The Sentencing Reform Act: Reconsidering Rehabilitation as a Critical Consideration in Sentencing

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ABSTRACT

The Sentencing Reform Act identifies four commonly recognized correctional goals as factors to be considered in determining an appropriate sentence, and neglects to endorse one theory of punishment over the others. The Sentencing Reform Act explicitly instructed the Sentencing Commission to establish Sentencing Guidelines that further all four purposes of sentencing, including offender rehabilitation. However, the Sentencing Reform Act appears internally inconsistent because 18 U.S.C. § 3553(a) requires the sentencing court to consider rehabilitation, whereas 18 U.S.C. § 3582(a) forbids the sentencing court from doing so.

The Sentencing Reform Act was enacted in response to rampant skepticism of rehabilitation and as such has been interpreted to give the lowest priority to correctional treatment as a goal of punishment. However, this skepticism was based on primitive social science research that has since been criticized as misleading and methodologically unsound. Although the meaning of an ambiguous statute may be found in the systematic issues it was designed to address, the underlying premise of the Sentencing Reform Act is no longer sound in light of recent social science research, which suggests that rehabilitation is effective in many circumstances. Thus, the ambiguities of the Sentencing Reform Act should be interpreted to allow equal consideration of rehabilitation in sentencing determinations.

I. INTRODUCTION

The United States Supreme Court recently decided that the Sentencing Reform Act prohibits consideration of offender rehabilitation in imposing or extending a period of incarceration.1 However, the Supreme Court did not explicitly delineate the scope of the rule, and the circuit courts of appeals have subsequently disagreed on its appropriate application.2 Specifically, the circuit courts of appeals have diverged as to whether offender rehabilitation may be considered as a basis for imposing or extending a sentence following revocation of supervised release.3 On the one hand, 18 U.S.C. § 3582(a) requires the sentencing court to consider the objectives listed in 18 U.S.C. § 3553(a), which includes providing the offender with “needed educational or vocational training, medical care, or other correctional treatment.”4 On the other hand, 18 U.S.C. § 3582(a) imposes a limitation and explains that “imprisonment is not an appropriate means of promoting correction and rehabilitation.”5 Alternatively, 18 U.S.C. § 3583(e) allows the sentencing court to revoke supervised release after considering certain factors set forth in 18 U.S.C. § 3553(a) and subsequently resentence the offender to a term of imprisonment.6 Significantly, 18 U.S.C. § 3583(e) fails to include similar limiting language.7

This Note argues that offender rehabilitation is an appropriate basis for imposing or extending a term of imprisonment following revocation of supervised release. The Sentencing Reform Act reflects a general skepticism toward rehabilitation. However, recent social science research indicates that rehabilitation is indeed effective in certain circumstances, and reconsideration of the rehabilitative model of punishment is therefore required. The underlying assumption that rehabilitation is unsuccessful no longer appears to be accurate, and the Sentencing Reform Act should therefore be interpreted to allow consideration of offender rehabilitation when imposing or extending a term of imprisonment following revocation of supervised release.

2. See infra Part IV.B.
3. Compare United States v. Molignaro, 649 F.3d 1, 5 (1st Cir. 2011) (prohibiting offender rehabilitation from serving as a basis for imposing or extending a sentence following revocation of supervised release), with United States v. Hudson, 457 F. App’x 417, 420 (5th Cir. 2012) (allowing offender rehabilitation to serve as a basis for imposing or extending a sentence following revocation of supervised release).
6. Id. § 3583(e).
7. See id.
Part II of this Note provides an overview of the four theories of punishment. Part III discusses the penological shift from the theory of rehabilitation to the theory of retribution and evaluates the theories of punishment ultimately supported by the Sentencing Reform Act. Part IV analyzes the case law interpreting the relevant sections of the Sentencing Reform Act and explains the arguments for and against offender rehabilitation as a basis for imposing or extending a term of imprisonment following revocation of supervised release. Part V discusses various social science research studies that highlight the benefits of rehabilitation. Finally, Part VI concludes that minimizing the importance of rehabilitation is irresponsible and short-sighted correctional policy.

II. THEORIES OF PUNISHMENT

Sentencing is derived from four basic theories of punishment, which provide philosophical justifications that legitimize the imposition of criminal sanctions. The Sentencing Reform Act deliberately neglected to endorse a specific theory of punishment, and instead identified the four commonly recognized goals as factors to be considered in determining an appropriate sentence. The Sentencing Reform Act directs the Sentencing Commission to establish policies that: (1) "reflect the seriousness of the offense . . . and . . . provide just punishment for the offense"; (2) "afford adequate deterrence to criminal conduct"; (3) "protect the public from further crimes of the defendant"; and (4) "provide the defendant with needed educational or vocational training, medical care, or other correctional treatment." Identifying and prioritizing these underlying theories of punishment is of great consequence, because each "theory can lead to or justify vastly different correctional policies and practices."
A. Retribution

First, the Sentencing Reform Act references retribution in that it requires the sentencing court to consider "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." Retribution assumes that offenders use free will in deciding to commit crime, and demands that the offender be punished in proportion to the seriousness of his or her offense. The more serious the offense, the more severe the punishment. Retribution justifies administering punishment as a way to "balance the scales of justice," and postulates that those who inflict harm on others deserve to be punished in response. Punishment under this theory is "an end in and of itself," and should not be inflicted to achieve any other goals.

Correctional policies and practices rooted in the theory of retribution seek only to establish a system in which all offenders who commit a particular crime are punished similarly, and in proportion to the harm caused. However, the context in which crime occurs is highly relevant in sentencing, and retribution disregards the aggravating and mitigating circumstances associated with the offense. Additionally, retribution essentially ignores the utilitarian aspects of punishment and minimizes the importance of rehabilitation programs. Correctional policies and practices that are based primarily on retribution are unreasonable because society expects the correctional system to reduce crime. While society also expects offenders to be punished at a level that is consistent with the seriousness of the offense, a purely retributive approach fails to reduce

21. Id. at 6.
22. COLE & SMITH, supra note 8, at 428.
23. MacKenzie, supra note 9, at 6.
24. COLE & SMITH, supra note 8, at 428.
25. Id. at 427.
27. BANKS, supra note 19.
29. Hirsch, supra note 26, at 64.
recidivism and merely operates to increase an already astronomical prison population.\(^{30}\)

**B. Deterrence**

Second, the Sentencing Reform Act mentions deterrence and requires the sentencing court to consider "the need for the sentence imposed . . . to afford adequate deterrence to criminal conduct."\(^{31}\) Deterrence assumes that offenders compare the potential benefits of committing crime with the potential costs of committing crime,\(^{32}\) and demands that punishment be certain and severe, such that potential offenders will conclude that committing crime is too costly.\(^{33}\) The cost of crime is typically determined by weighing the certainty and severity of punishment, and correctional policies and practices based on deterrence therefore strive to increase the cost of crime through more certain and more severe punishment.\(^{34}\) General deterrence is aimed at altering the decisions and actions of the general public, and theorizes that members of society will observe the punishments meted out against others and subsequently decide to refrain from committing crime out of fear of similar punishment.\(^{35}\) Alternatively, specific deterrence seeks to address the decisions and actions of previously convicted offenders, and hypothesizes that punishment will discourage reoffending.\(^{36}\) Deterrence justifies administering punishment as a technique for reducing crime.\(^{37}\)

Correctional policies and practices derived from the theory of deterrence seek to punish the offense, not the offender.\(^{38}\) However, crime is often caused by various biological, psychological, and sociological factors,\(^{39}\) and deterrence ignores this important reality by taking the focus away from individual offender characteristics.\(^{40}\) Furthermore, deterrence assumes that crime is a rational choice based on a calculation of the potential benefits

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32. See COLE & SMITH, *supra* note 8, at 428.
34. *Id.* at 72.
35. COLE & SMITH, *supra* note 8, at 428.
36. *Id.*
38. *Id.*
and the potential costs of committing crime.\textsuperscript{41} However, the erroneous assumption that all individuals think rationally before they act fails to account for offenders who commit crimes while intoxicated, offenders who commit crimes while mentally ill, and offenders who commit crimes on impulse.\textsuperscript{42} Additionally, effective deterrence requires that the risk of punishment be perceived as "fast, certain, and severe," but that is not how criminal sanctions typically operate.\textsuperscript{43} Thus, proponents of deterrence object to the exercise of discretion in sentencing because the certainty and severity of punishment are thereby diminished.\textsuperscript{44}

\textbf{C. Incapacitation}

Third, the Sentencing Reform Act alludes to incapacitation in that it invites the sentencing court to consider "the need for the sentence imposed ... to protect the public from further crimes of the defendant."\textsuperscript{45} Incapacitation requires a risk assessment to determine whether an offender will commit additional offenses in the future,\textsuperscript{46} and demands that punishment physically prevent the offender from committing those additional offenses.\textsuperscript{47} If an offender is expected to commit additional offenses, a harsh sentence should be imposed, and the offender should not be released until the correctional system is reasonably certain that the offender is no longer inclined to reoffend.\textsuperscript{48} Incapacitation justifies administering punishment as a technique for reducing crime, thereby protecting the public from future victimization.\textsuperscript{49}

Correctional policies and practices rooted in the theory of incapacitation assume that a small number of offenders commit a disproportionate number of offenses, and subsequently attempt to isolate those habitual offenders.\textsuperscript{50} However, the correctional system cannot accurately predict future conduct, and the theory of incapacitation will inevitably result in lengthy terms of imprisonment for offenders who would not have committed subsequent crimes.\textsuperscript{51} Additionally, the imposition of punishment for hypothetical

\begin{itemize}
  \item \textsuperscript{41} Nagin, \textit{supra} note 33, at 73.
  \item \textsuperscript{42} COLE \& SMITH, \textit{supra} note 8, at 428.
  \item \textsuperscript{43} \textit{Id}.
  \item \textsuperscript{44} See MacKenzie, \textit{supra} note 9, at 7-8.
  \item \textsuperscript{46} See BANKS, \textit{supra} note 19, at 152.
  \item \textsuperscript{47} COLE \& SMITH, \textit{supra} note 8, at 429.
  \item \textsuperscript{48} \textit{Id}.
  \item \textsuperscript{49} MacKenzie, \textit{supra} note 9, at 9.
  \item \textsuperscript{50} James Q. Wilson, \textit{Incapacitation: Locking Up the Wicked}, in \textit{CORRECTIONAL THEORY: CONTEXT AND CONSEQUENCES}, \textit{supra} note 9, at 99, 111-12.
  \item \textsuperscript{51} BANKS, \textit{supra} note 19, at 152.
\end{itemize}
future conduct is inconsistent with a basic sense of justice.\textsuperscript{52} Offenders are deserving of punishment for offenses they have committed, but are not so deserving of punishment for offenses they may or may not commit in the future.\textsuperscript{53}

Lastly, correctional policies and practices based on the theory of incapacitation are expensive.\textsuperscript{54} The correctional system currently expends upwards of $9 billion per year,\textsuperscript{55} and incapacitation would require further expansion of correctional institutions.\textsuperscript{56} Additionally, correctional policies and practices based on the theory of incapacitation provide only a temporary solution, as ninety-three percent of all incarcerated offenders will return to society.\textsuperscript{57} The theory of incapacitation neglects to account for over 700,000 offenders that are released from prison each year.\textsuperscript{58} Social science research suggests that imprisonment strengthens criminal propensities,\textsuperscript{59} and incapacitation ignores the possibility of eliminating such tendencies through prison-based rehabilitation programs.\textsuperscript{60}

D. Rehabilitation

Lastly, the Sentencing Reform Act mentions rehabilitation as a relevant consideration in that it requires the sentencing court to consider “the need for the sentence imposed... to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.”\textsuperscript{61} Rehabilitation assumes that the decision to commit crime is not a matter of free will.\textsuperscript{62} Rather, the decision to commit crime is determined by various biological, psychological, and sociological factors.\textsuperscript{63}

\begin{itemize}
\item \textsuperscript{52} See id.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} COLE \\ & SMITH, supra note 8, at 430.
\item \textsuperscript{55} Wilson, supra note 50, at 100 (citing Joan Petersilia, \textit{California's Correctional Paradox of Excess and Deprivation, in 37 CRIME AND JUSTICE: A REVIEW OF RESEARCH 207} (Michael Tonry ed., 2008)).
\item \textsuperscript{56} COLE \\ & SMITH, supra note 8, at 430.
\item \textsuperscript{57} JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 3 (2003).
\item \textsuperscript{58} Francis T. Cullen \\ & Cheryl L. Jonson, \textit{Four Correctional Lessons: Choosing Our Future, in CORRECTIONAL THEORY: CONTEXT AND CONSEQUENCES, supra note 9, at 205, 213.}
\item \textsuperscript{59} MacKenzie, supra note 9, at 9 (citing Daniel S. Nagin, Francis T. Cullen \\ & Cheryl L. Jonson, \textit{Imprisonment and Reoffending, in 38 CRIME AND JUSTICE: A REVIEW OF RESEARCH 115} (Michael Tonry ed., 2009)).
\item \textsuperscript{60} Id.
\item \textsuperscript{62} Rothman, supra note 16, at 25.
\item \textsuperscript{63} Nagin, supra note 33, at 73.
\end{itemize}
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and requires that the offender be punished in such a way that will modify criminogenic risk factors. Recidivism is subsequently reduced to the extent that punishment is effective in altering the risk factors that compel offenders to commit crime. Rehabilitation justifies the imposition of punishment through its social utility in that it "improv[es] the offender, reduc[es] recidivism, and [thereby] increase[es] public safety." Correctional policies and practices based on the theory of rehabilitation strive to identify and remedy the criminogenic risk factors associated with each individual offender. Rehabilitation focuses on the individual characteristics of the offender, and its advocates argue that the "punishment should fit the offender and not merely the crime." The biological, psychological, and sociological causes of crime vary widely from offender to offender, and successful rehabilitation therefore requires individualized evaluation and treatment. Although correctional policies and practices based on rehabilitation are commonly criticized as excessively lenient, this critique neglects to consider the potential long-term benefits. Rehabilitation ultimately aspires to protect society by reducing the incidence of crime and victimization.

III. THE SENTENCING REFORM ACT

The primary objective of the correctional system tends to be correlated with social context. Liberal social contexts typically support correctional policies that encourage rehabilitation, whereas conservative social contexts consistently support strict punishment. The Sentencing Reform Act is no exception, and is a reaction to an increasingly popular public sentiment that doubted the efficacy of offender rehabilitation. The Sentencing Reform Act identified the four commonly recognized theories of punishment as

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64. MacKenzie, supra note 9, at 11. See also infra note 224 and accompanying text.
65. MacKenzie, supra note 9, at 11 (citing D.A. ANDREWS & JAMES BONTA, THE PSYCHOLOGY OF CRIMINAL CONDUCT (5th ed. 2010)).
67. MacKenzie, supra note 9, at 12.
70. Id. at 26.
71. Id.
72. MacKenzie, supra note 9, at 3.
73. Id.
factors to be considered in determining an appropriate sentence,\textsuperscript{75} and intentionally declined to endorse one goal over the others.\textsuperscript{76} Regrettably, the structure of the Sentencing Reform Act has been interpreted to give the lowest priority to offender rehabilitation.\textsuperscript{77} However, the Sentencing Reform Act is based upon social context as opposed to empirical evidence, and has come to justify correctional practices that fail to adequately address the causes of crime.\textsuperscript{78}

A. The Social Context: Shifting Theories of Punishment

Throughout the early 1900s, correctional policies and practices stressed the importance of rehabilitation.\textsuperscript{79} The correctional system implemented numerous treatment programs, together with classification systems, calculated to identify the treatment needs of each individual offender.\textsuperscript{80} However, punishment for the purpose of rehabilitation produced indeterminate sentences, which required a term of incarceration to last until the correctional system was reasonably certain that the offender had been sufficiently reformed.\textsuperscript{81} Additionally, rehabilitation necessarily conferred broad discretion on judges in imposing a term of imprisonment, and on parole boards in determining the portion of the sentence to be served through incarceration.\textsuperscript{82} Furthermore, discretionary decisions were not guided by explicit sentencing standards, and such decisions were rarely subject to judicial review.\textsuperscript{83}

In the 1970s, indeterminate sentencing and unlimited discretion began to undermine the legitimacy of rehabilitation and individualized treatment, and trigger a drastic transformation in correctional thinking.\textsuperscript{84} Liberals criticized rehabilitation as a source of injustice,\textsuperscript{85} because unguided discretion and indeterminate sentencing resulted in unjustified sentencing disparities.\textsuperscript{86} Alternatively, conservatives condemned rehabilitation as a
source of social disorder,\textsuperscript{87} and as crime rates escalated, so too did the skepticism toward rehabilitation.\textsuperscript{88} Disappointment with rehabilitation was nearly unanimous.\textsuperscript{89} Liberals began to support the theory of just deserts, and conservatives began to support the theory of retribution.\textsuperscript{90} Additionally, early social science research seemed to corroborate the widespread disappointment, therefore contributing to the abandonment of rehabilitation as the primary goal of punishment.\textsuperscript{91} Influential judges and penal theorists subsequently concluded that rehabilitation should no longer govern sentencing decisions, and proposed to abandon the consideration of rehabilitative needs.\textsuperscript{92} Judges and scholars sought to eliminate discretion through the implementation of determinate sentencing,\textsuperscript{93} which would specify a punishment for each offense, and ensure that similar offenders would be given similar punishments.\textsuperscript{94} The inadequacies of rehabilitation inspired the Sentencing Reform Act, and the Sentencing Reform Act was subsequently drafted to reflect this widespread skepticism.\textsuperscript{95} Retribution became widely regarded as "the strongest ground . . . upon which to base a system of punishment,"\textsuperscript{96} and the original Sentencing Commission recognized crime control as the most important goal of sentencing policy.\textsuperscript{97}

B. The Sentencing Reform Act: Prevailing Theories of Punishment

The Sentencing Reform Act as originally introduced by Senator Edward Kennedy was designed to eliminate sentencing unfairness through guided


\textsuperscript{87} Rothman, supra note 16, at 33.

\textsuperscript{88} Id.

\textsuperscript{89} Hofer & Allenbaugh, supra note 77, at 56.

\textsuperscript{90} Gendreau, supra note 66, at 151.

\textsuperscript{91} See Stith & Koh, supra note 86. E.g., Robert Martinson, \textit{What Works? Questions and Answers About Prison Reform,} 35 \textit{Pub. Int.} 22, 25 (1974), available at http://www.nationalaffairs.com/public_interest/detail/what-worksquestions-and-answers-about-prison-reform ("With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.").

\textsuperscript{92} Vitiello, supra note 74, at 1012.

\textsuperscript{93} Gendreau, supra note 66, at 151.

\textsuperscript{94} Id. at 147.

\textsuperscript{95} Vitiello, supra note 74, at 1027.

\textsuperscript{96} Id. at 1013 (alteration in original) (quoting LAFAVE & SCOTT, supra note 74, at 26).

discretion, which would encourage the consideration of individual characteristics and ensure that punishments adequately accounted for individual circumstances. However, the original proposal maintained indeterminate sentencing, and was therefore met with harsh criticisms from those who sought to eliminate discretion entirely. A decade of legislative debate and concession transformed the Sentencing Reform Act from a liberal proposal into a conservative sentencing scheme, intended to eliminate discretion and increase the severity of punishment.

The Sentencing Reform Act ultimately directs the Sentencing Commission to establish policies that: (1) “reflect the seriousness of the offense . . . and . . . provide just punishment for the offense”; (2) “afford adequate deterrence to criminal conduct”; (3) “protect the public from further crimes of the defendant”; and (4) “provide the defendant with needed . . . correctional treatment.” The Sentencing Reform Act neglected to endorse one theory of punishment over the others, and therefore bestowed considerable discretion upon the original Sentencing Commission in establishing Sentencing Guidelines. However, the Sentencing Reform Act explicitly instructed the Sentencing Commission to establish Sentencing Guidelines that further all four purposes of sentencing, including rehabilitation.

Despite arguments that rehabilitation should be eliminated as a purpose of sentencing, the Sentencing Reform Act nevertheless includes “correctional treatment” as a factor to be considered in determining an appropriate sentence. The Senate Judiciary Committee expressed that “efforts to rehabilitate prisoners should [not] be abandoned,” and stated that prison-based rehabilitation programs “should be available and encouraged to enhance the possibility of rehabilitation.” Furthermore, the Senate Judiciary Committee classified rehabilitation as a “particularly important

100. Hofer Et Al., supra note 97, at 3 (citing Stith & Koh, supra note 86, at 286).
102. Id. § 3553(a)(2)(B).
103. Id. § 3553(a)(2)(C).
104. Id. § 3553(a)(2)(D).
106. Hofer Et Al., supra note 97, at 3 (citing Hofer & Allenbaugh, supra note 77, at 43).
107. Hofer & Allenbaugh, supra note 77, at 44.
109. Id. (citation omitted).
consideration” in establishing conditions for supervised release.\textsuperscript{110} However, the Sentencing Reform Act includes several provisions intended to limit the role of rehabilitation in sentencing determinations.\textsuperscript{111} The statutory language together with the legislative history suggest that rehabilitation should be subordinate to other purposes of punishment.\textsuperscript{112}

The Sentencing Guidelines ultimately represent a “modified just deserts philosophy” that gives primary importance to proportionate punishment and secondary importance to incapacitation of offenders most likely to commit additional crimes.\textsuperscript{113} The correctional system has subsequently embraced increasingly punitive policies and practices,\textsuperscript{114} despite evidence that the imposition of harsh punishment is an ineffective crime control policy.\textsuperscript{115} Social science research indicates that harsh punishments fail to address the risk factors that influence recidivism.\textsuperscript{116} Furthermore, incapacitation without rehabilitation does more harm than good, as offenders are often exposed to additional criminogenic risk factors in prison.\textsuperscript{117}

\section{IV. Circuit Splits: Rehabilitation as a Basis for Imposing or Extending Imprisonment}

The Sentencing Reform Act identifies four commonly recognized goals as factors to be considered in determining an appropriate sentence and deliberately declines to endorse one over the others.\textsuperscript{118} Although the Senate Judiciary Committee intended rehabilitative needs to be served, albeit to a limited extent,\textsuperscript{119} 18 U.S.C. § 3553(a) nevertheless requires the sentencing court to “consider . . . the need for the sentence imposed . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.”\textsuperscript{120} However, 18 U.S.C. § 3582(a) enumerates the factors to be considered in imposing a term of imprisonment and instructs the sentencing court to consider the factors set forth in 18 U.S.C. §

\begin{itemize}
\item \textsuperscript{110} Id.
\item \textsuperscript{111} Hofer & Allenbaugh, supra note 77, at 54. E.g., 28 U.S.C. § 994(k) (2006) (“The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant . . .”).
\item \textsuperscript{112} Id.
\item \textsuperscript{113} Hofer & Allenbaugh, supra note 77, at 54.
\item \textsuperscript{114} Id. at 51-52 (internal quotation marks omitted).
\item \textsuperscript{115} Rothman, supra note 16, at 36.
\item \textsuperscript{116} MacKenzie, supra note 9, at 12.
\item \textsuperscript{117} See id.
\item \textsuperscript{118} Id.
\item \textsuperscript{120} Kennedy, supra note 98, at 430.
\end{itemize}

Additionally, the sentencing court is instructed to "recogniz[e] that imprisonment is not an appropriate means of promoting correction and rehabilitation." The Sentencing Reform Act appears to offer conflicting guidance because 18 U.S.C. § 3553(a) requires the sentencing court to consider rehabilitation while 18 U.S.C. § 3582(a) forbids the sentencing court from doing so. The appropriate role of rehabilitation in initial sentencing determinations is therefore unclear.

Alternatively, 18 U.S.C. § 3583(e) explicitly states that the sentencing court "may, after considering the factors set forth in section . . . 3553(a)(2)(D) . . . (3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release." Furthermore, 18 U.S.C. § 3583(e) does not include limiting language similar to that found in 18 U.S.C. § 3553(a). Basic principles of statutory interpretation suggest that the omission of similar limiting language is significant, as the use of different language in different sections of the same statute is "presumed to be intentional and deserves interpretive weight." The absence of similar limiting language therefore suggests that the rule prohibiting consideration of rehabilitation in initial sentencing was not intended to apply when imposing or extending a term of imprisonment following revocation of supervised release.

This seemingly inconsistent statutory language has produced fundamental disagreement among the circuit courts of appeals. The Third Circuit Court of Appeals and the Ninth Circuit Court of Appeals have reached conflicting conclusions concerning the interaction between 18 U.S.C. § 3553(a) and 18 U.S.C. § 3582(a), and the appropriate role of rehabilitation in initial sentencing determinations. Additionally, the Ninth Circuit Court of Appeals and the Fifth Circuit Court of Appeals have reached conflicting conclusions regarding the relationship between 18 U.S.C. § 3582(a) and 18 U.S.C. § 3583(e), and the function of

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121. Id. § 3582(a) ("The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) . . . ").
122. Id.
123. United States v. Manzella, 475 F.3d 152, 157 (3d Cir. 2007).
125. See id.
127. Compare Manzella, 475 F.3d at 162 (rejecting consideration of rehabilitation in initial sentencing), with United States v. Duran, 37 F.3d 557, 561 (9th Cir. 1994) (allowing consideration of rehabilitation in initial sentencing), abrogated by Tapia v. United States, 131 S. Ct. 2382 (2011).
rehabilitation in sentencing determinations made following revocation of supervised release.  

A. Imposing or Extending the Initial Term of Imprisonment

1. Third Circuit: Disallowing Consideration of Rehabilitation

In United States v. Manzella, the defendant was convicted of uttering counterfeit security, and the Sentencing Guidelines called for two-to-eight months imprisonment. However, the district court sentenced the defendant to thirty-six months of imprisonment and recommended that she participate in the Bureau of Prisons' 500 Hour Drug Treatment Program. The district court explained that the sentence was intended to provide the defendant with necessary corrective treatment, and further noted that the Bureau of Prisons’ 500 Hour Drug Treatment Program required a minimum of thirty-six months to complete. The defendant argued that the district court violated the Sentencing Reform Act when it imposed thirty-six months of imprisonment with the intent to make her eligible for rehabilitative services. Alternatively, the Government argued that the intent to provide the defendant with corrective treatment is not only permitted, but affirmatively encouraged under the Sentencing Reform Act.

The Third Circuit reasoned that the meaning of statutory language is often clarified by “considering . . . ‘the design of the statute as a whole and its object,’” and noted that the Sentencing Reform Act rejected rehabilitation as a primary goal of sentencing. Furthermore, the Third Circuit distinguished the terms “sentence” and “incarceration” in order to demonstrate that 18 U.S.C. § 3582(a) and 18 U.S.C. § 3553(a)(2)(D) do not necessarily conflict with one another. The term “sentence” is broad, and

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129. Manzella, 475 F.3d at 154.
130. Id. at 155.
131. Id.
132. Id. at 156-57 (quoting 18 U.S.C. § 3582(a) (2006) (“[I]mprisonment is not an appropriate means of promoting correction and rehabilitation.”)).
133. Id. at 157 (quoting 18 U.S.C. § 3553(a)(2)(D) (“The court . . . shall consider . . . (2) the need for the sentence imposed . . . (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment . . ..”)).
134. Id. (quoting United States v. Tupone, 442 F.3d 145, 151 (3d Cir. 2006)).
135. Id. (citing Mistretta v. United States, 488 U.S. 361, 366-67 (1989)).
136. Id. at 158.
encompasses many categories of punishment, whereas the term "imprisonment" is more specific.\textsuperscript{137} Pursuant to 18 U.S.C. § 3553(a), the sentencing court is required to consider the need for rehabilitation when choosing an appropriate sentence from all types of possible punishment, and pursuant to 18 U.S.C. § 3582(a) the sentencing court is not permitted to further rehabilitative goals through imprisonment.\textsuperscript{138} Lastly, the Third Circuit asserted that the intended congressional policy is clearly expressed in the Sentencing Reform Act.\textsuperscript{139} Rehabilitation cannot be effectively implemented in a prison setting,\textsuperscript{140} and 18 U.S.C. § 3582(a) is therefore intended to prohibit a sentencing court from advancing the rehabilitative goals of 18 U.S.C. § 3553(a)(2)(D) by sentencing a defendant to a term of imprisonment.\textsuperscript{141}

2. Ninth Circuit: Allowing Consideration of Rehabilitation

In \textit{United States v. Duran}, the defendant was convicted of armed robbery and use of a firearm during a violent crime.\textsuperscript{142} The district court sentenced the defendant to 175 months imprisonment,\textsuperscript{143} and stated that "[t]he purpose of sentencing . . . [wa]s not only the protection of the public, . . . but also to . . . reach some sort of treatment that [would] deter . . . violent activity in the future."\textsuperscript{144} The defendant argued that the district court violated the Sentencing Reform Act because it imposed a term of imprisonment for an improper purpose.\textsuperscript{145} However, the Ninth Circuit noted that the factors to be considered in determining the length of the sentence include the "systematic goals of deterrence, rehabilitation, and consistency in sentencing,"\textsuperscript{146} and therefore found the justification provided by the sentencing court to be sufficient.\textsuperscript{147}

The Ninth Circuit addressed the apparent discrepancy between 18 U.S.C. § 3553(a) and 18 U.S.C. § 3582(a) by distinguishing the type of

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\textsuperscript{137} Id. (citing 18 U.S.C. § 3551(b)).
\textsuperscript{138} Id.
\textsuperscript{139} Id. at 161.
\textsuperscript{140} Id. at 159.
\textsuperscript{141} Id. at 162; see also United States v. Yehuda, 238 F. App'x 712, 713 (2d Cir. 2007) ("[R]ehabilitation . . . is not a permissible basis for increasing [a] term of imprisonment."); United States v. Tsosie, 376 F.3d 1210, 1214 (10th Cir. 2004) ("[T]he initial term of imprisonment is always limited by 18 U.S.C. § 3582(a) . . .").
\textsuperscript{142} United States v. Duran, 37 F.3d 557, 559 (9th Cir. 1994), abrogated by Tapia v. United States, 131 S. Ct. 2382 (2011).
\textsuperscript{143} Id.
\textsuperscript{144} Id. at 560.
\textsuperscript{145} Id.
\textsuperscript{146} Id. (quoting United States v. Upshaw, 918 F.2d 789, 792 (9th Cir. 1990)).
\textsuperscript{147} Id. at 561.
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punishment from the duration of punishment.\textsuperscript{148} Assuming that 18 U.S.C. § 3582(a) prohibits consideration of rehabilitation in determining whether to imprison an offender, it does not prohibit consideration of rehabilitation in determining the appropriate term of imprisonment.\textsuperscript{149} Further, the Ninth Circuit noted that 18 U.S.C. § 3553(a) specifically includes "'correctional treatment' as a factor to be considered in determining sentence length."\textsuperscript{150} Additionally, the Ninth Circuit stated that if Congress intended to prohibit sentencing courts from considering rehabilitation in determining sentence length, it could have enacted a statute that specifically explained that "imprisonment or the length of imprisonment is not an appropriate means of promoting correction and rehabilitation."\textsuperscript{151} Congress did not so specify, and the Ninth Circuit therefore declined to apply 18 U.S.C. § 3582(a) to determinations of sentence length.\textsuperscript{152}

3. The Supreme Court Sets the Circuit Split

The Supreme Court subsequently resolved the circuit split in a decision that addressed "whether the Sentencing Reform Act precludes federal courts from imposing or lengthening a prison term in order to promote a criminal defendant's rehabilitation."\textsuperscript{153} In \textit{Tapia v. United States}, the defendant was convicted of smuggling unauthorized aliens into the United States, and the Sentencing Guidelines recommended forty-one to fifty-one months imprisonment.\textsuperscript{154} The district court sentenced the defendant to fifty-one months after making reference to her need for drug treatment, and noted that her sentence should be long enough to allow completion of the Bureau of Prisons' 500 Hour Drug Treatment Program.\textsuperscript{155} The defendant argued that the district court violated 18 U.S.C. § 3582(a) of the Sentencing Reform Act when it lengthened her prison term in order to facilitate

\textsuperscript{148} Id.

\textsuperscript{149} Id.

\textsuperscript{150} Id. (quoting 18 U.S.C. § 3553(a)(2)(D) (2006)).

\textsuperscript{151} Id.

\textsuperscript{152} Id.; see also United States v. Jimenez, 605 F.3d 415, 423-24 (6th Cir. 2010) ("[T]he court characterized as 'most important' the need to provide defendant with needed . . . treatment . . . . This consideration was . . . hardly an impermissible factor."), abrogated by Tapia v. United States, 131 S. Ct. 2382 (2011); United States v. Hawk Wing, 433 F.3d 622, 629 (8th Cir. 2006) (citation omitted) ("While the district court must acknowledge that imprisonment is not an appropriate means to promote rehabilitation, it must consider . . . the need for the sentence imposed to provide the defendant 'with . . . correctional treatment . . .'"), abrogated by Tapia v. United States, 131 S. Ct. 2382 (2011).

\textsuperscript{153} Tapia, 131 S. Ct. at 2385.

\textsuperscript{154} Id.

\textsuperscript{155} Id.
completion of drug treatment. The Supreme Court concluded that Congress clearly intended sentencing courts to consider all the purposes of punishment with the exception of rehabilitation, because imprisonment is not an effective means of achieving that goal.

Justice Kagan stated that the analysis "starts with the text of 18 U.S.C. § 3582(a)—and given the clarity of that provision's language, could end there as well." However, the evenly divided split among the circuit courts of appeals suggests that the language of the Sentencing Reform Act is not so clear. When read alone, 18 U.S.C. § 3582(a) seems to definitively forbid the imposition of a prison sentence for the purpose of offender rehabilitation. When read in conjunction with 18 U.S.C. § 3553(a)(2)(D), the intent of Congress becomes less clear.

Furthermore, assuming that the Supreme Court was correct in its statutory interpretation, it does not necessarily follow that the rule established in Tapia v. United States applies when imposing or extending a term of imprisonment following revocation of supervised release. The Third Circuit concluded that 18 U.S.C. § 3582(a) was intended to prohibit the sentencing court from advancing the rehabilitative goals of 18 U.S.C. § 3553(a)(2)(D) in initial sentencing. However, the Third Circuit also acknowledged that imposing a term of imprisonment following supervised release is "an issue entirely different from determining what an initial sentence should be." The difference between considering rehabilitation in determining an initial term of imprisonment and considering rehabilitation in sentencing upon revocation of supervised release is derived from the sections of the Sentencing Reform Act that specifically address supervised release. Revocation of supervised release is governed by 18 U.S.C. § 3583(c), which requires consideration of the factors set

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156. Id. at 2386 (quoting 18 U.S.C. § 3582(a) (2006) ("[I]mprisonment is not an appropriate means of promoting correction and rehabilitation.").
157. Id. at 2389.
158. Id. at 2388.
159. See supra Part IV.A.1-2.
160. See 18 U.S.C. § 3582(a) ("[I]mprisonment is not an appropriate means of promoting correction and rehabilitation.").
161. Compare 18 U.S.C. § 3553(a)(2)(D) ("The court . . . shall consider . . . (2) the need for the sentence imposed . . . (D) to provide the defendant with . . . correctional treatment . . . ."), with 18 U.S.C. § 3582(a) ("[I]mprisonment is not an appropriate means of promoting correction and rehabilitation.").
162. United States v. Manzella, 475 F.3d 152, 162 (3d Cir. 2007).
163. Id. at 160 n.4.
164. United States v. Tsosie, 376 F.3d 1210, 1214 (10th Cir. 2004).

B. Imposing or Extending the Term of Imprisonment Following Supervised Release

1. Ninth Circuit: Disallowing Consideration of Rehabilitation

In United States v. Grant, the defendant was convicted of fraud.¹⁶⁶ The district court sentenced the defendant to one day of imprisonment on each count, with five years of supervised release, which required, among other things, participation in substance abuse programs and drug testing.¹⁶⁷ The defendant was caught violating the conditions of his supervised release, and the district court imposed a three-month term of imprisonment, followed by an additional fifty-seven months of supervised release.¹⁶⁸ Several months after his release, the defendant was again charged with numerous violations of the conditions of his release, and the Sentencing Guidelines called for three-to-nine months imprisonment.¹⁶⁹ However, the district court sentenced the defendant to twenty-four months imprisonment followed by twenty-four months of supervised release, in order to promote rehabilitation.¹⁷⁰ The district court noted that 18 U.S.C. § 3553(a) required a “significant enough period of incarceration so that he gets... treatment in a setting that will mandate that he in fact does what he's supposed to do...”¹⁷¹ The defendant argued that the district court violated 18 U.S.C. § 3582(a) of the Sentencing Reform Act by basing the length of his term of imprisonment on his need for rehabilitation.¹⁷²

The Ninth Circuit concluded that the rule prohibiting consideration of rehabilitation applies to sentencing determinations generally, regardless of whether a term of imprisonment is being imposed at initial sentencing or upon revocation of supervised release.¹⁷³ First, the Ninth Circuit addressed the legislative history of the Sentencing Reform Act, and noted that although sentencing was once “premised on a faith in rehabilitation,” the Sentencing Reform Act was founded on the belief that “rehabilitation...
had failed."

Furthermore, the Ninth Circuit reasoned that if consideration of rehabilitation in initial sentencing is prohibited because imprisonment is not an effective means of promoting rehabilitation, it would make little sense to consider imprisonment as an appropriate means of achieving rehabilitation upon revocation of supervised release. The Ninth Circuit concluded that the reasons provided by the Supreme Court in overruling United States v. Duran are equally persuasive with respect to sentencing determinations following revocation of supervised release.

2. Fifth Circuit: Allowing Consideration of Rehabilitation

In United States v. Breland, the defendant was convicted of making false or fraudulent claims, making false statements, theft of government funds, and mail fraud. The district court sentenced the defendant to twenty-four months of imprisonment followed by three years of supervised release. However, the defendant was charged with multiple violations of the conditions of his release, for which the Sentencing Guidelines called for six-to-twelve months imprisonment per violation. The district court subsequently sentenced the defendant to thirty-five months of imprisonment followed by an additional three years of supervised release, and recommended that he participate in the Bureau of Prisons' 500 Hour Drug Treatment Program. The district court explained that its sentencing determination was based upon consideration of the factors listed in 18 U.S.C. § 3553(a).

The defendant argued that the district court violated 18 U.S.C. § 3582(a) of the Sentencing Reform Act in considering rehabilitative goals in determining whether to impose a term of imprisonment during post-revocation sentencing.

Although the Supreme Court has concluded that the Sentencing Reform Act prohibits sentencing courts from considering offender rehabilitation in imposing or extending an initial term of imprisonment, various circuit courts of appeals believe that "post-revocation sentencing [can] be treated

174. Id. (alteration in original) (quoting Tapia v. United States, 131 S. Ct. 2382, 2386-87 (2011)).
175. Id. at 281.
176. Id.
177. United States v. Breland, 647 F.3d 284, 285 (5th Cir. 2011).
178. Id. at 286.
179. Id.
180. Id.
181. Id.
182. Id. at 287 (citing 18 U.S.C. § 3582(a) ("[I]mprisonment is not an appropriate means of promoting correction and rehabilitation.").)
differently."\textsuperscript{184} The Fifth Circuit had previously addressed this issue in \textit{United States v. Giddings} and concluded that, despite the language in 18 U.S.C. § 3582(a), the sentencing court is permitted to consider rehabilitation when determining the length of the term of imprisonment imposed following revocation of supervised release.\textsuperscript{185} Furthermore, the Fifth Circuit noted that the circuit courts of appeals that have addressed the issue have uniformly concluded that 18 U.S.C. § 3582(a) does not apply to the imposition of a term of imprisonment following revocation of supervised release under 18 U.S.C. § 3583(e).\textsuperscript{186}

Additionally, the Second Circuit reasoned that the Sentencing Reform Act expressly provided for rehabilitative needs to affect the term of imprisonment.\textsuperscript{187} First, the sentencing court may consider the rehabilitative factors set forth in 18 U.S.C. § 3553(a) in determining the appropriate period of supervised release.\textsuperscript{188} Subsequently, the sentencing court may revoke a term of supervised release and "require [the defendant] to serve in prison all or part of the term of supervised release."\textsuperscript{189} Therefore, because the sentencing court is permitted to consider rehabilitation in determining the length of a period of supervised release, and because the sentencing court is permitted to require an offender to serve the period of supervised release in prison, rehabilitative needs necessarily affect the term of imprisonment imposed following revocation of supervised release.\textsuperscript{190}

Although the Ninth Circuit found no significant difference between initial sentencing and sentencing upon revocation of supervised release,\textsuperscript{191} the Fifth Circuit did recognize an important textual distinction.\textsuperscript{192} On the one hand, 18 U.S.C. § 3582(a) contains language that specifically prohibits

\begin{itemize}
  \item \textsuperscript{184} See, e.g., United States v. Doe, 617 F.3d 766, 771 (3d Cir. 2010).
  \item \textsuperscript{185} \textit{Breland}, 647 F.3d at 287-88 (citing United States v. Giddings, 37 F.3d 1091, 1097 (5th Cir. 1994)).
  \item \textsuperscript{186} \textit{Id.} at 289; see also \textit{Doe}, 617 F.3d at 771 ("[D]istrict courts may give weight to . . . rehabilitative needs when revoking a term of supervised release . . . ."); United States v. Tsosie, 376 F.3d 1210, 1214 (10th Cir. 2004) ("After considering the § 3553(a) factors, the district court may terminate or extend the term of supervised release . . . ."); United States v. Brown, 224 F.3d 1237, 1241 (11th Cir. 2000) ("[A] court must consider . . . [the] need for correctional treatment when determining whether to revoke supervised release . . . .").
  \item \textsuperscript{187} United States v. Anderson, 15 F.3d 278, 282 (2d Cir. 1994).
  \item \textsuperscript{188} \textit{Id.}; see also 18 U.S.C. § 3583(c) (2006) ("The court, in determination whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553[. . . (a)(2)(D) . . . .]").
  \item \textsuperscript{189} \textit{Anderson}, 15 F.3d at 282 (quoting 18 U.S.C. § 3583(e)(3)).
  \item \textsuperscript{190} \textit{Id.}
  \item \textsuperscript{191} United States v. Grant, 664 F.3d 276, 280 (9th Cir. 2011).
  \item \textsuperscript{192} United States v. Breland, 647 F.3d 284, 288 (5th Cir. 2011) (construing United States v. Giddings, 37 F.3d 1091, 1094-95 (5th Cir. 1994)).
\end{itemize}
consideration of offender rehabilitation at initial sentencing.\textsuperscript{193} On the other hand, 18 U.S.C. § 3583(c) contains no such language and affirmatively requires the sentencing court to consider the rehabilitative factors set forth in 18 U.S.C. § 3553(a)(2)(D) in imposing a term of imprisonment following revocation of supervised release.\textsuperscript{194}

Lastly, the Fifth Circuit addressed the Supreme Court holding in \textit{Tapia v. United States}.\textsuperscript{195} The Supreme Court concluded that the Sentencing Reform Act prohibits consideration of offender rehabilitation in imposing or extending a term of imprisonment,\textsuperscript{196} and justified its statutory interpretation of 18 U.S.C. § 3582(a) by emphasizing "the absence of any provision... granting courts the power to ensure that offenders participate in prison rehabilitation programs."\textsuperscript{197} The Supreme Court subsequently contrasted 18 U.S.C. § 3582(a) against other sections of the Sentencing Reform Act.\textsuperscript{198} Significantly, the Supreme Court specifically acknowledged supervised release as one circumstance in which Congress intended sentencing courts to consider rehabilitation.\textsuperscript{199}

C. Ambiguous Statutory Language and Misguided Legislative Intent

The Sentencing Reform Act appears internally inconsistent because 18 U.S.C. § 3553(a) requires the sentencing court to consider rehabilitation, and 18 U.S.C. § 3582(a) forbids the sentencing court from doing so.\textsuperscript{200} The meaning of an ambiguous statute may be found in the systematic issues it was designed to address, and the Ninth Circuit therefore concluded that the Sentencing Reform Act prohibited consideration of rehabilitation in all sentencing determinations because it was drafted with skepticism toward rehabilitation.\textsuperscript{201} Although legislative history is an appropriate source of guidance when the express language of the statute is inconsistent or

\textsuperscript{193.} \textit{Id.; see also} 18 U.S.C. § 3582(a) ("The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a)... recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.").

\textsuperscript{194.} \textit{Breland}, 647 F.3d at 288; \textit{see also} 18 U.S.C. § 3583(e) ("The court may, after considering the factors set forth in section... 3553(a)(2)(D)... (3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release... ").

\textsuperscript{195.} \textit{Breland}, 647 F.3d at 290.

\textsuperscript{196.} Tapia v. United States, 131 S. Ct. 2382, 2391 (2011).

\textsuperscript{197.} \textit{Breland}, 647 F.3d at 290 (quoting \textit{Tapia}, 131 S. Ct. at 2390).

\textsuperscript{198.} \textit{Id.} (citing \textit{Tapia}, 131 S. Ct. at 2390).

\textsuperscript{199.} \textit{Id.} (citing \textit{Tapia}, 131 S. Ct. at 2390).

\textsuperscript{200.} United States v. Manzella, 475 F.3d 152, 157 (3d Cir. 2007).

\textsuperscript{201.} \textit{See United States v. Grant}, 664 F.3d 276, 280-81 (9th Cir. 2011).
otherwise unclear, it should not be given controlling weight where the concerns underlying the Sentencing Reform Act are no longer supported by social science research findings. Allowing the sentencing courts to consider rehabilitation would generate more effective correctional policy, as rehabilitation has since proven successful in a number of different settings.

The Sentencing Reform Act should be interpreted to allow sentencing courts to consider the rehabilitative factors set forth in 18 U.S.C. § 3553(a)(2)(D) during revocation of supervised release. The Supreme Court has insisted that imprisonment is not an appropriate means of promoting rehabilitation, and has maintained that other punishment options should be implemented in order to facilitate rehabilitation. However, sentencing determinations following revocation of supervised release involve circumstances in which alternative means of rehabilitation have been implemented and proven ineffective. The Sentencing Reform Act requires that the sentence “provide the defendant with needed ... correctional treatment in the most effective manner.” Rehabilitation that will mandate adherence may be the most effective manner in which to rehabilitate an offender who has failed to comply with the conditions of supervised release.

V. RECONSIDERING REHABILITATION

The debate concerning offender rehabilitation has been ongoing since Robert Martinson’s influential proclamation that “nothing works” to reduce recidivism. However, early social science research on rehabilitation has since been criticized as misleading and methodologically unsound, and Robert Martinson himself later retracted his previous conclusions. Further, a reexamination of the original data together with new social...
science research studies have since demonstrated promising results. The effectiveness of correctional theory is typically measured by its impact on recidivism. Other important indicators of effectiveness include whether the correctional policies and practices generate cost savings, or whether such policies and practices successfully transform offenders into more productive members of society. Despite the movement toward increasingly punitive correctional policies and practices, there is ample evidence that correctional treatment can be effective on all measures when implemented intelligently.

A. Rehabilitation and Reduced Recidivism

Since the passage of the Sentencing Reform Act, numerous social science research studies have demonstrated that prison-based rehabilitation programs do in fact have a significant impact on recidivism. Thus, it appears that the condemnation of rehabilitation was merely "a reflection of broader social and intellectual trends." Social science research suggests that the effectiveness of prison-based rehabilitation depends upon the characteristics of the individual offender as well as the characteristics of the rehabilitation program. Further, criminologists have discovered that the seemingly inconsistent conclusions of social science research studies are not random. The correctional system is therefore capable of identifying the characteristics that make certain rehabilitation programs effective, and

211. MacKenzie, supra note 9, at 5.
212. Id.
213. See infra Part V.A-B.
216. Id. at 374.
217. Gendreau, supra note 66, at 156.
using these conclusions to develop guidelines for successful prison-based rehabilitation programs.\textsuperscript{218}

Successful rehabilitation programs reflect three essential principles.\textsuperscript{219} First, the "risk principle" dictates that higher levels of treatment should be directed toward high-risk offenders, whereas lower levels of treatment should be assigned to low-risk offenders.\textsuperscript{220} Second, the "need principle" requires rehabilitation programs to target dynamic risk factors, which are characteristics associated with the likelihood of reoffending.\textsuperscript{221} Dynamic risk factors are commonly labeled "criminogenic needs,"\textsuperscript{222} which include family associations, peer associations, antisocial attitudes, problems with anger management, and problems with impulsivity control.\textsuperscript{223} Lastly, the "responsivity principle" instructs rehabilitation programs to implement treatment interventions that identify and influence the intermediate targets associated with offending and effectively complement the learning style of each individual offender.\textsuperscript{224} Prison-based rehabilitation programs that contemplate these principles will successfully reduce recidivism.\textsuperscript{225}

Additionally, numerous social science research studies have evaluated prison-based educational programs, and the results have been encouraging.\textsuperscript{226} Most offenders are "undereducated, underemployed, and..."
living in poverty [prior to] incarceration,\textsuperscript{227} and offenders who participated in prison-based educational programs improved their chances of maintaining employment and earning higher salaries than similar offenders who had not participated in such programs.\textsuperscript{228} Rehabilitation programs that provide academic and vocational education produce productive members of society who are substantially less likely to reoffend upon release.\textsuperscript{229} Offenders who took advantage of prison-based educational programs reduced their chances of reincarceration by twenty-nine percent, which subsequently translates into reduced correctional expenses.\textsuperscript{230}

B. Rehabilitation and Reduced Cost

In addition to the widespread belief that prison-based rehabilitation programs have no substantial effect on recidivism, such programs are also frequently criticized as excessively costly.\textsuperscript{231} However, social science research demonstrates that prison-based rehabilitation programs produce several economic benefits that partially offset the increased costs.\textsuperscript{232} First, rehabilitation programs have been shown to encourage prosocial behavior among offenders, which subsequently reduces administrative expenditures.\textsuperscript{233} For example, an analysis of the California Substance Abuse Treatment Facility compared offenders housed in a treatment yard with offenders housed in the general population,\textsuperscript{234} and found that the percentage of inmates with disciplinary infractions was lower among the offenders housed in the treatment yards.\textsuperscript{235} Fewer disciplinary infractions reduced the costs typically incurred in reviewing and processing infractions, and generated $112,990 in savings over a two-year period.\textsuperscript{236} Offenders housed in the treatment yards were also less likely to file grievances against prison officials, which generated $217,481 in additional

\textsuperscript{227} Id. at 4 (quoting Chris Tracy, Review of Various Outcome Studies Relating Prison Education to Reduced Recidivism (1994)).


\textsuperscript{229} Id. at 297.

\textsuperscript{230} Karpowitz & Kenner, supra note 226, at 4.


\textsuperscript{233} Id. at 389 ("Effective therapeutic environments . . . reduce[e] costs associated with disciplinary actions, conflict management, and extraordinary security measures.").

\textsuperscript{234} Id.

\textsuperscript{235} Id. at 392.

\textsuperscript{236} Id.
Furthermore, crime produces considerable costs at individual, community, and national levels. More than twenty-three million criminal offenses were committed in 2007 alone, which generated "approximately $15 billion in economic losses to victims and $179 billion in government expenditures." More than half of the offenders released from prison will reoffend, and significant economic benefits would accumulate when rehabilitation programs assist offenders in escaping the "cycle of substance abuse, crime, and reincarceration, for life as a productive member of the community." Although prison-based rehabilitation programs are expensive, such programs are cost-effective when compared with incapacitation without rehabilitation. Furthermore, empirical evidence demonstrates that rehabilitation is more effective than correctional policies and practices based on other theories of punishment, and is therefore a rational long-term investment.

VI. CONCLUSION

The Sentencing Reform Act requires the Sentencing Commission to "periodically... review and revise [the Sentencing Guidelines] in consideration of comments and data coming to its attention." Improvements in prison-based rehabilitation programs and advances in the field of criminology demand a revision of the Sentencing Guidelines that will assign equal weight to rehabilitative needs. The correctional system is now capable of identifying the characteristics that make certain rehabilitation programs effective and using these conclusions to develop guidelines for successful prison-based rehabilitation programs. Although the Sentencing Reform Act was drafted with skepticism toward

237. Id. at 393.
239. Id.
rehabilitation, numerous studies indicate that prison-based rehabilitation programs have been successful when correctly implemented.\textsuperscript{245}

Correctional policy favoring incapacitation without rehabilitation "is an expensive folly with short-term benefits — [a] 'winning [of] battles while losing the war.'"\textsuperscript{246} More than forty percent of all offenders are rearrested within three years of release,\textsuperscript{247} and it is therefore imperative to allow sentencing courts to consider "the need for the sentence imposed . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment."\textsuperscript{248} Prison-based rehabilitation programs provide offenders with the skills necessary for successful reintegration,\textsuperscript{249} and thereby protect society from a perpetual cycle of reoffending. It is irresponsible correctional policy to release offenders back into society unimproved and inclined to reoffend.

\textsuperscript{245} See supra Part V.A-B.
\textsuperscript{246} PETERSILIA, supra note 57, at 93 (internal quotation marks omitted) (quoting Warren E. Burger, Reforms Are Needed to Protect Society From Crime and Lawlessness, 67 A.B.A. J. 290, 293 (1981)).