.nlg.org/wp-content/uploads/2016/02/Report\\_JailHouseLawyersHandbook.pdf](https://www.nlg.org/wp-content/uploads/2016/02/Report_JailHouseLawyersHandbook.pdf) [<https://perma.cc/LLN7-G5CA>] (defining various terms that inmates may not be aware of, such as: admissible, affidavit, appeal, burden of proof, defendant, and many more).

87. *See id.* at 105-11 (detailing the basic intricacies of the court system, order of precedent, reading cases, and resources available for legal research).

knowledge of court structure can allow them to better understand the law and direct their appeals, writs, and questions to the proper personnel.

Understanding the Legal System will also include a presentation on civil litigation. Civil claims against the TDCJ can arise within the prison system, and inmates, at a minimum, should know about the civil claims and remedies which may only be availed through that system.<sup>88</sup> Additionally, exposing inmates to the civil system can help them after release with contract disputes, landlord-tenant problems, or child custody issues.<sup>89</sup> Knowing how to legally challenge these issues once released can lower the risk of a former inmate resorting to illegal means to obtain relief.

Teaching the law can provide inmates with the knowledge that laws are not static, but can change, especially when unjust or discriminatory.<sup>90</sup> This knowledge can give them a new perspective of the legal system that they may not have had prior to their incarceration.<sup>91</sup> Understanding the lawmaking process can make them feel less alienated by the law and those who uphold it—in turn giving them a deeper respect for those laws.<sup>92</sup> By understanding this concept, prisoners may realize the importance of legal processes, such as the appellate procedure, and this may encourage them to pursue their claims in court.<sup>93</sup>

### B. *Remedying the Past*

Unbeknown to many inmates, the legal system offers a plethora of remedies to convictions. For example; appeals, discretionary reviews, nunc pro tuncs, writs of habeas corpus, and other statutory and constitutional rights. Without a lawyer or substantial legal knowledge, remedies may go unredeemed.

One of the most prominent methods of remedy is a writ of habeas corpus. Guaranteed by both the Texas and United States Constitution, an

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88. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 15.019 (West 2019) (noting which county to file a claim for an action that occurred in a facility “operated by or under contract with the Texas Department of Criminal Justice”).

89. Brooks, *supra* note 16, at 738.

90. *See id.* at 724-25 (discussing the value of teaching inmates the ability to challenge laws).

91. *See id.* at 726 (advocating the use of mock trials and role playing to help open inmates’ minds to different perspectives of the legal system).

92. *Id.* at 722-23.

93. *See id.* at 725 (explaining how the appellate process provides a safeguard against both presumed systemic arbitrariness and inviolable judicial discretion).



inmate may use a writ of habeas corpus to remedy a restraint of their liberty.<sup>94</sup> When filed correctly, writs of habeas corpus are effective tools to challenge the legality of a conviction. However, procedural hurdles and other complex issues can prevent prisoners from fully utilizing this remedy.<sup>95</sup>

Courts expect inmates to locate and follow statute-prescribed application and filing methods, while also comprehending and applying legal terms without having any substantial legal knowledge. Inmates must also know the court structure, because the statute requires them to file the application with the clerk in the court where they were convicted.<sup>96</sup> This may get confusing because inmates can be transferred between prisons numerous times, and they may try to file in the county where they are currently located.<sup>97</sup>

Even if they can overcome the procedural hurdles, habeas petitioners only have “one bite at the apple,” meaning they must bring all claims, with a few exceptions, in the first writ application, or the claim will be waived.<sup>98</sup> Moreover, even if an issue is alleged in the first writ, but it could have been brought on appeal, the issue is waived.<sup>99</sup> Although inmates may obtain counsel to prepare a writ, there is no constitutional right to a court appointed attorney past the trial stage for inmates not sentenced to death.<sup>100</sup> High legal fees can force inmates seeking relief through writs of habeas corpus to proceed pro se.

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94. U.S. CONST. art. I, § 9, cl. 2.; TEX. CONST. art. I, § 12.; TEX. CODE CRIM. PROC. ANN. art. 11.01 (West 2019).

95. See generally TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2019) (outlining the duties of judges and petitioners in writ of habeas corpus petitions); see also *Filing Requirements*, TEX. JUD. BRANCH, <http://www.txcourts.gov/supreme/practice-before-the-court/> [<https://perma.cc/6VK5-R9AP>] (explaining that a court can strike a filing if the filing requirements are not followed).

96. TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3(b) (West 2019).

97. See, e.g., *Ex parte Burgess*, 152 S.W.3d 123 (Tex. Crim. App. 2004) (dismissing habeas corpus application that was mistakenly filed in the county where the deferred adjudication was transferred to and not in the county of conviction).

98. See TEX. CODE CRIM. PROC. ANN. art. 11.07, § 4(a) (West 2019) (outlining requirements an applicant must establish if seeking approval of a subsequent application).

99. See *id.* (noting exceptions that allow for the filing of subsequent writs).

100. Compare TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2019) (illustrating that applicants convicted without the death penalty may obtain counsel to file an application, but counsel is not a constitutional right in this situation), with TEX. CODE CRIM. PROC. ANN. art. 11.071, § 2 (West 2019) (asserting that applicants in death penalty cases must be represented by competent counsel).

The Applicant's claims must present sound legal arguments using both facts and law to support the allegations.<sup>101</sup> Courts may deny writs, regardless of their legal sufficiency, when they are poorly worded, factually deficient, and incomprehensible, because the court may not understand what the applicant is arguing.<sup>102</sup> While the limitation on filing subsequent writs is meant to preserve judicial economy, a little guidance can provide pro se inmates with the knowledge to file correct writs the first time around. HELP can teach inmates about the process to ensure their "one bite" gets the whole apple.

### C. *Educating for the Future*

The third curriculum phase of HELP is educating inmates about their legal rights after their release. The majority of this component will help inmates with employment-seeking skills and inform them of their rights as potential employees.

Inmates, and the general public, are generally aware that upon applying for a job, the employer may subject them to a background check. However, it is critical that the inmate know, prior to their release, that they cannot be specifically targeted for a criminal background check based solely on their national origin, religion, race, sex, and color.<sup>103</sup> Inmates should also know about federal programs that incentivize employers to hire people with criminal backgrounds. The Federal Work Opportunity Tax Credit program (WOTC) helps newly released inmates obtain employment by providing tax credits to employers who hire people with felonies in their background.<sup>104</sup> Informing inmates about which employers participate in this program prior to release is necessary because the tax credit does not apply to inmates who were released more than one year prior to their hiring.<sup>105</sup>

Inmates fighting against addiction should know that enrolling in a substance abuse treatment program will not expose them to

101. *See generally* TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2019) (explaining the structure of the writ as it applies to crafting a legal argument).

102. *See, e.g.,* Banks v. Gonzales, 496 F. Supp. 2d 146, 149 (D.D.C. 2007) (dismissing petitioner's amended petition because it did not clearly articulate a factual basis for relief).

103. 42 U.S.C. § 2000e-2(a)(1) (2018).

104. 26 U.S.C. § 51 (2018).

105. *See* 26 U.S.C. § 51(d)(4)(B) (2018) (defining a qualified ex-felon under WOTC as a person with a felony conviction and who is hired "not more than one year after the last date on which such individual was so convicted or was released from prison").

discrimination by employers. Under federal law, people who suffer from an addiction are protected from discrimination because addiction impairs and substantially limits individuals in major life activities.<sup>106</sup> Within the employment, employers must provide reasonable accommodations for employees to perform their duties and comply with their treatment plans.<sup>107</sup> For example, an employer must allow an employee to take off time of work to fulfill their treatment plan obligations.<sup>108</sup> It is crucial for inmates to learn about these rights so they are encouraged to seek treatment. It is also imperative for the inmate to know, prior to release, that to receive this protection as an employee or applicant, they must not use illegal drugs.<sup>109</sup>

#### CONCLUSION

Courts often balance efficiency and justice. Pro se inmates may file seemingly frivolous arguments and non-existent motions, which can strain court resources. By providing a basic legal education program for inmates, like HELP, these judicial resources will be utilized more efficiently.

Time and time again, education and treatment programs are proven to reduce recidivism. HELP can reduce recidivism in Texas by giving inmates the tools to more effectively and efficiently fight their legal battles, and to help them understand the law that led to their incarceration. HELP allows inmates an insight into remedies; including, but not limited to, monetary damages and substance abuse treatment opportunities that can encourage a brighter future.

Texas already possesses the resources to make HELP a reality. Between the ten law schools and nearly 100,000 active bar members,<sup>110</sup>

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106. 42 U.S.C. § 12114(b)(1)-(3) (2018).

107. KNOW YOUR RIGHTS: RIGHTS FOR INDIVIDUALS ON MEDICATION-ASSISTED TREATMENT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES 8-9 (2009), [http://atforum.com/documents/Know\\_Your\\_Rights\\_Brochure\\_0110.pdf](http://atforum.com/documents/Know_Your_Rights_Brochure_0110.pdf) [<https://perma.cc/QEG6-LWU6>].

108. *Id.*

109. 42 U.S.C. § 12114(a) (2018).

110. *Texas Law School Information*, ST. BAR TEX. (2019), <https://www.texasbar.com/Content/NavigationMenu/ForThePublic/FutureLawyers/TexasLawSchoolInformation/default.htm> [<https://perma.cc/WDZ4-PKCX>]; *State Bar of Texas Membership: Attorney Statistical Profile (2015-2016)*, ST. BAR TEXAS, <https://texasbar.com/AM/Template.cfm?Section=Demographic>

there is no lack of available educators and curriculum advisors.<sup>111</sup> Much like the Windham School District, Texas could permanently implement HELP into the Texas Department of Criminal Justice. Studies show the positive impact general inmate education has on recidivism rates and inmate well-being,<sup>112</sup> so imagine the impact of a legal education.

The need for HELP in the Texas Department of Criminal Justice is apparent. Although recidivism rates are decreasing, they are not anywhere near zero.<sup>113</sup> Executive Director Bryan Collier believes inmate education programs are driving these rates down.<sup>114</sup> HELP is the link between low recidivism rates and no recidivism rate, which the Texas Department of Criminal Justice yearns for.<sup>115</sup>

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\_and\_Economic\_Trends&Template=/CM/ContentDisplay.cfm&ContentID=32670 [https://perma.cc/CG3F-MBMQ].

111. See, e.g., *Texas Prison Education Initiative*, U. TEX. (2019), <http://sites.utexas.edu/texasprisoneducation/> [https://perma.cc/TP69-6SKY] (teaching courses in sociology and creative writing and providing GED tutoring).

112. DAVIS ET AL., *supra* note 12, at 40 (2013); Gerald G. Gaes et al., *Adult Correctional Treatment*, 26 CRIME & JUST. 361, 361-62 (1999).

113. LEGISLATIVE BUDGET BD., STATEWIDE CRIMINAL AND JUVENILE JUSTICE RECIDIVISM AND REVOCATION RATES 2 (2015), [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/1450\\_CJ\\_Statewide\\_Recidivism.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf) [https://perma.cc/3L54-QLP6] (showing a 0.7% decrease over the course of three years for adults incarcerated in prison).

114. Cody Stark, *New TDCJ Executive Director Talks About First Months on the Job*, HUNTSVILLE ITEM (Feb. 19, 2017), [https://www.itemonline.com/news/local\\_news/new-tdcj-executive-director-talks-about-first-months-on-the/article\\_a0cb6609-7f41-5e21-a599-59eca4169b75.html](https://www.itemonline.com/news/local_news/new-tdcj-executive-director-talks-about-first-months-on-the/article_a0cb6609-7f41-5e21-a599-59eca4169b75.html) [https://perma.cc/8R87-B9HV] (commenting on the decrease in the recidivism rate, “This is a testament to our treatment and diversion programs as well as the work that Windham is doing. Our ultimate goal is to get that number as close to zero as possible. We will continue to work closely with our partners like Windham to ensure offenders are prepared to re-enter society successfully.”).

115. LEGISLATIVE BUDGET BD., *supra* note 113.