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### The First Step Act of 2018: One Small Step Toward Social Change

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The First Step Act of 2018: One Small Step Toward Social Change

Mary Teresa I. Cuzzupe

Merrimack College

MERRIMACK COLLEGE

CAPSTONE PAPER SIGNATURE PAGE

CAPSTONE SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE

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IN

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AUTHOR:

Mary Teresa I. Cuzzupe

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### **Abstract**

Throughout history, the United States has toggled between punitive and rehabilitative policies within the criminal justice system, creating social changes that have contributed to racial inequalities within policy and practice that are still being dealt with today. The First Step Act of 2018 (Formerly Incarcerated Reenter Society Transformed, Safely Transitioning Every Person Act) is a federal prison reform attempting to implement rehabilitative social change within a society that is still not ready for it. The act is hoping to assist offenders with re-entry by reducing recidivism with a new risk and needs assessment, decreasing mandatory minimum sentences by allocating good time, and incarcerating individuals within 500 miles of their communities. However, this act only applies to certain federal inmates, does not change overall sentencing practices that have led to mass incarceration, and does not account for damaged social capital related to relationships or how society stigmatizes individuals with a criminal record. Ultimately, policymakers within the criminal justice system should consider how perceptions and inequalities related to criminal records will need to change in order for formerly incarcerated individuals to benefit from the First Step Act.

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### The First Step Act of 2018: One Small Step Towards Social Change

When individuals think of the United States as being a leader, they may not always think about how this country leads in the number of individuals that it incarcerates, or how it has been creating and maintaining punitive criminal justice policies affecting the overall treatment of incarcerated and formerly incarcerated individuals, both inside and outside of prison walls. The United State has close to 5% of the world's population, yet contains 25% of the global prison population (Bagaric & McCord, 2019). Not to mention, mass incarceration within the United States has been on the rise since the late 1970s, where the rate of incarceration during that time was around 110 per 100,000 individuals (Visher & Travis, 2003). Currently, the rate of incarceration is about 698 for every 100,000 individuals (Sawyer & Wagner, 2019). When thinking about why there is this spike in incarcerations, some will point towards the policies of various time periods, specifically thinking about an increase in more restrictive policies and reforms, rather than having rehabilitative reforms, especially during the War on Drugs in the 1980s (Tonry, 2019).

Regardless of which type of policies and reforms that were, or are, being implemented, it cannot be ignored how there are 2.3 million people in confinement within the United States, with more people incarcerated at the state level than at the federal level. When breaking down the overall prison population, it can be found that there are 1,306,000 state prisoners, 612,000 in local jails, and 221,000 in federal prisons and jails, as depicted in Appendix A (Sawyer & Wagner, 2019). With more and more individuals entering into incarceration, this also means that more individuals will eventually be leaving prison, which is something that neither they nor society are always ready for. In 2016, approximately 4.5 million individuals were in contact with probation or were on parole after their involvement with the justice system (Muhlhausen,

Hurwitz, & National Institute of Justice, 2019). Additionally, there are numerous individuals who leave prison and end up going back because they have committed another offense, which is a process referred to as recidivism. The rate of recidivism for federal prisoners is about 50%, specifically when looking at the decade after their release (Hopwood, 2018). A number of formerly incarcerated individuals have become trapped in a pattern of initially getting arrested, serving a certain length of time in prison, getting released from a facility, and then eventually getting arrested again. In a figurative sense, prisons have become a revolving door for inmates who go through the cycle of coming and going after each arrest and sentence, creating a pattern that becomes difficult to break out of (Davis, 2019).

Breaking the cycle of individuals returning to prison needs to be done in conjunction with reforms and policies that not only consider but also listen to the needs of individuals returning to society. Often times, formerly incarcerated individuals are leaving prison facilities without the connections to resources that they need to succeed, such as monetary assistance on the day of their release (Visher & Travis, 2003). There is no easy way to define exactly how or why individuals end up returning to prison, or rather what is or is not working for those returning to society. However, a lack of social capital, the stigma of a criminal record, and a lack of resources can create conditions of inequalities related to re-entry experiences and who ends up recidivating in the long run.

To begin with, social capital can impact how individuals are able to effectively re-enter society when thinking about either having or not having relationships with others. In terms of defining social capital, it is the idea of being able, "...to secure benefits through one's social connections, family and community ties, and other social structures..." (Arditti & Parkman, 2011, p. 207). Having connections can allow individuals to be less susceptible to committing



future offenses, as individuals could rely on additional resources to reach their intended goals for successful re-entry. A problem occurs when individuals re-entering society lack necessary connections and relationships to friends and family members. Nevertheless, those re-entering society who do have connections are sometimes returning to families and communities experiencing socioeconomic disadvantages. Thus, individuals cannot always fully utilize networks or resources in order to achieve success, since these forms of social capital become unavailable to them, creating a barrier within their re-entry process (Arditti & Parkman, 2011).

In addition to defining social capital in terms of networks and resources, social capital also appears when observing relationships between individuals within a specific setting. The setting can also determine the value of what individuals possess when compared to others, as well as how much power they will have within that setting. A simple example to follow related to this type of social capital is level of education. A person with a prestigious degree or level of education could be said to have more social capital than someone who has barely graduated from high school. Within the setting of society, it may be recognized as being desirable to have more knowledge, allowing those with the higher level of education to be thought of as having more power over those who do not possess that amount of education (Keith, 2017).

With regard to re-entering society, those who are released from prison will have a criminal record, which could be considered a form of social capital that would be viewed as undesirable by individuals within society (Pager, 2003). An example of this can be seen in the employment process, where individuals would be required to disclose any charges that they have been convicted of on an employment application. Having a criminal record can make someone appear to be untrustworthy, affecting their chances of getting a job, whereas someone who does not have a criminal record may not experience such judgements from potential employers

(O'Reilly, 2014). Employers may also be less likely to call applicants back if they have a criminal record as well (Couloute & Kopf, 2018). This alludes to the idea that having a criminal record can create a social stigma, as well as affects how one will be viewed by others in society if they have a record. Consequently, having criminal activity on a record can then lead to difficulties in reaching goals and building connections, as well as lead to exclusions from opportunities that could be needed in order to limit the chances of returning to prison (Arditti & Parkman, 2011).

In addition to the stigma of incarceration, limited work experience or education, as well as the inability to secure a stable form of employment can affect one's ability to successfully enter into the workforce after a length of time behind bars. Having a form of stable employment can lessen the chances of recidivism for those re-entering society (O'Reilly, 2014). However, the unemployment rate for those who were formerly incarcerated is around 27%, which is also five times greater than unemployment rates for individuals who do not have a criminal record (Couloute & Kopf, 2018). With such high rates of unemployment for formerly incarcerated individuals being reported, criminal records then serve as a barrier to employment, while at the same time may make recidivism seem to be more of a feasible possibility over seeking employment opportunities (Arditti & Parkman, 2011).

Additionally, an important aspect of unemployment to note is the way in which it is calculated. Unemployment is a measure of working- age individuals who are actively seeking employment, suggesting that formerly incarcerated individuals desire to work, but are experiencing additional barriers to obtaining jobs (Couloute & Kopf, 2018). On another note, if individuals are unable to find a job, they could potentially resort to alternative methods of earning income. In one case, a number of young adults who had already been involved with the

criminal justice system turned towards illegal methods to earn money. Not being able to find conventional jobs meant having to take that risk of criminal activity, often ending with getting caught and another period of time behind bars. Thus, the inability to secure a stable job led to troublesome activities that contributed to creating conditions for recidivism to occur (Arditti & Parkman, 2011).

Individuals returning to society are also affected by greater changes in policies that occasionally occur at different levels of the government. There are policies in place, at both the state and federal levels, related to the ways in which individuals go to prison, what goes on within prison facilities related to inmates, as well as what is available to individuals returning to society after serving their sentences in terms of fulfilling their needs or providing assistance with re-entry (Visher & Travis, 2003). Of those in federal prison, about 95% are going to be returning to society someday, meaning that policies should be in place to assist individuals with making a smooth transition from prison back into society (Chung, Rapp, Perez, & Hunter, 2018).

The Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act of 2018, or the First Step Act, is a newer criminal justice reform for the United States, specifically targeting the Federal Bureau of Prisons. Signed by President Trump in December of 2018, this bipartisan federal prison reform bill is designed to both reduce the number of individuals confined in federal prisons, while at the same time promote overall public safety within the country (Hopwood, 2018). Changing the pattern of recidivism may be possible by utilizing the new assessment under the First Step Act called the Prisoner Assessment Tool Targeting Estimated Risk and Needs, or PATTERN (Federal Bureau of Prisons, 2019b). PATTERN will be used to predict the risk of recidivism for individuals within three years of their release from federal prison, rating individuals as being at a low, medium, or high risk for

recidivism (U.S. Department of Justice, 2019). The assessment can also be used in relation to inmates earning good time, in the sense that it will be used to determine who is or is not eligible for such privileges, based upon their risk of recidivism upon release (Federal Bureau of Prisons, 2019b). This assessment could potentially be used in order to determine the best course of action, in terms of the kinds of services that would be provided or suggested while one is incarcerated, which could then assist federal prisoners in their process of returning to society.

In addition to the risk and needs assessment, a few other reforms may be possible under the First Step Act, including reforms related to reducing sentences by implementing changes in how inmates are actually earning time off of their sentences, as well as other aspects like having inmates carry out their sentences in closer proximity to family members. This means that not only inmates will benefit from this act, but families affected by incarceration can benefit as well, by both being closer to their loved ones and also being able to have them out of prison sooner than expected (Federal Bureau of Prisons, 2019a). However, there are limitations related to who would be able to benefit from reforms implemented by the First Step Act. For obvious reasons, this federal prison reform bill does not apply to non-federal inmates, meaning that individuals held in other places, such as state or local facilities, would not be assisted by it. On another note, individuals in federal prisons convicted of high-level drug offenses, certain sex crimes, violent offenses, and political crimes may not be eligible for good time, and thus are not affected by the First Step Act (James, 2019). Initial mandatory minimum sentencing practices are also not being impacted by the act (Haynes, 2018). It may be beneficial to consider implementing the First Step Act in a way that would not only assist more individuals returning to society, but could also take into consideration the conditions of mass incarceration and policy implementation that have created barriers for individuals who are returning to society.

## **Literature Review**

### **Criminal Justice Laws and Social Change**

In order to fully understand how the United States government has come to have the First Step Act as a federal prison reform, it is necessary to understand some of the background related to law formation, why certain policies are created, as well as their relation to social change within society. Vago alludes to the idea that there is a “reciprocity between law and social change” (2012, p. 310). In one way, laws can be created and implemented to maintain and uphold current values held by citizens and society, while in another way laws can be created to introduce new values or ways of dealing with individuals in society. An example of the first way can be seen in the use of technology for solving crimes. Introducing and incorporating new technology related to crime solving meant that regulations needed to be in place for how to use such devices in an appropriate manner. In other words, the social change of technology use led to additional laws, or policy responses, related to regulating how technology could be used. Additionally, an example of the second way, which is laws creating social change, can be seen in the creation of laws related to civil rights in the 1960s. With the incorporation of such laws, it was hoped that inclusion and new practices amongst individuals would become a result of the laws. Regardless of how laws and policies are created, the important point to note is that laws and social change work hand in hand in forming how the justice system has been, and will be, dealing with and controlling citizens in society (Vago, 2012).

#### **Mandatory minimum sentences.**

Since the First Step Act specifically targets reforms surrounding sentences related to mandatory minimums, it is important to understand how mandatory minimums came about as well as how they relate to public safety. Setting formal controls pertinent to how certain crimes

have been dealt with has been a way that society has tried to deter individuals from committing crimes. Mandatory sentences are a type of control, in the sense that they are direct punishments that correlate to certain serious offenses when they are committed (Siegel, 2015). Mandatory minimums began during the 1950s. The Boggs Act and the Narcotics Control Act contributed to developing mandatory minimums, as individuals convicted of a drug offense would automatically receive a sentence for 5 years in prison. Multiple drug offenses after the first one would be correlated to 10-year sentences (McCurdy, 2019). The thought behind having mandatory minimums was to have policies that would hopefully deter individuals from committing crimes, which has not always been a success. Mandatory minimums can create instances of injustice with how individuals choose to plead in relation to their charges.

Individuals could potentially feel pressured into pleading guilty for whatever their charges are, rather than continuing to go through the court system and risk having to serve decades of prison time for a mandatory sentence (Tonry, 2019). An unequal amount of power also can be bestowed upon prosecutors, in the sense that the prosecutors would make decisions with their own interests in mind, rather than the interests of the public (McCurdy, 2019). As a result, it has been thought that the implementation of mandatory minimums has contributed to the increase in the number of individuals that have been, and are now, in federal prison (Samuels, La Vigne, & Thomson, 2019).

#### **Policies related to mandatory minimum sentences.**

A number of policies from the 1970s and 1980s created conditions that further progressed the use of mandatory minimums for drug offenses, and created what we know today as the War on Drugs. Unbeknownst to many, the start of the war on drugs has been up for debate, with some believing that it was President Nixon who declared it, while others tend to believe that it was

President Reagan. When thinking about the war itself a little more broadly, some even say that there is no specific date to point at, but rather that the war began based on geographic location, or rather what law enforcement personnel were doing within their individual states to implement the laws (Pfaff, 2017). Regardless of when the war on drugs started, there were some dramatic changes related to drug offenses and sentencing that occurred as a result of changes in the mindset related to convictions.

During the 1980s, the Sentencing Reform Act of 1984 was put in place to establish a method of ensuring that sentences would be fair and not tougher than they necessarily should have been. This act was intended to address how individuals would be punished, how they could be discouraged from committing crimes, and how the process of reentry to society could happen for them. However, taken all as one, these goals could not necessarily align at the time. On the other hand, there were also changes occurring to make sentencing harsher. For example, the Anti-Drug Abuse Act of 1986 changed how charges for drug offenses would be determined, in the sense that the actual amount of drugs present during the time of the offense, as well as the form that they were in, would now be used as a determinant of what an individual would receive as a mandatory sentence for their offense (McCurdy, 2019).

A common example of implementing such sentences is seen in convictions related to crack cocaine and powder cocaine. However, the ways in which crack and powder cocaine were treated by law enforcement and society differed (Samuels, La Vigne, & Thomson, 2019). Originally, the ratio for convictions was 100:1, which meant that the amount of powder cocaine necessary to trigger a mandatory minimum was 100 times the amount of crack cocaine needed to trigger the same mandatory minimum sentence. Using simple math, 5 grams of crack cocaine and 500 grams of powder cocaine equated to the same mandatory minimum sentence.

Eventually, the Fair Sentencing Act of 2010 lessened the ratios for crack cocaine and powder cocaine. The ratio had decreased to 18:1, which was a significant decrease, but did not necessarily change who was affected by the sentencing. Moreover, it did not change the inequalities experienced by those convicted on charges related to crack compared to powder cocaine (Russell, 2019).

Even though there were some strides in tackling sentencing reform thanks to the Fair Sentencing Act of 2010, there were changes that needed to be made to mandatory minimums and how sentencing was done within the United States. A task force of criminal justice experts was created in 2014, known as the Charles Colson Task Force on Federal Corrections. This task force was specifically aimed at making suggestions related to federal prison policy (Samuels, La Vigne, & Thomson, 2019). The task force, "...conducted a year-long fact-finding mission to identify the drivers of prison population growth and develop policy recommendations designed to reduce recidivism, improve public safety, and hold all criminal justice actors accountable" (Samuels, La Vigne, & Thomson, 2019, p. 2). In terms of what the task force found, it was determined that having more programming for individuals of higher risk could be beneficial. Additionally, mandatory minimums, specifically related to drug offenses, promoted a rise in the number of individuals in federal prison, while not really doing anything positive to promote public safety as the mandatory minimums had originally intended to do (Samuels, La Vigne, & Thomson, 2019). In relation to more recent policy, an Independent Review Committee was set up to look into how to make improvements to the risk and needs assessment that is part of the First Step Act, showing that there is some form of accountability that is needed when implementing policy reforms (U.S. Department of Justice, 2020).

### **Power dynamics within policy formation.**



In terms of understanding how laws and policies are created and executed, one must also recognize the role that power plays within the process of implementation as well as how power affects the most marginalized in society. Having more power is sometimes associated with more radical tendencies amongst those who have it and use, often creating an idea that one will not recognize or know what they are doing with such power (Foucault & Gordon, 1980). However, there is also an idea that knowledge and power work together, in the sense that, "...the exercise of power itself creates and causes to emerge new objects of knowledge and accumulates new bodies of information" (Foucault & Gordon, 1980, p.51). The ways in which power is exercised must then depend on the knowledge of those who have it, as well as how they are choosing to utilize it. In other words, knowledge also drives how those with power choose to utilize it or what they want others to know and believe (Foucault & Gordon, 1980).

In connection to the criminal justice system, laws have often been put in place to further the thoughts and preferences of the elite class, rather than also thinking about how those actions will affect those who are not within the class, mainly poor individuals (Siegel, 2015). In her article on reforms, McCurdy references a quote from John Ehrlichman, who at one point served as a counsel to President Nixon, who had claimed that, "... we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities" (2019, p. 197). This statement alludes to the concept of domination, in the sense that the dominant group was able to take control of the justice system to further their own intentions, preserve their ideals, and ensure that they could maintain their control and power at the cost of nonelites (Siegel, 2015).

Additionally, associating certain groups of people with certain drug use is a way in which the United States has been able to enforce control over unpopular groups and opinions. For example, alcohol use was banned during the prohibition, partly due to the thought that workers drinking alcohol at saloons would create economic mutiny against capitalists and lead to increased social problems or a loss of capitalist control (Reinarman & Levine, 1997). Thus, the implementation of laws and policies within the criminal justice system can potentially further conditions of social control, allowing those with power to form society how they would like it to be (Siegel, 2015). In relation to the War on Drugs, the use of power by lawmakers can mimic the domination mentality, as there were underlying racial implications for the sentencing processes in the forms of the overall hysteria related to crack, stereotyping of offenders, and making assumptions about the communities offenders were coming from (Tonry, 2019). The implementation of policies related to the War on Drugs did focus on the actual criminal acts, but it is important to recognize that the policies punished those who did not fit in with the American lifestyle at the time, or rather who did not uphold the values of what an American citizen should have been. Drug use, especially the use of crack, was correlated to being less productive within the workforce and within the family structure, which could have been seen as a threat to the American way of life (Reinarman & Levine, 1997). However, drug use itself has also been thought of as a personal activity that does not necessarily have an effect on others, meaning that penalizing drug use could be seen as a way of controlling the rights of individuals and harming personal freedoms (Human Rights Watch & ACLU, 2016).

#### **Stereotypes of crack and cocaine offenders.**

Additionally, the media in 1986 assisted in furthering concerns over what crack was doing to the population by displaying televised news broadcast specials and documentaries, as

well as written articles related to crack use in America, that depicted crack use in a negative and uncontrolled manner (Reinarman & Levine, 1997). Media sources relied on the ideas that crack, ...was instantly addicting, it intensified the sex drive, and it turned users into violent maniacs. While powdered cocaine was glamourized as a thrilling amusement of the rich and famous, crack was vilified for stripping its underclass users of every shred of human dignity (Roberts, 1997, p.155).

Not only did the media heighten the hysteria related to crack, but also created a profile of who crack users were, and also a profile of who they were not. The stereotype at the time was that crack smokers and dealers were young African American or Hispanic males who came from poor city areas, whereas the cocaine users were mainly middle to upper class white individuals (Reinarman & Levine, 1997).

In thinking about the descriptions of crack users compared to cocaine users, it is necessary to understand how such stereotypes impacted the actual sentencing practices related to drug offenses, since the sentencing practices at that time can arguably be considered unfair and biased towards minority offenders (Tonry, 2019). Based on the offender stereotypes and thinking back to the Anti-Drug Abuse Act of 1986, it can be seen how the established ratios related to crack and powder cocaine offenses created instances where it was easier to receive a mandatory minimum sentence for crack offenses compared to cocaine offenses (Russell, 2019). Thus, it was easier for minority offenders to be convicted rather than white offenders, taking the stereotypes into consideration. Also, black individuals were 8 times more likely to be put behind bars than white individuals and the number of sentences given, as well as the length of incarcerations, were also longer for those identifying as black or Hispanic. White individuals were the offenders least likely to receive the longer sentences and were able to have their sentences reduced more

often than other individuals (Tonry, 2019). Contrastingly, it has been found that illegal drug use is very prominent amongst white individuals, with the rates of both legal and illegal drug use being fairly equivalent regardless of racial identification (Human Rights Watch & ACLU, 2016).

A more recent example of drug use being treated differently can be found in the use of heroin in the opioid epidemic, as users have primarily been middle-class white individuals. White individuals have made up close to 80% of overdoses for opioids (Murray, 2019). Opioid use is also being handled by criminal justice policies and society differently, in the sense that more services related to rehabilitation for opioid use have been implemented, which shows more of a rehabilitative response rather than the punitive response of criminalization experienced by those who were using crack in the past (Tonry, 2019). Individuals are able to receive treatment for their opioid use. However, race and financial status also have impacted the availability of treatment for opioid users, in the sense that the ability to pay for treatment and having access to insurance is not equal amongst all individuals seeking treatment (Murray, 2019). Future criminal justice policies, like the First Step Act, may need to consider the ways in which drug use has been depicted and dealt with in the past, in order to be more mindful of how implementing policies related to criminalization and rehabilitation can negatively or disproportionately affect certain racial groups more than others.

### **Overview of Risk and Needs Assessments**

Up until this point, the policies and situations described have revolved around the initial sentencing that occurs when an offender is convicted of a drug offense. A major portion that has yet to be discussed is what happens when one returns home after a period of incarceration, or rather what could be happening during incarceration that could help ease the transition back into society. Risk and needs assessments have been implemented at both the state and federal levels

in order to serve as a way of possibly predicting how well an individual will reintegrate into society, as well as what additional services may be necessary to assist individuals with such transitions. Risk refers to the likeliness of offenders getting into trouble with law enforcement, the justice system, or into other circumstances that could impede upon and threaten one's success in returning to society. Needs refer to means of assistance or services that could be provided to former offenders in order to prevent the risks from occurring or to diminish their overall effects on the individuals (U.S. Department of Justice, 2019). For instance, in a Risk-Need Responsivity model, or RNR, there are factors measured within risk and needs assessments that, if possessed by an individual, have shown a relationship to criminal behaviors after prison. Thus, possession of certain factors has been seen as a way of looking at possible delinquency for individuals in the future (Hamilton et al., 2016).

Factors measured within risk and needs assessments are often classified as being static or dynamic factors. Static factors refer to aspects of an individual's past that they are not able to alter, which would be something like the types of crimes that an individual has committed in the past or how old the individual was at the time of their first involvement with the justice system (U.S. Department of Justice, 2019). In contrast, dynamic factors are types of actions or behaviors that an individual is able to have some kind of control over. In the context of the PATTERN assessment from the First Step Act, a few of the dynamic factors being assessed relate to partaking in programs or various educational classes, as well as looking at whether someone has had any severe infractions while incarcerated (U.S. Department of Justice, 2020). Changes in how an inmate responds to PATTERN questions, or rather in how their dynamic factors have changed while incarcerated, represents how risk and needs assessments can be used to track progressions of incarcerated individuals over time. An individual's progress can also be looked

at in terms of the goals that the individual may have. Prison administrators can then use such data when determining what additional programs individuals should participate in, or also which programs could be offered to them while they are incarcerated in order to help with reaching their re-entry goals (U.S. Department of Justice, 2019).

### **Examples of risk and needs assessments.**

It may be helpful to look at some various forms of risk and needs assessments, in order to see how they have been applied to various prison populations. The assessment that the Federal Bureau of Prisons was using before PATTERN was known as the Bureau Risk Assessment Verification and Observation, or BRAVO. BRAVO was originally created in relation to predicting how an individual would act solely within the prison setting. Since its creation, BRAVO has become BRAVO-R, primarily focusing in on recidivism and how recidivism can then impact all members of society in the context of someone being released from prison. The change from BRAVO to BRAVO-R shows the capability of these types of assessments to be adapted and changed based on new data that is received or how certain behaviors may want to be observed. Since risk and needs assessments can directly influence the lives of incarcerated individuals, the importance of making sure that risk and needs assessments are up to date and as accurate as possible should be taken into consideration (U.S. Department of Justice, 2019).

Another example of risk and needs assessments can be found within a Canadian study of young boys experiencing difficulties with their overall conduct. This study found that there were monetary costs to the justice system associated with behaviors of the boys. These boys participated in the EARL-20B, which was a type of risk assessment tool for younger boys experiencing behavioral issues. This evaluation assessed risk factors that could serve as predictors of future criminality for the boys. Each risk factor that a young boy possessed related

to a monetary cost, with factors such as being antisocial and not having high academic performance being associated with higher costs. Costs can refer to both monetary costs inflicted upon the justice system, as well as more personal costs related to family members or victims of offenders. Although this study was only done in Canada, when thinking about using risk and needs assessments like the EARL-20B, it is thought that individuals can be connected to the services that they need if they are showing signs of needing additional support by having those key risk factors being identified and then actually being dealt with (Koegel & Farrington, 2019). The fact that the assessment was specifically designed for young boys also shows the need for assessments to take the identity of offenders into consideration when developing and improving assessments. Thus, the use of risk and needs assessments for the future, like the use of PATTERN from the First Step Act, could be needed in order to ensure individuals are accurately being assessed and that they are connected to services that they may need.

#### **Needs assessment for the First Step Act.**

Currently, the needs assessment portion of PATTERN is still in development. However, this does not mean that no needs assessments have been taking place within the federal prison system. The Bureau of Prisons has been using the needs assessment that they had in place before the creation of PATTERN, in order to not delay any inmates in receiving support programming (U.S. Department of Justice, 2020). The current needs assessment being used places inmates into Evidence Based Recidivism Reduction Programming, also known as EBRRS, as well as in Productive Activities, or PA, which are programs specifically related to needs that the inmates have that could help them stay out of the justice system upon re-entry (U.S. Department of Justice & Federal Bureau of Prisons, 2020). It has been identified that there are about 13 areas that inmates could need assistance in (U.S. Department of Justice, 2020). Some of these areas

include education, employment, family, well-being practices, substance use, and even behavioral aspects, such as anger management and improving social skills. The programs related to these areas are offered at almost all federal prisons, with the exception of some female only programs and job programs that are specific to certain facilities (U.S. Department of Justice & Federal Bureau of Prisons, 2020).

### **Current programs for federal inmates.**

Since there are numerous aspects that inmates need programming for, it should be no surprise that there are various programs related to each area. There are 21 EBRR programs and 50 for PA, all lasting for a certain number of sessions as well as various amounts of time. An example of an EBRR program is Anger Management, which targets areas related to behavioral issues, and appears to last for 12 sessions at an hour and a half each, meaning that an inmate would attend and complete 18 hours of programming. The PA that are offered seem to vary more in terms of time and hours per week. For instance, Alcoholics Anonymous, a program targeting the area of substance abuse, has no set sessions, but has 50 hours listed for completion (U.S. Department of Justice & Federal Bureau of Prisons, 2020).

Reducing recidivism may also be possible through implementing educational and vocational programming during incarceration, in the hope that such programs will lead to better employment outcomes (Muhlhausen et al., 2019). Programs related to education are found both within the EBRR and PA offerings at federal prisons, and can include programs such as the Bureau Literacy program and English as a Second Language, or ESL (U.S. Department of Justice, 2020). The Literacy Program allows inmates to obtain the basic concepts and learning skills needed to earn a high school degree. Federal laws and policies of the Bureau of Prisons actually require inmates without a degree to be enrolled in the program. Similarly, inmates who

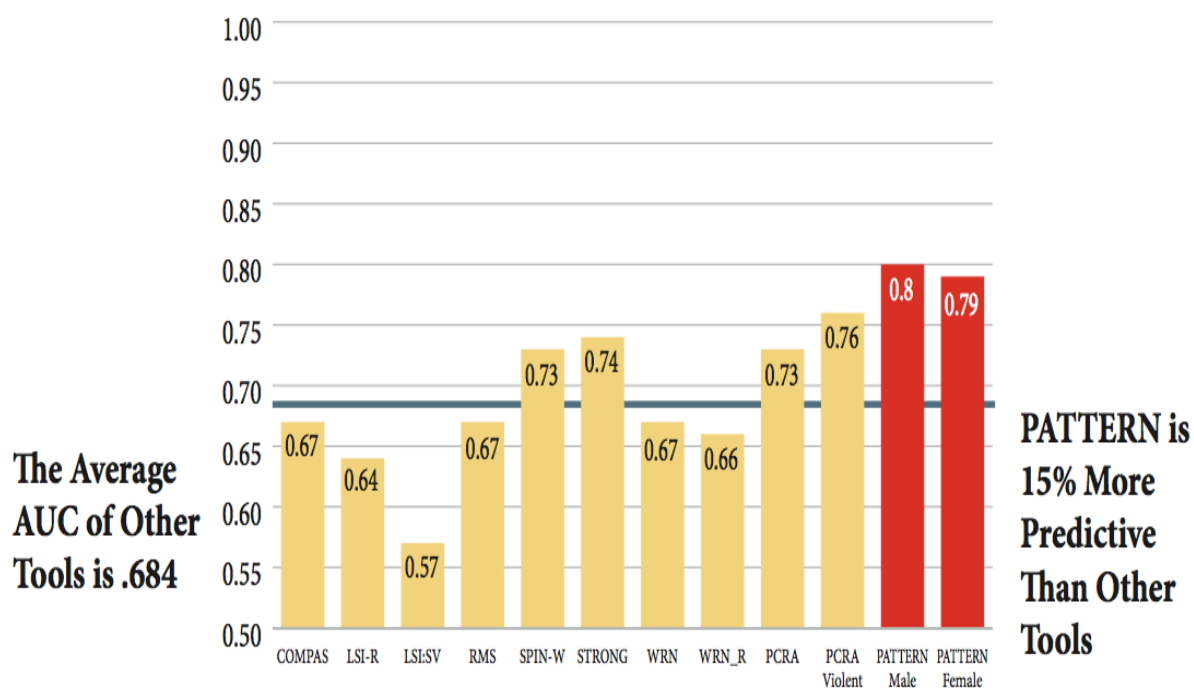


do not have a strong enough English language proficiency are mandated to partake in ESL until they can comprehend English at an eighth-grade level (Muhlhausen et al., 2019). Regardless of the type of programming, the hope is that the use of a needs assessment will allow for inmates to reduce their overall risk of offending upon release by participating in programming (U.S. Department of Justice, 2020).

### **Evaluating predictability of risk and needs assessments using AUC scores.**

Risk and needs assessments are also attractive to criminal justice administrators, due to their potential ability to predict how likely an individual is to reoffend upon their release from prison. Specifically, the validity of the assessment in predicting behaviors is what is highly valuable to administrators (Hamilton et al., 2016). The area under the curve, or AUC, measures the ability of an assessment to accurately predict recidivism. The values represented on the curve relate to the accuracy percentage of the assessment (U.S. Department of Justice, 2019). Typically, when using AUC as an evaluative tool, the results determined from the curve should aim to be greater than the base rate, meaning better than the results of tossing a coin (Hamilton et al., 2016). For example, an assessment could receive an AUC score of .5, which would mean that the assessment is 50% likely to be accurate, but may not be sufficient enough to actually make predictions as intended (U.S. Department of Justice, 2019). Even though new assessments have not always been successful in increasing AUC values (Hamilton et al., 2016), the First Step Act's risk and needs assessment, PATTERN, has been showing some promise, as depicted in Figure 1.

Figure 1: PATTERN Compared to Other Risk and Needs Assessments



*Figure 1.* AUC values for Tools Used in the United States. PATTERN is compared to other risk and needs assessments used within the United States. The AUC score of PATTERN is greater than the average of other risk and needs assessment tools, when looking at both male and female offenders (U.S. Department of Justice, 2019, p. 57).

When thinking about risk and needs assessments broadly, implementation across state and federal policies can occur, but whether or not the assessment will work in one area over another is debatable. The populations within federal prisons compared to state prison are different, both in terms of demographic representation and the types of offenders represented, as depicted in Appendix B (U.S. Department of Justice, 2019). Whether or not offenders are classified as violent or nonviolent could also impact assessment usage, with more of a focus being put on picking up on criminalistic behaviors of violent offenders (Hamilton et al., 2016). Additionally, differences in how males and females score when taking the same risk and needs

assessment also have to be considered, as the presence of certain risk factors or how one becomes involved in the justice system differs by gender and can be amplified for women when calculating out the likelihood of them to recidivate. Luckily, separate PATTERN assessments for men and women are in place, as depicted in Figure 2, with Pattern being slightly more effective than BRAVO for both genders (U.S. Department of Justice, 2020).

| Model                       | General |        | Violent |        |
|-----------------------------|---------|--------|---------|--------|
|                             | Male    | Female | Male    | Female |
| PATTERN AUC Testing Dataset | 0.80    | 0.79   | 0.78    | 0.77   |
| BRAVO-R AUC Testing Dataset | 0.77    | 0.77   | 0.75    | 0.76   |
| AUC Enhancement             | 0.03    | 0.02   | 0.03    | 0.01   |

*Figure 2.* The PATTERN and BRAVO-R AUC Comparisons. This table shows the AUC comparison of BRAVO-R and PATTERN. According to this table, the AUC score for Pattern for male offenders, regardless of type of offender, is 3% higher than the BRAVO-R AUC score. For female offenders, the AUC score for PATTERN is 2% greater for general female offenders and only 1% greater for female violent offenders (U.S. Department of Justice, 2019, p. 57).

### Data Analysis

#### Financial Costs: Federal Bureau of Prisons Budget

The Federal Bureau of Prisons needs to carefully consider how it will be utilizing the funds that it is receiving from the Department of Justice, in order to effectively implement aspects of the First Step Act that can create benefits for not only the Federal Bureau of Prisons, but more importantly for the formerly incarcerated individuals, as well as their families, communities, and society in general. To begin with, the Federal Bureau of Prisons reallocated a portion of its budget in 2019 in order to start implementing certain aspects of the act, such as the

creation of PATTERN and building upon educational and vocational programs (U.S. Department of Justice, 2020). The amount of money that was allocated was \$75 million, with the hope that funding could continue to support aspects of the First Step Act in the years to come (Rosen, 2019). For fiscal year 2020, there are certain aspects of the First Step Act that are hoping to be implemented, each associated with a certain cost. These aspects include expansions for programming, increasing halfway house placements, increasing access to technological ways of communicating, and having funding to evaluate PATTERN in order to make changes to services provided that could assist in transitioning individuals back into society. Even though \$116 million is what it would cost to fund all of the activities previously listed, only \$75 million was approved by the House and the Senate to use towards First Step Act implementation. This means that \$41 million worth of needs related to implementation would not necessarily be met for fiscal year 2020 (U.S. Department of Justice, 2020). However, \$75 million is expected to be allocated to the Department of Justice for the First Step Act every year until FY2023. The Federal Bureau of Prisons is likely to receive 80% of those funds, meaning that implementation of the First Step Act may not be able to occur immediately, but could potentially be done over the next few years (James, 2019).

Although it sounds fairly promising, there are some concerns that Congress will not give enough funding to the First Step Act, meaning that not enough funding would go directly towards programs within facilities (Haynes, 2018). When looking at specific aspects of the First Step Act, like re-entry programming, it can be seen that there are both costs and benefits to implementing them. For instance, the cost of expanding the re-entry programs for the Federal Bureau of Prisons is estimated to be \$52.3 million. Over half of that estimated cost would go towards building the infrastructure necessary to provide areas where programming can occur at

facilities. The rest of the costs would go towards adding in programs that could support the needs of inmates before they are released (U.S. Department of Justice, 2020). However, if funding is not allocated to the First Step Act, then the ability of the Bureau of Prisons to adequately provide re-entry programs to inmates could be impacted. This would then affect the overall timeline for implementation of the First Step Act, as well as the ability of federal inmates to benefit from the act's implementation (Haynes, 2018).

On another note, there are costs associated with having individuals being locked up in prison. Keeping incarceration, the way it is within the United States costs about \$80 billion each year (McCurdy, 2019). Additionally, data from 2018 has shown that, "It costs more than \$36,000 per year to house just one federal inmate, almost four times the average yearly cost of tuition at a public university" (McCurdy, 2019, p. 191). Multiply that cost by the total number of federal prisoners and it can be seen, monetarily, how much incarceration actually costs the government. Moreover, the funds going towards incarceration could be used elsewhere, for something like education as the prior example suggests. Investing in education could also help individuals stay in school and out of prison in the first place (U.S Department of Education, 2016). Thus, it could be beneficial for the Bureau of Prisons to consider ways in which they could cut costs related to incarceration and use their funds elsewhere, which is what implementing some aspects of the First Step Act would allow them to do.

### **Who Benefits From the First Step Act?**

In terms of the profiles of inmates that can benefit from the First Step Act, only federal inmates can take part in the benefits, since this is in fact a federal prison reform. This means that state offenders, as well as individuals under military code, do not benefit from it (Federal Bureau of Prisons, 2019c). So far, there have been about 1,691 inmates that have had their mandatory

minimum sentences reduced, 250 inmates who have transitioned to home confinement or compassionate release, and around 3,100 inmates who have left prison early since they have earned enough good time off of their sentences to do so (Rosen, 2019). Without a doubt, it can be seen that a few thousand inmates have benefited from the First Step Act at this point, specifically relating to getting time off of their overall sentences or being released early from prison. However, the fact of the matter is that the First Step Act is only making changes to how sentences are dealt with, rather than taking a stand to change how those sentences are given out to offenders in the first place. Rather than changing how long someone is in prison for, like moving away from mandatory minimums or getting rid of them completely, sentencing practices are remaining unchanged. Thus, the First Step Act can arguably be furthering conditions that have maintained and promoted mass incarceration for the past few decades, while at the same time doing little to actually reform the federal prison system (Haynes, 2018).

Changing who is going to prison and for how long they will be there may be more beneficial for the criminal justice system in the long run, considering that only a small number of individuals are benefitting from the First Step Act at this point, especially when looking at incarceration as a whole within the United States (Haynes, 2018). When thinking in terms of prison population, in this case the population of both federal and state prisons, federal prisons only hold around 12% of the United States prison population (Pfaff, 2017). This means that around 88% of the prison population will not benefit from the First Step Act. Of the 12% that do benefit, there are some restrictions based on offenses committed. For example, undocumented inmates, inmates who have committed higher-level or more severe offenses, repeated offenses, or those who are more likely to recidivate cannot earn time credits to be used off of their sentences under the First Step Act (Haynes, 2018).

It appears to be counterintuitive that high-level offenders cannot benefit from the First Step Act incentives, considering that these individuals often need more of the re-entry services that would assist them in returning to society (Haynes, 2018). Additionally, when looking the comparison of federal and state prison data from Appendix B, it can be seen that there could be some difficulties to implementing the First Step Act at the state level. From the table, it can be seen that there is a higher percentage of offenses related to homicide and other violent offenses in state prisons compared to those in federal prisons (U.S. Department of Justice, 2019). If the First Step Act was to ever be implemented at the state level, this would not only require a new risk and needs assessment, likely for each state, that could help support the re-entry process for the population of state inmates, but changing the qualifications of who would be eligible for the benefits of the act, such as the programming, would also have to be changed. With that being said, making the First Step Act more accessible to all offenders, regardless of their offense, could be a consideration for the future.

### **Differences in Individual Re-Entry Experiences**

In relation to access to rehabilitative services while incarcerated, it is thought that the way in which PATTERN has been created will rely too heavily on socioeconomic factors, meaning that there could potentially be racial and class disparities that could create differences in who has access to the educational programming in facilities, as well as who is able to utilize the time credits to return to society at an earlier point in time (Haynes, 2018). Although there have already been reforms to PATTERN that have been made to help lessen these disparities, in terms of taking out or changing questions (U.S. Department of Justice, 2020), what the assessment cannot do is change the communities individuals are returning to or the overall perceptions held by individuals the formerly incarcerated will interact with in society. Thus, the overall

experience of returning to society is not the same for every person leaving prison, in the sense that the neighborhoods, social connections, and availability of jobs that formerly incarcerated individuals have access to differs from person to person. Moreover, the process of returning to society has been shown to be experienced differently by individuals of various races, alluding to ideas of racialized re-entry and the impact of a criminal record hitting some individuals harder than others (Western & Sirois, 2019).

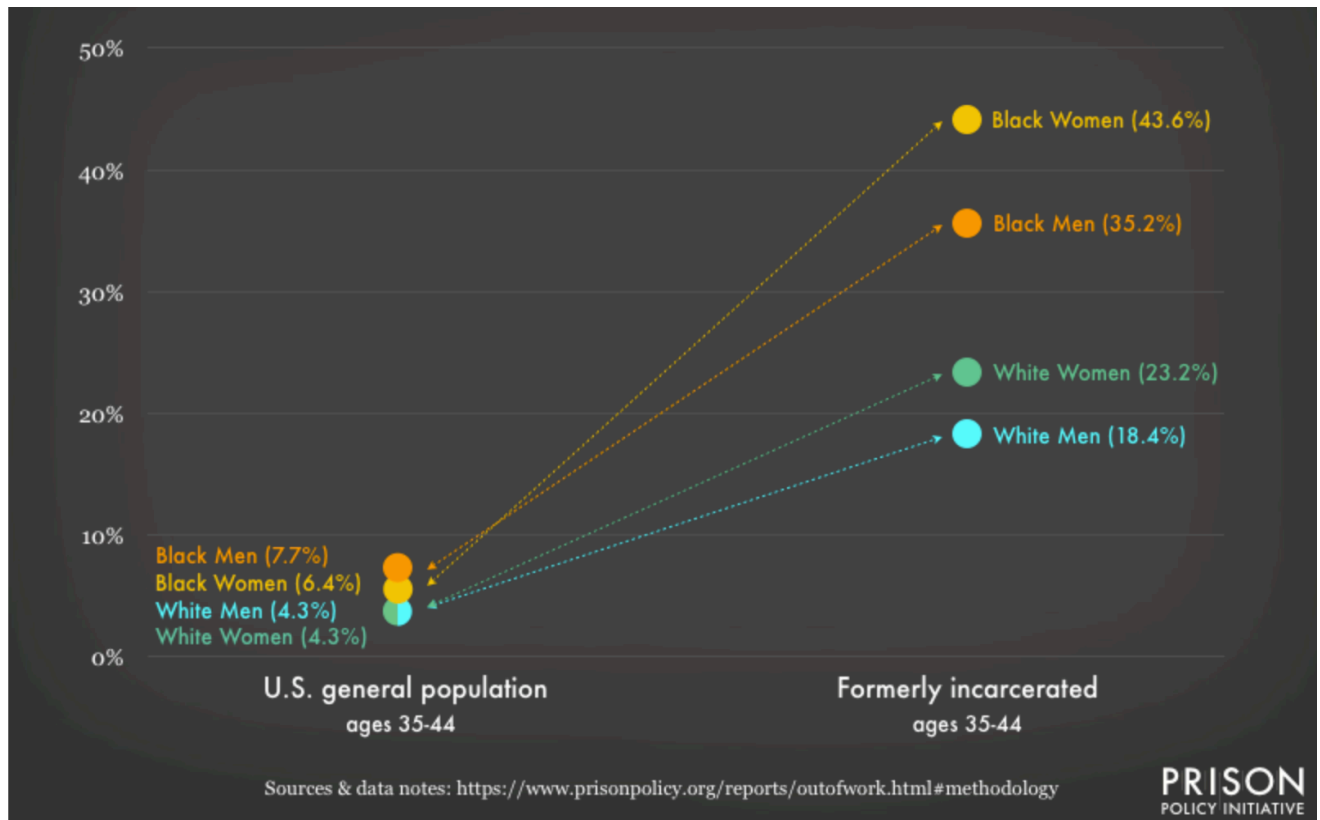
### **Unemployment and formerly incarcerated individuals.**

As mentioned earlier, unemployment becomes an issue for individuals returning to society, as they have a desire to work, but for a variety of reasons cannot secure adequate employment (Couloute & Kopf, 2018). Having a job can be considered a way of keeping individuals in control of their actions and remain on track towards a successful re-entry into society, but the inability to get a job after incarceration can disrupt the transition and eventually lead the individuals down a path towards recidivism (Cantora, 2014). Barriers and difficulties to getting and maintaining employment can be related to one's history and personal factors, such as not completing enough school, struggling to stay sober, or experiencing some kind of trauma (Western & Sirois, 2019). It is troubling that 37% of federal and state inmates lack a high school diploma, with close to 78% having no education beyond high school, as having an advanced education can sometimes help with gaining employment and earning a substantial living (Cantora, 2014). Thinking in terms of the value of education, it then makes sense that the Federal Bureau of Prisons is allocating funding towards educational programming, given that a need for education presents itself in this data. However, having a degree may not be enough to hire formerly incarcerated individuals when they are in the job search process, considering that their



possession of a record can overpower other educational or work-related experience that they may have (Pager, 2003).

Nevertheless, taking advantage of programming while in prison can better prepare individuals for jobs after incarceration (Cantora, 2014). Being prepared is important, yet actually being able to get a job can become an issue, especially when looking at unemployment rates. The unemployment rate for the formerly incarcerated, which is around 27%, has been found to be higher than the rate of unemployment during the Great Depression in the United States, which was 24.9%. It is also important to recognize that the unemployment rate for those who have not been incarcerated is about one fifth of the unemployment rate for those who are were formerly incarcerated (Couloute & Kopf, 2018). Differences in unemployment rates have also been shown to occur depending on race and gender as well . When looking at the graph of unemployment rates for individuals between the ages of 35 and 44 years old depicted in Figure 3, it can be seen that the unemployment rates for people of color are higher both amongst individuals from the general population and those who are formerly incarcerated. However, formerly incarcerated women of color experience the highest unemployment rate, 43.6%, which is about 10 times the unemployment rate for white men and women in the general population, and between 2 and 2.5 times the unemployment rate for white men and women who were formerly incarcerated (Couloute & Kopf, 2018). These unemployment rates not only show the need for services to be provided to formerly incarcerated individuals, but also further the idea that individuals have different reentry experiences based on gender and race that the risk and needs assessment from the First Step Act, PATTERN, will have to take into consideration.



*Figure 3.* The “Prison Penalty” in Unemployment. The experience of unemployment differs by race for both the general population and for the formerly incarcerated (Couloute & Kopf, 2018).

### **Perceptions of formerly incarcerated individuals.**

Relationships between formerly incarcerated individuals and society, as well as the perceptions of formerly incarcerated individuals by society, also become important to discuss when considering how such relationships can impact the effectiveness of policy reforms. As alluded to previously, a criminal record itself plays a role in one’s ability to have access to economic stability within the setting of society (Couloute & Kopf, 2018). Having a criminal record can be seen as impacting an individual’s ability to get a job, in the sense that there is a stigma attached to having a record that creates a barrier for the individual during the hiring process, thus also creating a larger barrier to re-entering society in general (Pager, 2003).

Additionally, discriminatory hiring practices related to race and gender may not always take into account how much a criminal record serves as the actual barrier to gaining employment (Couloute & Kopf, 2018).

Earlier on, it was mentioned how the setting of relationships can create a certain hierarchy that individuals are placed into based on what they are perceived to offer and have in relation to others, which also creates a class structure or power structure with some individuals being valued higher than others due to what they do or do not possess (Keith, 2017). The relationship between formerly incarcerated individuals and employers within the setting of the hiring process in society can be observed as it relates to social capital. In relation to the hiring process and returning to society, formerly incarcerated individuals become part of a class of formerly incarcerated individuals, who carry with them criminal records. Criminal records themselves carry what Pager refers to as a “negative credential” (2003, p. 942). This credential relates to how employers and others in society will categorize and view the formerly incarcerated in a negative manner. Thus, formerly incarcerated individuals may be placed at a lower-class social standing, which can lead to discriminatory perceptions of former offenders that affect their ability to be hired, and, more importantly, their ability to be accepted by society (Pager, 2003).

In some cases, the hiring practices of employers has shown the impact that having a criminal record can have on one’s ability to get a call back from an employer after an interview. Using the table in Appendix C, the rates of being called back by an employer for a sample of formerly incarcerated men and general population men who are black and white are given. Black men with a criminal record had a call back rate of 5%, whereas white men with a criminal record had a call back rate of 17%, which is a 12% difference between males with a criminal record. For those who did not have a criminal record, black men were called back at a rate of 14%, while

white men were called back at a rate of 34%, showing a 20% difference. Something to note here is that the call back rate for black men without a criminal record was 14%, whereas the call back rate for white men with a criminal record was 17%, meaning that there could be discriminatory practices related to race that can occur during the hiring process that could potentially impact black men more than white men (Pager, 2003). In another study, 23.9 % of black respondents and 32.3% of Hispanic respondents listed having a criminal record as their main barrier to employment, compared to only 8% of white respondents. From this study, it was found that white individuals with a criminal record were able to utilize the connections and ties that they had to family and friends when looking for employment, which was not as easily or readily available or experienced by black and Hispanic respondents (Western & Sirois, 2019).

Therefore, during the employment process, criminal records can create difficulties, but having social connections may be helpful in counteracting the challenges to getting a job (Cantora, 2014).

Keeping in mind that family and friends may be able to assist formerly incarcerated individuals in finding employment (Cantora, 2014), the impact of not having those ties on the former offender may be detrimental to them. Losing touch with family members due to the distance of where an individual is incarcerated compared to where they actually live can sever relationships with spouses and children or cause tensions between individuals, which could make it more difficult to re-enter society. Currently, 25% of federal inmates are in prisons that are located more than 500 miles from their communities, creating difficulties in maintaining relationships as well as adding additional monetary costs to individuals who would have to travel that distance if they wanted to visit their incarcerated loved one (Families Against Mandatory Minimums, 2019). The First Step Act is helping to eliminate this barrier by allowing for inmates

to be within 500 miles of their loved ones. In order for this to take place, a few requirements have to be met, including the prisons having beds available to them, the health and well-being needs of the offenders must be met, specific programs should be available to them, and the security level of the offenders must also be taken into consideration (James, 2019). Being closer to family members while incarcerated can potentially help formerly incarcerated individuals and reduce recidivism as well (Families Against Mandatory Minimums, 2019).

However, it is important to note that the types of relationships formerly incarcerated have with friends and family can impact the success of their overall transitions as well. For example, family and friends could potentially promote and contribute to criminal behaviors, like substance use, that could cause former offenders to recidivate. It is also possible that family or friends were the victims of the offender, meaning that their perceptions of the individual could be negative and their willingness to accept the individual back into their lives may not be present. Conflicts amongst family members can also lead to recidivism. On the other hand, friends and family can provide support towards positive endeavors that get former offenders back on track. Being closer to family members may only be beneficial depending on the kinds of relationships offenders have with others, as well as how those relationships contribute to the lifestyles that former offenders could be returning to upon release from prison (Visher & Travis, 2003).

## **Recommendations**

### **Short-Term Recommendations**

In order to enhance the effectiveness of the First Step Act, there are a few recommendations that can be made both in terms of immediate needs and where criminal justice policy could head in the future. To begin with, the Federal Bureau of Prisons could reinforce the part of the act that incarcerates individuals within 500 miles of their primary residences. This

could assist incarcerated individuals with maintaining their connections to family members, friends, and employers, as well as their connections to communities in general (Federal Bureau of Prisons, 2019a). Maintaining these connections could make the re-entry process easier, in the sense that formerly incarcerated individuals could be able to utilize their connections to gain employment. Additionally, being closer to family means being able to have a presence in the lives of children and spouses, allowing for important relationships to continue and not be disrupted (Families Against Mandatory Minimums, 2019). The act of becoming a parent or spouse again may not be immediate, but it can be part of the process of forming a more positive identity and a way of not breaking the law for a second time (Visher & Travis, 2003). Overall, being incarcerated closer to family members, or rather being able to have more frequent contact with family members, has the potential to reduce recidivism for offenders upon release from prison (Visher & Travis, 2003).

Another short-term reform that could be implemented is to have the Federal Bureau of Prisons reconsider how it is using funding to implement aspects of the First Step Act. As mentioned previously, there is some funding being used to increase the number of programs being provided while incarcerated. For example, some funding will be allocated to increasing educational classes, as well as vocational training programs where inmates could earn certifications to be used for life after incarceration (U.S. Department of Justice Office of Public Affairs, 2019). However, thinking back to how the First Step Act may not be receiving all of the funding that is needed for it to be implemented in its entirety, in the greater context of the criminal justice system this could mean that a lack of supports from the government upon reentry could lead to returning citizens having to look within their communities for support. Justice reinvestment could be considered a way of providing support to returning citizens. The term

justice reinvestment alludes to the idea that rather than allocating more funding to prisons, those funds would be dispersed within communities, specifically those impacted by higher crime rates (Martin & Price, 2016). The communities that individuals return to may be experiencing socioeconomic disadvantages of their own, which could affect the social capital that formerly incarcerated individuals could utilize upon re-entry (Arditti & Parkman, 2011). Investments could be made within various organizations in the community that could provide a wide range of connections and social services, like employment assistance or housing, to individuals re-entering society (Martin & Price, 2016). Therefore, if the Federal Bureau of Prisons cannot get complete funding for the First Step Act, maybe local organizations that specialize in re-entry services would be able to receive funding, which could potentially also help with the overall reintegration for formerly incarcerated individuals at the community level and assist in increasing social capital.

Keeping in mind how reintegration at the community level can assist with lessening the chances of recidivism, the ways in which such communities are defining what recidivism is also matters, as it relates to eligibility for the good time credits associated with the First Step Act. There needs to be more clarity over what recidivism is defined as at state levels, related to offenses, as some offenses could be counted as recidivism in one state but not in another. For instance, one state may count an arrest as recidivism while another could count an actual conviction as recidivism, yet the federal level is defining recidivism as arrests that occur within three years of release. Having different definitions of recidivism could then misinform how eligibility for the act is determined at the federal level. Therefore, ensuring that the Federal Bureau of Prisons and states are on the same page about what it means to recidivate also needs to

occur, in order for more accurate data comparisons to be made and for time credits to be allocated appropriately at the federal level (U.S. Department of Justice, 2020).

### **Mid-Range Recommendations**

In addition to the short-term reforms at the community and government level, there are other policy recommendations that would push the criminal justice system to further policies that could be more beneficial for individuals while incarcerated and upon release from prison. Finding a way to allow for more people to benefit should be a priority, considering how only 12% of the prison population is at the federal level (Pfaff, 2017). An obvious way to make the act more inclusive for the other 88% would be to have PATTERN implemented at the state level to include state offenders. However, eligibility at the federal level for more violent offenders would likely have to occur first. Considering how offenders with a higher risk of recidivism, who are often considered to be more violent offenders, are ineligible for the time credits, allowing for violent offenders to be eligible would enable an additional percentage of federal inmates to benefit from the First Step Act. Changing the eligibility would require an adjustment to how the time credits are allocated or rather how eligibility for the time credits is determined. Moreover, it would allow for those with a higher risk of recidivism, who may be considered the ones who could benefit most from programming, actually be able to get involved in programming that could lead them towards earning the time credits which they could then use to get out of prison earlier. Without having the incentive to complete programming for good time, it is difficult to say whether or not individuals would participate in the programming. Thus, having eligibility for good time being given to the high-risk or violent offenders could allow for more participation in programming and the overall potential to lessen recidivism in the long run (Haynes, 2018).



Another way to allow for more incarcerated individuals to benefit from this act would be to find a way for it to be implemented at the state level. With the way that PATTERN currently functions in relation to determining eligibility for good time, if implemented as is at the state level, some of the non-violent state offenders could benefit. However, there is a lower percentage of non-violent offenders in state prisons than in federal prisons, as depicted in Appendix B, meaning that not as many state offenders would necessarily benefit, or rather would be eligible for the time credits (U.S. Department of Justice, 2019). However, if PATTERN was changed to include more violent offenders at the federal level, then states could potentially adopt a risk and needs assessment similar to PATTERN to be used to at the state level to target the population of offenders that are considered to be at a higher risk of recidivism.

Additionally, there seems to be a misconception related to the First Step Act, in terms of sentencing reform. The First Step Act utilizes the PATTERN assessment to allocate good time that inmates earn in order to receive time off of their sentences. The time credits are given to certain qualified offenders, which is allowing for those individuals to get out of prison earlier than expected (Federal Bureau of Prisons, 2019a). However, advertising such a reform as being related to sentencing seems to be misleading, considering how reforms have not been made to how sentences are given to offenders in the first place.

The First Step Act is a policy that does not target overall sentencing, but tries to make up for the sentences by providing incentives for time off and participation in programs. Haynes refers to this as a “back-end” reform rather than a “front-end” reform (2018). The overall sentencing process for offenders has not been changed, in the sense that offenders are still receiving long sentences for their offenses. It may be more beneficial to look into reducing the prison time being given during the initial sentencing process. Specifically related to this act, it

may be beneficial to consider reducing or abolishing the decade long mandatory minimum sentences for non-violent drug offenses in the first place, rather than implementing time credits to try to fix or lessen the sentences after they have been given (Haynes, 2018). On another note, mass incarceration and the damages resulting from it cannot be reversed through the implementation of the First Step Act. Rather, considering abolishing mandatory minimum sentences, or reevaluating their effectiveness, could be the additional step needed to stop the perpetuation of mass incarceration and racial disparities that have accompanied it (Tonry, 2019).

### **Long-Term Recommendations**

In the future, the overall stigma of incarceration and perceptions of what it means to have a criminal record will need to change if criminal justice policies like the First Step Act are to be implemented effectively. The perceptions of individuals and stereotypes of offenders have contributed to the types of reforms that we have seen in the past and that we are currently seeing within the criminal justice system. Thinking back to the differences between the War on Drugs and the opioid epidemic, policy responses have benefitted some groups more than others. Responses in the past focused on punitive policies, which disproportionately affected minority offenders. More recently, the responses are focused on treating the health of offenders and providing more resources, with offenders primarily identifying as white (Tonry, 2019). In order to prevent racial disparities and inequalities from continuing within the criminal justice system, policymakers should consider how certain ways of implementing policies can have a more of a detrimental effect on certain groups over others.

### **Conclusion**

Policy implementation within the criminal justice system is a powerful tool that can impact and drive social change within the United States, both in punitive and rehabilitative ways.

At the moment, a policy reform such as the First Step Act could be considered a rehabilitative response and one that is more policy driven rather than socially driven. Society is not entirely up to speed with knowing social changes related to the criminal justice system, in terms of accepting individuals with a criminal record and eliminating racial disparities within the criminal justice system. Given the history of law creation within the criminal justice system itself, there is also no guarantee that punitive acts and policies related to harsher social controls, or sentencing, are gone for good. Just as the First Step Act was a bipartisan reform, both the criminal justice system and society need to work together to create and implement reforms that make sense within society, while at the same time compliment the goals and needs of the criminal justice system in a way that does not harm individuals who are or were incarcerated. It should be questioned why the government is implementing federal criminal justice reform policies if society itself will not accept formerly incarcerated individuals. Ultimately, the government should be more cognizant of how policy and power are used to affect the lives of incarcerated and formerly incarcerated individuals, while at the same time, society needs to change the stigma of a criminal record so that efforts to implement future policies like the First Step Act are not done in vain.

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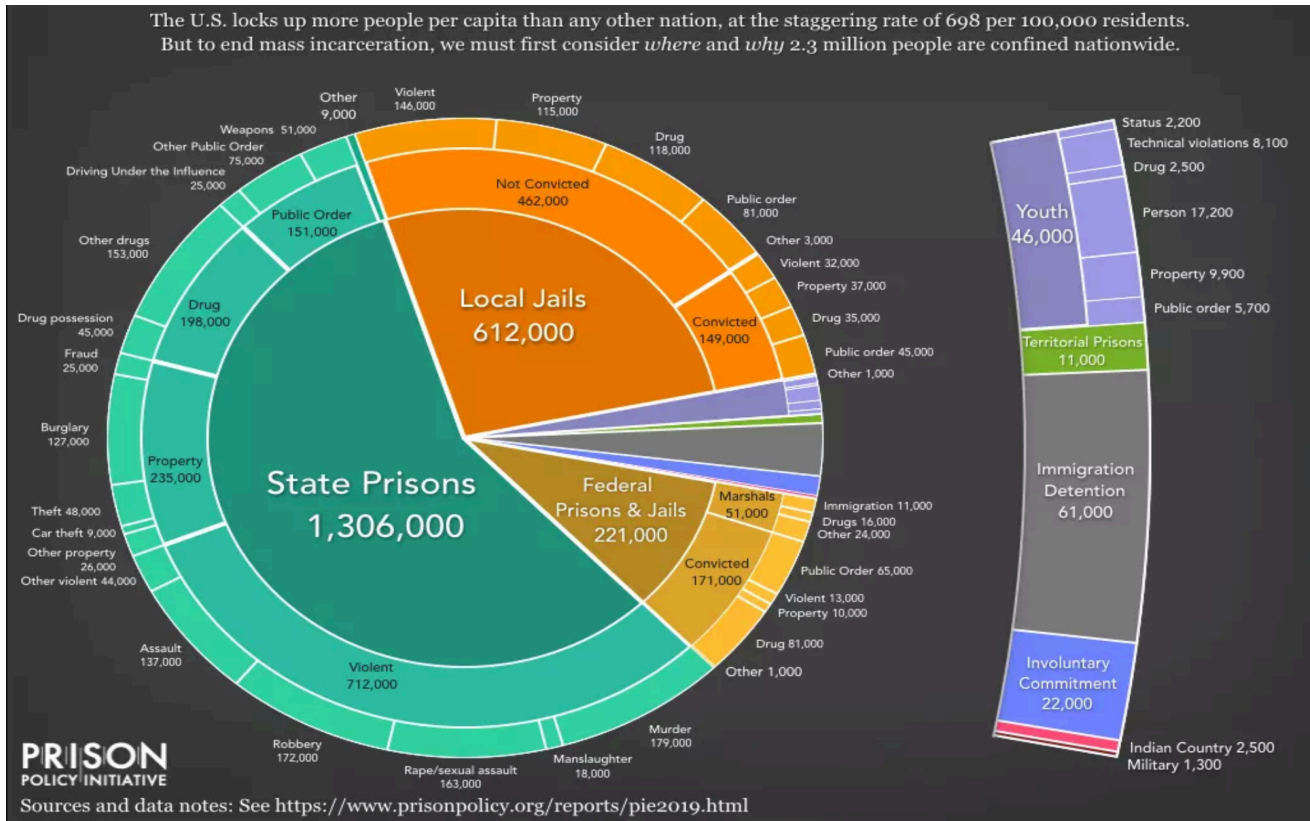
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**Appendix A: How many people are locked up in the United States?**



This diagram shows the prison population within the United States, breaking it down into where offenders are held as well as the types of offenses that are represented within each level. There are more individuals incarcerated at the state level than at the federal level (Sawyer & Wagner, 2019).

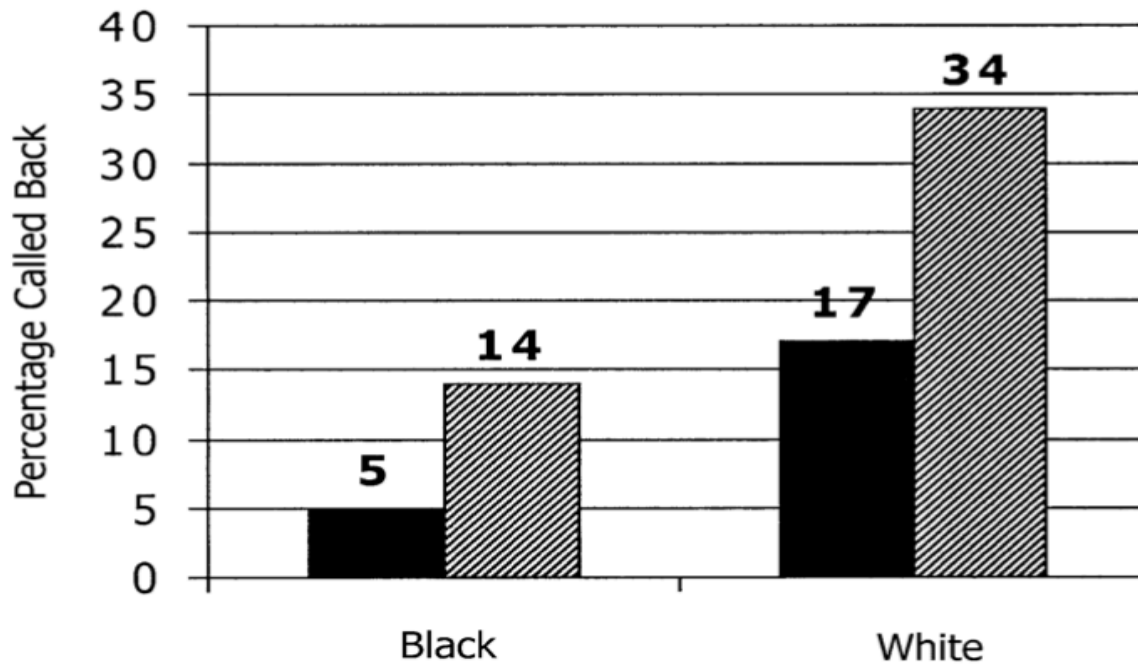
**Appendix B: Comparison of U.S. Federal and State Prison Populations**

**Comparison of Federal and State Inmates in 2017,  
based on BJS National Prisoner Statistics Data**

| Category        | Descriptor                                       | Federal Inmate | State Inmate |
|-----------------|--|----------------|--------------|
| Gender          | Female   | 6.8%           | 7.6%         |
| Race/Ethnicity* | White  | 27.6%          | 31.1%        |
|                 | Black  | 37.1%          | 32.6%        |
|                 | Hispanic   | 31.9%          | 21.6%        |
|                 | Other  | 3.4%           | 14.7%        |
| Citizenship     | Non-US Citizen                                   | 19.7%          | 5.8%         |
| Offense Type    | Drug Offense                                     | 47.3%          | 14.8%        |
|                 | Weapons  | 17.0%          | 4.2%         |
|                 | Immigration                                      | 6.7%           | 0.0%         |
|                 | Other Public Order (non-weapon, non-immigration) | 14.9%          | 7.7%         |
|                 | Homicide   | 1.6%           | 14.2%        |
|                 | Robbery  | 3.8%           | 13.1%        |
|                 | Other Violent Offense                            | 2.4%           | 27.9%        |
|                 | Burglary   | 0.2%           | 9.4%         |
|                 | Other Property Offense                           | 5.7%           | 8.1%         |

\* "Hispanic" includes all races with Hispanic ethnicity; all other categories include non-Hispanics of that race.

There are more violent offenders in state prisons than there are in federal prisons, as represented by the higher percentages for other violent offenses and homicides at the state level. Drug offenses represent 47.3% of overall offenses at the federal level in comparison to 14.8% at the state level (U.S. Department of Justice, 2019, p. 30).

**Appendix C: Call Back Rate Comparisons**

This bar graph compares the percentages of black and white men, both formerly incarcerated and general population, being called back by an employer for a job. The black bars indicate those with a criminal record, while the striped bars indicate not having a criminal record (Pager, 2003, p. 598).