

## Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

### Senator Sheldon Whitehouse Questions for the Record

1. Prof. DeLisi testified that many of the proposals discussed in the Urban Institute's report would inevitably lead to more crimes, based on the assertion that the release of any single prisoner results in 15-17 new offenses. Is his methodology valid? Are his conclusions consistent with the evidence from states that have reformed their criminal justice systems?

Professor DeLisi bases his estimates of the incapacitative effect of incarceration on a peer-reviewed journal article by Steven Levitt, published in 1996, that uses state-level data from 1971-1993.<sup>i</sup> That article, when it was published, provided compelling evidence that prison can incapacitate offenders and thus prevent them from committing further crimes against the general population, and it is just one of many articles that produced similar findings. As the primary source for estimating the number of crimes that would be committed because of the release of federal prison inmates in 2013 and beyond, however, it is problematic.

Before discussing the methodology of the Levitt study or subsequent studies with different findings, it is worth noting that the federal and state systems differ considerably, both in the types of inmates entering each system and the average length of stay in each system. Because little research has been conducted on the incapacitation effect of prison for a federal population, it makes sense that information from the states would be used as a proxy for unavailable federal information. But it is important to recognize that federal offenders are less likely to be incarcerated for violent crimes and typically have longer lengths of stay than their counterparts in the states.<sup>ii</sup>

The first troubling aspect of the Levitt paper for analytic use today is its period of data collection, starting in the early 1970s. The Levitt paper argues that at this time, the marginal increase of one prisoner prevented several crimes from occurring. Since then, the state incarceration rate has increased to almost three times the average rate at the time of the Levitt study,<sup>iii</sup> and the federal rate is approximately seven times as high as it was in 1980 (the oldest data available).<sup>iv</sup> The federal prison population is almost ten times higher than it was in 1980—nine years after data collection for the Levitt research began.<sup>v</sup> Indeed, most of his research was conducted before the passage and implementation of the Sentencing Reform Act of 1984 or the Anti-Drug Abuse Act of 1986, and none of it coincides with the implementation of state-level reforms as a result of the Violent Offender Incarceration/Truth in Sentencing initiative (VOI/TIS).

Given the substantial changes in the size and composition of prison populations since the Levitt paper was researched, diminishing marginal returns are likely an issue; with the incarceration rate tripled, the marginal prisoner today is likely quite different from the marginal prisoner of the past. This is borne out by more recent econometric research about the marginal incapacitative effects of incarceration; the reductions that Levitt found do not hold up as the scale of imprisonment increases.<sup>vi</sup> In fact, this recent research has found that reductions in the

incapacitative effect of incarceration may be accelerating.<sup>vii</sup> Plainly, the marginal prisoner today is exponentially less threatening to public safety than the marginal prisoner at the time of Levitt's study.

Using the numbers from the Levitt study also ignores the reality on the ground. In recent years, 29 states have reduced their incarceration rate, and all but three have also seen the crime rate drop.<sup>viii</sup> If reducing the number of prisoners increased crime to such a dramatic degree—at over a dozen per person as DeLisi purports—then there would have been an explosion of crime rather than a continued drop.

One limitation of the Levitt article that the author points out himself is that at the time of its publication, there was still little known about effective programming to prevent offenses or recidivism. Such programs are “preferable to long-term incarceration from both a cost-benefit and humanitarian perspective” (p. 348). Since then, the literature about what works in prevention and reentry has expanded. Efforts such as Urban Institute's What Works in Reentry Clearinghouse have shown that there are many programs and policies that are proven to reduce recidivism. These program evaluations conform to a high standard of methodological rigor, and many randomized controlled trials have shown substantial recidivism reductions.

Subsequent econometric research at the state level, published in the same journal as the Levitt paper, has found that providing the incentive of earlier release to prisoners for participating in such programming or good conduct is cost-beneficial from many perspectives. The incentive of early release encourages more inmates to participate in programming, and the rehabilitative effect of programming is much stronger than the incapacitative effect of prison.<sup>ix</sup> That is, building upon Levitt's own prediction, high-quality programming not only saves money, but also is a much more effective way to reduce crime.

Taking these changes into consideration, Levitt himself has recently argued that the calculus of incarceration has changed, telling the *New York Times*, “We know that harsher punishments lead to less crime, but we also know that the millionth prisoner we lock up is a lot less dangerous to society than the first guy we lock up... **I think we should be shrinking the prison population by at least one-third** [emphasis added].”<sup>x</sup>

The literature on how much time served is sufficient to protect the public is therefore at best mixed, and our methodology is especially conservative for not incorporating the recidivism reduction benefits of programming into a more explicit cost-benefit analysis.

2. Prof. DeLisi testified that “the effectiveness of treatment programs has been inflated.” Do you agree? Is there evidence that treatment programs are effective in reducing recidivism?

Perhaps what DeLisi perceives as inflated is the so-called “evidence” of program effectiveness that is the result of poorly designed studies that lack the methodological rigor to assert causation in a manner that would withstand academic scrutiny. However, a large and growing body of strong research evidence indicates that programs that prepare inmates for employment, address substance addiction, and maintain and enhance family relationships are critical to reducing the likelihood of recidivism following their release. Much of this evidence is embodied in the What Works in Reentry Clearinghouse,<sup>xi</sup> developed by Urban Institute in partnership with the Council of State Governments’ Justice Center as part of the Second Chance Act’s National Reentry Resource Center.<sup>xii</sup> Our methodology is stringent, examining only studies that conform to the highest standards of methodological rigor—including many randomized controlled trials, the “gold standard” of evaluation methods. While we are in the process of populating the Clearinghouse and have hundreds more studies still to review, to date we have found positive effects for many substance abuse treatment programs, including BOP’s Residential Drug Abuse Program,<sup>xiii</sup> Connecticut’s substance abuse treatment tier programs,<sup>xiv</sup> and Minnesota’s chemical dependency treatment program.<sup>xv</sup> Several prison industries programs were found to be effective, including the federal prison system’s UNICOR program,<sup>xvi</sup> work release programs in Florida<sup>xvii</sup> and Washington,<sup>xviii</sup> and a number of educational and vocational programs, particularly postsecondary and adult basic education.

Importantly, studies of in-prison visitation found that inmates who receive visits from family members while incarcerated have reduced rates of recidivism compared to those who do not, even when statistically controlling for other differences between these groups.<sup>xix</sup> This finding is consistent with Urban Institute’s reentry studies, which have found that families are an important positive influence in the reentry process (with higher levels of family support linked to higher employment rates and reduced recidivism following release)<sup>xx</sup> and that in-prison contact with family members is predictive of the strength of family relationships following release.<sup>xxi</sup>

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<sup>i</sup> Levitt, Steven. 1996. “The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation.” *The Quarterly Journal of Economics* 111(2): 319–351.

<sup>ii</sup> Samuels, Julie, Nancy La Vigne, and Samuel Taxy. 2013. “Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System.” Washington, DC: Urban Institute. <http://www.urban.org/publications/412932.html>.

<sup>iii</sup> Levitt (1996); La Vigne, Nancy. 2013. “Statement of Nancy G. La Vigne, Ph.D. Director, Justice Policy Center, Urban Institute before the Committee on Judiciary United States Senate.” *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*.

<sup>iv</sup> La Vigne (2013).

<sup>v</sup> Samuels, La Vigne, and Taxy (2013).

<sup>vi</sup> Johnson, Rucker and Steven Raphael. 2012. “How Much Crime Reduction Does the Marginal Prisoner Buy?” *Journal of Law and Economics* 55(2): 275–310.

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- <sup>vii</sup> Liedka, Raymond, Anne Piehl, and Burt Useem. 2006. "The Crime-Control Effect of Incarceration: Does Scale Matter?" *Criminology and Public Policy* 5(2): 245–276.
- <sup>viii</sup> Laudano, Jennifer. 2013. "U.S. Prison Count Continues to Drop." Pew Public Safety Performance Project. <http://www.pewstates.org/news-room/press-releases/us-prison-count-continues-to-drop-85899457496>.
- <sup>ix</sup> Kuziemko, Ilyana. 2013. "How Should Inmates be Released from Prison? An Assessment of Parole versus Fixed-Sentence Regimes." *The Quarterly Journal of Economics* 128(1): 371–424.
- <sup>x</sup> <http://www.nytimes.com/2012/12/12/science/mandatory-prison-sentences-face-growing-skepticism.html?pagewanted=2&r=1&hp&http://whatworks.csgjusticecenter.org>.
- <sup>xi</sup> <http://whatworks.csgjusticecenter.org>.
- <sup>xii</sup> <http://csgjusticecenter.org/nrrc>.
- <sup>xiii</sup> Pelissier, Bernadette, William Rhodes, William Saylor, Gerry Gaes, Scott D. Camp, Suzy D. Vanyur, and Sue Wallace. 2000. "TRIAD Drug Treatment Evaluation Project Final Report of Three-Year Outcomes: Part 1." Washington, DC: Federal Bureau of Prisons. [http://www.bop.gov/news/PDFs/TRIAD/TRIAD\\_pref.pdf](http://www.bop.gov/news/PDFs/TRIAD/TRIAD_pref.pdf).
- <sup>xiv</sup> Daley, Marilyn, Craig T. Love, Donald S. Shepard, Cheryl B. Petersen, Karen L. White, and Frank B. Hall. 2004. "Cost-Effectiveness of Connecticut's In-Prison Substance Abuse Treatment." *Journal of Offender Rehabilitation* 39(3): 69–92.
- <sup>xv</sup> Duwe, Grant. 2010. "Prison-Based Chemical Dependency Treatment in Minnesota: An Outcome Evaluation." *Journal of Experimental Criminology* 6(1): 57–81.
- <sup>xvi</sup> Saylor, William, and Gerry Gaes. 1992. "The Post-Release Employment Project: Prison Work Has Measurable Effects on Post-Release Success." *Federal Prisons Journal* 2(4): 33–36.
- <sup>xvii</sup> Berk, Jillian. 2007. "Does work release work?" Unpublished manuscript. Providence, RI: Brown University.
- <sup>xviii</sup> Drake, Elizabeth. 2007. "Does Participation in Washington's Work Release Facilities Reduce Recidivism?" Olympia: Washington State Institute for Public Policy.
- <sup>xix</sup> Bales, William D., and Daniel P. Mears. 2008. "Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?" *Journal of Research in Crime & Delinquency* 45(3): 287–321. ; Derkzen, D, R. Gobeil, and J. Gileno. 2009. "Visitation and Post-Release Outcome among Federally-Sentenced Offenders." Ottawa: Correctional Service Canada.
- <sup>xx</sup> La Vigne, Nancy G., Visher, Christine A. and Jennifer Castro. 2004. "Chicago Prisoners' Experiences Returning Home." Washington, DC: Urban Institute. <http://www.urban.org/publications/311115.html>.; La Vigne, Nancy G., Tracey L. Shollenberger, and Sara Debus. 2009. "One Year Out: The Experiences of Male Returning Prisoners in Houston, Texas." Washington, DC: Urban Institute. <http://www.urban.org/publications/411911.html>.
- <sup>xxi</sup> Naser, Rebecca L., and Nancy G. La Vigne. 2006. "Family Support in the Prisoner Reentry Process: Expectations and Realities." *Journal of Offender Rehabilitation* 43(1): 93–106.

## Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

### Senator Blumenthal Questions for the Record

#### **On Additional Cost Savings:**

It seems to me that when you enact sentencing reform, you reduce prison overcrowding. When you reduce prison overcrowding, you make it easier for the Federal Bureau of Prisons (BOP) to give inmates individualized attention, to keep inmates near their families, and to provide inmates with programming that has been proven to reduce recidivism. And finally, when BOP can do these things, you have fewer people in prison.

1. In your opinion, could this be an additional source of cost savings that would result from sentencing reform, over and on top of the savings discussed in your report?

Our projections did not consider the potential savings associated with increased program delivery behind bars. That's because we took a very conservative approach to population and cost projections, looking solely at the effect of each individual policy option on its own and assuming everything else stays the same. As a result, it is possible that there may be additional cost savings—both to federal agencies that have to house fewer future recidivists and to potential victims of averted crimes—beyond those that may be caused by additional programming available when prison overcrowding decreases because of sentencing reform.

Indeed, our own research at Urban Institute (and that of others) suggests that these savings could be substantial. Welsh's<sup>i</sup> review of cost-benefit analyses found that 12 of 14 evaluations of reentry programs led to positive cost-benefit ratios; he concluded that increasing treatment resources for offenders reduces recidivism and is cost-beneficial for society. In an Urban Institute evaluation of the Maryland Reentry Partnership Initiative, Roman et al.<sup>ii</sup> found that the effort returned \$3 in benefits for every \$1 in new costs. In another Urban Institute study, Roman and Chalfin<sup>iii</sup> found that jail reentry programming is cost-beneficial if the programming leads to at least a 2 percent reduction in crime. Also, Aos's meta-analysis of reentry program effects<sup>iv</sup> lists the cost-benefit ratios for a variety of adult and juvenile reentry interventions and finds that the majority of interventions are cost-beneficial.

#### **On Data:**

I have been surprised in my work on this issue by how hard it is to find good data on sentencing and incarceration. The sentencing commission does an absolutely impressive job of providing good data, but when you look for data on incarceration patterns, it is much harder to find.

1. As a researcher, do you believe the federal government could do a better job of providing high-quality data on this issue?

Yes, the federal government could do a better job of making more detailed data available to researchers and the general public. The US Sentencing Commission disseminates comprehensive data about offenders sentenced in the federal system. Data from BOP are available through the Bureau of Justice Statistics (BJS) Federal Justice Statistics Program and BOP provides an overview of the population on its website. But they could do better.

## 2. How could they do better?

Both agencies could be more transparent and disseminate more of the information they collect and analyze. They could also make these data publicly available in a timelier manner. BOP could do a better job of releasing information about its population, particularly for program participation. The BOP provides several annual reports to Congress with summary information, but these reports are not ordinarily made public. Moreover, datasets (with individual-level information) compiled for BJS do not include any information about program participation, except for inmates who receive Residential Drug Abuse Program credit. While BOP assesses inmates' risks on intake for classification purposes and at various times throughout their terms of incarceration, these data are not made public. The closest proxy for risk in publicly available data is the security of the facility in which inmates are incarcerated.

Another area with inadequate information concerns inmates completing their prison terms in Residential Reentry Centers (halfway houses) or home confinement. It would be beneficial to learn more about programming, compliance or noncompliance with conditions of confinement, and information about inmates who are sent back to BOP facilities from these community placements because of technical violations or other reasons. There are also certain fields in the publicly available data that could be improved, such as information about resentencing of prisoners already in BOP custody.

While the US Sentencing Commission regularly releases much of its data, it does not release its resentencing data set, which could help researchers better understand the final sentences served by inmates. Also, the prison impact assessments that the Sentencing Commission prepares for Congress are not made public and should be, in our assessment.

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<sup>i</sup> Welsh, Brandon. 2004. "Monetary Costs and Benefits of Correctional Treatment Programs: Implications for Offender Reentry." *Federal Probation* 68(2). <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=208065>.

<sup>ii</sup> Roman, John, Lisa Brooks, Erica Lagerson, Aaron Chalfin, and Bogdan Tereshchenko. 2007. *Impact and Cost-Benefit Analysis of the Maryland Reentry Partnership Initiative*. Washington, DC: Urban Institute. [http://www.urban.org/UploadedPDF/311421\\_Maryland\\_Reentry.pdf](http://www.urban.org/UploadedPDF/311421_Maryland_Reentry.pdf)

<sup>iii</sup> Roman, John and Aaron Chalfin. 2006. "Does It Pay to Invest in Jail Reentry Programs?" Washington, DC: Urban Institute. [http://www.urban.org/projects/reentry-roundtable/upload/roman\\_chalfin.pdf](http://www.urban.org/projects/reentry-roundtable/upload/roman_chalfin.pdf).

<sup>iv</sup> Aos, Steve. 2006. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia, WA: Washington State Institute for Public Policy. <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>.

## Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

### Senator Grassley Questions for the Record

1. Your testimony and the Urban Institute report heavily advocate for decreasing the prison population by “reducing drug prosecutions.” The report states that “[c]utting the number of drug offenders entering BOP by just 10 percent would save \$644 million over 10 years.”

Does this analysis of cost savings for not prosecuting drug dealers take into account the cost to potential victims and society of the crimes these drug dealers would continue to commit if they were not prosecuted, as well as the violence associated with drug trafficking?

To be clear, our report does not advocate any particular policy change, including reducing the number of drug prosecutions. We simply describe the projected population and cost effects of a wide array of options that are currently under consideration by this Congress.

Our methodological approach is conservative in nature because we examine each policy change on its own, holding all else constant. Thus, we do not take into account “dynamic effects” such as increased or decreased recidivism as a result of any policy option.

We would note, however, that reducing the number of offenders charged with federal drug trafficking crimes does not necessarily mean that the conduct of the offenders would go unaddressed; federal prosecutors could decline drug cases in favor of state prosecution or recommend that certain offenders receive alternatives to incarceration. The Attorney General’s recent Smart on Crime initiative explains that while there is violence associated with the drug trade generally, some non-violent, non-gang-involved, and non-leader drug offenders are nonetheless charged federally with mandatory minimum sentences for drug crimes.<sup>1</sup> He directed US Attorneys to revise their charging and declination practices in light of this information. We assume that prosecutors will, as before, use their discretion to balance public safety goals while conforming to their charging and declination practices.

2. You also advocate cost savings from reducing the percentage of the sentences that federal prisoners must serve. Does your cost analysis of this change take into account the crimes that would be committed as a result of the early release of thousands of violent offenders against potential victims and society?

As above, in our report, and in my testimony, we do not advocate any particular policy change. However, many policy options discussed in our report would increase the authority of BOP to release certain inmates prior to their having served 87.5% of their sentence. In each of these policy options, we assume that BOP will exercise its discretion conservatively, extending an earlier release option to those inmates who truly exhibit exemplary behavior while in BOP custody or those who complete the requisite quantity of programming. Many of these policy options explicitly exclude violent or high-risk offenders from early release.

While we do not calculate “dynamic effects” from either increased or decreased recidivism for any of these policy options, there is convincing evidence that early release programs that reward inmates for participating in recidivism reduction programming or for good behavior while in BOP custody would not increase crime. While prison surely has an incapacitation effect,<sup>ii</sup> many such policies have already been piloted in the states; a review of these programs found no statistical difference in the crime rates of those who had been released early.<sup>iii</sup> Moreover, retrospective and prospective cost-benefit analyses have found that certain early release programs, when combined with treatment or programming, are cost-beneficial because they reduce recidivism.<sup>iv</sup> Similarly, a recent peer-reviewed econometric study found that on the margins, well-implemented early release programs decrease the risk of inmate misconduct, recidivism program non-completion, and post-release criminal activity. This decrease in risk is relative to policies that mandate all inmates serve a large majority of their sentences.<sup>v</sup> The literature on how much time served is sufficient to protect the public is therefore at best mixed, and our methodology is especially conservative for not incorporating the recidivism reduction benefits of programming into a more explicit cost-benefit analysis.

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<sup>i</sup> Holder, Eric. 2013a. “Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association’s House of Delegates.” San Francisco, August 12.

<http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>; Holder, Eric. 2013b. “Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases.” Memorandum to the US Attorneys and Assistant Attorney General for the Criminal Division. Washington, DC: US Department of Justice; Holder, Eric. 2013c. “Retroactive Application of Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases.” Memorandum to the US Attorneys and Assistant Attorney General for the Criminal Division. Washington, DC: US Department of Justice.

<sup>ii</sup> Levitt, Steven. 1996. “The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation.” *The Quarterly Journal of Economics* 111(2): 319–351.

<sup>iii</sup> Guzman, Carolina, Barry Krisberg, and Chris Tsukida. 2008. “Accelerated Release: A Literature Review.” Focus, Oakland, CA: National Council on Crime and Delinquency.  
[http://www.nccdglobal.org/sites/default/files/publication\\_pdf/focus-literature-review.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/focus-literature-review.pdf).

<sup>iv</sup> Lee, Stephanie, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, and Laurie Anderson. 2012. “Return on Investment: Evidence-Based Options to Improve Statewide Outcomes April 2012 Update.” Olympia, WA: Washington State Institute for Public Policy.

<sup>v</sup> Kuziemko, Ilyana. 2013. “How Should Inmates be Released from Prison? An Assessment of Parole versus Fixed-Sentence Regimes.” *The Quarterly Journal of Economics* 128(1): 371–424.