



1 For Justice in the U.S. Criminal Legal System

2 Updated May 28, 2021

3

4 Summary

5 As a historic peace church, Mennonite Church USA is called to resist “injustice in all forms, and
6 in all places.”¹ Many aspects of the current United States’ criminal legal system cause pain and
7 suffering for many, especially poor people and people of color.

8 The U.S. criminal legal system, at its core, promotes violence and punishment, not reconciliation
9 and peace. We hear this from the voices of those currently and formerly incarcerated, calling for
10 justice; from their families, who yearn to be made whole; and from people of color, who are
11 discriminated against and hurt by this system.² The violence of the U.S. criminal legal system
12 will not, and cannot, bear the fruits of justice and peace.

13 A just world will only come through following the life and teachings of Jesus. For too long, we
14 have ignored the teachings of Jesus as they apply to the criminal legal system. Jesus calls us to
15 help the poor, the sick and the oppressed. “I was in prison and you visited me,” Jesus tells the
16 righteous in Matthew 25:36. We confess that too often, we have ignored that call.

17 At the beginning of his ministry, Jesus reads from the prophet Isaiah, saying, “The Spirit of the
18 Lord is upon me, because he has anointed me to bring good news to the poor. He has sent me to
19 proclaim release to the captives and recovery of sight to the blind, to let the oppressed go free, to
20 proclaim the year of the Lord’s favor.” Then, Jesus declares, “Today this scripture has been
21 fulfilled in your hearing.” Luke 4:18-21

22 As Christians, we are called to look to Jesus and the prophetic tradition of the Bible for our
23 vision of justice. We, like every generation of the church before us, are called to do our part,
24 empowered by the Spirit that raised Jesus from the dead, to advance God's all-encompassing
25 shalom, on earth as it is in heaven.

¹ MCUSA Renewed Commitments

² For more on the injustices of the U.S. criminal legal system, see Appendix A.

26

27 **Resolution**

28 We as a church body commit to confronting the injustice within the current U.S. criminal legal
29 system. There are many ways individual congregations, conferences, institutions and agencies of
30 the denomination can participate. We will call on them to report back to the delegate body at the
31 next biennial convention. The following are a starting place to begin this work together:
32

- 33 1. Learning about the injustices of the U.S. criminal legal system through conversations,
34 book groups, guest speakers and other means
- 35 2. Speaking with, and learning from, current and former prisoners, as well as others whom
36 the U.S. criminal legal system has harmed
- 37 3. Utilizing curricula addressing the injustices of the U.S. criminal legal system, such as
38 those developed by Mennonite Central Committee, MC USA, and Healing Communities
39 USA to guide local churches through discussions about the U.S. criminal legal system
40 and ways to help those hurt by it
- 41 4. Supporting the families of those who have been incarcerated
- 42 5. Learning about how our legal system has been shaped by racist assumptions and
43 committing to dismantle racism
- 44 6. Divesting from all private prisons, as an organization and as individuals within the church
- 45 7. Advocating for just treatment of people at all levels of the U.S. criminal legal system by
46 petitioning representatives at every level of government to enact necessary reforms
47 including ending cash bail, enacting policies mandating reductions in police violence,
48 ending mandatory minimum sentencing and others³
- 49 8. Continuing to call for a ban on the death penalty at the state and federal levels⁴
- 50 9. Working for reform of the criminal legal system to promote accountability and
51 rehabilitation
- 52 10. Seeking out alternatives to the current legal system through restorative justice practices,
53 creating new systems of justice that reflect God’s love and care for our world

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73 **Appendix A**

74 **Policing**

75 Policing originated to control various “threatening” peoples. In the Southern United States, many
76 police forces were borne out of slave patrols, formed to maintain the institution of slavery. In the
77 Northern states, Indian Constables controlled Native Americans, and in cities, such as St. Louis,
78 Mo., police forces were formed to protect residents specifically from Native Americans.³

79 The racial elements of early police can still be seen today. When stopped by police, a person of
80 color is more likely to have their vehicle searched.⁴ Body camera footage also shows police
81 officers clearly interacting with Black community members differently than their white
82 counterparts.⁵ The rate at which Black people are arrested is higher than white people for both
83 juveniles and adults. Additionally, Black people are five times more likely than white people to
84 be stopped by police without just cause.⁶ The statistics for death by police are alarming as well,
85 as Black and Hispanic people are disproportionately impacted. While white people make up
86 more than 60% of the population, they only make up about 41% of fatal police shootings. Black
87 people make up 13.4% of the population but make up 22% of fatal police shootings.^{7 8}

³ Victor E Kappeler, “A Brief History of Slavery and the Origins of American Policing,” A Brief History of Slavery and the Origins of American Policing | Police Studies Online (Eastern Kentucky University, January 7, 2014), <https://plsonline.eku.edu/insidelook/brief-history-slavery-and-origins-american-policing>.

⁴ Emma Pierson et al., “A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States,” Nature Human Behavior, May 2020, <https://doi.org/https://doi.org/10.1038/s41562-020-0858-1>.

⁵ Rob Voigt et al., “Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect,” PNAS (National Academy of Sciences, June 20, 2017), <https://www.pnas.org/content/114/25/6521.short>.

⁶ “Criminal Justice Fact Sheet,” NAACP, accessed October 1, 2020, <https://www.naacp.org/criminal-justice-fact-sheet/>.

⁷ Ibid.

⁸ “U.S. Census Bureau QuickFacts: United States,” Census Bureau QuickFacts, 2020, <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

88 Police brutality is a well-documented phenomenon. Over the past five years, police officers have
89 killed more than 5,000 people.⁹ These statistics do not include other forms of police brutality in
90 which the victim lives, as these are harder to document. Additionally, police officers have
91 become increasingly militarized, and the number of SWAT and other militarized units has
92 increased. These units use weapons, body armor and vehicles designed for war. As these units
93 grow in numbers, there has been no corresponding increase in officer safety or decrease in
94 crime.¹⁰

95 Ultimately, many issues in policing are rooted in the fact that police in the United States have
96 become overtasked and overburdened. Municipalities look to the police to handle issues of
97 homelessness, mental health crises, food insecurity and addiction.¹¹ These issues are better
98 addressed by increased funding for education,¹² social services, medicine, transportation
99 infrastructure and other public works.¹³

100 **Cash Bail**

101 The cash bail system is one of the most fundamentally unjust tenets of the American legal
102 system. The state charges a cash bail, which is either a standard amount for a particular offense,
103 or an amount adjusted by a judge, trying to guarantee that the defendant will return for their trial
104 or hearing. If they do show up, the bail money is returned; if they don't, it is forfeited to the
105 government. This system creates a divide based on economic status and incarcerates people
106 based on their economic status.¹⁴ Close to 90% of people being held in jails pre-trial are there
107 because they cannot afford to pay the bail.¹⁵ Additionally, being held before sentencing raises the
108 likelihood of being convicted.¹⁶ The idea of cash bail was to avoid people fleeing, but it has
109 become about how much money you have instead of whether or not you will show up to court.¹⁷
110 Being held on bail can mean loss of job, housing and even custody of children before a person is

⁹ "The Other Epidemic: Fatal Police Shootings in the Time of COVID-19," American Civil Liberties Union, 2020, <https://www.aclu.org/report/other-epidemic-fatal-police-shootings-time-covid-19>.

¹⁰ Nsikan Akpan, "Police Militarization Fails to Protect Officers and Targets Black Communities, Study Finds," PBS (Public Broadcasting Service, August 21, 2018) <https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communitiesstudy-finds>.

¹¹ "What Police Are For: A Look Into Role Of The Police In Modern Society," NPR (NPR, June 10, 2020), <https://www.npr.org/2020/06/10/874340093/what-police-are-for-a-look-into-role-of-the-police-in-modern-society>.

¹² Randi Hjalmarsson, Helena Holmlund, and Matthew J. Lindquist, "The Effect of Education on Criminal Convictions and Incarceration: Causal Evidence from Micro-Data," *The Economic Journal* 125, no. 587 (2015): pp. 1290-1326, <https://doi.org/10.1111/eoj.12204>.

¹³ Daniel Sansfaçon, "Investing Wisely in Crime Prevention: International Experiences," *Investing Wisely in Crime Prevention: International Experiences* § (2000), pp. 1-15.

¹⁴ Stephanie Wykstra, "Bail Reform, Which Could Save Millions of Unconvicted People from Jail, Explained," *Vox* (Vox Media, October 17, 2018), <https://www.vox.com/future-perfect/2018/10/17/17955306/bail-reform-criminal-justice-inequality>.

¹⁵ Cherise Fanno Burdeen, "How Money Bail Traps the Poor," *The Atlantic* (Atlantic Media Company, April 12, 2016), <https://www.theatlantic.com/politics/archive/2016/04/the-dangerous-domino-effect-of-not-making-bail/477906/>

¹⁶ Udi Ofer, "We Can't End Mass Incarceration Without Ending Money Bail," American Civil Liberties Union (American Civil Liberties Union, July 9, 2018), <https://www.aclu.org/blog/smart-justice/we-cant-end-mass-incarceration-without-ending-money-bail?redirect=blog>

¹⁷ "Bail Reform," American Civil Liberties Union, 2015, <https://www.aclu.org/issues/smart-justice/bail-reform>.

111 proven to have committed a crime.¹⁸ Cash bail also disproportionately affects Black, Latinos and
112 Native American people, as they are twice as likely to be held in jail for failing to post bond.¹⁹
113 These same groups also face higher bail rates than white people when charged with similar
114 crimes.²⁰

115 **Legal Counsel and Sentencing**

116 The court system itself is also unjust. Ninety-four percent of prisoners do not stand trial, but
117 instead are pressured into plea deals, forfeiting their chance to be proven innocent or guilty by a
118 jury.²¹ The plea deal has become a way for the legal system to save time and money, at the
119 expense of those being charged. People who have been charged are encouraged to take plea
120 deals, with prosecutors threatening extraordinarily inflated charges if the case is taken to trial.

121 Additionally, mandatory sentencing laws have increased both the number of people incarcerated
122 and the length of their incarceration.²² These include “three strikes” laws, which increase the
123 length of sentence for the third offense, no matter the charge, and mandatory minimum
124 sentencing laws, which force judges to impose certain sentences on specific crimes. Their stated
125 goal was to reduce drug use, but they have generally failed to do so. Instead, these mandatory
126 minimums increase the number of people in jail and are one of the major reasons why the U.S.
127 has the highest incarceration rate in the world.²³

128 The death penalty is another area of problematic and unjust sentencing. Studies show that the
129 death penalty is used in a racially biased way, as a defendant is more likely to be sentenced to
130 death for killing a white person than for killing a non-white person.²⁴ MC USA has already
131 resolved to oppose the injustice of the death penalty on numerous occasions.²⁵

¹⁸ Cherise Fanno Burdeen, “How Money Bail Traps the Poor,” The Atlantic (Atlantic Media Company, April 12, 2016), <https://www.theatlantic.com/politics/archive/2016/04/the-dangerous-domino-effect-of-not-making-bail/477906/>.

¹⁹ Stephen Demuth, “Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black and White Felony Arrestees*,” *Criminology* 41, no. 3 (August 2003): pp. 873-908, <https://doi.org/10.1111/j.1745-9125.2003.tb01007.x>.

²⁰ Cherise Fanno Burdeen, “How Money Bail Traps the Poor,” The Atlantic (Atlantic Media Company, April 12, 2016), <https://www.theatlantic.com/politics/archive/2016/04/the-dangerous-domino-effect-of-not-making-bail/477906/>.

²¹ Duffy Rice, Josie, Smith III. “The 94% - Plea Deals”. Justice in America (podcast). August 1, 2018. <https://podcasts.apple.com/us/podcast/episode-2-the-94-plea-deals/id1410847713?i=1000417011518>

²² James Cullen, “Sentencing Laws and How They Contribute to Mass Incarceration,” Brennan Center for Justice, October 5, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>.

²³ Rob Montz, “How Mandatory Minimums Helped Drive Mass Incarceration,” Vox (Vox Media, September 3, 2015), <https://www.vox.com/2015/9/3/9254545/mandatory-minimums-mass-incarceration>.

²⁴ “Race,” Death Penalty Information Center, June 21, 2019, <https://deathpenaltyinfo.org/policy-issues/race>. “Race and the Death Penalty,” American Civil Liberties Union, accessed October 1, 2020, <https://www.aclu.org/other/race-and-death-penalty>.

²⁵ “Response to the Federal Government Reinstating the Death Penalty,” Mennonite Church USA (Mennonite Church USA, July 26, 2019), <https://www.mennoniteusa.org/menno-snapshots/death-penalty-reinstatement-response/>. “A Resolution on The Death Penalty - 2001,” Mennonite Church USA (Mennonite Church USA, August 3, 2020), <https://www.mennoniteusa.org/resource-portal/resource/a-resolution-on-the-death-penalty-2001/>.

132 Finally, a lack of access to legal counsel makes it difficult for those charged with crimes to prove
133 their innocence or fight for a more just sentence.²⁶ Public defenders are overworked, and as a
134 result, many of their clients are unable to receive the attention that they deserve.²⁷

135 **Incarceration**

136 The U.S. system of incarceration has many flaws. One of the most notable is the increasing use
137 of private prisons, which are designed to profit from those serving time. These prisons do not
138 save the government money.²⁸ Instead, they make money for their shareholders and help foster a
139 culture of predatory legal action. Both private prisons and government-run prisons practice
140 numerous inhumane policies.²⁹ Prisoners can be hired out to private companies that contract with
141 the government, and the prisoners are often paid less than a dollar a day.³⁰

142 Additionally, the experience of living in a prison can be incredibly traumatic, and PTSD as a
143 result of incarceration is not uncommon.³¹ Women are especially vulnerable, as they are more
144 likely than men to experience both inmate-on-inmate and staff-on-inmate sexual violence.³²
145 After being released, formerly incarcerated individuals are often excluded from public housing
146 and considered ineligible for many jobs. In some states, they are barred from voting.

147 Incarceration hurts more than the person incarcerated. Eighty percent of women in jail are
148 mothers, and the majority of them are their child's primary caretaker.³³ Visitation policies often
149 discourage visits from families because of the cost of phone or video calls, limited visitation
150 hours and diminished quality of contact.³⁴ In addition, parents often have difficulty regaining
151 custody of children after they are released.³⁵ The effects of incarceration make it difficult for
152 both the individual and their family to live full and healthy lives.

²⁶ Richard A. Oppel and Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *The New York Times* (The New York Times, Jan. 31, 2019), www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html.

²⁷ Richard A. Oppel and Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *The New York Times* (The New York Times, Jan. 31, 2019), www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html.

²⁸ Mika'il DeVeaux, "The Trauma of the Incarceration Experience," *Harvard Civil Rights-Civil Liberties Law Review* 48 (2013): 257-277.

²⁹ "Prison Conditions," Equal Justice Initiative (Equal Justice Initiative, May 20, 2020), <https://eji.org/issues/prison-conditions/>.

³⁰ Whitney Bennis, "Prison Labor in America: How Is It Legal?" *The Atlantic* (The Atlantic, September 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/>

³¹ Mika'il DeVeaux, "The Trauma of the Incarceration Experience," *Harvard Civil Rights-Civil Liberties Law Review* 48 (2013): 257-277.

³² Elizabeth Swavola, Kristine Riley, and Ram Subramanian, "Overlooked: Women and Jails in an Era of Reform" (Vera Institute of Justice, 2016), pp. 6-34, https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-in-jails-report-web.pdf.

³³ Aleks Kajstura, "Women's Mass Incarceration: The Whole Pie 2017," October 17, 2017, <https://www.aclu.org/report/womens-mass-incarceration-whole-pie-2017>.

³⁴ Elizabeth Swavola, Kristine Riley, and Ram Subramanian, "Overlooked: Women and Jails in an Era of Reform" (Vera Institute of Justice, 2016), pp. 6-34, https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-in-jails-report-web.pdf.

³⁵ *Ibid.*

153 **Other Concerns**

154 These areas of concern – policing, cash bail, legal counsel and sentencing, and incarceration –
155 are – not the only injustices in the U.S. criminal legal system. Other concerns include the
156 criminalization and incarceration of immigrants, e-carceration, treatment of children accused of
157 crimes, and many others. These are significant tools of injustice that run counter to Jesus’ call,
158 and congregations and individuals within MC USA may wish to honor this resolution by
159 engaging one or more of the areas of concern not listed in this appendix.