



HELPING SHED LIGHT ON THE OBSTACLES PREVENTING OUR JUSTICE SYSTEM FROM BEING JUST.

May 20, 2022

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Garland:

When Congress passed the First Step Act (FSA) in December of 2018, those lawmakers made a deliberate decision about the FSA Time Credits Program. They specifically chose to define “evidence-based recidivism reduction programming” and “productive activities” broadly.

First, they defined “ ‘evidence-based recidivism reduction program’ ” as “either a group or individual activity that” “has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism” and “is designed to help prisoners succeed in their communities upon release from prison.”¹ Second, they defined “ ‘productive activity’ ” as “either a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating, and may include the delivery of the programs ... to other prisoners.”²

Since the law’s enactment, people in Bureau of Prisons (BOP) custody and their loved ones have waited to see how these broad definitions would apply in reality. In January of 2022, the BOP and Department of Justice (DOJ) made sure that the broad definitions on paper matched reality.

For instance, in response to comments that UNICOR jobs, college courses, and other programs and activities should count for FSA Time Credits, the BOP “agree[d] with these commenters,” emphasizing its plan to “structure[] its programs and work assignments to promote participation and flexibility.”³ Similarly, the BOP acknowledged that defining “a day” as eight hours “was inconsistent with the goals of the FSA and would have been logistically burdensome to calculate and administer,” opting instead for “a more straightforward and administratively manageable approach” that incentivizes and rewards participating on a rolling basis.⁴ Finally, the BOP recognized that retroactively applying FSA Time Credits starting on the date of the FSA’s enactment was “more consistent with the FSA’s goals of reducing recidivism through participating in programming and activities...”⁵

Unfortunately, at least in some facilities, one of the BOP’s most meaningful programs—the Mothers and Infants Together (MINT) Program—appears to have fallen through the cracks.

¹ 18 U.S.C. § 3635(3)(A)-(B).

² 18 U.S.C. § 3635(5).

³ “Supplementary Information,” *Department of Justice Bureau of Prisons*, available at https://www.bop.gov/inmates/fsa/docs/bop_fsa_rule.pdf (last visited May 10, 2022).

⁴ *Id.*

⁵ *Id.*

“The MINT Program is a community residential program that aims to assist offenders during the last two months of pregnancy.”⁶ As Volunteers of America Texas explains, mothers “enter the program at about seven months into their pregnancy and spend the next two months preparing for the birth of their child by attending classes and registering for public aid programs.”⁷

Interrogating Justice strongly believes that the MINT Program is “a group or individual activity that” “has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism” and “is designed to help prisoners succeed in their communities upon release from prison” or “a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating....” Put more simply, the MINT Program is an “evidence-based recidivism reduction program” or “productive activity.”

It is hard to imagine a valid reason for excluding the MINT Program from the definitions of “evidence-based recidivism reduction program” or “productive activity.” After all, the BOP’s own “FIRST STEP ACT Approved Programs Guide” specifically identifies “Family/Parenting” as one of the “13 areas that directly impact one’s ability to live a healthy and productive life.”⁸ That’s why the BOP expressly includes programs such as Assert Yourself for Female Offenders, Female Integrated Treatment, Life Connections, National Parenting From Prison, Threshold, Franklin Covey 7 Habits on the Inside, Women’s Relationships, and so many others as addressing the “Family/Parenting” need area and, as a result, eligible for FSA time credits. And, more directly, the BOP’s new rule specifically identifies “Family relationship building, structured parent-child interaction, and parenting skills” as “EBRR Programs.”⁹

The U.S. incarcerates more than its fair share of women.¹⁰ But only a narrow group of those women are pregnant, in BOP custody, and participating in the MINT Program, which only takes place during “the last two months of pregnancy.”¹¹ That participation addresses the “Family/Parenting” needs, which is precisely the type of need the DOJ and BOP identified as warranting FSA Time Credits. These new mothers deserve FSA Time Credits for their participation in the MINT Program.

Sincerely,



Peter J. Tomasek
Editor-in-Chief, Interrogating Justice

⁶ “Female Offenders,” *Federal Bureau of Prisons*, available at

https://www.bop.gov/inmates/custody_and_care/female_offenders.jsp (last visited Apr. 28, 2022).

⁷ “Mothers and Infants Nurturing Together Program,” *Volunteers of America Texas*, available at <https://www.voatx.org/mint> (last visited Apr. 28, 2022).

⁸ “FIRST STEP ACT Approved Programs Guide,” *Department of Justice Federal Bureau of Prisons*, available at https://www.bop.gov/inmates/fsa/docs/fsa_program_guide_2201.pdf (last visited May 10, 2022).

⁹ 28 C.F.R. § 523.41(a)(2).

¹⁰ See, e.g., Carolyn Sufirin, MD, PhD, *et al.*, “Pregnancy Outcomes in US Prisons, 2016-2017,” *American Journal of Public Health*, Vol. 109 No. 5 (May 2019) (“The United States has 4% of the world’s female population but 30% of its female incarcerated population.”).

¹¹ “Female Offenders,” *supra* n. 6.

