

BARS BEHIND BARS: DIGITAL TECHNOLOGY IN THE PRISON SYSTEM

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Abstract

With little opportunity to engage with technology while behind bars, returning citizens are finding themselves on the far side of the digital divide and increasingly vulnerable to recidivism. Investing in a well-run digital literacy program for our prison system is an innovative solution to a persistent problem and a rare win-win situation for inmates, prison officials, and American taxpayers. We begin by discussing how inmate tablet distribution programs mutually benefit both inmates and prison officials. We then explore prison profiteering by technology companies as a potential obstacle to the successful administration of technology programs, discussing the emergence of virtual monopolies in the prison technology space, their history of controversial pricing practices, and how these practices are perpetuated through prison tablet programs. We then present novel insights into how competitive bidding can be used as a public policy instrument to regulate competition, specifically in the context of prison technology. We argue that a traditional bidding framework is insufficient to act as a policy instrument and propose an alternative incentive-based framework toward this end. We conclude by outlining several practical recommendations that prison officials should consider when administering digital literacy programs in their facilities.

Keywords — digital divide, technology, recidivism, corrections, criminal justice system, competition policy, prison profiteering

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Introduction

When inmates become returning citizens, they emerge anachronisms in an almost unrecognizable world. For Jesse Pender, a former inmate who was released in 2011 after serving a thirteen-year sentence, reentering society “was like going from the old ages to Star Wars.”¹ For another, while learning how to work smartphones and apply for jobs on the Internet came with their own set of challenges, it was the self-checkout counter at the grocery store that proved the most daunting.² And when it comes to finding employment, returning citizens face an uphill battle due to *digitalization*, the diffusion of digital technology into nearly every aspect of business.³ A 2017 report found that jobs relying heavily on digital skills increased by more than four times from 2002 to 2016.⁴ Meanwhile, jobs that reported little to no need for digital skills, often the kinds of positions sought out by inmates upon release,⁵ were cut in half over the same time period.⁶ Surrounded by a “digital moat,”⁷ incarcerated populations are kept at a disadvantage due to a lack of access to training opportunities in digital skills otherwise available to the general public. And without the ambient exposure to digital technology free citizens encounter everyday, inmates have little opportunity to learn by osmosis. The result is a returning prison population on the far side of the digital divide — ill-prepared for the challenges of reentering free society and vulnerable to recidivism.

¹ Jesse Pender, interview with Manoush Zomorodi, WNYC Studios, Note to Self, podcast audio, March 23, 2013, <https://www.wnycstudios.org/podcasts/notetoself/episodes/278113-former-inmates-struggle-to-learn-new-technologies>.

² See Stephen LaConte, *Ex-Prisoners Are Sharing the Things They Were Most Shocked to Discover About the World When They Got Out*, BUZZFEED (Aug. 13, 2020), <https://www.buzzfeed.com/stephenlaconte/prisoners-biggest-shocks-of-outside-world-reddit>.

³ MURO ET AL., BROOKINGS INSTITUTION, *DIGITALIZATION AND THE AMERICAN WORKFORCE 3* (2017), <https://www.brookings.edu/research/digitalization-and-the-american-workforce>.

⁴ From 5 percent in 2002 to 23 percent in 2016. *See id.* at 15.

⁵ *See generally* ADAM LOONEY & NICHOLAS TURNER, BROOKINGS INSTITUTION, *WORK AND OPPORTUNITY BEFORE AND AFTER INCARCERATION* (2018), https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

⁶ *See supra* note 4.

⁷ Dan Tynan, *Online Behind Bars: If Internet Access is a Human Right, Should Prisoners Have It?*, THE GUARDIAN (Oct. 3, 2016, 6:00 AM), <https://www.theguardian.com/us-news/2016/oct/03/prison-internet-access-tablets-edovo-jpay>.

The high likelihood of any given inmate to return to prison after release represents a stubborn inefficiency in the criminal justice system, what researchers call the “revolving door of America’s prisons,”⁸ that costs taxpayers billions every year.⁹ A longitudinal study by the Bureau of Justice Statistics following 400,000 state prisoners found that since release, more than half were rearrested within two years, and 83 percent within nine years.¹⁰ Fortunately, studies have shown that the solution is fairly straightforward: focus on education and employment for inmates. In a meta-analysis compiling hundreds of studies conducted over thirty years, the RAND Corporation found that inmates who participate in educational programs while in prison are forty-three percent less likely to be re-incarcerated.¹¹ This translates to massive savings for taxpayers, with every dollar invested in prison education estimated to return at least four dollars over the course of three years.¹²

But with the barrier to stable employment becoming increasingly insurmountable for returning citizens who lack computer skills, it is necessary for prison officials to rethink how, if at all, inmates encounter digital technology while they are still incarcerated. Installing computer labs, for example, can afford inmates who are interested in pursuing or continuing a technical career upon release a chance to foster digital skills. Coursework in math and literature can be supplemented with free digital content from resources like MIT OpenCourseWare and Khan Academy.

Apart from clear educational and career development opportunities for inmates, an increased digital presence in prisons may also improve facility

⁸ PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA’S PRISONS (2011), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/pewstateofrecidivism.pdf.

⁹ Taxpayer burden is amplified in states like California and New York that spend more than twice the national average on inmates. See CHRIS MAI & RAM SUBRAMANIAN, VERA INSTITUTE OF JUSTICE, THE PRICE OF PRISONS: EXAMINING STATE SPENDING TRENDS, 2010 - 2015 8 (2015).

¹⁰ See ALPER ET AL., BUREAU OF JUSTICE STATISTICS, 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005-2014) 2 (2018), https://www.bjs.gov/content/pub/pdf/18upr9yfup0514_sum.pdf.

¹¹ See LOIS M. DAVIS ET AL., RAND CORPORATION, EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS 57 (2013), https://www.rand.org/pubs/research_reports/RR266.html.

¹² Every dollar invested in prison education is estimated to return four to five dollars over three years from an associated decrease in recidivism. See *id.* at 40.

management and logistics. For example, electronically distributed reading material not only saves on the cost of materials, but also eliminates security concerns that physical textbooks can stash contraband. For prison officials, controlling recreational computer use introduces alternative behavior management techniques that can reduce violent inmate interactions. A well-run prison technology program is a win-win situation that helps facilitate returning citizens' transitions back to civilian life amid rapid digitalization, while offering new inmate management solutions for prison administrators.

Part I of this paper begins by discussing increasingly popular prison tablet programs. Part II offers a comprehensive exploration of prison profiteering practices by technology companies, discussing the emergence of virtual monopolies in the prison technology space, their history of controversial pricing practices, and how these practices are perpetuated in the inmate tablet programs they administer. Part III presents novel insights into how competitive bidding can be used as a public policy instrument to regulate competition. This paper concludes by outlining several practical recommendations that prison officials should consider when administering digital literacy programs in their facilities.

I. Prison Tablet Programs

The most popular manifestations of a prison technology program have come in the form of prison tablets due to their low per-unit cost, low overhead, and ease of distribution. Correctional facilities partner with prison technology companies like JPay and Global Tel-Link (GTL) to provide inmates corrections-grade tablets preloaded with a selection of games and music, educational content, mental health and legal resources, and secure messaging services. In most cases, tablets come with a restrictive operating system configured so that inmates are only able to access the facility's secure local area network (LAN). Inmates are unable to access the open internet. The device itself is custom built with a shatter-resistant, transparent plastic housing to ensure that it cannot be used to stash dangerous items and pieces of a broken case cannot be made into a shiv.

While there have been no significant security breaches associated with inmate tablets, there have been a few notable incidents. In 2015, prison officials in Napa County, California, temporarily suspended a tablet pilot program amid reports that some prisoners were trying to reset the devices in order to gain unrestricted

Internet access.¹³ Although officials note that these efforts would not have worked, the tablets were temporarily confiscated from inmates as a precautionary measure and have since been returned. In 2018, Idaho inmates exploited a vulnerability in JPay's software that allowed them to download \$225,000 worth of music, books, and movies for free.¹⁴ According to JPay, the vulnerability has since been resolved.¹⁵

Apart from these few isolated incidents, the vast majority of prison tablet programs have proven to be secure and reliable staples in correctional facilities. Prison education startup American Prison Data Systems (APDS) reported that their tablets, deployed across eighty-eight facilities in seventeen states, have accumulated over nine million hours of usage without any security problems.¹⁶

Tablet programs were also shown to enhance other aspects of prison security. For instance, the emphasis on email and secure messaging reduces the risk of paraphernalia being received through the postal system. Digital textbooks reduce both the cost of materials and the potential risk for textbooks to be used to hide contraband. But arguably the most significant effect of tablets on prison safety is their ability to keep inmates busy, resulting in fewer altercations with officials and other inmates. Captain Sean Stewart, who oversaw a six-month pilot program at his facility in Pima County, Arizona, noted that since implementing their tablet program, "suicide attempts and ideations are down 60 percent and ... successful suicides are down 100 percent. Staff assaults are down 60 percent, and ... inmate-on-inmate assaults are down 40 percent as well."¹⁷ Some prison officials are experimenting with using tablets as an alternative behavior management tool, taking away device privileges if inmates misbehave or assigning mandatory anger management courses

¹³ Howard Yune, *Napa Jail Hits Pause on Inmate Tablets, Awaits Security Updates*, NAPA VALLEY REGISTER (Jun. 1, 2015), https://napavalleyregister.com/news/local/napa-jail-hits-pause-on-inmate-tablets-awaits-security-updates/article_40427cd5-b835-5ffb-b8a7-b3d9fb6777ec.html.

¹⁴ Rebecca Boone, *Idaho Prison Officials: Inmates Hacked System to Get Credits*, ASSOCIATED PRESS (Jul. 26, 2018), <https://apnews.com/article/dfd5dcccdf75c4b5dbc97ff5ecf3f3d5b>.

¹⁵ Taylor Hatmaker, *Idaho Inmates Hacked Prison-Issued Tablets for \$225,000 in Credits*, TECHCRUNCH (Jul. 27, 2018, 12:44 PM), <https://techcrunch.com/2018/07/27/inmates-idaho-jpay-hack/>.

¹⁶ American Prison Data Systems, *APDS in Numbers*, <https://apdsincorporate.wpengine.com/our-impact/#apds-in-numbers>.

¹⁷ Sean Stewart, *How Tablets Are Helping Us Clean Up Our Prison*, WASHINGTON EXAMINER (Sep. 5, 2017, 12:01 AM), <https://www.washingtonexaminer.com/how-tablets-are-helping-us-clean-up-our-prison>.

accessible through their device.¹⁸ The program was revolutionary for Captain Stewart, who wrote: “[i]nmate tablets are the most effective inmate management tool I have seen in my 25 years as a corrections professional.”¹⁹ Inmate tablets have gained an avid following among many prison officials like Captain Stewart, especially those who have seen the program at work in their own facilities. A 2021 survey found that officials who work in digitally advanced prisons, despite some initial skepticism, ultimately believe that such programs have a positive impact in their facilities.²⁰

II. Prison Profiteering and Predatory Contracts

As more correctional facilities partner with technology companies like JPay and GTL to adopt tablet programs, new problems emerge surrounding prison profiteering practices. Through a series of acquisitions and mergers over three decades, JPay and GTL have dominated the prison telecommunications space, effectively becoming virtual monopolies. These anticompetitive practices have allowed corporations to gouge families with high prices and fees for prison phone calls,²¹ a practice which reportedly left one in three inmate families in debt²² and led to proposed legislation and regulatory actions by the FCC. In 2015, the agency placed caps on out-of-state prison phone call rates. Three years later, New York City became the first major city to make phone calls free for inmates and their families,²³ with other cities and counties following suit. In an effort to bypass these regulatory measures, some companies have resorted to indirect profiteering practices, such as partnering with money transfer services like Western Union to charge families extra

¹⁸ See MICHELE COPPOLA, NATIONAL INSTITUTE OF JUSTICE, INMATE USE OF COMPUTER TABLETS IN PIMA COUNTY 1-2 (2017), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/inmate-use-computer-tablets-pima-county>.

¹⁹ Sean Stewart, *supra* note 17.

²⁰ Andrea Mufarreh et al., *Prison Official Perceptions of Technology in Prison*, PUNISHMENT & SOC'Y (2021).

²¹ See generally PETER WAGNER & ALEXI JONES, PRISON POLICY INITIATIVE, STATE OF PHONE JUSTICE (2019), https://www.prisonpolicy.org/phones/state_of_phone_justice.html.

²² ELLA BAKER CENTER FOR HUMAN RIGHTS, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 30 (2015), <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

²³ Katie Honan, *New York City Jail Inmates Can Now Make Free Phone Calls*, WALL STREET JOURNAL (May 1, 2019, 4:52 PM), <https://www.wsj.com/articles/new-york-city-jail-inmates-can-now-make-free-phone-calls-11556743962>.

fees to add prison phone credits. For example, adding \$50 of phone credits, enough for just over two hours of conversation,²⁴ incurs a \$12 charge from Western Union.²⁵ Profits can then be passed back to the telephone service providers in the form of “revenue shares.”²⁶

In recent years, these exploitative tactics have shifted to tablet programs. Correctional facilities across the country often receive tablets from companies like GTL and JPay free of charge to prisons and American taxpayers. While seemingly a charitable gesture, this is actually a predatory pricing tactic used to gain market share. Once companies have distributed tablets, often in exchange for an exclusive contracting deal with the facility, they charge exorbitant prices for inmates to use the devices, pricing ebooks, games, videos, music, and messaging services well above their normal fair market price.²⁷

For Jacob Carlson, an inmate at Virginia Beach Jail whose tablet was provided for free by GTL, playing his favorite skateboarding video game on his prison-issued tablet is a guilty pleasure that cost his family \$200. Listening to an audiobook can cost up to \$20, and up to \$46 to download a music album.²⁸ At one point, JPay collected profits on thousands of ebooks available to the general public for free, although the company has since stopped this particular practice.²⁹

²⁴ Using 2018 state jail rates calling rates, \$5 for 15 minutes. *See supra* note 21.

²⁵ *Id.*

²⁶ *Id.*; *see also* Prison Policy Initiative, Exhibit 2, https://www.prisonpolicy.org/phones/2019_exhibits/exhibit_2.pdf (an internal email exchange between Western Union and AmTel, a prison telecommunications company, discussing “revenue sharing” practices).

²⁷ *See* Tonya Riley, “Free” Tablets Are Costing Prison Inmates a Fortune, MOTHER JONES (Oct. 5, 2018), <https://www.motherjones.com/politics/2018/10/tablets-prisons-inmates-jpay-securus-global-tel-link/>.

²⁸ *See* Mack Finkel & Wanda Bertram, *More States Are Signing Harmful “Free Prison Tablet” Contracts*, PRISON POLICY INITIATIVE (Mar. 7, 2019), <https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/>; *see also* Edward Lyon, “Free” E-Tablets Are Anything But, 31 PRISON LEGAL NEWS 44 (2020), <https://www.prisonlegalnews.org/news/2020/mar/4/free-e-tablets-are-anything/>.

²⁹ *See* Michael Waters, *Free Tablets for the Incarcerated Come With a Price*, THE OUTLINE (Dec. 3, 2019, 9:59 AM), <https://theoutline.com/post/8329/jpay-free-tablet-program-ripoff>.

These companies also increase their profit margin by cutting corners on the quality of their products and services.³⁰ Brian Hill, CEO of Edovo, an emerging prison education startup aiming to compete against JPay, said of the latter's education programs: "Really, it's a PDF and video dump of whatever content they can find. . . . At the end of the day, they don't care. . . . They're big and they're clunky and they don't try very hard."

With email and video chat replacing collect calls and providing companies with more opportunities to profit off its incarcerated user base, tablet programs can be seen as a continuation of JPay and GTL's historically controversial practices in prison telecommunications. Every email requires paid "postage," as does every attached image and additional page, with the price of a digital stamp raised around special days like Christmas and Mother's Day.³¹ If families wish to spend time with an incarcerated loved one over video chat, JPay charges \$10 for thirty minutes and \$1 for one thirty-second "videogram."³² By charging inmates and their families excessive fees to stay connected, companies exacerbate the issues their tablet program claims to help solve, disproportionately affecting lower-income families who may not be able to afford the costs of keeping touch with their loved one.³³

A former inmate from New Orleans stated that prison "instantly destroyed my family because of the distance and the cost associated with visiting and phone calls. I suddenly became a dead person to them."³⁴ Another former inmate from Oakland lost contact with his family, which "kept [him] from being able to plan for [his] future after prison."³⁵ Having a future outside of prison that is supported by loved ones is critical to reducing recidivism rates. Profiteering practices can force lower-income families to choose between staying connected with an incarcerated loved one and keeping the lights on at home.

³⁰ Michael Waters, *The Outrageous Scam of "Free" Tablets for the Incarcerated*, THE OUTLINE (Aug. 10, 2018, 9:49 AM), <https://theoutline.com/post/5760/free-tablets-in-prison-nightmare>.

³¹ See DAVID DAYEN, *MONOPOLIZED: LIFE IN THE AGE OF CORPORATE POWER* 272 (2020).

³² See *id.*

³³ Families in regular contact are less likely to report experiencing separation or divorce from partners or spouses, damaged child-parent relationships, and sibling separation. Families who were able to stay in regular contact were also more likely to report that family relationships became stronger. See ELLA BAKER CENTER FOR HUMAN RIGHTS, *supra* note 22.

³⁴ *Id.* at 32.

³⁵ *Id.* at 31.

These practices evoke mixed feelings for John J. Lennon, a writer for the Marshall Project, inmate at Sullivan Correctional Facility, and JPay tablet user. While Lennon does not “pretend to ignore that [JPay] has some pretty indefensible pricing practices,” their tablet program gives him and his fellow inmates “a crucial tether to our loved ones on the outside.”³⁶ In a New York Times op-ed, Lennon wrote:

Mom will probably die before I get out of prison. Her Parkinson’s has advanced over the years, so she can’t visit. Until recently, I’d accepted that I’d never see her again. But lately, she’s been sending me 30-second videos...It costs her about a dollar to send each message; to me, they are priceless.³⁷

These pricing practices appear morally questionable at best, and predatory at worst. While there is no denying the positive impact of prison tablets on inmates and prison officials,³⁸ if programs are administered in a way that enables further prison profiteering by private corporations, perhaps they will prove to bring more harm to the criminal justice system than good.

III. Preventing Prison Profiteering

Profiteering practices by technology companies like JPay and GTL highlight the need for regulations that foster market competition. Competitive bidding is a traditional procurement process among public agencies to solicit multiple bids from vendors for a variety of large-scale government projects such as the construction of highways and stealth aircraft. Adopting competitive bidding allows public agencies to partner with private entities while maintaining transparency and reducing spending. And when combined with a well-designed system of regulations that align market forces with governmental objectives, this auctionary approach can also be a valuable instrument for public policy.

³⁶ John J. Lennon, *The Cost of Calling My Mom From Prison*, N.Y. TIMES (Feb. 12, 2021), <https://www.nytimes.com/2021/02/12/opinion/prison-internet-technology-jpay.html>.

³⁷ *Id.*

³⁸ *See id.* (Lennon writes, “[The] tablet program offers a window to the world, a tool to teach us, to inspire us, to build a network and career and to even earn income while in prison.”)

A. *On No-Bid Contracts*

Historically, however, competitive bidding processes have had a tendency to devolve into *no-bid contracts* where agencies only consider a single bidder, likely one that has an already established relationship with the contracting agency, as a way to fast-track the bidding process. This practice is especially prevalent in legal or security-related contexts where limiting negotiations to a single company is preferable. States have taken the initiative to improve their oversight of no-bid contracts, after several reports of bribery, corruption, and improper procurement. Christopher Epps, a former Mississippi corrections commissioner, is serving nearly 20 years in prison for accepting more than \$1.4 million from GTL in exchange for no-bid contracts; GTL agreed to pay a \$2.5 million settlement.³⁹ Inmate advocates are calling for a ban on no-bid contracts in prisons to promote transparency and prevent officials from engaging in corruption. Given the existing virtual monopolies already operating in the prison technology space as well as the obvious security-related nature of this field, it is fair to expect no-bid contracts will emerge when the opportunity arises. Specific measures should be implemented to eliminate such *sole-source* procurements that subvert market competition and can further monopolistic practices.

B. *On Commissions*

While competitive bidding is a simple way to foster competition, this system does not ensure that the competitive aspects of proposals are necessarily aligned with public policy goals. For example, in an effort to win over prison administrators, many companies offer correctional facilities a portion of their profits through commissions. Facilities are then inclined to not only pick the proposal offering the highest commission, but also support efforts by companies to increase their profit margins, even if it means compromising the quality of their services. In an exclusive contract with GTL, South Dakota's Department of Corrections (DOC) retained half of the profits from secure messaging and a quarter from phone calls.⁴⁰ Connecticut's DOC earns ten to thirty-five percent from profits made on audiobook and music

³⁹ Ryan Martin, *Tablets for Indiana Inmates May Be Free, But There's A Catch*, INDYSTAR (Nov 20, 2017, 6:00 AM), <https://www.indystar.com/story/news/crime/2017/11/20/indiana-prisons-tablets-offenders-inmates-department-correction/858322001/>.

⁴⁰ *See supra* note 28.

purchases.⁴¹ Florida's DOC states outright that they will award contracts to the "bidder submitting the highest percentage commission."⁴² This system incentivizes administrators to award contracts solely based on the amount of commission a company offers, regardless of the merits of their proposal, and aligns the interests of correctional facilities and private corporations against those of inmates and their families.

One natural solution some have proposed is to place a cap on the commission correctional departments are allowed to receive. In theory, this would ensure that bidders cannot rely solely on favorable commissions to secure contracts. However, companies have found ways to get around this restriction. JPay and GTL, for instance, changed their contracts' operating language from *commissions* to *signing bonuses*.⁴³ After banning commissions, California accepted an \$800,000 yearly "administration fee" from GTL.⁴⁴ Even if the definition of a "commission cap" were expanded to include other forms of commission fees, companies remain free to sweeten the pot in other ways unrelated to their proposal, such as with conditional contributions to political campaigns and sheriff-led organizations.⁴⁵ Imposing commission caps is a necessary but insufficient provision that does little to change the underlying incentive structures that enable prison profiteering.

C. Competitive Bidding as a Public Policy Instrument

Companies' proclivity to entice prison administrators by shifting costs results in what some refer to as the "basic problem" of consumers in corrections:

⁴¹ *Id.*

⁴² Mary Fainsod Katzenstein & Maureen Waller, *Phone Calls Won't Cost up to \$14 a Minute Anymore but Here's How Prisoners' Families Are Still Being Fleeced*, WASHINGTON POST (Oct 26, 2015, 5:35 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/26/phone-calls-wont-cost-up-to-14-a-minute-anymore-but-heres-how-prisoners-families-are-still-being-fleeced/>.

⁴³ Peter Wagner & Alexi Jones, *On Kickbacks and Commissions in the Prison and Jail Phone Market*, PRISON POLICY INITIATIVE (Feb. 11, 2019), <https://www.prisonpolicy.org/blog/2019/02/11/kickbacks-and-commissions/>.

⁴⁴ Prison Policy Initiative, Comment Letter to FCC Addressing the Commission System 2 (Aug. 1, 2013), <https://ecfsapi.fcc.gov/file/7520935168.pdf>.

⁴⁵ Peter Wagner & Alexi Jones, *see supra* note 43.

[G]rowing prison populations have led to unsustainable correctional budgets, which has led agencies to seek out so-called “no cost” contracts (in reality, this simply means shifting costs from the public sector to incarcerated people).⁴⁶

Because its underlying incentive structure is bilateral, with mechanisms acting in the mutual interests of bidders and buyers, a traditional competitive bidding process only serves to worsen this “basic problem” and is insufficient to act as an effective policy instrument. Reforming this system to advance public policy goals requires additional mechanisms that protect inmate consumers from price-gouging tendencies. At minimum, this would entail reviewing the language of any legal code governing the sale of goods or services in corrections and ensuring that it contains clear provisions that specifically protect inmates and their families. New York State, for instance, uses concise, specific language to regulate profiteering practices for inmate telephone services; correctional facilities in the state are mandated to consider “the lowest possible cost to the telephone user” when procuring service.⁴⁷ However, with no concrete enforcement mechanisms, these provisions may prove to be largely toothless.

Robust mechanisms should be (1) *proportionate*, contributing significant regulatory forces that “pull” those governing bidders and buyers into an equilibrium, and (2) *adaptable*, able to adapt and respond to any changes in the dynamics of the other parties. One proposed solution that meets these criteria is the establishment of a consumer review board, functionally similar to the Consumer Financial Protection Bureau,⁴⁸ that would continually represent the interests of inmates and their families and align market incentives with long-term policy goals.⁴⁹

It is important for government agencies to partner with the private sector when providing prison populations with technology. However, the emergence of virtual monopolies in this space not only impedes productive, responsible partnerships but also undermines the integrity of the criminal justice system. An effective and sustainable set of regulatory mechanisms will foster competition and

⁴⁶ Stephen Raher, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 HASTINGS RACE & POVERTY L.J. 3, 77 (2020).

⁴⁷ N.Y. COR. LAW § 623

⁴⁸ Similar, but not the same; there are nuances that would make entering into the purview of the CFPB an unideal solution. See Catherine E. Akenhead, Note, *How States Can Take a Stand Against Prison Banking Profiteers*, 85 GEO. WASH. L. REV. 1224, 1250 (2017).

⁴⁹ *Id.* at 1256.

preserve consumer choice, disincentivize correctional departments from entering into harmful contracts, and ensure that market forces align with the long-term programmatic interests of the prison system. While this will certainly require a coordinated response from all levels of government, most of the responsibility falls on state governments to ensure that their correctional facilities are entering into partnerships with responsible providers.⁵⁰

IV. Program Recommendations

As more correctional facilities adopt inmate tablet programs, or generally seek to increase inmate access to digital technology, program administrators should keep in mind the following points.

A. *Technology Isn't Everything*

Technology is essential; but technology isn't everything. "Digitally advanced" does not necessarily mean "better." There is nothing inherently good or bad about an increased digital presence in correctional facilities. If technology is used, for instance, to enrich private companies, or as a brute-force cost-cutting measure that is advertised as a superior replacement for an essential service, it can be a very bad system. The Prison Policy Initiative conducted a comparative case study between two states' correctional departments that used two very different approaches to their digitized law libraries.⁵¹ One, Oregon, adopted their digital library as a way to provide inmates with legal materials not available in their facility's limited collection. The other, South Dakota, replaced essential in-person legal assistance with a law research app accessible on inmates' GTL tablets. The responsible digitization of essential inmate services stems from the critical distinction of technology as a *means to an end* rather than an *end in itself*. Regulations are needed to ensure that facilities who choose to become digitally advanced are maximizing the utility of technology. States can also adopt a set of well-defined milestones to continually incentivize facilities' productive use of technology.

⁵⁰ See generally *id.*

⁵¹ See Stephen Raheer & Andrea Fenster, *A Tale of Two Technologies: Why "Digital" Doesn't Always Mean "Better" for Prison Law Libraries*, PRISON POLICY INITIATIVE (Oct. 28, 2020), <https://www.prisonpolicy.org/blog/2020/10/28/digital-law-libraries/>.

B. *Bridge the Teacher Gap*

Digitally delivered coursework does not preclude the need for passionate, qualified teachers. Brian Hill, the CEO of Edovo, emphasized that his company's inmate tablet program is "not a replacement for education programing, but it fills a massive void in prisons today."⁵² RAND's meta-analysis found that inmate education is significantly linked to decreasing recidivism rates; but the analysis also explored the role of teachers in prison education and found that return on investment is maximized when instructors act as effective conduits between inmates and the outside world.⁵³ Successful programs also continue offering support during the critical three years after release, during which returning citizens are most likely to recidivate.⁵⁴

Correctional administrators should recognize the role of facilitators in inmate tablet programs, specifically looking to the education and nonprofit sectors to forge partnerships that can help bridge the teacher gap. The continuing success of such programs ultimately lie in the strength of their community partnerships, which are especially valuable in the not uncommon event that correctional budgets are cut or diluted.

C. *Collaborate with Researchers*

Incarcerated populations are categorized by researchers as "hard-to-reach,"⁵⁵ which can make it very difficult to produce meaningful studies that can inform public policy decisions. The influential RAND meta-analysis, a work heavily cited in this paper, used a dataset of fifty studies on correctional education conducted over several decades, ranging from 1980 to 2011, to describe a correlation between education and recidivism. But when it comes to finer points, the relationships are less clear cut and often inconclusive. For instance, RAND's meta-analysis found no statistically significant improvement in academic performance for inmates who underwent

⁵² Ben Schiller, *A Tablet-Based Distance Learning Program Reaches Its Way Into Jail*, FAST COMPANY (Sep. 06, 2016), <https://www.fastcompany.com/3063279/a-tablet-based-distance-learning-program-reaches-its-way-into-jail>.

⁵³ See *supra* note 11 at 36.

⁵⁴ See *id.*

⁵⁵ Laura S. Abrams, *Sampling 'Hard to Reach' Populations in Qualitative Research: The Case of Incarcerated Youth*, 9 QUALITATIVE SOCIAL WORK 536 (2010).

computer-assisted lessons relative to traditional instruction. Some may take this as an indication that computer-based education programs are ineffective. However, with the meta-analysis based on four studies conducted between 1980 and 2000, the data set is sparse and far too outdated to apply to modern computing. RAND is careful to note that these findings should not be used to draw any definitive conclusions and emphasized the dire need for higher quality and more recent academic research in corrections, a recurring theme throughout the report.

The increasing number of pilot programs in facilities presents many more opportunities to enhance existing literature as well as contribute new knowledge relating to the increasing use of digital technology in the prison system. Prison officials should work with researchers and others in the academic community to facilitate research that can better inform modern public policy decisions.

Conclusion

As the digital skills gap between returning citizens and society increases, so too do the risks for recidivism. Amid rapid digitalization in the workforce, an increased exposure to technology in corrections can help returning citizens upon release by fostering much sought-after digital skills, significantly reducing their reincarceration risks. Inmate tablet programs can enhance lesson delivery for more traditional education programs, access to legal resources, and personal development programming such as parenting-while-incarcerated classes. For prison officials, these programs introduce an alternative behavior management tool that has contributed to a safer prison environment with fewer altercations.

However, the rollout of prison tablets has largely been controlled by JPay and GTL, two technology companies that have held virtual monopolies in prison telecommunications. The economic model behind such tablet programs appears predatory and exploitative, a continuation of historically controversial pricing practices in prison telephone services brought about by a lack of competition.

While emerging technology companies like Edovo and APDS offer some much-needed competition, the market structure remains susceptible to anticompetitive tendencies such as kickbacks and no-bid contracts. Fostering real competition in the pursuit of public policy goals requires an understanding of the underlying incentive structures that enable prison profiteering and strategically designed regulations that ensure these structures are organized productively. One promising solution may take the form of a consumer review board that advocates on behalf of inmates and their families.

The framework outlined in this paper has broader impacts that extend far beyond the prison walls. Anticompetitive regulations exacerbate the poverty to prison pipeline by continuing to drain incomes from families and communities outside of the system. Women, who represent the overwhelming majority of family members that shoulder the costs of incarceration, bear the brunt of prison profiteering practices.⁵⁶ Digital literacy programs give returning citizens the tools to break vicious, intergenerational cycles that disproportionately affect low-income families and communities of color.⁵⁷ Returning citizens can become positive change agents for their own communities, promoting upward mobility through technology.

The issue of prison reform has often been framed as a primarily social one, with social and economic objectives ostensibly at odds with one another. The promotion of digital literacy in prison populations, particularly through inmate tablet programs, represents a significant divergence from this commonly held idea. Investing in a well-run digital literacy program for our prison system is an innovative solution to a persistent problem, and a rare win-win situation for inmates, prison officials, and American taxpayers.

⁵⁶ 83% of the family members primarily responsible for conviction-related costs are women. ELLA BAKER CENTER FOR HUMAN RIGHTS, *supra* note 22 at 9.

⁵⁷ *See id.*