



Recommendations: Social Statement on Criminal Justice

Background

The Church and Criminal Justice: Hearing the Cries is the text of the recommended proposed social statement on criminal justice for the Evangelical Lutheran Church in America (ELCA). Initiated by memorials from several synods (Rocky Mountain, South Dakota, and La Crosse Area), the 2007 Churchwide Assembly directed the development of “a social statement on criminal justice” as “an important social issue that affects those incarcerated, their families, and the broader society.” If approved by the 2013 Churchwide Assembly, it will be the twelfth social statement of the ELCA.

ELCA social statements are teaching documents that assist members in their thinking about social issues. They are meant to aid in communal and individual moral formation and discernment. Social statements also set policy for this church and guide its advocacy and work in the public arena. They result from an extensive process of participation and discernment and are adopted by a two-thirds vote of a Churchwide Assembly. The development and adoption of social statements are guided by the document “Policies and Procedures of the Evangelical Lutheran Church in America for Addressing Social Concerns,” adopted by the 1997 Churchwide Assembly and revised by the Church Council periodically. Information about these documents is at www.elca.org/socialstatements.

Work on this social statement began in 2008 with the appointment of a task force composed of members of this church who had a diversity of perspectives, backgrounds, and competencies related to criminal justice. The ELCA Task Force on Criminal Justice met in person eight times and electronically four times.

The task force conducted nearly 25 Listening Posts within its first two years, received and discussed presentations from a variety of experts, and in late 2010 produced a study for congregational and classroom use that was designed to elicit feedback. A “Draft of a Social Statement on Criminal Justice” was published in March 2012, followed by a comment period that included nearly 45 synodical hearings and elicited hundreds of responses and communications. After careful review and discussion of these responses, the task force crafted revisions to the draft and signed off on the proposed social statement in February 2013.

Members of the task force include: Ms. Cynthia Osborne, *chair*; Ms. Dawn Jeglum Bartusch; Ms. Sue G. Berry; the Rev. Oliver E. Brown; Mr. Ryan P. Cumming; Mr. David T. Ellis; the Rev. David E. Fredrickson; the Rev. H. Julian Gordy; Mr. Daniel Joy; Ms. Linda Manson; the Rev. Derek R. Nelson; Ms. Jane Otte; Ms. Nancy M. Reed; the Rev. Steven D. Rice; Ms. Anamaria Schmid; Mr. Robert W. Tuttle.

Advisory members included Mr. John S. (Jack) Munday, Church Council member, and the Rev. Victor Thasiah, former ELCA staff member. Staff members of the Office of the Presiding Bishop who assisted the task force in the development of the proposed social statement were the Rev. Roger A. Willer, director for theological ethics, and Ms. Margaret Olson, administrative services coordinator.

The task force’s proposed statement, *The Church and Criminal Justice: Hearing the Cries*, was referred to the Church Council for consideration by the Rev. Marcus R. Kunz, assistant to the presiding bishop for theological discernment. Following review that included input from members of the Conference of Bishops, the Church Council received the proposed social statement at its April 2013 meeting, amended the text, and voted to transmit the follow recommended text and implementing resolutions to the 2013 Churchwide Assembly.

Recommendation for Assembly Action

Two-Thirds Vote Required

To adopt the text of the proposed social statement, “The Church and Criminal Justice: Hearing the Cries,” as a social statement of the Evangelical Lutheran Church in America in accordance with the “Policies and Procedures of the Evangelical Lutheran Church in America for Addressing Social Concerns” (2011).

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1 **The Church and Criminal Justice: Hearing the Cries**

2 **An Overview**

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

11 **The statement makes the following basic points:**

- 12 • The ELCA is prompted to speak and to act because so many cries of suffering and despair emerge from
13 the criminal justice system—from victims, the incarcerated, their families, communities, those wrongly
14 convicted, they who work in the system—and have not been heard.
- 15 • Drawing from Holy Scripture, this church holds up a vision of God’s justice that is wondrously richer and
16 deeper than human imitations and yet is a mirror in which justice in this world, God’s world, must always be
17 assessed.
- 18 • In assessing the current system, the ELCA gives thanks for its principles and orientation toward justice.
19 This church recognizes many in the system who serve their professional vocations with competent and humane
20 performance. Yet, this statement recognizes serious deficiencies. An underlying punitive mindset, budgetary
21 constraints and persistent inequalities based on race and class frequently challenge its basic principles and
22 impose significant costs on all involved in the system, and on society as a whole.
- 23 • Christians are called to confess that we, as individuals and in our common life together, often have fallen
24 short in responding to criminal justice—both in response to crime’s harm and to problems in the justice system.
- 25 • Guided by historic “marks” of the church, the ELCA is called to renewed ministry on behalf of those whom
26 the system affects: victims of crime and their families, the incarcerated and their families, affected communities,
27 those who work in the system, and many others.
- 28 • Through ministry with and bearing the burdens of those in the criminal justice system members of this
29 church can respond wisely through four practices: hearing the cries, hospitality, accompaniment, and advocacy.
- 30 • The ELCA supports positive trends for reform such as greater emphasis on victims’ rights and needs, use
31 of restorative justice, community-based alternatives to incarceration, legislation that reduces sentences for
32 certain offenses, the emergence of specialized courts, and the growing emphasis on reentry. These efforts
33 should be funded and supported adequately.
- 34 • Because mass incarceration causes significant harms, both personal and social, the ELCA strongly urges those
35 who make and administer correctional policies to take all appropriate measures to limit the use of incarceration as
36 a sanction for criminal offenses. Toward that end this statement identifies three specific paths: pursue alternatives
37 to incarceration, reform sentencing laws and policies, and closely scrutinize national drug policy.
- 38 • Four other imperatives also require vigorous action from policy makers: the criminal justice system must
39 acknowledge the disparities, and address the implicit and explicit racism that persists within; it must recognize
40 the special needs of juvenile offenders; it must stop the privatization of prison facilities; and finally, it must
41 foster the full reintegration of ex-offenders into community.
- 42 • A fundamental transformation of mindset about criminal justice is required that challenges the logic
43 equating more punitive measures with more just ones. Individuals must be held accountable, but every person
44 in the criminal justice system deserves to be seen and treated as a member of human communities, created in
45 the image of God and worthy of appropriate and compassionate response.
- 46 • To God we owe thanks for human reason and its abilities to discern—with compassion and wisdom—how
47 human communities might reflect at least the justice of the law. “For what does the LORD require of you but
48 to do justice, and to love kindness, and to walk humbly with your God?” (Micah 6:8)
- 49 • Ten Implementing Resolutions direct specific actions consistent with the principles and recommendations
50 set forth here. A glossary provides assistance with legal terms.

51 **I. Introduction**

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

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

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

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

74 This statement devotes significant attention to reform and calls for a dramatic shift in public discussion about
75 criminal justice. The dominant public view, underlying the current system, equates more punitive measures
76 with more just ones. The limited success of massive incarceration in deterring crime⁷ has not affected the
77 prevalence of “lock ‘em all up” rhetoric in public debate.

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

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

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

92 **A. Confession**

93 In calling for action, however, this church and its members do not pretend we are guiltless regarding either
94 crime or the problems of criminal justice. Many Christians confess each week that “we have sinned in thought,

95 word and deed, by what we have done and by
96 what we have left undone.”⁸ To confess one’s
97 sins centers accountability and can lead both to
98 the truth being told and justice being done
99 (1 John 1:5-9). In confession God is invoked as
100 the one who brings to human brokenness the
101 fullness of new life.

102 In that spirit, we as a church are called to
103 confess that the church and its members have
104 fallen short in responding to the growing
105 problems of the justice system. We ourselves
106 sometimes have committed crimes. Often we
107 have been negligent or allowed fear or bias to
108 dictate responses to crime. Often we have
109 allowed the cries of those harmed or those who
110 work in the system to go unheard. Often we
111 have been complacent as the burdens of crime
112 and the criminal justice system are borne
113 unfairly, especially by people of color or people
114 living in poverty.

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

125 **B. Marks of the church**

126 Confession is one “mark of the church”; Martin Luther included it among seven indicators that illustrate the
127 fundamental character and practices of the church: Confession, the Word of God, Holy Baptism, Holy
128 Communion, Worship, Ministry, and Compassionate Suffering.⁹ Some of these “marks of the church” will
129 serve throughout this statement as critical indicators of genuinely Christian response to today’s criminal justice
130 system and to the people involved in it.

131 **II. Assessing the system**

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

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

Lutheran Congregation Offers Prison Ministry
(Note: These real-life stories throughout the document are not part of the official text.)

So, why don’t you just do it? Our congregational prison ministry began seven years ago as a personal challenge – aimed directly at me. We were in a small group setting at church and the question on the table was, “Has God ever called you to serve in a way that you never followed up on?” I had shared with the group that I’d been attracted to prison ministry early in life but hadn’t ever done anything about it. I expected that the rest of the group would share their similar experiences. But George, one of the group members, wouldn’t let me off the hook that easily. He kept pestering me with the question, “So, why don’t you just do it?”

So I did. I got some entry-level training, worked as a small group volunteer in prison for a while, taught an Alpha Course, and got our congregation involved in a program to purchase Christmas presents for children of incarcerated parents. Eventually, I found a niche. In a prison setting where others had seen only obstacles, we saw an opportunity.

We decided that many of them could benefit greatly from a practical and hope-filled handbook for prisoners. Not finding anything like that on the market, I decided to write it myself. With a great amount of collaboration from inmates, prison chaplains, workers in prison ministry and aftercare we’ll be releasing a book entitled *A Spiritual Survival Guide for Prison and Beyond*. A copy will be given to every newly convicted inmate in our state who desires one.

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

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

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

166 **A. Victims of crime**

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

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

176 This church affirms the need for increased attention to the rights, needs, and interests of victims in the criminal
177 justice system. Those who are harmed by crime deserve consideration and respect throughout the process of
178 adjudicating justice. In appropriate circumstances a greater resonance of justice and humanity may be achieved
179 when forms of personal interchange are practiced such as financial restitution or opportunities for dialog when
180 sought by both victim and perpetrator.

181 **B. Law enforcement**

182 The ELCA gives thanks for those who serve in law enforcement with dedication to the common good. Federal,
183 state, county, and local law enforcement officers daily confront troubles ranging from murder to domestic
184 violence to missing pets. The ELCA recognizes that those who serve regularly encounter complex and stressful

A Victim of Crime

As usual, I pulled out of the driveway and headed to the subway station to pick up my husband from work. I picked him up at the usual time, around 5:30 PM, and then we headed home. When we got back and I went to put my key in the door, I realized the door was open. We walked in and I saw that there were some items on the floor. We looked across the kitchen and I saw the stereo was gone and the desk drawers were opened. We were scared, but went on through the house. Upstairs we found that our drawers had all been emptied, the mattresses flipped over and closets ransacked. We lost jewelry, cash, and items that had lots of sentimental value. Apparently, the thieves broke a second floor back window and reached in and tripped the door lock. Once it settled in, I realized that someone had gone through our home, our personal belongings, and took things important to us. Then it dawned on me that they knew when I left to go and get my husband and nobody would be home. It was then that I became really frightened as I realized we had been watched – I felt so vulnerable. I became a bit obsessed with who might be watching us or that this could happen again. I know I have to get over it, but I admit that it has been awfully hard. The police never were able to find out who did this to us.

185 situations that take a toll on their lives and relationships. It also must be acknowledged that the reputation of
186 law enforcement has been stained by evidence of racial bias and excessive use of force.

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

193 **C. Judicial system**

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

199 To achieve these goals, a fair system would ensure the accused have meaningful access to legal counsel, fair
200 notice of the charges, and opportunity to challenge and present evidence. It would provide protection of legal
201 rights by an independent judge, adjudication of factual disputes by an impartial judge or jury, and access to
202 appellate review of trial court decisions. A judicial system depends on the good faith and competent
203 performance of all who serve vocations in the criminal justice system, including judges, prosecutors, defense
204 counsel, and court personnel. This church affirms the responsibility of citizens to serve on juries.

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

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

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

218 **D. Corrections**

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

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

227 Another justification for punishment is incapacitation. When an offender seems significantly likely to re-offend
228 and the offense would do significant harm, then the offender must be prevented from harming again.
229 Punishment also may have aspects of retribution in which there is a legitimate concern for re-balancing of a
230 ruptured social order. In this way of thinking, if a human being has inflicted pain or gained an unfair advantage,
231 then he or she should experience proportional pain and have the advantage removed.

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

237 No single rationale or practice of punishment is solely commendable. Deterrence strategies may make society
238 safer, but they risk treating individuals solely as a means to the end of crime reduction.¹⁰ Retribution speaks
239 to an innate human desire to have the punishment fit the crime, but can easily devolve into mere vengeance.¹¹
240 Rehabilitation and restoration show promise to mend ruptured relationships between people and attend to the
241 needs of victims and offenders, but can reach beyond what the state is able, or rightly mandated, to achieve.

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

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

251 Massive overcrowding contributes considerably to the dehumanizing problems in the U.S. prison system.
252 Inmates fear physical and sexual violence from each other and staff and worry about threats of future violence
253 if reported. Gangs often control the culture of prisons. Inmates are powerless in interactions with correctional
254 staff, some of whom degrade inmates through language and physical intimidation. All inmates experience
255 despair from lack of control and inexpressible loneliness from separation.

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

260 A contributing factor to inhumane conditions involves the increased proportion of the mentally ill in jails and
261 prison, currently well over half of the population.¹² As the institutionalized mental illness population of the U.S.
262 has been reduced by more than 80 percent over recent decades, many of those released have ended up homeless
263 or in prisons.¹³

264 Imprisonment is not therapeutic by nature. Placement in jails and prisons has the effect of criminalizing mental
265 illness, and puts the mentally ill at risk for exploitation by other inmates. The incarceration of those with special
266 needs without sufficient services contributes considerably to prison volatility. The ELCA has addressed the
267 needs of people living with mental illness and noted problems related to the incarcerated in its 2012 social
268 message “The Body of Christ and Mental Illness.”¹⁴

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

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

- 276 • widespread and long-term total isolation in solitary confinement;
- 277 • incarceration practices that sever familial ties;
- 278 • trying, sentencing, and incarcerating children in the adult system;
- 279 • collateral sanctions that make social reintegration extremely difficult; and
- 280 • severely limited access to education, counseling, mental illness treatment, substance abuse treatment,
281 and vocational training.

282 **E. Confronting racism**

283 The ELCA has long recognized that racism¹⁵ pervasively infects and affects all aspects of U.S. society. Racism
284 is central to the deep and abiding problems of the current criminal justice system even though often
285 unacknowledged. The extent to which inequality exists within the system through biased enforcement,
286 adjudication, and treatment remains a matter on which further discernment is needed within this church and this
287 society. It is fair to note, however, that such disparities may favor socially privileged groups that, because of
288 this favor, often do not feel their privilege or understand its reach.

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

295 Examples are many. People of color experience statistically higher rates of contact with police, a disproportion
296 that persists even when other factors like age and economic status are taken into account. For instance, African
297 American drivers are more likely than others to have their vehicles searched and to be arrested.¹⁶ Since people
298 of color are disproportionately likely to live in poverty,¹⁷ they also are less likely to be released on bail.
299 Compared to those who are released before trial, detained individuals are statistically more likely to be
300 convicted and to be incarcerated.¹⁸

301 People of color are thus more likely to have a prior criminal record, which means they will receive harsher
302 punishments for future offenses. Likewise, people of color are more likely than Caucasians to be sentenced to
303 prison even after offense severity and the defendant's criminal record are taken into account.¹⁹ The cumulative
304 effects of racial bias result in gross over-incarceration and punishment of racial minorities.

305 Formally articulated in *Freed in Christ: Race, Ethnicity and Culture* the ELCA teaches that racism is a sin, a
306 violation of God's intention that fractures and fragments human society.²⁰ The full story of race in the criminal
307 justice system is undoubtedly complex, but one test of the justice of any system is its results. The ELCA
308 believes that present criminal justice practices and legislation have produced blatantly unacceptable results with
309 respect to race.

310 **F. Reentry**

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

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

320 **G. Immigration detention**

321 Some point to similarities between a punitive mindset about criminal justice and current trends in the
322 enforcement of immigration laws. The numbers of deportations and the reliance on immigration detention,
323 which is often arbitrary and indefinite, have grown exponentially in recent years.²¹ Detention is a severe,
324 under-scrutinized, and expensive method of migration control.

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

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

333 The outdated and inadequate U.S. immigration system is highly complex, controversial and difficult to address,
334 both in terms of its origin and in terms of solutions. In a social message and in a social policy resolution the
335 ELCA, nevertheless, repeatedly has articulated principles for just and wise treatment of immigrants.²²
336 Consistent with these documents, this church urges that arbitrary and indefinite detention and dehumanizing
337 isolation of migrants should be discontinued and the use of humane alternatives expanded.²³

338 **H. The church's call**

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

343 In seeking to respond, this statement draws on Lutheran resources to explore the nature of Christian
344 understanding (Section II, p. 5) and practice (Section III, p. 11). An adequate understanding of matters of
345 criminal justice does not depend solely on secular reason. Lutherans turn to Scripture for new insight, courage,
346 and strength. We also draw on our Confessions and historical theological reflection as well as existing efforts
347 by congregations, social ministry organizations, and others for knowledge and wisdom about what works.

348 This church believes that significant improvement in the criminal justice system is urgently necessary,
349 economically advantageous, and possible. This statement seeks to employ the best of human reason as a gift
350 from God. Sections IV, V, and VI, (pp. 15, 20, 23) guided by common principles and social science evidence,
351 recommend pathways toward improvement. It remains aware of the naïveté that assumes that best intentions
352 always lead to the best results. This guidance is offered in the spirit of discernment and deliberation for public
353 policy, but a spirit insistent that constructive action be taken.

354 **III. Justice and yearning**

355 **A. Twofold justice and civil order**

356 For the benefit of spiritual life, God relates to the world through the gospel's forgiveness of sins and promise
357 of new and eternal life. For life's many other needs, God relates through various institutions and communities,
358 including civil government and its criminal justice system.²⁴ God uses these systems to structure human life
359 and, within that structure, to provide food, shelter, safety, education, and many other material and social
360 benefits. Although these structures have a very different purpose than the gospel's, still they are God's great
361 gifts to us.

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

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

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

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

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

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

391 **B. Justice and the Easter hope**

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

395 The kingdom of God complicated the lives of the earliest Christians. The cross of Christ tore open their lives
396 to their own suffering and the suffering of others. Roman civil authorities mocked Jesus as King (Mark 15:26),

397 and their wicked judgments condemned the Son of God to crucifixion. Yet even when the resurrected Christ
398 appeared to his disciples he refused to claim any other identity than the one he had claimed on the cross. The
399 risen Christ will forever be recognized only in his loving but deadly-to-him embrace of humans in their sin and
400 death (1 Corinthians 2:2).

401 On the one hand, Christians believe that Christ has put his mark, the sign of the cross, on his ruling power. Yet
402 on the other, the power of Christ crucified has no more come in its completeness for us than it had for the
403 earliest Christians. In brief moments, however, the reign of Christ crucified comes in Baptism, in the Lord's
404 Supper, in preaching, in the forgiveness of sin. It comes in mutual consolation and the bearing of each other's
405 burdens, and in our bearing of the world's suffering. Unwilling to abandon the crucified King the earliest
406 Christians took up Christ's cross and followed him, refusing to use coercive power over others (Mark 8:34-38;
407 Luke 22:24-27).

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

411 This tension resulting from both the Spirit's presence and the promise of God's kingdom yet to come creates
412 a restlessness, a yearning among God's people.²⁵ It is a tension between the perfect reconciliation of the world
413 to God in Christ's death and the day-to-day, sometimes incremental and sometimes monumental fixes humans
414 apply to alleviate suffering and to right wrongs. The Bible recognizes this day-to-day work as God's work. So
415 should Christians.

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

421 Christian faith, because it is the Easter faith, believes that justice will be done in that future which God holds
422 out for the world, and to which the resurrection of Christ bears witness.²⁶ A community shaped by the
423 preaching of the Easter faith each Sunday will therefore be open to experiencing yearning as central to the
424 church's commitment to justice. It will "teach people what they need to know about Christ."²⁷

425 **C. Justice and baptismal vocation**

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

430 Lutherans also understand Baptism to confer a vocation upon the one baptized. The one baptized is to "care
431 for others and the world God made and work for justice and peace"²⁸ through various callings in life. Since God
432 desires just societies, those who serve in civil institutions act as God's agents in delivering the institution's
433 benefits.

434 In roles such as law enforcement officers, attorneys, judges, court and correctional staff, prison chaplains, and
435 the like, the work of God is done. This contribution as "doer of God's work" holds whether or not an agent is
436 aware of, or would acknowledge, such a connection. Lutheran tradition has affirmed that Christians may in
437 good conscience serve in such callings.²⁹ Civil institutions could not function without those who serve in them,
438 and for them and their work this church gives thanks. When their work is done for the benefit of all, God makes
439 concrete the blessings of public order and justice through them (Romans 13:4).

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

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

447 **D. Justice and holy yearning**

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

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

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

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

469 **E. Yearning and the Bible**

470 Yearning underlies profound portions of the Bible. Paul, for example, longs for the church at Philippi, and he
471 does so with the "compassion of Christ" (Philippians 1:8). By locating his emotions in Christ himself, Paul
472 implies that Christ also longs for the world. Christ desires complete and free, mutual and loving relatedness
473 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
474 death.

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

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

484 **F. Yearning and the effects of crime**

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

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

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

502 **G. Justice in civil institutions**

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

509 Civil government contributes to human flourishing primarily through law, which is a gift from God. When clear
510 rules are fairly and consistently enforced, individuals can conform their conduct to the law and trust that
511 others—including the authorities—will do the same.³⁰ Properly done, law enforcement, just procedures, and
512 impartial judges allow individuals to resolve their disputes through official and predictable channels rather than
513 private conflict. They function to protect individuals against injustice and abuse by those who have greater
514 economic, political, social, or physical power.

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

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

525 In its constitution the ELCA pledges itself to “work with civil authorities in areas of mutual endeavor,
526 maintaining institutional separation of church and state in a relation of functional interaction.”³¹ Part of its
527 calling as one institution alongside others is to call the public authority to the high standards the public authority
528 has set for itself.

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

533 Not possessing special insight into matters of reason, this church does not presume to instruct the public
534 authority how, in detail, the justice system should be shaped. This church does, however, urge the development,
535 implementation, and assessment of criminal justice procedures and criminal law on the basis of human reason
536 and principled, evidence-based practices, and laments the absence of such critical reason in many areas of the
537 system.

538 **IV. Wise responses of love**

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

546 **A. Ministry and compassionate suffering**

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

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

557 Ministering with such compassion in the face of wickedness may well lead to suffering. When Luther concludes
558 his list of ways one can identify the church on earth, it is as if he says, “Look for the cross. Look for people
559 enduring persecution, hardship, danger and death precisely because they will not compromise their faithfulness
560 to God.”³²

561 Christians do not seek out suffering for its own sake. Rather, we seek out those in need, those who are isolated,
562 those who are afraid, and those who yearn in hope. If our seeking leads to finding, and finding to ministry, then
563 we accept that burdens and ambiguity may well mark our responsive love. Reform of entrenched systems,
564 merciful response to harms caused by crime, and the courage to face injustice will inevitably involve struggle
565 and uncertainty. The exercise of baptismal vocation in the way of the crucified Christ risks suffering and bears
566 burdens as it bears the mark of the cross to a broken and crying-out world.

567 **B. Responsive love in practice**

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

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

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

581 **1. Hearing the cries**

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

585 This openness begins with our awareness that the cries of those harmed, both by crime and by the criminal
586 justice system, often come from our brothers and sisters within the church. Because fellow members are
587 affected by crime and the criminal justice system and because this church understands itself having
588 responsibilities in society, this church as a body of Christ cries out.

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

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

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

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

Family Member of a Man Incarcerated

When my brother was arrested, my parents and I stayed in a hotel to avoid the media. When we wouldn’t give them our story, they made up their own, blaming my parents for not teaching us right from wrong. Despite the support of our neighbors and friends at church, it was impossible not to start feeling guilty. Since then, we’re getting used to the frustrations of visiting him in prison: searches, prison guards who treat us no different than prisoners, visiting hours cancelled without notice, and visits denied because guards decided we weren’t “dressed properly.” It’s harder to get used to not having him around as my parents get older. It’s heartbreaking to deal with the fact that he can’t meet my infant son, his nephew. How can I tell my son he has an uncle, but he can’t meet him because he has to be 18 to visit? He may be the one incarcerated, but prison is a part of our life too, a part that most people can’t really understand.

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

621 *Those imprisoned for their crimes cry out.* Communities must be protected from those who create suffering,
622 shirk responsibility, and lack regret. Yet incarceration brings its own forms of suffering. Isolation, loneliness,
623 intimidation, and violence (sometimes sexual or gang-related) are very real. Moreover, some people are
624 wrongly convicted of crimes, spending years in prison before their exoneration, release, or death.

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

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

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

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

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

647 *Citizens and taxpayers also cry out.* An increasingly litigious society has sent legal costs skyrocketing and
648 diminished the system's efficiency. Unequal access to legal representation contributes to a sense of "justice
649 for sale" to those with the means to pay for the fullest possible legal defense. U.S. drug policy has led to
650 massive increases in the budgets of law enforcement agencies and prisons to house those convicted of crimes.

651 **2. Hospitality**

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

658 From Abraham and Sarah (Genesis 18:1-10) to the later writings of the New Testament (Hebrews 13:2) we read
659 about God's people honoring a sacred obligation that binds the host to the protection of the guest. In these

660 stories, though, there is something more than the discharging of a duty because those who welcome others are
661 open to the future, and thus make room for surprises. Risks may come when opening the door to that which is
662 new, but the Bible also emphasizes the creativity that flows from taking the risk (Luke 24:28-32). How must
663 the church welcome the stranger today?

664 As we turn to that question and the gift of hospitality, we must be ever mindful of another calling. The
665 injunction to hospitality is profound and must be practiced with equally profound recognition of the church's
666 care for the vulnerable in its community.³³ Most importantly, congregations that contemplate allowing anyone
667 who has been convicted of a sexual offense or who the congregation believes may present a danger to children
668 or others should prayerfully realize that we also are called to protect the innocent and vulnerable.³⁴

669 When relating to those who present such a concern, congregations should act with extraordinary care. If, after
670 consultation³⁵ and prayerful consideration, the congregation determines that participation in congregational
671 activities is appropriate, the congregation should create and follow carefully written agreements with these
672 individuals. There should be disclosure to the congregation, vigilant oversight and compliance with the written
673 agreement.

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

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

- 682 • being a place of healing for victims of crime and their families. Support can come in the form of emotional
683 aid, material assistance, helping them to understand what happened to them and what it means, and helping them
684 to regain a sense of empowerment and autonomy in their lives.
- 685 • welcoming former offenders into worshiping communities. All people come as sinners equal in
686 unworthiness to receive the forgiveness of sins, life, and salvation that God grants through Word and Sacrament.
- 687 • providing assistance to former offenders. Ex-offenders need job training and placement, emergency and
688 educational assistance, counseling, (including substance abuse counseling), legal counsel, and housing.
- 689 • mentoring those under correctional control. Congregations can provide spiritual guidance, Christian
690 fellowship and support, and personal motivation and challenge.
- 691 • supporting the families of offenders. Congregations can respond in ways that enhance family relationships,
692 such as providing transportation for visits, creating activities for children, and inviting families to
693 congregational activities that give respite to caregivers and positive interaction for children. In addition to
694 being intrinsically good, ministries that foster relationships with offenders reduce the likelihood for self-harm,
695 suicide or other harms.³⁶
- 696 • supporting those who work in the criminal justice system. Workers in the system need support in their
697 work responsibilities as a baptismal calling and as vital on behalf of the wider public.
- 698 • creating safe places for significant conversation and discernment. Conversations on emotionally charged
699 moral topics, like those related to the criminal justice system, can be extremely difficult. Lutheran

700 congregations, committed to the rule of love, should adopt practices of moral discernment that are thoughtful
701 yet open to lively interaction and grounded in mutually agreed upon guidelines.

702 **3. Accompaniment**

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

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

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

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

732 As beloved children of God, incarcerated Christians also can accompany one another as they face together the
733 challenges of imprisonment. Through prayer, worship, and mutual support, they give witness to Christ’s claim:
734 “where two or three are gathered in my name, I am there among them” (Matthew 18:20). The need and
735 potential for creative ministry inside correctional facilities is great.

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

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

Christmas Eve Baptism

It was Christmas Eve, and the gymnasium had been transformed into a holy space. There was a manger scene, candles, choir robes, baptism certificates, new Bibles and a few decorations. Scriptures were read, carols sung, the Word preached, and then came twelve adult baptisms. There were some tears and many beaming smiles as water was poured over each one with the promise of forgiveness, redemption from death and the devil. Powerful witness was given by these 12 precious children of God welcomed into the congregation. One of the women received a standing ovation when her name was called as she cast off her past life and renounced the powers of this world that rebel against God. This prison congregation of 200 women, called New Beginnings, promised to continue to support and nurture her and all the others in their faith walk. (New Beginnings is one of the Lutheran worshipping communities using the Prison Congregations of America model of ministry.)

745 **4. Advocacy**

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

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

755 Christians are called to be active participants in civil government. As citizens we have the responsibility to vote
756 and to participate in civic discourse about the criminal justice system. As participants we seek to affirm where
757 appropriate but also to be critics of earthly, temporal jurisdictions. Properly distinguishing between what is
758 promised in God's coming reign of justice and our current criminal justice institutions enhances, and does not
759 thwart, passionate efforts to bring about what is possible in our political reality.

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

765 **C. Burden bearing**

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

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

775 **V. Paths to greater justice: positive trends**

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

781 Despite deep and abiding problems in the criminal justice system, it is important to acknowledge positive trends
782 that have emerged in recent years. The ELCA supports trends such as greater emphasis on victims' rights and
783 needs, use of restorative justice, community-based alternatives to incarceration, legislation that reduces
784 sentences for certain offenses, the emergence of specialized courts and the growing emphasis on reentry
785 programming.

786 **A. Victims' rights**

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

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

794 More than 30 states also have passed
795 constitutional amendments dealing with victims'
796 rights, though circumstances and quality vary
797 widely from state to state. At the federal level,
798 legislation such as the Victims of Crime Act
799 (1984) and the Justice for All Act (2004) have
800 established victim rights and services such as
801 victim compensation funds.³⁷

802 **B. Restorative justice**

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

815 Since the 1980s the use of restorative responses
816 to harm has increased in the U.S. These
817 responses include victim-offender mediation,
818 family-group conferencing, circle process, and
819 community reparative boards. Restorative
820 practices are used primarily with juvenile offenders, but sometimes with adults, and could be much more widely
821 practiced. As a response it offers both a diversion strategy for relatively minor offenders and a supplement to
822 the sanctions of the criminal justice system for more serious offenders.

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

828 **C. Alternatives to incarceration**

829 Since 2000, many states have expanded their use of community-based corrections for offenders who do not pose
830 great danger to society; this especially includes drug offenders.³⁸ These alternatives to incarceration include
831 intermediate sanctions such as home confinement, electronic monitoring, halfway houses, residential

From a Teacher

Our urban high school was one of the few in our state on the list of "persistently dangerous" schools – because of the fights, riots and other crimes that were common there. But then we were urged to use restorative practices to try to build community and a more positive social culture.

We needed to change the climate of disrespect and to find something other than punishment in responding to kids. We needed to listen to the students to understand the issues they face that underlie the conflicts in school and prevent them from getting a good education. And we needed to create an environment where students could speak freely to one another and feel that they were being heard.

We instituted the use of "circles" in the classrooms, where students and teachers could talk respectfully to each other to address issues and misunderstandings before they escalated to violence. This was a turning point, as students realized that they "had a say," that they would have input and someone would listen. Circles gave them an opportunity to express their emotions and feelings, and work as a team to address the issues that surfaced in the conversations. In the first year that we used them, violent acts and serious incidents dropped dramatically at our school. So far this year, they have dropped even more. We are hopeful that we will soon be off the "persistently dangerous" list.

832 work-release centers, day-reporting centers, intensive probation supervision as well as treatment and diversion
833 programs for drug offenders.³⁹ Such approaches should be encouraged and funded.

834 In recent years community-based alternatives also have been used more extensively in some states to reduce
835 the number of probation and parole revocations that result in incarceration. Several states have decreased
836 prison populations by enhancing parole consideration for incarcerated individuals.⁴⁰ Some parole agencies have
837 developed graduated sanctions as alternatives to incarceration for parole violations.⁴¹

838 Alternatives to pretrial incarceration can reduce stress on jails and the use of alternative forms of pretrial release
839 on both federal and state levels have been promising. The goal is to put in place pretrial supervision as well
840 as evidenced-based assessments for determining conditions of release.⁴²

841 **D. Sentencing reform**

842 Since 2004, more than 20 states have enacted or proposed legislation to reform sentencing policies.⁴³ These
843 legislative changes have focused on several types of reform. Primary attention has been given to increasing
844 sentencing options that divert drug offenders from incarceration to community-based treatment alternatives and
845 expanding sentencing alternatives to incarceration for other non-violent offenders.

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

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

855 **E. Specialized courts**

856 In recent decades, specialized “problem-solving” courts have developed for those with drug-related and mental
857 health problems as well as for veterans. With a rehabilitative emphasis, these courts address underlying causes
858 of crime and provide treatment alternatives to punishment. Through successful participation in treatment
859 programs, defendants are able to avoid traditional court sanctions such as jail time.⁴⁴

860 “Drug courts” in particular have been used with success. They serve adult and juvenile offenders as well as
861 parents with cases in the child welfare system in which parental substance abuse contributed to child abuse or
862 neglect.⁴⁵ The potential impact of such courts is significant given the prevalence of drug use disorders among
863 offenders. Approximately half of jail inmates report symptoms consistent with drug use disorders prior to
864 admission to jail.⁴⁶ It is notable that about half of state and federal prisoners meet criteria for drug dependence
865 or abuse.⁴⁷

866 In drug courts, judges, defense attorneys, prosecutors, treatment services staff, and community corrections staff
867 generally work together to address cases. Case management typically includes risk and needs assessment,
868 intensive monitoring, graduated sanctions and incentives, and treatment and other rehabilitative services.
869 Though intensive monitoring and services are initially costly, in the long run drug courts are cost effective when
870 one considers the reduced recidivism of drug court participants.⁴⁸

871 Mental health courts and veterans’ treatment courts are less widely used and are underfunded, but are similar
872 in their rehabilitative focus.⁴⁹ Like drug courts, the potential impact of mental health courts is significant.
873 Research indicates that approximately 65 percent of jail inmates and about half of state and federal inmates have
874 mental health problems.⁵⁰

875 Female inmates are significantly more likely than male to experience mental health problems, and female jail
876 inmates have significantly higher rates of serious mental illness, compared to males.⁵¹ Outcome evaluations
877 are still limited, but early evidence hints at effectiveness in reducing arrests and jail time.⁵²

878 Veterans' treatment courts focus specifically on mental health and substance abuse issues for military veterans
879 who have committed criminal offenses.⁵³ These issues often result from psychological stresses of combat that
880 are not adequately addressed when military personnel return home.

881 **F. Reentry programming**

882 Since the late 1990s there has been greater emphasis on the reentry process and recognition that transitional
883 services are essential to successful reintegration into the community following incarceration. The ELCA is
884 grateful for congregations and social ministry organizations that have developed creative efforts to provide
885 reentry support, mentoring and other transitional services. Governments are encouraged by this church to
886 continue funding expansion of individualized reentry plans (based on systematic assessment), and provide a
887 range of services through coordinated efforts with community agencies.⁵⁴

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

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

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

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

902 **A. Pursue alternatives to incarceration**

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

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

911 In particular, the ELCA encourages greater use of pretrial release programs for individuals held in jail while
912 awaiting trial. At midyear 2010, nearly 749,000 individuals were confined in local jails, most for relatively
913 minor, non-violent offenses. Of these inmates, 61 percent had not been convicted, but were detained awaiting
914 trial or other court proceedings.⁵⁵ While some were denied the opportunity to post bail as a danger to the
915 community or a risk for non-appearance in court, most were not. By one estimate, nine billion dollars are spent
916 annually to incarcerate individuals awaiting trial who cannot afford bail but posed little threat to society.⁵⁶

917 Holding people in custody significantly disrupts
918 people’s lives, and can result in the loss of
919 work, home, and property. Incarceration while
920 awaiting trial increases the likelihood of
921 conviction, and stiffer sentences can lead to the
922 loss of income for families.⁵⁷ A racial and
923 ethnic component is also evident, given that
924 people of color are disproportionately likely to
925 live in poverty, and therefore are less likely than
926 Caucasians to be financially able to post bail.⁵⁸

927 **B. Reform sentencing laws and policies**

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

936 Habitual offender or three-strike laws, for
937 example, impose lengthy sentences on chronic
938 offenders. Nearly half of the states have them and in some, the law has applied even if the third felony
939 conviction was not for a serious or violent offense.⁵⁹ Mandatory minimum sentences that impose lengthy fixed
940 punishments on offenders and prohibit judges from considering mitigating factors, have been used most
941 extensively in response to drug-related offenses. In addition sentences have been lengthened through
942 truth-in-sentencing laws, which target serious violent offenders and require those convicted to serve at least 85
943 percent of their sentences. Such laws exist at the federal level and in more than half of the states.⁶⁰

944 This church calls for review and legislative reform of these sentencing policies for three reasons. First,
945 researchers have raised serious doubts about the effectiveness of more severe sentences in deterring crime.⁶¹
946 Second, the policies shift discretion from judges’ sentencing decisions to prosecutors’ charging decisions, which
947 are less susceptible to public scrutiny and likely to be inconsistently applied.⁶²

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

952 **C. Scrutinize national drug policy**

953 Any comprehensive assessment of the criminal justice system must attend to national drug policy because that
954 policy has a marked effect on all aspects of the system. In particular, the national drug policy bears significant
955 responsibility for the dramatic increase in the incarcerated population. In 2010, 52 percent of federal inmates
956 and 17 percent of state prison inmates were incarcerated for drug offenses.⁶³ As noted above, mandatory
957 minimum sentences have been used extensively for drug-related crimes and have led to exceptionally long
958 periods of incarceration.

959 Regardless of what future directions U.S. national drug policy takes, this church raises grave concerns about
960 aspects of the present approach. First, the image of a “war on drugs” reinforces a movement toward more
961 militarized policing. Although special circumstances of extraordinary threat sometimes may justify the use of

An Incarcerated Individual

I suppose that being in prison is different for everyone. For me it is the boredom—the isolation—the disconnection from family and friends. I accept that I broke the law and put myself here. I robbed the bank. Drugs were at the root of it all. I’m addicted and needed a way to get them. It isn’t an excuse—it’s just the way it is. It popped in my head that the easiest way to get money was to take it from the bank. So I did, and I got caught. Now here I am—staring down 5 years in federal prison, half way across the country from my family and hometown—so no visits. I hate it here. There is lots of hostility – from both the inmates and the staff. There is little to do, and even if there is something worthwhile, there are waiting lists. I just got here a few months ago so I’ve got nothing coming. I have a job as an orderly and make 21 cents an hour – about 30 bucks a month. That’s what I got. I try to keep to myself because you can’t be sure what other people are all about. You don’t trust anybody here and you keep your business to yourself. Letting your guard down makes you weak and an easy target—so I try to do my own thing and stay out of the way. I’ve got a lot of time but I’ve already started counting the days.

962 military-like tactics and equipment, those circumstances should not be treated as the norm and run counter to
963 proven community-based methods.

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

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

973 Third, and finally, there is mounting and persuasive evidence that the war on drugs has had a disproportionate
974 impact on people living in poverty and people of color. Law enforcement practices regarding drug offenses
975 often have targeted disadvantaged communities, and the sentencing policies regarding drug crimes have had
976 racially disparate effects. Despite the fact that Caucasians and African Americans engage in drug offenses (both
977 possession and distribution) at similar rates, Black people have been far more likely than White people to be
978 arrested for drug offenses.⁶⁴

979 Policing decisions about which neighborhoods and types of drugs should be the focus of enforcement efforts
980 only contribute to these disparities. Federal sentencing policies regarding cocaine offenses offers a stark
981 example of the racially disparate impact of overall drug policy. Although the tremendous disparity in sentence
982 length for powder vs. crack cocaine offenses has been diminished in recent years, it still exists.⁶⁵

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

988 This church does not presume to resolve that debate. But the ELCA does call for close scrutiny to the full costs
989 and consequences of drug policy. Those costs include the resources required to implement the policy as well
990 as the costs to those who are harmed by being branded criminals—and placed under state control—simply
991 because they have used an unlawful substance.

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

998 **VII. Paths to greater justice: support needed reforms**

999 Although the problem of mass incarceration demands immediate attention, the ELCA highlights four other
1000 imperatives that require prompt and vigorous response from those who make and implement criminal justice
1001 policies. While each deserves attention for its own sake, reforms in these areas also will reduce the incarcerated
1002 population significantly.

1003 First, the criminal justice system must acknowledge the racial disparities, and address the implicit and explicit
1004 racism that persists there; second, it must recognize the special needs of juvenile offenders; third, it must stop
1005 the privatization of prison facilities; and fourth, it must foster the full reintegration of ex-offenders into
1006 community.

1007 **A. Acknowledge racial disparities and end discrimination**

1008 The estimated prison population under state and federal jurisdiction at year-end 2011 was 34 percent Caucasian,
1009 38 percent African American, and 23 percent Hispanic.⁶⁶ Yet non-Hispanic Caucasians currently make up 63
1010 percent of the U.S. population, African Americans make up 12 percent, and Hispanics make up 17 percent.⁶⁷
1011 Percentages are greatly disproportionate for other peoples of color also, such as American Indians or Alaska
1012 Natives.⁶⁸ Racial disparities appear in juvenile justice systems as well, including disproportionate minority
1013 contact with juvenile justice systems.

1014 Some argue that these numbers represent the disproportionate involvement of people of color in crime. African
1015 Americans, for example, have high rates of involvement in crimes such as homicide and robbery that are
1016 punished by incarceration.⁶⁹ Yet, even when these high rates are taken into consideration, significant disparities
1017 persist and research shows that race influences decision-making at numerous points in ways that disadvantage
1018 people of color (e.g., policing decisions regarding arrest, prosecutorial decisions regarding charging, and
1019 judicial decisions regarding bail and sentencing).⁷⁰ Clearly, the cumulative effects of these decisions contribute
1020 significantly to racial disparity in incarceration.

1021 U.S. society has a history of and continues to manifest racism and profound economic inequality. The ELCA
1022 believes actions must be taken to end racial disparity in practices within the adult criminal and juvenile justice
1023 systems and to address the issue of racial disparity.

1024 For example, this church expresses grave objections to patterns of racial, ethnic, and religious profiling.
1025 Although some police departments have adopted robust policies to counter the problem of racial bias,
1026 discrimination remains and carries many harmful consequences. Profiling—whether intentional or
1027 unintentional—stigmatizes those who are innocent of any offense. It alienates members of the public who come
1028 to view the justice system as antagonistic rather than as a safeguard to all people’s rights and property.
1029 Extensive efforts must continue until discriminatory profiling ends.

1030 **B. Recognize the special needs of youth offenders**

1031 The U.S. juvenile justice system grew out of a social reform movement more than a century ago based on the
1032 principle that youth are different from adults. Because they are still developing capacities for moral judgment,
1033 they may be less culpable, and more amenable to rehabilitation, than adults who commit the same offense. This
1034 principle—now supported by a significant body of research showing that brain development is still incomplete
1035 at age 18⁷¹—led to the creation of a separate juvenile system that aspired to be more rehabilitative than punitive.

1036 In recent decades juvenile justice has drifted from that initial impetus. The drift has been motivated by
1037 perceptions of rising violent juvenile crime and perceived shortcomings in the rehabilitative focus of juvenile
1038 systems. Increasingly, the juvenile system has mirrored harsher trends in the adult system. Community-based
1039 alternatives for at risk youth as well as nonviolent youth offenders remain inadequate in many communities.
1040 Large residential juvenile correctional facilities resembling adult prisons still abound and are often unsafe and
1041 ineffective. They demonstrate high recidivism rates and poor educational outcomes, and youth rarely leave
1042 prepared to succeed as adults.

1043 Further, by the 1990s nearly all states had expanded their policies regulating transfer of juvenile offenders to
1044 the adult system, permitting transfer at younger ages and for more offenses. States justify this expansion both
1045 as a means of more securely segregating violent or repeat juvenile offenders and as a means of better directing
1046 scarce funding in the juvenile system toward youth who are perceived to be most amenable to successful
1047 rehabilitation.

1048 Concerns about security and efficiency are understandable. It is undeniable that society deserves protection
1049 from youth who commit horrific crimes. Yet, the weakened distinction between juvenile and adult corrections
1050 has done great harm. Juveniles who are prosecuted or sentenced as adults are ill-prepared for the fundamentally
1051 adversarial environment of the adult judicial process. Very little allowance is made for youths' immaturity, lack
1052 of experience, or questionable ability even to understand their rights.

1053 Youth sentenced to adult prison, compared to their peers in the juvenile system, suffer higher rates of physical
1054 abuse, sexual abuse, and suicide.⁷² They are rarely provided age-appropriate educational or rehabilitative
1055 assistance. Female youth face special challenges when placed in adult correctional settings.

1056 Some might see these problems as tragic consequences of otherwise prudent correctional policies for juvenile
1057 offenders, but the policies themselves fail to promote safe communities. Most experts agree that laws
1058 encouraging the transfer of juvenile offenders to the adult system do not deter serious juvenile crime.⁷³ In fact,
1059 there is compelling evidence that transferred juveniles are *more* likely to offend in the future than their peers
1060 in the juvenile system.⁷⁴ Even youth who receive a sentence of probation from adult criminal court reoffend
1061 more often than their peers in the juvenile system.⁷⁵

1062 Transfer practices also magnify the racial disparity in our nation's justice system. While Black youth represent
1063 17 percent of the overall youth population, they make up 62 percent of those tried in adult court. They are nine
1064 times more likely than White youth to be sentenced to adult prison. Latino and Native youth are also transferred
1065 to the adult system and incarcerated in adult prisons at higher rates than White youth.⁷⁶

1066 This church supports an end to current practices of trying, sentencing, and incarcerating youth in the adult
1067 criminal justice system as well as ending youth sentences of life in prison without the possibility of parole.
1068 Recent Supreme Court actions reflect encouraging developments in rulings against the death penalty for those
1069 who committed their crimes as juveniles and against mandatory life sentences without parole.

1070 While advocating an end to current transfer practices, this church recognizes that some juvenile offenders pose
1071 significant risks to public safety and may not be appropriate for release upon reaching the age at which juvenile
1072 custody would cease. Reasons include insufficient progress in rehabilitation or the severely grievous nature
1073 of their offenses. This statement urges authorities to explore means of ensuring public safety without continuing
1074 the practice of transferring juvenile offenders to the adult system.

1075 Even these youth deserve initial secure placement within the juvenile system where they have every opportunity
1076 to benefit from rehabilitative and educational activities with their peers. Adult incarceration should take place
1077 only after completion of placement in the juvenile system and should be reserved for youths who have
1078 committed the most grievous offenses. The determination that a youth poses continuing high risk to public
1079 safety requires thorough objective assessment of risks and needs.

1080 The ELCA recognizes that the goal of keeping juveniles out of the adult criminal system requires the
1081 development and expansion of alternative correctional strategies. Some states have redefined the age at which
1082 adulthood begins, allowing youths to remain in the juvenile system beyond 18 and affording them maximum
1083 opportunity to benefit from rehabilitative efforts in the juvenile system. Some jurisdictions have seen promise
1084 in blended sentencing strategies, which allow juvenile and adult sentences to be imposed simultaneously. The
1085 adult sentence is typically suspended but held as a possibility in order to protect public safety.⁷⁷

1086 At the most fundamental level, this church calls for a juvenile justice system that more closely matches its
1087 original rehabilitative intent and is equipped to meet the needs and manage the risks of all youth offenders.
1088 Promising initiatives for at risk and first time and nonviolent youth offenders include evidence-based therapeutic
1089 approaches for strengthening families as well as community supervision initiatives. Such initiatives include
1090 after-school programs and evening reporting centers that constructively engage juveniles during peak crime
1091 hours.

1092 For youth who have committed more serious offenses and require secure residential placement, some
1093 jurisdictions have developed approaches demonstrating that even many serious youth offenders are amenable
1094 to rehabilitation. In a positive trend, some states are working to reform their juvenile systems by embracing
1095 those approaches.⁷⁸ Until every state can meet the needs and manage the risks of *all* youth offenders within a
1096 rehabilitation-focused juvenile system, juvenile justice reform will be incomplete.

1097 Youth offenders should be held accountable for their wrongful actions. Anything less dishonors them and their
1098 budding capacity for moral agency. Yet, they should be held accountable in age and in developmentally
1099 appropriate ways. Regardless of their criminal offenses, youth deserve a rehabilitation-focused experience.
1100 Only these experiences provide them every opportunity to develop moral judgment, empathy for others and the
1101 skills necessary for making a responsible and successful transition to adulthood.

1102 This church calls upon its members, congregations, social ministry organizations, and others to take part in
1103 building new social momentum for reforming juvenile corrections practices and treating youth as youth.

1104 **C. End prison privatization**

1105 Arguments used in favor of for-profit prisons cite their supposed cost-effectiveness, their ability to reduce
1106 overcrowding in public prisons and the introduction of free market competition to lower incarceration costs
1107 overall. Recent decades have witnessed a dramatic trend toward the usage and spread of private, for-profit
1108 prisons.⁷⁹

1109 The arguments against them, however, are much stronger, and, for this church include concerns that are
1110 theological, moral, and economic. Theologically speaking, it is the role of government to restrain evil, not that
1111 of the market.⁸⁰ Civil governments may legitimately deputize private companies to act on their behalf in some
1112 cases. Private entities, including many church-related organizations, have effectively and appropriately
1113 participated in corrections programs, such as halfway houses. But such community facilities differ significantly
1114 from prisons. Such efforts must be carefully monitored when private entities are entrusted with even limited
1115 coercive power over individuals.

1116 Where individual lives depend utterly upon the system and as one comes closer to matters of life and death, it
1117 is of utmost importance that the state not abdicate its responsibilities. When the state incarcerates someone as
1118 a prisoner, it brings upon itself special responsibilities for exercising custodial control. For this moral reason
1119 the role of the state in the operation of prisons should not be supplanted by economic players who are guided
1120 primarily by profit or production. The profit motive of private prison corporations is apparent in reports to the
1121 Securities and Exchange Commission where such corporations identify sentencing reform as an economic “risk
1122 factor.”⁸¹

1123 Contracting with private firms for incarceration invites myriad offenses. Significantly, privatization works
1124 *against* rehabilitation and successful offender reintegration into society. When a corporation’s profits depend
1125 on a steady flow of offenders into or back into its prisons, it has little incentive to try to rehabilitate those who
1126 are incarcerated. Studies have shown that cost-saving measures in private prisons have contributed to
1127 significantly reduced services for the incarcerated. These reductions in medical care, education, job training,
1128 and counseling thereby contribute to higher recidivism rates for those released from private prisons compared
1129 to public ones.⁸²

1130 Recent evidence also questions the supposed economic benefits of private prisons. Studies have suggested that
1131 cost savings are minimal or absent.⁸³ In addition to reducing services for the incarcerated, efforts to cut costs
1132 have led to limited training of employees, relatively low pay rates among certain staff, and high turnover.⁸⁴
1133 Higher levels of violence are likely in such an environment.

1134 On the basis of theological, moral, and economic reasons, this church objects to current trends of corporate
1135 privatization in the criminal justice system. The ELCA urges government at every level to maintain or reclaim
1136 its responsibility and eliminate reliance on the use of private, for-profit prisons.

1137 **D. Foster full reintegration of ex-offenders**

1138 The dominant aim of criminal justice is restored social order. Even forms of punishment ultimately serve the
1139 goal of restoring a sense of social order. A balance must be achieved, therefore, between the harshness of
1140 punishment itself and the return of an offender to social life. If punishment is in some sense retributive, it must
1141 also be in some sense rehabilitative. For this reason attention to offender services and the successful
1142 reintegration of ex-offenders to society matter as part of the criminal justice system.

1143 **1. Rehabilitation, re-entry, and transitional support**

1144 This church holds that social order and human flourishing will be enhanced by greater emphasis on
1145 rehabilitative opportunities for prisoners. Many enter prison with limited life skills, poor job histories, little
1146 education and untreated drug or alcohol addictions. Upon their release from prison, however, they are expected
1147 to adjust to life back in their community (if they have one), find work, support themselves, seek help for mental
1148 illness and substance abuse, and not return to crime.

1149 To dramatically increase chances for success, re-entry support must begin long before release from prison. By
1150 identifying needs such as basic life-skill and job-skill training, education and treatment needs at sentencing, and
1151 then comprehensively addressing these needs during incarceration, the likelihood of successful transition back
1152 into the community is heightened. The religious dimension of life is significant and deserves to be a major
1153 component of rehabilitative programs for those interested.

1154 The ELCA also supports improved programming for released prisoners or those with alternative sentencing.
1155 The difficulties of finding housing, employment, and treatment (both for mental illness and addiction) make an
1156 offender or ex-offender's participation in society challenging. Mentoring programs have shown especially
1157 encouraging signs of success in aiding released offenders. Congregations and social ministry organizations have
1158 found ways to act as mentors and supporters; the ELCA applauds and encourages such efforts.

1159 Yet the church also must remind the state of its duty to increase the possibility of successful re-entry to society.
1160 The main responsibility lies, finally, with the offender, but impediments to successful re-entry need to be
1161 removed to the greatest extent possible. Incentives for re-entry preparation should be created. If inmates
1162 successfully complete prison programs related to post-prison success, sentence reductions may be appropriate.

1163 Support for rehabilitation and reentry programs alone is not sufficient. Current policies imposing punitive,
1164 long-term collateral sanctions also must be reformed for the sake of successful re-entry and the reduction of
1165 recidivism.

1166 **2. Collateral sanctions**

1167 When someone is convicted of a crime and a judge imposes the sentence, many invisible "collateral sanctions"
1168 are indirectly, and silently, added.⁸⁵ These punishments are defined through legislation and restrict the rights
1169 of ex-offenders after release. Such restrictions may include denial of the right to vote, restricted access to public
1170 housing, ineligibility for public assistance or educational loans, and barriers to employment for their entire lives
1171 due both to employers' increased access to criminal records and to exclusion from particular occupations.⁸⁶
1172 The stigmatization of these restrictions harms people personally as much as some restrictions harm them
1173 financially.

1174 Beginning in the 1980s, state legislatures and the U.S. Congress created legislation expanding the use of
1175 collateral sanctions. Examples include an increase in the number of states that permanently deny convicted
1176 felons the right to participate in the democratic process by voting. It is likely that many U.S. citizens are
1177 unaware of the existence of such legal restrictions. This invisibility follows because, unlike prisons, these

1178 sanctions operate largely beyond public view, and are imposed through law rather than by a judge in a visible
1179 courtroom setting.⁸⁷

1180 While some collateral sanctions are directly responsive to the risk posed by the ex-offender’s prior conduct,
1181 the broader trend of collateral sanctions does not seem to arise from those concerns. Instead, the increased use
1182 of such significant consequences reflects the general shift toward more punitive responses to offenders and
1183 “tough-on-crime” strategies. This expansion has been politically popular because, unlike other forms of
1184 sanction, it has come at little cost to taxpayers. In that sense, there are political advantages to the use of invisible
1185 punishments.

1186 Such a narrow view ignores the consequences of these enduring punishments that significantly impact millions
1187 of Americans. For instance, there are real effects when a young man earns his GED in prison, but upon release
1188 is denied access to student loans for more education. The harms of collateral sanctions extend beyond those
1189 convicted of crimes to families and communities. In all cases, defendants and their counsel should be given
1190 effective ways to determine collateral consequences and make plea decisions with full knowledge of those
1191 consequences.⁸⁸

1192 Although most collateral sanctions should be drastically limited, some are appropriate or even necessary when
1193 the sanction corresponds directly to the offense for which a person was convicted. It is reasonable to exclude
1194 those convicted of financial crimes from employment positions where they would have access to or
1195 responsibility for oversight of funds. Serious sex offenders and all child sex offenders should not have access
1196 to vulnerable individuals in employment or volunteer settings.

1197 The majority of invisible punishments, however, does not fit the criterion of necessity, and therefore are unjust.
1198 This statement concurs with the action of the American Bar Association that has called for “restricting the reach
1199 of invisible punishment by limiting collateral sanctions to those that relate directly to the offense charged, and
1200 prohibiting sanctions that without justification, infringe on fundamental rights, or frustrate a convicted person’s
1201 chances of successfully reentering society.”⁸⁹

1202 **VIII. Moved by the cries—called to respond**

1203 Aware of the mounting evidence of the system’s deep and abiding problems, the ELCA calls for the adoption
1204 of a variety of reforms. The leading concern is to decrease the incarcerated population, but other reforms
1205 delineated in this statement are significant in
1206 their own right.

1207 At a deeper level, however, this statement
1208 recognizes that a more fundamental
1209 transformation in thinking about criminal justice
1210 is required. It calls for a transformed mindset,
1211 one that counteracts the logic equating more
1212 punitive measures with more just ones. This
1213 mindset challenges current undertones of
1214 vengeance, violence, and racism and permits
1215 everyone in the criminal justice system to be
1216 seen as members of human communities,
1217 created in the image of God and worthy of
1218 appropriate and compassionate response.

1219 The ELCA recognizes that retreat from unduly
1220 harsh sentencing policies and the
1221 over-utilization of incarceration may be
1222 motivated by economic factors, rather than by a

A Lutheran Congregation Provides Mentoring

A Lutheran congregation in Minnesota has been involved for over five years with the Community Justice Mentoring Project. Several members became active mentors of individuals returning to the community post-incarceration. The mentors reported that, when they entered the adult correctional facility to meet their mentees, it was a very humbling experience to begin to imagine losing all freedom in prison and how difficult the re-entry process was; they caught a glimpse of why at one level incarceration may have felt preferable to trying to navigate the re-entry system. The outcome of mentoring has been threefold for the congregation: 1) members of the congregation who had been silent about a family member’s incarceration began to speak; 2) for the last five years the congregation has provided funding for the Community Justice Mentoring Project, space for mentor events, and held forums to address criminal justice issues; and 3) they have begun to recognize that relational ministry is a Christian and beneficial calling.

1223 moral critique of the way the system functions. Improvement for any reason is important to the individuals
 1224 involved, but this church maintains that responses to criminality should be made on theological, moral, and
 1225 rational grounds as well. Changes made simply for economics are less likely to endure.

1226 Today it is important to join with others of good will to challenge the flawed public consensus about crime and
 1227 criminal justice. Until a shift occurs in the public consensus, criminal justice policies likely will persist that
 1228 recognize neither the injustice nor the inefficiency of many of our current responses to crime.

1229 In God we place our hope for the fullness of shalom promised. Confident in the presence and promise yet to
 1230 come of God's reign we yearn for a greater measure of justice now. And to God we owe thanks for human
 1231 reason and its abilities to discern—with compassion and wisdom—how human communities might reflect at
 1232 least the justice of the law.

1233 When reason identifies sites of injustice in these communities, institutions, and systems, compassion motivates
 1234 our response. The ELCA deeply appreciates the high ideals of the current criminal justice system. At the same
 1235 time this statement has noted numerous issues about which it must be said that justice has not been done.

1236 The ELCA therefore recommits itself to ministry with, for, to and among the many, many people whose voices
 1237 cry out within our criminal justice system. "For what does the LORD require of you but to do justice, and to
 1238 love kindness, and to walk humbly with your God?" (Micah 6:8)

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/scefy8210.pdf> (accessed 2/3/2013). U.S. Department of Justice, "FY 2013 Budget Request - Prisons and Detention." <http://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. 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. Luther's original list, including some slight changes of wording, can be found in "On the Councils and the Church," (1539) and "Concerning Ministry" (1523).
10. 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.
11. 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.
12. 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).
13. See E. Fuller Torrey, *Out of the Shadows: Confronting Mental Illness Crises*, (mental illness crises, New York: John Wiley & Sons, Inc. (1997).
14. A social message on "The Body of Christ and Mental Illness" (Chicago: ELCA, 2012). www.elca.org/socialmessages.
15. 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.
16. 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.
17. 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).
18. This is true even after offense severity and defendant's prior criminal record are considered. Samuel Walker, Cassia Spohn, and Miriam DeLone, 2012. *The Color of Justice: Race, Ethnicity, and Crime in America* (5th ed.; Belmont, CA: Thomson Wadsworth: Belmont, Calif., 2012); and Darrell Steffensmeier and Stephen Demuth, 2001. "Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparison," *Criminology* 39:145-178.
19. Ibid.
20. *Freed in Christ* (Chicago: ELCA, 1993), 4. www.elca.org/socialstatements.
21. From fiscal year (FY) 2000 to 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."
22. See "Toward Compassionate, Just, and Wise Reform," (ELCA Social Policy Resolution, November 2009). (www.elca.org/socialmessages)
23. See also the 2011 Lutheran Immigration and Refugee Services report, "Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy."
24. *The Church in Society: A Lutheran Perspective* (Chicago: ELCA, 1991), 4.
25. Ibid., 3.
26. Colossians 2:11-12; Romans 8:11; 1 Corinthians 15:20.
27. 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).

28. *Evangelical Lutheran Worship*, Rite of Holy Baptism, 228.
29. Kolb and Wengert, *Augsburg Confession*, XVI.
30. 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.
31. Evangelical Lutheran Church in America, *Constitutions, Bylaws, and Continuing Resolutions* (Chicago: ELCA, Evangelical Lutheran Church in America, 2011), 4.03.n.
32. Mary E. Hinkle, *Signs of Belonging: Luther's Marks of the Church and the Christian Life* (Minneapolis: Augsburg Fortress, 2003), 78.
33. 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.
34. *Human Sexuality: Gift and Trust* is the most recent articulation of this long-standing commitment of the ELCA. (Chicago: ELCA, 2009), 25.
35. www.elca.org/sexoffender.
36. 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).
37. William G. Doerner and Steven P. Lab, "Victimology" (6th ed.; Burlington, Mass.: Anderson Publishing, 2012).
38. Judith Greene and Marc Mauer, "Downscaling Prisons: Lessons from Four States" (Washington, D.C.: The Sentencing Project, 2010).
39. 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.
40. 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).
41. 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.
42. The state of Virginia has used pre-trial release effectively and the federal system also has instituted efforts at pretrial release programs. <http://www.dcjs.virginia.gov/corrections/riskAssessment/assessingRisk.pdf>.
43. Ryan S. King, "Changing Direction? State Sentencing Reforms 2004-2006" (Washington, D.C.: The Sentencing Project, 2007).
44. 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.
45. More than 2,500 drug courts exist throughout the U.S. Department of Justice, "Drug Courts" (Washington, D.C.: Office of Justice Programs, 2011).
46. 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).
47. 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).
48. Ibid. See also Deborah Koetzle Shaffer, "Looking Inside the Black Box of Drug Courts: A Meta-Analytic Review" *Justice Quarterly* 28(3): 493-521.
49. 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.

50. <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf> (accessed 12/9/12).
51. 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). Steadman, Henry J., 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.
52. 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).
53. Use of specialized courts is justified only to the extent that such courts identify and address major problems likely to lead to re-offending.
54. 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).
55. 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).
56. www.npr.org/2010/01/21/122725771/Bail-Burden-Keeps-U-S-Jails-Stuffed-With-Inmates (accessed 2/2/12).
57. 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*.
58. 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).
59. 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.
60. G. Larry Mays and Rick Ruddell, "*Making Sense of Criminal Justice: Policies and Practices*" (New York: Oxford University Press, 2008).
61. *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.*"
62. 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.
63. 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).
64. "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).
65. 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.
66. 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).

67. 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." <http://www.census.gov/popest/data/national/asrh/2011/index.html> (accessed 1/8/13).
68. 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.akclu.org (accessed 1/18/13).
69. Federal Bureau of Investigation, 2012. *Crime in the United States, 2011: Uniform Crime Reports* (Washington, D.C.: U.S. Department of Justice, 2012). Online at <http://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 whites in the U.S. live in poverty, while about 20-25 percent of African Americans and Hispanics do.
70. See, for example, Walker, *The Color of Justice*.
71. J. Giedd, F.M.J. Lalonde, F.M.J., Celano, M.J., et al. "(2009, May). 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.
72. C.J. Mumola, "C.J. (2005, August). 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.ncjrs.gov/pdffiles1/226680.pdf>.
73. P. Griffin, S.P., Addie, B.S., Adams, and K.B., & Firestone, "K. (2011). Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting. Juvenile Offenders and Victims, "National Report Series Bulletin." (Washington DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2011).
74. R.E. Redding, "R.E. (2010). 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).
75. Ibid.
76. 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, I. *America's Invisible Children: Latino Youth and the Failure of Justice*. (2009, May) Washington, DC: Campaign for Youth Justice, 2009).
77. Many experts, though, oppose blended sentencing and see it as an unsuccessful compromise between the juvenile and adult systems. A. Kupchik, (2006). *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, F. (2011). *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).
78. The Missouri Division of Youth Services offers one such approach widely considered effective.
79. Reports indicate a 784 percent increase between 1999 and 2010 in the number of federal prisoners held in private facilities. Cody Mason, 2012. *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).
80. 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.
81. 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.

82. 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.
83. 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).
84. 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 Demonstration Project: Performance of a Private-Sector Prison and the BOP*” (Washington, D.C.: U.S. Department of Justice, Federal Bureau of Prisons, 2005).
85. For examples visit <http://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.
86. 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).
87. *Ibid.*, 64.
88. New attention to this matter is evident in 2009 of 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).
89. 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.

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 or 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):** 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.

**“The Church and Criminal Justice: Hearing the Cries”
Implementing Resolutions**

Recommendation for Assembly Action

- 1 **1. To call upon members of this church through steadfast prayer, discernment, ministry efforts, and**
2 **public action to hear the cries, offer hospitality, accompany, and advocate on behalf of those whose**
3 **lives are caught up in or committed in service to the criminal justice system;**

- 4 **2. To call upon members, congregations, synods, social ministry organizations, and churchwide**
5 **ministries to advocate intentionally and creatively for system reform consistent with the principles**
6 **and recommendations set forth in this social statement;**

- 7 **3. To encourage ELCA congregations to work with victims, victim advocates, and victim support**
8 **organizations, to grow in sensitivity and response to the harm caused by crime, and to grow in**
9 **awareness of restorative justice practices;**

- 10 **4. To encourage ELCA congregations to consider becoming sites of ministry and action for the**
11 **incarcerated and their families, possibly in ecumenical collaboration, and with special attention to**
12 **re-entry ministries and to preferential hiring for ex-offenders, as appropriate;**

- 13 **5. To hold in prayer the ministry of ELCA chaplains and pastors serving in all correctional facilities,**
14 **or serving with law enforcement agencies around the country, and to encourage all expressions of**
15 **the ELCA and its affiliated institutions to provide greater support to prison ministry;**

- 16 **6. To request the ELCA’s Congregational and Synodical Mission unit to enlist the aid of leaders in**
17 **conferences, synods, social ministry organizations or other appropriate groups in creating and**
18 **maintaining a resource database, to which members, pastors or other professionals can turn for**
19 **information about activities, models, and training modules that support ministry to people and**
20 **action toward reform of the criminal justice system;**

- 21 **7. To call upon the ELCA’s Worship and Liturgical Resources Team to develop additional liturgical**
22 **resources for those involved in the criminal justice system, such as services and prayers for victims**
23 **and their families, for those incarcerated, for those employed in the system, or rites of blessing for**
24 **those engaging in visitation ministries;**

- 25 **8. To direct the staff of the ELCA’s advocacy ministries to coordinate efforts to develop on behalf of**
26 **this church a social investment screen on private prison operations, along with developing education**
27 **materials to use within the ELCA for understanding these actions.**

- 28 **9. To direct the ELCA’s Theological Discernment Team in the fall of 2015 to bring to the Church**
29 **Council an assessment of the feasibility of developing a social message on U.S. national drug policy,**
30 **in accordance with “Policies and Procedures of the Evangelical Lutheran Church in America for**
31 **Addressing Social Concerns” (Chicago: ELCA, 1997, revised 2006, 2011);**

- 32 **10. To encourage the three expressions of this church to utilize the recommendations of the Addressing**
33 **Social Concerns Review Task Force in the process of disseminating and implementing this social**
34 **statement; and**

- 35 **11. To call upon appropriate staff in the ELCA’s Congregational and Synodical Mission unit and the**
36 **Office of the Presiding Bishop to establish and oversee a process of implementation and**
37 **accountability for this social statement that provides a report on implementation to the Church**
38 **Council in the fall of 2017.**