



Evangelical Lutheran Church in America
God's work. Our hands.

A Social Statement on
**The Church and Criminal
Justice: Hearing the Cries**

This social teaching document was amended and adopted by a more than two-thirds vote (882-25) at the thirteenth biennial Churchwide Assembly on August 17, 2013, at Pittsburgh, Pennsylvania.

Overview

The Evangelical Lutheran Church in America (ELCA) affirms the fundamental principles of the U.S. criminal justice system such as due process of law and the presumption of legal innocence. Yet, this church hears people's cries that reflect the current system's serious deficiencies. Drawing from the biblical witness to God's wondrously rich forms of love and justice, we are compelled by a "holy yearning" to address the need for a change in public mindset and for dramatic reforms in policies and practices. This statement calls upon Christians to strengthen or take up ministries of compassion and justice. Drawing on evidence and data, it affirms some current efforts at improving the system while identifying numerous other reforms that urgently need implementation.

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Summary of key points

- The ELCA is prompted to speak and to act because so many cries of suffering and despair emerge from the criminal justice system — from victims, the incarcerated, their families, communities, those wrongly convicted, they who work in the system — and have not been heard.
- Drawing from Holy Scripture, this church holds up a vision of God’s justice that is wondrously richer and deeper than human imitations and yet is a mirror in which justice in this world, God’s world, must always be assessed.
- In assessing the current system, the ELCA gives thanks for its principles and orientation toward justice. This church recognizes many in the system who serve their professional vocations with competent and humane performance. Yet, this statement recognizes serious deficiencies. An underlying punitive mindset, budgetary constraints and persistent inequalities based on race and class frequently challenge its basic principles and impose significant costs on all involved in the system, and on society as a whole.
- Christians are called to confess that we, as individuals and in our common life together, often have fallen short in responding to criminal justice — both in response to crime’s harm and to problems in the justice system.
- Guided by historic “marks” of the church, the ELCA is called to renewed ministry on behalf of those whom the system affects: victims of crime and their families, the incarcerated and their families, affected communities, those who work in the system, and many others.

- Through ministry with and bearing the burdens of those in the criminal justice system members of this church can respond wisely through four practices: hearing the cries, hospitality, accompaniment and advocacy.
- The ELCA supports positive trends for reform such as greater emphasis on victims' rights and needs, use of restorative justice, community-based alternatives to incarceration, legislation that reduces sentences for certain offenses, the emergence of specialized courts, and the growing emphasis on reentry. These efforts should be funded and supported adequately.
- Because mass incarceration causes significant harms, both personal and social, the ELCA strongly urges those who make and administer correctional policies to take all appropriate measures to limit the use of incarceration as a sanction for criminal offenses. Toward that end this statement identifies three specific paths: pursue alternatives to incarceration, reform sentencing laws and policies, and closely scrutinize national drug policy.
- Four other imperatives also require vigorous action from policy makers: the criminal justice system must acknowledge the disparities, and address the implicit and explicit racism that persists within; it must recognize the special needs of juvenile offenders; it must stop the privatization of prison facilities; and finally, it must foster the full reintegration of ex-offenders into community.
- A fundamental transformation of mindset about criminal justice is required that challenges the logic equating more punitive measures with more just ones. Individuals must be held accountable, but every person in the criminal justice system deserves to be seen and treated as a member of human communities, created in the image of God and worthy of appropriate and compassionate response.
- To God we owe thanks for human reason and its abilities to discern — with compassion and wisdom — how human communities might reflect at least the justice of the law. “For what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?” (Micah 6:8).
- Eleven implementing resolutions direct specific actions consistent with the principles and recommendations set forth here. A glossary provides assistance with legal terms.

I. Introduction

As this statement is adopted, one in 34 adults in the United States is under some form of correctional control¹ and more citizens are imprisoned as a percentage of the population than in any other country on earth, even those with comparable crime rates.² The U.S. spends 60 billion dollars every year for corrections alone³ and they who work in the criminal justice system often feel stressed to the breaking point. People of color and people living in poverty are disproportionately harmed by problems within the system. Concerned that so many cries — from victims, the incarcerated, their families, communities, those wrongly convicted, those who work in the system — have not been heard, the ELCA is prompted to speak and to act.

As members of the body of Christ and as citizens who seek to strengthen communities, we, the ELCA are both freed and called in Christ to serve the needs of the neighbor and to work for justice and peace in all the world. Seeking God's just will for the world requires continual theological and moral discernment and deliberation.⁴ As in 1991 or 1994 when the ELCA addressed questions about the death penalty⁵ or causes of crime⁶ this statement is the product of such seeking and an invitation both to ongoing discernment and to action for the sake of our neighbors.

The ELCA speaks in this statement from among and to its members, to those affected by crime in any way, and to those who work for the public good in various civil offices related to the criminal justice system. Drawing from Holy Scripture, this church holds up a vision of God's justice that is wondrously richer and deeper than human efforts and yet is a gauge against which justice in this world, God's world, must always be assessed (Amos 5:24).

Conscious of the limitations of all human aspirations and institutions, this church also seeks to draw on the best of human reason to join with many others in calling for urgently needed reform. Both Scripture and reason are vital to the integrity of the church's witness in the world. This church desires the achievement of greater justice in the U.S. criminal justice system and maintains that such an achievement is possible.

This statement devotes significant attention to reform and calls for a dramatic shift in public discussion about criminal justice. The dominant public view, underlying the current system, equates more punitive mea-

suers with more just ones. The limited success of massive incarceration in deterring crime⁷ has not affected the prevalence of “lock ‘em all up” rhetoric in public debate.

Prevalent views such as “tough on crime” rhetoric and policies make it more difficult to see each person involved in the criminal justice system as a human being. These views effectively override the conviction that all people are created in the image of God and worthy of appropriate and compassionate responses. A punitive mindset hinders questioning the logic and practices of the current system and limits efforts to seek better alternatives.

This church knows that human evil is prevalent, ancient and often heinous. News reports about murders, white-collar crime, political corruption, sexual assault, to name just a few, provide almost daily reminders of this human propensity. The criminal justice system will move toward greater effectiveness overall and toward greater rendering of justice only when undergirded by a mindset that recognizes each person as a valued human being and a member of human communities.

This statement, thus, recognizes the need for changes in mindset and policies. It urges a clear-eyed *and* humane perspective that can undergird effective long-term reform. It urges reforms supported by data and attentive both to individual and social good that provides appropriate and flexible measures of response to criminality in place of stringent and sweeping measures of incarceration.

A. Confession

In calling for action, however, this church and its members do not pretend we are guiltless regarding either crime or the problems of criminal justice. Many Christians confess each week that “we have sinned in thought, word and deed, by what we have done and by what we have left undone.”⁸ To confess one’s sins centers accountability and can lead both to the truth being told and justice being done (1 John 1:5-9). In confession God is invoked as the one who brings to human brokenness the fullness of new life.

In that spirit, we as a church are called to confess that the church and its members have fallen short in responding to the growing problems of the justice system. We ourselves sometimes have committed crimes. Often we have been negligent or allowed fear or bias to dictate respons-

es to crime. Often we have allowed the cries of those harmed or those who work in the system to go unheard. Often we have been complacent as the burdens of crime and the criminal justice system are borne unfairly, especially by people of color or people living in poverty.

In confessing complicity in injustice, this church invokes both the judgment and the wise guidance of God. We turn to God for counsel on how we might minister better and more mercifully to those harmed by injustice. We ask God's aid in opening our hearts to the cries of our neighbors, that their faces and voices might show us whom we must love, if we say we love God (1 John 4:18-21). We pray for guidance to speak more prophetically and to strive more responsibly toward earthly justice.

B. Marks of the church

Martin Luther calls Confession a “mark of the church” one of seven indicators that illustrate the fundamental character and practices of the church. He also describes Compassionate Suffering as another kind of external mark whereby the Holy Spirit sanctifies the church in relation to the neighbor. These “marks of the church” serve throughout this statement as critical indicators of genuinely Christian response to today's criminal justice system and to the people involved in it.

II. Assessing the system

Contemporary societies establish the definition of crime through a body of laws that apply to all citizens. Crime is committed when a person breaks laws or rules for which a governing authority prescribes punishment, upon adequate proof of guilt. Laws and the system they create are subject to change over time and to social bias, but their purpose is to protect the social fabric, to provide for the wider social good and to prevent harm to all.

Consistent with Lutheran Confessions, the ELCA teaches that civil government is a gift of God for these purposes. Because an effective system of criminal justice is an essential part of any functioning civil government, this church affirms the legitimacy of the U.S. criminal justice system and the fundamental principles to which the U.S. system is committed.

Among others, these include the rights to counsel and against self-incrimination, protection against illegal search and seizure, trial by jury and the presumption of legal innocence.

At the same time this church joins its voice with many others who recognize grave deficiencies in the current system of criminal justice. Conflicting political objectives, budgetary demands, distorted media portrayals and persistent inequalities based on race, ethnicity, gender and class, frequently challenge the system's implementation of — and perhaps even its commitment to — basic principles of justice. The failure to achieve a well-ordered system of criminal justice imposes grievous costs on everyone involved in the system, and on society as a whole.

The most just and enduring solutions for reforming the criminal justice system will be built upon realistic perspectives about crime that recognize the humanity of all those involved in the criminal justice system and that follow principled, evidence-supported practices. Guided by these commitments, this church's assessment attends to careful description (based on principles of justice) and takes into account the cries of those participating in the system. Each participant is a human being with dignity who deserves to be heard.

A. Victims of crime

Taken on the whole it is correct to say that all crime — violent or non-violent — does harm. Some harm is immediate while some is delayed; some has moderate impact while some carries dramatic lifelong consequences. The harm can be physical, emotional, or financial or in varying combinations. Crime always tears at the personal and social trust that undergirds the flourishing of human society and yet victims of crime bear the most immediate injury.

Much in the current system presumes that conviction and punishment delivered through a principled, depersonalized institution is an adequate response to the social need for justice. In many cases this may be true, but human beings are involved. Victims of crime, whose needs largely have been ignored in the past by depersonalized institutions focused solely on punishment, cry out for something more.

This church affirms the need for increased attention to the rights, needs and interests of victims in the criminal justice system. Those who are harmed by crime deserve consideration and respect throughout the pro-

cess of adjudicating justice. In appropriate circumstances a greater resonance of justice and humanity may be achieved when forms of personal interchange are practiced such as financial restitution or opportunities for dialog when sought by both victim and perpetrator.

B. Law enforcement

The ELCA gives thanks for those who serve in law enforcement with dedication to the common good. Federal, state, county and local law enforcement officers daily confront troubles ranging from murder to domestic violence to missing pets. The ELCA recognizes that those who serve regularly encounter complex and stressful situations that take a toll on their lives and relationships. It also must be acknowledged that the reputation of law enforcement has been stained by evidence of racial bias and excessive use of force.

District attorneys, prosecutors and related staff, as members of the law enforcement, also serve for the purpose of administering justice, maintaining public order and protecting the social fabric. The ELCA is troubled by evidence of bias and other short-comings worsened by overwhelming caseloads even while honoring those who through their service strive to operate with fairness and human care. This church affirms ongoing efforts to deal with stresses in the system and efforts to train and support members of the law enforcement system in constructively responding to bias and abuse.

C. Judicial system

This church gives thanks for a judicial system that is intended to operate with impartiality and accuracy in handling offenses, while also structured to provide legal protection against errors or overreach by the state. A just system is appropriately responsive to claimed violations of rights of person or property and treats all participants with equal respect. A system of fair adjudication for disputed questions of fact and law provides transparent processes and appropriate opportunity for review of decisions.

To achieve these goals, a fair system would ensure the accused have meaningful access to legal counsel, fair notice of the charges and opportunity to challenge and present evidence. It would provide protection of legal rights by an independent judge, adjudication of factual disputes by an impartial judge or jury and access to appellate review of trial court decisions. A judicial system depends on the good faith and

competent performance of all who serve vocations in the criminal justice system, including judges, prosecutors, defense counsel and court personnel. This church affirms the responsibility of citizens to serve on juries.

Achievement of these goals — impartial adjudication and protection of rights — also depends on adequate resources. But in many places the adjudicative process faces an overwhelming number of cases. This high volume, due largely to current national drug policy and zero tolerance policies for certain public order offenses, leaves little opportunity for particularized attention to any case.

Overwhelming caseloads also mean that the vast majority of cases must be resolved by negotiated pleas. While there are social and personal benefits from negotiated resolutions, this now common practice of private negotiations between prosecutors and defense attorneys may be less transparent than what happens in courtroom trials, where communications and decisions are a matter of public record.

Over the past generation, the adjudicative process has been significantly affected by changes to sentencing policies. Such changes responded to concerns that judicial discretion in sentencing produced unacceptable variation among punishments for the same offenses. This church affirms the importance of equal treatment in sentencing, but expresses concern that sentencing reform has become synonymous with increasingly harsher sentences.

D. Corrections

Since crime is inevitable, so too is the need for appropriate consequences, which require offenders to reckon with the fact that their crime has caused harm, and must be addressed. Genuine disagreement exists regarding the rationale for the forms punishment should take. Deterrence, rehabilitation, incapacitation, retribution and restoration are all plausible justifications for punishment.

Punishing offenders may serve as a deterrent to their re-offending in the future (specific deterrence) or to others who might commit similar crimes (general deterrence). Punishing offenders might serve rehabilitative needs; the offenders are equipped to understand the harms they have caused and helped to become a person less likely to offend.

Another justification for punishment is incapacitation. When an offender seems significantly likely to re-offend and the offense would do

significant harm, then the offender must be prevented from harming again. Punishment also may have aspects of retribution in which there is a legitimate concern for re-balancing of a ruptured social order. In this way of thinking, if a human being has inflicted pain or gained an unfair advantage, then he or she should experience proportional pain and have the advantage removed.

Finally, there is restoration. Advocates of restorative justice suggest that victims, offenders and their families and communities would be better served when, in cases of admitted guilt and when the personal and emotional safety of victims is protected, resolution takes place in a facilitated conversation among these parties. Such practices have been especially useful in juvenile justice and in adult cases of property crime, when both victim and offender willingly participate.

No single rationale or practice of punishment is solely commendable. Deterrence strategies may make society safer, but they risk treating individuals solely as a means to the end of crime reduction.⁹ Retribution speaks to an innate human desire to have the punishment fit the crime, but can easily devolve into mere vengeance.¹⁰ Rehabilitation and restoration show promise to mend ruptured relationships between people and attend to the needs of victims and offenders, but can reach beyond what the state is able, or rightly mandated, to achieve.

Reliance on one particular form of punishment or another may be appropriate in a given case, and human reason, rightly employed, can discern what is best. No single form of punishment, however, is required of necessity — and this includes incarceration. Incarceration is simply one strategy among many, even though it has been the one overwhelmingly chosen by U.S. society. The recognition that incarceration is merely one option among many brings freedom to challenge the logic of mass incarceration, and enables imagining and instituting better alternatives.

Although justified in principle, all practices of punishment deserve serious scrutiny. As noted above, the U.S. now has the highest incarceration rate in the world. This has led to both overcrowding and very significant expenditures on prisons — tax dollars that could justifiably be better spent elsewhere.

Massive overcrowding contributes considerably to the dehumanizing problems in the U.S. prison system. Inmates fear physical and sexual violence from each other and staff and worry about threats of future

violence if reported. Gangs often control the culture of prisons. Inmates are powerless in interactions with correctional staff, some of whom degrade inmates through language and physical intimidation. All inmates experience despair from lack of control and inexpressible loneliness from separation.

Massive overcrowding today worsens conditions to the point of inhumane treatment of the incarcerated. Dangers to physical safety are real and declining health through poor conditions is likely. Cost-saving measures have caused some governments to contract with private firms to incarcerate offenders, raising many ethical questions.

A contributing factor to inhumane conditions involves the increased proportion of the mentally ill in jails and prison, currently well over half of the population.¹¹ As the institutionalized mental illness population of the U.S. has been reduced by more than 80 percent over recent decades, many of those released have ended up homeless or in prisons.¹² Imprisonment is not therapeutic by nature. Placement in jails and prisons has the effect of criminalizing mental illness, and puts the mentally ill at risk for exploitation by other inmates. The incarceration of those with special needs without sufficient services contributes considerably to prison volatility. The ELCA has addressed the needs of people living with mental illness and noted problems related to the incarcerated in its 2012 social message “The Body of Christ and Mental Illness.”¹³

Related to mass incarcerated rates is the troubling emergence of much more punitive attitudes toward the incarcerated. As the population grows, services are being greatly reduced or eliminated, such as educational and recreational opportunities or access to counseling and spiritual care.

As people of reason, we accept differences in correctional philosophies, but as people of faith we reject dehumanization of the incarcerated through brutalizing means whether legal, psychological, sexual, emotional, racial, cultural, or spiritual. While rational people may reasonably disagree about the extent and sources of suffering, this church insists that *some* of its forms simply must stop. These include:

- widespread and long-term total isolation in solitary confinement;
- incarceration practices that sever familial ties;
- trying, sentencing and incarcerating children in the adult system;

- collateral sanctions that make social reintegration extremely difficult; and
- severely limited access to education, counseling, mental illness treatment, substance abuse treatment and vocational training.

E. Confronting racism

The ELCA has long recognized that racism¹⁴ pervasively infects and affects all aspects of U.S. society. Racism is central to the deep and abiding problems of the current criminal justice system even though often unacknowledged. The extent to which inequality exists within the system through biased enforcement, adjudication and treatment remains a matter on which further discernment is needed within this church and this society. It is fair to note, however, that such disparities may favor socially privileged groups that, because of this favor, often do not feel their privilege or understand its reach.

The criminal justice system encounters citizens in a long sequence. It begins with contact with law enforcement officers and moves through many stages. These include release on bond, assignment of counsel, arraignment, adjudication of the offense, sentencing and punishment — including sometimes incarceration — probation, or intermediate sanctions. While racial disparities at any one particular point in the sequence may be small, and intentional discrimination may even be absent, the cumulative effects of bias in the system as a whole have led to intolerably destructive and long-term effects on minority communities.

Examples are many. People of color experience statistically higher rates of contact with police, a disproportion that persists even when other factors like age and economic status are taken into account. For instance, African American drivers are more likely than others to have their vehicles searched and to be arrested.¹⁵ Since people of color are disproportionately likely to live in poverty,¹⁶ they also are less likely to be released on bail. Compared to those who are released before trial, detained individuals are statistically more likely to be convicted and to be incarcerated.¹⁷

People of color are thus more likely to have a prior criminal record, which means they will receive harsher punishments for future offenses. Likewise, people of color are more likely than Caucasians to be sentenced to prison even after offense severity and the defendant's criminal

record are taken into account.¹⁸ The cumulative effects of racial bias result in gross over-incarceration and punishment of racial minorities.

Formally articulated in *Freed in Christ: Race, Ethnicity and Culture*, the ELCA teaches that racism is a sin, a violation of God's intention that fractures and fragments human society.¹⁹ The full story of race in the criminal justice system is undoubtedly complex, but one test of the justice of any system is its results. The ELCA believes that present criminal justice practices and legislation have produced blatantly unacceptable results with respect to race.

F. Reentry

Significant challenges and problems continue for offenders following release from prison. Personal obstacles make it more difficult to find and retain employment and to maintain healthy personal and familial relationships. Some of these problems would have been real before incarceration, but many stem from the punishment itself.

Legal obstacles make the problem worse. Collateral sanctions are punishments stemming from legislation against those convicted of crimes, and include limitations to employment, civic participation, housing and educational opportunities. The punitive view that underlies the trend toward mass incarceration continues to exercise its hold beyond prison walls. This church recognizes and endorses the important work of providing support and services to those who have been incarcerated and strongly encourages such ministries of accompaniment among the faithful to aid the all-important goal of full integration into society.

G. Immigration detention

Some point to similarities between a punitive mindset about criminal justice and current trends in the enforcement of immigration laws. The numbers of deportations and the reliance on immigration detention, which is often arbitrary and indefinite, have grown exponentially in recent years.²⁰ Detention is a severe, under-scrutinized and expensive method of migration control.

Migrants in detention include asylum seekers, survivors of torture, lawful permanent residents and families with children. Most of these have not committed crimes, but are held in county jails or in jail-like facilities, increasingly those operated by private prison corporations, while awaiting either court proceedings or deportation.

Individuals accused of and detained for immigration violations lack adequate due process and meaningful access to legal counsel. Conditions of confinement are often harsh and include solitary confinement and minimal access to visitors. This experience can be re-traumatizing and isolating, particularly for individuals who are locked up far from their families and communities.

The outdated and inadequate U.S. immigration system is highly complex, controversial and difficult to address, both in terms of its origin and in terms of solutions. In a social message and in a social policy resolution the ELCA, nevertheless, repeatedly has articulated principles for just and wise treatment of immigrants.²¹ Consistent with these documents, this church urges that arbitrary and indefinite detention and dehumanizing isolation of migrants should be discontinued and the use of humane alternatives expanded.²²

H. The church's call

The ELCA does not presume to have quick or easy prescriptions for these enduring, intractable problems, but we do call for vital and sustained response. The cries of people reflected here, the needs within the various systems named, and the data underlying this assessment all shape an urgent call for change in the criminal justice system.

In seeking to respond, this statement draws on Lutheran resources to explore the nature of Christian understanding (Section III, p. 16) and practice (Section IV, p. 23). An adequate understanding of matters of criminal justice does not depend solely on secular reason. Lutherans turn to Scripture for new insight, courage and strength. We also draw on our Confessions and historical theological reflection as well as existing efforts by congregations, social ministry organizations and others for knowledge and wisdom about what works.

This church believes that significant improvement in the criminal justice system is urgently necessary, economically advantageous and possible. This statement seeks to employ the best of human reason as a gift from God. Sections V, VI and VII, (pp. 31, 35, 39) guided by common principles and social science evidence, recommend pathways toward improvement. It remains aware of the naïveté that assumes that best intentions always lead to the best results. This guidance is offered in the spirit of discernment and deliberation for public policy, but a spirit insistent that constructive action be taken.

III. Justice and yearning

A. Twofold justice and civil order

For the benefit of spiritual life, God relates to the world through the gospel's forgiveness of sins and promise of new and eternal life. For life's many other needs, God relates through various institutions and communities, including civil government and its criminal justice system.²³ God uses these systems to structure human life and, within that structure, to provide food, shelter, safety, education and many other material and social benefits. Although these structures have a very different purpose than the gospel's, still they are God's great gifts to us.

That said, there is a fundamental *unity* in God's will for human flourishing and yet we experience God's divine providence in an interrelated twofold way. Our understanding of justice is likewise twofold, though interrelated. There is a form of justice, or civil righteousness, which we seek and can expect to find in the institutions of the world. At the same time there is a form of justice, or spiritual righteousness, for which we yearn and which we hear in the gospel and partially see in the gospel's community, the church. One form must not be mistaken for the other even though both are interrelated with life in this world.

Judgment of crime is a characteristic of the one. Forgiveness of sins characterizes the other. Justice according to the law is administered in civil institutions by the wise use of human reason. Justice according to the gospel, or spiritual righteousness, however, often flies in the face of reason (1 Corinthians 1:21). Wisdom requires caution in determining which standard of justice applies in a given circumstance.

Even when focused solely within the aspect of law, the concept of justice defies any simple definition because it covers a wide range of contexts and relationships. In some contexts, justice emphasizes equity — the disinterested, even-handed application of rules to each person — and the determination of eligibility for benefits or imposition of penalties.

In other contexts, justice demands attention to differences among people — for instance, the distribution of some goods according to particular circumstances of need or merit. A central theme however, weaves together all the various dimensions of justice. Justice speaks about social relations and the need to create, exercise, or restore right relationship between and among individuals in community.

No matter how different the two forms of justice are or how varied the dimensions, all emerge from the same root: God's desire for wholeness in humankind — *shalom* — and for communion and fellowship with all that God has created. Justice must be understood in light of God's final victory (Revelation 21:1-8; Isaiah 2:2-4). The justice of the law is necessary for the world as we experience it, but will fall away in the world to come. In that new heaven and earth the twofold character of God's relating to the world will have run its course; only the righteousness of the gospel will remain.

Rightly understood, the distinctions between law and gospel, between the justice of the law and the justice of the gospel, and between temporal and spiritual authority powerfully motivate Christian responses to injustice. Distinctions between them supply a motive for the possible without succumbing to perspectives that are simplistic or utopian. The presence and promise of God's reign within the brokenness of the world prompts both hope and clear-eyed realism.

B. Justice and the Easter hope

Lutherans do not articulate this twofold way of understanding justice because of loyalty to a historic "Two Kingdoms" doctrine. They recognize the distinction because it is profoundly biblical and perceptive, reaching back to the church's first days.

The kingdom of God complicated the lives of the earliest Christians. The cross of Christ tore open their lives to their own suffering and the suffering of others. Roman civil authorities mocked Jesus as King (Mark 15:26), and their wicked judgments condemned the Son of God to crucifixion. Yet even when the resurrected Christ appeared to his disciples he refused to claim any other identity than the one he had claimed on the cross. The risen Christ will forever be recognized only in his loving but deadly-to-him embrace of humans in their sin and death (1 Corinthians 2:2).

On the one hand, Christians believe that Christ has put his mark, the sign of the cross, on his ruling power. Yet on the other, the power of Christ crucified has no more come in its completeness for us than it had for the earliest Christians. In brief moments, however, the reign of Christ crucified comes in Baptism, in the Lord's Supper, in preaching, in the forgiveness of sin. It comes in mutual consolation and the bearing of each other's burdens, and in our bearing of the world's suffering. Unwilling to abandon the crucified King the earliest Christians took up

Christ's cross and followed him, refusing to use coercive power over others (Mark 8:34-38; Luke 22:24-27).

But they also refused to privatize their faith. Biblical witnesses testify to the goodness and necessity of civil order (Romans 13; 1 Peter 2:13-14). Christians dedicated themselves to live in the tension created by faith in the coming kingdom of Christ.

This tension resulting from both the Spirit's presence and the promise of God's kingdom yet to come creates a restlessness, a yearning among God's people.²⁴ It is a tension between the perfect reconciliation of the world to God in Christ's death and the day-to-day, sometimes incremental and sometimes monumental fixes humans apply to alleviate suffering and to right wrongs. The Bible recognizes this day-to-day work as God's work. So should Christians.

As this church yearns for the justice of Christ's coming kingdom, we listen to the cries for justice that ring out right now. Those cries cannot wait for our hope in Christ to come in completeness. For the sake of the same world for which Christ was willing to die we must be willing to employ power to preserve life. That power must never be used for self-promotion, self-satisfaction or the advancement of the interests of only some, but used rather for the good of all, especially for those who are most vulnerable.

Christian faith, because it is the Easter faith, believes that justice will be done in that future which God holds out for the world, and to which the resurrection of Christ bears witness.²⁵ A community shaped by the preaching of the Easter faith each Sunday will therefore be open to experiencing yearning as central to the church's commitment to justice. It will "teach people what they need to know about Christ."²⁶

C. Justice and baptismal vocation

In Holy Baptism God forgives sin, redeems from death and grants eternal salvation to all who believe. God's action initiates the Christian life and places a claim or mark upon us. Baptism reminds us that *all* have fallen short of living God's will and urges humility even as it insists that *no* grave sin and *no* human being lies beyond the unmerited grace of God.

Lutherans also understand Baptism to confer a vocation upon the one baptized. The one baptized is to "care for others and the world God

made and work for justice and peace²⁷ through various callings in life. Since God desires just societies, those who serve in civil institutions act as God's agents in delivering the institution's benefits.

In roles such as law enforcement officers, attorneys, judges, court and correctional staff, prison chaplains and the like, the work of God is done. This contribution as "doer of God's work" holds whether or not an agent is aware of, or would acknowledge, such a connection. Lutheran tradition has affirmed that Christians may in good conscience serve in such callings.²⁸ Civil institutions could not function without those who serve in them, and for them and their work this church gives thanks. When their work is done for the benefit of all, God makes concrete the blessings of public order and justice through them (Romans 13:4).

When one's role is understood as answering the baptismal vocation, a standard for evaluating the work done is necessarily implied. Commitments to serving the neighbor as an expression of Christian life remind those who hold this role that their primary purpose is a ministry of loving service to their neighbors. Their daily work is not for their own honor, and when its concrete form harms rather than serves the neighbor it must be changed.

To designate those who exercise responsibilities in the public authority "doers of God's work" neither baptizes their power in the name of God nor sanctifies their status quo. Instead, it expresses how crucial the justice of the law is, and insists it be done with appropriate dignity.

D. Justice and holy yearning

Still, the justice of the law will never match the fullness of the righteousness of the gospel. No matter how good and just our laws are, they will be interpreted and enforced by fallible human beings. No matter how wise our attorneys and judges are, incomplete evidence will be all that we can rely on in rendering decisions. The facts of any particular criminal case can never be fully known in all their detail, nor be perfectly interpreted, by those asked to render judgment.

Human finitude thus diminishes the forms earthly justice takes. Human sin also conditions the fullness that can be expected from earthly justice. Fear, wrathfulness, biases and innumerable other vices are present in crime and — often in much smaller and hidden ways — in responses to crime, no matter how measured and reasonable a justice system is.

As citizens of civil society Christians are commanded and enabled to work for earthly justice. We feel a healthy responsibility to ensure that the systems of justice our governments oversee reflect, to as deep an extent as possible, the key commitments of our faith. And yet, Lutherans do not think that a judge rendering a verdict should necessarily cite Jesus' exhortations about forgiveness or judgment (Matthew 5:38-42; Matthew 7:1-5). Victims of crimes should not be counseled to deal with crime privately rather than reporting it to the public authority.

Nevertheless, Christians do approach questions of earthly justice from the vantage point of faith. Faith bears with it a certain healthy, relativizing dissatisfaction with earthly justice. Christians see and feel a fissure between the righteousness of the gospel and the justice of the law in our everyday lives. We know that, as much as we long for the contrary, the world evoked on Sunday morning cannot quite be achieved on Monday. The ELCA names this *yearning* as a holy gift of God, central to our understanding of justice, and thus of the criminal justice system.

E. Yearning and the Bible

Yearning underlies profound portions of the Bible. Paul, for example, longs for the church at Philippi, and he does so with the "compassion of Christ" (Philippians 1:8). By locating his emotions in Christ himself, Paul implies that Christ also longs for the world. Christ desires complete and free, mutual and loving relatedness in which all that is Christ's is ours just as Christ bears in his body all that is our own, including our sin and death.

Christians in their longing for Christ find themselves deeply immersed in the sufferings of the world. Christians are not aloof spectators, watching the world's troubles. Faith in Christ does not give special knowledge that trumps the reasoning power of those leading civil institutions. Rather, faith leads us into solidarity with suffering. The groaning of creation is our groaning just as the Spirit of God sighs our sighs (Romans 8:18-39). That is why we, by the Spirit and out of faith, eagerly anticipate and await the justice of the gospel (Galatians 5:5).

Until Christ's return, however, the Spirit of God does not let us say: "justice has been done." Our hope in the coming justice of God makes us especially mindful of victims and the isolation and dehumanization of individuals convicted of crimes, as well as shortcomings of the system and errors in particular judgments.

F. Yearning and the effects of crime

Those who have suffered from the effects of crime find peace at the last, for “God himself will be with them; he will wipe every tear from their eyes. Death will be no more; mourning and crying and pain will be no more, for the first things have passed away” (Revelation 21:3b-4). Such words are not just consolation; they also empower us to meet the challenges of a world harmed by crime.

Faith relies on the promise of God. God promises to redeem our losses (Psalm 34:22; Ephesians 1:7-10), and promises that in Christ we are reconciled to God. (2 Corinthians 5:18-19). This means that God promises to find a way to right all that has wronged us, and the wrong we have done. Victims of crime and their families lose much. They lose belongings. Sometimes they lose their loved ones; sometimes they lose their very lives. The witness of Easter, and the yearning it produces in us, recognizes that none of this pain is lost in God. God bears all the suffering of the world in God’s very being — it is God’s mark — and promises to make right the wrongs human beings do and undergo (John 20:27-28; Revelation 5:6, 12).

When the vision of the future justice God has in store for the world is perceived more clearly, Christians are better equipped to work for the betterment of our world today. The promise of God gives courage to acknowledge evil and face injustice. We know we can speak out, because God has spoken out, against the wickedness of the world. The promise of God gives courage to cope with *partial* justice; if incomplete adjudication is all that is possible, we have recourse to the knowledge that, in God’s future reign, all shall be well.

G. Justice in civil institutions

In the meantime, civil institutions of justice are essential to human flourishing. Even if people were reliably unselfish and kind to one another, civil government would still be necessary to organize our common life. But people are not reliably good to one another. Disorder leaves people in fear for their person or property and often without access to basic human needs. Effective civil government reduces such fear by establishing security. Freed from this fear, people and communities can more easily develop and enjoy the full range of human benefits.

Civil government contributes to human flourishing primarily through law, which is a gift from God. When clear rules are fairly and consistent-

ly enforced, individuals can conform their conduct to the law and trust that others — including the authorities — will do the same.²⁹ Properly done, law enforcement, just procedures and impartial judges allow individuals to resolve their disputes through official and predictable channels rather than private conflict. They function to protect individuals against injustice and abuse by those who have greater economic, political, social or physical power.

Order as such is not the sole goal of governmental institutions, however. Ordering must be *just*. Reliable patterns of human interactions must be formed with equal regard for the dignity of each person. Such patterns as laws, programs and institutions themselves are just when they foster the well-being of all. When “order” falls substantially short of this goal, it becomes “*disorder*,” a source of significant harm rather than the basis of human flourishing.

Just ordering of society is characterized by both principled and pragmatic insights. It is principled in that it seeks to safeguard the individual against arbitrary or otherwise unfair treatment. It is pragmatic in noting that unjust or excessive rule may produce as much disorder as ineffective rule. Just order also can come when a deep sense of justice leads to the unsettling of established patterns of unjustifiably unequal treatment or distribution of goods.

In its constitution the ELCA pledges itself to “work with civil authorities in areas of mutual endeavor, maintaining institutional separation of church and state in a relation of functional interaction.”³⁰ Part of its calling as one institution alongside others is to call the public authority to the high standards the public authority has set for itself.

The United States understands its justice system in light of the nation’s constitutional mandate to “establish justice, ensure domestic tranquility, provide for the common defense, [and] promote the general welfare” This church finds significant evidence that the institutions of criminal justice in the United States are in urgent need of reform.

Not possessing special insight into matters of reason, this church does not presume to instruct the public authority how, in detail, the justice system should be shaped. This church does, however, urge the development, implementation and assessment of criminal justice procedures and criminal law on the basis of human reason and principled, evi-

dence-based practices, and laments the absence of such critical reason in many areas of the system.

IV. Wise responses of love

God calls Christian people to love and seek justice in this world even as this world often is confused, petty, sometimes beautiful and many times murderous. Our calling surprises us and often offends us, since we are prone to think we do God's work only when we analyze, remedy and distance ourselves from evil (Luke 18:9-14). In full knowledge of how cruel human beings can be to one another, and indeed have been, we, as part of God's church are called to participate in God's "Yes" to the world even as we eagerly await its — our — future. "Jesus Christ, whom we proclaimed among you ... was not 'Yes and No'; but in him it is always 'Yes'" (2 Corinthians 1:19).

A. Ministry and compassionate suffering

Participation in this "Yes" is marked by both ministry and compassionate suffering, or as Luther calls it, "the possession of the sacred cross." The cross is the deepest mark of the Christian church on earth. The gospel gathers a cruciform people. The church believes that Jesus Christ showed steadfast love for us sinners despite individual and systemic wickedness, and is convinced of the outrageous and scandalous truth that in this act of reckless love, God is most fully revealed.

To respond in gratitude with compassion and wisdom requires the ability both to discern the needs of another and to know what gifts lie within oneself that could be well given to the one in need. Jesus' own ministry was characterized by abundance in responsiveness. Though Christians often feel, and sometimes are, diminished and powerless, still the Holy Spirit grants power to respond to those affected by crime and the justice system in ministries of compassion and mercy.

Ministering with such compassion in the face of wickedness may well lead to suffering. When Luther concludes his list of ways one can identify the church on earth, it is as if he says, "Look for the cross. Look for people enduring persecution, hardship, danger and death precisely because they will not compromise their faithfulness to God."³¹

Christians do not seek out suffering for its own sake. Rather, we seek out those in need, those who are isolated, those who are afraid, and those who

yearn in hope. If our seeking leads to finding, and finding to ministry, then we accept that burdens and ambiguity may well mark our responsive love. Reform of entrenched systems, merciful response to harms caused by crime, and the courage to face injustice will inevitably involve struggle and uncertainty. The exercise of baptismal vocation in the way of the crucified Christ risks suffering and bears burdens as it bears the mark of the cross to a broken and crying-out world.

B. Responsive love in practice

This church's ministry and mission can begin with the simplest efforts by an individual, by two or three gathered to serve, or by a small task force. At the same time ministry and mission grow and must be creative, seeking ever new ways of responding to opportunities and needs. As the ELCA becomes more aware of injustice and pain, its members are called to seek justice and to bear one another's burdens compassionately and wisely.

Such responsive love in practice will be rooted in word and sacrament and be expressed in liturgical forms. This church endorses the enhancement of worship materials to reach out to victims of crime, those affected by incarceration and others who are involved in the criminal justice system. It calls on its members to hold in public prayer those who might otherwise be "invisible" and to proclaim boldly Jesus' declaration of "release to the captive" as a sign of God's coming reign (Luke 4:18).

Centered in word and sacrament while seeking to respond both compassionately and wisely, this church looks to the word of God and to the creative efforts already present in some congregations, ministry sites, synods and social ministry organizations. The evidence that the ELCA is putting into practice its convictions will be expressed by the growth of at least four forms of ministry and mission that rest on biblical foundations.

1. Hearing the cries

The foundational practice must be listening with compassion to the cries and listening for "what is really happening." Such listening requires paying close attention and being truly open to the voices of those most affected by that system.

This openness begins with our awareness that the cries of those harmed, both by crime and by the criminal justice system, often come from our brothers and sisters within the church. Because fellow members are affected by crime and the criminal justice system and because

this church understands itself having responsibilities in society, this church as a body of Christ cries out.

Victims of crime cry out, individually and uniquely. They can suffer physical injuries, financial loss, medical or psychological care costs, or the inability to work, as well as the loss of property. Some have deep emotional pain; others feel emotionally numb or paralyzed with fear. Victims suffer individually and uniquely.

Their families suffer alongside them and struggle to know how to help when resolution is often impossible. Some harmed by crime suffer again at the hands of the criminal justice system; they feel invisible or insignificant, as if their voices do not matter. Some suffer at the hands of their own faith communities, feeling misunderstood or ignored. Like victims, families of victims feel pressured by others to “move on,” leading to an even deeper sense of isolation. The church’s first ministry is one of listening. The temptation to turn away is great. But the love that seeks justice will not let us turn a deaf ear to the cries.

The families of offenders cry out. Relationships become strained and distorted. Visitation is often difficult or even impossible because of distance or expense. While those who work in the system may not intend to willfully harm families of offenders, practices and policies often treat families like outcasts or criminals themselves. Families of offenders grieve, worry and struggle.

Children separated from incarcerated parents cry out. Children of incarcerated mothers are especially at risk. Many incarcerated mothers are single parents, so their children are cared for by relatives or in the foster care system. These caregivers can grow weary of their changed role and live daily with the uncertainty of the mother’s future return. Many of those involved experience shame from having a loved one in prison.

Those convicted of crimes cry out. This church teaches that individuals should be held responsible for their actions. Yet it is easy to forget that those who harm others are still human beings. Some have caused irreparable harm and may never change. Many have been victims of crime themselves. Many regret their crimes and yearn to make amends. Many are people of faith.

Those imprisoned for their crimes cry out. Communities must be protected from those who create suffering, shirk responsibility and lack regret. Yet incarceration brings its own forms of suffering. Isolation, loneliness,

intimidation and violence (sometimes sexual or gang-related) are very real. Moreover, some people are wrongly convicted of crimes, spending years in prison before their exoneration, release or death.

While most incarcerated people eventually return to their communities, the longer they are incarcerated the more ties to the community have been lost and the more difficult it is to return. Many return to their communities without education or job training, and thus have little chance of success after release. Many end up back in prison. Some give up, accepting life in prison despite its difficulties. Their cries — even those unvoiced — need to be acknowledged.

Communities cry out, especially those that have more than their share of crime and incarceration, leaving ever greater dismal economic prospects and increasingly fragile social networks. For example, public education suffers because teachers are reluctant to seek jobs in these communities. Most significantly, disproportionate numbers of men are incarcerated, leaving women to raise children alone and often encouraging boys to grow up expecting incarceration to be part of their own futures.

Workers within the criminal justice system cry out. Many work in challenging circumstances where violence and emotional trauma are common. Most experience intense stress, yet are expected to respond to tension or violence calmly. Their professional challenges are rarely recognized or respected.

Police regularly manage the stress of dangerous and unpredictable situations, and are expected to intervene rationally and maintain a professional attitude in trying situations. Those who work in the courts desire to earn public trust and must balance responsibilities to many, including victims and offenders, families and communities. Large caseloads make it difficult to treat people as individuals. They rarely walk away from their work unaffected since they bear the burden of knowing the potential consequences of rendering a verdict or sentence.

Correctional staff, administrators, counselors and chaplains face tense and demanding conditions. Those who work in victim services programs listen daily to painful stories and struggle to keep their own emotional balance.

Citizens and taxpayers also cry out. An increasingly litigious society has sent legal costs skyrocketing and diminished the system's efficiency. Unequal access to legal representation contributes to a sense of "justice for sale"

to those with the means to pay for the fullest possible legal defense. U.S. drug policy has led to massive increases in the budgets of law enforcement agencies and prisons to house those convicted of crimes.

2. Hospitality

Hospitality is riskier than hearing and seeking to understand. Factual understanding searches for dependable, predictable patterns in nature and human experience. But hospitality opens a door to another person, even a stranger who out of the blue asks for our protection. Hospitality invites another, figuratively or literally, into our private space and opens our lives to the possibility of new expectations and experiential understanding. The guest inevitably confronts us with something new, something we cannot reduce to our prior experiences, our nature, or what has worked for us in the past.

From Abraham and Sarah (Genesis 18:1-10) to the later writings of the New Testament (Hebrews 13:2) we read about God's people honoring a sacred obligation that binds the host to the protection of the guest. In these stories, though, there is something more than the discharging of a duty because those who welcome others are open to the future, and thus make room for surprises. Risks may come when opening the door to that which is new, but the Bible also emphasizes the creativity that flows from taking the risk (Luke 24:28-32). How must the church welcome the stranger today?

As we turn to that question and the gift of hospitality, we must be ever mindful of another calling. The injunction to hospitality is profound and must be practiced with equally profound recognition of the church's care for the vulnerable in its community.³² Most importantly, congregations that contemplate allowing anyone who has been convicted of a sexual offense or who the congregation believes may present a danger to children or others should prayerfully realize that we also are called to protect the innocent and vulnerable.³³

When relating to those who present such a concern, congregations should act with extraordinary care. If, after consultation³⁴ and prayerful consideration, the congregation determines that participation in congregational activities is appropriate, the congregation should create and follow carefully written agreements with these individuals. There should be disclosure to the congregation, vigilant oversight and compliance with the written agreement.

This protective duty is not limited to minors, but extends to others within the community such as the elderly or disabled, who may be vulnerable to abuse, whether sexual, emotional, physical, financial or other types. Specifically it includes financial protection for congregations. Persons convicted of financial crimes or known to have been involved in financial misconduct should not be given responsibility for congregation funds.

With those considerations in mind, we return to the question: how must the church welcome the stranger today? In creative obedience to this biblical mandate, many congregations and social ministry organizations have found ways of extending hospitality to those affected by crime and the criminal justice system. Such ministries include:

- being a place of healing for victims of crime and their families. Support can come in the form of emotional aid, material assistance, helping them to understand what happened to them and what it means, and helping them to regain a sense of empowerment and autonomy in their lives.
- welcoming former offenders into worshipping communities. All people come as sinners equal in unworthiness to receive the forgiveness of sins, life and salvation that God grants through word and sacrament.
- providing assistance to former offenders. Ex-offenders need job training and placement, emergency and educational assistance, counseling, (including substance abuse counseling), legal counsel and housing.
- mentoring those under correctional control. Congregations can provide spiritual guidance, Christian fellowship and support, and personal motivation and challenge.
- supporting the families of offenders. Congregations can respond in ways that enhance family relationships, such as providing transportation for visits, creating activities for children and inviting families to congregational activities that give respite to caregivers and positive interaction for children. In addition to being intrinsically good, ministries that foster relationships with offenders reduce the likelihood for self-harm, suicide or other harms.³⁵
- supporting those who work in the criminal justice system. Workers in the system need support in their work responsibilities as a baptismal calling and as vital on behalf of the wider public.

- creating safe places for significant conversation and discernment. Conversations on emotionally charged moral topics, like those related to the criminal justice system, can be extremely difficult. Lutheran congregations, committed to the rule of love, should adopt practices of moral discernment that are thoughtful yet open to lively interaction and grounded in mutually agreed upon guidelines.

3. Accompaniment

The third response moves beyond hospitality to accompaniment. The ELCA understands accompaniment as walking together in solidarity that practices interdependence and mutuality. In response to God's call to comfort God's people (Isaiah 40), we can live out our baptismal vocation by accompanying those who suffer from crime and its effects. Along the way we share their pain and fear. Jesus Christ enjoins such accompaniment and the opportunities are many (Matthew 25:31-46).

Congregations can be effective in expressing solidarity with victims of crime and their families. Whether it is providing a safe space for their story to be told, or working to secure safe housing for a victim of abuse, or organizing transportation for someone in need, the congregation is a key site where our hands do God's work. This church commits itself to holding up in prayer those who struggle and suffer after crime has been committed, and will work to discern more ways to actively practice accompaniment in the faith it cherishes.

The ELCA recognizes prison ministry as especially needed at present and encourages those in or preparing for rostered ministry to consider serving in this way. Many jails or prisons work with local pastors and other religious leaders willing to provide spiritual services for inmates and staff. The incarcerated population has increased so dramatically in recent years that staffing and conditions have not been able to keep pace.

As beloved children of God, individuals who are incarcerated are in need of accompaniment and of receiving the gift of the gospel in word and sacrament. They also need to experience dignified ways of relating to other human beings that are not destructive or distorted. They need relationships with people who are not responsible for their confinement and appropriate relationships with those who are.

As beloved children of God, incarcerated Christians also can accompany one another as they face together the challenges of imprisonment.

Through prayer, worship and mutual support, they give witness to Christ's claim: "where two or three are gathered in my name, I am there among them" (Matthew 18:20). The need and potential for creative ministry inside correctional facilities is great.

This church is grateful for its prison chaplains and prison congregations in their proclamation through word and sacrament of good news for all people. In their daily lives as counselors and advocates, chaplains and pastors accompany people who are incarcerated. Those ministering within prisons have the opportunity to share concern for the humanity of each inmate and have critical roles in protecting First Amendment rights.

Synods, congregations and individuals are urged to support and join in ministry to those incarcerated. Congregations should consult the local institution in question but can remember imprisoned people in prayer and by providing "care packages" via prison chaplains and pastors. Visitation or writing prisoners can change lives. Through Bible study, advocacy and — most importantly — relationships, the accompaniment that evokes the righteousness of the gospel can be made real.

4. Advocacy

In seeking to remedy harm this church is called to hear the cries, to show hospitality and to accompany, but compassion calls for more. Compassion leads to seeking justice in the relationships and structure of society. Just as God seeks justice in this world, so church members, chaplaincies, congregations, social ministry organizations, synods and churchwide ministries must not be satisfied merely to react to injustice, but must also work proactively in the promotion of justice for all.

Seeking justice demands that we become advocates for those whose cries are ignored. Victims of crime often feel unable or unsafe in expressing their concerns and needs. Those who are incarcerated are cut off in many ways from communicating with others. Those most likely to be harmed by the criminal justice system are in many cases the ones with the least political and economic power. Advocacy is essential.

Christians are called to be active participants in civil government. As citizens we have the responsibility to vote and to participate in civic discourse about the criminal justice system. As participants we seek to affirm where appropriate but also to be critics of earthly, temporal jurisdictions. Properly distinguishing between what is promised in God's coming reign of justice

and our current criminal justice institutions enhances, and does not thwart, passionate efforts to bring about what is possible in our political reality.

Support for public policy advocacy groups is vital. The ELCA urges its members to initiate, organize and support broad-based efforts to re-orient the present criminal justice system away from retribution alone and toward preparing individuals for re-entry into our communities. Fear, racial prejudice and economic disparities too often drive public response. Christians are called to support both officials who prioritize sensible, rational and equitable approaches to criminal justice and public policies that are just and effective.

C. Burden bearing

Through ministry of hearing the cries, hospitality, accompaniment and advocacy the compassionate suffering of the cross becomes evident as Christians increasingly bear other's burden (Galatians 6:2). Bearing the cross inevitably moves Christians toward actual identification with the victim, the criminal, the justice system worker. Wearing the mark of the cross we leave distance and the safe familiar behind; we begin to count the experience of others as our own.

We are Ruth who pledges herself to Naomi (Ruth 1:15-18). We imitate God (Ephesians 5:1) who is not satisfied only to have made us but pledges to carry us as well (Isaiah 46:3-4). When we bear what weighs down another's life, we fulfill the law of Christ who himself has carried our sin and death in his body. When this church bears such burdens we become a "Yes" to others as a response to God's "Yes" to us.

V. Paths to greater justice: positive trends

The practices of responsive love seeking justice means this church also must attend to public policy because human needs are addressed through systems. In the following three sections this church identifies and calls for consideration of recommendations grounded in evidence and aimed at humane, effective change. These seem worthy of support whether requiring legislative reform, budgetary prioritization, volunteer efforts or other forms of enactment.

Despite deep and abiding problems in the criminal justice system, it is important to acknowledge positive trends that have emerged in recent

years. The ELCA supports trends such as greater emphasis on victims' rights and needs, use of restorative justice, community-based alternatives to incarceration, legislation that reduces sentences for certain offenses, the emergence of specialized courts and the growing emphasis on reentry programming.

A. Victims' rights

As a result of the efforts by advocates for reform, all 50 states now have legislation establishing the rights of victims. While more must be done to develop victim-sensitive practices, these rights typically include:

- the right to fair treatment, dignity and respect;
- the right to be informed about court proceedings and victim services and rights;
- the right to be present at legal proceedings;
- the right to a voice at sentencing and at proceedings involving offender release; and
- the right to restitution from the offender.

More than 30 states also have passed constitutional amendments dealing with victims' rights, though circumstances and quality vary widely from state to state. At the federal level, legislation such as the Victims of Crime Act (1984) and the Justice for All Act (2004) have established victim rights and services such as victim compensation funds.³⁶

B. Restorative justice

Restorative justice focuses on crime as an offense against human individuals and a community rather than simply as against "the state." While not denying the state's role or the appropriate place of retribution, this approach encourages victims to take an active role in responding to crime and invites offenders to take personal responsibility. Restorative approaches seek to bring together the victim, offender and other members of the community harmed by crime to develop a plan to try to repair that harm.

Since the 1980s the use of restorative responses to harm has increased in the U.S. These responses include victim-offender mediation, family-group conferencing, circle process and community reparative boards. Restorative practices are used primarily with juvenile offenders, but sometimes with adults, and could be much more widely practiced. As a

response it offers both a diversion strategy for relatively minor offenders and a supplement to the sanctions of the criminal justice system for more serious offenders.

Restorative justice, in its attention to the people involved, provides a fuller account of the nature of justice as well as creative alternatives to incarceration. This church notes that congregations could consider becoming host sites for restorative training and programs. Likewise, individuals are encouraged to consider participating in restorative practices by becoming trained facilitators, community participants and advocates in both diversion programs and correctional facilities.

C. Alternatives to incarceration

Since 2000, many states have expanded their use of community-based corrections for offenders who do not pose great danger to society; this especially includes drug offenders.³⁷ These alternatives to incarceration include intermediate sanctions such as home confinement, electronic monitoring, halfway houses, residential work-release centers, day-reporting centers, intensive probation supervision as well as treatment and diversion programs for drug offenders.³⁸ Such approaches should be encouraged and funded.

In recent years community-based alternatives also have been used more extensively in some states to reduce the number of probation and parole revocations that result in incarceration. Several states have decreased prison populations by enhancing parole consideration for incarcerated individuals.³⁹ Some parole agencies have developed graduated sanctions as alternatives to incarceration for parole violations.⁴⁰

Alternatives to pretrial incarceration can reduce stress on jails and the use of alternative forms of pretrial release on both federal and state levels have been promising. The goal is to put in place pretrial supervision as well as evidenced-based assessments for determining conditions of release.⁴¹

D. Sentencing reform

Since 2004, more than 20 states have enacted or proposed legislation to reform sentencing policies.⁴² These legislative changes have focused on several types of reform. Primary attention has been given to increasing sentencing options that divert drug offenders from incarceration to community-based treatment alternatives and expanding sentencing alternatives to incarceration for other non-violent offenders.

Other reforms have attempted to increase use of community supervision and technological innovations such as electronic monitoring to respond to probation and parole violations. Some states have established or expanded programs that divert to drug treatment those who commit certain drug offenses. Other states have authorized early release from prison to community-based housing and treatment programs for offenders who meet certain criteria.

These reforms often are encouraged solely on the basis of economic cost. Improvement for any reason is important to the individuals involved, and the burden of cost is a necessary factor for government to evaluate. Changes made simply for economic reasons are less likely to endure, however, and people of faith also must evaluate practices in terms of moral justification, that is, whether the people involved are harmed or aided.

E. Specialized courts

In recent decades, specialized “problem-solving” courts have developed for those with drug-related and mental health problems as well as for veterans. With a rehabilitative emphasis, these courts address underlying causes of crime and provide treatment alternatives to punishment. Through successful participation in treatment programs, defendants are able to avoid traditional court sanctions such as jail time.⁴³

“Drug courts” in particular have been used with success. They serve adult and juvenile offenders as well as parents with cases in the child welfare system in which parental substance abuse contributed to child abuse or neglect.⁴⁴ The potential impact of such courts is significant given the prevalence of drug use disorders among offenders. Approximately half of jail inmates report symptoms consistent with drug use disorders prior to admission to jail.⁴⁵ It is notable that about half of state and federal prisoners meet criteria for drug dependence or abuse.⁴⁶

In drug courts, judges, defense attorneys, prosecutors, treatment services staff and community corrections staff generally work together to address cases. Case management typically includes risk and needs assessment, intensive monitoring, graduated sanctions and incentives, and treatment and other rehabilitative services. Though intensive monitoring and services are initially costly, in the long run drug courts are cost effective when one considers the reduced recidivism of drug court participants.⁴⁷

Mental health courts and veterans' treatment courts are less widely used and are underfunded, but are similar in their rehabilitative focus.⁴⁸ Like drug courts, the potential impact of mental health courts is significant. Research indicates that approximately 65 percent of jail inmates and about half of state and federal inmates have mental health problems.⁴⁹

Female inmates are significantly more likely than male to experience mental health problems, and female jail inmates have significantly higher rates of *serious* mental illness, compared to males.⁵⁰ Outcome evaluations are still limited, but early evidence hints at effectiveness in reducing arrests and jail time.⁵¹

Veterans' treatment courts focus specifically on mental health and substance abuse issues for military veterans who have committed criminal offenses.⁵² These issues often result from psychological stresses of combat that are not adequately addressed when military personnel return home.

F. Reentry programming

Since the late 1990s there has been greater emphasis on the reentry process and recognition that transitional services are essential to successful reintegration into the community following incarceration. The ELCA is grateful for congregations and social ministry organizations that have developed creative efforts to provide reentry support, mentoring and other transitional services. Governments are encouraged by this church to continue funding expansion of individualized reentry plans (based on systematic assessment), and provide a range of services through coordinated efforts with community agencies.⁵³

VI. Paths to greater justice: ending the overuse of incarceration

The ELCA is grateful for these positive trends, while concerned that governments and private organizations provide sufficient funding and institutional support to expand and broaden their effectiveness. At the same time, this church is clear that many areas of the criminal justice system urgently require extensive reform and sustained overhaul. The primary factor in making policy decisions related to criminal justice must be principled, evidence-based practices at all levels of the criminal justice system.

One area stands far above others and deserves immediate attention: this society must find ways to end the overuse of incarceration. As mentioned earlier, compared with other countries — along any relevant scale — the U.S. overuses incarceration as a response to criminality. Because of the significant harms —both personal and social —caused by incarceration, the ELCA strongly urges those who make and administer correctional policies to take all appropriate measures to limit the use of incarceration as a sanction for criminal offenses.

To achieve the goal of decreased incarceration, the ELCA identifies three specific objectives: aggressively pursue alternatives to incarceration; reform sentencing laws and policies; and closely scrutinize national drug policy.

A. Pursue alternatives to incarceration

Since the vast majority of individuals who have committed crimes do not require or deserve institutional confinement, reforms are urgently needed. This church encourages eliminating reliance on unnecessary secure detention and jail, the gateways to long-term incarceration.

The ELCA urges greatly expanded use of alternatives to incarceration and detention such as those commended above in its discussion of positive trends. This includes more use of community-based alternatives to incarceration for convicted offenders, for those who violate conditions of probation or parole, for juvenile offenders, and for those detained because of immigration status. This church also supports more treatment-focused alternatives to the use of jails and prisons for mentally ill offenders.

In particular, the ELCA encourages greater use of pretrial release programs for individuals held in jail while awaiting trial. At midyear 2010, nearly 749,000 individuals were confined in local jails, most for relatively minor, non-violent offenses. Of these inmates, 61 percent had not been convicted, but were detained awaiting trial or other court proceedings.⁵⁴ While some were denied the opportunity to post bail as a danger to the community or a risk for non-appearance in court, most were not. By one estimate, nine billion dollars are spent annually to incarcerate individuals awaiting trial who cannot afford bail but posed little threat to society.⁵⁵

Holding people in custody significantly disrupts people's lives, and can result in the loss of work, home and property. Incarceration while awaiting trial increases the likelihood of conviction, and stiffer sentences can

lead to the loss of income for families.⁵⁶ A racial and ethnic component is also evident, given that people of color are disproportionately likely to live in poverty, and therefore are less likely than Caucasians to be financially able to post bail.⁵⁷

B. Reform sentencing laws and policies

Numerous sentencing policies have been adopted since the 1980s, including mandatory minimum sentences, habitual offender laws, truth-in-sentencing laws and sentencing guidelines. Their implementation has led to increases in the use of incarceration and in the length of sentences, and has limited judicial discretion in the sentencing process.

Habitual offender or three-strike laws, for example, impose lengthy sentences on chronic offenders. Nearly half of the states have them and in some, the law has applied even if the third felony conviction was not for a serious or violent offense.⁵⁸ Mandatory minimum sentences that impose lengthy fixed punishments on offenders and prohibit judges from considering mitigating factors, have been used most extensively in response to drug-related offenses. In addition sentences have been lengthened through truth-in-sentencing laws, which target serious violent offenders and require those convicted to serve at least 85 percent of their sentences. Such laws exist at the federal level and in more than half of the states.⁵⁹

This church calls for review and legislative reform of these sentencing policies for three reasons. First, researchers have raised serious doubts about the effectiveness of more severe sentences in deterring crime.⁶⁰ Second, the policies shift discretion from judges' sentencing decisions to prosecutors' charging decisions, which are less susceptible to public scrutiny and likely to be inconsistently applied.⁶¹

Third, and finally, these policies exact enormous and unnecessary personal costs on offenders, families and neighborhoods, along with a massive demand for public resources when tax dollars are desperately needed elsewhere. Lengthy sentences produced by these policies mean that offenders are incarcerated long beyond the point at which they would likely have "aged out" of crime and ceased to pose a threat to society.

C. Scrutinize national drug policy

Any comprehensive assessment of the criminal justice system must attend to national drug policy because that policy has a marked effect on

all aspects of the system. In particular, the national drug policy bears significant responsibility for the dramatic increase in the incarcerated population. In 2010, 52 percent of federal inmates and 17 percent of state prison inmates were incarcerated for drug offenses.⁶² As noted above, mandatory minimum sentences have been used extensively for drug-related crimes and have led to exceptionally long periods of incarceration.

Regardless of what future directions U.S. national drug policy takes, this church raises grave concerns about aspects of the present approach. First, the image of a “war on drugs” reinforces a movement toward more militarized policing. Although special circumstances of extraordinary threat sometimes may justify the use of military-like tactics and equipment, those circumstances should not be treated as the norm and run counter to proven community-based methods.

Second, the national drug policy has directed substantial resources toward one very specific form of criminal activity. Drug abuse can be devastating for individuals and communities, and the international trade in illegal drugs continues to cause political conflict and instability in many countries.

The intense focus and expenditure on drug crimes, however, may come at the expense of other public needs, both within and outside the criminal justice system. Some of the significant resources spent on law enforcement efforts could be devoted to drug treatment and drug use prevention efforts. Further, current law allows law enforcement agencies to seize and retain assets used in or gained from crime. This power may create an improper financial incentive for law enforcement, especially given the relatively sparse judicial oversight of asset forfeitures.

Third, and finally, there is mounting and persuasive evidence that the war on drugs has had a disproportionate impact on people living in poverty and people of color. Law enforcement practices regarding drug offenses often have targeted disadvantaged communities, and the sentencing policies regarding drug crimes have had racially disparate effects. Despite the fact that Caucasians and African Americans engage in drug offenses (both possession and distribution) at similar rates, Black people have been far more likely than White people to be arrested for drug offenses.⁶³

Policing decisions about which neighborhoods and types of drugs should be the focus of enforcement efforts only contribute to these disparities. Federal sentencing policies regarding cocaine offenses offers a stark example of the racially disparate impact of overall drug policy. Although the tremendous disparity in sentence length for powder vs. crack cocaine offenses has been diminished in recent years, it still exists.⁶⁴

Despite broad consensus that national drug policy has been marked by improper use of war language, very high costs and disproportionate burdens on vulnerable members of our community, there are widely divergent views about the proper response. Some argue for decriminalization of the use of illegal drugs and a shift toward a public health model for addressing the negative effects of drug addiction and abuse. Others contend that some measure of criminal prohibition remains necessary to secure both individual and social well-being.

This church does not presume to resolve that debate. But the ELCA does call for close scrutiny to the full costs and consequences of drug policy. Those costs include the resources required to implement the policy as well as the costs to those who are harmed by the policies.

There are histories behind the designation of unlawful substances. Human decisions have made some substances illegal while permitting others and have made some substances legal in some jurisdictions or in certain time periods. The histories behind the construction of drug policy point to the role of contextual factors, including the race and class of those who use particular substances. Those histories should be considered when revisiting those policies' harmful effects. A responsible society must question whether the policy's benefits are sufficient to offset those costs.

VII. Paths to greater justice: support needed reforms

Although the problem of mass incarceration demands immediate attention, the ELCA highlights four other imperatives that require prompt and vigorous response from those who make and implement criminal justice policies. While each deserves attention for its own sake, reforms in these areas also will reduce the incarcerated population significantly.

First, the criminal justice system must acknowledge the racial disparities, and address the implicit and explicit racism that persists there; second, it

must recognize the special needs of juvenile offenders; third, it must stop the privatization of prison facilities; and fourth, it must foster the full reintegration of ex-offenders into community.

A. Acknowledge racial disparities and end discrimination

The estimated prison population under state and federal jurisdiction at year-end 2011 was 34 percent Caucasian, 38 percent African American and 23 percent Hispanic.⁶⁵ Yet non-Hispanic Caucasians currently make up 63 percent of the U.S. population, African Americans make up 12 percent and Hispanics make up 17 percent.⁶⁶ Percentages are greatly disproportionate for other peoples of color also, such as American Indians or Alaska Natives.⁶⁷ Racial disparities appear in juvenile justice systems as well, including disproportionate minority contact with juvenile justice systems.

Some argue that these numbers represent the disproportionate involvement of people of color in crime. African Americans, for example, have high rates of involvement in crimes such as homicide and robbery that are punished by incarceration.⁶⁸ Yet, even when these high rates are taken into consideration, significant disparities persist and research shows that race influences decision-making at numerous points in ways that disadvantage people of color (e.g., policing decisions regarding arrest, prosecutorial decisions regarding charging, and judicial decisions regarding bail and sentencing).⁶⁹ Clearly, the cumulative effects of these decisions contribute significantly to racial disparity in incarceration.

U.S. society has a history of, and continues to manifest racism and profound economic inequality. The ELCA believes actions must be taken to end racial disparity in practices within the adult criminal and juvenile justice systems and to address the issue of racial disparity.

For example, this church expresses grave objections to patterns of racial, ethnic and religious profiling. Although some police departments have adopted robust policies to counter the problem of racial bias, discrimination remains and carries many harmful consequences. Profiling — whether intentional or unintentional — stigmatizes those who are innocent of any offense. It alienates members of the public who come to view the justice system as antagonistic rather than as a safeguard to all people's rights and property. Extensive efforts must continue until discriminatory profiling ends.

B. Recognize the special needs of youth offenders

The U.S. juvenile justice system grew out of a social reform movement

more than a century ago based on the principle that youth are different from adults. Because they are still developing capacities for moral judgment, they may be less culpable, and more amenable to rehabilitation, than adults who commit the same offense. This principle — now supported by a significant body of research showing that brain development is still incomplete at age 18⁷⁰ — led to the creation of a separate juvenile system that aspired to be more rehabilitative than punitive.

In recent decades juvenile justice has drifted from that initial impetus. The drift has been motivated by perceptions of rising violent juvenile crime and perceived shortcomings in the rehabilitative focus of juvenile systems. Increasingly, the juvenile system has mirrored harsher trends in the adult system. Community-based alternatives for at risk youth as well as nonviolent youth offenders remain inadequate in many communities. Large residential juvenile correctional facilities resembling adult prisons still abound and are often unsafe and ineffective. They demonstrate high recidivism rates and poor educational outcomes, and youth rarely leave prepared to succeed as adults.

Further, by the 1990s nearly all states had expanded their policies regulating transfer of juvenile offenders to the adult system, permitting transfer at younger ages and for more offenses. States justify this expansion both as a means of more securely segregating violent or repeat juvenile offenders and as a means of better directing scarce funding in the juvenile system toward youth who are perceived to be most amenable to successful rehabilitation.

Concerns about security and efficiency are understandable. It is undeniable that society deserves protection from youth who commit horrific crimes. Yet, the weakened distinction between juvenile and adult corrections has done great harm. Juveniles who are prosecuted or sentenced as adults are ill-prepared for the fundamentally adversarial environment of the adult judicial process. Very little allowance is made for youths' immaturity, lack of experience, or questionable ability even to understand their rights.

Youth sentenced to adult prison, compared to their peers in the juvenile system, suffer higher rates of physical abuse, sexual abuse and suicide.⁷¹ They are rarely provided age-appropriate educational or rehabilitative assistance. Female youth face special challenges when placed in adult correctional settings.

Some might see these problems as tragic consequences of otherwise prudent correctional policies for juvenile offenders, but the policies themselves fail to promote safe communities. Most experts agree that laws encouraging the transfer of juvenile offenders to the adult system do not deter serious juvenile crime.⁷² In fact, there is compelling evidence that transferred juveniles are *more* likely to offend in the future than their peers in the juvenile system.⁷³ Even youth who receive a sentence of probation from adult criminal court reoffend more often than their peers in the juvenile system.⁷⁴

Transfer practices also magnify the racial disparity in our nation's justice system. While Black youth represent 17 percent of the overall youth population, they make up 62 percent of those tried in adult court. They are nine times more likely than White youth to be sentenced to adult prison. Latino and Native youth are also transferred to the adult system and incarcerated in adult prisons at higher rates than White youth.⁷⁵

This church supports an end to current practices of trying, sentencing and incarcerating youth in the adult criminal justice system as well as ending youth sentences of life in prison without the possibility of parole. Recent Supreme Court actions reflect encouraging developments in rulings against the death penalty for those who committed their crimes as juveniles and against mandatory life sentences without parole.

While advocating an end to current transfer practices, this church recognizes that some juvenile offenders pose significant risks to public safety and may not be appropriate for release upon reaching the age at which juvenile custody would cease. Reasons include insufficient progress in rehabilitation or the severely grievous nature of their offenses. This statement urges authorities to explore means of ensuring public safety without continuing the practice of transferring juvenile offenders to the adult system.

Even these youth deserve initial secure placement within the juvenile system where they have every opportunity to benefit from rehabilitative and educational activities with their peers. Adult incarceration should take place only after completion of placement in the juvenile system and should be reserved for youths who have committed the most grievous offenses. The determination that a youth poses continuing high risk to public safety requires thorough objective assessment of risks and needs.

The ELCA recognizes that the goal of keeping juveniles out of the adult criminal system requires the development and expansion of alternative cor-

rectional strategies. Some states have redefined the age at which adulthood begins, allowing youths to remain in the juvenile system beyond 18 and affording them maximum opportunity to benefit from rehabilitative efforts in the juvenile system. Some jurisdictions have seen promise in blended sentencing strategies, which allow juvenile and adult sentences to be imposed simultaneously. The adult sentence is typically suspended but held as a possibility in order to protect public safety.⁷⁶

At the most fundamental level, this church calls for a juvenile justice system that more closely matches its original rehabilitative intent and is equipped to meet the needs and manage the risks of all youth offenders. Promising initiatives for at-risk and first-time and nonviolent youth offenders include evidence-based therapeutic approaches for strengthening families as well as community supervision initiatives. Such initiatives include after-school programs and evening reporting centers that constructively engage juveniles during peak crime hours.

For youth who have committed more serious offenses and require secure residential placement, some jurisdictions have developed approaches demonstrating that even many serious youth offenders are amenable to rehabilitation. In a positive trend, some states are working to reform their juvenile systems by embracing those approaches.⁷⁷ Until every state can meet the needs and manage the risks of *all* youth offenders within a rehabilitation-focused juvenile system, juvenile justice reform will be incomplete.

Youth offenders should be held accountable for their wrongful actions. Anything less dishonors them and their budding capacity for moral agency. Yet, they should be held accountable in age and in developmentally appropriate ways. Regardless of their criminal offenses, youth deserve a rehabilitation-focused experience. Only these experiences provide them every opportunity to develop moral judgment, empathy for others and the skills necessary for making a responsible and successful transition to adulthood.

This church calls upon its members, congregations, social ministry organizations and others to take part in building new social momentum for reforming juvenile corrections practices and treating youth as youth.

C. End prison privatization

Arguments used in favor of for-profit prisons cite their supposed cost-effectiveness, their ability to reduce overcrowding in public prisons and

the introduction of free market competition to lower incarceration costs overall. Recent decades have witnessed a dramatic trend toward the usage and spread of private, for-profit prisons.⁷⁸

The arguments against them, however, are much stronger, and, for this church include concerns that are theological, moral and economic. Theologically speaking, it is the role of government to restrain evil, not that of the market.⁷⁹ Civil governments may legitimately deputize private companies to act on their behalf in some cases. Private entities, including many church-related organizations, have effectively and appropriately participated in corrections programs, such as halfway houses. But such community facilities differ significantly from prisons. Such efforts must be carefully monitored when private entities are entrusted with even limited coercive power over individuals.

Where individual lives depend utterly upon the system and as one comes closer to matters of life and death, it is of utmost importance that the state not abdicate its responsibilities. When the state incarcerates someone as a prisoner, it brings upon itself special responsibilities for exercising custodial control. For this moral reason the role of the state in the operation of prisons should not be supplanted by economic players who are guided primarily by profit or production. The profit motive of private prison corporations is apparent in reports to the Securities and Exchange Commission where such corporations identify sentencing reform as an economic “risk factor.”⁸⁰

Contracting with private firms for incarceration invites myriad offenses. Significantly, privatization works against rehabilitation and successful offender reintegration into society. When a corporation’s profits depend on a steady flow of offenders into or back into its prisons, it has little incentive to try to rehabilitate those who are incarcerated. Studies have shown that cost-saving measures in private prisons have contributed to significantly reduced services for the incarcerated. These reductions in medical care, education, job training and counseling thereby contribute to higher recidivism rates for those released from private prisons compared to public ones.⁸¹

Recent evidence also questions the supposed economic benefits of private prisons. Studies have suggested that cost savings are minimal or absent.⁸² In addition to reducing services for the incarcerated, efforts to cut costs have led to limited training of employees, relatively low pay rates among certain staff, and high turnover.⁸³ Higher levels of violence are likely in such an environment.

On the basis of theological, moral and economic reasons, this church objects to current trends of corporate privatization in the criminal justice system. The ELCA urges government at every level to maintain or reclaim its responsibility and eliminate reliance on the use of private, for-profit prisons.

D. Foster full reintegration of ex-offenders

The dominant aim of criminal justice is restored social order. Even forms of punishment ultimately serve the goal of restoring a sense of social order. A balance must be achieved, therefore, between the harshness of punishment itself and the return of an offender to social life. If punishment is in some sense retributive, it must also be in some sense rehabilitative. For this reason attention to offender services and the successful reintegration of ex-offenders to society matter as part of the criminal justice system.

1. Rehabilitation, re-entry and transitional support

This church holds that social order and human flourishing will be enhanced by greater emphasis on rehabilitative opportunities for prisoners. Many enter prison with limited life skills, poor job histories, little education and untreated drug or alcohol addictions. Upon their release from prison, however, they are expected to adjust to life back in their community (if they have one), find work, support themselves, seek help for mental illness and substance abuse, and not return to crime.

To dramatically increase chances for success, re-entry support must begin long before release from prison. By identifying needs such as basic life-skill and job-skill training, education and treatment needs at sentencing, and then comprehensively addressing these needs during incarceration, the likelihood of successful transition back into the community is heightened. The religious dimension of life is significant and deserves to be a major component of rehabilitative programs for those interested.

The ELCA also supports improved programming for released prisoners or those with alternative sentencing. The difficulties of finding housing, employment and treatment (both for mental illness and addiction) make an offender or ex-offender's participation in society challenging. Mentoring programs have shown especially encouraging signs of success in aiding released offenders. Congregations and social ministry organizations have found ways to act as mentors and supporters; the ELCA applauds and encourages such efforts.

Yet the church also must remind the state of its duty to increase the possibility of successful re-entry to society. The main responsibility lies, finally, with the offender, but impediments to successful re-entry need to be removed to the greatest extent possible. Incentives for re-entry preparation should be created. If inmates successfully complete prison programs related to post-prison success, sentence reductions may be appropriate.

Support for rehabilitation and reentry programs alone is not sufficient. Current policies imposing punitive, long-term collateral sanctions also must be reformed for the sake of successful re-entry and the reduction of recidivism.

2. Collateral sanctions

When someone is convicted of a crime and a judge imposes the sentence, many invisible “collateral sanctions” are indirectly, and silently, added.⁸⁴ These punishments are defined through legislation and restrict the rights of ex-offenders after release. Such restrictions may include denial of the right to vote, restricted access to public housing, ineligibility for public assistance or educational loans, and barriers to employment for their entire lives due both to employers’ increased access to criminal records and to exclusion from particular occupations.⁸⁵ The stigmatization of these restrictions harms people personally as much as some restrictions harm them financially.

Beginning in the 1980s, state legislatures and the U.S. Congress created legislation expanding the use of collateral sanctions. Examples include an increase in the number of states that *permanently* deny convicted felons the right to participate in the democratic process by voting. It is likely that many U.S. citizens are unaware of the existence of such legal restrictions. This invisibility follows because, unlike prisons, these sanctions operate largely beyond public view, and are imposed through law rather than by a judge in a visible courtroom setting.⁸⁶

While some collateral sanctions are directly responsive to the risk posed by the ex-offender’s prior conduct, the broader trend of collateral sanctions does not seem to arise from those concerns. Instead, the increased use of such significant consequences reflects the general shift toward more punitive responses to offenders and “tough-on-crime” strategies. This expansion has been politically popular because, unlike other forms of sanction, it has come at little cost to taxpayers. In that sense, there are political advantages to the use of invisible punishments.

Such a narrow view ignores the consequences of these enduring punishments that significantly impact millions of Americans. For instance, there are real effects when a young man earns his GED in prison, but upon release is denied access to student loans for more education. The harms of collateral sanctions extend beyond those convicted of crimes to families and communities. In all cases, defendants and their counsel should be given effective ways to determine collateral consequences and make plea decisions with full knowledge of those consequences.⁸⁷

Although most collateral sanctions should be drastically limited, some *are* appropriate or even necessary when the sanction corresponds directly to the offense for which a person was convicted. It is reasonable to exclude those convicted of financial crimes from employment positions where they would have access to or responsibility for oversight of funds. Serious sex offenders and all child sex offenders should not have access to vulnerable individuals in employment or volunteer settings.

The majority of invisible punishments, however, do not fit the criterion of necessity, and therefore are unjust. This statement concurs with the action of the American Bar Association that has called for “restricting the reach of invisible punishment by limiting collateral sanctions to those that relate directly to the offense charged, and prohibiting sanctions that without justification, infringe on fundamental rights, or frustrate a convicted person’s chances of successfully reentering society.”⁸⁸

VIII. Moved by the cries: called to respond

Aware of the mounting evidence of the system’s deep and abiding problems, the ELCA calls for the adoption of a variety of reforms. The leading concern is to decrease the incarcerated population, but other reforms delineated in this statement are significant in their own right.

At a deeper level, however, this statement recognizes that a more fundamental transformation in thinking about criminal justice is required. It calls for a transformed mindset, one that counteracts the logic equating more punitive measures with more just ones. This mindset challenges current undertones of vengeance, violence and racism and permits everyone in the criminal justice system to be seen as members of human communities, created in the image of God and worthy of appropriate and compassionate response.

The ELCA recognizes that retreat from unduly harsh sentencing policies and the over-utilization of incarceration may be motivated by economic factors, rather than by a moral critique of the way the system functions. Improvement for any reason is important to the individuals involved, but this church maintains that responses to criminality should be made on theological, moral and rational grounds as well. Changes made simply for economics are less likely to endure.

Today it is important to join with others of good will to challenge the flawed public consensus about crime and criminal justice. Until a shift occurs in the public consensus, criminal justice policies likely will persist that recognize neither the injustice nor the inefficiency of many of our current responses to crime.

In God we place our hope for the fullness of shalom promised. Confident in the presence and promise yet to come of God's reign we yearn for a greater measure of justice now. And to God we owe thanks for human reason and its abilities to discern — with compassion and wisdom — how human communities might reflect at least the justice of the law.

When reason identifies sites of injustice in these communities, institutions and systems, compassion motivates our response. The ELCA deeply appreciates the high ideals of the current criminal justice system. At the same time this statement has noted numerous issues about which it must be said that justice has not been done.

The ELCA therefore recommits itself to ministry with, for, to and among the many, many people whose voices cry out within our criminal justice system. “For what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?” (Micah 6:8).

Glossary

- **Adjudication:** A process by which a finder of fact hears arguments and reviews evidence to settle a legal dispute.
- **Arraignment:** A criminal proceeding at which an individual accused of a crime is informed of the charges against them, and at which they are given the opportunity to plead innocent, guilty, or as otherwise allowed by law. Bail is often set at this proceeding.
- **Bail:** An amount of money exchanged for an accused's release from custody which the accused may reclaim only upon appearing in court at the scheduled time.
- **Collateral sanctions:** Any penalty imposed automatically upon conviction of an offense, even if the penalty is not included in the sentence.
- **Community corrections:** The supervision of criminal offenders in the general population, as opposed to incarceration. Two main types are probation and parole.
- **Correctional control:** A restraint on freedom that allows law enforcement to limit the movement and activities of criminal offenders.
- **Criminal justice system:** The system used for apprehending and trying those accused of crimes, and sentencing and incarcerating those found guilty of a crime.
- **Discretion:** The freedom to decide or act according to one's own judgment restrained only by general legal guidelines.
- **Disparity:** A difference between otherwise similar classes or individuals.
- **Diversion:** A process by which a criminal offender is allowed to provide community service or participate in counseling or substance-abuse treatment instead of incurring the typical penalty for the crime. If the offender successfully completes a diversion program, the offense may be removed from the offender's record.
- **Due process of law:** A guarantee that all proceedings affecting a person's legal rights will be in accord with specified procedures and conducted in a manner that is fundamentally fair to the individuals whose rights are at issue.
- **General deterrence:** A policy goal to cause all individuals in society to avoid a disfavored action.

- **Habitual offender laws (or “three strikes” laws):** Laws that provide specific — and heightened — penalties for those who commit additional offenses after being convicted of prior offenses.
- **Incapacitation:** Removal of a person’s legal capacity to act in a specified way.
- **Incarceration:** The act of putting someone in prison or jail.
- **Intermediate sanctions:** Alternative punishments used to monitor offenders who are neither under the usual restrictions of probation nor incarcerated.
- **Law enforcement:** Federal, state and local agencies charged with protecting public order through the use of the coercive power of the state.
- **Mandatory minimum sentences:** Legislative provisions that establish the shortest possible prison term to which a judge may sentence a person convicted of a particular crime.
- **National drug policy:** The societal goals regarding drugs, primarily represented by the laws enacted across the country to regulate them.
- **Negotiated pleas (or plea agreements):** These occur when the accused agrees to plead “guilty” or “no contest” to some crime in return for some benefit, such as reduction of the severity of the charges, dismissal of some of the charges, or the prosecutor’s agreement to recommend a particular sentence.
- **Parole:** The release of a prisoner before the end of the prescribed sentence, on condition that the offender follows specific rules, such as reporting to a parole officer and avoiding prohibited conduct.
- **Pretrial release:** A procedure that allows an accused person to remain in the community until trial. The individual may be released on their recognizance, which means without any fee or restrictions, or alternatively after the payment of fees or agreement to enhanced supervision.
- **Prison privatization:** The transfer of ownership and/or operation of prisons and prison-services from state-run agencies to privately owned entities.
- **Probation:** A chance to remain free, given to a person convicted of a crime, provided the person conforms his or her behavior to specific rules established by the court or administrators.

- **Profiling (or racial profiling):** The use, typically by law enforcement, of a person's racial or ethnic characteristics in the decision to detain or question the person about potential criminal activity.
- **Re-entry (or re-entry programs):** The process through which a person released from prison adjusts back to living freely in the community.
- **Rehabilitation:** The process by which an individual is restored to a state where he/she is capable of being a responsible member of society.
- **Restorative justice:** A model of criminal justice that emphasizes reparation to those harmed by the offender, and encourages reconciliation between offenders and victims.
- **Retribution:** A model of criminal justice that emphasizes the use of punishment to restore equality between offender and victim by imposing sanction on the offender proportionate to the harm inflicted by the crime.
- **Sentencing guidelines:** Legislatively established standards for determining the punishment that a person convicted of a crime should receive based primarily on the character of the crime and the offender's record.
- **Specialized courts:** Courts that focus attention on specific types of offenders, such as those who have substance abuse problems, and provide treatment and other services as an integrated part of the adjudication and sentencing process.
- **Specific deterrence:** An effort to cause a specific individual to refrain from engaging in certain behavior in the future.
- **Truth-in-sentencing laws:** Laws that require a convicted offender to serve all, or at least a substantial portion, of the prison sentence that he/she receives. This is primarily accomplished by restricting the availability of parole.

Implementing resolutions

Resolved:

1. To call upon members of this church through steadfast prayer, discernment, Christian education, ministry efforts and public action to share the gospel of God's love in Jesus Christ as they hear the cries, offer hospitality, accompany and advocate on behalf of those whose lives are caught up in or committed in service to the criminal justice system;
2. To call upon members, congregations, synods, social ministry organizations and churchwide ministries to advocate intentionally and creatively for system reform consistent with the principles and recommendations set forth in this social statement;
3. To encourage ELCA congregations to work with victims, victim advocates and victim support organizations, to grow in sensitivity and response to the harm caused by crime, and to grow in awareness of restorative justice practices;
4. To encourage ELCA congregations to become intentional sites of ministry and action for the incarcerated and their families, possibly in ecumenical collaboration, and with special attention to re-entry ministries and to preferential hiring for ex-offenders, as appropriate;
5. To hold in prayer the ministry of ELCA chaplains and pastors serving in all correctional facilities, or serving with law enforcement agencies around the country, and to encourage all expressions of the ELCA and its affiliated institutions to provide greater support to prison ministry;
6. To request the ELCA's Congregational and Synodical Mission unit to enlist the aid of leaders in conferences, synods, seminaries, social ministry organizations or other appropriate groups in creating and maintaining a resource database, to which members, pastors, seminarians or other professionals can turn for information about activities, models and training modules that support ministry to people and action toward reform of the criminal justice system;
7. To call upon the ELCA's Worship and Liturgical Resources Team to develop additional liturgical resources for those involved in the criminal justice system, such as services and prayers for victims and

- their families, for those incarcerated, for those employed in the system, or rites of blessing for those engaging in visitation ministries;
8. To direct the staff of the ELCA's advocacy ministries to coordinate efforts to develop on behalf of this church a social investment screen on private prison operations, along with developing education materials to use within the ELCA for understanding these actions;
 9. To direct the ELCA's Theological Discernment Team in the fall of 2015 to bring to the ELCA Church Council an assessment of the feasibility of developing a social message on U.S. national drug policy, in accordance with "Policies and Procedures of the Evangelical Lutheran Church in America for Addressing Social Concerns" (Chicago: ELCA, 1997, revised 2006, 2011);
 10. To encourage the three expressions of this church to utilize the recommendations of the Addressing Social Concerns Review Task Force in the process of disseminating and implementing this social statement; and
 11. To call upon appropriate staff in the ELCA's Congregational and Synodical Mission unit and the Office of the Presiding Bishop to establish and oversee a process of implementation and accountability for this social statement that provides a report on implementation to the ELCA Church Council in the fall of 2017.

Endnotes

¹ Press release from the Department of Justice – Office of Justice Programs, “One in 34 U.S. Adults Under Correctional Supervision in 2011, Lowest Rate Since 2000” (Nov. 29, 2012) (on file at Department of Justice). For a fuller assessment see *Pew Center on the States*, “One in 31: The Long Reach of American Corrections” (Washington, D.C.: The Pew Charitable Trusts, 2009). Correctional control includes prison, jail, probation and parole.

² Roy Walmsley, *World Prison Population List* (9th ed.; London: International Centre for Prison Studies, 2011). www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf (accessed 2/2/12).

³ Tracey Kyckelhahn, “State Corrections Expenditures, FY 1982-2010,” Bureau of Justice Statistics Bulletin, December 2012 (Washington, D.C.: U.S. Department of Justice, 2012). <http://bjs.ojp.usdoj.gov/content/pub/pdf/scfy8210.pdf> (accessed 2/3/2013). U.S. Department of Justice, “FY 2013 Budget Request — Prisons and Detention.” www.justice.gov/jmd/2013factsheets/prison-detention.pdf (accessed 2/3/2013).

⁴ Evangelical Lutheran Church in America, *Policies and Procedures of the Evangelical Lutheran Church in America for Addressing Social Concerns* (Chicago: ELCA, 1997), 12. “Discernment” suggests a more open-ended process rooted in Scripture’s call to discern God’s will (Romans 12:1-2) while “deliberation” suggests a process more oriented toward decision, guided by a legislative model. While there is significant overlap in purpose and practice, each model contributes crucial aspects for moral reflection and action.

⁵ Evangelical Lutheran Church in America, *The Death Penalty* (Chicago: ELCA, 1991). www.ELCA.org/socialstatements. While “not finished [in] its deliberation” and while recognizing that “God entrusts the state with power to take human life” when appropriate, the social statement opposes the death penalty because “it is not fair and fails to make society better or safer.” In 2002 a social policy resolution adopted by the ELCA Church Council encouraged a “moratoria on the use of the death penalty and [urged] its eventual abolition in this society.”

⁶ Evangelical Lutheran Church in America, *Community Violence* (Chicago: ELCA, 1994). www.ELCA.org/socialmessages. While not analyzed extensively, the individual, economic and social sources of crime are addressed in the discussion about fear and violence that threaten the U.S. social fabric.

⁷ According to Marc Mauer, rising rates of incarceration between the 1960s and the 2000s have coincided with two periods of increase in crime rates and two periods of decrease in crime rates. The rate of violent crime in 2003 was higher than the rate of violent crime prior to the increased build-up of prisons in the United States. He concludes that, at best, mass incarceration has an “ambiguous” effect on actual crime rates. Marc Mauer, *Race to Incarcerate* (Rev. ed.; New York: New Press, 2006), 94-95. See also John J. Donohue III., “Economic Models of Crime

and Punishment.” *Social Research* 74(2): 379-412, who points out that high costs of incarceration are far greater than the economic benefits of crime reduction through incarceration.

⁸ *Evangelical Lutheran Worship* (Minneapolis: Augsburg Fortress, 2006), 95.

⁹ An important strand of ethical thought insists that each human being should be treated as an “end” not a “means” because of human dignity. Punishing an offender solely as a means to greater social safety (e.g., “making an example” of someone) can violate this principle.

¹⁰ Indeed, retributive punishment has historically functioned as a public proxy for private vengeance. If one family has been wronged by another and wants to retaliate, they will be less likely to do so if they feel the other family has been appropriately punished by the state.

¹¹ In 2005, 56 percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail inmates had a mental health problem, including histories or symptoms of illnesses such as major depression, psychotic disorders and mania. Yet, among inmates with a mental health problem, only 34 percent received treatment after admission in state prison, 24 percent in federal prisons, and 18 percent in local jails. Doris J. James and Lauren E. Glaze, “Mental Health Problems of Prison and Jail Inmates” Bureau of Justice Statistics Special Report (Washington, D.C.: U.S. Department of Justice, 2006). <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf> (accessed 12/9/12).

¹² See E. Fuller Torrey, *Out of the Shadows: Confronting Mental Illness Crises* (New York: John Wiley & Sons, Inc. 1997).

¹³ A social message on “The Body of Christ and Mental Illness” (Chicago: ELCA, 2012). www.ELCA.org/socialmessages.

¹⁴ The term “racism” as used throughout this statement is consistent with other ELCA documents and indicates structures of power and privilege as distinguished from personal attitudes of discrimination alone. See *Freed in Christ: Race, Ethnicity and Culture*. (Chicago: ELCA, 1993), 4. www.ELCA.org/socialstatements.

¹⁵ Christine Eith and Matthew R. Durose in “Contacts between Police and the Public, 2008” Bureau of Justice Statistics Special Report: October, 2011 (Washington, D.C.: U.S. Department of Justice, 2011), report that African American drivers were about three times as likely as Caucasian drivers and about two times as likely as Latino drivers to be searched during a traffic stop. 4.7 percent of African American drivers were arrested, compared to 2.6 percent of Latino drivers and 2.4 percent of Caucasian drivers.

¹⁶ Approximately 10 percent of Caucasians in the U.S. live in poverty, while about 20-25 percent of African Americans and Latinos do. Martin N. Marger, *Social Inequality: Patterns and Processes*, (5th ed.; New York: McGraw-Hill, 2011).

¹⁷ This is true even after offense severity and defendant's prior criminal record are considered. Samuel Walker, Cassia Spohn and Miriam DeLone. *The Color of Justice: Race, Ethnicity and Crime in America* (5th ed.; Thomson Wadsworth: Belmont, Calif., 2012); and Darrell Steffensmeier and Stephen Demuth "Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparison," *Criminology* 39:145-178.

¹⁸ Ibid.

¹⁹ Freed in Christ (Chicago: ELCA, 1993), 4. www.ELCA.org/socialstatements.

²⁰ From fiscal year (FY) 2000-2011, the number of immigrants detained annually grew from 167,000 to over 400,000. Detainees are held in a national network of 260 federal, private, state and local jails, costing the federal government over \$2 billion per year. See National Immigration Forum, "The Math of Immigration Detention"; Department of Homeland Security, Office of Immigration Statistics, "Immigration Enforcement Actions: 2011"; and Department of Homeland Security, Immigration and Customs Enforcement, "Immigration Detention Overview and Recommendations."

²¹ See "Toward Compassionate, Just, and Wise Reform," (ELCA Social Policy Resolution, November 2009). www.ELCA.org/socialmessages.

²² See also the 2011 Lutheran Immigration and Refugee Services report, "Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy."

²³ Evangelical Lutheran Church in America, *The Church in Society: A Lutheran Perspective* (Chicago: ELCA, 1991), 4.

²⁴ Ibid., 3.

²⁵ Colossians 2:11-12; Romans 8:11; 1 Corinthians 15:20.

²⁶ Augsburg Confession, XXIV.3, *The Book of Concord: The Confessions of the Evangelical Lutheran Church*, eds. Robert Kolb and Timothy J. Wengert (Minneapolis: Fortress Press, 2000).

²⁷ *Evangelical Lutheran Worship*, Rite of Holy Baptism, 228.

²⁸ Kolb and Wengert, *Augsburg Confession*, XVI.

²⁹ One still must be permitted, and may even be mandated, to object when obeying a given law would cause one to sin. Cf. *Augsburg Confession* XVI.7, Kolb and Wengert, which cites Acts 5:29.

³⁰ Evangelical Lutheran Church in America, *Constitutions, Bylaws, and Continuing Resolutions* (Chicago: ELCA, 2009), 4.03.n.

³¹ Mary E. Hinkle, *Signs of Belonging: Luther's Marks of the Church and the Christian Life* (Minneapolis: Augsburg Fortress, 2003), 78.

³² ELCA protocol urges due diligence and background checks among other practices devoted to protection and care for the vulnerable. See www.ELCA.org/protectingchildren or www.ELCA.org/misconductresources.

³³ *Human Sexuality: Gift and Trust* is the most recent articulation of this long-standing commitment of the ELCA. (Chicago: ELCA, 2009), 25.

³⁴ www.ELCA.org/sexoffender.

³⁵ The power of relationships has been documented. See T.J. Flanagan, “The Pains of Long-Term Imprisonment: A Comparison of British and American Perspectives,” *British Journal of Criminology* 20 (1980): 148-156; and A. Liebling, *Suicides in Prison* (New York: Routledge, 1992).

³⁶ William G. Doerner and Steven P. Lab, *Victimology*, (6th ed.; Burlington, Mass.: Anderson Publishing, 2012).

³⁷ Judith Greene and Marc Mauer, *Downscaling Prisons: Lessons from Four States* (Washington, D.C.: The Sentencing Project, 2010).

³⁸ Diversion programs are designed to enable offenders to avoid criminal charges and a criminal record. Such programs might include restitution, community service hours, treatment or counseling.

³⁹ These measures include increased use of good-time credits that allow earlier release, increased rates of release for low-risk offenders who are identified through the use of risk assessment instruments, and consideration of parole eligibility earlier in sentences. Nicole D. Porter, *The State of Sentencing 2009: Developments in Policy and Practice* (Washington, D.C.: The Sentencing Project, 2010). Judith Greene and Marc Mauer, *Downscaling Prisons: Lessons from Four States*. (Washington, D.C.: The Sentencing Project, 2010).

⁴⁰ In Kansas, for example, changes in community supervision policies and practices resulted in a nearly 50 percent decline in parole revocations for technical violations from 2005 to 2009. Marc Mauer, “Sentencing Reform: Amid Mass Incarcerations — Guarded Optimism,” *Criminal Justice* 26 (2011):1.

⁴¹ The state of Virginia has used pre-trial release effectively and the federal system also has instituted efforts at pretrial release programs. www.dejs.virginia.gov/corrections/riskAssessment/assessingRisk.pdf

⁴² Ryan S. King, *Changing Direction? State Sentencing Reforms 2004-2006* (Washington, D.C.: The Sentencing Project, 2007).

⁴³ Contrary to claims that such programs are “soft” on crime, defendants in problem-solving courts are typically required to complete more rigorous programming than offenders whose sentences in traditional courts are punishment oriented.

⁴⁴ More than 2,500 drug courts exist throughout the U.S. Department of Justice, Drug Courts (Washington, D.C.: Office of Justice Programs, 2011).

⁴⁵ Jennifer C. Karberg, and Doris J. James, *Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002*. (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2005).

⁴⁶ Christopher J. Mumola and Jennifer C. Karberg *Drug Use and Dependence, State and Federal Prisoners, 2004* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006).

⁴⁷ *Ibid.* See also Deborah Koetzle Shaffer, “Looking Inside the Black Box of Drug Courts: A Meta-Analytic Review” *Justice Quarterly* 28(3): 493-521.

⁴⁸ Mental health courts identify participants through mental health screening and assessments, and provide a court-supervised treatment plan developed by a team comprised of mental health professionals and court staff.

⁴⁹ <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf> (accessed 12/9/12).

⁵⁰ Doris J. James and Lauren E. Glaze, “Mental Health Problems of Prison and Jail Inmates” Bureau of Justice Statistics Special Report (Washington, D.C.: U.S. Department of Justice, 2006). <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf> (accessed 12/9/12). Henry J. Steadman, Fred C. Osher, Pamela Clark Robbins, Brian Case, and Steven Samuels, “Prevalence of Serious Mental Illness among Jail Inmates,” *Psychiatric Services* 60, no. 6 (June 2009): 761–765.

⁵¹ Council of State Governments Justice Center, Criminal Justice/Mental Health Consensus Project, *Mental Health Courts: A Primer for Policymakers and Practitioners* (Washington, D.C.: Bureau of Justice Assistance, 2008).

⁵² Use of specialized courts is justified only to the extent that such courts identify and address major problems likely to lead to re-offending.

⁵³ Council of State Governments Justice Center fact sheet on the Second Chance Act: http://reentrypolicy.org/documents/0000/1277/2.14.12_Second_Chance_Act_Fact_Sheet_.pdf (accessed 12/6/12).

⁵⁴ Todd D. Minton, “Jail Inmates at Midyear 2010 – Statistical Tables” Bureau of Justice Statistics, Statistical Tables (Washington, D.C.: U.S. Department of Justice, 2011). <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim10st.pdf> (accessed 12/20/11).

⁵⁵ www.npr.org/2010/01/21/122725771/Bail-Burden-Keeps-U-S-Jails-Stuffed-With-Inmates (accessed 2/2/12).

⁵⁶ Studies show that those who are detained pretrial are more likely to be convicted and more likely to be sentenced to incarceration than those who are released prior to trial, even after factors such as the seriousness of the offense and the defendant’s prior criminal record are considered. See Walker, Spohn, and DeLone, *The Color of Justice*.

⁵⁷ In 2009, 12 percent of Caucasians, 26 percent of African Americans, 25 percent of Latinos, and 13 percent of Asians and Pacific Islanders in the U.S. lived in poverty. U.S. Census Bureau, www.census.gov/compendia/statab/2012/tables/12s0711.pdf (accessed 2/2/12).

⁵⁸ In California about 8,000 third-strike inmates are serving sentences of 25 years to life; for almost half of these inmates, their third strike was a conviction for a drug or non-violent property offense. Ryan S. King, *Changing Direction? State Sentencing Reforms 2004-2006* (Washington, D.C.: The Sentencing Project, 2007). In November 2012, California citizens voted to change California's habitual offender law so that the third felony offense now must be serious or violent in order to invoke habitual offender sanctions.

⁵⁹ G. Larry Mays and Rick Ruddell, *Making Sense of Criminal Justice: Policies and Practices* (New York: Oxford University Press, 2008).

⁶⁰ *Ibid.*, 126. Deterrence research has shown that increasing the severity of punishment has little deterrent effect on future offending. King, *Changing Direction? State Sentencing Reforms*.

⁶¹ Research suggests that "widespread injustices" follow because of prosecutors' ability to circumvent mandatory minimum sentences. Michael Tonry, "Criminology, Mandatory Minimums, and Public Policy" *Criminology and Public Policy* 5(1):45-56. Research also demonstrates that prosecutors' charging decisions can lead to inconsistent application of mandatory minimum sentences. Vanessa Barker, "Deliberating Crime and Punishment: A Way Out of Get Tough Justice?" *Criminology and Public Policy* 5(1):37-44. Nancy Merritt, Terry Fain and Susan Turner, "Oregon's Get-Tough Sentencing Reform: A Lesson in Justice System Adaptation" *Criminology and Public Policy* 5(1):5-36.

⁶² E. Ann Carson and William J. Sabol, "Prisoners in 2011" Bureau of Justice Statistics Bulletin December, 2012 (Washington, D.C.: U.S. Department of Justice, 2012). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed 1/3/2013).

⁶³ "In every year from 1980 to 2007, black people were arrested nationwide on drug charges at rates relative to population that were 2.8 to 5.5 times higher than White arrest rates." Human Rights Watch, *Decades of Disparity: Drug Arrests and Race in the United States* (New York: Human Rights Watch, 2009). Available at: www.hrw.org/sites/default/files/reports/us0309web_1.pdf (accessed 1/17/12).

⁶⁴ According to the prepared statement of Ricardo H. Hinojosa, Acting Chair, United States Sentencing Commission, before the Senate Judiciary Committee's Crime and Drugs Subcommittee on April 29, 2009, African American offenders comprised 91.4 percent in 1992 and 80.6 percent in 2008; Caucasian offenders comprised 3.2 percent in 1992 and 10.2 percent in 2008; and Latino offenders 5.3 percent in 1992 and 8.2 percent in 2008. Powder cocaine offenses are more common in Caucasian populations, and crack cocaine offenses in African American populations.

⁶⁵ Carson and Sabol, "Prisoners in 2011" Bureau of Justice Statistics Bulletin December, 2012 (Washington, D.C.: U.S. Department of Justice, 2012). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed 1/8/2013).

⁶⁶ U.S. Census Bureau. “Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2011.” www.census.gov/popest/data/national/asrh/2011/index.html (accessed 1/8/13).

⁶⁷ For instance, Alaska Natives comprise twice the proportion of the prison population relative to their proportion in the statewide population. “Rethinking Alaska’s Corrections Policy: Avoiding an Everyday Crisis.” www.akcchi.org (accessed 1/18/13).

⁶⁸ Federal Bureau of Investigation. *Crime in the United States, 2011: Uniform Crime Reports* (Washington, D.C.: U.S. Department of Justice, 2012). Online at www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-43 (accessed 1/24/13). Approximately 10 percent of Caucasians in the U.S. live in poverty, while about 20-25 percent of African Americans and Latinos do.

⁶⁹ See, for example, Walker, *The Color of Justice*.

⁷⁰ J. Giedd, F.M.J. Lalonde, M.J. Celano, et al, “Anatomical Brain Magnetic Resonance Imaging of Typically Developing Children and Adolescents,” *Journal of the American Academy of Child and Adolescent Psychiatry* (May, 2009). 48(5), 465-470.

⁷¹ C.J. Mumola, “Special Report: Suicide and Homicide in State Prisons and Local Jails,” Bureau of Justice Statistics, U.S. Department of Justice, August 2005, 2-5. Retrieved from www.bjs.gov/content/pub/pdf/shsplj.pdf. See also *National Prison Rape Elimination Commission, Report (June 2009)*, available at <https://www.nejrs.gov/pdffiles1/226680.pdf>

⁷² K.P. Griffin, S.P. Addie, B.S. Adams and K.B. Firestone, “Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting: Juvenile Offenders and Victims: National Report Series Bulletin. (Washington D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2011).

⁷³ R.E. Redding, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” *OJJDP Bulletin* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2010).

⁷⁴ *Ibid.*

⁷⁵ The meta analysis of available research demonstrates that racial disparity holds even when controlling for offense severity. “Out of all youth cases in adult court, African-American youth accounted for 87% of those charged with drug offenses; 48% of those charged with property offenses; 59% of those charged with violent offenses; and 63% of those charged with public order offenses.” N. Arya, C.F., Villanueva and I. C. Augarten, *America’s Invisible Children: Latino Youth and the Failure of Justice* (Washington, D.C.: Campaign for Youth Justice, 2009).

⁷⁶ Many experts, though, oppose blended sentencing and see it as an unsuccessful compromise between the juvenile and adult systems. A. Kupchik, *Judging Juveniles: Prosecuting Adolescents in Adult and Juvenile Courts*. (New York: New York University Press, 2006). While the intention is to incentivize youth charged with the most serious offenses to take advantage of rehabilitative efforts in the juvenile system, there is

evidence of subjectivity and bias in decision-making, resulting in even more youths, especially those of color, being transferred into the adult system. F. Cheesman, A Decade of NCSC *Research on Blended Sentencing of Juvenile Offenders: What Have We Learned about "Who Gets a Second Chance?" Future Trends in State Courts 2011* (Williamsburg, Va.: National Center for State Courts, 2011).

⁷⁷ The Missouri Division of Youth Services offers one such approach widely considered effective.

⁷⁸ Reports indicate a 784 percent increase between 1999 and 2010 in the number of federal prisoners held in private facilities. Cody Mason, *Too Good to be True: Private Prisons in America* (Washington, D.C., The Sentencing Project, 2012). http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf (accessed 2/3/2013).

⁷⁹ In the Lutheran understanding of distinct "orderings" or mandates of creation, the purpose of economy is to provide work and the means to self-sufficiency while government has primary responsibility to "wield the sword," that is, to restrain evil.

⁸⁰ Donna Selman and Paul Leighton, *Punishment for Sale: Private Prisons, Big Business, and the Incarceration Binge* (Lanham, Md.: Rowman and Littlefield Publishers, Inc., 2010), xi. In an SEC filing, Corrections Corporation of America wrote, "Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities....The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices....For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted and sentenced, thereby potentially reducing demand for correctional facilities to house them." U.S. Securities and Exchange Commission, Corrections Corporation of America, Form 10K for fiscal year ended Dec. 31, 2005.

⁸¹ Andrew Coyle, Allison Campbell and Rodney Neufeld, eds., *Capitalist Punishment: Prison Privatization and Human Rights* (Atlanta, Ga.: Clarity Press, Inc, 2003). Andrew L. Spivak and Susan F. Sharp, 2008, "Inmate Recidivism as a Measure of Private Prison Performance," *Crime and Delinquency* 2008, 54(3):482-508.

⁸² See, for example, Brad W. Lundahl, Chelsea Kunz, Cyndi Brownell, Norma Harris, and Russ Van Vleet, "Prison Privatization: A Meta-Analysis of Cost and Quality of Confinement Indicators," *Research on Social Work Practice* 19(4):383-394, and H. G. Lappin, T. R. Kane, W. G. Saylor, and S. D. Camp, *Evaluation of the Taft Demonstration Project: Performance of a Private-Sector Prison and the BOP* (Washington, D.C.: U.S. Department of Justice, Federal Bureau of Prisons, 2005). James Austin and Garry Coventry, *Emerging Issues on Privatized Prisons* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance, 2001).

⁸³ Scott D. Camp and Gerald G. Gaes, "Growth and Quality of U.S. Private Prisons: Evidence from a National Survey" *Criminology and Public Policy* 1 (2002): 427-450. H. G. Lappin, T. R. Kane, W. G. Saylor, and S. D. Camp, *Evaluation of the Taft Demon-*

stration Project: Performance of a Private-Sector Prison and the BOP (Washington, D.C.: U.S. Department of Justice, Federal Bureau of Prisons, 2005).

⁸⁴ For examples visit www.abacollateralconsequences.org/. The Court Security and Improvement Act of 2007 authorized the creation of the National Inventory of Collateral Consequences, to systematically collect the collateral consequences of convictions that exist in all states and the federal system on one website.

⁸⁵ Travis, *But They All Come Back*. See especially chapter 4: The Expanded Universe of Invisible Punishment. Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2006). Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

⁸⁶ *Ibid.*, 64.

⁸⁷ New attention to this matter is evident in 2009 as the Uniform Collateral Consequences of Conviction Act, drafted by the National Conference of Commissioners on Uniform State Laws. At this time, this legislation has been enacted by North Carolina and introduced in other states. <http://uniformlaws.org/Act.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act> (accessed 1/8/13).

⁸⁸ American Bar Association, *ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons* (3rd ed.; Chicago: American Bar Association, 2004). Cited in Travis, *But They All Come Back*, 74-75.

A social statement on

The Church and Criminal Justice: Hearing the Cries

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