



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

Updated May 28, 2021

## **Summary**

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

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

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

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

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

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<sup>1</sup> MCUSA Renewed Commitments

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

## **Resolution**

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

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

Original Authors & Sponsors Team (Please note that this resolution has been modified by MC USA Executive Board staff and the Resolutions Committee):

Zachariah Begly, Reba Place Church, [zachariahbegly@gmail.com](mailto:zachariahbegly@gmail.com)  
Elizabeth Reimer, Lombard Mennonite Church, [e.reimer07@gmail.com](mailto:e.reimer07@gmail.com)

Reba Place Church, Evanston, Ill. (Illinois Mennonite Conference)  
Contact: Pastor Charlotte Tsuyuki Lehman, [pastor.rebaplacechurch@gmail.com](mailto:pastor.rebaplacechurch@gmail.com)  
Living Water Community Church, Chicago, Ill. (Illinois Mennonite Conference)  
Contact: Stephen Lamb, Associate Pastor, [stephenmlamb@gmail.com](mailto:stephenmlamb@gmail.com)

Church of the Sojourners, San Francisco, Calif. (Pacific Southwest Mennonite Conference)

Contact: Pastor Zoe Mullery, [zoe@churchofthesojourners.org](mailto:zoe@churchofthesojourners.org)

Shalom Community Church, Ann Arbor, Mich. (Central District Conference)

Contacts: Pastor Hillary Watson, Pastor Trevor Bechtel, [pastors@shalomcc.org](mailto:pastors@shalomcc.org)

Chapel Hill Mennonite Fellowship, Chapel Hill, N.C. (Central District Conference)

Contact: Pastor Isaac Villegas, [isaac.villegas@gmail.com](mailto:isaac.villegas@gmail.com)

### **Additional Endorsers of this Resolution**

Pastor Karl S. Shelly, J.D.

### **Appendix A**

#### **Policing**

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

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

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<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> 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>.

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

<sup>7</sup> Ibid.

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

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

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

## Cash Bail

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

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<sup>9</sup> "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>.

<sup>10</sup> 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>.

<sup>11</sup> "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>.

<sup>12</sup> 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>.

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

<sup>14</sup> 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>.

<sup>15</sup> 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/>

<sup>16</sup> 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>

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

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

## **Legal Counsel and Sentencing**

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

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

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

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<sup>18</sup> 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/>.

<sup>19</sup> 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>.

<sup>20</sup> 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/>.

<sup>21</sup> 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>

<sup>22</sup> 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>.

<sup>23</sup> 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>.

<sup>24</sup> “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>.

<sup>25</sup> “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/>.

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

## **Incarceration**

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

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

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

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<sup>26</sup> 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](http://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html).

<sup>27</sup> 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](http://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html).

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

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

<sup>30</sup> 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/>

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

<sup>32</sup> 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](https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-in-jails-report-web.pdf).

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

<sup>34</sup> 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](https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-in-jails-report-web.pdf).

<sup>35</sup> *Ibid.*

## **Other Concerns**

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