

*Wisconsin Legislative Council Staff*

***BACKGROUND INFORMATION ON FAITH-  
BASED APPROACHES TO CRIME  
PREVENTION AND JUSTICE***

*Staff Brief 98-11*



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*Staff Brief 98-11\**

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**BACKGROUND INFORMATION ON FAITH-BASED APPROACHES  
TO CRIME PREVENTION AND JUSTICE**

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**INTRODUCTION**

This Staff Brief was prepared for the Joint Legislative Council's Special Committee on Faith-Based Approaches to Crime Prevention and Justice. The Special Committee was created and the Chairperson appointed by a June 24, 1998 mail ballot; the members were appointed by a September 4, 1998 mail ballot.

The Special Committee is directed to study means by which faith-based approaches to lessening crime rates, lowering recidivism and achieving restorative justice in the aftermath of criminal acts may be encouraged. The Committee is directed to report its recommendations to the Joint Legislative Council by May 1, 1999.

The Staff Brief is divided into the following parts:

**Part I** describes current state-funded faith-based crime prevention programs in Wisconsin.

**Part II** describes faith-based crime prevention programs in other states.

**Part III** describes the restorative justice concept.

**Part IV** describes constitutional constraints on the provision of public funds to religious organizations for use in crime prevention and intervention.

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\*This Staff Brief was prepared by Shaun Haas and Mary Matthias, Senior Staff Attorneys, Legislative Council Staff.



**PART I**

**STATE-FUNDED FAITH-BASED CRIME PREVENTION PROGRAMS IN WISCONSIN**

This Part of the Staff Brief provides information on state-funded faith-based or religiously affiliated programs currently in operation in Wisconsin. Specifically, this Part provides information on the provision of and services provided by chaplains in Wisconsin correctional facilities and programs administered by the Department of Health and Family Services (DHFS) which provide funding to organizations with religious affiliations. This Part also provides information on Department of Corrections' (DOC) policies pertaining to the religious beliefs and practices of inmates and DOC's guidelines governing volunteers in corrections facilities.

**A. DEPARTMENT OF CORRECTIONS**

**1. Facilities Chaplains**

The DOC employs chaplains at each of the maximum and medium security adult correctional facilities in Wisconsin, the minimum security Oakhill Correctional Institution, the Wisconsin Resource Center, and at the four juvenile correctional facilities. Chaplains are not on the staff at adult minimum security correctional centers or farms other than the Oakhill Correctional Institution.

Table 1, below, lists each institution at which one or more chaplains are employed, and the name of the chaplain or chaplains at each institution. As noted in Table 1, a number of chaplain positions are currently vacant. The "vacant" designations accompanied by an asterisk are positions which were recently created in 1997 Wisconsin Act 27, the Biennial Budget Act. According to DOC, DOC and the Department of Employment Relations are currently developing the process to fill those positions, within the constraints of civil service requirements.

**TABLE 1**

***Department of Corrections' Facilities Chaplains***

<b><i>Institution</i></b>	<b><i>Chaplains</i></b>
<b>DIVISION OF ADULT INSTITUTIONS</b>	
Columbia Correctional Institution Portage, WI	Gene Dawson Vacant
Dodge Correctional Institution Waupun, WI	Paul Rogers Vacant Vacant*
Fox Lake Correctional Institution Fox Lake, WI	Glenn Lashway Steven Thomas

<i>Institution</i>	<i>Chaplains</i>
Green Bay Correctional Institution Green Bay, WI	Paul Emmel Jerome Taddy
Jackson Correctional Institution Black River Falls, WI	Alan Minshall Vacant*
Kettle Moraine Correctional Institution Plymouth, WI	Paul Zoschke Kenneth George
Oakhill Correctional Institution Oregon, WI	Larry Heitke Bob Groth
Oshkosh Correctional Institution Oshkosh, WI	Gary Burkum* Vacant
Racine Correctional Institution Sturtevant, WI	Tommie Thomas Vacant*
Racine Youth Offender Correctional Facility Racine, WI	Cornelius Gordon
Taycheedah Correctional Institution Fond du Lac, WI	Marilyn Morris
Waupun Correctional Institution Waupun, WI	Reotha Cole Jerry North
DIVISION OF JUVENILE CORRECTIONS	
Ethan Allen School Wales, WI	Mark Molling Vacant
Lincoln Hills School Irma, WI	Gary Uttech Craig Lindgren
Prairie du Chien Correctional Facility Prairie du Chien, WI	Vacant*
Southern Oaks Girls School Union Grove, WI	Vacant*
DEPARTMENT OF HEALTH AND FAMILY SERVICES DIVISION OF CARE AND TREATMENT FACILITIES**	
Wisconsin Resource Center Winnebago, WI	Gary Lee

***Source:*** DOC.

\* New Position.

\*\* The Wisconsin Resource Center is a DHFS facility operated by the Division of Care and Treatment Facilities.

As shown in Table 1, the State of Wisconsin currently employs 21 chaplains and there are currently nine vacant chaplain positions at correctional facilities in Wisconsin. Of those nine vacant positions, five were created recently in 1997 Wisconsin Act 27.

Table 2, below, sets forth the amounts budgeted by the DOC for the costs of chaplains at state correctional facilities for fiscal year 1998-99. The table sets forth both the amounts budgeted for the salaries and fringe benefits of chaplains as well as the amounts budgeted for related supplies and services.

**TABLE 2**

***FY99 Budgeted Chaplaincy Costs at Department of Corrections' Facilities***

<b><i>Department/Division</i></b>	<b><i>Full-Time Equivalent Positions</i></b>	<b><i>Salary and Fringe Budget - FY99</i></b>	<b><i>Estimated Supplies and Services Budget - FY99</i></b>
Dept. of Corrections Div. of Adult Institutions	21.90	\$980,100	\$35,700
Dept. of Corrections Div. of Juvenile Corrections	5.50	\$247,200	\$9,600
Dept. of Health and Family Services Div. of Care and Treatment Facilities - Wisconsin Resource Center	1.00	\$49,800	\$1,800
<b>TOTAL</b>	<b>28.40</b>	<b>\$1,277,100</b>	<b>\$47,100</b>

**Source:** DOC.

\* The Wisconsin Resource Center is a DHFS facility operated by the Division of Care and Treatment Facilities. Chaplaincy costs for the Wisconsin Resource Center are included in the DHFS budget.

As shown in Table 2, in fiscal year 1997-98, it is expected that more than \$1 million will be expended on salaries and fringe benefits for chaplains at DOC facilities and an additional \$47,000 will be spent on supplies and services related to those chaplains. These figures include funds sufficient to fully fund the positions which are currently vacant.



## 2. Duties of Chaplains

DOC administrative rules provide that chaplains must hold services, provide counseling and provide other pastoral services to inmates or arrange for other qualified persons to provide those services. The chaplain, or designated staff person with appropriate religious training, is to develop and maintain close relationships with religious resources from outside the institution and encourage religious groups from outside the institution to take part in institution religious activities. [s. DOC 309.61 (4), Wis. Adm. Code.]

A more detailed description of chaplains' duties is provided in the DOC position description for chaplains. The following information was obtained from the position description for the chaplain at the medium security Oshkosh Correctional Institution. One-half of the chaplain's time is spent administering the institution's ministerial program to meet the spiritual and rehabilitation needs of the inmates. The specific duties of the chaplain in this area are to:

- Plan, administer and supervise the institution's religious programs to meet the spiritual and rehabilitation needs of all the inmates. This includes all recognized religious expressions.
- Arrange for inmates to participate in religious services.
- Work with institution staff in planning programming which will effect the rehabilitation of inmates.
- Represent the institution in maintaining contact with and seeking support from community organizations.
- Assist in budget preparation for the institution's religious program.
- Prepare reports and maintain office records.
- Recruit and supervise inmate and nominate volunteers to assist with religious services and activities.
- Recruit, train, supervise and evaluate volunteers to work with inmates.
- Counsel inmates, their families and affected parties regarding personal problems and inform them of institution policies, procedures and programs.
- Supervise any inmate workers in the chapel area.
- Represent the institution at any meetings, seminars or training pertaining to religious activities.

Approximately 30% of the chaplain's time is spent providing personal and special ministry to inmates. The specific duties of the chaplain in this area are to:

- Arrange for and/or conduct religious worship services.
- Arrange for special services such as ecumenical services during holidays or for special events.
- Conduct or arrange for religious instruction classes.
- Follow department and institution policy and procedure in regards to marriages and other significant events, such as funeral videos and memorial services.

The remaining 20% of the chaplain's time is to be spent providing assistance with the planning, development and implementation of community-based volunteer organizations and programs. The specific duties of the chaplain in this area are to:

- Provide assistance to various institution staff in the planning of volunteer programs provided by community-based organizations as needed.
- Provide orientation to the institution philosophy and various programs to community-based organizations providing volunteer services to the institution's inmates as needed.
- Provide assistance with the scheduling and coordination of volunteer and intern services and programs provided to the institution's inmates as needed.
- Perform other assigned duties as needed.
- Provide institution staff with information regarding the requirements of the various religious groups.

As noted in the description of duties above, chaplains at Wisconsin correctional facilities are required to provide services to meet the spiritual and rehabilitation of inmates of all recognized religious expressions.

## **B. RELIGIOUS PRACTICE BY INMATES AT WISCONSIN CORRECTIONAL FACILITIES**

Section 301.33, Stats., entitled "Freedom of worship; religious ministrations," provides that subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall have an opportunity, at least once each week, to conduct religious services within the state correctional institutions. Attendance at the services is voluntary. In addition, the statute states that every inmate shall receive, upon request, religious ministrations and sacraments according to

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the inmate's faith and every inmate who requests it shall have the use of the Bible. The state must also make copies of the Quran available to prisoners to the same extent that the Bibles are made available. [*Pitts v. Knowles*, 339 F. Supp. 1183 (1972).]

The DOC's administrative rules state that "the department recognizes that religious beliefs can provide support to inmates which may aid in their adjustment to institutional life and can lead to development of community ties which may aid in the inmates' successful reintegration into the community upon release." [s. DOC 309.61 (1) (a), Wis. Adm. Code.]

The administrative rules require institutions to make facilities and other resources available to inmates for permitted religious practices to the extent feasible. [s. DOC 309.61 (1) (d), Wis. Adm. Code.]

The DOC has established written guidelines known as "Internal Management Procedures" which govern, among other things, the practice of religion by inmates. [DOC 309 IMP #6.] Each correctional institution is required to develop its own policies and procedures to implement religious programs in compliance with Internal Management Procedures established by DOC.

The DOC's guidelines relating to religious belief and practices provide that, to the extent feasible, institutions must offer the opportunity for reasonable access to religious activities by inmates, including regular religious services and ceremonies, special ceremonies or sacraments, prayers and meditation, religious instruction, counseling, literature and dietary accommodations consistent with restrictions prescribed by the religion, institution resources and appropriate security considerations.

The DOC guidelines provide that participation by inmates in any religious programs is on a voluntary basis.

The DOC guidelines further provide that the institution's schedule of religious services and activities must be made available to all inmates. Religious meetings are permitted in accordance with faith group obligations, except that inmates in segregation status are not allowed to attend. A warden at each institution must designate an area for the location of religious meetings and make decisions regarding staff supervision, participation by volunteers or spiritual advisers and the monitoring of religious programs.

The guidelines provide that inmates may engage in personal devotional activities in their living quarters that do not violate institution policies or procedures. Inmates are permitted to have certain religious property and literature in their living quarters.

The DOC guidelines state that chaplains or designated staff persons are to develop and maintain contact with religious resources outside the institution and encourage religious resource persons and groups to take part in the institution's religious activities.

All correctional institutions are required to, when possible, accommodate inmates and religious leaders' requests for special foods for religious obligation within constraints of budget and security.

Resolution of all issues relating to the legitimacy of a religious activity or materials and an inmate's participation in such activity are to be determined by the warden. Every reasonable effort is to be made to accommodate religious practices.

The DOC guidelines contain as addenda specific guidelines for each recognized religious practice. The guidelines set forth the minimum religious obligations, other recognized religious activities, religious literature and property and dietary restrictions applicable to the following religions: Buddhist; Catholic; Church of Christ Scientist (Christian Science); Church of Jesus Christ of Latter Day Saints (Mormon); Jehovah's Witnesses; Jewish; Muslim; Native American; Protestant, including Seventh Day Adventist and Wicca.

### **C. DEPARTMENT OF CORRECTIONS' GUIDELINES GOVERNING VOLUNTEERS IN CORRECTIONAL INSTITUTIONS**

The DOC's Internal Management Procedures regarding volunteers in correctional institutions define a volunteer as any approved individual, including DOC staff members not in pay status, who enters an institution to provide services to inmates. The guidelines provide that volunteer programs or their individual participants should not receive monetary compensation, although some expenses may be reimbursed with the warden's approval. The individual's participation in volunteer activities is subject to approval by the institution or his or her designee. [DOC 309 IMP #30.]

The guidelines specify numerous forms which must be completed by any volunteers wishing to serve in a correctional institution and each institution is required to develop a volunteer manual. The guidelines provide that each institution must develop additional procedures which include a statement that volunteers will not replace, but rather enhance staff; a statement of support for volunteer programs; a statement of goals and objectives for the institution volunteer program and an evaluation component; and a statement regarding staff responsibility for the supervision of volunteers.

The DOC guidelines contain specific procedures to be followed when any person on probation or a person who has recently been discharged from a correctional institution applies to volunteer at an institution. The guidelines provide that the immediate family of an inmate or any persons on an inmate's approved visiting list may not be approved as a volunteer at the same facility. Any volunteer who chooses to visit an inmate at the institution where they volunteer loses their volunteer status at that institution. Exceptions to these policies may be granted by the warden under certain circumstances.

Each volunteer program must be evaluated annually to determine if the program effectively serves the needs of inmates for whom it was established.

**D. DEPARTMENT OF HEALTH AND FAMILY SERVICES**

According to the DHFS, the agency does not administer any programs that specifically involve faith-based strategies to prevent crime. DHFS does, however, contract with and provide grants to a number of religious organizations to carry out various programs which may have the effect of reducing crime. Although these programs are operated by organizations with religious affiliations, the actual program delivery does not necessarily incorporate any faith-based elements.

Some of the organizations with religious affiliations which receive grant funds, along with the program operated by each organization, are set forth in Table 3, below.

**TABLE 3**

***A Representative Listing of Religious Organizations  
That Receive Funding Administered by DHFS***

<b><i>Organization</i></b>	<b><i>Program</i></b>	<b><i>1998-99 Funding</i></b>
Salvation Army	Domestic Violence Shelter	\$44,000
Catholic Social Services	Refugee Family Strengthening Program	\$8,700
Catholic Charities, Milwaukee	Pregnancy Counseling	\$32,904
Lutheran Social Services	Adolescent Pregnancy Prevention	\$30,000
	Adolescent Parent Self-Sufficiency Programs	\$35,000
Bethany Christian Services, Milwaukee	Abstinence-Only Adolescent Pregnancy Prevention	\$40,000
Community Enterprises of Greater Milwaukee	Abstinence-Only Adolescent Pregnancy Prevention	\$35,000
St. Mary's Hospital, Milwaukee	Abstinence-Only Adolescent Pregnancy Prevention	\$46,580
Holy Cathedral Church of God in Christ and Word of Hope Ministries, Inc.	The Family Technology Resource Center Initiative	\$12,000

**Source:** DHFS.

In addition, Catholic Charities and Word of Hope Ministries are included as Medical Assistance certified providers for the Milwaukee Family Project, which extends the Medicaid Prenatal Care Coordination benefit until a child reaches age seven. According to DHFS, the

primary goal of the project is to improve family functioning, thereby reducing the risk of child abuse and neglect, thereby reducing negative health and social outcomes.

DHFS also reports that the U.S. Department of Agriculture Emergency Food Assistance Program uses a statewide distribution network that includes many churches.



## **PART II**

### **FAITH-BASED CRIME PREVENTION PROGRAMS IN OTHER STATES**

This Part of the Staff Brief provides information on two faith-based crime prevention programs in other states: The InnerChange Freedom Initiative in Texas and the activities of faith-based organizations involved in the Boston Strategy to Prevent Youth Violence.

#### **A. THE INNERCHANGE FREEDOM INITIATIVE IN TEXAS**

This Part of the Staff Brief provides information on the InnerChange Freedom Initiative currently in operation at the minimum security Jester II unit of the Sugar Land Correctional Facility in the State of Texas. The InnerChange program is a Christian-based immersion-style rehabilitation program which is operated within the prison and paid for by Prison Fellowship Ministries.

##### **1. Origins of the InnerChange Program**

The InnerChange program was developed in response to a request for proposals by the State of Texas for a values-based, faith-neutral, prerelease program designed to reduce recidivism. The request for proposals was based on a resolution adopted by the Texas State Senate which urged the Texas Board of Criminal Justice and several other corrections-related Texas state entities to permit faith-based correctional programs, facilities and initiatives to play a more significant role in the rehabilitation of criminal offenders by: (a) encouraging more use of faith-based programming in public prisons and jails and treating such programs on the same basis as nonreligious programs; (b) facilitating the operation of private, faith-based correctional facilities for willing inmates who are nearing release; and (c) utilizing one-on-one faith-based programs that intervene in the lives of willing, nonviolent offenders to encourage positive behaviors by offering a structured and readjusted program of education and spiritual nurture as a positive alternative to incarceration or as a part of agreed-upon, post-incarceration aftercare. [Senate Concurrent Resolution 44, adopted by the Texas Senate on May 20, 1997; adopted by the Texas House, with amendment, on May 28, 1997; and concurred in as amended by the Texas Senate on May 29, 1997.]

The InnerChange program is modeled after a similar program operated in Brazilian prisons by Prison Fellowship which began in 1973. The InnerChange model is currently in operation in approximately 80 prisons in Brazil.

According to Jack Cowley, Director of the InnerChange program, Prison Fellowship will soon begin operating similar programs in prisons in Kansas and Iowa. Prison Fellowship is seeking some financial assistance from those states. For example, Prison Fellowship has requested \$200,000 annually from the State of Kansas to operate a program there. According to Mr. Cowley, the State of Kansas has expressed reluctance to pay for religious programming, and



therefore Prison Fellowship will separate the religious and secular portions of its program and state funds will be applied only to the secular portions.

## **2. Description of the InnerChange Program**

The InnerChange program began operation in the Texas prison in April 1997. The program is operated and paid for by Prison Fellowship Ministries. Prison Fellowship, an international organization with headquarters in Reston, Virginia, provides counseling, job training, and Bible studies in prisons throughout the United States. Prison Fellowship, founded by Charles Colson, operates 55 field offices in the United States, with 280 paid employees and approximately 50,000 volunteers.

The InnerChange program is staffed by five full-time paid staff and over 350 volunteers who serve as instructors, small-group leaders, mentors and administrative volunteers. The salaries of the paid staff persons are paid by Prison Fellowship. According to Prison Fellowship, the direct annual cost of operating the InnerChange program is \$400,000. The State of Texas pays for the inmate's shelter, food and prison guards. The warden is responsible for meeting state correctional standards including standards relating to command and control, security and major disciplinary procedures. The InnerChange program director is responsible for the overall day-to-day operation of the program.

Corrections officers working in the Jester II unit are specifically selected for their assignment by the TDCJ with the assistance of InnerChange staff. Officers are interviewed to ascertain their level of comfort in working with a biblically based, Christ-centered program. Officers who are uncomfortable with the program or unwilling to participate are not assigned to work in Jester II. Corrections officers assigned to Jester II receive special training relevant to the InnerChange program.

Volunteers for the program are recruited by InnerChange staff from churches in the Houston area and indirectly through other ministries. All volunteers must complete a thorough screening process that was developed jointly by the Texas Department of Criminal Justice (TDCJ) and InnerChange staff. Screening includes, at a minimum, an interview, a records check, and completion of an application form that requires signing a statement of faith. Applicants must complete 20 hours of Prison Fellowship and TDCJ training before certified as a Prison Fellowship volunteer.

The InnerChange Operations Manual contains the following mission statement:

The mission of the InnerChange program is to create and maintain a prison environment that fosters respect for God's law, the rights of others and to encourage the spiritual and moral regeneration of offenders to the end that they develop responsible and productive relationships with their creator, families and communities.

This program will foster prisoners' respect for the rights of others, obedience of the law and encourage their spiritual and moral regeneration. As a result, these prisoners will develop responsible and productive relationships with their Creator, families and communities.

According to information from the Texas Department of Criminal Justice, the program emphasizes restorative justice, in which the offender works to restore himself, the community, the victims and his family.

The InnerChange program consists of three phases. The first lasts 12 months and emphasizes education, work assignments, classes in biblically based life skills and family and victim-offender reconciliation. Classes cover topics such as forgiveness, anger management, substance abuse, racial reconciliation, goal-setting, exercise and nutrition. Phase 2 lasts six months and includes more classes and community service work, such as helping build houses for low-income families through Habitat for Humanity. Programming in the prison is conducted every day from 5:30 a.m. to 10:30 p.m.

The third phase of InnerChange begins when the inmate is placed on parole and consists of regular meetings with Christian mentors and support groups, with the goal of helping offenders reconnect with their families and communities.

Since the InnerChange program began in April 1997, a total of 163 inmates have entered the program; of those, 89 are still participating in the program in prison and have not yet completed the 18 months of programming; 41 of the participants have gone on parole; 12 were expelled from the program and 21 withdrew voluntarily. Of the 41 participants who were in the program and are now on parole, only seven completed the full 18-month program; the remainder were paroled early. According to InnerChange, 93% of the participants who were paroled are succeeding in the aftercare portion of the program, while 7% have "failed" aftercare.

### **3. Participation by Inmates**

In order to be accepted into the InnerChange program, an inmate must be male, must be classified as a minimum security risk and must be within 21 to 24 months of his release or parole date and be scheduled for release in the Houston area. The inmate must be allowed to leave the correctional facility to participate in community service projects. The inmate must either live in Harris County, Texas (the county in which the prison is located), or have Harris County listed as their county of record. The inmate must be healthy, speak English, be functionally literate and have no enemies at Jester II. Participants are not required to be Christian, although they must be willing to participate in a program that is explicitly Christian in both content and delivery. Inmates who practice other faiths are allowed to participate in the program if they are willing to actively participate in a Christ-centered program based on the Bible.

#### **4. Evaluation of the InnerChange Program**

The InnerChange program will be evaluated by comparing the recidivism rates and the cost of incarceration of inmates participating in the InnerChange program to the recidivism rates and costs of incarceration of a control group of inmates with similar backgrounds, convictions and sentences. The evaluation will be conducted by Byron Johnson, Ph.D., Director for Justice Research and Education at Lamar University in Beaumont, Texas.

#### **B. ACTIVITIES OF FAITH-BASED ORGANIZATIONS IN THE BOSTON STRATEGY TO PREVENT YOUTH VIOLENCE**

The Boston Strategy to Prevent Youth Violence was implemented in the City of Boston in phases, beginning in the early 1990s. The Boston strategy emphasizes the importance of partnerships between the law enforcement community and the rest of the community, including Boys and Girls Clubs, religious organizations, social services agencies and the public school system. The Boston program has been successful in reducing violent crime in the city. Specifically, since July 1995, not a single juvenile under the age of 17 has been killed by gunfire. The Boston program was used as a model for the Federal Values-Based Violence Prevention Initiative which, through the U.S. Department of Justice, has made grants available to 16 community-based collaborative organizations, including religiously affiliated organizations, that target youth violence, gangs, truancy and other juvenile problems.

In 1996, the U.S. Department of Justice released a report describing the Boston Strategy to Prevent Youth Violence, entitled “Youth Violence--A Community-Based Response.” That document describes the role that religious organizations played in the success of the Boston initiative. According to the Department of Justice report, an organization called “The 10 Point Coalition,” a group of clergy and lay leaders, was instrumental in the success of the Boston strategy. The main activities of “The 10 Point Coalition” are facilitating collaboration between churches with violence prevention programs already in place and helping to train members of churches wishing to become involved. The coalition also sponsors a street ministry program. Participants in that program participate in mediation efforts between gangs, participate in neighborhood crime watches and patrols and in meetings with youth agency workers. The coalition provides training for pastors and lay people to carry out these activities.

The 10 Point Coalition has released a “10-Point Plan to Mobilize the Churches,” which sets forth specific ways in which the Christian community can help to reduce violence among youth. The types of activities which the coalition calls upon religious organizations to implement are the following:

- To establish collaborative groups of churches to sponsor “adopt-a-gang” programs to organize and evangelize youth in gangs. Innercity churches would serve as drop-in centers providing sanctuary for troubled youth.
- To commission youth evangelists to do street-level one-on-one evangelism with youth involved in drug trafficking. The evangelists would also help

youth prepare for college, develop legal revenue-generating enterprises and gain skills necessary to compete in the marketplace.

- To establish accountable, community-based economic development projects.
- To establish links between suburban and downtown churches and front-line ministries to provide spiritual, human resource and material support.
- To initiate and support neighborhood crime watch programs within local church neighborhoods.
- To establish working relationships between local churches and community-based health centers to provide counseling for families during times of crisis.
- To establish drug abuse prevention programs and abstinence-oriented educational programs focusing on the prevention of aids and sexually transmitted diseases.



## **PART III**

### **RESTORATIVE JUSTICE**

#### **A. BACKGROUND**

The legal system in the United States is generally divided into two major categories, the criminal justice and the civil justice systems. Under the criminal justice system, a criminal action is prosecuted in criminal court by the state as the complainant, usually represented by a district attorney, against a person charged with a public offense or crime for which punishment is commonly expressed in terms of a forfeiture, fine or imprisonment. In contrast, the civil justice system involves private litigants; that is, a plaintiff seeking the establishment, recovery or redress of private and civil rights against another. A civil action, which is tried in civil court, may involve a claim for monetary damages or other relief (e.g., restraining order or injunction) arising out of injury to a person or harm to property. Historically, the criminal justice and civil justice systems were considered separate and independent. However, in modern times, civil justice and criminal justice are becoming intertwined.

An example of the trend to mix the civil justice system with the criminal justice system is found in s. 973.20, Stats. Under s. 973.20 (1r), Stats., a court, when imposing sentence or ordering probation for the commission of a crime is required to order the offender to make full or partial restitution to any victim of the crime unless the court finds substantial reason not to do so and states the reason on the record. The statute further provides that the court, in determining whether to order restitution and the amount thereof, must consider all of the following: (1) the amount of harm suffered by the victim of the offender; (2) the financial resources of the offender; (3) the present and future earning ability of the offender; (4) the needs and earning ability of offender's dependents; and (5) any other factors which the court deems appropriate. [s. 973.20 (13) (a), Stats.]

Section 973.20, Stats., has been substantially revised and expanded since its original enactment in 1979 when its obligation was limited to requiring the court to determine if restitution would be an appropriate condition of probation. [Ch. 189, Laws of 1979.] The restorative justice concept proposes to further mix the civil justice and criminal justice systems.

#### **B. RESTORATIVE JUSTICE PHILOSOPHY**

Restorative justice represents further mixing of the criminal justice and civil justice systems. In fact, restorative justice rejects the notion that crimes should be viewed simply as a violation against the state. Crime is seen as something done against the victim and the local community. [Restorative Justice for Victims, Communities and Offenders, Center for Restorative Justice and Mediation, School of Social Work, University of Minnesota (1996); hereinafter, "Restorative Justice."] As described in a "Backgrounder" on restorative justice, prepared by the

Minnesota Department of Corrections (January 22, 1997), which is attached as *Appendix A*, restorative justice is described as a “new framework” for the criminal justice system:

Restorative justice is a philosophical framework which has been proposed as an alternative to the current way of thinking about crime and criminal justice. Restorative justice emphasizes the ways in which crime harms relationships in the context of community.

Crime is viewed as a violation of the victim and the community, not as a violation of the state. As a result, the offender becomes accountable to the victim and the community, not the state. [*Id.* at 1.]

Because restorative justice redefines crime as “an act against a victim and a local community,” rather than as an act against the state or government, the government alone does not determine the outcome of the case, as under the traditional criminal justice system. Instead, the victim and community join with the offender to decide how the harm will be repaired. [Restorative Justice, *supra*.] Because restorative justice involves the victim, offender and community in determining how to address the harm caused, restorative justice may take many forms. The restorative justice “Backgrounder” in Appendix A, contains a listing of the various forms that restorative justice may take in practice, which range from the provision of support and assistance to victims by community volunteers, faith communities and professional agencies; the payment of restitution by the offender; and the involvement of faith communities in sponsoring support groups for offenders trying to change life patterns.

### **C. RESTORATIVE JUSTICE IN PRACTICE**

A common restorative justice practice involves restitution. As noted in Section A., above, current Wisconsin law requires a criminal court to order a convicted offender to pay restitution to a victim of a crime, if the offender is financially able to do so. Restitution under the restorative justice model is a common result of victim/offender mediation or conferencing, outside the traditional criminal justice system. Victim/offender mediation specifically involves a trained mediator, who may be a volunteer, acting to facilitate a face-to-face meeting between the victim and offender to express feelings, discuss the harm done by the crime and negotiate a restitution agreement. Voluntary participation by the offender in victim/offender mediation or conferencing is encouraged. However, participation by the offender could be ordered by the criminal court (for example, as a condition of probation). Victim/offender mediation could also be a component of an agreement between a district attorney and the defendant, whereby the district attorney defers prosecution on the condition that the offender participate in victim/offender mediation.

Based on various estimates, more than 100 victim/offender mediation programs are operating throughout the United States. In Wisconsin, according to spokespersons for the Dane County Juvenile Offender Conferencing Services Program, victim/offender mediation programs

exist in Dane, La Crosse, Manitowoc and Outagamie Counties; Jefferson County is starting a similar program.





## PART IV

### CONSTITUTIONAL CONSTRAINTS ON THE PROVISION OF PUBLIC FUNDS TO RELIGIOUS ORGANIZATIONS FOR USE IN CRIME PREVENTION AND INTERVENTION

This Part of the Staff Brief discusses constitutional issues that are likely to be raised regarding legislation authorizing the provision of public funds to religious organizations for use in crime prevention and intervention. Because this legislation has not been drafted, the discussion describes constitutional issues in general terms without reaching conclusions. The value of this exercise is to alert the Special Committee to constitutional constraints on the provision of public funds to religious organizations, so that the Special Committee may formulate its legislative recommendations, if any, so as to avoid obvious constitutional impediments and pitfalls.

Also discussed in this Part is the “charitable choice” provision of the Federal Personal Responsibility and Work Opportunity Reconciliation Act. As will be apparent from the discussion, the charitable choice provision is an example of legislation that has been carefully crafted to authorize the transfer of public funds to religious organizations for use in the provision of services to needy persons without violating constitutional constraints.

#### A. CONSTITUTIONAL ISSUES

The provision of public funds to religious organizations for use in crime prevention and intervention is likely to be challenged as violating the Establishment Clause of the First Amendment to the U.S. Constitution and Wis. Const. art. I, s. 18. The Establishment Clause of the U.S. Constitution provides in part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .” This provision of the First Amendment to the U.S. Constitution is applicable to state governments by operation of the Fourteenth Amendment to the U.S. Constitution. [*Cantwell v. Connecticut*, 310 U.S. 296 (1940).]

In addition, Wis. Const. art. I, s. 18, provides as follows:

***Freedom of worship; liberty of conscience; state religion; public funds.*** Section 18. [As amended November 1982] The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; ***nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.*** (Emphasis added.)

## 1. Meaning of the Establishment Clause of the U.S. Constitution

Justice Black in *Everson v. Board of Education*, 330 U.S. 1, 675 S. Ct. 504 (1947), opined that the proper relationship between religion and state is one of *strict separation*. As expressed by Justice Black in *Everson*:

The establishment of religion clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws that aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to follow to or to remain away from church against his will or force him to profess a belief or disbelief in any religion . . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion . . . . In the words of Jefferson, the clause against establishment of religion by law was intended to erect a *wall of separation* between church and state. (*Id.* at 15; emphasis added.)

Subsequent to *Everson*, the Supreme Court devised the three-prong test for reviewing Establishment Clause challenges in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105 (1991) (hereinafter, “*Lemon*”). Under that test, to be constitutional, a statute, policy or program must meet all of the following criteria:

- a. It must have a legitimate *secular purpose*.
- b. Its *principal or primary effect* must neither advance nor inhibit religion.
- c. It may not foster *excessive government entanglement* with religion (e.g., there must not be excessive state supervision to ensure that any state aid is used solely for secular purpose and not to advance religion).

The three-prong test set forth in *Lemon* has guided Establishment Clause jurisprudence for more than 25 years. However, recent Supreme Court decisions indicate that at least several members of the Court are no longer satisfied with the *Lemon* test.

In *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 113 S. Ct. 2462 (1993), the Court held that the Establishment Clause did not prevent a school district from providing a sign language interpreter to a deaf student at a parochial school. Writing for the majority, Chief Justice Rehnquist expressed the opinion that the Court has “. . . never said that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs.” [509 U.S. at 8, quoting from *Bowen v. Kendrick*, 487 U.S. 589, 609, 108 S. Ct. 2562 (1988).] Justice Rehnquist expressed the opinion that government programs are not necessarily subject to Establishment Clause challenge if such programs “neutrally provide benefits to a broad class of citizens defined without reference to religion . . . .” [*Id.* at 8.] Justice

Rehnquist, writing for a five-member majority, effectively ignored *Lemon* and the concerns of entanglement or effect in deciding the case.

In contrast, the Supreme Court did apply the *Lemon* test in *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 113 S. Ct. 2141 (1993), a case decided 11 days before *Zobrest*. The issue in that case was whether a school could deny a church permission to use school facilities in order to show a religiously based film series. The justices unanimously agreed that in a nonpublic forum, decisions regarding access must be “reasonable . . . and viewpoint neutral.” [508 U.S. at 392.] The Court found that the school district’s refusal to allow the church to show its film was not viewpoint neutral. Because the church’s use of the school property did not promote establishment of religion under the *Lemon* test, the Court found no justification for the school district’s actions.

Although the Supreme Court has not explicitly rejected the *Lemon* test, its failure to apply this test may indicate a willingness on the part of some members of the Court to recognize a new method for analyzing the Establishment Clause. Professor Carl H. Esbeck has written an article for the *Emory Law Journal*, in which he expresses a view that the concept of “separatism,” as expressed by the Supreme Court in earlier decisions addressing the meaning of the Establishment Clause (e.g., *Everson v. Board of Education* and *Lemon v. Kurtzman*, *supra*) is being replaced by a **neutrality-based** rule. [See Esbeck, Carl H., “A Constitutional Case for Governmental Cooperation With Faith-Based Social Service Providers,” 46 *Emory Law Journal* 1 (Winter 1997).]

The concept of neutrality was set forth in a concurring opinion by Justice Kennedy in *Bowen v. Kendrick*, *supra*. The five-member majority opinion in *Bowen* upheld federal grants for teenage sexuality counseling, including counseling offered by faith-related centers. In his concurring opinion, Justice Kennedy advocated a neutrality-based rule for analyzing Establishment Clause cases. A social assistance program would be facially constitutional, Justice Kennedy opined, as long as its purpose was neutral as to religion and a diverse array of organizations were eligible to participate. What was important to Justice Kennedy was not whether the entity receiving the public funds is of a religious character but how it spends its public grant funds. In Justice Kennedy’s opinion, as long as the grant is actually used for the designated public purpose--rather than to advance inherently religious beliefs or practices--there is no violation of the Establishment Clause.

## **2. Meaning of Wisconsin Constitution Article I, Section 18**

The provision of the Wisconsin Constitution prohibiting the allocation of state revenues “. . . for the benefit of religious societies, or religious or theological seminaries” is more restrictive than the Establishment Clause in the federal constitution.

The Wisconsin Supreme Court has indicated that the provisions of the Establishment Clause to the U.S. Constitution and Wis. Const. art. 1, s. 18, are intended and operate to serve the same dual purposes of prohibiting the “establishment” of religion and protecting the “free exercise” of religion. [*State ex rel. Warren v. Nusbaum*, 64 Wis. 2d 314, 328, 219 N.W.2d 577

(1974), hereinafter, “Warren (1974)”]; *State ex rel. Warren v. Nusbaum*, 55 Wis. 2d 316, 332, 198 N.W.2d 650 (1972), hereinafter, “Warren (1972).”] According to the Wisconsin Supreme Court, a holding that a statute violates the Establishment Clause of the U.S. Constitution is a holding that it violates the Establishment Clause of the Wisconsin Constitution. [*Warren (1972)*, 55 Wis. 2d at 332.] However, in both *Warren (1972)* and *Warren (1974)*, the Wisconsin Supreme Court expressed the view that, in addition to meeting the requirements under the Establishment Clause of the federal constitution, in order to be constitutional under Wis. Const. art. I, s. 18, a statute must meet the requirement of the last clause of art. I, s. 18, that “money [not be drawn] from the treasury for the benefit of religious societies, or religious or theological seminaries.” Thus, a program may violate art. I, s. 18, even if it is permissible under the Establishment Clause of the federal constitution.

## **B. DISCUSSION OF THE CHARITABLE CHOICE PROVISION OF THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 AND RELATED CONSTITUTIONAL ISSUES**

Relevant to the assignment given to the Special Committee and constitutional issues described in the previous section is a provision of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. [403 U.S.C. s. 604; hereinafter referred to as the “Charitable Choice” law.] A copy of the Charitable Choice law is contained in *Appendix B*.

### **1. Description of the Charitable Choice Law**

Under the Charitable Choice law, a state is authorized to administer and provide social services through contracts with charitable, religious or private organizations and provide beneficiaries of state assistance with certificates, vouchers or other forms of disbursement which are redeemable with such organizations. Specifically, the law applies to services funded by Temporary Assistance for Needy Families (TANF) block grants. (TANF replaces the Aid to Families with Dependent Children Program on the federal level.) It also applies to food stamp, Medicaid and Social Security Income programs. The stated purpose of the law is to allow states to contract with religious organizations, or to allow religious organizations to accept certifications, vouchers or other forms of disbursement on the same basis as any other nongovernmental provider without impairing the religious character of such organizations and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

The Charitable Choice law specifies that, in the event that a state exercises its authority to contract with private, charitable or religious organizations, religious organizations are eligible on the *same* basis as any other private organization to contract to provide assistance or accept various forms of disbursement as long as their programs are implemented consistent with the Establishment Clause of the U.S. Constitution. The law states that unless prohibited or restricted by a provision of the state constitution or a state statute, neither the federal government nor a state receiving funds under such programs may discriminate against an organization which is or applies to be a contractor to provide assistance or which accepts certificates, vouchers or other forms of disbursement on the basis that the organization has a religious character.

The Charitable Choice law specifies that a religious organization with a contract or which accepts a disbursement funded by a state program must retain its independence from federal, state and local governments, including such organization's control over the definition, development, practice and expression of its religious beliefs. Specifically, the law states that neither the federal government nor a state may require a religious organization to alter its form of internal governance or remove religious art, icons, scripture or other symbols in order to be eligible to contract to provide assistance or accept any disbursement funded under a state program.

The Charitable Choice law also provides that if an individual who receives, or applies or requests to apply for, state assistance has an objection to the religious character of an organization or institution from which the individual receives or would receive assistance, the state in which the individual resides must provide the individual, within a reasonable period of time after the date of such objection, with assistance from an alternative provider that is acceptable to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization.

The Charitable Choice law specifies that religious organizations' exemption from the current federal equal employment opportunity law is not affected by its participation and receipt of funds from state programs.

The Charitable Choice law also provides that, except as otherwise provided in law, a religious organization may not discriminate against an individual in regard to rendering assistance funded under any program on the basis of religion, a religious belief or refusal to actively participate in a religious practice. The law also specifies that no funds provided directly to institutions or organizations to provide services and administer programs may be expended for sectarian worship, instruction or proselytization.

Finally, the Charitable Choice law states that nothing in the section regarding discrimination against religious organizations may be construed to preempt any provision of a state constitution or state statute that prohibits or restricts the expenditure of state funds in or by religious organizations.

## **2. Constitutional Issues Relating to the Charitable Choice Law**

The provisions of the Charitable Choice law described above are certain to lead to litigation in states which elect to exercise the authority under the law to administer and provide social services through contracts with religious organizations. The resolution of these challenges may determine the fate of the faith-based solutions to crime which may be recommended by the Special Committee. Thus, speculation on how the courts might resolve constitutional issues that are likely to be raised regarding the Charitable Choice law should provide a helpful guide to the Special Committee in formulating its recommendations so as to avoid constitutional pitfalls. Joel Weaver, a student at the T.C. Williams School of Law, University of Richmond, has speculated on the constitutionality of the Charitable Choice provisions depending on whether a court construing the law applies the "effects" and "entanglement" prongs of the *Lemon (supra)* test or the neutrality principle recognized in *Zobrest (supra)*. [See Weaver, Joel, "Charitable

Choice: Will This Provision of Welfare Reform Survive Constitutional Scrutiny?”, *Perspectives on the Law and Public Interest* (Spring 1997).]

According to Mr. Weaver, if courts continue to embrace a *separationist* interpretation of the Establishment Clause, as articulated in *Everson (supra)*, a state program in which a religious entity is authorized to administer government-funded welfare benefits is likely to fail under both the “effects” and “entanglement” prongs of the three-prong *Lemon* test.

*Lemon’s* second prong requires that the *principal or primary effect of a law not advance religion*. Although the Charitable Choice law exclusively states that “no funds provided directly to institutions or organizations to provide services and administer programs . . . shall be expended for sectarian worship, instruction, or proselytization”, Mr. Weaver speculates that it may be difficult for a religious organization empowered to administer government-funded welfare benefits to remain religiously neutral, which is a concern expressed by Chief Justice Burger in *Lemon*. [403 U.S. 602, 618.] Passing the test under the “excessive entanglement,” third-prong of *Lemon* will be even more difficult, according to Mr. Weaver, if the traditional separationist theory is followed by the court.

Under the excessive entanglement prong of the *Lemon* test, explains Mr. Weaver, courts must consider whether the statute in question fosters an *excessive administrative entanglement* between religious officials in the offices of government. In order to ensure proper disbursement of government benefits, states will have to monitor the activities of participating religious organizations. This will require regular audits of the accounts of participating religious organizations and monitoring to ensure compliance with the provision of the Charitable Choice law which precludes the expenditure of government funds for sectarian worship, instruction or proselytization. Sensing this potential legal issue, the Charitable Choice law specifically authorizes a religious organization to segregate federal funds, provided to a religious organization to administer and provide authorized social services, into “separate accounts” so that “. . . only the financial assistance provided with such funds shall be subject to audit.” [42 U.S.C. s. 604 (h) (2).]

Mr. Weaver also expresses doubt whether states will be able to avoid constitutional pitfalls in attempting to administer the program consistent with the *neutrality principle*. As explained by Chief Justice Rehnquist in *Zobrest (supra)*, this interpretation of the Establishment Clause requires only that benefits be neutrally provided to a broad class of citizens defined without reference to religion. [509 U.S. at 1.] Mr. Weaver suggests that issues of discrimination will arise as states choose amongst various religious entities. He also suggests that religious organizations will find it difficult to remain “neutral and uninvolved” and concludes that the mix of government and religion will be an unworkable coalition.

In contrast, Professor Esbeck expresses the view that states will find it easier to avoid constitutional pitfalls in the administration of the Charitable Choice law if the neutrality principle governs their efforts. He concludes that if the neutrality principle replaces separatism and the three-prong *Lemon* test, involvement of religious organizations in the administration and

provision of social services, which is authorized in the Charitable Choice law, will not violate the Establishment Clause. As explained by Professor Esbeck:

Rightly interpreted, the Establishment Clause does not require that faith-based providers censor religious expression and secularize their identity as conditions of participation in a governmental program. So long as the welfare program has as its object the public purpose of society's betterment--that is help for the poor and needy--so long as the program is equally open to all providers, religious and secular, then the First Amendment [Establishment Clause] requirement that the law be neutral as to religion is fully satisfied. [46 *Emory Law Journal* at p. 40.]

The Wisconsin Constitution's variation of the Establishment Clause [Wis. Const. art. I, s. 18] may pose a greater challenge than the Establishment Clause of the federal constitution. As noted previously, the Wisconsin Supreme Court has held that the phrase ". . . nor shall any money be drawn from the treasury for the benefit of religious societies or religious or theological seminaries," makes Wisconsin constitutional constraint more restrictive than the Establishment Clause of the First Amendment to the U.S. Constitution. However, statutes and programs which have been found not to have the primary effect of advancing religion under the second part of the *Lemon* test, have been found to meet the requirements of Wis. Const. art. I, s. 18. Further, if the Wisconsin Supreme Court follows the devolvement of the U.S. Supreme Court away from separatism and toward the direction of neutrality theory, the involvement of religious organizations in the provision of welfare services (or perhaps services to criminal offenders) may not violate constitutional constraints if neutrality is observed.

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## Backgrounder Restorative justice

January 22, 1997

### Introduction

Restorative justice is a new framework for the criminal justice system that is rapidly gaining acceptance and support by criminal justice professionals and community groups in Minnesota and across the nation. The Minnesota Department of Corrections advocates adoption of restorative justice principles and has established a department unit that supports implementation of restorative justice concepts throughout the state. This statewide effort involves all aspects of the community including schools, churches, courts, corrections and law enforcement agencies, and citizens.

The restorative justice initiative provides education about the philosophical framework of restorative justice to engage the interest and enthusiasm of key stakeholders. Upon request from agencies or jurisdictions interested in moving toward a more restorative system, the initiative provides technical assistance in designing and implementing applications of restorative justice. The initiative also creates networks of professionals and community activists to support one another and share accumulating knowledge regarding new practices.

Education is provided through public speaking, trainings, an annual conference, distribution of written materials, and a newsletter. Technical assistance is provided through onsite and phone consultation, referrals to state and national experts, research, and skills training. Networking is promoted through organized special interest meetings, maintenance of a special interest resource list, and phone referrals to interested colleagues.

A statewide advisory council advises the department on restorative justice implementation.

### What is restorative justice?

Restorative justice is a philosophical framework which has been proposed as an alternative to the current way of thinking about crime and criminal

justice. Restorative justice emphasizes the ways in which crime harms relationships in the context of community.

Crime is viewed as a violation of the victim and the community, not a violation of the state. As a result, the offender becomes accountable to the victim and the community, not the state.

Restorative justice defines accountability for offenders in terms of taking responsibility for actions, and taking action to repair the harm caused to the victim and community.

Restorative justice provides for active participation by the victim, the offender and the community in the process of repairing the fabric of community peace.

As the Twin Cities *Star Tribune* noted in a July, 1993, editorial, "This vision of justice... (is) about making things right instead of lamenting what's wrong, cultivating strength rather than perpetuating failure."

Community corrections, which has been a primary component of corrections in Minnesota for many years, encompasses many of the restorative justice principles. Victim services, restitution, community service, face-to-face meetings between victims and offenders and their support systems, victim impact panels, and skill-building classes for offenders are elements of restorative justice.

### Expanded role for victims

Under restorative justice, crime victims are offered more opportunities to regain personal power.

Currently, victims frequently feel left out of their own cases except possibly as witnesses. One of the key developers of restorative justice, criminal justice specialist Howard Zehr, emphasizes that victims have many needs. They need chances to speak their feelings, experience justice, and have the power restored to them that has been taken away by the offender. Restorative justice allows for victim involvement in determining how those needs can best be met.

### Community participation

The role of the community also changes dramatically under restorative justice.

The entire community bears some responsibility for all its members, including the victim and the offender.

The community is responsible for supporting and assisting victims, holding offenders accountable, and ensuring opportunities for offenders to make amends. Communities are also responsible for addressing the underlying causes of crime to reduce victimization in the future.

### Offender's role

Under the existing criminal justice system that concentrates on legal issues and the possibilities of avoiding punishment, offenders are not required to realize the harm they have done. They often are not required to do anything to right the wrong they have committed.

Incarceration by itself may be considered a relatively easy sentence compared to the restorative justice approach that holds offenders directly accountable to victims, confronts them with the personal harm they have caused, and requires that they make real amends to the victim and the community.

In the existing system, offenders are in a passive role. In a restorative justice system, they become active participants in reparation.

### Key assumptions

The restorative justice framework is based on the following assumptions:

- Crime results in injuries to victims, communities and offenders.
- All parties should be included in the response to crime including the offender, the community, and the victim if they wish.
- The victim is central to the process of defining the harm and how it might be repaired.

- Accountability is based on accepting responsibility and repairing the harm done.
- Crime is defined as an act against another person and the community, rather than an act against the state. The state has an interest in resolving the problem but is not the primary actor. The offender becomes accountable to the victim and the community, not the state.
- Restoration or making things right replaces the imposition of punishment for its own sake as the highest priority of the system. Restitution would become common, not the exception.
- Results in a restorative justice model are measured not by how much punishment was inflicted, but by how much reparation was achieved.
- Crime control rests primarily with the social system. The criminal justice system can have only a marginal impact on the level of crime because it can only respond to crime after it occurs.
- Offenders are accountable for their individual choices, but communities are also accountable for the conditions which may exist that contribute to crime.

**Public attitudes**

A 1991 statewide public opinion survey asked residents about their support for the underlying concepts of restorative justice.

By large margins, respondents expressed an interest in participating in victim/offender mediation, chose restitution over jail time for a burglary sentence, and supported prevention efforts over prison as an effective way to reduce crime.

According to the Minnesota Citizens Council on Crime and Justice, the survey results suggest that the public will support a restorative justice model that emphasizes repairing the harm done by a crime, encourages face-to-face accountability to the victim and community where appropriate, and

**What does restorative justice look like in practice?**

- Support and assistance are provided to victims and families of victims by community volunteers, faith communities, and professional agencies.
- Restitution is given priority over other financial obligations of the offender.
- Victim/offender mediation is available for victims who wish to participate.
- The community provides work opportunities so that offenders can pay restitution to victims.
- Offenders are engaged in community service projects valued by the community.
- Treatment programs include components dealing with victim empathy and responsibility as a community member.
- Offenders face the personal dimension of the harm caused by their crime through victim/offender mediation, family group conferencing, sentencing circles, victim panels or community panels.
- If they wish, victims have the opportunity to help shape the obligations placed on the offender for repairing the harm.
- The courts and corrections provide annual reports on measures related to reparation.
- Community members are involved in advisory boards which guide the courts and corrections.
- Businesses and community organizations work with offenders to reintegrate them into the community as offenders fulfill their obligations.
- Faith communities sponsor support groups for offenders trying to change life patterns.
- Offenders leave the corrections system with greater skills than when they entered.
- Every criminal justice intervention leaves the community stronger than it was before the crime occurred.

recognizes that crime control rests primarily outside the criminal justice system.

**Change possible**

Change toward a more restorative response to crime is guided by the following questions:

- How can we increase opportunity for victim involvement in defining the harm and potential repair?
- How can we increase offender awareness of injury to the victim and the community?
- How can we encourage offender acknowledgment of the wrongness of the behavior?
- How can we acknowledge the harm to the victim and confirm that the victim is not responsible for what happened?

- How can the community send messages of disapproval while not banishing offenders?
- How can the community provide opportunities for the offender to repair the harm?
- How can the community be involved in the process of holding offenders accountable?

Mutual responsibility between individual and community is the loom on which the fabric of community is woven. Crime represents a failure of responsibility. Our response to crime needs to emphasize and reestablish *mutual responsibility*.



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## The Charitable Choice Provision of the 1996 Welfare Reform Act

*(From Public Law 104–193, the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” enacted August 22, 1996).*

### SEC. 104. SERVICES PROVIDED BY CHARITABLE, RELIGIOUS, OR PRIVATE ORGANIZATIONS.

#### (a) IN GENERAL.—

##### (1) STATE OPTIONS.—A State may—

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

##### (2) PROGRAMS DESCRIBED.—The programs described in this paragraph are the following programs:

(A) A State program funded under part A of title W of the Social Security Act (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I or II of this Act, that—

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) RELIGIOUS ORGANIZATIONS.—The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection(a)(2), on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS.—In the event a State exercises its authority under subsection (a), religious organizations are eligible, on

the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) RELIGIOUS CHARACTER AND FREEDOM.—

(1) RELIGIOUS ORGANIZATIONS.—a religious organization with a contract described in subsection (a)(1)(A), or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B), shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State shall require a religious organization to—

- (A) alter its form of internal governance; or
- (B) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2).

(e) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

(1) IN GENERAL.—If an individual described in paragraph (2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2), the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of assistance which the individual would have received from such organization.

(2) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2).

(f) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C.2000e-1a) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2).

(g) **NONDISCRIMINATION AGAINST BENEFICIARIES.**—Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) **FISCAL ACCOUNTABILITY.**—

(1) **IN GENERAL.**except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) **LIMITED AUDIT.**—If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) **COMPLIANCE.**—Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) **LIMITATIONS TO USE OF FUNDS FOR CERTAIN PURPOSES.**—No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)( 1 )(A) shall be expended for sectarian worship, instruction, or proselytization.

(k) **PREEMPTION.**—Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.