

RESPONDING TO CRIME & INCARCERATION: A CALL TO THE CHURCH

BACKGROUND AND ACKNOWLEDGEMENTS

This white paper, “Responding to Crime and Incarceration: A Call to the Church,” and the resulting Justice Declaration (www.justicedeclaration.org) has been part of a collaborative initiative between the Colson Center for Christian Worldview, the Ethics and Religious Liberty Commission, the National Association of Evangelicals, and Prison Fellowship. Many other faith leaders from outside our partner organizations generously contributed their wisdom and suggestions, which undoubtedly strengthened the end product.

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While this white paper inspired the Justice Declaration, mirroring key points in our concluding appeal to the Church, a Christian leader’s endorsement of the Justice Declaration does not indicate an individual’s endorsement of this white paper.

Nonetheless, our prayer is that this deeper commentary on the relevant statistics, policies, and Christian teachings guiding our response to crime and incarceration will provide a framework for deeper dialogue and engagement among the Christian leader signatories and all Christians.

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Because the good news of Jesus Christ calls the Church to advocate (or “be a witness”) for biblical truth and to care for the vulnerable, we, His followers, call for a justice system that is fair and redemptive for all. The Church has both the unique ability and unparalleled capacity to confront the staggering crisis of crime and incarceration in America and to respond with restorative solutions for communities, victims, and individuals responsible for crime.

THE CRISIS

America is facing a crisis of over-criminalization. By turning to the justice system to address conduct that should be regulated by civil or administrative means, and by imposing long prison sentences for many types of crime, the U.S. has become home to five percent of the world’s population, but a quarter of the world’s prison population. Our misguided response to crime, including over-reliance on incarceration, fails to make us safer and has pervasive, devastating, and long-lasting consequences for individuals and American society at large.

The number of individuals incarcerated in prisons and jails in the United States is nearly 2.2 million.¹ More than 728,000 individuals are held in local jails, more than 3.7 million are supervised by a probation system, and more than 870,000 people are on parole.² The effects of over-criminalization extend beyond the prison gates. An estimated 65 million American citizens have a criminal record, hindering their ability to access higher education, employment, and other things necessary to lead a full and productive life.³

At the same time, the violent crime rate in America has decreased by half since its peak in 1991.⁴ The property crime rate has similarly fallen by half.⁵

1 Danielle Keable & Lauren Glaze, *Correctional Populations in the United States*. 2015, Bureau of Justice Statistics (December 2016), <https://www.bjs.gov/content/pub/pdf/cpus15.pdf>.

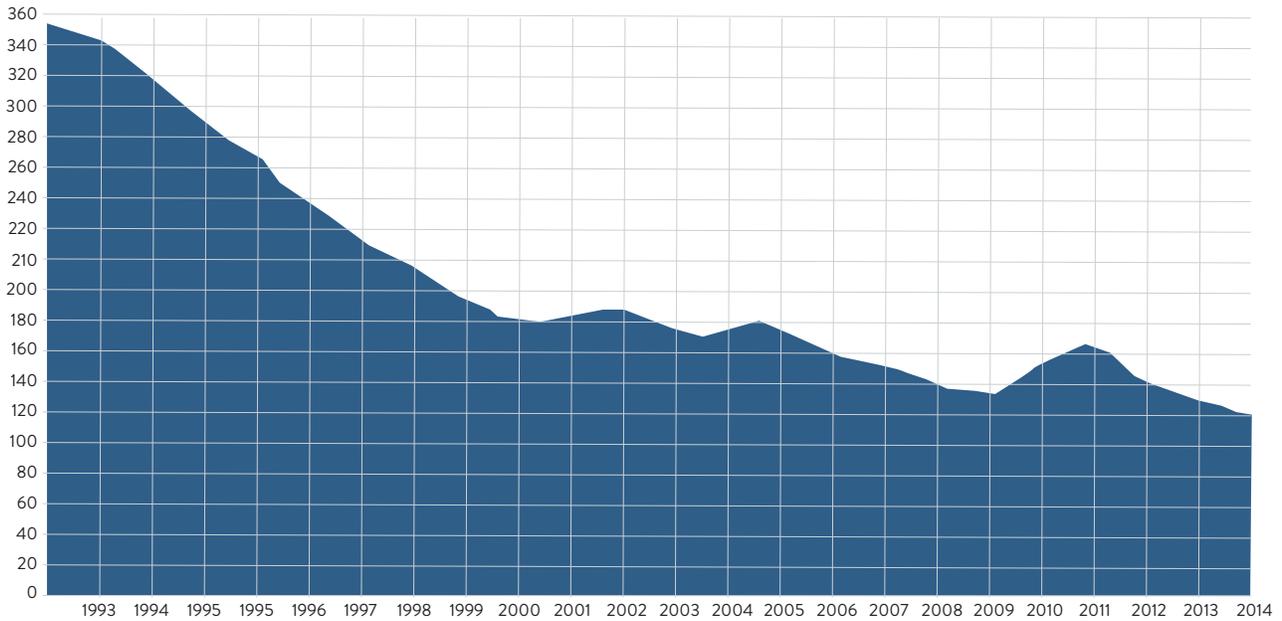
2 Keable, *supra* note 1 at 2.

3 Michelle Natividad Rodriguez & Maurice Emsellem, *65 Million “Need Not Apply.” The Case for Reforming Criminal Background Checks for Employment*, *The National Employment Law Project* (March 2011), http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf.

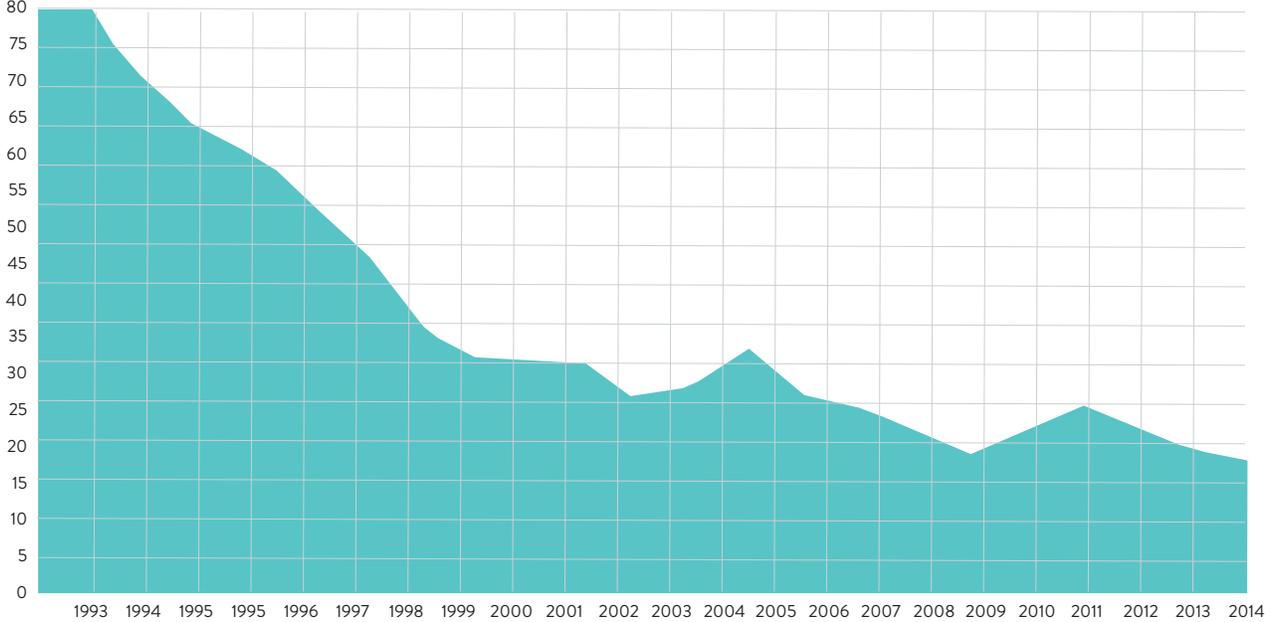
4 The Pew Charitable Trusts, *National Imprisonment and Crime Rates Continue to Fall*, *The Pew Charitable Trusts* (December 2016), http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

5 The Pew Charitable Trusts, *supra* note 4 at 3.

Property Crime Rate per 1,000 Americans Age 12 or Older



Violent Crime Rate per 1,000 Americans Age 12 or Older



While crime and arrest rates are down, prosecutors now seek felony charges after an arrest much more frequently than they did even a decade ago.⁶ According to the Pew Charitable Trust, from the year 1983 through 2013, all states became more punitive, imposing increasingly harsher sentences over time for the same types of crime. Although crime rates decreased significantly during this period, the rate at which we incarcerate those who commit crimes increased by 165%.⁷

6 John F. Pfaff, *Waylaid by a Metaphor: A Deeply Problematic Account of Prison Growth*, 111 Mich. L. Rev. 1087 (2013).

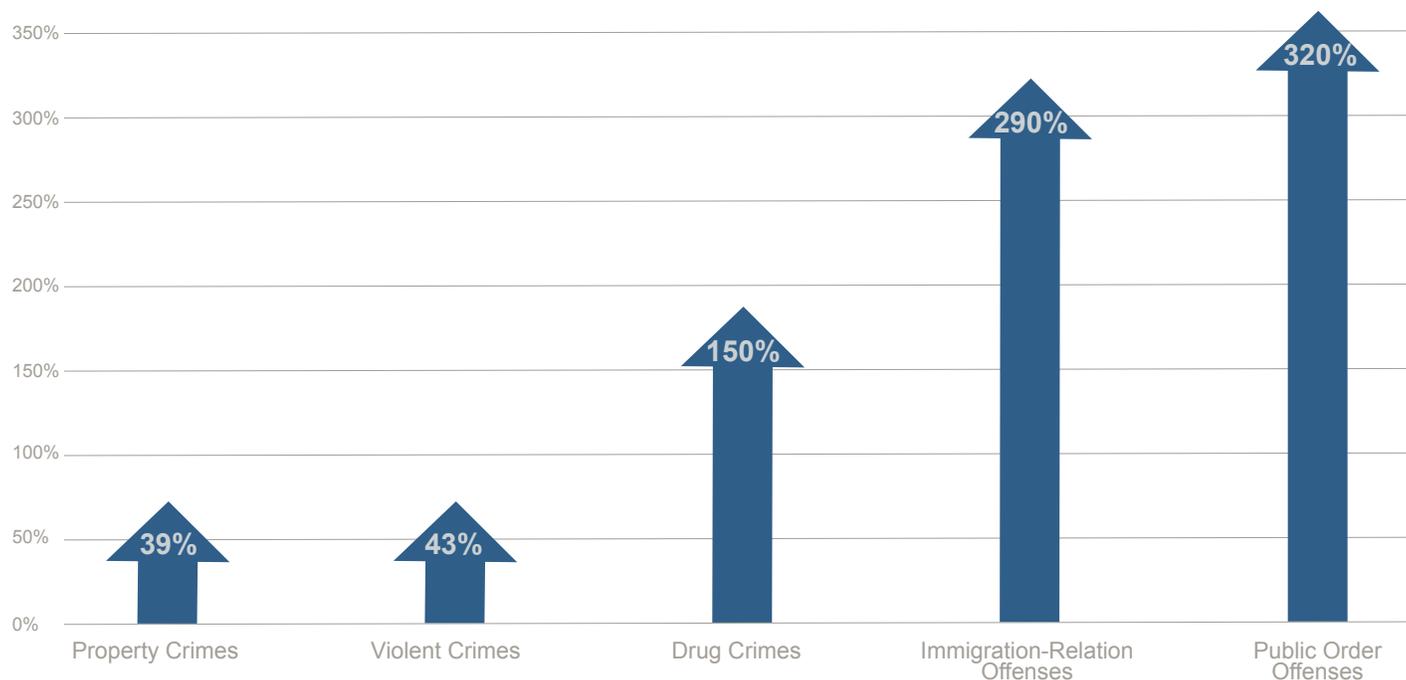
7 The Pew Charitable Trusts, *The Punishment Rate*, The Pew Charitable Trusts (March 2016), http://www.pewtrusts.org/~media/assets/2016/03/the_punishment_rate.pdf.

8 The Pew Charitable Trusts, *Prison Time Surges for Federal Inmates*, The Pew Charitable Trusts (November 2015), http://www.pewtrusts.org/~media/assets/2015/11/prison_time_surges_for_federal_inmates.pdf.

9 The Pew Charitable Trusts, *supra* note 8 at 1.

Moreover, the average length of time served by an individual sentenced to federal prison increased from 17.9 to 37.5 months between 1988 and 2012, even in the face of research that suggests that longer sentences do not reduce recidivism.⁸ During this period, average sentence lengths increased by 39% to 320% for certain categories of crime.⁹

Increase in Sentence Lengths Imposed for Federal Crimes



While at first glance it may appear that this increased reliance on incarceration and longer prison sentences fully explains the massive decrease in crime rates, criminologists and other experts who have carefully studied the best available evidence refute this premise. Of the contributing factors which could have reduced crime in recent decades, research suggests that only 25% of the decrease in violent crime and an even smaller percentage of the decrease in property crime can be attributed to increased incarceration.¹⁰ Other factors, such as a growing economy, changes in the drug market, the aging population, strategic policing, and community responses to crime have been found to be significant contributing factors to the decline in crime.¹¹ Incarceration may even increase the likelihood of future criminal behavior, an unintended consequence termed “the criminogenic effect,” particularly among people who have been convicted of low-level crimes.¹² Thus, beyond a certain threshold, harsher and more frequent prison sentences deliver diminishing returns for public safety, which should prompt us to think outside the bars in search of more evidence-based, restorative measures for correcting harmful behaviors.

10 William Spelman, *The Limited Importance of Prison Expansion*, in *THE CRIME DROP IN AMERICA* 97-128 (Alfred Blumstein & Joel Wallman 2006); See also National Research Council, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* (National Academies Press 2014).

11 Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 *J. Econ. Persp.* 163 (2004); Steven D. Levitt, *The Limited Role of Changing Age Structure in Explaining Aggregate Crime Rates*, 37 *Criminology* 581 (1999); Richard Curtis, *The Improbable Transformation of Inner-City Neighborhoods: Crime, Violence, Drugs, and Youth in the 1990s*, 88 *J. Crim. L. Criminology* 1233 (1998); John E. Eck & Edward R. Maguire, *Have Changes in Policing Reduced Violent Crime? An Assessment of the Evidence*, in *THE CRIME DROP IN AMERICA* 207-256 (Alfred Blumstein & Joel Wallman 2nd eds. December 2009); Spelman, *supra* note 9; Oliver Roeder, et al., *What caused the crime decline?*, Brennan Center for Justice (2015), https://www.brennancenter.org/sites/default/files/analysis/What_Caused_The_Crime_Decline.pdf; Richard B. Freeman & William M. Rogers III, *Area Economic Conditions and the Labor Market Outcomes of Young Men in the 1990s Expansion* (National Bureau of Economic Research, Working Paper No. 7073 1999), <http://www.nber.org/papers/w7073.pdf>.

12 Brian Forst, *Prosecution and Sentencing*, in *CRIME* 369-385 (J.Q. Wilson & Joan Petersilia eds., 1995); Cassia Sophn & David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, 40 *Criminology* 329 (2002); Oliver Roeder, et al., *What Caused the Crime Decline?*, Brennan Center for Justice (2015), https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf.

13 Lynn Langton & Matthew Durose, *Police Behavior during Traffic and Street Stops*, 2011, Bureau of Justice Statistics (September 2013), <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>.

14 Patrick A. Langan, *The Racial Disparity in U.S. Drug Arrests*, Bureau of Justice Statistics (October 1, 2015), <https://www.bjs.gov/content/pub/pdf/rdsda.pdf>.

15 William Rhodes, et al., *Federal Sentencing Disparity: 2005-2012*, Bureau of Justice Statistics (October 22, 2015), <https://www.bjs.gov/content/pub/pdf/fsd0512.pdf>; Lindsey Devers, *Plea and Charge Bargaining: Research Summary*, Bureau of Justice Statistics (January 24, 2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>.

16 Office of Juvenile Justice and Delinquency Prevention, *One-day count of juveniles in residential placement facilities, 1997-2014*, U.S. Department of Justice (August 03, 2016), <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2014>; Office of Juvenile Justice and Delinquency Prevention, *Number of inmates age 17 or younger in custody of state prison institutions, 2000-2014*, U.S. Department of Justice (December 13, 2015), <https://www.ojjdp.gov/ojstatbb/corrections/qa08701.asp?qaDate=2014>; Office of Juvenile Justice and Delinquency Prevention, *Jail inmates younger than 18, 1990-2014*, U.S. Department of Justice (December 13, 2015), <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp?qaDate=2014>.

Over-criminalization is not only a matter of public safety, but also contributes to racial inequality. Data collected by state and federal agencies have increasingly made clear the disproportional impact that our justice system has on racial minorities. Communities of color are subject to higher-than-average rates of traffic stops and police searches.¹³ African Americans are significantly more likely to be arrested for a drug crime, even though rates of drug use and trafficking are roughly equal across all races.¹⁴ When convicted, they are often subjected to harsher-than-average sentences and less likely to receive any form of reduced sentence, charge, or plea agreement, when compared to similarly situated individuals of non-African American descent.¹⁵

Over-criminalization also has a significant impact on the rising generation of American young people. On a recent survey day, there were 50,821 youths held in residential placement facilities nationwide, with another 5,235 committed to adult jails and prisons.¹⁶ By 2013 the overall juvenile court delinquency caseload had grown to 2.6 times what it was in 1960, even though the number of crimes committed by youth remained consistent over this period.¹⁷ With the prevalence of zero-tolerance policies and the proliferation of new crimes on the books, a significant portion of America's youth experience the juvenile justice system, impacting their ability to graduate high school, find meaningful employment, and have continued positive relationships with their families and communities.¹⁸ Increased time behind bars also makes it more likely that young people will commit more crimes in the future. One jurisdiction has found that for each additional year a juvenile is incarcerated, his or her probability of future arrests increases by 32.7%.¹⁹

The impact of over-criminalization extends beyond the men, women, and youth in the justice system. Children and families suffer from disproportional sentencing, too. Approximately 2.7 million—or 1 in 28—American children have an incarcerated parent.²⁰ Approximately one in 110 white children, one in 41 Hispanic children, and one in 15 black children has a parent who is incarcerated.²¹ Children of an incarcerated parent may experience fear, anxiety, anger, guilt, and embarrassment, often resulting in difficulties in school and behavioral problems.²² A criminal record makes it much harder for previously incarcerated parents to find gainful employment and hinders their economic mobility. This negatively impacts the well-being of their children and families for generations.²³

THE VICTIMS AND SURVIVORS OF CRIME

Of course, acknowledging and addressing the needs of the people most directly harmed by crime cannot be overlooked in our response to over-criminalization. In 2015, more than 19 million U.S. residents experienced some form of property or violent crime, which does not even account for embezzlement, identity theft, and other emerging forms of crime.²⁴

Despite the encouraging decrease in overall crime rates, each crime is no less harmful to its victim. Survivors of crime can experience physical wounds, financial losses, and psychological harm. While each person's experience is unique, common traits that result from the trauma of crime victimization include feelings of helplessness, lack of security, and fear of re-victimization. A national survey of individuals who personally experienced crime found that two out of three did not receive help following the incident, and those who did largely received assistance outside the criminal justice system.²⁵

Progress has been made to advance victims' rights in the past several decades. This progress includes laws to protect their privacy, ensure their access to information and criminal justice proceedings, and bolster restitution and compensation funds. Nevertheless, some victims find the system does not provide a platform for significant participation—nor result in the outcomes they desire. Victim-offender dialogue, victim-impact classes, and restorative justice programs can offer opportunities for survivors of crime to have a more meaningful and individualized role in the justice process.

17 Sarah Hockenberry & Charles Puzanchera, *Juvenile Court Statistics 2013*, National Center for Juvenile Justice (July 2015), <https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2013.pdf>; Melissa Sickmun & Charles Puzanchera, *Juvenile Offenders and Victims: 2014 National Report*, National Center for Juvenile Justice (December 2014), <https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf>; Office of Juvenile Justice and Delinquency Prevention, *Offending By Juveniles*, Office of Justice Programs (September 30, 1999), <https://www.ojjdp.gov/ojstatbb/offenders/qa03201.asp?qaDate=19990930>.

18 Randi Hjalmarsson, *Criminal Justice Involvement and High School Completion*, 63 *J. Urb. Econ.* 613 (2008); Bruce Western & Katherine Becker, *How Unregulated is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 *Am. J. Soc.* 1030 (January 1999); See also Anna Aizer & Joseph J. Doyle, *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, *The National Bureau of Economic Research* (June 2013), <http://www.nber.org/papers/w19102.pdf>; Andrea J. Sedlak & Karla S. McPherson, *Conditions of Confinement: Findings from the Survey of Youth in Residential Placement*, Office of Juvenile Justice and Delinquency Prevention (May 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>.

19 Prison Fellowship, et al., *Juvenile Justice Reform in Virginia*, Prison Fellowship (January 2016), available at <https://www.prisonfellowship.org/about/justicereform/legislation/state-issues/va/>.

20 The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, The Pew Charitable Trusts (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

21 The Pew Charitable Trusts, *supra* note 18 at 19.

22 Rucker C. Johnson, *Ever-Increasing Levels of Parental Incarceration and the Consequences for Children*, in *DO PRISONS MAKE US SAFER? THE BENEFITS AND COST OF THE PRISON BOOM* 177-206 (Steven Raphael & Michael Stoll eds., 2009); Danielle H. Dallaire, *Incarcerated Mothers and fathers: A Comparison of Risks for Children and Families*, 56 *Fam. Rel.* 440 (December 2007); Thomas E. Hanlon, et al., *Vulnerability of children of incarcerated addict mothers: Implications for preventive intervention*, 27 *Child. Youth Services Rev.* 67 (2005); Julie Poehlmann, *Representations of Attachment Relationships in Children of Incarcerated Mothers*, 76 *Child Dev.* 679 (May 2005); Ashton Trice & JoAnne Brewster, *The Effects of Maternal Incarceration on Adolescent Children*, 19 *J. Police Crim. Psychol.* 27 (March 2004); Christopher Wildeman, *Parental Incarceration, the Prison Boom, and the Intergenerational Transmission of Stigma and Disadvantage* (Princeton University, Published Doctoral Dissertation, 2008); The Annie E. Casey Foundation, *A Shared Sentence: The devastating toll of parental incarceration on kids, families and communities*, The Annie E. Casey Foundation (April 2016), <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>; The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, The Pew Charitable Trusts (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf; Joseph Murray, et al., *Effects of parental imprisonment on child antisocial behavior and mental health: a systematic review*, *Campbell Systematic Reviews* (August 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/229378.pdf>; Susan D. Phillips & James P. Gleeson, *What we Know Now that we Didn't Know Then about the Criminal Justice System's Involvement in Families with whom Child Welfare Agencies have Contact*, University of Illinois at Chicago (July 2007), <http://www.f2f.ca.gov/res/pdf/WhatWeKnowNow.pdf>.

23 Becky Pettit & Bruce Western, *Collateral Costs: Incarceration's Effect on Economic Mobility*, The Pew Charitable Trusts (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

Victims' perspectives on the current approach to crime and use of incarceration may be surprising to some. The overwhelming majority of crime victims surveyed believe that the justice system in America relies too heavily on incarceration and would prefer that the system invest in prevention and treatment over building additional prisons or jails.²⁶ By a margin of three-to-one, individuals who have been victims of crime believe that placing someone in prison is more likely to encourage further criminal behavior rather than rehabilitation.²⁷ More than 75% of crime survivors would prefer additional investments in the justice system to be focused on education, mental health treatment, substance abuse treatment, and employment training.²⁸

THE CAUSES AND SOLUTIONS

Identifying the crisis of over-criminalization in America doesn't mean we should be dismissive of crime. On the contrary, preventing and addressing crime, even while crime rates are low, is the foundation of a robust, systemic response to over-criminalization.

Failure of Moral Formation

A Christian worldview informs our understanding of the causes of crime. Among the leading factors contributing to crime is a failure in moral formation. The social manifestations of this failure are everywhere, but nowhere more obvious than in the family. The family is the birthplace of self-governance, the cradle of citizenship. In the family, a child first learns, or fails to learn, the essential qualities necessary for governing the self: honesty, trust, loyalty, cooperation, self-restraint, civility, compassion, personal responsibility, and respect for others. Evidence suggests that by the time a child reaches 13, his or her worldview is basically established.²⁹ Early training in the home is, therefore, pivotal in setting a child's moral compass.

Conversely, when the home fails to be a place of love, acceptance, and appropriate discipline, the consequences are glaringly obvious. Early abuse, neglect, and trauma often damage children's long-term psychological and emotional health, contributing to future criminal behavior and incarceration.³⁰ Studies reveal that most men and women who are incarcerated previously faced some form of physical, sexual, or emotional abuse, and many of them were subject to such trauma as children.³¹

Churches and houses of worship are also crucial to moral formation. Within those communities, individuals learn to be less self-centered, to love God with all their heart, soul, mind, and strength, and to love their neighbors as themselves. They learn respect for our leaders, for government, and for the rule of law. They also learn that all people, regardless of ethnicity, gender, and social status, are made in God's image, and they learn the importance of mutual accountability, cooperation, and faithfulness.

Strong local neighborhoods are another source of moral formation. Parents and families should invest themselves in cultivating civic virtues by strengthening the bonds of community, serving their neighbors, and investing in a community infrastructure that helps provide the formative experiences of children. Neighborhoods should be safe, nurturing, and friendly environments for individuals and families, especially children.

Schools should come alongside parents to teach science, history, literacy, and math, and reinforce the character formation of children.

By the time children become adolescents, moral formation and self-control become more difficult. Studies have shown that until the early- to mid-twenties, insufficient mental development and maturity in young adults, particularly among males, leaves them less able to control impulses and emotions, less likely to consider moral reasoning or long-term consequences, and more prone to the effects of peer pressure and stress.³²

Failure of moral formation results in sinful patterns, which manifest in many forms of brokenness beyond criminal behavior. Societal factors, particularly poverty, increase the likelihood that brokenness will manifest as criminal activity.

24 Jennifer L. Truman & Rachel E. Morgan, *Criminal Victimization*, 2015, Bureau of Justice Statistics (October 2016), <https://www.bjs.gov/content/pub/pdf/cv15.pdf>; See also Erika Harrell, *Victims of Identity Theft*, Bureau of Justice Statistics (September 2015), <https://www.bjs.gov/content/pub/pdf/vit14.pdf> (Finding that over 17 million Americans, or approximately seven percent of U.S. residents over age sixteen, reported that they were the victim of some form of identity theft in 2014).

25 Alliance for Safety and Justice, *Crime Survivors Speak*, Alliance for Safety and Justice (2016), <https://www.allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

26 Alliance for Safety and Justice, *supra* note 25 at 13-21.

27 Alliance for Safety and Justice, *supra* note 25 at 14.

28 Alliance for Safety and Justice, *supra* note 25 at 17-21.

29 George Barna, *TRANSFORMING CHILDREN INTO SPIRITUAL CHAMPIONS: WHY CHILDREN SHOULD BE YOUR CHURCH'S #1 PRIORITY* (2016).

30 Jane A. Siegel & Linda M. Williams, *The Relationship Between Child Sexual Abuse and Female Delinquency and Crime: A Prospective Study*, 40 *J. Res. Crime Delinq.* 71 (February 2003), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.521.9034&rep=rep1&type=pdf>; Janet Currie & Erdal Tekin, *Does Child Abuse Cause Crime?* (National Bureau of Economic Research, Working Paper No. 12171, April 2006), <http://www.nber.org/papers/w12171.pdf>.

31 Lorraine E. Cuadra, et al., *Child maltreatment and adult criminal behavior: Does criminal thinking explain the association?*, 38 *Child Abuse Neglect* 1399 (2014), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1652&context=psychfacpub>; Nancy Wolff & Jing Shi, *Childhood and Adult Trauma Experiences of Incarcerated Persons and Their Relationship to Adult Behavioral Health Problems and Treatment*, 9 *Int. J. Environ. Res. Public Health* 1908 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3386595/pdf/ijerph-09-01908.pdf>; See also Robin Weeks & Cathy Spatz Widom, *Self-reports of early childhood victimization among incarcerated adult male felons*, *J. Interpersonal Violence* 346 (June 1998); Carolina Wolf Harlow, *Prior Abuse Reported by Inmates and Probationers*, Bureau of Justice Statistics (April 1999), <https://www.bjs.gov/content/pub/pdf/parip.pdf>; See also Doris J. James, *Profile of Jail Inmates, 2002*, Bureau of Justice Statistics (July 2004), <https://www.bjs.gov/content/pub/pdf/pj02.pdf>; Angela Browne, et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 *Int'l J. L. & Psychiatry* 301, 310-322 (1999).

32 Jessica R. Cohen et al., *A unique adolescent response to reward prediction errors*, 13 *Nat. Neuroscience* 669 (June 2010); Sara B. Johnson, Robert W. Blum, & Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 *J. Adolesc. Health* 216 (September, 2009); William G. Iacono, Stephen M. Malone, & Matt McGue, *Behavioral Disinhibition and the Development of Early-Onset Addiction: Common and Specific Influences*, 4 *Ann. Rev. of Clinical Psychol.* 325 (April 2008); Valerie Reyna & Frank Farley, *Risk and Rationality in Adolescent Decision Making: Implications for Theory, Practice, and Public Policy*, 7 *Psychol. Sci. Pub. Int.* 1 (September 2006); Laurence Steinberg, *Risk Taking in Adolescence: What Changes, and Why?*, 1021 *Annals N.Y. Acad. Of Sci.* 51 (June 2004); Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 *Ann. N.Y. Acad. Sci.* 77 (2004).

Misguided Criminal Justice Policy

We must also recognize the role misguided criminal justice policies have played in contributing to our nation's current crisis. Our Christian worldview emphasizes the importance of proportionality in punishment, the possibility of redemption and transformation, and the necessity of pursuing justice that restores.

What constitutes a crime in America has expanded significantly over time. Murder, rape, robbery, and other basic offenses are understood by virtually all Americans as crimes with grave moral and public safety implications. However, the number of crimes and regulations carrying criminal penalties has ballooned to include many offenses with no such implications; now, virtually all Americans are unaware of all the behaviors that are legally considered criminal. Our criminal laws and regulations should be evaluated and eliminated in cases where there is insufficient criminal intent.

Poverty often unjustly frustrates individuals' ability to navigate this complex justice system, resulting in disparate access to bail, quality defense, and other tools of justice. Thus, our prison population includes an unknown number of innocent people who were falsely accused and lacked the means to adequately defend themselves in court, or accepted a plea bargain out of fear of risking a much longer sentence if wrongly convicted.

Prosecutors are generally elected and paid for by counties and many prosecutors campaign on their ability to secure harsh convictions. However, the defendants they charge, if convicted of felonies, will serve their prison sentences at cost to the state, not the county. Thus, prosecutors can boost their record without financial checks and balances. While there are likely many reasons that contribute to the increased use of felony charges by prosecutors, we should be wary of this perverse incentive.³³

Sentencing for many types of crime, including drug-related offenses, is often disproportional to the harm caused to victims and to society. Another policy contributing to our excessive prison population is the use of disproportional mandatory minimum sentences, particularly for drug crimes, which limits judges' ability to do their jobs.

Along with these lengthier prison terms come rapidly escalating prison costs. In 2010, comparing total expenses for prisons across 40 state justice systems, it cost on average \$31,000 per year to incarcerate one adult.³⁴ Adjusting for inflation, correctional spending in the United States has increased from \$17 billion in 1980 to over \$71 billion in 2013, an increase of 324% over this period.³⁵

If crime rates have been falling for a generation, why are so many behaviors being criminalized, and such disproportional and costly sentences being handed down? Such laws and policies are frequently fueled by the public's fear of crime, which is often much greater than the documented danger, and by political pandering. While fear of crime is a natural human response, we are not to be governed by fear, but rather by love and sound wisdom. We should embrace a restorative approach to punishment that addresses the underlying causes of crime and promotes effective accountability. By setting aside fear, we can critically evaluate criminal justice policies based on actual public safety outcomes.

Alternative sentencing options that lead to improved outcomes are often overlooked. In some cases, suspended sentences, probation, fines, restitution, community service, or other programs prove to be far more successful, less expensive, and better at reducing recidivism than prison sentences, while still providing an effective deterrent to crime. In the Old Testament, Israel's most common means of punishment was restitution. In our current context, appropriate, community-based alternative sentencing permits individuals to pay their debt to society while they hold paying jobs, go to school, support their families, and contribute meaningfully to society. The importance of maintaining individuals' connection to their communities, whenever possible and safe cannot be overstated. Among youth involved in the juvenile justice system, community programs involving the child's family have been shown to be increasingly effective, reducing recidivism by up to 70%.³⁶

Drug courts are an excellent example of an alternative sentencing scheme that allows people to be held accountable for harmful behaviors without resorting to expensive and unnecessary terms of incarceration. There are more than 3,000 drug courts across the country seeking to remedy substance abuse issues among those who have been charged with criminal offenses.³⁷ Drug courts have been shown to reduce recidivism among participants by 13%, and average taxpayer savings are between \$5,680 and \$4,208 per drug-court participant.³⁸

People living with a mental illness can also benefit from alternative sentencing. As the availability of community-based mental health services has declined, jails and prisons have increasingly been called upon to act as mental health service providers—a task they are often poorly trained or

33 John F. Pfaff, *Waylaid by a Metaphor: A Deeply Problematic Account of Prison Growth*, 111 Mich. L. Rev. 1087 (2013).

34 Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayer*, (July 20th, 2012), <http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

35 U.S. Department of Education, *State and Local Expenditures on Corrections and Education*, U.S. Department of Education (July 2016), <https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>.

36 Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation (2011), <http://www.juvenile-in-justice.com/wp-content/uploads/2011/10/NoPlaceForKids.pdf>.

37 Office of Justice Programs, *Drug Courts*, U.S. Department of Justice (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>.

38 Office of Justice Programs, *supra* note 37.

resourced to perform. The prison experience itself may create or exacerbate mental health issues. More than half of state prisoners show current symptoms or have had a recent history of mental health problems.³⁹ Nearly half of federal prisoners and nearly two-thirds of persons detained in local jail have mental health problems.⁴⁰ Many of these people should receive mental health treatment rather than incarceration, or may be good candidates for mental health courts. In addition to seeking alternatives to incarceration, in the last decade many states have removed or limited application of mandatory minimum sentences, reclassified felonies as misdemeanors, or passed other sentencing reforms designed to restore more proportional sentencing. The results have been very encouraging. State corrections and crime data show that states which have lowered their incarceration rates in recent years have also realized similar or larger decreases in crime when compared to the nation as a whole. While crime rates have decreased in almost every state across the country since 2010, the states with the 10 largest decreases in their imprisonment rates realized a 6% larger decrease in crime than the 10 states with the largest increases in imprisonment rates.⁴¹ For example, Texas has introduced a significant number of reforms in recent years that have reduced the state's imprisonment rate by 12.9%.⁴² Over the same five-year period, the state has realized a 23.3% decline in its crime rate.⁴³ South Carolina, a state which adopted comprehensive criminal justice reform in 2010, has seen an approximately 16% decrease in both its imprisonment and crime rates since the legislation was enacted.⁴⁴

Although more than 600,000 people are released from prison or jail every year, many of them are not more prepared to live a productive and crime-free life than when they were first incarcerated, and some learned to be more violent while they were in custody.⁴⁵ We should evaluate and reform policies that contribute to these devastating outcomes. Solitary confinement, or "restrictive housing," generally entails confining prisoners in their cells for 23 hours a day and severely limiting their social interaction with both the general prison population and their family and friends in the community. Many studies have documented the severe psychological impact such isolation can have on prisoners, particularly those with serious mental illness.⁴⁶ In 2015, the Association of State Correctional Administrators undertook a nationwide study to document the number of incarcerated persons placed in restrictive housing and the conditions they face.⁴⁷ The study revealed that 42 jurisdictions do not limit the duration of solitary confinement, and that some fail to record the length of time that an individual is held in restrictive housing. In some situations, the length of restrictive housing exceeded three years. New laws and regulations have brought about greater transparency regarding incidents of sexual assault in correctional facilities, and have bolstered prevention and response efforts. Still, a survey conducted during 2011 and 2012 revealed that about 4% of prisoners reported experiencing sexual victimization by another prisoner or a member of the prison staff.⁴⁸ If we want incarcerated people to return as better neighbors, conditions of confinement must uphold human dignity and promote safety and pro-social values.

39 KiDeuk Kim, et al., *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System*, The Urban Institute (March 2015), <http://www.urban.org/sites/default/files/publication/48981/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>; See generally Doris J. James & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics (September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

40 Kim, *supra* note 35 at 8-9.

41 The Pew Charitable Trusts, *National Imprisonment and Crime Rates Continue to Fall*, The Pew Charitable Trusts (December 2016), http://www.pewtrusts.org/~media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf.

42 The Pew Charitable Trusts, *supra* note 41 at 2.

43 The Pew Charitable Trusts, *supra* note 41 at 2.

44 Omnibus Crime Reduction and Sentencing Reform Act, S. 1154, 2010 Gen. Assemb., 118th Reg. Sess. (S.C. 2010): The Pew Charitable Trusts, *supra* note 41 at 2.

37 Office of Justice Programs, *Drug Courts*, U.S. Department of Justice (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>.

38 Office of Justice Programs, *supra* note 37.

39 KiDeuk Kim, et al., *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System*, The Urban Institute (March 2015), <http://www.urban.org/sites/default/files/publication/48981/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>; See generally Doris J. James & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics (September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

40 Kim, *supra* note 35 at 8-9.

41 The Pew Charitable Trusts, *National Imprisonment and Crime Rates Continue to Fall*, The Pew Charitable Trusts (December 2016), http://www.pewtrusts.org/~media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf.

42 The Pew Charitable Trusts, *supra* note 41 at 2.

43 The Pew Charitable Trusts, *supra* note 41 at 2.

44 Omnibus Crime Reduction and Sentencing Reform Act, S. 1154, 2010 Gen. Assemb., 118th Reg. Sess. (S.C. 2010): The Pew Charitable Trusts, *supra* note 41 at 2.

45 E. Ann Carson & Elizabeth Anderson, *Prisoners in 2015*, Bureau of Justice Statistics (December 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>. 46 See e.g., Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 *Int'l J.L. & Psychiatry* 49 (1986); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 *N.Y.U. Rev. of Law and Social Change* 477-570 (1997); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 *Crime & Delinq.* 124 (2003).

Society stands to benefit from strengthening prison and reentry programs. Programs that address criminogenic thought patterns, like self-justification, blaming others, and holding unrealistic perceptions of reality, are shown to decrease recidivism rates.⁴⁹ Evidence also suggests that when prisoners complete educational and practical life-skills programs, like parenting or financial literacy classes, they are less likely to recidivate.⁵⁰ Likewise, faith-based programs that holistically address criminogenic thinking through the teaching and application of relevant Christian principles affirm the dignity of those in prison. They also prepare them for success outside of the institution, making both prisons and communities safer.⁵¹ Over-incarceration has a lasting impact even after someone has completed the punishment imposed by the court. The one in four Americans with a criminal record face nearly 48,000 legal collateral consequences, such as voter disenfranchisement, inability to obtain professional licensing, and lack of access to higher education, not to mention pervasive social stigma.⁵² Many of these consequences take effect automatically, without considering the person's criminal history, the time since the offense, or his or her efforts to make amends. These restrictions should be eliminated or narrowly tailored to serve public safety. Public safety would be further served by providing holistic reentry services, such as job training and placement, safe transitional housing, and mentoring, for people who have paid their debt to society and want to become productive citizens.

The laws must change to provide opportunities for second chances, but so must the culture. Gaining meaningful employment is one of the most significant predictors of how likely an individual is to be involved in criminal activity in the future, but 90% of those who have been incarcerated struggle to find employment in the first year after release.⁵³ Only 40% percent of employers are willing to hire an applicant with a criminal record, and applicants with a criminal record are half as likely to receive a call back from a potential employer.⁵⁴ Christians can lead the way in extending acceptance to people with criminal records who return to our businesses, churches, and communities.

THE APPEAL TO THE CHURCH⁵⁵

Therefore, we make an urgent appeal to all who follow the Lord Jesus Christ to:

Affirm that the God of the Bible is a just God: justice flows from God's very character, and the works of God's hands are faithful and just.⁵⁶ God calls his people to act justly, love mercy, and walk humbly before Him.⁵⁷

Treat every human being as a person made in God's own image, with a life worthy of respect, protection, and care.⁵⁸

Foster just relationships between God, fellow human beings, and property, which will lead to human flourishing. The violation of just relationships leads to human trauma and suffering. Recognition of human dignity requires that churches seek to serve all of those who are impacted by crime, including the victim and the person responsible, working as ministers of biblical justice. This is, after all, the story of the good news of Jesus of Nazareth, who brings reconciliation between God and humanity, between one person and another, and to all of creation by making peace through His own sacrifice.⁵⁹

47 The Liman Program, *Time in Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison*, Yale Law School & Association of State Correctional Administrators (August 31, 2015), https://law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf.

48 Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, Bureau of Justice Statistics (May 2013), <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

49 Valerie A. Clark & Grant Duwe, *An Outcome Evaluation of a Prison-Based Life-Skills Program: The Power of the People*, 59 *Int'l J. Offender Therapy Comp. Criminology* 384 (2015); Dawn K. Cecil, et al., *The Effectiveness of Adult Basic Education and Life-Skills Programs in Reducing Recidivism: A Review and Assessment of the Research*, 51 *J. Correctional Educ.* 207 (June 2000).

50 Steven Block, et al., *A Mixed-Method Assessment of a Parenting Program for Incarcerated Fathers*, 65 *J. Correctional Educ.* 50 (January 2014); Scott Zuckerman & Danielle Wright, *Learning How to Father Effectively Through Jail Programming*, 24 *Am. Jail* 26 (August 2010); David B. Wilson, et al., *A Meta-Analysis of Corrections-Based Education, Vocation, and Work Programs for Adult Offenders*, 37 *J. of Res. in Crime and Delinq.* 4, 347, 355-357 (2000); Lois M. Davis, et al., *How Effective is Correctional Education, and Where Do We Go From Here?*, RAND Corp. & Bureau of Justice Assistance (2014), available at http://www.rand.org/pubs/research_reports/RR564.html.

51 Minnesota Department of Corrections, *An Outcome Evaluation of the Innerchange Freedom Initiative in Minnesota*, Minnesota Department of Corrections (February 2012), http://www.doc.state.mn.us/PAGES/files/large-files/Publications/2-12-DOC_IFI_Evaluation.pdf; See also Grant Duwe & Bryon R. Johnson, *Estimating the Benefits of a Faith-Based Correctional Program*, 2 *Int'l J. Criminology Soc.* 227 (2013).

52 Justice Center, *National Inventory of the Collateral Consequences of Conviction*, The Council of State Governments (2016), <https://niccc.csgjusticecenter.org/map/>.

53 John M. Nally, et al., *Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year Follow-up Study in the United States*, 9 *Int'l J. of Crim. Just. Sci.* 1, 16, 23 (2014); Le'Ann Duran, et al., *Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness*, The Council of State Governments Justice Center (2013), <https://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp..pdf>.

54 Harry J. Holzer, *Collateral Costs: The Effects of Incarceration on the Employment and Earnings of Young Workers* 12 (Institute for the Study of Labor, Discussion Paper No. 3118, October 2007).

55 The Bible verses cited in this section provide supportive references but should not be considered a complete or exhaustive explanation of the biblical basis for the underlying assertion. For additional commentary on the biblical basis for justice, victim care, and prison ministry please see the sources cited in this footnote. See e.g. Paul Nyquist, *IS JUSTICE POSSIBLE?: THE ELUSIVE PURSUIT OF WHAT IS RIGHT* (Moody Publishers 2017); Craig DeRoche, et al., *OUTRAGEOUS JUSTICE* (Prison Fellowship Ministries 2016); Daniel W. Van Ness, *CRIME AND ITS VICTIMS* (Inter-Varsity Press 1989); Charles Colson, *PRISON FELLOWSHIP DISCUSSION GUIDE: CHARLES COLSON ON JUSTICE* (Prison Fellowship Ministries 1988); Southern Baptist Convention, *On America's Growing Prison Population*, Southern Baptist Convention (2013), <http://www.sbc.net/resolutions/1239/on-americas-growing-prison-population>; United States Conference of Catholic Bishops, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, United States Conference of Catholic Bishops (November 15, 2000), <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/crime-and-criminal-justice.cfm#scriptural>; National Association of Evangelicals, *Resolution: The Church's Responsibility to Prisoners*, National Association of Evangelicals (1997), <https://www.nae.net/prisoners/>.

56 Deuteronomy 32:4 (New International Version); Psalm 99:4 (NIV); Psalm 111:7-8 (NIV).

57 Micah 6:8 (NIV).

58 Genesis 1:27; 9:6 (NIV).

59 Colossians 1:19-20 (NIV).

Redouble our efforts to prevent crime by cultivating the “seedbeds of virtue,” including families, churches, neighborhoods, schools, and other sources of moral formation, seeking the peace and prosperity of the community through institutions of civil society. Supporting parents is particularly important, recognizing that it is in the nurture of the family that a child first experiences love, security, and trust, and learns the essential qualities necessary for governing oneself: honesty, loyalty, cooperation, self-restraint, civility, compassion, personal responsibility, and respect for others.⁶⁰

Care for the physical and emotional wounds of survivors of crime, ensure their safety,⁶¹ and support their meaningful participation in the justice system. We commit to “mourn with those who mourn”⁶² by walking alongside and listening to those who are harmed by crime. We can act as bridges between those who have suffered property loss and violent crime, those who have committed such acts, their communities who suffer, and a justice system that seeks to protect and serve its citizens.

Take up the cause of the poor and vulnerable, ensuring fair access to education, economic opportunity, the social safety net, and, for those accused of crimes, the instruments of justice. “Do not pervert justice; do not show partiality to the poor or favoritism to the great, but judge your neighbor fairly.”⁶³ We will “speak for those who cannot speak for themselves” and “defend the rights of the poor and needy,”⁶⁴ ensuring that all receive equal treatment under the law.

Advocate for proportional punishment, including alternatives to incarceration, that protects public safety, fosters accountability, and provides opportunities to make amends. Criminal justice policy has often been driven by a culture of fear, resulting in an overly punitive response that does not make communities safer. Although we acknowledge retribution as a biblical principle, a Christian view of justice also emphasizes redemption, reformation, restoration, and renewal.

Preach the good news of the gospel and proclaim that true freedom in Christ is available to all, including prisoners,⁶⁵ recognizing that His atoning sacrifice covers all sin.⁶⁶ We recommit ourselves to being gospel people and gospel communities who think more highly of others than we do ourselves.⁶⁷ We ourselves have been reconciled to God and received the grace of redemption, and now seek the shalom that Christ has inaugurated by making peace through His own cross and resurrection.⁶⁸

Invest in the discipleship of incarcerated men, women, and youth, protect their safety and human dignity, and minister to the needs of families and children with incarcerated loved ones. Christians are enjoined to “carry each other’s burdens, and in this way you will fulfill the law of Christ.”⁶⁹ We should pursue fellowship with the members of the Body of Christ who live behind prison bars, offering encouragement and support.

Celebrate redemption in our congregations and communities by welcoming back those who have paid their debt to society, and by providing opportunities for all persons to reach their God-given potential. “Therefore, if anyone is in Christ, the new creation has come. The old has gone, the new is here!”⁷⁰ As Christians, we have each received a second chance by the grace of God. We can extend the same spirit of acceptance to those who have paid their debt to society, enabling them to contribute to their families and our communities.

60 Proverbs 22:6 (NIV); Ephesians 6:4 (NIV). 61 Luke 10:25-37 (NIV). 62 Romans 12:15 (NIV). 63 Leviticus 19:15 (NIV).

64 Proverbs 31:8-9 (NIV). 65 Luke 4:18 (NIV). 66 1 John 2:2 (NIV). 67 Philippians 2:3 (NIV). 68 Colossians 1:20 (NIV). 69 Galatians 6:2 (NIV). 70 2 Corinthians 5:17 (NIV).