

CJ

REALITIES
and CHALLENGES

FOURTH EDITION

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REALITIES AND CHALLENGES

4TH EDITION

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CJ: REALITIES AND CHALLENGES, FOURTH EDITION

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A Note from the Author Team

As both practitioners and academics, we have endeavored to write a compelling, contemporary, and fact-based account of vital American institutions. We understand that this course is faculty's first chance to engage students in a meaningful exposure to the ideals of the American criminal justice system. *CJ: Realities and Challenges*, Fourth Edition, translates the passion that we feel in the classroom into a learning program that nourishes students' enthusiasm for the field while dispelling widely held myths.

CJ: Realities and Challenges, Fourth Edition, encourages students to think critically about how the American criminal justice system operates in practice. Recognizing the myths and interpreting the facts underlying the system lead to an appreciation of its complexities. Students who succeed in this course will emerge with a realistic understanding of the system and of the opportunities that await them if they should choose to pursue a career in criminal justice.



OBSERVE ➔ INVESTIGATE ➔
UNDERSTAND

A Critical Thinking Approach to Criminal Justice

CJ: Realities and Challenges, Fourth Edition, takes a critical thinking approach to examining traditional and emerging issues and topics in criminal justice. A three-part framework—Observe, Investigate, Understand—asks students to:

- OBSERVE** the core principles underlying the criminal justice system.
- INVESTIGATE** how these foundational principles are applied in the real world.
- UNDERSTAND** how and why these principles and practices are still evolving.



Each chapter opens with a series of learning objectives tied to this framework. These goals are explored in the chapter using vivid examples to reinforce student learning. At the end of

each chapter, this same framework is used to recap key concepts and [page xiii](#) conclusions. Students revisit chapter-specific learning objectives in Connect Criminal Justice, where all activities are linked specifically to these learning outcomes.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Identify the principal policing roles.

- A major part of the workload of police is maintaining order.
- Police engage in law enforcement when they enforce criminal law and apprehend lawbreakers.
- Service activities are nonenforcement actions performed on an as-needed basis.

Compare the various policing strategies.

- In preventive patrol, officers are assigned to randomly drive or walk around an area.
- Problem-oriented policing focuses on discovering the underlying causes of problems and encouraging police to find innovative solutions to solve those problems.
- Community-oriented policing emphasizes reducing crime and disorder by involving residents in the job of policing.
- Aggressive order maintenance entails that police focus on minor public order offenses that affect residents' quality of life.

Describe the different jobs in policing.

- The rookie police officer quickly learns the realities of police work while working under the guidance of a training officer.
- Patrol officers are the first individuals to respond to a call for service.
- A follow-up investigation occurs after a patrol officer documents the facts of the crime.
- Police are the primary public safety agency in charge of enforcing traffic laws.

Explain how police departments strive to maximize their resources.

- Communications coordinates the performance of law enforcement activities.
- Custody is the incarceration of parties either accused or convicted of a crime.
- Forensics is the application of scientific knowledge and methods to criminal and civil investigations and legal procedures, including criminal trials.

Identify the factors that shape public opinion about the police.

- High-profile incidents of police brutality affect public opinion about the police.
- Because their experiences with police have not been as positive, racial and ethnic minorities tend to have lower opinions of the police than do Whites.

The **OBSERVE → INVESTIGATE → UNDERSTAND** framework helps students make logical connections between the principles and the practices of criminal justice. As a case in point, in Chapter 6, “Policing Operations,” students learn about the varied tactics of community policing, including foot patrol. Reading the opening vignette, students **OBSERVE** the challenge faced by police in upholding the right to free speech while keeping the peace. The chapter narrative then guides students to **INVESTIGATE** effective policing strategies, which may include foot patrol. This discussion leads students to **UNDERSTAND** the difficulties law enforcers face in their efforts to prevent crime, as well as the varied consequences of the strategies they choose to employ. In these ways, the **OBSERVE → INVESTIGATE → UNDERSTAND** pedagogy actively involves students in making connections and exploring ideas that support learning.

Probing the Myths and the Realities of Criminal Justice

Another main goal of this text is to erase rampant misconceptions about the criminal justice system. We created the **MYTH/REALITY** feature to reinforce the text's real-world basis. Integrated throughout the chapters, **MYTH/REALITY** selections challenge students to reflect critically on their own beliefs and to develop an understanding of the way the system actually works. Each entry is connected to a broader discussion that uses supporting data to explain a key principle. Among the persistent myths we investigate are:

- Older adults are more likely to be victimized than people in any other age group. (Chapter 2, “Types of Crime”)
- Police must always read suspects their *Miranda rights*. (Chapter 7, “Legal and Special Issues in Policing”)
- Drug offenders are treated leniently by the criminal justice system. (Chapter 10, “Sentencing”)
- Juvenile crime rates are skyrocketing. (Chapter 15, “Juvenile Justice”)

OBSERVE → INVESTIGATE →
UNDERSTAND

Reality-Relevant Special Features That Reinforce the Text's Framework

CJ: Realities and Challenges, Fourth Edition, offers an array of special-feature boxes that highlight and reinforce the *Observe, Investigate, Understand* framework:

- **Matters of Ethics** explores moral dilemmas and problems that may arise in various criminal justice scenarios and settings; see, for example, Chapter 8's [page xv](#) selection, "Expert Witnesses: The Good, the Bad, and the Criminal," and Chapter 11's example, "Making Money on Prisoners."
- **A Case in Point** links key text concepts to actual events and cases.
- **A Global View** compares American justice to international justice.
- **Disconnects** explores the gap between the intent of policies and law and their application in the real world.

What about the Victim?

Culture Conflict in Charlottesville, Virginia

On August 11, 2017, hundreds of white nationalists went to Charlottesville, Virginia, to exert their rights to express their feelings about the planned removal of a statue of Confederate general Robert E. Lee. Their demonstration became known as the "Unite the Right" rally, which was believed to be one of the largest gatherings of white nationalists in at least a decade. Many white nationalists had their hands taped ready to do street fighting. They also carried torches and chanted racist slogans and some had pistols and long guns.



Chip Somodevilla/Getty Images

As the white nationalists marched through the University of Virginia emotions ran high and violent clashes broke out with counter-protesters that included local residents, civil rights leaders, members of church groups, onlookers, and members of anti-fascist groups. Many of these persons carried shields, sticks, and clubs. Both groups sprayed chemicals at each other and hurled rocks and bottles. Chaos continued in Charlottesville through August 12, 2017, when the authorities forced the rally to disband and demanded both sides disperse. Nonetheless, an enraged white nationalist plunged a car into a crowd of counter-protesters causing the death of a young woman named Heather Heyer. Ultimately, the death toll became three when a police helicopter monitoring the event crashed and two state troopers were killed. The Charlottesville tragedy illustrates that sometimes culture conflict can result in major clashes of cultural norms and values resulting in culture wars, violence, and death.

OBSERVE → INVESTIGATE → UNDERSTAND

- How is American society the victim of the Charlottesville tragedy?
- Why does culture conflict sometimes result in culture wars?
- What are some ways in which culture conflict can lead to positive outcomes?
- What are some other cases where culture conflict has resulted in law violation?

SOURCES: Joe Helm, "Recounting a Day of Rage, Hate, Violence and Death," *The Washington Post*, August 14, 2017. https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.865ac8de48be (retrieved January 16, 2019). *The Guardian*, "White Supremacist Members Arrested on Riot Charges Tied to Charlottesville," October 24, 2018. <https://www.theguardian.com/us-news/2018/oct/24/white-supremacist-members-arrested-charlottesville-riot> (retrieved January 16, 2019).

Matters of Ethics

Making Money on Prisoners

The fact that private prisons are lucrative business has led to charges of corruption in several states. For example, in 2010 the New Mexico corrections secretary refused to penalize a private prison contractor for understaffing prisons it operated—a violation of its contract with the state. New Mexico lost more than \$1.8 million in penalties due to this lack of contract enforcement. The state saved money, but at the expense of adequately staffing the prison. It turns out that the corrections secretary in New Mexico was a former employee of and a warden for the same private prison corporation. Furthermore, the prison corporation had been accused of unfair political activity by contributing to the campaign of a candidate for sheriff while using unregistered lobbyists to secure a lease renewal of a jail it operated.

In another case, a private prison company took advantage of the small town of Hardin, Montana. It convinced the town to sell \$27 million in bonds for the construction of a facility that was built but never used. The bonds have since gone into default.

President Trump's 2018 policy of separating family members seeking asylum in the United States drew increased attention to immigrant



detention centers. Many such detention centers are run by private companies such as CoreCivic and GEO Group. While 9 percent of prisoners are held in private prisons, up to 73 percent of immigrants are held in private facilities. The argument for private prisons is that they can provide the same functions at a lower cost, but studies question the veracity of that claim. Given Trump's stated promise to imprison as many illegal immigrants as possible, the assumption is that the numbers of people seeking refugee status in the United States will continue to increase the private prison populations.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Construct a compelling argument for banning current or former employees of private prison corporations who assume political office from developing contracts with private prison corporations.
- Should states be allowed to contract with private corporations to incarcerate prisoners? Why or why not?
- What concerns arise when families seeking asylum are held in detention centers run by private companies?



Matthew Brown/Alamy Images

SOURCES: Trip Jennings, "No Penalties for Understaffed Private Prisons," *New Mexico Independent*, September 2, 2010; Trip Jennings, "Corrections Secretary's Previous Work for Private Prison Operator Highlighted," *New Mexico Independent*, September 7, 2010; Trip Jennings, "NM Could Have Repeatedly Fired Private Prisons for Low Staffing Levels," *New Mexico Independent*, September 10, 2010; Trip Jennings, "Corrections Gave Up \$1.8 Million in Unlected Penalties," *New Mexico Independent*, September 15, 2010; East County Magazine, "Private Prison Group Uses Unregistered Lobbyists While Giving Money to Sheriff Gore," www.eastcountymagazine.com/1463 (accessed December 21, 2010); Matthew Reichbach, "Private Prison Developer Behind Montana Prison Involved in Construction of NVA Private Prisons," *New Mexico Independent*, October 12, 2009; Clyde Haberman, "For Private Prisons, Detaining Immigrants Is Big Business," *The New York Times*, October 1, 2018.

DIS Connects

Complicated Justice

Sometimes who deserves incarceration instead of fines, restitution, or probation is not only contested in the courts but also in the media. On January 29, 2019, Jussie Smollett, a star of the popular show *Empire*, reported that he was targeted in a racialized and homophobic manner. Smollett said he was victimized in a way that included a noose around his neck and physical injuries. The incident reportedly happened in Chicago and immediately received national attention. As the story unfolded, it became less clear that the facts of that early morning were exactly as Smollett reported.

The Chicago police contended that Smollett's story was not corroborated by the evidence they uncovered. The police forwarded to the district attorney's office that Smollett had conspired with two brothers,



Terrence Antonio James/Chicago Tribune/TNS/Alamy

Abimbola Osundairo and Olabinjo Osundairo, to fake the attack. The district attorney's office on March 26, 2019, however, decided to drop the 16 charges of disorderly conduct related to alleged false reporting against Smollett. The district attorney's office dropped the charges in exchange for giving up his \$10,000 bail bond and for his already served community service. One explanation from the district attorney's office was that a conviction was likely to be difficult.

The mayor of Chicago, Rahm Emanuel and the Chicago Police Department did not agree with the prosecutor's decision. They publicly stated such immediately and followed up in April 2019 with a civil suit to reimburse the city for the costs of the investigation. According to the police department, Smollett cost them \$130,000 for the investigation that they consider fraudulent. For his part, Smollett maintains that he was a victim and that any notion that he conspired in his victimization is inaccurate.

This chain of events led some to question whether Smollett was dealt with in a way that "regular" people would have experienced. Was Smollett case influenced by his celebrity status? When we have opposing understanding of facts how is the justice system supposed to sort through these differing contentions?

OBSERVE ➤ INVESTIGATE ➤ UNDERSTAND

- Do celebrities receive different justice than people who are not celebrities?
- How does media coverage affect how justice is meted out?
- How can we create a system that minimizes the influence of celebrity?

SOURCE: Mitch Smith, "Chicago Sues Jussie Smollett, Seeking Costs of Police Investigation into Attack Claim," *New York Times*, April 11, 2019.

- **Real Careers** profiles recent graduates who have chosen a career in criminal justice.
- **Real Crime Tech** illuminates the ways in which technology is currently used in a range of criminal justice situations and settings.
- **Race, Class, Gender** traces the experiences of people who historically have been left behind in the process of criminal justice.
- **What about the Victim?** reminds us that the criminal justice story is also about the victim.

An Author Team That's Connected to the Real World

CJ: Realities and Challenges, Fourth Edition, provides a uniquely interdisciplinary view of criminal justice not found in any other text. As both academics and practitioners with diverse backgrounds in law enforcement, the courts, corrections, and victim services, we provide a comprehensive, contemporary, and realistic perspective on these vital institutions.

We wrote this text using a highly collaborative process. To ensure that each branch of the criminal justice system was thoroughly represented, we organized our research, writing, and editing efforts as a peer review circle. Each chapter was the product of an ongoing, iterative review by the entire author team. The result of this synergistic effort is a unified voice providing a balanced, insightful point of view that is informed by the experience of the entire author team and has been affirmed by the feedback of course instructors.

We encourage students to read this text much in the spirit in which it was created: to have an open mind, think critically, engage in discussion, and exploit the wide knowledge and practical experience represented by the author team. Our collective experience demonstrates the need for collaboration in addressing the complexity of the criminal justice system.

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John P. J. Dussich, Ph.D.

Professor Emeritus, Department of Criminology, California State University, Fresno. Expertise: John P. J. Dussich is one of the world's leading authorities on victimology, victim services, criminology, victimological theory, and criminological and victimological research. He has worked as a criminal justice planner, as a police officer, as a warden of a prison, as a director of a program evaluation unit, and as a director of an international victimology research institute in Japan. He is the founding and immediate past editor-in-chief of the online journal *International Perspectives in Victimology*. He has taught criminology since 1966 and victimology since 1976. The American Society of Victimology has named the John P. J. Dussich Award in his honor, and gives it each year to a person who has made significant lifelong achievements to the field of victimology. The National Organization for Victim Assistance's service award in 1980 was named the "John Dussich Founder's Award," to be given to individuals who perform outstanding service on behalf of NOVA. He was recently awarded the prestigious 2016 Ronald Wilson Reagan Public Policy Award. This award "honors those whose leadership, vision, and innovation have led to significant changes in public policy and practice that benefit crime victims." The award is given by the U.S. Office for Victims of Crime, and the nominee is approved by the U.S. Attorney General.

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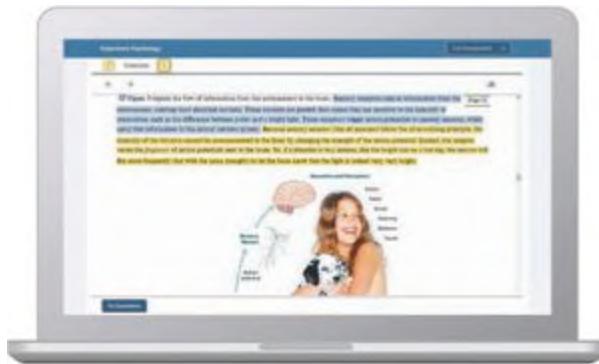
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The Learning Support System for CJ: *Realities and Challenges*

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Instructor Resources

Supplements provide teaching aids and tools to help instructors leverage the classroom experience and provide students with a wide range of study and assessment tools to reinforce comprehension of the text. These supplements are available on the Instructor Resources sections of Connect.

- **Instructor's Manual.** Provides a comprehensive guide to teaching the introductory course using *CJ: Realities and Challenges*, including chapter guides that feature learning objectives, chapter previews and reviews, detailed outlines, lecture summaries, additional lecture ideas, and class discussion topics.
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Chapter-by-Chapter Changes

PART 1: CRIME, LAW, AND THE CRIMINAL JUSTICE SYSTEM

Chapter 1: What Is the Criminal Justice System?

- New Realities and Challenges vignette, “The Role of the Criminal Justice System in the U.S. Democracy”
- Updated discussion of changing views on marijuana use and trends toward decriminalization
- Updated Disconnects box, “Evolution of Marijuana Laws”
- Updated discussion of tough-on-crime politics
- New Race, Class, Gender box, “Muslim Travel Ban”
- Completely revised discussion in “Challenges to Criminal Justice Today”

Chapter 2: Types of Crime

- New Realities and Challenges vignette, “The Changing Definition of Domestic Violence”
- Updated A Case in Point box, “Atlanta’s Program to Interrupt Violence through Outreach and Treatment”
- Updated Real Crime Tech box, “Emerging Drug-Testing Technologies”
- Updated Race, Class, Gender box, “Gender and Crime”
- Updated crime statistics
- Updated material on immigration offenses

Chapter 3: Causes of Crime

- New Realities and Challenges vignette, “A Case of Folie à Deux?—‘Madness of Two’”
- New Real Crime Tech box, “Reconstructing Faces from DNA: DNA Phenotyping”
- Updated Matters of Ethics box, “Revising the *DSM*: A Process on Trial in the Court of Professional Opinion”
- Updated and expanded discussion of mental disorders
- New Race, Class, Gender box, “Interrupting Gun Violence”
- New A Case in Point box, “Social Conflict: Yellow Vests’ Protests in France”
- New What about the Victim? box, “Culture Conflict in Charlottesville, Virginia”

Chapter 4: Criminal Law and Defenses

- New A Global View box, “What Happens When Crime Crosses Borders?”
- New Matters of Ethics box, “When Is Breaking the Law Necessary?”
- Updated Race, Class, Gender box, “LGBTQ+ Youth and Survival Sex”

PART 2: LAW ENFORCEMENT

Chapter 5: Overview of Policing

- New Realities and Challenges vignette, “The Power of Community Partnerships,” addressing the opioid crisis
- Updated numbers of federal officers
- New Real Crime Tech box, “Camera Surveillance and Facial Recognition Interface”
- New Race, Class, Gender box, “Why Do People Want to Abolish ICE?”
- New What about the Victim? box, “The Value of Procedural Justice in Increasing Police Empathy in Interactions with Victims and Citizens”
- Results of a recent study on agency consolidation
- Updated Global View box, “India’s Growing Reliance on the Security Industry”

Chapter 6: Policing Operations

- New Realities and Challenges vignette, “Violence Erupts in Charlottesville”
- New A Case in Point box, “Problem-Oriented Policing in Action: The Pinellas County Sheriff’s Office’s Safe Harbor for the Homeless”
- New Real Crime Tech box, “Flagging In-Progress Crimes”
- New Disconnects box, “Repairing the Disconnect in Emergency Communications”
- New text material on drones and law enforcement
- Text update of more favorable views of law enforcement
- New A Global View box, “Public Perception of the Police in Belgium”

Chapter 7: Legal and Special Issues in Policing

- New Realities and Challenges vignette, “Managing Use of Force”
- New Matters of Ethics box, “Interrogating Minors”
- New Real Crime Tech box, “Use of Force Training in a Simulator Environment”
- New text material on changes to drug enforcement strategies
- New text material on gangs
- New What about the Victim? box, “The ‘Elephant in the Room’: Officer Suicide”
- New A Case in Point box, “*Plumhoff v. Rickard* (2014)”

PART 3: ADJUDICATION

Chapter 8: The Courts

- New Realities and Challenges vignette, “A Complicated Journey through the Courts”
- Updated statistics on court processes
- New Race, Class, Gender box, “Judicial Diversity”
- Updated Real Crime Tech box, “Freeing Wrongfully Convicted Persons”
- New What about the Victim? box, “The Role of the Victim Advocate on a College Campus”

Chapter 9: Pretrial and Trial

- New Realities and Challenges vignette, “Tried for a Third Time?”
- New A Case in Point box, “The Right to Claim Innocence”
- New What about the Victim? box, “Victims’ Rights and the Courts”

Chapter 10: Sentencing

- New text details updating the discussion of the revised USSC sentencing guidelines
- Updated text discussion of controversies and court challenges over lethal injections—and the effect on executions
- Updated and expanded discussion on capital punishment
- Updated A Global View box, “United Nations Resolution on a Death Penalty Moratorium”
- Updated Race, Class, Gender box, “Exonerating the Innocent”

PART 4: CORRECTIONS

Chapter 11: Overview of Corrections

- Updated Myth/Reality features
- Updated statistics, figures, and textual material throughout
- In-depth updated coverage of Public Safety Realignment Policy and mass incarceration
- Updated What about the Victim? box, “Implications for Victims of California’s Realignment Policy”
- Updated coverage of California’s Public Safety Realignment Policy and women prisoners
- Updated discussion of inmate race and gender differences
- Updated discussion of private and faith-based prisons
- Updated coverage of correctional populations in the United States
- Updated coverage of state prison inmates
- New material on the Trump Administration’s Bipartisan Criminal Justice Reform Act of 2018 (First Step Act)
- New Matters of Ethics box, “Making Money on Prisoners,” on immigration detention centers at the border and private prisons
- Updated A Global View box, “The Legacy of Penal Transportation and Isla Maria Madre Federal Prison”
- Updated Race, Class, Gender box, “Treating Women in Prisons … as Second-Class Citizens of the System”

Chapter 12: Jails and Prisons

- New A Global View box, “Incarceration For Punishment in Contrast to Incarceration As Punishment: Prisons around the World That Defy Hard Time”
- Updated statistics, figures, charts, boxes, and textual material throughout
- Inclusion of discussion of the Criminal Justice Reform Act of 2018 (First Step Act)
- Updated Real Crime Tech box, “Personal Communication Technology and Prisons,” on voice-print technology in prisons and jails
- Updated Disconnects box, “Diving for Rehabilitation
- Updated jail and prison statistics throughout
- Updated coverage of the shift away from the policy of mass incarceration and “get tough” sentencing practices
- Updated coverage of how mass incarceration affects people of color
- Updated A Case in Point box, “The National Emotional Literacy Program for Prisoners”
- Updated coverage of transgender inmates

- Updated coverage on AIDS and ill inmates
- Updated discussion of prisoner rights
- Updated discussion of rapidly rising number of women in U.S. prisons

Chapter 13: Community Corrections

- Updated statistics, figures, charts, boxes, and textual material
- New Disconnects box, “Complicated Justice,” on the Jussie Smollett case
- Updated A Case in Point box on the Jaycee Dugard case
- Updated Real Crime Tech box, “Probation Kiosks”
- Updated sections on probation and parole
- Updated coverage of how Public Safety Realignment policy affects probation, parole, and community corrections
- Updated coverage on the relationship between doing away with policies of mass incarceration and community-based corrections
- Updated Matters of Ethics box, “Relationships between Correctional Personnel and Offenders”

PART 5: SPECIAL ISSUES

Chapter 14: Understanding and Helping Victims

- Updated social forces leading to the victims' rights movement
- New Race, Class, Gender box, "Hate and Violence in the United States"
- Updated crime statistics
- New text on the U.S. Census of Domestic Violence Services
- Updated Disconnects box, "When Victims Are Revictimized"
- Updated perspectives on victim assistance for older adults
- New A Case in Point box, "School Shootings in the United States"

Chapter 15: Juvenile Justice

- New Realities and Challenges vignette, "Alternatives for Juveniles"
- Updated discussion and analysis of measuring juvenile crime
- Updated statistics on juvenile crime
- Updated Matters of Ethics box, "Police in the Schools"
- New Race, Class, Gender box, "Victimization of Female Delinquents"
- Updated juvenile corrections statistics
- Updated Disconnects box, "Punishing Truancy"

Chapter 16: Evolving Challenges in Criminal Justice

- New Realities and Challenges vignette, "The Rise of Far-Right Extremism"
- New coverage of ransomware
- Updated information on the extent of cybercrime
- New What about the Victim? box, "Victimization in the Wake of Cybercrimes"
- New Real Crime Tech box, "Drones as Terrorist Weapons"
- Updated terrorism prevention strategies
- New Matters of Ethics box, "Airport Screening Protocols and Privacy Concerns"
- Updated hate crime statistics
- Extended discussion of immigrant victims

Contributors

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—Lisa A. Houston, Allegany College of Maryland “This is a thorough and highly relevant textbook that will encourage students to further their pursuit of criminal justice as a field of academic study.”

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—John Dussich

CJ

REALITIES AND CHALLENGES

4TH EDITION

1 What Is the Criminal Justice System?



Wade Spees/The Post and Courier/AP Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Illustrate how social norms help us define crime.
- Define crime and explain how it is classified.
- Describe the consequences of crime for the offender and the victim.
- Outline the basic structure of the criminal justice system.
- Describe key models of the workings of the criminal justice system.
- Describe how criminal justice is influenced by public opinion, the media, politics, and policy.
- Review the challenges to the criminal justice system today.

page 4

Realities and Challenges

The Role of the Criminal Justice System in the U.S. Democracy

In today's America the news and other forms of media often contain debates about strains upon our democratic institutions. Some say our society is divisive politically, socially, and culturally to an extent it has never been before. As a result, it is important to ask the following question: How and in what ways does the criminal justice system contribute to the stability and functionality of a democratic society? As you will learn by reading this book law enforcement, the judiciary, corrections, and victims services are major components of the wider criminal justice system that have positive roles to play in keeping society free from chaos and harm. This is not meant to imply the criminal justice system is perfect and does not need improvement but rather each part of the criminal justice system reflects and

carries out American values, provides checks and balances, and offers truth to power for other institutions and those persons in power who might seek to undermine the foundations and institutions of democracy. One example of how different components of the criminal justice system operate to ensure democratic ideals is that, in addition to providing for public safety and preventing crime, law enforcement agencies pursue cases that those with political power might work to undermine. The courts by their rulings and adherence to the sacred principle of the rule of law provide checks and balances against overreach by the executive and legislative branches of government. Corrections provides rehabilitation and treatment for those who commit crimes and are addicted, and protects citizens by incarcerating those who might harm them. Recently corrections is providing reparation to those who have been victims of sentencing disparities. Victims services advocate for victim-oriented legislation and provide rights backed by law and programs to bring justice and restoration for those who have suffered from crime events. You will learn more as you read this book and we encourage you to consider the positive aspects of the criminal justice system and aspects that might need revision. We also challenge you to think about the role the criminal justice system plays in a vital democracy. Chapter 1 sets the foundation for the rest of the book by defining laws and crime, and sanctions; providing different views of crime; describing the structure and realities of the broader criminal justice system; discussing how the fear of crime, media coverage, and politics shape our ideas about crime; and introducing major challenges to the criminal justice system in the twenty-first century.

Police, detectives, victim advocates, judges, lawyers, prosecutors, jurors, correctional officers, parole officers—these are the people with whom the suspect, the victim, and the victim’s family deal when interacting with the criminal justice system. It is a complex and sometimes lumbering machine, as it tackles the job of taking criminals off the street, ensuring a fair trial, supporting victims, protecting society, and punishing and attempting to rehabilitate offenders.

Of course, there are challenges to match the complexity. Have the police followed proper procedures? Has the victim been treated fairly, and does the individual understand his or her rights? Have the prosecutors shared all the relevant evidence with the defending lawyers? Was the jury trial fair? What role did the victim and/or the victim’s family play in the criminal justice process? Were due process rights protected? Was the sentencing appropriate for the offense? Has the offender been mistreated in prison? Are there opportunities to rehabilitate? Has parole been granted (or denied) in a fair manner? There are many points at which justice may be either served or derailed.

We hope that this book will help you learn to think critically about the realities and challenges of the world of criminal justice. We want to help you interpret facts and recognize myths about the criminal justice system so you

will understand and appreciate its complexities. We hope you come to understand how the roles of offenders, protectors, and victims are interwoven in a system dedicated to detecting those who violate the rules, determining their guilt, and carrying out an appropriate punishment. We begin in this chapter with a brief exploration of the nature of rules [page 5](#) whose violations constitute crime and an introduction to how the criminal justice system is structured and works.

THE RULES THAT BIND: NORMS AND LAWS

MYTH/REALITY

MYTH: Some behaviors are so wrong that they are crimes in all societies.

REALITY: It is not the nature of an act that makes that act a crime; it is the nature of society that defines a particular act as a crime in that society.

A **norm** is a rule that makes clear what behavior is appropriate and expected in a particular situation. If, for example, it is the norm to arrive at meetings on time, being late violates the norm. The term *abnormal* connotes **deviance**, the violation of a norm. (The prefix “ab” means “away from,” so *abnormal* means “away from the norm.”) No behavior is inherently deviant—that is, deviant solely by virtue of its nature. Rather, whether a particular act is considered deviant depends on many factors, including context, place, time, and the individual(s) judging it.

norm

A rule that makes clear what behavior is appropriate and expected in a particular situation.

deviance

The violation of a norm.

Preview

THE RULES THAT BIND: NORMS AND LAWS

WHAT IS CRIME?

THE CONSEQUENCES OF CRIME

THE STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM

HOW CRIMINAL JUSTICE WORKS: THE REALITIES

INFLUENCES ON CRIMINAL JUSTICE

CHALLENGES TO CRIMINAL JUSTICE TODAY

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

Let's consider how a behavior's deviance depends on the context in which it occurs. For example, if you were to spit on 42nd Street in New York City, people might frown at you, but you would not be arrested. But if you were to spit in the subway, you would be violating a formal regulation of the New York City Transit Authority and could face criminal prosecution in a municipal court. The fact that each week 7 million people pass through the close quarters of the subway system makes hygiene a factor in determining what is deviant in that situation.

Our ideas of deviance also change over time. For example, before the 1970s, being divorced conferred the status of deviant in society. In contrast, today's social norms recognize divorce as acceptable behavior. In other words, there is nothing inherently deviant in getting divorced: Society found it deviant until the 1970s, and then our attitudes changed.

Norms vary from place to place as well. In eastern Europe, men greet other men with kisses on the cheek. In the United States this behavior is considered unusual. The "A Global View" box shows how norms about corporal punishment can vary from one country to another. Norms also vary from group to group within a society. While some may consider it deviant to have tattoos covering one's body, it is the norm within many gangs and among many professional athletes.



▲ Tattoos: Sign of Deviance or Body Art?

Some groups may consider tattoos a sign of deviance; for others, including many professional athletes, tattoos are a normal means of expression.

Hans Deryk/Reuters/Landov

A **social norm** specifies how people are expected to behave. Social norms are informal rules that are not written but that we nonetheless know and follow. We learn them from parents, peers, and teachers. In North American society, informal social norms include waiting your turn in line to page 6 purchase tickets at a movie theater and not eating mashed potatoes with your fingers.

social norm

A rule that specifies how people are expected to behave.

A **Global** View

How U.S. Legal Norms Differ from Those in Singapore: The Case of Michael Fay

The focus of this case is not so much on the crime as it is on the punishment. On March 3, 1994, Michael Peter Fay, a St Louis, Missouri, teenager living in Singapore, was sentenced to four months in jail, a fine of 3,500 Singapore dollars (about 2,214 U.S. dollars at the time), and six strokes of a rattan cane for the crimes of theft and vandalism. Norms differ regarding the appropriateness of the type of corporal punishment known as caning between the United States and Singapore. To understand the context of these crimes and their punishment, it is relevant to know that the Singapore government had been trying to cope with a rash of vandalisms leading up to this case. About six months earlier, car vandalism emerged as a noticeable new problem and was reported in one of the local newspapers. Cars parked near apartments were being damaged with hot tar, paint remover, red spray paint, and hatchets; and some taxi drivers reported having their tires slashed. In both countries vandalism and theft are usually considered nonviolent crimes and are considered as misdemeanors. The exception to this rule is when the property damaged or stolen has high value (in the United States if it exceeds \$500), in which case it can be considered as a felony. In Singapore it is quite normal for the criminal courts to issue sentences of caning; this punishment is unheard of in the United States. Ironically, 19 U.S. states do permit corporal punishment to be used to “discipline” children and to be administered by parents and/or teachers. In Singapore this form of punishment may only be used on males. President Clinton considered Michael Fay’s punishment so inappropriate that he interceded and appealed to the president of Singapore, who, out of deference to the U.S. president, reduced the number of strokes from six to four. The caning was carried out on May 5, 1994, and the rest of the sentence was completed after four months. In the United States, the typical forms of punishment for vandalism can include fines, probation, community service, restitution, and/or jail sentence.



▲ **Michael Fay**

Roslan Rahman/AFP/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Should the Singapore court have taken into account that the offender had been socialized in a different culture? Explain.
- When living in a foreign country, should a guest from the United States be held to a higher standard? What are your reasons?
- Was it appropriate for the president of the United States to intervene? What might have been the consequences either way? What message did his intervention send to other Americans living in foreign countries?

SOURCES: “U.S. Student Tells of Pain of His Caning in Singapore,” *New York Times*, June 26, 1994. <http://www.nytimes.com/1994/06/26/us/us-student-tells-of-pain-of-his-caning-in-singapore.html> (retrieved May 15, 2015); Alejandro Reyes, “Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate about Crime and Punishment,” *Asiaweek*, Hong Kong, May 25, 1994. <http://www.corpun.com/awfay9405.htm> (retrieved May 16, 2015); Valerie Strauss, “19 States Still Allow Corporal Punishment in School,” *Washington Post*, September 18, 2014. <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/09/18/19-states-still-allow-corporal-punishment-in-school/> (retrieved May 18, 2015).

Formal social norms, also called *legal norms*, are formally written. Formal norms forbid theft and assault, for instance. Although not all deviance from norms constitutes a crime, the violation of formal norms, or *laws*, sets the criminal justice system in motion. In fact, informal social norms can evolve into legal norms. Because it is laws that determine what crimes are, we need to take a closer look at how these legal norms come about.



▲ Violating a Legal Norm

Spitting in the subway is a crime that violates a formal regulation of the New York City Transit Authority.

steinphoto/iStock/Getty

WHAT IS CRIME?

What constitutes crime? The answer is not as obvious as it may seem. Certainly, a crime is an act that breaks a law. But this description, though concise, does not help us understand the complexity of classifying criminal behavior. As we will see in this section, it is common to distinguish between two broad categories of crime: *mala in se* and *mala prohibita* crimes.

page 7

MYTH/REALITY

MYTH: People are either criminal or not.

REALITY: Virtually all people commit crimes at some point in their life. Whether we consider them criminals depends largely on what offenses they commit.¹

Can Crimes Be Inherently Wrong?

A crime is referred to as *mala in se* if it is categorized, as its Latin name suggests, as an “evil unto itself,” a behavior that is morally wrong. This definition implies that a given behavior would be wrong in any context, even if there were no law against it. However, just as there is no such thing as an inherently deviant act, there is no such thing as an inherently criminal act. Society creates crime in the same way it creates deviance—by labeling specific behaviors as such.

mala in se

A behavior categorized as morally wrong (“evil in itself”).

Because no behavior is criminal until society makes it so, distinguishing a category of crime as *mala in se* can be confusing. We discuss this category of crime here because it is a term often used by researchers and practitioners in the field of criminal justice.

Traditionally, *mala in se* offenses are seen as a violation of a basic universal social value. On the surface, it may seem reasonable to identify an act such as forcible rape as violating some universal code of morality. But no universal social code of justice exists. For example, historically the victim of a sexual assault was not considered the woman herself but rather her husband, father, or brother. The “What about the Victim?” box illustrates that the definition of sexual assault crimes is influenced not only by time period but also by the understanding of the victim and the relationship to the perpetrator.

Crimes Prohibited by Law

Mala prohibita crimes, also known as **statutory crimes**, are acts that are criminal because they are prohibited by law. *Mala prohibita* crimes reflect public opinion at a particular moment in time. As standards of social tolerance change, so do the behaviors included in this category.

mala prohibita

A statutory crime that reflects public opinion at a moment in time.

statutory crime

An act that is criminal because it is prohibited by law.

Laws against adultery provide a case in point. Historically, when a married person had consensual sexual relations with someone outside the marriage, the punishment could be death. Under some laws today, such as strict Islamic law (known as *Shariah*), adulterers can still be executed. Although adultery remains illegal in many countries today, page 8 penalties are relatively minor and are rarely enforced. Currently in the United States more than 20 states have laws prohibiting adultery. While prosecutions are rare, legal penalties range from a \$10 fine to life in prison.

What about the Victim?

“No Means No” ... at Least in Some States



Rehulian Yevhen/Getty Images

Depending upon the legal jurisdiction, the element of force is no longer necessary to be convicted of forcible rape. Two state jurisdictions have changed their rape laws in this regard. In January 2003, the California Supreme Court decided that 16-year-old John Z. raped 17-year-old Laura T. when, at a party in 2000, he continued to have sexual intercourse with her for 1—2 minutes over her objections. In fact, they had engaged in intercourse for approximately 10 minutes, during which time Laura repeatedly told him she had to go home while physically struggling to stop him. John's response was "to give [him] a minute." The court held that even though Laura initially consented to intercourse, John's failure to stop when she withdrew her consent—after penetration—constituted rape. By 2004, courts in eight states, including California, had extended the interpretation of their rape laws. No longer is the use of force, violence, or threat of harm to the victim required to convict for rape.

Illinois went a step further. After the John Z. decision, the state legislature passed the "No Means No" Act later in the same year. This legislation added a section to the Illinois rape statute that recognizes an individual's legal right to withdraw consent to intercourse at any point after giving that consent. This development made Illinois the first state to pass a law explicitly protecting the rights of women in this regard. As Matthew Lyon (2004) notes in his discussion of how definitions of rape are evolving over time, cases like that of John Z., legislative initiatives like that of Illinois, and media coverage of cases like the accusation of rape against basketball phenomenon Kobe Bryant are likely to prompt other state legislatures to consider similar statutes.

Now, in the "Post-Weinstein era," more rape victims' statements are believed. Most states today are shying away from trying to only determine if the sex act was unwanted; 8 states are in that category, 28 states use "sex without consent" when specific "power unbalances or victim characteristics exist," and 46 states accept that rape has occurred only when there was no consent and when "an additional element of force is present."

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Although the California court rejected John Z.'s "primal urge" claim—that is, the idea that he just could not stop himself—what do you think about the argument that once a male has begun to have consensual intercourse, it is not reasonable to expect that he can "just stop"? What is a reasonable time for a partner to stop after a woman removes her consent?

- What if a woman is too drunk to give consent?

SOURCES: *People v. John Z.*, 60 P.3d 183, 184 (Cal. 2003); Matthew R. Lyon, “No Means No? Withdrawal of Consent during Intercourse and the Continuing Evolution of the Definition of Rape,” *Journal of Criminal Law and Criminology* 95 (2004): 277—314; Kari Hong, “A New Mens Rea for Rape: More Convictions and Less Punishment,” *American Criminal Law Review*, 55, no. 22 (2018): 259—332.

What motivates a society to criminalize some behaviors and not others? Two predominant points of view about how crimes become defined capture the essence of this divergence: the consensus perspective and the conflict perspective.

Consensus and Conflict Perspectives

The **consensus perspective** of crime views laws as the product of social agreement or consensus about what criminal behavior is. According to this view, criminals are individuals whose behavior expresses values and beliefs at odds with those of mainstream society. For example, they rob banks while most of us work for a living. Laws, as the product of social consensus, promote solidarity: “We’re all together on this.” In this perspective, murder is a crime because it violates a consensus belief in the sanctity of life. We agree that killing is wrong, so we criminalize this act. Those who subscribe to the consensus perspective believe that defining some behaviors as criminal is necessary (or functional) because it is in everyone’s interest to control those who deviate.

consensus perspective

A view of crime that sees laws as the product of social agreement or consensus about what criminal behavior is.

The **conflict perspective**, on the other hand, views the definition of crime as one outcome of a struggle among different groups competing for resources in society. The people who own and control society’s resources (land, power, money) are able to influence those who determine what laws are passed. Rather than looking at individual wrongdoers to understand crime, the conflict perspective looks at the process that determines who is a criminal and who is not. It asks, for example, why we apply more law

enforcement resources to the bank robber than to the stockbroker who steals millions of dollars through insider trading on Wall Street.

conflict perspective

A view of crime as one outcome of a struggle among different groups competing for resources in their society.

The conflict perspective holds that laws are influenced and created by those who control the political and economic power within the society. The unequal distribution of resources in society generates competition, and hence conflict, among the groups vying for power. The “Disconnects” box illustrates how powerful corporate interests may have aided, if not been largely responsible for, passage of laws prohibiting marijuana use. An overview of marijuana’s long and complicated history reveals that nothing about the nature of the act itself makes marijuana use a crime. But whether laws against it are consensus or conflict based is a matter of debate. Let’s consider both sides.

Is using marijuana illegal because society agrees it should be (consensus model)? The fact is that public views on the use of marijuana have changed over time. A Gallup Poll conducted in 2018 revealed 66 percent² of Americans support the legalization of marijuana (and a 2018 Quinnipiac Poll found 93 percent of American voters supported medically prescribed marijuana).³ In contrast, only about 20 percent favored its legalization in the early 1970s.⁴ Accordingly, and consistent with the position that consensus drives legislation, a number of states are introducing initiatives toward the decriminalization of marijuana use.

Alternatively, is marijuana use illegal because powerful interests are served by making it so (conflict model)? For example, it is conceivable that profits related to particular drugs produced by the pharmaceutical industry could be threatened by the legalization of marijuana use. A third possibility may be that marijuana laws are the result of both consensus and conflict—to varying degrees at different points in time.

DIS Connects

Evolution of Marijuana Laws

The evolution of marijuana laws illustrates that laws are mere social constructions that change as we and our social landscape change.

In the United States from the mid-1800s until 1937, marijuana was largely a medicinal drug legally available by prescription. Few knew it as a recreational drug beyond people living in the Mexican American communities close to the Mexican border. But growing anti-Mexican sentiment in various regions of the country spread fears of Mexicans' bringing their "loco weed" into the United States and fueled the call for marijuana prohibition. Legislation proposed to control marijuana use cited its alleged harmful effects and reflected the views of authorities like the commissioner of the Federal Bureau of Narcotics, Harry Anslinger, who testified before Congress that "marijuana is an addictive drug that produces in its users insanity, criminality, and death." Such claims made it appear that marijuana laws would be for the good of the whole society—reflecting a consensus view. Remarkably, however, the American Medical Association went on record in those same 1937 congressional hearings to note that there was no medical evidence to support the contention that the drug was harmful. It is unlikely the medical profession would offer the same testimony today. For example, the National Institute on Drug Abuse links long-term marijuana use to addiction and symptoms of serious mental disorder, and smoking marijuana frequently leads to the same respiratory problems experienced by tobacco smokers. Such research is only likely to increase as more states decriminalize marijuana use for medicinal or recreational purposes.



Bettmann/Getty Images

But back in 1937, a conflict view was at work as well. Powerful corporate interests joined the crusade against marijuana when they recognized that hemp—the source plant for the drug—could be used to make textiles and paper, thereby posing a threat to already established U.S. industries. Fears of the economic potential of the hemp plant—not its psychoactive properties—largely stimulated calls for passage of the Marijuana Tax Act of 1937. Under this law, anyone who imported, distributed, or sold marijuana was required to register with the Internal Revenue Service and to pay a prohibitive tax. Although the act did not outlaw marijuana, it sought to severely curtail its use. Similarly, opposition to the legalization of marijuana for medicinal and/or recreational use today has been alleged to come from, among other sources, the pharmaceutical industry and alcohol companies—both of which stand to lose profit if marijuana is accepted as an alternative to existing products.

Public support for decriminalizing marijuana use has been increasing since the 1990s. A 2018 poll found a majority of U.S. voters (63 percent versus 33 percent) agree with the

legalization of marijuana for recreational use, and it is legal for medicinal purposes in at least 33 states. And while its use—recreational or otherwise—continues to be prohibited under federal law, individual states are making moves toward decriminalization. In 2012, Colorado and Washington became the first states to legalize and regulate the possession of an ounce or less of marijuana by adults over 21. Since then at least eight more states and Washington, D.C. have passed similar legislation. It remains to be seen whether the federal government will enforce federal law in these jurisdictions.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- In what ways have the laws against marijuana reflected a consensus perspective? In what ways have they represented a conflict perspective?
- What might make the campaign against marijuana different from campaigns against other recreational drugs, such as cocaine?
- Do you think a tax is a better way to control marijuana use than a law against it? State your reasons.

SOURCES: John Galliher, David Keys, and Michael Elsner, “*Lindesmith v. Anslinger: An Early Government Victory in the Failed War on Drugs*,” *Journal of Criminal Law and Criminology* 88 (Winter 1988): 66; Richard Bonnie and Charles Whitehead, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* (New York: Lindesmith Center, 1999); National Institute on Drug Abuse, “NIDA InfoFacts: Marijuana,” revised June 2018, National Institute on Drug Abuse, Bethesda, MD. <http://drugabuse.gov/PDF/InfoFacts/Marijuana.pdf> (retrieved December 18, 2010); Quinnipiac University Poll, “Support for Marijuana Hits New High,” April 26, 2018. <https://poll.qu.edu/national/release-detail?ReleaseID=2539>.

The conflict perspective is well illustrated in the case of vagrancy laws in England.⁵ Vagrancy laws were passed in the fourteenth century to prevent peasants from leaving the employ of wealthy landowners to seek independent work in neighboring towns. Because it took time to develop a trade and become established in the towns, peasants who page 10 wandered would, at least initially, lack any apparent means of support. Laws defining unemployed wanderers as vagrants targeted those peasants. Given the choice of being imprisoned for vagrancy or returning to the landowners, many returned to work the land.

Vagrancy laws served the interest of the wealthy by preserving the status quo and their position of power and privilege. Such laws could also, however, be seen as a protection for society because the wandering unemployed would eventually have to commit crimes to support themselves.

Using the evolution of vagrancy laws as a model can help us understand many of today's laws in the United States. Most of our laws and the resources of the criminal justice system focus on "crime in the streets" at the expense of attention to corporate crime and government corruption, the "crime in the suites" that costs society billions of dollars each year. Like the wealthy landowners of feudal England, today's large corporations get their interests translated into laws. Those who come to be identified as criminals are often, like the peasants of medieval society, those who lack power and wealth.

The basis for a particular law also may change over time. For example, we could argue that laws against theft were initially consistent with the conflict model because the will of the more powerful "haves" dictated the passage of laws against theft to protect their own property. The "have-nots" had less in the way of material goods and tended to be the ones identified as criminals. With the passage of time and a decrease in the previously massive disparity in economic well-being, however, most people came to a consensus about laws against theft.

THE CONSEQUENCES OF CRIME

The consequences of crime—for victims and perpetrators alike—are numerous and varied. Some are obvious and can be readily measured. For example, the victim of an assault suffers a broken nose that requires surgery, and she loses two weeks of work as a result. The convicted offender spends five years in prison. Other consequences are indirect and more difficult to assess. How, for instance, do we measure the fear that accompanies the victim every time she walks alone to her car? How do we measure what is lost by spending years in prison? The criminal justice system is society's formal response to criminal behavior. But, of course, not all offenders are caught and convicted, and the effects of victimization can extend far beyond the legal arena.

Sanctions

There is no sense in having rules if there are no consequences for those who break them. **Sanctions** are prescribed consequences intended to reinforce people's conformity to norms; they can be positive (rewarding) or negative (punishing). Although we are well acquainted with the rationale behind punishing bad behavior, we tend not to associate the term *sanction* with rewards for good behavior. In fact, positive sanctions can be just as effective—if not more so—than negative sanctions in shaping people's behavior. Rewarding an ex-convict's efforts to learn to read and write, for example, may prove more effective in changing his criminal ways than sending him to jail a second time.

sanctions

Prescribed consequences intended to reinforce people's conformity to norms.

Sanctions can be formal or informal. For example, someone who behaves badly in public is likely to be met with disapproving glances, an informal response designed to encourage the deviant to cease and desist. Even though informal sanctions generally do not carry the weight of their formal counterparts, they can have a major impact on behavior.

page 11

Our criminal justice system delivers a range of formal negative sanctions in response to criminal behavior. If the crime is relatively minor—say, driving 10 miles per hour over the speed limit—the offender may be given a fine. A criminal infraction of a more serious nature—say, vandalizing a park—is likely to be sanctioned by a harsher penalty such as probation, which restricts personal freedom by requiring regular meetings with a probation officer and avoidance of drugs, alcohol, and other people on probation. For more serious crimes, such as robbery and assault, the court may set a term of incarceration. Prison inmates are removed from society and deprived of their liberty. For the most serious crimes, in 35 states the offender can be executed.⁶

We have considered the formal and informal sanctions that offenders face as consequences of their criminal behavior. As would be expected, victims also suffer consequences from criminal behavior; however, often these

consequences are not as well understood given our criminal justice system's focus on offenders.

Impact of Crime on Victims

Victims are the targets of illegal actions by others. As a result, victims suffer physical, sexual, or emotional harm, death, or a combination of these injuries.

More often than not, criminals and their victims are of the same race and in the same age range, live in the same neighborhood, belong to the same socioeconomic strata, and—with the important exception of rapists and most of their victims—are the same sex. Victims tend to occupy the same social space as do offenders. Would-be criminals notice the victims' vulnerabilities, seize the opportunity, and commit a crime.⁷

Victims are often neglected and even abused by the criminal justice system, and this reality makes their suffering significantly worse. Some become fearful and less willing to cooperate with the prosecution. It is normal to want to avoid fear and pain. That is why many victims choose not to report their crime, not to cooperate with criminal justice officials, and not to serve as key witnesses.

The plight of victims gave rise to the victim rights' movement (see Chapter 14). This movement began to have an effect on the criminal justice system, initiating reforms in the early 1970s. As a result, victims are now being treated better and can receive compensation for their injuries and losses. Furthermore, most suffer fewer hardships and recover more quickly from monetary losses. However, much remains to be done before all victims are treated with the respect, dignity, and care they deserve.

THE STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM

The **criminal justice system**, our focus in this section, comprises the wide array of actors and agencies at the local, state, and federal levels of government that deal with the problem of crime. The term *criminal justice system* denotes the process by which adult offenders are handled, while *juvenile justice system* (see Chapter 15) refers to the process for those under

18. The major institutional components of the traditional criminal justice system include law enforcement, the judiciary, and corrections. These components are interdependent in that decisions made in one component often affect decisions made in others.

criminal justice system

The interdependent actors and agencies—law enforcement agencies, the courts, the correctional system, and victim services—at the local, state, and federal levels of government that deal with the problem of crime.

A contemporary view of the system also considers victim services as an emerging element of the system because of the collaborative effort to incorporate victim services into law enforcement agencies, the courts, and corrections (Figure 1-1). Generally, we think of law enforcement page 12 as starting the process of the administration of justice, the courts as deciding guilt and punishment, and correctional agencies as carrying out that punishment. Victim services, although not traditionally considered a major branch of the criminal justice system, is an important determinant of whether justice is served.

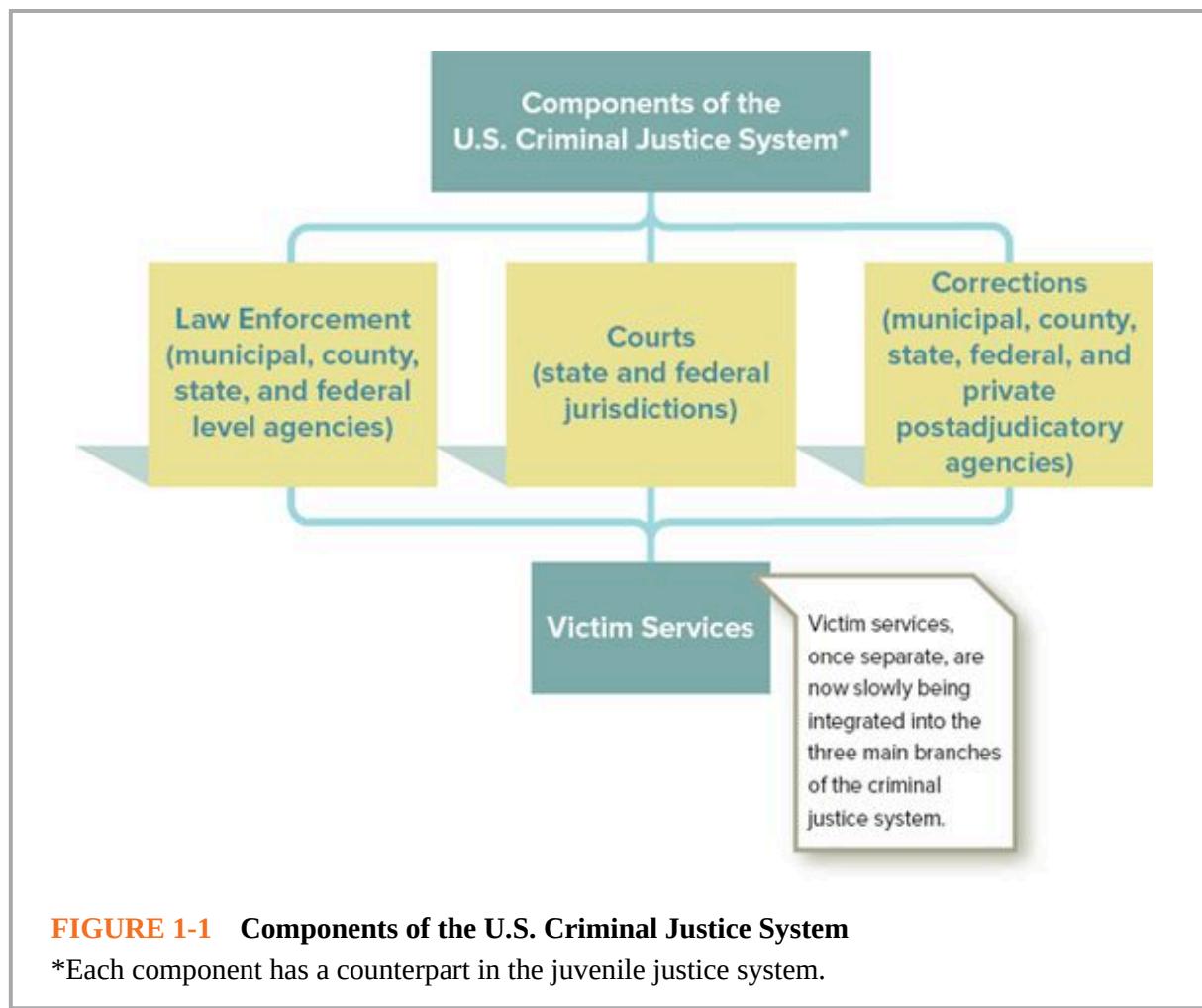
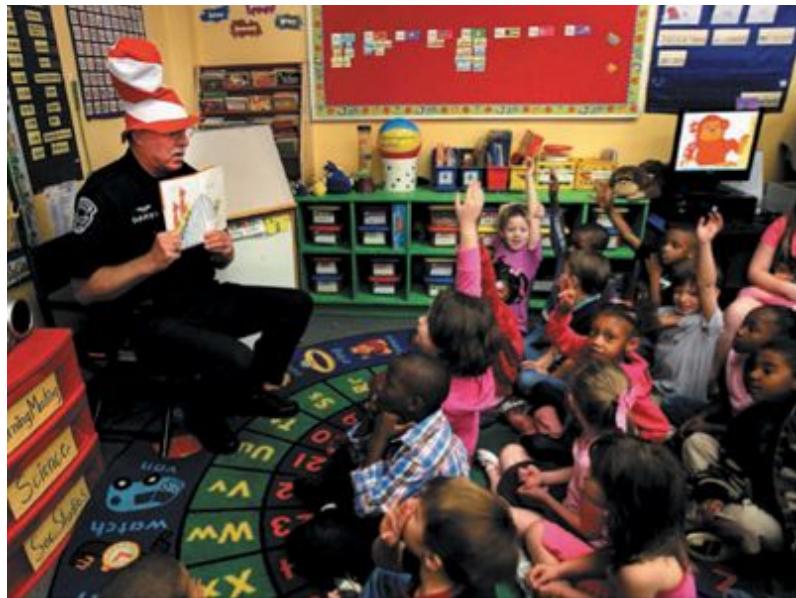


FIGURE 1-1 Components of the U.S. Criminal Justice System

*Each component has a counterpart in the juvenile justice system.

The U.S. criminal justice system is the sum of all these parts and more. Because of its size and complexity, communication among the parts is not always efficient. In addition, like a chain whose strength is determined by its weakest link, the criminal justice system depends for its success on the effectiveness and integrity of each component. In the “Matters of Ethics” box, we see the extent to which unethical behavior on the part of one individual working in a crime lab ultimately compromised justice in thousands of criminal cases.



▲ School Resource Officer with Elementary School Students

School resource officers bring awareness of crime and the law into the classroom.
ZUMA Press Inc/Alamy

Law Enforcement

The part of the criminal justice system familiar to most U.S. citizens is law enforcement. From childhood, we can identify a police officer and an officer's car and understand the basic functions of the police—to protect the community and arrest criminals.

But realistically, the police are called upon to do far more than protect and arrest. They are dispatched to deal with a host of matters ranging from the mundane (checking on the security of a home while the owner is traveling; writing a traffic ticket), to the bizarre (finding ghosts page 13 in a home), to the most serious (homicide)—and nearly any imaginable incident in between. Law enforcement officers are expected to resolve many of society's problems and are entrusted to use force only when necessary. Ideally, they make decisions quickly, use discretion, show courage and sacrifice in the face of danger, and treat individuals with dignity and respect even when threatened, harassed, abused, or assaulted.⁸

Matters of Ethics

Lies That Convicted the Innocent

For justice to be served, judges and juries must trust in the integrity of both expert witness testimony and physical evidence in considering whether there is reasonable doubt that a suspect committed the crime. Major doubts about that integrity fell upon the Boston area in the fall of 2012.

In late August 2012, it was revealed that a chemist in the Massachusetts state crime lab, Annie Dookhan, had mishandled drug evidence and failed to follow required procedures. Governor Deval Patrick ordered the lab closed, and the extent of the damage began to be revealed. Dookhan had been considered the lab's "Superwoman," testing drug evidence at much higher rates than her colleagues. But her rates were so high that eventually some colleagues grew suspicious. Dookhan ultimately admitted to investigators that she had been negligent in the processing of evidence in some cases and had outright faked results in others.

Dookhan had worked at the lab for a decade and told investigators she had been compromising evidence "for about the last two or three years." Specifically, she admitted to documenting samples as narcotics based on their appearance rather than actually testing them; she estimated she had tested only about 5 of every 25 samples. The investigation also included a review of Dookhan's e-mail correspondence with prosecutors, in which she revealed an eagerness to cooperate and gratification at being able to help win convictions. To support her qualifications as an expert witness, she also claimed to have a master's degree that she did not have.

In November 2013, Dookhan was found guilty of tampering with evidence and obstructing justice. She served three years in prison and was released on parole in April 2016. The final costs of her behavior will be immense. Governor Patrick has asked for \$30 million to fund a review of her cases, and several county district attorneys have requested a further \$12 million. As many as 60,000 cases may need to be reviewed, more than half of which may be overturned, and untold numbers of convicted drug defendants may have their convictions voided. By October 2018, over 21,000 cases linked to Dookhan's testing and analysis were dismissed.



Troubling ethical questions have arisen regarding oversight of the lab. Many ask how a chemist could have tampered with so many cases without raising red flags. Colleagues had notified supervisors of their concerns, but those concerns were not acted upon. Ultimate responsibility for the state's crime labs lays with the public health commissioner, who resigned as a result of the scandal. Several supervisors were also disciplined or fired.

Dookhan's ethics are also puzzling. Why did she do it? Why would a biochemist with a seemingly great career taint evidence and lie about her credentials? The only answers appear to center around her desire to be a "helpful" employee and her commitment to convicting people the police had arrested.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How can trust in the criminal justice system be restored after a scandal like this?
- What kind of oversight should be employed in crime labs?
- What guidelines should be in place to verify expert witnesses?

SOURCES: Brian Ballou and Andrea Estes, "Chemist Admitted Wrongdoing in Lab Scandal," *Boston Globe*, September 26, 2012; Andrea Estes, "Indicted Drug Analyst Annie Dookhan's E-mails Reveal Close Personal Ties to Prosecutors," *Boston Globe*, December 20, 2012; Shawn Musgrave, "District Attorneys Send Notices to Thousands of Dookhan Defendants," *WGBH News*, June 6, 2017, <https://www.wgbh.org/news/2017/06/06/local-news/district-attorneys-send-notices-thousands-dookhan-defendants> (retrieved February 2, 2019); Rebecca Trager, "Final Cost of Forensic Chemist's Misconduct Still Being Counted." *Chemistry World*, October 23, 2018, <https://www.chemistryworld.com/news/final-cost-of->

[forensic-chemists-misconduct-still-being-counted/3009660.article](#) (retrieved February 2, 2019).

In recent years, police responsibilities have moved into the educational setting as school resource officers and educators raise awareness about crime, drugs, and prevention. Community-based initiatives have tried to foster a more collaborative relationship between police and citizens to address crime control and prevention.⁹

The Courts

The United States has a dual court system made up of **state courts** and **federal courts**. As their names suggest, crimes against state laws are prosecuted in state courts, and crimes violating federal statutes are prosecuted in the federal court. State courts differ from state to state, but all have trial courts and **appellate courts**, where cases can be appealed. The federal system consists of district courts (comparable to the state trial courts), appellate courts or circuit courts where appeals are heard, and the U.S. Supreme Court (see Chapter 9).

state courts

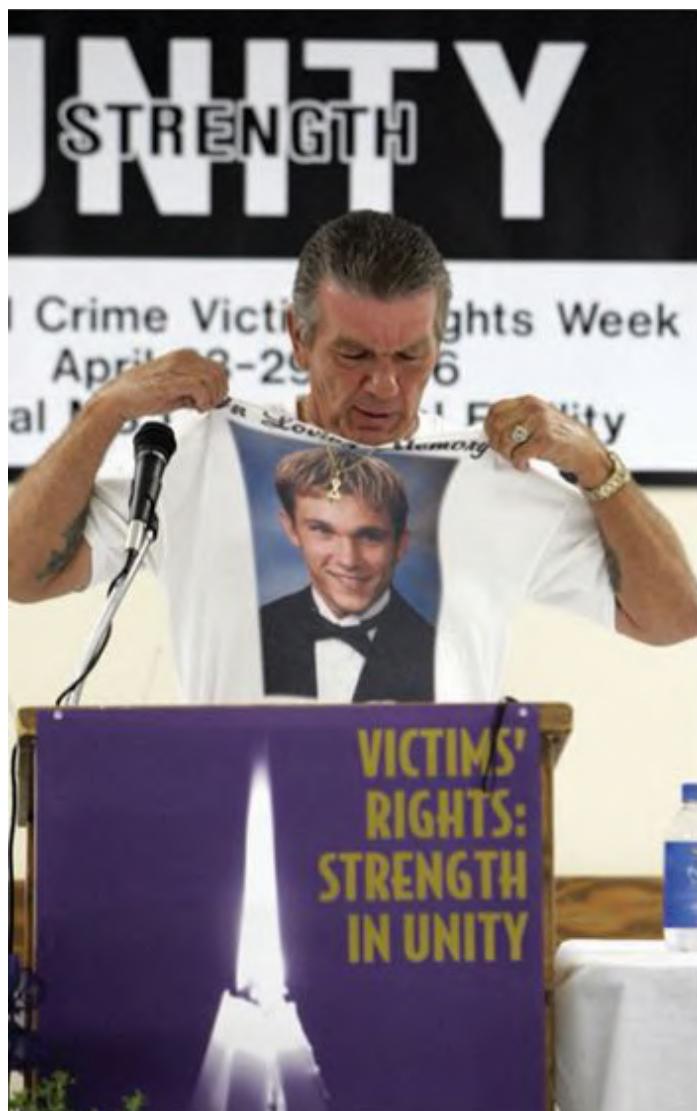
The system in which state crimes are prosecuted; it includes both trial and appellate courts.

federal courts

The system in which federal crimes are prosecuted consisting of district courts, appellate courts or circuit courts, and the U.S. Supreme Court.

appellate courts

Courts that hear appeals from trial courts or other lower courts.



▲ Demonstration for Victims' Rights

The victims' rights movement began in the 1970s and pushed for more involvement of the victim in the criminal justice process.

Rogelio Solis/AP Images

Within each of these settings, a prosecutor first decides whether to prosecute a case. If the prosecutor chooses to move forward, he or she presents the case against the defendant on behalf of the state or federal government. A grand jury decides whether a case should go to trial. The prosecutor is then responsible for arguing that case at trial. Defense attorneys, hired by a client or assigned by the court, protect the legal rights of the defendant. If the case goes to trial, the defendant is entitled to fair and proper procedures. Finally, judges are the arbiters in the courtroom and are

responsible for ensuring that the rules of evidence and law are not violated. They also provide a jury with instructions for rendering a verdict or decision about the case.

Corrections

Corrections is the systematic, organized effort by society to punish offenders, protect the public, and change an offender's behavior. These efforts are realized through programs, services, and facilities that deal with the offender before and after conviction. The purpose of corrections is to achieve the goals of sentencing, which include retribution, deterrence, incapacitation, rehabilitation, (re)integration, and restitution (see Chapter 11).

corrections

The systematic, organized effort by society to punish offenders, protect the public, and change an offender's behavior.

Once convicted of a crime, offenders may be imprisoned or serve their sentences under supervision within the community while on probation. An offender also may be given an **alternative sentence** that can be served in a treatment facility or carried out in the form of community service. **Probation** is an alternative to jail or prison in which the offender remains in the community under court supervision, usually within the caseload of a probation officer. Offenders who have been sent to prison can be freed on **parole**, an early release based on their compliance with certain standards while free. A parole officer supervises the offender, who can be sent back to prison if he or she violates the terms or conditions of the parole (see Chapter 13).

alternative sentence

A sentence that is served in a treatment facility or in community service.

probation

An alternative to jail or prison in which the offender remains in the community under court supervision, usually within the caseload of a probation officer.

parole

An early release from prison conditional on complying with certain standards while free.

When most people think of corrections and the corrections system, they think of the prison system (see Chapter 12). The general practice of using imprisonment as punishment for crime is less than two centuries old. The Bureau of Justice Statistics of the U.S. Department of Justice reported that as of year-end 2016, approximately 2.2 million adults were held in federal or state prisons or in local jails. When the number of individuals on probation and parole are included, the total number of people under correctional supervision as of year-end 2016 was approximately 6.6 million.¹⁰

Victim Services

Until the late twentieth century, the U.S. criminal justice system focused primarily on the criminal rather than the victim. Since the 1970s, under pressure from the law-and-order movement, the civil rights movement, the women's movement, and other victim-oriented coalitions, the pendulum began to swing the other way. The promotion of victims' rights to participate in criminal proceedings and to enjoy personal safety contributed to the formation of an array of **victim services** inside and outside the criminal justice system, including shelters and transitional housing programs, counseling services, and 24-hour hotlines.¹¹ Victim services were an integral part of the victims' rights movement that began in the mid-1970s; another dimension of these rights was greater involvement of the victim in the criminal justice process.

victim services

A range of resources—such as shelters, transitional housing, counseling, and 24-hour hotlines—aimed at reducing the suffering and facilitating the recovery of victims, especially those who participate in the criminal justice process.



John Spink/Atlanta Journal Constitution/AP Images

Real Crime Tech

AMBER ALERT SYSTEM

The U.S. Department of Justice created the Amber Alert program to foster partnerships among law enforcement agencies, transportation agencies, and broadcast and wireless companies. The goal of the program is to return missing children to their caregivers by widely broadcasting information that would help recover the children. Information such as a description of the suspect's car can be scrolled across electronic highway signs and television screens. As of December 2015, the Amber Alert system has contributed to the rescue and return of 794 children.

SOURCE: U.S. Department of Justice, Office of Justice Programs, "Amber Alert." <https://amberalert.ojp.gov/> (retrieved December 3, 2019).

Other services focus on the victim's legal needs, including the appointment of a **victim advocate** to assist the victim with every aspect of the postvictimization period, from the initial crisis and investigation through case adjudication and ultimately to the offender's release. Two important goals of victim services are to lessen victims' suffering and to facilitate their recovery.

victim advocate

A professional who assists the victim during the postvictimization period.

Today, victim advocates work in government and nongovernment organizations and in all sectors of the criminal justice system. Some are employed in victim/witness units within district attorneys' offices, others are in probation departments, and still others are part of special units in police departments or within correctional institutions.¹² When a victim is also a family member of the offender, legal services are available to assist with divorce and custody concerns, supervised visitation requests, orders of protection (such as restraining and/or harassment orders), and mediation. The latter is used to help disputing parties work with a court-appointed mediator to ensure that a mutual agreement is reached on a specific issue such as child custody.¹³

Victim services may also include helping victims apply for victim compensation and write **victim impact statements** about how their victimization affected them. These statements are generally read in open court prior to sentencing (in a process called *elocution*) and at probation and parole hearings. In other cases, victim advocates work with **secondary victims** and/or witnesses to help them cope with the victimization of a loved one. Victim services also include removing a dependent individual from a violent environment and conducting site visits at the new location, assisting victims to obtain a job, and a host of other activities to ensure that victims are able to live a life free of the violence they once experienced.¹⁴

victim impact statement

A victim's written statement, usually in the Presentence Report, about how the experience with crime affected him or her. Sometimes judges ask victims to read this statement in open court prior to sentencing.

secondary victims

Family and friends of an individual who has been victimized.

HOW CRIMINAL JUSTICE WORKS: THE REALITIES

There are various explanations for—and debates about—how the criminal justice system works in reality. These explanations complement debates

about how it *should work*—that is, the theoretical ideal. This section surveys some of the explanations and debates regarding how the system works in practice and how it should work in theory.

MYTH/REALITY

MYTH: Almost all criminal cases go to trial.

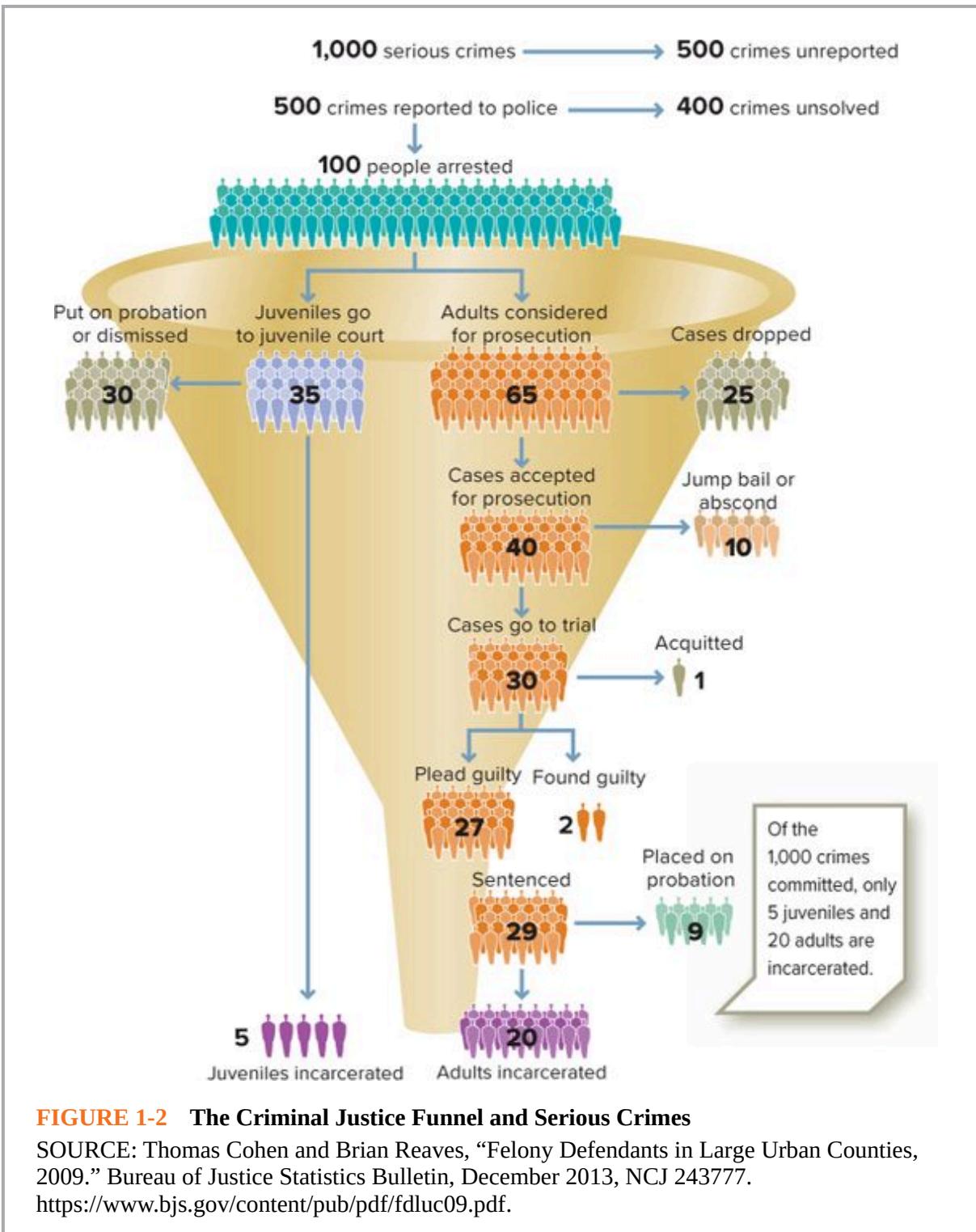
REALITY: A high percentage of cases drop out of the criminal justice system without ever getting to trial or before a trial is complete.¹⁵

The Criminal Justice Funnel and the Wedding Cake Model

The result of decisions by criminal justice professionals, suspects, and others creates what is often referred to as the *criminal justice funnel*. The process begins as a large number of people are arrested, many fewer of whom, through a process of filtering, ultimately go to trial or are sentenced. Think about it: If every case were to go to trial, the criminal justice system would collapse from the overload. There has to be a filtering of cases. All criminal justice professionals have a high level of discretion and can filter out cases along the way. For example, a police officer can decide not to arrest [page 16](#) a particular individual who has committed a crime. A prosecutor can decide not to charge someone whom the police arrested. A judge can dismiss a case. When any of those decisions are made, the suspect drops out of the criminal justice process. A guilty plea by a suspect keeps the offender within the system but also eliminates the need for a trial.

A variety of factors influence criminal justice professionals' decisions regarding whether a defendant should enter and proceed through the system. One significant consideration, of course, is the quality of the evidence. If, for example, an officer gets a statement from a witness who then retracts that statement, the prosecutor might be left with insufficient evidence, so she chooses to drop the charges. Another factor is the resources—both time and money—that are needed to take a case to trial. Frequently those expenses are judged to be too great given that a suspect often will agree to plead guilty in exchange for a reduced sentence. From the perspective of professionals in the system, justice can be obtained without a trial outcome. Of course, the system cannot do its work if crimes are not reported, as occurs less than 50 percent of the time. According to the National Crime Victimization Survey

2017, only 45 percent of violent crimes are even reported to the police.¹⁶ These are just a few examples of the many reasons why in 1,000 crimes committed, only 25 people are convicted (Figure 1-2).



Some scholars and practitioners use the **wedding cake model** to help explain why some cases make it through the funnel and some do not. Figure 1-3 depicts the four different layers of the criminal justice wedding cake. The vast majority of cases, about 90 percent, are contained within the base of the cake, Layer 4. These offenses are largely misdemeanor and infraction cases. *Misdemeanor cases* are those that can result in a sentence of one year of incarceration or less, probation, or other alternative sentences. *Infractions* are even more minor offenses, such as traffic violations. These cases are generally considered not serious or worth much of the system's time. The focus in this layer is to minimize the amount of resources expended on these cases. To that end, there is a very high level of guilty pleas in exchange for lenient treatment.



SOURCE: Walker, Samuel. *Sense and Nonsense about Crime and Drugs* (Belmont, CA: Wadsworth, Cengage Learning, 2001).

wedding cake model

An explanation of the workings of the criminal justice system that shows how cases get filtered according to the seriousness of the offense.

The next three layers account for the other 10 percent of cases. Layer 3 includes *felony* cases of a less serious nature (such as car theft) or ones in which the defendant has not previously had trouble with the law. These cases are also dispatched rather quickly. The system starts slowing down with Layer 2. This tier includes serious felonies. Here you would find murder cases, defendants with many prior offenses, and cases that include victims who were strangers to their perpetrators. The criminal justice system regards all of these situations as serious, and they are more likely to result in trials than the cases in either Layer 4 or Layer 3.

The top of the cake, Layer 1, includes the very few cases that are considered celebrated cases, such as serial killings. They garner the most media attention. They may or may not involve celebrities, but the defendant in the case generally becomes a household name. These cases almost always involve a long trial, unless the defendant strikes a plea bargain. For example, Gary Ridgway, known as the Green River Killer, spared himself the risk of the death penalty by pleading guilty to killing 48 women in Washington State. Law enforcement believes he killed many more women, and Ridgway himself claims to have killed 90 or more.

The wedding cake model reminds us that most cases do not get the attention or resources spent on them that the high-profile cases do. The system does not work as TV shows like *Law & Order* would have us believe. Justice is usually not swift, and some observers worry that it is not deliberate enough. People who see the criminal justice system that way categorize the process as an assembly line with little consideration for the unique characteristics of a case. Criminal justice professionals defend their actions by arguing that the system cannot handle a thorough deliberation of all the cases.

Now that we have examined how the criminal justice system works in practice, we focus next on a key recurring point in discourse about the system—the idea of preventing crime from occurring altogether. A frequent topic of discussion, many people view crime prevention as the “elephant in

the room” because they believe that crime springs from societal conditions and that the criminal justice system is incapable of effectively handling the problem. In the absence of a “vaccination” to address criminality at its roots, preventive actions have been relegated in large part to the _____ page 18 system’s vanguard component: law enforcement. Two additional points of discussion—or, rather, debates—ensue after prevention measures have proved ineffective. These are centered on two models of how the system should process individuals who come within its purview. These models—crime control and due process—represent distinct value systems that compete for priority in a democratic society.¹⁷



▲ Serial Killer Gary Ridgway

Ridgway was convicted and sentenced to life for killing 48 women.
Should Ridgway have been allowed to plead guilty to avoid execution?

Elaine Thompson-Pool/Getty Images

Crime Prevention

Crime prevention rests on the notion that it is better to take measures to prevent crime than to respond to crime after its occurrence.¹⁸ Preventing crime has been a central element of modern law enforcement’s mission, and these efforts are mostly focused on high-crime activity—for example, hot spots policing (the concentration of policing on crime clusters)¹⁹; target hardening, as through neighborhood crime prevention and environmental

design (the elimination of physical conditions conducive to crime)²⁰; police-public partnerships such as community policing; potential offenders, as with general and specific deterrence; and offender intervention programs.

crime prevention

Measures taken to reduce the opportunity for crime commission by individuals predisposed to such.

Crime prevention also has significant applications to victimization. From the results of studies of repeat victimization²¹ and victim vulnerabilities,²² crime prevention resources can be delivered to individuals lacking such protections, especially those whose behaviors, personal conditions, and lifestyles increase their risk for victimization—for example, young children, young adults, marginalized individuals such as the homeless and ex-offenders, and people with a disability.²³

The Crime Control Model

The **crime control model** emphasizes the efficient arrest and processing of alleged criminal offenders. The value system underlying this model considers the repression of criminal conduct as the most important function of criminal justice. In other words, what matters most is to reduce, quickly respond to, and punish criminal behavior. According to this model, the failure to bring criminal conduct under control leads to the breakdown of public order, a vital condition of human freedom. Because the crime control model emphasizes quick conviction and sentencing, advocates resist strong procedural protections that others would say help society ensure that only the guilty are punished.

crime control model

A model of the criminal justice system that emphasizes the efficient arrest and processing of alleged criminal offenders.

As you will see in many parts of this book, the crime control model has dominated the public debate over how the criminal justice system should work since the 1980s. It has led to a tough-on-crime stance that doubts whether perpetrators can be rehabilitated and stresses that offenders have historically been treated too leniently by the criminal justice system. Proponents of the crime control model are satisfied with assembly-line

justice because it speeds up the justice system and treats similar offenses and offenders in a consistent way. They worry more about criminal threats to people's safety than about the constitutional protections of suspects.

The Due Process Model

The **due process model** emphasizes individual rights at all stages of the justice process. This model is more concerned with the threat to procedural rights of the offenders than with the general public's right to be free of crime. Advocates of the due process model argue that it is better to let guilty people go free than to convict the innocent.

due process model

A model of the criminal justice system that emphasizes individual rights at all stages of the justice process.

Due process is the term used in the Constitution to describe procedural protections for the accused. Under the due process model, the police would recognize all the constitutional rights guaranteed to persons page 19 suspected of criminal conduct. Prosecutors and judicial authorities would actively support the same constitutional provisions before, during, and after any criminal proceeding. If the crime control model is more akin to an assembly line, then the due process model looks more like a maze with a variety of barriers to ensure that those punished are truly guilty.

The due process model likely reached its height in the 1960s when the U.S. Supreme Court was extending constitutional due process requirements to local and state criminal justice agents as well as federal ones. The law enforcement requirement to notify suspects of their rights, first introduced in 1966 in the famous case of *Miranda v. Arizona*, is consistent with the values of the due process model.

Although these two models seem to work as a dichotomy—one on each end of a value continuum—values of both models are at work in the criminal justice system today. In fact, the continued debate between these two positions helps us to evaluate from day to day how we want our criminal justice system to work.

INFLUENCES ON CRIMINAL JUSTICE

In an ideal society, the criminal justice system protects, defends, and upholds laws in an equitable way for all citizens. In the real world, however, people bring genuine fears and prejudices to the courtroom, the media can stoke those fears and prejudices, and lawmakers hold the purse strings to criminal justice initiatives. Thus, the criminal justice system does not operate in isolation; it is subject to many outside influences that can change the course of justice, either intentionally or unintentionally.

MYTH/REALITY

MYTH: People fear strangers as being very likely to victimize them.

REALITY: Individuals are more likely to be victimized by someone they know.²⁴

Fear of Crime

In general, U.S. residents believe there is much more crime than there actually is, and their fears are often misplaced. For example, women are consistently told that they should not walk alone at night and should fear male strangers. Being cautious about one's surroundings is wise, but the truth is that women are much more likely to be harmed by someone they know than by a stranger. It is uncomfortable to think about, but given the statistics on women's victimization, women should fear the men they know more than the men they do not know.²⁵ Still, 46 percent of women, but only 26 percent of men, say they are afraid to walk alone at night.²⁶ Fear of crime, specifically of crimes by strangers, influences where and when women are comfortable in public spaces and how they behave in those spaces. In other words, fear of stranger crime works to control women's choices.²⁷

One measure of our fear of crime is the Gallup survey's question "Is there any area near where you live—that is, within a mile—where you would be afraid to walk alone at night?" In October 2017, 0 percent responded yes.²⁸ That response was down from the 1982 high of 48 percent and may reflect a significant reduction in crime during that time period. Specifically, in 1982 there were 50.7 violent crime victims per 1,000 U.S. residents, whereas in 2017 there were only 20.6 violent crime victims per 1,000 people.²⁹ That reality is clearly not reflected in people's *perception* of crime, however;

consider that in March 2016, 53 percent of U.S. residents _____ page 20 worried a “great deal” about crime.³⁰ This put the level of Americans’ concerns about crime at a 15-year high.

Various factors can affect the level of fear we experience about crime generally, including our gender, age, past experiences with crime, ethnicity, income, educational attainment, and the area in which we live. Criminologists point out that some of the most fearful groups are those less likely to be victimized.³¹ For example, older people and women tend to have higher levels of fear than do young men, yet as a group young men are most likely to be victims of crime.³² Women may have a greater fear of crime than men because their fear of sexual assault generalizes into an overall fear of crime.³³ Older people may be influenced in their fears by media exaggerations of crime in the streets, attention given to elder fraud and nursing home abuse, and heightened feelings of vulnerabilities that come with advanced age.³⁴

Those who have experienced crime typically have elevated fears of crime. Victims of robbery tend to have high levels of fear afterward due to the sudden, unexpected, and personal nature of the crime. Victims of _____ page 21 burglary likewise tend to become more fearful due to the invasion of their home and the loss of significant money or property.³⁵

Real Careers



Lane Oatey/Blue Jean Images/Corbis

RACHEL DREIFUS

Work location: Redmond, WA

College(s): Bellevue College

Major(s): Criminal Justice (AA)

Job title: Assistant Investigator, Securitas Security Services USA

Salary range for jobs like this: \$40,000—\$48,000

Time in job: 5 years

Work Responsibilities

Securitas Security is a vendor company contracted by Microsoft Corporation to provide investigative services. My job consists of reviewing and investigating cases requiring follow-up, such as ones involving theft, threats of violence, and assault. I am assigned between 5 and 25 cases per month, and I manage them by interviewing witnesses, communicating with police departments, and maintaining physical evidence in our secure climate-controlled evidence room. Some of the tools that make my investigations possible are video cameras, audio recorders, phone logs, and covert cameras that are as small as a pin! Every day I make sure all of my case notes are recorded in our database, which can be accessed by other Securitas Security investigators.

Why Criminal Justice?

I returned to college as an adult after having spent five years raising my children. When my youngest daughter became old enough to enter kindergarten, I decided to pursue the career that I always wanted: U.S. marshal. After researching the qualifications to enter the U.S. Marshals

Service, I found that an AA in criminal justice along with at least three years in private security was recommended. Although at times it has been a juggling act to balance family, work, and school, my classes were a purely rewarding experience. I am now proficient in all aspects of investigations, including gathering data, collecting evidence, analyzing crime scenes, and interviewing subjects. After five enjoyable years in corporate security, I no longer plan to pursue employment as a U.S. marshal. My current job allows me to practice criminal justice without the dangers associated with police investigations.

Expectations and Realities of the Job

The realities of the job are a little bit different than I originally expected. First, I thought my deadlines would be more long term, but as it turns out, I am challenged on a daily basis to meet business objectives, such as resolving a certain number of cases and following through with a report to our legal department. After five years on the job, I have never gotten tired of what I do. I make my work more interesting and rewarding by striving to go above and beyond my supervisors' expectations.

My Advice to Students

Textbooks provide the knowledge you need for your job, but they cannot prepare you for the emotional aspects of starting a new job, particularly the nervousness. Taking responsibility for managing cases and any mistakes that might happen during the investigation put a lot of pressure on me. By speaking with experienced colleagues, I learned that these feelings are normal. Remind yourself that your employer thinks you are qualified for the job. After a few months of getting settled, your confidence will grow.

A moderate level of fear might serve citizens in a positive way by generating caution, a factor that makes them less vulnerable to victimization. Some people might purchase alarms or security systems designed to keep them safe. Some might avoid situations they perceive as dangerous. Locking an automobile or a home is a prudent action. However, when the public's unreasonable or unwarranted fear of crime influences public policy, it results in crime policies that are based on irrational conclusions rather than sound reasons. The fear of crime also can have a major economic and social impact on society. How we spend money, go out to dinner, buy our houses, shop, travel, and spend our leisure time can all be affected by our fear of crime.



▲ Graffiti-Tagged Shops

Some people may regard a neighborhood with defaced storefronts as a sign that the area is unsafe.
Kostas Tsironis/Bloomberg/Getty Images

Media Coverage

Media coverage of crime inflates individuals' levels of fear. It produces a **moral panic**, a group reaction based on exaggerated or false perceptions about crime and criminal behavior. Individuals who watch local television news are more likely to be fearful of crime than those who watch national television news, listen to radio news, or access their news from the Internet.³⁶ The old adage "If it bleeds, it leads" appears to be especially true for local television news. Sensational media reports fuel fear of crime and result in support for the death penalty and handgun ownership, indicating that media coverage of crime can affect people's policy positions.³⁷

moral panic

The reaction by a group of people based on exaggerated or false perceptions about crime and criminal behavior.

Most criminal behaviors are not crimes against persons and are nonconfrontational. However, media reports focus heavily on violent crime. For example, homicides make up more than one-fourth of the crime stories

reported on the evening news, but murder is actually a very rare event.³⁸ Media focus on these incidents via television, radio, newspapers, magazines, books, billboards, and the Internet leads people to believe that violent crime occurs frequently.

The media usually report or portray perpetrators of crime as minorities. White people are shown as victims out of proportion to their actual rates of victimization.³⁹ The image of the African American male, especially, as the victimizer of White people has a long historical legacy. Following the Civil War many African American males were lynched because of often unsubstantiated claims that they had made sexual advances toward—or sexually assaulted—White women.⁴⁰ In actuality, most crime today is intraracial—individuals most often victimize people of their own race.⁴¹

A significant downside to the “if it bleeds, it leads” mentality is the shallowness of reporting that results, as demonstrated by research from the City University of New York. A systematic analysis of 12 school shootings (all but one of which occurred in a high school) that took place between 1997 and 2002 in cities from Alaska to Georgia revealed a high incidence of dating violence and sexual harassment as precursors to the shootings, but those incidents went unreported in the news. In five of the incidents, boys targeted and shot girls who had just rejected them. In three cases, page 22 boys’ motivation to kill sprang from general unhappiness related to difficulties with girls. In three other cases, boys felt that they had “protected” their girlfriends by shooting other boys who threatened the relationships.⁴²

The media have a public responsibility to report the news, but they are also in the business of making money for their shareholders. If the public chose sources that relayed a more accurate view of crime, the media might change the way they cover the news.

As we have discussed, the media can affect people’s fear of crime. Such fear can be translated into political positions and policy preferences.

Politics

The criminal justice system works within the larger U.S. political system, and politics influences the administration of justice in many ways. The legal system controls what actions are legitimate for criminal justice professionals. Legislators decide how much money the country will spend on prisons,

policing, the court system, and victim services. Federal policies influence the priorities established by local justice agencies. For example, the Violent Crime and Law Enforcement Act of 1994 established the COPS office in the Department of Justice to provide grants for hiring community police officers. At the time, this was a new way to approach policing and required a high level of contact and cooperation between police officers and members of communities.

The U.S. Congress does not always require change by passing new laws. Instead, lawmakers can make access to federal funds dependent on states' compliance with certain standards. For example, in 1984 Congress passed the National Minimum Drinking Age Act. The law did not mandate that states make their drinking age 21, but it specified that states that did not raise their minimum drinking age to 21 would not receive highway transportation funds. Even though some states objected to the higher drinking age, they agreed to it so they could access federal monies. Federal agents (such as the attorney general) can also choose to prosecute individuals under federal laws if they disagree with changes in state laws. For example, after California voters approved a proposition in 1996 allowing the use of marijuana for medicinal purposes, federal prosecutors charged medicinal marijuana growers with federal offenses.

Political positions toward crime and justice have changed over time. Beginning in the 1920s, some political leaders held that criminals could be rehabilitated, and criminal justice policies for the most part reflected that belief. However, by the 1980s, the political mood had shifted to a tough-on-crime approach. At that point, the "war on crime" and the "war on drugs" were in full swing, and politicians of both parties pushed for more punitive criminal justice policies, among them stricter sentencing guidelines. Still, there is much debate about whether tougher sentences have reduced crime in the last few years or whether the decline is due to other factors.

Politicians on both the left and right have recently started to articulate concerns that a simple tough on crime approach was repeatedly showing to be both ineffective and very expensive. Hence, a bipartisan effort to move in a different direction was successful in December 2018 when Congress passed the FIRST STEP Act, which was the largest criminal justice reform in a generation. The new law, signed by President Trump, expands early release programs, reduces sentences, and assists inmates in their re-entry into society. This is a radically different direction for criminal justice policy to

take and, for reformers, they hope it is just as its name might promise—a first step toward future changes.⁴³

Some individuals who seek to influence the administration of justice band together in *interest groups* composed of people who have common social or political goals that they try to achieve by influencing government decision making. These individuals focus either on the overall administration of justice or on one particular aspect of the system or law to [page 23](#) forward their interests. A particularly effective victim interest group is Mothers Against Drunk Driving (MADD), which was instrumental in passing the National Minimum Drinking Age Act. Other organizations focus on broader issues such as reducing sentences for offenders. The Sentencing Project, Families Against Mandatory Minimums, and the Drug Policy Alliance argue that the tough-on-crime approach is not effective in reducing criminal behavior but does increase racial disparity (see the “Race, Class, Gender” box). Crime Victims United, on the other hand, advocates more punitive sentences for offenders.

Race, Class, Gender

Muslim Travel Ban

At the end of January 2017, President Donald Trump signed an executive order entitled Protecting the Nation from Foreign Terrorist Entry into the United States. It is largely referred to as the Muslim travel ban given Trump proposed such a ban during his campaign for president. Given challenges to the initial ban, the President issued another to replace it in March 2017. That version also had legal trouble. The final version was issued as a proclamation on September 24, 2017 and was entitled Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats. The main provisions of the executive orders and then proclamation denied travel from seven countries without an approved waiver. Those countries include Iran, Libya, Somalia, Syria, Yemen, North Korea, and Venezuela. As a result, 700 travelers were detained by Homeland Security and 60,000 visas were revoked. Further, the Refugee Processing Center estimates that Muslim refugees have been reduced by 91 percent in the last two years.

The travel ban was met with a variety of legal challenges focusing on the claim that the policy discriminated against Muslims. Ultimately, the U.S. Supreme Court upheld the proclamation in June 2018. Critics of the executive order argue that the executive order is a result of discrimination against Muslims and an assumption that Muslims traveling to the U.S. are doing so to commit crimes or terrorist acts. The Supreme Court ruled that because waivers

could be granted, the executive order was not unconstitutional. They emphasized the President's broad authority over national security and immigration.



Jeff Chiu/AP Images

One family's experience with the travel ban resulted in widespread national outcry. Parents Ali Hassan, a U.S. citizen and Shaima Swileh, a Yemeni, who lived in Egypt, sought to bring their two-year old son, Abdullah Hassan, with a genetic disorder, to the United States to seek desperately needed medical intervention. Because Hassan's mother, Swileh, is originally from Yemen, she was prevented from receiving a travel visa. As Hassan's condition worsened, the family decided his father would bring him to the United States. Swileh continued to try to gain access to the United States. Ultimately, the family realized that Hassan was going to die and were trying to allow Swileh to say goodbye to her son. There was no change on her visa application until the story received national media attention. She was finally granted the visa and was able to say goodbye to her son.

Critics of the travel ban argue that discrimination is behind the policy. Regardless of the motives of the order, the fear that individuals from these countries will commit crimes, especially terrorist acts, has resulted in a total of 35 million people being unable to travel to or seek refugee status in the United States (without the very rare exception of being able to obtain a waiver).

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- President Trump campaigned saying many disparaging things about Muslims. Should what people say about groups be used to understand their actions? How do we know if something is discriminatory?
- How does our fear of crime from certain groups affect our policy actions?

- How can we balance concerns for security with those for human rights without being discriminatory?

SOURCES: Adam Liptak and Michael D. Shear. “Trump’s Travel Ban Is Upheld by the Supreme Court,” *New York Times*. June 26, 2018; Christina Caron. “Son of Yemeni Mother Dies Soon After She Won Visa Battle with U.S. to See Him,” *New York Times*. December 29, 2019.



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Many interest groups are intent on shifting the criminal justice system away from its sole focus on punishment and back to its emphasis on rehabilitation. The critique of the criminal justice system’s almost sole focus on punishment includes concerns about racial disparities in criminal law and punishment, which we review next.

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Discrimination

Individuals in jail or prison or on probation are disproportionately people of color.⁴⁴ This fact has raised a variety of questions regarding fairness in the administration of justice. The serious disparity can be seen in the imprisonment rates; per 100,000 U.S. residents, 281 White adults, 1609 Black adults, and 857 Latinos are imprisoned.⁴⁵ In fact, nearly one-third of Black males aged 20–29 are under some form of criminal justice supervision on any given day.⁴⁶

The conflict perspective would explain racial disparities in the criminal justice system as an extension of social divisions in U.S. society.⁴⁷ Historically, some definitions of what is criminal were clearly discriminatory. For example, in early America when slavery was legal, it was a crime for antislavery activists to harbor African Americans seeking

freedom. A patchwork of discriminatory laws against African Americans—generally called *Jim Crow laws*—was enforced from the years following the Civil War until the late 1960s. In the late nineteenth century, at a time when the White population considered Chinese immigrants a threat to their jobs, opium smoking, a fairly common habit in China, was criminalized in the United States.⁴⁸

Today some observers argue that drug laws are discriminatory in their impact. Young Blacks report less alcohol and drug use than White youth,⁴⁹ yet Blacks are much more likely to be arrested for the possession of illicit substances. The “war on drugs” has also had a significant disparate impact on women. Women’s incarceration rates have increased steeply in the last few decades, most often for drug possession.⁵⁰

CHALLENGES TO CRIMINAL JUSTICE TODAY

Any discussion about the criminal justice system needs to consider how the system must adapt to the changing needs of the twenty-first century. Challenges confronting criminal justice today and into the future place significant strains on its resources. Adaptability on the part of the system and its practitioners is more crucial than ever before. The scope and pace of challenges show no signs of slowing.

Since this textbook was last published, the scale of incidents of mass violence within the United States has reached unprecedented levels. The Pulse Nightclub shooting claimed 49 lives and the ensuing Mandalay Bay concert shooting surpassed that toll by 9 lives. These incidents are the two deadliest mass shootings in U.S. history.⁵¹ The words “Nobody would’ve thought it would happen here!” have been heard on nightly newscasts so often in recent years that the language has lost its significance. What makes a person walk into a workplace, theater, or classroom and open fire? What combination of circumstances compels a human being to commit the most inhuman of crimes?

While less overtly violent but nonetheless an insidious killer, the opioid epidemic has resulted in an annual death rate exceeding that of traffic

accidents.⁵² In fact, the skyrocketing surge in overdose deaths has actually cut the U.S. life expectancy rate.⁵³

On the surface, the array of challenges confronting the criminal justice system may appear incalculably daunting. However, delving into the underlying realities reveals that for every challenge there can be reasoned, research-based processes brought to bear.

While the frequency and mortality of mass collective violence is indeed chilling, the magnitude of the phenomenon has sparked response from multiple influential parties. The National Institute of Justice in 2018 allocated grant funding specifically to perform research to reduce the incidence of mass shootings.⁵⁴ The American College of Physicians has advocated vigorously for the adoption of policies to reduce the number of deaths and injuries related to firearms, to the extent the National Rifle Association took to Twitter to admonish doctors to “stay in their _____ page 25 lane.”⁵⁵ A Federal Commission on School Safety was established in the wake of the 2018 school shooting in Parkland, Florida, and the “STOP School Violence Act of 2018 authorized grant funding through 2028 to support evidence-based violence prevention in schools.⁵⁶ While there are no “one-size-fits-all” answers, as we have come to better understand the causes of criminal behavior we are better positioned to deal with it more effectively, possibly even preventing it from occurring in some cases.

Illicit drugs and the domestic and transnational organizations that traffic them, as well as the corrupt doctors and pharmacists who take advantage of addicted individuals, continue to pose significant challenges. However, efforts on multiple fronts have made progress in turning the tide. The Department of Justice (DOJ) and Drug Enforcement Administration (DEA) have reduced markedly the supply of deadly synthetic opioids in high-impact areas through interdiction targeting distribution networks and suppliers, both domestic and international.⁵⁷ The DEA has progressively lowered the legal limits on opioid manufacturing, in furtherance of a goal of reducing opioid prescriptions by one-third over a three-year period. Healthcare fraud enforcement has become a top priority of the DEA and DOJ.⁵⁸ For the better part of a decade, Dayton, Ohio, had one of the highest opioid death rates in the country. Between 2017 and 2018, Dayton cut its overdose death rate in half. The key to its success was an approach that rejected outdated strategies that criminalized addiction. The city launched “all-hands-on-deck” harm

reduction initiatives such as syringe exchanges. Dayton was also an early champion of naloxone and worked to ensure every first responder was equipped with the overdose reversal drug.⁵⁹

Today's terrorist landscape is complex, and counterterrorism remains a top priority. Experience has reinforced that preparedness and prevention must be integral parts of a counterterrorism strategy. A comprehensive national strategy emphasizing strengthening security at ports of entry, protecting the infrastructure, and broadening the range of international partners has been operational since being promulgated in late 2018.⁶⁰ A separate strategy specifically addressing weapons of mass destruction (WMD) has complemented the broader national counterterrorism strategy. The risk that terrorists are able to attack the United States and its interests with WMD has been reduced as far as can be practically achieved.⁶¹



In response to the opioid epidemic, law enforcement agencies across the country have equipped officers with naloxone kits to reverse opioid overdoses.

New2me86/Shutterstock

As a nation, the United States has become highly digitally dependent. Our economy, national security, educational systems, critical infrastructure, and social lives have become deeply reliant on cyberspace. However, the richness of cyberspace's content is a treasure trove for malicious actors. The Federal Bureau of Investigation's Internet Crime Complaint Center tallied victim losses as exceeding \$1.4 billion in 2017.⁶² Studies by researchers at St. John's University project that cybercrime is expected to cost \$6 trillion in damages globally by 2021.⁶³ Once a topic seen mostly as a nuisance requiring an occasional reset of a password or a new credit card, cybersecurity has become one of the most complicated, difficult issues

facing society. The urgency for action precipitated by the threat, however, has stimulated a proportionate response. The U.S. House Committee on Energy and Commerce has intensively analyzed root-cause origins of cybersecurity incidents.⁶⁴ There are many exciting partnerships underway to combat cybercrime threats. The U.S. Attorney's Office's Criminal Division in Colorado has created a Cybercrime and National Security Section, which aims to work with private industry toward cybercrime prevention. The U.S. Department of Homeland Security and Department of Defense have established a presence in Silicon Valley to foster collaboration with technology firms.⁶⁵ Colleges and universities are fashioning online cybersecurity curricula to make course work more affordable in hopes of attracting more people to the field. Bridge programs have been page 26 established for college graduates wishing to switch to graduate programs in computer science.⁶⁶ The Federal Bureau of Investigation's "Operation Wellspring Initiative" builds the cyber investigative capability of the state and local law enforcement community.⁶⁷

DNA analysis continues to demonstrate its extraordinary value. This was illuminated in striking fashion in a recent case involving the arrest of a notorious serial murderer-rapist suspect. The suspect in the decades old Golden State Killer case was identified and arrested through a free online database, "GEDmatch," where anyone can share their data from consumer DNA testing companies to search for relatives who have submitted their DNA. In this particular instance, authorities uploaded crime scene DNA into GEDmatch's database containing nearly one million profiles. The database search revealed several relatives who were the equivalent to third cousins to the crime scene data linked to the Golden State Killer. Other information such as genealogical records, approximate age, and crime locations then allowed investigators to hone in on a single key related person (Joseph James DeAngelo).⁶⁸

Of course, DNA has also been instrumental in exonerating persons wrongfully convicted of crimes. "A Case in Point" spotlights a U.S. Supreme Court's decision affecting convicted persons' access to DNA.

Other technologies continue to transform crime control. A free virtual training platform funded by the U.S. Department of Homeland Security provides a setting where school resource officers, teachers, and first responders control avatars and role play to scenarios designed by their own trainers to fit their community, policies, and procedures. Although it is seen

primarily as an active shooter training tool, it is an “open sandbox” and can be used for conflict de-escalation, a hostage situation, a fire, or any other type of emergency a school wants to design.⁶⁹ Modern advances in technology, such as facial recognition, gunshot detection, unmanned aircraft (drones), body-worn cameras, and digital communications platforms, pose many opportunities for practitioners, including increased efficiency, improved analytical capabilities, and enhanced information gathering and sharing. The challenge is how to balance public safety and civil liberties.

The extent and quality of imprisonment within the United States is a lightning rod for divergence of opinion on crime and punishment along philosophical, sociological, psychological, and economic lines. The United States continues to lead industrialized nations in incarcerating its citizens. Criminologists and policy makers increasingly agree that we have reached a tipping point with incarceration. The year 2018 proved to be historic for criminal justice reform legislation. The FIRST STEP Act (Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act) shortened some unnecessarily long federal prison sentences and enforced rules that improve conditions for people currently imprisoned.⁷⁰ While limited to the federal corrections system, the legislation has been a major win for the movement to end mass incarceration. On the same date, the Juvenile Justice and Delinquency Prevention Act was enacted with the overarching purpose of affording core protections for children in states’ youth justice systems.⁷¹

For decades, communities have struggled with the question of how to reduce the number of people with unmet mental health needs entering the criminal justice system. In the United States, jails and prisons are de facto psychiatric hospitals, and correctional officers double as mental health providers.⁷² Thirty-seven percent of state and federal prisoners have been told by a mental health professional in the past they had a mental health disorder; among jail inmates, 44 percent had been told in the past they had a mental health disorder.⁷³ Over 90 percent of police officers on patrol have an average of six encounters with individuals in crisis each month, and 7–10 percent of all police encounters involve people suffering from mental illness.⁷⁴ Methods for diverting mentally ill people from the criminal justice system are evolving. These include law enforcement–mental health liaison programs, increased crisis intervention training of law enforcement personnel, and mental health courts.

a case in **point**

The Right to DNA Testing after Conviction

The due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution protect individuals from unfair treatment by federal, state, or local government. If an individual can prove that he or she was unjustly convicted of a crime, fairness seems to dictate that the individual should be exonerated. The right for a review after a conviction, however, is not automatic everywhere in the United States. In some states the prosecutor must grant permission for this review. If a state does not have a law granting prisoner access to DNA testing, the prosecutor can deny the request without even giving a reason.

Such is the case in Alaska, one of three states that do not have a DNA testing law. Alaska has steadfastly refused to turn over DNA evidence to William G. Osborne, who was convicted in 1994 of kidnapping, sexual assault, and assault. Osborne claims that DNA evidence could prove his innocence, and he has offered to pay the costs of a newer sophisticated test of the DNA, a procedure not available at the time of his original trial.

On June 19, 2009, the U.S. Supreme Court ruled in a 5—4 decision that prisoners do not have a constitutional right to DNA testing to challenge their convictions. The Court ruled that the due process clause of the Constitution does not apply in this situation. While acknowledging that DNA can positively identify the guilty while exonerating the wrongly convicted, the justices held that a defendant found guilty after a fair trial does not have the same rights as a free man. It is important, the Court argued, that the certainty of convictions be final and not undermined. The Court also said that access to DNA evidence for convicted individuals should be left up to the states, most of which have already enacted such laws. As noted, however, Alaska has no such laws, and no prisoner in Alaska has ever been granted permission to obtain DNA evidence after conviction. Until Alaska changes this policy, William Osborne will not be able to introduce DNA evidence in his appeals.



Taylor Jones/The Palm Beach Post/ZUMAPRESS.com/Newscom

In a Texas case, a hair was the only physical evidence placing a would-be murderer at the scene of the crime. Claude Jones was executed in 2000 for a murder he insisted he did not commit. A hair found at the scene was a critical piece of evidence since Texas law required that there be physical evidence to corroborate other testimony in a capital (death penalty) case. State officials refused Jones's request for DNA testing of the hair, but in 2010, 10 years after his execution, DNA tests were conducted showing that the hair did not belong to Jones. The test did not prove that Jones was not guilty, but without the physical evidence, Texas could not have put him to death—and it is even possible that a jury might not have convicted him. Think about it: Had the tests been done when originally requested, Jones might be alive today.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How and why would a defendant's rights be different before trial and after conviction?
- Why would Alaska not want to retest Osborne?
- Do you think the Supreme Court was correct in its 2009 decision? State your reasons.
- Why would Texas not have wanted to DNA-test the hair in the Jones case?

- If a test is not done before a conviction, why might a state consider it too late to test afterward?

SOURCES: *District Attorney's Office for the Third Judicial District v. Osborne*, 129 S. Ct. 2308 (2009); Adam Liptak, "Justices Reject Inmate Right to DNA Tests," *New York Times*, June 19, 2009; Jess Bravin and Jennifer S. Forsyth, "Court Upholds States in DNA Testing of Convicts," *Wall Street Journal*, June 19, 2009; "The Supreme Court's DNA Ruling: Wrong on Rights," *Los Angeles Times*, Editorial, June 19, 2009; "DNA Testing: Supreme Court's Ruling Put Procedure before Justice," *Star-Ledger*, Editorial. http://blog.nj.com/njv_editorial_page/2009/06/dna_testing_supreme_courts_rul.html (retrieved July 3, 2009); Dave Mann, "DNA Tests Undermine Evidence in Texas Execution," *Texas Observer*, November 11, 2010; "The DNA Non-Redemption," *Los Angeles Times*, Editorial, November 27, 2010.

In the chapters that follow, all these challenges, among many others, will be discussed in the context of their evolution. It is an exciting time as criminal justice practitioners, educators, and students attempt to forge new solutions to longstanding problems, while at the same time develop strategies to contend with nascent challenges such as those driven by technological advancements.

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SUMMARY

The criminal justice system is based in law. However, laws only reflect what societies agree should be the norm for behavior. What works or is acceptable or is normal in one society, in one place, or in one time period may be considered deviant in another society, place, or period of time. When a law or formal norm is broken, the criminal justice system is set in motion.

The main parts of the criminal justice system are law enforcement, the courts, corrections, and victim services. The actors in these different sectors interact in various ways with the offender and the victim in the process of protecting society, providing a fair trial, and carrying out punishment and rehabilitation.

The challenge is to administer justice consistently, to balance efficiency with fairness, to keep the system up to date, and to avoid undue influence from outside sources, such as the media and interest groups.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Illustrate how social norms help us define crime.

- A norm is a rule that makes clear what behavior is appropriate and expected in a particular situation. The term *abnormal* connotes deviance, the violation of a norm.
- Whether we consider a behavior deviant always depends on the context in which it occurs.
- Formal social norms, also called legal norms, are formally written, such as laws that result from a legislative process.
- Violation of formal norms, or laws, sets the criminal justice system in motion.

Define crime and explain how it is classified.

- Society defines crime in the same way it defines deviance—by labeling specific behaviors as such. Thus, behaviors considered criminal in one country (or place or time) may not only be legal in another country (or place or time) but the norm.
- One way of classifying crimes is as *mala in se* (an “evil unto itself,” a behavior that is considered morally wrong). But no act or behavior is an inherently criminal act; society only labels it as criminal.
- Crimes can also be classified as *mala prohibita* (acts that are criminal because they are prohibited by law). *Mala prohibita* crimes reflect public opinion at a point in time.
- The consensus perspective of crime views laws defining crime as the product of social agreement or consensus about what criminal behavior is. The conflict perspective of crime views the definition of crime as one outcome of a struggle among different groups competing for resources in their society.

Describe the consequences of crime for the offender and the victim.

- Those who break the law must face sanctions, which are used to reinforce people's conformity to norms. Sanctions can be positive or negative, and they can be formal or informal.
- Victims generally suffer some sort of loss or injury or even death. When victims are neglected or abused by the criminal justice system, their suffering worsens.

Outline the basic structure of the criminal justice system.

- The three major institutions of the criminal justice system are law enforcement, the courts, and corrections, with victim services additionally involved in these major components.
- The police are called upon to do far more than protect and arrest. Law enforcement officers are expected to correct many of society's problems and are entrusted to use force when necessary.
- The U.S. judiciary consists of a dual court system made up of state courts (trial and appellate courts) and federal courts (district courts, appellate courts or circuit courts where appeals are heard, and the U.S. Supreme Court).
- Corrections is the systematic, organized effort by society to punish offenders, protect the public, and change an offender's behavior. Correctional efforts include incarceration, probation, parole, treatment, and community service.
- Victim services offer a broad array of services within and outside government agencies to help the victim, including shelters and transitional housing programs, counseling services, 24-hour hotlines, and the appointment of a victim advocate to assist with legal needs.

Describe key models of the workings of the criminal justice system.

- Criminal justice professionals have discretion, which results in a filtering of cases so that not all of them end up in court.
- The wedding cake model helps explain what cases make it through the criminal justice funnel. The bottom layer (4) represents the vast majority of cases (largely misdemeanor and infraction cases), which are dispatched rather quickly. Each of the three layers on top represent more and more serious cases, with the most celebrated cases in the top layer (1) getting the most attention and resources.
- The crime control model emphasizes the efficient arrest and processing of alleged criminal offenders.

- The due process model values individual rights and procedural protections for the accused at all stages of the justice process.

Describe how criminal justice is influenced by public opinion, the media, politics, and policy.

- Public fears of crime are often inflated and misplaced. The level of fear we experience can be affected by factors such as gender, age, past experiences with crime, ethnicity, income, educational attainment, and the area in which we live.
- Media coverage of crime inflates levels of fear by presenting exaggerated or false perceptions about crime and criminal behavior. Media reports disproportionately focus on violent and sensational crime.

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- Politics influences the administration of justice in many ways. Legislators define crimes, determine what actions are legitimate for agents of criminal justice, and decide how much money to allocate to the criminal justice system. Some individuals who seek to influence the administration of justice band together in interest groups.

Review the challenges to the criminal justice system today.

- Crimes such as cybercrime and international terrorism exemplify the globalization of crime.
- The continually increasing prison population has created problems of overpopulation.
- DNA testing has greatly affected the administration of justice.
- Drugs and the domestic and transnational organizations that traffic them, as well as the corrupt doctors and pharmacists who take advantage of addicted individuals, pose significant challenges.

Key Terms

- alternative sentence 14
- appellate courts 13
- conflict perspective 8
- consensus perspective 8
- corrections 14
- crime control model 18

crime prevention 18
criminal justice system 11
deviance 5
due process model 18
federal courts 13
mala in se 8
mala prohibita 8
moral panic 21
norm 5
parole 14
probation 14
sanctions 10
secondary victims 15
social norm 5
state courts 13
statutory crime 8
victim advocate 15
victim impact statement 15
victim services 14
wedding cake model 17

Study Questions

1. Norms can
 - a. inform us as to what behaviors are acceptable.
 - b. clarify what behaviors are unacceptable.
 - c. vary according to culture.
 - d. all of the above
2. All of the following are formal negative sanctions delivered in response to criminal behavior *except*
 - a. incarceration.
 - b. court requirement of drug treatment.
 - c. dirty looks.

- d. probation.
3. A true statement about victims in the U.S. criminal justice system is that
- most of the time, victims and criminals are of the same race, class, and age.
 - historically, victims were neglected and abused by the criminal justice system.
 - today victims participate more in the criminal justice process and can receive money for their injuries and losses.
 - all of the above
4. The model illustrating that most criminal cases do not go through the trial process is the
- crime control model.
 - due process model.
 - wedding cake model.
 - conflict model.
5. A person who believes that the focus of the criminal justice system should be on protecting individual rights and freedoms is a believer in the
- due process model.
 - crime control model.
 - United Nations model.
 - criminology model.
6. All of the following have given substantial support to the victims' rights movement *except*
- drug and alcohol movements.
 - law-and-order movements.
 - women's movements.
 - victim-oriented coalitions.
7. Laws are examples of
- statistical norms.
 - informal social norms.
 - cultural norms.
 - formal norms.
8. The perspective that sees laws defining crime as the product of social agreement about criminal behavior is the
- conflict perspective.
 - consensus perspective.
 - wedding cake model.
 - crime control model.
9. Based on who in reality is most likely to be victimized, the group that should be most fearful of crime is
- women.
 - older individuals.
 - young men.
 - children.
10. All of the following are true of media coverage of crime *except*
- media reporting is sensational.

- b. media reporting accurately represents criminal behavior.
- c. media reporting affects people's fear of crime.
- d. media reporting focuses on violent crimes.

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Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. What is considered a crime in one place may not be a crime in another place. How, then, is justice possible?
2. Do you believe the basis of most U.S. criminal laws is consensus or conflict? Explain.
3. How do you think media coverage of crime affects decisions about policies and the workings of the criminal justice system?

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2 Types of Crime



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OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Understand how crime rates are measured.

- Differentiate the types of crimes against persons.
- Describe the different types of property crimes.
- Identify types of public order crimes.
- Describe some of the political crimes that have occurred in recent years.
- Discuss organized crime and who engages in it today.
- Contrast the types of crimes generally perpetrated by males and by females.

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Realities and Challenges

The Changing Definition of Domestic Violence

In April 2018, the U.S. Department of Justice changed the official definition of domestic violence to include only physical violence. Other forms of intimate partner abuse such as emotional, economic, and psychological are no longer considered as part of the official definition. The more narrow definition impacts how this crime is viewed, measured, and even funded with potential repercussions on policies, practices, and service provision. This chapter looks at the how we measure and define crime and why doing both is important to our understanding of crime and victimization.¹

Drawing upon our understanding from Chapter 1 of how society determines what behaviors are crimes, this chapter will begin by determining how crime is measured. As you can see from the opening vignette, data on the same types of

crime, for the same population, and from the same location can be collected from various sources with wide disparities in final count. This chapter discusses how this is possible and outlines the various sources for crime data collection in the United States. Next, we consider how crimes are categorized in the United States today. Finally, we examine the effects of various kinds of offenses on victims and communities.

MEASURING CRIME

Information about crime and criminals is assembled by government agencies, private groups, and scholars. Four of the most frequently used data sources for estimating crime are the Uniform Crime Reports (UCR), the National Incident-Based Reporting System (NIBRS), the National Crime Victimization Survey (NCVS), and self-report studies. Each has advantages and disadvantages, as we will see in this section. Together, however, they yield a comprehensive picture of the extent and nature of crime.

As you read this chapter, note that, as in Figures 2-1, 2-2, and 2-3, the term *rate* is used. *Rate* is a simple term that allows criminologists to compare geographic units (cities, counties, states, and nations) or certain categories of people (for example, males and females) according to a constant number of persons. The three constants most used are 1,000 (usually for cities and counties), 10,000 (usually for states), and 100,000 (usually for nations).

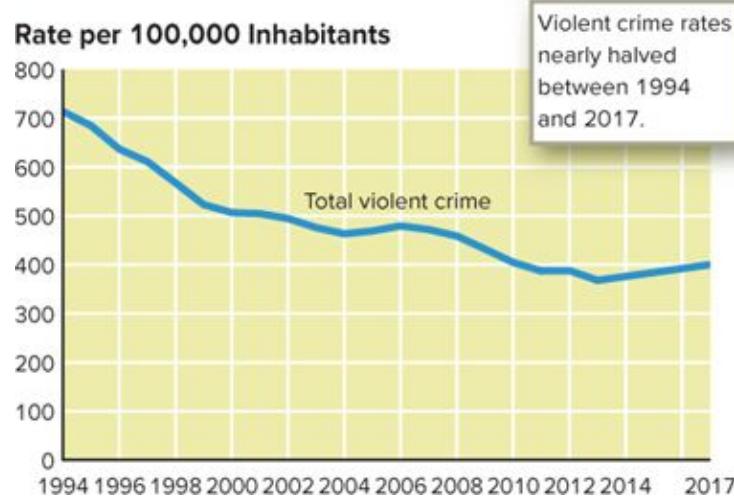


FIGURE 2-1 Violent Crime Rates, 1994–2017

Given the dramatic drop in total violent crime (rape, robbery, aggravated assault, and homicide) rates from 1994 to 2017, consider what conditions might be responsible for that change.

SOURCE: Federal Bureau of Investigation, "2017 Crime in the United States."

<https://ucr.fbi.gov/crime-in-the-u-s/2017/crime-in-the-u-s-2017/home> (retrieved January 16, 2019).



FIGURE 2-2 Violent Crime Rates by Gender of Victims

Current rates for both males and females are well below rates of previous years.

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, "Violent Crime Rates by Gender of Victim." <http://bjs.ojp.usdoj.gov/content/glance/vsx2.cfm> (retrieved July 11, 2011).

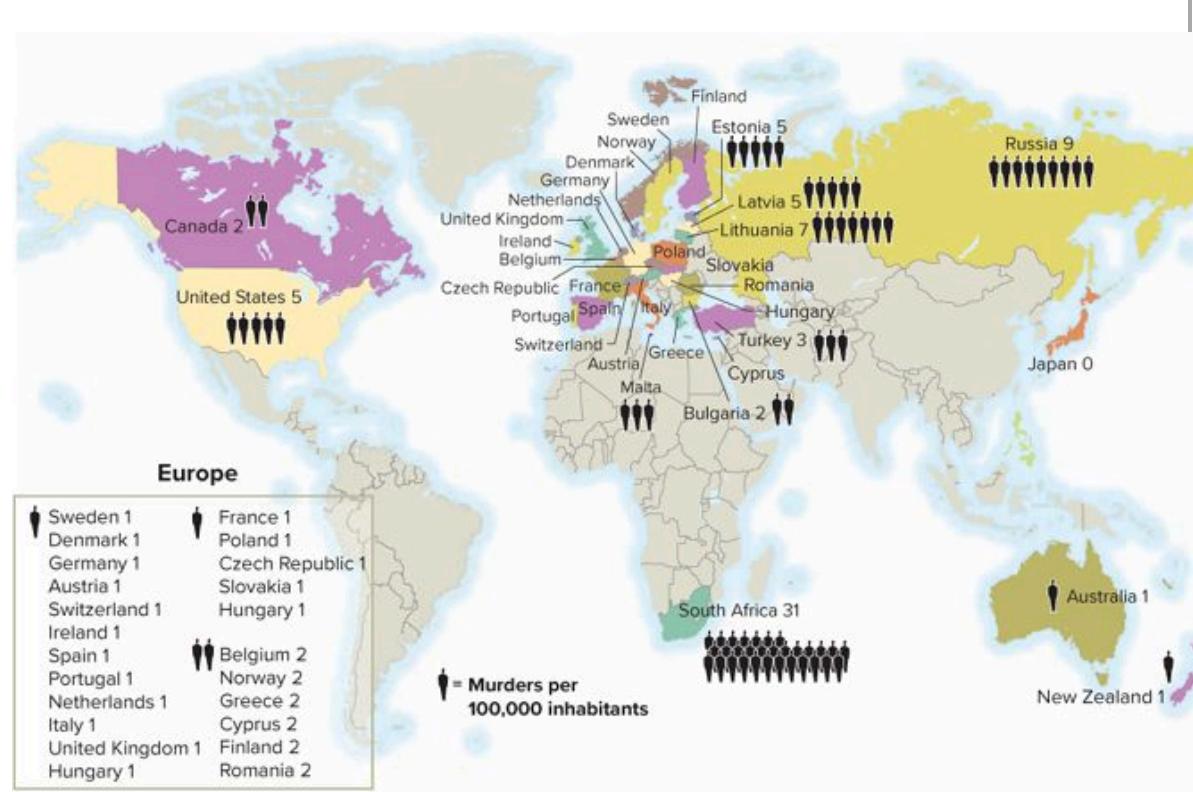


FIGURE 2-3 Homicide Rates around the World

SOURCE: World Bank, “Intentional Homicides (per 100,000 People).”
<http://data.worldbank.org/indicator/VC.IHR.PSRC.P5> (retrieved November 6, 2015).

Uniform Crime Reports

In the 1920s, the International Association of Chiefs of Police saw the need for national crime statistics. They formed the Committee on Uniform Crime Records to create a system for uniformly measuring crime. The most serious of these crimes, defined as *Part I offenses*, constituted the **Crime Index**. This index served as a gauge of the state of crime in the United States. The Part I offenses comprised seven felonies: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.² Congress later mandated the addition of arson to the Part I offenses.³

Crime Index

An officially compiled statistical measure of the incidence of crime in the United States.

Uniform definitions of crimes were created to provide standardization across jurisdictions. As an example, for reporting purposes, the crime of “rape” required that the act be forcible (rather than *statutory*, which described sexual activities in which one participant was below the age required to legally consent to the behavior). Similarly, the crime of “aggravated assault” required that an attack be for the purpose of inflicting severe bodily harm, usually accompanied by use of a weapon—not, for example, a hand slap.

In 1930, the Federal Bureau of Investigation (FBI) was given the task of annually collecting, publishing, and archiving crime statistics from all the states’ law enforcement agencies in the form of the **Uniform Crime Reports (UCR)**. Since 1996, the UCR requires authorities to provide additional information when a crime appears to have been motivated by hate. Under a 1990 federal law, other felonies can be designated as hate crimes if they are motivated by the perpetrator’s hatred of the victim’s “race, color, religion, national origin, ethnicity, gender, or sexual orientation.”⁴ Race/ethnicity/ancestry motivate more than half of all hate crime convictions; most of the rest involve bias against the victim’s religion and sexual orientation.⁵ A notorious example of a hate crime is the 2015 brazen, murderous rampage by Dylann Roof. Roof killed nine African-American churchgoers in Charleston, South Carolina in an outburst of extremist violence that shocked the nation. In 2017, in federal court the jury of nine whites and

three blacks rendered a verdict that ultimately led to imposition of the death penalty.⁶

Uniform Crime Reports (UCR)

An annual series of U.S. statistical measures of the incidence of selected crimes reported by police departments and compiled by the FBI.

Preview

MEASURING CRIME

CRIMES AGAINST PERSONS

PROPERTY CRIMES

PUBLIC ORDER CRIMES

POLITICAL CRIMES

ORGANIZED CRIME

CRIMES BY GENDER

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

MYTH/REALITY

MYTH: The UCR (the FBI's annual tally of serious crimes) accurately reflects the nature and level of crime in the United States.

REALITY: The UCR contains only crimes reported by police and thus does not cover all crimes committed. As a result, the greater volume of property crimes overshadows the occurrence of more serious but less frequently committed crimes.

Use of the Crime Index as an indicator of criminality was discontinued in 2004 because it was skewed toward property crimes. The Crime Index had been calculated by adding the total of Part I offenses. Offenses such as larceny, which accounts for a majority of reported crimes, distorted the crime total by overshadowing the incidence of more serious but less frequently committed offenses. Crime statistics are now categorized and published as “violent crimes” and “property crimes.”⁷

Effective January 2013, the definition of rape was revised to eliminate the requirement that the crime be perpetrated through the use of force. “Without consent” is the new language.⁸ The UCR data can be confusing. For example, UCR definitions of crimes may differ from a state’s definitions. In California, breaking into a locked car constitutes a “burglary” (entering with the objective of stealing), but the UCR classifies it as “theft” (defined simply as stealing). Another problem with the UCR system of data collection is that it undercounts offenses. Police have to report only the most serious offense when multiple offenses are committed in one incident. For example, a home invasion robbery that includes a rape and an auto theft would yield only one offense for UCR reporting purposes. Most likely the rape would be the offense counted because rape is considered the most serious offense of these three.

The UCR also includes a schematic presentation of offenses—a “crime clock” designed to convey the relative frequency of crimes, such as one burglary every 22.6 seconds. However, by omitting variables such as time of day, day of week, location, and any relationship between offender and victim, it shows crimes occurring with a regularity (and implied randomness) that is not realistic.

In recent years, the traditional UCR program, that is, raw counts of specific types of crime, has evolved to become the Summary Reporting System (SRS). The SRS now includes counts of human trafficking-commercial sex acts and human trafficking-involuntary servitude. Too, the SRS does in some instances include some basic characteristics relative to a crime (e.g., whether a burglary involved forcible entry or whether a robbery involved a weapon). page 36 However, the lack of additional detail for all SRS crimes limits understanding of a particular criminal event and restricts efforts toward crime reduction. Largely for this reason, agencies are being transitioned to a reporting process, the National Incident-Based Reporting System (NIBRS), to improve the overall usefulness of collected crime data.⁹ UCR data are not the final word when it comes to assessing the level of crime in a given jurisdiction. Many other variables should be considered. Accurate assessments are possible only

with careful study and analysis of the various unique conditions affecting each jurisdiction, such as the strength of law enforcement agencies, stability of the population, family cohesiveness, local highway system, percentage of youth, and economic conditions.¹⁰

National Incident-Based Reporting System

For more than five decades, the UCR program remained unchanged. Then, in response to the need for more informative data, the Department of Justice's Bureau of Crime Statistics collaborated with the FBI to formulate the **National Incident-Based Reporting System (NIBRS)**. This enhancement to the UCR program collects detailed information for 52 offenses, plus 10 additional offenses for which only arrests are reported. NIBRS can provide information on nearly every major criminal justice issue confronting society today, including human trafficking, computer crime, drug/narcotics offenses, elder abuse, white-collar crime, organized crime, intimate partner violence, and driving under the influence.¹¹ Too, NIBRS can provide information about type of premises involved, method of entry, type of property loss, weapon/force used, relationship of victim to offender, alcohol/drug use by offender, and many other details.¹² Data on when and where crime takes place and the characteristics of victims and perpetrators provide leads for follow-up investigations and strategies to prevent crime.

National Incident-Based Reporting System (NIBRS)

A U.S. crime index (not yet fully national in scope) compiled by the FBI and the Department of Justice that tracks detailed information for more than 50 offenses.

Because NIBRS provides more useful statistics for informing policing, the FBI has made nationwide implementation of NIBRS a high priority. Forty-three percent of U.S. law enforcement agencies currently participate in NIBRS. To increase participation, a partnership with the Bureau of Justice Statistics has been formed to emphasize to law enforcement agencies the importance of NIBRS data and to facilitate a transition to NIBRS-only data collection by 2021. In addition, federal funds have been made available to help agencies address the cost of transitioning. The vision for NIBRS is for it to become the standard for quantifying crime, which, in turn, will help law enforcement and communities to use resources more strategically and effectively.¹³

National Crime Victimization Survey

Some criminologists and, more recently, *victimologists*—those who study victims and victimization—criticize the UCR as an inaccurate barometer of society’s well-being. Many victims do not report crime for a variety of reasons: different police agencies have different thresholds for reporting; most sheriffs are elected so politics can also influence the number of crimes reported; many victims (and often their families) are fearful of their offender’s retaliation if they report; and, some victims become convinced the police will not believe them so they choose to avoid what they believe is futile. Consequently, a large number of crimes remain unknown to police and never get into a database.

Criminal justice professionals ultimately realized that the only way to measure the true extent of crime accurately was to go directly to citizens and avoid the “filter” of the criminal justice system. The method that emerged was **victim surveys**, a term not entirely accurate because those interviewed are not always victims. However, the idea was well conceived, and in 1966 a presidential commission prompted the carrying out of the first national crime survey, based on a random sample of 10,000 households. The ^{page 37} results confirmed that significant numbers of people did not report their victimization to the police.¹⁴

victim surveys

Interviews with individuals (including but not limited to actual victims) who have been personally affected by specific crimes.

From 1972 to 1977, the Department of Justice (DOJ) undertook an annual victimization survey of residences and businesses in 26 large cities and published its reports annually. In 1973, the DOJ’s Bureau of Crime Statistics and the Bureau of the Census launched the National Crime Surveys (NCS), and these have continued to the present. In 1992, the name was changed to **National Crime Victimization Survey (NCVS)** to reflect more accurately the central focus of this research: the extent of victimization among the general population.

National Crime Victimization Survey (NCVS)

A statistical sampling of households and individuals who have been personally victimized by specific crimes.

The survey questionnaire for the NCVS has three sections: Personal Characteristics, Household Screen, and Individual Screen. If someone has been victimized, the survey asks a series of further questions about the victimization(s). The current sample size is about 76,000 households and

encompasses 135,300 people over the age of 12. These households remain in the sample for 3 years and are interviewed every 6 months.¹⁵

The NCVS differs substantially from the UCR. It *does not* include homicide, kidnapping, so-called victimless crimes, commercial crimes, or victimizations of children under the age of 12. It *does* include both reported and nonreported crimes, and it counts each crime separately, whereas the UCR counts only the most serious crime in an incident. (The NIBRS remedies that flaw.) The NCVS includes details about the victims as well as about the crime and its consequences. Perhaps most important for victimologists, the NCVS focuses mainly on victims and their victimizations, whereas the UCR is primarily oriented toward criminals and their crimes.

A comparison of data from both the NCVS and the UCR revealed that most crimes in the categories of rape/sexual assault, simple assault, and theft were not recorded by law enforcement. The actual number of people victimized by violent crimes is almost double the reported figure. The actual number of victims of property crimes is almost two-thirds more than reported to the police. In the 2004–2005 time period, only 48.7 percent of all violent victimizations and 39.3 percent of all property crimes were reported. Since 1992 the trend for reporting crimes has been increasing steadily.¹⁶ Unreported and unrecorded crimes together are called the **dark figure of crime**.

dark figure of crime

The group of unreported and unrecorded crimes as revealed by crime victim surveys.

The NCVS has made a major contribution to how we understand the crime problem and how we respond to victims, especially those who choose not to report their victimizations. We now have a much better understanding of victims of crime and the differences between those who report and those who do not. For example, the NCVS results suggest that some victims do not report victimization if the perpetrator is known to them. This finding has major implications for prosecuting sexual crimes and crimes within the family.

The NCVS has also helped to clarify how the criminal justice system, especially the police, influences victim reporting and cooperation with law enforcement. Victimologists are particularly concerned about **secondary victimization**, when the victim who reports the crime is victimized again—this time, by the police, by medical personnel, by the courts, or even by friends who respond inappropriately or judge his or her actions at the time of the offense. NCVS data show that victims take into consideration the way they think police will react to their report of victimization. Today, police know that treating

victims with greater respect and taking victims seriously greatly improves individuals' willingness to report and encourages victims to be more cooperative witnesses. Consequently, the efficiency of the criminal justice system significantly improves, and the victims take a more meaningful role in that process. "A Global View" discusses victim surveys on an international scale.

secondary victimization

The suffering of crime victims caused by their subsequent treatment by the police, the courts, or personal acquaintances.

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Self-Report Data

In 1946, criminologist Austin Porterfield experimented with a method called *self-disclosure* in a survey-based research project comparing college students to juvenile delinquents.¹⁷ Porterfield's method was simple: He asked respondents to anonymously disclose the crimes they had committed. He found that the actual numbers of crimes reported were far greater than expected. This surprising result challenged the view, commonly held by criminologists and laypersons alike, that people are either criminal or not. Porterfield's findings suggest a very different and much more likely scenario: that criminality exists on a continuum in which some people commit few crimes, most people commit some crimes, and a very few people commit many crimes.

Self-report studies are an important source of information about offenders and their offenses. Academic and clinical researchers can choose from a wide range of methods to collect and analyze the information they get from offenders through the self-report method. They may engage a sample of burglars in personal interviews and learn that they have a human face and do not spend all their time plotting or engaging in crime. Or researchers can give a written questionnaire to a class of college students and learn, as Porterfield did, that more than 90 percent of us commit a crime during our adolescence for which we could have been incarcerated had we been caught and prosecuted. Telephone and mail surveys allow researchers to pose a series of prepared questions to a sample of people representative of a larger population. If we wish to learn more about serial rapists, for example, we could conduct a survey of incarcerated serial rapists and compare their results with responses from a control group of men of the same age and socioeconomic background who lack a criminal background. *Case studies*, a self-report approach in which the

experiences of an individual offender are examined at length and in detail, can suggest useful hypotheses to test later with a larger sample of the same kind of offender.

self-report

Surveys in which individuals (who are guaranteed confidentiality) reveal offenses that they have committed but for which they may or may not have been arrested and held accountable. These surveys uncover another part of the dark figure of crime.

Self-reports tell us about crimes committed by people who were never caught—and even about crimes unknown to the police (because the victims did not report them) but about which the offenders are willing to talk. To maximize their confidence in information from self-reports, researchers can use various methods to ensure valid and reliable results. Since the 1950s when self-report research in criminology began, the quality of the methodology has increased. Although there is room for improvement, the self-report method of data collection has acceptable validity and reliability.¹⁸ Thus we can learn much from the offenders themselves—even when they choose to lie.

The various sources of information from police, victims, and offenders complement one another by offering overlapping data and filling in missing information. When we consider the information as a whole, it paints a more comprehensive picture of crime than any one approach can provide on its own.

CRIMES AGAINST PERSONS

Attacks or threats of an attack on a person's body constitute **crimes against persons**. The most serious of these offenses are murder and manslaughter (both mean wrongfully taking a life), sexual assault, kidnapping, robbery (theft with force or the threat of force), and battery (the intentional unwanted touching of one person by another with intent to injure). Laws defining crimes against persons are probably the oldest rules in human societies. This continuity demonstrates both the enduring nature of human violence and the heavy toll violent acts take on individuals and communities.

crimes against persons

Attacks or threats of an attack to a person's body, including murder and manslaughter (taking a life), sexual assault, kidnapping, robbery (theft with force or the threat of force), and battery (the intentional unwanted touching of one person by another).

A Global View

Measuring Crime around the World

United Nations Office on Drugs and Crime (UNODC) is responsible for compiling and comparing international crime data around the world. Crime statistics are reported to this source through victim-reported crimes as well as crimes reported to the police. UNODC experiences the same challenges with data collection that we have in the United States, as disparities persist between crimes reported by victims and crimes reported to the police. UNODC website (www.unodc.org) has a searchable database that allows anyone to look at crime statistics for assault, kidnapping, robbery, burglary, motor vehicle theft, sexual violence, and homicide, as well as for the criminal justice system. By searching the database, one can compare all regions or select a particular region (for example, Africa, the Americas, Asia, Europe, and Oceania, as well as subregions and specific countries). Data are available on varying topics from 1970 to the present. UNODC also sponsors the Commission on Narcotic Drugs (CND) and the Commission on Crime Prevention and Criminal Justice (CCPCJ), which are responsible for creating resolutions and decisions that provide guidance to member states. In addition to collecting data, UNODC hosts the UN Crime Congress each year, whereby academics and practitioners meet in a different part of the world to discuss crime issues including the administration of justice, prevention, laws, and interventions in a global context. UNODC also marks June 26 as the International Day against Drug Abuse and Illicit Trafficking and December 9 as International Anti-Corruption Day. A wealth of information about their programs, activities, and publications can be found on the organization's website.



Stan Honda/AFP/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What role can UNODC play in improving data collection about crime and victimization throughout the world?
- How reliable a picture of crime do you think UNODC data provide?
- How likely is it that persons contacted by UNODC researchers will give honest answers? Explain.

SOURCE: United Nations Office on Drugs and Crime. www.unodc.org (retrieved May 18, 2015).

Data on Crimes against Persons

In 1973, the UCR cited 715,900 police reports for these violent offenses, but during the same period more than 1.8 million cases of violent crimes were reported in the NCVS about individuals' experiences with crime. This is *more than double* the number of victimizations reported to the police. The UCR and NCVS numbers then rose steadily each year, fluctuating during the 1970s and 1980s. As you can see from Figure 2-1, UCR data peaked in 1992 at just more than 1.6 million cases reported by the police, and the next year, 1993, the NCVS survey of victimizations reported to the police peaked above 2.2 million cases. Both measures began a steady decline after these peaks, continuing their downward trend through the last year for which data are available, 2017, when the UCR reported more than 1.2 million serious violent crimes. Given the dramatic drop in total violent crime from 1993 to 2017, consider what conditions might be responsible for that change.

Fortunately, crimes against persons constitute a relatively small proportion of all crime. For example, in 2017, FBI data show that about 1.2 million violent crimes were reported to the police in the United States compared to 7.7 million property crimes.¹⁹ If we consider that many more property crimes than violent crimes probably go unreported, the disparity becomes even greater. Furthermore, contrary to popular belief, the rate of violent crimes committed in the United States has declined considerably since 1993.²⁰

The Victims: The Influence of Gender, Age, and Other Factors

More than any other act, crimes against persons have the potential for causing greater damage to individuals, including economic losses, psychological and emotional trauma, physical pain and injury, disability, and death. These crimes generally rank as highest priorities among law enforcement agencies. Increasingly, multijurisdictional law enforcement and prosecutorial entities are combining resources to investigate, apprehend, and prosecute perpetrators of violent crimes. The pooling of resources not only can help to offset the resource losses sustained by any one agency in the wake of budgetary reductions, but also can provide investigative expertise that may be missing within the jurisdiction where a crime has occurred. “A Case in Point” shows how local, state, and federal agencies in Michigan have joined forces to impact the incidence of violent crime statewide.

Who are the “persons” against whom crimes against persons are committed? Anyone, of course, can be a victim. However, gender, health, intelligence, social associations, location, mental state, and age often determine an individual’s likelihood of becoming a victim of particular types of crimes. In general, men are more likely than women to become victims of reported violent crimes. For example, the FBI reported that 77 percent of murder victims in 2009 were male.²¹

An earlier study concluded that 60 percent of violent crime victims were male.²² From 1973 until 2005, the NCVS provided data about violent crime rates by gender for individuals 12 years of age and older. As you can see from 35 years of collected data in Figure 2-2, males are consistently victimized at a higher rate than females. It is also apparent, however, that the overall violent crime rate has been decreasing since 1994, and the rates for male victims have fallen more than rates for females. Thus, the disparity of victimization rates between males and females has narrowed considerably.

Men and women have different patterns of violent crime victimization. Most women are attacked by someone they know, whereas about half of the attacks on men are perpetrated by strangers.²³ Women are more likely to be attacked in the home; men, in public places. Most intimate partner violence and sexual assault victims are female. In fact, 85 percent of violent crimes committed by intimates (people in a romantic relationship) have female victims.²⁴ The number one cause of assault and murder of women in the United States is intimate partner violence.²⁵

Age is also an important factor in victimization. In general, younger people are more likely than older people to be victims of violent crime. Children are vulnerable to abuse by parents and other caregivers. In 2008, there

were 3.3 million reports of child abuse and neglect in the United States, 20.9 percent of which were later substantiated.²⁶ Very young children are at particular risk of being abused and are especially likely to suffer severe injuries or death as a consequence. Of course, much child abuse goes unreported.

a case in point

Atlanta's Program to Interrupt Violence through Outreach and Treatment

Law enforcement agencies rely on law enforcement partnerships routinely on a daily basis. Intelligence centers, joint agency task forces, and mutual aid pacts typify such partnering. Law enforcement should not be the sole component in any effective violent crime strategy. Relying on nongovernmental entities as allies expands markedly an agency's ability to fulfill its mission and provide the community with a more comprehensive response.^a

In 2018, under the sponsorship of the Bureau of Justice Assistance, the Atlanta Police Department joined with Grady Memorial Hospital in creating a hospital-based violence intervention called Program to Interrupt Violence through Outreach and Treatment (PIVOT).

Applied Research Services served as an embedded research partner and evaluator.^b

Dr. Diane Payne was instrumental in the development of PIVOT. She had been a surgeon in Hawaii and while there over a three-year period she had treated one person with a gunshot wound. Upon moving to Atlanta she was shocked by the hundreds of gunshot victims being treated annually at Grady Hospital. She performed research and learned of success that had been achieved in other states through a model known as hospital-based violence intervention. She successfully applied for a grant through the Bureau of Justice Assistance, and PIVOT was launched.^c

In its operation, PIVOT employs a public health model that acknowledges that gun violence can spread like an epidemic through social interactions and personal networks. The project focuses on preventing repeat gunshot victimization and retaliatory violence through the combination of three main components: wraparound social services with intensive follow-up, community policing, and data sharing.



Ann Hermes/The Christian Science Monitor/Getty Images

Grady Hospital's emergency department social worker staff facilitate follow-up services for clients, that is, victims of violence who are between the ages of 18 and 35 and reside in Atlanta. A community resource coordinator follows up with PIVOT clients in the community and connects the clients to services.

Two Atlanta Police Department community policing officers are assigned to follow up with clients in the community to investigate the nature of their conflicts and help ease tensions in the neighborhood. The officers also work to build community trust in high violence neighborhoods and improve citizen participation in solving gun crimes.

Grady Hospital has implemented a data collection method that supplements police data on gun crimes by collecting anonymous data from patients (including whether a patient was intentionally injured, whether and what weapons were used, location, cross streets, and time of day), and sharing the data with the police department. The merged data will produce hotspot maps that will inform interventions to further reduce violent injury and death.^d

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What are the advantages of the partnership approach?
- What problems might arise with respect to the split of responsibilities among entities?
- Might there be reluctance on the part of “clients” to speak freely to social workers in light of the media’s publicizing of PIVOT?

SOURCES: ^aMajor Cities Chiefs Association and the Bureau of Justice Assistance, *Violent Crime Reduction Operations Guide* (Washington, DC: U.S. Department of Justice, 2018).

^bAtlanta Police Department, Grady Memorial Hospital, and Applied Research Services, PIVOT (Washington, DC: Bureau of Justice Assistance and U.S. Department of Justice, 2017).

^cLisa Hagen, “A Decades-Old Approach to Prevent Gunshot Wounds Is Catching on in Hospitals Around the U.S.” *American University Radio*, January 14, 2019. <https://wamu.org/story/19/01/23/a-decades-old-approach-to-prevent-gunshot-wounds-is-catching-on-in-hospitals-around-the-u-s/> (retrieved January 15, 2019).

^dHildy Saizow, “Atlanta PIVOT: Reducing the High Cost of Gun Violence,” *Strategies for Policing Innovation Newsletter*, no. XXIV—Winter 2018.

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MYTH/REALITY

MYTH: Older adults are more likely to be victimized than people in any other age group.

REALITY: In 2013, individuals aged 12–17 had the highest prevalence of being victims of violent crime at 2.2 percent of all persons of that age, or 52.1 per 1,000 persons in that age group. By comparison, elders had the lowest prevalence of violent crime at 0.3 percent of all persons of that age, or only 5.4 per 1,000 persons in that age group.²⁷



▲ Sex Differences in Reporting Violent Crimes

Women may be less likely than men to report a violent crime.

Aaron Roeth Photography

Elder people are significantly less likely than young people to be victims of violent crime, though like children, some older persons may have a heightened

potential for being abused, physically and emotionally. Research on elder abuse is relatively new. The vulnerability of older people is unique, and law enforcement personnel must understand it as a separate phenomenon, whether they are dealing with crime prevention or victim assistance. Elder abuse is likely to increase significantly as the population shifts with the entry of baby boomers into their senior years. It is estimated that half a million elder people in the United States are abused each year.²⁸ This troubling statistic notwithstanding, of all age groups, it is teenagers who are most likely to be victims of violent crime.²⁹

Homicide

Homicide occurs when someone causes the death of another human being. The different types of homicide are distinguished primarily by the culpability of the offender. With justifiable homicide, there are circumstances that allow the act to be regarded as within the law and the person committing the act not deserving of blame. Killing in self defense would be one example.

homicide

The act of unjustifiably causing the death of another human being.

Most intentional homicides are classified as murders. Different jurisdictions classify murders in different ways, but usually the most serious kind is first-degree murder. To be convicted of **first-degree murder**, an offender must have purposely killed his or her victim and must have planned to do so at least a short time in advance. In some states, people may receive the death penalty for first-degree murder. In most states, **second-degree murder** is an intentional killing not planned ahead of time.

first-degree murder

The most serious kind of murder. To be convicted of first-degree murder, an offender must have purposely killed the victim and must have planned the killing at least a short time in advance.

second-degree murder

In most states, an intentional killing that is not planned ahead of time.

Manslaughter is a killing in which the offender is less blameworthy, and it usually carries a less severe penalty than murder. There is more than one type of manslaughter. **Voluntary manslaughter** occurs when an offender is provoked and loses control, killing his or her victim in the heat of passion;

involuntary manslaughter refers to a killing that results from an offender's careless actions. For example, 20-year-old Collin Viens was playing with his hunting rifle and shot at a tractor he believed was empty. In fact, Rejean Lussier was sitting in the tractor and was killed. Viens was convicted of involuntary manslaughter and given a sentence of 1–5 years.³⁰ In some states, deaths resulting from careless driving are classified as involuntary manslaughter. Careless driving might include excessive speed or the failure to stop for pedestrians at a crosswalk. Other states, such as California, classify such deaths as **vehicular manslaughter**.

manslaughter

A killing in which the offender is less blameworthy than for murder; it usually carries a less severe penalty than murder.

voluntary manslaughter

Killing in the heat of passion.

involuntary manslaughter

A killing that results from an offender's careless actions.

vehicular manslaughter

In some states, a classification for a death that results from careless driving.

According to the UCR, the U.S. murder and voluntary manslaughter rate is approximately 5.4 per 100,000 inhabitants, but it varies by geographic areas.³¹ Homicide rates are highest in the South and lowest in New England and the Rocky Mountain West.³² Internationally, the United States has some of the world's highest homicide rates (Figure 2-3). Some nations with higher murder rates than the United States are Estonia, Lithuania, Russia, and page 43 South Africa; among the lowest are Japan, Spain, Greece, and Switzerland.³³

The most grievous of crimes, homicide takes away a person's most prized possession—life. As the only form of victimization from which the victim cannot recover, it therefore incurs the severest penalties. Depending on the kind of homicide committed, an offender might receive anything from probation or a short time in prison to, in many states, a death sentence. The survivor victims (the deceased person's loved ones) are asked to cooperate with a system that they often perceive as being demanding, at times uncaring, and sometimes even abusive. The impact of the crime and criminal justice proceedings on grieving

survivor victims is usually traumatic and long lasting. For victim service providers, this is the most challenging form of victimization.³⁴

One of the most intriguing areas in the study of crime is *multiple murder*, in which perpetrators kill many victims. Serial murder, mass murder, and spree murder are each a type of multiple murder, differentiated by time. **Serial murder** is the killing of three or more people over an extended period. **Mass murders** are multiple murders that occur at one place and time. In a **spree murder**, victims are killed within a fairly narrow time span, from several hours to a few days.³⁵

serial murder

The killing of three or more people over an extended period of time for personal gratification.

mass murder

Multiple murders that occur at one place and at one time.

spree murder

The killing of several people within a fairly narrow period, such as several hours or days.

People in mainstream society, and certainly students of criminology, are fascinated with serial killers—their lives, motivations, methods or *modus operandi* (MO), and selection of victims. The media fuel this interest through sensational movies, television shows, and stories that are filled with gory details but short on facts. The stereotype of a serial killer is a “ruthless, blood-thirsty sex monster who lives a Jekyll-and-Hyde existence—probably next door to you.”³⁶ In fact, not all serial murders are motivated by sex, and not all serial killers sexually violate their victims. That they live a Jekyll-and- page 44 Hyde existence is true to the extent that they present themselves in society as at least minimally acceptable individuals, hiding their darker nature. They are not so much “taken over by strange forces” that change their fundamental identity; rather, they succeed in hiding their criminality from others. Some do this with more success than others.



Bettmann/Getty Images



Steve Eicher/WireImage/Getty Images

▲ **John Wayne Gacy: The Jekyll-and-Hyde Serial Killer**

Gacy was a known and trusted member of his community. He sometimes entertained neighborhood children in full costume as “Pogo the Clown.” (The photo below is Gacy’s self-portrait as Pogo.) But Gacy also raped and murdered 33 boys and young men between 1972 and 1978, burying most of their corpses in a crawl space under his house.

Stereotypes often have some validity, but serial murderers are not homogeneous. Most exhibit particular patterns or have a specific modus operandi, but some are less consistent in the commission of their crimes, using, for example, a variety of weapons. Some seek a specific type of victim, and others are more opportunistic and kill because a victim is an easy target. Most known serial killers are male and use weapons or other means of physical violence to kill. Other serial killers, usually female, kill by relatively passive methods such as poison or suffocation. For many male serial murderers, motivation includes sexual gratification; for many female offenders, the killings bring them attention or money from victims’ insurance policies. Serial killers can murder within a specific location such as a home or known neighborhood, or they can be mobile, murdering across a city, state, or even the country. Some victims know their assailant, perhaps through an intimate or familial relationship, or as a passing acquaintance; others are total strangers.³⁷



▲**Survivor of Connecticut Mass Murder**

Although Dr. William Petit (speaking here at a press conference after the conviction of Hayes) escaped his captors, his wife Jennifer and the couple’s daughters, Hayley and Michaela, did not survive their brutal attacks. This 2007 home invasion involved crimes of robbery, rape, arson, attempted murder, and murder.

Cloe Poisson/Hartford Courant/MCT/Getty Images

Mass murders, those that occur when several individuals are killed within minutes in the same location or after being held hostage together, have been committed in workplaces and other public locales, such as post offices and schools. However, in some intimate partner violence or family abuse cases, one person will take an entire family hostage within the home, kill each person, and then commit suicide.³⁸ In the deadliest mass shooting in American history, 58 outdoor concert goers were killed and more than 400 others shot during an 11-minute barrage of gunfire from the thirty-second floor of a Las Vegas casino hotel room. Stephen Paddock then turned one of the 23 firearms in the room, on himself. The crime had been meticulously planned over many months by the retired civil servant turned high-stakes gambler. Yet, after studying the case for over a year following the massacre, the FBI was unable to determine Paddock's motivation.³⁹

In the third category of multiple murder, spree killing, the offender is usually mobile and often acts erratically and boldly; these crimes frequently involve the use of drugs and alcohol. The spree murderer may kill several victims in a single location before moving on.⁴⁰ Andrew Cunanan killed five men over an 80-day period in 1997. Some classify him as a spree killer because his killings began when he left California in April and continued as he traveled across the country until he committed suicide in July—as if he left home to go on an apparently continuous killing campaign. Others see Cunanan as a serial murderer because his murders took place over an extended time period. Such cases illustrate how even professionals may classify the same multiple murderer differently.

KEY CONCEPTS Types of Homicide

Type	Definition
First-degree murder	A murder in which the offender must have purposely killed his or her victim and must have planned to do so at least a short time in advance.
Second-degree murder	An intentional killing not planned ahead of time.
Manslaughter	A killing in which the offender is less blameworthy, usually carrying a less severe penalty.
Voluntary manslaughter	A killing in which an offender is provoked and loses control, slaying his or her victim in the heat of passion.

Type	Definition
Involuntary manslaughter	A killing resulting from an offender's careless actions.
Vehicular manslaughter	Death resulting from careless driving.
Serial murder	The killing of three or more people over an extended period for personal gratification.
Mass murder	Multiple murders that occur at one place and time.
Spree murder	Killing of several victims within a fairly narrow time span, generally from several hours to a few days.

Assault and Battery

Another type of crime against persons is **assault and battery**, a harmful or offensive physical attack by one person upon another. The UCR reported that in 2017 there were approximately 252 aggravated assaults in the United States per 100,000 population.⁴¹ (The crime of *aggravated assault* means attacking another person with the intent to commit another felony, or using a deadly weapon.)

assault and battery

A harmful or offensive physical attack by one person upon another.

Like homicide, assault usually starts with interpersonal conflict and escalates to violence. When a victim and an assaulter are married or partnered and charges are filed, the victim must come to terms with the prosecution of the offender. The criminal justice system offers both parties input in deciding whether to stay in or leave the relationship. Many relationships that include assault victimizations are not easy to leave, and those that include children, intrafamilial relationships, and employment may be complicated, even binding. If the relationship continues and the interpersonal problem cannot be resolved, the same conflict or similar ones are highly likely to erupt again and, over time, to escalate into serious violence. Victims who cooperate with the criminal justice system thus may require special protections.

Sexual Assault

Sexual assault is one of the most sensationalized of all victimizations and has characteristics of both physical and sexual violence. **Sexual violence** encompasses a range of crimes, including sexual intercourse by force with vaginal, anal, digital, and/or oral penetration and the use of weapons and foreign objects as sexual devices to torture and terrorize the victim. **Sexual victimization** means “forced or coerced sexual intimacy.”⁴² Sexual assault is a devastating experience for victims, depriving them of their dignity and traumatizing them for a significant time. Anyone, regardless of age, sex, race, or other characteristics, may be sexually victimized.

sexual violence

A range of crimes including vaginal, anal, digital, and/or oral penetration that can include the use of weapons and foreign objects to torture and terrorize the victim.

sexual victimization

Forced or coerced sexual intimacy.

The Victims of Sexual Violence Victims are likely to know their assailant; three-fourths of reported rape victims 18 and older named as the rapist their current or former husband or unmarried partner, or someone they had been dating.⁴³ The most common types of sexual assault perpetrated by a known assailant are *marital rape* and *date rape*. Another example is *acquaintance rape*, in which the victim knows—or has at least seen—the perpetrator prior to the assault, but the two are not dating or in an intimate relationship. In all these cases, the perpetrator can be of the opposite or the same sex as the victim.

The most recent data from the National Crime Victimization Survey (NCVS) show that in 2016 approximately 298,000 people were sexually assaulted.⁴⁴ In a five-year period from 2005 to 2010, females who were under 34 years old and who also identified as lower income and living in rural areas had some of the highest rates of sexual violence. During the same five-year period, almost 80 percent of sexual violence was perpetrated by a family member, intimate partner, or acquaintance; 11 percent of rapes involved a gun, knife, or other weapon; and 35 percent of women were treated for their injuries. Of those treated for their injuries, 80 percent went to a hospital, emergency room, or doctor’s office, and almost one-quarter of victims contacted a victim services agency.⁴⁵ In 2016, only 23 percent reported the crime to the police, a decrease from 32.5 percent the previous year and an even larger decrease from the all-time high of 56 percent that were reported in 2003.⁴⁶

Victimization research based on individuals and their experiences of crime, however, suggests that only one in four sexual assaults is reported to the police.⁴⁷ The remaining victims do not report assaults, for a number of reasons. They may view it as a personal matter (25 percent) or fear retaliation (17 percent). Sometimes the crime was reported to a different official (13 percent), the victim wished to protect the offender (10 percent), or the victim believed the criminal justice system would be biased against her (6 percent).⁴⁸ Victimization survey data also show that victims do not report for various reasons, among them: self-blame (especially if the victim was under the influence of alcohol), an expectation of being judged negatively, a fear of retaliation (especially when the victim and offender know each other), a preference for dealing with the assault privately, a desire to avoid shame, and a wish to protect family from embarrassment.⁴⁹ Ethnic and cultural background seems to play a role in determining the willingness of women to report sexual attacks.



▲ People Participating in “Take Back the Night”

“Take Back the Night” demonstrations increase people’s awareness of rape and sexual assault.

Gurinder Osan/Hindustan Times/Getty Images

The closer the relationship between offender and victim, the less likely it is that the victim will contact police. Some reasons are: fear of retaliation, fear that family or friends will side with the perpetrator, and fear that the crime will

be perceived as “no big deal.” One-fourth of victims reported the sexual assault when the offender was a current or former intimate partner, compared to 18 percent when it was an acquaintance or a friend. In contrast, 66 percent of victims reported the crime to the police when the assailant was a stranger.⁵⁰

Ultimately, the nonreporting of sexual assault ensures that the offender goes unpunished and keeps the crime a secret. Some observers denounce this situation as a conspiracy of silence that encourages victims (and witnesses) to accept victimization as not serious enough to report. Some victims develop a sense of helplessness that lasts long after the initial victimization.⁵¹

The Role of Alcohol and Date Rape Drugs Many rapes occur when the perpetrator and/or the victim use alcohol or other substances. In recent years, any substance used to facilitate a rape has been referred to as a *date rape drug*. Among the most common of these odorless and tasteless drugs are Rohypnol (also known as ruffies), gamma hydroxybutyrate (GHB), ketamine (also known as K or Special K), and ecstasy (or E). The would-be rapist slips the drug into a beverage that a potential victim consumes. Within minutes of drinking it, the victim is likely to feel dizzy and nauseated and very soon will lose consciousness. Depending on the drug or combination of drugs used, the victim may not regain consciousness for several hours, sometimes even for days.

Date rape drugs are also called *mind erasers* because once the victim awakens, she typically has no memory of the preceding 24–48 hours. She may not remember being unconscious, what she drank, or even whom she was with. These memory gaps make the prosecution of these cases especially difficult.⁵² Despite the availability of date rape drugs, the most commonly used substance in committing a sexual assault is still alcohol, the age-old means of lowering perpetrators’ inhibitions and intoxicating or otherwise incapacitating victims.⁵³

The Urgency of Medical Attention Once a rape has been committed, it is very important for the victim to receive medical attention, specifically, a sexual assault forensic exam. This exam allows for the collection of DNA evidence, which is vital when there is an unknown assailant.

Although each victim responds differently to sexual victimization, many experience a number of symptoms collectively known as **rape trauma syndrome**, which has three phases. The *acute phase* occurs immediately after the crisis, and the symptoms usually linger for several weeks. During this phase, some victims’ reactions may include fear, anxiety, agitation, and crying. However, other victims may appear in control, calm, and emotionless in the

acute phase, sometimes leading service providers to conclude inaccurately that the sexual assault was not serious or did not actually happen. The reality is that some individuals respond in a controlled manner initially, only to experience an emotional breakdown several days or even months after the attack. Some victims first express shock, disbelief, and disorientation. They may have difficulty concentrating, making decisions, or answering questions. Service providers may misinterpret these normal reactions as uncooperativeness.⁵⁴

rape trauma syndrome

The three phases (acute, outward adjustment, and resolution) of symptoms that many victims experience after a sexual assault.

The second, or *outward adjustment phase*, features a seeming return to normal life but an inward struggle to cope with the assault. Some victims suppress the event and refuse to talk about what happened or what they are currently feeling. They try to live as if the rape never occurred. Others completely alter their lives to begin anew, moving to a new city or home, switching jobs, breaking off relationships, or changing their appearance. Some victims minimize the situation, saying that things could have been worse or that everything is fine. Others in this phase cannot stop talking about the crime; it becomes the focal point of their life. Regardless of the coping technique used, behaviors associated with this phase include fear, helplessness, anxiety, flashbacks, difficulty concentrating, depression, severe mood swings, rage, eating and sleeping difficulties, sexual and relationship problems, and isolation from loved ones and familiar activities. The presence, intensity, and duration of these symptoms differ for each victim and can last from a few months to years.

Finally comes the *resolution phase*, marked by the victim's shifting focus from the crisis and the intensity of the attack to coping or resolution and moving on with life. This shift does not mean the victim has forgotten about the sexual assault; rather, she or he has placed the rape in perspective as a part, but not the totality, of her or his life. The victim does not feel the intensity and range of emotions that followed the assault or were the hallmarks of the outward adjustment phase. Instead, she or he may briefly experience a range of emotions, but the feelings subside and the pain lessens with time. Resolution occurs through a strong support system, counseling, and sometimes the ending of her or his involvement with the criminal justice system.⁵⁵

Robbery

In 1999, the FBI reported that on average, one robbery occurred every minute.⁵⁶ According to the UCR, in 2017 approximately 101 robberies were committed in the United States per 100,000 population.⁵⁷

A **robbery** is always a crime against a person because, while taking personal property from the victim, the robber either uses or threatens to use force. In 41 percent of all robberies, the perpetrator instills fear with a handgun. Some victims were robbed of their cars while stopped at a traffic light; some, while walking the streets; some while at work. Many believe robbery is the victimization most people fear, thinking that they could be killed in a robbery attempt. Despite this fear, the likelihood of murder during a robbery is low; since 1980, 99.8 percent of all robbery victims have survived their victimizations.⁵⁸ Primarily because of the intense fear and sense of helplessness it causes, some robbery victims suffer severe and lasting psychological trauma.

robbery

A crime against a person in which the offender takes personal property from the victim by either using or threatening force.

Matters of Ethics

Ethical Issues When Dealing with Treatment of Offenders or Victims

Many professional organizations that deal with trauma have formal ethical standards for issues concerning treatment. For example, the American Psychological Association has *The Ethical Principles for Psychologists*. These principles are applicable for clinicians and their relationships with all types of patients. It might be surprising that the available case histories about psychologists who fall into these ethical dilemmas more frequently have to do with trauma than one would think. Having to cope with clinical, legal, and moral issues simultaneously significantly exacerbates the challenges of competent therapy, often resulting in maltreatment. Having offenders and victims as trauma clients can increase the likelihood of ethical transgressions. Three essential requirements for those treating offenders and victims are: (1) to be properly credentialed with offenders and/or victims; (2) to maintain current awareness of innovations and findings in the research literature; and (3) to understand the unique standards that apply to these types of clients. Additionally, one of the common recommendations is to obtain the assistance of a consultant, especially for complicated cases. Getting a second opinion

from a trusted, competent, and respected colleague not only can reduce the risks of ethical violations but also can confirm the use of treatment techniques that serve the needs of both clients. It is also relevant to add two other groups of persons who can be traumatized by a crime: witnesses, whose trauma can be as severe as the direct victim's, and care providers, who can fall prey to compassion fatigue or vicarious trauma (see Chapter 14).



Lewis J. Merrim/Science Source



OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What are the differences between clinical, legal, and moral treatment decisions? Explain.
- When dealing with offenders or victims, can you imagine what types of severe outcomes could result when ethical transgressions occur?

- What might be some of the barriers to exercising good ethical judgment in providing therapy with such cases as child abuse, sexual assault, or incest? Discuss the possible complexities.

SOURCE: Constance J. Dalenberg and Lina Brown, "Ethical Issues," in Michele Winterstein and Scott R. Scribner (Eds.), *Mental Health Care for Child Crime Victims: Standards of Care Task Force Guidelines* (California Victim Compensation and Government Claims Board, 2001).

Crimes against Children

A crime against persons that is particularly difficult for most people to understand occurs when children are the targets of violence. Children are the most vulnerable of all groups, a fact accounting for why child abuse victims are of great concern to society.

Forms of Child Abuse **Child abuse** refers, for the most part, to neglect of or violence against children. Although child abuse has been a major social concern only since the 1950s, adults have victimized children throughout history. From 1998 to 2002, among the 3.5 million victims of family violence, 10.5 percent of them, or 367,600, were children harmed by their parents.⁵⁹ The major forms of child abuse are physical abuse, sexual abuse, drug endangerment, emotional maltreatment, and neglect. Each is unique and requires different responses by society and victim services providers.

child abuse

Neglect of and/or violence against children.

Physical abuse, which includes corporal punishment (such as spanking), has been in the forefront of child abuse literature and research since the 1960s when the term *battered child syndrome* was coined. This phrase describes the condition whereby a child suffers serious physical injury, usually inflicted by parents.⁶⁰ **Physical abuse** includes intentionally beating, biting, burning, strangling, hitting, kicking, shaking, or pushing a child. Indeed, many argue there is a very fine line—if there is one at all—between spanking and abuse. One of the foremost opponents of corporal punishment has page 50 researched this topic for more than 30 years and concludes that children who are physically hurt by their parents may suffer significant long-term psychological harm.⁶¹

physical abuse

The condition whereby an individual suffers serious physical injury from the intentional aggressive acts of others, such as slapping, spanking, beating, biting, burning, strangling, hitting, kicking, shaking, or pushing.

With respect to the sexual abuse of children, most people find this offense particularly disturbing, as it serves primarily not to control or correct a child's behavior but to gratify the perpetrator. With the exception of murder, sexual assault is the least commonly reported form of family violence (it constitutes just 0.9 percent of all such cases).⁶² For the most part, child sex abusers are family members, friends, and neighbors of the victim. In one large survey, roughly 43 percent of sexual abusers were family members with whom victims had a long-lasting, trusting relationship. The psychological trauma is generally surmountable, although recovery becomes more difficult when the offender used coercive force or the child was older.⁶³

MYTH/REALITY

MYTH: All child sexual abuse victims are girls.

REALITY: Recent large studies in the United States indicate that girls are at least twice—and in some studies four times—as frequently abused sexually as are boys.⁶⁴

Drug-endangered children (DEC) form another category of abused children. The offspring of parents who are selling or manufacturing drugs, these children live in deplorable conditions and are in imminent danger. Often exposed to the drugs themselves, DEC are on occasion left behind since they are sometimes not identified as victims by first responders. DEC agencies in many states have developed programs that link law enforcement with child services and have begun programs and practices to rescue these children and place them in safe environments.⁶⁵

A more subtle type of abuse against children is **emotional abuse**. In this form of victimization, sometimes called *psychological abuse*, power or control is used to harm the victim's sense of self. Emotional abuse often includes such acts as "verbal threats, social isolation, intimidation, exploitation, or routinely making unreasonable demands, terrorizing a child, or exposing [him] to family violence."⁶⁶ Other examples of emotional abuse are shaming and putting down a child.⁶⁷ Such abuse often results in impaired psychological growth, health, and development. Emotional abuse also can occur when a parent does not

notice or seek help for a child's emotional problems. Due to vague and conflicting definitions of emotional abuse, and the difficulties in measuring it, the extent of this crime is unknown.

emotional abuse

A form of victimization by means of power or control that harms the victim's sense of self and is sometimes referred to as psychological abuse, including verbal threats, social isolation, intimidation, exploitation, or routinely making unreasonable demands, terrorizing, shaming, and putting the victim down.

Some forms of child abuse are acts of omission. **Child neglect** is the chronic and repetitive failure to provide children with food, clothing, shelter, cleanliness, medical care, or protection from harm. It constitutes the largest category of child abuse offenses; 52 percent of all child abuse cases in the United States (and roughly 40 percent in Canada) involve neglect.⁶⁸ Researchers once assumed the negative outcomes of neglect were relatively minor. Recent research indicates that child neglect, especially at an early age, causes substantial problems. In fact, some forms of early neglect lead to "severe, chronic, and irreversible damage."⁶⁹

child neglect

Chronic and repetitive failure to provide children with food, clothing, shelter, cleanliness, medical care, or protection from harm.

Most commonly, adults commit child abuse. However, children may sometimes abuse other children. This type of abuse can also be traumatic and leave long-lasting effects.

MYTH/REALITY

MYTH: Bullying at school is a normal process that teaches children about life and helps them to mature.

REALITY: Bullying is not a necessary rite of passage that all children must endure to mature. It is an unnecessary experience that can and often does cause trauma and severe psychological injury if not properly treated, and it can result in lifelong disability to the victims.⁷⁰

Student Bullying: When Children Abuse Children One of the more disconcerting forms of child abuse, and a serious problem in schools

nationwide, is **student bullying**. This form of victimization occurs when, over a span of time, a student repeatedly experiences harmful acts committed by other students.⁷¹

student bullying

A form of victimization in which a student is repeatedly exposed to threats and harmful acts from other students over a period of time.

Examples of student bullying—and its tragic aftermath—are all too common. In April 2009 a woman in Springfield, Massachusetts, found her 11-year-old son Carl Joseph Walker-Hoover hanging by an extension cord at their home after having endured another day of homophobic taunts at his school.⁷² In September 2010 Asher Brown, a 13-year-old boy in Houston, Texas, committed suicide by shooting himself in the head in response to harassment and bullying at school.⁷³ And in November 2010 Brandon Bitner, a 14-year-old boy in Pennsylvania, committed suicide by walking several miles to a highway to step in front of an oncoming tractor-trailer. He had written a suicide note stating that he had endured years of constant bullying at school.⁷⁴



▲ The community rallies against bullying children

Karen Warren/Houston Chronicle/AP Images

It was previously thought that school bullying peaked in middle school and decreased in high school. However, a national survey of 43,000 students, conducted in 2010, reported that half the high school students said they had bullied another person during the past year, and almost half of the students said that they had been the victim of bullying.⁷⁵ Additionally, a study conducted in

England found that those students who are engaged in bullying—whether they are victims, bullies, or bystanders—are significantly more likely to have thoughts about ending their own life.⁷⁶ Other studies indicate that lesbian, gay, and bisexual students have a higher risk of emotional distress—such as depression, self-harm, and suicidal thoughts—and of suicide attempts than their classmates due to homophobic bullying.⁷⁷

Bullying is especially disturbing for school administrators and teachers, because most of it takes place in and around school grounds and often seriously disrupts learning. Ironically, bullying originates within the bully's home. The act of bullying—throughout the bully's life—seems to be highly correlated with the physical abuse the child suffered at the hands of his parents. For some children, being a bully is an early indication of later criminal behavior. For other children, victimization appears to be an early indicator of further, even lifelong victimization. Fortunately, research indicates that child abuse interventions can have beneficial effects in the homes of both offenders and victims.⁷⁸ (For additional information about child abuse, see Chapter 14.)

MYTH/REALITY

MYTH: A child kidnapped by one of the child's own parents does not suffer significantly because the kidnapper is usually known to the child.

REALITY: A child who is taken by a parent suffers more than we generally realize. There can be enormous damage to the child's psyche from being trapped between warring parents, sometimes living on the run, using false names, and missing school and appropriate medical attention.⁷⁹

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KEY CONCEPTS Types of Child Abuse

Type	Definition
Physical abuse	Intentional slapping, spanking, beating, biting, burning, strangling, hitting, kicking, shaking, or pushing of a child.
Sexual abuse	Nonconsensual, forced, or coerced sexual touching of genitalia, anus, mouth, or breasts. Also can include forced masturbation or use of another person for prostitution, pornography, or voyeurism.
Neglect	Chronic and repetitive failure to provide a child with food, clothing, shelter, cleanliness, medical care, or protection from harm.

Type	Definition
Emotional abuse	Subjection of a child to verbal threats, social isolation, intimidation, exploitation, unreasonable demands, terrorizing, or exposure to family violence.
School bullying	A student's repeated experience of harmful acts perpetrated by other schoolchildren.
Missing children	Children not accounted for by their next of kin because they have been kidnapped (and perhaps killed), have wandered away on their own due to a disability, or have intentionally fled from home violence.
Abandonment	The act of intentionally leaving a child in circumstances in which the child might suffer serious harm; or the situation where the parent or guardian's identity or whereabouts are unknown, or the parent or guardian has failed to maintain reasonable contact with the child or to provide reasonable support for a specified period, with the intent of never resuming his or her interest or claim over the child. Sometimes also called <i>foundling</i> or <i>throwaway</i> .
Homicide	The intentional illegal taking of a child's life, in some cases caused by the use of physical abuse that results in the child's death.

Missing Children: An Often Overlooked Problem One of the most ignored child victim types today is **missing children**. This category includes children who are not accounted for by their next of kin because they have been kidnapped (and perhaps killed); those who have wandered away on their own due to a developmental disability or mental illness; and those who have intentionally gone missing to escape violence at home. On December 31, 2006, there were 110,484 active missing person records in the National Crime Information Center's (NCIC) Missing Person File. About half the people in these files were under 18.⁸⁰

missing children

Children not accounted for by their next of kin because they were kidnapped or killed, wandered away due to a developmental disability, or are intentionally missing in order to escape violence at home.

The family and friends of a missing child sometimes offer special monetary rewards to help locate their loved one. The parents of a California kidnapping victim established one of the more elaborate efforts. The reward ultimately led to the location of the remains of their daughter, their granddaughter, and her friend, and it contributed to the successful prosecution of the three victims'

killer. Subsequently these parents established a foundation that today provides these same services—in many cases successfully—across the United States.⁸¹

PROPERTY CRIMES

Although society clearly recognizes the seriousness of violent crimes, property offenses also can have a major impact on victims' lives. **Property crimes** include the taking of money or goods *without the use of force*, as well as the intentional destruction of property. Such crimes include any act of *burglary* (entering another's property with the intent to commit a felony such as theft), *theft* or *larceny* (taking another's property without permission), *motor vehicle theft*, and offenses that involve destruction of property, such as *arson*.

property crimes

The taking of money and/or material goods without the use of force, as well as the intentional destruction of property.

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Rates of Property Crime

About three-quarters of all crimes committed in the United States in any given year are property crimes. According to the UCR, in 2017 approximately 2,379 property crimes were committed in the United States per 100,000 population.⁸² As you can see from Figure 2-4, property crimes peaked in the mid 1990s.

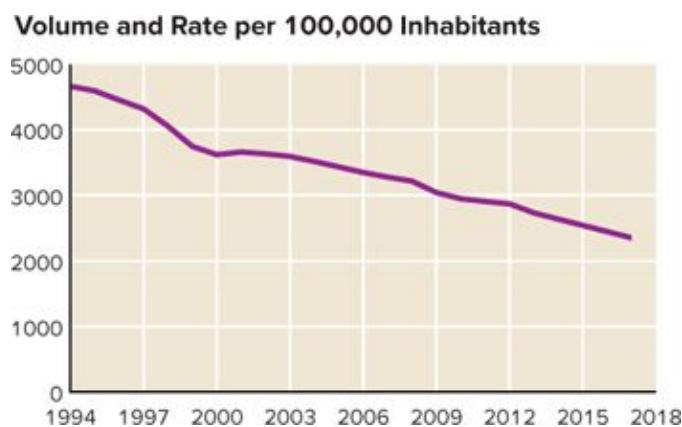


FIGURE 2-4 Property Crime Rates, 1994–2017

SOURCE: Federal Bureau of Investigation, “2017 Crime in the United States.” from <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/home> (retrieved January 16, 2019).

In general, beginning in the mid-1990s, all categories of property crimes have decreased steadily. In 2004, approximately 16 million households, or 12 percent of the U.S. total, experienced one or more property crimes—a 9 percent decrease from a high of 21 percent in 1994.⁸³ It is unclear why this decrease occurred. One possible explanation may be that people have taken more security measures to protect their homes, decreasing their vulnerability to property crimes.

There is mixed evidence on whether difficult economic times result in higher than normal rates of property crimes. It makes sense that crime rates might increase as more people have difficulty finding jobs and as law enforcement budgets are slashed. For example, recent studies in Delaware and Virginia have linked rising property crimes rates with economic recession.⁸⁴ However, despite the struggling economy and high unemployment rates across the United States, the FBI reported that property crime rates continued to fall from 2008 through 2017.⁸⁵

The Victims of Property Crime

People over the age of 65 experience more property crimes than other age groups. Between 1993 and 2002, 9 of 10 crimes reported by the elderly were property crimes, compared to 4 of 10 reported by persons between 12 and 24 years old. Latinos were more likely to be victimized by property crimes (204 per 1,000 households) than African Americans (191 per 1,000) or Caucasians (157 per 1,000 households). The same trend holds true for motor vehicle thefts, with Latinos (19 per 1,000 households) victimized more frequently than African Americans (16 per 1,000 households) or Caucasians (8 per 1,000 households). Finally, people with annual incomes under \$7,500, including teens and unemployed persons, are victimized at a higher rate than those with higher incomes.⁸⁶

Although property crime can happen anywhere, it is more common in urban than in rural areas and in the western region of the United States. Urban population densities and the resulting anonymity do contribute to the ease of stealing, but it is unclear why there are more property crimes in the West.

The pervasiveness of property crime suggests that many people who would never consider physically attacking others as the sole criminal act are willing to

take others' belongings, sometimes even using violence. It may be tempting to let property crime take a distant second to violent crime in our attention, but we should not underrate it. Victims of theft, for example, can be devastated financially and psychologically, and the fear and stress of victimization can contribute to physical ailments.⁸⁷ Corporate crimes of theft in particular take an enormous financial toll on the economy as well as on public trust. Much property crime also occurs in conjunction with violent criminal acts, making it worthy of every effort to understand and control it.

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Burglary

With the exception of larceny, **burglary**—entering another's property with the intent to commit a felony such as larceny—is the most common serious victimization perpetrated on people living in the United States. UCR statistics show that in 2017 approximately 429 burglaries per 100,000 population were committed in the United States.⁸⁸ Household burglary victimization produces a strong emotional reaction because it invades the victim's privacy and security, even though confrontations between burglars and victims are rare. A U.S. study in the early 1970s found that 92 percent of those who reported being burglarized stated there was no confrontation.⁸⁹ However, in a Canadian study, 44 percent of burglary victims reported being at home when the burglary took place.⁹⁰ Regardless of the value of the property that is stolen, and even if the victims are not at home, burglary may have a particularly adverse impact on victims because of the psychological trauma involved in having strangers enter one's home and disturb private belongings.

burglary

Entering another's property with the intent to commit a felony such as larceny.

Larceny

The most common form of victimization in the United States is **larceny**, a type of theft that includes both completed and attempted taking of cash or property from a location without attacking or threatening the victim and without obtaining permission. (If property is taken with force or the threat of force, the crime is considered robbery.) The larceny rate in the United States is close to 1,700 per 100,000 population.⁹¹ In 2017, there were about 5.2 million thefts.⁹²

larceny

A type of theft that includes both completed and attempted taking of cash or property from a location without attacking or threatening the victim and without obtaining permission.

Theft victimization usually has the fewest physical and emotional effects. The most significant loss is the value of the object or cash taken. Victims of larceny are among the least likely victims to seek victim services because the crime normally does not result in significant fear or trauma. When they do request help, it is usually for administrative information to facilitate their cooperation with the criminal justice system's prosecution, to learn about applying for restitution or compensation, and to help prevent future victimization.

Motor Vehicle Theft

Another property crime that usually does not include contact with the offender and accompanying fear or trauma is **motor vehicle theft**, the theft of a motorized road vehicle. Motor vehicle theft is less common than household burglary or larceny. According to the UCR, in 2017 approximately 243 motor vehicle thefts were committed in the United States per 100,000 population.⁹³

motor vehicle theft

A property crime that involves the theft of a motorized road vehicle.

The physical impact of motor vehicle theft is relatively minor. However, because the financial loss is high, victims often experience significant anger and a sense of major loss. Like other kinds of theft victims, they rarely see victim service providers. Their primary needs are for information about their role in the prosecution of the offender. Moreover, they want to find out how to obtain either restitution or compensation and how to avoid becoming a victim of future auto thefts.



▲ Motor Vehicle Theft

Breaking into a car can happen within minutes.

McGraw-Hill Education/Christopher Kerrigan

White-Collar Crime

White-collar crime is an illegal, unethical action by an agent of an organization.⁹⁴ Because it is nonconfrontational, white-collar crime is frequently classified as a property crime. Certainly, pain and suffering result from the victim's realization of loss, but violence has not been threatened or inflicted to accomplish the unlawful taking of money or goods. White-page 55 collar crime can range in scope from a lowly employee's embezzlement of a few thousand dollars from a Main Street business to the gigantic frauds perpetrated by executives of the energy behemoth Enron Corporation or by financier Bernard Madoff. Defining white-collar crime has proved so problematic that some criminologists avoid it, favoring instead the broader concept of "occupational crime." In 1996, the National White-Collar Crime Center held a conference of researchers on the subject from across the United States and defined **white-collar crime** as "illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain."⁹⁵

white-collar crime

Illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain.

MYTH/REALITY

MYTH: More people in the United States are affected by street crime than by white-collar crime.

REALITY: Although it is difficult to measure precisely the financial losses attributable to white-collar crime, criminologists generally agree that white-collar crime dwarfs street-crime losses.⁹⁶

White-collar crimes include such offenses as corporate fraud, health care fraud, environmental crime, and money laundering. The actual extent and costs of white-collar crime are unknown; although, it is estimated by the FBI to cost the United States more than \$400 billion annually.⁹⁷ Some experts put the annual dollar costs of white-collar crime at between 5 and 25 times the cost of conventional crime.⁹⁸ A survey by the National White-Collar Crime Center

revealed that 1 in 4 households surveyed reported experiencing at least one form of white-collar crime victimization within the previous year.⁹⁹

During the 1990s, the exponential growth of the securities and commodities markets, combined with the erosion of government regulations, led to the involvement of great numbers of individuals in intentional corporate fraud. For example, using deceptive accounting practices, officers of Enron misled investors and regulators by falsifying its true financial condition.¹⁰⁰ Enron's collapse cost \$60 billion in market value on Wall Street, almost \$2.1 billion to pension plans, and 5,600 jobs. A number of anecdotal studies have cited the stressors a victim experiences after sustaining a loss from fraud. There is evidence that loss due to fraud is a direct causal factor in many cases of depression and suicide.¹⁰¹

Despite increased public scrutiny, an enormous gap remains between the number of white-collar crimes committed and those actually brought to the attention of law enforcement.¹⁰² Moreover, federal attorneys frequently decline to prosecute cases referred to them by the Securities and Exchange Commission (SEC). Two principal reasons for their reluctance are the difficulty establishing criminal intent and the extent of harm, as well as complexity of the crimes. These offenses and losses (which often involve conspiracies) can be very hard to prove to juries of ordinary citizens, especially when accused white-collar offenders are wealthy business figures who can afford the best defense attorneys.

Many criminologists have long contended that the greatest damage done by white-collar crime lies not in its financial costs but in the corruption of U.S. society by those who occupy key roles in the economic and political systems.¹⁰³ The integrity of the financial markets and the public's resulting willingness to invest in them are crucial components of a capitalist economy. Widespread false reports of a company's robustness or other means of causing its shares to sell at inflated prices could cause people to lose trust in page 56 corporate reports altogether. The fallout to the economy could be devastating in terms of actual losses sustained directly by victims and the reluctance of others to invest in corporations.

PUBLIC ORDER CRIMES

Society considers as criminal a number of acts that, unlike property crimes, seemingly do not directly harm other people. Rather, the public believes public

order crimes are harmful to society in general or to the person who commits the crime.

Public order crimes are identified for UCR statistical purposes as crimes against society and encompass a wide variety of offenses, including disorderly conduct, disturbing the peace, loitering, public intoxication, panhandling, bigamy, drunk driving, weapons violations, prostitution, obscenity, gambling, and possession of controlled substances. In general, these are considered immoral acts or public nuisances. Crimes against public order often are called **victimless crimes** because, unlike property crimes and crimes against persons, they usually have no identifiable victim. However, the expression *victimless crime* may be misleading in that crimes against public order often do indirectly harm others.

public order crimes

A wide variety of offenses considered immoral or public nuisances, including disorderly conduct, disturbing the peace, loitering, public intoxication, panhandling, bigamy, drunk driving, weapons violations, prostitution, obscenity, gambling, and possession of controlled substances.

victimless crimes

Often called crimes against public order and considered victimless because they usually have no identifiable victim.

For example, a store owner may lose sales if panhandlers or prostitutes who loiter outside drive away customers. On a larger scale, some argue that rampant obscenity, gambling, and drug use harm society itself. Arguably the most compelling case against such public order crimes as prostitution, money laundering, weapons offenses, and drug offenses is their link to organized crime and even terrorism. Some proponents of laws against public order crimes argue that such laws serve to protect people from themselves. The idea is that if people face potential criminal sanctions, they may be less tempted to harm themselves through substance abuse or excessive gambling.

Data on public order offenses are not collected by the FBI and are not part of the Uniform Crime Reports. A great many public order laws are local ordinances rather than state statutes, and few of them are regularly or systematically enforced. It is therefore difficult to determine accurately who commits public order crimes and how often.

Crimes against Morality

Loud calls to enact specific laws against particular public order crimes, called *crimes against morality*, frequently dominate legislative agendas. **Crimes against morality** include offenses related to sexuality, prostitution, gambling, and pornography. Some observers see these laws as necessary to a civil and moral society. However, the morals they invoke may be questionable, if not unconstitutional. For example, at one time many states had *antimiscegenation laws*, which made it a crime for people of different races to marry. The Supreme Court declared these laws unconstitutional in 1967 in the case of *Loving v. Virginia*. Likewise, in *Lawrence v. Texas* in 2003, the Court struck down state laws forbidding couples to engage in acts of sodomy (oral or anal sex).¹⁰⁴

crimes against morality

Particular public order crimes, which include offenses related to sexuality, prostitution, gambling, and pornography.

Critics of morality laws have long argued that it is both wrong and impractical for society to legislate morality. What business is it of the state, they ask, to punish acts between consenting adults that harm nobody (except maybe the people willingly engaging in them)? Many public order laws that are still on the books—against gambling, fornication (sex outside marriage), and adultery, for example—are ignored so frequently and universally as to make them virtually meaningless. Proponents of public order laws counter, however, that these acts do harm to others, indirectly if not directly, and that even if the laws are difficult to enforce, they have a symbolic purpose in signifying that certain behaviors are wrong.

Another argument used against public order laws is that they are often vague and broad and can easily lead to abuse of discretion by police and other public officials. Laws against disorderly conduct, for instance, often are [page 57](#) used to arrest peaceful protesters. Public nuisance laws serve as a pretext for raids on gay bars and bathhouses. Riot laws are invoked to quash strikes. Under antilewdness laws, women who acted independently of their fathers' or husbands' control have been imprisoned, and laws against panhandling and sleeping in public are used in attempts to rid cities of homeless people. In fact, critics have noted that those in power use public order laws as a way of keeping relatively powerless people—minorities, women, and the poor—“in their place.”



▲ Celebrating the Legalization of Same-Sex Marriage

Proponents of same-sex marriage celebrate the Supreme Court decision legalizing same-sex marriage in all 50 states.

Rena Schild/Shutterstock

In 2017, almost 50 percent of prostitution arrests were of women and 50 percent of men.¹⁰⁵ Although male and female arrest rates for prostitution are about equal there are gender differences in how prostitution is organized. Female prostitutes are often controlled by a pimp, a male who monitors their work and takes a percentage of their pay. Pimps, too, are arrested, but much less frequently than are prostitutes. The disparity between female and male arrests for the sale of sex has led to cries of “foul” by those who view the criminalization of sexual behaviors of women as a means of controlling women’s sexuality.¹⁰⁶ Female runaways, approximately 73 percent of whom were victims of sexual abuse, often turn to sex work to survive. Drug-addicted women are more likely to use sex to obtain drugs than are male drug users.¹⁰⁷ Other women are forced into prostitution through human trafficking.

Recent examples of problematic public order laws are the antigang laws passed in some locales. These laws allow the police to arrest people for such acts as talking with known gang members, wearing clothing with gang-related colors or symbols, blocking sidewalks, or approaching vehicles. Some argue these laws are an effective way to protect communities from gang-related violence, but opponents contend police use them to harass and intimidate youths, especially young people of color.¹⁰⁸

Drug Offenses

Public order crimes include such **drug offenses** as the unlawful possession, use, manufacturing, selling, growing, making, or distributing of drugs classified as having potential for abuse. Illicit drugs may include (but are not limited to) *stimulants* such as cocaine and amphetamines; *depressants* such as barbiturates, inhalants, and alcohol; *opioids* such as heroin and cocaine; *hallucinogens* such as LSD and ecstasy; *marijuana*; and *performance-enhancing drugs* such as anabolic steroids. As you can see from the table “Common Types of [page 58](#) Abused Drugs,” there are many types of illicit drugs. Societal attempts to regulate drugs stretch back to the United States’ early history, as we consider here.

drug offenses

Public order crimes that include the unlawful possession, use, manufacturing, selling, growing, making, or distributing of drugs classified as having potential for abuse.

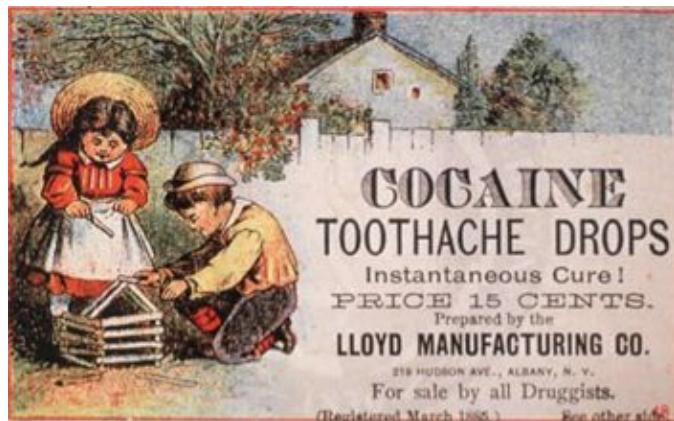
Common Types of Abused Drugs

Drug	Examples
Stimulants	Cocaine, crack, and methamphetamines, including trade-name drugs Benzedrine, Dexedrine, and Methedrine
Depressants	Barbiturates, methaqualone, inhalants, meprobamate, and alcohol; trade-name drugs include Seconal, Nembutal, Amytal, Librium, Valium, and Thorazine
Opioids	Heroin, morphine, codeine, and fentanyl
Hallucinogens	LSD, PCP, mescaline, psilocybin, ecstasy or MDMA, and DPT
Marijuana	Cannabis and hashish
Performance-enhancing drugs (anabolic steroids)	Ethylestrenol, methandriol, methenolone, and methandrostenolone

U.S. Drug Regulation: A Historical View Drug regulation in the United States began in 1791, when Congress passed a tax on whiskey that led to the so-called Whiskey Rebellion. Refusing to pay the tax, Appalachian farmers tarred and feathered the federal revenue agents sent into the region by the government to collect the fees. In the end, the federal government won the confrontation, an outcome that established the U.S. government’s power to

enforce federal laws perceived to be in the national interest. Since then, numerous federal laws have imposed and increased punishments for drug offenses.

During the nineteenth and twentieth centuries, the negative effects of drug abuse by U.S. citizens grew into a major issue. Morphine and cocaine dependency became problems after the hypodermic syringe was invented in 1856. Opium smoking by Chinese immigrants and the widespread use of patent medicines containing opiates escalated during the late nineteenth and early twentieth centuries. Among major twentieth-century federal laws regulating narcotics, dangerous drugs, and controlled substances were the Pure Food and Drug Act (1906), the Harrison Act (1914), the Eighteenth (or Prohibition) Amendment (1919–1933), the Jones-Miller Act (1922), the Drug Abuse and Control Amendments (1965), the Comprehensive Drug Abuse and Prevention and Control Act (1970), and the Omnibus Drug Act (1988), which created a U.S. “drug czar” with responsibility to develop a national drug-control strategy and a budget for federal agencies involved in drug enforcement. Each of these acts signifies increasing federal control and involvement in the “war on drugs.”



▲ Ad for “Cocaine Toothache Drops”

During the late nineteenth and early twentieth centuries, cocaine was a common pain medication.
U.S. National Library of Medicine

The 1906 Pure Food and Drug Act required manufacturers of products containing drugs to clearly label the type of drug and to state how much of it was in the product. At the turn of the twentieth century, problematic drugs included alcohol, opium, morphine, cocaine, and marijuana. However, as long as the product containing the drug was not mislabeled, citizens could buy, sell, and use it freely, without prescriptions. The 1914 Harrison Act required individuals who sold or dispensed opiates and cocaine to register annually, pay

a fee, and file a federal tax form. Users of these drugs could still do so without fear of penalty as long as they received the drugs from a registered physician who prescribed them for medical treatment. The 1922 Jones-Miller Act established the Federal Narcotics Control Board to deal with the illicit drug market. This law imposed a \$5,000 fine and 10 years in prison for those convicted of illegally importing narcotics. The Jones-Miller Act also made addicted persons criminals if they had illegally obtained drugs in their possession. Between 1919 and 1933 the Eighteenth Amendment authorized federal legislation (the Volstead Act) making the manufacture, sale, and use of alcohol illegal.

Responding to an increase in the use of illegal drugs and to a change in the type of drugs used by U.S. citizens during the 1960s, the 1965 Drug Abuse Control Amendment classified hallucinogens, barbiturates, and amphetamines as dangerous drugs and established the Bureau of Narcotics and Dangerous Drugs. In 1970 the Comprehensive Drug Abuse Prevention and Control Act (often called the Controlled Substances Act) replaced or updated earlier laws dealing with narcotics and dangerous drugs. This act created five different schedules of controlled substances (see “Controlled Substances Schedules” table). It also funded drug prevention and treatment, moved drug enforcement from the Treasury Department to the Drug Enforcement Administration (DEA), made the attorney general responsible for drug enforcement laws, and empowered the secretary of Health and Human Services to decide—on the basis of medical research—which substances should be controlled. The act also established penalties for drug possession and sales.

Then, the 1988 Omnibus Drug Act toughened approaches that dealt with drug users. For example, under this law those who use illegal marijuana face a civil fine up to \$10,000; loss of federal benefits, forfeiture of airplanes, cars, and boats used to transport drugs; and a family’s removal from public housing if any member of that family engages in drug-related behavior on or near the housing complex. One part of this act makes it possible for a person who murders someone or orders the killing of someone in conjunction with a drug-related felony to receive the death penalty.¹⁰⁹ In 2018, the White House’s Opioid Bill was signed by President Trump. Legislation is intended to expand recovery centers, curb drug shipments like fentanyl, encourage new painkiller research, lift treatment restrictions allowing doctors to prescribe drugs that help people detoxify from their addiction, and expand Medicare coverage for opioid treatment.¹¹⁰ Despite these efforts, people in the United States continue to use illegal drugs, and enforcement remains a serious, difficult, and costly problem.

An alarming trend in drug abuse today is the use of **designer drugs**, such as ecstasy (a variation of methamphetamine), that mimic the chemical makeup of particular illicit drugs. Designer drugs get their name from the fact that the drug's manufacturer changes the chemical structure to get around existing drug laws.

designer drugs

Drugs that mimic the chemical makeup of particular illicit drugs, named for the fact that drug manufacturers may change the chemical structure to get around existing drug laws.

Another alarming trend is the use of caffeinated alcohol drinks such as Four Loko. Such drinks cause a wide-awake drunken state. The stimulant affect of the caffeine can disguise the sedating effects of alcohol causing users to underestimate how intoxicated they are, to engage in more risky behaviors, and to alter brain neurochemistry particularly in adolescent users. The U.S. Food and Drug Administration is concerned about the danger of these beverages, and so are the states. Michigan's Liquor Control Commission banned alcoholic energy drinks in November 2010, and other states are following suit.¹¹¹ As of January 2013, Massachusetts, New York, Washington, Utah, Michigan, Kansas, and California had banned beer drinks laced with caffeine.¹¹² Additionally, in March 2015, the U.S. Alcohol and Tobacco Tax and Trade Bureau approved Palcohol, powdered alcohol that can be mixed with water to achieve a drink with the same alcohol content as a standard mixed drink. A number of flavors, such as vodka, rum, cosmopolitan, and margarita, are available, with more on the way. Lawmakers are alarmed about the potential for abuse. So far 21 states have banned its use.¹¹³ Juuling or vaping is another trend in the e-cigarette market alarming parents and educators. Although marketed to those page 60 over 18 as an alternative to smoking cigarettes adolescents are increasingly drawn to it. A Juul cartridge looks like a flash drive and can be charged in a laptop's USB port. Each cartridge lasts about 200 puffs and delivers as much nicotine as a package of cigarettes. Furthermore, Juul pods come in enticing flavors such as mango, fruit medley, and creme brûlée. The flavoring and size and shape of the device make them attractive to teens.¹¹⁴



▲ **Juul devices are hard to detect.**

Steve Heap/Shutterstock

Illicit Drugs in Global Perspective Globally, there are cultural differences in attitudes toward drug use, addiction, regulation, and punishment. For example, the Netherlands takes a distinctive approach to regulating the use of certain types of drugs. The Dutch decriminalized marijuana in 1976, for instance, and the drug is now sold, publicly and without penalty, in many of [page 61](#) Amsterdam's licensed coffeehouses. In contrast, in the United States, the dominant approach centers on the idea that strict penalties are the best way to deter use. However, a comprehensive study comparing marijuana use in San Francisco and Amsterdam concluded that there were no differences between the two cities in age at onset of use, age at first regular use, or age at the start of maximum use.¹¹⁵ And although the Dutch are concerned about illicit drugs and enforcement, they embrace the idea that addiction is a disease and are committed to treatment instead of punishment. These views influence Dutch drug policy.

Controlled Substances Schedules

Type	Use	Examples
Schedule I	<p>The drug or other substance has a high potential for abuse.</p> <p>The drug or other substance has no currently accepted medical use in treatment in the United States.</p> <p>There is a lack of accepted safety for use of the drug or other substance under medical</p>	Heroin, LSD, marijuana, and methaqualone

Type	Use	Examples
Schedule II	<p>supervision.</p> <p>The drug or other substance has a high potential for abuse.</p> <p>The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.</p> <p>Abuse of the drug or other substance may lead to severe psychological or physical dependence.</p>	Morphine, PCP, cocaine, methadone, and methamphetamine
Schedule III	<p>The drug or other substance has less potential for abuse than the drugs or other substances in Schedules I and II.</p> <p>The drug or other substance has a currently accepted medical use in treatment in the United States.</p> <p>Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.</p>	Anabolic steroids, codeine and hydrocodone with aspirin or Tylenol, and some barbiturates
Schedule IV	<p>The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.</p> <p>The drug or other substance has a currently accepted medical use in treatment in the United States.</p> <p>Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.</p>	Darvon, Talwin, Equanil, Valium, and Xanax
Schedule V	<p>The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.</p> <p>The drug or other substance has a currently accepted medical use in treatment in the United States.</p> <p>Abuse of the drug or other substances may lead to limited physical dependence or psychological</p>	Cough medicines with codeine

Type	Use	Examples
	dependence relative to the drugs or other substances in Schedule IV.	

Great Britain has taken a different approach to regulating heroin than has the United States. Today in the United States, there are no medical applications, under any circumstances, where heroin is considered legal. In contrast, in the 1960s and 1970s, registered British heroin addicts were given legal prescriptions that allowed them to obtain the drug in medical clinics to prevent withdrawal symptoms and to reduce their heroin habits. Then, in the 1980s, the United Kingdom replaced prescription heroin in these clinics with a narcotic antagonist, methadone—another very highly addictive substance. (An *antagonist* is a drug that counteracts the effect of another drug.) The Swiss in 1994 opened the first injection centers for prescription heroin. Today Switzerland has 22 centers managed by public hospitals and private clinics supported by the state. There is even an injection treatment center in a Swiss prison. Each center has a supervised injection room for addicts. Today the Swiss no longer have open drug scenes on the streets, drug-related crime has been reduced dramatically, and heroin-related crime has almost disappeared primarily because heroin is free to those in treatment. The policy of improving addicts' lives and relieving society of the burden of addiction has been positive in Switzerland. Today several cities in the United States are opening safe heroin injection places in attempt to save lives from opioid overdoses.^{116,117}

MYTH/REALITY

MYTH: If law enforcement would destroy drugs at the source, we could eliminate the drug problem or reduce the supply of drugs entering the United States.

REALITY: Seizing drugs at the source does not solve the drug problem because many drugs are easy to produce, because demand persists, and because profits are high.¹¹⁸

Many illicit drugs are easy to produce. Marijuana, coca (the main ingredient of cocaine), and poppies (the main ingredient of heroin) thrive in many locales and climates. Specialized training is not required to harvest these crops and produce the drugs, and poor people in remote locations make profitable, easily replaced labor forces.¹¹⁹ As a result, and because demand in rich countries

persists and profits are high, the drug trade continues even when major drug busts occur. When production is stopped or interrupted in one place, it continues in another.¹²⁰ Latin American countries such as Colombia and Mexico have replaced Asia as the largest suppliers of heroin to the United States.¹²¹

Addiction and Crime We usually think of drugs as positive when they are used medically, in appropriately prescribed ways. On the other hand, when they are misused and people become addicted to them, we view drugs negatively. Drug addiction is frequently considered a public order offense because the user has lost control over taking drugs and faces harmful physical, personal, social, and legal consequences as a result. Today addiction to heroin use and opioid use in the United States is epidemic. In 2018, the Trump Administration expanded the Obama Administration's Comprehensive Addiction and Recovery Act (CARA) of 2015 by signing the Trump Opioid Bill, which often is mentioned as CARA 2.0.

Many experts today view substance abuse as a progressive disease (not a character defect or the result of willful choice) that changes the user for the worse until treatment occurs. It is a common belief that people will page 62turn to crime as a primary means of supporting their habit once they are addicted. With treatment, however, they can replace drug-using attitudes and behaviors with conventional ones and are often able to resume drug- and crime-free lifestyles. Regular recreational use of drugs, even heroin, does not mean addiction will automatically follow. Many veterans who used heroin during the Vietnam War (when it was pure, cheap, and readily available) stopped using it after returning home.¹²² Studies are limited but have shown that veterans of the Afghanistan and Iraq wars suffer from excessive alcohol and drug use, and more than 11 percent have been diagnosed with a substance abuse disorder.¹²³

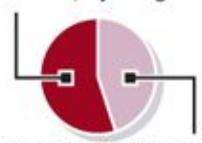
Alcohol powder, yes it exists

Government regulators are studying the safety of the new "powdered alcohol" products, a new use of the starch-like chemicals called **cyclodextrins**. How they work:

How powdered alcohol works

U.S. powdered alcohol product called Palcohol is packaged in a foil envelope about 4 x 6 in. (20 x 30 cm)

55% Grain alcohol (ethanol) by weight



Also contains flavoring, sweetener

1 Envelope contains about 1 oz. (29 g) of powder; about 80 calories

2 Add 6 oz. (180 ml) of water or other liquid

3 Mixture is equivalent to a standard glass of liquor, wine or beer

Source: Lipsmark LLC, AP, LiveScience, TNS Photos

Graphic: Helen Lee McComas, Tribune News Service



▲ Powdered Alcohol

Lawmakers are concerned about the risks that powdered alcohol pose to public health.
McComas/TNS/Newscom

Drug use, however, has several connections to crime. Many criminals are addicted to or abuse alcohol or other drugs and follow a drug-using lifestyle. Although addicted offenders typically have a drug of choice, many will use any available and convenient drug. Criminal and violent behaviors can page 63 result from effects of the ingested drug on the user's central nervous system. Certain drugs lower inhibitions, paving the way for behaviors that an individual would normally avoid, like initiating a fight. Moreover, the addict's need for the drug—to prevent agonizing withdrawal symptoms—motivates such crimes as burglary and robbery to obtain money to buy the drug. On a broader scale, manufacturing and trafficking in drugs can be so profitable that they command the power to corrupt and intimidate entire police agencies and high officials. Science is making advances in the treatment of addiction. For example, the generic drug buprenorphine, which is marketed under the brand names Subutex and Suboxone is an opiate antagonist that shows promise especially when combined with other types of behavior and emotional therapy.



▲ Poppy Farmers

Poppy cultivation is a lucrative business. *Do you think the United States can or should encourage other countries not to grow crops used in making drugs?*

Noor Mohammad/AFP/Getty Images

Race, Gender, Income, and Other Factors in Drug Conviction In 2017, approximately 1,122,000 U.S. persons were arrested for drug/narcotic offenses. Of this number about 71 percent were White, about 24.5 percent were Black or African American, and about 4.8 were of other or unknown races.¹²⁴ The 2017 National Survey on Drug Use and Health reported of those aged 12 or older approximately 55 percent of Whites used illicit drugs during their lifetime. In comparison, approximately 46 percent of those classified as Black or African Americans, 39 percent of those classified as Hispanic or Latino, 63 percent of those classified as American Indian or Alaska Native, and 23 percent of those classified as Asian used illicit drugs during their lifetime.¹²⁵ However, most prison inmates serving time for drug offenses are not White (Figure 2-5).

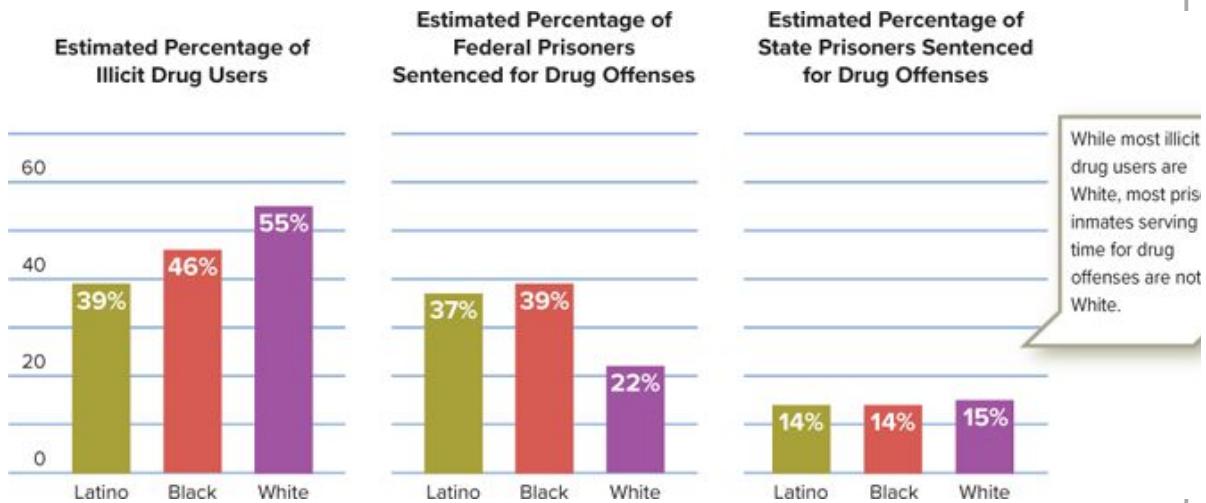


FIGURE 2-5 Racial and Ethnicity Breakdown of Drug Abusers

Social, economic, and cultural factors contribute to the disparity in the ethnicity of illicit drug users and those incarcerated for drug offenses.

SOURCES: Substance Abuse and Mental Health Services Administration, Table 1.29B—Illicit Drug Use in Lifetime among Persons Aged 12 or Older, by Age Group and Demographic Characteristics: Percentages, 2016 and 2017.

<https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2017/NSDUHDetailedTabs2017.htm#tab1-29A> (retrieved January 11, 2019); Sam Taxy, Julie Samuels, and William Adams, “Urban Institute, Drug Offenders in Federal Prison: Estimates of Characteristics Based on Linked Data,” U.S. Department of Justice, Bureau of Justice Statistics, October 2015. <https://www.bjs.gov/content/pub/pdf/dofp12.pdf> (retrieved January 11, 2019); Ashley Nellis, “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” *The Sentencing Project*, June 14, 2016.

<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/> (retrieved January 11, 2019); E. Ann Carson, “Prisoners in 2016,” January 2018. Washington, DC: US Dept of Justice Bureau of Justice Statistics, Table 12, p.18. <https://www.bjs.gov/content/pub/pdf/p16.pdf> (retrieved January 11, 2019).

(Note: No race/ethnicity was reported for 20.2% of inmates serving time in state prison for a drug offense. Also, the Bureau of Justice Statistics annual report on prisoners does not provide separate counts for inmates who identify as two or more races, nor of American Indians, Alaska Natives, Asians, Native Hawaiians, or other Pacific Islanders.)

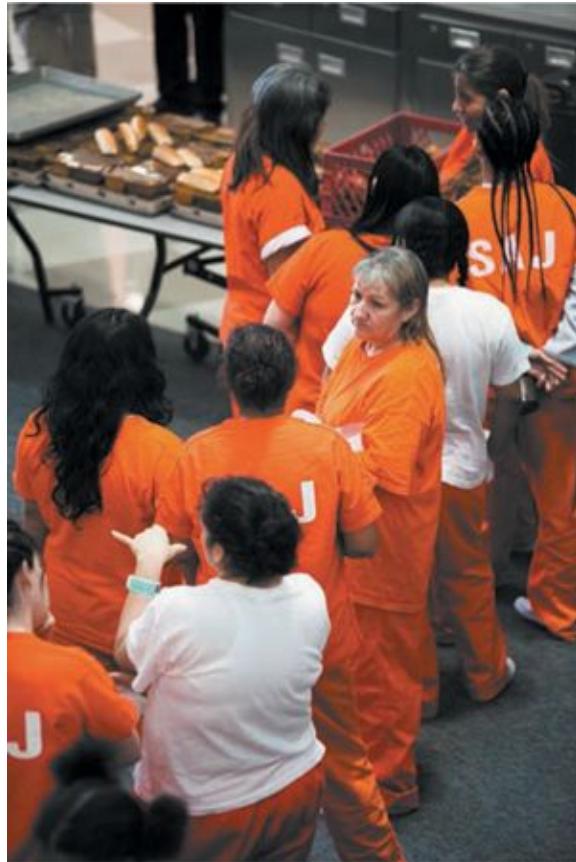
When we look at those convicted of drug felonies in federal courts, Whites are also less likely to be sent to prison. Black men get longer sentences for the same federal crime as White men and Black men’s sentences are 19.1 percent longer than White men’s. In fact, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug violations than are Whites.^{126,127} Critics argue that racial page 64 discrimination exists in the prosecution of African Americans for drug

violations based on the fact that African Americans are imprisoned for drug offenses at rates far exceeding their representation in the general population.

MYTH/REALITY

MYTH: U.S. drug laws are color and gender blind.

REALITY: Of individuals arrested for drug law violations, a disproportionate number belong to racial minorities. Further, the laws prohibiting use of specific drugs have resulted in the disproportionate incarceration of women of color.¹²⁸



▲ Women in Prison

Incarcerated women have a great deal of time to think about their freedom.
Marmaduke St. John/Alamy

Women represent the fastest-growing and least violent segment of U.S. jail and prison populations.¹²⁹ About 28 percent of U.S. female jail inmates, 56 percent of female federal prison inmates, and 25 percent of female state prison inmates are behind bars for nonviolent drug offenses (Figure 2-6).¹³⁰ By 2017,

an estimated 25 percent of women compared to 14 percent of men were sentenced for drug offenses in U.S. state prisons.¹³¹ Drug convictions are primarily responsible for the explosion in the number of women behind bars in the states.¹³² Additionally, African American and Latino women tend to be imprisoned for drug offenses at higher rates than do White women, although their rates of illicit drug use are comparable.¹³³

Female Nonviolent Drug Offenders by Type of Incarceration

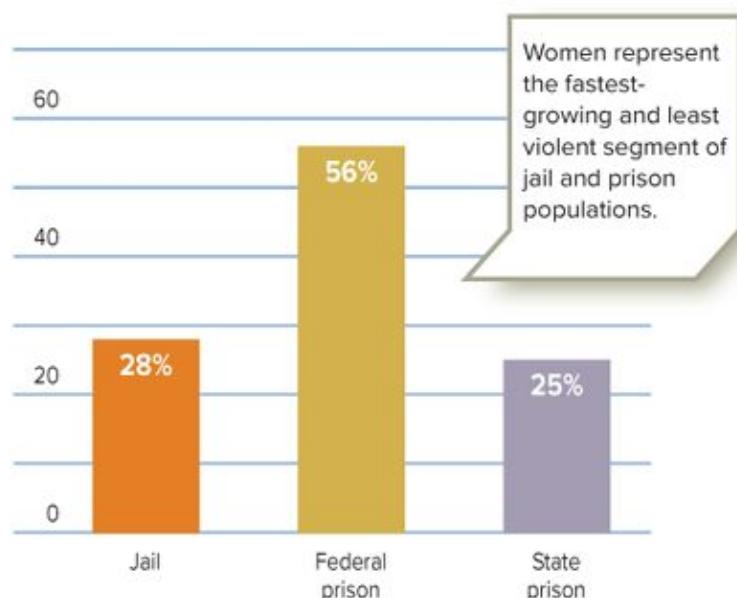


FIGURE 2-6 Incarceration of Women for Nonviolent Drug Offenses

SOURCES: E. Ann Carson, PhD. *Prisoners in 2016*. Washington, DC: US Dept of Justice Bureau of Justice Statistics, January 2018, NCJ251149, p. 13; Peter Wagner and Wendy Sawyer, "Incarceration: The Whole Pie 2018," *Prison Policy Initiative*. March 14, 2018. <https://www.prisonpolicy.org/reports/pie2018.html> (retrieved January 12, 2019); Aleks Kaistura, "Women's Mass Incarceration: The Whole Pie 2017," *The Prison Policy Initiative*. October, 19, 2017. <https://www.prisonpolicy.org/reports/pie2017women.html> (retrieved January 12, 2019).

Critics contend that drug enforcement does disproportionate harm to women—who are generally minor players in the world of illegal drugs. For example, women who are not drug users may become implicated if they fail to notify authorities of a partner’s drug use. They typically have little or no exposure to the criminal justice system and lack knowledge about such strategies as bargaining for reduced sentences. Many female partners of male offenders feel powerless and dependent, do not assume responsibility for their life, and are dominated by their partners. In some cases, nonviolent women with no criminal

history are given sentences on a par with those of drug kingpins when in fact they are minimally involved or are low-level users or dealers. In these instances, the disruption of family and the impact on minor children is devastating; 60–80 percent of incarcerated women are mothers with dependent children.¹³⁴

MYTH/REALITY

MYTH: Intensive law enforcement efforts at the street level will lead to the control of illicit drug use and abuse.

REALITY: Law enforcement efforts at the street level generally do not target those most directly engaged in drug trafficking. The main targets of arrest are low-level dealers and users.¹³⁵

It is easy to get the wrong impression about drugs and their relationship to income level. When statisticians compose reports, they combine drug sales with drug use and assume that poor minority neighborhoods are the center of drug use. In fact, drug use in minority neighborhoods is only slightly [page 65](#) higher than that in more affluent nonminority areas.¹³⁶ Residents of disadvantaged neighborhoods—with high population densities and high concentrations of minorities—have only slightly higher levels of drug use and somewhat higher levels of drug dependency than do residents of more affluent nonminority neighborhoods. On the other hand, residents living in poor minority neighborhoods have much higher levels of visible drug sales. Also in poor minority neighborhoods, a major drug distribution market serves all segments of society (including purchases from those outside the minority community). Drug dealing plays a large role in the economies of poor urban neighborhoods.¹³⁷ Those who deal drugs tend to have little formal education and few job skills, and these obstacles make it difficult for them to find well-paying lawful employment.

An Unsolvable Problem? Cultural attitudes, politics, economics, and perceived harm to individuals drive policy proposals to solve the U.S. drug problem. In 2018, 62 percent of Americans supported the legalization of marijuana. This opinion doubled since 2000. Figure 2-7 illustrates the change in attitudes Americans demonstrated over the years. By 2018, 11 states passed ballot initiatives to legalize marijuana for recreational use—a large victory for the legalization movement and approximately 36 states, territories, and districts

have legalized the use of medical marijuana.¹³⁸ Strategies used to solve America's drug problem include imposing harsher punishments for drug offenders, decriminalizing drug use and abuse, legalizing certain types of illegal drugs, enhancing law enforcement control efforts, and focusing on medical solutions to drug problems. Some of the conditions for which medical marijuana has been approved are cancer, AIDS, HIV, glaucoma, severe pain and nausea, seizures, and muscle spasms. States are responsible for determining the number of ounces a patient is allowed, and thus the amount permitted varies significantly from place to place.

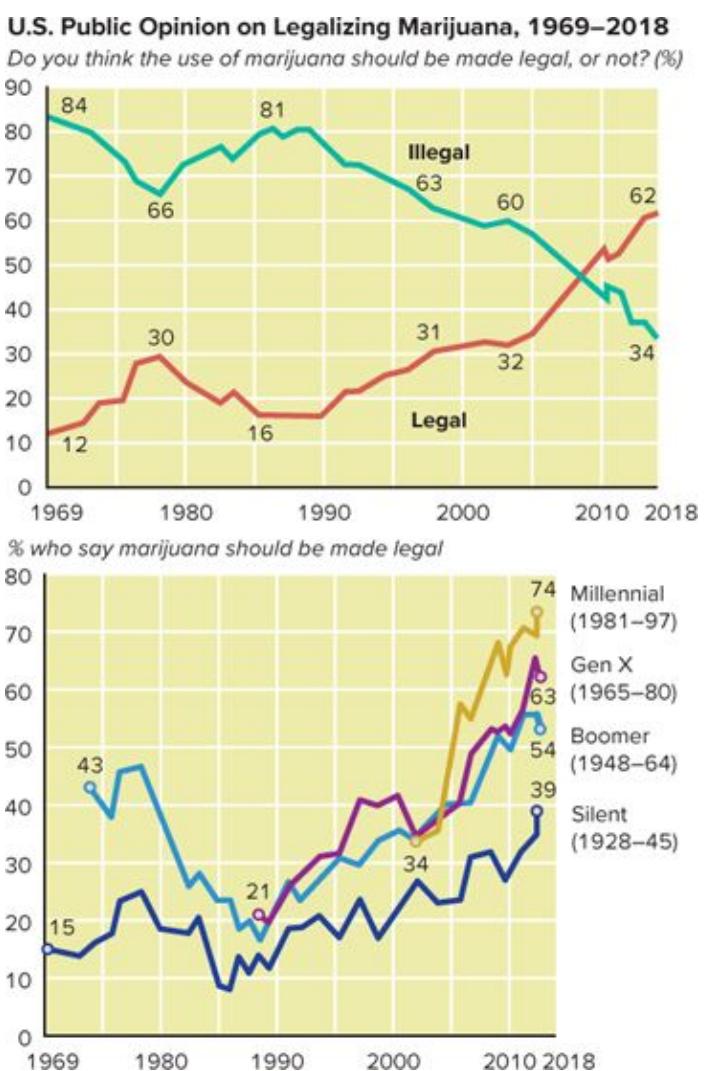


FIGURE 2-7 U.S. Public Opinion on Legalizing Marijuana, 1969–2018, *Do You Think Marijuana Should Be Made Legal or Not? (%)*

SOURCE: Found at <http://www.pewresearch.org/fact-tank/2018/10/08/americans-support-marijuana-legalization/>.

All these solutions have been attempted, but none has worked. Certainly, the lack of resources limits law enforcement efforts—but even with unlimited resources, it is impossible for law enforcement to prevent all illicit drugs from entering the country. Asset forfeiture laws, which allow the state to confiscate a person's assets, have been passed to deter drug offenses and are frequently criticized as unfair and overly harsh, but the enormous profits derived from the cultivation of poppies, coca, and marijuana mean that crop control efforts meet resistance. Ultimately, addicts need to be highly motivated to find success in drug treatment, because addiction is a relapsing disease, and victory is often incremental, transient, and temporary.

POLITICAL CRIMES

Acts, whether violent or nonviolent, that society perceives as threats to a government's survival constitute **political crimes**. At one extreme are crimes such as terrorism and treason, which directly challenge the state (see Chapter 16). At the other end of the spectrum are the relatively minor offenses [page 66](#) of immigration law violations and unlawful demonstrations. These offenses, while not intended as confrontational, may still threaten the established order and the state's political authority. They may also focus government resources on a perceived threat: for example, stationing the National Guard along the United States–Mexico border to counter illegal immigration. Choosing to fund National Guard troops at the border means that there is less money available for other priorities and therefore affects all U.S. residents.

political crimes

Violent or nonviolent acts that society perceives as threats to a government's survival.



Don Bayley/Getty Images

Real Crime Tech

EMERGING DRUG-TESTING TECHNOLOGIES

Once, drug tests involved taking urine, blood, or hair samples and required weeks of laboratory analysis. In recent years, newer drug tests, including the following, have been providing results in less invasive ways:

- The *sweat patch* is a gauzelike patch in the middle of adhesive tape. It is placed on a visually accessible part of the body such as the upper arm, which is cleansed with rubbing alcohol before the device is attached. The patch is worn for up to 14 days and then removed and sent to a lab for analysis. This process can take several weeks—not always ideal for the purposes of the criminal justice system.^a
- The *saliva swab*, a handheld device that tests saliva, provides much faster drug analysis than the sweat patch. Results are available in less than 90 seconds—ideal when criminal justice professionals need instantaneous readings.^b
- With respect to the *breathalyzer*, the latest version is the iBreath, which plugs into the base of an iPod and acts as a field sobriety test. The suspect exhales into the breath wand, and the sensor automatically measures the results within seconds. A reading over .08 (the legal limit for being under the influence of a substance) sounds an alarm, indicating legal intoxication.^c
- A new breathalyzer created in Sweden can detect both alcohol and drugs in one's system. The device can detect 12 different drugs including cocaine, heroin, marijuana, methamphetamine, and morphine. The device shows an accuracy of almost 90 percent, comparable to the accuracy of blood and urine tests.^d
- Another technology includes using fingerprints to test for substances. Paper spray mass spectrometry is a new system whereby a person will place their finger on a device that will analyze the molecules in a person's fingerprint as the body metabolizes drugs with up to 99 percent accuracy. Given that the system focuses on the drugs in the body, touching drugs or washing one's hands will not impact the outcome. This non-invasive process provides results within a few minutes and accurately identifies the person and the substance.^e

All drug-testing systems can be tampered with, and all can provide false-positive results. The development of more accurate and more advanced devices will continue to be a real technology need

for the criminal justice system well into the future.

SOURCES: ^aDrug Policy Alliance Network, “Drugs, Police, and the Law.” www.drugpolicy.org/law/drugtesting/sweatpatch_/ (retrieved January 2, 2009).

^b“Philips and Concateno Announce Revolutionary Drugs- of-Abuse Testing System,” *MHWmagazine*, January 15, 2009, <https://mhwmagazine.co.uk/phillips-and-concateno-announce-revolutionary-drugs-of-abuse-testing-system.html> (retrieved December 3, 2019).

^cDawn C. Chmielewski, “Blow into the iBreath and Your iPod Plays a Blood Alcohol Alert,” *Los Angeles Times*, December 19, 2008. <https://www.latimes.com/archives/la-xpm-2008-dec-19-fidrunk19-story.html> (retrieved January 1, 2008).

^dMelissa Stusinski, “New Breathalyzer Test Detects Drugs Too” *Inquisitr*, April 28, 2013. www.inquisitr.com/639275/new-breathalyzer-test-detects-drugs-too/ (retrieved May 18, 2015).

^eCosta, Catia, Roger Webb, Valdimir Palitsin, Hahado Ismail, Marcel De Puit, Samuel Atkinson, Melanie J. Bailey. (2017). “Rapid, Secure Drug Testing Using Fingerprint Development and Paper Mass Spectrometry.” *Clinical Chemistry*. <http://clinchem.aaccjnls.org/content/early/2017/09/25/clinchem.2017.275578> (accessed February 10, 2019).

Immigration Offenses

Federal immigration law determines whether a person is an *alien* (not a U.S. citizen) and stipulates all the legal rights, duties, and obligations aliens have in the United States. The law also establishes when aliens can become *naturalized citizens* (that is, citizens through law rather than through birth) with full rights of citizenship, who may enter the United States, and how long they may stay.¹³⁹ Individuals who violate these laws commit **immigration offenses**.

immigration offenses

Violation of federal immigration law, which determines whether a person is an alien and stipulates all the legal rights, duties, and obligations aliens have in the United States.

According to the most recent data from the Bureau of Justice Statistics, there were approximately 82,000 arrests made for immigration-related offenses that includes illegal entry and reentry, human smuggling, and visa fraud. One-half of all federal arrests are for immigration offenses. These arrests for immigration offenses are made largely by the U.S. Customs and Border Protection (CPB) (68 percent) and Immigration and Customs Enforcement (ICE) (30 percent) both under the Department of Homeland Security (DHS). The vast majority of these arrests (93 percent) occurred along the U.S.–Mexico border with the two busiest courts in Tuscon, Arizona (17,731) and Laredo, Texas (15,207). Non-U.S. citizens made up 42 percent of those charged in a U.S. District court and

25 percent of those sentenced in the Federal Bureau of Prisons.¹⁴⁰ The vast majority (90 percent) of arrests in 2010 occurred in four southwest states: California, Arizona, New Mexico, and Texas. Crimes for which individuals saw a U.S. attorney included illegal entry (51 percent), reentry (42 percent), alien smuggling (5 percent), and misusing a visa (2 percent). In the same year, those arrested were largely male (90 percent) and between 25 and 34 years old (41 percent); 81 percent received a median prison term of 15 months. The majority of immigration offenders in a federal prison were there for illegal entry or reentry (90 percent), alien smuggling (10 percent), and visa fraud (less than 1 percent).¹⁴¹ Of those released from a federal prison in 2012, 17 percent were readmitted to a federal prison within three years of release.¹⁴²

U.S. immigration policy has become a divisive political issue over the past four decades. Until the late 1970s, Republicans and Democrats alike expressed concern for families separated by immigration, as well as for people displaced by wars, famine, and political oppression. The focus was humanitarian, emphasizing the need for family unification and assimilation. However, in the 1980s, as concerns mounted nationwide over the costs of health care for the uninsured, bipartisan support evaporated, and many Americans began demanding change.¹⁴³ Citing the skyrocketing costs of extending public benefits to illegal immigrants, and reluctant to grant them amnesty, the federal government called for immigration reform, with emphasis on the criminality of immigration offenses. After September 11, 2001, fears of terrorism page 67 perpetrated by aliens made immigration a topic of great and widespread concern. The federal government focused intensely on illegal immigration, aiming to enforce and strengthen existing laws.¹⁴⁴ In November 2014, President Obama outlined an executive order that provided temporary legal status and protection from deportation for 4 million illegal immigrants. The executive order provided for a reprieve for undocumented parents whose children are U.S. citizens and permanent residents who have lived in the United States for at least five years, thus removing the threat of deportation. The order also expanded the 2012 Deferred Action for Childhood Arrivals (DACA) program, which allows those who arrived as children and who are not yet 30 years old to apply for a deportation deferral. Both groups will have to reapply for a deportation deferral every three years. The executive order will include a program to facilitate visas for those who pursue science, technology, and math (STEM) degrees, as well as strengthening resources for border security and immigrant detention procedures.¹⁴⁵



▲ Customs Agent on the Lookout

U.S. Customs and Border Protection is responsible for keeping terrorists and their arms out of the country and for enforcing laws concerning immigration and drugs.

David R. Frazier Photolibrary, Inc./Alamy

KEY CONCEPTS Crimes Committed Due to Drugs

Crime Category	Types of Crime
Crimes against persons	First-degree murder, voluntary and involuntary manslaughter, vehicular manslaughter, serial murder, spree murder, assault, battery, sexual assault, robbery, child abuse, child neglect, child abandonment, school bullying, kidnapping
Crimes against property	Burglary; larceny/theft; motor vehicle theft; white-collar crimes such as embezzlement, fraud, and corporate fraud; environmental crime; money laundering; manufacturing, trafficking, and distributing drugs; selling drugs
Crimes against public order and morality	Disorderly conduct, disturbing the peace, panhandling, prostitution, pimping, public intoxication, loitering, drunk driving, weapons violations, gambling, obscenity, fornication, bigamy, adultery

Immigrants—legal and illegal—are vital to the U.S. economy. They make up 12 percent of the U.S. population and 14 percent of its workforce. From 1994 to 2004, the number of foreign-born workers grew from 13 million to 21 million, accounting for more than half the growth of the U.S. labor force in that period. According to the American Immigration Lawyers Association, illegal immigrants hold 40 percent of jobs in farming, fishing, and forestry in the United States, 33 percent of jobs in building and grounds maintenance, 22 percent of jobs in food preparation, and 22 percent of jobs in construction. Opinions differ as to what impact immigration reform will have on the United States and its economy, particularly in states like California that earn much of their revenue from immigrant farm workers, agriculture, and tourism.¹⁴⁶

Real Careers



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AMY NYE

Work location: (cannot disclose)

College(s): Wayne State University, Detroit, MI

Major(s): Criminal Justice (BS), Near Eastern Studies (MA)

Job title: Special Agent with Immigration and Customs Enforcement

Salary range for jobs like this: \$29,000—\$37,000

Time in job: 1 year

Work Responsibilities

I conduct criminal investigations on a wide range of matters, such as visa security, illegal arms trafficking, document and identity fraud, drug trafficking, gang activity, child pornography and sex tourism, immigration and customs fraud, and intellectual property rights violations.

As a special agent, I enjoy a balance between working at the office and working in the field. Some of my more exciting field experiences include conducting surveillance on targets, working undercover operations, and executing search and arrest warrants. But being a special agent is certainly not a 9-to-5 job: very early mornings and late nights are often required.

Why Criminal Justice?

I had been interested in criminal justice since high school. My history teacher, a retired police officer, often told stories about his experience in that profession. Wanting to learn more about law enforcement, I took an independent study course with him and researched the challenges currently facing law enforcement agents, especially females in a traditionally male-dominated career path.

I entered college originally with the intention of obtaining an associate's degree in criminal justice in order to become a city police officer. However, once I began college, I loved my criminal justice classes so much that I decided to pursue a BS and eventually an MA. When I began looking for employment after graduation, I primarily used Wayne State's website to find criminal justice career opportunities. However, before applying for a job, I always did some of my own online research to learn more about the agency's mission and the requisites for the job.

Expectations and Realities of the Job

Working in law enforcement is vastly different from the way it is portrayed in novels and TV shows. Criminals do not always confess, and investigations can carry over for weeks, months, or even years. For example, a lot of intelligence gathering and database mining must be performed before an agent can even begin questioning a subject. Post-enforcement procedures can be just as lengthy: Agents are required to report and update databases so that the most current intel is available for future cases.

But regardless of the separation between reality and fiction, I love having a job that makes a difference. I don't just talk about making my country and my community safer—I am actually doing something about it.

My Advice to Students

The entire process of getting hired as a special agent can take a couple of years, so if you are interested in becoming an agent, apply as soon as possible. To increase your chances of finding employment, I suggest you apply to a variety of agencies that specialize in different areas of investigation. Your strengths and abilities might be better suited for one agency over another. But no matter which agency you apply to, federal agents must keep a clean criminal record. Background checks are always a component of the application process.

Try to get involved in extracurricular activities related to the field you want to enter. For example, during college I rode with local police agencies, which gave me a great feel for the career path I was choosing. I also took classes at the local gun range on firearm safety, weapon retention,

and carrying a concealed weapon. Beginning my career training with prior firearm knowledge was quite valuable. Finally, keep yourself in great physical condition. Any type of martial arts training will also be beneficial.

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▲ Day Laborers Waiting to Work

Day laborers, who are frequently in the United States illegally, are eager to find work.

LM Otero/AP Images

ORGANIZED CRIME

Groups can also commit crimes. **Organized crime** is an ongoing criminal conspiracy that profits from providing illicit goods and services. It uses or threatens violence to further its criminal enterprises and to maintain monopolistic control of specific markets.¹⁴⁷ Much of what people believe they know about the underworld comes from mass media, which have focused almost exclusively on the Italian community and which may not be based on reality.

organized crime

An ongoing criminal conspiracy that profits from providing illicit goods and services, using or threatening violence to facilitate its criminal enterprise and to maintain monopolistic control of illicit markets.

Historically, Italians' ("La Cosa Nostra") involvement in U.S. organized crime was preceded by that of Irish and German Jewish immigrants. Most members of each ethnic group attempted to enter the mainstream of American life and attain financial security in law-abiding ways, but some pursued illicit shortcuts.¹⁴⁸ In the United States, organized crime groups originally drawn from successive waves of immigrants have yielded to a range of diverse criminal associations such as urban street gangs, outlaw motorcycle gangs, and prison gangs. A few large organizations once controlled an illicit market, but now an expanded number of small organizations operate autonomously.¹⁴⁹ Other organized crime groups have gained considerable influence in the United States; some are based on foreign soil, including the Colombian drug cartels and the Russian mafia.¹⁵⁰

Crimes perpetrated or controlled by criminal enterprises include gambling, prostitution, auto theft, drug trafficking, and human trafficking. Organized crime groups use legitimate business ventures as a cover and as a way to launder illegal profits. They may employ or contract with specialists, such as corrupt governmental officials or individuals in the private sector, who are in a position to ignore violations, conceal or move assets, or otherwise assist illegal activities.¹⁵¹ Members of the criminal organization may comprise a crime "family," a gang, a cartel, or a criminal network. Membership is restricted to those who have been formally accepted after demonstrating loyalty to the group's principles and its members.

By the late twentieth century, organized crime groups were able to exploit the same open borders and technological advances that have enabled multinational corporations to prosper. In fact, transnational crime groups may have profited more from globalization than legitimate business page 70 enterprises, which are subject to the laws and regulations of domestic and host countries. Organized criminals are increasingly involved in high-tech operations involving identity theft and counterfeiting of goods.¹⁵² Transnational activities require numerous independent groups operating in source, transit, and destination countries.¹⁵³ Thus, alliances are being forged among groups such as the Russian Mafia, La Cosa Nostra, and the Colombian cartels. Some alliances have even occurred among terrorist groups.¹⁵⁴

CRIMES BY GENDER

Anyone can commit a particular crime, but strong trends differentiate by gender the types of crimes committed and the frequency of offending.¹⁵⁵ Stalking today is a crime dominated by one sex: For the most part, men stalk women.

Stalking has existed since the beginning of human history, and through the ages has been depicted in music, poetry, novels, paintings, and films as part of romantic behavior. In the last decade, stalking has been criminalized throughout the United States.¹⁵⁶ Although definitions vary from state to state, a 1990 California statute defines **stalking** as involving anyone who “willfully, maliciously, and repeatedly follow[s] or willfully and maliciously harass[es] another person and ... makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or of the safety of his or her family.”¹⁵⁷

stalking

Willfully, maliciously, and repeatedly following or harassing another person and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or for the safety of his or her family.

A national survey of American women revealed that 1 in 12 survey participants had been stalked. (One man in 45 also had been followed or harassed at some point in his life.)¹⁵⁸ The victim’s obvious reaction to stalking is fear, and that fear is justified because stalkers eventually assault 81 percent of targeted individuals. Although the notoriety of stalking results from cases of celebrities who are stalked by strangers but rarely endangered, the overwhelming majority of cases involve intimate partners or former partners stalking women who are not celebrities and whose lives are often at considerable risk. As Figure 2-8 illustrates, stalking occurs in six types of relationships. Note the differences in gender between victims. Males often are stalked by an acquaintance or a stranger, but females are more likely to be stalked by a current, former, or would-be intimate partner. In these page 71 cases, the stalking is a form of abuse, used to control the victim.¹⁵⁹

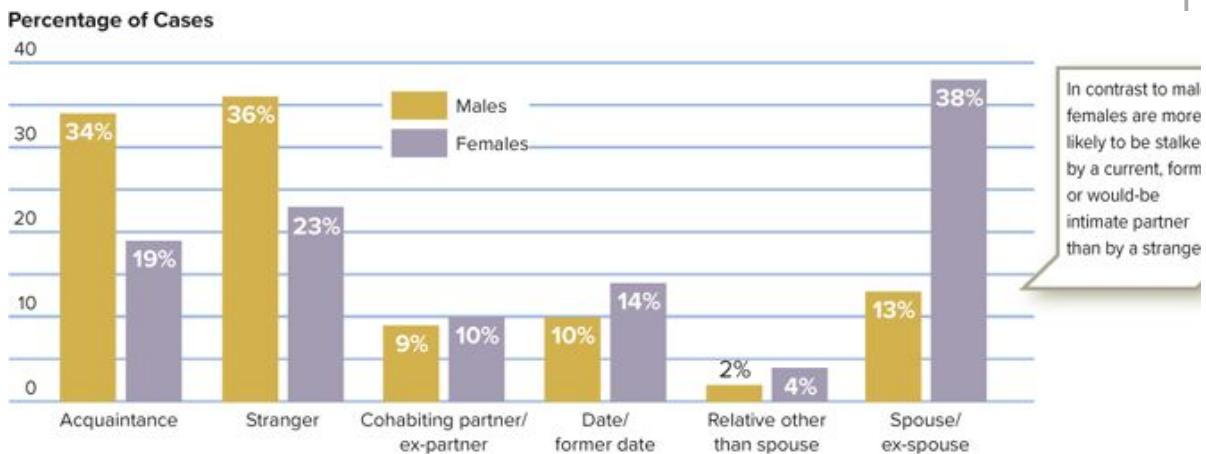


FIGURE 2-8 Gender Differences between Stalking Victims

SOURCE: Patricia Tjaden and Nancy Thoennes, "Stalking in America: Findings from the National Violence Against Women Survey," *National Institute of Justice, Centers for Disease Control and Prevention—Research in Brief* (Washington, DC: U.S. Department of Justice, April 1998), 6.

Race, Class, Gender

Gender and Crime

Females represent a small, but increasing percentage of the offending population in the United States for all crimes. In 2016, there were approximately 1.5 million people in state and federal institutions, of whom almost 112,000 were female offenders. Of these, almost 99,000 were incarcerated in state correctional institutions and the rest in federal prisons. Females sentenced to more than 1 year increased by more than 700 persons in 2016. More than half (61 percent) of incarcerated females are White in comparison to only 39 percent of incarcerated males. About 2.5 percent of Black male U.S. residents were in state or federal correctional institutions. Black males (41 percent) make up the largest portion of incarcerated males while black females make up 24 percent of the total prison population, but the rate of Black females imprisoned was almost double that of White women (97 per 100,000 and 49 per 100,000, respectively). Black males aged 18 and 19 years old were almost 12 percent more likely to be imprisoned than their White counterparts. This disparity is seen at the other end of the age spectrum with Black males 65 years and older being 4.4 times more likely to be imprisoned than White males in the same age bracket.^a

Although males represent the largest percentage of prison inmates, female inmates present with more mental health problems than do males. Among inmates in a prison, 20 percent of females and 14 percent of males had an identified as having a mental illness. If those incarcerated in a prison, 60 percent of females and 35 percent of males had a history of mental health problems. Similar statistics were found for those in jails with 32 percent of females and 26 percent of males being identified as having a mental illness.^b

Males offend with greater frequency than do females, and in general, males are more likely than female offenders to be violent. Almost 56 percent of males who are incarcerated for a violent crime

of which almost 14 percent is for murder and 13 percent for sexual assault. In comparison, 47 percent of females' inmates are imprisoned for violent crimes, almost 12 percent of which are for murder and 2 percent for sexual assault. When compared to men, women are more to arrested for property crimes (27 percent for women and 18 percent for men) and drug offenses (25 percent for women and 15 percent for men).^c

According to the National Crime Victimization data of juvenile victims (ages 12—17) despite the increase in female violence, males continue to commit certain violence crimes with greater frequency than do females including intimate partner violence, stalking, aggravated assault, forcible rape, robbery, and murder. In 2016, juveniles of both genders were equally likely to experience a violent crime such as rape, robbery, or aggravated assault.^d

OBSERVE → INVESTIGATE → UNDERSTAND

- What might explain why a larger proportion of incarcerated women than men presents with mental health problems?
- Why do you think the rate of violent crimes is narrowing between men and women?
- The statistics indicate that females are becoming more violent than ever before, but not for murder. What might explain this finding?

SOURCES: ^aE. Ann Carson, "Prisoners in 2016." U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (January, 2018, NCJ 251149). <https://www.bjs.gov/content/pub/pdf/p16.pdf> (accessed February 10, 2019).

^bJennifer Bronson and Marcus Berzofsky, "Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (June 2017, NCJ 250612). <https://www.bjs.gov/content/pub/pdf/imhprpj1112.pdf> (accessed February 10, 2019).

^cE. Ann Carson, "Prisoners in 2016," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (January 2018, NCJ 251149). <https://www.bjs.gov/content/pub/pdf/p16.pdf> (accessed February 10, 2019).

^dRachel E. Morgan, and Grace Kena. "Criminal Victimization, 2016: Revised," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 252121 (October 2018). <https://www.bjs.gov/content/pub/pdf/cv16re.pdf> (accessed February 10, 2019).

There are other differences in the incarceration rates and types of crimes committed by males and females. The "Race, Class, Gender" box highlights these patterns based on gender.

SUMMARY

For 20 years after the FBI began compiling its Uniform Crime Reports in 1973, the incidence of serious violent crimes increased in the United States. After peaking in the early 1990s, the number of both violent crimes and property crimes reported to police has been declining, and rates of victim-reported and police-reported crime have been converging, for reasons not entirely understood.

Other important trends also stand out. On a global scale, the United States has a high murder rate, and within this country, murder rates are highest in the South. Males are more frequently victimized by all categories of violent crime except rape and intimate partner violence. Women are less likely to report a violent attack—especially rape, a crime in which perpetrator and victim very often know each other. Children are more frequently victimized by violent crime than are older people. Despite the great fear that crimes against people evoke, almost 10 times as many crimes against property are reported. Property crimes account for about three-fourths of all crimes reported in the United States, but as in the case of violent crime, the rate has been falling since the 1990s. Property crimes are usually less traumatizing, although white-collar crime can inflict devastating economic losses.

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A common characteristic of public order crimes is that they are offenses against morality. Although they often are called victimless crimes, in fact many of them have negative consequences for the perpetrator as well as for others.

Drug offenses have been a great source of concern in the United States for a century. Although most crime is not drug related, drugs are a factor in both violent crimes (homicide, assault, and robbery) and nonviolent crimes (burglary and theft). Abusers can be physically and psychologically devastated by drug use. Enforcing drug laws and controlling drug-related crime has not been very successful. One significant impact of the U.S. “war on drugs” is an ever-rising proportion of persons incarcerated for drug-related offenses, including disproportionate numbers of women and racial minorities. A second major impact is the corrupting effect on the police and public officials that stems from organized crime’s domination of the drug trade.

Political crimes directly challenge government authority. They run the gamut from such relatively minor offenses as immigration law violations to major crimes against the state—espionage, treason, and terrorism.

In the United States, organized crime was once largely associated with immigrant ethnic groups. Organized crime is a serious problem in modern societies. It uses violence to exploit and profit from such public order offenses as prostitution, gambling, and drug trafficking. Organized crime frequently is implicated in the corruption of public authorities.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Understand how crime rates are measured.

- The Uniform Crime Reports (UCR) are compiled annually by the FBI from data reported by local police departments. Today, the UCR includes murder and nonnegligent manslaughter, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, arson, hate crimes, human trafficking-commercial sex acts, and human trafficking-involuntary servitude.
- The National Incident-Based Reporting System (NIBRS), compiled by the FBI and the Department of Justice, is an index that tracks detailed information about 62 offenses. Data are submitted by state authorities, but not all states are as yet able to take part in the system.
- The National Crime Victimization Survey (NCVS) is an annual national survey of selected households and individuals to discover who has been victimized by crime and whether or not the crime was reported to the police. Through this survey, the so-called dark figure of crime can be estimated—the gap between reported crime and crime that goes unreported and is therefore unrecorded. It can also reveal the extent of secondary victimization: that is, the negative experiences of crime victims based on their treatment by the police, the courts, and personal acquaintances.

Differentiate the types of crimes against persons.

- Crimes against persons involve attacks upon or threats to a person's body. The most serious crimes against persons are murder and manslaughter (both mean taking a life), sexual assault, kidnapping, robbery (theft with force or the threat of force), and battery (the intentional unwanted touching of one person by another).
- Homicide occurs when someone causes the death of another human being. Different types of homicide in which the person is considered culpable, include first-degree murder (purposely planning to kill the victim), manslaughter (the offender is less blameworthy than for murder; it usually carries a less severe penalty than murder), voluntary manslaughter (the offender is provoked and loses control, killing the victim in the heat of passion), involuntary manslaughter (killing that results from an offender's careless actions), and vehicular manslaughter (the careless use of one's vehicle that results in a victim's death).
- Serial murder means killing three or more people over an extended period; mass murders are multiple killings that occur at one place and at one time; spree murder refers to multiple victims killed within a fairly narrow time span, such as several hours or days.
- Sexual violence encompasses nonconsensual vaginal, anal, digital, and oral penetration and can include the use of weapons and foreign objects to torture and terrorize the victim.

Describe the different types of property crimes.

- Property crimes include taking money or material goods without using force, as well as intentionally destroying property. They include any act of burglary (entering another's property with the intent to commit a felony such as theft), theft (or larceny, both of which mean taking another's property without permission), motor vehicle theft (taking one's motor vehicle or its contents), the intentional destruction of property (as in the case of arson), and white-collar crime (theft or other nonviolent offenses in a business setting).

Identify types of public order crimes.

- Public order crimes encompass a wide variety of offenses, including disorderly conduct, disturbing the peace, loitering, public intoxication, panhandling, bigamy, drunk driving, weapons violations, prostitution, obscenity, gambling, and possession of controlled substances.
- Public order crimes are characterized as immoral or public nuisances.
- Crimes against public order often are called victimless crimes page 73 because, unlike property crimes or crimes against persons, they do not have an easily identifiable victim.

Describe some of the political crimes that have occurred in recent years.

- Political crimes include acts, violent and nonviolent, that threaten a government's survival.
- Terrorism and treason are two extreme forms of political crimes; they are extreme because they represent a direct challenge to the government.
- Less extreme examples of political crimes include violations of immigration laws and unlawful demonstrations. These offenses, although not intended to be confrontational, may still represent a threat to the established order and to political authority.
- Political crimes may serve to turn government resources toward a perceived threat, such as when National Guard troops are stationed at the United States —Mexico border as a force to counter illegal immigration. The choice to use money to fund troops at the border reduces the amount of resources available for other priorities and therefore affects all U.S. residents.

Discuss organized crime and who engages in it today.

- Organized crime is an ongoing criminal conspiracy that profits from providing illicit goods and services. By its nature, organized crime uses or threatens violence to facilitate its criminal enterprises and maintain monopolistic control of illicit markets.

- Crimes committed or controlled by criminal enterprises include gambling, prostitution, auto theft, and drug trafficking. Organized crime groups engage in many legitimate business ventures as a cover and as a way to launder monies from their criminal activities. They may employ or contract with specialists such as corrupt government officials or members of the private sector who can ignore violations, conceal or move assets, or otherwise assist the network of illegal activities.
- Members of the criminal organization may form a crime “family,” a gang, a cartel, or some other kind of criminal network. Membership is restricted to those who have been formally accepted after demonstrating loyalty to the group’s criminal principles and its members.
- By the late twentieth century, organized crime had exploited the same open borders and technological advances that have enabled multinational corporations to prosper. In fact, transnational crime groups may have profited more from globalization than have legitimate business enterprises, which are subject to domestic and host country laws and regulations.

Contrast the types of crimes generally perpetrated by males and by females.

- In general, male offenders are more likely to be violent than female offenders. However, data show that women are increasingly participating in violent crimes.
- Women are committing more property, drug, and public order offenses than are men. Men continue to commit more violent offenses than women, but the gap is narrowing.
- Women are much less likely than men to commit assault or murder.
- Despite the increase in female violence, males continue to commit certain violent crimes with much greater frequency than females, including intimate partner violence, stalking, aggravated assault, sexual assault, robbery, and murder.

Key Terms

assault and battery 46

burglary 54

child abuse 49

child neglect 50

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drug offenses 57
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Study Questions

1. The Uniform Crime Reports (UCR) are annual surveys that
 - a. track the most serious crimes as reported by victims.
 - b. track the most serious crimes as reported by police departments.
 - c. provide detailed information about criminal incidents and arrests in 22 categories.
 - d. are compiled by telephoning individuals in different countries about crimes against household members during the previous 12 months.
2. The number one cause of injuries and death to women in the United States is
 - a. traffic collisions.
 - b. suicide.
 - c. drug abuse.
 - d. intimate partner violence.
3. Offenses against another person's belongings are known as
 - a. victimless crimes.
 - b. property crimes.
 - c. attempted crimes.
 - d. infractions.
4. Crimes against public order often are referred to as
 - a. inchoate offenses.
 - b. victimless crimes.
 - c. property crimes.
 - d. attempted crimes.
5. All of the following are characteristics of organized crime *except*
 - a. part-time participation by the perpetrators.
 - b. provision of illicit goods and services.
 - c. use of violence or the threat of violence.
 - d. corruption of public officials.
6. All of the following are examples of a public order crime *except*
 - a. disorderly conduct.
 - b. disturbing the peace.
 - c. loitering.

- d. immigration offenses.
7. All of the following are examples of an immigration offense *except*
- entering the United States illegally.
 - improper entry into the United States.
 - alien smuggling.
 - white-collar crimes.
8. The age group that is most vulnerable to crime is
- young people.
 - middle-aged people.
 - older adults.
 - All age ranges are equally likely to be victimized.
9. Although property crime can happen everywhere, it is more common in urban than in rural areas, and in the _____ region of the United States.
- eastern
 - northern
 - southern
 - western
10. The 1967 Supreme Court decision that declared antimiscegenation laws unconstitutional is
- Loving v. Virginia.*
 - Lawrence v. Texas.*
 - Brown v. Board of Education.*
 - Gideon v. Wainwright.*
11. Which statement based on the NCVS is not true?
- It has four sections—community characteristics, personal characteristics, household characteristics, and individual characteristics
 - It does not include homicide victimizations
 - It does not include victimizations of children under the age of 12
 - The actual number of people victimized by violent crimes is almost double the reported figure

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Can crimes truly be victimless? Explain.

2. If white-collar crime is so costly, why doesn't the criminal justice system do more to prosecute these types of offenses?
3. How should we deal with the drug problem in the United States?

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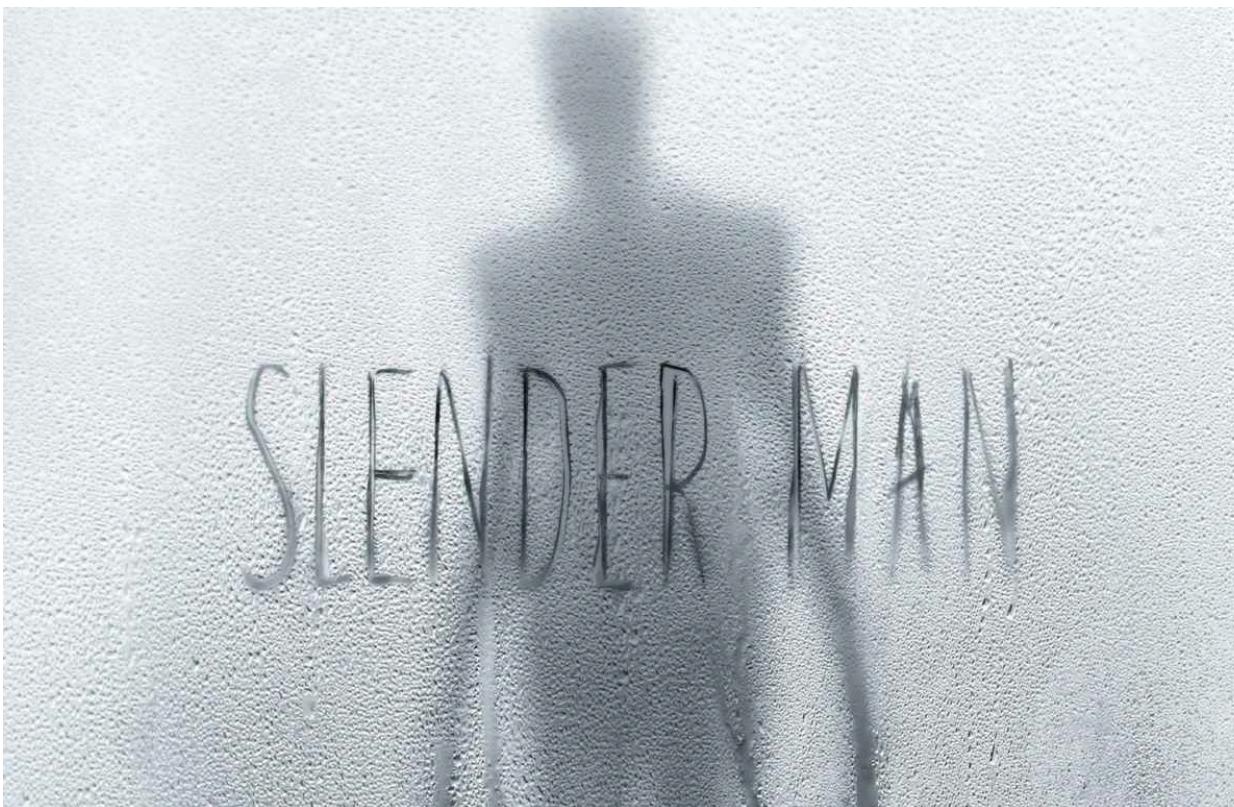
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3 Causes of Crime



AF archive/Alamy

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Appreciate the roles of biological (including genetic) and environmental factors on brain function and criminal behavior.
- Explain the key aspects of mental disorders and understand how they are classified.
- Recognize the cognitive factors of intelligence and moral reasoning as brain functions that influence criminal behavior.
- Understand how economic, class, and social inequalities can be linked to the causes of crime.
- Describe factors that cause some people to become victims of crime.

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Realities and Challenges

A Case of Folie à Deux?—“Madness of Two”

In a Milwaukee suburb on the morning May 31, 2014, after a birthday sleepover for Morgan Geyser, the plan was put into action. Geyser and Anissa Weier lured Payton Leutner into a wooded area “to play hide-and-seek.” They pushed an unsuspecting Leutner to the ground. Handing the 5-inch-long kitchen knife to Geyser, Weier said “I can’t do it. You know where all the soft spots are.” Nonetheless, as Weier told the police interrogator, she urged Geyser on as she stabbed Leutner 19 times: “Go ballistic. Go crazy.” According to both girls’ confessions, they left Leutner to die. But incredibly, she survived. Each girl was 12 years old; all were friends. For her part, Geyser related the sordid details of the crime to the investigating officer in a matter of fact manner. Describing the actual attack, Geyser told the officer, “It sort of just happened... It didn’t feel like anything. It was like [as she makes stabbing motions with her hand] ... air.”

The girls had discovered Slender Man on the Creepypasta Wiki, a website dedicated to horror stories. Not unlike the scary tales recounted around campfires, stories of Slender Man largely center on themes of a tall, spindly, ghost-like figure in a black suit with a feature-less

face and tentacle-like arms that abducts children. Geyser and Weier were obsessed with the fictional character and came to believe “it was necessary” to kill Leutner in order to be “proxies” for Slender Man. In particular, Geyser believed such a sacrifice was needed to prevent Slender Man from killing her or her family.^{a,b} To demonstrate loyalty to the supernatural character, the two girls planned the murder for many months. Internet research they did included topics such as “How to get away with murder.”^c



Michael Sears/Milwaukee Journal-Sentinel/AP Images



Michael Sears/Milwaukee Journal-Sentinel/AP Images

According to court testimony by Geyser’s mother, Geyser father has schizophrenia. And from early childhood, Geyser showed symptoms of serious mental disorder.^d A forensic psychiatrist diagnosed Weier with a “shared psychotic disorder” (*folie à deux*) in which her own fantasies about Slender Man got “caught up in” the irrational beliefs that were a part of Geyser’s schizophrenia. The combination proved to be the ingredients for a perfect storm.

Trials for both girls were held in adult criminal court. In August 2018, Weier (bottom photo) pleaded guilty to attempted second-degree intentional homicide due to mental illness or disease in a plea bargain that would keep her out of prison but incarcerate her in a mental health facility for 25 years. Two months later, in a similar plea deal to avoid prison time, Geyser (top photo) pleaded guilty to attempted first-degree intentional homicide. The judge ultimately held she was not guilty by reason of mental disease or defect—meaning she was not held to be criminally responsible for the crime. Geyser was sentenced to 40 years in a psychiatric institution. Both

girls received the maximum possible sentence under their respective plea deals; depending upon the effectiveness of their psychiatric treatment, both could be released early.

After this crime, Creepypasta website administrators reminded viewers of the “line between fiction and reality.”^e As for the sentencing outcomes for Geyser and Weier—relative to the life-long consequences of this crime for Payton Leutner—a question remains: Where is the line between compassion for the perpetrators and retribution for the victim?

SOURCES: ^aCrime Vault, “Slenderman Stabbing: Morgan Geyser & Anissa Weier PoliceInterviews (Excerpts). Published July 11, 2018. <https://www.youtube.com/watch?v=kbP1wUx8mYw>. (retrieved February 9, 2019).

^bCaitlin Dewey, “The Complete History of ‘Slender Man,’ the Meme That Compelled Two Girls to Stab a Friend,” *The Washington Post*, July 27, 2016. https://www.washingtonpost.com/news/the-intersect/wp/2014/06/03/the-complete-terrifying-history-of-slender-man-the-internet-meme-that-compelled-two-12-year-olds-to-stab-their-friend/?utm_term=.ea48431c4817 (retrieved February 6, 2019).

^cLindsey Bever, “In the Bedroom of Alleged ‘Slender Man’ Stabber, Some Disturbing Things,” *The Washington Post*, February 18, 2015. <https://www.washingtonpost.com/news/morning-mix/wp/2015/02/18/in-the-bedroom-of-alleged-slender-man-stabber-some-disturbing-things/> (retrieved February 6, 2019).

^dSean Dooley, Emily Whipp, Kelley Robinson, Alexa Valiente, and Lauren Effron, “Mothers of Teens Who Pleaded Guilty in ‘Slender Man’ Stabbing Say There Were No Warning Signs of Violence,” *ABC News*, January 31, 2018. <https://abcnews.go.com/US/mothers-teens-pleadedguilty-slender-man-stabbing-case/story?id=52739807> (retrieved February 10, 2019).

^eJessica Roy, “Behind Creepypasta, the Internet Community That Allegedly Spread a Killer Meme,” *Time*, June 3, 2014. <http://time.com/2818192/creepypasta-copypasta-slender-man/> (retrieved February 9, 2019).

Preview

SEEKING THE CAUSES OF CRIME: EARLY SCHOOLS OF THOUGHT

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The case of Morgan Geyser and Anissa Weier illustrates the kinds of challenges that mental illness presents to the criminal justice system. Schizophrenia, the mental disorder from which Geyser apparently suffers, is considered in this chapter. Mass murderers, discussed briefly in Chapter 2, tend to be unlike other types of murderers in that most often they are seriously mentally disordered. But like other people with serious mental disorder, their illness generally has a course of development where symptoms emerge over time. Accordingly, as the illness is untreated and progresses, symptoms become worse. Unlike what many people think, mass murderers do not simply “go crazy;” they do not just “snap.” In fact, in the majority of cases there is a long trail of signals that are either not recognized as possible danger signs or are overlooked. There is usually a series of increasingly disturbed behaviors that, on their own, do not portend violence but together signal an individual who is becoming at risk for committing acts of violence. Nonetheless, the vast majority of people who are mentally ill—even seriously mentally ill—are not violent. This makes it very difficult to predict those few whose behavior will make the headlines.

The extraordinarily complex nature of human behavior continually challenges the criminal justice system. How do we predict with accuracy which individuals are most likely to be violent? For example, which accused wife batterer should be freed on his own recognizance before a court appearance is scheduled? Which ones should be kept in jail until that hearing? Which inmates should be selected for early release from prison? Or when is treatment—rather than punishment—the appropriate response for the offender? What role should mental illness play in these decisions? While there are no one-size-fits-all answers, as we come to better understand the causes of criminal behavior we will be better positioned to deal with it more effectively, possibly even preventing it from occurring in some cases.

Much research has been devoted to understanding why people commit crimes. Knowing the causes of crime—its *etiology*—is an important key to preventing criminal acts and changing the behavior of offenders. Being able to explain crime also influences the decisions of the courts. In the Geyser and

Weier attempted murder case, both defendants were found by the court to have committed the crime as the result of “mental illness or disease,” or, as is known in most legal jurisdictions, insanity. This determination would lead reasonable people to raise doubts about the girls’ criminal responsibility. Certainly, they were responsible for the multiple and life-threatening injuries to Payton Leutner, but whether Geyser and Weier were capable of truly comprehending the real-life consequences of their actions at the time of the crime was a different and difficult matter for the criminal courts to decide. Broadly speaking, matters of insanity continue to be the subject of contentious public debate.

This chapter looks at the causes of crime from different angles—biology, psychology, and sociology—and explores why some people are victimized, even repeatedly, and others are not. As the Geyser and Weier case shows, how factors like mental disorder are understood has important implications for how we conduct the business of criminal justice.

SEEKING THE CAUSES OF CRIME: EARLY SCHOOLS OF THOUGHT

The causes of crime have been the subject of research in the disciplines of biology, psychology, sociology, and victimology for years. Criminologists recognize two major schools of thought or belief systems as among the first attempts to organize a view of crime causation: the classical and the positive schools of criminology.

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The Classical School: Choosing to Be a Criminal

The **classical school of criminology** viewed the criminal as having free will, the freedom of individual choice to choose a criminal path deliberately. The Italian economist and jurist Cesare Beccaria (1738–1794) articulated this position in *On Crimes and Punishments* (1764), the cornerstone of the classical school of criminology.¹ Jeremy Bentham (1748–1832), an English philosopher, also contributed to the classical school’s view of crime causation with his *Introduction to the Principles of Morals and Legislation* (1789).² Both Beccaria and Bentham believed that criminal behavior resulted from a person’s rational

and conscious choices—that is, criminals were responsible for their behavior—and that appropriate punishments would deter further criminal actions.

classical school of criminology

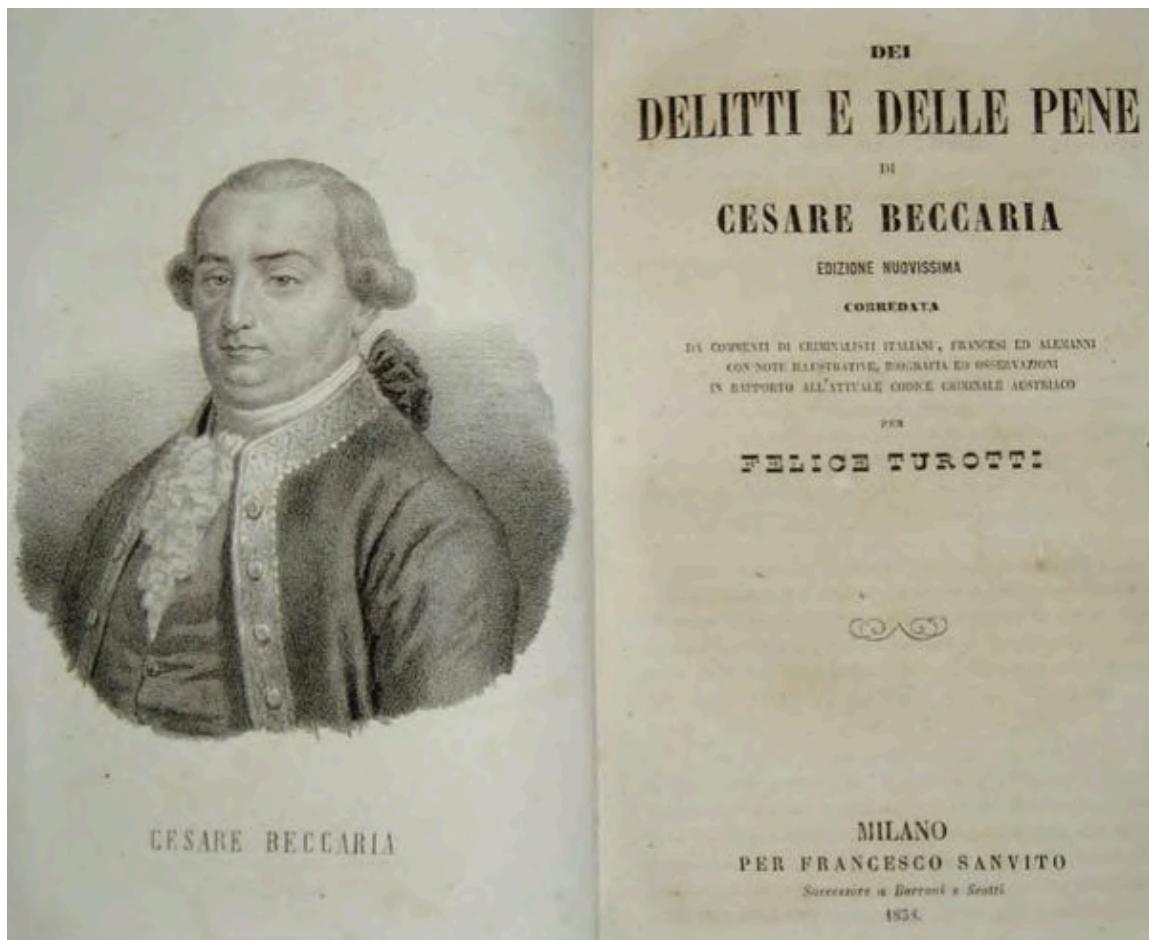
A body of theories of crime causation that views criminal behavior as the product of the offender's free will. The criminal is choosing to break the law.

According to Beccaria, if punishment is to deter offenders, it must be dictated by law, proportionate to the crime committed (neither too harsh nor too easy), certain, swiftly imposed, and dispensed in public.³ Bentham proposed that people acted in a way that brought them the greatest pleasure and the least pain and that they would not commit crime if the pain of punishment was greater than what might be gained from carrying out the crime. This idea was known as Bentham's *hedonistic calculus*. Bentham also developed *utilitarianism*, an ethical philosophy of social control that focused on imposing punishments that were believed best for the majority of people in society.⁴

Like the classical school from which it is derived, the **neoclassical school of criminology** is based on the principle of free will, the belief that people are responsible for their actions, and the idea that punishment can prevent crime. However, the neoclassical school incorporates some practical modifications necessary for the equitable administration of criminal law and justice. For example, the neoclassical school recognizes differences in criminal circumstances and assumes that some people—such as children, the insane, and the intellectually deficient—cannot reason. In such cases, the criminal justice system must consider the offender's needs in determining appropriate punishments. Proponents of the classical and neoclassical schools page 85 frequently support the crime control model discussed in Chapters 1 and 11.

neoclassical school of criminology

A theory of crime causation that recognizes differences in circumstances and assumes that some people—such as children, the seriously mentally ill, and the intellectually deficient—cannot reason. In such cases the criminal justice system must look at the offender's ability to comprehend the consequences of his or her criminal actions in determining appropriate punishments.



▲ Classical School of Criminology

The classical school of criminology believes that the criminal has a free will and should be punished as dictated by law.

The Picture Art Collection/Alamy

A present-day derivative of the classical and neoclassical schools of criminology is **rational choice theory**. This theory assumes that criminals choose to commit crime because they believe that the benefits they will derive will overshadow the risks of getting caught.⁵ The benefits of crime may be economic, physiological, or both. For example, one offender may commit a crime because she thinks she will obtain a great deal of money; another offender might receive an adrenaline high or a boost in self-esteem from committing the crime. In both cases, the offender considers her crime and victims carefully before proceeding and comes to the conclusion that there is little chance of getting caught or of being punished.

rational choice theory

A theory of crime causation that assumes that criminals choose to commit crime because they believe that the benefits they will derive will outweigh the risks of getting caught.

The Positivist School: Tendency Toward Criminal Behavior Is Predetermined

The **positivist school of criminology**, which emerged after 1850, replaced the classical school concepts of free will and rational choice with the concept of *determinism*—the idea that criminal behavior is a product of biological, psychological, and social forces that are beyond a person’s control. Moreover, the positivist school de-emphasized punishment as a deterrent to crime and stressed instead the need to treat the offender. If they were to be treated successfully, offenders had to be scientifically studied to determine what factors caused them to commit crime.

positivist school of criminology

The view that criminal behavior is a product of biological, psychological, and social forces beyond a person’s control.

The positivist school is associated with Cesare Lombroso (1835–1909), who is known as the father of modern criminology. Lombroso was one of the first researchers to apply the scientific method to his study of offenders. He spent much of his life measuring the skulls of criminals and recording his findings. As a biological determinist, he believed that biological factors (particularly heredity) were the main determinants of criminal behavior. Lombroso proposed that criminals were born with criminal traits, and he espoused the concept of **atavism**—the idea that, viewed from an evolutionary perspective, criminals were primitive, subhuman, biological throwbacks characterized by certain “inferior” identifiable physical and mental characteristics.⁶ For example, Lombroso described criminals as having small glassy eyes, big ears, and excessive amounts of hair. Proponents of the positivist school of criminology are frequently supporters of the rehabilitation model discussed in Chapter 11. The major tenets of the classical and positivist schools of criminology are compared in Key Concepts.

atavism

The belief that criminals are evolutionarily primitive or subhuman people characterized by certain “inferior” identifiable physical and mental characteristics.



▲ Cesare Lombroso

Boyer/Roger Viollet/Getty Images

The classical and positivist schools of thought are starting points from which to view crime and criminal behavior, but their ability to predict who will engage in criminal behavior and who will be victimized by crime is limited. Although free will and biological determinism continue to be useful explanations of crime, today we recognize that crime is caused by multiple factors. Research focusing on biological, psychological, sociological, and victimological factors contributes further to our understanding of what causes crime and victimization.

KEY CONCEPTS Principles of the Classical and Positivist Schools of Criminology

Classical School

Criminal behavior is the product of free will.

The presence of punishment in the general population prevents crime.

Positivist School

Criminal behavior is a result of determinism.

Treatment of convicted offenders prevents them from committing crime.

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BIOLOGICAL FACTORS

Social forces can lead people to behave in criminal and violent ways, yet most people who experience social challenges such as poverty and racism do not

become criminals. Differences in the biological and psychological makeup of individuals largely account for this fact. The ways each person thinks and feels—and thus behaves—are largely the result of brain structure and function. Understanding the psychology of an offender's mind requires first knowing something about the biology of the brain.

Criminologists have benefited greatly from new technologies that permit the study of brain activity and function. Today's technologies enable researchers to see various structures of the brain as well as to observe the brain in action. Although much of human behavior is largely influenced by the thought processes associated with making choices (individual free will), biological factors are also involved.

Advances in science and medicine, and their respective technologies, are making it possible to identify and measure a variety of biological factors related to the expression and suppression of criminal and violent behaviors. For this reason, much current research on criminal and violent behavior is turning to investigating the structure and function of the brain.

Neurobiological Factors of Brain Function

Teenagers are known to make careless decisions and to engage in high-risk behaviors, but is it their fault? Neurological studies have shown that the teenage brain is still a work in progress. Not all of its structures have matured. In teenagers, the immature prefrontal cortex area of the brain is not yet capable of maintaining control over a teen's impulses. Thus even teenagers known to be "good kids" sometimes behave recklessly: for example, skateboarding down some steps without wearing a helmet or stepping on the gas to speed away from a stoplight.⁷ Many delinquent behaviors are the result of poor impulse control that is due, at least in part, to a brain that has not yet completely developed.

But what of adults who act on impulse? In many cases their behavior is the result of a brain that has been injured or has developed in abnormal ways. Brain functioning may be affected by disease or injury or by the effects of chemical agents such as alcohol and drugs. There is no scale for predicting the degree to which any of these factors might induce criminal behavior, but these abnormalities are widely recognized as factors contributing to aberrant and violent behavior.

How a person's behavior may change after a head injury depends largely on the site and extent of the trauma. Forensics expert Gail Anderson examined a variety of studies of violent offenders in which their violent and criminal

behaviors (for example, spousal battery, murder) were linked to brain damage.⁸ Other studies have linked head injury to violent behavior in juveniles who grow up in a home where there is violence and where the juvenile has a mental disorder (most often depression, and usually undiagnosed at the time).⁹ Although it is not clear how these three factors—trauma to the brain, violence in the home, and psychological disorder—specifically relate to one another (that is, whether depressed children are more prone to head injury or whether head injury results in depression), their combined result can be chronic violent behavior.



▲ Reckless Teen Behavior

Many delinquent behaviors on the part of youths result from poor impulse control that is due, at least in part, to a brain that has not yet completely developed. Ingram Publishing

A simple explanation of brain function shows that behavior results from interactions between the rational prefrontal cortex and the emotional *limbic system*—the part of the brain responsible for the experience of emotions (such as rage) and basic drives (such as sex). When an individual has an _____ page 87 urge to act in a particular way (to yell at someone for cutting in line at the movie theater), that person's prefrontal cortex will judge whether that behavior is the best response. If the person cutting in line is a large and

imposing stranger, yelling at him may provoke him to become violent. The prefrontal cortex may then decide that no action is the best course of action. For some individuals, however, the urge to yell at the stranger is uninhibited by rational thought. Because their prefrontal cortex is not functioning properly, they yell without thinking about the possible consequences of doing so.

Impulsive behaviors are characteristic of individuals with *attention deficit hyperactivity disorder (ADHD)*, a syndrome with many symptoms, including poor impulse control, restlessness, and an inability to concentrate. Considering the structure of the brain, we can understand how a stimulant medication such as Ritalin works to calm the behavior of someone with ADHD. Normally, such a drug would stimulate a person; however, in those with ADHD, the drug acts to stimulate the underaroused prefrontal cortex, prompting it to do its job of dampening impulses that come from the emotion-generating limbic system.

Using scanning imagery, we can identify the activity in the brain as people under the same experimental conditions are given a task (such as counting backward by multiples of 7) to stimulate the prefrontal cortex. During such an experiment, activated regions of the brain appear as red areas on the scan. The brain scan of a control subject with no psychiatric or criminal history produces an image in which much of the prefrontal cortex is red, indicating its activation as the brain concentrates and performs the task. In contrast, the scan of an impulsive murderer shows shades of blue and green in the prefrontal cortex, reflecting reduced activity in this region. Such a scan is consistent with what we would expect in people who tend to behave on impulse. Indeed, it is the type of image seen in the scan of an impulsive murderer—an individual who kills out of feelings of rage at that moment. Interestingly, the brain scans of individuals who kill in the heat of the moment appear to differ from those of predatory murderers. The scans of those who plan their series of killings reveal higher than normal levels of activity in the prefrontal cortex during such cognitive tasks. The elevated level of activity in this region of the brain could explain, in part, why serial murderers succeed in committing a number of killings. Their behavior may be under better self-control and less susceptible to impulse.

The human brain contains some 100 billion *neurons*, the basic nerve cells that process and respond to incoming signals from the outside world through the five senses: vision, hearing, touch, taste, and smell. **Neurotransmitters** are chemicals secreted by neurons that facilitate the transmission of information from one neuron to another. These chemicals operate much like switches, turning neurons off and on—terminating the impulse or passing along the information. The neurotransmitter serotonin has been linked to impulsive and

aggressive behaviors. A person whose serotonin levels in particular regions of the brain are too low will be significantly more likely to act on impulse and behave aggressively.¹⁰ Another neurotransmitter, dopamine, appears to play a major role in the disordered thinking of schizophrenics.¹¹

neurotransmitter

A chemical secreted by neurons that facilitates the transmission of information from one neuron to another.

Like neurotransmitters, *hormones* are also chemical messengers, except that they are released into the bloodstream and so circulate throughout the body. The male sex hormone testosterone has long been associated with aggressive behavioral tendencies such as competitiveness and dominance. Increasing the level of testosterone (for example, by injecting it into the bloodstream) can result in higher levels of aggression.¹² Although being aggressive does not necessarily involve violence, the probability of a violent outcome increases when an individual is highly aggressive in interactions with others.

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The adrenal gland secretes the stress hormone cortisol in response to a threatening situation. Extremely violent boys tend to have abnormally low levels of cortisol, a finding suggesting that they would be less physiologically responsive to situations most others would experience as threatening.¹³ This “no fear” state in the face of potential threat could serve a criminal well. Consider that for most of us, our stress level alone would deter us from committing a serious crime. If we tried to rob a bank, we would probably bail out by the time we got to the front of the teller line, sweating profusely and with our heart beating out of our chest. An individual whose body does not register the situation as threatening is much more likely to execute the crime successfully, in a calm and controlled manner.

Genetic Factors: The Inheritance of Criminal Tendencies

Do criminals inherit their criminality? The basic unit of heredity is the *gene*—a segment of an individual’s DNA that contains the information for making specific proteins that, in turn, contribute to particular biological or behavioral traits. The field of behavioral genetics explores the roles of genes in behavior. Of the approximately 25,000 genes that humans have, no single gene codes for any particular behavior. There is no “crime gene” per se. Rather, a variety of

genetic and environmental factors interact to produce specific traits. Fetal exposure to toxins and viruses, stress and emotional trauma in childhood, and nutritional status are just a few of the factors that affect the way genes are expressed.

Criminal behavior tends to run in families.¹⁵ Some families produce successive generations of criminals largely because of the way those families raise their children. In other cases, genes that predispose individuals to behave in aggressive and impulsive ways are carried along family lines. Dutch geneticist Han Brunner discovered a mutation in a specific gene that affects, among other things, serotonin levels. Every male in the family he studied who had the mutated gene also had a history of violent behavior.¹⁶ This particular mutation is so rare, however, that it cannot explain violent behavior in general. Future researchers will no doubt identify other contributing genes, along with the kinds of environments in which they come to be expressed as criminal behaviors. An emerging field called *epigenetics*, which looks at how specific factors in the environment switch on and off the expression of particular genes, will come to be especially important in this regard.



▲ Identical Twins

When one identical twin is criminal, the twin sibling is more likely to be criminal as well. This occurs more frequently in identical twins than in other siblings.

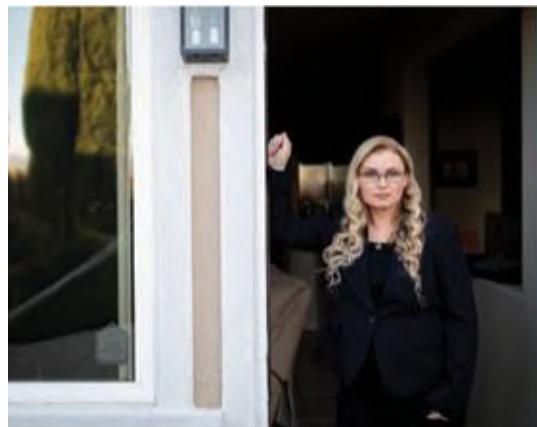
Barbara Penoyar/Getty Images

MYTH/REALITY

MYTH: A specific gene, when inherited, results in criminal behavior.

REALITY: More likely, some individuals inherit particular combinations of genes that make them more likely to act on impulse or respond with aggression to certain situations.¹⁴

What are the respective contributions of genes and the environment? Studies of twin siblings offer substantial evidence of the role genes play in criminal behavior.¹⁷ Identical twins have identical genes, and they tend to behave more similarly than do other brothers and sisters. With regard to criminal behavior, when one identical twin is criminal, the other twin is more likely to be criminal as well—this occurs more frequently than with other siblings. In research on adoptees, the genetic influences of biological parents who themselves were criminal were found to outweigh the influence of the parents who raised the children, whether those parents were criminal or not. Thus, although both the rearing environment and genetic makeup have a role in a child's (and later an adult's) behavior, genes appear to carry more weight.¹⁸



▲ CeCe Moore

Tara Pixley/The New York Times/Redux

The recognition that, except for identical twins, individual humans have stretches of DNA that uniquely identify them has broad application in criminal investigations. DNA can be extracted from bone tissue to identify skeletal remains of victims of crime. In addition, offenders leave traces of _____ page 89

their DNA (for example, from semen) at the scenes of their crimes. Just as current research strives to link specific genes and combinations of genes to physical and mental illnesses, genetic “profiles” are being sought for behavioral traits such as violence.



isak55/Shutterstock

Real Crime Tech

RECONSTRUCTING FACES FROM DNA: DNA PHENOTYPING

Between December, 2005 and March, 2016, a serial rapist is believed to have attacked at least eight women in their Queensland, Australia homes. The attacks appeared to stop after police launched a public appeal to assist in the capture of the Gold Coast Rapist. It is unusual for such serial rapists to just stop offending. It may be that the offender moved, or was incarcerated for a different crime, or is keeping a low profile so as not to draw undue attention to himself. DNA evidence has conclusively linked one man to four cases; in every case the modus operandi of the offender was “terrifyingly similar.”^a

DNA phenotyping is a technique currently used to estimate ancestry, age, height, and sex of skeletal remains and has already been shown to assist in the identification of remains found along the American-Mexican border. Could DNA samples also provide information for developing a 3D facial

composite picture of an individual? Without sufficient detail with which to create a sketch of the Gold Coast Rapist from any of his victims, could the DNA already collected be used to “put a face on” this perpetrator? Geneticist and anthropologist Mark Shriver is developing a database of biological samples and 3D facial scans, looking for the genetic markers that contribute to the shapes of faces. In their lab they are looking for the genes that underlie normal variations in common traits like facial features associated with different ancestral groups (e.g., of European descent). The more DNA collected, the better will be the statistics that can be developed, and the higher the probabilities of accurate prediction of facial features will be. If DNA samples can be obtained from a skull, for example, nose shape is easier to predict. While there are companies advertising such capabilities, Shriver cautions these claims are premature; that much more research remains to be done.^b To date, there has not been a bombshell success story where DNA phenotyping was used to “flesh out” the face of a convicted offender. Certainly courts will not be relying on such applications of DNA phenotyping any time soon, but police investigators may increasingly find the developing technology useful to at least narrow a suspect pool.^c To this end, the ongoing research by international consortiums such as that with which Shriver is involved—linking gene maps to facial features—is likely to find a receptive audience in the forensic arena.

SOURCE: ^aKim Stephens, “One Year on, Gold Coast Rapist, the Night Stalker, Is Still on the Loose,” *News.com.au*, January 13, 2017. <https://www.news.com.au/national/queensland/crime/one-year-on-gold-coast-rapist-the-night-stalker-is-still-on-the-loose/news-story/df5ddcd3eb36e7810dfa535ac3b9320> (retrieved on February 12, 2019).

^bAndrew Purcell, “Could DNA Phenotyping Construct a Likeness of the Gold Coast Rapist?” *The Sydney Morning Herald*, December 12, 2016. <https://www.smh.com.au/national/drawing-an-offenders-face-from-a-drop-of-blood-20161118-gss377.html> (retrieved February 6, 2019).

^cAugust Pasquale, “Facial Recreation Might Be Possible with just a Sample of DNA, Joint Study between Penn State, Other Schools Show,” *The Daily Collegian*, February 28, 2018. https://www.collegian.psu.edu/news/campus/article_dba4f8c0-1c0b-11e8-b6e2-2f9dad9eb08b.html (retrieved February 6, 2019).

Most recently, consumer and volunteer uploads of DNA test results to various databases are being compared to DNA evidence from cold cases. The idea is to find matches whereby relatives of the perpetrator can be identified. Genetic genealogist (aka “DNA detective”) CeCe Moore describes the approach as a “major game changer for [solving] cold cases.” She uses GEDmatch and Parabon Nanolab databases in her work with law enforcement.¹⁹ In April, 2018, such a genetic fingerprint was used to crack the 25-year-old cold case of the Golden State Killer, believed responsible for at least 45 rapes and 12 murders between 1976 and 1986 in California.²⁰ However, the use of this technology for the purpose of identifying criminal suspects is already facing privacy and ethical challenges. Might there be criminals on the limbs of your family tree?

Many people, researchers and the general public included, believe that linking criminal behavior to biological factors unjustly frees offenders from

criminal responsibility for their crimes. However, the complexity of criminal behavior makes it both difficult to understand and difficult to control. Perhaps the most admirable goal would be to identify what we are capable of changing and recognizing what we are not, at least not with current knowledge.

PSYCHOLOGICAL FACTORS

All aspects of our psychological makeup have biological underpinnings. The question is not whether mental illnesses have a genetic component but how combinations of genes work to increase an individual's vulnerability to mental disorder. When an individual's brain does not work properly, the person's psychological responses may lead to deviant behavior and crime. Some people commit crimes because there is something psychologically wrong with them. Some have mental disorders that affect their ability to function in accordance with society's laws. Others may have psychological problems even if they do not suffer from a recognized mental illness.

Mental Disorders and Criminal Behavior

A *mental illness* or *mental disorder* is a medical condition that interferes with a person's ability to function on a day-to-day basis. The most serious disorders—**psychoses**—leave individuals out of touch with reality and unable to cope with their surroundings. A person suffering from a psychotic disorder may page 90 experience *hallucinations*, which are sensory experiences, such as hearing voices or seeing things that are not there, in the absence of actual stimuli. The individual may also have *delusions*, false and sometimes preposterous beliefs about the world, such as believing that people are out to get him or her.

psychoses

Serious mental disorders that cause individuals to be out of touch with reality and thus unable to cope with the demands of everyday living.

MYTH/REALITY

MYTH: People with mental disorders are more likely than other people to commit crimes.

REALITY: In general, mentally disordered people are no more likely than others to commit crimes. There is, however, a relationship between some kinds of mental disorder and criminal behavior. The

way a particular mental disorder affects an individual's thinking and feeling will affect that person's behavior.²¹

Criminals depicted on television and in movies are often stereotyped as having mental problems.²² The truth is that mentally disordered individuals are generally not violent, nor are they criminal.²³ The best predictor of future criminal behavior—for those with and without mental disorders—is a history of past criminal behavior.²⁴ No particular mental disorder indicates that a person will behave violently or break the law. Some mental disorders do, however, make certain individuals more susceptible to acting in criminal or violent ways. This is especially true when a person's mental state is further altered by the abuse of drugs or alcohol or when a person has gone without prescribed medication for such a disorder.²⁵

Classifying Mental Disorders The American Psychiatric Association publishes the ***Diagnostic and Statistical Manual of Mental Disorders (DSM)***, the standard classification reference used by mental health professionals in the United States. The *DSM*, now in its fifth edition (thus *DSM-5*), describes the approximately 300 mental disorders currently recognized by the psychiatric community, along with their identifying symptoms.²⁶ The criminal justice system regularly calls upon mental health professionals to assist in making a wide range of decisions, and these professionals rely on the *DSM*, which describes mental disorders largely based on their effects on an individual's ability to meet the demands of everyday life. (See "Matters of Ethics" for a discussion of the *DSM* and the controversies it prompts.)

Diagnostic and Statistical Manual of Mental Disorders (DSM)

The standard classification reference used by mental health professionals in the United States.

The *DSM-5* lists several categories of serious mental disorders that include schizophrenia spectrum disorders, paranoid disorders, and severe mood disorders. A number of criminal cases making the news involve schizophrenic disorders or some form of major mood disorder. We discuss both of these types of disorders in the following sections to illustrate the influence of serious mental disorders on behavior—including criminal behavior.

Schizophrenia Spectrum Disorders The term **schizophrenia** comes from Greek and then New Latin *schizo* (meaning “split”) and *phrenia* (meaning

“mind”). The word’s origins may explain why so many people wrongly believe that schizophrenia means split personality. In fact, schizophrenia refers to the individual’s split from reality that is the result of profound aberrations in cognitive processes. Schizophrenics typically suffer from both delusions and hallucinations. Approximately 1 percent of U.S. adults have a form of this debilitating mental disorder.²⁷ The majority of schizophrenics are not violent, but the odds of their being so increase if they have the paranoid type of the disorder²⁸ and are not taking medication for it. Substance-abusing schizophrenics also are more likely to be violent.²⁹

schizophrenia

A serious mental illness characterized by an individual’s split from reality due to profound aberrations in cognitive functioning.

Andrei Chikatilo, executed for murdering 52 fellow Russian citizens over a 12-year period beginning in 1978, likely suffered from paranoid schizophrenia. He mutilated most of his victims, removing or wounding their eyes because he believed that the image of a killer could be retrieved from his victim’s eyes. He also cannibalized some victims. Chikatilo seemed quite normal on the outside; he was married with two children and held down a steady job as a factory clerk. The bizarre nature of his crimes, however, betrayed his serious mental illness.

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Matters of Ethics

Revising the *DSM*: A Process on Trial in the Court of Professional Opinion

The *Diagnostic and Statistical Manual of Mental Disorders (DSM)*—often referred to as the “shrink’s bible”—is the book that mental health professionals in North America use to diagnose mental disorders. Medical insurance companies require therapists to provide *DSM* diagnoses in order to be paid for their services. Expert witnesses regularly testify as to specific *DSM* disorders in insanity trials. Forensic psychologists and psychiatrists refer to *DSM* diagnoses in their assessments of whether or not a defendant is mentally fit to stand trial or should be granted early release from prison. Diagnoses are important factors in community placement decisions

regarding parolees who are mentally ill. Suffice it to say, the diagnoses in this manual carry tremendous weight in the lives of many people—both in and out of the criminal justice system.

The National Institute of Mental Health estimated that in 2016, 18.3 percent of Americans over the age of 18 had a diagnosable mental disorder. This agency also estimated 4.2 percent of American adults had serious mental disorders.^a In comparison, according to the Treatment Advocacy Center, in 2014, approximately 20 percent of jail inmates and 15 percent of state prison inmates had a serious mental disorder. Not only is this greater than the prevalence of serious mental illness in the general population, it was also 10 times higher than the number of individuals with serious mental disorder in state psychiatric hospitals.^b The discrepancies are even higher for all mental disorders. Whether we are talking about people in the general community or individuals convicted of crimes, the consequences of being diagnosed with a mental disorder are far-reaching. Whether your medical insurance company will pay for your psychotherapy or a defendant's plea of insanity will prevail in court largely depends upon the application of *DSM* diagnoses.

Since the American Psychiatric Association published the first edition of the *DSM* in 1952, the manual has gone through six revisions (two of which were not substantial enough to warrant new editions). The fact that the *DSM* continues to be revised reflects the arbitrariness of diagnostic categories. So, who decides what mental disorders are included in the *DSM*? For that matter, who decides what combinations of symptoms constitute any particular mental disorder? And what criteria are used to select the behaviors that are cited as symptoms of the various disorders? The process by which diagnoses (and their criteria) become part of the *DSM* involves a number of working groups (known as advisory panels), each of which is responsible for a particular diagnostic category. Their recommendations have significant influence on the choice of which mental disorders are ultimately included in (or excluded from) subsequent *DSM* editions.

In a study in 2006, Lisa Cosgrove and her colleagues examined financial investments that members of advisory panels had with pharmaceutical companies at the time they were making recommendations to revise the *DSM-III*.^c A wide range of conflicts of interest were uncovered that included such practices as panel members' holding stock in drug companies, serving as expert witnesses for drug companies that were being sued, and receiving gifts (in the form of travel, grants, contracts, and research funding) from drug companies. Cosgrove and her colleagues found that of the 170 panel members, 56 percent had financial ties to pharmaceutical companies. In fact, 100 percent of the panelists making recommendations about schizophrenia and other psychotic disorders had financial conflicts of interest with the pharmaceutical industry! Since drug companies have such a vested interest in the *DSM*, it would be naive to think that their relationships with *DSM* panelists are born of altruistic motives in support of the psychiatric profession.



In 2013, the American Psychiatric Association again revised the manual. Decisions were made about which disorders should be included in the *DSM-5* and what criteria should be used to diagnose them. Of this most recent *DSM* panel-based revision process, Cosgrove and Krimsky reported that 75 percent of the work groups “continue to have a majority of their members with financial ties to the pharmaceutical industry.” Further, as was found with *DSM-IV* revisions, “the most conflicted panels are those for which pharmacological treatment is the first-line intervention.” Thus, it would seem that ethical questions about the process remain, conferring dubious validity on the work product—the *DSM-5*.^d

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Why is it important to know how mental health professionals decide on what should be considered a mental disorder?
- What kind of weight should diagnoses be given as a factor in the outcome of criminal trials?
- Should shareholders in pharmaceutical companies be banned from giving input in the process of revising the *DSM*? Why and why not?

SOURCES: ^aThe National Institute of Mental Health, “Statistics” (updated November, 2017). <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml> (retrieved February 2, 2019).

^bTreatment Advocacy Center, “How Many Individuals with Serious Mental Illness Are in Jails and Prisons?” November, 2014. <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf> (retrieved February 5, 2019).

^cLisa Cosgrove, Sheldon Krimsky, Manisha Vijayaraghavan, and Lisa Schneider, “Financial ties between *DSM-IV* Panel Members and the Pharmaceutical Industry,” *Psychotherapy and Psychosomatics* 75 (2006): 154—160.

^dLisa Cosgrove and Sheldon Krimsky, “A Comparison of *DSM-IV* and *DSM-5* Panel Members’ Financial Associations with Industry: A Pernicious Problem Persists,” *PLoS Medicine* 9, no. 3 (2012): e1001190. doi:10.1371/journal.pmed.1001190.

The search for the causes of schizophrenia focuses on a number of factors. Because the disorder tends to run in families, genetic studies are a logical area of research. Multiple clusters of genes that affect brain structure and function appear to be involved. A particularly productive line of research is focusing on abnormalities in different neurotransmitter systems. As the biochemistry of

schizophrenia becomes better understood, medications to manage its symptoms more effectively will undoubtedly follow.³⁰

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Major Mood Disorders *Major mood disorders* involve extreme and prolonged emotional states that render the individual incapable of coping with the demands of everyday life. Approximately 6 percent of the adult population has a major depressive disorder marked by feelings of guilt and worthlessness, loss of appetite for food and sexual activity, sleep disturbance, and thoughts of suicide.³¹ The severity of these symptoms distinguishes the person with major depressive disorder from someone who is only mildly depressed. In the same way that medications can treat the symptoms of schizophrenia, drugs can affect the biochemistry of the brain in ways that alleviate serious depression.

People suffering serious depression may be inclined to harm themselves, and they may also present a risk to others. There are highly publicized cases of individuals with serious depression who murder others before taking their own lives (“angry suicides”) or who position themselves to be killed by police after they have murdered others (“suicide-by-cop”). On a July morning in 1984, for example, 41-year-old James Oliver Huberty told his wife “society had its chance.” As he was leaving home dressed in military-style camouflage clothes, he told her: “I’m going hunting. Hunting humans.” Seventy-seven minutes after Huberty entered the McDonald’s restaurant close to his home in San Ysidro, California, 21 people were dead and 19 wounded. A police sharpshooter killed Huberty, making him the 22nd fatality and ending the incident—thus aiding Huberty in his apparent suicidal quest.



▲ Aftermath of the James Oliver Huberty Massacre

James Oliver Huberty was killed by a police sharpshooter after murdering 21 people and wounding 19 others in a McDonald's restaurant. The media frequently refer to such murderers as "going postal" since some of the infamous ones were former postal workers who returned to the workplace and killed coworkers. In the Huberty case, the media introduced the term "McRage" to reflect the killer's apparent emotions and the scene of his crime.

Lenny Ignelzi/AP Images

The day before, Huberty had called a local mental health center seeking help. Since he did not say it was an emergency situation, his name, incorrectly spelled as Shouberty, was apparently put on a waiting list. Huberty's wife later told the media that her husband appeared to be delusional around this time, a symptom indicating a major depressive disorder. The autopsy revealed extremely high levels of lead and cadmium in his body, perhaps from his years of work as a welder. Both are toxic elements known to significantly affect brain function. Thus, in Huberty's case, brain function may have been compromised by toxic elements. It appears that altered brain function coupled with major depressive disorder proved a fatal mix, resulting in a mass murder.

Another form of major mood disorder is **bipolar disorder**. Formerly known as manic depression, bipolar disorder is characterized by periods of severe depression that can alternate with periods of mania, whose symptoms include extreme elation and exaggerated self-importance. Persons suffering from major depression may become suicidal, whereas individuals in the manic phase of bipolar disorder are often irritable and hostile and can turn violent. Hallucinations or delusions may contribute to their aggression.

bipolar disorder

A major mood disorder manifested by bouts of serious depression alternating with periods of extreme elation and exaggerated self-importance.

A woman who has bipolar disorder is at higher risk of experiencing **postpartum psychosis**, a serious mental illness whose symptoms include delusions, hallucinations, and obsessive thoughts about her baby. These symptoms generally start within the first 6 weeks after the baby's page 93 birth but may not appear for as long as a year. It is not surprising that some mothers with postpartum depression kill their babies.³² Postpartum psychosis, combined with a number of other factors, likely led Andrea Yates to a mental state in which, in 1991, she decided that killing her five children was the only way to save them from what she believed would be eternal damnation. As her grip on reality faded, the influence of extremist religious views took hold, and her increasing isolation increased her vulnerability. Andrea's family also had a history of mental illness: One brother had bipolar disorder, and another brother and a sister had long-standing histories of depression, as did their mother.³³ This family history of mood disorder suggests that Yates's psychological problems, as is true of most others with serious mental illness, had genetic roots.³⁴ In her initial trial, a Texas jury found Andrea Yates guilty and sentenced her to life in prison. Following the discovery that a prosecution expert witness had given false testimony that may have led jurors to believe in her culpability, another trial was conducted. The jury in the second trial decided that Yates was not guilty by reason of insanity. She was committed to a maximum security state mental hospital, and later transferred to a minimum security psychiatric facility in Texas, where she currently resides.³⁵

postpartum psychosis

A serious mental illness characterized by hallucinations, delusions, and obsessive thoughts about the baby.



Mental illness × Social isolation × Fascination with violence × Access to guns = Sandy Hook mass murder.

Zuma Press/Newscom

Most mental disorders are not as debilitating as the psychoses previously described. Yet many of the most serious and brutal crimes are the product of these so-called less serious mental disorders. For example, in 2012, 20-year-old Adam Lanza shot and killed 26 people, 20 of whom were elementary school students. The “Sandy Hook Shooter” reportedly suffered from more than one mental disorder—none of which was a psychosis. A formal review of the case concluded he had autism spectrum disorder, an anxiety disorder, and obsessive-compulsive disorder.³⁶ The report concluded that Lanza’s mental disorders, coupled with his fascination with mass murder, social isolation, and access to guns, proved to be a recipe for mass murder. (See Chapter 14 for more on the Lanza case.)

Psychopathy In the *DSM-5*, *antisocial personality disorder* was the diagnosis for the presence of a pattern of behavioral problems before age 15 that include truancy, theft, and compulsive lying, and the continuation of such a pattern into adulthood. In fact, repeated lawbreaking is considered a core symptom of antisocial personality disorder, and most prison inmates would qualify for this diagnosis.³⁷ Beyond confirming that these individuals have a pattern of antisocial behavior, however, this diagnosis offers little to distinguish among offenders or to explain their behavior.

An alternative approach, particularly in the forensic arena, relies on the concept of psychopathy. **Psychopathy** is a disorder of personality revealed by a lifelong pattern of antisocial behavior about which the individual has no remorse. It differs from antisocial personality disorder in that it involves distinct cognitive and emotional deficits that have been linked to specific brain abnormalities. The struggle regarding these two terms—antisocial personality

disorder and psychopathy—continued during the deliberations for deciding personality disorders for the *DSM-5*. For the time being, it is fair to say that most clinicians are continuing to refer to their clients as having antisocial personality disorder, whereas forensic behavioral professionals are increasingly focusing on the psychopathy of the suspects, defendants, and convicts they evaluate.

psychopathy

A personality disorder involving specific cognitive and emotional deficits that is exhibited by a lifelong pattern of antisocial behavior for which the individual has no remorse.

Most people have heard of psychopathy but do not fully understand what it is. A common mistake is to confuse the word *psycho*, a slang term for “psychotic,” with the term *psychopath*. Whereas psychotics typically experience distorted thoughts and perceptions, psychopaths are in touch with reality and appear to be normal on the surface. Typically, psychopaths are manipulative, superficial, and self-centered. They lack the ability to empathize emotionally with others and do not experience remorse for their antisocial behavior. Psychopaths do experience emotions, but their feelings page 94tend to be shallow. They tend to act on impulse and are, by and large, irresponsible. Their behavior is thus like that of people with antisocial personality disorder; but the nature of their behavior is more complex in that psychopaths have specific neurobiological deficits as well. Taking this definition to its logical conclusion, psychologist Robert Hare noted that “[i]f crime is the job description, the psychopath is the perfect applicant.”³⁸



▲ Posttraumatic Stress Disorder Sufferer

Some people who suffer from posttraumatic stress disorder (PTSD) have been reported to perpetrate serious crimes.

Chris Carlson/AP Images

Many criminals who commit serial offenses, from burglary to confidence schemes to serial murder, are psychopaths. The kinds of feelings and associations that stop us from engaging in antisocial acts are notably absent in psychopaths. They do not care about others or the harm that their antisocial behaviors—criminal and otherwise—do to them. This is one reason that criminal psychopaths are significantly more likely to reoffend than are nonpsychopathic offenders.³⁹ Moreover, while most psychopaths are not criminal or violent, criminal psychopaths as a group commit more than half the violent crimes in society.⁴⁰

Other nonpsychotic disorders have been linked to criminal behavior. Individuals suffering from *posttraumatic stress disorder (PTSD)*, for example, have been reported to perpetrate serious crimes. The woman who kills her long-abusive husband, and the war veteran who engages in violence following his return from active duty, are two examples. In both cases, prior experience with a situation perceived to be life-threatening has serious and long-term psychological consequences. In fact, virtually any mental disorder can contribute to, if not be the basis for, criminal behavior.

Intelligence and Morality—The Cognitive Brain

The way in which the brain processes information is another factor related to the causes of crime. Two areas of cognitive research that warrant discussion in relation to crime are intelligence and moral reasoning.

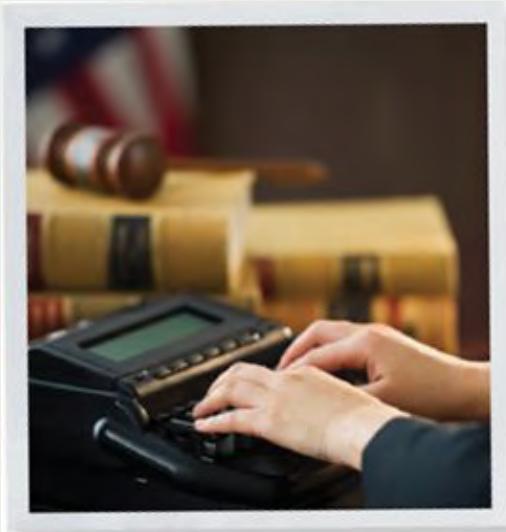
Intelligence **Intelligence** is the capacity to learn or comprehend, shown through the ability to solve problems and adapt to life's everyday experiences.⁴¹ *Intelligence tests* such as IQ tests provide a standardized measure of cognitive ability (as demonstrated by, for example, solving problems or engaging in abstract reasoning). The Wechsler Adult Intelligence Scale is commonly used in clinical and forensic settings.⁴² In addition to providing measures of capacities such as verbal comprehension and page 95 motor coordination, scores on particular subtests can indicate brain damage and other deficits. Incarcerated offenders tend to score lower on average than nonoffenders on such intelligence tests.⁴³

intelligence

The capacity to learn or comprehend, manifested by the ability to solve problems and adapt to life's everyday experiences.

The relationship between intelligence and criminal behavior is complex. Complicating this discussion is the fact that there are different kinds of intelligence. People with high *emotional intelligence* accurately perceive others' emotions, understand emotional meanings, and can manage their own emotions.⁴⁴ The behavior of serial murderers would indicate they are low in emotional intelligence, as they appear to lack the ability to understand the emotional meanings of situations as experienced by others; they appear to process emotional information differently. Psychopaths, in particular, lack these abilities.

Real Careers



Daniel Grill/Getty Images

JESSICA DUBNOFF

Work location: New York City

College(s): Northeastern University (2008)

Major(s): Criminal Justice with a minor in Political Science (BS)

Job title: Contracted Area Coordinator in the Department of Probation, Special Offenders Unit

Salary range for jobs like this: \$30,000—\$35,000

Time in job: 1.5 years

Work Responsibilities

As area coordinator for a mental health treatment program for sex offenders, I act as a liaison among the probation officers, probationers, and mental health clinicians. My responsibilities include gathering information for new referrals, explaining the program to probationers, and scheduling appointments for probationers with one of our mental health clinicians. I also make sure all the relevant monthly paperwork—such as progress reports, monthly updates, sign-in sheets, session notes, and billings—is distributed to the proper probation officer and a copy is filed at our office. My favorite part of this job is when I oversee containment meetings with the sex offender and probation officer and serve as a moderator, an integral part of this multidisciplinary team. Through my current employment, I have found myself becoming much more interested in the social work aspects of supervising and monitoring a case than in the department administration and law enforcement aspects.

Why Criminal Justice?

Since high school I knew I wanted to work in the criminal justice field. However, I was unsure which career was right for me—criminal defense attorney, police officer, forensic psychologist, and prosecutor all seemed like excellent choices. I decided to attend Northeastern University for guidance in making this difficult decision. Northeastern is well known for its co-op program, which allows students to work full-time for 6 months per year for class credit in a hands-on environment. By the time I was a senior, I had participated in three co-ops. In fact, I landed the job I have now because my co-op experience led me to a successful internship with the same company.

Expectations and Realities of the Job

From my co-ops, academics, and employment, I gained a wealth of knowledge about the field, and I knew what to expect in terms of financial compensation and work hours. However, my education did not fully prepare me for the negative effects that my job would have on my personal life. For example, when riding the subway, I found myself questioning whether those everyday unavoidable physical brushes against others were intentional (a crime called *frotteurism*). Similarly, if I passed a car with tinted windows, I would wonder if a sexual crime was being committed within. It took some time before I was able to go about my everyday life without thinking about sexually related crimes.

My Advice to Students

If you want to work in a setting that deals with the rehabilitation of offenders, you need to be able to separate the person from the crime. There are many other facets of a person's character and personality that need to be considered apart from the crime he or she committed. Offenders need solid, unbiased counseling to improve their lives and avoid future arrests. It can be tough to do this at first, but experienced colleagues or supervisors can be supportive and offer advice.

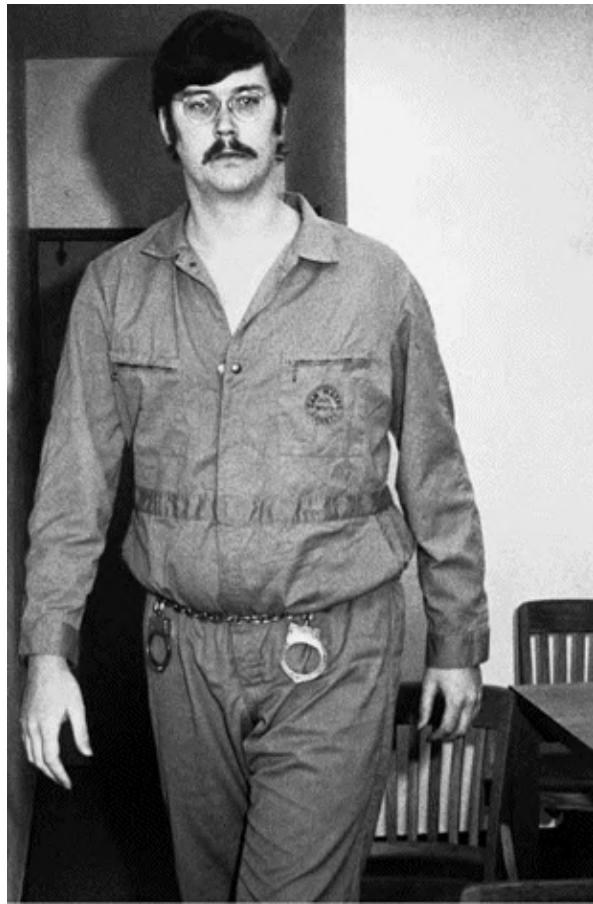
With an IQ in the genius range, serial murderer Edmund Emil Kemper III is unusual both as a person and as a serial killer. Yet there is reason to believe that his high cognitive abilities came with significant emotional deficits. Consider: After he had picked up a young woman hitchhiker, Kemper saw that as he drove her around, she began to get anxious because they did not seem to be going to her destination. “So I pulled out the gun to calm her down.”⁴⁵ Kemper knew, intellectually, that pulling out his gun would have an effect on the hitchhiker, but it was evident that—even with his superior IQ—he could not identify, emotionally, with the terror she felt when she saw the gun. Brain-imaging studies and other research show that the brains of violent psychopaths work differently from those of people who do not suffer from mental disorders and of individuals who do not commit violent crimes.⁴⁶

Moral Reasoning **Moral reasoning** involves the application of a set of ethical principles based on what society views as good versus bad behavior. For most people, the ability to discern right from wrong develops and is internalized in childhood. Young children tend to see things as right or wrong, black or white. Children do not begin to identify “shades of gray” until about 7 years of age.⁴⁷

moral reasoning

Application of a set of ethical principles based on what society views as good versus bad behavior.

Like children, many criminals appear to have immature moral reasoning. Damage to the prefrontal cortex (the part of the brain responsible for making decisions and judgments, planning, and self-control) from stroke, injury, or infection can result in a pattern of reckless, antisocial, and violent behavior about which the individual has no remorse.⁴⁸ This knowledge offers a model with which to understand how some offenders can repeatedly violate the rights of others and not feel guilty about it. The biology that sets the moral compass for their behavior is undeveloped or defective.



▲ Edmund Emil Kemper III

A most unusual serial killer, Kemper has an IQ approaching the genius range.

Bettmann/Getty Images

Learning Criminal Behavior from Others: Social Learning Theory

Behavioral psychologists argue that we learn behavior, which is then maintained or extinguished by the rewards or punishments we associate with it.⁴⁹ This perspective is known as **social learning theory**. How a person behaves is also influenced by experiences with the behavior of others. Thus, social learning can entail watching others and noting the consequences of their behaviors. This type of social learning may explain the boy who grows up to batter his wife. For years he observed his own father gain the compliance of his mother through acts of violence and intimidation. Similarly, children can learn to behave violently by seeing violent behavior rewarded in movies or through the instant rewards of killing the enemy in video games.⁵⁰ A major aspect of the socialization of every individual involves internalizing the rules for appropriate

behavior. Anticipating punishment for bad behavior facilitates learning these rules.

social learning theory

Theory that behavior is learned and is maintained or extinguished based on the rewards or punishments associated with it.

Psychodynamic Factors

Sigmund Freud, the father of psychoanalysis, believed that humans have primitive urges and drives that exist below the level of conscious awareness.⁵¹ A main principle of Freudian thinking—also known as *psychodynamic psychology*—is that an individual's personality and behavior traits develop early in life.

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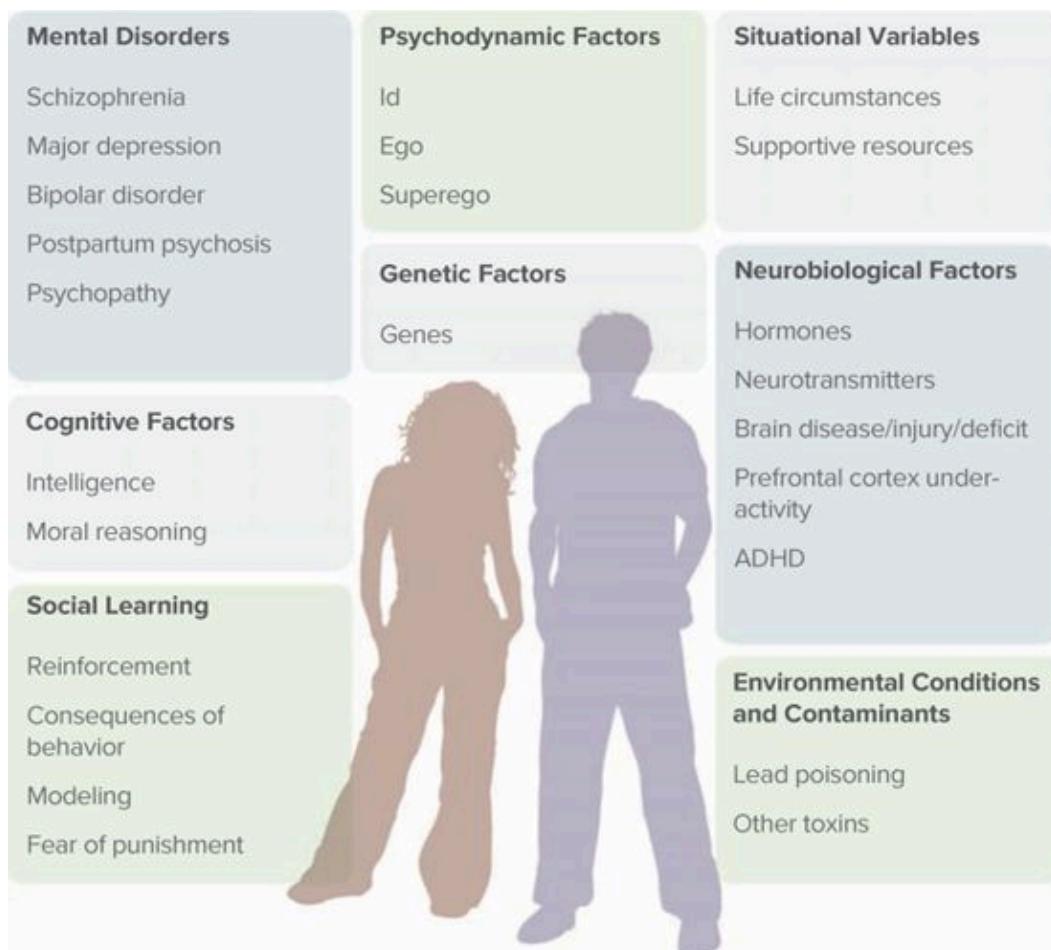
Freud posited that there are three parts to personality:

- The *id* consists of unconscious drives that demand instant gratification, always seeking pleasure and avoiding pain. Sexual urges and the cry of a baby to be fed are expressions of the *id*. We are born with an *id*; it helps us to survive during a stage in life when we cannot communicate with language.
- The *ego* incorporates conscious thoughts that cope with the demands of reality. The *ego* tries to satisfy the *id* by bringing the individual pleasure within accepted norms of society. The *ego* develops early in childhood and can be adversely affected by abuse and neglect.
- The *superego* constitutes the moral aspect of personality, or *conscience*, and internally judges one's actions based on principles of right and wrong. The *superego* regulates behavior by generating feelings of guilt in response to a person's immoral behavior.

Freud believed that the *id*, the *ego*, and the *superego* work together in a psychologically healthy individual to regulate behavior. Others have used Freud's conception of the three-part personality to explain aspects of criminal behavior. For example, some theorists have proposed that the personality of offenders often suffers from an imbalance in the roles played by *id*, *ego*, and *superego*. A person with a damaged *ego* (say, from child abuse) may be prone to act on impulses because the urges that come from the *id* go unchecked by

what otherwise would be the rational judgment offered by a healthy *ego*. A person with a weak *superego* might be less able to control his violent or sexual impulses. Conversely, a person with an overactive *superego* might experience overwhelming feelings of guilt, persecution, and worthlessness, factors that can lead her to commit crimes—so that she will get the punishment she deserves.

KEY CONCEPTS Examples of Biological and Psychological Factors Involved in Criminal and Delinquent Behavior



Ingram Publishing

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Freud based his psychological theories on his clinical observations of patients. He did not have available to him the technologies that we currently utilize. What he described as *id*, for example, today might be explained as activity in the brain's limbic system; what he called *ego* might be what we see

in brain scans as activity in the prefrontal cortex. The lesson is that different approaches may on the surface appear to lead to different conclusions because they are limited by their own theoretical concepts or by differences in the availability of technological advances.

The Key Concepts table illustrates some of the known biological and psychological factors involved in criminal and delinquent behavior.

SOCIOLOGICAL FACTORS

Sociology is the study of human beings within their social environments and includes looking carefully at how people behave and interact in societies. Sociological factors that relate to the study of crime and its causes include income, racism, sexism, capitalism, education, religion, ethnicity, neighborhood, subculture values, geography, family, occupation, politics, media, gang membership, health status, socialization, and the presence of weapons.

For most of the twentieth century, U.S. criminologists embraced sociological explanations of crime causation more fervently than biological and psychological theories. However, with advances in science, biological and psychological theories are gaining more interest. Nevertheless, many researchers and theorists still look closely at the role of sociological factors in explaining crime and criminal behavior.

When Adversity Leads to Crime: Strain Factors

Strain theory proposes that extraordinary pressures make a person more likely to commit crime. Strain factors can come from a variety of sources—individuals, groups, and social institutions. For example, a teenager can experience strain when parents do not provide a safe home life, when he does not make a football team, and when he has to pass through a crime-prone neighborhood while walking home from school.

strain theory

Theory that extraordinary pressures make people more likely to commit crime.

Most people encounter pressures and hardships in life, but very few turn to a life of crime. Unfortunately, strain factors do make some people more likely to engage in crime. General strain theory proposes that experiencing repetitive negative emotions and thoughts might dispose some people to crime and

delinquency.⁵² The experiences of the death of a loved one, abuse, divorce, poverty, hunger, dysfunctional home life, and loss of significant relationships can produce negative emotions such as anger, fear, rejection, hurt, and even mental illness such as depression.

Feelings of Alienation The French sociologist Émile Durkheim (1858–1917) introduced the term **anomie** to describe a feeling of alienation or a condition that renders a person hopeless, rootless, cut off, alienated, isolated, disillusioned, and frustrated.⁵³ A person who experiences anomie cares very little about society's rules and norms and instead feels intense strain or pressure. In some cases, anomie can result in criminal behavior. For example, in 2018, a “Unite the Right” rally where frustrated and unpredictable Neo-Nazis and alt-right protesters and counterprotesters marched in the streets of Charlottesville, Virginia, causing the death of one person and injuring 19 others.⁵⁴ Anomie might also account for the willingness of some to abandon their norm-abiding lives to join violent extremist groups such as ISIS (Islamic State of Iraq and Syria).

anomie

A feeling of alienation or a condition that leaves people feeling hopeless, rootless, cut off, alienated, isolated, disillusioned, and frustrated.

Inability to Achieve Desired Life Goals Sociologist Robert Merton introduced the concept of *goals-means disjunction*—a disconnection between legitimate goals that society values and the way we attain them.⁵⁵ He recognized that U.S. culture values wealth, prestige, and power but not all people achieve these goals.



▲ “Unite the Right” Rally in Charlottesville, Virginia

Protests turn deadly in Charlottesville.

Evelyn Hockstein/The Washington Post/Getty Images

The desire to achieve these goals without the means to acquire them produces pressure, frustration, and anomie for many. Merton suggested that crime is prevalent in the lower classes because those with lower economic status are less likely to succeed, a situation that results in extraordinary stress—or strain—on some individuals. If the pressure is great enough on some individuals, they may feel pressured into breaking the law. People have different kinds of responses when they cannot reach their desired goals (see the table “Merton’s Adaptations to the Goals–Means Disjunction”). Not all people choose to commit a crime just because they lack opportunity to achieve society’s desired goals. Most people conform, some innovate to achieve success, some retreat or drop out of the race, some basically accept their fate (ritualism), and others rebel, often turning to crime.

Other strain factors that contribute to criminal behavior are lack of available opportunities, coupled with pressure to be part of a gang. One of the major reasons that youth—primarily from working-class neighborhoods—join gangs is their discomfort with unfamiliar middle-class values that are expected of them while attending school. They temporarily resolve their anxiety and discomfort by finding others who feel the same way and hanging out together in a gang.

The gang experience provides members with a heightened sense of social status, respect, fellowship, and relief from strain by opposing middle-class values. Committing delinquent acts is gang members' way of saying middle-class values are unimportant.⁵⁶ The "Race, Class, Gender" box reviews a new program that targets gang members who are involved in gun violence.

Merton's Adaptations to the Goals–Means Disjunction

Cultural Goals	Institutionalized Means	Modes of Adaptation
+	+	Conformity
+	-	Innovation
-	+	Ritualism
-	-	Retreatism
±	±	Rebellion

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Race, Class, Gender

Interrupting Gun Violence

Solutions to end gang membership and cycle of gun violence have largely been elusive. A promising, but controversial program, Advance Peace appears to be getting some results. Founded in Richmond, California in 2010, the organization helped reduce gun violence in the city of Richmond from 2010 to 2017 by 66 percent. The program is finely targeted to individuals involved in gun violence. In Richmond, the police department found that less than 30 men were responsible for 70 percent of the city's gun problems. Advance Peace offers them the opportunity to be Peacemaker Fellows.

The Peacemaker Fellows are offered a mentor(s) who has previously served time in prison. The Fellows also receive a variety of assistance to help them engage productively with the community. Over an 18-month fellowship period, the services include an internship opportunity, financial incentives to not commit crimes (up to \$1,000 per month), and help navigating social service agencies. Based on the results seen in Richmond, which included 83 percent of Fellows having no gun injuries or hospitalizations and 77 percent not being suspected of any gun activity, the city of Sacramento decided to adopt the program in 2017.



Mason Trinca/The Washington Post/Getty Images

Sacramento was seeing an increase in gun violence, which they largely thought was due to gang activity. The Sacramento Police Department found that about 50 men were responsible for most of the city's gun violence. The expansion to Sacramento though came with controversy as many voiced concerns about paying people to not commit crimes. As of February 2019, however, Sacramento was seeing a reduction in teen killings and they attribute that, at least in part, to the work of Advance Peace.

Given that reaching gang members has been historically so difficult, many cities are likely to be watching whether the \$1.5 million four-year contract with Advance Peace ultimately pays off for the city of Sacramento, its residents, and the Peacemaker Fellows.

OBSERVE → INVESTIGATE → UNDERSTAND

- How might a program like this convince young men not to participate in gangs?
- What other supports might communities need to reduce gun violence?
- How does investing in individuals before they commit crimes make better sense for a community than responding after a crime is committed? Why might it not make sense?

SOURCES: Wesley Lowery and Steven Rich. "In Sacramento, Trying to Stop a Killing before It Happens," *Washington Post*, November 9, 2018; Michael Finch II, "Teens Used to Be Killed at an Alarming Rate in Sacramento. Here's Why That's Changing," *Sacramento Bee*, February 11, 2019; Anita Chabria and Ryan Lillis, "Sacramento Hopes Program Will Persuade 50 'Shooters' to Change Their Violent Ways," *Sacramento Bee*, December 1, 2017.

On a Path to Crime: The Life Course Delinquency Perspective

Juvenile delinquency refers to illegal acts committed by minors. According to the *life course delinquency perspective*, delinquency follows identifiable trends from birth to old age. When a person is very young, delinquency is rare, but it becomes more frequent during a person's early adolescence. Delinquency is most common during the late teens and early adulthood and then declines during old age.⁵⁷

Dual taxonomic theory, a contemporary offshoot of strain theory of criminal behavior that combines biological and psychological elements with social factors, asserts that because of brain damage, chemical imbalances, and other neuropsychological deficits, as well as factors such as poverty and dysfunctional families, some individuals get into trouble and engage in delinquency at young ages and continue their criminal behavior throughout the course of their lives.⁵⁸ These offenders are referred to as **life course persistent offenders**. By contrast, **adolescence-limited offenders** tend to participate in antisocial behavior during limited periods of time during adolescence, while maintaining school performance and respectful relationships with adults such as parents and teachers. Adolescence-limited offenders frequently give up criminal behaviors when they get older as they begin to realize the problems they will bring on themselves if their offending behavior continues. Offending behavior tends to peak around age 15–19 and then declines as offenders mature in their early 20s.⁵⁹ Many take up a conventional law-abiding page 101lifestyle by age 35.⁶⁰ In 2011 the researchers of an extensive Pathways to Desistance Study concluded that offenders who commit serious felonies during their youth are not destined for a life of recidivism and adult crime. The term **desistance** means cessation of crime commission. The study's findings were that serious young offenders who have low rates of substance abuse, have stable living arrangements, and work and attend school cease offending as time goes by, regardless of the interventions they receive; longer incarcerations in juvenile facilities do not prevent reoffending and can possibly lead to increased recidivism; community-based supervision after incarceration is important for desistance; and longer-duration substance abuse counseling where family members are involved can contribute to desistance in the short term.⁶¹

life course persistent offenders

Those who engage in delinquency at young ages and continue their criminal behavior throughout their lives.

adolescence-limited offenders

Young people who participate in antisocial behavior for a limited period of time during adolescence while maintaining school performance and respectful relationships with parents and teachers.

desistance

The cessation of crime commission.

Social Bonds and Crime: Social Control Factors

Social control theory focuses primarily on belief systems—not laws or formal rules—that hold people to society’s standards by putting limits on their actions. According to this theory, what keeps people from wrongdoing most of the time is their belief system. Whether on the street, at home, at parties, at school, at church, with friends, or in prison, beliefs regulate behavior. Control factors exist at several different levels in society.

social control theory

Theory that an individual’s belief system, the police, and parental supervision are important in preventing the individual from getting into trouble.

Control by the Community Small and large communities control the behavior of their citizens in different ways. Small communities whose inhabitants live closely together frequently have tight bonds to one another. Citizens know what their neighbors do and are able to quickly identify and report anything out of the ordinary. In small communities, most citizens share the same norms and traditions and tend to think similarly, and those who do not follow norms are dealt with swiftly. Deviance tends to be rare in this type of community.

In contrast, people living in larger communities are not as tightly bonded with others in their community. Citizens do not get involved with many of their neighbors or their comings and goings and are less likely to identify and report unusual happenings. In these large and diverse communities, norms and traditions vary across different subcultures. People are accustomed to being among those who are different and tend to tolerate many types of deviance.⁶²

Beyond One’s Control—Avoiding Responsibility Some criminologists argue that for people to break the law, they must accept rationalizations that allow them to overcome feelings of responsibility. This perspective, known as **neutralization theory**, was developed by Gresham Sykes and David Matza.⁶³ Sykes and Matza note that when caught and arrested, many offenders point to others, not themselves, as the sources of their problems with the law. The

justifications used to avoid taking responsibility are called *techniques of neutralization* because they neutralize the feelings of responsibility that would otherwise prevent a person from committing crime. Neutralization techniques include:

neutralization theory

Theory that if people break the law, they overcome their feelings of responsibility through rationalizations.

- Denial of responsibility: “It wasn’t my fault; I was a victim of circumstances.”
- Denial of injury: “No one was hurt, and they have insurance, so what’s the problem?”
- Denial of victim: “Anyone would have done the same thing in my position; I did what I had to do given the situation.”
- Condemnation of the condemners: “I bet the judge and everyone else on the jury has done much worse than what I was arrested for.”
- Appeal to higher loyalties: “My friends were depending on me and I see them every day. What was I supposed to do?”⁶⁴

There are other ways to justify or neutralize unlawful behavior. For instance, a person may protest that the law itself is unjust. Or an offender might claim that since everyone else is doing something illegal, such as page 102 speeding, he or she should be able to do it too. When people use neutralizations to excuse their actions and overcome their guilt, their beliefs may not prevent them from committing crime.

Personal Bonds to Society The types of bonds people have to society also are factors that control behavior and keep individuals from committing crime. One type of bond essential in controlling or containing delinquency is the “*good boy*” concept—the perception boys have of themselves as good, law-abiding people. These ideas are the basis of Walter Reckless’s **containment theory**, which argues that some factors that keep behavior in check are personal, such as self-concept, self-control, goal-directedness, conscience, tolerance for frustration, sense of responsibility, realistic levels of aspiration, and identification with lawful norms. When these control mechanisms fail to restrain or check behavior, delinquency is likely to occur.⁶⁵

containment theory

Theory emphasizing that some of the factors that keep behavior in check are personal, such as self-concept, self-control, goal-directedness, conscience, tolerance for frustration, sense of responsibility, realistic levels of aspiration, and identification with lawful norms.

Travis Hirschi's **social bond theory** focuses on four facets of the social bond people have with society:

social bond theory

Theory detailing the social bond people have with society, consisting of attachment, commitment, involvement, and belief.

- Attachment: development of an emotional connection with and affection for people and institutions that make up society
- Commitment: the act of pledging and promising to people and institutions

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a case in **point**

Social Conflict: Yellow Vests' Protests in France

In late 2018 and early 2019, the French people began protests organized primarily online by ordinary working people through videos and social media. The high visibility yellow vests the demonstrators wear became a symbol of working-class people who rejected French policies they saw as favoring the wealthy at the expense of rural, small-town French. The street protesters dressed themselves in yellow vests, carried signs stating "France is angry," took to the streets, and demanded that the government do more than reduce high fuel taxes. Added demands included doing more for the poor, slashing politicians' salaries, and other social change. The yellow vests' protesters also called for the resignation President Emmanuel Macron. The populist movement began in Paris and spread throughout the country in a few months. Mutual mistrust ensued between the government and the people and violence began. The disconnected protesters became involved in activities such as throwing rocks at the police and the police, in turn, volleyed tear gas and water canon at the protesters. Many central districts were locked down. Stores and businesses on the Champs-Elysees and elsewhere around the city were boarded down and closed. Ultimately, the government declared a zero tolerance policy for the violence and deployed about 80,000 security forces nationwide. To date approximately 84,000 people turned out to protest throughout France and several hundred people were detained. The government in an attempt to resolve the peoples' issues did away with the planned fuel tax hike,

gave a financial relief package of approximately \$11.5 billion to low income earners, and established national debate with the protesters.



Richard Bouhet/AFP/Getty Images

Social conflict and critical theorists frequently note that it takes galvanizing or watershed events to spark the flames of reform in a society. The yellow vests and resulting protests may well become the symbol of change and important economic reforms in France.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What are some of the ways that structural conditions and inequalities might have influenced the yellow vests' protests in France?
- How would critical theorists explain the protests?
- How important are protests in changing the way a country deals with economic challenges?

SOURCES: Natacha Butler, "French 'Yellow Vests' Rally in Fresh Round of Protests," *Ajazeera*, January 12, 2019. <https://www.aljazeera.com/news/2019/01/french-yellow-vests-rally-fresh-protests-190112144525443.html> (retrieved January 15, 2019); "Yellow Vest Protesters Clash with Police in Fresh Paris Rallies," <https://www.trtworld.com/europe/yellow-vest-protesters-clash-with-police-in-fresh-paris-rallies-23286> (January 15, 2019).

- Involvement: the time spent engaged in conventional activities with others
- Belief: holding society's values and beliefs as true for oneself⁶⁶

When all these aspects of the social bond are present, a person is unlikely to commit crime. Social bonds in the form of strong ties to work and family can also move youthful offenders away from crime, and a secure marriage and job can be turning points in a young offender's life course.⁶⁷

Another social bond that keeps people from engaging in crime is *self-control*, or the ability to control one's own impulses, emotions, desires, and behaviors.⁶⁸ Michael Gottfredson and Hirschi propose that individuals with low or limited self-control exhibit certain characteristics that make them more likely to engage in crime. People who are impulsive, narcissistic, risk-taking, physical, and active are more likely to commit crime. Those who do not derive pleasure from hard work and mastering tasks and who are insensitive to how others feel are more likely to take the chance of committing crime.⁶⁹

Self-esteem, the feelings of self-worth that stem from positive or negative beliefs about being valuable and capable, is another facet of the social bond with society.⁷⁰ In some cases, low self-esteem appears to contribute to delinquency, whereas in others delinquent behavior might serve to enhance low self-esteem.⁷¹ Low self-esteem is frequently cited as a cause of crime and delinquency,⁷² and being successful in crime can raise self-esteem.⁷³ Low self-esteem is related to problems in school achievement, drug and alcohol abuse, hostility, conflicts with others, frustration, attraction to gangs, and engaging in violence.

Inequality and Crime: Power and Social Conflict Theory

Social conflict theory views criminal behavior as the product of the conflict between the wealthy and powerful on the one hand, and the poor and powerless on the other hand. Social conflict theory emerged in the United States following the turbulent 1960s, a period characterized by a range of social movements that sought to improve the civil rights of various subgroups in American society. The economic gains made by corporate America stood in stark contrast to the abject poverty of large numbers of people living in the nation's great industrial centers. The women's movement called for women's greater equality with the economic standing of men. African Americans exposed racial and class discrimination and demanded change, and the gay

rights movement gained momentum. These developments demanded new theories to explain the problems threatening social stability.

social conflict theory

The view that crime is the result of conflict between a society's wealthy and powerful people on the one hand, and its poor and powerless people on the other hand.

Critical theory is a branch of social conflict theory concerned with the ways in which structural conditions and social inequalities influence crime. *Structural conditions* refers to factors rooted in corporate, political, and environmental conditions that block and exploit the less powerful in society. In this view, those in power strive to maintain their social status by dictating laws and policies to reinforce their control over people of lesser advantage. Critical theorists attribute criminal activity to the social and economic institutions that adversely affect the lower socioeconomic classes.⁷⁴ The social and economic gap between rich and poor who live close together can also influence crime. When impoverished people observe the extravagant lifestyles of the wealthy, they may experience a sense of deprivation that leads to anger, resentment, and jealousy. These negative feelings can bring about behavior that ultimately results in crime.⁷⁵

critical theory

A branch of social conflict theory concerned with the ways in which structural conditions and social inequalities influence crime.

Social conflict criminologists view crime from a broad perspective and are highly critical of the criminal justice system, lawmakers, corporations, and others in privileged positions who set policy in society. “A Case in Point” illustrates social conflict as thousands of French in 2018 and 2019 took to the streets and demonstrated against French economic policies which citizens claim favored the rich.

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Feminist criminology applies feminist thought to the study of crime. Feminist criminologists argue that women's inequality is partly explained by the power differences between men and women and by social expectations of both.⁷⁶ Most studies conducted prior to the 1970s assumed that women were like men and therefore concluded that what was learned about men's behavior would also apply to women.⁷⁷ Studies of women's criminality relied on gender

stereotypes and assumptions about healthy and unhealthy sexuality. Theorists often explained female criminality by pointing to what was said to be women's sexual misbehavior.⁷⁸

feminist criminology

The application of feminist thought and analysis to the study of crime.

By 1975, some theorists believed that the success of the women's movement would result in a corresponding increase in crimes committed by women.⁷⁹ They argued that as women gained equality with men, women would also begin to act more like men, even committing crimes with the same frequency as men. Evidence has not supported this hypothesis, however, and today women's criminal patterns are still significantly different from men's (see Chapter 2).⁸⁰ After gaining a foothold in the 1970s, feminist criminologists have continued to explain not only women's criminality but also the treatment of female suspects and offenders by criminal justice institutions.

Feminist criminologists also draw attention to a number of criminology's sexist practices and point out that women and men experience the world differently. As a result, it is essential that women researchers and activists be involved in interpreting crime as perpetrated by and against women. As women have entered the field of criminology, they have made a variety of contributions, including a fuller understanding of the complexity of women's offending and victimization.

Feminist criminologists find the roots of crime in economic and political conditions that contribute to the exploitation of women. Most recently, their research has examined the ways in which women's experiences with crime, victimization, and the criminal justice system differ based on race, class, and gender.⁸¹ Not all women are treated the same by the criminal justice system, nor do they experience or commit crimes in exactly the same ways. In other words, female victims and offenders should not be treated as homogenous groups. They have important differences, just as there are differences among men.⁸²

A contemporary theme stemming from critical criminology is **peacemaking criminology**. This perspective of criminology represents a departure from mainstream criminology and urges us to think of crime causation from a different point of view.⁸³ Peacemaking criminologists point out that crime is a form of violence and assert that criminology should thus advocate a nonviolent, peaceful society.⁸⁴ They argue that widespread social justice would eliminate

crime and that new forms of punishment should replace coercive methods.⁸⁵ Peacemaking criminology urges a transformation of policies in the criminal justice system to achieve a more just, peaceful, and crime-free world where the needs of offenders, communities, and victims are balanced.⁸⁶ Peacemaking criminology is the cornerstone of the humanistic restorative justice approaches discussed in Chapter 13.

peacemaking criminology

A branch of criminology that views crime as a form of violence and urges criminology to advocate a nonviolent, peaceful society.

A Different Set of Values: Cultural Deviance Factors

Cultural deviance theory focuses on how the social traditions with which people live and the subcultures with which they identify contribute to the values that guide their behaviors. Criminologists who subscribe to this perspective believe that adoption of negative and antisocial values learned in neighborhoods and subcultures produces criminal behavior.

cultural deviance theory

The view that the adoption of negative and antisocial values learned in neighborhoods and subcultures produces criminal behavior.

Social Disorganization: Factors Related to Where We Live **Social disorganization theory**, a particular type of cultural deviance theory, attributes crime to the failure of social institutions and organizations—such as police, churches, and welfare services—to meet the needs of a community or [page 105](#) neighborhood. Social disorganization factors are typically found in high-crime areas that have been subject to rapid change due to industrialization, immigration, and urbanization. Social disorganization theorists examine neighborhood characteristics to find explanations of high crime rates among urban immigrants from other countries and communities.

social disorganization theory

The theory that explains crime by examining city neighborhood characteristics.

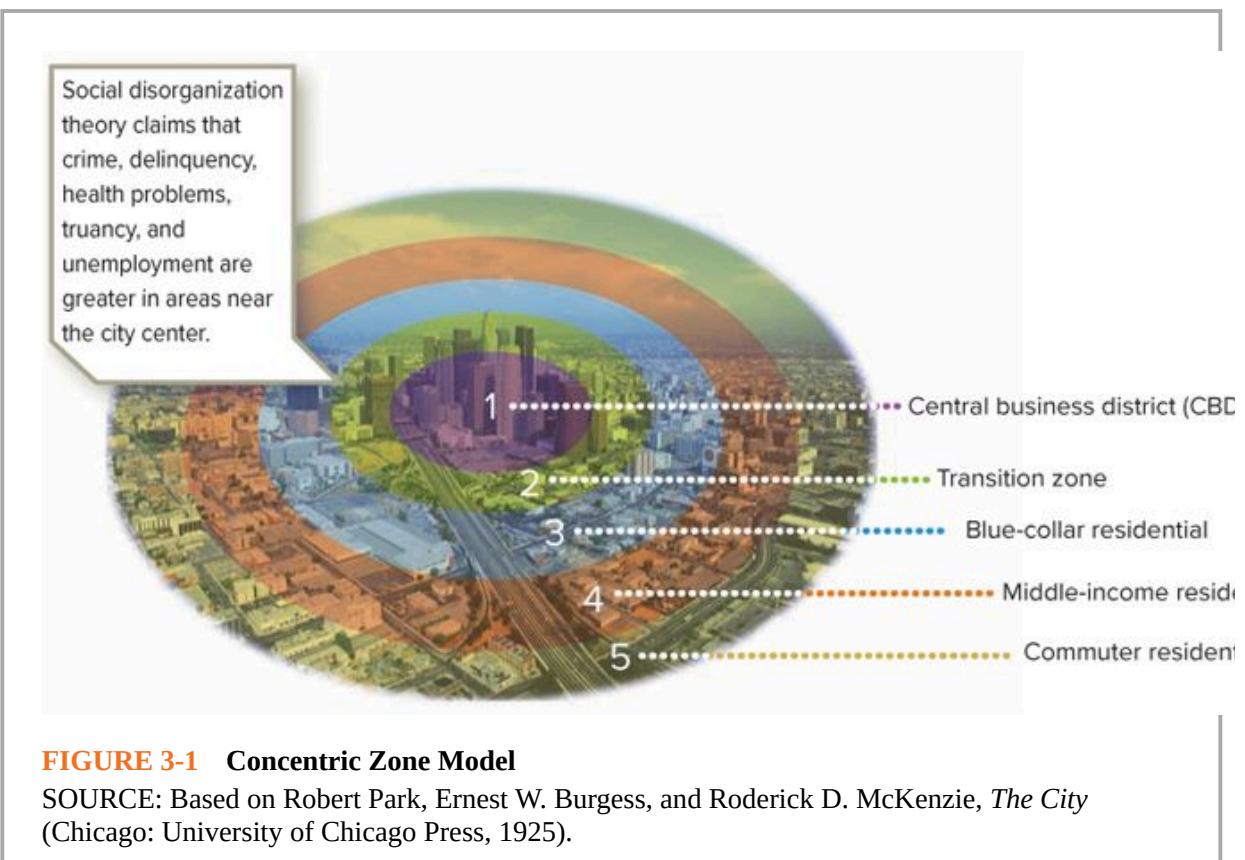


▲ Migration to Chicago in the Early Twentieth Century

People from the rural South and immigrants began moving into large northern U.S. cities during the early twentieth century, resulting in rapid social disorganization.

Getty Images

During the early twentieth century, large numbers of immigrants and people from the rural South began moving into large northern U.S. cities. Researchers from the University of Chicago began studying the social disorganization and other problems that resulted from these population shifts, and they became known as the Chicago School of Social Ecology.⁸⁷ Chicago School researchers Robert Ezra Park and Ernest Burgess examined Chicago's disorganized neighborhoods by analyzing ecological (geographic) areas. This research led Burgess to develop a model of Chicago that consisted of concentric zones (Figure 3-1).



Each zone in Burgess's model has its own structure, organization, culture, and unique people. According to Clifford Shaw and Henry McKay (sociologists who in later decades expanded the research of Park, Burgess, and McKenzie), the city center and Zone II are the zones of transition—home to the city's poor, unskilled, and disadvantaged, living in dilapidated housing, frequently near factories. Moving away from this region, neighborhoods exhibit signs of greater social organization. For example, in Zone III, more working-class people own homes than rent, and in Zone IV the affluent purchase homes that reflect their status. Crime, delinquency, health problems, truancy, and unemployment are greater in areas near the city center than in neighborhoods farther away from the center. Social institutions and organizations have a difficult time responding to the needs of residents in areas where people are transient and not invested in the community.⁸⁸

This *concentric circle theory* has been modified over the years to reflect changes in residential patterns in cities. As affluent suburbanites move back into city centers, for example, many poor inner-city residents are forced to relocate in order to find affordable housing and jobs. Future geographic studies

of crime and delinquency are likely to yield results different from those found by Shaw and McKay.

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Various crimes arise from social disorganization. For example, neighborhoods that do not discourage vandalism of homes and buildings may seem to encourage—or at least tolerate—crime. That is, how society is structured, largely in relation to the distribution of its wealth, affects the behavior of its residents. In response to the social disorganization brought on by economic disparities, people cope with whatever is their lot in life by forming groups of common interests and values, our next topic.

Subcultures and Crime A **subculture** is a group that has some of the same norms, values, and beliefs as members of the dominant, mainstream culture but also other norms, values, and beliefs not held by society at large. A subculture is not necessarily bad or violent. For example, college students and animal lovers can be considered subcultures. However, a juvenile gang is also an example of a subculture. Its members could be said to value loyalty (as members of the dominant culture do), but they hold other values not consistent with mainstream culture (such as graffiti-tagging buildings). Marvin Wolfgang and Franco Ferracuti formulated the theory that an independent subculture of violence exists in some extremely poor and disorganized areas.⁸⁹ In these areas, people are socialized to resolve conflicts by resorting to violence. In fact, violence is the expected and valued response.⁹⁰

subculture

A group that has some of the same norms, values, and beliefs as members of the dominant, mainstream culture but also other norms, values, and beliefs not held by society at large.

When the norms of conduct for one group conflict with conduct norms of another group, the result is **culture conflict**.⁹¹ Crime may occur when there is culture conflict, but not all culture conflict results in law violation. The “What about the Victim?” box illustrates how culture conflict can morph into culture wars and violence.

culture conflict

Clash between the norms of conduct for one group and the norms of conduct for another group.

Acting-Out Expectations: Social Process Factors

Assuming that criminality results from a sequence of successive interactions with others and society's institutions, **social process theory** seeks to explain the developmental stages leading to delinquent or criminal behavior. Proponents of social process theory minimize influences such as poverty, social institutions, and mental disorders, emphasizing instead factors such as [page 107](#) interaction with others, socialization, imitation, reinforcement, role-modeling, stereotyping, and reaction of others to one's behavior. Key concepts in social process theory include the looking-glass self, labeling, tagging, and differential association.

social process theory

The view that criminal behavior results from successive interactions with others and with society's institutions.

What about the Victim?

Culture Conflict in Charlottesville, Virginia

On August 11, 2017, hundreds of white nationalists went to Charlottesville, Virginia, to exert their rights to express their feelings about the planned removal of a statue of Confederate general Robert E. Lee. Their demonstration became known as the “Unite the Right” rally, which was believed to be one of the largest gatherings of white nationalists in at least a decade. Many white nationalists had their hands taped ready to do street fighting. They also carried torches and chanted racist slogans and some had pistols and long guns. As the white nationalists marched through the University of Virginia emotions ran high and violent clashes broke out with counter-protesters that included local residents, civil rights leaders, members of church groups, onlookers, and members of anti-fascist groups. Many of these persons carried shields, sticks, and clubs. Both groups sprayed chemicals at each other and hurled rocks and bottles. Chaos continued in Charlottesville through August 12, 2017, when the authorities forced the rally to disband and demanded both sides disperse. Nonetheless, an enraged white nationalist plunged a car into a crowd of counter-protesters causing the death of a young woman named Heather Heyer. Ultimately, the death toll became three when a police helicopter monitoring the event crashed and two state troopers were killed. The Charlottesville tragedy illustrates that sometimes culture conflict can result in major clashes of cultural norms and values resulting in culture wars, violence, and death.



Chip Somodevilla/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How is American society the victim of the Charlottesville tragedy?
- Why does culture conflict sometimes result in culture wars?
- What are some ways in which culture conflict can lead to positive outcomes?
- What are some other cases where culture conflict has resulted in law violation?

SOURCES: Joe Helm, “Recounting a Day of Rage, Hate, Violence and Death,” *The Washington Post*, August 14, 2017. https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.865ac8de488e (retrieved January 16, 2019); *The Guardian*, “White Supremacist Members Arrested on Riot Charges Tied to Charlottesville,” October 24, 2018. <https://www.theguardian.com/us-news/2018/oct/24/white-supremacist-members-arrested-charlottesville-riot> (retrieved January 16, 2019).

Charles H. Cooley developed the idea of the **looking-glass self** in 1902 based on his belief that we come to define ourselves by the way others see us.⁹² If we perceive that others see us as good, bad, smart, dumb, responsible, flakey, manipulative, or criminal, we learn to see ourselves in those ways. How we see ourselves, in turn, will affect who we become and what we do in life. A person who sees himself as a crook is more likely to commit criminal acts; a person who sees himself as a law-abiding citizen is less likely to commit criminal acts.

looking-glass self

The idea that we come to define ourselves the way we perceive that others see us.

Labeling theory, associated primarily with Howard Becker,⁹³ is related to the theory of the looking-glass self. Labeling theory attempts to explain the complicated route a person takes in becoming criminal, progressing through gradual stages of criminality, and the role that society plays in defining a person as a criminal. According to this theory, the social process a person experiences has the potential to define him or her as “bad” or “good,” and some people become bad because others do not believe them to be good. The label is powerful and defines a person as criminal in his or her own eyes as well as in the eyes of others. Once an individual accepts and internalizes a label, negative behavior can follow. Criminals often act in accordance with these labels, and it

is hard for them to reject and change their labels, a reality that makes reformation difficult.⁹⁴

labeling theory

Theory that the social process that individuals experience has the potential to define them as “bad” or “good,” and that some people become bad because others do not believe them to be good.

As people progress through the criminal justice system, they are marked each step of the way in a process known as *tagging*. Tagging reinforces offenders’ negative traits. During tagging, offenders shift from perceiving their acts as bad to seeing themselves as bad or evil. Opportunities for offenders to change this view decline over time.⁹⁵

Differential association theory, developed by Edwin Sutherland, suggests that criminal behavior is learned during normal social interactions and that the same learning principles are involved in reinforcing criminal and law-abiding behavior. A person who is exposed to and learns a large number of criminal attitudes and values is more likely to commit criminal acts than someone who is exposed to and learns very few criminal attitudes and values. Perhaps most important, differential association theory emphasizes that learning criminal behavior occurs in intimate groups and assumes that anyone can become criminal if placed in a situation that fosters such behavior.⁹⁶

differential association theory

Theory that criminal behavior is learned during normal social interactions, and the same learning principles are involved in reinforcing criminal and law-abiding behavior.

Social process theories attempt to explain how we become who we are and how changing our identity is a monumentally difficult job. Figure 3-2 shows how a sociological theory about working-class delinquency organizes information about specific sociological factors and can also take into consideration individual (for example, biological) factors to explain why, for instance, not all working-class youths become gang members.

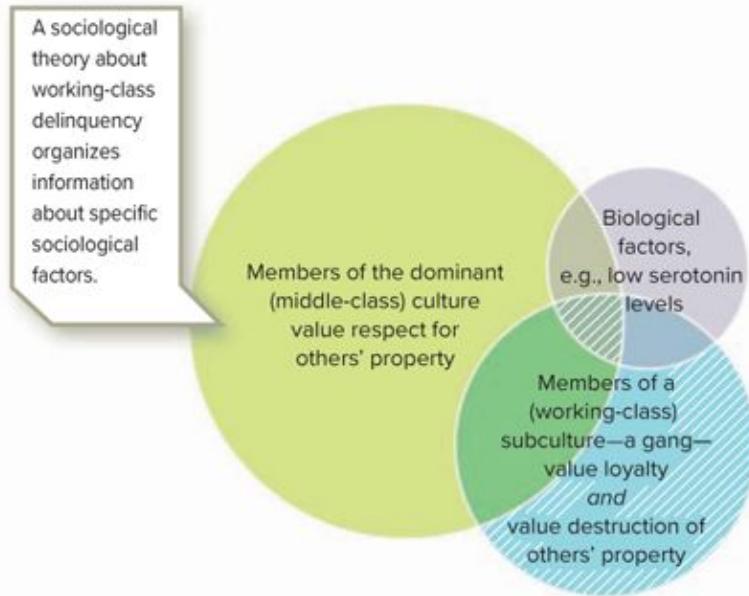


FIGURE 3-2 A “Factors” Approach to Explaining Criminal Behavior

Working-class youth experience strain from being seen as “nobodies” in the eyes of the dominant middle class. Those who tend to be more impulsive (from low serotonin levels) are more inclined to form their own subculture, a gang, with its own rules.

It is extremely difficult for the criminal justice system to deal with all the biological, psychological, and sociological factors that affect criminal behavior. The “Disconnects” box highlights the difficulty in connecting the factors that produce crime and criminality with the ability of criminal justice professionals to consider those factors in the administration of justice.

The table “Examples of Internal and External Factors Leading to Criminal Behavior” presents the biological, psychological, and sociological factors that interact with one another to produce criminal behavior. In the next section we consider factors related to victims: their characteristics, their behavior, and their responses to being victimized.

Examples of Internal and External Factors Leading to Criminal Behavior

Internal Factors	External Factors
Genetics	Toxins
Intelligence	Nutrition and diet

Internal Factors	External Factors
Mental disorders	Socioeconomic status
Hormones	Cultural values
Neurotransmitters	Geographic conditions
Brain disease and deficits	Environmental change

VICTIMIZATION FACTORS

The U.S. population is much more aware of efforts to apprehend criminals and prevent crime than it is of the plight of crime victims. Lack of concern for the victim even extends to criminal justice practitioners.⁹⁷ One of the major themes of the victim rights' movement, which began in England in 1957, was recognizing and correcting the way crime victims had been neglected. Providing victims with some form of reparation and compensation was one of the first types of assistance.⁹⁸ In the United States, California was the first state to respond to the financial needs of crime victims. In 1965 the state established a victim compensation program that repaid crime victims for damages and injuries resulting from a crime.⁹⁹

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DIS Connects

Mentally Ill Death Row Inmates

Under normal circumstances, when people are mentally ill we seek to provide them with the treatment they need to relieve their symptoms. How, then, could withholding treatment be in an individual's best interest? The answer: When that person is a seriously mentally ill inmate on death row and it is approaching time for his or her execution. Because of the U.S. Supreme Court's decision in *Ford v. Wainright* (1986), condemned inmates must be aware of their impending execution and the reasons for it in order for the execution to take place. They must be able to understand they are about to be killed as the punishment for the crime they committed. As part of

its rationale, the Court held that to execute someone who is not capable of knowing what is happening and why serves little or no retributive function, since the inmate is not able to appreciate why he is being put to death. How could the inmate experience it as punishment if he is unaware of what is going on? To execute a person under such circumstances, the Court wrote, offends humanity.^a

A logical way to resolve the problem would be to give the inmate drugs that would restore the senses to reality and to an understanding that he is going to be put to death because that was the sentence for the crime. But what if the condemned inmate refuses to take the medication? Defense attorneys will encourage him not to take it in order to try to save the life of their client. The inmate may choose not to comply with a medication order—not to evade execution, but more likely because of paranoid fears that medication is poison and that people are trying to kill him (which, ironically, they actually are).

Steven Staley, convicted of shooting a restaurant manager he took hostage during a failed robbery attempt in 1989, was diagnosed with paranoid schizophrenia while on death row. He bangs his head against walls and believes polygraph machines are controlling him. He has been catatonic, lying immobile on his back for such long periods of time that he has worn a bald spot on the back of his head. Texas courts stopped his first scheduled execution in 2005 and have since stayed it several times due to questions about his mental status.^b Texas does have the right to forcibly medicate Staley as long as it is in his best medical interest. The dilemma is clear: Medicating him may relieve him of his frightening delusions, but it may also serve to make him mentally fit to be executed. The latter could hardly be seen as being in Staley's best medical interest. It remains to be seen whether the courts will ultimately order that he be forcibly medicated. In the meantime his situation is not unique. It is estimated that 5—10 percent of condemned inmates are seriously mentally ill.^c

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do you think condemned inmates should have a right to refuse medication? Why or why not?
- What are some of the moral dilemmas facing medical professionals who forcibly administer drugs in such situations?
- Do you agree with the U.S. Supreme Court's decision that people who are not able to know they are about to be executed for their crimes should not be executed? If you agree, what would you say about justice for the victims of their crimes?

SOURCES: ^a*Ford v. Wainright*, 477 U.S. 399 (1986).

^bEmily Bazelon, "Texas Wants to Drug a Prisoner So They Can Kill Him," *Slate*, May 11, 2012. www.slate.com/articles/news_and_politics/crime/2012/05/the_execution_of_steven_staley_forcible_medication_on_death_row_in_texas_.html (retrieved on June 26, 2015).

^cDeath Penalty Focus, "Mental Illness on Death Row." www.deathpenalty.org/article.php?id=53 (retrieved on June 20, 2015).

Most of the pioneers in **victimology**, the scientific study of victims, were criminologists who were intrigued by the role that victims played in crime causation.¹⁰⁰ To appreciate the role of victims in the study of crime and criminal justice, criminologists and victimologists need to understand victims without judging them. They must know the factors that shaped victims' development, especially any childhood circumstances that might have influenced their behaviors before their adult victimization. For example, some victims of intimate partner violence contribute to the violence that ultimately injures them.¹⁰¹ Some of those factors have to do with the coping behaviors victims have learned for dealing with conflicts, the kinds of victimizing situations they are unable to avoid, and the circumstances that put them at risk.

victimology

The scientific study of victims, which includes their behaviors, injuries, assistance, legal rights, and recovery.

The Risk of Becoming a Victim

Offenders tend to target individuals who display a variety of attributes that make them easy prey. These attributes can be behavioral, physical, social, or attitudinal and may change over time.¹⁰²



▲ At Risk of Victimization?

Consider the characteristics of this individual that might increase her vulnerability to becoming a victim.
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Vulnerability factors are human characteristics that can be exploited by criminals and can result in victimization. Two examples are having been previously victimized¹⁰³ and having a disability (for example, page 110 blindness, deafness, or muteness).¹⁰⁴ Demographic factors also may increase vulnerability and the likelihood of being victimized. Such factors include being female,¹⁰⁵ working in a high-risk profession,¹⁰⁶ being in a foreign country,¹⁰⁷

or belonging to a discriminated group.¹⁰⁸ The risk of victimization can increase when vulnerabilities are combined. For example, an individual may have multiple conditions such as physical disability, advanced age, diminished intellectual capacity, and mental impairment that, when combined with being in a dangerous environment like a bar where high-risk activities take place, can further increase the risk of victimization.

Obtrusive vulnerabilities are those that are visible, obvious, and recognizable. For example, a person who is very drunk or very old often lacks the mental awareness or ability to think clearly to avoid a criminal attack. *Unobtrusive vulnerabilities* are not easily observed. For example, a child who has been victimized in the past by a classmate might develop a sense of helplessness. Persons in a state of helplessness are convinced that they cannot protect themselves and consequently are more likely to give up when attacked.¹⁰⁹ When threatened again, they are likely to put up little resistance. When offenders know the vulnerabilities of potential victims, and especially when they live in close proximity to them, the probability of harm significantly increases.¹¹⁰ In general, most crimes against persons occur between acquaintances largely because there are more opportunities for conflict, and the offender has greater awareness of the victim's vulnerabilities.¹¹¹

Persons with high levels of both obtrusive and unobtrusive vulnerabilities are often victimized repeatedly and are thus known as **recidivist victims**. The children of battered women, for example, often live in situations of high stress, often observe violence in their homes, are usually not properly protected from family abuse, do not receive proper guidance from their parents, and do not experience consistent child rearing and positive disciplinary practices. As a consequence, these children lack many important social skills and do not know how to cope well with conflicts within the family—factors that make them more vulnerable to repeat victimization than children who come from nonviolent families.¹¹²

recidivist victims

Persons who are victimized repeatedly.

MYTH/REALITY

MYTH: People who want to avoid being victimized can—if they put their mind to it.

REALITY: A large part of what causes people to become victims is mostly out of their control. An example of how different settings, different behaviors, and different lifestyles result in different levels of victimization can be seen in the differences between the rates of victimization in public

and private schools. In public schools, 71 percent of children in grades 6–12 reported knowing about events of bullying, physical attacks, or robberies; in the same grades in private schools, only 45 percent knew about these incidents of violence.¹¹³

Another type of victim vulnerability theory is **routine activities theory**, which views victimization as the result of an individual's daily routine activities. Examples include leaving and returning home at the same time each day, taking the same route to school or work, and going to the same hangouts on weekends. Offenders learn to recognize the victim's predictable and patterned behaviors. Some lifestyles, such as barhopping and getting drunk with friends every weekend, and some occupations, such as those requiring late-night work shifts, provide greater opportunities for criminals than do others.¹¹⁴ While these behaviors may make some individuals more vulnerable to potential offenders, it is the actions of the offenders (as determined by the law) that cause the victimizations.

routine activities theory

Theory suggesting that crime occurs when an opportunity is available, the victim is not adequately protected, and the effort brings reward. Applied to victims, the theory argues that some individuals' daily activities make them more vulnerable than others to being victimized.

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Victim Behavior during the Crime

During the commission of most personal crimes, some level of communication generally occurs between the offender and the victim.¹¹⁵ During a property crime, the interaction between offender and victim starts when the offender makes contact with an object that belongs to the victim. The outcome of this interaction will determine whether victimization will occur and the degree of injury or damage that will result. For example, in a first encounter with an unknown victim, an offender will start a conversation with someone the offender identifies as vulnerable. The victim's response depends on his or her perception of threat. The offender will then test the victim's vulnerability; either the vulnerability is confirmed as a weakness or the offender realizes he or she made a mistake in judgment.

A male offender may be physically aggressive with a female victim. In such a case, the victim will test defenses she assumes are effective. If she perceives the threat as significant, she may attempt to fight back. If the victim feels that

she is too vulnerable, she may attempt to flee the scene as quickly as possible. In one study comparing victims' and nonvictims' responses to hypothetical scenarios, victims tended to be confrontational or abusive to an initial approach by the perpetrator. In contrast, nonvictims were more likely to withdraw quietly and say or do nothing.¹¹⁶ A confrontational or abusive response in an offensive situation increases a person's chances of becoming a victim. A person who withdraws from an offensive situation will likely not become a victim. Some offenders will commit their crimes regardless of the victim's response to the initial confrontation, but the way a potential victim responds may convince the offender not to continue.

A Typology of Victimology

The man known as the father of victimology is Benjamin Mendelsohn, who was a defense attorney. In preparing for his cases, Mendelsohn interviewed both victims and offenders in an effort to understand who contributed more to the criminal act. Mendelsohn coined the term *victimology* and defined it as the science of victims. He also created a *typology* (that is, a classification of types) of crime victims based on the degree to which they contributed to the criminal act (see the table “Mendelsohn’s Early Victim-Blaming Typology of Crime Victims”).

Mendelsohn’s typology focused attention on the notion that victims’ actions play a significant role in the outcome of a criminal act. With this typology and his later proposals for victim clinics, victim studies, a victim journal, an international victimology organization, and victim institutes—all of which have been realized—Mendelsohn started a movement that today spans the globe and has had a major impact on the way victims are understood and treated. (See the table “Factors Associated with Criminal, Delinquent, and Victim Behavior.”)

Mendelsohn’s Early Victim-Blaming Typology of Crime Victims

Victim	Example
Completely innocent victim or ideal victim	Children and individuals who are unconscious during the crime
Ignorant victim with minor culpability	A woman who induces a miscarriage and dies as a result

Victim	Example
Victim who is as guilty as the offender and the voluntary victim	Suicides <u>page 112</u>
Victim who is guiltier than the offender	A victim who provokes an attack against which the “offender” defends him or herself
Guiltiest victim	An aggressive “victim” who is alone guilty, or an attacker who is killed by another in self-defense
Simulating an imaginary victim, who tries to mislead justice and have the accused punished	Paranoids, hysterical persons, senile persons, and some children

SOURCES: Benjamin Mendelsohn, “The Victimology,” *Etudes Internationale de Psycho-sociologie Criminelle* (July—September, 1956): 23—26; Stephen Schafer, *The Victim and His Criminal: A Study in Functional Responsibility* (New York: Random House, 1968).

Factors Associated with Criminal, Delinquent, and Victim Behavior

Psychological and Biological Factors	Sociological Factors	Victim Factors
<i>Mental Disorders</i> Schizophrenia Major depressive disorder Bipolar disorder Postpartum psychosis Psychopathy	<i>Strain Factors</i> Life pressures Feelings of alienation Inability to achieve desired life goals Lack of opportunity and gang membership Maturation during the life course	<i>Previctimization Factors</i> Behaviors Attitudes Physical attributes Vulnerabilities Prior victimizations
<i>Cognitive Factors</i> Intelligence and IQ Moral reasoning	<i>Control Factors</i> Communities Taking responsibility Rationalization Bonds to society Self-control Self-esteem	<i>Victim Behavior during the Crime</i> Aggressiveness Passivity Weakness Confrontation Helplessness
<i>Social Learning Factors</i>	<i>Critical Factors</i>	<i>Victimology Theory</i>

Psychological and Biological Factors	Sociological Factors	Victim Factors
Reinforcement Consequences of behavior Modeling Fear of punishment	Capitalism Racism Sexism Discrimination Poverty Power Inequality	Victim's role in a crime Psycho/social coping
<i>Situational Variables</i> Life circumstances Supportive resources	<i>Cultural Deviance Factors</i> Neighborhoods Social disorganization Subcultures Culture conflict	<i>Patterned Activity Factors</i> Victim availability Victim unguarded Inadequate resources Limited-time conditions
<i>Psychodynamic Factors</i> Id Ego Superego development	<i>Social Process Factors</i> Looking-glass self Labeling Tagging Differential association	<i>Psychological Trauma Factors</i> Increased arousal Avoidance of objects and people Event reexperiencing Fear and anxiety
<i>Neurobiological Factors</i> Hormones Neurotransmitters Brain disease, injury, or deficit Prefrontal cortex underactivity ADHD		<i>Physical Factors</i> Diminished brain function Physical disabilities Illness Hormonal imbalance
<i>Environmental Conditions and Contaminants</i> Lead poisoning Effects of other toxins		<i>Coping Space Factors</i> High-risk places Unfamiliar locations

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Psychological and Biological Factors	Sociological Factors	Victim Factors
<i>Genetic Factors</i> Genetic abnormalities		<i>Genetic Factors</i> Genetic abnormalities

SUMMARY

Traditional approaches to the study of the causes of criminal and victim behavior tended to focus separately on psychological, biological, or sociological theories. Theories represent different ways of organizing information about factors. In reality, a person's behavior is the product of the interactions among many psychological, biological, and sociological factors. Different factors interact with one another in complex ways.

Most crimes are the product of the interactions between victim and offender, and one area of the focus on victims involves understanding how victim behavior interacts with offender behavior to produce a crime. Victimologists are interested in victims' perception of their victimization, their contributions to their own victimization, the extent of their injuries, and their responses to the experience of victimization. Many of the same biological, psychological, and sociological factors that produce criminal behavior are related to why people become victims.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Appreciate the roles of biological (including genetic) and environmental factors on brain function and criminal behavior.

- Biological factors associated with brain function influence behavior and the thought processes associated with making choices.
- Biological factors related to the expression and suppression of criminal and violent behaviors can be identified and measured.

Explain the key aspects of mental disorders and understand how they are classified.

- Mental disorders are psychiatric conditions that interfere with a person's ability to function on a day-to-day basis.
- The *Diagnostic and Statistical Manual of Mental Disorders (DSM)* includes mental disorders (psychotic and nonpsychotic), mood disorders, and personality disorders.

Recognize the cognitive factors of intelligence and moral reasoning as brain functions that influence criminal behavior.

- On average, incarcerated offenders tend to score lower than nonoffenders on standardized intelligence tests. Offenders may have lower emotional intelligence, which can influence criminal behavior.
- Damage to the prefrontal cortex area of the brain can affect moral reasoning and lower impulse control and lead to criminal behavior.

Understand how economic, class, and social inequalities can be linked to the causes of crime.

- When people need and want to make money and are not able to, they may experience extraordinary strain and feel pressured to break the law to obtain the things they need and want.
- Social and economic differences among the classes adversely affect the lower socioeconomic classes, resulting in crime.

Describe factors that cause some people to become victims of crime.

- Many of the same biological, psychological, and social factors that influence why people commit crimes are related to why people become victims.
- A variety of behavioral, physical, social, and attitudinal factors can cause people to become victims of crime.

Key Terms

- adolescence-limited offenders 100
- anomie 98
- atavism 85
- bipolar disorder 92
- classical school of criminology 84
- containment theory 102
- critical theory 103
- cultural deviance theory 104
- culture conflict 106
- Diagnostic and Statistical Manual of Mental Disorders (DSM)* 90
- differential association theory 107
- feminist criminology 104
- intelligence 94
- labeling theory 107
- life course persistent offenders 100
- looking-glass self 107
- moral reasoning 96
- neoclassical school of criminology 84
- neurotransmitter 87
- neutralization theory 101
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- positivist school of criminology 85
- postpartum psychosis 92
- psychopathy 93
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- rational choice theory 85
- recidivist victims 110
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social learning theory 96
social process theory 106
strain theory 98
subculture 106
victimology 109

Study Questions

1. Psychoses are
 - a. false beliefs.
 - b. false perceptions.
 - c. serious mental disorders.
 - d. all of the above
2. According to psychoanalysts, criminals are dominated by their _____, which resulted from a damaged _____ during childhood.
 - a. ego; id
 - b. superego; ego
 - c. ego; superego
 - d. id; ego
3. The following are all true of psychopaths *except*
 - a. they tend to experience hallucinations and delusions.
 - b. they exhibit a lifelong pattern of antisocial behavior.
 - c. they have no guilt for their antisocial behaviors.
 - d. they tend to act on their impulses.
4. All of the following are major categories of thought regarding sociological factors *except*
 - a. social conflict.
 - b. social process.
 - c. techniques of neutralization.
 - d. control.
5. An example of a social process factor is
 - a. looking-glass self.
 - b. anomie.
 - c. socioeconomic status.
 - d. techniques of neutralization.
6. The attributes of potential victims that are visible, obvious, and recognized are called
 - a. obtrusive vulnerabilities.
 - b. routine activities.

- c. victim susceptibilities.
 - d. precipitating clues.
7. A strain factor that can lead to criminal behavior is
- a. feelings of alienation.
 - b. inability to achieve desired life goals.
 - c. frustration.
 - d. all of the above
8. Offenders who begin their criminal activities when young and continue them throughout their lives are called
- a. adolescence-limited offenders.
 - b. delinquent recidivist offenders.
 - c. life course persistent offenders.
 - d. all of the above
9. All of the following factors are control factors *except*
- a. feelings of alienation.
 - b. community responses.
 - c. taking responsibility.
 - d. bonds to society.
10. A statement that accurately describes feminist criminology is
- a. Feminist criminology is an outgrowth of social conflict theories of crime causation.
 - b. Feminist criminology was developed in the 1990s.
 - c. Feminist criminology points out that men and women experience the world in similar ways.
 - d. all of the above

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Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Why are we so quick to embrace the research that has found specific genes associated with breast cancer but so reluctant to accept a genetic basis for criminal behavior?

2. What are some of the factors that contribute to anomie in modern life?
What are some of the things that can be done to prevent anomie from occurring?
3. Why is it important to understand that victims are not all 100 percent innocent, and offenders are not all 100 percent guilty?

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4 Criminal Law and Defenses



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OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Explain the rule of law.

- Provide a short history of lawmaking.
- Identify modern sources of laws in the United States.
- Examine the key elements of civil and criminal law.
- Define the three types of criminal offenses.
- Describe the legal elements of a crime.
- Explain common criminal defenses allowed by the court.
- Explore aspects of the insanity defense.

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Realities and Challenges

Is Hazing a Crime?

Why did 13 Florida students disregard their school's hazing laws, leading to the death of a fellow student?



Red Huber/Orlando Sentinel/MCT/Getty Images

After a band performance on November 19, 2011, 26-year-old drum major Robert Champion voluntarily participated in an illegal hazing ritual in which 12 fellow Florida A&M University (FAMU) marching band members beat him to death. Champion had to run the gauntlet from the front of the band's motor coach to the back, exposing himself to kicks and blows from hands, drumsticks, straps, and other objects. One of the individuals who beat him claimed Champion wanted to complete this feat as a sign he could endure the ordeal, which would give him status and respect from his peers. Tragically, according to the medical examiner, "he died from hemorrhagic shock due to internal bleeding from blunt force trauma."

The inspector general of the Florida Board of Governors completed a 32-page report that concluded the university did not have adequate internal controls to prevent this type of hazing and that poor communication existed among senior school officials, the office responsible for disciplining students, and the police. The report also found that university rules specifically designed to prevent hazing were in place and were disregarded.

FAMU denied responsibility for Robert Champion's death, but what the police call hazing, state law calls a felony. On May 2, 2012, the police charged 13 students with felony hazing charges, making this one of the largest hazing cases ever brought in Florida. The band, some of whose members were not students, was suspended for one year, and the band director resigned. The university claims it has instituted many changes, which include limiting band membership to FAMU students. New policies were put in place, to be backed by a "compliance officer" for the band, and a special top-level position was created to focus on hazing.¹

The sad case of Robert Champion's hazing death illustrates that criminal law is not always easy to interpret. Sometimes it is a challenge to determine what crimes were committed. Attorneys and judges often are pressed to define the

meaningful legal elements of a case and to spell out an appropriate judicial outcome for such offenders. Fortunately, the foundation of law underlying the criminal justice system may be interpreted and tailored to meet the needs of a wide variety of cases.

In this chapter we explore the basic elements of criminal law and common criminal defenses, including the insanity plea. Although the basic roots of criminal laws can be traced back almost 4,000 years, the hazing case of Robert Champion demonstrates that the nature and meaning of laws can change over time to address specific problems that arise.

WHAT IS LAW?

Imagine a system in which a king could punish his subjects whenever he wished, for whatever acts he wished, and using whatever kinds of punishment he desired. People would have no idea what they could or could not do. The king could wield his power to punish anyone to whom he took a dislike. Most of us would find this brand of “justice” intolerably unfair.

Unlike such a kingdom, the United States has a system of justice that relies on the **rule of law**. A government can punish people only when there are written laws, created by established procedures, prohibiting ^{page 121} specific activities. Furthermore, under the rule of law, no government official, no matter how powerful, is above the law.

rule of law

The guiding principle of the U.S. legal system, which states that no single person is more powerful than the law.

Preview

WHAT IS LAW?

LEGAL ELEMENTS OF A CRIME

CRIMINAL DEFENSES

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

Purpose and Function of the Law

Laws are formal rules of conduct sanctioned by the state. Laws have governed human conduct for thousands of years, and today the criminal laws of just a single state are complex enough to fill hundreds of pages. Why do we have all these laws?

laws

Formal rules of conduct sanctioned by the state.

Criminal laws serve a number of functions. By providing penalties for certain behaviors, they protect people and property from harm. By designating which behaviors are forbidden, they provide clear standards of behavior, warning people about acts that will or will not be punished. They also limit the government's power to penalize people unfairly or arbitrarily. On a broader scale, criminal laws regulate and sometimes maintain social order. Criminal laws also serve a symbolic function, sending a message that a society disapproves of particular acts.

History of Criminal Laws

Long before recorded history, human behavior was governed by unwritten social norms, and these norms continue to shape daily life. Norms evolve slowly through social consensus, but some of them have been imposed by those in power. As people began living in larger communities—in cities and kingdoms—the first formal rules of conduct were devised, and eventually put in writing, by heads of state and their representatives. Not only did these rules require or prohibit certain behaviors, but they also specified sanctions for violations. Sanctions could include fines, enslavement, banishment, physical punishments such as whipping or maiming, and execution. These rules of state became the earliest laws.

The earliest written complete law code still in existence is the Code of King Ur-Nammu from the twenty-first century BCE written in the Sumerian language. It provided a uniform law for the entire reign of King Ur-Nammu and included such capital crimes as murder, rape, and robbery. In spite of its age, it

provided for compensation to victims of bodily injury, something _____ page 122 not provided in the more barbaric Code of Hammurabi of ancient Babylonia some three centuries later, which used the principle of an eye for an eye and a tooth for a tooth. The Code of Ur-Nammu is now on display at the Istanbul Archeology Museum in Turkey.²



▲ Ur-Nammu's Code

Sumerian King Ur-Nammu's Code, the earliest complete law text, which is dated 2050 BCE and predated King Hammurabi's Code by roughly three centuries. One of the unique features, especially at this early period, was its use of victim compensation.

CM Dixon/Hulton Archive/Getty Images

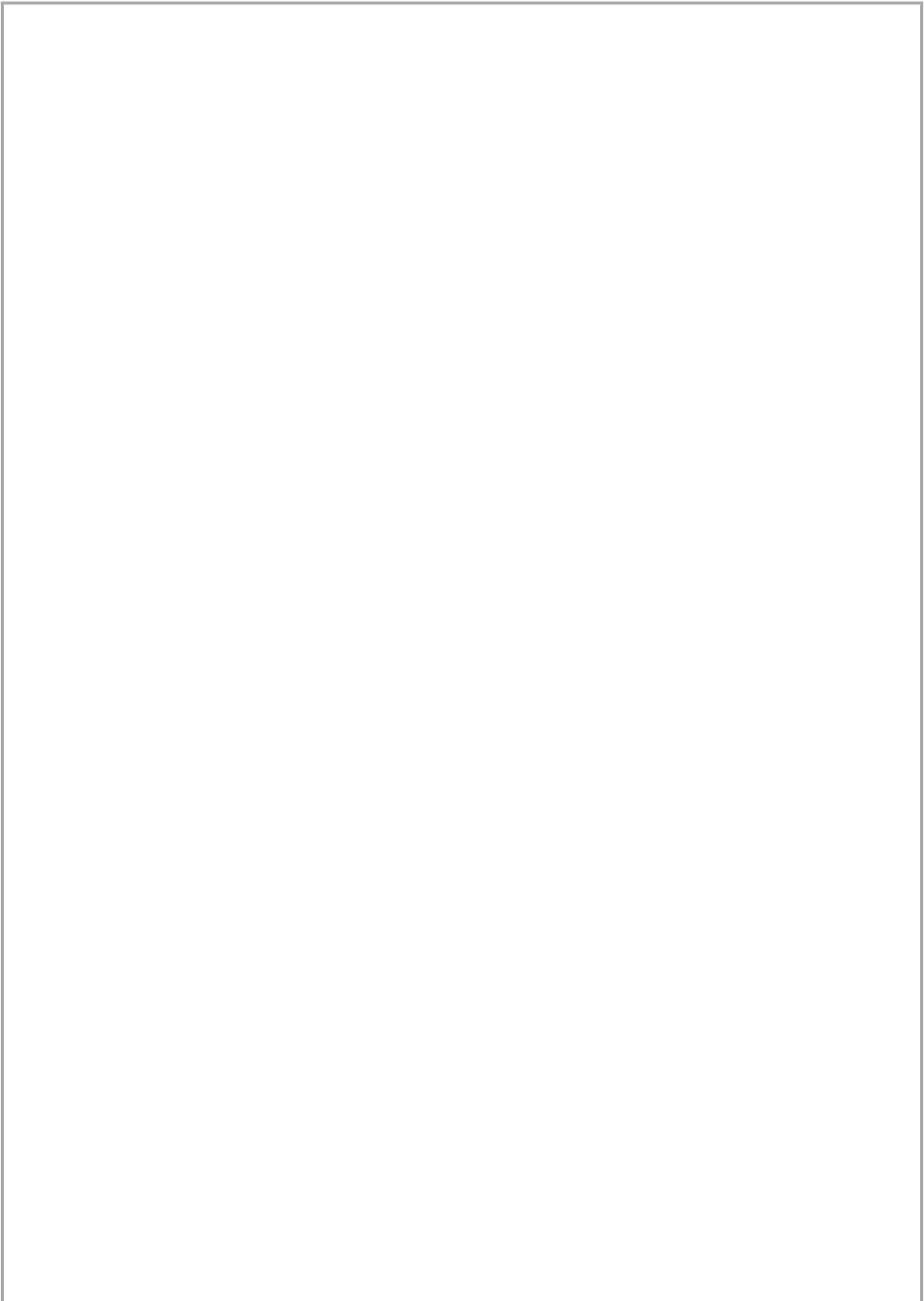
The second earliest known record of written laws dates from the time of Babylonian king Hammurabi (reigned 1792–1750 BCE). The laws known as **Hammurabi's Code** established high standards of behavior, setting forth 252 written rules and designating punishments for violators. The core of Hammurabi's Code was the principle that violators should suffer punishment equal to their offense.

Hammurabi's Code

The second earliest known written law, which was set down by Babylonian king Hammurabi (1792–1750 BCE). The basic principle was that violators should suffer punishment equal to their offense.

Hammurabi had his code carved in stone and set up for all to see; it still survives and today is displayed at the Louvre in Paris. The entire text of the code has been translated into English and is available online.³

Another early system of written laws was *Mosaic Law*, which like Hammurabi's Code rested on the principle of an eye for an eye. Because these laws are included in the books of Exodus, Leviticus, and Deuteronomy in the Bible, they became the basis for Judaism and, to some extent, Christianity. The Ten Commandments are part of Mosaic Law. (Figure 4-1 displays a timeline of the history of law.)





ca 2050 BCE
The Code of Ur-Nammu



ca 1792–1750 BCE
Hammurabi's Code



ca 600 BCE
Mosaic Law recorded in written form in the Bible



ca 1170
Development of common law in England



529–565 CE
Corpus Iuris Civilis
codified under Justinian



1610 Jamestown;
first permanent settlement in America

1788
U.S. Constitution ratified

1791
U.S. Bill of Rights
(the first 10 constitutional amendments) ratified



FIGURE 4-1 History of Law Timeline

What factors impelled societies to begin writing down formal laws?

CM Dixon/Hulton Archive/Getty Images; Time Life Pictures/Mansell/The LIFE Picture Collection/Getty Images; Bettmann/Getty Images; ChameleonsEye/Shutterstock; CM Dixon/Print Collector/Getty Images; Popperfoto/Getty Images; North Wind Picture Archives/The Image Works; Ingram Publishing/Alamy; Ingram Publishing/SuperStock

In antiquity, both the Greeks and the Romans relied heavily on written laws. In the sixth century CE, the Roman emperor Justinian created a series of law books that eventually served as the basis of the legal system implemented across most of Europe. Those books were called the *Corpus Iuris Civilis* (“Body of the Civil Law”). *Justinian’s Code* was one of the first systematic collections of laws. Countries with systems based upon the *Corpus Iuris Civilis* have civil or Roman law systems; these countries include most of continental Europe and many other countries throughout the world.

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Prior to the Norman Conquest of England in 1066, laws in England varied a great deal from place to place. England had previously consisted of several smaller kingdoms, which traced their roots to many different countries and cultures.

As late as the twelfth century, England had no uniform system of laws or courts. But King Henry II (reigned 1154–1189) created, under his own control, a single system of laws for the entire kingdom. Henry dispatched royal judges to “ride circuit”—that is, to travel around the country hearing cases, assisted by locally chosen juries. Royal judges carried with them a consistent set of rules that became known as **common law**, so called because it was uniform, or common, throughout England.

common law

The legal system created in England after the Norman Conquest and still used in the United States today.

Common law relies on judges’ interpretations of previous cases. A previous case that guides decisions in later cases is known as **precedent**. In contrast, civil (Roman) law systems do not rely on precedent. The fact that courts rely on precedent to shape their decisions—a concept known as *stare decisis*, or “to stand on the decision”—means that courts themselves become a significant

source of laws and law interpretation. The use of precedent also helps ensure uniformity and predictability of legal decisions.

precedent

Previous court decisions that have binding authority on subsequent cases.

When the first British colonists arrived in North America in the seventeenth century, they brought from their homeland many traditions and practices, including the common law system. But English law was not the only law in colonial America. Other European colonizers—such as the Dutch, Spanish, and French—brought with them civil law-based legal systems, and Native American societies had their own (unwritten) laws. In the end, the English system prevailed. As the colonies grew, however, the settlers encountered a number of conditions and challenges that had not existed in England and that required new laws. Two obvious examples arose from the colonists' desire to subdue the American Indians and to control their slaves. Common law made no provision for slavery. Then, after the Revolutionary War, the new United States faced the opportunity to create a legal system virtually from scratch rather than relying on bits and pieces cobbled together over several hundred years. Still, common law remains the foundation of the legal system of the United States, as well as in England, Canada, Australia, India, and other countries that were once British colonies.

As the government of the United States evolved, common law remained one source of law. Over time, other vital sources were added to the body of laws that govern the country. These include the federal and state page 124 constitutions, case law, regulations, and *statutes* (the laws enacted by Congress and the state legislatures). We consider these sources of law in the next section.



▲ U.S. Constitution

The Constitution is the supreme law of the United States; it establishes the powers of the federal government and limits those powers.

Dieter Spears/Getty Images

Modern Sources of Law in the United States

Today, the average citizen of the United States is governed by a large number of laws from a variety of sources. These laws and regulations emanate from federal, state, and local administrative agencies and affect everything from getting a dog license to serious criminal acts. Some acts are illegal throughout the United States, but wide variation continues to exist from place to place in the way we enforce laws and define and punish crime. The Key Concepts feature “Sources of Law” illustrates the different sources of law that govern our behavior.

A **constitution** specifies the components of a government, the duties of each component, and the limits of their power. The U.S. Constitution is the supreme law of the United States, which means that all laws within all jurisdictions in the United States must conform to its requirements. The U.S. Constitution regulates the federal government, and each state has its own constitution as well.

constitution

A document that specifies the components of a government, the duties of each component, and the limits of their power.

The U.S. Constitution contains sections specifying the powers and responsibilities of the three branches of the federal government (Congress, the executive, and the courts) and the qualifications for holding various federal offices. It also contains 27 amendments, many of which specify certain rights that are afforded to individuals in the United States, and with which the government cannot interfere without good cause. Freedom of speech, which is guaranteed in the First Amendment, is one of these rights. We examine many of these rights in later chapters of this book.

Statutes are written laws enacted either by legislatures or (in states that allow for this procedure) by the citizens themselves through the voting process. Federal statutes form a multivolume set known as the United States Code. Each state also has its own set of statutes. Thousands of statutes cover everything from business licenses to water use. Both federal and state statutes include laws that specify punishments for certain kinds of acts, but because most crimes are considered primarily to be matters of local concern, there are many more of these criminal laws in state codes than in the federal code. Cities and counties also create their own written laws. These are usually called **ordinances**.

statutes

Laws enacted by state legislatures or by Congress.

ordinances

Laws enacted by local governments such as cities and counties.

In 1962 the American Law Institute (ALI)—a board of judges, lawyers, and legal scholars—published the first version of its **Model Penal Code (MPC)**. It was most recently updated in 1981. The MPC is not a set of laws but a suggested prototype for criminal laws, intended to guide states in bringing their systems of criminal law up to date and making them more uniform. In some places, the MPC offers states several options, among which they are invited to choose. No state uses the entire MPC, but four have adopted it almost whole, and two-thirds have used it extensively in modernizing their criminal laws. Many definitions of crimes and of criminal responsibility used in page 125 this book reflect usages suggested in the Model Penal Code.

Model Penal Code

A suggested code of criminal law drafted by the American Law Institute and used to guide the states in modernizing their laws.

International	Federal	State	Local
Compacts and treaties	U.S. Constitution	State constitutions	
	U.S. Code (consists of U.S. statutes)	State statutes	Local ordinances
	Federal case law	State case law	
	Federal administrative regulations	State administrative regulations	Local administrative regulations

Another major source of law in the United States is **case law**, which consists of decisions that judges have made in court cases. Federal, state, and local judges cannot actually write or pass laws, but they interpret them in the course of formulating their court decisions. Other judges generally follow these interpretations in later cases.

case law

Decisions judges have made in previous court cases.

Administrative agencies provide still another source of law in the United States. The hundreds of such agencies at the federal, state, and local levels include the Environmental Protection Agency, the Department of Motor Vehicles, and the Board of Education. Many of these agencies can create rules that carry the force of law. These rules are usually called *regulations*. The body of law that concerns the content and use of these regulations is known as *administrative law*, and it is quite extensive.

A final source of law in the United States is *international law*, which consists of the rules that operate among nations and among the citizens of different nations. International law generally resides in *treaties* and *compacts* that countries enter into with one another; these are agreements between two or more nations. International law also includes regulations created by organizations such as the United Nations. In the United States, the Constitution grants Congress the power to make and sign international treaties. “A Global View” illustrates that it can be extremely difficult to enforce laws across international borders.

Civil and Criminal Laws

The system of laws in the United States is large, complicated, and diverse. We can understand it more easily when we separate American laws into broad

categories. Two of the most important of these are civil law and criminal law. The term *civil law*, as used here, differs from the meaning of civil law in the legal tradition deriving from ancient Roman law.

Civil law governs relationships between individuals. In civil law, a party who is injured financially or physically by another person or organization can bring a lawsuit against that entity. Civil proceedings focus on the injuries of the victim. The party who initiates the lawsuit is the **plaintiff**, and the other party is the **defendant**. For example, if a person is trimming a tree on her own property and a branch falls onto her neighbor's car, damaging it, the owner of the car could bring a civil lawsuit against the person trimming the tree. Lawsuits of this kind are called **torts**. If a pedestrian is struck by a car and wins a lawsuit against the driver, the latter may have to pay for the pedestrian's medical bills, lost wages, pain and suffering, and any other losses experienced as a result of the accident. These payments are known as **damages**. Other kinds of civil law include *contract law* (disputes arising from legal agreements between parties) and *property law* (disputes related to land ownership and use).

civil law

(1) The system of laws, sometimes known as the Roman system, used in many countries that do not use the common law system; or (2) noncriminal law, or law that concerns disputes between individual parties.

plaintiff

The party who initiates the lawsuit in a civil case.

defendant

The person against whom criminal charges or a civil lawsuit are filed.

torts

Civil disputes in which one party sues another for the damages that the defendant's actions have caused.

damages

Payments that a defendant must make to a winning plaintiff in a civil lawsuit to compensate the plaintiff for the injuries or costs that the defendant's actions have caused.

Criminal law is distinguished from civil law in a number of important ways:

criminal law

A body of laws in which people are punished by the government for specific prohibited actions.

- Criminal law operates under the assumption that society—rather than an individual—has been injured by the defendant's actions.

- Only the government may bring criminal cases. Although many people believe that the victim must press charges, the prosecutor alone decides whether to pursue criminal cases. Furthermore, prosecutors are not bound by the wishes of the victim. Prosecutors will pursue a criminal case based on the merits of the case, regardless of what the victim may want. In civil proceedings, however, the victim, not the government, brings the case to court.
- Defendants who lose criminal cases may pay fines to the government, but they also may be incarcerated in a jail or prison and, in some jurisdictions, even be put to death. Civil defendants who lose are not [page 126](#) incarcerated or executed; instead, they pay damages to the victim.

A Global View

What Happens When Crime Crosses Borders?

The U.S. presidential election of 2016 was contentious in a number of respects. It also highlighted some of the difficulties with attempting to enforce criminal laws across international borders.

A variety of federal laws prohibit foreign nationals from trying to influence elections in the United States. While the exact scope of these laws isn't always clear, they prohibit citizens of other countries from spending money to assist in the campaigns of U.S. candidates. Laws also prohibit agents from tampering with voting processes or hacking into the private data of candidates or political parties. After the 2016 election, U.S. intelligence agencies concluded that the Russian government had engaged in a concerted campaign of illegal activities aimed at influencing the presidential election—claims that have been denied by Russian President Vladimir Putin.

By late 2018, many people had been charged with engaging in illegal activities related to attempts by Russians to affect the election. Eight people were convicted of these charges as of December 2018, but with the exception of one man, who was Belgian, they were all U.S. citizens. But by early 2019, an additional 29 people and three corporations had also been charged. Most of them were Russian, the exception being two Turkish citizens.

But will these Russian defendants, many of whom have close ties to the Russian government, ever face trial? The Russian government would have to agree to extradite them—that is, to hand them over to U.S. officials—and that is unlikely. As long as these defendants remain outside the United States, law enforcement agents from the United States have no legal authority or ability to take them into custody.

Not all matters of international law are as complicated or politically fraught as this one, yet many of them face barriers related to enforcement of important legislation.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- In what situations are law enforcement agencies most likely to encounter problems with enforcing laws across international borders?
- Is there value in charging foreigners with violations of U.S. law even if they'll probably never end up in court? Are there dangers with this approach?
- How could nations go about making it easier to enforce violations of their laws when the violations have international implications?

SOURCES: Scott Shane and Mark Mazzetti, "Inside a 3-Year Russian Campaign to Influence US Voters," *New York Times*, February 16, 2018. <https://www.nytimes.com/2018/02/16/us/politics/russia-mueller-election.html>; Medium, "A Running Tab of Mueller Investigation Convictions and Indictments," January 20, 2019. <https://medium.com/@KeithDB/a-running-tab-of-mueller-investigation-convictions-indictments-f518b9a7282>; The Conversation, "If the 12 Indicted Russians Never Face Trial in the US, Can Anything Be Gained?", January 20, 2019; <http://theconversation.com/if-the-12-indicted-russians-never-face-trial-in-the-us-can-anything-be-gained-99997>; Andrew Prokop, "All of Robert Mueller's Indictments and Plea Deals," *Vox*, November 29, 2018. <https://www.vox.com/policy-and-politics/2018/2/20/17031772/mueller-indictments-grand-jury>.

- Criminal defendants are found guilty; civil defendants are found liable.
- A criminal conviction tends to bring greater moral condemnation from society than does losing a civil lawsuit.
- Criminal defendants are entitled to a number of legal protections, such as access to a government-paid attorney if they are unable to afford one, the presumption of innocence, and a speedy trial. Civil defendants do not automatically have such government protections.
- In the U.S. criminal justice system, the state, not the victim, charges the defendant. Therefore, victims have little or no influence on how a criminal case proceeds. Victims have more control in the civil justice system because they, not the government, make the decision to begin the court process. They also hire their own attorneys, and they have the right to be present during the entire proceeding.
- The standard of proof in criminal cases is high: Guilt must be proved beyond a reasonable doubt. In civil cases, the party that proves its case by a preponderance of the evidence (a lower legal threshold) can win. (Standards of proof are discussed in more detail in Chapter 9.)

KEY CONCEPTS Criminal versus Civil Law

	Criminal Law	Civil Law
<i>Harm</i>	To society	To individual
<i>Case brought by</i>	Government	Injured party
<i>Sanctions</i>	Fines, incarceration, death	Damages
<i>Terminology</i>	Guilty	Liable
<i>Brings moral condemnation</i>	Usually yes	Usually no
<i>Special legal protections</i>	Yes	No
<i>Control by victim</i>	Very little	Very much
<i>Standard of proof</i>	Beyond a reasonable doubt	Preponderance of the evidence

The differences between criminal and civil law are summarized in the Key Concepts feature “Criminal versus Civil Law.”

MYTH/REALITY

MYTH: Double jeopardy occurs when someone is sued in civil court and tried in criminal court for the same act.

REALITY: According to the U.S. Constitution, double jeopardy protection does not apply to civil cases.

The Fifth Amendment’s protection against **double jeopardy** prohibits a defendant from being tried twice for the same crime. However, many acts can result in both civil and criminal cases, and double jeopardy protection does not prohibit the victim from filing a civil lawsuit. In 1995, former football star O. J. Simpson was tried in a criminal case by the state of California for the murders of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman. Simpson was tried but acquitted (found not guilty) of the criminal charges. After the acquittal, the victims’ families brought a civil lawsuit against Simpson for “wrongful death.” In the civil case, the jury found Simpson responsible for

the deaths, and he was ordered to pay the families \$33.5 million. Contrary to what many people believe, the civil trial did not violate Simpson's constitutional protection against double jeopardy, because that protection only prohibits trying someone more than once on criminal charges for the same offense. Similarly, actor Robert Blake was found not guilty in 2005 of murdering his wife, but her children successfully sued him in 2006 for killing their mother.⁴ If a man is criminally convicted and then a civil lawsuit is brought, that conviction can be used against him in the civil trial.

double jeopardy

The Fifth Amendment right that protects anyone from being tried twice for the same offense.

Not only may a single act result in both criminal and civil trials, but those trials will bear many similarities. Both may take place in the same courtroom, although not at the same time and not in front of the same judge or jury. The outcomes also may share similarities. Defendants who lose civil cases may be required to pay punitive damages if their behaviors are held to be especially unconscionable or malicious. Similarly, criminal defendants may be required to provide victims **restitution**, which is reparation for their losses.

restitution

In a criminal case, the money or services a defendant must provide as reparations to the victim for the cost and inconvenience suffered.

Many people believe that victims use the civil justice system as a way to obtain huge monetary settlements. In fact, many victims do not go through the civil justice system at all because they cannot afford to hire an page 128 attorney. Others use the civil justice system in an attempt to bring about policy changes that can occur when civil juries grant large monetary settlements. Sometimes a multimillion-dollar judgment is granted, but others are for undisclosed amounts, and still others are for only a few hundred dollars. “What about the Victim?” describes a case that led to victim-initiated policy changes.

What about the Victim?

Civil Damages in Action: Creating the Jeanne Clery Act

Jeanne Clery was a 19-year-old freshman at Lehigh University, located in a quiet community outside Philadelphia. On the evening of April 5, 1986, another student entered Jeanne's dorm room and brutally raped and killed her. Access to the dormitory was easy because other students had propped open the outside doors.

Jeanne's parents were outraged, not only by the rape and murder of their daughter but also by the fact that the university had provided inadequate protection for its students. As the Clerys wrote on the website for the organization they started, Security on Campus:

We learned that institutional response to such tragedies could involve callousness, cover-ups and stone-walling. Lehigh officials publicly passed off Jeanne's torture/murder as an "aberration." The college, in an ill-conceived attempt to protect its "image," produced a self-serving "report," written by one of its trustees, K. P. Pendleton, which concluded that there was no negligence on the part of the university and that "our present safety policies were complete"; this, despite the administration's knowledge of prior violent crimes on the campus and that there had been 181 reports of propped-open doors in Jeanne's dormitory in the four months prior to her death.

Jeanne's parents also discovered that students had not been informed about 38 violent crimes at Lehigh University in the three years prior to her murder.

As a result, the Clerys filed a civil lawsuit against the university for negligent failure of security and for failure to warn of foreseeable dangers on campus. They received an undisclosed financial settlement. They used the money to create Security On Campus, Inc., a grassroots, nonprofit organization devoted to creating safe campuses for college and university students. The organization also lobbies for state and federal laws for campus security.

In the late 1980s, Pennsylvania enacted a law requiring all postsecondary education institutions receiving federal aid to collect crime statistics. Institutions must publish and disseminate these statistics in a campus security report that is updated each year by October 1. These statistics must cover all campus and noncampus properties, including those controlled by student organizations and recognized by the institution (such as officially sanctioned Greek housing), and all public areas in close geographic proximity to university property that are accessed by students for school-related activities. Each year, all students, faculty, staff, and administrators must be informed that the statistics are available, and the institution must inform the campus community whenever a crime is committed and the alleged offender remains at large, posing a continued threat to those on campus.



Marianne Barcellona/Time & Life Pictures/Getty Images

The Pennsylvania law and comparable legislation in nine other states gave the Clerys the momentum they needed to persuade Congress to enact the Crime Awareness and Campus Security Act of 1990. The law later was amended twice, and in 1998 it was renamed the Jeanne Clery Act. Collectively, these amendments provide for campus victims' rights, expanded reporting requirements, and the disclosure of results from disciplinary hearings to victims. The Clery Act is just one example of the ways in which victims use the civil justice system not for personal monetary gain but to bring about policy changes in an attempt to prevent future victimizations.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- In what ways did the Clery Act pave the way for victim awareness?
- What steps has your college taken to ensure your on-campus safety? Are they appropriate? If not, what additional measures do you feel should be taken? If the current steps are appropriate, do you think they stem from the concerns the Clery Act highlighted?
- Could the objectives of the Clery Act have been achieved without the Clery family's resorting to a civil suit? Explain.

SOURCE: Security on Campus. www.securityoncampus.org/index.php?option=com_content&view=article&id=52:jeanne-clearys-victimblog&catid=34:victim-blog-category&Itemid=54 (retrieved July 3, 2009; relaunched as <https://clerycenter.org/> in January 2017).

Criminal Laws: Misdemeanors, Felonies, and Infractions

A useful way to categorize criminal laws is according to the seriousness of the offense. In the United States, most crimes are felonies, misdemeanors, or infractions. This classification scheme dates back more than a [page 129](#) thousand years, to the Norman Conquest of England in 1066. Prior to the conquest, early medieval English kings punished only a small number of crimes. Usually victims were expected to deal with wrongdoers themselves, either by taking compensation or (more commonly) through private vengeance. However, those who committed serious acts such as murder could be executed by the king's representatives, and their property could be seized by the crown. These serious acts were called **felonies**.

felony

A serious criminal offense that brings a potential punishment of a year or more in state or federal prison.

Following the Norman Conquest, and especially after Henry II established his system of royal courts in the late twelfth century, the number of acts defined as felonies increased, and people faced execution or property forfeiture for a

variety of acts, many of which we would not consider very serious today. But juries often were hesitant to find defendants guilty of relatively minor offenses if the judge's sentence would be death. Consequently, some less serious crimes came to be classified as **misdemeanors** and carried relatively mild punishments. The procedures for prosecuting misdemeanors were considerably less complex than those for felonies.⁵

misdemeanor

A criminal offense that is punished by fines or a maximum of a year in a county or city jail.

Today, the most serious crimes are still classified as felonies; less serious offenses constitute misdemeanors and infractions. Jurisdictions differ in how they classify specific offenses, although very serious crimes such as murder and rape are always felonies. But in Florida, for example, stealing something worth \$350 is grand theft, a felony, whereas in California it is petty theft, a misdemeanor. **Infractions** include minor traffic offenses such as speeding, as well as violations of local laws, such as failure to license a dog properly.

infraction

A minor violation of a local ordinance or state law that brings a potential punishment of fines.

People convicted of felonies can be punished by incarceration in state or federal prisons, usually for terms of more than one year. *Capital felonies* are those that in some states might result in a death sentence. In contrast, people who commit misdemeanors usually face sentences of fines, probation, or incarceration in local jails, usually for less than one year. In states that have three-strikes laws (which punish repeat offenders with harsher penalties), felonies may count as "strikes" but misdemeanors usually do not. There are also procedural differences between the two categories of crimes. Felony defendants in some places may be entitled to a grand jury (see Chapter 8), but misdemeanor defendants are not. In some states, misdemeanor cases are heard by different courts than those that try felonies.

MYTH/REALITY

MYTH: Speeding tickets and other infractions are not criminal offenses.

REALITY: All infractions, even minor ones, are criminal.

In many states, certain crimes are known as *wobblers*, which may be charged either as misdemeanors or as felonies, usually at the discretion of the judge or prosecutor. For example, in Florida certain kinds of vandalism are wobblers.

Depending on the jurisdiction, some minor offenses are categorized as violations or infractions. For example, common traffic offenses such as illegal parking and speeding are punished only with fines. Although those found guilty of violations or infractions do not incur a criminal record, the U.S. Supreme Court has held that people may be placed under arrest and taken into custody even for relatively minor matters such as speeding and seat belt violations.

page 130

a case in point

Convicted without Criminal Intent?

In the fall of 1948, Joseph Edward Morissette, a 27-year-old honorably discharged soldier, was deer hunting with two friends when he decided to remove three tons of empty, discarded, rusted bomb casings from a small Army air base in the northeastern rural Michigan town of Oscoda. Sometime later, he sold these casings as scrap metal for \$84. At his trial, Morissette claimed he believed these casings were abandoned and thus did not know it was illegal to take them. However, dealing with the question of intent, the judge charged the jury with the words:

And I instruct you that if you believe the testimony of the government in this case, he intended to take it. He had no right to take this property, and it is no defense to claim that it was abandoned, because it was on private property. And I instruct you to this effect: That if this young man took this property (and he says he did), without any permission (he says he did), that was on the property of the United States Government (he says it was), that it was of the value of one cent or more (and evidently it was), that he is guilty of the offense charged here. If you believe the government, he is guilty.

Subsequently, Morissette was found guilty for unlawfully, willfully, and knowingly stealing and converting the metal casings to his own use, violating Title 18 U.S.C.A. § 641.^a On appeal the conviction was affirmed; however, because the key issue—the requirement of knowledge that the property was abandoned—was removed by the judge's instruction, a principal element of the case was missing; thus, the U.S. Supreme Court reversed the findings of both the trial court and the district appellate court. The key point of this case centered on

the admissibility of the evidence that Mr. Morissette was unaware that what he took in fact belonged to the U.S. government. Furthermore, this case illustrates the importance of mens rea as an important element in these types of offenses. This point is embodied in Justice Robert Jackson's now famous statement for the Supreme Court regarding mens rea, which states that crime is "generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand."^b



Vladislav S./Shutterstock

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Does the judge's instruction to the jury seem fair? Explain?
- Do you think the district appellate court made a mistake? What is your opinion?
- Why did the trial and appellate courts ignore what the Supreme Court ruled was an important legal point?

SOURCES: ^aAndrew J. Transue, (2014) Flint, Mich., on brief for appellant, *Morissette v. United States*, LEAGLE, United States Court of Appeals Sixth Circuit. February 5, 1951. www.leagle.com/decision/1951614187F2d427_1485.xml/MORISSETTE%20v.%20UNITED%20STATES (retrieved May 23, 2015).

^bInvispress, Law School Case Briefs: Criminal Law, *Morissette v. United States*, 342 U.S. 246 (1952). www.invispress.com/law/criminal/morissette.html (retrieved May 23, 2015); Wikipedia, "Morissette v. United States." http://en.wikipedia.org/wiki/Morissette_v._United_States#cite_ref-3 (retrieved May 23, 2015).

LEGAL ELEMENTS OF A CRIME

Whether a crime is a felony, a misdemeanor, or an infraction, before an individual can be convicted, the state must prove that a crime has actually occurred. The legal requirements for identifying a criminal action are quite precise, as we now consider.

Corpus Delicti—Proof That a Crime Has Been Committed

The **corpus delicti** of a crime (literally “the body of the offense”) refers to the particular elements required in order for prosecutors to establish that a crime was indeed committed.⁶ To meet the corpus delicti requirement, the prosecutor must show that a defendant’s criminal act (*actus reus*) was the product of his or her **criminal intent** (*mens rea*) and that this intended action (or failure to act) resulted in some manner of harm or injury to the victim. Collectively, [page 131](#) these three elements—action, intent, and harm—constitute the essence of a crime. Each crime requires a specific *actus reus* and a specific *mens rea*. All three are generally required to convict a criminal defendant. In some cases, however, a defendant can be found guilty of a crime even though one or more of the key elements is absent. The Latin terms *corpus delicti*, *actus reus*, and *mens rea* come from ancient and medieval law.

corpus delicti

“The body of the crime”; the specific elements that must be proved to convict someone of a specific offense.

criminal intent

The degree to which a defendant must have intended his or her actions or the consequences of those actions.

The term *corpus delicti* is often mistakenly taken to mean the corpse of a victim. But in a homicide case the body of the murdered victim is only one of the elements constituting the *corpus delicti*. In some cases, if circumstantial evidence is compelling enough, the actual body of an alleged murder victim need not be found for the killer to be convicted. British serial murderer John George Haigh used acid to decompose the bodies of people he had killed for financial gain, under the mistaken belief that without a corpse murder could not be proved because there was no *corpus delicti*. “No bodies. No crime. No

punishment.”⁷ Haigh made the common error of misunderstanding the word *corpus*. That was his undoing. The evidence against him, albeit circumstantial, was substantial. Haigh was found guilty of nine murders and was executed in 1949.⁸



▲ John George Haigh

Haigh was a notorious English serial killer during the 1940s. *How should the U.S. criminal justice system deal with serial killers?*

Popperfoto/Getty Images

Actus Reus—The Criminal Act

Each kind of crime has a specific **actus reus**, literally the “evil” or “guilty act.” For example, the actus reus for the crime of perjury in Florida is making a false statement under oath during a public proceeding (such as a trial).⁹

actus reus

The specific act required to convict a person for a specific crime.

To be found guilty of murder, you must cause another person’s death. Usually this means that you, the defendant, must have used the murder weapon yourself. There are, however, exceptions to this requirement. If a person hires or compels somebody else to do the actual killing, he or she can still be found guilty of murder by having caused the crime. This would obviously be the case if a person were to hire a hit man to kill his spouse. (Of course, the hit man would also be guilty of murder.)

The murder conviction of cult leader Charles Manson is another example of how a person can be found guilty of a crime without meeting the usual requirement of actus reus.¹⁰ In 1971, Manson was convicted of the murders of seven people in 1969, even though he had not been present during the killings. In fact, it was a small group of his followers who had committed the murders. Manson and four members of his “family” were all sentenced to death, though their punishment was reduced to life sentences when the U.S. Supreme Court temporarily abolished capital punishment in 1972. Except for one of the followers, Susan Atkins, who died in prison in 2009, and Charles Manson, the family patriarch who died in prison in 2017, the rest remain in prison.

Mens Rea—The Defendant’s Mental State

Actus non facit reum nisi mens sit rea.

(An act does not make a man guilty unless his mind be also guilty.)

—Sir Edward Coke (1644)¹¹

To say that a person committed a criminal act is not the same as saying that he is criminally responsible (or criminally liable) for the crime. What makes the difference is the perpetrator’s **mens rea**, or state of mind at the time of the crime.

mens rea

The level of criminal intent, or the mental state usually required to convict a person of a criminal act.

Different crimes represent different levels of mens rea, or criminal intent. To be convicted of first-degree murder, the offender usually must commit the crime with “premeditation and malice aforethought”; that is, with having planned and intended ahead of time to kill the victim. First-degree murder carries the heaviest penalty—usually long-term sentences, life imprisonment, or death. Other levels of mens rea required for different offenses include *purposefully* (intending the offense and its consequences), page 132 *knowingly* (being certain in the result of the actions, regardless of whether the offender wants them to happen), *recklessly* (knowing that there is a substantial risk of the consequences), and *negligently* (behaving differently from the way a reasonable person would have behaved).



▲ **Derrick Robie**

Four-year-old Derrick was beaten to death by a 13-year-old. *Do you think a 13-year-old can understand how his crime will affect others?*

Dale and Dori Robie

For a deed to be criminal, intent and act must concur. In other words, if you intend to do one kind of harm to someone (for example, rob him) and attempt to carry out that *actus reus*, but accidentally do unrelated, unplanned harm to that person (such as run over and kill him while driving to his house), then the concurrence of act and intent for murder has not been established.

Some offenses do not require that the offender actually intended to commit the *actus reus* or cause the victim harm. Reckless or very careless behavior may be sufficient. For example, Michael Derderian owned a nightclub in Rhode Island. He knew that the cheap soundproofing material around the stage was highly flammable, and he also frequently allowed the nightclub to become crowded beyond capacity. On one such packed evening in 2003, he permitted the band Great White to use pyrotechnics during their performance. The pyrotechnics set the soundproofing material on fire, and many of the club's patrons were unable to escape. One hundred people died in the inferno.

Derderian was convicted of involuntary manslaughter and sentenced to four years in prison.

The general idea behind the mens rea requirement is that people should usually not be held criminally liable if they did not intend to commit certain acts or to cause certain consequences. Furthermore, the law often assumes that people should receive more severe criminal sanctions when they intended to harm others, as opposed to when the harm was careless or accidental.

In some instances, the perpetrator may not understand the consequences of the injurious act. For example, a child might know that an act is wrong but not truly comprehend how the crime affects others. A chilling example is the beating death of 4-year-old Derrick Robie in Savona, New York, in 1993. The murderer was another child, 13-year-old Eric Smith. Smith lured Robie into the woods and there beat him to death with large rocks. Although Smith was aware he had committed a crime, he did not fully comprehend how the murder would affect others. In a televised interview a year after the crime, when Smith was asked how the parents of the murdered child might feel about the killing, Smith replied, “I guess they’re mad at me and stuff.”¹² He still did not “get it.” A jury convicted the juvenile of second-degree murder. He has been in prison ever since. Smith has been refused parole nine times and will be eligible again in 2020.¹³

Generally speaking, when a defendant lacks the required mens rea or intent for a particular crime, he is not held criminally responsible for that crime. To establish mens rea, the judge or jury makes a judgment of the individual’s capability of forming it. Assuming that the person is capable of forming mens rea, the judge or jury must then establish whether the person actually did have the requisite mens rea at the time of committing the actus reus. In most states, a defendant with an extraordinarily low IQ is considered incapable of forming mens rea.¹⁴

It is often difficult to determine whether a person had the required mens rea. This is particularly true when the person is an adolescent or has a mental disability. Criminal law attaches culpability to criminal intent, yet mens rea cannot be measured in any objective way. (The table “Examples of Elements of Crime” provides instances of offenses, actus reus, and mens rea.)

Offense	Actus Reus	Mens Rea
Silent or abusive calls to 9-1-1 service (Texas Pen. Code §42.061)	A person makes a phone call to 9-1-1 when there is not an emergency and remains silent or makes abusive or harassing statements.	Knowingly or intentionally
Kidnapping (Texas Pen. Code §20.03)	A person abducts another person.	Knowingly or intentionally
Criminally negligent homicide (Texas Pen. Code §19.05)	A person causes the death of an individual.	Criminal negligence

The same requirements of proving actus reus and mens rea apply when it comes to the accomplices to a crime. The prosecution must establish beyond a reasonable doubt that someone who supplied a weapon, served as a lookout, drove a getaway car, or sheltered a fugitive did so with the conscious intent of aiding and abetting the crime. Sometimes this can be difficult to prove. Suppose, for example, that Mary sells a gun to John, who uses it to commit a holdup or a murder. If it can be proved that Mary had foreknowledge of the use to which John would put the weapon, or if she knowingly accepted from John some of the proceeds of the robbery or murder, then she is liable as an accomplice. She might also face criminal consequences if she supplied the weapon to John in reckless or negligent disregard of the consequences—for example, knowing that he was a violent lawbreaker.

Some specific acts constitute crimes regardless of the presence or absence of criminal intent. These **strict liability offenses** are generally associated with less harsh punishments than if they were accompanied by mens rea. Statutory rape is one controversial example. By law, an adult who has sex with a minor is committing a crime, regardless of whether the sexual activity was consensual or whether the adult had a good-faith belief that the minor was older. In most states, the age of consent is 16, but in some it is 17 or 18. If sexual relations occur, the law dictates that the adult be held criminally responsible. But because mens rea is not an element of the offense, the punishment is typically less severe than for the crime of forcible rape.

strict liability offenses

Crimes that have no mens rea requirement; a person who commits the requisite actus reus may be convicted of the offense regardless of intent.

MYTH/REALITY

MYTH: The law excuses children from criminal responsibility.

REALITY: Even young children may be found criminally responsible for their criminal behaviors and can be tried as adults in some states.

Inchoate Offenses

Sometimes a person has the mens rea to commit a crime and even takes some steps to commit the actus reus, but for various reasons is unable to complete the offense. The individual may still face criminal liability, however. These incomplete criminal acts are called **inchoate crimes**.

inchoate crimes

Crimes that have been begun but are not completed or are crimes that are completed by someone else.

One common inchoate crime is *attempt*. For example, suppose that a person decides to rob a liquor store. She obtains a gun, drives to the store, enters, points the gun at the clerk, and demands the money in the till. Before the clerk can respond, however, an off-duty police officer tackles the would-be robber to the ground, disarms her, and places her under arrest. Should she escape criminal liability merely because she was unable to complete the actus reus for robbery, which is taking another person's property through force or [page 134](#) threats? That would seem unjust. Because she clearly intended to commit robbery and had taken substantial steps to commit it, she could be charged with attempted robbery. Attempt usually carries the same penalties as the completed offense.

Other inchoate crimes include *conspiracy* (an agreement with other people to commit a criminal act) and *solicitation* (persuading or inducing someone else to commit a crime). In general, the idea behind all inchoate offenses is that someone who tries to commit a crime, but who is unsuccessful, is as dangerous and as culpable as someone who succeeds.



▲ What If the Boss Had Died?

In the film *9 to 5*, a character believed she had accidentally poisoned her awful boss.
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Other Elements of Crime

While all crimes require a specific *actus reus* and a specific *mens rea*, some crimes have additional elements as well. Some crimes require that a particular result occur. For example, in order for someone to be convicted of homicide, the prosecutor must prove that the defendant's actions resulted in the death of a human being. The legal name for this requirement is *causation*. Sometimes causation is easy to prove, but other times it is quite difficult, especially when there may be several intervening causes or when several people could potentially be blamed for a particular act. In 1972, three members of a motorcycle gang beat Danny Centrone. He survived the attack but with severe brain damage. Twenty-one years later, Centrone died from choking on a piece of food he was eating. The medical examiner determined that Centrone's death was due to his impaired chewing and swallowing, which resulted from the attack years earlier. The examiner declared Centrone's death to be a homicide.¹⁵

Most crimes also require *concurrence*; that is, the *mens rea* and the *actus reus* must occur at more or less the same time and in concert. Concurrence is a

complex concept, but it generally means that the defendant must have the requisite mens rea at the time she commits the actus reus. In the 1980 movie *9 to 5*, a woman accidentally serves her hateful boss coffee containing rat poison; at the time she prepared the coffee, she thought the powder was sweetener.¹⁶ If the boss had died from the poison, and if the woman had rejoiced afterward over the death, she still would not have been guilty of murder because at the time she served him the poison, she didn't intend to kill him. In this case, there would have been no concurrence between the actus reus and the mens rea.

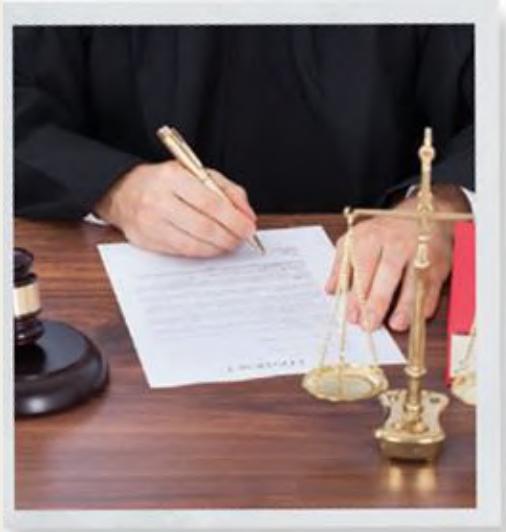
CRIMINAL DEFENSES

The law views human beings as conscious, rational, and intentional agents of behavior. In the U.S. judicial system, criminal defendants have the opportunity to claim a variety of circumstances and conditions that may serve as defenses if they are accused of committing crimes.

There are certainly instances where the defendant is wrongly accused of committing the crime for which he or she is on trial. These include the case in which an eyewitness has mistakenly identified the accused as the actual offender. The defendant is truly innocent and would present to the court an alibi that explains where he was and what he was doing at the time of the crime—details that, if verified during trial, would be exculpatory (meaning _____ page 135 that they would clear the defendant of guilt). An alibi can be proved in a variety of ways. For example, the defense could use testimony from individuals who were present with the defendant at another location during the time the crime was committed, or video surveillance footage that places the defendant across town at the time of the crime. The defense of alibi holds that the defendant is not guilty because the person did not commit the crime. All other defenses concede that the defendant committed the crime, but argue that the person should not be held criminally responsible. Such defenses are known as affirmative defenses because the defendant is admitting she broke the law (affirming she did it) but argues that she had a legal justification for doing so. What all these other defenses have in common is the argument that mens rea was lacking or diminished at the time of the crime.

Although the courts determine criminal responsibility, criminal defenses are set by statute and are heavily influenced by common law. We look next at the criminal defenses allowed in courts in the United States.

Real Careers



AndreyPopov/iStockphoto.com

CHRISTOPHER GOWEN

Work location: Washington, DC

College(s): Villanova University (2000); University of Miami School of Law (2005)

Major(s): Business Administration (BS); Juris Doctorate (JD)

Job title: Senior Staff Attorney, American Bar Association (ABA)

Salary range for job like this: \$60,000—\$80,000

Time in job: 1 year

Work Responsibilities

As the senior staff attorney for the Criminal Justice Section of the American Bar Association (ABA), I am responsible for overseeing and developing new policy on pertinent criminal justice issues with our attorney members. Once our section has decided on a policy, it goes for a vote by the ABA House of Delegates. If the policy passes, the ABA will then take it to the United States Congress and lobby the legislators to make it law. I am currently developing policy that would not allow schools and employers to deny opportunities to applicants based on their contact with the criminal justice system as juveniles.

My section also follows criminal cases before the Supreme Court and reports on them to our members. When the Court is going to hear a criminal case that has a legal issue on which the ABA has developed policy, we will write an amicus brief in favor of the side our policy supports.

I also develop programs to train attorneys on different aspects of the law around the country in such areas as evidence, criminal procedure, and public corruption. Last but not least, the ABA allows me to practice law on a pro bono basis. I can represent indigent children in criminal cases for free, and the ABA will allow me to work on the cases during normal work hours.

Why Criminal Justice?

After law school I worked for the Miami Dade Public Defender's Office, where I learned how important the role of a public defender is to society—the only hope to protect people falsely accused by the police or whose rights have been violated by the government.

After my second year as a public defender, I worked in Iowa in a senior position for the Hillary Clinton for President campaign. Following the campaign, I moved to Washington, DC, married, and took a job with the ABA. If I could still afford to be a public defender, I would return in a heartbeat. Unfortunately, public defender offices around the country are facing serious budget problems and can't afford to pay their attorneys reasonable salaries.

Expectations and Realities of the Job

I had expected things to move a little faster in Washington, DC. The reality is it takes a very long time to get new law passed. But the pace at which a new public defender or prosecutor works is incredible—you get thrown right into the fire and are representing clients on day one. In two years I tried over 40 cases as a public defender. Many trial lawyers do not try that many cases in a lifetime.

My Advice to Students

Get some real-life experience (bill paying, working 9—5) before you go to graduate school, especially law school. In law school you learn about cases that shaped and developed law, each of which is based on facts that occurred in someone's life. The more you have experienced in life, the better you will understand the consequences of the law and the cases you are learning about.

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Mistake of Fact

We are generally presumed to know the law, but its enormity and its changing nature make it impossible for everyone to know all the laws all the time. Nonetheless, ignorance of the law is not an acceptable defense. If it were, it is easy to imagine how flooded the courts would be with defendants claiming "I didn't know there was a law against that!" The defense of mistake of fact argues that a mistake related to a *fact of the crime* may have affected the state of mind of the defendant in such a way as to cause the person to commit the crime, but without mens rea.

Generally, people can use mistake of fact as a defense if they were mistaken about a fact, but not if they were mistaken about a law. For example, imagine a

woman whose husband disappears overboard while they are on a cruise ship together. Ten years later, believing him to be dead, she remarries. If her first husband then suddenly reappears, alive and well, is the woman guilty of bigamy? Most likely not, as she reasonably (although mistakenly) believed her husband was dead.

But now imagine a woman who is married, who knows her husband is alive, but who (mistakenly, she says) believes her state permits people to have multiple spouses. If she marries a second time before divorcing her first husband, she will be guilty of bigamy because she is mistaken about the law. Cases involving mistake of fact or law are uncommon.

Intoxication

In most cases, people who become intoxicated by alcohol or other drugs cannot use intoxication as a defense. However, if a person becomes so intoxicated that the individual cannot form the mens rea required for a particular crime, the person may have a successful intoxication defense. For example, if a man were so impaired that he did not realize what he was doing when he killed his friend, he would probably not be convicted of first-degree murder, which requires that the crime be premeditated. He would probably be convicted of a lesser offense, such as involuntary manslaughter. On the other hand, if he wanted to kill the friend but lacked the courage to do so in a sober state and so drank in order to be able to commit the murder, his intoxication would generally not serve to reduce his culpability.

In the United States, states vary as to whether they will accept intoxication as a defense at all, and if so, when. Montana, for example, never allows voluntarily intoxicated people to use the defense, whereas New York accepts voluntary intoxication as a defense in cases not involving extremely reckless behavior.¹⁷

However, the intoxication defense can be used when someone becomes intoxicated involuntarily. For example, if someone slipped a drug into a woman's drink without her being aware of it, and she committed a crime while under the drug's influence, she would be able to claim intoxication as a defense.

The Justification Defenses

In other cases, a defendant admits to having broken the law but presents the court with a justification for his behavior. While he knew that what he was

doing was a criminal act, he argues that his actions were justified by the circumstances surrounding the incident. Justification defenses include duress, necessity, self-defense, and entrapment.

Duress: Being Coerced into Committing a Crime Situations may occur in which a person is literally forced into committing a crime because failure to commit it would result in more serious harm. As long as the crime is not murder (owing to the principle that one person's life is no more valuable than another's), the defendant may make the claim of **duress**.

duress

A defense in which the defendant claims that he or she was forced or coerced into committing a crime.

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Consider this example: A man forces his way into a home and holds a handgun to the wife's head. Because he is convinced that mind-controlling waves are emanating from the neighbor's television set, he directs the husband to break into the neighbor's house and destroy the set. The husband is given 10 minutes to complete the deed and return with the remote control for the television, or his wife will be killed. Even though the husband realizes the man has a serious mental illness, he does as he is told and returns (with the remote control) to report the television destroyed. Although the husband indeed committed more than one crime (burglary, destruction of property, and theft), it would be clear to any reasonable person that not to have done so could have resulted in a much more serious outcome: the killing of his wife by this deranged man. Should the husband ultimately be charged with the crimes? Under the circumstances, a plea of duress may be appropriate.

A defense of duress would not be accepted, however, if the husband were directed to murder his neighbor's wife instead of destroying the television. The law would not recognize that the life of his wife was more valuable than that of his neighbor's wife.

Necessity: When Circumstances Require an Illegal Act Sometimes, under extreme circumstances, a person cannot avoid taking criminal action to resolve a situation. A case such as this might use the defense of **necessity**. Such was thought to be the situation when, in 1884, a ship capsized off the coast of Africa. For a week, four crew members survived in a lifeboat by sharing two cans of turnips and the carcass of a sea turtle. During the second week, the

youngest member of the crew, Richard Parker, was approaching death from starvation. At one point the ship's captain Dudley and first mate Stephens decided that if help did not arrive by the following morning, they would kill Parker and consume his remains. (The other crew member refused to participate in the plan.) The help did not come. The two stabbed Parker and ate from his remains over the next four days, until a German ship rescued them. On their return to England, Dudley and Stephens were put on trial for Parker's death.

necessity

A defense in which the defendant must demonstrate that he or she had to commit the crime to avoid more severe consequences.

Courtroom debate examined questions of how to measure and compare the value of lives. The opinion of the court was delivered by Chief Justice Lord Coleridge, who wrote: "Is it to be strength, or intellect, or what? ... In this case the weakest, the youngest, the most unresisting, was chosen. Was it more necessary to kill him than one of the grown men? The answer must be 'No.'" A panel of five judges found Dudley and Stephens guilty of murder and sentenced them to die. However, public outrage about the trial's outcome prompted Queen Victoria to commute the death sentences to six months in prison.¹⁸

Subsequent cases have etched out exceptions whereby killing is deemed a necessity. If, for example, the death of the victim was imminent and the continuation of the victim's life threatens the life of others, the defendant can make a case for necessity. This is the kind of determination made in cases where the life of one conjoined twin is taken in order to save the other. Necessity would also have applied as a defense on September 11, 2001, if military jets had managed to shoot down any of the hijacked planes, together with the kidnapped passengers, before the terrorists' mission was accomplished.

To use the necessity defense successfully, the defendant generally must demonstrate that he or she had to commit the crime in order to avoid more severe consequences. For this reason, it is sometimes called the "lesser of two evils" defense. In the nineteenth century, many states prohibited people from doing business on Sundays. Courts permitted the necessity defense in the cases of shipping companies that had set sail on Sundays to avoid storms, and in the case of telegraph companies that had transmitted telegrams concerning emergencies.¹⁹

Matters of Ethics

When Is Breaking the Law Necessary?

In late December of 2018, a disagreement between Congress and the president over funding for a wall at the Mexican border lead to the longest federal government shutdown in U.S. history. One of the repercussions of this shutdown was that 800,000 federal employees did not receive their regular paychecks. About half of these employees were furloughed, meaning they were forced to stop working. The remainder had jobs deemed critical, such as members of the Coast Guard and Transportation Safety Agency employees who conduct security screenings at airports. These employees had to work without pay, and due to the intricacies of state laws, most of them weren't eligible for unemployment benefits. As a result, a great many of them faced the possibility of losing their homes or otherwise being unable to provide for themselves and their families.

About 1,500 people took a very modern approach in dealing with their difficult situation: they created GoFundMe accounts to pay their living expenses. The problem was that attempts such as these might result in criminal prosecution. A federal law prohibits federal employees from receiving outside payments for their government service. Violations of the law can result in steep fines as well as prison terms.

The law was enacted to avoid undue influences on people performing government duties. The question is whether the law applies to a situation like this. Ironically, the Office of Government Ethics, which could normally publish a clarification of the legality, was also mostly closed due to the shutdown.



If federal employees who received money from GoFundMe accounts were prosecuted, could they use necessity as a defense? Perhaps they could argue that saving their homes and supporting their families was more important than the minimal risk that GoFundMe financing would eventually affect their duties.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- When a defendant uses the necessity defense, should the original purpose of the law they've violated be important?
- Under what circumstances do you think illegal acts are justified? Are there some crimes, such as murder, that can never be justified? Explain.
- In what kinds of situations do you believe necessity defenses are most likely to be successful?

SOURCES: Washington Post, “Everything You Need to Know about the Government Shutdown,” January 18, 2019. https://www.washingtonpost.com/graphics/2018/politics/government-shutdown-faq/?noredirect=on&utm_term=.7309e0146602; WREG, “Furloughed Government Employees Created GoFundMe Pages,” January 17, 2019. <https://wreg.com/2019/01/17/furloughed-government-employees-created-gofundme-pages-to-survive-the-shutdown-that-may-be-against-the-law/>.

In 1976, four inmates of a jail in Washington, DC, escaped by removing a bar from a window and sliding down a knotted bedsheet. When they were eventually caught and charged with escape, they claimed that there were frequent fires in the jail, the guards had beaten them, and one of them was not receiving adequate care for his medical conditions. They said that they had left the jail to protect their health and lives.²⁰ A majority of the U.S. Supreme Court eventually upheld the convictions for their escape. The “Matters of Ethics” box presents a more recent situation in which perhaps a necessity defense might be used.

Self-Defense: Protecting Yourself or Your Property When someone is threatened by another person, the threatened individual may be compelled to defend herself with the use of force. A person may claim that she acted in self-

defense if she can show that the use of force was absolutely necessary to protect herself or her property.

Three requirements must be satisfied to justify the use of the self-defense claim. The first is that the action against the perceived threat must be necessary; no other less harmful means of dealing with the threat can be reasonably available. For example, in considering available fight-or-flight options, flight must not be possible. Consider a person who is commanded at gunpoint to stay in his car while a stranger enters from the passenger side. After obeying the perpetrator's instructions to drive to the nearest ATM and withdraw money—all under threat of imminent death—once back in the car the victim takes advantage of a moment when the perpetrator is distracted, grabs the gun and shoots his captor. Most states used to require a person who was attacked to flee, rather than fight back, if flight was possible. Recently, however, several states have passed stand-your-ground laws that eliminate this requirement.

The second requirement for an act of self-defense is that it be proportionate to the threat. To defend against the threat, force used by the defendant cannot be significantly greater than the unlawful force threatened or used page 139 against the person. Running onto the street in pursuit of someone who has just burglarized your house and then shooting him does not constitute self-defense. The fact that the perpetrator was fleeing removed the imminence of any threat he may have posed inside the house.



▲ The Necessity Defense

A person may claim that he acted in self-defense if he can show that use of force was absolutely necessary to protect himself or his property.

Jim Bourg/AP Images

The third requirement is that the threat against which the individual is defending himself or herself must be imminent, or immediate. This requirement has prompted much debate. Consider the wife who has been battered by her abusive husband for years and finds the level of his violence increasing. The husband may, for example, threaten her with a knife—something he has never done before. Is it self-defense when she kills him later that night as he sleeps? Traditionally, the answer was no, and the wife would be convicted of murder. In recent years, however, some courts have retreated from the imminence requirement in certain cases.

Entrapment: Being Deceived into Committing a Crime When law enforcement officers or agents trap or trick a person into committing a crime

that the person would not otherwise have committed, **entrapment** occurs. The standards for entrapment vary, but generally the defense exists when the defendant had no predisposition to commit the crime—that is, when it seems clear that the person had no preexisting desire to commit the offense until the police persuaded the individual to do so.

entrapment

A situation in which law enforcement officers or agents trap or trick a person into committing a crime that the person would not otherwise have committed.

When entrapment is alleged, the state has the burden of proving beyond a reasonable doubt that the defendant was not entrapped. Today, the entrapment defense is often viewed as an effort to deter police misconduct.

Entrapment cases typically concern individuals whom authorities already suspect are involved in criminal activity. For example, an undercover police officer may be sitting at a bar to see if any minors will attempt to purchase alcohol. Once the officer sees someone walk up to the bar, order a drink, show a fake ID, and pay for the drink, he is able to offer to buy that person a drink without risking a claim of entrapment. It becomes entrapment if the police officer is in the same bar, sees someone who appears to be under 21 years old, offers to purchase that person an alcoholic beverage, and then, after the person has said yes and consumed the drink, arrests the person for underage drinking. In this case, there is no clear determination that the minor would have purchased or consumed alcohol if the police officer had not offered to purchase it.

Insanity

Although the term's meaning has changed in everyday usage, the legal definition of **insanity** as a defense refers to an individual whose mind was disordered because of defective mental processes at the time of committing a crime. This legal definition is unrelated to the medical community's understanding of mental disorder. Although experts in psychiatry and psychology often contribute their opinions about a defendant's mental status and behavior, the judge or jury ultimately determines whether a defendant was insane at the time of a crime.

insanity

A defense in which the defendant admits committing the criminal act but claims not to be culpable due to mental illness.

Like other criminal defenses, insanity implies diminished or no criminal responsibility based on a lack of mens rea. The underlying principle of the insanity defense has been well established in Anglo-American law for centuries. In the eighteenth century, British courts developed the “wild beast” test, which held a defendant innocent if he was “so bereft of sanity” that he could not understand the consequences of his behavior, “no more than ... an infant, a brute, or a wild beast.”²¹

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Race, Class, Gender

LGBTQ+ Youth and Survival Sex

In 2018, a national study on youth homelessness found that in a one-year period (2016–2017), 3 percent of households with youth (ages 13–17) reported homelessness and another 1.3 percent noted that youth couch surfed. For those aged 18–25, the rates jumped to 5.9 percent for homelessness and another 6.6 percent for couch surfing. These numbers double for young adults (18–25) who identified as lesbian, gay, bisexual, transgender, and queer (LGBTQ) with approximately 20 percent reporting being homeless during the study period.^a This mirrors earlier research by the Urban Institute that looked at LGBTQ and their participation in survival sex while living on the streets in New York City. Prior research studies indicate that anywhere from 2,500 to 4,000 individuals under 21 years of age experience commercial sexual exploitation in New York city alone.^b However, limited research focuses specifically on the experiences of LGBTQ youth and the unique challenges they face in being homeless. The Urban Institute study focused on a total of 283 youth who participated in in-depth interviews regarding their pathways to engaging in survival sex as they ran from abuse and trauma, poverty, racism, sexism, and homophobia. Participants ranged in age from 13 to 21 years old and identified as male (47 percent), female (36 percent), transgender female (11 percent), transgender male (3 percent), transgender other (2 percent), queer and questioning (0.4 percent), and other (3 percent). The majority represented a racial minority with 37 percent identifying as African American, 22 percent as Latino, and 5 percent as White. In terms of sexual orientation, participants were largely bisexual (37 percent), gay (23 percent), lesbian (15 percent), heterosexual (13 percent), queer and questioning (3 percent), and other (9 percent). More than 75 percent were not enrolled in school, and 48 percent did not graduate high school or obtain a general equivalency diploma. Nearly half (48 percent) lived in a shelter, and 10 percent lived on the streets; the remaining lived in a family or friend’s home, with only 9 percent living on their own.

The results of the interviews illustrated youth who experienced harsh discrimination and rejection from their families, as well as society in general. In an attempt to escape these harsh realities, the youth ran away and lived life on the streets. Compounding these challenges was a lack of access to LGBTQ-friendly community services, which further contributed to housing instability, food insecurity, and inadequate health and mental health care. In order to survive, these young people engaged in “survival sex” for money and/or material possessions and entered commercial

trade through friends/peers or family (50 percent), solicitation and exploitation (32 percent), their own initiative (20 percent), and other factors (7 percent). Youth typically saw three to six customers each day, most of whom were found on the street (48 percent) or online (40 percent). Youth reported charging \$91 to \$231 per encounter and largely spent these earnings on food (54 percent) and clothing (36 percent).

Survival sex was dangerous, and youth protected themselves most commonly with knives (36 percent), mace (24 percent), or fists (19 percent). Engaging in survival sex contributed to frequent arrests, accompanied by violence, abuse, and discrimination by law enforcement and while incarcerated. For these youth, life on the street also meant relying on informal peer networks, sharing limited resources, bartering, and resiliency in the face of dangerous circumstances. The youth in this study also noted risks of survival sex including sexually transmitted diseases, pregnancy, drug use, police profiling and stigmatization, and exploitation, but these concerns were also balanced by the need to simply survive life on the streets.^c

OBSERVE → INVESTIGATE → UNDERSTAND

- Do you think that youth engaging in survival sex should be treated as criminals?
- What role can schools play in identifying at-risk youth?
- What are some strategies to address the issue of youth engaging in survival sex?

SOURCES: ^aM. H. Morton, A. Dworsky, J. L. Matjasko, S. R. Curry, D. Schlueter, R. Chávez, and A. F. Farrell. "Prevalence and Correlates of Youth Homelessness in the United States," *Journal of Adolescent Health*, 62, no. 1 (2018): 14—21.

^bFrances Gragg, Ian Petta, Haidee Bernstein, Karla Eisen, and Liz Quinn, *New York Prevalence Study of Commercially Sexually Exploited Children* (Rensselaer, NY: New York State Office of Children and Family Services, 2007); Ric Curtis, Karen Terry, Meredith Dank, Kirk Dombrowski, and Bilal Khan, *The Commercial Sexual Exploitation of Children in New York City, Volume 1: The CSEC Population in New York City: Size, Characteristics, and Needs*. Report submitted to the National Institute of Justice, United States Department of Justice, September 2008.

^cMeredith Dank, Jennifer Yahner, Kuniko Madden, Isela Banuelos, Lilly Yu, Andrea Ritchie, Mitchyll Mora and Brendan Conner, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex*, The Urban Institute (February 25, 2015). www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ywsw-engaged-survival-sex/view/full_report (retrieved June 3, 2015).

When a defendant is found **not guilty by reason of insanity (NGRI)**, he is acquitted of the criminal charges against him and discharged from the criminal justice system. Instead of being punished, he is generally viewed as needing psychiatric treatment. A well-established body of civil mental health laws for involuntary commitment dictates the terms of the defendant's incarceration in a

psychiatric facility. As a patient there, he can be held against his will until such time as he is found to present no danger to himself or to others.

not guilty by reason of insanity (NGRI)

A verdict in which the jury determines that the defendant is not criminally culpable due to mental illness.

MYTH/REALITY

MYTH: Insanity is a common verdict in criminal courts in the United States.

REALITY: An insanity plea is put forward in less than 1 percent of all felony trials, and of those only 25 percent succeed with a not guilty by reason of insanity verdict. Thus, in 1,000 felony cases, only 10 defendants plead insanity, and of those, fewer than 3 succeed.²²

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Definitions of Insanity The legal system has a long history of considering a person's impaired mental state as part of the defense. In contrast, a popular view outside the judicial system is that a plea of NGRI is little more than a legal dodge for getting away with a crime. To facilitate the judicious application of the insanity defense, the courts have developed a system of definitions, guidelines, and practices that enables them to assess the mental state of a defendant. To evaluate insanity, courts seek to determine whether the defendant had some kind of mental disease or mental defect that was directly involved in commission of the crime.

There is no single legal standard for determining insanity. Three primary rules form the basis of an insanity defense in the United States: the McNaughtan Rule, the Durham Rule, and the American Law Institute Rule (Figure 4-2). The legal standards that define insanity, and that therefore determine criminal responsibility, vary across courts in state and federal jurisdictions and in the military. None of these rules and standards makes reference to any specific mental disorder. And even though a defendant has a specific, serious mental disorder, it does not necessarily mean that the defendant will qualify for a verdict of insanity.

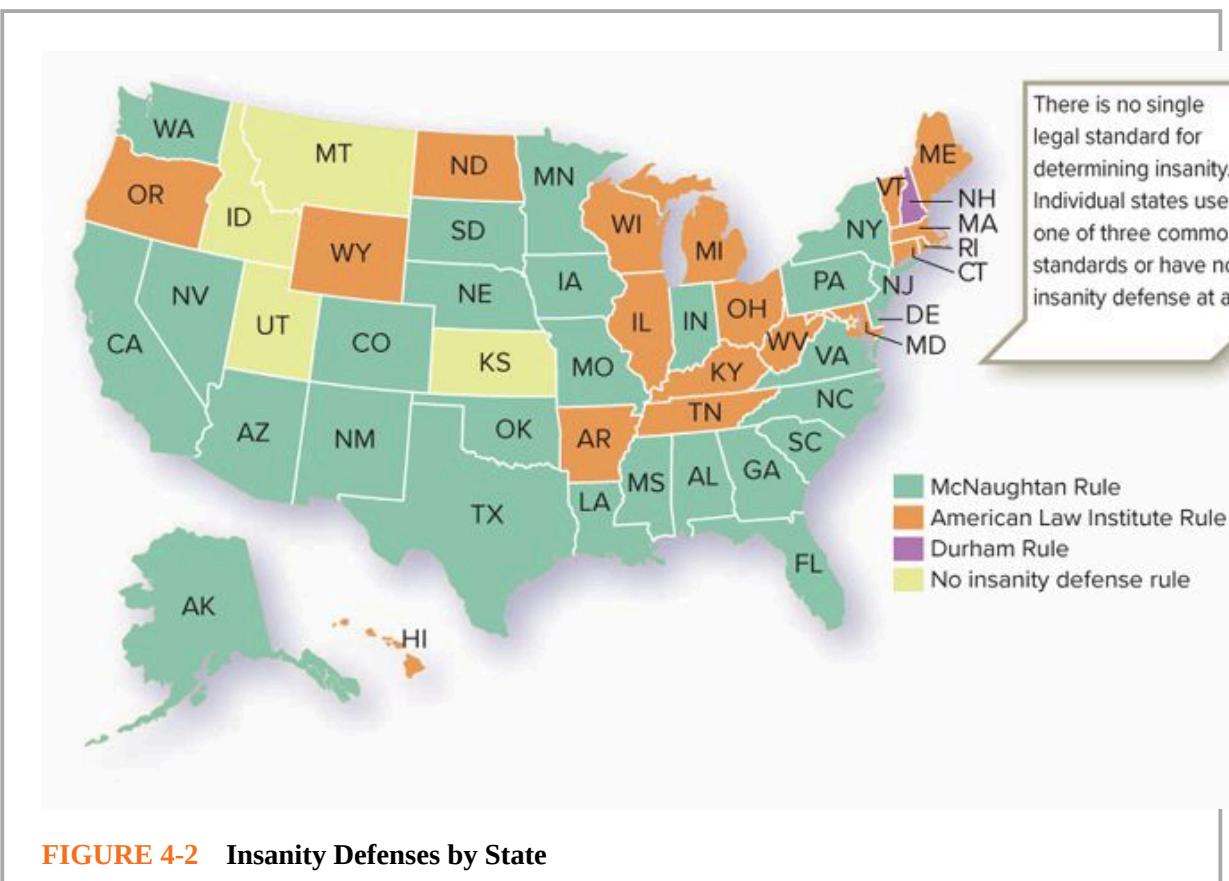


FIGURE 4-2 Insanity Defenses by State

The McNaughtan Rule By far the most commonly used standard for insanity is the **McNaughtan Rule** or some variation of it. This test was established in 1843 in England, following the acquittal of Daniel McNaughtan for the assassination of the secretary of Sir Robert Peel, the prime minister. McNaughtan was delusional, believing that the government was plotting to kill him. He displayed symptoms consistent with what today we would call paranoid schizophrenia. In response to public outcry denouncing the court's acquittal "by reason of insanity," Queen Victoria convinced the House of Lords to establish standards for the insanity defense. As for McNaughtan, he was transferred to the psychiatric institution popularly known as Bedlam, where he remained incarcerated as a psychiatric patient until his death 20 years later.²³

McNaughtan Rule

A standard for insanity that asks whether the defendant was unable to know what he or she was doing or to distinguish right from wrong.

The McNaughtan Rule is known as the "right or wrong" test. To be found insane, either (1) the defendant must have had, at the time of the crime, a

“defect of reason, from disease of the mind” that rendered him unable to know what he was doing, or (2) if he did know what he was doing, he did not know that it was wrong.²⁴ Some states have broadened their application of the McNaughtan Rule by including an **irresistible impulse test** to help ascertain whether the defendant’s mental disorder rendered him or her page 142 incapable of controlling urges to behave in particular ways. Being unable to resist an impulse is, of course, different from merely not resisting an impulse. An irresistible impulse is not a matter of choice. The irresistible impulse test thus broadens McNaughtan from being solely a cognitive test of insanity to one that considers behavioral control.

irresistible impulse test

A standard for insanity that asks whether the defendant had a mental disease or defect, as a result of which the defendant was unable to control his or her behavior.

The Durham Rule From the time he was 17, Monte Durham had been incarcerated in mental and penal institutions many times. As he exhibited signs of serious mental disorder, the hospitalizations generally followed his arrests. In 1953, the 25-year-old Durham was convicted of housebreaking in Washington, DC. His unsuccessful defense had been that he was of “unsound mind.” On appeal to the District of Columbia Federal Court of Appeals in 1954, Durham’s conviction was overturned. The court argued that the McNaughtan standard was outdated in view of the growing body of psychiatric knowledge about mental disorders and disease.

Under the **Durham Rule**, “an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.” The Durham Rule recognized mental illness as a disease that could be treated, if not cured.²⁵ The rule, however, quickly fell from favor due to its vagueness in defining mental disease. Many feared that the rule would be used to exonerate criminals who could cite their “mental diseases” of alcoholism, drug addiction, and compulsive gambling as the underlying cause of their criminal behavior. There also was discomfort with the amount of influence the Durham Rule gave psychiatrists and psychologists in the courtroom. Eventually the federal courts rejected the Durham Rule as too broad a standard. Nonetheless, today, one state (New Hampshire) continues to use it to determine insanity.

Durham Rule

A standard for insanity that asks whether the defendant’s conduct was the product of a mental disease or defect.



▲ John Hinckley Jr.

Hinckley (in back seat of car on the passenger's side), who shot President Ronald Reagan in 1982, was found not guilty by reason of insanity. He was confined to a psychiatric facility until 2016, when he was released under a number of conditions, including that he continue in therapy.

Bettmann/Getty Images

The American Law Institute Rule: The Substantial Capacity Test In 1962, the American Law Institute (ALI) offered a new rule for defining insanity in its Model Penal Code. The **American Law Institute Rule (ALI Rule)** required that the defendant have a mental disease or defect that causes him to lack “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.”²⁶ Some scholars considered this test an improvement over the McNaughtan Rule because it permitted the defense for those who were severely affected by mental illness and yet still able to understand to a limited extent what they were doing when they committed the crime. However, it was not nearly as broad a rule as Durham.

American Law Institute Rule (ALI Rule)

A standard for insanity that asks whether the defendant lacked substantial capacity to appreciate the criminality of the act or conform to the law.

In 1992, serial murderer Jeffrey Dahmer was tried in Wisconsin using the ALI Rule as the standard for insanity. Although Dahmer stated, unhesitatingly,

that he knew what he had done was wrong—killing 17 men, dismembering and sexually violating their corpses, and even cannibalizing some—the basis of his defense was that his mental disorders rendered him incapable of controlling his sexually deviant urges. His plea was “guilty but insane,” essentially the same as a plea of not guilty by reason of insanity. Although Dahmer was found guilty and thus sane, his trial generated heated controversy about how a person could have done what he admitted doing to his victims and not have been insane at the time. Sentenced to life imprisonment and put into the general prison population, Dahmer was beaten to death by another inmate in 1994.

Currently most states use the McNaughtan Rule or some variation of it; about half of these include an “irresistible test” as part of their standard. The ALI Rule or a variation of it defines insanity in the courts of 19 states, as well as in federal and military courts.

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KEY CONCEPTS Definitions of Insanity

Standard	Definition
McNaughtan Rule	Unable to know the nature and quality of the act as being wrong, or unable to distinguish right from wrong
Irresistible impulse test	Unable to control impulses
Durham Rule	Behavior is a product of mental disease or defect
American Law Institute Rule (ALI Rule)	Unable to substantially appreciate criminality of act or conform to the law

Four states no longer provide a court definition of insanity. This was a direct result of the acquittal of John Hinckley Jr. in 1982 for the attempted assassination of President Ronald Reagan. In the shooting, Reagan was seriously wounded, and his press secretary received a head wound that resulted in permanent brain damage. Hinckley was found not guilty by reason of insanity, a verdict that outraged many and caused a series of reforms to insanity laws around the country. Although acquitted of the shootings, Hinckley was committed to a Washington, D.C., psychiatric facility where he would spend the next 34 years. In 2016, a federal court judge, citing a “full and stable

remission,” granted Hinckley convalescent leave from the hospital on the condition he be monitored and treated on an out-patient basis.^{27,28}

In addition to the passage of the Insanity Defense Reform Act in 1984, which made it more difficult to prove insanity in federal cases, many individual states changed their rules to make it more difficult to do the same. Some states went so far as to abolish the insanity defense altogether. Currently, Utah, Montana, Idaho, and Kansas have no legal provision for an insanity defense. In these states, unlike those where the defense has the burden of proving insanity, the prosecution bears the burden of proving the defendant had mens rea at the time of the crime. Although Nevada abolished its insanity defense in 1995, the Nevada Supreme Court later ruled (in 2001) that the elimination of the insanity defense violated the state’s constitution.

The movement toward eliminating the insanity defense or requiring adherence to stricter standards for measuring insanity marks a trend in the courts to hold individuals more fully accountable for their criminal actions. Still, a growing body of scientific evidence reveals that many mental disorders have a biological rather than behavioral cause. It will be interesting to monitor the clash of these opposing points of view as the post-Hinckley debate over the insanity defense continues to develop.

Guilty but Mentally Ill The **guilty but mentally ill (GBMI)** verdict, introduced in 1975, was intended as a compromise between acquitting a defendant who is mentally disordered as NGRI and finding the person guilty. A person found GBMI (or guilty but insane, GBI, as it is known in some jurisdictions) is recognized to be mentally ill but is still considered criminally responsible for the crime. The mental illness grants the person the right to psychiatric treatment during incarceration. Should the mental disorder be effectively treated prior to the end of the term of the sentence, the individual will nonetheless be required to complete whatever time remains in a regular correctional institution.

guilty but mentally ill (GBMI)

Verdict for a person recognized to be mentally ill but still considered criminally responsible for the crime.

In courts that provide the option of a GBMI verdict, the jury has the power to decide if a defendant is mentally ill but not insane, making the person responsible for the crime. This alternative might appear to dispel page 144 concerns that a defendant “got away with” the crime, notwithstanding the mental illness. But how can a person be found guilty of a

crime for which he or she lacks the requisite mens rea? The availability of a GBMI verdict has not reduced the number of insanity acquittals, nor has it resulted in longer periods of confinement of offenders who are determined to be mentally ill and dangerous.²⁹ Currently, more than 20 states have enacted laws providing for the GBMI verdict.

Although the insanity defense is hardly a recent invention, it continues to be a matter of frequent and lively debate. The trend in the 1950s and 1960s was to make the defense more widely available, but that trend sharply reversed in the 1980s and 1990s. It remains to be seen what will become of the defense in the twenty-first century.



▲ Crimes on Ice

Video files UPI Photo Service/Newscom

Other Defenses

Another commonly recognized defense is that of **infancy** (the name dates back to medieval England). This defense sometimes protects very young offenders (those under the age of 7) from criminal consequences. Traditionally, those between 7 and 14 were also presumed incapable of forming the mens rea necessary for criminal liability. This presumption could be overcome, however, by evidence that a particular child knew what he or she was doing. The premise was that children should not be held responsible for acts when they cannot fully comprehend the nature or consequences of them. Chapter 15 discusses the infancy defense in more detail.

infancy

A defense that sometimes protects very young offenders from criminal liability because they do not understand the consequences of their actions.

In addition to the defenses we have examined, most jurisdictions recognize a variety of others. For example, under some circumstances a defendant may escape criminal liability if the victim actually gave the defendant permission to engage in the prohibited acts; this defense is called **consent**. For example, a boxer who hits his opponent during a match, or a football player who tackles another player, will normally not be convicted of battery. However, if the scope of the attack exceeds what is considered acceptable within the rules of the game, a jury might conclude that the victim did not consent to the violence, and the attacking player might still be convicted. National Hockey League players Marty McSorley, Todd Bertuzzi, and Dino Ciccarelli all received criminal convictions for such attacks on opposing players.³⁰

consent

A defense against criminal liability because the victim actually gave the defendant permission to engage in the prohibited acts.

SUMMARY

The rule of law means that the state must exercise its power to coerce and punish within strict bounds. Laws must be written according to established procedures, and no government official is supposed to be above the law. These basic concepts have defined law-abiding societies for thousands of years, ever since ancient Babylonia. Roman law is the basis of the legal codes of contemporary continental Europe and many other countries, and medieval England's common law is the foundation of modern English and American law. Other sources of law in the United States are the federal and state constitutions, the body of case law (judges' decisions in prior cases), administrative regulations, and international treaties.

Most legal systems differentiate between civil and criminal law. In the United States, society (that is, the state), and not the individual, is considered to be injured by criminal acts, and a government prosecutor alone decides whether to bring a criminal case. Criminal defendants can be found "guilty" or "not guilty" (rather than liable for civil damages); they are afforded certain rights not granted to civil litigants; they can be fined, imprisoned, or executed if found guilty; and the standards of proof are higher in criminal than in civil cases.

Depending on their seriousness, criminal law offenses in the United States are classified as felonies, misdemeanors, and infractions. To be convicted of any of these, the state usually must show that actus reus (guilty act) and mens rea (criminal intent) coincided. Different "degrees" of mens rea affect the severity with which an offense is punished. Some acts—so-called strict liability offenses—are defined

as criminal regardless of intent (for example, having sex with a minor), and some acts that are intended but not completed (such as conspiracy to commit an illegal action) can also incur criminal consequences.

For those accused of breaking the criminal law, a number of valid defenses are available in the United States. These are mistake of fact (about the facts of the case, not about the law itself), severe intoxication, duress, necessity, self-defense, entrapment (by a law enforcement officer), and insanity. The common element in all these defenses is the absence of mens rea, or criminal intent.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Explain the rule of law.

- Offenders can be punished only by written laws.
- The laws must be created through an established process.
- Nobody is supposed to be above the law.

Provide a short history of lawmaking.

- Early societies relied on unwritten social norms.
- One of the earliest known records of written laws dates from the rule of Babylonian king Hammurabi (reigned 1792—1750 BCE).
- England created the common law system after 1066.
- American colonists borrowed from the English system but made many changes and adaptations.

Identify modern sources of laws in the United States.

- Federal and state constitutions
- Federal and state statutes
- Local ordinances
- Federal and state case law
- Administrative regulations

- International treaties and compacts

Examine the key elements of civil and criminal law.

- Civil law deals with issues between individuals.
- An injured party can bring a civil lawsuit against another person or organization.
- In civil cases, the losing party pays damages directly to the injured parties.
- Civil defendants are found “liable.”
- Victims have more rights in civil cases than in criminal cases.
- Criminal law focuses on injuries to society as a whole rather than to individuals.
- Criminal cases can be brought only by the government.
- A criminal defendant may be ordered to pay fines, may be incarcerated, or sometimes could even be put to death.
- Criminal defendants have more rights than civil defendants.
- The standard of proof is higher in criminal cases than in civil cases.

Define the three types of criminal offenses.

- Felonies can be punished by state or federal prison for more than a year, and sometimes by death.
- Misdemeanors can be punished by probation, fines, and/or up to a year in local jail.
- Infractions or violations can be punished only by fines or community service.

Describe the legal elements of a crime.

- The corpus delicti of a crime (literally “the body of the offense”) refers to the particular elements required in order for prosecutors to establish that a crime was indeed committed.
- Actus reus is the guilty or illegal act of a crime; it is the first of the two key elements required for determining criminal liability.
- Mens rea is the criminal intent relative to the mental state of the defendant at the time of a crime; it is the second of the two key elements required for determining criminal liability.

Explain common criminal defenses allowed by the court.

- The mistake of fact defense argues that a mistake related to a fact of the crime may have affected the state of mind of the defendant who otherwise had no criminal intent.
- The intoxication defense argues that a person was so intoxicated that he could not control the mental state required for a particular crime.
- The duress defense argues that a person was forced to commit a crime because failure to do so would result in more serious harm.
- The necessity defense is used when, under extreme circumstances, a person cannot avoid committing a criminal act.
- Self-defense can be argued when a person is threatened by another and is compelled to protect herself or her property.
- The entrapment defense is used when a person is deceived by law enforcement officials into committing a crime that he would not otherwise have committed.
- The insanity defense applies to an individual whose behavior was affected by defective mental processes at the time of committing a crime.

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Explore aspects of the insanity defense.

- Successful insanity defenses require defendants to have had a mental disease or defect that affected their behavior at the time of the crime.
- The McNaughtan Rule is a cognitive test that requires defendants to have known right from wrong when they committed their crimes.
- The Durham Rule defines insanity broadly as the product of a mental disease or defect that affected the defendant's behavior at the time of the crime.
- The American Law Institute (ALI) Rule requires that defendants lacked substantial mental capacity to appreciate the wrongfulness of their behavior or could not stop themselves because of the mental problem.

Key Terms

actus reus 131

American Law Institute Rule (ALI Rule) 142

case law 125

civil law 125
common law 123
consent 144
constitution 124
corpus delicti 130
criminal intent 130
criminal law 125
damages 125
defendant 125
double jeopardy 127
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Durham Rule 142
entrapment 139
felony 129
guilty but mentally ill (GBMI) 143
Hammurabi's Code 122
inchoate crimes 133
infancy 144
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insanity 139
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mens rea 131
misdemeanor 129
Model Penal Code 124
necessity 137
not guilty by reason of insanity (NGRI) 140
ordinances 124
plaintiff 125
precedent 123
restitution 127
rule of law 120
statutes 124
strict liability offenses 133
torts 125

Study Questions

1. Hammurabi's Code was
 - a. one of the earliest written systems of laws.
 - b. a famous case involving shipwrecked sailors.
 - c. a law intended to reduce copyright piracy.
 - d. a standard for proving insanity.
2. All of the following are sources of law in the United States *except*
 - a. constitutions.
 - b. presidential decree.
 - c. statutes.
 - d. case law.
3. One important distinction between civil and criminal cases is that
 - a. only criminal cases involve injuries to a victim.
 - b. only criminal cases use juries.
 - c. only in civil cases must the losing party pay money.
 - d. only in criminal cases can the losing party be incarcerated.
4. A criminal offense that may result in incarceration in prison for more than a year is called a(n)
 - a. felony.
 - b. misdemeanor.
 - c. infraction.
 - d. violation.
5. The specific unlawful act that must be proved to convict someone of a crime is called the
 - a. mens rea.
 - b. actus reus.
 - c. corpus delicti.
 - d. final straw.
6. An inchoate offense is
 - a. a crime that is punishable only by fines.
 - b. a crime committed by a juvenile.
 - c. an act illegal only under common law.
 - d. a crime that was begun but not completed.
7. The main purpose of a criminal trial is to
 - a. establish whether the defendant was insane.
 - b. determine criminal responsibility.
 - c. establish whether the defendant committed a crime.
 - d. establish justice.
8. The best defense for a person who would not otherwise have committed a crime, but who was persuaded to do so by a police officer, is
 - a. insanity.
 - b. entrapment.

- c. necessity.
 - d. mistake.
9. The percentage of felony criminal cases that involve an insanity plea is
- a. 1 percent.
 - b. 25 percent.
 - c. 50 percent.
 - d. 75 percent.
10. In legal terms, insanity is considered a serious mental disorder.
- a. true
 - b. false

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Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. What are the advantages and disadvantages of having a formal, written system of laws, as opposed to relying on unwritten social and cultural norms?
2. Under what circumstances should a person who commits an unlawful act be excused from criminal responsibility for that act?
3. How do you think a prosecutor should go about proving mens rea in a case?

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5 Overview of Policing



Laus Photography



Davis Police Department

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Identify the distinguishing characteristics of policing.
- Trace the evolution of policing in the United States.
- Describe the structure of law enforcement.
- Recognize how recruitment, selection, and training affect quality of service.
- Describe the dynamics of the police subculture.
- Contrast the positives and negatives in the use of police discretion.
- Distinguish between corruption and abuse of authority.
- Examine the extent and functions of private security agencies.

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Realities and Challenges

The Power of Community Partnerships

The last few years has found the United States in the midst of an opioid crisis. In 2016 alone, 64,000 people died of a drug overdose and two-thirds of those deaths were from opioids. Police departments have realized that a steady stream of arrests don't seem to be slowing down use or deaths from overdoses. The Police Executive Research Forum has gathered a list of 10 "standards of care" that departments should consider when considering their responses as well as a collection of descriptions of various departments successful programs.¹



Ted S. Warren/AP Images

One aspect they all share is a commitment to involving different community partners especially public health agencies and nonprofits. For example, the Police Assisted Addiction and Recovery Initiative began in Arlington, Massachusetts in July 2015. In this innovative program, a public health professional reaches out to customers of drug dealers, who the police have recently arrested, to offer addiction and treatment services. Another police program that aims to keep low-level drug offenders out of the system all together is at work in King County, Washington. The Law Enforcement Assisted Diversion (LEAD) program focuses on diversion—when police encounter low-level drug users, they refer the addicts to services rather than arresting them. These programs area all good examples of how policing has evolved over the decades in the United States. In this chapter, you'll learn about the history of law enforcement and how its focus and preferred strategies have changed over time. Today most departments utilize many tenets of community policing, which highlights the need to work with local groups and agencies outside of law enforcement to solve the complicated problems police officers face on a daily basis.

In this chapter we examine how policing in the United States has evolved to its current form. Among other things, we review the recruitment, selection, and training of law enforcement officers.

This chapter also probes into the realities of policing. We first look into how society defines policing and then briefly trace policing history. We analyze the structure of U.S. policing at the local, state, and federal levels and review the consequences for the public of that fragmentation of authority. As noted above,

we explain how officers are recruited, selected, and trained. Further, we investigate how the police subculture can influence officers while on the job. Finally, we consider the great degree of discretion officers have—and examine what happens when they abuse their power.

DEFINING POLICING

Since the mid-1900s, the terms *law enforcement* and *policing* have been used synonymously. Most people would say the police are those given the task of enforcing the law, and the most common image of police is as crime fighters.

Most of what police officers do on a daily basis, however, has little to do with directly enforcing the law. We call on the police to perform a variety of tasks even when no law has been broken. For example, police direct drivers when traffic lights are out, respond to calls about neighbors' disagreements over property lines, and deal with individuals who are mentally ill. The way we define policing influences both how the public views the police and how officers view their own jobs.

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Individuals bestowed with policing powers were not always charged with enforcing the law. In the past, for example, police officers were expected to enforce not the law but the will of those with political power. Today, the rise of private police forces such as Triple Canopy, provider of security across the globe, has led some to question whether these private forces should be included under the umbrella of law enforcement. A key question is, what distinguishes the police from others? In other words, what makes the police the police? If we consider everything police do and the myriad reasons citizens call upon them for assistance, the best definition is that police officers are individuals to whom society has granted the power to use physical force when they deem it necessary or appropriate.²

Preview

DEFINING POLICING

HISTORY OF POLICING IN THE UNITED STATES

STRUCTURE OF THE LAW ENFORCEMENT SYSTEM

RECRUITMENT, SELECTION, AND TRAINING

POLICE SUBCULTURE

POLICE DISCRETION

MISCONDUCT

PRIVATE SECURITY

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

Why do people call the police? Only 19 percent of calls to police relate to a crime of any kind,³ and an officer typically spends only 10–15 percent of patrol time on crime-related activities.⁴ Clearly, this percentage of time is much less than that portrayed on television series. Society has identified local police officers as the people residents should call when they need immediate assistance. We often call them because we do not know where else to turn, and we believe officers can make other people do what should be done. That power comes from officers' authority to use force.⁵

Police officers and criminal justice professionals are a product of their environment, and the ethnic and racial tensions and alliances found in society at large exist in policing as well. Consider, for example, the emigrants from Ireland who came to the United States in the mid-nineteenth century. Those in power often regarded the Irish immigrants as violent troublemakers. Hence, they frequently came into conflict with the police, who were responding to what individuals in power wanted them to do.⁶ In time, however, the Irish gained political power and served in public positions—including in the police force. As the evolving relationship between the police and the Irish demonstrates, police reflect the broader society.

HISTORY OF POLICING IN THE UNITED STATES

One key to understanding the present is to learn about the past. Knowing something about the various influences on the shaping of the police in the United States helps us appreciate the present-day challenges of policing and understand why some groups of people distrust law enforcement officers.

Vigilantism: Policing by Self-Appointed Committees

A great deal of police activity existed before the development of well-organized, big-city police departments. If we think of the police as individuals authorized by a community to use force, then we can consider vigilantism as very much a part of the history of policing in the United States. **Vigilantism** is the use of volunteer, self-appointed committees organized to suppress crime and punish criminals. Vigilantes were local residents who organized themselves to apprehend and punish those they considered outlaws. Vigilantism flourished from the mid-1700s to about 1900, years when the rapid spread of settlement throughout the country outpaced the establishment of formal law enforcement in new communities. Although vigilantism started in the East, it became much more common in the West as a means of regulating behavior and enforcing U.S. society's developing cultural norms.⁷

vigilantism

Use of volunteer, self-appointed committees organized to suppress crime and punish criminals.

Our modern image of vigilantes is that of a group of people outraged by some heinous offense who spontaneously spring into action to catch and punish the offender. Vigilante movements of the past, however, were quite page 152 different. They were well-organized, quasi-military groups of 100 or more participants who were the elites of their community. Many vigilante groups even had constitutions or manifestos to explain their rules and means of operation. Vigilantes often hanged those they apprehended, and between 1767 and 1900 they killed more than 700 people. Suspects' crimes included horse theft, counterfeiting, and offenses against the newly established private property system, which created haves and have-nots in the developing West. Vigilantism is an example of how the police (in this case, self-appointed police) historically enforced social norms rather than laws.⁸



▲ Vigilante Example

The Baldknobbers were a group of vigilantes in Missouri with estimates of 500—1,000 members in the 1880s. This image is from a reenactment.

History Museum on the Square

The West was not, however, without formal law enforcement. One of the most effective and ethical law enforcement officers of the Old West was Bass Reeves, who was appointed U.S. Deputy Marshal in 1875 to curb lawlessness in the Indian Territory (the eastern portion of present-day Oklahoma).

Slave Patrols: Capturing Fugitives

The first publicly funded city police departments in the United States were slave patrols created to keep slaves from rebelling or running away.⁹ In South Carolina, for example, mounted daytime slave patrols were formed in the 1740s.¹⁰ Moreover, one of the primary duties of the Texas Rangers, the forerunner of organized state police forces, was retrieving runaway slaves.¹¹ Slave patrols were also created out of fear the state militia would be unable to control slave rebellions.¹²

Slavery was not just an accepted practice in the United States in bygone years; it was a legally protected institution. Local governments passed a variety of laws giving Whites the power to control African Americans. These *slave codes* varied from place to place, but they generally required slaves to have passes any time they left their owner's land, forbade more than a few slaves to congregate at any one time, prohibited their education, and required the return of slaves to their "owners."¹³ Police were required to uphold these laws, whether or not they agreed with them. Even if a Texas Ranger, for example, was opposed to slavery, a primary responsibility of his job was to retrieve runaway slaves. page 153
After the Civil War, the former Confederate states enacted *Black codes* to ensure that the former slaves remained under the control of the White majority. The Black codes required that individuals could marry only someone of their own racial background, outlined who could hold property (Whites), and included laws against vagrancy to force freed African Americans to work on White-owned farms.¹⁴

Early vigilantism and slave patrols demonstrate that police-type agencies were created to protect individuals in power by controlling those without it.¹⁵ This historical development sowed resentment toward the police among some groups.

The English Model

Rapid settlement of the U.S. West and the institution of slavery influenced the development of policing in the United States, but so too did events in England. The tireless efforts of Sir Robert Peel, British home secretary, to establish a disciplined and organized police force to battle the turmoil and crime in London led to the creation of the London Metropolitan Police Department in 1829. Peel structured the London Metropolitan Police on a quasi-military model with clear hierarchical ranks of command including sergeants, lieutenants, and captains. The officers—called “bobbies” after Sir Robert—wore uniforms that made them easily identifiable. As in the military, lower ranks were required to follow the orders of their superiors. Because of public concern about potential threats to civil liberties, however, London police were given limited authority, meaning that their powers and duties were specified in law, and their primary orientation was toward crime prevention.

Before the advent of Peel’s reforms, keeping peace in England had occurred at the local level. In the **frankpledge system**, which developed in England before the eighteenth century, 10 families in a community agreed to maintain the peace in their area and make sure lawbreakers were taken into custody and brought to court. In time the frankpledge system gave way to the **watch system**, in which particular men were assigned to be watchmen and were responsible for patrolling

the streets, lighting lanterns, serving as a lookout for fires, and generally keeping order. Maintaining peace, then, was first seen as a local affair. As policing developed in England and then in the United States, police departments continued to be controlled by local government. This decentralized system had both positive and negative consequences, as we'll see later in this chapter.

frankpledge system

Peacekeeping system in early England in which a group of 10 local families agreed to maintain the peace and make sure lawbreakers were taken into custody and brought to court.

watch system

Peacekeeping system in which particular men were assigned the job of watchman and became responsible for patrolling the streets, lighting lanterns, serving as a lookout for fires, and generally keeping order.

Early police departments in the United States adopted the same mission as the London police: to stop crime through **preventive patrol**. To accomplish this goal, officers patrolled the streets, maintaining a visible presence in the community.¹⁶ Preventive patrol remains a large part of police activities today.

preventive patrol

Officers' maintenance of a visible presence in communities to serve as a deterrent to a variety of street-level crimes.

Yet the United States of the 1800s was very different from the England of that era, and the police forces of the two countries differed in some significant ways. The police in New York City, for example, tended to gain their legitimacy—the public's trust in them—by being of the people. That is, they were usually of the same ethnic background as those they policed, so they were able to develop personal relationships with the public. Because there was little ethnic diversity in London, matching the ethnic backgrounds of police to citizens was not a concern. English bobbies established their authority as members of an impersonal independent agency, whereas New York City officers got their legitimacy from their personal relationships with residents and the political connections they made.¹⁷

Political Era: Patronage-Based Policing

The political era of policing in the United States began with the creation of organized police departments in the nation's major cities in the 1840s and lasted until the early 1920s. During this period, local political bosses selected members of their party to be police officers as a reward for party loyalty. In this patronage system, it was *whom* the police knew, rather than *what* they knew, that was

important. In fact, there wasn't much police officers were actually page 154 expected to know. During this era, police were not thought of primarily as law enforcers. Instead, their role was to control undesirable immigrants, maintain order, and provide a variety of social services not otherwise available to the poor or needy, such as housing the homeless.¹⁸

Officers received little if any training, and the use of force was fairly common. Holding facilities were generally located far from where an officer was likely to confront a suspect. Rather than bringing a suspect to department headquarters, officers often practiced "street justice" by physically punishing the suspect on the spot.

Professional Era: The Police as Law Enforcers

The professional (or reform) era of policing, which spanned the late 1920s through the late 1970s, sought to rectify the many problems of the political era. During the 1920s, major reforms swept *all* levels of American government. Progressive reformers created formalized hierarchical government agencies, or bureaucracies, to increase specialization, reward merit, and decrease corruption.

Progressives wanted government bureaucrats, including the police, to be free of political influence. Critical of the partisan politics that characterized police departments, they advocated hiring people for government positions on the basis of merit and thoroughly training them. Progressives also embraced science and believed that research could increase the efficiency of government operations, including law enforcement. Changing technology, such as the increased availability of telephone service, also had an impact on everyday policing. The early reformers believed change would fundamentally improve policing and its effectiveness. But like all reforms, the professional era had both positive and negative outcomes.

August Vollmer (1876–1955), the first police chief of Berkeley, California, was appointed to that position in 1909 and held it until 1932. An early reformer who had a great impact on the history of policing, Vollmer believed in hiring individuals with a broad-based education. He advocated using science to solve crimes and created *modus operandi* ("modes of operation") files to connect offenses of similar types systematically—a key element in modern investigative profiling. Perhaps his greatest innovation came in 1908 when he created a police school to train officers. In 1914, Vollmer oversaw the first completely mobile force, in which all officers used automobiles for transportation. Vollmer's ideas about policing and the innovations he instituted in Berkeley served as an example to other departments across the country.¹⁹

During the professional era, law enforcement emerged as the primary function of police officers. The Uniform Crime Reports (UCR) (see Chapter 2), which began in this era, assessed police departments based on reported crimes in their jurisdictions and their rates of solving them. Such developments focused departments' efforts on law enforcement, as police chiefs knew they would be judged on their ability to catch criminals. The development of the 9-1-1 system during this era is also indicative of the emphasis on law enforcement. The idea behind the system was that citizens would report crimes by calling 9-1-1, and officers would quickly respond—and perhaps even catch perpetrators in the act.

The professional era of policing had many positive outcomes. Political control over officer hiring and firing was eliminated, and entrance to the force was based on merit. Officers were expected to police all residents evenly without political favoritism. Training for new officers became much more systematic. Pay for officers and resources for departments increased, both because the mission of the police became more professionalized and articulated and because newly created police unions successfully pressed for salary increases.



▲ August Vollmer

In the early twentieth century, Vollmer was a leading innovator in law enforcement.
Berkeley Police Department Historical Unit

The professional era had some negative outcomes as well. By the time of the civil rights movement and anti–Vietnam War protests of the 1960s, officers had

grown distant from their communities. Protesters and police clashed, [page 155](#) sometimes violently. The confrontations of the 1960s also exposed the troubled relationship between Blacks and the police. The definition of police officers as primarily law enforcers created an atmosphere in which some people saw the police as an occupying force in their neighborhood rather than as public servants. “A Case in Point” illustrates that problems of strained relations persist today.

Changes in technology also increased the distance between officers and citizens. Instead of patrolling on foot, police rode in department automobiles, dispatched through a central radio call system. The telephone also changed the way the public contacted police. By the mid-1970s, residents were being advised to call the police only on crime-related matters, and patrol officers and the public interacted only when residents had problems to report.

MYTH/REALITY

MYTH: Putting police officers in radio-equipped vehicles proved to be of substantial benefit in helping the police get a finger on the public’s pulse.

REALITY: Patrolling the streets from within the isolating confines of a radio-equipped car distanced the police from the people they served.²⁰

a case in point

Conflict with Occupy Wall Street Protestors

The Occupy Wall Street movement began on September 17, 2011, in New York City’s Zuccotti Park. Protestors had hoped to be closer to Wall Street, but police, anticipating their arrival, had fenced off the area. Zuccotti Park was left unfenced partly because it was privately owned. New York City police were suddenly faced with the responsibility of containing thousands of protestors.

Although their objectives were often considered nebulous, the Occupy Wall Street protestors were largely opposed to corporate bailouts and economic inequality in the United States. It was through their efforts that the slogan “We are the 99 percent” first garnered widespread media attention. The protestors occupied Zuccotti Park until they were removed by police on November 15, 2011.



Andrew Lichtenstein/Corbis/Getty Images

In the meantime, the movement spread to 1,500 other cities. In some places, protestors turned violent. In some places, police did. Oakland, California, saw perhaps the greatest tragedy. The Oakland Police Department has been under external monitoring since 2003, when it was revealed that several officers were routinely abusing their power and violating use-of-force policies. According to a report from an outside monitor, an Oakland Police SWAT officer fired a beanbag at the head of Scott Olsen, critically injuring him. Over 1,000 complaints of police misconduct were filed during the Occupy protests in Oakland. The police monitor wrote of being very pleased with the behavior of Oakland officers in some instances and “dismayed” in others.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How can police balance protestors' right to assembly with nonprotestors' desire to freely go about their regular business?
- What should trigger police use of force in protest situations?
- What consequences should officers face when they do not follow use-of-force policies?

SOURCES: Mary Slosson, “Oakland Police Still Handling Fallout over Treatment of Occupy Movement,” *Reuters*, October 12, 2012. www.reuters.com/assets/print?aid=USBRE89C00820121013 (retrieved February 3, 2013); Bill Chappell, “Occupy Wall Street: From Blog Post to a Movement,” *NPR*, October 20, 2011. www.npr.org/2011/10/20/141530025/occupy-wall-street-from-a-blog-post-to-a-movement (retrieved February 3, 2013); Mary Slosson, “Occupy Wall Street: Report Criticizes Police Response to Oakland Protests in 2010,” *Reuters*, May 1, 2012.

www.huffingtonpost.com/2012/05/01/occupy-wall-street-oakland-violence_n_1466436.html
(retrieved February 3, 2013).

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Image Source/Getty Images

Real Crime Tech

CAMERA SURVEILLANCE AND FACIAL RECOGNITION INTERFACE

Facial recognition software is being used to scan mugshots in Washington County, Oregon. Sheriff's deputies upload cameras' images into a special program that then compares the images to a database of 300,000 photos from the sheriff department's jail booking mug shots. Deputies use the software for a variety of situations, for example, identification of suspects from surveillance videos, run the photos of detained individuals (as taken by deputies' cameras) who refuse to identify themselves, or to identify people from social media photos. However, the use of the facial recognition system has raised civil

liberties and civil rights concerns, particularly since in certain scenarios the system has failed to reliably determine the sex of females and dark-skinned faces.

SOURCES: Kandra Kent, “Local Deputies Using Facial Recognition Software to Fight Crime,” *KPTV*, April 20, 2018. https://www.kptv.com/news/local-deputies-using-facial-recognition-software-to-fight-crime/article_d085cf5d-456c-52c0-a752-89d3309f9369.html (retrieved January 25, 2019); Matt Cagle and Nicole A. Ozer, “Amazon Teams Up with Law Enforcement to Deploy Dangerous New Face Recognition Technology. Here’s How It’s Used in Washington County,” *ACLU of Oregon*, May 22, 2018. <https://www.aclunc.org/news/emails-show-how-amazon-selling-facial-recognition-system-law-enforcement> (retrieved January 25, 2019); Kyle Wiggers, “MIT Researchers: Amazon Rekognition Shows Gender and Ethnic Bias,” *Venture Beat*, January 24, 2019. <https://venturebeat.com/2019/01/24/amazon-rekognition-bias-mit/> (retrieved January 25, 2019).

Another negative consequence of professionalization was the decrease in the number of minority officers hired as departments implemented educational and test requirements. People of color who had been making steady progress in entering police forces were less likely to have the education required, partly because they were often denied access to education for much of this time period. As a result, the police forces that policed multicultural urban centers were largely White, male, and suburban.²¹

Despite the reforms of the professional era, crime increased. Individuals within and outside the profession of policing began to ask why the changes had not reduced crime. The realization that many policing strategies were proving to be ineffective led to the development of community policing, which focuses on developing positive relationships between the police and the public they serve.

Community Policing Era: Working for—and with—the Public

During the 1970s, U.S. reformers came to believe that if the police were to have any impact on crime, they would need the full cooperation of the people in the communities they served. Yet at the same time, these reformers recognized that the relationship between the police and the public was strained. Consequently, they began to advocate fundamental changes in the way police interact with members of their communities. Whereas policing in the professional era focused solely on solving crimes, **community policing** emphasizes crime prevention and the development of positive relationships between the police and the public (see Chapter 6). Community policing uses two main strategies: deploying officers on foot patrol in the community and engaging residents in the work of policing. The goal is to stop crimes before they occur.

community policing

Philosophy of policing that emphasizes crime prevention and focuses on developing positive relations between the police and the public.

The most fundamental change in the era of community policing, which began in the late 1970s and continues today, concerns the way the police view the public and the relationship between the police and the public. Officers are now expected to cultivate positive relationships with individuals in the communities they serve, and with neighborhood organizations such as the Boys & Girls Club and Neighborhood Watch, in order to include the public in crime prevention and enforcement. Officers attend local meetings and ask residents what they would like to have happen in their communities. Are there particular areas on which residents would like police resources to focus? What problems would they like to see addressed? In community policing, officers are given greater discretion to address these problems.

Increased communication is the key to improving relations between police and the public. If police are to rely on residents to help them solve crimes and resolve problems, community members must feel positive about their local officers. Indeed, one of the strongest factors in solving a crime is the ability and willingness of a victim, complainant, or witness to work with police to identify a suspect.²² Community policing increases time demands on officers—time to interact with residents, time to attend community meetings, and time to investigate neighborhood problems. Because the public still expects police to answer calls for service, some officers are designated exclusively as page 157 community policing officers and either are relieved of responding to calls for service or respond only to those in their assigned neighborhood.

Another major change in the community policing era was the shift toward *proactive* rather than *reactive* police work. *Proactive policing* aims to prevent crime not just through the threat of capture but also through the elimination of the presumed causes of crime, such as disorder in a community. To accomplish this goal, police officers deal with lifestyle issues such as public drunkenness, vandalism, loitering, and other minor offenses that reduce the quality of life.

The community policing era continues today. We will examine community policing as a policing strategy in greater detail in Chapter 6. There we will also assess the effectiveness of community policing and review critiques of this policing strategy.

History often is presented as falling into neatly defined, distinct categories, but change takes place gradually. Characteristics of any one era may overlap with the next. The Key Concepts feature on page 157 summarizes the different policing eras and illustrates that overlap.

STRUCTURE OF THE LAW ENFORCEMENT SYSTEM

We have seen that policing in the United States has adopted many aspects of the London model: namely, a focus on crime prevention, visible patrol, and a quasi-military organization. In addition, a division in staffing is characteristic of U.S. policing, with police departments employing both sworn and nonsworn personnel. **Sworn personnel** are those entrusted with arrest powers and are usually referred to as *peace officers* in the statutes conferring such powers. In the language of policing, nonsworn personnel are *civilians*.

sworn personnel

Police department employees entrusted with arrest powers; usually referred to as *peace officers*.

The independence of local government is deeply rooted in U.S. culture, as is the fear of a national police force and the tyranny that could accompany it.²³ Thus policing in the United States has always been highly localized.²⁴ Yet despite the localized nature of policing, law enforcement agencies in the United States exist at the federal, state, and local levels.

KEY CONCEPTS The History of Policing in the United States

Policing Era	Time Period	Defining Characteristics
Vigilantism	Mid-1700–1900	Residents organized to punish people deemed outlaws.
Slave patrols	1740–1840	Residents organized to enforce laws meant to control slaves.
English model	1700–1800	Local patrol force had limited authority and quasi-military organizational structure. Police departments in U.S. cities developed similarly.
Political era	1840–1920	Police received jobs because of political affiliation and enforced the priorities of the political party in power.
Professional era	1920–1970	Focus was on enforcing the law, hiring qualified officers, using technology, and improving police training.
Community policing era	1970–present day	Focus is on crime prevention with the assistance of improved relations with community members.

Local Law Enforcement Agencies

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We can divide local law enforcement agencies into two broad categories: sheriffs' offices and police departments. Sheriffs' offices tend to serve larger, more rural areas with fewer people, whereas police departments serve smaller, urban areas with more people.

Sheriffs' Offices Sheriffs' offices typically police counties in rural areas and towns that have no law enforcement services. Sheriffs respond to violations of criminal statutes (usually defined by state-level penal codes) as well as to violations of city or county ordinances. In addition, they provide jail facilities for both accused and convicted persons and transportation services for all incarcerated persons within counties. In their court-related functions, most sheriffs' offices serve *summons* (which direct persons accused of crimes to appear in court) and *subpoenas* (which direct individuals to appear in court to present evidence), provide court security, serve eviction notices, and enforce child support orders.

Police Departments Police departments outnumber sheriffs' offices by four to one, operate mostly in urban areas, and perform most law enforcement duties. They respond to violations of state penal codes and local ordinances and generally provide only temporary housing of arrested persons. Usually, arrested persons remain in police custody only until their initial appearance in court.²⁵

State Law Enforcement Agencies

The Texas Rangers, organized by Stephen Austin in 1823 to protect his fledgling colony from American Indians, was the forerunner of state law enforcement agencies.²⁶ Other states later created their own state-level police agencies.

Because the roles and missions of state law enforcement agencies are defined by state law, they vary considerably and include motor vehicle law violation investigation, lottery oversight, alcoholic beverage control, and narcotics enforcement. About half of all state agencies also offer crime lab services for local police departments.²⁷ The number of state and local law enforcement agencies in the United States and their respective numbers of employees are shown in the table “Local and State Law Enforcement Agencies and Employees in the United States, 2016.”

Federal Law Enforcement Agencies

Federal law enforcement agencies deal with violations of federal statutes. The most prominent employers of sworn law enforcement officers at the federal level are the Federal Bureau of Investigation (FBI), the U.S. Secret Service, and the Drug Enforcement Administration (DEA). However, peace officer positions are found in many other federal agencies as well, including the U.S. Railroad Retirement Board, the Federal Deposit Insurance Corporation, and the Bureau of Engraving and Printing.

Local and State Law Enforcement Agencies and Employees in the United States, 2016

Type of Agency	Number of Agencies	Sworn Employees*
Local country police department	12,695	468,170
Sheriff's office	3,066	173,354
State law enforcement agency	49	59,645
Total	15,810	701,169

* Sworn employees are those with general arrest powers.

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, *Full-Time Employees in Law Enforcement Agencies, 1997–2016*, August 2018, NCJ251762.

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Department of Justice The Department of Justice (DOJ) is the chief federal law enforcement department. Headed by the attorney general, a member of the president's cabinet, the DOJ provides federal leadership in preventing and controlling crime. The DOJ also has responsibility for enforcing the law and defending the interests of the United States according to the law and for ensuring public safety against foreign and domestic threats. Several agencies within the DOJ provide law enforcement services:

- Federal Bureau of Investigation (FBI)
- Drug Enforcement Administration (DEA)
- Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), formerly the Bureau of Alcohol, Tobacco, and Firearms
- U.S. Marshals Service

The mission of the FBI, created in 1908, is to protect and defend the United States against terrorism and foreign intelligence threats and to uphold and enforce the nation’s criminal laws. The FBI provides criminal justice services—such as fingerprint identification, laboratory examinations, and police training—to federal, state, and local law enforcement agencies. It is the nation’s lead investigative arm for high-tech crime.²⁸

The DEA was established in 1973 to wage the “war on drugs.” Its mission today remains the same: to enforce the nation’s laws and regulations governing controlled substances. The DEA investigates and prepares for the prosecution of those charged with violating controlled substance laws at both the interstate and international levels.

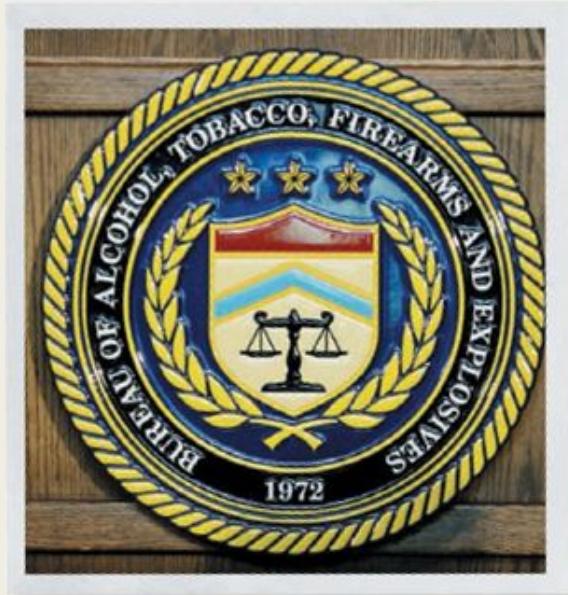
Passage of the Homeland Security Act in 2003 transferred ATF from the Department of the Treasury to the Department of Justice. ATF responsibilities include enforcing federal laws, regulating the firearms and explosives industries, and investigating and reducing crimes involving firearms and explosives, acts of arson, and the illegal trafficking of alcohol and tobacco products.

The U.S. Marshals Service, which has operated since 1789, is the nation’s oldest federal law enforcement agency. Duties of the deputy U.S. marshals and criminal investigators, who form the backbone of the agency, are to apprehend federal fugitives, protect the federal judiciary, operate the Witness Security Program, transport federal prisoners, and seize property acquired by criminals through illegal activities.

Department of Homeland Security The newest cabinet department of the federal government is the Department of Homeland Security (DHS), which was created following the terrorist attacks of September 11, 2001. The DHS mission is to lead the unified national effort to protect the American people and their homeland, to prevent and deter terrorist attacks, to protect against and respond to threats against the nation, and to prepare for and respond to all hazards and disasters. In order to prevent duplication of effort, DHS groups 22 federal agencies into one cabinet department. There are seven major DHS agencies:

- Transportation Security Administration (TSA)
- U.S. Customs and Border Protection (CBP)
- U.S. Citizenship and Immigration Services

Real Careers



Evan F. Sisley/AFP/Getty Images

JOHN TORRES

Work location: Los Angeles

College(s): Sacramento State University (1982, 1986)

Major(s): Criminal Justice (BA), Criminal Justice (MA)

Job title: Alcohol, Tobacco, Firearms (ATF) Agent

Salary range for job like this: \$45,000—\$65,000

Time in job: 25 years

Work Responsibilities

As the special agent in charge of ATF in Los Angeles, I enforce federal firearms, explosives, and arson laws. We conduct criminal investigations, regulate the firearms and explosives industries, and assist other law enforcement agencies. We also work to prevent terrorism, reduce violent crime, and protect the public in a manner that is faithful to the Constitution and the laws of the United States. One of my most memorable moments on the job was when I was incident commander for the takedown of an outlaw motorcycle organization, the Mongols Motorcycle Club. We arrested more than 80 club members and seized over 100 motorcycles. We also seized their trademark, the first time this was ever done.

Why Criminal Justice?

Ever since I was a teenager, I knew that I wanted to be in law enforcement in some capacity. While I was still a student at Sacramento State, I saw a small ad on a bulletin board on campus that ATF recruiters would be at the school. I applied, and the rest, as they say, is history.

Expectations and Realities of the Job

My job has changed significantly from when I started. My early years were spent investigating career criminals, using the expertise within ATF. The middle years focused on developing my skills as an ATF supervisor and providing direction to less experienced agents. Most recently, I have been the leader within my agency. I admit that when it came time for me to become a supervisor, I expected leadership to come naturally. However, I quickly realized that anyone can “manage” an agency, but to be truly successful you need to have compassion and vision and let those around you know that you care about them as people. The relationships I have formed during my career have nurtured my love of the job.

My Advice to Students

It is so important to set your goals and stay the course. Your journey may not be an easy one or what you expected, but if you continue to pursue your goals with conviction and effort, you will achieve what you set out to do.



▲ ICE at Work

U.S. Immigration and Customs Enforcement (ICE) is a federal law enforcement agency.

Race, Class, Gender

Why Do People Want to Abolish ICE?

President Trump campaigned on a promise to secure the nation's borders and, in general, increase enforcement of immigration laws. Early in office he began following through on those promises. Perhaps the action that caused the greatest public opposition was the "zero tolerance" border policy to separate families if they were seeking entry to the United States. The rising opposition to Trump's immigration policies have resulted in a call to end the Immigration and Customs Enforcement (ICE) agency.

ICE was created in 2003 as part of the new Homeland Security that was built as a response to the tragedies of September 11, 2001. ICE's focus is on illegal immigrants already in the United States, not people currently crossing the border (that jurisdiction is Customs and Border Protection). ICE arrests and deports unauthorized immigrants. During the Obama administration, ICE focused on unauthorized immigrants who had committed serious crimes. Consistent with his promises, Trump tasked ICE with targeting anyone who was in the United States. illegally regardless of whether they had been otherwise law-abiding for many years.

Cries to abolish ICE started as a broad protest to Trump's anti-immigrant administration. Signs at protests saying things like "Keep families together, Abolish ICE" illustrated this opinion. But while some activists were critiqued for conflating border control and family separation with ICE enforcement, many people saw the work of ICE as separating families by doing things like deporting contributing members of a community without a criminal record while the rest of the family was safe to stay in the United States. Some local law enforcement agencies also object to cooperating with ICE because they are concerned that residents of their community will not report crimes to the police because they are scared they will be reported to ICE.



Spencer Platt/Getty Images

One such example is found in Wichita, Kansas. Jose Gutierrez entered the United States 25 years ago on a temporary visitor's visa, but stayed in the country illegally and was deported three years after his arrival. In 1998, he illegally came back to the United States on the same visitor's visa. He never committed any other crimes in the United States. He married and has two children ages seven and ten. He was arrested on May 1, 2018, and deported to Mexico. His children are U.S. citizens.

It is stories like Mr. Gutierrez's that lead many to question whether otherwise law-abiding contributing members of communities should be removed from their family and the country by ICE. According to the U.S. Census, approximately 4 million children live with at least one undocumented parent. The impact of these policies, then, is very wide ranging.

OBSERVE → INVESTIGATE → UNDERSTAND

- How should federal agencies deal with undocumented residents of the United States who have committed only immigration offenses? How should they deal with those who have committed other crimes?
- What might be positives and negatives to local law enforcement cooperating with ICE?
- What policies and/or enforcement priorities would you recommend?

SOURCES: Rick Montgomery, "'I Just Want My Dad Back.' Kansas Families with Deported Parent Have One Holiday Wish," *The Kansas City Star*, December 23, 2018; Sydney Ember

and Astead W. Herndon, “How ‘Abolish ICE’ Went from Social Media to Progressive Candidates’ Rallying Cry,” *The New York Times*, June 29, 2018.

- U.S. Immigration and Customs Enforcement
- U.S. Secret Service
- Federal Emergency Management Agency (FEMA)
- U.S. Coast Guard

The two major law enforcement components of DHS are the U.S. Customs and Border Protection (CBP) and the U.S. Immigration and Customs Enforcement (ICE). CBP, which guards 7,000 miles of U.S. land borders and 2,000 miles of coastal waters, is charged with protecting the nation’s borders from terrorism, human and drug smuggling, illegal immigration, and importation of agricultural pests. ICE enforces the nation’s customs and immigration laws. Recently ICE has become very controversial. See the “Race, Class, Gender” box to learn why.

While DOJ and DHS are the chief law enforcement departments of the federal government, perhaps the most complex arrangement for law enforcement services in the country belongs to the federal Bureau of Indian Affairs (BIA), which is part of the Department of the Interior. American Indian tribes may provide for policing services in several ways:

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- They may contract with the BIA for funding of their own tribal police departments. Officers in such arrangements are tribal employees.
- They may elect to have federal employees of BIA provide policing services.
- They may rely on state and local authorities for policing services.
- They may fund policing exclusively with tribal funds.

The type of policing conducted on much American Indian land is of particular concern because law enforcement activities often clash with tribal values and norms. For example, a police officer on a Tohono O’odham reservation who aggressively confronts a suspect will offend tribal norms. Conversely, an officer on a reservation of the Turtle Mountain Band of Chippewa Indians who fails to confront a suspect will be guilty of a misstep. Law enforcement officers need to incorporate tribal values in their policing mission to create workable, tribe-specific policing institutions and approaches informed by traditional customs.²⁹

Many people work in federal law enforcement agencies. To understand the scope of federal law enforcement, refer to Figure 5-1, which shows agencies with more than 3,000 full-time employees.

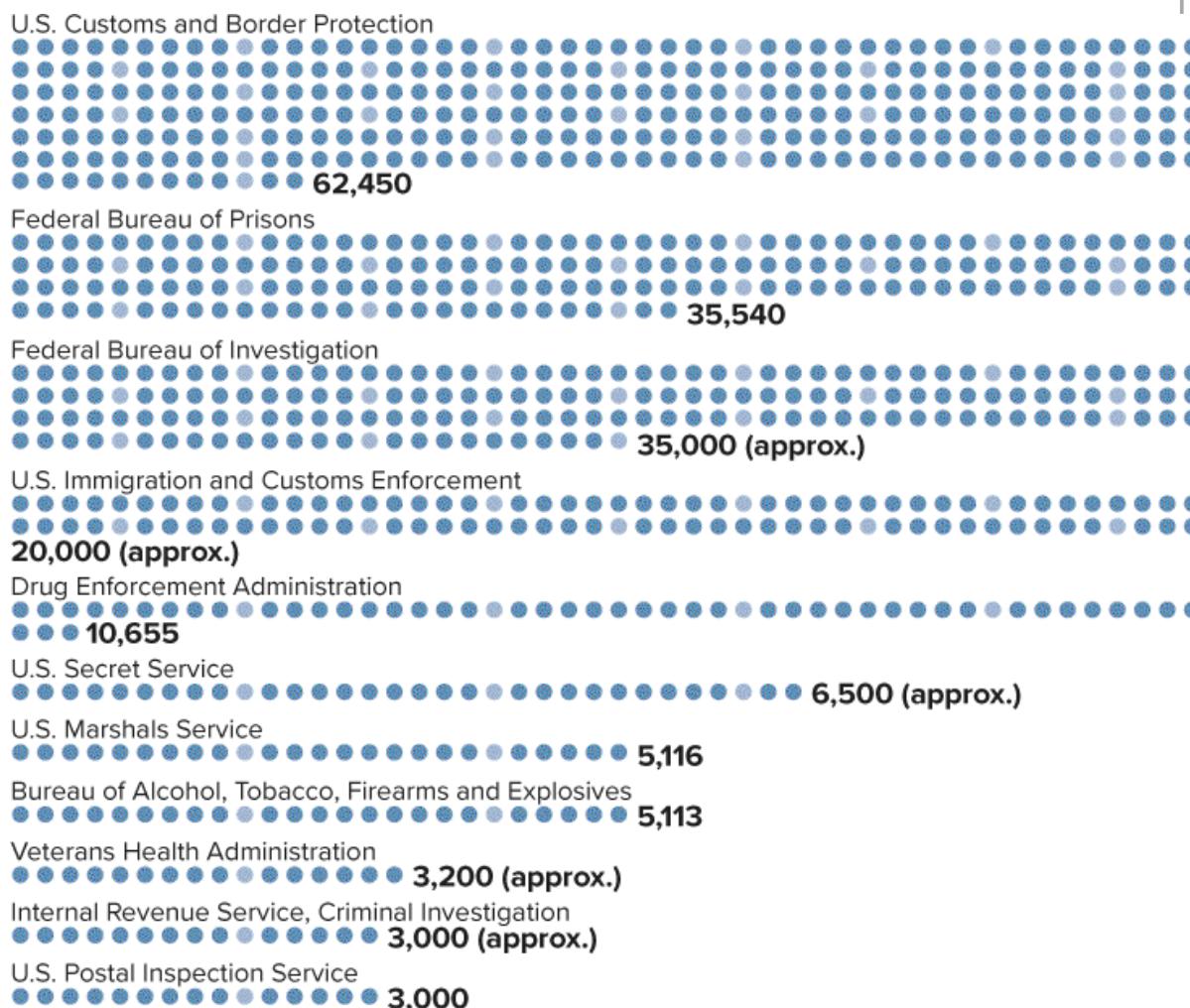


FIGURE 5-1 Federal Agencies with 3,000 or More Employees, February 2019

The figures listed include both sworn employees (those with authority to carry firearms and make arrests) and support personnel.

SOURCE: Respective agencies' websites (retrieved February 26, 2019).

The Problem of Fragmentation

Localized policing allows local values to inform police practices and better positions officers to use their judgment in resolving local community problems. This historic approach, however, has led to the problem of **fragmentation**, a lack of coordination among law enforcement agencies in the same geographic region

due to the existence of many small departments. Suppose, for example, that a particular group of criminals commits crimes in several different police jurisdictions. Investigators in one police department may have information that could help a neighboring agency, but the two agencies do not routinely communicate. (This situation can exist even within a single agency—usually a large, urban agency—where the bureaucratized division of responsibilities hinders or prevents information sharing and cooperation among different units.) Consider, too, that if one community enforces certain laws more strictly than others, criminals may conduct their criminal activities in a neighboring jurisdiction that takes a less aggressive approach. Duplication of services is another frequent result of fragmentation. For example, separate agencies generally operate their own call dispatch and crime laboratory units and bear the expenses individually.³⁰

fragmentation

The lack of coordination among law enforcement agencies in the same geographic region due to the existence of many small departments.

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Problems resulting from fragmentation are not easily solved. Law enforcement officials and the public are accustomed to the independence of their local police departments. Nevertheless, as problems linked to drug trafficking and terrorism cross jurisdictions, the disadvantages of fragmentation may reduce support for this approach to policing.³¹

Consolidation is one option for dealing with the problem of fragmentation. Scholars and policy makers have suggested for nearly a century that consolidation of agencies could yield efficiencies in the delivery of law enforcement services, as well as help to reduce corruption, improve services, and reduce crime. Yet there has been little systematic evidence on consolidation and its effects. Michigan State University studied different forms of police consolidation in four communities and investigated its associated impacts on police legitimacy and officer satisfaction. The study found that police consolidation did not impact public perceptions of the police or police legitimacy. Officers, on the other hand, were generally supportive of consolidation in terms of cost effectiveness, job security, and crime reductions.³²

Instead of consolidating, smaller agencies can contract with larger agencies for specific services. This arrangement has been especially efficient for detention facilities and communications systems.³³ Contracting for specific services may also make sense for emergency planning. A city, for example, can contract to have

the county's SWAT unit available in the event of a major riot, invasion by an outlaw motorcycle gang, or a hostage situation at a school.³⁴

RECRUITMENT, SELECTION, AND TRAINING

Effective policing in a community requires a force of high-quality, well-trained peace officers who are responsive to the community's needs. The processes of recruitment, selection, and training are critical to developing such a force.

Recruitment

"The most fundamental human resource process in a law enforcement organization is the recruitment of a sufficient number of qualified applicants to meet the staffing needs of an agency."³⁵ At a minimum, "qualified" applicants possess good oral and written communications skills, are fit both physically and psychologically, have a solid employment history, and are free of convictions for criminal offenses.

Agencies face significant challenges in recruiting, including

- Better-paying jobs outside law enforcement
- Unusually high attrition as older generations retire
- Negative publicity over matters such as alleged discrimination in arrests and excessive use of force³⁶

Difficulties in recruitment also may reflect the nature and expectations of the contemporary workforce. For one thing, fewer individuals are interested in public service work today than was true of previous generations. Also, police page 164 officers today want balanced lives that allow them time for family, leisure activities, and other priorities. In the current environment, for example, officers may resist extending a work shift to handle a late-breaking homicide or a traffic accident.³⁷

Recruitment Challenges Many core problems that law enforcement agencies face in recruiting have worsened in the past decade. The recession that began in 2008 caused unprecedented difficulties for sustaining police workforces, including budget and workforce reduction, consolidation, and even disbanding of some agencies. Generational preferences and conceptions of work and career change have added to recruitment challenges, as has an increased prevalence of

disqualifications related to drug use. Departments have historically experienced difficulty recruiting and maintaining workforces that reflect their communities' composition. As the communities that departments serve become more culturally diverse, it is even more important to have personnel who are capable of understanding the community's diverse needs and can credibly interact with residents. When examining strategies for attracting candidates, agency leaders must recognize that achieving success is a function of budgetary allocations, commitment, and effectiveness in targeting the specific subgroups the agency seeks to recruit. Moreover, internal objectives and policies that emphasize interaction, relationship building, and partnerships with the public can enhance perceptions of diversity and boost hiring of women and minorities.³⁸

Methods of Recruitment Often, the best recruiters for an agency are its own personnel. A RAND Corporation survey of 44 of the nation's largest police and sheriff's departments revealed that family or friends working at the department that recruits ultimately joined were responsible for first prompting more than 40 percent of new recruits to consider the agency. An additional 20 percent were prompted by family or friends at another agency.³⁹

Websites have evolved as the top tool for attracting applicants. Moreover, podcasts, blogs, and "really simple syndication" (RSS) feeds have increased job seekers' sophistication, allowing them to process growing amounts of information and network more efficiently. DiscoverPolicing.org is the cornerstone of a nationwide initiative to market the benefits of careers in law enforcement to a broad and diverse audience, from first-time applicants to those seeking a career change or transitioning from active military service. Through a clear and accurate portrayal of the full range of police service opportunities, DiscoverPolicing.org expands the pool of potential applicants and provides an effective means for candidates and hiring agencies to connect.⁴⁰

Agency open houses and job fairs are additional popular methods of recruitment. Face-to-face interaction and fostering human connections can make recruitment more meaningful and personal for both the department and applicants.⁴¹

Selection

Once an agency has attracted a sufficient number of applicants, the next step is selecting the best-qualified individuals to fill sworn positions. A peace officer's work is complex, potentially dangerous, and emotionally stressful, and it requires

above-average intelligence to apply an ever-changing body of laws and police regulations to the solution of problems created by crime.⁴²

Selection Process For the candidate, the selection process requires patient navigation of physical, mental, and aptitude screening exams; interviews; and submitting to an in-depth background investigation. The critical task for agencies is to use selection methods that reveal the best candidates for agency needs.⁴³

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BLACKS, LATINOS, AND WOMEN IN LOCAL LAW ENFORCEMENT AGENCIES

Law enforcement agencies have increased efforts to attract qualified minority and female candidates. Although progress has been made, greater demographic representativeness remains to be accomplished.

Demographic	2000 (percent)	2003 (percent)	2013 (percent)
Black	11.7	11.7	12.0
Latino	8.3	9.1	11.6
Women	10.6	11.3	12.0

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, *Local Police Departments, 2013* (Washington, DC: DOJ, 2015), 4–5.

Some police departments still hire officers who are attracted by the adventure of the job rather than by its service functions. However, an emphasis on adventure and an attitude of derring-do distance police from the community and produce a **siege mentality** that sets the police up as a “band of brothers”—or “sisters”—against everyone else. To build a force capable of dealing with the complexity of the twenty-first century, it is imperative that agencies place value on both educational achievements and socialization skills when selecting personnel. Hiring officers who are capable of interacting well with the community members they serve is essential not only for external relations but also for increasing the degree of fairness, compassion, and cultural sensitivity practiced by all members of the police organization.⁴⁴

siege mentality

Police view of themselves as a “band of brothers”—or “sisters”—against everyone else in society.

Background checks are a vital element in the hiring process. Typically, background investigators seek evidence of good moral character, solid work habits, interpersonal skills, stress tolerance, and decision-making ability. Increasingly, background investigators are reviewing applicants’ social media activity. Conducting background investigations on candidates for whom computer

use is a social reality can be inherently problematic. Younger applicants can be surprisingly candid in disclosing personal information, and their impressions of what constitutes “character” can be startlingly different from those of evaluators.⁴⁵ Moreover, background checks are not always reliable indicators of which individuals will become good officers. Background investigators can be subjective and may use past criminal records as a means to eliminate candidates, without regard to how recent a conviction was or to the facts surrounding the particular criminal event. Improperly conducted background investigations are common, especially in cases involving Black and Latino applicants being assessed by White investigators who may be unfamiliar with the culture and lifestyle of the candidates’ communities.⁴⁶

Demographics of Candidates Over the past few decades, law enforcement agencies have increased their efforts to attract qualified minority and female candidates. Although they have unquestionably made strides, much remains to be accomplished. As you can see from examining the table above, the percentages for minorities and women in law enforcement have increased, but they are still low.

MYTH/REALITY

MYTH: Women are underrepresented in police departments today chiefly because they have only recently been permitted to become police officers.

REALITY: Marie Owens was appointed as an officer with the Chicago Police Department in 1893. Several other women were appointed soon thereafter. However, the nature of their duties was long limited to juvenile and custodial activities.⁴⁷



▲ Women in the Line of Duty

Women are increasing their numbers in law enforcement agencies.

Aaron Roeth Photography

We find the greatest disparity by far when we measure the percentage of women police against the percentage of women in the general U.S. population. Women have been employed by police departments in the United States since 1893, when the Chicago City Council passed an ordinance granting Marie Owens the title and pay of “patrolman.” Yet Owens was given neither a uniform nor the authority to arrest. Instead, she was assigned to assist detectives with cases involving women and children and to conduct follow-up interviews of witnesses or victims.⁴⁸

The number of female police officers has increased, and women officers now perform all law enforcement activities. Still, women only comprise approximately 12 percent of the policing workforce, despite progressive legislation aimed at procuring gender equality in the United States.⁴⁹

MYTH/REALITY

MYTH: Women are not strong enough to perform police work.

REALITY: Most police work does not require physical strength. In fact, the federal government is encouraging police departments to hire more women because females are less likely to use force inappropriately. Departments with a greater number of female officers face fewer lawsuits.⁵⁰

Female representation in police departments can be increased by implementing policies and practices that preclude potential disparate impact to females such as physical fitness requirements. Departments that use physical fitness requirements to screen applicants have less gender diversity than those agencies that do not use screening requirements. Moreover, physical fitness requirements are controversial, as there is little empirical evidence that such tests are reflective of the common tasks performed by officers or predictive of performance when involved in hostile situations. However, requirements for higher education attainment have been correlated positively with increased female representation. Educational requirements may be attractive to women because of the association between education and professionalism. Additionally, agencies that embrace policies that feature problem-solving strategies and commitment to community engagement have been found to have higher levels of female representation than agencies that are less focused on community policing.⁵¹

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DIS Connects

Where Are the Women?

Female police officers rely on minimal use of physical force and are typically better than men at defusing potentially violent confrontations. Women officers also often respond more effectively to incidents of violence against women—crimes that represent a large category of calls for service. They have better communication skills than their male counterparts and are better able to win the trust that motivates citizens to cooperate with community policing. All these factors work to the advantage of the police and the communities they serve.

Despite their demonstrated competence and superiority in certain functions, and despite the fact that chief executives of law enforcement agencies overwhelmingly endorse their hire, women make up a disappointingly small percentage of the law enforcement workforce. At the local level, they compose approximately 12 percent of the sworn workforce; state and federal figures are approximately 7

percent and 20 percent, respectively. These percentages contrast sharply when compared to the percentage of women in the U.S. labor force: approximately 57 percent. Where are the women?

Popular misperceptions of police—and a resulting image problem—may be to blame. Specifically, stereotypical images of police as macho crime fighters who spend most of their time engaged in combat and high-speed chases may discourage women from considering careers in law enforcement. In addition, job descriptions continue to emphasize physical attributes over skills in communication and mediation. Further, most U.S. police academies still use a boot camp approach to training, which emphasizes tearing down individuality and rebuilding recruits in the military model. The entire setting is a subculture decidedly foreign to most women.

Given the many challenges facing modern police agencies, the need for more women in the ranks is clear and urgent. However, at the current rate of hiring, women will continue to be underrepresented unless the policies and practices that discourage them are eliminated. The police departments of Albuquerque, New Mexico, and Tucson, Arizona, have both experienced significant increases in recruitment and retention of women by implementing initiatives that emphasize the importance of interpersonal and communications skills. At the same time, initiatives have accommodated needs for child care and customized uniforms and equipment.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Should police departments hire women police officers? Why or why not?
- What hiring accommodations—if any—should police departments make in order to hire more women for the force?
- What are the benefits of having women as police officers?

SOURCES: David Burlingame and Agnes L. Baro, “Women’s Representation and Status in Law Enforcement: Does CALEA Involvement Make a Difference?,” *Criminal Justice Policy Review* 16 (2005): 391—411; National Center for Women and Policing, *Hiring and Retaining More Women: The Advantages to Law Enforcement Agencies* (Arlington, VA: NCWP, 2003), 1—16; U.S. Department of Justice, Bureau of Justice Statistics, *Local Police Departments*, 2007 (Washington, DC: DOJ, 2010), 14; Lynn Langton, *Women in Law Enforcement, 1987—2008* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2010), 1—3; U.S. Department of Labor, “Women’s Bureau Data & Statistics in 2015.” www.dol.gov/wb/stats/stats_data.htm (retrieved July 11, 2015); University of San Diego, “The Top 5 Trends in Law Enforcement.” <https://onlinedegrees.sandiego.edu/top-5-trends-in-law-enforcement/> (retrieved January 28, 2019).

African Americans wanting to become police officers also have faced discrimination. In the late 1860s, some southern cities began to hire African American males as police officers, but members of the White public strongly objected. After the end of Reconstruction (the political process designed to unify the North and South after the Civil War) in 1877, southern police departments expelled their African American officers. By 1910 there were no African American officers on southern police forces.⁵²



▲ LGBT Police Group at Parade

Police Officers at a Gay Pride Parade.

Kevin C. Downs/ZUMA Press/Newscom

Like the White public who objected to African American policemen, White officers also deeply resented—and fought—the hiring of African American officers. Moreover, departments that were forced to hire African Americans set aside specific positions for them so that African American job [page 168](#) candidates were not competing with White candidates.⁵³ During the 1970s, Black males began to enter police departments at meaningful levels, and their numbers continue to rise. Between 1987 and 2013, the percentage of Black local police officers increased from 9.3 percent to 12 percent.⁵⁴



▲ Police Recruits Training

Law enforcement training includes a wide variety of physical and intellectual tasks.

Seth Perlman/AP Images

Black and Latino candidates are more likely to be hired as police officers in cities with substantial minority populations and Latino or Black mayors or police chiefs.⁵⁵ The number of Latino police officers increased from 4.5 percent in 1987 to 11.6 percent in 2013.⁵⁶

Some police departments have begun recruiting gay and lesbian candidates to improve the quality of services provided to gay, lesbian, bisexual, and transgender individuals. For example, the District of Columbia's Metropolitan Police Department created a Gay and Lesbian Liaison Unit in June 2000. Other cities—including Atlanta, Georgia, and Missoula, Montana—have followed this example.⁵⁷ In addition, LGBT officers have themselves formed associations within agencies to provide support for issues confronted by LGBT colleagues. The NYPD has been a leader in this area since 1982, when officers within its ranks formed the Gay Officers Action League.⁵⁸

Training

Training has evolved in step with policing. In the political era of policing, there was no formal training, and officers often learned how to police by serving as

apprentices to senior personnel.⁵⁹ They focused on developing competence in the technical aspects of policing and learning the laws of arrest, penal code provisions, patrol tactics, firearms proficiency, and interview and interrogation techniques.

Systematic basic training in police academies was one of the reforms instituted in the twentieth century. Basic training in a formal classroom environment enabled uniform coverage of standard curricula designed to equip student-officers with the fundamental skills and knowledge necessary to perform essential policing activities. The transition from reactive policing to the more proactive orientation of community policing stimulated a shift to emphasis on problem solving, conflict resolution, crime prevention, and service.⁶⁰ A spate of videotaped incidents occurred nationally in 2014 and 2015 involving police use of lethal force (several against unarmed individuals) and triggered a backlash of rage by members of minority communities, particularly African American citizens. The events underscored the need for and importance of lasting, collaborative relationships between local police and the public. Today's police recruits must be inculcated with skills that enable fair and procedurally just policing. Tactical skills are important, but attitude, tolerance, and interpersonal skills are equally so.⁶¹

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Real Careers



Bilgin Sasmaz/Anadolu Agency/Getty Images

RANDALL D. WATKINS

Work location: San Marcos, Texas

College(s): Texas State University—San Marcos, 2006

Major(s): Criminal Justice (BS); Military and Law Enforcement Certifications

Job title: Tactical Logistics Coordinator/Tactical Instructor, Advanced Law Enforcement Rapid Response Training Center (ALERRT)

Salary range for job like this: \$50,000—\$75,000

Time in job: 2 years

Work Responsibilities

I help accomplish ALERRT's mission to provide first-response officers and military personnel with the training and tools they need to perform their duties in a hostile environment. For example, I ship and receive roughly \$3 million worth of training equipment all over the United States. I also teach courses in responding to an active shooter, breaching, rural operations, low-light operations, and tactical rifle/pistol.

Why Criminal Justice?

I served 5 years on active duty in the Marine Corps Infantry and was a part of Operation Iraqi Freedom in 2003. After completing my enlistment, I went to Texas State University to finish my degree and pursue a career as a Marine officer. In late 2004, the unit that I had just left took very heavy casualties in Iraq, so I decided to leave school and volunteer for another deployment. While conducting a raid in Iraq in May 2005, my platoon was ambushed; we lost four Marines, and eight were severely wounded, including me. After a year and a half in the hospital, I returned to Texas State and completed my degree. Being medically retired from the Marine Corps, I knew my options as an

officer in the field would be limited. The ALERRT program was the answer to my prayers. I use my experience and knowledge to train members of the military and law enforcement to learn from the mistakes that I made and to help them become the best officer, Marine, or soldier that they can be.

Expectations and Realities of the Job

I have been struck by the similarities and transferability of skills between military and law enforcement. For example, although the military is designed as a fighting force, the mission and role of the military in Operation Iraqi Freedom and Operation Enduring Freedom evolved to be more law enforcement in nature. And much like in the military, I have seen that law enforcement agencies must tailor their tactics according to the specific criminal.

My Advice to Students

I cannot emphasize enough how important it is to go to college. College gave me analytical and research skills that I never had before. It bridged the gap of being strictly an operator in the field to having the skill set to look at the big picture and to plan for accomplishing the mission while jumping the necessary hurdles.

Training Facilities States typically train their recruits in special academies, and each state determines its own training requirements. Some large law enforcement agencies (for example, large municipal police departments and state or federal agencies) operate their own academies. Most often, however, training centers work with institutions of higher education, especially community colleges. Prospective officers usually pay for their own training in anticipation of being recruited after they graduate.⁶²

Training Curricula Community-oriented policing required change not only in academies' curricula but also in their teaching methods. **Adult learning**, with its emphasis on engaging the learner and incorporating his or her experiences, is rapidly replacing the traditional lecture form of academy instruction.⁶³ The corresponding curricula include topics such as human diversity, special populations, ethics and integrity, and community building. page 170 Notwithstanding the prevalence of curricula involving problem solving and community policing, there is a tendency to emulate a warrior mentality in many American law enforcement agencies. The seeds of this culture are planted during recruit academy training with a "boot camp-like" atmosphere. Upon graduation, newly trained officers are sent to the community, and despite the militaristic manner in which they were treated by their academy trainers, they are expected to treat the relatively powerless people they often encounter with exemplary dignity and respect. Thus, it should not be a surprise when some officers treat both suspects and citizens with the disdain and detachment they saw modeled by those in power at the academy.

adult learning

Method of learning that emphasizes engaging the learner by incorporating the learner's experiences in the curriculum.

Change is afoot, though, and instructive examples are emerging across the nation. One such transformation is occurring in the state of Washington as the state's Criminal Justice Training Commission has changed the tone of the training curriculum from one emphasizing the distinction between guardians of democracy and civil rights over the conquering warrior mentality. A five-year longitudinal study of the effectiveness of the new curriculum and philosophy was launched in 2014. The study has been designed to determine whether the guardian philosophy positively influences officers' attitudes about their job and the public. It will also assess whether officers trained under the new program are more likely to employ crisis intervention tactics and de-escalation skills than are officers trained under the former warrior philosophy.⁶⁴ The state of California requires that each topic in a police academy's curriculum includes the themes of ethics and community policing.⁶⁵ Training for special areas such as domestic violence also serves the interests of community policing and its focus on the victims of such crimes.

Training in Legal Issues Training in legal issues is designed to help officers perform well; it also serves to shield officers and their employers from liability in lawsuits. This type of training ranges broadly—from the mandate to ensure the safety of a child left behind when a parent or guardian is arrested through the latest court decisions regarding warrantless searches of premises or vehicles.

Standardized training also establishes customary practices. Plaintiffs have a more difficult task of attributing bad outcomes to errors or omissions if officers are properly trained.⁶⁶ For example, if an officer frequently applied a particular control measure but on one occasion application of this measure resulted in injury to a suspect, the concerned agency (and officer) would be much better protected against liability than if the officer had not been so conscientious.

POLICE SUBCULTURE

Along with the training that new police recruits receive in police academies and in the field, they also absorb the police *subculture*—the attitudes, values, and beliefs—that permeates the law enforcement agency. Although U.S. police agencies are organized in formal hierarchies and have clear policies and intensive training, the police subculture may influence officer behavior more than any formal rules and orders. There are two types of police subculture.

Police occupational subculture is a set of norms and beliefs held by most officers in a given country. Police occupational subculture in the United States is influenced by the perception of the danger and irregularity of police work, the need for officers to support one another, and the necessity for them to demonstrate and maintain their authority.⁶⁷

police occupational subculture

Norms and beliefs embraced by most officers in a given country.

A **police organizational subculture** is particular to an individual department.⁶⁸ For example, one department may value community policing, whereas another may stress maintaining law and order. One agency's subculture may rate diversity among the rank and file as a worthy goal, but another department may feel that the value of diversity is overemphasized.

police organizational subculture

Norms and beliefs particular to an individual department.

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MYTH/REALITY

MYTH: Police demonstrate virtually blind obedience to the mandates of superiors and top management.

REALITY: Police occupational subculture is frequently in conflict with management's orders and directives, as illustrated by this often-cited warning from a training officer to his new charge: "Forget everything you were taught at the academy. Just keep your mouth shut and your ears open."⁶⁹

There is no doubt that compared to most occupations, policing is dangerous. Beginning in academy training, police cadets are reminded daily of the possibility of danger. They are trained to make sure that they can always see exits and entrances, even when eating lunch in a restaurant. They are told to remember that any person with whom they come in contact could pose a physical threat. The belief that their job includes daily risks of danger is a strong component of the police subculture and creates solidarity among officers, despite the fact that most of them will never need to discharge their firearm.

At the core of police occupational subculture is the belief that officers must support one another, not only in physical confrontations but also if and when questions are raised about their actions. By and large, officers resist reporting the misbehavior of their fellow officers.⁷⁰ This **blue code of silence** places loyalty to

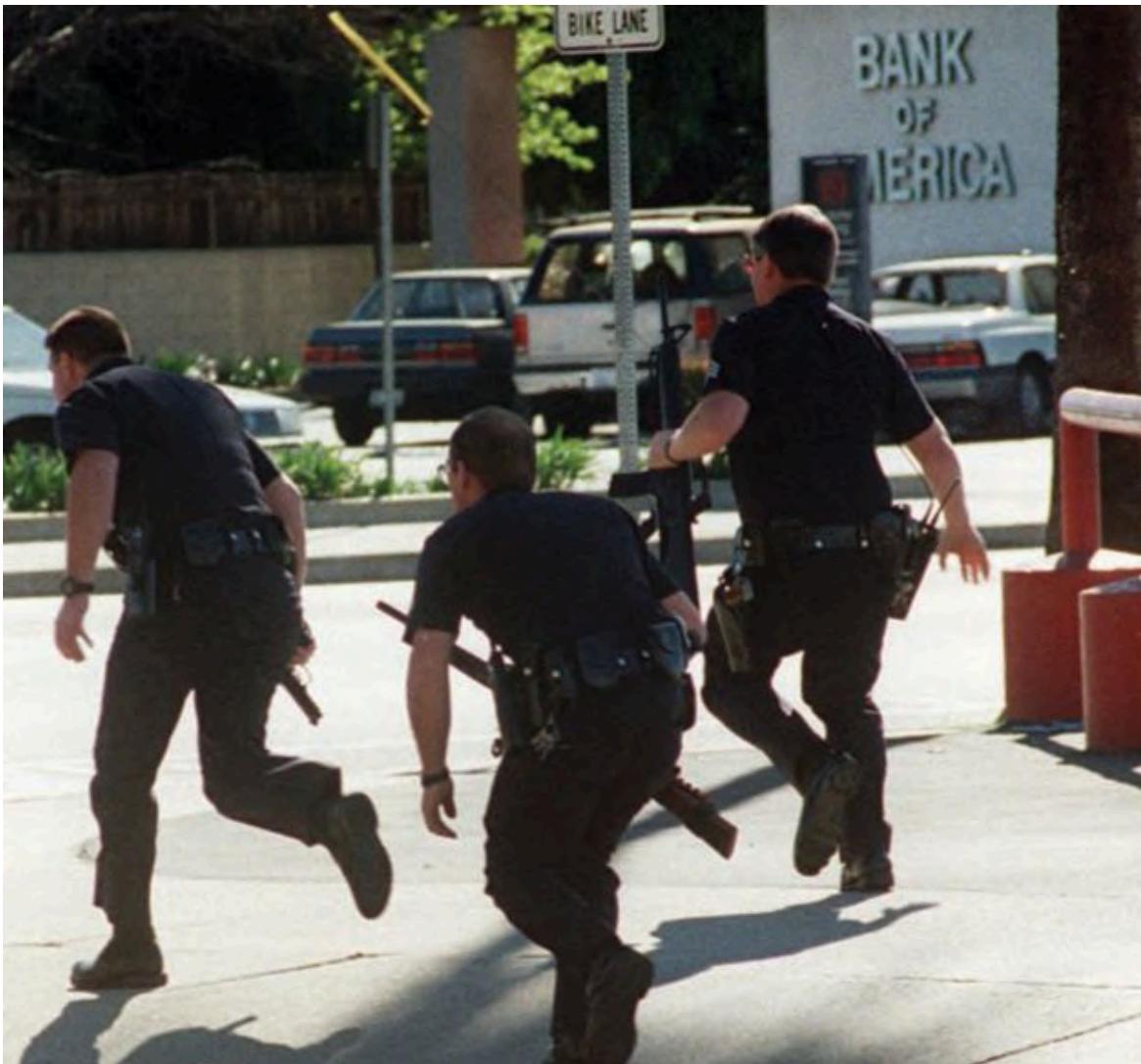
fellow officers above all other values and tacitly assures officers that they can count on a backup to any story they tell, regardless of the truth.⁷¹

blue code of silence

Adherence to a code of conduct that places loyalty to fellow officers above all other values by not reporting on a fellow officer's misconduct.

Officers often work under extremely tense conditions, with little information, and generally in ways that will leave someone unhappy with the outcome.⁷² The public is not always sensitive to these fundamental constraints. Therefore, police officers often feel that only other officers really understand them and the conditions under which they work.

The need to maintain authority is another major component of police occupational subculture. Officers expect the individuals with whom they come in contact will be both deferential and respectful. They realize that even though they may have the power to resort to force, their greatest tool is communication. By and large, they believe if they do not maintain their authority, they will not be able to accomplish their job. Individuals who challenge police authority are likely to experience unpleasant consequences.⁷³



▲ Police Charging a Bank

Such images reinforce the idea that officers' jobs are constantly fraught with danger and excitement.

Mike Meadows/AP Images

Because officers regularly deal with people who are not honest with them and because they feel that members of the public are often quick to second-guess their decisions, an “us versus them” mentality develops as a common element of police occupational subculture. Public opinion of police is generally high, but officers may have difficulty believing that. Everywhere they go in uniform, people stare at them. A sign greeting officers driving their police cars out of the garage at Calgary Police Services headquarters in Alberta, Canada, reminds them: “Drive like everyone is watching you, because they are.”

The media reinforces the message that the real work of policing is crime fighting. Think about it: There is not a single major television show about the

daily tasks of a community policing officer. Patrol officers also learn that crime fighting is what administrators value because police effectiveness is often assessed on measures such as numbers of citations issued, numbers of traffic stops made, numbers of arrests made, and the like. The focus on crime fighting is so deeply ingrained that even community policing officers believe that those traditional police responsibilities are their most valuable work.⁷⁴

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What about the Victim?

The Value of Procedural Justice in Increasing Police Empathy in Interactions with Victims and Citizens

Victimization can have a significant detrimental impact on an individual's well-being. Given the negative consequences of victimization, the quality of the relationship between victims' participation in the criminal justice system and their emotional well-being becomes critical. Anti-therapeutic consequences of victim involvement with the criminal justice system are well documented with secondary victimization (insensitivity to the victim's plight) being the most prominent phenomenon identified.

However, recent studies consistently find that practicing procedural justice can be a key feature in increasing perceptions of police legitimacy and enhancing the quality of interaction with victims and citizens at large. Empirical evidence on the impact of police-led interventions aimed at improving police legitimacy has revealed that when interventions include aspects of procedural justice there was an increase in satisfaction with the police, as well as improved cooperation. The procedural justice protocol is based on four central principles: (1) treating people with dignity and respect, (2) giving victims and citizens "voice" during encounters, (3) being neutral in decision making, and (4) conveying trustworthy motives.



The therapeutic value of procedural justice is associated with the belief that communicating to individuals that they are valued has the potential to affirm their sense of dignity and self-worth. This is especially beneficial for victims of crime whose sense of self-esteem and self-efficacy may be undermined in the aftermath of what may be considered a demeaning experience.

David Weisburd and colleagues reported in May 2016 the results of a study conducted with The Seattle Police Department on the effectiveness of the practice of procedural justice. In the study, a group of officers who worked in “hot spots” were randomly assigned to employ the tenets of procedural justice whenever practicable under a program called LEED (Listening and Explaining with Equity and Dignity). The officers were assessed on arrest rates, use of force, and community complaints over a six-week period. The results of the study showed that the officers exercising the procedural justice protocol had significantly different behavioral patterns than a comparison group of officers not trained in procedural justice. The LEED officers had double-digit percent fewer arrests and were more than 50 percent less likely to use force in an encounter, even though they were involved in a similar number of encounters as the untrained police officers. Results of the LEEDS study are consistent with the concept of encouraging officers to use respectful, empathic communication with those they encounter, as they will be less likely to over-arrest and to use excessive force.

Stanford researcher Jamil Zaki praises programs like LEED but warns that too often empathy-building is sabotaged by a “warrior” mentality (versus an empathy-oriented “guardian mentality”), in which police are trained to consider every person armed and dangerous and are thus effectively far less inclined to consider the perspective of the people they encounter. He has cautioned that “If you wanted to decrease recruits’ empathy, you could scarcely do better than to enshrine a warrior mentality.”

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How does practicing procedural justice translate to increased police legitimacy?
- Does a warrior mindset more often than not get in the way of police displaying empathy toward victims?

SOURCES: Gali Aviv and David Weisburd, “Reducing the Gap in Perceptions of Legitimacy of Victims and Non-Victims: The Importance of Police Performance,” *International Review of Victimology* 22, no. 2 (2016); Irina Elliott, Stuart Thomas, and James Ogloff, “Procedural Justice in Victim-Police Interactions and Victims’ Recovery from Victimization Experiences,” *Policing and Society* 24, no. 5 (2014); Jamil Zaki, “When Cops Choose Empathy,” *The New Yorker*, September 25, 2015. <https://www.newyorker.com/tech/annals-of-technology/when-cops-choose-empathy> (retrieved January 26, 2019); Jill Suttie, “Can Empathy Improve Policing?” *Greater Good*, September 21, 2016. https://greatergood.berkeley.edu/article/item/can_empathy_improve_policing (retrieved January 26, 2019).

There are merits to a strong police occupational subculture. For example, it creates a high level of group solidarity. But officers who value its main tenets are found to engage in more coercive actions, from verbal threats to physical force, than officers who do not.⁷⁵ Both within and across departments, page 173 however, there are variations in the police subculture and in the degree to which

officers support it. The relative strength of each component and the way it influences individual officers also vary somewhat by agency.

There is a growing awareness, however, within police organizations and among officers, of the value of practicing procedural justice when interacting with crime victims and citizens at large. "What about the Victim?" describes how the adoption of the tenets of procedural justice by the Seattle Police Department led to significantly different behavioral patterns by officers.

POLICE DISCRETION

Most members of the public believe that all or most police actions are dictated by law. Officers, however, have a high degree of **discretion** in their everyday activities that enables them to act in the manner they judge most appropriate in a given situation. When officers use discretion, the choices they make are largely up to them; they use their own judgment. Discretion is necessary because there are too many laws for all to be enforced, so police must choose which ones are most important in a particular incident. Furthermore, laws and policies are often vague and can be interpreted in many ways. The legislators who write laws and the police administrators who develop policies understand that any given situation will require officers to make the best choice for those involved.

discretion

Authority to act in a manner that officers judge most appropriate for a given situation.

Yet there are definite limits on police discretion. For example, a number of Supreme Court decisions and police policies have reduced officers' discretion regarding the use of force—especially lethal force. The discretion to initiate and continue vehicular pursuits when a driver does not comply with a police request to pull over often comes under the microscope as well, largely because innocent bystanders can be injured or killed during these pursuits. Some state legislatures have passed laws requiring police departments to develop or revise their policies in order to give patrol officers clear directions concerning pursuits.

As we have noted, most police work does not involve dealing with crimes. Nonetheless, those who call the police rarely want to hear, "No crime has been committed, so there is nothing I can do" as the officer leaves the scene. The outcomes of calls for service, which make up the vast majority of requests for police assistance, depend on how the responding officer uses discretion. Suppose a father and son are having an argument, but the dispute has not turned physical. One officer called to the scene may spend half an hour counseling the parties on

conflict management. Another may simply advise the family members to make sure they do not assault each other and be gone in five minutes.

Positives and Negatives of Police Discretion

One of the greatest benefits of police discretion is that it allows officers to act in the most just manner in a given situation. Consider the following scenario. An officer observes a driver roll through a stop sign and pulls the vehicle over. The driver is clearly upset and crying and tells the officer he was just notified that a family member has died. The officer decides that there is no need to give the driver a citation and instead advises him to call someone to pick him up or perhaps talk to someone on the phone until he is calm enough to drive, for his own safety and that of others. Most people would agree the officer acted in the most just manner in that situation. Officers' discretionary decisions can sometimes fulfill the spirit of the law by not following the letter of the law.

Another benefit of police discretion is that it allows officers to decide where to focus their energies. The criminal justice system cannot manage the burden of fully enforcing all aspects of the penal and traffic codes at all times. Serious crimes occur more rarely than people think, but minor crimes are pervasive. Jaywalking, hanging objects from a car's rearview mirror, loitering, not wearing a seat belt, and underage drinking are all common occurrences. If law enforcement resources were spent on these and all the other minor offenses, police would be stretched too thin and would have little time to devote to serious crimes.

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KEY CONCEPTS Positives and Negatives of Police Discretion

Positives	Negatives
Results in increased justice	Increases the possibility for discrimination
Relieves the criminal justice system of the need to handle all cases it otherwise would receive	Allows some people who deserve punishment to avoid it

Yet there are disadvantages to police discretion as well (see the Key Concepts feature). Consider that all professionals with the power of discretion are susceptible to the temptation to abuse that authority. Discretion allows for the possibility that decisions could be influenced, for example, by race, ethnicity, class, gender, or sexuality. The Fourteenth Amendment to the Constitution, as

well as state laws guaranteeing all persons equal protection under the law, should lead officers to treat all individuals equally—even when exercising discretion. But the influences of racism, sexism, and other discriminatory attitudes are widespread throughout the United States and prevail even among law enforcement personnel.

Influences on the Use of Discretion

The discretionary decisions to stop a vehicle and to make an arrest are the subject of much research. Both the seriousness of the offense and the quality of the evidence influence an officer's decision to arrest. Suspects who are male or juvenile are more likely to be arrested than are females or adults. Black suspects are significantly more likely to be arrested than White suspects. Intoxicated suspects are more likely to be arrested than those who are sober. Individuals who exhibit a negative attitude to police are also much more likely to be arrested.⁷⁶ Finally, with all other variables held constant, White officers are more likely to arrest than are Black officers. If the suspect is a Black male, however, a Black officer is more likely to arrest than is a White officer.⁷⁷

Police managers are, of course, interested in why some officers are more productive than others. Research has found that several variables affect how many drug arrests an officer makes. One important effect on the decision to make an arrest for drugs is whether a patrol officer believes that his department rewards such arrests. Officers also are influenced by whether they believe managers see drug enforcement as a priority. As might be expected, they also are more likely to make such arrests if they've had special training in drug interdiction.⁷⁸



▲ Racial Profiling

Numerous studies have shown that racial profiling does occur.

Ralf-Finn Hestoft/Corbis/Getty Images

Officers generally have “working rules” that influence whom they deem suspicious and therefore how they use their discretion when deciding whether to stop an individual. For instance, an officer may become suspicious about someone who is not usually in a given neighborhood or someone who is in a business district late at night.⁷⁹

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MYTH/REALITY

MYTH: Police treat all individuals the same regardless of race, class, and gender.

REALITY: A variety of characteristics of officers, citizens, victims, and suspected perpetrators influence police behavior.⁸⁰

An officer’s decision to stop a vehicle, for which the traffic code affords many possible reasons, is also a discretionary matter. The extent of **racial profiling**—police contact with an individual that is initiated because of the person’s skin

color or ethnicity—is widely debated in the United States. Many commentators say that claims of racial profiling are divisive and unsubstantiated. However, numerous studies, some conducted by police departments themselves, show that police disproportionately stop Black drivers. Research has also shown that Black drivers are more likely to be searched during a traffic stop than are Latino or White drivers.⁸¹

racial profiling

Police contact with an individual initiated because of the person's skin color or ethnicity.

Some defenders of racial profiling say that officers who practice it are merely responding to the fact that people of color are more likely to commit crime, and that police therefore often use traffic stops as a means to uncover criminal behavior beyond violation of the traffic code. However, the incidence of, for example, illegal drug use does not support these defenses. Based on self-reports of illegal drug use, Whites use drugs at rates about equal to Blacks. Furthermore, data from a recent national study revealed that although Black and Latino males were at an increased risk of citations, searches, arrests, and use of force, minority drivers were not more likely than White drivers to be in possession of anything illegal.⁸² Another defense of the higher rate of traffic stops of people of color is that they are more likely to drive recklessly. That claim has also been disproved.⁸³ The bottom line is that racial profiling is not only discriminatory—it is also ineffective police work.

Victims and the Use of Discretion

People generally assume that arrest decisions are based on whether there is sufficient evidence to indicate that a crime occurred. In fact, police arrest in only about half the cases in which evidence of a crime is present; the greatest influence on the decision to arrest is the victim's or complainant's preference for arrest. Therefore, the public influences how officers exercise discretion.⁸⁴

The degree of relationship between the victim and perpetrator—whether they are family, friends, acquaintances, or strangers—also influences arrest decisions. The closer the relationship between victim and perpetrator, the less likely an arrest will be made. An arrest is more likely when two strangers are in a physical altercation than when one family member assaults another.⁸⁵ Unfortunately, this practice puts those who are the most vulnerable in greatest jeopardy. Individuals who perpetrate violence against a stranger—in a bar fight, for instance—usually never see their victim again, so the likelihood of another conflict is minimal. Victims who know their perpetrators have a much greater chance of continued

interaction with them and therefore are at greater risk of being victimized again. Yet in situations in which the victim needs the most protection from future assaults, retaliation, and threats, an arrest is less likely to be made.

MISCONDUCT

Probably nothing is more harmful to a law enforcement agency than officer misconduct. Misconduct damages both public confidence in the police and the ability of law enforcement administrators to control and direct the workforce. Police officers are uniquely entrusted to protect the safety and rights of [page 176](#) all citizens. Moreover, police officers are given special powers and prerogatives—the authority to investigate people, to deny them freedom to move about, and to use force if warranted.

Two types of misconduct by the police are abuse of authority and corruption. The possibility of personal gain is what distinguishes the two.

Abuse of Authority

Abuse of authority occurs when police disregard policies, rules, or laws in the performance of their duty. Generally, those who commit such misuse believe in a **noble cause** that they claim excuses their wrongdoing because “the end justifies the means.”⁸⁶ Noble cause is present, for instance, when officers frame individuals whom they believe are “dirty” and who would be imprisoned but for lack of evidence. Police may also seek to administer their own street justice through brutal means. The police often believe that their concern for the victim justifies their behavior in such incidents. Officers may recall the brutality suffered by victims of past gang violence or drug dealing when they encounter persons trying to commit similar crimes. The police may believe any extralegal actions they take to remove perpetrators from the streets pale in comparison to the harm the next victim will suffer.⁸⁷ Many critics and reformers looking to curb the use of violence by the police fail to recognize that the use of violence against perpetrators often stems from police officers’ concern for the victims.⁸⁸

abuse of authority

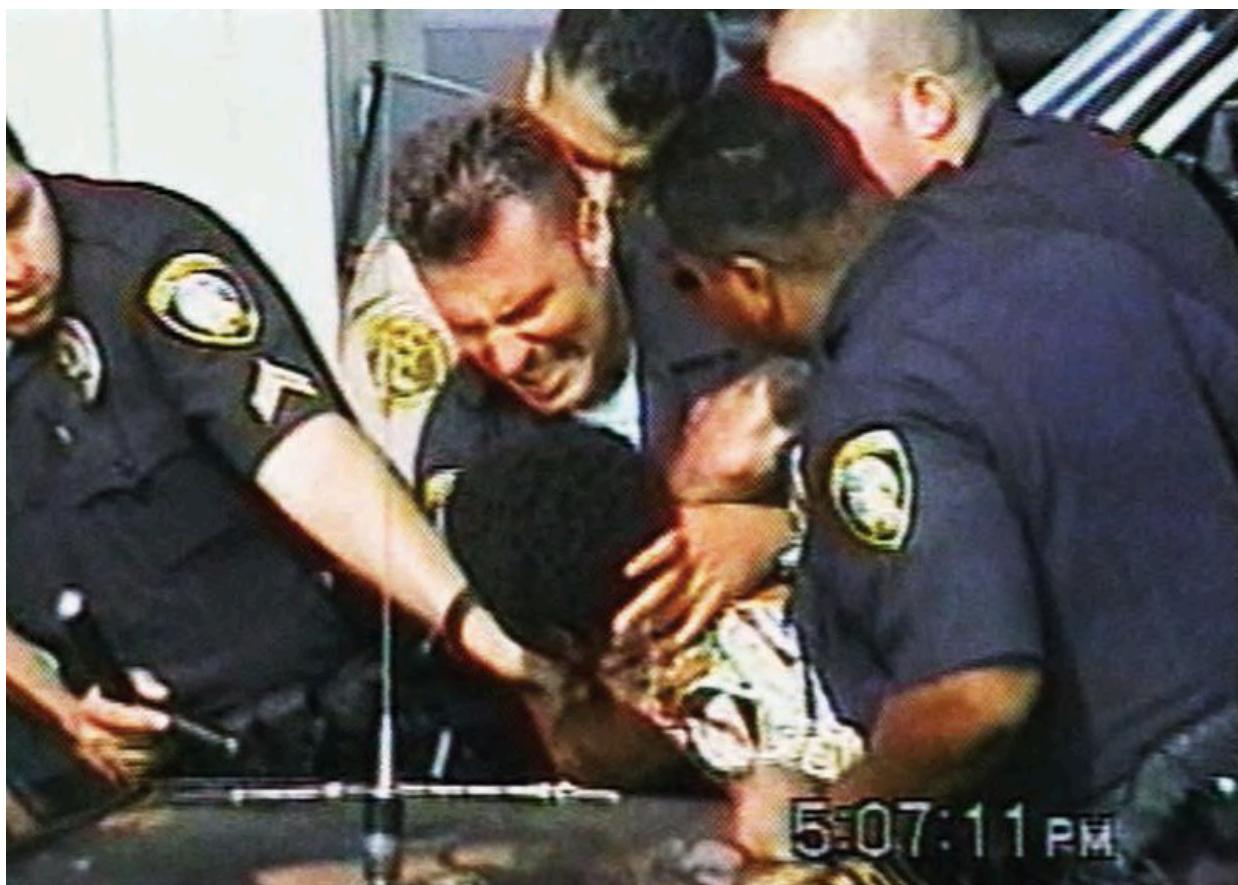
Police disregard for policies, rules, or laws in the performance of their duty.

noble cause

Justification for wrongdoing committed by an officer based on the premise that the end justifies the means.

Officers who abuse their authority may face criminal prosecution for violations of state and federal laws. However, civil lawsuits against the police for abuse of authority are more common than criminal prosecutions.⁸⁹ It is easier for victims to prevail in civil court, where the standard of proof is a preponderance of evidence, than in criminal court, which requires proof beyond a reasonable doubt. Claims charging abuse of authority often cite use of excessive force and false arrest.

Police departments and cities can be civilly liable for failures to act that result in denial of equal protection as set forth in the Fourteenth Amendment, as was demonstrated in the landmark case of *Thurman v. City of Torrington*.⁹⁰ Tracey Thurman was awarded a \$1.9 million judgment as a result of the local police department's chronic failure to arrest her former husband for the violent acts he committed toward her. The large settlement made this case a catalyst for the development of mandatory arrest laws (see Chapter 7).



▲ Excessive Force

There are a variety of explanations for police use of excessive force. *What explanations, if any, justify the use of excessive force?*

Mitchell Crooks/Getty Images

MYTH/REALITY

MYTH: Most changes in police behavior have resulted from police efforts to serve citizens better.

REALITY: Changes in police behavior are often forced by legislative action or court cases such as *Thurman v. City of Torrington*, which gave notice to police departments across the country to treat domestic violence as they would a crime in which the perpetrator and victim do not know each other.⁹¹

Police Corruption

Corruption is generally defined as misconduct motivated by personal gain, such as skimming seized narcotics monies.⁹² Motives are not limited to money, however. Personal gain may take the form of services rendered or political influence gained. A police officer may let a tavern remain open after the required closing time because a local politician is part owner, and the officer believes that “looking the other way” will lead to a promotion or a better assignment through the politician’s influence. Two schools of thought have developed to explain police corruption: the first focuses on the police organization, and the second on the individual.⁹³

corruption

Misconduct motivated by personal gain, such as skimming seized narcotics monies.

Organizational Explanations for Police Corruption Organizational explanations of police corruption often attribute it to an entrenched culture of dysfunction (as illustrated through the agency example in the “Matters of Ethics” box) and the police occupational subculture, especially the “code of silence.” Officers who adhere to the code of silence are motivated by fears of being labeled a rat and being ostracized for snitching—and, conceivably, even being left without timely aid when endangered in a street situation.⁹⁴

Individual Explanations for Police Corruption Police occupational subculture helps explain why corruption exists among the rank and file. It does not, however, explain why some officers are corrupt and others are not. Individual factors also come into play. Even the best screening protocol provides only a snapshot of an officer’s psychological qualifications at the beginning of his or her career.⁹⁵ Some corrupt individuals may manage to slip through the selection screening process. Other recruits may be impulsive or harbor a sense of entitlement. Individuals

react differently to the normal day-to-day events police officers encounter, and some succumb to temptations.

Attaining Integrity

The opposite of misconduct is integrity, which in the context of policing refers to moral principles and professional standards that help officers resist the temptation to abuse their rights and privileges. Integrity can be an attribute of police organizations as well as of individuals.⁹⁶ Strategies to enhance integrity help minimize misconduct.

Management’s Leading Role Management is responsible for reducing vulnerability in the police force. For example, management must create tight protocols for handling narcotics evidence so that no one can remove or skim either money or drugs. Perhaps most important, however, is management’s role in setting the tone by condemning abuse. The way managers detect, investigate, and discipline misconduct shows officers how serious they consider it to be. Managers must also demonstrate their own integrity. If rank-and-file officers do not see their managers or supervisors practicing what is expected of them, integrity will be shelved in that spacious cabinet labeled “forget everything you learned in training—this is how we do it on the street.”⁹⁷

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Matters of Ethics

Department of Justice Investigation of the Ferguson, Missouri, Police Department

On March 4, 2015, the U.S. Department of Justice (DOJ) released its findings from both criminal and civil investigations of the Ferguson, Missouri, Police Department. The investigations stemmed from the August 9, 2014, shooting death of Michael Brown, an unarmed, 18-year-old African American, by Ferguson police officer Darren Wilson.

The FBI opened a federal criminal rights investigation two days after the fatal shooting amid some witnesses’ allegations that Brown, suspected by Wilson as the perpetrator of a recent robbery at a convenience store, had his hands up in surrender when he was being apprehended and ultimately shot by Wilson. Federal authorities reviewed physical, ballistic, forensic, and crime scene evidence; medical reports and autopsy reports; Wilson’s personnel records; audio and video

recordings; and Internet postings. FBI agents, St. Louis County Police Department detectives, federal prosecutors, and prosecutors from the St. Louis County Prosecutor's Office worked cooperatively to both independently and jointly interview more than 100 purported eyewitnesses and other individuals claiming to have relevant information. Based on its investigation, the DOJ concluded that Officer Wilson's actions did not constitute prosecutable violations under the applicable federal criminal rights statute, 18 U.S.C. Section 242, which prohibits uses of deadly force that are "objectively unreasonable."

The shooting of Michael Brown, despite the eventual exoneration of the involved officer, exposed and accelerated a broader breakdown in civic trust. The incident triggered weeks of protests and some rioting, revealing the depth of disharmony between many members of the community and the police. It added impetus to the national "Black Lives Matter" movement. On September 4, 2014, the Civil Rights Division of the DOJ opened an investigation under the "pattern or practice" provision of the Violent Crime Control and Law Enforcement Act of 1994. The investigation revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violated the First, Fourth, and Fourteenth Amendments of the U.S. Constitution.

The investigation disclosed that Ferguson's law enforcement practices were shaped by the municipality's focus on revenue rather than by public safety needs. The emphasis on revenue compromised the character of the police department, contributing to a pattern of unconstitutional policing, and also shaped the municipal court, leading to procedures that raised due process concerns and inflicted unnecessary harm on members of the community. Further, Ferguson's police and court practices both reflected and exacerbated racial bias. Over time, the police and court practices sowed deep mistrust, undermining law enforcement legitimacy among African Americans in particular.



Fabiano/SIPA/Newscom



The city budgeted for sizable increases in municipal fines and fees each year and exhorted police and court staff to deliver those revenue increases. The emphasis on revenue generation resulted in patrol assignments and schedules geared toward aggressive enforcement of Ferguson's traffic codes. Officer evaluations and promotions depended inordinately on the number of citations issued. Officers sometimes wrote 6, 8, or, in at least one instance, 14 citations for a single encounter. Moreover, half of African Americans received multiple citations per encounter, while only a quarter of non—African Americans did. Thus many officers appeared to see residents, especially those residing in the city's predominantly African American neighborhoods, less as constituents than as potential offenders and sources of revenue.

This culture within the police department influenced officer activities beyond citation issuance. Officers expected and demanded compliance even when they lacked legal authority. They tended to interpret the exercise of free speech as unlawful disobedience, innocent movements as physical threats, and manifestations of mental or physical illness as belligerence. Police supervisors and leadership did little to ensure that officers acted in accordance with law and policy. The result was a pattern of stops without reasonable suspicion and arrests without probable cause. In addition, the DOJ investigation revealed that officers' use of force frequently went unreported, and when completed such reports were reviewed laxly.

The Justice Department called for an overhaul of the police department. In its report, the DOJ delineated 13 recommendations for change within the police department to remedy unlawful enforcement practices and to repair community trust. During 2019 the Ferguson Police Department completed revision of many of its general orders for compliance with DOJ recommendations.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- To what extent, if any, might the exercise of discretion have been abused by the Ferguson police officers?
- Was the DOJ's call for an overhaul of the police department attributable principally to the police subculture, or was the subculture a part of a larger scheme?

- Is Ferguson an appropriate venue for advancing the concepts of legitimacy and procedural justice? Why or why not?

SOURCES: U.S. Department of Justice, Criminal Section of the Civil Rights Division, *Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson* (Washington, DC: DOJ, March 4, 2015); U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department* (Washington, DC: DOJ, March 4, 2015); Ferguson Police Department, “Services and Programs—General Orders Modification,” Ferguson Police Department Website (2019). <https://www.fergusoncity.com/92/police-department> (retrieved January 28, 2019).

Early Warning Systems Early warning systems are data-driven programs that identify police officers whose behavior is beginning to suggest problems. By automatically recording each employee’s role in all incidents including uses of force, vehicular pursuits, formal complaints, and informal counseling, the programs reveal patterns that indicate an inclination toward or potential for misconduct. Early warning systems came into use after evidence showed that in most police departments a small percentage of employees is responsible for a disproportionate share of instances of misconduct.⁹⁸

Only about one-third of agencies have early warning systems. Among those that do, more than 95 percent of survey respondents rate them as “effective.”⁹⁹

Legitimacy and Procedural Justice An unfortunate reality is that in a number of communities the police have lost the confidence of those they have sworn to serve. This distrust is often exacerbated by the nature of the police–citizen contacts, which far too often are unilateral exchanges—police to citizen. When the police fail to explain why a citizen has been detained by the police or fail to explain the actions taken by an officer to ensure both the safety of the officer and the citizen, citizen or onlooker complaints are often the result. In recent years police executives have begun to explore the concepts of legitimacy and procedural justice and their application to policing. **Legitimacy** is a measure of the extent to which the public trust the police, are willing to defer to police authority, and believe police actions are morally justified and appropriate. Police can increase the public’s belief in their legitimacy by providing procedural justice in the course of interactions. **Procedural justice** consists of providing an opportunity for a citizen to explain his side of a story in a given situation and for the officer, in turn, to make his decisions in a fair manner; within this context, an

officer must ensure that he responds with a respectful demeanor. There is a growing body of research indicating that when the public believes police are exercising their authority in procedurally just ways, there is improved deference to police authority and an equally improved impression of the police. Accordingly, there can be increased respect of citizens by the police and a substantial reduction in the incidence of circumstances that often give rise to the incidence of misconduct.¹⁰⁰

legitimacy

A measure of the extent to which the public trust the police, are willing to defer to police authority, and believe police actions are morally justified and appropriate.

procedural justice

Providing an opportunity for a citizen to explain his side of a story in a given situation and for the officer, in turn, to make decisions in a fair manner.

Formal Mechanisms for Detecting and Investigating Misconduct All large law enforcement agencies have internal affairs units to handle real and reported misconduct. Sworn personnel from within the agency staff these units. Citizen review boards also are common. These boards, which frequently include members from the community's minority groups, can review and make recommendations regarding complaints of police misconduct. They also may have authority to investigate complaints and even adjudicate claims. The presence of a Black mayor in a city increases the likelihood that a citizen review board will be created there.¹⁰¹

Independent auditors who evaluate citizen complaints generally work at high levels within law enforcement agencies or in outside government entities. They often have law degrees and are dedicated to ensuring a fair and thorough investigation.

Regardless of the mechanism, the key to a successful investigation is the ease with which people can register complaints. The intake process must be "color-blind" and accessible via many channels, including mail, anonymous _____ page 180 phone numbers, and in-person opportunities at police stations.¹⁰² The other crucial component is a speedy and fair resolution of complaints.

PRIVATE SECURITY

An overview of policing would not be complete without a look at its private sector counterpart in crime prevention: private security. Entrepreneurship and privatization are part of daily life in a democratic society; allowing for the

transfer of power and responsibility to the consumers of goods and services is a form of contracting out social control services.¹⁰³ In essence, then, **privatization** is the transfer of government programs and functions to the private sector.¹⁰⁴ Therefore, we can define **private security** as the nongovernmental, private sector practice of protecting people, property, and information; conducting investigations; and otherwise safeguarding an organization's assets.¹⁰⁵

privatization

The transfer of government programs and functions to the private sector.

private security

The nongovernmental, private sector practice of protecting people, property, and information; conducting investigations; and otherwise safeguarding an organization's assets.

Private security agencies provide for the safety and security of private individuals and organizations and prevent and detect criminal activity on private property. They help companies enforce corporate policy and respond to natural and other disasters. Importantly, private security is indispensable as extra "eyes and ears" for matters related to homeland security.¹⁰⁶

Growth

There are an estimated three times more private security officers in the United States than public law enforcement officers.¹⁰⁷ One reason for this dramatic growth is the expanded service offered by private security organizations. In addition to providing security guards, these organizations also install and monitor alarms, manufacture security equipment, and conduct polygraph tests, background investigations, and drug screening.¹⁰⁸ And private security companies often augment the workforce employed by the Transportation Security Administration (TSA).

Quality Concerns

In the early days of private security services, untrained and poorly disciplined staff committed many abuses (such as use of excessive force and sleeping while on duty). No licensing standards applied, and training was superficial. Many of those hired were unfamiliar with citizens' basic constitutional protections. In fact, many security workers could have been arrested for battery had citizens known the criminal statutes and complained to police. However, the private security industry has been slowly professionalizing, partly in response to concerns about

liability. To ensure at least a minimal degree of competence among private security workers, a number of states now require a licensing process.¹⁰⁹

Private Security/Law Enforcement Cooperation

Some forms of economic crime are beyond the scope or jurisdiction of local police, and some police departments are ill equipped to investigate corporate cases. System complexities make it particularly difficult for public law enforcement agencies to prevent and investigate high-tech crimes. In addition, many private enterprises—financial institutions, for example—are reluctant to have monetary losses or service interruptions due to criminal conduct (for example, via hacking) brought to the attention of their shareholders and the general public. Police are thus finding liaisons with private security agencies a useful way to increase the effectiveness of investigating and preventing crime. Security threats, familiar and unfamiliar, will most assuredly demand an expanded repertoire of collaborative arrangements.¹¹⁰

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A Global View

India's Growing Reliance on the Security Industry

India has an estimated 8 million security officers, making it larger than healthcare and almost as large as public administration. In large part, the high number of personnel is attributable to the country's infrastructure development. But it is also, in no small part, a result of the 2008 terrorist attacks in Mumbai.

The city of Mumbai, home to India's largest companies, is a primary target for terrorism as it symbolizes India's economic growth. The raid by terrorists in 2008 lasted three days and resulted in the deaths of 166 people. The terrorist assault team struck at "soft" targets where foreigners were likely to congregate. Gunmen opened fire indiscriminately in hotel lobbies, a train station, a movie theater, and a café, among other sites.

Manned guarding is the service line with maximum employment and is also the highest revenue generator for the private security industry, contributing to 80 percent of the revenue. However, the average security officer is often underscreened at entry, undertrained, poorly supervised, and underpaid. Herein lies the longstanding shortfall of the private sector in comparison to public policing: training standards. This is a deficiency across the security sector, both domestically and internationally. However, it does appear that the call for improvement is being heard.

The U.S. Department of Justice, in association with the American Society for Industrial Security (an international association of security practitioners dedicated to professionalism in the security sector), has included in its action agenda for enhancing the quality of the practice of security a call for the cross-

training of private security practitioners and law enforcement at existing training programs such as the FBI National Academy and the Federal Law Enforcement Training Center. Additionally, the agenda encourages study of law enforcement—private security partnerships in countries such as the United Kingdom, Ireland, Israel, and Sweden. Within India, the Private Security Agencies Regulation Act was recently created to establish minimum training standards (160 hours of training before deployment). Partnerships are being forged between local providers and those in Israel, Europe, and the United States for advanced training and consultant services.



Anupam Nath/AP Images

Time will tell the tale of India's quest to harden the potential targets of terrorists. The country certainly is boosting the number of its security forces at an impressive rate. Ultimate success will be determined by the extent to which the rate of growth in quality can match or surpass the rate of growth in quantity.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What might be a downside to using multinational trainers to train India's security forces?
- Would it be beneficial to have security forces train with law enforcement, or are their missions so different that training would be a waste of funds and time? Explain.

SOURCES: Stephanie Berrong, "India's Growing Security Industry," *Security Management* <http://aldeilis.net/mumbai/0519.pdf> (retrieved December 3, 2019); Bibhudatta Pradhan and Unni Krishnan, "Mumbai Police Strengthen Security on Terror Attack Intelligence," *Bloomberg Businessweek* <https://www.bloomberg.com/news/articles/2010-12-24/mumbai-police-bolster-security-search-for-four-said-to-plan-terror-attack> (retrieved January 13, 2011); Bill Roggio, "Analysis: Mumbai Attack Differs from Past Terror Strikes," *Long War Journal*.

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Private security firms are not always better than public law enforcement agencies, but neither are public agencies “automatically superior in every respect” to private organizations.¹¹¹ “A Global View” illustrates how private sector forces can be of significant value in “hardening” targets while at the same time reducing the strain on overwhelmed public sector forces attempting to respond to major incidents such as the terrorist attack on Mumbai, India.

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SUMMARY

The popular view of policing, one that is reinforced by the media, sees the police primarily as crime fighters and law enforcers. In fact, most tasks that police perform involve neither fighting crime nor enforcing the law. But when the occasion demands, the police are those who are entrusted with the authority to use force.

The community policing strategy in vogue today emphasizes crime prevention and the cultivation of a positive relationship between the police and the public. Even though policing in the United States has always been highly localized—a reflection of the high value placed on independence—law enforcement agencies exist at the federal, state, and local levels. The proliferation of agencies can afford greater protection for all citizens but can also result in the problem of fragmentation, which comes starkly to light when agencies fail to communicate critical information to one another and when they provide duplicate services.

Law enforcement agencies recruit widely and screen recruits through a careful selection process. Selected candidates receive classroom training in police academies and one-on-one field training under the direction of a senior officer. Despite the training recruits receive, police occupational subculture may influence officer behavior more than the agency’s rules and policies. Police are given wide discretion to act in the manner they deem most fitting in the particular circumstances. Still, there are some limits on their discretion, especially with the use of force and in vehicular pursuits.

An element of police subculture is the need to maintain authority, but police can misuse their authority when they disregard rules, orders, and laws in the performance of their duty. Officers sometimes try to justify such misconduct by claiming adherence to a “noble cause.” Police who abuse their authority for personal gain are guilty of corruption. To maintain the integrity of a department and its officers, management must investigate any suspicion of misconduct and root out those who are guilty.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Identify the distinguishing characteristics of policing.

- Most of what police officers do on a daily basis has little to do with enforcing laws.
- Less than one-fifth of calls to police relate to a crime, and even less patrol time is spent on crime-related activities.
- The primary distinguishing feature of police is society's grant of authority to use physical force as necessary.

Trace the evolution of policing in the United States.

- Vigilantism was an early method for enforcing group norms.
- The first publicly funded city police departments were slave patrols.
- The innovations of the London model of policing, such as preventive patrol and hierarchical organization, had a significant influence on early urban policing in the United States.
- During the political era of policing, most police jobs were filled through political patronage.
- Changes in technology, a focus on crime control, and hiring based on merit characterized the professional era of policing.
- The present-day community policing era emphasizes a police—community partnership and proactive policing.

Describe the structure of law enforcement.

- U.S. policing has always been highly localized.
- Law enforcement agencies exist at the local (municipal and county), state, and federal levels.
- Problems resulting from fragmentation—that is, the lack of coordination among neighboring local agencies—include duplication of services and the failure to share critical information.

Recognize how recruitment, selection, and training affect quality of service.

- Law enforcement agencies are challenged to recruit for an unprecedented number of vacancies and to ensure diversity in the force.
- The selection process typically includes a test of mental ability, an interview, physical and psychological examinations, and a background check.

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- Police officers today need to be service-oriented and proactive problem solvers.
- Training of police officers includes classroom study at a police academy, field training under the supervision of a senior officer, continuing professional training, and training for special areas.

Describe the dynamics of the police subculture.

- Police subculture may influence officer behavior more than formal rules and orders.
- Police subculture stresses the danger and irregularity of the work, the need for officers to support one another, and the necessity of maintaining authority.
- The blue code of silence is a code of loyalty among many officers that supersedes all other values and assures support regardless of the circumstances—including misconduct.

Contrast the positives and negatives in the use of police discretion.

- Discretion enables officers to enforce the spirit rather than strictly the letter of the law.
- Police must exercise vigilance to ensure that discretion does not become discrimination.

Distinguish between corruption and abuse of authority.

- Abuse of authority occurs when police disregard policies, rules, or laws to attain what they perceive to be a worthy outcome.
- Corruption includes taking advantage of the opportunity for personal gain.
- Management is responsible for establishing and maintaining integrity among officers and must incorporate mechanisms to facilitate reporting, detecting, and investigating allegations of misconduct.

Examine the extent and functions of private security agencies.

- Private security agencies direct most of their attention to the safety and security of private individuals and organizations, and to the prevention and detection of criminal activity on private property.
- Police are finding liaisons with the private sector and the business community a particularly fruitful way to increase effectiveness in attaining mutual goals of loss prevention and prevention of interruption of vital services.

Key Terms

abuse of authority 176
adult learning 169
blue code of silence 171
community policing 156
corruption 177
discretion 173
fragmentation 162
frankpledge system 153
legitimacy 179
noble cause 176
police occupational subculture 170
police organizational subculture 170
preventive patrol 153
private security 180
privatization 180
procedural justice 179
racial profiling 175
siege mentality 165
sworn personnel 157
vigilantism 151
watch system 153

Study Questions

1. Police officers are most accurately defined as
 - a. individuals granted the power to use force.
 - b. crime fighters.
 - c. order maintenance providers.
 - d. emergency management personnel.
2. Vigilantes
 - a. operated as well-organized groups.
 - b. were often poor people.
 - c. were paid by local governments.
 - d. were mostly harmless.
3. The policing era strongly influenced by Progressive era reforms was the
 - a. vigilante era.
 - b. political era.
 - c. professional era.
 - d. community policing era.
4. A problem resulting from the structure of policing in the United States is
 - a. overpolicing.
 - b. centralization.
 - c. fragmentation.
 - d. underpolicing.

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5. A preferred characteristic in police recruits is
 - a. political acumen.
 - b. a service orientation.
 - c. adventurousness.
 - d. militarism.
6. A major component of police occupational subculture is
 - a. stress.
 - b. individuality.
 - c. blind obedience to superiors.
 - d. perception of omnipresent danger.
7. Among the following, the factor or situation that, by itself, is least likely to result in an arrest is
 - a. a suspected narcotics dealer's negative attitude.
 - b. a first-time act of shoplifting by a female adult.
 - c. a hit-and-run accident by a Black male drunk driver.
 - d. a felony arrest warrant.
8. An essential component of a sound police disciplinary system is
 - a. having an early warning system.
 - b. prolonging the adjudication of complaints.
 - c. restricting the filing of complaints to in-person appearances at local precincts.

- d. limiting the acceptance of complaints to within a year of their reported occurrence.
9. One reason for giving police officers a relatively high degree of discretion is
- a. to enable an increased use of racial profiling.
 - b. to broaden the situations in which lethal force can be employed.
 - c. to compensate for the vagueness of many laws.
 - d. noble cause.
10. The term applicable to the situation in which officers act wrongfully on the grounds that inappropriate means are justified by the outcome is
- a. siege mentality.
 - b. bounded lawlessness.
 - c. virtuous misconduct.
 - d. noble cause.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Does the image of police as crime fighters make recruitment easier or more difficult? Why?
2. How did events in the professional era affect recruitment of Blacks to policing?
3. What accounts for the widespread police occupational subculture when neither police management nor the public condones an “us versus them” attitude?

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6 Policing Operations



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OBSERVE → INVESTIGATE → UNDERSTAND

After reading this chapter, you should be able to:

- Identify the principal policing roles.

- Compare the various policing strategies.
- Describe the different jobs in policing.
- Explain how police departments strive to maximize their resources.
- Identify the factors that shape public opinion about the police.
- Compare the service needs of diverse populations.

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Realities and Challenges

Violence Erupts in Charlottesville

In the context of protesting the removal of Confederate statues, on August 11 and 12, 2017, a Unite the Right Rally was called in Charlottesville, Virginia. Prior to the rally, people who had come to town to participate in the rally marched, with torches, on the campus of the University of Virginia to a statue of Thomas Jefferson (pictured). They were chanting racist and anti-Semitic slogans. That march set the stage for conflicts the next day.



Evelyn Hockstein/The Washington Post/Getty Images

Law enforcement was faced with the exceedingly difficult task of policing the likely clashes between groups of alt-right, white nationalists, neo-Nazis, and various militias with counterprotestors. The people who organized the event had obtained a permit to hold the event, but when the interactions between the protestors, who were carrying semiautomatic guns weapons, and the counterprotestors turned violent, the governor declared a state of emergency and the Virginia State police ordered the gathering unlawful; the protestors had to disperse. Instead of leaving the area, James Fields, a 20-year-old self-declared white supremist, drove his car into a crowd of counterprotestors, killing 30-year-old Heather Heyer and injuring 19 others. The tragedy led to many questions about how law enforcement officers can effectively police these types of events. How can they respond when they need to uphold the right to free speech and keep the peace? This chapter reviews the different roles the police play, the strategies they use, how the public views them, and how law enforcement interacts with diverse populations.¹

First in this chapter, we will examine the functions and services that make up policing operations. As we review proven strategies for fighting crime and the key duties assigned to police officers, we will note differences between the popular image of policing operations and the reality of a typical officer's day-to-day activities. We will consider that police work encompasses a variety of roles and tasks. Within a week's tour of duty, for example, a single officer might respond to calls relating to found property, an injured person, shots fired, an abandoned car, a traffic collision, a barking dog, and a landlord–tenant dispute. These calls, and any number of others, constitute the essential fabric of police work.²

POLICING ROLES

The popular image of a law enforcement officer is that of a heroic crime fighter who puts his or her life on the line every day. In the movies and on television, police officers spend most of their time combating criminals and rescuing victims from the grip of gun-toting, drug-sniffing thieves, killers, and psychopaths. The reality of law enforcement, however, is a far less dramatic story.

Consider the following facts. First, about half of all calls to police result in the dispatch of a police officer, although often, through an interview with the caller, it is apparent that sending an officer may not be necessary. For example, questioning the caller may reveal that a particular crime occurred some days earlier and does not now require an on-scene investigation; perhaps the victim needs only to have a police report prepared at the police station. [page 191](#) Second, contrary to popular belief, most calls do not involve in-progress violent crimes or criminal activities requiring arrest. Instead, between 70 and 80 percent of police dispatches are based upon requests to maintain order in the community or to provide a certain service.³ Third, only 19 percent of citizen calls for a police response involve a crime at all, and only 2 percent entail a violent crime.⁴ In fact, only 46 percent of violent crimes were reported to police in 2013.⁵

Still, whether or not a crime is reported, police are also responsible for enforcing the law. In this section, we will examine the three principal policing roles: maintaining order, enforcing the law, and providing services.

Preview

POLICING ROLES

POLICING STRATEGIES

POLICE OFFICERS ON THE JOB

THE POLICE ORGANIZATION

DEPLOYMENT OF POLICE RESOURCES

THE POLICE AND PUBLIC OPINION

RESPONDING TO DIVERSE POPULATIONS

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

MYTH/REALITY

MYTH: Police work primarily entails responding to crimes in progress or crimes that have just occurred.

REALITY: The vast majority of calls to police relate to neither violent confrontations nor criminal activities requiring arrest, but rather to minor disputes such as a landlord–tenant disagreement and to requests for service such as removing a vehicle that is blocking a driveway.⁶

Maintaining Order—Keeping the Peace

The first of the three major policing roles is **maintaining order**, or keeping the peace, the goal of which is to reinforce informal control mechanisms already operating in the community.⁷ Sometimes this role involves enforcement of local statutes and laws, such as when the police respond to complaints that someone is disturbing the peace. At other times the peacekeeping role involves activities undertaken to maintain the civility of life in the community. For example, the police may be called to investigate and deal with an abandoned car. In fact, police officers respond to many incidents not by enforcing the law but rather by handling the situation.⁸

maintaining order

Peacekeeping activities, including enforcement of quality of life laws such as no loitering.

Typical examples of maintaining order, or the peacekeeping function, include traffic control and crowd management during sporting events, concerts, and parades. Officers engaged in maintaining order typically use informal sanctions such as warnings far more than formal sanctions such as citations and arrests.

Enforcing the Law—When Arrest Is Needed

The primary function of **law enforcement** is the application of the criminal code to specific, developing situations. But the process of enforcing laws is not as clear-cut as you might expect. There are more laws in the criminal codes than police can routinely enforce, so they enforce laws based on their department's priorities, which are determined by factors such as the seriousness of a crime and the availability of police resources. These priorities are conveyed through departmental directives, training, peer interactions, and supervisors' preferences. Some laws are minor offenses, such as jaywalking, while others have a more serious impact on the community, such as toxic waste dumping. Police often tailor enforcement actions to community norms. For example, they may routinely arrest shoplifters if that is what local retailers desire.

law enforcement

The police agency's application of the criminal code to specific situations.

Apprehending suspects lies at the heart of the law enforcement function. The degree to which patrol officers and follow-up investigators work cooperatively will, in many cases, determine the quality of crime scene investigations and thus their outcome—that is, whether or not officers apprehend suspects.



▲ Keeping the Peace

Maintaining order in the community is one of three major policing functions.

John Tlumacki/The Boston Globe/Getty Images

Providing Service—Nonemergency Police Work

Service activities are non-law enforcement duties performed by police officers on an as-needed basis. Such activities include giving directions, arranging for tows of disabled vehicles, assisting disoriented elder adults, and arranging for barricade placement at dangerous spots along public roads. These duties fall to the police primarily because of their round-the-clock availability.

service activities

Non-law enforcement activities performed by officers on an as-needed basis.

The meaning of “service” in U.S. policing has developed significantly from its early politically based form. A new service orientation evolved in the later twentieth century as criminal justice scholars and policing practitioners recognized the value of community outreach both to reduce crime and to address community needs on a broad scale.

POLICING STRATEGIES

Reducing and responding to crime remains a key focus of police work. Police departments have developed several approaches to preventing and addressing criminal activity. These strategies are tailored to different types of crime situations.

Preventive Patrol

The assumption behind the strategy of **preventive patrol**, in which officers randomly patrol a neighborhood, is that the visible presence of an officer serves as a deterrent to a variety of street-level crimes, including prostitution, drug dealing, burglaries, and robbery. Preventive patrol is most often conducted by patrol car, but police may also patrol on foot (see the “Realities and Challenges” vignette at the beginning of this chapter) or by bicycle. The common feature of preventive patrol is the clearly identifiable presence of a uniformed police officer. Preventive patrol focuses on reducing street crime rather than offenses committed in the privacy of people’s homes.

preventive patrol

Officers’ maintenance of a visible presence in communities to serve as a deterrent to a variety of street-level crimes.

MYTH/REALITY

MYTH: Police presence reduces crime.

REALITY: Police presence alone does not reduce crime.⁹

KEY CONCEPTS Policing Roles

Function	Definition	Example
Maintaining order	Keeping the peace	Managing crowds
Enforcing the law	Applying criminal laws	Making an arrest
Providing service	Non-law enforcement activities provided to residents	Giving someone directions

The Kansas City Preventive Patrol Project, a police study [page 193](#) conducted in 1974, was designed to test the degree to which preventive patrol affected a variety of factors, including offense rates, response time, number of traffic accidents, level of public fear, and public satisfaction with the police. To measure the influence of preventive patrols on crime level, the researchers created three different kinds of districts in Kansas City. One type of district maintained the same number of patrols as before the study. A second type eliminated preventive patrol units altogether and required officers to leave the district immediately after responding to a call for service. In the third type of district, the number of patrol officers was increased.

The study found that the level of patrol in a neighborhood had no effect on any of the factors under study. Police administrators and academics were shocked to learn that there was no significant relationship between the number of officers patrolling a district and the number of crimes committed, the number of vehicular accidents, the level of residents' fear, the degree of support for the police, or police response time to calls for service.¹⁰

Perhaps, though, we should not be so surprised by the study's findings. The assumption that preventive patrol reduces crime also presumes that offenders are acting rationally, but criminal behavior is influenced by a variety of factors that limit rational decision-making. Offenders may find themselves in situations that lead to criminality or suffer from maladies that affect their mental capacity.¹¹

Problem-Oriented Policing

A strategy proposed by Herman Goldstein in the late 1970s, **problem-oriented policing** emphasizes discovering the underlying causes of problems. Goldstein encouraged police departments to consider the complexity of problems rather than narrowly focusing on crimes—a change from previous policing strategies. For example, suppose there have been several arsons in an area. Let's say that some were the work of teenagers burning down buildings, while others occurred when homeowners set fire to their homes to collect insurance monies. Both would be considered crimes of arson, but the underlying causes would be completely different and would call for different police responses. To identify the underlying causes of problems and then appropriately respond to them, Goldstein recommended that police take specific sequential steps.¹²

problem-oriented policing

A policing strategy based on conducting specific and detailed research on a community's problems to discover the underlying dynamics of crime.

The first step in a problem-oriented policing strategy is conducting specific and detailed research on a community's problems to reveal the underlying dynamics of crime.¹³ For example, suppose police discover that _____ page 194 burglaries in a college town largely victimize students and increase when the college is on break and most students have gone home. They notice that the pattern of these crimes differs from that of other residential crimes and commercial burglaries in the town. The crimes tend to victimize a specific population (college students), occur at particular times of year (during the breaks), and take place in a specific area of town (near the college). Once the department identifies the characteristics of the burglaries, officers can more effectively respond to—and prevent—these crimes.



▲ Police Officer Conducting Preventive Patrol

A typical police strategy is random patrol of neighborhoods
Hemis/Alamy

The second step in problem-oriented policing is to examine the ways in which the police department currently deals with a particular problem in order to identify the most effective responses. In the case of campus burglaries, the department would examine how it has dealt with such criminal patterns before and what strategies were most successful in preventing burglaries and apprehending perpetrators. Problem-oriented policing strategies also include

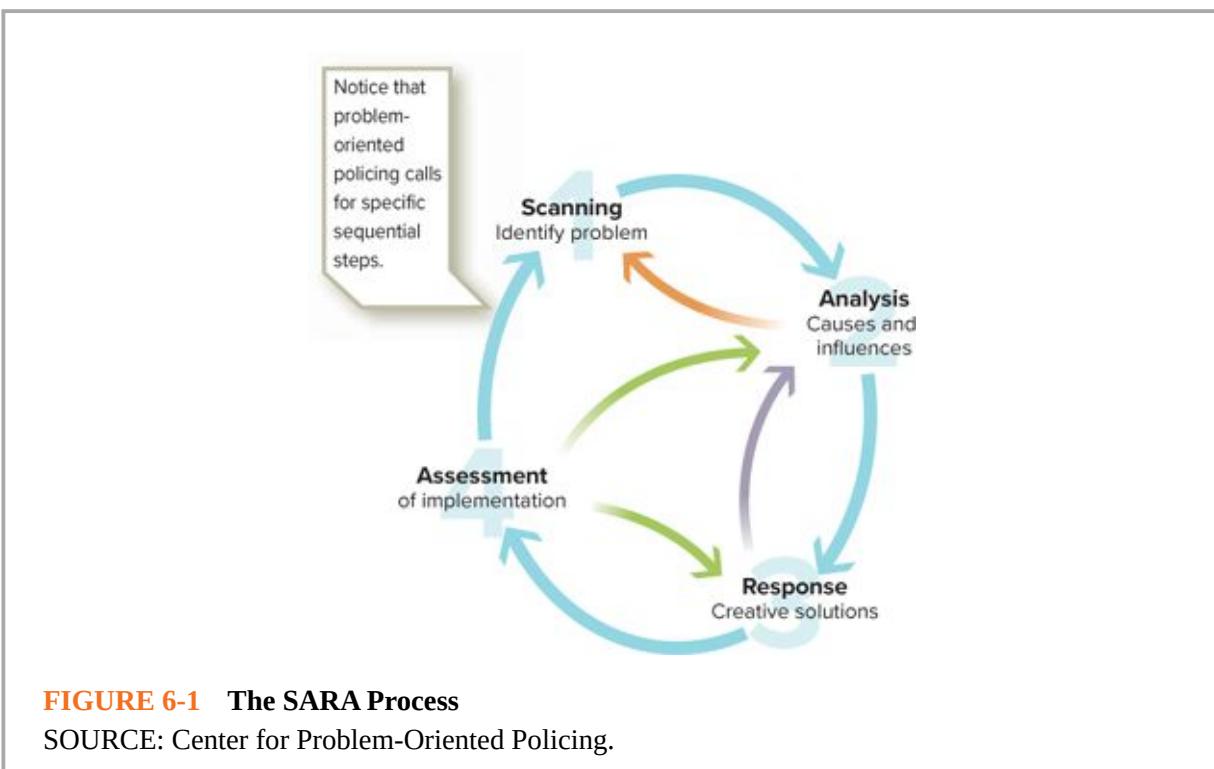
learning from other departments' successful practices and published studies on policing. The key concept in this second step is that departments are reviewing both their own responses and other relevant research as well.¹⁴

Once the department has identified the problem and researched ways to deal with it, the third step is devising strategies to address the problem. Police officials must consider how they might relay needed information to residents, develop new skills in their officers, and enhance community resources.¹⁵ In the campus burglaries example, new skills might include learning how to adapt campus patrols while college students are on break and setting up surveillance cameras to watch over the dormitories. “A Case in Point” illustrates a problem-oriented policing success.

Many police departments engage in some version of problem-oriented policing. The way problem-oriented policing is practiced in any individual department is influenced by both its priorities and its resources. In one approach, departments assign problem-oriented policing officers to a particular geographic area that is plagued by a variety of specific problems. Another approach is to assign these officers to specific problems that cross neighborhood boundaries. For example, police departments have used problem-oriented policing to tackle crimes involving both domestic violence and gang activity. In the case of domestic violence (DV), departments have created DV units to follow up with individuals who have made calls for police help in such cases. With gangs, teams of officers may successfully reduce some crimes by maintaining close contact with area youths known to have gang associations.

One model of problem-oriented policing is called *SARA* (a term that stands for scanning, analysis, response, and assessment). In the *scanning* step, the police department identifies the problem, its consequences, the frequency with which it occurs, and any other information relevant to understanding it. The next step, *analysis*, identifies anything that may be causing or influencing the problem. During the analysis step, police department researchers gather information on the problem to better understand how the department is currently handling it. While conducting analysis, the department will also learn what resources are already available to help solve the problem. In the third step, *response*, participants think creatively about ways to solve the problem. As part of the response step, a department will most likely learn how other jurisdictions have dealt with the same problem. The department then creates an implementation plan with clear objectives that will allow for measurable results. The final step is *assessment*, during which officers determine whether

the program was put into effect as intended and whether the goals were met. A plan for continuing assessment of the chosen strategy may also be a part of the assessment stage. Figure 6-1 illustrates the SARA process.



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a case in **point**

Problem-Oriented Policing in Action: The Pinellas County Sheriff's Office's Safe Harbor for the Homeless

The Pinellas Safe Harbor is an emergency homeless shelter and a jail diversion program to deal with individuals committing minor crimes related to homelessness. Safe Harbor was initiated in 2010 amid a rapidly expanding jail population. Upon examining the composition of the inmates, it became readily apparent that the Pinellas jail to a critical degree had

become a veritable dumping ground for a social problem—homelessness. A significant number of the jail's population were homeless and were spending hundreds of days being locked up for relatively minor offenses such as disorderly conduct for urinating in public, trespassing, and minor retail theft. Some were arrested more than 70 times within a two-year period.

The saturation point was reached when hundreds of inmates were required to sleep on the floor of the jail facility, which became an officer safety concern and a major operational issue. As there were no other options available, the decision was made by the county sheriff to secure a facility specifically for housing the homeless. This movement of the homeless inmates being held for minor offenses resulted in a dramatic reduction in the jail population. At the same time, it was discovered that the expense for housing homeless offenders outside the jail's confines decreased markedly since the separate housing of the homeless did not require conformance with accreditation standards required for housing prisoners in jail facilities.



Douglas R. Clifford/Newscom

Soon after its formation, the Sheriff's Office forged partnerships with numerous service providers, to include Pinellas County Public Defender's Office, WestCare Foundation, Metropolitan Ministries, Pinellas County Health and Human Services, Directions for Living, and the Pinellas County Homeless Leadership Board. The services provided are extensive. Metropolitan Ministries prepared three hot meals daily. Volunteers provide transportation to employment or medical appointments. Donations of new socks and underwear, as well as racks of donated clothes, are available. The Pinellas Suncoast Transit Authority buses stop near the shelter. Classes on parenting skills, jobs for life, and rent readiness are offered. Opportunities are extended to participate in Alcoholics Anonymous, Narcotics Anonymous, HIV awareness, and various workshops and religious services.

Contracted services provide internal security. Existing Pinellas County Jail perimeter patrols maintain facility perimeter security. There are five community policing deputies assigned to roving shifts at Pinellas Safe Harbor and environs. Additionally, there is a Street Outreach Program community policing deputy based out of Safe Harbor who works with a Directions for Living social worker.

The total capacity for Safe Harbor is 470, though the average daily occupancy approximates 400. Men and women share common facilities during the day but are housed separately at night. Intake staff complete assessments of each homeless person's appropriateness for the facility. The county spends \$2.3 million annually to run the facility. However, it is cost avoidance because the \$2.3 million being spent to house 400 people a day would cost \$4.5 million if they were housed in the county jail. Also, operational costs are offset by monetary donations from participating cities, civic groups, and citizens at large.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What does the Pinellas Safe Harbor program demonstrate about the value of applying the SARA problem-solving technique?
- Could the approach taken by the Pinellas County Sheriff's Office work in your community? Why or why not?

SOURCES: Police Executive Research Forum, *The Police Response to Homelessness* (Washington, DC: PERF, 2018), 12–13; Pinellas County Sheriff's Department, *Pinellas Safe Harbor*. <https://www.pcsoweb.com/pinellas-safe-harbor> (retrieved January 29, 2019).

Community-Oriented Policing

A policing strategy that focuses on reducing crime and disorder, such as loitering and graffiti, by involving residents in the job of policing is **community-oriented policing**. It has four components: police–community reciprocity, decentralization of police units, proactive policing using foot patrols, and the civilianization of the police force.¹⁶ These four ^{page 196} components result in policing that is focused more on maintaining positive police–community relations than on crime rates.

community-oriented policing

A policing strategy that depends on getting community members to address the problems that plague their neighborhoods.

Police–community reciprocity requires collaboration between police and community members to solve and prevent crime. The success of community

policing relies on a mutually beneficial bond between the police and the public. Community policing contends that policing is the responsibility of all members of a neighborhood and that the public is a partner in the effort to fight crime, disorder, and other community problems.¹⁷

police—community reciprocity

A policing practice that relies on collaboration between police and community members to solve and prevent crime.

A second component of community policing is **decentralization of command**, the creation of substations or police buildings in various areas so that the police maintain a physical presence throughout the community. Decentralization gives individual patrol officers more discretion to come up with ways to solve neighborhood problems. The belief is that because patrol officers interact daily with people in the neighborhood, they are better positioned than police managers to know what that community needs.

decentralization of command

The fanning out of substations in various areas so the police maintain a physical presence throughout the community.

A third component of community policing is **proactive foot patrol**, in which officers walk beats to learn more about the people in the neighborhoods they patrol and to develop relationships with them. Officers assigned to foot patrols generally report higher levels of satisfaction in their jobs.¹⁸ Perhaps the greater satisfaction arises because officers on foot patrol have more opportunities to interact with a wide variety of people rather than dealing almost exclusively with suspects and victims.

proactive foot patrol

A component of community policing in which officers walk beats to learn more about the people in the neighborhoods they patrol and to develop relationships with them.

Civilianization of the police force, the fourth component of community policing, involves assigning to civilians tasks previously performed by police officers. The goal of civilianization is to increase the number of community residents actively participating in policing. Civilian community service officers (CSOs) might help with gathering nonemergency reports or addressing community problems that are not of a serious criminal nature. CSOs typically perform tasks that involve no inherent danger or risk. For example, if a resident

reports that her house was burglarized while she was on vacation, a police department may send a CSO to take the report, because the crime occurred several days before the call for service, and thus no one is in imminent danger.

civilianization

A component of community policing that increases the number of community residents active in policing by assigning civilians to tasks previously performed by sworn officers.

Although the goals of community policing are laudable, this policing strategy has been subject to some criticism. For example, some scholars have raised questions about what constitutes a community and how different groups—the police, other city employees, residents—define geographic areas as a community. In other words, what the police define as a community, the residents and others may not.¹⁹ Also, some critics point out that police do not communicate equally with all members of a community and that individuals with greater resources are more likely than others to have opportunities for positive interactions with police. Other critics observe that the members of the community do not always agree on identified problems and solutions.²⁰ Finally, some observers view community policing as just the latest strategy in the overpolicing of Blacks—a tactic whereby police take advantage of their large number of contacts with the community to keep their surveillance of this particular group of people high.²¹

Implementing Community Policing Because community-oriented policing is an innovative policing strategy, there have been difficulties in implementing its various components. We consider some of these challenges here.

Real Careers



Roy Morsch/Fuse/Getty Images

STACY SHAMBLIN

Work location: Reno, NV

College(s): University of Nevada, Reno (2007)

Major(s): Criminal Justice (BS)

Job title: Methamphetamine Program Coordinator, Reno Police Department

Salary range for jobs like this: \$35,000—\$50,000

Time in job: 1.5 years

Work Responsibilities

I coordinate drug education and prevention activities for the Reno Police Department. We educate citizens about the drugs commonly abused in their area, the effects and paraphernalia associated with those drugs, and drug prevention strategies. In general, the program serves middle and high school students, parents, and professionals who work with teens and young adults. My role in the program is to fulfill requests for instructional materials and presentations and to provide drug awareness training targeted for the specific audience. Trends in substance abuse often change, and I adapt our curriculum to provide the most accurate information possible.

In addition to managing the program, I am responsible for monitoring and reporting quarterly progress to the federal office that funds our activities—COPS, or Community-Oriented Policing Services (part of the U.S. Department of Justice). Although writing reports is not as exciting as planning presentations, it is an important aspect of my job because these reports determine whether our program will continue to receive federal funding.

Why Criminal Justice?

When I was a teenager, I wanted to pursue a career as a criminal prosecutor. As I prepared for college, I realized I wanted to have a more direct impact on crime and public safety through a career in civilian law enforcement. I did not know what careers were possible in law enforcement other than police officer, so I consulted my professors and worked two internships while in college.

During my junior year, I applied for the FBI Scholastic Honors Internship Program and was selected to intern in the Economic Crimes Unit at FBI headquarters in Washington, DC. My summer with the FBI proved to be a valuable work experience and was certainly a great asset to my resume, but the internship that was most instrumental to my current career was at the Crime Analysis Unit of the Reno Police Department. Shortly after I graduated, my former supervisor, who was impressed with my work as an intern, notified me that the position of methamphetamine program coordinator had become available.

Expectations and Realities of the Job

I have been somewhat surprised by my influence in making key decisions for the program. Even though I am an entry-level employee, I have been encouraged to suggest and even implement new strategies to improve the success of the program. I am impressed with the effectiveness of the COPS approach to tackling drug problems, which utilizes cooperation and partnerships with outside agencies. I frequently work with schools and community organizations, such as Join Together Northern Nevada, Nevada Prevention Resource Center, and Boys & Girls Club.

My Advice to Students

Apply for internships. My internship experiences gave me a competitive edge in the employment marketplace. They allowed me to explore potential career opportunities, including some nontraditional criminal justice careers that I previously had not known about. In addition, my internships provided me with opportunities to build my project management and professional communication skills, which are applicable to any career in law enforcement.

Some police departments have received federal grants to encourage them to implement community policing programs. The federal Office of Community Policing Services (COPS) was created in 1994 by the Violent Crime Control and Law Enforcement Act. COPS was charged with distributing grants totaling \$8.8 billion over six years. Their first major grant focus was to aid police departments in hiring officers who were specifically designated community-oriented policing officers. The office and its funding have grown since that time. In 2015, the office announced that applications were open for five different grant programs—COPS Hiring Program, Community Policing Development Program, COPS Anti-Gang Initiative, Anti-Heroin Taskforce Program, and the Anti-Methamphetamine Program. As of 2015, COPS has distributed \$14 billion to 13,000 law enforcement agencies (from page 198 state to tribal). This has resulted in the hiring or redeployment of 126,000 officers to community- and problem-oriented policing functions.

Year	Development	Appropriation
1994	Office of Community-Oriented Policing (COPS) is created	\$148.4 million

Year	Development	Appropriation
1999	Has hired 100,000 community policing officers	\$1.46 billion
2005	Government study indicates COPS funding to communities reduced crime	\$598 million
2008	Starts Child Sexual Predator Program	\$587 million
2015	COPS hosts forum “Healthy Police–Community Relations within a Human Rights Framework”	2014 appropriation, \$124 million

▲ Highlights from the Office of Community-Oriented Policing Services

SOURCE: U.S. Department of Justice, “The COPS Office: 20 Years of Community Oriented Policing.” https://cops.usdoj.gov/html/dispatch/11-2014/cops_office_20th_anniversary.asp.

Community policing reformers argue that community policing allows police to change their relationship with the public, partly by reducing the number of ranks in a department. Streamlining the ranks means that there are not as many different levels of officers from the patrol level to the chief’s level. Because community policing also emphasizes that officers should be generalists who deal with all the problems of a community, some police departments have reduced the number of department sections that focus on a particular task or crime. In practice, however, research has found no significant difference in organizational structure between departments that claim to be using community policing and those that do not. That is, many departments that say they are implementing community policing have not reduced either the number of ranks in the department or the number of sections focused on a particular task or crime.²²

As shown in Figures 6-2 and 6-3, the structure of a department that has reduced the number of ranks and sections looks very different from that of a traditional department. A department structured like that shown in Figure 6-3 is more likely to give patrol officers increased discretion, a central feature of community policing. Thus, a department with a flatter organization like that pictured in Figure 6-3 is likely to be implementing a community-oriented policing strategy.



FIGURE 6-2 Hierarchical Structure of a Traditional Police Department

Basic Elements Photography/Getty Images



FIGURE 6-3 Structure of a Community-Oriented Policing Department: Fewer Ranks and Sections

Implementing community-oriented policing requires change not only in organizational structure but also in police culture. Because of these two requirements, the nationwide implementation of community policing is occurring slowly.²³

Consider that traditional police culture regards crime prevention and law enforcement as the sole responsibility of the police. In community policing, however, crime prevention is considered a *joint* responsibility of police officers and community members. This notion is a fundamental change in the understanding of what makes up police work—and changing *any* professional culture, including police culture, is difficult. Cultural changes often start with the leadership of organizations. There is little chance that a police department will implement community policing if the chief is not fully committed to the strategy.²⁴ Patrol officers must also support the philosophy, because they are the ones who will put it into effect at the street level. Support for such a cultural change among police officers, however, is uneven. In general, officers of color are more likely to support community policing.²⁵

The Impact of Community Policing During the early 1990s, when community policing became the model for departments, the crime rate declined, but community-oriented policing was not necessarily the page 199 reason.²⁶ If community policing does not reduce crime, why is the strategy so popular with federal, state, and local governments?

The answer is that crime reduction is not the only way to assess the impact of community policing. Another significant measure of this strategy's influence is the community's confidence in the police and the development of a positive relationship between the police and the public—a central goal of page 200 community-oriented policing. Indeed, volunteers in community policing programs within their local police departments generally report high confidence in the police. Furthermore, law-abiding individuals who have a greater number of contacts with the police department are more likely to have a higher level of support for their police.²⁷

Aggressive Order Maintenance

Disorder is frequently a major contributor to residents' discontent with their neighborhoods, especially in urban communities. Naturally, many residents fear and disapprove of vagrants, drunks, drug addicts, loud teenagers, and others who may disturb the peace in the streets.²⁸ For such residents, the

presence of such people signifies that the neighborhood is experiencing disorder.

One strategy for fighting disorder is **aggressive order maintenance**, or *zero tolerance policing*, in which police focus on minor public order offenses that affect residents' quality of life. For example, officers target abandoned cars, graffiti, public urination, and loitering by identifiable gang members by using stop-and-frisk actions and field interrogations. A strategy of aggressive order maintenance drives up the number of arrests for minor offenses.

aggressive order maintenance

Policing activities that address noncriminal or minor offenses that affect residents' quality of life.

One influential perspective on aggressive order maintenance is known as the **broken windows theory**. Proposed by social scientists James Q. Wilson and George Kelling, the broken windows theory argues that there is a relationship between the deterioration of a neighborhood and higher crime rates. In their view, disorder leads to crime because criminals assume that a neighborhood that tolerates disorder—in the form of broken windows, graffiti, and the like—will also ignore more serious criminal acts.²⁹ From Wilson and Kelling's perspective, minor crimes lead to more serious crimes. The broken windows theory also holds that having officers focus on minor offenses will reduce serious offenses. This point of view seems logical, but showing a relationship between disorder and crime is not always easy.

broken windows theory

Theory proposing that disorder leads to crime because criminals assume that a neighborhood that tolerates disorder will also ignore criminal acts.

The broken windows theory has had a major impact on how criminal justice professionals and members of the public think about crime and how they believe police departments should use their resources. The idea that disorder leads to more serious crimes suggests that police officers should focus more of their time on addressing minor nuisance-type enforcement that previously was unlikely to get much notice from patrol officers. Wilson and Kelling also contend that a police focus on reducing disorder would ease public fears. Hence, if police could reduce disorder, they could also reduce more serious crimes *and* fear of crime.

Although the broken windows theory is politically popular, the relationship between disorder and crime is complicated. In fact, the link between disorder

and crime has not been proved, with the exception of the crime of robbery.³⁰ An important factor in the mix that must be considered is *community efficacy* —the feeling among community members that they can do something about their neighborhood. Importantly, the *absence* of community efficacy leads to both disorder and crime. When people in a neighborhood are bound together by common values about public disorder and crime, they create a common community culture and develop a sense of community efficacy. However, the reality is that community efficacy is less common in poor communities, so poor communities are more likely to have neighborhoods characterized by disorder.

Many of the ideas underpinning the broken windows theory remain popular. For example, some metropolitan law enforcement agencies, among them the New York City Police Department, see aggressive order maintenance as a successful policing strategy. These agencies believe that strict enforcement in the case of minor offenses increases the quality of life in neighborhoods that were previously considered blighted. Moreover, other supporters _____ page 201 of aggressive order maintenance argue that it reduces both crime and residents' fear of crime. But on the other side of the debate, opponents of the strategy say that aggressive order maintenance results in targeted policing in poor neighborhoods and focuses mainly on people of color.

POLICE OFFICERS ON THE JOB

The principal activities performed by law enforcement officers are patrol, follow-up investigation by detectives, and traffic operations. These are customarily referred to as **line activities**. Additional activities that support line activities are referred to as **support activities**.³¹ These may include communications, custody, and forensics. Law enforcement agency employees who are sworn officers usually fill line positions, while civilian employees typically occupy the support positions.

line activities

The principal activities performed by law enforcement officers, including patrol, follow-up investigation, and traffic operations.

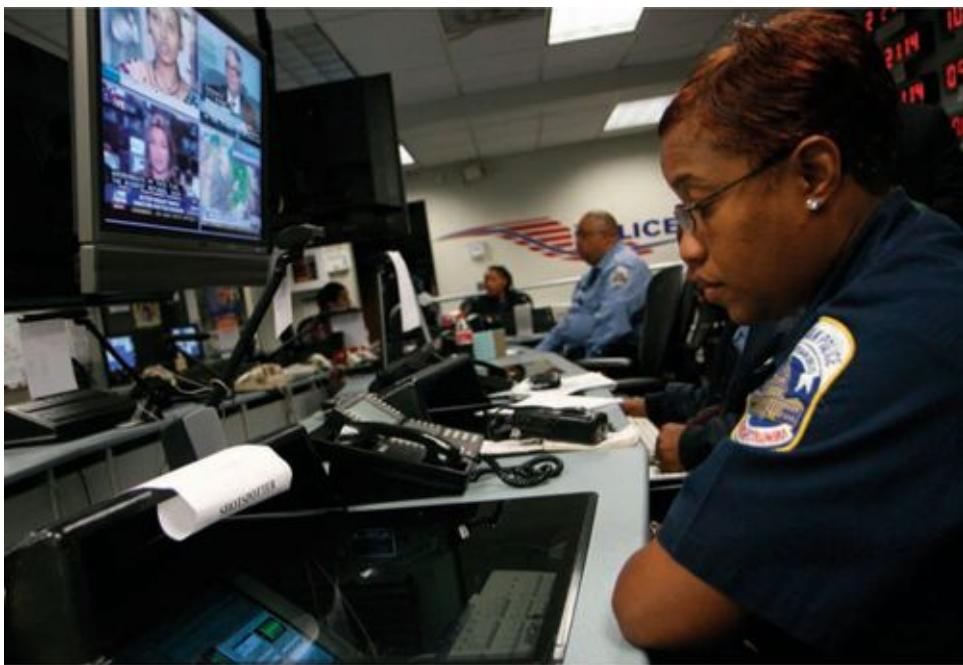
support activities

Additional policing activities that support line activities, such as communications, custody, and forensics.

The Rookie Officer—Meeting the Real World

The first day of work for the average police academy graduate working in a city is often overwhelming. The role-playing scenarios practiced at the academy suddenly become real as the rookie officer is immersed in the daily functions of policing: maintaining order, enforcing the law, and providing service. The rookie learns the rhythm of the patrol officer while working under the watchful and often hypercritical eye of a training officer. The vehicle pull-overs are now real, as are the tickets issued to motorists. To the rookie's surprise, every action takes much longer to complete than expected.

As radio calls arrive from the dispatcher, the rookie gains a sense of the call load queue. The "queue" is the array of calls for service awaiting handling. Depending on the communications equipment installed in police vehicles, the queue of calls may or may not be visible to the officer. Already on the way to a "landlord–tenant dispute," the officer must turn the squad car around in the hope of catching the perpetrator of a "burglary in progress." As the new call receives priority, the officer wonders what might be waiting at the scene. The training officer and other senior officers will scrutinize the rookie officer's performance closely; the new officer must act carefully, know page 202 when to call for backup, and not make any serious rookie mistakes such as exposing the gun side of the hip (a position of tactical disadvantage) while interviewing a suspicious person.



▲ Dispatcher at Work

Dispatchers are essential in helping police officers do their job.

Michael Robinson-Chavez/The Washington Post/Getty Images

The Patrol Officer—The Backbone of Policing

Uniformed personnel (patrol officers) assigned to patrol specific regions of a city or county perform the bulk of police work. The majority of patrol officer contacts with the public are responses to calls for service.

Patrol officers are the first individuals to respond to a call for service. They are in many ways the backbone of the law enforcement organization. The patrol officer is the most visible face of the agency and the initial responder to virtually any incident requiring a police response. The patrol force is the component around which a police department is constructed; without the patrol component, there would be no law enforcement capability. Patrol officers do not merely wait around the precinct station for a call; they are out and about in the geographic region that makes up their jurisdiction, always on the lookout for suspicious activity. They keep a watchful eye on the streets they patrol, noting such variables as time and place, appearance, and behavior of an individual to determine whether the scenarios they observe might be considered suspicious activity.³²

MYTH/REALITY

MYTH: Detectives are most responsible for preserving the integrity of a crime scene.

REALITY: The quality of the patrol officer's preliminary investigation is the key determinant in solving crimes. If the description obtained at the scene of the crime is accurate, there is a reasonable likelihood of solving the case.³³

The patrol officer has a crucial role at crime scenes. As the first responder on the scene, she must be alert for any fleeing suspects and assess the scene for the safety of other officers and/or emergency medical technicians who are on the way. At the crime scene, the patrol officer must locate key parties (victims, suspects, or witnesses), control them, and identify and preserve any physical evidence. Once the patrol officer musters sufficient resources to secure the crime scene and identify or control persons of interest, she must document everything she observed.³⁴ In large agencies, the officer's reports and notes are provided to detectives for their follow-up investigation. In small agencies, the first responding officer may also handle the follow-up.

A 1975 seminal study revealed that the bulk of the cases solved by detectives hinged on information obtained by patrol officers during their preliminary investigation, with a witness's or victim's at-scene description of a suspect a crucial factor.³⁵ A second and larger 2001 study reaffirmed the importance of patrol officers in the investigative process, with 72 percent of surveyed agencies reporting efforts to enhance patrol officers' investigative role.³⁶ A 2011 in-depth job task analysis of the criminal investigator function suggested that spreading the problem analysis practices of uniformed patrol officers to investigators could be a promising way to orient them toward strategic crime control, that is, toward addressing the underlying conditions that cause crime problems to persist.³⁷

Follow-up Investigation

A follow-up investigation occurs after a patrol officer documents the facts of the crime. For serious crimes (e.g., homicides and home invasion robberies), the detective may be called directly to the scene and receive a [page 203](#) briefing from the first responder. In most cases, however, the detective receives the patrol officer's report the next day, after physical evidence and suspects have already been secured.

Real Careers



Tetra Images/Getty Images

MARK DEMMER

Work Location: Washington County, OR

College(s): California State University, Chico (2008)

Major(s): Criminal Justice (BS)

Job title: Patrol Officer

Salary range for jobs like this: \$45,000—\$50,000

Time in job: 1 year

Work Responsibilities

A usual day consists of making traffic stops and writing reports for any number of things, from thefts to automobile crashes. There is no such thing as a typical week. One week I might write 5 reports and make 40 traffic stops; the next I might write 15 reports and only make 5 traffic stops. The workweek is dynamic and keeps me energized. It doesn't even feel like a chore for me to go to work. Every day I feel proud to be helping people and making a difference in their lives and the community. What makes the job even more of a pleasure are the new friendships I have developed with my coworkers.

Why Criminal Justice?

After my first “ride-along” in Great Falls, Montana, as a high school volunteer at my local police department, I knew I wanted to be a cop. But I had to work hard to get my dream job. After going through four years of college and seven months of testing and interviewing, I landed the position.

Expectations and Realities of the Job

This career has been more difficult than I expected. For example, while I learned how to write in college, I had to learn how to write detailed police reports after I got hired. These are important because they are used in court and can make the difference in what the verdict in a case might be.

Multitasking has also been an unwritten requirement of the job. For example, while I'm driving the police vehicle, I have to operate the communications equipment. During vehicle pull-overs or when I arrive at the location of a call for service, I have to tactically position the police vehicle for maximum safety and efficiency. Shift rotations (e.g., moving from the daytime shift to the graveyard shift and having to stay awake at 3:00 a.m. and then going to bed at 10:00 a.m.) take some getting used to as well. Thank goodness for aluminum foil, which does do the trick in terms of shutting out the daylight. Extended shifts, often resulting from a court appearance or overtime for an arrest or a search for a suspect or missing child, are another challenge.

My Advice to Students

Once you leave college for the real world, it is important to set achievable goals. For me it was work hard and get hired. And even if you reach your goal, don't think it can't be taken away. I've realized it's hard to get hired but even harder to stay hired. Try learning from the veterans and consider their advice.

Because resources are limited, priorities among criminal incidents requiring investigation are determined by the seriousness of the crime and its **solvability**, that is, the likelihood the crime will be solved. Solvability depends upon the presence of clues or evidence that makes apprehension of a suspect more likely. Several specific factors affect solvability: the quality of the patrol officer's preliminary investigation, the availability of witnesses, a suspect's name or identifying information, significant physical evidence, page 204 and identification of a unique method of operation (MO) by the perpetrator.

solvability

The likelihood that a crime will be solved.



▲ Detectives attempt to salvage crucial physical evidence.

Bruce Kellman/The News Tribune/AP Images

Solving crimes can be very difficult, however. For example, according to FBI records, nationwide in 2017, law enforcement cleared 45.6 percent of violent crimes and 17.6 percent of property crimes. In the FBI's Uniform Crime Reporting Program, law enforcement agencies can close, or "clear," cases in one of two ways: by arrest or by "exceptional means." The rate of crime clearance is calculated by dividing the number of crimes cleared by arrest or "exceptional means" by the number of criminal offenses reported. Clearing of crimes by "exceptional means" requires that an agency encounter circumstances outside its control that preclude arresting, charging, and prosecuting an identified offender. "Examples of exceptional [means] clearances include, but are not limited to, the death of the offender (e.g.,

suicide or justifiably killed by police or citizen); the victim's refusal to cooperate with the prosecution after the offender has been identified; or the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense.”³⁸ This low solvability rate can partly be explained by the fact that solving crimes when a witness or victim does not identify the suspect is very difficult.

A detective’s follow-up investigation plan typically includes visiting the crime scene and documenting everything related to the case. When all the evidence and information have been obtained and a suspect has been apprehended, the detective prepares the case for presentation to the prosecutor, who reviews its worthiness for a court’s scrutiny.³⁹

Enforcing Traffic Laws

Police are the primary public safety agency in charge of the enforcement of traffic laws. Law enforcement officers have this responsibility for several reasons. One reason is the relationship between crime and traffic incidents. Think about it: Automobiles are frequently used in the commission of crimes, and police are equipped to find and capture suspects on the run. In high-crime areas, searches incidental to traffic stops frequently yield illegal drugs and firearms, precipitating a disruptive influence on organized criminal enterprises.⁴⁰ Police are also outfitted and trained to handle situations that might result from traffic stops, such as belligerence on the part of drunk drivers, aggravated traffic violations, and the discovery of persons with outstanding warrants. Finally, police use their investigative skills to elicit statements and document facts relating to traffic collisions.⁴¹

Until recently, the police alone were responsible for enforcing traffic laws. However, the so-called traffic services functions have begun to extend beyond the law enforcement agency. Indeed, in many communities, the police partner with community agencies that draft and implement transportation policy, such as the local department of transportation. These partnerships effectively identify existing traffic-related problems and develop solutions that benefit the whole community.

For example, the accident reports taken by police feed into local and statewide computerized databases that may be accessed by city, county, and state government transportation entities. Sharing this database helps them identify problems that may be mitigated through engineering solutions such as roadway alterations or the placement of traffic lights. For their part, police may

use these databases to identify locations that are particularly prone to traffic accidents and may increase their patrols accordingly. Direct interaction with citizens enables police to learn about the specific concerns of the community while providing a forum to educate the public on evolving traffic safety practices such as speed bumps and roundabouts that restrict speed and increase pedestrian safety. Law enforcement also relies on devices such as [page 205](#) photo radar cameras and electronic message signs to prevent collisions and provide advisories of traffic conditions.⁴²

Communications Technology—The Central Nervous System of Policing

Just as the patrol function is often considered the backbone of policing, communications might be thought of as the central nervous system that coordinates the performance of law enforcement activities. Computer-aided dispatch supplements radio communication and allows patrol officers to remotely search databases for warrants for individuals or vehicles without having to go through the central dispatch center. Many agencies are working to establish next-generation 9-1-1 (NG911) capabilities that will better serve today's wireless society; 9-1-1 systems that are capable of receiving text messages, photographs, and videos will be more useful for public safety purposes.⁴³

Communications interoperability is the ability of police agencies (and other public safety entities such as fire departments and emergency management agencies) from different jurisdictions to talk and share data in real time. Though vitally important, such communication is often a challenge, because different jurisdictions operate on different frequencies. Precious time is lost while dispatchers manually relay emergency communications between radio systems. Technology that facilitates communication among different bands is being developed, as is a Nationwide Public Safety Broadband Network, which will provide a secure, dedicated interoperable network for emergency responders to communicate during an emergency.⁴⁴ The “Disconnects” box describes the capabilities of this system, “FirstNet,” and the complementary NG911 system.

communications interoperability

The ability of police and other public safety agencies from different jurisdictions to talk and share data.

Mobile video systems, which complement computer-aided dispatch in enabling an official record of events, consist of vehicle-mounted cameras that capture audio and video information, providing evidence of crimes such as drunk driving while monitoring officers' conduct.⁴⁵ Before the widespread use of in-car video systems (and body-worn cameras), evidence of alleged offenses or of misconduct by an officer was sorely lacking. The availability of video has greatly reduced the burden of producing evidence for both the alleged offender and the officer. Accused parties may introduce portions of the video to refute police allegations, just as police officers may introduce video evidence to refute allegations of police misconduct.



Viappy/Shutterstock

Real Crime Tech

FLAGGING IN-PROGRESS CRIMES

Videos from surveillance cameras have an ability to not only aid in post-event investigation but also to enable intervention in criminal events as they occur. Surveillance cameras have emerged as a popular law enforcement tool to address crime. However, the number of cameras has outpaced the capacity to monitor the cameras, and thus to respond in real time to the image captured. An emerging response to the shortfalls of human-monitored camera systems is “computer vision.” The development of live-event analysis is conducted along dual computer vision paths: detection of preidentified events of interest and detection of anomalous, potential criminal incidents. Computer vision increases the extent of video segments analyzed, and, too, an algorithm is not distracted during real-time monitoring.

SOURCES: Haroon Idrees, Mubarak Shah, and Ray Surette, “Enhancing Camera Surveillance Using Computer Vision: A Research Note,” *Policing: An International Journal of Police Strategies & Management* 41, no. 2 (2018): 292—307; Mubarak Shah, *Studying the Impact of Video Analytics*

for Pre, Live, and Post Event Analysis on Outcomes of Criminal Justice (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2018).

Custody—Booking and Holding Offenders

Custody is the incarceration of persons either accused or convicted of a crime. The length of time a law enforcement agency keeps an arrested person in custody varies. In general, police departments maintain only temporary holding facilities for arrested persons. They may be booked into the police station for a few days before being taken before a judge, who then evaluates the grounds for arrest and determines whether the person can be detained longer. The detective assigned to the follow-up investigation may question a suspect in police custody, and the police may run fingerprint identification on the suspect.

custody

The incarceration of persons either accused or convicted of a crime.

Custody is usually a core function of a sheriff's department. As county entities, sheriff's departments maintain a central jail for persons awaiting trial and for those who have been convicted and are serving a period of page 206 incarceration up to a year. Newly appointed deputy sheriffs commonly serve a stint in the county's jail facility before being assigned to patrol, traffic, or investigative details.

DIS Connects

Repairing the Disconnect in Emergency Communications

Today, the vast majority of first responders rely on more than 10,000 separate, incompatible, and often proprietary radio networks for communication. Because they are not connected on one network, emergency responders from different jurisdictions cannot directly communicate with one another.

However, the United States is on the cusp of the biggest evolutionary step in emergency communications in nearly 50 years. Next Generation 911 and FirstNet technologies are poised to fundamentally change how the public communicates with the police and how disparate agencies' officers communicate.

Next Generation 911 (NG911) is an internet-based 911 system that will allow callers through mobile and digital devices to communicate with 911 call centers. This includes the ability to share rich data such as audio and video recordings, photos, and texts, as well receive data from other transmitting devices such as wearable medical devices and building alarms and video cameras. NG911 is a necessary upgrade of the 911 system to adapt to how people communicate today, largely through mobile and digital devices.

NG911 also enhances the ability of 911 centers to communicate with each other. In cases of mass casualty incidents or natural disasters, overwhelmed call centers can seamlessly enable transfer of calls to another less impacted call center.

FirstNet is a nationwide public safety communications network established by Congress as an independent authority within the National Telecommunications and Information Administration. The purpose of FirstNet is to create, operate, and maintain an interoperable wireless broadband network for first responders to communicate with one another in the field and receive important information from call centers. It provides seamless mobile broadband communication among public safety responder agencies. Through the network, dispatchers will be able to provide information about the scene of an incident, such as building floor plans, videos, and photos.

NG911 and FirstNet are different systems moving on separate tracks, but they are complementary. When fully implemented and coordinated, the two systems will significantly improve communications capabilities among the public, call centers, and first responders.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What are the consequences of public safety agencies' inability to communicate across jurisdictions?
- How might NG911 and FirstNet facilitate the handling of an active shooter situation?
- How might NG911 facilitate police response to a missing child report?

SOURCES: Roman Gressier, Mawia Khogali, and Daniel Mocombe, "Future Directions of Technology in Policing," *Emerging Issues in American Policing Digest 2* (March 2018), <https://www.vera.org/publications/emerging-issues-in-american-policing-digest/volume-2/digest-2> (retrieved February 7, 2019); Police Executive Research Forum, *The Revolution in Emergency Communications* (Washington, DC: PERF, 2017); First Responder Network Authority, "Why FirstNet?." <https://www.firstnet.gov/about/why> (retrieved February 7, 2019); PoliceOne Staff, "NG911 and FirstNet: Breaking Down the Differences," *PoliceOne.Com*, August 15, 2017. <https://www.policeone.com/police-products/communications/articles/410210006-NG911-and-FirstNet-Breaking-down-the-differences/> (retrieved February 7, 2019).



▲ Suspect Processing

This police officer is processing an arrested person for transfer to the jail facility of a sheriff's department.

ThinkStock Images/Getty Images

Forensics—Applying Science to Investigations

Forensics is the application of scientific knowledge and methods to criminal and civil investigations and legal procedures, including criminal trials. Facilities using scientific or technical methods to process and analyze evidence are called **forensic science laboratories**. **Criminalistics** is the use of scientific techniques in recognizing, identifying, individualizing, and evaluating physical evidence.⁴⁶ In the past, scientific analysis of evidence occurred near the end of a criminal investigation—when a case was being prepared for trial. Today, scientific analysis begins with the first responder to the crime.

forensics

The application of scientific knowledge and methods to criminal and civil investigations and legal procedures, including criminal trials.

forensic science laboratories

Facilities using scientific or technical methods to process and analyze evidence.

criminalistics

The application of scientific techniques to recognizing, identifying, individualizing, and evaluating physical evidence in legal proceedings.

MYTH/REALITY

MYTH: Forensics results are available quickly and reliably to most major police departments.

REALITY: Even when forensics tests are available, results can take days, weeks, or even months. Furthermore, due to evidence contamination or other problems, the results are not always

reliable.⁴⁷

The prominent role of forensics in criminal investigations rests on two factors: increased awareness of its value in identifying and protecting evidence, and advances in technology. Popular television shows highlighting [page 207](#) forensic techniques have profoundly influenced public expectations in terms of evidence collection, analysis, and presentation in court. On television, the forensic laboratory returns results to police within hours of evidence collection. In real life, however, forensic testing analysis can take days, weeks, or even months.⁴⁸



▲ Forensic Chemist-Anthropologist with Bones

Technology has helped solve crimes, but getting evidence analyzed is sometimes difficult given limited resources.

Marco Di Lauro/Getty Images

In the world of forensics, the demand for DNA testing in particular continues to accelerate. Principal reasons include a skyrocketing increase in the number of DNA samples from property crimes (whose incidence far outnumbers that of violent crimes); the reopening of cold cases; examination of possible instances of wrongful conviction; and advances in analysis capabilities that enable “hits”—DNA matches—from minute samples. Too, recently, jurisdictions across the United States have expressed a growing

interest in aiding criminal investigations through the use of familial DNA searching, a forensic technique to identify family member linkages associated with a crime scene DNA sample.⁴⁹

Scientific analysis is applied to a wide range of evidence beyond DNA, including controlled substances, fire debris, explosive residues, hairs, fibers, glass, soil, paint, fingerprints, tire tracks, footwear, tool marks, and firearms.⁵⁰ Included too are the complex analyses that involve computer-stored information and insects that inhabit corpses (to determine time and location of death). The “Careers in Forensics” table lists the variety of forensic career types.

THE POLICE ORGANIZATION

Most agencies that deploy uniformed personnel have certain common characteristics, such as a hierarchical organization and a degree of centralization. Three key protocols characterize such hierarchical, centralized agencies: chain of command, unity of command, and span of control.

Chain of command is the line of authority that extends throughout the organization. **Unity of command** requires that each individual within the organization reports directly to a single individual higher in the chain of command. **Span of control** is the extent of an individual’s authority, or the number of individuals that one person is responsible for overseeing. The general behavior of all officers is embodied by the will of the chief, whose actions represent a consistency of conduct that assures citizens that the law is applied in an equitable manner.⁵¹

chain of command

The line of authority that extends throughout an organization.

unity of command

The requirement that each individual within an organization reports directly to a single individual higher in the chain of command.

span of control

The extent of an individual’s authority, or the number of individuals that one person is responsible for overseeing.

Most police departments are hierarchically organized, with several layers of personnel and a rigid chain of command, but the move to community policing

during the latter decades of the twentieth century sparked calls for changes in police organization. Community policing requires a less centralized approach that gives rank-and-file officers the flexibility and autonomy needed to develop closer ties with the community and to involve the public in solving community problems. Community policing empowers field officers to exercise increased amounts of discretion in solving problems, while management acts as coach.

The 9/11 terrorist attacks led to another organizational change. Specifically, police departments have created units or assigned personnel (e.g., terrorism liaison officers) that are responsible for gathering information that page 208 could be linked to possible terrorist activity. At the same time, post-9/11 agencies increasingly have shared information with one another. Before the terrorist attacks, police organizations had been relatively insular, relying on adjoining agencies only in acute emergencies.

CAREERS IN FORENSICS

Listed here are some of the careers available in forensics, as well as the educational requirements for each.

Title	Job Description	Minimum Education Usually Required
Forensic accountant	Analyzes financial transactions	Bachelor's degree in accounting to determine fraud
Computer forensics investigator	Finds and analyzes computer evidence	Education and experience in computer science
Evidence technician	Receives, processes, and stores physical evidence	Some coursework in forensics
Ballistics and firearms expert	Matches projectiles to particular weapons	Experience in firearms and trajectory analysis
Fingerprint examiner	Collects and analyzes latent print evidence	Bachelor's degree in science
Criminalist	Analyzes physical evidence through use of scientific techniques, usually in a laboratory	Bachelor's degree in biology, chemistry, physics, or criminalistics
Forensic pathologist	Determines cause and time of death	MD

Title	Job Description	Minimum Education Usually Required
Forensic entomologist	Uses insect evidence to determine time, place, and cause of death	Doctorate in biology
Forensic anthropologist	Helps determine identity of human remains as well as cause of death	Doctorate in anthropology
Forensic psychologist	Uses psychology to help make decisions relevant to the law (determining competency to stand trial, assisting attorneys in juror selection)	Doctorate in psychology

Review of the events leading up to 9/11 highlighted the importance of sharing intelligence information proactively to help prevent such emergencies. Indeed, as illustrated in Chapter 16, piecing together a terrorist plot often requires the gathering of information possessed by different jurisdictions. Networks of policing agencies equipped to share information across regional jurisdictions are critical to the success of antiterrorist intelligence gathering. These networks are made up of all agencies within regions and effectively cross the borders of jurisdictional authority that have been characteristic of American policing since its inception.⁵²

DEPLOYMENT OF POLICE RESOURCES

A police operation needs a sound strategy for the allocation of personnel and equipment to ensure that those resources are being used appropriately. As is the case in almost all organizations, a police department's most important resources are money and people. Financial resources for law enforcement agencies come primarily from government agencies. For example, municipal policing agencies receive most of their funds from city governments.

As police budgets for all communities become increasingly at risk, the efficient deployment of resources becomes commensurately crucial. This section looks at the challenging considerations that arise in the deployment of police resources.

Factors Affecting Resource Allocation

Many factors influence how police resources are allocated, including demands of the citizens, administrative requirements of the police agency, and agendas of local government leaders. Decisions about how many police officers to have on the streets versus assigned to other tasks are resource choices that often come under scrutiny. If, on the one hand, the local population prefers a community-oriented policing strategy, the number of police officers assigned to patrol can be relatively high. If, on the other hand, the community prefers a policing strategy focused primarily on rapid response to crime-related calls for service and apprehension of offenders, fewer officers are assigned to foot patrol in the community.

The policing strategy in practice also affects a police organization's administrative and support needs. Agencies emphasizing community policing strategies need additional staff to support substations in the community and to conduct special programs operating from main stations.

MYTH/REALITY

MYTH: Police are almost always deployed in greatest numbers where there is the highest percentage of minority populations.

REALITY: Police deployment is often the result of political influence. A cohesive minority bloc can wield significant political clout in the competition for policing resources.⁵³

Local politics plays a role in the deployment of police resources. Insistent pressure from a particular group that more police should be deployed to their neighborhood is most likely to be effective in cities with traditional political structures and operations, such as a mayor–council form of government, partisan elections, and district-based city councils. In these cases local elected officials tend to be sensitive to political pressure.⁵⁴

Interestingly—and paradoxically—fiscal constraints may have a bright side: illumination of the value of evidence-based policing. **Evidence-based policing**, which was proposed as a new model for policing in 1998, is the use of the best available research on the outcomes of police work to implement guidelines and to evaluate agencies, units, and officers.⁵⁵ This model, which had earlier been applied in the practice of medicine, is ideal as a means for determining best practices—and in turn for optimizing the deployment of resources. A prerequisite of evidence-based policing is acquiring the

knowledge of research methodology. This prerequisite facilitates a strengthening of the relationship between practitioners and academicians—a long overdue partnership.⁵⁶

evidence-based policing

The use of the best available research on the outcomes of police work to implement guidelines and evaluate agencies, units, and officers.

The evidence-based future of policing must include a focus on the relatively small percentage of streets and locales that generate much of the crime in a city or county. Such a focus will be most effective if the police try to use not only strategies that increase surveillance and deterrence, but also ones that try to strengthen the microcommunities of people who reside in crime hot spots.⁵⁷

Technological Resources

In addition to money and personnel, equipment is a crucial resource for law enforcement agencies. Police departments are increasingly using new technological equipment—such as drones, geographic information systems, computerized statistical systems, and crime analysis—to improve their efficiency.

Drones Drones, or unmanned aerial vehicles, are remotely controlled or fly autonomously through software-controlled flight plans in their embedded systems. Used initially by the military, they are used increasingly by civilian public safety agencies.⁵⁸ Police departments are using them for page 210 search and rescue, surveillance, situational awareness, and crime scene mapping.⁵⁹ Drones are exponentially less expensive than helicopters. Police helicopters cost roughly \$500,000 to \$3,000,000; a drone with a powerful camera costs approximately \$6,000. While extremely efficient, as their numbers have increased, there are growing concerns regarding privacy rights.⁶⁰

drones

Unmanned aerial vehicles used for surveillance and other purposes.

Geographic Information Systems (GIS) Crime mapping is the process of pinpointing the locations and times of crimes. The potential of crime mapping to help solve crimes is greatly enhanced by **geographic information systems (GIS)** technology, which uses a computerized mapping system to produce

detailed descriptions of crime occurrences and to analyze the relationships between variables such as location and time. GIS technology reveals areas of concentrated crime or higher risk of victimization, commonly called **hot spots**.⁶¹ This information enables police to concentrate their resources and problem-solving activities on the hot spots.

crime mapping

A technique used by police to pinpoint the locations and times of crimes.

geographic information systems (GIS)

A technology that uses a computerized mapping system to produce descriptions of crime occurrence and analyzes the relationships between variables such as location and time.

hot spot

An area of concentrated crime or higher risk of victimization.

Computerized Statistics GIS technology has been augmented by **CompStat** (COMPuterized STATistics), a performance management system developed by the New York City Police Department in 1994. CompStat integrates information from crime maps across the community for department leaders' review. It emphasizes information sharing, responsibility, accountability, and improving effectiveness. It includes four core components: (1) timely and accurate information or intelligence, (2) rapid deployment of resources, (3) effective tactics, and (4) relentless follow-up.⁶²

CompStat

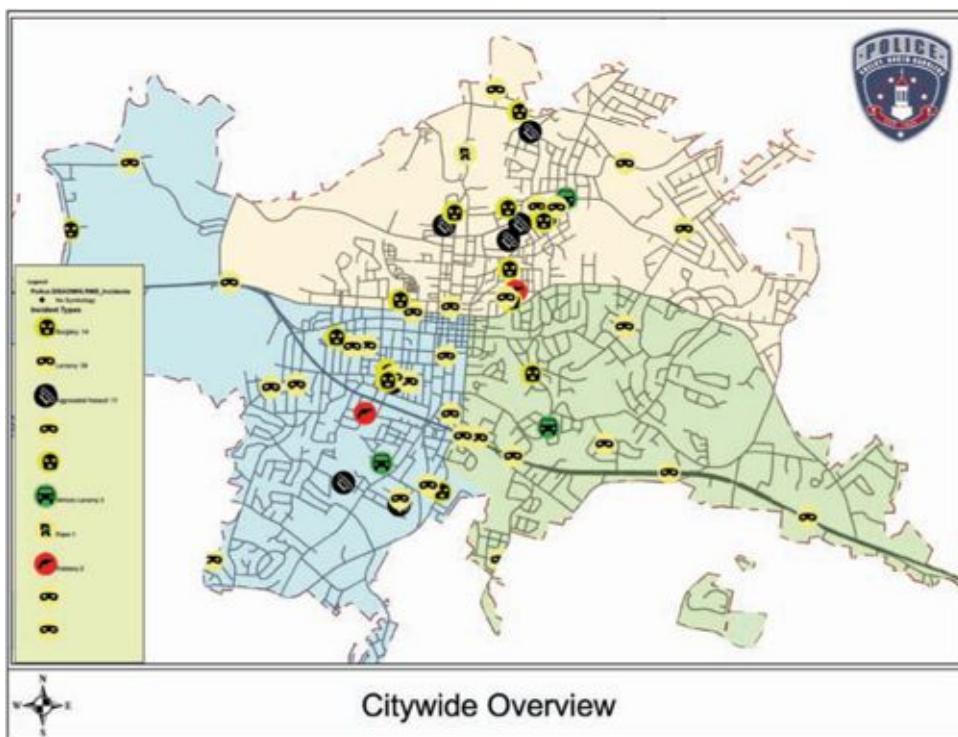
A computerized statistical program that integrates information from crime maps across a community for department leaders' review.

Crime Analysis The assessment of crime-related information to help prevent crime, deploy law enforcement resources, apprehend suspects, and support crime investigations is termed **crime analysis**. Crime analysis techniques have greatly improved the way agencies deploy their resources. Before modern crime analysis practices became widespread, the task of allocating resources was jokingly referred to as the “Bud-Shell Method”—a name that page 211 evoked the image of a police administrator sitting with a six-pack of Budweiser and a Shell gas station road map, using a marker to draw lines down major arteries and create policing districts on the basis of geography.⁶³ Although the delineated districts were uniform in terms of size, the incidence of crime did not distribute itself accordingly. Yet administrators in the past had little in the way of current crime statistics to help them with the task of

allocating resources. In contrast, today's computerized methods allow resources to be allocated based on analysis of the incidence of crime by type of offense, time of commission, and a complex mix of other variables. Combining computer-aided dispatch with automatic vehicle locator systems, commanders now may reposition resources at will via real-time views of crime occurrence.

crime analysis

The application of processes designed to analyze information pertinent to crimes and to develop correlations useful in crime prevention, resource deployment, investigations, and suspect apprehension.



▲ Geographic Information Systems (GIS)

Geographic information systems (GIS) help police departments identify high-crime areas, or hot spots. These areas are identified on this GIS Crime Map by the clustering of color-coded incidents.

Jeff Ledford, Map: Citywide Overview, as seen here:

<http://www.esri.com/news/arcnews/summer08articles/summer08gifs/p32p1-lg.jpg>, Summer 2008.
Copyright ©2008 by Jeff Ledford. All rights reserved. Used with permission.

Crime analysis is useful in follow-up investigations through examination of a crime scene in the context of an offender's behaviors. Knowing the *how* of a crime—what the perpetrator did and did not do—can help illuminate the *why*—the offender's likely motivation for the crime, as well as his personality. For example, an offender who uses a surprise approach (lying in wait or attacking a sleeping victim) reflects a lack of confidence, or inadequacy. Crime analysis

can thus identify correlations that can reduce the pool of possible suspects. At the same time, crime analysis can reveal links among crimes, suggesting they may have been committed by the same individual(s).⁶⁴

A recent outgrowth of crime analysis is predictive policing, which is rooted in the notion that it is possible, through sophisticated computer analysis, to predict where and when future crimes are most likely to occur. **Predictive policing** involves taking data from a wide array of sources, analyzing them, and using the results to anticipate, prevent, and respond more effectively to future crime.⁶⁵ The underlying concept is not new; what is new is the broad-based and extensive amount of data undergoing analysis and capable of being used to correlate with crime occurrence. For example, the infusion and analysis of data such as the location of dogs, the identification of homes with burglar alarms, the locales of code violations, and residents' employment status can lead to the prediction of the most likely targets for residential burglaries. Key to the continued implementation of predictive policing is a commitment to ensuring integrity in the handling of all information contained in databases analyzed. Privacy and civil liberty issues are critically interrelated with predictive policing.

predictive policing

Taking data from a wide array of sources, analyzing them, and using the results to anticipate, prevent, and respond more effectively to future crime.

THE POLICE AND PUBLIC OPINION

Overall, the U.S. public is supportive of the police. In one survey, 54 percent of the respondents expressed a “great deal” or “quite a lot” of confidence in the police,⁶⁶ rating the police behind only the military and small business and higher than churches or organized religions, banks, the U.S. Supreme Court, the medical system, and public schools. The highest level of confidence was found in 2004 at 64 percent. The change is likely influenced by the large number of protests surrounding police behavior toward Black Americans starting in 2014 and continuing to the present. The age group with the greatest confidence in police is individuals 65 years and older.⁶⁷ See Figure 6-4 for an overview of public confidence in institutions, including the police.

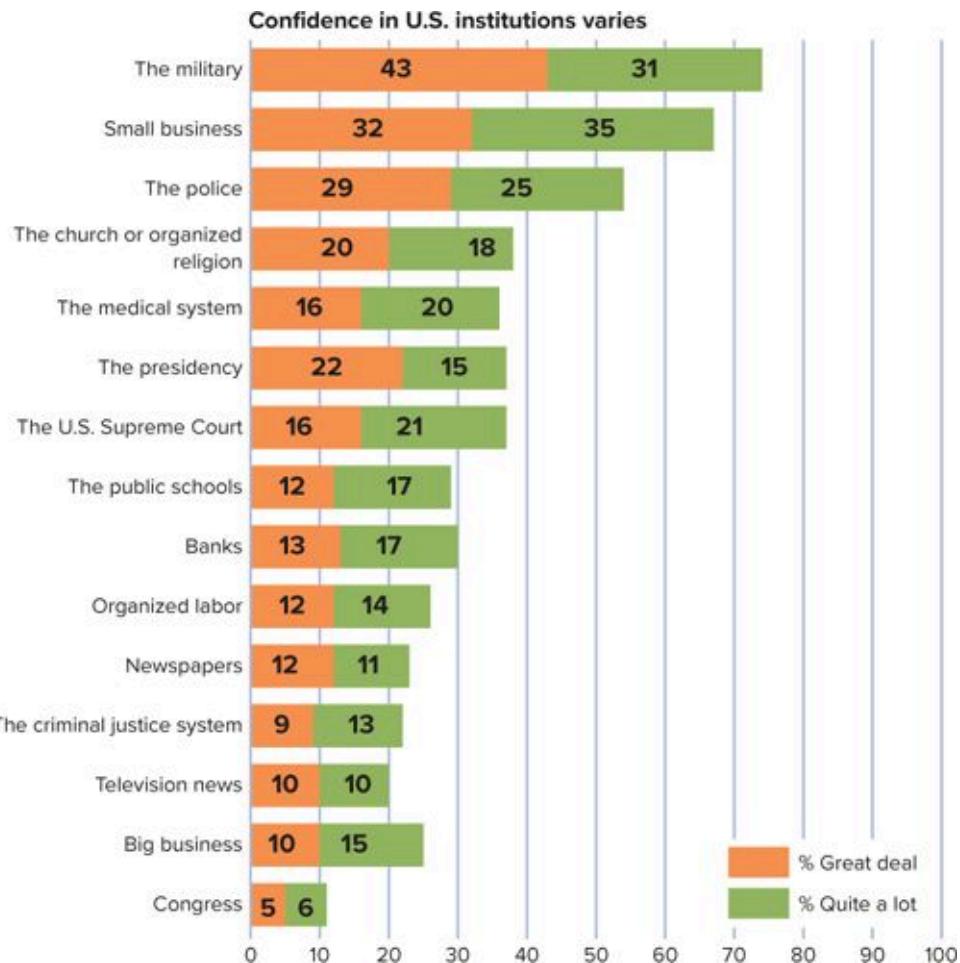


FIGURE 6-4 Confidence in Institutions

SOURCE: Gallup Poll, “Confidence in Institutions,” 2018.

www.gallup.com/poll/1597/confidence-institutions.aspx (retrieved April 12, 2019).

In December 2014, Americans were less likely than in 2013 to view police officers as having high honesty and ethical standards. Forty-three percent of people rated police as high or very high in honesty and ethical standards. The poll was conducted after grand juries did not indict White police officers whose actions resulted in the deaths of Black men in Ferguson, Missouri, and Staten Island, New York. The overall drop of 6 percentage points in honesty and ethics ratings is the result of a significant, 22 percent drop in page 212 non-Whites’ ratings of police officers. White people’s views had not changed. Historically, Whites and people of color have viewed police differently, with Whites consistently viewing police more positively, but the recent data seem to indicate that people of color are responding much more

negatively to Black male deaths that have resulted from police shootings. As a consequence, the 2014 ranking of police honesty is at its lowest point in more than two decades.⁶⁸ By 2017, the view of the police had started to come back to previous levels. In that year, 56 percent of people again viewed the police as having very high or high ethical standards.⁶⁹

The public generally believes that racial profiling is more common than police brutality. For example, 53 percent of U.S. residents believe that racial profiling is widespread in traffic stops.⁷⁰ Numerous studies have uncovered evidence of racial profiling—or at least evidence that Whites and Blacks are stopped at different levels, a finding that supports the belief of many U.S. residents.⁷¹

Although overall U.S. residents are supportive of the police, there are fairly large differences in opinion between Whites and people of color. Eighty percent of Whites but 67 percent of Nonwhites have a great deal of respect for police in their area.⁷² This is likely because of the difference in page 213 experiences between the groups and the police. Twenty-four percent of Black men under the age of 35 report that they have been treated less than fairly by law enforcement in the last 30 days.⁷³ Beyond young Black male experiences with the police, 67 percent of Blacks, in general, say that Blacks are treated less fairly by police than Whites in their community. On the other hand, only 40 percent of Whites think Blacks are treated unfairly by police.⁷⁴

One explanation for this difference in opinion is that Blacks have a different relationship with the police than do Whites. For example, 72.7 percent of Black men between the ages of 18 and 24 report having been victimized by racial profiling at least once, whereas only 10.9 percent of White males in that age group make a similar claim. Race and personal experience with racial profiling appear to have the greatest influence on individuals' opinions of the police.⁷⁵ Both Black and White communities believe that police treat the two communities differently, although for varying reasons. Whites tend to believe that differential treatment is warranted because Blacks are more likely to commit crimes, whereas Blacks see differential treatment as discriminatory.⁷⁶

In general, Blacks' views of the police vary by class and level of education. Blacks living in middle-class Black neighborhoods report their relationship with police as more similar to that of White communities than that of Blacks residing in lower-class Black communities.⁷⁷ Whites' opinions of the police and views on racial profiling do not vary by class. Better-educated Blacks,

however, are more likely than less-educated Blacks to have a negative view of profiling, to report having experienced it, and to think it is widely practiced.⁷⁸

Blacks are not the only group that perceives the police differently than do Whites. Although Latinos' views are not as negative as those of Blacks, neither are they as favorable as those of Whites. For example, Latinos are more likely than Whites to believe that racial profiling is widespread.⁷⁹ Among both Latinos and Blacks, men are more likely than women to believe that racial profiling is widespread.⁸⁰ This difference is likely related to the relationship between personal experience and opinions of the police, since men of color generally have more contact with the police than do women of color. And certain other ethnic groups also view the police with some reservations. After the 9/11 terrorist acts, for instance, Arab Americans reported fearing the police because of what they viewed as increased surveillance and racial profiling of Arab Americans.⁸¹ Historically, new Chinese and Vietnamese immigrants also have reported perceiving the police as prejudiced.⁸²

Another major divide in how people in the United States view the police is seen by political affiliation. As the country has become more politically polarized, that affects how people view various American institutions. Above we discussed how Whites and Blacks see the treatment of racial minorities by the police differently. The differences are stark by political party on that topic. Seventy-eight percent of Republicans say law enforcement treat racial and ethnic groups equally. Only 26 percent of Democrats think police treat different racial and ethnic groups equally. Almost 80 percent of Republicans see the police as doing a good job of protecting people from crime, but only 53 percent of Democrats agree. The two groups also starkly disagree on police use of force, with 73 percent of Republicans believing that police use an appropriate amount of force, but only 27 percent of Democrats who think the same.⁸³

In summary, although public opinion of the police varies by group, most of the U.S. public has a fairly positive view of the police. That is not true in all countries, as the “Global View” box explores.

A Global View

Public Perception of the Police in Belgium

Law enforcement in Belgium is currently conducted through an integrated model at federal and local levels. Both forces work in unison. This structure was stimulated by public outcry in the wake of an instance of perceived policing incompetence. Formerly, policing was conducted in a fragmented manner through municipal police forces, a national law enforcement service, and the judicial police (akin to the investigative units within district attorney offices in the United States). With the integration, 195 police zones were created at the local level, with each zone having a chief and autonomy to address local problems. The federal police serve in a complementary manner to the local police, supporting the local police with specialized resources.



JLBvdWOLF/Alamy

Along with the structural change, the community policing operational philosophy was implemented. It was based on five pillars: external orientation, problem solving, partnership, accountability, and empowerment. Community policing was subsequently complemented with the adoption of information-led policing. The goal of this combined approach was attaining excellence in policing, with its core value establishment of a trust relationship between the populace and the police.

As there had been a longstanding lack of information about what shaped Belgians' opinions about the police, Belgium proved to be an excellent locale for exploring the issue. Moreover, the time was right, given the need to assess the worth of the structural reform and the integration of community policing. Previous research from the United States and the United Kingdom had revealed that personal contact was a key element in formation of opinions about the police. These studies had shown that perceptions of procedural justice (being treated respectfully and fairly, with an opportunity for explanation of actions prior to police decision making) played a larger role than perceptions of police performance in accounting for citizens' trust in the police.

Thus, in light of the deficit of research in Belgium, two studies of public opinion were undertaken, with the results published in 2015 and 2017. The first study was conducted in Belgium's third largest city, Ghent. The study entailed face-to-face interviews with 761 randomly selected residents of Ghent. A total of 63 percent (481) of the interviewees had experienced police contact, in contrast to 37 percent (280) who had not. Of those who had experienced police contact, the majority (68 percent) expressed satisfaction with the manner with which they were treated, and 18 percent indicated dissatisfaction. The findings revealed an association between satisfactory contacts and trust and an association between unsatisfactory contacts and distrust. Moreover, experiencing a neutral

contact actually negatively affected trust in police. The takeaway from the study essentially was it was necessary for the police in Ghent to treat citizens fairly and respectfully during encounters so that the citizens perceive the police as legitimate and sharing the same values and norms.

The second study on public opinion of the Belgian police analyzed data collected in three municipalities: Hamont-Achel, Neerpelt, and Overpelt. The sample of residents consisted of 952 face-to-face interviews. The level of trust in the police was moderately high. The percentage of interviewees expressing a lot, or quite a lot, of trust ranged from 45 to 66 percent; while the percentage of interviewees expressing little or very little trust was small (ranging between 7 to 12 percent). The analysis of data further revealed that perceptions of responsiveness played a much larger part than perceptions of outcomes in accounting for respondents' trust in police. The more respondents felt that police treated people unequally, and the more they believed the police disregarded citizens' views and suggestions, the less they trusted law enforcement.

The findings of the two studies of the Belgian police suggest rather compellingly that procedural justice plays a larger role than police performance in accounting for citizens' trust in police. Thus, this means that every police officer has to be aware that every moment of personal contact with citizens can either improve or undermine opinions about the police in general.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Is procedural justice compatible with community policing?
- Should the manner in which citizens are treated be as important as policing's outcomes, that is, catching "bad guys"?
- What is meant by "empowerment" in the context of Belgium's adherence to a community policing philosophy?

SOURCES: Politie, "The Integrated Police: Who Does What?." <https://www.politie.be/nl> (retrieved February 5, 2019); Martin Van Craen and Wesley Skogan, "Trust in the Belgian Police: The Importance of Responsiveness," *European Journal of Criminology* 12, no. 2 (2015): 129—150; Anjuli Van Damme, "The Impact of Police Contact on Trust and Police Legitimacy in Belgium," *Policing and Society* 27, no. 2 (2017): 205—228.

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RESPONDING TO DIVERSE POPULATIONS

The public generally expects the police to serve all people fairly and equitably, keeping everyone safe. These expectations are challenging, as the police are called upon to serve a wide variety of people with different needs, problems, and experiences.



▲ Police Aiding an Elder Adult

Today police are often called upon to investigate cases of elder abuse.

Mitch Wojnarowicz/The Image Works

Elder Adults

In the United States the issue of mistreatment of elder adults has garnered growing attention as more people are living longer. The Census Bureau projects that just over 94 million Americans will be age 65 or older in 2060 compared to just over 49 million in 2020.⁸⁴ **Elder abuse** is any knowing, intentional or negligent act by a caregiver or another person that causes harm or a serious risk of harm to a vulnerable elder 60 years of age or older. The harm may be physical abuse, emotional abuse, sexual abuse, exploitation (the taking, misuse, or concealment of funds), neglect, or abandonment.⁸⁵

elder abuse

Any knowing, intentional, or negligent act by a caregiver or another person that causes harm or serious risk of harm to a vulnerable adult 60 years of age or older.

Elder abuse is still a relatively new area of criminal justice intervention. It was first formally addressed in the United States in the mid-1970s with the

allocation of Adult Protective Services' funding under Title XX of the Social Security Act. **Adult Protective Services (APS)** are state services provided to older people and dependent adults who are being mistreated or neglected, are unable to protect themselves, and have no one to assist them.⁸⁶ If the elder abuse occurs within an elder care facility, usually another agency has the responsibility to respond. In California, this other agency is the Long-Term Care Ombudsman.⁸⁷

Adult Protective Services (APS)

State services provided to older people and dependent adults who are being mistreated or neglected, are unable to protect themselves, and have no one to assist them.

Although the investigation of suspected cases of elder abuse does not vary greatly from other criminal investigations, investigators need to be particularly alert to the physical condition of the home environment and the elder adult's accommodations and apparent health. They will treat skeptically any attempts by a caregiver or relative to answer for the elder or to keep the elder from directly providing information. They will also keep in mind that a victim's recall may be clouded by complications of the aging process, disorientation or nervousness, and/or the side effects of some medications.⁸⁸ When an elder adult dies and there is suspicion of abuse or neglect, investigators must first determine whether the death was expected and consistent with the appearance of natural causes and then whether there was a delay in notifying authorities.⁸⁹

Police dispatchers are an integral part of the law enforcement team approach to dealing with elder abuse. Many elder adults have difficulty articulating their problems or clearly describing their situations. Dispatchers must be trained to be patient and diligent in seeking information that may point toward abuse. They must also know how to refer callers to appropriate agencies such as law enforcement, adult protective services, or long-term care ombudsmen.⁹⁰

Determining the incidence of criminal offenses of elder abuse presents special problems. Victims may be cognitively impaired and unable to recognize or report offenses. Those who have been exploited financially may not be aware that they have been so victimized.⁹¹

The National Center on Elder Abuse, the major source of statistical information on elder abuse in the United States, collects and analyzes national data on cases referred to and investigated by APS. A national study of state-level APS data conducted in 2004 revealed that "self-neglect" page 216 made up approximately one-third of substantiated reports of

abuse, closely followed by neglect by caregivers and exploitation of finances. Over 65 percent of victims were women, and over 40 percent of victims were 80 years of age or older. Perpetrators were divided evenly among men and women. The largest category of perpetrators was between 30 and 50 years of age. Most alleged perpetrators were adult children of the victim or other family members. The study collected data nationwide, but states vary widely on the type of statistics they maintain. For example, only 40 percent of the states maintain a database of alleged perpetrators, and only 25 percent were able to provide data on racial composition of victims and perpetrators.⁹²



▲ Assisting and Protecting Victims with Disabilities

Individuals with disabilities are at a higher than normal risk of being victimized.

James Shaffer/PhotoEdit

Many law enforcement agencies have established partnerships with the elder adult population and the support agencies that serve them. The intent of these relationships, often organized under a program called TRIAD, is to create trust between law enforcement and the elder adult population. (*TRIAD* is not an acronym; it simply represents a three-part union of police, sheriff, and retired persons' associations.) Elder action programs use problem solving and community policing strategies to meet the concerns of elders.⁹³ A volunteer council, in some cities called SALT (Seniors and Lawmen Together), guides local TRIADs. Each SALT council decides what services the TRIAD will offer,

recruits volunteers, and oversees the results. For example, the Texas TRIAD program, offered through the state office of the attorney general, includes consumer protection, crime prevention, and health and safety oversight. It also provides toll-free hotlines for seniors who have complaints about consumer goods, nursing homes, and Medicaid provider fraud, as well as a legal services hotline and a 24-hour abuse hotline.⁹⁴

People with Physical or Developmental Disabilities

Individuals with physical or developmental disabilities are at higher risk of being victimized than those without such personal challenges, according to the National Organization for Victim Assistance (NOVA). Because the perpetrators of crime against such individuals are frequently their caretakers, reporting the crime puts them at further risk, and few cases come to the attention of police. Moreover, individuals with disabilities may not be able to report a crime because of constraints on their mobility or difficulties communicating.

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Recognizing these issues, the NOVA offers a number of recommendations on how criminal justice agencies, including police departments, can protect people with disabilities and respond when they have been victimized. Recommendations include ensuring access to buildings for people of all abilities, training officers about disabilities and the subcultures of people with disabilities, and encouraging police departments to work with victim services providers and disability support services organizations.⁹⁵

People with Mental Disabilities

Providing services and protection for people with mental disabilities is another police priority requiring special attention. Police became more involved with people with mental disabilities in the 1980s, when a large number of institutions for those with mental disabilities closed because of cuts made to federal mental health funding. (See Chapter 12 for a discussion of people with mental disabilities in jails and prisons.) Officers generally encounter individuals suffering from mental illness as a result of complaint calls from members of the public. Most police academies do not include specific training to identify individuals who may be mentally ill or information on how to use

community resources to address problems that may result from people with mental disabilities.

Officers encountering a person whose behavior appears irrational generally respond in one of three ways. The first is to transport the individual to a facility that provides psychiatric care if she is a danger to herself or others, although in some locations hospitals refuse anyone they deem dangerous. Regardless, an on-site physician has sole authority whether to admit the person.⁹⁶

The second choice is to arrest an individual with mental disabilities for an offense such as disorderly conduct. This option is most often used when a hospital refuses admission, and the individual cannot be left in the situation in which she was found. An officer makes an arrest because he believes the individual will continue to cause problems.⁹⁷

The third option is to resolve the situation informally if the person with mental disabilities is a “neighborhood character,” a “troublemaker,” or a “quiet mental.” *Neighborhood characters* are individuals the police know well because of their visibility in the community, and they are not a threat to public safety. For example, individuals seen muttering to themselves and walking aimlessly might cause some concern, but they are not a danger to anyone. Police are also likely to ignore *troublemakers*, those who have created problems for officers in the past. In some instances, if police were unsuccessful in previous attempts to have someone admitted to the hospital, an officer may avoid dealing with that individual. Dealing with such troublemakers requires a lot of energy that officers are not necessarily willing to expend, as well as extensive paperwork. Police are also not likely to intervene with *quiet mentals*—individuals who seem detached from reality but do not present a nuisance to themselves or to the public.⁹⁸

Although police use all these options, the probability of being arrested is 67 percent greater for those who appear to have mental disabilities than for those who do not. Some mental health professionals argue that this high arrest rate constitutes criminalization of mentally disordered behavior. Taking individuals with mental disabilities to jail, however, is often the only option for police if hospitals and service agencies turn them away.⁹⁹

There is a relationship between psychiatric admission rates and crime and arrest rates. Specifically, when rates of admission to psychiatric hospitals decrease, crime and arrest rates increase. Consequently, those who are unable to function in society are not cared for in the institutions best equipped to do so. Rates of psychiatric hospitalizations are also related to levels of homelessness. When hospital admissions decrease, the number of homeless

people increases.¹⁰⁰ People who have severe mental disabilities and are homeless or drug and alcohol abusers are more likely to be victims page 218 of crime *and* more likely to be arrested for committing crime.¹⁰¹



▲ Police and the Homeless

Police are often asked to move homeless people out of a particular neighborhood.

Thomas Samson/AFP/Getty Images

A promising new practice relies on crisis intervention teams (CITs). Officers are provided specialized training with the goal of helping those who are mentally ill or developmentally disabled to receive appropriate mental health services rather than entering the criminal justice system. Research has found that CIT-certified officers were more likely to connect people to mental health services than those officers who had not had the training. Although, there was no effect on arrests, CITs had the greatest impact on directing individuals with mental illness or disabilities to the resources available to them.¹⁰²

The Homeless

Large and small communities across the United States have homeless persons. Figure 6-5 illustrates the homeless population by state. **Homelessness** is defined as the state of having no fixed, reliable, or adequate nighttime

residence. In 2016, 355,212 individuals were experiencing homelessness on a single night in the United States, a 13.9 percent decline since 2007.¹⁰³

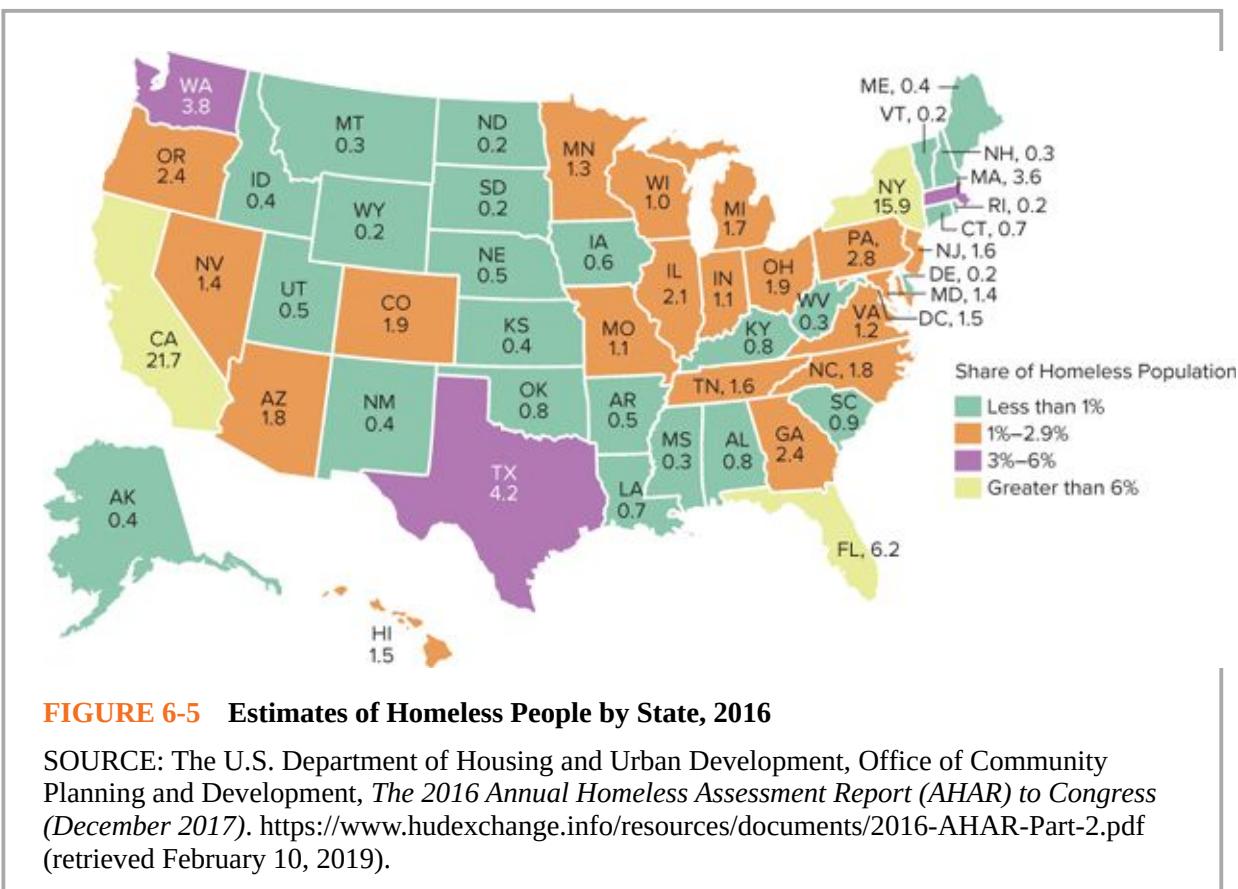


FIGURE 6-5 Estimates of Homeless People by State, 2016

SOURCE: The U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *The 2016 Annual Homeless Assessment Report (AHAR) to Congress* (December 2017). <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-2.pdf> (retrieved February 10, 2019).

homelessness

The state of having no fixed, reliable, or adequate nighttime residence.

The 2016 profile for a typical individual experiencing sheltered homelessness was: a lone man (71.2 percent), between the ages of 31 and 50 (41.4 percent), white, non-Hispanic (45.5 percent), not disabled (52.7 percent), already homeless (44.2 percent), and spending 21 nights in an emergency shelter.¹⁰⁴

Residents of communities with visible homeless populations often call the police to “do something” about them. Individuals complain that homeless people affect the quality of life in their communities, making some locations, such as city parks, undesirable to visit. Perhaps because of these demands, over 70 percent of police departments report that homelessness is a problem in their communities.¹⁰⁵ Pressure from community members has even led some police

officers to transport homeless individuals out of their jurisdiction to another locale. Police may put problematic individuals on a bus or some other form of transportation to move them out of the area. Although media reports from a number of cities have lamented this practice of “dumping,” it continues to be one way of dealing with the homeless.¹⁰⁶

Homeless persons are often victims of crime.¹⁰⁷ Sexual victimization of homeless individuals is one of many serious concerns. In-depth interviews with homeless teenagers reveal that some trade sex for items they need page 219 to survive, such as food, shelter, money, or drugs. Others are forced to have sex.¹⁰⁸ Sixteen percent of single adult homeless persons suffer from some form of mental illness.¹⁰⁹

Cultural Differences and Language Barriers

In the 1800s and early 1900s, police officers were the only government employees who interacted with new immigrants.¹¹⁰ Both in the past and today, many new immigrants are not proficient in English, so it is often difficult for them to report crimes to the police. Moreover, some cultural practices of immigrants’ native countries may be prohibited in the United States. In such cases, police may be called upon to educate immigrants on the norms of their new country. Immigrants’ lack of proficiency in English and different cultural practices can create challenges to police to ensure that all residents—newcomers and the native born—are equally protected and served.

Immigrants have come in waves from a large number of countries at different periods in U.S. history, with different states and regions as their common destinations. In recent years, about 15,000 Hmong people from Southeast Asia immigrated to the United States. Severely persecuted in Laos because they or their ancestors aided the U.S. military during the Vietnam War, they received safe haven in the United States.¹¹¹

The United States is an increasingly diverse country. Police officers must know how to interact with all people in culturally sensitive ways. Some police departments respond to demographic changes in their communities by recruiting from among the newcomers, who may be better prepared to respond to problems in ethnic neighborhoods in culturally sensitive ways. For example, in some countries, if an individual is told to kneel and put his hands behind his head, he knows he is about to be executed. When an officer asks an individual from that cultural background to assume such a position, he should not be surprised if the immigrant responds as if in fear of his life. Today, police

academies include cultural diversity training to help officers respond to problems in diverse communities. In some departments, task forces engage in outreach programs to different immigrant and cultural groups, to foster a positive relationship.

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Another major issue in immigrant communities is the language barrier. Most officers speak only English, but the communities they serve are often multilingual. Many departments offer pay incentives to bilingual officers who can serve as interpreters. This practice can create tension for such officers, however, who complain that they applied to be police officers, not interpreters. For example, they may grow to resent the amount of time they spend on interpreter services rather than on other aspects of their job.¹¹²

Because the language barrier presents risks for the safety of both the police and community members, some police departments have instituted crash courses in language skills training. Officers are taught a few key phrases in the language or languages most common in the neighborhoods in which they work. For example, they may be taught how to say, “Drop your weapon,” “You’re under arrest,” or “Please show me some identification.”

Rural Communities

Almost half of all policing agencies in the United States have fewer than 10 sworn officers. The Bureau of Justice Statistics report their most recent data in 2008. Two-thirds of police departments nationwide serve communities of 25,000 people or fewer.¹¹³ The attitudes of rural officers toward their work often differ from those of officers in big cities. Moreover, rural officers are much more supportive of community policing strategies than are their urban counterparts.¹¹⁴ Indeed, rural and small-city police administrators have reported that while community policing was considered a reform in large cities, it was already a standard practice for them. These smaller police departments usually have closer relationships with members of their communities.¹¹⁵

Crime is not as prevalent in rural communities as it is in urban locales. In rural areas there are 16.9 crimes of violence per 1,000 people, while the rate in urban areas is 25.9 violent crimes per 1,000 people.¹¹⁶ Some problems previously concentrated in urban areas, such as gang activity and drug abuse and trafficking, have crept into rural communities. These relatively new

problems seriously challenge rural police agencies to adapt their crime-fighting strategies to more proactive, targeted enforcement.

In sum, rural police departments support community policing and deal with less crime than urban departments. Nevertheless, rural departments are starting to see historically urban problems such as gang activity and drug abuse come to their communities.

SUMMARY

The popular image of the police officer—an image reinforced by the media—is that of a heroic figure engaged in battling violent crimes and apprehending dangerous suspects. In reality, police officers spend most of their time on the job responding to calls to maintain order or to provide service of various kinds. Of course, police do also respond to crimes in progress, and apprehending suspects is part of the policing role of enforcing the law. Yet the police cannot routinely enforce all the laws in criminal codes. They tend, therefore, to enforce laws based on their department's priorities and community norms.

Maintaining order, enforcing the law, and providing service are policing roles common across agencies, but police departments employ different strategies to perform these roles. In preventive patrol, police randomly cruise a neighborhood to maintain a visible police presence in the area, the idea being that maintaining a visible police presence will reduce street crime. However, research experiments have failed to validate the claim that random patrols prevent crime. Problem-oriented policing focuses on identifying the causes of problems in an area and then implementing appropriate, sequential steps to alleviate those problems. In community-oriented policing, police and residents work together to reduce crime and disorder. The principle underlying community [page 221](#) policing—that crime prevention is a joint responsibility of police and community members—requires a change in the police culture that traditionally has seen crime prevention and law enforcement as the responsibility of the police alone. Police departments that follow a strategy of aggressive order maintenance, or zero tolerance policing, target minor public order offenses that affect residents' quality of life. Zero tolerance policing may reduce crime but can have negative effects on police—community relations.

Most police departments are organized hierarchically, with several ranks of officers and a clear and rigid chain of command. Community policing calls for organizational change, with fewer ranks and fewer special departments, thereby allowing patrol officers greater discretion in deciding how to respond to community needs and problems. The communications function within a police department coordinates the performance of law enforcement activities, but the difficulty or impossibility of communication across jurisdictions presents serious problems, particularly in large-scale emergencies. Local government plays a large and influential role in determining how and where police resources of money, equipment, and personnel are allocated. Local politicians must be sensitive to citizens' demands for police resources.

Even though the media regularly highlight incidents of police brutality and racial profiling, the public generally supports the police, with the level of support higher among Whites than among people of color. Most people expect that the police will keep everyone safe, but in fact most violent crimes occur among persons who know each other. Expecting the police to prevent violent acts by one family member against another, or by a friend against a friend, is a tall—and unrealistic—expectation.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Identify the principal policing roles.

- A major part of the workload of police is maintaining order.
- Police engage in law enforcement when they enforce criminal law and apprehend lawbreakers.
- Service activities are nonenforcement actions performed on an as-needed basis.

Compare the various policing strategies.

- In preventive patrol, officers are assigned to randomly drive or walk around an area.
- Problem-oriented policing focuses on discovering the underlying causes of problems and encouraging police to find innovative solutions to solve those problems.
- Community-oriented policing emphasizes reducing crime and disorder by involving residents in the job of policing.
- Aggressive order maintenance entails that police focus on minor public order offenses that affect residents' quality of life.

Describe the different jobs in policing.

- The rookie police officer quickly learns the realities of police work while working under the guidance of a training officer.
- Patrol officers are the first individuals to respond to a call for service.
- A follow-up investigation occurs after a patrol officer documents the facts of the crime.
- Police are the primary public safety agency in charge of enforcing traffic laws.
- Communications coordinates the performance of law enforcement activities.
- Custody is the incarceration of parties either accused or convicted of a crime.

- Forensics is the application of scientific knowledge and methods to criminal and civil investigations and legal procedures, including criminal trials.

Explain how police departments strive to maximize their resources.

- Departments use geographic information systems (GIS) technology to produce detailed descriptions of crime occurrences and to analyze the relationships between variables such as location and time. This information helps police know how to respond to an incident.
- CompStat is a computerized information system that integrates information from crime maps across the community for department leaders' review. This information helps police administrators decide how to allocate their resources.
- Crime analysis can be helpful in reducing the pool of possible suspects, thereby making investigation more efficient.

Identify the factors that shape public opinion about the police.

- High-profile incidents of police brutality affect public opinion about the police.
- Because their experiences with police have not been as positive, racial and ethnic minorities tend to have lower opinions of the police than do Whites.

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Compare the service needs of diverse populations.

- Police aid elder adults by protecting them from typical crimes of elder abuse and by solving such crimes.
- Individuals with physical or developmental disabilities are at higher risk of being victimized and therefore may be in need of police protection.
- Police generally deal with apparently mentally ill persons in one of three ways: transporting them to a facility for psychiatric care, arresting them, or leaving them alone if they do not appear to present a threat or danger.
- The homeless are a vulnerable population that is increasingly subjected to violence.
- Rural communities experience less crime than urban communities but are experiencing an increasing amount of gang activity.

Key Terms

- Adult Protective Services (APS) 215
- aggressive order maintenance 200
- broken windows theory 200
- chain of command 207
- civilianization 196
- communications interoperability 205
- community-oriented policing 195
- CompStat 210
- crime analysis 210
- crime mapping 210
- criminalistics 206
- custody 205
- decentralization of command 196
- drones 209
- elder abuse 215
- evidence-based policing 209
- forensics 206
- forensic science laboratories 206
- geographic information systems (GIS) 210
- homelessness 218
- hot spot 210
- law enforcement 191
- line activities 201
- maintaining order 191
- police—community reciprocity 196
- predictive policing 211
- preventive patrol 192
- proactive foot patrol 196
- problem-oriented policing 193
- service activities 192
- solvability 203
- span of control 207
- support activities 201

Study Questions

1. The three *principal* policing roles are enforcing the law, providing service, and
 - a. crime mapping.
 - b. taking individuals into custody.
 - c. maintaining order.
 - d. conducting forensics.
2. The policing strategy that incorporates the SARA process is
 - a. random patrol.
 - b. split-force.
 - c. problem-oriented policing.
 - d. directed patrol.
3. The policing strategy that has a police—public partnership as a central feature is
 - a. problem-oriented policing.
 - b. random patrol.
 - c. community policing.
 - d. split-force.
4. Communicating across jurisdictions is called
 - a. synchronous telephony.
 - b. asynchronous telephony.
 - c. interoperability.
 - d. frequency incompatibility.
5. The program that integrates information from crime maps with an exchange of information among an agency's leaders is
 - a. CompStat.
 - b. SARA.
 - c. abrasion.
 - d. NCIC.
6. An approach that examines a crime scene from a behavioral perspective is
 - a. broken windows theory.
 - b. crime analysis.
 - c. SARA.
 - d. order maintenance.
7. An efficient means for the use of limited policing resources is
 - a. team policing.
 - b. air support to ground operations.

- c. crime mapping.
 - d. DNA analysis.
8. A forensics specialist who employs insect evidence to determine time and place of death is known as a
- a. forensic pathologist.
 - b. forensic anthropologist.
 - c. phrenologist.
 - d. forensic entomologist.
9. A factor that affects police—community relations is
- a. officers' use of force.
 - b. crime rate.
 - c. use of forensic science.
 - d. crime mapping.
10. Police departments in rural areas claim that they have always practiced
- a. team policing.
 - b. preventive patrol.
 - c. community-oriented policing.
 - d. gang enforcement.

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Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Is community-oriented policing practical for every community? Why or why not?
2. What is the basis for differing opinions about the police among people of different races?
3. Is dealing with persons suffering mental illness and the homeless really a law enforcement problem, or should social services assume an expanded role? Explain.

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7 Legal and Special Issues in Policing



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OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Identify the limitations on law enforcement activities imposed by the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution.
- Identify the situations most likely to entail use of force by the police, and explain how the police use of force is regulated.
- Analyze the impact of the use of force on community relations.
- Describe the major legal and policy issues raised in police pursuits.
- Contrast the strategies of enforcement and prevention used to curb illegal drug use.
- Explain how police departments have responded to gangs.
- Describe how the police response to intimate partner violence has changed over time and explain why.
- Describe the factors that create stress for police officers and efforts to deal with these pressures.

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Realities and Challenges

Managing Use of Force

Managing use of force is one of the most difficult challenges facing law enforcement agencies. Police officers have the difficult and admirable job of responding to high-risk situations, which sometimes put them in harm's way and the necessity to consider-

instantaneously—use of force. Decades of psychological research demonstrate that officers, in order to ensure their safety, instinctually resort to a fast-thinking approach in decision-making. However, the research underscores while fast-thinking approaches may be efficient, they are associated with higher levels of errors in decision-making. Moreover, when influenced by preconceptions toward particular groups, such as minorities or residents of high-crime areas, fast thinking can contribute to adverse outcomes, both in the use of force and community perceptions.¹ These dynamics may very well have led to the death of 17-year-old Laquan McDonald at the hands of Chicago police officer Jason Van Dyke.

On October 20, 2014, Laquan McDonald was reported to have been behaving erratically walking down a street while holding a folding knife. Numerous officers followed McDonald, who was walking away when Officer Jason Van Dyke arrived on the scene. Shortly after arriving, Van Dyke began shooting at McDonald, hitting him several times. The gunshots continued as McDonald crumpled onto the ground, mortally wounded. The encounter sparked intense demonstrations after authorities released a video showing Van Dyke firing 16 shots into McDonald. The incident also triggered a federal investigation of the Chicago Police Department that found Chicago officers routinely used excessive force and violated people's rights, particularly minorities. Van Dyke was ultimately convicted of second-degree murder and sentenced to nearly seven years in prison in January 2019.²



Rick Loomis/Getty Images

Ironically, on the same day that Van Dyke was sentenced, across the country in California, Davis Police Officer Natalie Corona was buried. Corona, a highly regarded rookie officer, had been ambushed while conducting a traffic accident investigation. By her reputation, she was the very antithesis of what Van Dyke had become.³

The ability of law enforcement officers to enforce the law, protect the public, and guard their own safety and that of innocent bystanders is very challenging. Use of force decisions are made under myriad scenarios and often on a split-second basis. Introduced in the decision in *Graham v. Connor* (1989), the “objectively reasonable” standard established the necessity for the use of force to be based on the individual officer’s evaluation of the situation, considering the totality of the circumstances.⁴ In the McDonald case, Van Dyke testified that he feared for his life as he approached him, despite the fact that McDonald was walking away. Jurors found that Van Dyke’s response, in light of the facts and video

recording evidence, was not “objectively reasonable.” Furthermore, as per the decision in *Tennessee v. Garner* (1985), even though an officer may have probable cause to arrest an individual, it may be unreasonable to do so through the use of deadly force.⁵

The death of Laquan McDonald was one among a spate of highly publicized deaths of African Americans at the hands of the police. Against this backdrop, in 2018 the U.S. Commission on Civil Rights launched an examination of the use of force in the context of modern policing practices. The Commission members soon discovered that there was a lack of data regarding use of force; no comprehensive database existed. Thus, while allegations that some police use of force are excessive, unjustified, and discriminatory, current data regarding use of force are insufficient to determine whether instances are occurring more frequently. The public continues to hear competing narratives by law enforcement and community members.⁶

There is good news, however. On January 1, 2019, the Federal Bureau of Investigation (FBI) launched the National Use-of-Force Data Collection. The FBI has received positive feedback from the law enforcement community about implementing a national use-of-force data collection. Participation is open to all local, state, tribal, and federal law enforcement and investigative agencies in coordination with the FBI’s Uniform Crime Reporting Program. The goal of the resulting statistics is provision of an aggregate view of the incidents reported and the circumstances, subjects, and officers surrounding the incidents.

The information analyzed will be made publicly available biannually.⁷

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In this chapter, we examine the legal limitations on law enforcement activities and explore some special issues that prove especially challenging for law enforcement officers. We begin with a discussion of the constitutional limitations on police behavior. In our consideration of special issues with the police use of force, we probe how the use of force has been regulated and how communities have responded to the use of force. Next we look at some of the major problems in police pursuits. Our discussion of the use of and trafficking in illegal drugs focuses on enforcement, prevention, and rehabilitation efforts. Gangs—particularly in urban areas—pose special problems, and we examine ways in which the police respond to gang activity. A particularly troubling problem is intimate partner violence, and we will see how the police response to its occurrence has changed over time. The issues discussed in this chapter contribute greatly to police officer stress. In the last section, we explore both the causes of officer stress and various strategies for coping with the strains of being a police officer.

Most of us would like to live in a safe community. Nearly everyone would agree that police ought to be given the authority and tools to catch criminals. But nearly everyone also would agree that police powers should

have limits. We would not want to allow law enforcement officers to do anything they want, to anyone they want, anytime they want. Several sections of the Constitution—especially the Fourth, Fifth, and Sixth Amendments—place important restraints on what the police may do.

Preview

THE FOURTH AMENDMENT

THE FIFTH AMENDMENT

THE SIXTH AMENDMENT

USE OF FORCE

PURSUITS

DRUG ENFORCEMENT

GANG ENFORCEMENT

INTIMATE PARTNER VIOLENCE

STRESS

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

THE FOURTH AMENDMENT

The Fourth Amendment to the U.S. Constitution protects residents from “unreasonable searches and seizures.” This clause raises two basic questions: What is a search or seizure? And what is unreasonable? In other words, we first must determine whether particular actions by the police constitute

searches or seizures. If they do, we then must determine whether those searches or seizures are permissible under the Constitution.

Searches and Seizures

Although the language of the Fourth Amendment is succinct, the Supreme Court has interpreted its meaning in a number of cases that define a search or seizure. First, these limitations apply only to actions taken by a government agent; that is, a local, state, or federal law enforcement officer, or someone working for or on behalf of government. The Fourth Amendment does not limit the actions of private individuals and companies unless they are acting at the request or demand of the government. Many employers, for instance, require job applicants to submit to drug testing, a procedure that would likely be unconstitutional for most government agencies because it would be considered an unreasonable search.

MYTH/REALITY

MYTH: The actions of any individual or company can be unconstitutional.

REALITY: Only actions taken by government agencies or those working for those agencies can be in violation of the Constitution.

Second, in order for an act to be a search or seizure, the target of the act must have a reasonable expectation of privacy. If a man is standing on a sidewalk talking loudly into his cell phone to his friend with page 230 whom he is planning to rob a bank, a police officer who overhears him has not conducted a search or seizure. It would be unreasonable for the man to expect a loud conversation in a public place to be private. However, if he plans the robbery while in his home, it is reasonable for him to expect privacy. If the officer places a wiretap on the man's phone so she can listen in on the conversation, she is conducting a search.

In its rulings on privacy, the Supreme Court has found that people possess the expectation of privacy regarding the contents of their postal mail, phone conversations held in a closed phone booth, most activities in and contents of a home in a rental car even when the driver isn't listed on the rental

agreement, and the contents of suitcases and other containers.⁸ On the other hand, the Court has held that there was no expectation of privacy, and therefore that no search occurred, when police rummaged through a suspect's trash bags after the garbage was placed outside for collection, when police used an electronic device to keep track of which phone numbers a suspect was calling, when police hovered 400 feet above a suspect's home in a helicopter, or when DEA agents used a narcotics detection dog to sniff the outside of a suspect's luggage.⁹

Recent technological advances make it particularly challenging to determine the scope of the Fourth Amendment. To what extent does the amendment protect electronic information such as e-mail, computerized databases (including, for instance, medical records), and records of Internet surfing? The USA PATRIOT Act, enacted after the 9/11 terrorist attacks, gave the government wide authority to engage in various kinds of electronic surveillance. Many critics claim that portions of the act violate the Fourth Amendment's protection of privacy. (The USA PATRIOT Act is discussed in more detail in Chapter 16.) A related question is the extent to which the government may use technology to assist law enforcement activities, especially when the technology is not widely available to the general public. In 2012, for instance, the Supreme Court held that the government's placement of a GPS tracking device on a vehicle constitutes a search under the Fourth Amendment.¹⁰ The "Disconnects" box illustrates the differences between what police see as good detective work and what the Supreme Court views as unconstitutional.

The courts have accorded certain groups less expectation of privacy than other people, making it easier for government agents to justify searches of these individuals. These classes include schoolchildren, prisoners, parolees, and probationers.

If government agents undertake actions, and these actions infringe on reasonable expectations of privacy, the actions are searches or seizures within the meaning of the Fourth Amendment. The subjects of those searches and seizures may be people—an arrest of a person is a seizure—or things. If actions constitute a search or seizure, they must be reasonable to be permissible. But what is reasonable?

Reasonableness

The Fourth Amendment offers a few clues on what constitutes a reasonable search or seizure. The amendment states, “[N]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The courts interpret this passage to mean that ordinarily the government must obtain a **warrant**—a legal document—before its agents can conduct a search or seizure. The agent must first collect enough evidence to lead a reasonable person to believe there is a good likelihood—**probable cause**—that a crime was committed or that evidence or illicit materials are present. The agent then describes the evidence in a sworn written or oral statement and presents it to a neutral party, usually a judge. If the judge page 231 determines that probable cause exists, she authorizes a warrant. The warrant must be specific about what or who is to be searched or seized. Only then can the agent conduct the search or make the seizure. The purpose of this somewhat unwieldy process is to protect people from abuses of police authority and from unjustified or mistaken intrusions into their privacy and freedom.

warrant

A legal document, based on probable cause, permitting police to conduct a search or seizure or to arrest someone.

probable cause

The amount of evidence necessary to obtain a warrant or conduct most searches and seizures.

DIS Connects

Reasonably Private?

Advancing technology has allowed the government to conduct investigations in ways that the drafters of the Fourth Amendment never dreamed of. For example, in 1992 police officers in Oregon used a special type of camera called a thermal imager to scan Danny Lee Kyllo's house for infrared radiation. When they found that some parts of the house were unusually hot, they concluded that Kyllo was growing marijuana indoors. Kyllo was subsequently arrested and convicted. The Supreme Court overturned his conviction, however, holding that the police should have obtained a warrant for the scan of his house.



opturadesign/Alamy

What about other uses of modern technology? Cell phone locations can be tracked with almost pinpoint accuracy; GPS devices allow cars and packages to be easily traced; and people communicate frequently using e-mail, texting, and cell phones, all of which can be searched. Many of us probably feel that these activities are private, but do the courts agree? Are warrants required for police to conduct investigations in these realms?

The answer varies. In decisions in 2010 and 2011, federal appeals courts ruled that warrants are not needed if police seek to track the location of people's cell phones or to place a GPS tracking device on a car sitting in a driveway. The California Supreme Court held in 2011 that no warrant is necessary if police wish to search someone's cell phone after the person has been arrested. On the other hand, another federal appeals court has held that warrants are necessary for police to read someone's e-mail. And recently, the U.S. Supreme Court held that a warrant is required when police want to track records of where a cell phone has traveled.

Other questions are too new to have been addressed yet by most courts. Are warrants required for police to investigate which electronic books and journals we have read? To find out which websites we have visited? To follow conversations on social-networking sites such as Facebook and Twitter? What about tracking the items we buy, whether online or in stores?

For now, it seems wise to remember that even if we believe that our conversations and information are private, the courts will not necessarily agree.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- In what ways has modern technology made law enforcement easier—or more difficult?
- What limits should be placed on police using social-networking sites such as Facebook to investigate crimes?

SOURCES: *Kyllo v. United States*, 533 U.S. 27 (2001); *In re United States*, 620 F.3d 304 (3rd Cir. 2010); *United States v. Warshak*, 2010 Fed. App. 0377 (6th Cir. 2010); *United States v. Pineda-Moreno*, 617 F.3d 1120 (9th Cir. 2010); *California v. Diaz*, 2011 Cal. LEXIS 1 (Cal. Sup. Ct. 2011); *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

Government agents are not required to obtain a warrant before every search or seizure if doing so would endanger public safety by obstructing the agents' ability to do their jobs. For example, few of us would want a firefighter to pause to secure a search warrant before dashing into a burning house to save a trapped child. Consequently, the Supreme Court recognizes a large number of exceptions to the warrant requirement. Still, to comply with the Fourth Amendment, even *warrantless* searches and seizures—those conducted without a warrant—must be reasonable.

Felony arrests may always be made without a warrant—as long as the officer has probable cause to believe the suspect committed a felony. Nevertheless, police sometimes choose to obtain an arrest warrant for practical reasons. First, doing so allows them to enter a home to make the arrest. Entry would usually not be allowed without a warrant if much time had passed since the crime was committed. Second, by having a page 232 neutral party confirm that probable cause exists, the warrant protects the police so that the arrest is less likely to be declared invalid later. To be considered reasonable seizures, felony arrests always require probable cause—with or without a warrant.



▲ Police Entering a Residence

In most cases, officers need a warrant to search a person's home. *Under what circumstances are search warrants not required?*

Mario Tama/Getty Images

At one time, police could make warrantless arrests for misdemeanors only when suspects committed a breach of the peace in their presence. However, the Supreme Court rejected the breach of the peace requirement in *Atwater v. Lago Vista* (2001) and hinted that it might also reject the requirement for an agent to be present. Like felony arrests, misdemeanor arrests—with or without a warrant—require probable cause.

The Court also authorizes other types of warrantless seizures. One of the most common is called a **stop-and-frisk** or **Terry stop** (after *Terry v. Ohio*, 1968, the case in which the Court first made the ruling). A Terry stop is permitted when police have **reasonable suspicion** to believe a person is engaged in criminal activity. Reasonable suspicion is less certain than probable cause but more than just a hunch. In the *Terry* case, for example, John W. Terry and another man were pacing back and forth in front of a store, periodically peering in the store windows. An experienced police officer concluded they might be preparing to rob the store. Reasonable suspicion is the amount of evidence required before officers may conduct a stop-and-frisk, which allows a police officer to briefly detain a person,

question him about his activities, require him to show identification, and frisk him or pat him down for weapons. Although this action is a seizure, it does not amount to a full arrest.¹¹ A full arrest means taking a suspect into police custody for a longer period of time.

stop-and-frisk

Police action allowing the police, with reasonable suspicion, to briefly detain a person, question him about his activities, require him to show identification, and frisk him or pat him down for weapons; also known as a *Terry* stop.

Terry stop

Another name for stop-and-frisk, in which the police, with reasonable suspicion, briefly detain a person, question him about his activities, require him to show identification, and frisk him or pat him down for weapons.

reasonable suspicion

Amount of evidence necessary for officers to conduct a stop-and-frisk or *Terry* stop.

Like seizures, reasonable searches may be conducted without a warrant. Figure 7-1 lists a number of exceptions to the warrant requirement. One of the most common is the **automobile exception**, first articulated by the Supreme Court in 1925 in *Carroll v. United States*.¹² The Court held it impractical to require police officers to obtain search warrants for cars because, while the officer was obtaining the warrant, the suspect could simply drive away. Furthermore, because it is easy to see into cars, and because their use is already heavily regulated, people have a reduced expectation of privacy in the contents of their automobiles. The _____ page 233 Court therefore allows searches of motor vehicles based on probable cause, with no warrant necessary. In subsequent rulings, the Court expanded the automobile exception to include all packages and containers inside a car, even in the trunk. The automobile exception also encompasses vehicles other than cars. In *California v. Carney* (1985), for example, the Court upheld the warrantless search of a motor home.¹³ However, the automobile exception doesn't mean cars can always be searched without warrants. In 2018, the U.S. Supreme Court held that a police officer should have obtained a warrant before searching a motorcycle that was parked in the suspect's driveway and covered by a tarp.¹⁴



Kevork Djansezian/Getty Images

Over time, the U.S. Supreme Court has extended the reach of warrantless searches and seizures and in so doing expanded the powers of police. Warrants are not required for:

- *Terry* stops (stop-and-frisk)
- Automobile searches
- Searches incident to arrest
- Searches at international borders
- Searches at airports
- Stops at sobriety checkpoints
- Inventory searches (when police make inventory lists) of items impounded by police, such as the contents of a car when the car is impounded
- Searches of buildings when police are in hot pursuit of a fleeing felon
- Searches under exigent circumstances such as when someone's life is in immediate danger; for example, when a house is on fire or when a victim is being held hostage
- Protective sweeps—quick searches of a home to ensure no other people are present
- Searches when the items are in plain view
- Searches in open fields and outside the "curtilage" or area immediately surrounding a home
- Consent searches—when the suspect allows the officer to search
- Regulatory searches such as by health inspectors and building inspectors
- Searches where "special government needs" exist, such as in random drug testing of student athletes, customs inspectors, and railway employees involved in accidents

FIGURE 7-1 Exceptions to the Warrant Requirement

Some people argue that this long list of exceptions has essentially gutted the warrant requirement; others assert that the exceptions are necessary for law enforcement officers to do an effective job. *Which argument do you find more persuasive and why?*

automobile exception

An exception to the warrant requirement holding that police do not need warrants to search automobiles, just probable cause.

Another major exception to the warrant requirement is a **search incident to arrest**. When a person is placed under arrest, police may search her body, clothing, and any packages she is carrying. Such searches protect police from any weapons suspects may be carrying, prevent suspects from carrying contraband into a jail, and reduce the chances that evidence will be destroyed. If a suspect is arrested in her home, police may search any areas within her “wingspan”—that is, her approximate reach—even if _____ page 234 she is handcuffed. If she is arrested in a car or shortly after exiting one, police may search the car’s passenger compartment. If her car is impounded and taken into police custody, they may search the entire vehicle. Officers need neither probable cause nor reasonable suspicion to conduct a search incident to arrest. If a person is arrested (as opposed to simply being issued a ticket) for not wearing a seat belt, for example, police could legally search the person’s car, purse or backpack, clothing, and body. However, the Court ruled in *Riley v. California* (2014) that searches incident to arrest do not include searching the contents of the suspect’s cell phone.¹⁵

search incident to arrest

A warrantless search of a person and the area around that person, conducted shortly after the person is arrested.

After the 9/11 terrorist attacks in 2001, national debates emerged over how much leeway government officials should be allowed in conducting warrantless searches for the protection of national security. In late 2005, newspapers reported that the National Security Agency (NSA) was electronically eavesdropping on hundreds of thousands of domestic and international phone calls and e-mails without search warrants or notification. Only a handful of the thousands of people thus monitored—fewer than 10 a year—were actually found to be acting suspiciously. While critics lambasted the program as a constitutional violation and a severe infringement on privacy, federal authorities defended it as necessary in the “war on

terrorism.”¹⁶ Also since 9/11, more intrusive searches are being made of people and luggage at airports, and some cities have begun random searches of subway passengers’ belongings.¹⁷ In early 2008, Amtrak announced that it would begin random searches of luggage for explosives.

The Exclusionary Rule

Government agents who conduct an unreasonable search or seizure are violating someone’s Fourth Amendment rights. But what can the person do about it? Certainly, she can sue the police for violating her civil rights. But lawsuits charging unreasonable searches yield little in monetary damages and might even be damaging if the person could be convicted in a trial that used unconstitutionally obtained evidence against her. Nor would lawsuits do much to deter the police from infringing on people’s rights in the future, especially if they thought they might obtain valuable evidence.

The Supreme Court recognized this problem in its ruling in *Weeks v. United States* (1914):

If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.¹⁸

In *Weeks*, the Court first articulated the **exclusionary rule**, which says that evidence obtained in violation of an individual’s Fourth Amendment rights cannot be used against her in a criminal trial. The rule originally applied only to cases in which searches or seizures were conducted by federal officials, but when *Dollree Mapp*’s case reached the U.S. Supreme Court in 1961, the Court extended the rule to state and local officials. *Mapp*’s case was based on the following facts. At 3 a.m., a bomb went off outside the home of a small-time bookie in Cleveland, Ohio. The bookie told police a man to whom he owed money might have planted the bomb. A few days later police showed up at the home of *Dollree Mapp*, who ran a

boardinghouse where they suspected the man responsible for the bomb may have spent time.

exclusionary rule

The rule that illegally obtained evidence cannot be used against a criminal defendant at trial.

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▲ **Dollree Mapp**

Mapp's case resulted in the extension of the exclusionary rule to the actions of state and local law enforcement officials.

AP Images

When the police arrived, Mapp called her lawyer and, on his advice, refused to let the police in without a search warrant. Three hours later more officers, as well as Mapp's attorney, arrived at the house. The police barred

the lawyer from entering the house, broke down Mapp's front door, and went inside. Mapp demanded to see a warrant. One officer claimed he had a warrant and waved a piece of paper in her face. She grabbed it and shoved it down the front of her shirt, but the officer pulled the paper out again. Mapp was then forcibly placed in handcuffs.

The police looked through dressers, closets, suitcases, and photo albums throughout the house. In a trunk in the basement, police found pictures of nudes as well as booklets containing lewd stories that apparently belonged to a former boarder who had left them when he moved. Mapp was charged with possession of obscene materials. At her trial, even though no evidence was produced of the existence of a search warrant, Dollree Mapp was convicted and sentenced to a maximum of 7 years in prison.¹⁹ Her conviction was overturned, however, and *Mapp v. Ohio* (1961) became a landmark case in the protection of constitutional rights.²⁰

MYTH/REALITY

MYTH: The exclusionary rule is a technicality that lets many guilty people go free.

REALITY: The exclusionary rule is the only effective way to protect important constitutional rights from government intrusion. Furthermore, in most cases in which evidence is excluded from a trial under the rule, the defendant is convicted based on other evidence.²¹

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How to apply the Constitution to law enforcement is a subject of considerable and lively debate. On one hand, people argue that to require police to follow strict rules in criminal investigation is both unrealistic and dangerous. Furthermore, the argument goes, criminals should not get away with their crimes merely because police make mistakes.

Other people contend that protecting people from infringements on their basic constitutional rights is more important than catching criminals. According to this argument, excluding illegally obtained evidence effectively deters police misconduct. Moreover, if the courts set out clear rules for police rather than muddying the waters with more and more exceptions, police will be able to do their jobs without having to worry about whether evidence might be excluded.

The exclusionary rule is a strict rule. If evidence that was illegally seized is the only evidence—or even the primary evidence—against a defendant, and that evidence is excluded from trial under the exclusionary rule, the defendant may go free. Thus, the exclusionary rule may allow people known to have broken the law—sometimes even dangerous and violent people—to escape punishment for their actions. Many government officials complain that the exclusionary rule makes criminals harder to catch and leaves guilty people free to commit more crimes. Many would argue that the danger a suspect presents to the community should outweigh Fourth Amendment rights against illegal searches and seizures. Victims often find it difficult to see those who harm them go unpunished. The public tends to view those who are released on Fourth Amendment grounds as having “gotten off on a technicality.” Because we usually hear about Fourth Amendment violations in the context of someone having broken the law (if no illegal evidence is found, the case never goes to court, and nobody hears about the violations), many people view the amendment and the exclusionary rule as granting “special rights” to guilty people. After all, the argument goes, if I have nothing to hide, why should I care whether the police search my belongings?

In reality, however, the Fourth Amendment protects *everyone*, guilty and innocent alike. Even completely law-abiding people may not want to give the government unrestricted authority to rummage through their private affairs and belongings anytime some government employee feels like it. Defenders of the exclusionary rule, including justices of the U.S. Supreme Court, contend that the rule makes constitutional rights meaningful and effectively deters government officials from violating the Constitution. Most criminals can eventually be successfully prosecuted without infringing on Fourth Amendment rights, and if a few guilty people do go free, perhaps that is a reasonable price to pay for protecting everyone’s freedom and privacy.²²

Even the Supreme Court, however, has had difficulty applying the exclusionary rule when doing so allows an obviously guilty person to go unpunished. After *Mapp*, the Court held that the rule does not apply to proceedings other than criminal trials. Therefore, illegally obtained evidence can be used in deportation proceedings, civil tax proceedings, and grand jury hearings. Such evidence also can be used in criminal cases to *impeach* a defendant or other witness (i.e., to prove that the defendant gave false testimony or is an untrustworthy person). This is one reason criminal defendants sometimes do not take the stand to testify in their own defense. If

they do testify, evidence that would otherwise be inadmissible can be brought in to impeach them. If, on the other hand, they refrain from testifying, the jury will never hear that evidence.

The Derivative Evidence Rule The **derivative evidence rule**, also known as the **fruit of the poisonous tree doctrine**, further extends the exclusionary rule. The derivative evidence rule provides that any evidence derived from something that is illegally seized is itself inadmissible. For example, suppose police illegally record a phone conversation in which a suspect reveals the location of stolen goods. The police then obtain a warrant based on [page 237](#) the content of that conversation, and they find the stolen goods.

Not only would the taped conversation be suppressed as evidence under the exclusionary rule, but so would the stolen goods. Even though police had a warrant to search for the goods, that warrant was the “fruit” of the “poisonous” phone tap.

derivative evidence rule

An extension to the exclusionary rule holding that evidence derived from something that is illegally searched or seized is itself inadmissible; also known as the fruit of the poisonous tree doctrine.

fruit of the poisonous tree doctrine

Another name for the derivative evidence rule, which excludes evidence derived from an illegal search or seizure.

The derivative evidence rule extended the scope of the exclusionary rule, but the Supreme Court has carved out a number of exceptions to the exclusionary rule. These exceptions permit illegally obtained evidence to be used against a defendant at trial.

The Good Faith Exception to the Exclusionary Rule Articulated by the Supreme Court in *United States v. Leon* (1984),²³ the **good faith exception** applies when police officers act in good faith on a warrant or law that is later declared invalid. If police reasonably believe the warrant or law authorizing a search or seizure is legitimate, but it later turns out it is not, the evidence will not be suppressed. In *Arizona v. Evans* (1995), for example, an officer stopped Isaac Evans for a traffic violation. The officer made a computer check for outstanding warrants and discovered a misdemeanor warrant, so he placed Evans under arrest. When he searched Evans incident to the arrest, he discovered marijuana. Later it turned out the warrant had been declared

invalid 17 days earlier, but the court clerk's office had mistakenly left it in the system. Because the officer was acting in good faith reliance on the computer check, the Supreme Court upheld Evans's conviction for marijuana possession.²⁴

good faith exception

Exception to the exclusionary rule allowing illegally obtained evidence to be used if officers relied in good faith on an invalid warrant.

The Supreme Court extended the good faith exception in *Herring v. United States* (2009).²⁵ In that case, a warrant had been issued for Bennie Herring in one county. When the warrant was later recalled, the county failed to update its database, so the warrant was still listed. When police officers in a neighboring county searched for and found the erroneous warrant listing, they placed Herring under arrest. When they searched him, they discovered that he had drugs and a gun in his possession; because he was a felon, he was not permitted to own a gun. At trial, Herring claimed that the gun and drugs should not be used as evidence against him because they were the fruit of an illegal arrest. The Supreme Court agreed that his initial arrest was illegal since it was based on a faulty report of a warrant, but the Court allowed the evidence anyway because the officers had acted in good faith on the erroneous information.

In 2014, the Court expanded the good faith exception even farther. In *Heien v. North Carolina*, the Court held that evidence from a search is admissible if a police officer was reasonably mistaken about the law.²⁶

Other Exceptions to the Exclusionary Rule Other exceptions to the exclusionary rule include **inevitable discovery**, in which illegally obtained evidence is admissible if police officers would have discovered it anyway had they used proper procedures. The **independent source** exception allows evidence to be admissible if its discovery was independent of any improper search or seizure. **Attenuation** is the exception that applies when the link between the unconstitutional acts and the evidence becomes weak due to intervening time or events. For example, if a defendant was wrongly arrested but then released and, after consultation with his attorney, returns to the police station several weeks later to confess, his confession will almost certainly be admissible even though the original arrest was unlawful.²⁷

inevitable discovery

Exception to the exclusionary rule allowing illegally obtained evidence to be admissible if it would inevitably have been discovered through legal means.

independent source

Exception to the exclusionary rule permitting the use of evidence discovered independent of any improper search or seizure.

attenuation

An exception to the exclusionary rule that applies when the link between the unconstitutional acts and the evidence becomes weak due to intervening time or events.

The exclusionary rule does not apply when the defendant does not have **standing**; that is, if it was not the defendant's own rights that were violated by the unreasonable search or seizure. For example, if police improperly search a home and find evidence implicating a person who does not live in the home, that evidence can be used against the visitor.

standing

The legal ability to assert a particular constitutional claim.

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The Supreme Court recently created another exception to the exclusionary rule, this one involving *no-knock warrants*. The Court had previously ruled that unless police have obtained a no-knock warrant, when they execute a search warrant at a house, they must knock before entering, announce their presence, and give the resident a reasonable amount of time to voluntarily comply with the warrant.²⁸ The Court's decision in *Hudson v. Michigan* (2006) did not overturn the knock-and-announce rule, but it did hold that if police violate the rule, the exclusionary rule does not apply. Justice Scalia wrote,

[T]he social costs of applying the exclusionary rule to knock-and-announce violations are considerable; the incentive to such violations is minimal to begin with, and the extant deterrences against them are substantial—incomparably greater than the factors deterring warrantless entries when *Mapp* was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified.²⁹

Therefore, even though violation of the knock-and-announce rule violates a suspect's constitutional rights, any evidence that is found will be admissible. Critics have argued that this ruling makes the knock-and-announce rule meaningless.

Opponents of the exclusionary rule support its long list of exceptions, saying that those exceptions make it easier for police to do their jobs and let fewer obviously guilty people go free. Others argue that exceptions have essentially gutted the rule, leaving little incentive for police to comply with the Constitution and little recourse for individuals when they do not. Because many cases from which exceptions arose were prosecutions for drug possession, some commentators believe that the exclusionary rule, and to a large extent the Bill of Rights itself, is the biggest casualty of the "war on drugs."³⁰

THE FIFTH AMENDMENT

The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself." This amendment gives criminal defendants the right to refuse to testify—to "take the Fifth." But these words also affect the manner in which police may question suspects.

Voluntariness

In the spring of 1934, a White man named Raymond Stewart was found beaten to death at his home near Meridian, Mississippi. Soon after, sheriff's deputies, accompanied by other men, took three young Black men from their houses and demanded they confess to the murder. All three men were viciously beaten and whipped; one of them twice had a rope tied around his neck and was suspended from a tree. Threatened with death, all three eventually confessed to the murder. At trial (which occurred only a few days later), even though the police admitted to hanging and whipping the defendants, the confessions were admitted as evidence. All three defendants denied having anything to do with Stewart's death. After brief deliberation, the all-White jury found the defendants guilty and sentenced them to death.

When the Supreme Court finally heard the case (*Brown v. Mississippi*) two years later, it held that the Constitution prohibits the use of coerced confessions as evidence, ruling that such confessions violated the due

process clause of the Fourteenth Amendment. Chief Justice Charles Evans Hughes wrote, “It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process.”³¹ In overturning the defendants’ convictions, the Court established the **voluntariness test**, the rule that confessions are inadmissible unless made willingly.

voluntariness test

Rule that confessions are inadmissible unless made willingly.

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Real Careers



Geoff Brightling/Getty Images

BRIAN HILSINGER

Work location: Cincinnati, Ohio

College(s): University of Cincinnati (2001)

Major(s): Criminal Justice (BS)

Job title: Deputy U.S. Marshal, Southern District of Ohio

Salary range for job like this: \$30,000–\$35,000

Time in job: 7 years

Work Responsibilities

I am primarily responsible for the security of all parties in the courtroom. That includes helping to transport federal inmates to their court appearances and protecting all courtroom personnel from the inmate and any witnesses or family members who may become belligerent. One duty that is unique to U.S. marshals is protecting federal judges. In fact, I once went to Oklahoma City as part of a weeklong protection detail of Supreme Court Justice Sandra Day O'Connor.

A new function that the U.S. marshals have assumed in the last several years is enforcing the Adam Walsh Act. This act requires a person who has been convicted of a sex offense to register as a sex offender. When an offender fails to comply with this act and crosses interstate commerce or state lines, the violation becomes federal, and a U.S. marshal becomes responsible for making the arrest. But I should point out that marshals are unique because they can make arrests on both federal and local warrants.

Why Criminal Justice?

I majored in criminal justice because I knew that this was the first step on the road to working in law enforcement. While I was a student at the University of Cincinnati, I was an intern with the U.S. marshals. My first job in the field was with the Ohio Adult Parole Authority as a parole officer. Having a positive first encounter with the profession led me to pursue a career with the U.S. Marshals Service.

Expectations and Realities of the Job

I did not expect the job to entail so much precision and attention to detail. For instance, I now see that part of being an effective U.S. marshal, and investigator, is making sure I am working with the most current information. This means taking comprehensive notes when in the field and documenting the casework carefully. Other than this aspect of the work, the expectations that I had prior to becoming a U.S. marshal met the realities of the job.

My Advice to Students

No matter what career track you have in mind, just get a foot in the door with any CJ-related job. You will mostly likely need that valuable field experience to pursue a career in CJ. Also, networking with colleagues, professors, and classmates is one of the best ways to learn about potential career paths and job openings. Finally, regardless of the job you choose, keep your criminal record clean, as that can affect your eligibility to be hired.

Miranda v. Arizona

At the time that *Brown v. Mississippi* was decided and for the next 30 years, the Fifth Amendment applied only to actions taken by federal government agents. In 1964, in *Malloy v. Hogan*, the Supreme Court held that the self-incrimination clause of the Fifth Amendment applied to actions taken by

state, local, and federal governments.³² This ruling set the scene for one of the Court's most famous cases, *Miranda v. Arizona* (1966).

The *Miranda* case arose out of several unrelated criminal cases in which suspects were taken into custody and interrogated without being informed of their constitutional rights, after which they confessed. Ernesto Miranda, 22 years old, was suspected of committing a series of kidnappings and rapes in Phoenix, Arizona. After police questioned him for 2 hours, he confessed to one of the rapes and, based in part on his confession, was convicted and sentenced to 20–30 years.



▲ Ernesto Miranda

His case resulted in the famous requirement of the *Miranda* warnings.

AP Images

Unlike the situation in *Brown*, there was no evidence Miranda was beaten, threatened, or otherwise compelled to confess. Nevertheless, the Supreme Court held that even without the use of threats or physical force, custodial interrogation is inherently coercive. Specifically, the conditions of being held against one's will in an unfamiliar place, separated _____ page 240 from family and allies, and questioned by investigators often trained in psychological techniques to obtain incriminating statements all lead to a situation in which a suspect cannot truly exercise free will. But without prohibiting police interrogations altogether, how could society ensure that a suspect is not compelled to confess in violation of the Fifth Amendment? That is the key question with which the justices wrestled.

The Court's solution was to rule that before people in police custody may be questioned, they must be informed of their constitutional rights. This instruction is the famous ***Miranda*** **warnings**, and anyone who has ever watched a crime show on TV can probably recite each *Miranda* right:

***Miranda* warnings**

Notifications that police must give suspects about their rights prior to beginning custodial interrogation.

- You have the right to remain silent.
- Anything you say may be used in court.
- You have the right to consult a lawyer and have a lawyer present during questioning.
- If indigent, you may have a lawyer provided at no cost.
- You have the right to end questioning or consult with a lawyer at any time.

Informing suspects of their rights was seen as the only effective way to safeguard their privilege against self-incrimination.³³

The *Miranda* decision was controversial. Critics claimed that reading suspects their rights would result in significantly fewer confessions and therefore significantly fewer convictions. Effective law enforcement, they charged, would virtually be hobbled. In reality, however, approximately 75 percent of suspects waive their *Miranda* rights and choose to speak to police rather than remaining silent or consulting a lawyer.³⁴ Clearly, the criminal justice system has not come to a grinding halt since *Miranda*. In 2000, in *Dickerson v. United States*, the Court reaffirmed the *Miranda* requirements.³⁵ If a person is in custody and is questioned without first being informed of his rights, the exclusionary rule applies and any statements he makes will be inadmissible.

MYTH/REALITY

MYTH: Police must always read suspects their *Miranda* rights.

REALITY: Suspects do not have to be read their rights if they are not in custody or if police do not plan to interrogate them.³⁶

The *Miranda* rule is limited in several ways. First, it applies only to custodial interrogations. A suspect who is not actually under arrest need not be warned. If a suspect is under arrest, police must read her the warnings only if they want to question her. Just talking to a suspect or asking for identification does not constitute an interrogation. In *Rhode Island v. Innis* (1980), the Supreme Court defined interrogation as “words or actions … that the police should know are reasonably likely to elicit an incriminating response.”³⁷

Second, *Miranda* applies only to **testimonial evidence**—statements made by the suspect. *Miranda* does not apply to nontestimonial evidence such as fingerprints, DNA samples, and so on, even if that evidence may link the suspect to a crime.

testimonial evidence

Words or statements made by a person.

The Supreme Court recently limited the *Miranda* decision even more. In *Berghuis v. Thompkins* (2010),³⁸ the Court held that once a suspect is given the warnings, if he does not actually invoke his rights—that is, if he responds with silence—police may continue to question him.

In *Miranda*, the Court was specific about what information police must give to suspects when they warn them. Many police departments ask officers to read from prepared cards that contain language virtually identical to that in the *Miranda* opinion—although the Supreme Court later held that the content of the warnings does not need to be exactly the same. Police may use different words as long as the correct basic information is given and the officers are not overly coercive. In fact, even if proper *Miranda* warnings are given, a suspect’s statements may be suppressed if the police use too much intimidation. For example, if a suspect was read her rights and then police pointed a gun at her head and told her to confess, the confession would not be admissible.

Exceptions to the *Miranda* Rule

Just as there are exceptions to the Fourth Amendment’s prohibitions against unreasonable searches and seizures, there are also exceptions to the *Miranda* rule. The **public safety exception** allows police to dispense with the warnings if they believe there is an immediate threat to public safety. For

example, police may question a person suspected of kidnapping a child about the child's location if they think the child is in danger. Even though the suspect is not "Mirandized," any statements he makes in this situation will still be admissible against him at trial. All the exclusionary rule exceptions to the Fourth Amendment apply as well to the Fifth Amendment. For instance, the statements of suspects who are not properly Mirandized may be used to impeach them (to prove they are lying) at trial.

public safety exception

Exception to *Miranda* requiring police to interrogate suspects without first warning them of their rights if there is a significant threat to public safety.

Suspects may waive their Fifth Amendment rights and choose to speak to police without an attorney present, and suspects who waive their rights may change their minds later. The only requirements for waiver are that it be knowing—that is, the suspects must be aware of what their rights are and voluntarily decide to waive them. Social scientist's question whether certain people, such as teenagers and the developmentally disabled, can really understand their rights enough to knowingly waive them, but the courts refuse to impose blanket prohibitions of waivers for any group of people.³⁹ "Matter of Ethics" further explores the issue of interrogating juvenile offenders.

Innocent people are more likely than guilty ones to waive their rights, perhaps in the naïve belief that by cooperating with police they will talk their way out of trouble.⁴⁰ Perhaps this explains why, according to the Innocence Project, false confessions are the second leading cause of wrongful convictions.⁴¹

THE SIXTH AMENDMENT

The Sixth Amendment affords accused persons several constitutional protections, but one guaranteed right is of particular significance to law enforcement: "In all criminal prosecutions, the accused shall enjoy the right ... to have assistance of counsel for his defense." This statement means that criminal defendants are entitled to the help of an attorney at trial. However, the rights protected by the Sixth Amendment apply well before trial. In fact, they apply as soon as formal charges are filed against a defendant. A

defendant who has been charged is in more peril than a suspect who is merely being questioned (and who could still be released without being charged with any crime). Therefore, the Sixth Amendment right to counsel is broader and more powerful than the Fifth Amendment rights under *Miranda*.

The Supreme Court articulated the general rule about questioning defendants outside the presence of counsel in *Massiah v. United States* (1964).⁴² Winston Massiah was indicted for transporting cocaine. He obtained a lawyer, and while he was out on bail, federal agents convinced his codefendant (a friend who was accused of committing the crime with him) to have a conversation with Massiah in the presence of a hidden radio transmitter. The codefendant purposely got Massiah to make incriminating statements while an agent listened to the conversation. The statements Massiah made during that conversation were later used against him at trial. In a 6–3 decision, however, the Supreme Court held that Massiah’s Sixth Amendment rights had been violated. To question a defendant without his lawyer present—whether secretly, as in this case, or openly—interferes with the lawyer’s ability to effectively represent her client. Therefore, once a person has been formally charged with a crime, any questioning must take place in the presence of an attorney. If statements are obtained in violation of the *Massiah* rule, the exclusionary rule applies.

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Matters of Ethics

Interrogating Minors

Nothing in the Fifth or Sixth Amendment mentions special rules when suspects are juveniles. However, the legal system often treats young people differently than adults on the basis that children might have less understanding and poorer decision-making skills than adults. Many scholars and policy-makers have argued that juveniles should have special protections when it comes to police interrogations. Juveniles might not truly comprehend their constitutional rights and might also be more easily persuaded or coerced into incriminating themselves. They might also be more easily led by experienced investigators into confessing to crimes they did not commit.

The primary U.S. Supreme Court case to deal with this issue is *Fare v. Michael C.* (1979). Michael C., who was 16, already had a long criminal history when he was arrested for murder. After police read him his *Miranda* rights, he asked to speak with his probation officer. The police refused; Michael C. then agreed to speak to police and incriminated himself in the murder. The Court held that his request for his probation officer was not the same as asking for a lawyer. Although he was young, he would be given no special protections regarding waiver of *Miranda* rights. As long as he understood the rights, he could waive them.



Charlie Neuman/Newscom



Police have often interrogated minors without the presence of attorneys or parents. The danger of this practice was illustrated in a case involving a completely different Michael C.—in this case, 14-year-old Michael Crowe. Crowe's 12-year-old sister was brutally murdered. Police suspected Michael and two of his friends. Over a period of days, each of the boys was interrogated several times, often for hours on end, without other adults present. In Michael's case, his parents didn't even know he was being interrogated. All three boys eventually made incriminated statements and were charged as adults with murder. After the boys had been incarcerated for six months awaiting trial, crime scene evidence tied someone else to the murder. Charges against the boys were dropped, and a judge eventually took the uncommon step of ruling them factually innocent of all charges.

Some states have taken steps to deal with the issue of interrogations on juveniles. In 17 states, *Miranda* warnings have been reworded to help young people understand them better. All but 16 states have laws specifying that juveniles must be given the opportunity to speak with an attorney or parent. And 20 states require that custodial interrogations of juveniles be recorded.

OBSERVE → INVESTIGATE → UNDERSTAND

- What steps, if any, do you believe should be taken to provide additional protections for juvenile suspects?
- When a judge is considering whether a juvenile suspect knowingly and understandingly waived *Miranda* rights, what factors about the juvenile should the judge consider?
- In some states, a juvenile's request to speak with a parent is treated the same as a request to speak to an attorney. What are the pros and cons of this approach?

SOURCES: *Fare v. Michael C.*, 42 US 707 (1979); American Academy of Child and Adolescent Psychiatry (2013), “Interviewing and Interrogating Juvenile Suspects.”

Retrieved February 15, 2019 from https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx; Center on Wrongful Convictions of Youth (2019), “National Outlook: Laws Governing Youth.” Retrieved February 15, 2019 from <http://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/map/>; Teri Figueroa (April 14, 2004), “Michael Crowe, Once Accused of Murdering Sister, Takes Stand in Trial of Transient,” *San Diego Union Tribune*. Retrieved February 15, 2019 from <https://www.sandiegouniontribune.com/sdut-michael-crowe-once-accused-of-murdering-sister-2004apr14-story.html>.

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The *Massiah* decision was less controversial than the *Miranda* ruling, in part because *Massiah* usually applies only after police have had the opportunity to conduct a fair amount of investigation. Nonetheless, some were concerned that *Massiah* might interfere with the ability to put wrongdoers behind bars. A more conservative Supreme Court later limited the *Massiah* ruling somewhat by finding that *Massiah* rights, like *Miranda* rights, may be waived. Thus, a defendant who has been charged with a crime and has a lawyer may still be questioned without her lawyer’s being present as long as she is adequately notified of her rights and expressly and voluntarily chooses to waive them. In addition, a defendant who “lawyers up” on one charge—invokes his Sixth Amendment rights and obtains an attorney—may be interrogated by police about a different crime.⁴³

All the exceptions to the exclusionary rule apply to the Sixth Amendment just as they do to the Fourth and Fifth Amendments. A famous example is the so-called Christian Burial Speech case. Robert Williams was the suspect in the kidnapping and probable murder of a 10-year-old girl in Des Moines, Iowa. The body had not yet been found, although a major search was under way. Williams turned himself in to authorities in Davenport, 160 miles away, was arraigned, and hired an attorney who was in Des Moines. Police officers from Des Moines picked Williams up in Davenport. On the drive back to Des Moines, one of the officers had a conversation with Williams and said how sad it was that the girl’s parents would be unable to give her a Christian burial. Williams, who the officers knew was religious and who had a history of mental illness, eventually led them to the girl’s body.

The Supreme Court held that the officer had violated Williams’s Sixth Amendment rights by questioning him, and therefore the statements

Williams made to the officers were inadmissible. However, the Court also eventually ruled that the body's location and condition could be admitted as evidence because, the Court said, the search party was nearby, and the body would have been discovered even without Williams's incriminating statements. Therefore, the evidence was admissible under the inevitable discovery exception.⁴⁴

In a more recent case, Donnie Ray Ventriss was charged with robbery and murder. Before his trial, the police planted an informant in Ventriss's cell and told the informant to keep his ears open for incriminating statements. This ploy violated Ventriss's Sixth Amendment rights to counsel. At his trial, Ventriss testified that someone else had committed the crimes. The prosecutor then had the informant testify about incriminating statements Ventriss had made in jail. The Supreme Court held that the exclusionary rule would not apply in this instance because the illegal evidence was used to impeach Ventriss's statements—that is, to make him look like a liar—rather than specifically to prove that he had committed the crimes.⁴⁵ While this may seem like a fine distinction—and one that might be lost on jurors—it was enough for the Court to uphold the conviction.

Constitutional restrictions and guarantees place legal limitations on what police in the United States may and may not do. In addition, police face a number of special issues and situations that affect both police performance and the way communities interact with law enforcement.

USE OF FORCE

A seemingly extraordinary succession of instances of police use of lethal force has galvanized public concern and has, in a number of communities, undermined public trust.⁴⁶ The term *use of force* encompasses an array of coercive actions, from control holds (e.g., "wrist locks" and "twist locks") to deadly force. Because it is now so easy to record the use of force in public places, it is being illuminated as never before. Video recording devices are increasingly ubiquitous, from on-board video cameras in law enforcement vehicles to citizens' handheld video recording devices. The omnipresence of video recordings was underscored in a number of high-profile police–citizen deadly force encounters across the nation in 2014 and 2015. In fact, the

value of video evidence of police–citizen encounters has undoubtedly given impetus to body-worn cameras becoming part of each officer’s equipment inventory in many agencies.⁴⁷



▲ Police Use of Force

Officers’ use of force is heavily regulated.

Ann Heisenfelt/AP Images

Regulating Use of Force

No aspect of the exercise of law enforcement powers poses greater potential for harm than the misuse of force. Therefore, the laws and policies concerning police use of force are particularly important.

Case Law The facts of three key cases define lawful use of force: *Tennessee v. Garner*, *Graham v. Connor*, and *Saucier v. Katz*. In *Tennessee v. Garner* (1985), the U.S. Supreme Court held that the use of deadly force was not reasonable unless the suspect committed a crime that inflicted serious harm and his or her escape posed a significant risk of further serious harm to persons at large. The *Garner* decision reversed the common law authorization to use deadly force against any fleeing felon.⁴⁸

KEY CONCEPTS Constitutional Provisions That Limit Police Actions

Amendment	Provisions
Fourth Amendment	
Searches and seizures	Applies only to actions undertaken by government agents
Reasonableness	Applies only when there is a reasonable expectation of privacy Many searches require valid search warrants based on probable cause
Exclusionary rule	There are numerous exceptions to the warrant requirement Evidence seized in violation of the Fourth Amendment is excluded at trial
Fifth Amendment	There are numerous exceptions to the exclusionary rule Prohibits compelled confessions
	Originally, confessions were permitted as evidence as long as they were voluntary
	In <i>Miranda v. Arizona</i> , the U.S. Supreme Court required that defendants must be informed of certain rights prior to custodial interrogation
Sixth Amendment	There are exceptions to the <i>Miranda</i> rule Guarantees criminal defendants the assistance of counsel
	Once formal charges have been filed, a defendant cannot be questioned outside the presence of the defense attorney
	Exceptions apply as they do to Fourth and Fifth Amendment rights

The Court's decision in *Graham v. Connor* (1989) established the "objective reasonableness" standard. Recognizing that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation, the Court ruled that the reasonableness of a particular use of force incident must be judged from the perspective of a reasonable officer on the scene. Other factors determining whether the use of force meets the objective reasonableness standard include severity of the

crime, immediacy of the threat to the safety of officers or others, and the suspect's resistance to arrest or his or her attempt to evade arrest by flight.⁴⁹

In *Saucier v. Katz* (2001), the Court recognized that on occasion police officers apply force that may eventually be determined unconstitutional yet remains protected by **qualified immunity**—meaning that the officers, under specific circumstances, cannot be sued for their actions. The Court established a two-prong test: (1) Did the officer's conduct violate a Constitutional right? and (2) If a violation occurred, was the right clearly established in light of the specific context of the case at hand?⁵⁰

qualified immunity

When government officials are shielded from being held personally responsible for an action they took in their official capacity.

A number of cases following *Saucier* more closely examined the “hazy border” between excessive and acceptable use of force. In *Brosseau v. Haugen* (2004), the Court reiterated the requirement that a right allegedly violated must have been so clearly established that a reasonable officer would know that his conduct violated the law. A fact-driven analysis must reveal that law in a particular area is clearly established. Absent such, an officer is entitled to qualified immunity from a lawsuit.⁵¹ Commonly, an officer's training records are accessed to determine exposure to knowledge.

Court decisions have made it clear that we must judge the need for and appropriateness of any level of force objectively on the facts in a given situation. Law enforcement officers must use only nondeadly force options when deadly force is not appropriate, and they may use only a level of force that is objectively reasonable to bring an incident under control.

Use of Force Continuum The **use of force continuum** is a training aid depicting the appropriate amount of force a law enforcement officer may use in particular kinds of situations. As Figure 7-2 illustrates, the continuum includes strategies for escalating force when a subject does not comply with officers, as well as strategies for de-escalating force when a subject is compliant. The underlying principle of a force continuum is that force should be applied proportionately and increased or decreased in increments.⁵²



FIGURE 7-2 Use of Force Continuum

The use of force continuum is a training aid for officers in determining the appropriate level of force to be applied against a resisting suspect.

use of force continuum

Guideline depicting the appropriate amount of force a law enforcement officer may use in particular kinds of situations.

Policy Paramount among the policies of law enforcement agencies are those controlling use of force. Not only should there be policies for deadly and nonlethal uses of force, but a “sanctity of life” philosophy must be inculcated and in the forefront of each officer’s mind.⁵³ The “gold standard” of use of force management is a leader who possesses complete awareness of the use of force culture within her agency and knowledge of the attitudes held by all officers.⁵⁴



Joe Raedle/Getty Images

Real Crime Tech

USE OF FORCE TRAINING IN A SIMULATOR ENVIRONMENT

One of the most important aspects of any law enforcement use of force training system is the degree to which the virtual environment reproduces reality. The greater the believability, the greater the degree of presence and focus achieved. To enhance the richness of an immersive virtual reality training experience, accurate environmental sounds and spatial characteristics are essential, as is the ability to adjust atmospheric and lighting conditions. In addition, interactivity among officer(s) and other parties (e.g., suspects, victims, and innocent citizens) is critical for ensuring realism and application and coordination of tactics.

Simulation technology enables eye tracking and measurement of reaction times. Even more nuanced concepts such as “temporal occlusion” can be integrated. Temporal occlusion enables anticipating actions of another individual through observing bodily cues. Acquiring such a skill set through repetitive simulations can lead to reliably predicting what a subject would likely do in a given scenario. As use of force simulator technology continues to advance and become further validated, there will be more sophisticated learning opportunities to maximize the quality of training.

SOURCES: *VirTra*, “Real World Use of Force Training in a Virtual Simulator Environment,” May 24, 2018; Lon Bartel, “How Simulators Will Transform Police Use of Force Training in 2018,” *PoliceOne.Com*, February 22, 2018. <https://www.policeone.com/police-products/training/simulator/articles/471480006-How-simulators-will-transform-police-use-of-force-training-in-2018/> (retrieved February 13, 2019).

It is imperative that agencies continuously update policy and related training to reflect changes in law, societal expectations, and tactics.⁵⁵ In fact now, amid the largest national debate over policing since the 1991 beating of

Rodney King in Los Angeles, a number of agencies are reexamining when officers should chase people or draw their weapons and when they should back away and wait or try to defuse certain situations.⁵⁶

Dynamics of Use of Force

The most recent national survey of contacts between the police and the public revealed that an estimated 21 percent of U.S. residents aged 16 and older, or 53.5 million individuals, had face-to-face contact with the police in the course of the year 2015. Fewer than 2 percent of the 53.5 million people experienced force or threat of force by the police. African Americans and Latinos were more likely than Whites to experience use of force. Too, African Americans were more inclined to consider the force excessive; overall, more than three-quarters of the people experiencing use of force believed the force used against them was excessive.⁵⁷

Some critics of the police assume that use of any force, including excessive force, primarily occurs when White officers deal with minority citizens. However, some recent studies present strong evidence that a suspect's behavior and demeanor toward the police, rather than race, are significant determinants of police use of force. If the suspect uses or threatens physical force, the police are more likely to use force, and the amount of force increases significantly. Moreover, the probability of using force and the amount of force significantly increase when the suspect is antagonistic. Thus, what the suspect does—not who he is—is a major indicator of police force.⁵⁸

Until relatively recently, studies have not assessed the perceptions, beliefs, and thought processes of the officers involved in deadly force situations. A 2012 study under the auspices of the Bureau of Justice Statistics surveyed 295 law enforcement officers across the United States regarding their experiences involving use of deadly force. The results of the study indicated that approximately 70 percent of the sample of officers, averaging 17 years of service, had been in a situation where they legally could have fired their weapons. This finding contrasts with the public perception of police officers, which is framed and influenced largely by media depictions.

Insight into the restraint of use of force by officers can be provided by a concept known as the “deadly mix.” The “deadly mix” is descriptive of the dynamic interaction of the officer, suspect, and the circumstances that

brought them together. As the suspect and officer interact, both parties assess each other's behavior and act accordingly. This occurs within seconds but has life-altering potential. The elements of the "deadly mix" were divined in large part through interviews of offenders who killed officers. In a majority of cases, the decision to take on an officer was based on the officer's apparent level of awareness of all going on around him and the degree to which the officer conveyed "being in charge." Conceptualizing restraint in terms of the "deadly mix" reveals the dynamic nature of decision-making in the context of exigent circumstances.⁵⁹

PURSUITS

Like instances of excessive force, police vehicle pursuits that result in the loss of innocent lives can be particularly problematic for law enforcement. A pursuit begins when a law enforcement officer signals a driver to stop his automobile and the driver refuses to do so. Police and many members of the public believe that allowing officers to pursue someone who fails to yield is an absolute necessity. If offenders know they can drive away and the officer will not pursue, many people reason that this situation creates a serious hazard to public safety. Others argue that officers should make decisions to pursue based on a variety of relevant factors, such as the seriousness of the suspected activity and the potential danger to bystanders. Driving 10 miles over the speed limit, for example, might not be an offense worthy of pursuit. Officers need to quickly weigh competing safety issues—namely, the possible risk to public safety of not apprehending the suspect against the risk of pursuit and the possibility of an accident.

Risks of an accident increase when more officers participate in a chase. As noted earlier, an officer is also more likely to use force in events that follow a pursuit.⁶⁰ Suspects who flee from police not only put themselves at risk of an accident but also increase the likelihood of police use of force when they are apprehended.

Pursuits are dangerous for suspects, bystanders, and police. A good deal of controversy surrounds the data about how many innocent bystanders are killed annually because of police pursuits. Between 1996 and 2015, an average of 355 persons per year were killed as a result of police pursuits.⁶¹

In 2017, 2 of 46 officers feloniously killed on duty lost their lives as the result of a vehicle pursuit.⁶²

There are few legal limits on when and under what conditions police may pursue a suspect. In several cases, someone who was harmed as a result of a police pursuit sued the officer and the department. Generally, courts have ruled that qualified immunity shields these officers from civil suits.

The U.S. Supreme Court ruled on officer liability in *Scott v. Harris* (2007). Victor Harris was driving 73 miles per hour in a 55-mile-per-hour zone. When Officer Timothy Scott tried to pull him over, Harris failed to yield and attempted to flee; 6 minutes and 10 miles into the pursuit, Scott rammed his bumper into the rear of Harris's vehicle. Harris lost control of his automobile, and the resulting crash left him a quadriplegic. Harris sued Scott, claiming that Scott had violated his constitutional rights by subjecting him to excessive force. The Court ruled that Scott had not violated Harris's constitutional rights because his actions were reasonable in that Harris's driving was causing a threat to public safety. Scott was therefore not liable under the doctrine of qualified immunity. In the majority opinion, Justice Antonin Scalia wrote, "A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury."⁶³ See the "Case in Point" box to read about how the U.S. Supreme Court has ruled that police officers can use deadly force during a pursuit if the public safety is threatened.

Although the courts have largely supported police in their efforts to apprehend fleeing suspects, the risk of lawsuits and the need to ensure the safety of the public and officers have led many law enforcement agencies to review and revise their pursuit policies. There are two types of pursuit policies. In a restrictive policy, an officer can only begin a pursuit in the suspicion of particular crimes, usually felonies. In a discretionary policy, an officer can decide whether to pursue, but guidelines are provided regarding how to conduct the pursuit and when to stop pursuing. Restrictive policies have drawn criticism because people argue that criminals will be more likely to commit crimes for which they know they won't be chased. If a department wants to limit lawsuits, however, it will more likely adopt a restrictive policy so that any accidents or injuries that do occur will be the result of pursuing a suspected felon.⁶⁴

a case in **point**

Plumhoff v. Rickard (2014)

In July 2004, West Memphis, Arkansas, a police officer stopped Donald Rickard for a burned-out headlight. Rickard initially stopped. After asking Rickard some questions, the officer thought Rickard was acting suspiciously and, therefore, asked him to step out of the car. Instead of doing so, Rickard, with a passenger in the car, attempted to flee. The officer, and then five others, gave chase. The high-speed pursuit continued over state lines into Tennessee and through the streets of Memphis. At some point, it appeared that Rickard was cornered in a parking lot, but he continued to attempt to flee by ramming his car into an officer's bumper and then trying to speed away. At that time, officers fired 15 times into the car. A combination of the resulting car crash and gunshots killed both Rickard and his passenger, Kelly Allen.



The Commercial Appeal/Zuma/Alamy

On May 27, 2014, the U.S. Supreme Court unanimously held that the officers had not violated the Fourth Amendment when using deadly force during a pursuit. The Court opinion argued that the shooting was not unreasonable because the pursuit was a public safety threat given Rickard's "outrageously reckless" driving. The officers acted reasonably, the Court held, because Rickard would have continued to be a public safety threat had he been able to drive away. Given that the officers acted reasonably and, therefore, did not violate the Fourth Amendment, they should be granted qualified

immunity. As mentioned in the chapter, when a government official has qualified immunity, they are protected from personal liability.

The decision has been interpreted to give law enforcement even more discretion during pursuits—the authority to use deadly force if the person who is fleeing is determined by a reasonable officer to be acting in ways that constitute a public safety threat. One of the questions raised was whether it was necessary and constitutional for the officers to shoot 15 times. The Court’s opinion included the position that if an officer finds a threat serious enough to use deadly force, “they need not stop shooting until that threat has ended.”

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do you think the Court decided correctly? How would you have decided the case?
- When do you think a chase is enough a risk to public safety that deadly force is reasonable?
- In this case, the pursuit originally started because of an inoperable vehicle light. Should the reason for the stop matter when an officer decides whether to pursue?

SOURCE: *Plumhoff v. Rickard* 572 U.S. ____ (2014).

DRUG ENFORCEMENT

The use and sale of illegal drugs is another challenge for law enforcement. Illegal drug use is widespread in the United States. According to a 2015 national survey, 8.8 percent of adolescents aged 12–17 (an estimated 2.2 million adolescents) reported using illicit drugs within the month prior to being surveyed. Overall, 2.9 percent of people 12 and over in the United States (7.7 million individuals) reported that they had been dependent on drugs during the prior year.⁶⁵

Marijuana appears to be the clear drug of choice for illicit users, but methamphetamine use tends to be associated with a variety of other criminal behaviors not necessarily found with other drugs. For example,

methamphetamine use has been found to predict violent behavior in parolees.⁶⁶ Furthermore, the labs in which methamphetamine is made are particularly dangerous. About 15 percent of the methamphetamine labs discovered in California are uncovered because unsafe handling of the highly combustible chemicals required often results in explosions, fires, toxic fumes, and other environmental hazards.⁶⁷ Perhaps most troubling are the risks to children who live in homes where methamphetamine is manufactured.⁶⁸

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▲ Methamphetamine Lab

Drug use is affecting communities throughout the United States.

Spencer Platt/Getty Images

As we saw in Chapter 1, enforcement of drug laws has varied over time. Enforcement strategies today are aimed at preventing drugs from entering the United States, stopping drug sales, and arresting individual users in possession of illicit drugs. The federal budget for drug enforcement, prevention, and rehabilitation illustrates where most of the government's efforts are focused. The 2019 National Drug Control Strategy identifies the Trump administration's highest priority as addressing the opioid crisis.⁶⁹ The

president's fiscal year 2018 funding request helps illustrate where most of the government's efforts are focused. Prevention requests totaled \$1.3 million, which is down from \$1.5 million the two previous years. Treatment resources raised to \$10.8 from \$10.6 the previous year and \$9.8 in 2016. Funding for domestic law enforcement was reduced but resources for interdiction—stopping the importation of drugs—increased to \$5 million from \$4.6 million. The 2015 the Obama administration's budget had for the first-time increased funds to prevention, but the Trump administration has brought the priorities back to enforcement and, in particular, interdiction.⁷⁰

Although the focus of a good deal of taxpayer money, enforcement strategies have been largely ineffective in reducing the use or sale of illegal drugs.⁷¹ However, measuring the effect of police interventions is difficult because there are scant data on their long-term results. Still, drug use in the United States has not declined in recent years.⁷²

Differential enforcement of drug laws is also a concern. Whites and Blacks report about the same level of drug use, but Blacks are much more likely to be arrested for a drug offense.⁷³ In fact, 75 percent of incarcerated drug offenders are people of color, even though 72 percent of drug users are White, 13 percent are Black, and 11 percent are Latino.⁷⁴ The “Race, Class, Gender” box illustrates how aggressive drug enforcement can encourage increased rates of searches that may cross the line of constitutionality.

Police also engage in drug prevention efforts. In the Drug Abuse Resistance Education (D.A.R.E.) program, the best known of these strategies, officers talk to students in classrooms about illegal drugs and the negative effects of drugs on users' lives. The preventive orientation is appealing to communities, and many have implemented the program in their public schools. But individuals who receive D.A.R.E. programming are not any less likely to use illegal drugs.⁷⁵ Unfortunately, neither enforcement-oriented nor prevention-oriented policing strategies appear to have a notable impact on illegal drug use.

Race, Class, Gender

Pedestrian Stop-and-Frisk in the Big Apple

As part of its aggressive order maintenance and general tough-on-crime strategy, New York City's Police Department initiated an active stop-and-frisk program in 2006. The result was over a half-million police–resident pedestrian contacts in that year. The data released by the NYPD indicated that almost 90 percent of those stops were of non-White individuals. Specifically, the racial breakdown of stops was 53 percent Blacks, 29 percent Latinos, 11 percent Whites, and 3 percent Asians. When frisks were considered, some races had a higher “hit rate,” meaning that they were more likely to be in possession of a weapon. Whites were frisked only 29 percent of the times in which they were stopped, but they were 70 percent more likely to have a weapon. However, Blacks and Latinos were more likely to be frisked at the rate of 45 percent of those stopped.

A primary goal of pedestrian stop-and-frisks is to rid the streets of contraband, including narcotics. Of the half-million stops, however, only 6.4 percent of White suspects, 5.7 percent of Black suspects, and 5.4 percent of Latino suspects were discovered to be in possession of contraband. Ultimately, though, over 90 percent of pedestrians stopped were not found to be breaking the law.

A follow-up analysis of stops in 2009 showed that even more pedestrian stops were executed, with 575,000 such stops occurring in that year, which brings the 3-year total to almost 3 million. Blacks and Latinos were nine times more likely to be stopped that year than Whites but were still no more likely to be arrested. In the more than half-million stops, 726 guns were found, which equates to .001 percent of the pedestrian stops.



Per-Anders Pettersson/Getty Images

The most recent controversy over this practice is that the police department had been storing identifying information about every pedestrian stopped in a database, regardless of whether the person had been found to be engaged in any criminal activity. The New York State legislature passed a bill that barred the department from saving identifying information on people who

were not found to be engaged in wrongdoing. Despite protests from New York City's mayor and police chief, the governor signed the bill into law in July 2010. Despite lawsuits and public protests, however, the department continued to engage in an aggressive stop-and-frisk program for several years. When new mayor Bill de Blasio took office in 2014, he pledged to reduce the practice. According to subsequent reports, although the overall number of stops did decrease significantly, young Black and Latino men continued to be stopped at disproportionately high rates.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Community relations—particularly among communities of color and the police—suffered from these stop-and-frisk activities. Many people expressed the view that Blacks and Latinos were specifically being targeted by law enforcement. Do you think stop-and-frisks should continue given what you have just learned? Explain.
- Should law enforcement agencies be required to demonstrate that their tactics are effective, especially if the tactics are personally intrusive? Why or why not?
- What kind of information should police departments be able to keep on individuals for whom they have no proof of criminal wrongdoing?

SOURCES: Gary Ridgeway, "Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices," 2006. RAND Corporation. www.rand.org/pubs/technical_reports/2007/RAND_TR534.pdf (accessed February 13, 2011); Al Baker, "New York Minorities More Likely to Be Frisked," *New York Times*, May 12, 2010; Al Baker and Ray Rivera, "New York to Limit Retention of Street-Stop Data," *New York Times*, July 15, 2010; Taylor Wofford, "Did Bill de Blasio Keep His Promise to Reform Stop-and-Frisk?" *Newsweek*, August 25, 2014. www.newsweek.com/did-bill-de-blasio-keep-his-promise-reform-stop-and-frisk-266310 (retrieved June 7, 2015).

The challenge to police of dealing with illegal drugs and drug enforcement policy often overlaps with police confrontations with gangs and gang members, the topic we take up in the next section.

GANG ENFORCEMENT

There is no single accepted definition of gangs. In any case, gangs' characteristics and the behavior of members vary from place to place. Classifying crimes as gang-related is equally difficult. So we cannot be as

confident in our knowledge of gang involvement in criminal events as we are in other areas of criminology.⁷⁶

We define gangs as “any identifiable group of youngsters who (a) are generally perceived as a distinct aggregation by others in their neighborhood, (b) recognize themselves as a denotable group (almost invariably with a group name), and (c) have been involved in a sufficient number of delinquent incidents to call forth a consistent page 251 negative response from neighborhood residents and/or law enforcement agencies.”⁷⁷ In other words, gangs are groups, recognized as such by themselves and others, that have a history of trouble with neighbors and police.



▲ Gang Identity

Special signs, colors, tattoos, and codes provide identity for gang members. Tom Homan, Director of Immigration and Customs Enforcement, answers questions in front of photos of MS-13 tattoos at a White House briefing in 2017.

Win McNamee/Getty Images

Patterns of Gang Activity

As of 2012, there were more than 30,000 gangs and 850,000 gang members in the United States.⁷⁸ Gang membership and violence was, and still to a large degree is, a major *urban* problem.⁷⁹ Rural areas and small towns lack

the necessary population base to sustain gangs, and any disruption such as an arrest or the departure of members can severely weaken the gang. Gang problems reported by most rural agencies are occasional and minor.⁸⁰ Only 5.5 percent of gangs are found in rural communities.⁸¹

Almost 70 percent of gang members live in large and small cities. News media frequently report stories about gang members moving into communities from other places. However, gangs are not as mobile as these reports might suggest, and membership in gangs has been fairly stable. For the most part, gang problems develop within a community rather than being imported into it.⁸² Gangs are the primary distributors of illicit drugs throughout the United States and often use drug trafficking as their primary means of financial gain.⁸³

Gangs are also associated with organized crime entities. Criminal alliances exist between Mexican organized crime groups and U.S. gangs, and Asian criminal enterprises also work with street gangs in the United States. In addition to illegal drugs, Asian organized crime groups are often engaged in credit card fraud, illegal gaming, and money laundering. In California, Russian organized crime groups have been associated with the Crips (a well-known gang) for the purpose of fencing stolen goods.⁸⁴

President Trump has drawn an increasing amount of attention to the gang MS-13. He has specifically tied their membership to foreign countries and blamed immigration laws for their presence in the United States. MS-13 originated in central Los Angeles in the late 1980s by El Salvadoran refugees. Rather than being a national threat, most authorities believe the gang is mostly found in three particular communities—Los Angeles, Long Island, New York, and outside Washington, D.C. The FBI estimates that there are 10,000 members nationwide. MS-13 is a street gang page 252 that doesn't, in fact, engage in *international* drug dealing or other criminal activity. It is, however, a very violent gang generally made up of local teenagers who recruit others in their local areas.⁸⁵

Gangs have kept pace with technology and use it extensively. For example, gangs use cell phones as much as does the public at large. Gangs also monitor police communications with scanners and use surveillance equipment to detect hidden microphones or "bugs." They track legal proceedings online and use computers to identify witnesses for intimidation, steal information, and perpetrate fraud.⁸⁶

Police Response to Gangs

To deal with the gang problem, police departments have created task forces or gang units and offered specialized training in gang signs, colors, tattoos, and codes. Gang units, like drug units, generally use proactive police strategies and maintain a high degree of contact with known gang members or gang affiliates for intelligence purposes. Operation Ceasefire, an innovative problem-oriented policing program in Boston, successfully reduced gang violence. The program identified young gang members who were especially active in crime and focused enforcement efforts on them. When members of a gang committed violence, the police would flood the area and indicate that they would strictly enforce any law broken. Community organizations also offered gang members a variety of social services such as health care, substance abuse assistance, and food and shelter.⁸⁷

Some critics contend that police and politicians have become overzealous in their desire to protect society from the criminal behavior of gang members. For example, some cities have imposed juvenile curfews that have been challenged as unconstitutional or illegal.⁸⁸ Given their training, officers report they can identify gang members by their clothing, the people with whom they associate, their tattoos, and the hand signals they flash. Some agencies document names and identities of those they believe to be gang members.

Critics, however, say these lists cast a shadow of suspicion on all young men of color, some of whom can find their names listed, though there is little supporting evidence. According to law enforcement agencies, gang membership by race is divided in the following manner: 35 percent of gang members are Black, 46 percent Latino, 11 percent White, and 7 percent some other race or ethnicity.⁸⁹

Success in eliminating problems and crime associated with gangs demands a coordinated response that includes suppression, community mobilization, and social opportunities for youth.⁹⁰ Of course, all such efforts must be clearly defined, constitutional, and nondiscriminatory.⁹¹

INTIMATE PARTNER VIOLENCE

Domestic violence is the traditional term for an assault on a person with whom the attacker is intimately involved. Today the preferred term is **intimate partner violence**, which encompasses the variety of couples who experience this violence—dating couples, same-sex couples, life partners, married couples, and couples recently separated (the aftermath of separation is an extremely dangerous time for this kind of victimization). Intimate partner disputes occur in all social classes and make up a large percentage of calls to the police. Yet only half of female victims call the police, with lower-class women reporting their victimization at the highest rates.⁹²

intimate partner violence

An assault on a person with whom the attacker is intimately involved.

One of the reasons victims may be hesitant to contact the police is that for years police officers treated violence between intimates as a private problem, a family matter not appropriate for police intervention. Hence, officers rarely made arrests even when there was clear evidence an assault had occurred.⁹³ Police response to the crime of intimate partner violence has, however, changed for a number of reasons.

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First, in the 1970s victim advocates and women's rights advocates began to raise public awareness of police unresponsiveness to victims of intimate partner violence. That publicity put pressure on departments to change the way they handled these calls for service. A second force for change was that local governments were successfully sued for failing to protect female victims. In the pivotal case of *Thurman v. City of Torrington*, a Connecticut city awarded \$2.3 million to a victim for violating her right to equal protection. This case illustrated to police and government officials that if they failed to protect victims, they would be held responsible, at least financially.⁹⁴ A third catalyst for change was the Minneapolis Domestic Violence Experiment, a study that revealed that an offender was less likely to reoffend if officers arrested the individual instead of suggesting mediation or separation.⁹⁵

Police officers still tend to dislike intimate partner calls, in part because they believe such incidents pose the greatest risk to their own safety. There is

little evidence to support that belief, however. The situations that pose the greatest threat to officer safety are traffic stops and pursuits.⁹⁶

Today **mandatory arrest policies** dictate that officers must make an arrest when there is evidence of an assault. These policies were created to reduce police discretion in incidents of intimate partner violence because evidence showed that when police had discretion, they chose not to make an arrest. Critics of the policies say that arrests have not consistently been shown to reduce violence and have unintended negative impacts on poor women and women of color.

mandatory arrest policy

Policy requiring officers to make an arrest when there is evidence of an assault.

Mandatory arrest policies have resulted in an increase in dual arrests. **Dual arrests** occur when an officer arrests both parties in a physical altercation instead of identifying and arresting only the primary aggressor. Dual arrests are troubling because in at least 85 percent of cases of intimate partner violence, men are the perpetrators.⁹⁷ Some jurisdictions discourage dual arrests and instead expect officers to identify the primary aggressor.

dual arrest

The arrest of both parties in a physical altercation instead of identifying and arresting only the primary aggressor.

Women who are undocumented residents in the United States are particularly vulnerable victims of intimate partner violence. Given a new federal practice that being undocumented in the United States is grounds for deportation regardless of any other criminal offenses, it is reasonable that undocumented individuals who are victims of intimate partner violence may be afraid to call police who are often compelled to work with immigration authorities.

The Violence Against Women Reauthorization Act, also known as VAWA, was first authorized in 1994. The original act removed the obstacles of “immigration laws that prevent immigrant victims from safely fleeing domestic violence and prosecuting their abusers.”⁹⁸ VAWA was originally reauthorized in 2000 and extended assistance to immigrants who are victims of sexual assault, human trafficking, and other violent crimes, as long as the victim cooperates with law enforcement and prosecution. The goal of this

legislation is to protect victims from abusers and traffickers who seek to control the victims by threatening them with deportation. The 2013 VAWA reauthorization legislation included increased resources and greater justice for Native American women who are victims of violence through tribal courts. The law also now allows immigrant victims to seek legal assistance, grants victims of child abuse the right to petition on their own behalf for citizenship until they are 25 years old, and provides resources for victims of elder abuse.⁹⁹ The 2018 VAWA reauthorization was caught up in the government shutdown. As of February 2019, its reauthorization was still being negotiated by the new Democratic majority in the House of Representatives.

STRESS

The constitutional and legal limitations imposed on police officers, as well as the special issues discussed in the preceding sections, powerfully affect officers' levels of stress. Officers routinely deal with emotionally charged situations knowing that there is always a potential for danger, yet page 254 they report that agency-related matters create the greatest job stress.¹⁰⁰ In particular, a major complaint among patrol officers is lack of support from their superiors.¹⁰¹

What about the Victim?

The “Elephant in the Room:” Officer Suicide

In 2017, 155 law enforcement officer suicides were reported. During the same time period, 152 line of duty deaths were recorded. In fact, police officer deaths by suicide occur 2.4 times more frequently than deaths by homicide. Approximately, 25 percent of officers' experience suicidal ideations, compared to 13.5 percent of the general population. This imbalance is strongly correlated to the prevalence of PTSD and depression among officers. Researchers estimate that 10—17 percent of officers in the United States demonstrate symptoms of PTSD. Extreme stress is omnipresent in police work. Estimates indicate that officers encounter more than 900 highly stressful and potentially traumatic incidents during their careers.

Unsupportive agency culture often deters anyone experiencing mental distress from seeking help. In many departments, cultural expectations require that officers always appear brave or tough. Cultural standards may stigmatize anyone asking for help as weak. Fear of ridicule from peers and supervisors upon any divulgence of emotional problems often inhibits seeking assistance, which effectively ingrains a “tradition of silence” around psychological problems.

It is imperative to establish a cultural shift around mental health wellness in law enforcement. Mental health issues should be treated with the same attention as any other medical matter. While many agencies do have some form of mental health support programming, it is common that agencies offer only one type of support. Agencies may only have peer support programs while lacking other critical components such as external counseling or family support. Such an approach is problematic because a single type program will not accommodate the needs of all. Too, it is critical that multiple forms of assistance remain available to officers through a career; data reveal that most officer suicides occur between 15 and 19 years of service.



Stefanie Grewel/Getty Images

The San Diego Police Department's (SDPD) Wellness Unit is considered a top-tier model program. The agency has a full-time unit staffed to provide comprehensive support to department members. The Wellness Unit's expressed goal is to create and sustain a robust culture of wellness that prioritizes physical and mental health. The SDPD's program is built on three pillars: (1) The full-time staff within the Wellness Unit; (2) other services providers, such as per supporters, psychological services, and issue-specific programs and partnerships; and (3) a multilevel training program, which extends to new officers, engages with senior staff, and is responsive to emerging issues. The Police Executive Research Forum has published an in-depth description of the SDPD Wellness Unit in a report entitled "Building and Sustaining an Officer Wellness Program."

Officer mental health is not only an officer issue; it is an agency issue, a family issue, and a public health issue. Officers who are leaving mental health issues untreated because of stigma or lack of access to resources are at risk of those deficits playing out both in the public and at home. Wellness programs can significantly improve officers' physical and emotional health, yielding positive outcomes for police officers, their agencies, and the communities they serve.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Should police officers suffering PTSD remain on active duty?
- Should agency leadership prioritize budgetary authorization for an officer wellness unit above a gang enforcement detail in an area besieged by gangs? Why or why not?

- Might the higher-than-expected incidence of suicides by police officers be somewhat explained by the degree to which they have access to firearms?

SOURCES: Officer Safety and Wellness Group Meeting Summary, *Officer's Physical and Mental Health and Safety*, Community Oriented Policing Services, April 2018; Officers Down Memorial Page, Inc., "Honoring Officers Killed in 2017. <https://www.odmp.org/search/year?year=2017> (retrieved February 14, 2019); Konstantinos Papazoglou, Peter Collins, and Brian Chopko, "Mindfulness and Officer Health, Job Performance, and Well-Being," *FBI Law Enforcement Bulletin*, January 17, 2018. <https://leb.fbi.gov/articles/featured-articles/mindfulness-and-officer-health-job-performance-and-well-being> (retrieved February 14, 2019); Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program* (Washington, DC: Office of Community Oriented Policing Services, 2018).

This perceived failing by management has taken on a new complexion in light of the proliferation of peace officers who have had their policing careers interrupted by military deployments to combat zones (e.g., Iraq and Afghanistan). Those returning from combat consistently acknowledge that the challenge of transitioning back to police work could be eased if agency leadership did more to prepare returning veterans for reintegration.¹⁰² The "What about the Victim?" box focuses on this situation and looks at its context and potential solutions.

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Experiencing Stress

Unquestionably, police officers' stress from the job affects life at home.¹⁰³ Often officers work irregular hours and have a reduced amount of time they can spend with their families. Further, the transition from dealing with traumatizing events on the job, such as multiple deaths in a traffic accident, to attending to family needs at home can be difficult.

Female officers and officers of color tend to experience higher levels of stress than their White male colleagues, much of it the result of discrimination from fellow officers.¹⁰⁴ Officers who identify as gay or lesbian also report increased levels of stress. Lesbian officers, however, report that their gender is a greater barrier in policing than their sexual orientation.¹⁰⁵ Gay male officers, on the other hand, experience clear hostility from straight male officers.¹⁰⁶

Although only about 14 percent of police–citizen interactions involve citizen resistance,¹⁰⁷ police often find it hardest to forget these incidents, and they greatly affect the level of occupational stress. In the case of service calls to households, even when the residents are cooperative, the police are dealing with trauma. Indeed, many officers come face-to-face with social problems most people hope never to witness, such as sexual assault, child abuse, intimate partner violence, runaways, and drug addiction. These emotion-taxing problems take their toll on officers’ psychological and emotional well-being.

Sometimes the police themselves are victims, as in the case of the officers who lost their lives or were injured at the site of the 9/11 World Trade Center devastation, or who contracted related illnesses after the event. [page 256](#) Such cases affect not only the individual officers who are victimized but also other officers—who feel as though an assault on one officer is an assault on them all.

Real Careers



Don Farrall/Getty Images

RYAN BAL

Work location: Roseville, California

College(s): California State University–Sacramento (2004)

Major(s): Criminal Justice (BS)

Job title: Patrol Officer, Roseville Police Department

Salary range for job like this: \$56,000–\$76,000

Time in job: 4 years

Work Responsibilities

As a patrol officer, I respond to emergency calls, like automobile accidents, and nonemergency calls, such as noise complaints and fallen trees. But I also partake in proactive law enforcement, which means I do traffic stops, locate subjects, and conduct searches.

I work on a 3/11, 4/11 schedule—that is, every other week I work 3 days for 11 hours or 4 days for 11 hours. On top of that, I recently received special training in evidence collection techniques and became a CSI (crime scene investigator). Now I am always on call for homicides or any other crime that requires specialized documentation and collection of evidence.

Why Criminal Justice?

My passion for criminal justice began when I took a forensic science class in high school. When I entered college, criminal law and investigation were the only subjects that interested me, so I knew that I wanted a career in law enforcement. Before applying for any jobs, my professors recommended I first see criminal justice in the field by taking an internship or part-time job. My internship with the city of Roseville as a cadet officer not only confirmed for me that I wanted a career that let me serve my community but also let me prove to myself that I could handle a heavy workload and dangerous situations.

Expectations and Realities of the Job

A career in law enforcement is definitely a stressful lifestyle. I often work an 11-hour shift, go home to sleep for a couple of hours, and wake up to start the next shift. Transitioning to this type of schedule was especially difficult for me because only two weeks after graduating from college, I began the police academy. I went from only afternoon classes to a 10-hour day of both physical and academic classes beginning at 7:00 a.m.

My Advice to Students

My best piece of advice is to get an internship before deciding on a career. This is the only opportunity you will really have to explore a career path before taking a full-time job. If you have a successful internship, the department might call you back for a full-time position.

Strategies for Coping with Stress

Some officers may resort to alcohol to “deal with” stress.¹⁰⁸ Unfortunately, alcohol use is likely to create additional problems, both in family

relationships and on the job. More positively, officers can turn to one another for support or utilize services offered by departments to help them cope with stress and the effects of dealing with traumatizing events.

Many types of stress prevention and treatment programs are available to police—some that individuals can pursue on their own and some the department must provide. Individual coping strategies include participating in a support system, maintaining a healthy diet and exercise regimen, venting feelings appropriately, and seeking out a change of focus and positive feedback. The single most important factor is having a dependable support group. Generally, from the perspective of police officers, no one is better equipped to understand the pressures of law enforcement than a peer. However, officers who serve as peer counselors should be trained by mental health professionals.¹⁰⁹



▲ Cleveland Police Department Dog Tags

The Cleveland Police Department awarded these tags to officers who participated in the department's innovative program on how to deal with on-the-job stress.

Partnership for a Safer Cleveland

Organizational strategies for addressing stress include the training of supervisors on sound supervisory techniques, constructive feedback on job performance, open communication channels, opportunities for input into organizational decisions whenever possible, and active support of stress management programs.¹¹⁰ Although the vast majority of police departments aggressively equip their personnel with weapons, communications equipment, and bulletproof vests, they may not always undertake adequate measures to “bulletproof the mind.” Supervisors are not always trained to recognize the symptoms of stress or to take appropriate action to deal with it. If a secondary problem such as alcohol abuse or marital conflict is allowed to fester, depression, intimate partner violence, and attempts at suicide may result.¹¹¹ A study of police suicides from 2008 to 2015 found that 125–150 officers commit suicide a year. Police suicide is a significant problem that needs to be better prevented. Overall, the organization can play a central role in minimizing the potential for harm, not only from criminal assailants but also from unattended stress.

The Cleveland Police Department’s program to help reduce on-the-job stress included equipping patrol officers with laminated cards identifying the symptoms of stress in themselves and others and providing information on how to deal with and recover from stress. The program also involved training police supervisors on how to recognize the symptoms of stress and how to assist officers suffering from stress. To encourage participation in the program, the department awards participants bronze medals in the shape of dog tags and engraved with the words “One for All” and “Strengthening the Chain.”¹¹²

SUMMARY

Police officers must balance their authority to enforce the law with citizens’ constitutional guarantees of civil liberties and the right to due process. Constitutional provisions, especially those of the Fourth, Fifth, and Sixth Amendments, protect the civil liberties and civil rights of the criminally accused and legally limit what the police may do when interrogating, detaining, or arresting persons suspected of committing a crime.

Officers must sometimes exercise force to enforce the law and maintain order, but the use of force must be lawful, according to Supreme Court guidelines. Police decisions to use force or to pursue fleeing suspects should be based on the particular situation at hand. Factors to consider include the seriousness of the situation, the potential risk to innocent bystanders, and the effect on police–community relations.

Police efforts to curtail the sale of and trafficking in illegal drugs encompass both enforcement and prevention strategies. To deal with gangs, many police departments have created gang units or specialized task forces. Success in dealing with gangs and eliminating gang violence requires community involvement and support. The police response to incidents of intimate partner violence has changed over time, with police now more likely to respond and intervene promptly. Nevertheless, police still tend to dislike calls involving such incidents, in part because they mistakenly believe these calls present the greatest threat to their own safety.

The nature of police work creates stress for many officers, and legal restrictions on police actions can compound that stress. So, too, can dealing with the special issues discussed in this chapter—the use of force, pursuits, illegal drugs, gangs, and intimate partner violence. Specialized training in recognizing and relieving stress can be helpful, but the single most important factor is having a dependable support group. For many officers, that means a support group of fellow officers.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Identify the limitations on law enforcement activities imposed by the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution.

- The Fourth Amendment requires that police conduct searches and seizures that are reasonable.
- The Fifth Amendment prohibits police from coercing confessions.
- The Sixth Amendment prohibits police from questioning defendants outside the presence of their attorneys.

Identify the situations most likely to entail use of force by the police, and explain how the police use of force is regulated.

- Situations most likely to entail use of force are those involving interpersonal disturbances, intoxicated persons, fleeing suspects, or suspects resisting arrest.
- Use of force rules are derived largely from case law and agency guidelines.

Analyze the impact of the use of force on community relations.

- The police use of force, especially excessive force, usually has a negative effect on community relations.

Describe the major legal and policy issues raised in police pursuits.

- Officers must consider the risks to public safety when deciding to pursue a suspect.
- Officers are generally protected from liability when engaging in pursuits, but pursuits can imperil the officers themselves and give rise to lawsuits.

Contrast the strategies of enforcement and prevention used to curb illegal drug use.

- Enforcement strategies include attempting to stop drugs from entering the United States, targeting drug sales, and arresting individual users who are in possession of illicit drugs.
- The best-known police department drug prevention effort is the D.A.R.E. program.

Explain how police departments have responded to gangs.

- Departments have created special task forces or gang units to deal with the gang problem.
- Gang units, like drug units, generally use proactive police strategies.

Describe how the police response to intimate partner violence has changed over time and explain why.

- Police historically did not provide victims of domestic violence the protection they deserved.
- Victims' rights advocates, women's rights advocates, and civil suits put pressure on police departments to change the way they responded to intimate partner violence.
- Today mandatory arrest policies and dual arrests are common.

Describe the factors that create stress for police officers and efforts to deal with these pressures.

- Police officers report that agency-related matters create the greatest stress.
- Female officers and officers of color tend to experience higher levels of stress due to bias within police departments.
- Strategies for dealing with stress include individual efforts and department programs.

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Key Terms

- attenuation 237
- automobile exception 232
- derivative evidence rule 236
- dual arrest 253
- exclusionary rule 234
- fruit of the poisonous tree doctrine 236
- good faith exception 237
- independent source 237
- inevitable discovery 237
- intimate partner violence 252
- mandatory arrest policy 253
- Miranda* warnings 240

probable cause 230
public safety exception 241
qualified immunity 245
reasonable suspicion 232
search incident to arrest 233
standing 237
stop-and-frisk 232
Terry stop 232
testimonial evidence 240
use of force continuum 245
voluntariness test 238
warrant 230

Study Questions

1. To obtain a search warrant, police officers must
 - a. place the target of the warrant under arrest.
 - b. permit the suspect to consult with an attorney.
 - c. demonstrate to a judge that probable cause exists to search for evidence or contraband.
 - d. prove the suspect's guilt beyond a reasonable doubt.
2. According to the exclusionary rule, evidence will be excluded at a defendant's trial if
 - a. police obtained the evidence through illegal means.
 - b. there is sufficient other evidence to obtain a guilty conviction.
 - c. the defendant has no standing.
 - d. the police did not have a valid search warrant.
3. Which of the following statements about the *Miranda* warnings is the one that is most accurate?
 - a. The police must recite the *Miranda* warnings before asking suspects any questions.
 - b. The *Miranda* warnings are meant to protect suspects' rights against self-incrimination.
 - c. The *Miranda* warnings have resulted in significantly fewer confessions.
 - d. The *Miranda* warnings include the right to a jury and a speedy trial.

4. Which of the following means a police officer who pursues a fleeing suspect will likely not be held financially responsible for any harm that comes to a suspect or other individual?
- Qualified immunity
 - Qualified liability
 - Limited suability
 - Total vulnerability
5. One of the major effects of a police officer's excessive use of force is that
- the public's confidence in the police is reduced.
 - officer morale remains static.
 - interdepartmental cohesion ends.
 - the police officer could get promoted.
6. One of the most important stressors police officers deal with—regardless of their ethnicity, gender, race, or sexual orientation—is
- general societal problems.
 - hostile situations while on duty.
 - agency-related stress.
 - marital stress.
7. Which of the following statements accurately explains why differential enforcement of drug laws is a concern?
- People of color use drugs at a higher rate than Whites, yet both groups are arrested at proportional rates.
 - One-fourth of incarcerated drug offenders are people of color.
 - There should be no concern, because differential enforcement of drug laws does not exist.
 - Whites and Blacks report about the same level of drug use, but Blacks are much more likely to be arrested for a drug offense.
8. Police departments have responded to gang problems in their areas by
- emphasizing faceless-oriented policing that utilizes reactive police strategies.
 - establishing special task forces or units that utilize proactive police strategies.
 - creating intradepartmental alliances that depend on proactive policing strategies.
 - relying on problem-oriented policing and reactive police strategies.
9. The main reason many female victims do not call the police about intimate partner violence is that
- they believe that intimate partner violence is a private matter that should be dealt with inside the home.
 - they are emotionally strong enough to handle intimate partner violence without the help of law enforcement agencies.
 - historically, the police response to intimate partner violence has been victim-centered and has scared women away from making the call.
 - historically, the police response to intimate partner violence has not been victim-centered.
10. The Sixth Amendment limits police behavior by
- protecting people from unreasonable searches.

- b. protecting people from coerced confessions.
- c. prohibiting police from questioning a defendant without his or her attorney present.
- d. protecting people from unwarranted police pursuits.

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Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Where should we draw the line between freedom and safety? What are some specific situations in which we might want to emphasize safety over freedom? When might we emphasize freedom over safety?
2. How do you think race is or is not related to police use of force?
3. How should police respond to the crime of intimate partner violence?

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8 The Courts



Image Source/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Distinguish among state, local, and federal courts and their jurisdictions.
- Describe some of the specialized courts that have been created for particular cases.
- Discuss how appeals courts differ from trial courts.
- Identify the major participants in the judicial system and their respective roles.

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Realities and Challenges

A Complicated Journey through the Courts

Lee Baca served as a deputy with the Los Angeles County Sheriff's Department for over 30 years before being elected sheriff. However, while he served as sheriff, the FBI began investigating reports of guards abusing inmates in the LA County jail system, which the sheriff's department operates. Baca resigned in 2014 but was eventually charged with lying to federal investigators and conspiring to obstruct justice.

Initially, Baca pleaded guilty to a single charge. Shortly afterward, the judge rejected Baca's plea deal under the grounds that the agreed upon sentence—six months—was too short. Then Baca withdrew his guilty plea and the case went to trial in federal court. The jury found was unable to agree on a verdict and the judge declared a mistrial. A few months later he was tried again, and this time the jury found him guilty of several charges. In May 2017, Baca was given a three-year prison sentence.

But the case wasn't over. Baca appealed his conviction, arguing, among other things, that the trial judge erroneously excluded evidence that Baca was suffering from Alzheimer's disease. In February 2019, the court of appeals rejected his appeal and upheld his conviction. Baca's fate, however, remained uncertain; his attorney announced plans to ask for a rehearing in front of a larger panel of judges.¹

As the case of Lee Baca illustrates, a case's journey through the U.S. court systems can be lengthy and complicated. Running this complex system requires a small army of workers, ranging from clerks to judges, each with a dedicated role in moving the stages of justice forward. This chapter focuses on various types of criminal courts and the roles and responsibilities of those who work within the court system.

COURT STRUCTURE AND JURISDICTION

Like the other components of the justice system, U.S. courts are complex. Each court has **jurisdiction**—legal power to hear particular kinds of cases. There are federal courts, state courts, and sometimes municipal or local courts. There are **courts of general jurisdiction**, which can hear almost any kind of case; and specialty courts, often called **courts of limited jurisdiction**, which hear only cases of a certain type. (An example of a limited jurisdiction court is a juvenile court.) Most criminal trials occur in courts of general jurisdiction. There are also trial courts and appellate courts. Each kind of court is organized differently, and the U.S. states have different ways of structuring their court systems.

jurisdiction

A court's legal power to hear particular kinds of cases.

court of general jurisdiction

A court that can hear nearly any type of case.

court of limited jurisdiction

A specialty court that can hear only cases of a certain type.

State Courts

The basic structure of most state courts is similar, but their names vary. Figure 8-1 illustrates a typical state court organization. Most state criminal cases begin in state trial courts, usually called *district courts* or *superior courts* but sometimes, as in New York State, called *supreme courts*. In most states, each county has at least one of these trial courts.

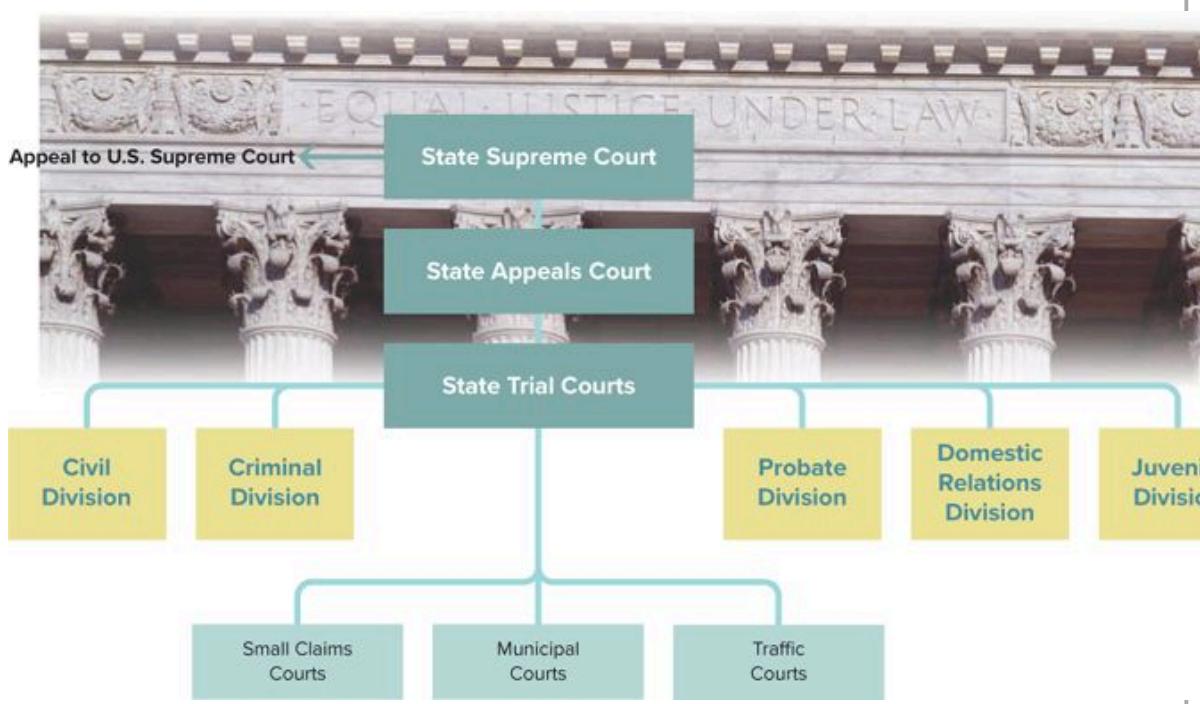


FIGURE 8-1 A Typical State Court

State court systems are complicated bureaucracies.

Photographs in the Carol M. Highsmith Archive, Library of Congress, Prints and Photographs Division [LC-DIG-highsm-14781]

Appeals are usually heard in the *state court of appeals*, sometimes known as the intermediary appeals court. Cases in intermediary appeals courts are heard by a panel of judges rather than a jury. Most states have only one appeals court, but some have several. Appeals courts may be divided geographically into *circuits* or by subject matter into civil and criminal courts. Some states with small populations, such as Montana and North Dakota, do not have an intermediary appeals court.

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The next level is the state's highest court, usually called the *state supreme court*. Some states, such as Texas and Oklahoma, have a special high court just for criminal cases. In most states, high courts have *discretionary appeals*, meaning that the justices can refuse to hear a case. However, defendants in death penalty cases often are entitled to automatic, nondiscretionary appeals to the high court. The number of justices on state high courts varies between five and nine; most states have seven.

Preview

COURT STRUCTURE AND JURISDICTION

THE COURTROOM WORKGROUP

OTHER COURTROOM PARTICIPANTS

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

Most states have other courts as well. Some have many—New York has 13 different kinds of courts (Figure 8-2). Typically, local courts, run by cities or counties, hear minor civil and criminal matters, but they also may conduct some early stages of more serious civil and criminal cases. Most states have specialty courts as well. For example, since 2000, prompted by the increasing numbers of offenders with mental disorders in jails and prisons, approximately 100 mental health courts have been established in the United States. Their primary goal is to help prevent the arrest of these offenders in the first place—for instance, by making referrals to community mental health centers to ensure that at-risk individuals stay on their medications. Other specialty courts deal with such matters as traffic infractions, drug offenses, juvenile offenders, family law issues, tax issues, and civil “small claims,” typically of \$1,000 or less.

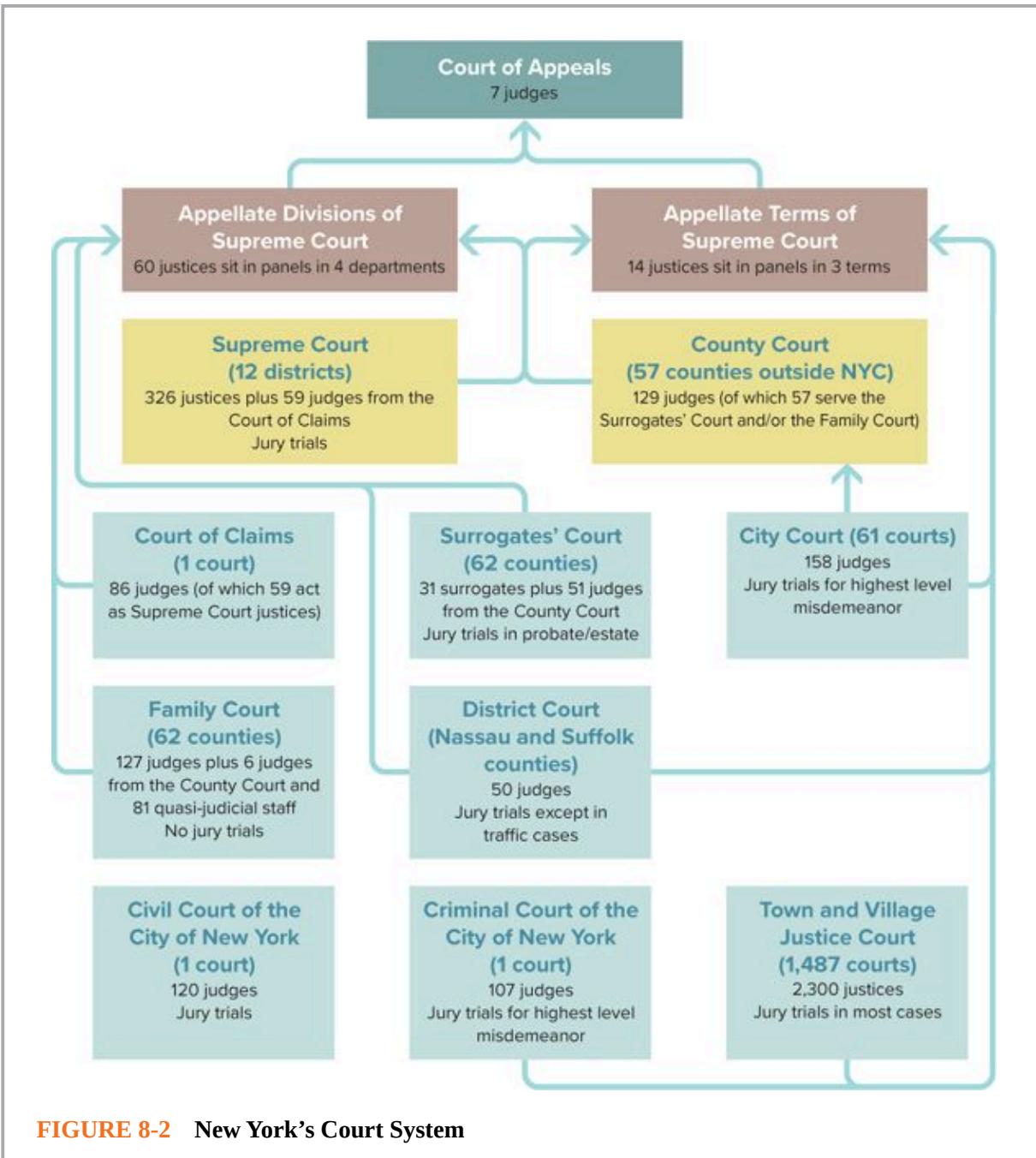


FIGURE 8-2 New York's Court System

Trial courts do not necessarily have to be administered locally; they could be administered instead by the state. On the one hand, centralization can mean a more streamlined bureaucracy, greater consistency in procedures and outcomes within a state, and less vulnerability to local political pressures. On the other hand, locally run courts might be more sensitive to local needs and face less competition for the state's limited funding.

Federal Courts

The federal courts have jurisdiction to hear only limited types of cases. In general, a federal case must entail federal law or the U.S. Constitution; or it must involve citizens of different states and at least \$75,000 in controversy; or the U.S. government itself must be prosecuting the case or involved as a party in the lawsuit. Thus, the only criminal cases that go to federal courts are those that charge someone with violating a federal law or those in which a defendant claims that a state has violated her constitutional rights. In the case at the beginning of this chapter, for example, Eddie Pugh and his friends violated federal kidnapping and weapons laws.

Very few criminal cases are prosecuted in federal courts. In 2012, for example, there were about 93,000 federal criminal prosecutions—less than 0.05 percent of the total number of prosecutions in the United States. [page 267](#)
Only 3 percent of federal criminal trials were for violent crimes.²

Figure 8-3 illustrates the federal court system. There are three basic types of federal courts. Federal trials are held in one of the 94 U.S. *district courts*. States with large populations have more than one district court. Pennsylvania, for example, has three—the Western, Middle, and Eastern districts. Each district court employs several judges, who hear federal civil and criminal cases.

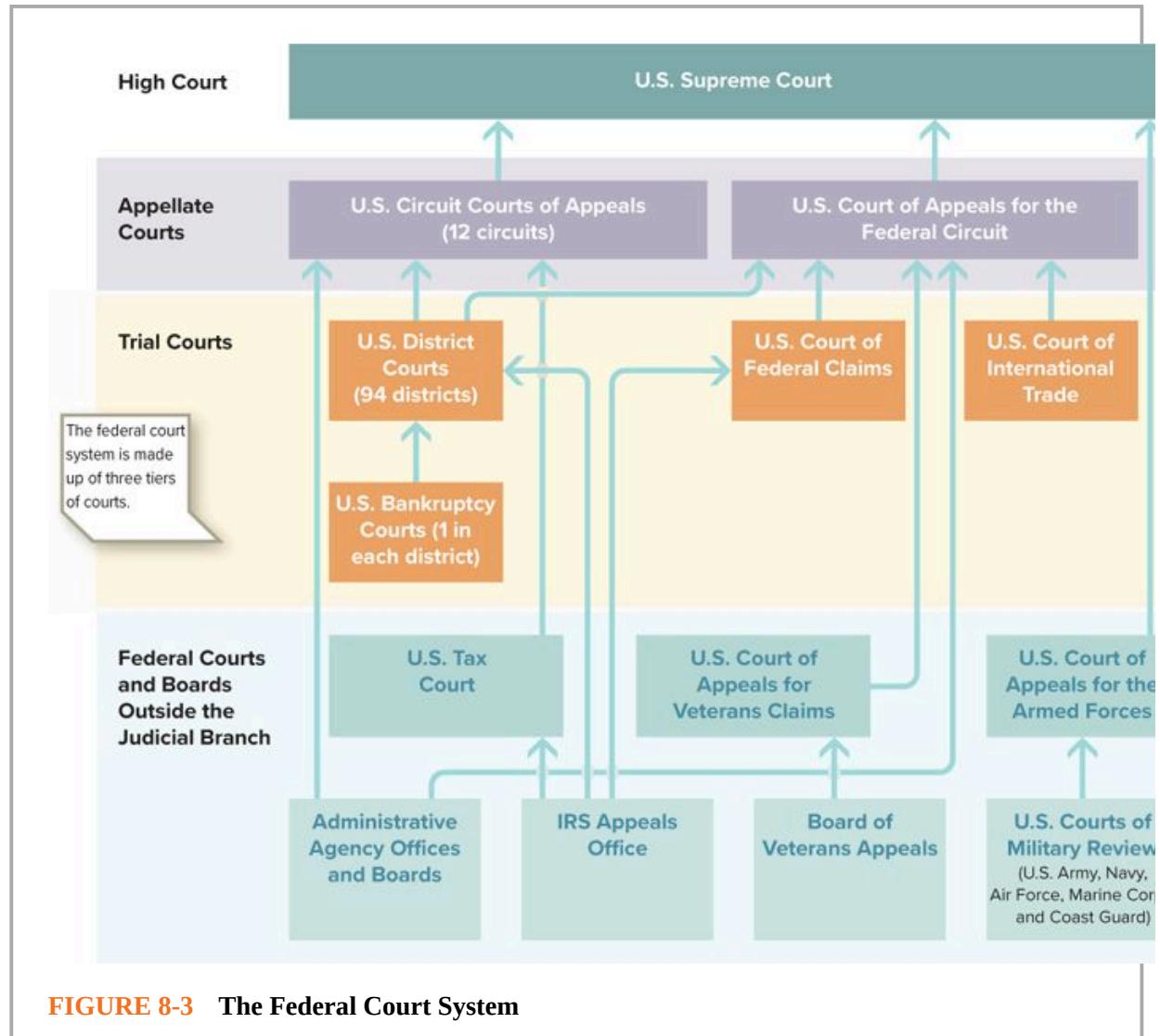


FIGURE 8-3 The Federal Court System

An appeal from a federal district court's decision is heard by a *U.S. circuit court of appeals*. Eleven federal circuits each cover several states, but the Twelfth Circuit is for the District of Columbia alone. The Thirteenth Circuit Court of Appeals handles cases from the entire nation involving patent rights, as well as cases in which the United States itself is the defendant. Each circuit employs many judges—the Ninth Circuit, for example, currently has 28—who hear cases in a few locations within the circuit covering 11 western states and territories. Several recent proposals call for splitting this circuit into two or more smaller jurisdictions to reduce case processing time and to make the circuits more equal in size.

A case before a U.S. court of appeals is usually heard by a panel of three judges, although occasionally cases will be heard *en banc*. Literally translating to “on the bench,” **en banc** in practice means that the case is heard by a larger group than three judges. Appeals from the courts of appeal (including cases that originated in military and tribal courts) go to the *U.S. Supreme Court*.

en banc

An appeals case presided over by a larger than usual panel of judges (more than three judges).

Federal specialty courts hear specific kinds of cases. For example, each district has a *bankruptcy court*. The United States sometimes also uses special *military courts* to try individuals accused of being enemy combatants. In 2006, the U.S. Supreme Court held that special military courts could not try suspected terrorists being held at the detention facility for detainees from the Iraq and Afghanistan wars at Guantánamo Bay, Cuba.³

Other Courts

The vast majority of criminal cases are tried in state or federal courts. A few cases, however, go to other types of courts. Members of the U.S. armed forces accused of violating the Uniform Code of Military Justice (the criminal laws for all persons in the military) are tried in *courts-martial*, in which the judges, prosecutors, juries, and usually also the defense attorneys are all members of the military. Members of American Indian tribes may be tried by *tribal courts* for crimes committed on tribal land. Many state and federal administrative agencies have their own courts, such as the U.S. Immigration Court and the National Labor Relations Board, as well as state courts dealing with matters such as unemployment benefits, workers’ compensation, and air and water resources.

Some jurisdictions have created special courts to deal with nonviolent youthful offenders, with defendants with mental health issues, and with those who abuse addictive substances. About 1,200–1,800 *drug courts* operate in the United States today, up from only 12 in 1994.⁴ These courts bring together prosecutors, defense attorneys, probation officers, mental health workers, and treatment center personnel to offer treatment programs designed to break the addiction cycle and reduce relapse, rearrest, and incarceration.

Drug court judges can make a difference in drug court outcomes. The largest and most extensive drug court research study found that judges’ positive, respectful, fair, attentive, and compassionate attitudes toward drug court

participants can reduce criminal behavior and drug use.⁵ In addition to committed judges, frequent judicial status meetings, drug treatment, and drug testing were central to the study's successful outcomes.

Drug rehabilitation programs have recently come into the spotlight as celebrities—including Lindsay Lohan, Britney Spears, Tara Conner, Boy George, Courtney Love, Leif Garrett, Rush Limbaugh, and Tom Sizemore—have checked into them. Amy Winehouse, who died in July 2011 at the age of 27, had been planning to return to rehab. Drug programs may help substance abusers avoid incarceration and get the support they need to overcome their addictions. Drug courts tend to be effective for reducing drug use and recidivism for adults and youth.⁶

Reentry courts are another kind of specialized court. The assumption behind these courts is that if a judge takes an interest in an offender's reintegration into society, that concern will have a positive effect on the offender's rehabilitation. Judges thus act as sentence and reentry managers for offenders, who live at home after conviction but make regular appearances before the court.⁷ If the offender violates the terms of release, the judge administers graduated sanctions and assistance that stops short of returning the offender to prison and fosters reintegration instead. Reentry court staff workers ensure that offenders fulfill the education, work, counseling, and community service page 269 requirements that the judge has imposed. Offenders, their family members, and other support agencies all are responsible directly to the court.⁸

Teen courts are another kind of specialized court, focused on first-time, nonviolent youthful offenders. On the assumption that teenagers may be more likely to listen to their peers, the juries in these specialized courts consist of teenagers, and the "prosecutor" and "defense attorney" are frequently teens as well. The judge is generally a professional judge or an attorney. To participate, the defendant usually must first admit guilt. The jury can set a variety of sentences, including community service, counseling, and letters of apology. In the hope that active participation in the justice system itself can deter future offenses, defendants usually also are required to serve as jurors in a specific number of future cases. Today there are more than 600 teen courts in the United States.⁹



▲ Teen Court

Teen courts are based on the idea that young defendants are more likely to be influenced by their peers. *What are the benefits of teen courts for defendants and other participants? What disadvantages, if any, might teen court defendants experience?*

ZUMA Press Inc/Alamy

Criminal Appeals

If a criminal defendant in the United States is acquitted of a crime, that acquittal automatically ends the case. The Fifth Amendment's protection against double jeopardy prohibits a defendant from being tried twice for the same crime. Double jeopardy protection does not, however, prohibit the victim from filing a civil lawsuit. Because the burden of proof in civil cases is lighter than in criminal cases, it is not unusual for a person to be acquitted on criminal charges and still be found civilly liable for the same acts—for example, former football star O. J. Simpson in 1997 was found responsible in civil court for the wrongful deaths of his ex-wife Nicole Simpson and her friend Ronald Goldman. Similarly, actor Robert Blake was held responsible in 2001 for the wrongful death of his wife.



▲ Oral Arguments in an Appellate Court

Appellate courts determine whether legal errors were made at trial.

Charlie Archambault/AFP/Getty Images

page 270

If the defendant is convicted, however, he or she may appeal to a higher court. In a capital (death penalty) case, a convicted person's appeal is usually automatic. As we have seen, all state and federal jurisdictions have at least one appellate court where appeals are heard.

Appellate courts are very different from trial courts in terms of both structure and function. Unlike trial courts, appellate courts do not decide on the facts of a particular case, and they do not decide whether the defendant is guilty. Instead, they determine whether legal errors were made at the trial and, if so, whether those errors were important enough to invalidate the conviction. Therefore, courts of appeals provide direct oversight of trial judges.

To appeal a conviction, the defendant—or, more often, the defendant's lawyer—files a document called an appellate brief with the appeals court. Despite its name, the **appellate brief** is a lengthy text in which the defendant, now called the *appellant*, describes all the legal errors alleged to have been made at her trial and provides *legal precedents*—that is, earlier court decisions that support her arguments. The appellant cannot dispute any of the findings of fact made at trial, although errors might include evidence that should have been excluded or admitted but that the judge did not allow. Appeals also examine

allegations of faulty jury instructions by the judge and impermissible statements by the prosecutor. In addition, the appellant may claim that the jury was improperly chosen, that the law under which she was prosecuted was unconstitutional, or that her sentence was not appropriate.

appellate brief

A document containing legal arguments in an appellate case, submitted to a court by attorneys for one party.

Once the appellant files her brief, the prosecutor will respond with a brief in which he argues that no legal errors were made. These arguments also must be supported by precedent.

There is no jury in appellate courts, no evidence is presented, and no witnesses testify. Instead, a panel of judges reads the briefs. Usually, *oral arguments* are held in which each side highlights the arguments made in the briefs and answers questions posed by the judges. Oral arguments are usually quite short—generally 15–60 minutes per side—and the appellant herself is generally not present.

Also unlike trial courts, appellate courts rarely issue decisions right away. After hearing the oral arguments, the judges meet to discuss the case. Eventually—sometimes months later—they give a *written opinion*, which may be read aloud in court. Opinions vary from a few sentences to hundreds of pages, depending on the number and complexity of the issues. Opinions not only state the judges' decisions but also elaborate the reasons for the decisions. Often they become precedents for future cases.

Appellate judges need not be unanimous in their judgment; a simple majority suffices. It often happens that some judges on the appellate court disagree with the majority decision and therefore may write dissenting opinions.

If the appellate court finds that legal errors were made at trial and that they were significant enough to affect the outcome of the case, they will *vacate*, or invalidate, the conviction. Usually, they will then **remand** the case—send it back to the trial court. The prosecution may choose to try the case again, sometimes several times. Alternatively, the prosecution may appeal the appellate court's decision to a higher appellate court.

remand

The act by which an appellate court sends a case back to a lower court for further proceedings.

If the court finds no significant legal errors, it will uphold the conviction. The defendant may then appeal to a higher court if she chooses. Higher courts frequently overturn lower courts' decisions. If a party loses the appeal at the **court of last resort**—usually the state supreme court but sometimes the U.S. Supreme Court—there is nowhere left to go except to seek habeas corpus relief (see Chapter 10).

court of last resort

The highest court to which a case may be appealed.

The U.S. Supreme Court sometimes hears appeals from state high courts, but these tend to be limited to matters of constitutional law. Unlike the U.S. circuit courts of appeal, the Supreme Court chooses whether to page 271 hear a case. If at least four justices agree that a case merits the Supreme Court's attention, then a **writ of certiorari** is issued, ordering the lower court to deliver all relevant records of the case for the Court's examination. If, however, the Supreme Court refuses to hear an appeal—and in fact it refuses about 99 percent of the cases appealed to it—then the parties have no further recourse and the previous judgment stands. The Court hears only about 100 cases a year, usually on matters it deems particularly important from the standpoint of constitutional law or about which the lower courts widely disagree.

writ of certiorari

A request that a case be heard by an appellate court such as the U.S. Supreme Court.

THE COURTROOM WORKGROUP

The U.S. court system has many different participants, each with a unique role to play. Their relationships, everyday interactions, and job performance can influence the administration of justice.

Judges

The judge, seated at the front of the courtroom, is often the most distinctive participant in a criminal case. By traditions that go back centuries, she is treated with certain respectful formalities and addressed as "Your Honor." Everyone in the courtroom rises when she enters. Attorneys must ask her permission to approach "the bench"—that is, the judge's desk—to discuss a point of law. The

opposing attorneys hold conferences with the judge **in chambers**—that is, in her private office, closed to outsiders. If a case comes before the judge in which she has an economic or a personal interest—for example, involving some property in which she has invested or individuals whom she knows—she must exercise **recusal** by turning the case over to another judge who can act with total impartiality. Such a degree of disinterestedness is not routinely expected of members of legislative bodies. The judge, in short, symbolizes the majesty, the power, and the impartiality of the law, serving as a referee to ensure that the trial proceeds according to the rules of **due process**.

in chambers

Meeting that occurs between attorneys and a judge in the judge's office rather than in the courtroom.

recusal

The act by which a judge removes herself from a case because she may be biased or may have the appearance of being biased.

due process

The right, guaranteed by the Fifth and the Fourteenth Amendments, that laws and processes be fair.

What Judges Decide In the U.S. criminal justice system, judges decide whether to issue search and arrest warrants. Once suspects have been arrested, the judge determines whether probable cause exists to believe they committed a crime. Decisions about whether to release suspects from custody while trials are pending and about the amount of bail that the defendant must provide are also within the purview of judges.

During a trial, it is a judge's job to decide all matters of law—as opposed to matters of fact, which the jury usually decides. Thus the judge decides what evidence may be admitted, rules on various motions the attorneys make, and gives the jurors their instructions. But it is the jurors who determine the guilt of the defendant based on their interpretation of the evidence. If it is a bench trial rather than a jury trial, the judge makes the determination of guilt. (For more on bench trials, see Chapter 9.) When a defendant is convicted, it is usually the judge's job to sentence her as well. In most states that have the death penalty, however, the jury decides whether to give the defendant death or page 272 some other sentence, usually life in prison, with or without the possibility of parole.



▲ Judge in Her Courtroom

Judges must make many kinds of decisions. *How might a judge's personal beliefs affect the decisions she makes on matters of law?*

moodboard/Getty Images

If a defendant appeals his conviction, the appeals court judges will decide whether errors were made at trial or whether any of his constitutional rights were violated. Furthermore, because the meaning of written laws is often unclear or contradictory, especially as they apply to specific activities, appellate judges interpret statutes and constitutions. For example, in 2001 a motorist named Robert Lee Coggin gestured with his middle finger at another driver whom he felt was driving too slowly. The other driver, offended, called 9-1-1. Coggin was subsequently pulled over and charged with disorderly conduct. He was convicted, fined \$250, and appealed to the Texas Court of Appeals. Although a Texas statute defines as disorderly conduct gestures that “tend to incite an immediate breach of the peace,” it was up to the court to determine whether “shooting the bird” incites an immediate breach of the peace. The majority of the court held that it did not, and Coggin’s conviction was overturned. More recently, in 2011 the U.S. Supreme Court heard a case that hinged on whether fleeing police in a car constitutes a “violent felony.” Lower courts were split on this issue.¹⁰ As “A Case in Point” explains, the courts’ power to interpret laws and the Constitution was established in 1803 in one of the most important rulings of the U.S. Supreme Court.

MYTH/REALITY

MYTH: Judges “pass” laws.

REALITY: Legislators pass laws. Judges interpret those laws, and their interpretations carry legal authority.

Kinds of Judges and Judicial Selection There are several kinds of judges. Today, **magistrates** and **justices of the peace** generally handle minor matters such as warrants—recall that these are legal documents giving government agents authority to conduct searches, seizures, and arrests—and infractions. Magistrates and justices of the peace may also preside over some of the early steps in criminal cases such as arraignments (see Chapter 9). In a few cases, a special magistrate is appointed to preside over a case that requires particular technical expertise or that cannot be heard by any ordinary judge due to potential conflicts of interest. Court **commissioners** or **referees** also may preside over early stages, and some perform all the duties of regular judges in specialty courts such as family and juvenile courts. The men and women who hear felony trials and many misdemeanors are called *judges*, as are those who hear most appeals. The judges of the U.S. Supreme Court, as well as of most states' highest courts, are called *justices*.

magistrate

A judge who handles matters such as warrants, infractions, and the early stages of a criminal case.

justice of the peace

A judge who handles matters such as warrants, infractions, and the early stages of a criminal case.

commissioner

An individual who presides over the early stages of some criminal trials or serves as judge in specialized courts.

referee

An individual who presides over the early stages of some criminal trials or serves as judge in specialized courts.

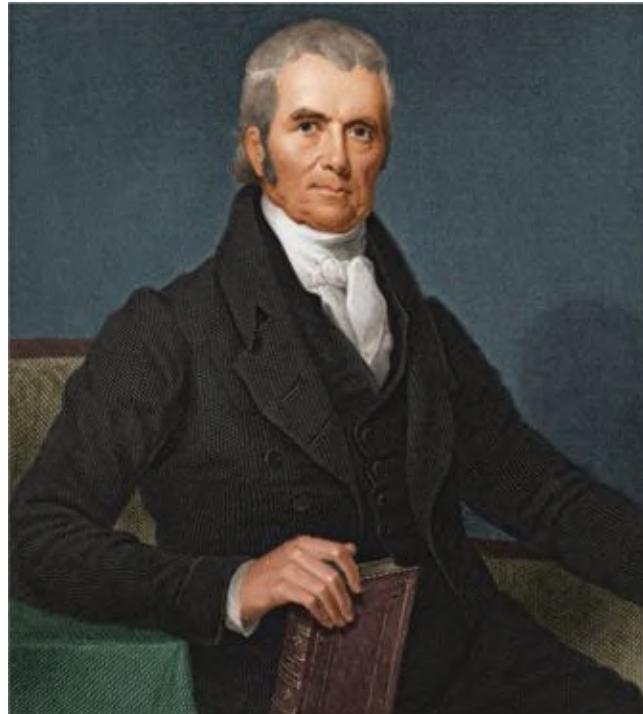
There are generally no absolute qualifications for becoming a state or local judge, and none are specified by the U.S. Constitution for federal judges or Supreme Court justices. At one time, many justices of the peace and juvenile court judges did not have any law training at all. Today, however, nearly all judges have law degrees, and most have had extensive experience in practicing law, or sometimes in legal scholarship and teaching.

Most federal judges are nominated by the president of the United States. The Senate, however, must confirm these nominations. Once federal judges have

been confirmed, they hold office for life. Unless they retire or resign, they may be removed from office only by impeachment—essentially, a special kind of trial—although this rarely happens. Since 1789, only 13 federal judges have been impeached, and 4 of those, including Samuel Chase, were found not guilty.

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a case in **point**



▲ **John Marshall**

Stock Montage/Getty Images

Marbury v. Madison (1803)

The U.S. Constitution is fairly detailed about the roles and responsibilities of the executive and legislative branches, but it says little about the powers of the courts. The Supreme Court,

in a clever decision during the American republic's early years, therefore gave the federal courts authority to interpret the meaning of laws and constitutions.

The year was 1801. Congress had just created several dozen new federal judgeships, and outgoing Federalist president John Adams appointed members of his own political party to fill these positions. These individuals were called *midnight judges* because Adams was still signing their hastily bestowed commissions on the eve of his departure from the White House.

However, when President Thomas Jefferson of the opposition Democratic Republican Party took office a few days later, he ordered James Madison, his secretary of state, to ignore any new commissions that Adams had failed to sign. Thus a Federalist named William Marbury never received his commission to become a federal justice of the peace. Consequently, Marbury filed a lawsuit against Madison that went directly to the U.S. Supreme Court. A federal law, the Judiciary Act of 1789, had provided that this kind of lawsuit must originate in the Supreme Court rather than in a lower federal court.

The Supreme Court faced tough choices. If it ruled *for* Marbury, there was a good chance that Jefferson would simply ignore the ruling, thus reducing the Court's power almost to zero. If it held *against* Marbury, on the other hand, the Court would be viewed as too tightly controlled by the president. To further complicate matters, Chief Justice John Marshall had also served as Adams's secretary of state and was Jefferson's political enemy (and also his distant cousin). Worse, Jefferson and his Democratic Republican supporters in Congress seemed determined to strip the Federalist-dominated U.S. court system of power. A few years later, they would impeach a highly unpopular Supreme Court justice, Samuel Chase. John Marshall himself might well be a target for impeachment.

Marshall found an ingenious way around these problems. He wrote an opinion in which the Court held that the Judiciary Act of 1789 was unconstitutional and, therefore, that Marbury's case could not be brought directly before the Court. President Jefferson was unlikely to dispute that ruling because it meant that Marbury and other last-minute Adams appointees would not become judges. Importantly, at the same time, the Court declared for itself the right of *judicial review*—that is, the authority to interpret laws and constitutions. Since then, the right of judicial review has been extended to all state and federal appellate courts. With these developments, the role of the judiciary was expanded far beyond its original scope.

The case of *Marbury v. Madison* remains a great milestone in shaping the role of courts in the U.S. justice system. It is the foundation of the modern federal courts' power to "make law" through judicial review and under their authority to interpret the law.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What types of factors determine whether something should be considered unconstitutional?
- In what other ways might the Marshall Court have decided *Marbury v. Madison*? What would have been the impact of a different decision?
- In his *Marbury v. Madison* ruling, was John Marshall being an "activist" judge, meaning that he was "legislating from the bench" and failing to follow the original intent of the authors of the U.S. Constitution? Explain.

SOURCE: *Marbury v. Madison*, 5 U.S. 137 (1803).

Depending on the jurisdiction and position, state court judges may be either appointed (usually by the governor) or elected by voters, and they hold office for life or for a set number of years. Both methods of judicial selection—appointment and election—have their critics. Some claim that appointment can lead to the seating of judges who are chosen not because of their qualifications but because of their personal views or their political beliefs and [page 274](#) connections. Since the 1980s, the confirmation process for Supreme Court justices in particular has repeatedly polarized the nation and set off bitter battles between the two political parties and between the Senate and the White House. Other critics, however, argue that the voting public is ill equipped to decide on the qualifications of state and local judges who are running for election—sometimes on blatantly political platforms—and that judges' concerns about raising campaign contributions and winning reelection may affect their courtroom decisions. In 2009, the U.S. Supreme Court ruled that judges must recuse themselves from deciding cases involving parties who have given them significant campaign contributions.¹¹

Race, Class, Gender

Judicial Diversity

Diversity has been slow in coming to the judiciary. The first female federal judge, Genevieve Cline, was appointed in 1928, and the first non-White federal judge, Irvin Mollison, joined the courts in 1945. Even today, the judiciary does not reflect the diversity of the U.S. population. As of 2017, 80 percent of federal judges were White and non-Hispanic, and 74 percent were male. Of the 13 people who became new federal judges in 2017, nine were male and all were White. In general, a large proportion of judges also come from wealthier social classes.

There are many reasons to explain this lack of diversity. Historically, institutional bias meant women and people of color had difficulty being admitted to law schools and additional difficulty obtaining access to the kinds of legal careers that tend to lead to judicial appointments. Bias may affect elections in situations where judges are chosen by voters, and appointments when they're nominated by government officials. Political goals may play a part as well. President Trump has nominated significantly lower proportions of women and people of color than did his predecessor,

President Obama. This might be because President Trump is seeking nominees who share his conservative political views, and those views are more predominant among White men.

Whatever the causes of lack of judicial diversity, it may have an outcome on how cases are decided. One study, for example, concluded that younger, male, White judges are more likely to sentence defendants to jail or prison than are judges who are older, female, or people of color. Furthermore, it has been argued that a diverse judiciary inspires better public confidence and allows a greater variety of voices and points of view to participate in decision making.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Has diversity in the judiciary lagged behind diversity in other high-profile professions, or is it just one example of an overall problem?
- Keeping in mind the various processes for judges to gain office, what might be some effective methods of increasing judicial diversity?
- Little research has been conducted on economic and social class variation among judges. How important do you believe these factors might be in affecting judges' decisions?

SOURCES: Federal Judicial Center, “Demography of Article III Judges, 1789—2017.” Retrieved February 11, 2019 from <https://www.fjc.gov/history/exhibits/graphs-and-maps/gender>; Brian D. Johnson, “Judges on Trial: A Reexamination of Judicial Race and Gender Effects Across Modes of Conviction,” *Criminal Justice Policy Review* 25 no. 2 (2012): 159—184; Sherrilyn A. Ifill, “Racial Diversity on the Bench: Beyond Role Models and Public Confidence,” *Wash. & Lee L. Rev.* 57 (2000): 405—495; NPR, November 15, 2018, “Trump Is Reshaping the Judiciary.” Retrieved February 11, 2019 from <https://www.npr.org/2018/11/15/667483587/trump-is-reshaping-the-judiciary-a-breakdown-by-race-gender-and-qualification>.

Some critics also argue that concern about reelection might cause some judges to pay too much attention to popular public opinion instead of the dictates of the law. In 2010, for example, voters did not reelect three members of the Iowa Supreme Court, most likely because of discontent over those justices’ decisions in a case involving same-sex marriage.¹²

In an attempt to ensure the accountability of state judges to voters while avoiding the worst problems of partisan politics, Missouri in 1940 introduced a system of appointment that has subsequently been adopted in other states. Under the so-called Missouri Plan, a nonpartisan board suggests candidates for judgeships, and from this slate the governor makes appointments. After several years, the appointed judges must submit to a “retention election” in which voters decide whether they have performed well enough to warrant staying on the bench.

Diversity among Judges Other controversies pertain to the lack of diversity among judges. Judges tend to disproportionately male, white, wealthy, and older. The “Race, Class, Gender” box discusses some of the issues related to judicial diversity.

Impact of Judicial Ideology Judges’ attitudes, values, and beliefs directly affect the decisions they make and therefore the precedents they leave in their wake—although some people argue that this is not the case and claim [page 275](#) that judges can separate their ideology from their decision making, resolving cases based on the requirements of the law.¹³ During his 2005 confirmation hearings, U.S. Supreme Court nominee John Roberts repeatedly refused to answer senators’ questions about his personal opinions on such subjects as abortion, civil rights, and women’s rights, claiming that his views would not influence his decisions. Asked about the separation of church and state, Roberts replied, “[M]y faith and my religious beliefs do not play a role in judging. When it comes to judging, I look to the law books and always have.”¹⁴ Roberts was confirmed, and today he serves as chief justice.



▲ **U.S. Supreme Court Justice Sonia Sotomayor**

Justice Sotomayor is the first Latina to serve on the U.S. Supreme Court. In 2015, for the first time in history, the Court had three female justices.

Alex Wong/Getty Images

However, both the political left and the political right have repeatedly accused judges with whom they disagree of *judicial activism*—using the courts to further their own personal or social agendas. As one scholar wrote, “Studies demonstrate that the ideology of a Supreme Court Justice is one of the most powerful predictors of his decisions.”¹⁵

Even a quick look at Supreme Court decisions over the past several decades reveals that although all nine justices are using the same “law books,” they are frequently sharply divided in their decisions, and those divisions nearly always follow ideological lines. Lower court judges are no better at preventing their attitudes from influencing their decisions. In fact, some scholars have argued that judges’ beliefs not only *must be* an important basis of their decisions but also *should be*. For example, when the meaning of laws is unclear, judges should use their beliefs as a guide to interpreting those laws.¹⁶

MYTH/REALITY

MYTH: With some crimes, such as intimate partner violence, the victim has to agree to press charges.

REALITY: Only a prosecutor has the power to decide whether a suspect is charged with a crime.

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Prosecutors

In the U.S. criminal justice system, the prosecutor (and usually only the prosecutor) has the power to bring formal criminal charges against someone. If a prosecutor declines to bring charges, a victim has little legal recourse, aside perhaps from a civil lawsuit against the alleged offender. Conversely, if a prosecutor chooses to initiate charges, even a victim who does not want the offender to be tried can do little about it. These characteristics of the process stand in contrast to those of many other countries, such as England, where victims may hire private (nonpublic) attorneys to prosecute their cases.

Prosecutorial Jurisdictions and Titles Prosecutors in the United States go by different names, depending on the jurisdiction. Each of the federal districts has a U.S. attorney, an employee of the Department of Justice. Federal prosecutors are appointed by the president. Each U.S. attorney oversees several assistant attorneys who actually conduct most of the prosecutions. Occasionally,

Congress insists that the president and attorney general appoint a **special prosecutor**, armed with independent authority to investigate and to bring charges in very high-profile political scandals.

special prosecutor

A prosecutor who is appointed specifically for one particular case, usually because of his specialized knowledge or experience.

Most states have an **attorney general**, the state's head law enforcement officer. Among other duties, the attorney general and his deputies prosecute criminal appeals. They also may prosecute criminal cases at trial level when the cases are large and complex or have attracted great public attention. At the state level, the attorney general is usually an elected official.

attorney general

A state's head law enforcement officer; also the head of the U.S. Department of Justice.

Most criminal prosecutions, however, are conducted at the local level. The people who prosecute cases are called—depending on the jurisdiction—**district attorneys (DAs)**, state's attorneys, commonwealth's attorneys, or county prosecutors. This is most often an elected position, although in some jurisdictions prosecutors are appointed by a governor or another official. Prosecutors oversee deputies or assistants, who do most of the actual prosecuting. In large prosecutors' offices, deputies and assistants are charged with handling specialized kinds of cases: white-collar criminals, repeat offenders, perpetrators of sexual offenses, and so on.

district attorney (DA)

The lawyer who prosecutes criminal cases at the local level.

Whatever the jurisdiction and title, prosecutors have the duty to prove all elements of a criminal charge beyond a reasonable doubt. Not only do prosecutors argue the state's case at trials and appeals, they also conduct investigations, make bail recommendations, do plea bargaining, and make sentencing recommendations. A prosecutor must have a law degree and pass the bar exam for that jurisdiction.

Prosecutorial Discretion Prosecutors are invested with an enormous amount of discretion. We have seen that it is their choice whether to pursue a case. Prosecutors make this decision based on the amount and the quality of the

evidence, which in turn means whether they think they can win a conviction. If the prosecutor decides to go ahead with a case, he also usually decides whether to offer the defendant a plea bargain. If the defendant either accepts a plea bargain or is convicted, the prosecutor usually recommends a sentence to the judge. In a capital case, only the prosecutor can decide whether to seek the death penalty.

There are few constraints on **prosecutorial discretion**. Unfortunately, this reality means that prosecutors may, intentionally or not, perpetuate racial, ethnic, social, and gender inequalities within the justice system. Ultimately, the prosecutor is the embodiment of the law: If a prosecutor chooses not to enforce a law or enforces it badly, the law has little value.

prosecutorial discretion

The prosecutor's power to determine when to bring criminal charges and which charges to bring.

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Controversies Surrounding Prosecutors Whether prosecutors should be elected or appointed is much debated. On one hand, prosecutors literally represent “the people” in a criminal prosecution, so perhaps the people—that is, the voters—ought to choose their representative. On the other hand, a prosecutor concerned about being reelected may base her choices about who to prosecute on what she thinks may be popular among the electorate rather than what is fair or good policy. She may decide not to charge a suspect who is wealthy or powerful and who she believes can help reelection. Because prosecutors routinely decline to bring cases unless they are fairly certain they will win, poor suspects who cannot afford the best attorneys are more likely to be charged. And because some cases—such as intimate partner violence, hate crimes, and sexual assaults—tend to be more difficult to prove, prosecutors may be particularly unlikely to pursue them.

Another controversy focuses on prosecutors' place within the justice system. Are they agents of law enforcement or of the courts? Their duties and responsibilities differ depending on the role they play. For example, should a DA be more concerned with locking up a dangerous person or with avoiding injustice?

Defense Attorneys

Defendants usually have the right to argue their own cases if they wish and if the judge rules that they are mentally competent to conduct their own defense. However, most defendants choose to have a lawyer represent them. In addition to arguing the case in court, this **defense attorney** may conduct pretrial investigations, be present during some police questioning, bargain with the prosecution and the judge over bail amounts, engage in plea bargaining, determine defense strategy, argue about the sentence, and represent the defendant in appeals.

defense attorney

The lawyer who represents the defendant in a criminal case.

American law recognizes as a fundamental right the principle of **attorney-client privilege**—that is, the confidentiality of oral and written communications between the accused and his attorney. After all, if what is said between a criminal defendant and his attorney were known to the prosecution and the judge and thus could be used against the defendant at the trial, the Fifth Amendment protection against self-incrimination could be violated. What then would remain of an accused person's right to defend himself in court? However, the Supreme Court has ruled that if a defense attorney learns from her client that another crime is going to be committed, the principle of attorney-client privilege cannot serve as an excuse for her failing to report such future criminal actions. By failing to report, the attorney herself would become an accessory to another crime.¹⁷

attorney-client privilege

The right of a person to prevent the government from asking his lawyer to provide evidence of the content of discussions between the person and his attorney.

Defendants who can afford their own attorneys must pay for them, even if they are found not guilty. These fees will not be reimbursed. For many middle-class people, this fact of life may mean taking out a second mortgage or other loans. Indigent (poor) defendants, however, are entitled to have the government appoint and pay for a defense attorney (see Chapter 9). Public defenders often carry extremely heavy caseloads. In Minnesota in 2015, for example, about 390 public defenders had an average caseload of 614 cases each.¹⁸

There are three methods by which indigents' defense attorneys may be assigned. Some jurisdictions, mostly larger cities, have *public defenders*. These attorneys work only for the government to defend indigents. A second method is the *assigned counsel system*. Here, individual lawyers in private law firms

take indigent clients on a case-by-case basis and are paid according to a set fee schedule. Finally, some jurisdictions use a *contract method*, in which law firms or nonprofit agencies accept indigent cases for a set fee. Whatever the method, indigent defendants do not get to choose their own attorneys.

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Real Careers



nyul/iStockphoto.com

ALMA VALENCIA

Work location: Redwood City, California

College(s): California State University, Chico (2007)

Major(s): Criminal Justice (BS)

Job title: Fee Arbitration Coordinator, San Mateo County Bar Association

Salary range for job like this: \$40,000–\$45,000

Time in job: 2 years

Work Responsibilities

My work primarily involves assigning arbitrators to cases that involve fee disputes between clients and their attorneys. The goal of an arbitrator is to examine the facts of the disagreement and to assist the parties in arriving at a fair solution. In addition to assigning cases, I coordinate events, such as Community Law Night and Judges Night, hosted for the judges and bar members in San Mateo County.

As part of my professional training, I was required to attend a presentation on the rules and procedures of fee arbitration by the State Bar of California. I also learned strategies for speaking assertively and confidently with attorneys and their clients. Such training has certainly helped me develop successful professional relationships.

Why Criminal Justice?

I began my undergraduate studies as a business administration major. After taking a business law class during my third semester, I developed an interest in the justice system. Wanting to learn more about the criminal justice field, I took an introductory course. I was captivated by the material and decided to change my major to criminal justice.

Upon graduating, my plan was to work in a law-related field for a few years while preparing to take the LSAT exam. I was fortunate enough to have a friend working at the San Mateo County Bar Association who informed me of a job opening and suggested that I apply. Having the bachelor's in criminal justice gave me the competitive edge I needed to land my current position as fee arbitration coordinator. Working closely with lawyers over the past 2 years has confirmed for me my original goal of attending law school.

Expectations and Realities of the Job

I had expected my academic courses to prepare me for work. But working in the real world has taught me the importance of developing certain practical career skills that are best mastered outside of the classroom. For example, after 6 months, my supervisor noticed that my communication and leadership skills improved and offered me a salary raise. I strive to continue developing these skills because they allow me to do my job more effectively: I have more productive conversations with clients, and I better coordinate meetings and activities.

My Advice to Students

Take advantage of the career development resources your school offers. I revised my resume many times with a Career Center counselor, discussed career paths with the Criminal Justice Department adviser, and sought course information from the Educational Opportunity Program. These resources were available to me free of charge and provided me the assistance I needed to interview and land my current position.

Most felony suspects in the United States are poor, and thus most—approximately 80 percent—are represented by appointed counsel.¹⁹ Almost invariably, appointed attorneys have many fewer resources available than do either prosecutors or privately paid defense lawyers. Critics argue that this situation fosters inequalities: Rich or celebrity defendants such as O. J. Simpson can afford top-notch teams of attorneys, whereas poor defendants must accept lawyers who are overworked, underpaid, often inexperienced, and sometimes poorly motivated. People who are poor and have to depend on less than stellar legal counsel may be convicted more often and receive harsher sentences. According to one study, defendants with public defenders were convicted at about the same rate as those represented by private counsel but

were more likely to be incarcerated.²⁰ This unfairness is likely to fall hardest on people of color, whose incomes tend to be lower than those of Whites.

Although there are a few extremely highly paid and famous criminal lawyers, who for the most part defend wealthy or celebrity clients, the typical defense attorney usually earns less than a prosecutor. In general, [page 279](#) within the legal profession defense work carries less prestige than prosecution. Consequently, prosecutors' offices are more likely than public defenders' offices to attract top law school graduates. Again, this means that poor defendants are likely to receive second-rate legal assistance.

Judges, prosecutors, and defense attorneys are members of courtroom workgroups that interact on a regular basis. Especially in smaller locales, the numbers of participants in this group can be small and static over time. Such relationships among the three parties could result in the creation of a **local legal culture**—that is, a shared understanding of how cases should be processed. Most seriously, a local legal culture could include a *going rate* for each crime. A **going rate** is a generally agreed-upon sentence for a defendant based on the crime and prior record.²¹ For example, in Butte County, California, almost every individual arrested for minor possession of alcohol receives a sentence that includes a 1-year revocation of his driver's license. Such a harsh sentence is rare in other California counties. The likely explanation is that Butte County takes alcohol offenses comparatively seriously because California State University, Chico, is located in the county and is perceived as a university that hard-drinking students attend.

local legal culture

A shared understanding of how cases should be processed.

going rate

A generally agreed-upon sentence for a defendant based on the crime and prior record.

OTHER COURTROOM PARTICIPANTS

People without formal legal training play important roles in the courtroom. In fact, nearly any U.S. citizen may be called upon to serve as a juror, and anyone—whether a citizen or not—who has knowledge about a crime or sees it being committed might be required to testify as a witness.

Juries

In one form or another, juries have been used for thousands of years. Most countries with civil law systems do not use them any longer, but in common law countries—such as the United States, England, and Canada—juries are invested with unique powers.

We can trace our jury system back to eleventh-century England. There are two kinds of U.S. juries: the **grand jury** and the **petit jury** (*petit* is French for “small” and in Anglo-American legal usage is pronounced “petty”). Grand juries are panels of citizens who sometimes investigate crimes and determine whether there is sufficient evidence to prosecute a particular suspect. Petit juries are small groups of citizens who decide whether defendants are guilty of the crimes with which they are charged. The United States makes more extensive use of juries than any other country in the world.

grand jury

Panel of citizens who may investigate certain crimes and determine whether sufficient evidence exists to bring a defendant to trial.

petit jury

Small group of citizens who determine whether a criminal defendant is guilty of the crimes with which he is charged.

Jury Composition A jury is composed of citizens who reside in the trial court’s jurisdiction and is typically picked at random from lists of registered voters and licensed drivers. To make juries more representative of their communities and to increase the jury pool, some states have recently begun choosing citizens by using utility bills, telephone bills, or property taxes. (Sometimes jury selection techniques lead to mistakes; in 2009, for example, a cat named Sal Esposito was called for jury duty in Boston, apparently because his owners had listed him on their census form.)²²

In the United States, jurors must be citizens over the age of 18 who can understand English and who are physically capable of sitting through the trial. Vision- and hearing-impaired individuals and those with significant mobility problems are usually excused. In some places, a criminal record may permanently disqualify a person from jury service, and other factors such as the person’s profession may also prevent jury service. When a person _____ page 280 is called for jury duty, she has a legal obligation to serve unless she can convince the judge that doing so would impose undue hardship, either on her dependents or on herself. Professionals associated with law enforcement and the justice system, such as police officers and lawyers, are sometimes automatically excused.



▲ The Courtroom at Work

Many different parties participate in trials.

Comstock/PunchStock

In some jurisdictions, a pool of potential jurors is chosen for one particular case, whereas in other jurisdictions the pool may be for whatever trials arise during a particular time frame. In that case, people designated as potential jurors typically have to present themselves for jury duty for several weeks or until they are selected for a trial. In either case, this pool is called the **venire** (pronounced “ven-eer”). The goal is to assemble a venire as representative of the community as possible. In practice, this is a difficult challenge given that some groups of people may be less likely to register to vote than others or may have personal or financial needs that keep them from serving. Depending on how lenient local judges are about requests to be excused, a venire might be disproportionately made up of middle-class and retired people. The problem was worse in the past, however: Until well into the 1960s, non-Whites and women were routinely excluded from juries.

venire

A group of people called to be prospective jurors.

Jury duty is necessary under the U.S. system of justice, but many people regard it as a burden. The amount of time jurors must commit varies enormously across jurisdictions, but being called for jury duty can mean days

or even weeks of waiting in the courthouse before being put on a jury, and some trials can last for weeks or even months. Although employers are forbidden by law to penalize employees for work time lost while doing jury duty, the compensation paid to jurors is usually only a few dollars per day. Self-employed individuals, part-time workers, day laborers, and students—for all of whom the loss of work time can spell a significant burden—are seldom able to persuade judges to excuse them entirely from service. In addition, serving on a criminal jury can be emotionally wrenching, especially in a violent murder or rape case or when a difficult verdict must be rendered or a decision made about inflicting the death penalty.

Once a venire has been formed, the judge or attorneys may ask members about their personal background and history, profession, education, and criminal record, knowledge of the case or the individuals involved, page 281 and their opinions about matters relevant to it. For example, in states that employ capital punishment, potential jurors in a murder trial may be asked whether they would categorically refuse to recommend a death sentence should the defendant be found guilty. This process is called **voir dire** (“vwar deer”). Anyone biased against the prosecution or the defendant—for example, a relative of the victim—is excused from the pool. Such exclusions are called **challenges for cause**. Further, the prosecutor and defense attorney may use **peremptory challenges** to release some people they think will not be sympathetic to their case. In federal capital trials—that is, for crimes punishable by death—both the prosecution and the defense are allowed 20 peremptory challenges, and in noncapital trials 3 such challenges are permissible; state rules for peremptory challenges vary. By law, these challenges are not supposed to be used to exclude jurors on the basis of race, ethnicity, or gender. In fact, however, lawyers often do consider potential jurors’ race and gender in trying to build a persuadable jury.²³

voir dire

The process of questioning prospective jurors about their background, opinions, and knowledge relevant to a particular case.

challenge for cause

Excusing potential jurors from a jury because they might be biased in that case.

peremptory challenge

An attorney’s removal of a prospective juror she feels will not be sympathetic to her side of the case.

Some lawyers use jury consultants to help them choose jurors. These consultants—usually people with graduate training in psychology or other social sciences—conduct mock trials, surveys, and other exercises to try to determine the characteristics of those jurors most, and least, likely to be sympathetic to the clients' cases. Some critics argue that jury consultants help lawyers unfairly stack the deck in favor of their clients. Others say they affect trial decisions in only some cases.²⁴

Once voir dire is complete, the venire will be narrowed down to an actual jury, typically of 12, although the Supreme Court has allowed juries as small as 6 members. The jury's role is to be the finder of facts. When all the evidence has been presented and both sides have completed their arguments, the jurors withdraw to a closed room to deliberate together and reach a verdict. A defendant who is found guilty may appeal, but higher courts will not overturn that verdict unless it was completely unreasonable or the judge made legal errors during the trial. A verdict of not guilty is final. No matter how obvious it may seem that the defendant committed the crime, double jeopardy prohibitions prevent the prosecutor from appealing or retrying a defendant found innocent (see Chapter 9 for more on double jeopardy).

Juries' Power Even though judges instruct juries to follow the law, if they refuse and acquit an obviously guilty individual, there is no recourse. Therefore, juries may sometimes choose not to apply criminal laws when they feel doing so would be unjust. This power—**jury nullification**—has been recognized in U.S. law for more than 200 years. An early example occurred in 1735, when a jury in New York refused to convict John Peter Zenger of seditious libel for printing newspapers that criticized the colony's governor. In the Jim Crow South before the 1970s, all-White juries routinely refused to convict Whites for committing crimes against Black people and almost invariably found Blacks guilty when they were accused of raping, assaulting, or killing Whites, regardless of the facts of the case.

jury nullification

The power of juries to refuse to apply criminal laws when they feel applying them would be unjust.

MYTH/REALITY

MYTH: Juries administer equal justice.

REALITY: Jurors are influenced by many extralegal considerations including racism, sexism, and heterosexism.²⁵

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Of course, any power brings with it the possibility of abuse. No one but a juror is permitted to be present during jury deliberations. And because jurors need not discuss their deliberations with others after the fact, no one knows how often their decisions are affected by factors that are not supposed to be considered in criminal cases, such as the defendant's race, gender, social class—and even physical attractiveness.

Witnesses

Some evidence in criminal trials is physical evidence—things we can actually see and touch, such as weapons, bloodstains, surveillance videos, and letters. Most evidence, however, comes from *witnesses*—individuals who have some information pertinent to the trial. There are two kinds of witnesses. **Lay witnesses**, also referred to as *fact witnesses* or *eyewitnesses*, are individuals who heard or saw firsthand something directly related to the crime. **Expert witnesses** are individuals who have some special knowledge—scientific, technical, and the like—that can help the triers of fact decide a case.

lay witness

An individual who has personally seen or heard information relevant to the case at hand; also called a fact witness or eyewitness.

expert witness

An individual who has specialized knowledge of some scientific or technical matter intended to help the trier of fact understand particular evidence or specific facts in a case.

Lay Witnesses The prosecution and the defense may call as witnesses anyone who personally heard or saw things related to the case, including the crime itself. Even if no one actually saw the crime occur, the prosecution could still call upon witnesses to establish the defendant's motive for or knowledge of the case. When there are victims, there will nearly always be witnesses. The defense, on the other hand, might call people who can testify that the defendant was somewhere else when the crime was committed—that is, they establish an *alibi*—people who provide evidence that someone else committed the crime, or even those who can claim that the alleged crime never occurred at all.

The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the right to confront and cross-examine their accusers and to have witnesses testify in their defense. The attorneys can therefore request the judge issue a **subpoena**, a legal document ordering a witness to appear in court even if unwilling. A person who disobeys a subpoena may be found in **contempt of court** and punished.

subpoena

A legal document ordering a person to appear in court.

contempt of court

Violation of a court's order, punishable by fine, jail time, or both.

Eyewitness testimony is powerful evidence that tends to carry considerable weight with jurors. Unfortunately, it is not as reliable as many people assume. In criminal cases the witnesses themselves often are facing criminal charges; by testifying against the defendant, they hope to absolve themselves or at least receive a lighter sentence. Prosecutors frequently offer one suspect a plea bargain, recommending a relatively light charge or sentence in exchange for testimony against someone else. Consider, for example, the case of Michael Fortier, the accomplice who testified against Timothy McVeigh and Terry Nichols in a trial concerning the 1995 bombing of a federal office building in Oklahoma City. Witnesses in these situations have a strong incentive to provide damaging evidence against the defendant and may be less than honest in their testimony.

MYTH/REALITY

MYTH: Eyewitness testimony is reliable evidence.

REALITY: Eyewitness testimony is often unreliable, even when witnesses are positive they are testifying accurately.²⁶



Ryan Henriksen/Dallas Morning News/MCT/Newscom

Real Crime Tech

FREEING WRONGFULLY CONVICTED PERSONS

The partnership between law and forensic science especially DNA analysis, is helping to free wrongfully convicted persons and ensure greater constitutional protection. In cases of wrongful conviction, the leading responsible factor (more than 70 percent of the time) has been *eyewitness misidentification*. Because of new technology for DNA testing and an innovative program called the Innocence Project, however, large numbers of convictions of innocent persons are being overturned. Thanks to the pioneering work of attorneys Peter Neufeld and Barry Scheck (both members of the successful O. J. Simpson criminal trial defense team), the Innocence Project was established in 1992 at the Cardozo School of Law, Yeshiva University, in New York City. The term that has come to identify this type of technological legal work is *DNA exonerations*.

As of January 2019, there have been 364 such exonerations in the United States; the first occurred in 1989. Among all those exonerated, 20 were serving time on death row, the average time served was 14 years, and the average age was 26.5. The majority (62 percent) of these wrongful convictions were Blacks.

As of 2019, there are 69 such projects around the world. This innovative use of DNA technology in partnership with law reformers provides unquestionable substantiation that wrongful convictions from systemic flaws in the legal process can be corrected and can help free those who are innocent (such as Cornelius Dupree, shown above).

SOURCES: The Innocence Project. <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (retrieved March 1, 2019); The Innocence Network. <https://innocencenetwork.org/about/> (retrieved March 1, 2019).

Most people, including jurors, are skeptical of testimony from coconspirators and police informants. What many do not realize, however, is

that all eyewitness testimony is suspect. Research demonstrates that even witnesses who have no incentive to lie and are trying to be as truthful as possible perceive and remember events with little accuracy. The brain does not operate like a video camera, accurately recording what it sees and reproducing it later. Instead, environmental conditions such as lighting and physical obstructions, as well as the trauma associated with the crime, all compromise eyewitness identification. According to the Innocence Project, out of 183 cases in which defendants were later proved to have been wrongfully convicted, mistaken eyewitness identification was a factor in about 75 percent.²⁷

Mistaken eyewitness identification is the foremost cause of wrongful convictions. Social scientists and legal scholars have made recommendations for reducing these errors, such as using identification procedures that are less suggestive. Evidence indicates that at least some of these solutions work, but few jurisdictions follow them.²⁸

Expert Witnesses Lay witnesses testify about what they observed or what they know as fact. Expert witnesses, on the other hand, can express *opinions* based on their specialized knowledge, research, and experience, as long as the judge is satisfied that their testimony will help the jury discover the facts about the case. Most often, expert witnesses help jurors understand particular evidence about, for example, the insanity defense, eyewitness identification, child custody matters, intimate partner violence, and class action suits.

Ideally, expert witnesses are impartial and educate the court. The adversarial nature of judicial proceedings, however, often puts them under considerable pressure to give their loyalty to the winning of the case rather than to their discipline. For instance, they could fail to mention contradictory findings or exaggerate or even falsify claims. Such behavior is especially troubling because it is very difficult to prosecute expert witnesses for perjury as they are ostensibly giving an opinion rather than presenting a fact. With rare exception, an unethical expert witness will be deemed incompetent. A profession is distinguished by, among other things, its code of ethics. It is an unfortunate reality that there are unethical players in every profession. The “Matters of Ethics” box discusses this problem in more detail.

In one homicide case, the fingerprint expert for the prosecution noted two fingerprints—both matching the defendant’s—on an item admitted into evidence.²⁹ A third print—not the defendant’s—was later discovered on the object, but not before the defendant had been convicted and sentenced to death. Whether the expert in this case was dishonest or incompetent is difficult to

establish, and when there is doubt, the expert is given the benefit of that doubt. Some expert witnesses are certainly sincere in their testimony but nonetheless hold opinions not grounded in science (see the “Disconnects” box for a discussion of junk science).

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Matters of Ethics

Expert Witnesses: The Good, the Bad, and the Criminal

Not all expert witnesses are equally competent. Some are *incompetent*. But not being good at what they do or not giving accurate information or not being professional does not constitute committing perjury. In the case of perjury, the expert intends to provide wrong information for the purpose of misleading the trier of fact. It is very difficult, however, to prove that an expert witness actually intended to present false information. Convictions of expert witnesses for perjury are therefore rare events. Yet unethical behavior is not limited to perjury. An expert witness may, for example, exaggerate her credentials. Or she may withhold information that she knows could go against the desired outcome of a case, or she may overstate research findings that are favorable to the side that is paying her for her testimony.

A defining feature of any profession is that its members abide by a code of ethical behavior. The American Psychological Association, for example, requires its members to adhere to its Ethics Code. Forensic psychologists are expected to conduct themselves in accordance with the Specialty Guidelines for Forensic Psychologists. The rules that guide their research and clinical practice are what one would expect. For example, forensic psychologists are expected to “provide services only in areas of psychology in which they have specialized knowledge, skill, experience, and education” (p. 658). But to whom does the forensic psychologist owe her primary loyalty? Is it the defendant—the person she evaluates for insanity? Is it the court—the agency seeking to determine the criminal responsibility of the defendant? Is it the side that hired her—the prosecution pushing for a conviction or the defense looking for a reduced sentence (if not an acquittal)? Or does the forensic psychologist owe her loyalty to her discipline—psychology? The psychologist who testifies in court as an expert witness is likely to feel a pull in each of these directions.



PNC/Getty Images



Ideally, an expert witness's loyalty is to his discipline (say, psychology). But pressures exist that make discipline loyalty much easier said than done. In truth, instead of testifying as objective social scientists, expert witnesses are generally expected to testify in ways that support the position of the side that hires them—a convention that makes them, in effect, advocates for that side. Expert witnesses who become known for such advocacy are referred to as *hired guns*.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- To what extent do you believe jurors in criminal trials are influenced by personal characteristics of expert witnesses (such as physical attractiveness) rather than by the

competence of the expert?

- Should all prospective expert witnesses be given a test of their knowledge and competence before they are permitted to testify in court?
- What might be the advantages of using only court-appointed experts (i.e., those appointed by the judge) instead of experts that are hired by the prosecution and defense? What might be the disadvantages of doing this?

SOURCES: William L. Foster, “Expert Testimony: Prevalent Complaints and Proposed Remedies,” *Harvard Law Review* 11 (1897): 169; American Psychological Association, “*Ethical Principles of Psychologists and Code of Conduct*” (Washington, DC: APA, 1992); Committee on Ethical Guidelines for Forensic Psychologists, “Specialty Guidelines for Forensic Psychologists,” *Law and Human Behavior* 15, no. 6 (1991): 655—665.

Victims in Courts

In the criminal justice system, victims serve as witnesses because technically they are not a party to the court case. Instead, the case is brought by the state against a defendant. As such, the state is legally the “victim” of the crime; the actual person who was victimized is merely a witness to the crime. The distinction is a difficult one for many victims to understand because they are the ones who suffered as a result of the crime. Victims feel that they should play a larger role in the court process than merely serving as a witness when called by the state. Yet it is the prosecutor representing the state who determines whether there is enough evidence to bring a case forward—a decision that is often made without consulting the victim. If the prosecutor feels that there is enough evidence, she will bring charges against the defendant. If the case goes to a plea bargain, the prosecutor will negotiate a plea with the opposing defense attorney and the defendant. The victim in the case is not present when the plea bargain is negotiated, might not approve of the plea bargain process, and may not be notified that the defendant entered into the agreement or that a plea agreement was reached. If a plea agreement is not reached or if the defendant wants the case to go to trial, the case will proceed to trial even if the victim does not want to press charges, denies that the crime ever occurred, or does not want to participate in the court process. With the exception of the federal courts since 2002, the victim does not have a voice in *any* of these stages, and the case will proceed, often without his knowledge or approval. At this point, the case is in the prosecutor’s hands, and she can subpoena or compel the victim to testify as a witness. If the victim does not

participate, he can be found in contempt of court, which is punishable by a fine, incarceration, or both.

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DIS Connects

Junk Science in the Courtroom

Do jurors and judges understand the language used by expert witnesses? Do they know what an expert means when he uses terms such as “consistent with” and “statistically significant”? Do they understand the science that underlies an expert’s testimony? The answers to these questions are generally no. How, then, can the triers of fact recognize when expert witnesses present unreliable information based on unscientific methods and analyses? The adversarial nature of judicial proceedings should serve to expose such junk science, as well as outright fraud in the courtroom. Expert witnesses from the other side should catch it. Yet even when faulty science is exposed, it might not make a difference to jury members.

Unfounded scientific opinions may be obscured by the charismatic presentation of the expert. Sometimes even in cases where the science itself is suspect, judges and jurors accept the testimony at face value. After all, wouldn’t you trust in a dog’s ability to differentiate people by their scent? More to the point, however, can dogs link a criminal to his crime scene? Would you feel confident that a scent-tracking dog would “pick” the perpetrator—and not you—out of a police lineup?



X2Photo/Getty Images

In Texas, police have used a dog scent lineup technique in over 2,000 criminal investigations. Scent-tracking dogs are presented with scent swabs from individuals known to have nothing to do with a particular crime; the dogs are also given a swab from the suspect in the case. The police are looking to see if the dogs identify the scent from an item at the crime scene as being the same as the scent from their suspect. A real-life case exemplifies some problems with this approach, however.

A former sheriff's deputy in Fort Bend County, Texas, Michael Buchanek, was accused of the murder of his neighbor in 2006. Sheriff's deputy Keith Pikett used the behavior of his bloodhounds, named Jag and James Bond, as pointing to a match between Buchanek's scent and the scent on the rope that had been used to strangle the victim. For several months, despite Buchanek's protests of innocence, his former fellow officers believed the dogs. Ultimately, another man pleaded guilty to the murder after being implicated by DNA evidence. Buchanek was fortunate. Many people have been wrongfully accused—and even convicted—of crimes based on dog scent lineups. And while the Texas Court of Criminal Appeals recently reversed a conviction that was the result of Pikett's testimony, evidence from dog scent lineups was not held to be inadmissible. The court instead ruled that results of scent-discrimination lineups are not sufficient to convict a defendant if they are the sole or primary evidence in the case.

What is the science behind this investigative technique? This is a crucial question, since many defendants have been convicted based largely (or solely) on the “wag of a tail.” Pikett lacked a scientific background. He trained himself in the use of the lineup procedure. Even though many judges have allowed police testimony based on dog scent lineups to support a conviction, the reliability of these lineups as a scientifically based technique is now being called into question.

Pikett retired in 2010—perhaps because courts are raising doubts about the value of dog scent lineups, or perhaps because of a 2009 report by the Innocence Project equating dog scent lineups with junk science.

Similarly, polygraph (lie detector) evidence is generally not admissible because it is considered scientifically unreliable. Even fingerprint evidence has been called into question in recent years. As scientific techniques advance, what was once considered unreliable may eventually grow strong enough to become acceptable in court.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Is it necessary for jurors to understand the science that underlies the testimony of expert witnesses? Explain.
- Why are jurors so willing to believe junk science in a courtroom?
- Is the problem of jurors' sometimes accepting junk science in criminal trials a valid argument against continuing to use the jury system in American criminal justice? Why or why not?

SOURCES: Ed Lavandera, "Dogs Sniff out Wrong Suspect; Scent Lineups Questioned," *CNN Justice*, October 5, 2009. <http://www.cnn.com/2009/CRIME/10/05/texas.sniffer.dogs.controversy/> (retrieved January 7, 2011); Supreme Court of Appeals of West Virginia, *Renewed Investigation of the West Virginia State Police Crime Laboratory, Serology Division*, January 2006. <http://www.courtswv.gov/supreme-court/docs/spring2006/32885.htm> (retrieved February 23, 2007); Michael Specter, "Do Fingerprints Lie?" *The New Yorker*, May 27, 2002.

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What about the Victim?

The Role of the Victim Advocate on a College Campus

On April 4, 2011, Russlynn Ali, Assistant Secretary for the U.S. Department of Education and its Office of Civil Rights, penned the now famous "Dear Colleague Letter" outlining that sexual harassment and violence against students interferes with a student's right to receive an education free from discrimination on the basis of sex (Title IX of the Education Amendments of 1972. The letter highlighted the statistics associated with sexual violence: One in five women will experience a completed or attempted sexual attack, whereas approximately 6 percent of males will experience the same. The letter noted that existing practices for assisting victims of sexual assault, domestic violence, and stalking fall far short of the appropriate response and services needed by students. The letter called upon schools to take immediate and effective steps to eliminate violence, raise awareness to prevent abuse, provide immediate and effective services, and ensure appropriate responses through established procedures and training for students and university employees alike. Failure to take these steps will

result in losing crucial federal funding. This letter contributed to several widespread and long overdue changes to address these crimes against students on campuses nationwide and many institutions of higher education hired victim advocates to assist students through the on-campus disciplinary process, as well as any criminal proceedings that may occur off-campus. In November 2018, the U.S. Department of Secretary Betsy DeVos released a final draft of many new Title IX rules regarding how sexual assaults should be handled on campuses including: allowing the accused via advisors or attorneys to cross-examine victims; allowing both the accused and victim to appeal the ruling; raising the burden of proof from a “preponderance of evidence” to “clear and convincing,” and only allowing for the adjudication of incidents that occur on-campus, among other changes. These draft changes are open for public comment, but many victim advocates are concerned about how these changes will impact their role, as well as the services and supports that are provided to victims on-campus.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- If the proposed changes go into effect, what impact do you think this will have on how sexual assaults are responded to on-campus?
- Do you think the role of the victim advocate will change in helping victims?

SOURCES: Rosslyn Ali, “*Dear Colleague Letter*” (Washington, D.C.: U.S. Department of Education, Office for Civil Rights, April 4, 2011). <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (retrieved May 18, 2015); Robin Hattersley-Gray, “*U.S. Dept. of Ed. Releases Official Proposed Title IX Sexual Violence Rules*” (Hospital, School, University, Campus Safety, November 16, 2018). <https://www.campussafetymagazine.com/clery/proposed-title-ix-sexual-violence-rules/> (retrieved February 12, 2019).

The final stage of victim participation occurs prior to sentencing, when the victim is granted the opportunity to describe how the crime has influenced his life—also known as giving a *victim impact statement*. In most states, the victim impact statement is given to a probation officer, who includes it in a document called the *presentence investigation report*. However, in some cases, a judge may allow a victim to speak in open court in lieu of a formal impact statement. This in-court statement is called *eloction*. Because many victims _____ page 287 are unfamiliar with the criminal justice system or may find it overwhelming or intimidating to deal with, in some places they may be offered the help of *victim advocates* (see “What about the Victim?”).

Other Participants

The defendant, judge, attorneys, jury, and witnesses are the most obvious and most visible participants in a trial. A body of other individuals may provide

services to the court, attorneys, defendants, and victims. Figure 8-4 provides a brief summary of some of the other trial participants.

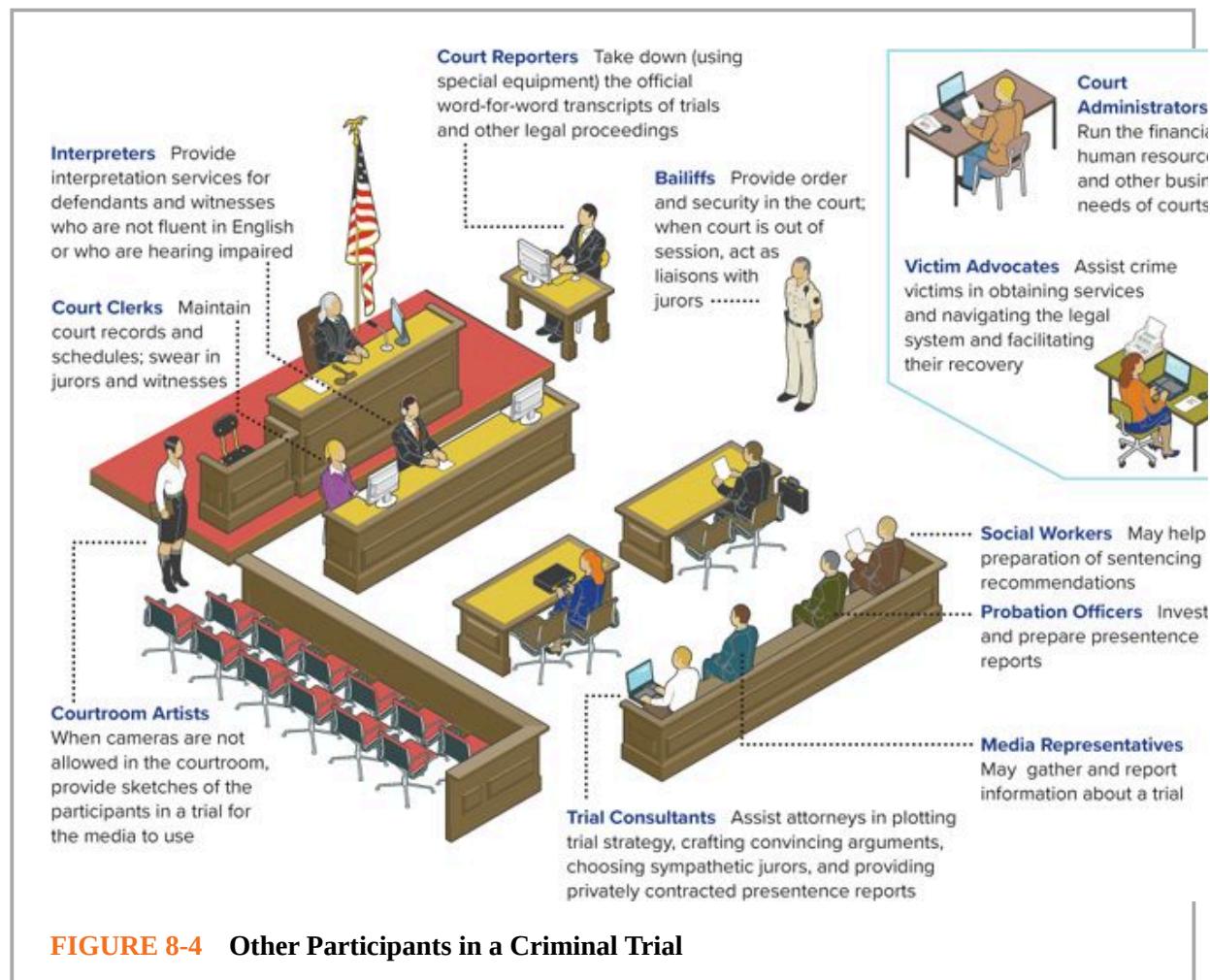


FIGURE 8-4 Other Participants in a Criminal Trial

SUMMARY

The essence of the Anglo-American system of justice is its adversarial nature, in which the state must prove the defendant's guilt beyond a reasonable doubt. The defendant is entitled to a vigorous, professional defense that need only prove the existence of real doubt about the defendant's guilt. As the two sides contend in the courtroom, the judge serves as referee, ensuring due process and the correct application of the law, and the jury weighs the evidence and decides the question of guilt. A "not guilty" finding means that the constitutional protection against double jeopardy [page 288](#) ensures that the defendant will not be tried again for the same offense (though this does not protect an acquitted defendant against a civil trial for damages, in which the standard of proof is lower).

In the United States, federal cases—those subject to federal law—are tried in federal district courts. Appeals from district courts go to federal appellate courts, which determine not guilt or innocence but rather ensure that mistakes were not made at the trial court level. The Supreme Court of the United States hears a limited number of further appeals. States maintain a parallel track of trial courts, appellate courts, and a state supreme court. There also are special courts of limited jurisdiction to handle a variety of special cases.

Serious problems still affect the U.S. court system. Courts often are overwhelmed with more cases than can be handled efficiently. Prosecutors enjoy (and occasionally abuse) enormous discretionary powers, including the right to decide which cases are prosecuted. Apart from a few highly paid celebrities, defense attorneys are typically overworked and not well compensated. Most Americans regard jury service as an unpleasant duty, and juries occasionally make serious mistakes. Victims are sometimes badly treated by defense attorneys and prosecutors. Members of racial and ethnic minorities are underrepresented among prosecutors and judges, and a disproportionate share of death sentences is given to people of color. Judges and jurors often rely on expert witnesses to understand evidence, but not all expert testimony is reliable.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Distinguish among state, local, and federal courts and their jurisdictions.

- State courts hear most criminal cases.
- Local courts generally hear minor criminal or civil cases or conduct the early stages of a criminal trial.
- Federal courts have limited jurisdiction and can hear only cases involving federal law or certain civil cases.

Describe some of the specialized courts that have been created for particular cases.

- Mental health courts involve cases with defendants with mental health issues.
- Drug courts involve cases with defendants with substance abuse problems.
- Reentry courts focus on reintegrating offenders into society.
- Teen courts focus on youthful offenders, and their juries consist of other teenagers.

Discuss how appeals courts differ from trial courts.

- The purpose of appeals courts is not to decide the facts of the case but to determine whether legal errors were made at trial.
- The attorneys in appeals cases file lengthy documents known as appellate briefs.
- There is no jury in an appeals case.
- Appeals cases are usually heard by a panel of judges.

Identify the major participants in the judicial system and their respective roles.

- Judges interpret the law, decide appropriate legal issues, and usually determine the sentence.
- Prosecutors decide whether to bring criminal charges and which ones to bring, and they attempt to prove all elements of the crime beyond a reasonable doubt.
- Defense attorneys represent the defendant; they conduct pretrial investigations, are present during some police questioning, argue about bail amounts, engage in plea bargaining, determine defense strategy, argue about the sentence, and represent the defendant in appeals.
- Juries determine the facts of the case and ultimately whether the defendant is guilty or innocent.
- Lay witnesses testify about things they heard or saw that are relevant to the case.
- Expert witnesses testify about scientific or technical matters that are helpful in determining the facts of a case.
- Victims may serve as witnesses and may also speak during the sentencing process.

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Key Terms

appellate brief 270

attorney general 276

attorney-client privilege 277
challenge for cause 281
commissioner 272
contempt of court 282
court of general jurisdiction 264
court of last resort 270
court of limited jurisdiction 264
defense attorney 277
district attorney (DA) 277
due process 271
en banc 268
expert witness 282
going rate 279
grand jury 279
in chambers 271
jurisdiction 264
jury nullification 281
justice of the peace 272
lay witness 282
local legal culture 279
magistrate 272
peremptory challenge 281
petit jury 279
prosecutorial discretion 276
recusal 271
referee 272
remand 270
special prosecutor 276
subpoena 282
venire 279
voir dire 280
writ of certiorari 271

Study Questions

1. All of the following are examples of a specialty court *except*
 - a. a mental health court.
 - b. a drug court.
 - c. a reentry court.
 - d. an appeals court.
2. Appellate courts
 - a. are triers of fact.
 - b. decide whether legal errors were made at trial.
 - c. often let guilty people go free.
 - d. are speedy in providing justice.
3. When a case is heard en banc, it means that
 - a. one judge presides over the case.
 - b. a panel of three judges presides over the case.
 - c. more than three judges preside over the case.
 - d. none of the above
4. All of the following are typically the job of a trial court judge *except*
 - a. to determine matters of fact.
 - b. to determine matters of law.
 - c. to interpret laws.
 - d. to determine the sentence.
5. A state's chief law enforcement officer is known as a/an
 - a. district attorney.
 - b. attorney general.
 - c. sheriff.
 - d. police chief.
6. If a prosecutor refuses to try someone for a crime, the victim may
 - a. sue the prosecutor.
 - b. press charges and require the prosecutor to act.
 - c. hire an attorney to prosecute the accused.
 - d. bring a civil lawsuit.
7. The pool of people called to serve as potential jurors in a case is called the
 - a. habeas corpus.
 - b. voir dire.
 - c. venire.
 - d. grand jury.
8. A lay witness is
 - a. someone who has information directly pertinent to the case.
 - b. someone who is an expert in a scientific or technical area.
 - c. someone who has a personal relationship with the defendant.
 - d. rarely allowed to testify.

9. The foremost cause of wrongful convictions is
- mistaken eyewitness testimony.
 - jury tampering.
 - attorney malpractice.
 - poor scientific evidence.
10. A person with specialized knowledge that may be helpful in a particular case is known as a/an
- district attorney.
 - expert witness.
 - voir dire.
 - accomplice.

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Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



- Which do you think is more likely to result in a fair decision: a trial by jury or a bench trial? What do you see as the potential risks and benefits of each? Why do you think the United States relies so much more on juries than does the rest of the world?
- How should district attorneys be chosen—by political appointment or election? What difference does it make?
- What are some ways to ensure the accuracy of scientific testimony in the courtroom?

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9 Pretrial and Trial



Jesse Ward-Pool/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Describe the Eighth Amendment right to bail.

- List the rights afforded to criminal defendants by the Sixth Amendment.
- Describe the scope and limitations of the right against double jeopardy.
- Identify the steps of the pretrial process.
- Analyze the meaning of the due process clause.
- Distinguish among the differing standards of proof used by the U.S. legal system.
- Identify the stages of a criminal trial.

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Realities and Challenges

Tried for the Third Time?

When 13-year-old Alex Torres opened the door of his grandparents' apartment in Corpus Christi, Texas, someone shot and killed him. Prosecutors eventually charged David Davila with capital murder. They claimed he had gone to the apartment complex intending to shoot his pregnant ex-girlfriend, but he had gone to the wrong unit and mistakenly killed Alex. Davila denied being the shooter.



Corpus Christi Caller-Times

At trial, several witnesses testified against Davila. One of them was his current girlfriend, who had allegedly been the getaway driver after the killing. She had initially been charged with murder as well but had accepted a plea deal. The jury, however, failed to reach a decision as to Davila's guilt, and the judge declared a mistrial.¹

Three months later, Davila was again brought to trial for the murder. But this time someone violated the court's order, and once again a mistrial was declared. As of February 2019, the district attorney had not yet decided whether to bring charges for the third time.²

In any given year, more than 20 million criminal cases are referred to state courts in the United States.³ About one-quarter of these cases are felonies; the rest are misdemeanors. More than 95 percent of them never go to trial but instead are settled by plea bargains, in which the defendants plead guilty (to either the original charge or a lesser one) in exchange for reduced sentences. Still, approximately 1 million cases do go to court. As Keith Butler's case demonstrates, the criminal justice process is long and complicated—and it does not always result in justice being served. In this chapter, we explore the rights of criminal defendants, the stages of the pretrial process, and the procedures followed in criminal trials.

DEFENDANT RIGHTS

Constitutional protections do not end with the actions of legislatures or police. They also extend to the processes and procedures that occur after a suspect has been arrested and formally charged with a crime.

The Eighth Amendment: Bail

Frequently, individuals who are charged with crimes are permitted to remain free while they wait for their case to be tried or otherwise settled. Many such defendants deposit a sum of money, called **bail**, with the court to ensure their appearance in court. The Eighth Amendment to the U.S. Constitution clearly states: “Excessive bail shall not be required.” Interestingly, this is one of the few sections of the Bill of Rights that does not apply to the states; this privilege applies only to *federal* cases. If states want to set high bail amounts—or even do away with bail altogether—the Eighth Amendment will not prohibit them from exercising these options. Even in federal cases, the scope of the excessive bail clause is limited. Some states, however, provide residents with the right to bail in the state constitutions.

bail

A sum of money deposited by a defendant with a court to ensure the defendant’s appearance at trial.

The purpose of bail is to ensure that defendants show up at trial. Those who fail to appear forfeit the bail money they have put up for their release. Generally speaking, the Supreme Court has given few guidelines about what constitutes “excessive” bail, and judges have wide latitude with [page 295](#) respect to the amount of bail they set. Essentially, the courts have held that “excessive” means bail that is too high relative to the severity of the offense, not to the defendant’s ability to pay. Judges or legislatures also may opt to deny bail when the risk of flight is very high, such as when the charges are extremely serious. In addition, the Supreme Court has ruled that suspects can be held without bail if they pose a potential danger to the community—a practice known as **preventive detention**.

preventive detention

The practice of holding a suspect without bail because he is believed to pose a potential danger to the community or to be at risk of fleeing the jurisdiction.

Preview

DEFENDANT RIGHTS

PRETRIAL PROCESS

THE CRIMINAL TRIAL

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

Generally the amount of bail is determined by the severity of the offense. In many states, each court sets particular bail levels for specific crimes. These amounts vary widely depending on the crime. For example, in Los Angeles, a person charged with writing a bad check will probably be released on \$5,000 bail, whereas someone charged with selling very large amounts of drugs may have bail set at \$5 million.⁴

Most defendants who are granted bail do not pay the full amount themselves but instead hire a *bail bonding* service. For a fee charged to the defendant, the bail bonding company guarantees the court that the defendant will appear at trial. Bail bonding is a profitable business, conducted mainly in the poorer parts of town and around courthouses, jails, and police headquarters. The professionals who run bail bonding offices charge high interest for their services, as much as 10–15 percent. To insure themselves against defendants who may be tempted to flee, they employ *bounty hunters*—usually former police officers, retired military personnel, and even ex-convicts—who must be prepared to use very rough tactics to hunt down and catch bail-jumping fugitives.

Being free on bail gives an accused person a chance to put his or her personal affairs in order before facing trial, to work more closely with defense counsel, to search out evidence and witnesses who can help establish innocence—and, above all, to avoid jail. Most jails are badly overcrowded, and sometimes they are dilapidated and poorly maintained for lack of funding. The disparities in granting bail mean that the inmates are overwhelmingly poor, and they include as well a disproportionate number of violent offenders. Almost invariably, confinement in a county jail is extremely unpleasant, and often it can be dangerous.

The Sixth Amendment: The Right to Counsel and a Speedy Trial

The Sixth Amendment to the Constitution affords several rights, including the right to counsel, the right to a speedy trial, the right to a jury, and the right to confront and cross-examine witnesses. The Sixth Amendment “attaches,” or takes effect, as soon as formal charges are filed, so some of its provisions may affect the actions of law enforcement. The amendment is, however, of greater significance later in the criminal justice process because it contains several provisions that concern criminal trials.

The Right to Counsel During the Great Depression, many people hopped freight trains as they traveled from one town to the next in a desperate search for work. In Alabama in March 1931, a fight broke out on one of these trains between a group of young Black men and a group of young White men. Shortly after the fight, two White women, who were also on the train, claimed that they had been raped by several of the Black men, nine of whom were ultimately charged with rape. The atmosphere before and during the trial was so rife with potential violence that military guards were called in to protect the defendants from the hostile public; even so, a lynching was only narrowly averted. The defendants were all poor and uneducated, and none had friends or family in Alabama. None was given a lawyer prior to the beginning of his trial, and after the trials—each lasting only one page 296 day—all were convicted by an all-White jury. Eight were sentenced to death.

Race, Class, Gender

Justice for All?

As the case of the nine young men in Alabama—often referred to as the Scottsboro Boys case—demonstrates, poor Americans and Americans of color have often had little or no access to good legal representation. Also consider the case of *Brown v. Mississippi*, in which three poor, Black tenant farmers were accused in 1934 of murdering a White man. The only evidence introduced during the one-day trial was the defendants’ confessions. Even though police admitted that the men had confessed only after having been whipped, suspended from a tree, and threatened with death, the all-White jury convicted the defendants and sentenced them to death. Eventually the

Supreme Court overturned their convictions, but they all still ended up spending several years in prison on manslaughter charges.



Bettmann/Getty Images

In a series of cases, mostly in the 1960s, the U.S. Supreme Court took steps to ensure that all defendants receive at least adequate legal assistance, regardless of how much money they have. In all criminal trials in which incarceration is a possibility, as well as in at least one appeal of these cases, poor people are entitled to have a government-provided attorney.

While conditions have certainly improved since the 1930s, it remains unclear to what extent the poor get *good* legal assistance. Public defenders are often inexperienced, overworked, and underfunded, and in complicated cases such as homicides they may have difficulties providing strong defenses. The standard for getting a conviction overturned on the basis of inadequate legal representation is quite high.

Even when they get good legal help, poor people who are accused of crimes may still find themselves saddled with debts long after they have served their time, as states and counties tack on numerous court-related fees. A report issued in late 2010 concluded that these debts make it hard for people to find housing and jobs and often result in the return of parolees or probationers to prison. And the practice has not abated. A 2015 survey found between 2008 and 2014, criminal court fees were increased and/or new ones were added in 48 states.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How can the justice system ensure good-quality legal assistance even for poor defendants?

- In an era of government budget cuts, many courts are trying to meet expenses by increasing fees. Is this fair? If fees are not increased, where should court funding come from?

SOURCES: *Brown v. Mississippi*, 297 U.S. 278 (1936); Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, 2010. <https://www.brennancenter.org/our-work/research-reports/criminal-justice-debt-barrier-reentry> (retrieved February 17, 2011); Joseph Shapiro, “As Court Fees Rise, The Poor Are Paying The Price,” *NPR*, May 19, 2014. <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> (retrieved April 13, 2019).

When the convictions were appealed, the International Labor Defense, a left-wing organization that often handled civil rights cases, represented the defendants *pro bono*, meaning without charging the defendants for their services. The defendants lost their appeal to the Alabama Supreme Court and then appealed to the U.S. Supreme Court.

When the case reached the U.S. Supreme Court, the justices held that the defendants’ due process rights had been violated because they were not given effective assistance of counsel. The Court, however, stopped short of holding that the Sixth Amendment right to counsel applies to state prosecutions. On its face, the Sixth Amendment and the rest of the Bill of Rights limit only the federal government, and it was not until the 1960s that the Supreme Court began to extend the Bill of Rights’ protections in state cases as well. The defendants, who became known as the *Scottsboro Boys*, were later retried (see the “Race, Class, Gender” box). Even though one of the alleged victims testified at the retrial that the rapes had never happened, the men were once again convicted. Most were later paroled or pardoned, but only after serving many years in prison.⁵

The right to counsel had its own day in court in 1963, when the Supreme Court ruled in *Gideon v. Wainwright* that the Sixth Amendment gives all defendants—whether tried by the state or by the federal page 297 government—the right to counsel.⁶ The Court wrote: “[I]n our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”⁷ The justices’ decision means that defendants who cannot afford an attorney must be provided with one at government expense and that the assistance provided must be effective.

The Sixth Amendment right to counsel comes into play well before a case goes to trial. A defendant has the right to an attorney at any critical stage that could influence the right of the accused to a fair trial. These stages include preliminary hearings, plea bargaining, police interrogations, and lineups that occur after a defendant has been charged. It does not include photographic lineups, lineups, or field showups that occur before charges are filed. A showup occurs shortly after a crime has been reported and usually consists of a police officer's showing a single suspect to a witness or victim in the field.

Once a defendant has been convicted, she also has the right to counsel at her sentencing hearing and at any *appeal of right*; usually, this means just her first appeal. However, she does not have the right to have appointed counsel at discretionary hearings, where the court can refuse to hear the case; at habeas corpus proceedings; or at hearings to revoke probation or parole.

MYTH/REALITY

MYTH: Poor defendants have a right to legal representation until they have fulfilled their sentence.

REALITY: Defendants who qualify for legal representation need to be facing the threat of incarceration. They have the right to legal representation only for their first appeals, and do not have the right to a lawyer for some postconviction proceedings.⁸

There are exceptions to the right to counsel based on the severity of the offense. Defendants facing only fines or probation are not entitled to a lawyer, although they can have one if they can afford the legal fees. Only defendants who face the possibility of incarceration have the constitutional right to an attorney, regardless of whether the offense is a felony or a misdemeanor. The Supreme Court also holds that the Sixth Amendment includes the right to have the assistance of certain expert witnesses; most notably, defendants pleading insanity are entitled to the assistance of psychiatrists.

Like other rights, the right to counsel may be waived by the defendant. The defendant's right to this waiver can lead to the problem that a particular defendant will use his criminal trial as a stage. The example of convicted terrorist Zacarias Moussaoui is a case in point. Prosecuted for his

involvement in the September 11, 2001, terrorist attacks, Moussaoui defended himself and used court proceedings to make inflammatory speeches calling for the destruction of several nations, including the United States. Nevertheless, the Supreme Court has held that defendants have the right to represent themselves, so long as the waiver of their Sixth Amendment rights is voluntary, knowing, intelligent, and expressed. Even when a defendant is represented by counsel, he retains the right to make some decisions about his case. The “A Case in Point” box discusses a recent U.S. Supreme Court decision about this.

The Right to a Speedy Trial The Sixth Amendment states that defendants have the right to a “speedy” trial. Thus they do not have to defend themselves years after an alleged crime has occurred, which could be long after evidence has disappeared, witnesses have forgotten the circumstances, or principals in a case have died. The amendment also ensures that defendants who cannot make bail do not sit in jail for years without ^{page 298} ever facing trial. Even for those defendants who are freed on bail, a speedy trial avoids having the weight of possible conviction hanging over their heads indefinitely. Crime victims also may benefit; some experience closure only after the trial is complete. However, if a defendant wishes to waive his right to a speedy trial in order to have more time to prepare his defense, victims have no right to force an earlier trial.

a case in **point**

The Right to Claim Innocence

By all accounts, Robert McCoy’s working relationship with his defense attorneys was difficult. McCoy was charged in Louisiana with murdering his estranged wife’s mother, stepfather, and son. The prosecutor intended to ask for the death penalty.

Because McCoy was indigent, he was assigned a public defender to represent him. When that relationship had broken down so badly that the lawyer could no longer assist, McCoy’s parents retained a different lawyer. Shortly before trial, the new lawyer

concluded that the evidence against McCoy was so strong that he'd almost certainly be found guilty. The only way to avoid being sentenced to death, he argued, was for McCoy to admit during trial that he'd committed the killings but present evidence that McCoy lacked the culpability for capital murder because he suffered from mental health issues.



Sam Hodgson/The New York Times/Redux

McCoy strongly disagreed with this tactic. He insisted he was innocent and had been out of state during the murders. He asked for a new lawyer, but the judge refused because the trial was starting so soon. At trial, the defense attorney did tell the jury several times that McCoy killed the victims. Although McCoy protested, the trial continued. The jury found him guilty and gave him three death sentences.

On appeal to the US Supreme Court, McCoy asserted that it violated his Sixth Amendment rights for lawyer to be allowed to admit McCoy's guilt despite McCoy's objections. Previous cases had held that attorneys are entitled to make many of the strategic decisions in a case, such as which witnesses to call and which arguments to make. The defendant retains the right to make other choices, however, such as whether to plead guilty, whether to waive the right to jury trial, and whether to appeal. A 6 to 3 majority of the Supreme Court held that whether to use innocence as a defense, as McCoy had wished, is also the defendant's choice. The Court overturned his conviction and ordered a new trial.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Which decisions should a defendant be entitled to make, and which should be left to the attorney's discretion?

- In this case, McCoy allegedly suffered from mental health issues. How, if at all, should that affect how much leeway a defendant has in making trial decisions?
- Are there ways the criminal justice system could encourage better working relationships between lawyers and difficult clients?

SOURCE: *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018).

The right to a speedy trial does not come without costs. If this right is violated, a defendant will go free, even if he obviously broke the law. Furthermore, this right means that most trial courts give preferential scheduling to criminal cases. Litigants in civil cases, who do not have similar Sixth Amendment rights, may face delays—sometimes extended delays—before their cases are heard.

When prosecutors are unnecessarily slow in initiating a trial, the Federal Speedy Trial Act of 1974 allows for the dismissal of charges. The Supreme Court has refused to set a hard-and-fast deadline for how quickly a prosecution must move because some cases are more page 299 complicated than others or, like capital cases, carry greater weight and so require more time for preparation. Judges are given broad authority to weigh the reasons for the delay versus the potential costs to the defendant. In addition, defendants cannot claim that their right to a speedy trial was violated if the delays were due to the defense's own requests to delay the trial. In large urban areas in 2002, 87 percent of felony defendants had their cases decided within a year of their arrest.⁹



▲ Men in Jail Awaiting Closure of Their Cases

Accused individuals have a right to a speedy trial. *What do you think is the maximum amount of time the state can leave an accused person in jail before trial? In other words, how much time has to pass before a person's right to a speedy trial has been violated?*

Brian Vander Brug/Los Angeles Times/Getty Images

Some people believe that defendants are not the only ones who deserve the right to a speedy trial. Victim advocates argue that victims, too, ought to be accorded this right (see the “What about the Victim?” box).

The Right to a Jury Another important privilege protected by the Sixth Amendment is the right to be tried by an impartial jury. Although the Sixth Amendment originally was intended to apply only to federal cases, the Supreme Court in 1968 extended the application of the amendment to state cases as well.¹⁰

This right has several components. First, the right to a jury trial—as opposed to a **bench trial**, in which the judge determines guilt—applies only in criminal cases in which the defendant faces 6 months or more of incarceration. Therefore, individuals who are charged with most petty offenses will not get juries. This rule saves the state significant time and expense and reduces the number of citizens who must do jury duty.

bench trial

A trial in which guilt is determined by a judge rather than by a jury.

Second, the jury must be impartial. Impartiality requires that any potential jurors who have personal knowledge about the case or who express their belief that the defendant is guilty before the trial even begins may be excluded from the jury. Further, if pretrial publicity in an area makes it very difficult for the defendant to secure an impartial jury, the defendant may seek a **change of venue**—that is, the trial may be moved to another location where there is less publicity. This consideration was invoked in moving Oklahoma City bomber Timothy McVeigh’s trial to Denver. Changes of venue are rarely granted, however. For instance, the 2015 trial of Boston Marathon bomber Dzhokhar Tsarnaev took place in Boston because judges felt that it would be possible to seat an impartial jury there.

change of venue

Relocation of a case to another court because the case has received too much publicity in the original jurisdiction for the defendant to receive a fair trial.

Third, although the tradition of 12-person juries and the requirement of unanimous verdicts can be traced all the way back to England in 1215 and the Magna Carta, the Supreme Court holds that neither of these is a requirement of the Sixth Amendment. In fact, the Court holds that states may have juries of any size they choose, as long as there are at least six jurors.¹¹

Finally, unlike most other constitutional rights, the right to a jury is not fully waivable. In federal cases the defendant cannot have a bench trial if the prosecutor wishes to have a jury. Some states follow this rule as well. Even when a defendant is permitted to waive a jury, the accused must express that he understands what waiving the right to a jury means and must verbalize that understanding.

The Right to Confrontation and Cross-Examination The Sixth Amendment gives criminal defendants the right to confront witnesses—that is, to have witnesses actually present at trial—and to examine or question page 300 them. This provision gives the defendant, or more precisely his attorney, the chance to ask a witness about possible inconsistencies, inaccuracies, or biases; it also makes it less likely that a witness—who will be positioned to look the accused in the eye—will be dishonest. In practice, these rights mean that hearsay evidence usually is excluded, and defendants nearly always are entitled to be present during their own trials.

What about the Victim?

Victims' Rights and the Courts

Since the creation of the Victims of Crime Act (VOCA) in 1984, all states and the federal government have passed laws to establish Victims' Rights. At present, 35 states have some provisions within the state Constitutions for Victims' Rights and six more states (Florida, Georgia, Kentucky, Nevada, North Carolina, and Oklahoma) will allow voters the opportunity to amend their state's Constitutions pertaining to these rights. In 2018, crime victims' rights measures accounted for the most criminal justice related ballot measures. While there is momentum at the state level for constitutional protections for crime victims, to date, the federal government has yet to pass an amendment to the U.S. Constitution protecting victims' rights.^a These rights pertain to the victims' role in the criminal justice systems of the state, federal, tribal, and military jurisdictions. Victims' Rights can be nuanced depending upon the system, as well as the locale within which the crime was committed, but in general include:

- *The right to be reasonably protected from the accused*
- *The right to reasonable, accurate, and timely notice of any public proceedings*
- *The right to participate in all public proceedings*
- *The right to be reasonably heard in all public proceedings*
- *The right to proceedings from unreasonable delay*
- *The right to be treated with fairness for the victim's dignity and privacy*
- *The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement*
- *The right to be informed of these rights*



junial/Getty Images

Generally, these rights pertain to victims being free from any physical and emotional harm, harassment, and intimidation when entering and exiting the courthouse, as well as locations where any proceedings occur. Ideally, safety also includes separate waiting areas and allowing testimony via closed circuit, so as to not be face-to-face with the accused. The other rights assist victims in understanding and preparing for what they may face in the court process and then participate in a process that is hopefully timely. Ensuring that these rights are enforced can assist victims with trauma response, recovery, and feelings that justice has been served. While these victims' rights exist, and in some cases are constitutionally protected with states, these are always balanced with the rights of the accused, which are protected both at the state and federal levels.^{b, c}

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How do you think victims' rights can be enforced?
- How do you balance victims' and offenders' rights?
- Why do you think states have amended their Constitutions to include Victims' Rights, but the federal government has not?

SOURCES: ^aAnne Teigen, "Rights for Crime Victims on the Ballot in Six States," National Conference of State Legislatures (October 12, 2018). <http://www.ncsl.org/blog/2018/10/12/rights-for-crime-victims-on-the-ballot-in-six-states.aspx> (retrieved January 13, 2019).

^bNational Center for Victims of Crime, "Victims' Rights." <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victims'-rights> (retrieved January 13, 2019).

^cU.S. Department of Justice, Offices of the United States Attorneys, "Crime Victims' Rights Act." <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act>

(retrieved January 13, 2019).

Hearsay evidence is any statement made by a witness that is not based on that witness's personal knowledge. For example, it would be hearsay if a witness testified: "My sister told me that she heard the defendant say that he killed his wife." Any such statement is considered an "out of court" statement and is normally viewed as inadmissible because it infringes on the defendant's Sixth Amendment right to confront witnesses and because it tends to be unreliable. In the foregoing example, if the sister's statement is to be admitted as evidence, the witness's sister herself would have [page 301](#) to appear on the witness stand, testify to what she herself claimed to have heard, and then be subjected to cross-examination. Out of court statements also include such evidence as recorded 9-1-1 emergency calls; an operator who takes such a call would have to be the witness to testify to what she heard. There are a number of exceptions to the hearsay rule, including statements made while a person is dying.

hearsay evidence

Any statement made by a witness that is not based on that witness's personal knowledge.

In 2011, the Supreme Court dealt with the difficult question of when laboratory reports might constitute hearsay. The defendant was given a blood alcohol test. When the prosecutor presented the results of the test at trial, the technician who had actually done the analysis and prepared the report did not testify. Instead, another technician from the same lab testified in court. The Supreme Court held that this violated the defendant's right to confront and cross-examine a witness.¹²

There are times when a prosecutor can show that a witness may be vulnerable to harm if forced to testify in the presence of the defendant.¹³ This is often the situation in trials involving possible child abuse by the accused. In such cases, the Supreme Court has ruled that the witnesses may be permitted to testify via one-way closed-circuit television rather than being called to testify in the actual courtroom.

Double Jeopardy: Protection from Repeated Trials for the Same Crime

The Fifth Amendment prohibits subjecting anyone twice to “jeopardy of life or limb” for the same offense. This is known as the **double jeopardy** clause. The Supreme Court has held that the right against double jeopardy applies in state as well as federal cases.¹⁴ This clause prevents a person from being prosecuted again and again for the same crime. If it were not for the protection against double jeopardy, a prosecutor could use his power to torment an innocent person by repeatedly dragging him into court for the same charges. As the Supreme Court wrote, “[T]he State ... should not be allowed to make repeated attempts to convict an alleged criminal ... thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continued state of anxiety.”¹⁵

double jeopardy

The Fifth Amendment right that protects anyone from being tried twice for the same offense.

The right against double jeopardy has several aspects. It means that once a person has been tried for a crime, she cannot be tried again on the same charges, even if new evidence appears—no matter how convincing or compelling that evidence is. If a judge acquits a defendant at trial, the defendant cannot be tried again for the crime even if the judge was mistaken in applying the law and should not have forced a not guilty finding.¹⁶ It also means that once a person has completed the punishment for an offense, she cannot be punished again for that same offense.

MYTH/REALITY

MYTH: Double jeopardy means that once a person has gone through a criminal trial for a particular act, the prosecutor can never bring that person to trial again.

REALITY: It is not a violation of double jeopardy if the defendant is charged with a different offense.¹⁷



▲ Mug Shot of Celebrity Emile Hirsch

One of the first stages of the criminal justice process is booking, in which the suspect is usually photographed.

Summit County Sheriff's Office/WireImage/Getty Images

There are several limitations to the right against double jeopardy. First, it does not prohibit a person from being tried for a crime by more than one state, or by the state and the federal governments. For example, a person who kidnaps someone in Texas and transports his victim to Oklahoma might be tried and convicted in the courts of both Texas and Oklahoma, as well as in federal court. Second, the right does not keep a person from being tried on different charges. If a person accused of robbing a store and killing the cashier is found not guilty of murder, he still may be tried for page 302 robbery. Third, the right does not prohibit a victim from bringing a civil lawsuit against a person who was acquitted in a criminal trial, as happened in the O. J. Simpson and Robert Blake murder cases (see Chapter 8). Fourth, the right does not apply if a defendant is convicted and appeals, and then the appeals court remands the case for a new trial due to errors in the original trial. Finally, the right usually does not prevent a retrial if the jury in the original trial fails to reach a verdict, or if a mistrial is declared for some other reason.

PRETRIAL PROCESS

Although the pretrial process often receives little attention in TV crime shows, the procedures that occur before a trial begins are essential. In this section we examine the major stages of the pretrial process.

Arrest and Booking

A criminal case typically begins with an arrest, although sometimes an arrest warrant is issued first. In either case, a suspect is generally taken into custody and booked, most often at a local police station or jail. During **booking**, the suspect is photographed (this photo is known as a *mug shot*) and fingerprinted, and the police record her personal information and the crimes with which she is initially being charged. Unless the crime is very minor and she is released, the suspect is normally confined in a local jail.

booking

The process of photographing and fingerprinting a suspect and creating the police record of personal information and the crime(s) with which the suspect is initially being charged when taken into custody.

The Criminal Complaint

The police then refer the case to the prosecutor, who will make an initial decision about whether to bring charges and, if so, what they will be. These charges, outlined in official paperwork called the **complaint**, are not necessarily the ones for which the suspect was initially arrested. As an investigation proceeds and reveals new evidence, the prosecutor may drop or change some charges or add new ones. Specific charges later may be dropped as part of a plea bargain, so the charges that are filed can give the prosecutor negotiating leverage. Once the prosecutor has filed a complaint, a suspect officially becomes a defendant.

complaint

The document containing the initial crimes with which a defendant is charged.

Arraignment and Plea

A defendant in custody is entitled to a speedy **arraignment**, or a hearing before a judge or magistrate. During this hearing, the complaint is formally read. Arraignments often take place within a day of the arrest, although they may be delayed if the arrest occurs on a weekend or a holiday. The arraignment may be the first time the defendant learns which charges he is facing. If he has not already retained an attorney, he is informed of his right to counsel. If he is indigent, he is assigned a defense attorney. The defendant is also formally read his other rights. Finally, the defendant enters an initial

plea, or answer, to the charges. Generally, he may plead *guilty*, meaning that he admits to all the charges; *not guilty*, meaning that he denies the charges; or **no contest (nolo contendere)**, meaning that he does not admit to the charges but will not dispute them in criminal court. This last plea may help him avoid civil liability for the acts of which he is accused. Convictions and guilty pleas can be used as evidence of a defendant's liability in a related civil lawsuit, but no contest pleas cannot be used in civil suits.

arraignment

A hearing before a judge or magistrate during which the complaint is formally read.

plea

A defendant's formal denial or admission of guilt.

no contest (nolo contendere)

A plea in which a defendant admits that sufficient evidence exists to convict him, but he does not actually admit his guilt.

In many minor misdemeanor cases, defendants simply plead guilty, and the arraigning judge sentences them, usually to time already served in jail and perhaps also to fines or probation. Some have argued that for minor offenses the criminal process itself is designed to be so unpleasant that it serves as punishment.¹⁸ In felony cases, defendants usually page 303 plead not guilty at the arraignment. The judge will then determine whether they are entitled to be released on bail, and, if so, how much the bail will be. Recall that the purpose of bail is to guarantee that defendants will appear for trial. If defendants do not appear, they will forfeit their bail money, and the court will issue a warrant for their arrest.

Probable Cause Hearing

The next step is a hearing to determine whether there is probable cause to believe that the suspect committed the offenses in the complaint. There are two major kinds of probable cause hearings: *grand juries* and *preliminary hearings*. All defendants in federal felony cases are entitled to a grand jury under the Fifth Amendment. Some states also require grand juries to be seated in some circumstances; others give the prosecutor the choice of whether to use one. A grand jury is composed of 12–23 local citizens who may serve for a particular length of time or for a specific case. They are

usually selected in the same way as members of petit juries, such as from voter lists.

Grand juries do not determine whether the suspect is guilty. Instead, they decide whether sufficient evidence exists for a prosecution to proceed. The stated purpose of the grand jury is to protect people against unjust or overzealous prosecutors. Critics claim, however, that grand juries usually go along with whatever the prosecutor asks them to do.¹⁹ During a grand jury hearing, the prosecutor presents evidence against the defendant. The grand jury may subpoena witnesses or conduct investigations on its own, but it rarely does so independently of the prosecutor. Grand jury hearings are closed to the press, and defendants have few rights during the process. For example, they are not entitled to counsel and cannot call their own witnesses. However, defendants and witnesses may invoke their Fifth Amendment right against self-incrimination during grand jury proceedings.

If a grand jury finds that probable cause exists, it issues an **indictment**, which formally sets out the charges against the defendant. Again, these are not necessarily the charges that were in the original complaint. On the rare occasion that a grand jury fails to find probable cause, the case is dismissed. The prosecutor can, however, bring another complaint against the accused containing different charges, or he can later bring the same charges with new evidence. This does not constitute double jeopardy because that protection does not begin until a trial begins.

indictment

A document issued by a grand jury after it finds probable cause, formally listing the charges against the defendant.

In most state cases, instead of a grand jury hearing, a **preliminary hearing** is held. The purpose is the same—to determine whether probable cause exists—but the preliminary hearing, often called the *prelim*, is held before a judge instead of a grand jury. It must occur 5–30 days after the complaint is filed, depending on whether the defendant is in jail or free on bail. As at a grand jury hearing, the prosecutor presents most, or often all, the evidence; in contrast, during the prelim, the defense usually presents no evidence at all. The prosecutor does not have to offer all the evidence available to him—just enough to ensure that the defendant is put on trial. Unlike the case of grand jury proceedings, however, prelims are held in public, and defendants are entitled to representation by counsel. A defendant

can waive her right to a preliminary hearing, but doing so often is not in her best interest.

preliminary hearing

A proceeding in which a judge determines whether probable cause exists to bring the defendant to trial for the crimes with which he has been charged.

The prelim serves several important functions. For example, it helps avoid the prosecution of people against whom evidence is scanty. It also gives the defense an opportunity to preview the strength of the case against them. If the case appears strong, the defendant will be more willing to plea bargain instead of taking his chances at trial. Moreover, during the prelim, the defense may object to the inclusion of certain pieces of evidence at trial. If the judge rules that important evidence is inadmissible, perhaps because of the exclusionary rule (see Chapter 7), the prosecutor may drop page 304 the charges. In short, prelims decrease the number of unnecessary trials, lessen the risk that a defendant will be tried unfairly, and reduce courts' caseloads.

If the judge fails to find probable cause at the prelim, the case is dismissed. As in the grand jury process, however, the prosecutor can try again with new charges or new evidence. If the judge does find that there is probable cause to try the defendant, the case is held over for trial. The prosecutor then produces the **information**, a formal document that lists the charges for which the defendant will be tried. The defendant is entitled to a second arraignment on the information because the charges in the information may be different from those on which he was initially arraigned, although he may waive it. A trial date is then set by the court.

information

A document filed by a prosecutor after a preliminary hearing, formally listing the charges against the defendant.

Discovery

Before the trial begins, the attorneys on both sides are especially busy. They continue their investigation, working to uncover evidence to support their cases. In a process called **discovery**, each attorney may request that opposing counsel or other parties give them certain evidence or information. In a criminal case, the prosecution frequently has the advantage of greater

resources and greater access to evidence because prosecutors' offices usually have bigger budgets than do public defenders. Moreover, prosecutors have police departments and their own investigators at their disposal. Discovery is intended to level the playing field by allowing the defense to obtain some of this evidence. Another advantage of discovery is that it allows the attorneys to prepare their cases sufficiently and helps them avoid being ambushed at trial with unexpected evidence that they are not prepared to refute.

discovery

The process in which an attorney requests that opposing counsel or other parties provide certain evidence or information.



▲ Wrongfully Convicted

Jimmy Eacker's conviction was overturned because the prosecutor withheld evidence.

M. Scott Moon/Peninsula Clarion

Yet critics claim that the discovery process is cumbersome and inadequate. The prosecutor is forbidden to intentionally hide or destroy evidence that might exonerate (clear from blame) the defendant. In fact, since the 1963 case of *Brady v. Maryland*, prosecutors have the duty to disclose to the defense all *material exculpatory evidence*—that is, any evidence that might affect the jury's decision as to the defendant's guilt.²⁰ If the prosecutor fails to hand over such evidence, a conviction can be overturned. For example, in 2009, Alaska's Senator Ted Stevens's conviction—for failing to report gifts properly—was thrown out because the prosecutor had deliberately withheld evidence from the defense. More recently, in 2011,

Alaskan Jimmy Eacker was granted a new murder trial because the prosecutor had withheld DNA evidence that implicated someone else in the crime.²¹ The problem is, however, that it might not always be clear to the prosecutor whether particular evidence truly is material. A further complication in the process is that overworked and underfunded public defenders are often accused of doing a poor job of investigating their cases—and of consequently putting up an inadequate defense.

Pretrial Motions

Pretrial motions are specific requests that lawyers file with the judge. A common request is to suppress evidence. At both the federal and the state level, the procedural rules governing what evidence is permissible are detailed and explicit. A defense attorney who believes that a particular piece of evidence is not admissible because, for instance, it was illegally obtained can ask the judge to rule that the prosecution cannot use it at trial. Successful motions to suppress evidence can leave the prosecution without enough evidence to obtain a conviction, leading the prosecutor to request dismissal of the case.

Another motion is a request for a change of venue. If a case receives so much publicity where the crime allegedly happened that potential jurors have already formed opinions about the defendant's guilt and it _____ page 305 would be virtually impossible to hold a fair trial, the defendant—almost never the prosecution—may ask that the case be moved to another location where there has been less publicity. The venue was changed in the sensational 2005 trial of Scott Peterson for killing his wife and unborn child in California. In May 2015, the six Baltimore police officers charged in the death of Freddie Gray requested a change of venue for their trial. Gray died while in police custody, sparking protests that received worldwide media attention.

Plea Bargaining

Occasionally, prosecutors drop the charges. More often, however, the prosecutor and the defense strike a deal—called a **plea bargain**—in which the defendant agrees to plead guilty in exchange for reduced charges or a lesser sentence. In cases involving multiple defendants, such as the Oklahoma City bombing case, prosecutors often offer one or more of the

defendants reduced charges in exchange for their testimony against other defendants. The negotiation of a plea bargain may take more than one meeting. In fact, several negotiations may be required before both parties agree to the charge to which the defendant will plead guilty. And although plea bargaining can occur at any time before or during the trial—right down to the moment before the jury delivers a verdict—in most cases it occurs *before* trial.

plea bargain

An agreement between defendants and prosecutors, in which a defendant pleads guilty to the original or reduced charges in exchange for a lesser sentence.



▲ Dzhokhar Tsarnaev was tried for planting bombs at the 2013 Boston Marathon.

Because Tsarnaev's case received extensive media attention, his defense attorneys requested a change of venue, which was denied. *Should defendants or prosecutors be able to change the location of the trial? Why or why not?*

FBI/Getty Images

As evidence is shared with the defense through discovery, the defense attorney might realize that there is likely too much evidence of guilt to prevail at trial. In that case, the attorney might advise the defendant to plead guilty to the original offense rather than trying to negotiate a bargain for a reduced charge.

One way plea bargaining can occur is for the prosecution to drop some charges in exchange for a guilty plea. For example, a defendant might be charged with 10 acts of burglary, but the prosecution agrees to drop 8 of the 10 charges, thus significantly reducing the defendant's sentence. In jurisdictions with sentencing guidelines, such decisions may be made

specifically to reduce the sentence that would be imposed because the guidelines stipulate a particular sentence for the greater number of offenses of the same crime.

Judges are required to approve plea bargains, and it is the judge's duty to make sure that the bargain is voluntary—that the defendant realizes what rights she is surrendering and what other implications are entailed when she agrees to a plea bargain. That requirement was established in *Boykin v. Alabama* (1969), in which the Supreme Court ruled that the defendant must be fully aware of what she is agreeing to. Today, most judges have a standard list of questions they ask defendants in court to ensure that their choices are voluntary. Further, only with the judge's consent may the defendant withdraw a guilty plea that she has made under a plea bargain.

The U.S. criminal justice system encourages plea bargains because they are an efficient means of disposing of a great many of the 20 million criminal cases that arise each year. Plea bargains also allow prosecutors to pursue more cases, and to pursue them more thoroughly. Today, about 95 percent of criminal convictions result from plea bargains rather than completed trials.²² Alaska banned plea bargaining in 1975, and in some other jurisdictions attempts have been made to restrict its use. However, in general, plea bargaining has become indispensable to the efficient functioning of the U.S. criminal justice system.

Recent research on the origins of plea bargaining in the United States reveals that the practice emerged in Boston, Massachusetts, in the 1830s and 1840s—much earlier than previous studies had reported. Between the 1830s and the 1840s in Boston's lower courts, the guilty plea rate rose page 306 from 10 percent to 28 percent. The most commonly plea-bargained offense was public drunkenness. There were also significant occurrences of plea bargaining for larceny and assault and battery.²³

Plea Bargaining Controversies Centering on the Defendant Despite its long historical tradition, plea bargaining is not without controversies. Think about it: Defendants face a high-stakes gamble. If they go to trial, they may be acquitted—or they may be found guilty and receive a harsher sentence than they were offered through the plea bargain. Whether to opt for a plea bargain is a difficult choice for anyone to make, but it is especially so for someone who is innocent. Of course, all defendants must be presumed innocent at this point. So, how can defendants make a good choice? The

answer is that they must consider many factors. What is the conviction rate for the offenses with which they are charged? Felony conviction rates range from 41 percent for assault to 80 percent for murder.²⁴ Will the jury be sympathetic to them? How strong is the prosecution's evidence?

It may surprise you to learn that a defendant can plead guilty even as he maintains his innocence. In *North Carolina v. Alford* (1970), the Supreme Court ruled that a judge may accept a guilty plea from a defendant who wishes to reduce his sentence even if the individual states that he is innocent. The Court, however, also held that a judge should accept a guilty plea in such a case only if the facts support that the defendant is guilty.²⁵

A defendant's choice is also likely to be heavily influenced by whether his lawyer is a public defender or a private attorney. Public defenders are often less experienced than private attorneys and typically have heavier caseloads with fewer resources at their disposal. A public defender might be eager to unload a case quickly to reduce her workload and therefore might encourage her client to opt for a plea bargain; a private attorney will earn more if the case goes to trial. Defendants with public defenders are more likely to accept a plea bargain than are defendants with private attorneys.²⁶ This is another way in which the process of justice is different for the poor.

The U.S. Supreme Court ruled in *Bordenkircher v. Hayes* (1978) that prosecutors may threaten defendants with harsher sentences if they do not plead guilty. This is one reason why plea bargaining also fuels opposition to capital punishment. Prosecutors may use the threat of the death penalty to compel innocent people to plead guilty. Even if you know that you are innocent, you will likely be tempted to plead guilty to, say, second-degree murder and a sentence of 15 years rather than face a trial for first-degree murder in which you could receive a death sentence.

Plea Bargaining Controversies Centering on the Victim It is not only defendants' advocates who criticize plea bargains. Victims and their advocates may be deeply displeased as well, believing that plea bargains spare the people who hurt them from getting the punishment they deserve. In light of this issue, some states require that prosecutors confer with victims before completing a plea agreement, either to ask for their input on the deal or simply to notify them of it. Some states allow victims to make a statement in court when the plea is entered. In no state, however, does a victim have the power to veto a plea agreement. To many victims, it must thus seem that

expediency is valued more than justice. One noteworthy example is the case of Gary Ridgway, the “Green River killer.” In 2003, Ridgway pleaded guilty to 48 murders. In return for providing police with enough information to locate the victims’ bodies and close these cases, he was given 48 life sentences instead of the death penalty.

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Determining the Scope of the Plea: Who Decides? In general, the prosecutor may decide what sort of plea bargain to offer the defendant. Specific rules differ by jurisdiction. For example, in federal cases the proposed sentence will usually comply with federal sentencing guidelines. In most cases, once a defendant has entered a guilty plea as part of a plea bargain, she cannot withdraw it, and prosecutors are usually bound to carry out the deals they have struck as well. However, a judge may set aside a plea bargain, an action that might require that a new plea bargain be struck or that the case go to trial.

A local legal culture typically arises within a given jurisdiction as the same legal professionals work together over a long period of time. Indeed, defense attorneys, judges, and prosecutors develop similar ways of looking at cases and concluding what justice calls for in particular offenses.²⁷ For example, in many jurisdictions there will be a “going rate” for such common crimes as possession of a small amount of narcotics, intimate partner violence, and possession of alcohol while a minor. In one jurisdiction, the major actors might all agree that an individual cited for having a fake driver’s license in order to purchase alcohol should have his license revoked. Another jurisdiction, however, might require the offender simply to take responsible-drinking classes. The adversarial system of criminal justice is more theory than reality in such cases.

THE CRIMINAL TRIAL

As we have seen, only a small percentage of criminal cases make it to trial. But the criminal trial, with all its ceremony and drama, is what most people have in mind when they think about criminal cases. Most people believe that they have an accurate idea of what happens during a trial, in large part because of depictions of trials in television and movies. In reality, though,

trials are much more complex—and usually much less dramatic—than the ones enacted on television shows.

Due Process: Providing Fair and Equitable Treatment

The **due process clause** is arguably the most important phrase in the Constitution. Simply stated, due process stands for the proposition that government laws and proceedings must be fair.

due process clause

A clause of the U.S. Constitution that represents the proposition that government laws and proceedings must be fair.

The due process clause appears twice in the Constitution: once in the Fifth Amendment and again in the Fourteenth. In both places it reads: “No person shall be ... deprived of life, liberty, or property, without due process of law.” The difference is that the clause in the Fifth Amendment, part of the original Bill of Rights and ratified in 1791, applies only to the federal government, whereas the Fourteenth Amendment, ratified in 1868 after the Civil War, applies specifically to the states. Because the words within the Fifth and the Fourteenth Amendments themselves give no specifics about what is and is not permissible, the Supreme Court has often struggled with the precise meaning of the due process clause. In general, the Court has discussed two kinds of due process: procedural due process and substantive due process.

Procedural due process stands for the idea that the processes and methods used to try people for crimes cannot be arbitrary or unfair. For instance, if a person were to be put on trial without first being adequately notified of the specific charges against him, it would be very difficult for that individual to adequately defend himself. *Substantive due process* means that the government cannot unfairly, or without just cause, deprive people of certain fundamental liberties. An example is an individual’s right to privacy, which the government cannot invade unless it has a good enough reason, such as strong evidence that the person has committed a serious crime.

Real Careers



Comstock/Stockbyte/Getty Images

SARAH CORY

Work location: St. Paul, Minnesota

College(s): University of Minnesota (1998); William Mitchell College of Law (2001)

Major(s): Sociology (emphasis in criminology) and Philosophy (BS); Juris Doctorate (JD); Minnesota Bar Certified (2001)

Job title: Assistant County Attorney III, Ramsey County Attorney's Office

Salary range for job like this: \$80,000–\$120,000

Time in job: 7 years

Work Responsibilities

During my 7 years as assistant county attorney, I have worked in three different divisions: child support enforcement, juvenile prosecution, and adult felony prosecution. But jury trial work is my primary responsibility. A typical workweek involves meeting with witnesses, talking with police officers, preparing cases for trial, and appearing in court for motion hearings, sentencing hearings, and jury trials.

Why Criminal Justice?

I was drawn to the complexities of what justice means in the context of criminal law. I enjoy the problem-solving aspect of it—the fact that it's not so simple that someone did something wrong and just has to pay for it.

Expectations and Realities of the Job

I expected cases to go to trial more often than they actually do. I also expected that it would be obvious to victims that I am working to help them. But sometimes it feels as a criminal prosecutor that I'm not really helping them at all. Victims can find seeking justice to be a bit of a burden or punishment—first the crime, then the interruptions to meet with law enforcement, meet with attorneys, and testify in court. But this doesn't at all change how satisfying I find the work to be. I am working to bring about justice.

My Advice to Students

Be resourceful and try to understand as much as you can about how things work—whether it's the technology you use or the day in the life of a probation officer. This will help you build relationships with people who can help you figure things out in your job and make you self-sufficient when there isn't anyone around to help. Be inquisitive and genuinely interested in how things work, and you will learn things you didn't think to ask about. And while you are in school, take advantage of the opportunity to learn whatever you can about the practice of law. If you're not at the top of your class (which I wasn't), it's all the more important to seek a part-time job or an internship with a law firm. From this experience not only will you learn firsthand how to practice law, but you will have an opportunity to show your employer just how irreplaceable you are.

Due process is perhaps the core of the criminal justice system. Think about it: What value can a system have if is not administered fairly? Due process protections can help ensure that individuals are not discriminated against or persecuted by government officials and that people's rights are respected.

Yet some critics of the criminal justice system complain that its procedures are often time-consuming, complicated, and expensive. Other critics say that participants in the system sometimes make mistakes or act in arbitrary or biased ways. The due process clause demands that we find a reasonable balance between these competing concerns. However, actually establishing that balance is often a challenge.

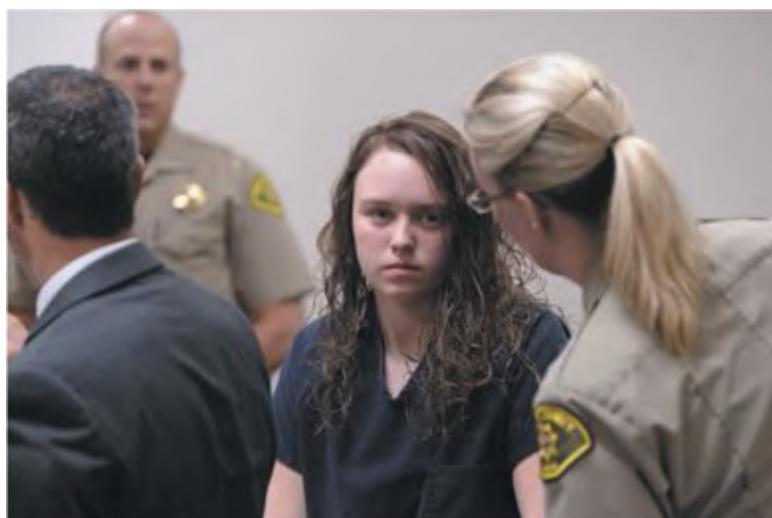
Burden of Proof and Standards of Proof

Many procedures have been built into the U.S. criminal justice system to minimize mistakes. As a society, we also have made a value judgment with respect to criminal behavior. Specifically, we have decided that it is better to risk letting some guilty people go free than to risk convicting the innocent. Accordingly, we place heavy burdens on the prosecution in criminal cases.

All criminal cases begin with the *presumption of innocence*—the legal assumption that the defendant did not commit any crimes. To overcome this presumption and gain a conviction, the prosecution bears the page 309 **burden of proof**—that is, the challenge of proving every element of each crime. This means that even if the defense presents no evidence at all, the defendant may still be acquitted if the prosecution does not carry its burden.

burden of proof

The burden of proving a particular thing in court.



▲ Charged with Murder

Meagan Grunwald was charged with murder and several other crimes after the fatal shooting of a Utah sheriff's deputy.

Al Hartmann/POOL Salt Lake Tribune/AP Images

In some cases, the defense may also have a burden of proof. For example, if a defendant claims that she was acting in self-defense or was insane, in most cases she must prove her claim, as opposed to the prosecution having to prove that she was not defending herself or was not insane.

MYTH/REALITY

MYTH: In a criminal trial when a defendant is found not guilty, the trier of fact believes that the defendant is innocent of the crime for which he was charged.

REALITY: A judge or a jury may find a criminal defendant not guilty even if they believe he is probably guilty. A not guilty verdict means that the trier of fact believes that the prosecutor has

failed to establish the defendant's guilt beyond a reasonable doubt.

The burden of proof falls on the party who must prove a particular thing in court; in contrast, *standard of proof* describes how convincing the proof must be. In most civil cases, the plaintiff, the person who brings the suit, must prove his case by a **preponderance of the evidence**, meaning simply that his case must be slightly stronger than the other side's. This is a relatively light burden. In criminal cases, the prosecutor must meet a more difficult standard—he must prove his case **beyond a reasonable doubt**, meaning that the jurors must have no real uncertainties about the defendant's guilt. Even if the jury is fairly sure that the defendant has committed the crime, the jurors must acquit him if they can conceive of another plausible explanation for the evidence. In the U.S. criminal justice system, people are therefore not found innocent but rather are found not guilty, meaning that the prosecution has not carried its burden. When the prosecution has given sufficient proof of all elements of the crime, defendants are, of course, found guilty.

preponderance of the evidence

The standard of proof required to win a civil lawsuit.

beyond a reasonable doubt

The standard of proof required to criminally convict a person.

Other standards of proof appear in criminal cases as well. Sometimes defenses must be proved or disproved by a preponderance of evidence. Other defenses might require **clear and convincing evidence**, which lies somewhere between a preponderance and beyond a reasonable doubt. The standard of proof depends on the jurisdiction and on the particular defense. For example, in Delaware a defendant must prove insanity by a preponderance of the evidence, whereas in Florida he must prove it with clear and convincing evidence. Whether jurors are really able and willing to understand such subtle nuances of proof is not clear, but our system does expect them to.

clear and convincing evidence

An intermediate standard of proof, sometimes required for certain defenses such as the insanity defense.

A party may meet the burden of proof through direct evidence, circumstantial evidence, or a combination of both. *Direct evidence* is evidence that tends to directly prove something without any inferences required. For example, a defendant's statement to an informant that the defendant is willing to sell the defendant a gram of methamphetamine is direct evidence that the defendant is selling illegal narcotics. In contrast, *circumstantial evidence* requires some assumptions in order to prove something. A defendant's fingerprints on a murder weapon are page 310 circumstantial evidence that the defendant committed the murder. To convict the defendant based on this evidence would require the assumption that the defendant did not handle the weapon before or after the true murderer. A person may be convicted solely on circumstantial evidence, but it is often more difficult for the prosecution to meet its burden of proof without direct evidence.



▲ O. J. Simpson Embracing His Lawyer Johnnie Cochran

Simpson celebrated the not guilty decision in his criminal trial, but he lost in his subsequent civil trial when he was found liable for the deaths of Nicole Brown Simpson and Ronald Goldman. *What do the differing verdicts in the two trials indicate about the U.S. system of justice?*

Myung J. Chun, Pool/AP Images

Stages of the Trial

Every trial progresses through several discrete stages—our focus in this section.

Jury Selection Typically, the first step when a case comes to trial is that a jury is chosen. Chapter 8 presents the process by which jurors are selected. There is a common misconception that the Constitution guarantees people the right to be tried by a jury of their peers. See the Matters of Ethics box, “A Jury of Your Peers? ... Not Really,” for a discussion of how the results of this initial stage of a trial are not generally what people think them to be. Once selected, the bailiff swears the jurors in. Contrary to popular belief, it is only in a few very high-profile cases that jurors are **sequestered**—that is, kept isolated from outside contact. As the trial begins, however, the judge will usually give jurors some general instructions and warn them not to discuss the case with anyone outside the jury until the case is complete.

sequestered

Referring to a jury that is kept separate from outside contact during a trial.

Opening Statements The trial begins with the opposing attorneys’ **opening statements** to the jury. The lawyers introduce the case from their perspective and summarize the main evidence or main arguments they intend to put forward. Lawyers will attempt to establish an emotional connection with the jurors at the outset of the trial. In fact, opening statements can carry much influence and affect how the jury views the evidence that follows.²⁸ As a district attorney recently told one of this book’s authors, “If I haven’t convinced the jury by the end of my opening statement, I’ve lost the case.” The prosecutor always makes the first opening statement. The defense may then choose to make its opening statement right away or wait until the prosecution’s **case-in-chief**, or main body of evidence, is complete.

opening statements

Initial statements made by attorneys to a jury outlining the case they will present during the trial.

case-in-chief

A stage in a criminal trial during which a party presents the main body of evidence.

The Prosecution’s Case-in-Chief The prosecution’s case-in-chief begins when the first witness is sworn in. The prosecution has already decided on a trial strategy that includes the order in which witnesses will appear, the questions they will be asked, and the evidence the attorney will attempt to include through their testimony. The prosecutor will ask the witness a series of questions. This is called **direct examination**. The defense attorney may

object to questions that are improper—for example, if the prosecutor is *leading* the witness, or suggesting to the witness what her answers should be. Similarly, a defense objection may arise if the evidence is inadmissible hearsay. The judge will immediately *overrule* the objection and allow the question, or he or she may *sustain* the objection, in which case the prosecutor must rephrase the question or pursue a different line of inquiry.

direct examination

A stage in a trial when attorneys question their own witnesses.

Once the prosecutor finishes the direct examination, the defense may choose to question, or **cross-examine**, the witness. Now the prosecution may object to particular questions. The defense will often try to *impeach* the witness—that is, make the witness himself or his testimony appear unreliable. When the defense is finished, the prosecutor may [page 311](#) choose to redirect, after which the defense may recross, and so on until both sides have finished with that particular witness. In some trials, this process may take many days. The witness is then excused, and the prosecutor calls the next witness. Despite what we see in movies and on TV or read in whodunits, surprise witnesses are rarely allowed. Through the discovery process, the defense almost always knows well in advance of the trial whom the prosecution will be calling to testify; and in fact, springing a last-minute witness can be grounds for dismissing a case.

cross-examination

A stage in a trial when attorneys question the opposing side's witnesses.

Matters of Ethics

A Jury of Your Peers? ... Not Really

Most people believe the Constitution guarantees each of us the right to a trial by our peers—others of our own race, gender, or age. (And while we are thinking about it, what about socioeconomic status or sexual orientation?) They expect to be judged by people who are, essentially, their equals. This would be an incredibly tall order given that some of us are well

educated, others not; some are wealthy, others not; some are White, others not. Then consider all the permutations of such variables. How hard would it be to find jurors who are similar to a 24-year-old, wealthy Latino defendant with a PhD? Needless to say, it would not be an easy or even reasonable task.

In fact, nowhere in the Constitution is it stated that criminal defendants are entitled to a jury of their peers. So where does this popular belief come from? The formal idea of “a jury of peers” likely originated with a Magna Carta provision giving noblemen the right to be judged, not by the king, but rather by other noblemen. Today this principle translates to “a jury of fellow citizens.” Although it is not part of the Constitution, the U.S. Supreme Court has ruled it is necessary for juries to be made up of a “fair cross-section of the community.” This is not driven by an interest in actually creating juries of one’s peers, but rather by satisfying the Sixth Amendment right to an impartial jury. The assumption is that most people will have more similarities with a random sample of the population than they will have differences. And “like” people are more likely to give the defendant a fair shake; discrimination is less likely to occur. To this end, courts use a random method to create a jury pool that is reasonably representative of the community. It is from this broad cross-section of the community that the ultimate jury is constituted.

Given the process by which jury pools are created, the extent to which any defendant’s characteristics are matched by those of the jurors would be a matter of random chance. The likelihood of selecting a jury that is biased in terms of race, gender, and age is reduced by this process, but the members of the chosen jury may not look at all like the defendant in a number of ways thought to be critical in jury decision-making. How do poorly educated jurors perceive highly educated defendants? How do poorly educated, poor jurors perceive highly educated, rich defendants? Given that results of jury selection in the real world often eliminate as part of the process, for example, the most educated, how fair is such a system to highly educated defendants? Or, for that matter, to poorly educated defendants whose case largely rests on understanding testimony from expert witnesses regarding population genetics or complicated financial networks?



Two issues emerge from the above discussion. If fairness in the judicial process is a primary goal, is it ethical to maintain a jury selection process that may actually disadvantage some defendants? And how ethical is it for the criminal justice system to promote the image of the jury system as one in which a defendant’s fate will be fairly judged by his “equals”?

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

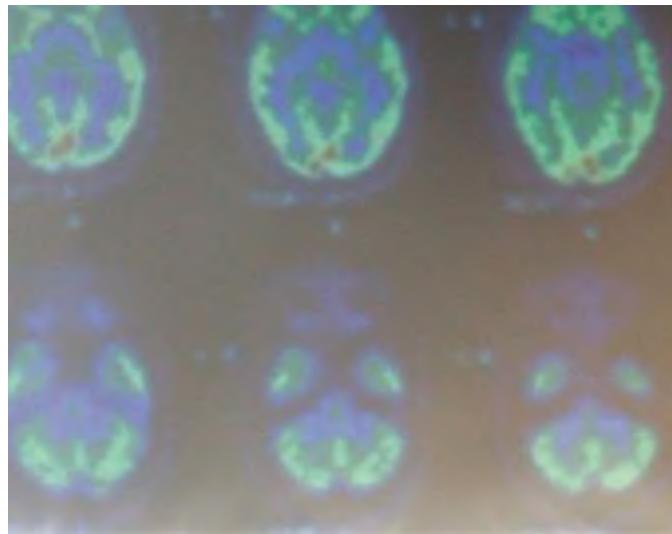
- Do you think the Constitution should be amended to guarantee the right to a jury of one's peers? If so, how could this be achieved in actual criminal trials?
- To what extent do you think the characteristics of jurors contribute to the racial and gender disparities we see in verdicts and sentences? How might the current jury selection process be changed to reduce these disparities?
- What would be the pros and cons of replacing our current jury system with professional juries? If a true objective is to create a jury of one's peers, what criteria could be used to hire professional jurors?

SOURCES: USLegal.com, “Jury Pool.” <http://definitions.uslegal.com/j/jury-pool/> (retrieved June 11, 2015); FindLaw, “What Is a Jury of Peers?” <https://criminal.findlaw.com/criminal-procedure/what-is-a-jury-of-peers.html> (retrieved June 11, 2015); Alcibiades Bilzerian, “Jury of Our Peers?” *The Bilzerian Report*, February 8, 2013. <http://thebilzerianreport.com/jury-of-our-peers/> (retrieved June 11, 2015).

Eventually, the prosecutor will conclude, or *rest*, his case. At this point, the defense attorney will almost always move to have the case dismissed; this is called a motion for a **directed verdict**. The judge now must determine whether the prosecution has carried its burden of proof—that is, whether it has proved every element of the criminal charges beyond a reasonable doubt. If not, the judge will dismiss the case without the defense ever having to make arguments of its own. Because of the protections against double jeopardy, the prosecution would be forbidden to try the defendant again on the same charges. In practice, few defense motions for dismissal are granted at this point.

directed verdict

A motion made by a defense attorney after the prosecution has rested its case; the motion asks for the judge to direct the jury to find the defendant not guilty due to the prosecution’s failure to meet its burden of proof.



David Massey, Pool/AP Images

Real Crime Tech

BRAIN SCANS ON TRIAL

As a general rule, criminal courts find defendants criminally responsible—that is, guilty—when their criminal actions were the product of a so-called criminal mind. In other words, when the offender committed the crime, he had mens rea (see Chapter 4). Unfortunately, mens rea cannot be measured by a blood or urine test. Brain-scanning technology, however, can reveal abnormalities in the brain that may affect a person's ability to know that what he is doing is wrong or to truly understand the consequences of that behavior, or even to control it. An MRI (magnetic resonance imaging) scan can reveal a tumor that may put pressure on nearby brain structures that affects, for example, the individual's ability to control his emotions. A PET (positron emission tomography) scan shows actual brain activity and can pinpoint abnormalities of function in different parts of the brain.

In 1992, a New York court was first to allow PET scans into evidence at trial to support an insanity plea. The 65-year-old defendant, Herbert Weinstein, had strangled his wife and thrown her body from a 12th floor window to make the murder appear to be a suicide. When the judge ruled that the scans of Weinstein's brain were admissible, the prosecutors—apparently concerned about the influence that brain scan images would have on the jury—agreed to the lesser plea of manslaughter.

Even when admitted as evidence, however, abnormal brain scans do not always lead juries to reach a finding of no guilt or lesser guilt on the part of the defendant. Even though neuroimaging has undoubtedly enhanced our understanding of the brain, some court experts view this technology as junk science. In fact, the “jury”—that is, the scientific community—is still out about whether brain scans provide meaningful evidence in criminal trials.

SOURCE: J. Rojas-Burke, “PET Scans Advance as Tool in Insanity Defense,” *Journal of Nuclear Medicine* 3, no. 1 (January 1993).

The Defense's Case-in-Chief The defense then begins its own case-in-chief by making opening statements if it did not already do so at the start of the trial. This proceeds very much like the prosecution's case, only this time it is the defense that conducts direct examination and the prosecution that cross-examines. Then the defense rests.

Whether or not to put the defendant on the stand to testify is a crucial decision that the defense must make. Certainly a defendant who can make a convincing and truthful case for her innocence on the stand can greatly increase her chances for being found not guilty. However, the Fifth Amendment guarantees the defendant's right not to be compelled to testify against herself—and self-incrimination is exactly what could happen if she takes the stand only to be subjected to a withering cross-examination by the prosecutor. Giving false testimony under such cross-examination would, in addition, constitute the crime of perjury, and it would be highly unethical for a defense attorney knowingly to encourage or allow his client to perjure herself. Furthermore, if a defendant does take the stand, evidence that would otherwise not be admissible may be used to impeach her or to attempt to prove that she is a liar.

On the other hand, the Fifth Amendment rule against self-incrimination forbids the prosecutor from drawing the jury's attention to the defendant's failure to testify. The judge must enforce this rule both as the case proceeds and in his instructions to the jury. Since the defense is not required to prove the defendant's innocence but needs only to create a reasonable doubt about her guilt, it is quite possible for the defendant to be found not guilty even though she never testified in her own defense.

Rebuttal The next step is called *rebuttal*. Here the prosecution may call new witnesses or recall old ones in an attempt to refute the defense evidence. The defense can rebut as well, a procedure called the *surrebuttal*. The whole process once again continues until both sides are satisfied.

Closing Statements Finally, it is time for *closing statements*. The attorneys cannot bring new evidence during this phase; they summarize and highlight what they have already presented to the jury. In some jurisdictions, the

defense gives closing statements first, and then the prosecutor. In other places, the prosecutor goes first, followed by the defense. Finally, the prosecutor may speak once more. Some critics feel that this order gives the prosecution an unfair advantage because jurors' decisions are likely to be heavily influenced by the first and last words they hear. Others maintain that the heavy burden of proof the prosecution carries in criminal cases requires this particular order.

Jury Deliberations Next, the judge gives the jury *directions*, including descriptions of exactly what facts they must find to convict the defendant on each count. Although most states have collections of jury instructions that judges may use, the attorneys may suggest or object to particular page 313 instructions, and sometimes these objections result in the jury's being recalled to hear new instructions. Defense attorneys' challenges to the judge's instructions can become the basis of appeals.

Once the jury goes off to deliberate, its deliberations are always in secret. Deliberations may take minutes or days, depending on the complexity of the case and the evidence. In most jurisdictions, the jury must reach a unanimous decision, although some jurisdictions permit convictions based on 10–2 or 9–3 votes (see Chapter 8 for more details about juries). If the jurors report that they are unable to reach a verdict, the judge will urge them to keep trying. If, however, a verdict is still impossible—if there is a **hung jury** in which one or more jurors absolutely refuse to vote for conviction—the judge will declare a **mistrial**. The prosecutor can then choose to try the case again. If she does, the whole process begins anew—an expensive and time-consuming outcome, to be sure. Often prosecutors decide not to retry such cases, taking the mistrial as a sign that the evidence is not strong enough to produce a conviction.

hung jury

A jury that is unable, after concerted effort, to reach a verdict.

mistrial

A judge's ruling that declares a trial invalid, often because of a hung jury.



▲ Lawyer Making a Closing Statement

During closing statements, attorneys summarize what they have presented to the jury.
Stockbyte/Getty Images

If the jury reaches a verdict, as it does in most cases, the jurors return to the courtroom, and the judge or the jury foreman reads the verdict. If the defendant is found not guilty of all charges, he is released from custody. If he is convicted, the judge may sentence him immediately or set a later date for a hearing to determine the sentence. Many jurisdictions allow victims or their families to speak during the sentencing hearing about how the crimes affected them. The effect of these statements on sentencing decisions has not been clearly established. See Chapter 10 for more on victim impact statements. Figure 9-1 illustrates how the criminal justice process works from arrest through trial.

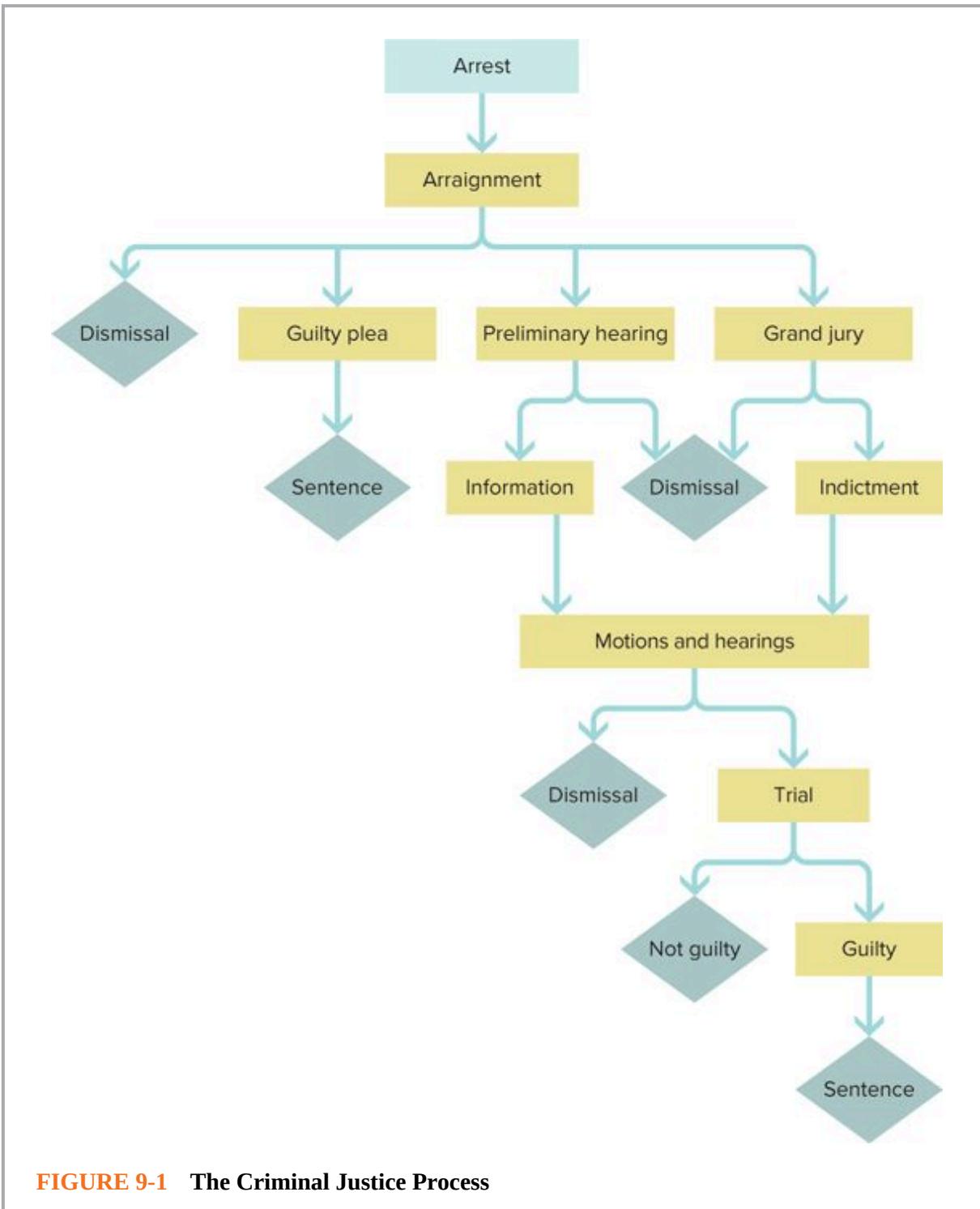


FIGURE 9-1 The Criminal Justice Process

Bifurcated Trials

In a **bifurcated trial**, different issues of the case are decided in separate hearings or trials. Since capital punishment was reinstated in the United

States in 1976, capital cases have had to proceed in two separate phases—effectively, two separate trials.²⁹ In the *guilt phase*, the jury determines whether the prosecution proved, beyond a reasonable doubt, that the defendant committed a **capital crime**, an offense that is punishable by death. If so, the case then proceeds to a separate *penalty phase*. During this sentencing phase, the jury will determine whether the capital defendant should be given the death penalty or life without the possibility of parole. Jurors are to arrive at their decision by considering evidence presented only during this second part of the trial. They are instructed to weigh mitigating factors against the aggravating factors presented by the prosecution during the penalty phase. In their deliberations, jurors might have to weigh, for example, the fact that the defendant was severely abused as a child against the fact that he tortured his victim before killing her.

bifurcated trial

A two-part trial in which different issues of the case are decided in separate hearings—for instance, one part deciding guilt and the second deciding the penalty.

capital crime

An offense punishable by execution.

In approximately 20 percent of states, when sanity is an issue, it is determined in separate proceedings after the jury has resolved the issue of guilt. In California and most other states, insanity trials proceed as follows. First, the defendant is put on trial to determine his guilt. If he is found guilty, then in a second, separate phase the jury decides whether he was insane at the time he committed the crime.

By the time a criminal case reaches its final outcome, several years may have passed since the crime was committed. Dozens of people will be involved in dealing with the case, and it may go through multiple courts. Many people criticize the size and complexity of the judicial component of the criminal justice system, as well as the time and money it page 314 takes to settle cases. Critics of jury trials in particular criticize the institution for the occasional instances when jurors apparently cannot render impartial verdicts, overcome racial or other prejudices, or fail to understand complex cases, especially those involving conspiracies, sophisticated economic crimes, or scientific evidence such as DNA tests.

Proposals are frequently made to streamline the system and reduce the number and kinds of resources involved. However, human beings are fallible, and the law is intricate. Any reduction in procedures, appeals, or resources will likely mean that more errors are made and that more innocent people will be subjected to criminal prosecution and punishment. What price are we willing to pay to ensure that justice is done?

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SUMMARY

In any criminal justice system, the state brings to bear on an individual its immense coercive power —its ability to deprive the accused of liberty and even life. For that reason, the U.S. system of justice insists that due process and high standards of proof be observed legitimately to convict people of crimes and to punish them.

The U.S. Constitution and the other laws and rules governing the U.S. justice system afford criminal defendants significant safeguards. However, there are still limitations. For example, the Constitution's ban on excessive bail applies only to federal offenders (the states are under no obligation even to grant bail), and "excessive" means disproportionate to the gravity of the offense and to the risk of the defendant's fleeing, not to the defendant's ability to pay. The right to counsel does not mean that poor defendants (who constitute the vast majority of those who must face the criminal justice system) will receive more than perfunctory assistance from an overworked and underpaid public defender. Rules providing for a speedy trial by jury, excluding hearsay evidence, and guaranteeing against double jeopardy are sometimes surrounded by qualifications when they are put into practice in a specific case.

The rules of criminal process are very precise in order to protect the defendant's rights at every stage. These rules apply at arraignment during the determination of probable cause to proceed toward a trial; they apply while the prosecution and the defense are gathering and sharing information about the case through a process called discovery; and they are in play during negotiations over possible changes in venue and plea bargains.

Most criminal cases culminate not in a trial but in a plea bargain. However, if the defendant pleads not guilty and goes to trial, the courtroom procedures are also surrounded by many guarantees of due process. Finally, if a defendant is convicted of a capital crime, there must be a separate penalty phase in which the jury deliberates over whether to inflict the sentence of death.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

Review

Describe the Eighth Amendment right to bail.

- The Eighth Amendment states that bail cannot be excessive.
- The right to bail does not apply to states, only to the federal government.
- Courts may deny bail altogether in some cases.

List the rights afforded to criminal defendants by the Sixth Amendment.

- Criminal defendants have a right to counsel—to be represented by an attorney.
- Criminal defendants have a right to speedy trial—to be brought to trial within a reasonable amount of time.
- Criminal defendants have a right to a jury—to be tried by an impartial panel of their peers.
- Criminal defendants have a right to confront and cross-examine witnesses.

Describe the scope and limitations of the right against double jeopardy.

- Generally, the right against double jeopardy prohibits trying the same person more than once on the same charges.
- It does not apply in cases where a person is tried by multiple states, or by a state and by the federal government.
- It does not apply when a person is tried on charges different from the original charge.
- It does not prohibit a victim from filing a civil lawsuit after a person has been criminally tried.
- It does not apply in most cases when the jury fails to reach a verdict, or when there is a mistrial.

Identify the steps of the pretrial process.

- The suspect is placed under arrest.
- The suspect is booked.
- The prosecutor files a criminal complaint.
- The defendant is arraigned.
- A grand jury hearing or preliminary hearing is held.
- The grand jury files an indictment, or the prosecutor files an information.
- Attorneys make pretrial motions.
- Attorneys engage in plea bargaining—that is, making agreements by which defendants plead guilty to the original or reduced charges in exchange for lesser sentences.

Analyze the meaning of the due process clause.

- Generally, the due process clause means that laws and procedures must be fair.
- Procedural due process means that the process itself, and the components of that process, must be fair.
- Substantive due process means that the government cannot arbitrarily interfere with certain liberties.

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Distinguish among the differing standards of proof used by the U.S. legal system.

- Beyond a reasonable doubt means that there is no reasonable conclusion other than that the defendant is guilty of the crimes with which he is charged. It is the amount of proof needed to convict a person of a crime.
- Clear and convincing evidence is the amount of evidence required for some defenses. It lies between preponderance of the evidence and beyond a reasonable doubt.
- Preponderance of the evidence is the amount of evidence needed to win a civil lawsuit. It means that there is at least slightly more evidence in that person's favor than against it.

Identify the stages of a criminal trial.

- A jury is sworn in.

- The attorneys make opening statements.
- The prosecutor presents the case-in-chief.
- The defense presents the case-in-chief.
- The attorneys conduct rebuttals and surrebuttals.
- The attorneys make their closing statements.
- The judge instructs the jury.
- The jury deliberates.
- The jury issues a verdict.
- The defendant is sentenced.

Key Terms

arraignment 302
bail 294
bench trial 299
beyond a reasonable doubt 309
bifurcated trial 313
booking 302
burden of proof 309
capital crime 313
case-in-chief 310
change of venue 299
clear and convincing evidence 309
complaint 302
cross-examination 310
direct examination 310
directed verdict 311
discovery 304
double jeopardy 301
due process clause 307

hearsay evidence 300
hung jury 313
indictment 303
information 304
mistrial 313
no contest (nolo contendere) 302
opening statements 310
plea 302
plea bargain 305
preliminary hearing 303
preponderance of the evidence 309
preventive detention 295
sequestered 310

Study Questions

1. The Eighth Amendment protects the right to
 - a. bail.
 - b. a jury trial.
 - c. an attorney.
 - d. confront witnesses.
2. Of the following rights, one that is *not* guaranteed by the Sixth Amendment is
 - a. jury trial.
 - b. counsel.
 - c. speedy trial.
 - d. due process.
3. Sam was tried and acquitted of theft in the state of New Jersey. Which of the following would the right against double jeopardy prohibit?
 - a. The victim of the alleged theft sues Sam for damages.
 - b. Sam is tried for theft by the state of New York.
 - c. Sam is tried for the same theft by New Jersey when new evidence is found.
 - d. Sam is tried for murder by New Jersey.
4. The usual sequence of events prior to a trial is

- a. complaint, arraignment, preliminary hearing, information.
 - b. information, complaint, arraignment, preliminary hearing.
 - c. preliminary hearing, information, complaint, arraignment.
 - d. preliminary hearing, complaint, arraignment, information.
5. If there has been so much publicity about a case that a defendant believes she cannot receive a fair trial, her attorney will
- a. file a motion for a change of venue.
 - b. try to create more positive publicity about the case.
 - c. request that all charges be dropped.
 - d. sequester the jury.
6. Due process basically means that government procedures and laws must be
- a. swift.
 - b. expedient.
 - c. fair.
 - d. inexpensive.
7. Plea bargaining
- a. rarely occurs.
 - b. cannot occur once the trial begins.
 - c. settles the vast majority of criminal cases.
 - d. results in increased court workloads.

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8. A prosecutor must always prove every element of a criminal case
- a. within a week.
 - b. by clear and convincing evidence.
 - c. beyond a reasonable doubt.
 - d. beyond all doubt.
9. The part of a trial in which the prosecutor presents the evidence against the defendant is called the
- a. rebuttal.
 - b. case-in-chief.
 - c. surrebuttal.
 - d. deliberation.
10. A bifurcated trial is one in which
- a. the judge acts as trier of fact.
 - b. the defendant is found not guilty.
 - c. the jury first determines guilt and then determines insanity or whether to impose a death sentence.
 - d. there are two defendants.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Describe the challenges of having a justice system that is fair yet workable. What are some ways that you would advocate balancing these goals?
2. Of the rights granted to criminal defendants by the Sixth, Eighth, and Fourteenth Amendments, which do you see as essential? Discuss whether there are other rights that you believe should be protected as well.
3. List as many points as you can in support of plea bargaining, and as many points as you can against it. Then evaluate the totality of these lists to decide whether plea bargaining is a necessary evil.

Endnotes

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10 Sentencing



David R. Frazier Photolibrary, Inc.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Describe the constitutional protections that affect sentencing.

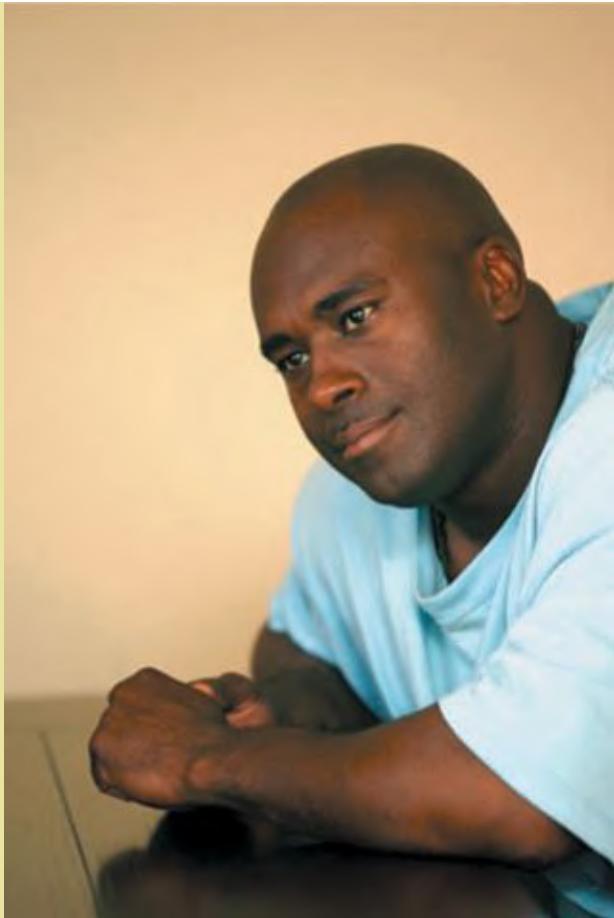
- Describe the various goals of sentencing.
- Compare the different sentencing models.
- Review how a capital punishment trial proceeds.
- Outline controversies surrounding the death penalty.

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Realities and Challenges

A Web of Sentencing Complexities

In April 2006, Sergeant Patrick Lett found himself facing U.S. District Judge William Steele on the federal charge of trafficking crack cocaine. Lett pleaded guilty. He had served 17 years in the army, including two tours of duty in Iraq, and that day he wore his army uniform as he stood before Judge Steele. Lett testified that he had had difficulty since returning to Alabama from Iraq in April 2004. He explained that he had been dealing both with family struggles and with the emotional toll of seeing peers and friends killed in Iraq.¹



Nicole Lacour Young/AP Images

In the spring of 2004, when Lett's car needed work, he had turned to his cousin for assistance. The cousin had offered to fix the car if Lett made seven deliveries of crack cocaine worth a total of \$2,100. Lett had agreed. Unfortunately for Lett, he had sold some of the cocaine to an undercover federal agent. He was arrested shortly after he had reenlisted in October 2004 and just before he was about to redeploy to Iraq.²

Lett's luck turned around, though, when his old friend and law student Matthew Sinor attended his sentencing hearing. Judge Steele sentenced Lett to 5 years in prison. Sinor believed that there was a legal "safety valve" that was relevant to the case. It would allow a shorter sentence for defendants who had no prior record, played a minor role in the offense, and admitted their crime. Sinor wrote a letter to the judge arguing that this safety valve applied to Lett's case. Judge Steele agreed and entered a new sentence of 11 days, which was the time served. So, Lett would be free. However, the prosecutor appealed the revised sentence.³

The state won the initial appeal. A three-judge panel of the Eleventh U.S. Circuit Court of Appeals ruled that a district judge did not have the authority to change the sentence once it had been imposed. In essence, the appeals court was saying that Steele had failed to recognize his power to apply the safety valve and could not do so retroactively. However, an additional consideration was relevant: In the years since the original sentence, the sentencing context had changed. The U.S. Supreme Court had ruled in *United States v. Booker* (2005) that the U.S. Sentencing Guidelines were merely advisory and that judges were not bound to follow them. Therefore, on February 27, 2009, when the case came back to Judge Steele's court after the Eleventh Circuit decision and the U.S. Supreme Court's denial of certiorari, Steele agreed with

the defense that he was now afforded the discretion to reinstate the 11-day time-served sentence.⁴

In this one case, we can see several factors in play that are related to ensuring justice in the sentencing process. First, Lett would surely have been stuck with the 5-year prison sentence had not his friend Sinor been aware of the safety valve provision. Lett's original defense attorney in fact thought that Lett should be happy with the 5-year sentence and found Sinor's interference "insulting." Clearly, we observe that the intricacies of sentencing law affect justice substantially in individual cases. Second, the severity of federal crack cocaine offenses is apparent in this case, with a first-time offender eligible for 5 years in prison. Third, we can see how for decades the U.S. Sentencing Guidelines firmly constrained what judges could do and that recent changes in the law have restored judicial discretion.

This chapter focuses on sentencing—the stage after a defendant has been found guilty but before the person begins punishment. We review the constitutional context of sentencing, the various goals and models of sentencing, and the ultimate sentence—the death penalty. We examine both historical and contemporary influences on sentencing.

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CONTEXT FOR SENTENCING

When a judge in the United States sentences a defendant, she does so within a constitutional context. In this section, we review the Eighth Amendment's protection against cruel and unusual punishments and Article I, Section 9's prohibition of wrongful conviction—that is, habeas corpus. These constitutional provisions confine sentencing behavior and provide a context for sentencing. We also review the presentence investigation because it provides guidance for the judge when sentencing.

Eighth Amendment Protection against Cruel and Unusual Punishment

As we saw in Chapter 9, the Eighth Amendment includes the bail requirement in federal cases. The remainder of the Eighth Amendment comprises the cruel and unusual punishments clause, which applies to all criminal cases. We may define a **cruel and unusual punishment** as a sentence or conditions of confinement that, within the time period of sentencing or confinement, go beyond what is acceptable to society.

cruel and unusual punishment

A sentence or conditions of confinement that, within the time period of sentencing or confinement, go beyond what is acceptable to society.

Preview

CONTEXT FOR SENTENCING

GOALS AND MODELS OF SENTENCING

CAPITAL PUNISHMENT

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

MYTH/REALITY

MYTH: What constitutes cruel and unusual punishment is objective and obvious.

REALITY: A practice considered cruel and unusual at one point in time might not be considered so in another.⁵

In interpreting the Eighth Amendment, the Supreme Court deems certain types of punishments to be unconstitutional. These include penalties that were considered cruel at the time the Eighth Amendment was ratified in 1791, as well as those that “evolving standards of decency”—meaning standards that have changed over time—have rejected.⁶

Even if a particular type of penalty is not cruel and unusual in and of itself, it may be cruel and unusual in terms of its application. Punishments that are excessive in relation to the seriousness of the offense may be unconstitutional, as may be punishments that outweigh the defendant’s culpability. For example, in 2001 the Supreme Court ruled that it would violate the Eighth Amendment to execute an offender with mental retardation or someone who was under age 18

when the person committed the offense.⁷ Further, even though the Court refuses to prohibit capital punishment altogether, it has found that the death penalty is unconstitutional for the offense of rape.⁸ The Court also holds that it is cruel and unusual to punish a person for a *status* or a *characteristic*, such as being a drug addict, as opposed to a *behavior* such as possessing illegal drugs.⁹ In 2010, the Court ruled that sentencing a juvenile to life without parole for a crime that is not murder violates the Eighth Amendment.¹⁰ And in 2012, the Court also held that mandatory life without parole for juvenile offenders is unconstitutional.¹¹

The Eighth Amendment also prohibits certain conditions of confinement when a person is sent to prison. For instance, prisoners may challenge extended use of solitary confinement, restricted diets, and conditions of prison overcrowding.

In general, the Court is hesitant to consider Eighth Amendment violations to the cruel and unusual punishment clause. At least under certain circumstances, the Court has allowed executions to continue and permitted life sentences for minor crimes, such as stealing \$150 worth of videotapes, to stand under the three-strikes and other habitual offender laws discussed later in this chapter. Many prisoners are kept in solitary confinement for years, especially in “supermax” facilities (see Chapter 12).

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Habeas Corpus: Protection against Illegal Detainment

Article I, Section 9 of the Constitution provides a safeguard against illegal detainment. A writ of **habeas corpus** is a written judicial order requiring that a prisoner’s case be reviewed in court to determine whether the individual is being held unconstitutionally. The concept of habeas corpus (Latin for “you have the body”) was created to prevent the government from illegally detaining and punishing people. Although the phrase and the general legal concept behind it date back to medieval England 800 years ago, modern habeas law in the United States has evolved well past its original meaning.

habeas corpus

A written judicial order requiring that a prisoner’s case be reviewed in court to determine if the person is being held unconstitutionally.

Cases centering on issues of habeas corpus may take place in state or federal courts. There are no juries. The offender cannot argue that he is innocent of the crime, nor can he—in contrast to the situation in an ordinary appeal—raise ordinary procedural errors that he believes were made at trial. Instead, he must claim that some aspect of the trial itself, or of the sentence he received, violates one or more of his constitutional rights. For example, many people who are sentenced to death argue that the death penalty itself, or the method in which it is carried out, is cruel and unusual punishment that violates the Eighth Amendment. Defendants usually may bring a habeas case only after they have exhausted all their other remedies in a case.

Habeas cases have several advantages for offenders. They may help an individual who is accused or convicted of a crime to avoid injustice. They may permit a person who has been tried on state criminal charges, and whose case so far has been heard only by state courts, to have his case heard in a federal court, which may be more sympathetic to certain legal arguments. And habeas cases also may allow individuals who are detained for lengthy amounts of time without a trial, such as those who were suspected of terrorism after 9/11, to have their day in court.

Some observers have blamed habeas corpus for the often lengthy delays in implementing criminal sentences, especially the sentence of death. Among the most vocal critics was the late Chief Justice William Rehnquist, who denounced the “abuse” of habeas corpus petitions by death row inmates. Following the Court’s ruling in *McCleskey v. Zant* (1991), Rehnquist led an increasingly conservative Court in imposing limits on further appeals.

Later Court rulings have required even tighter limits. In 1996 Congress passed the Anti-Terrorism and Effective Death Penalty Act, which, among other provisions, required that habeas cases be brought within 1 year page 323 after a defendant exhausts the regular appeals. However, some prisoners who have valid claims may be unable to pursue habeas relief quickly enough, especially because the Sixth Amendment right to an attorney does not apply to habeas cases, and inmates may therefore be forced to represent themselves. Few inmates have the ability to complete the extensive filing requirements in a timely manner without the help of an attorney. As discussed in “A Case in Point,” the Supreme Court has recently indicated some willingness to show leniency to certain prisoners who fail to meet the 1-year deadline.¹²



▲ Guantánamo Bay Prison

The imprisonment of enemy combatants at Guantánamo Bay raises habeas corpus concerns. *Should the U.S. government be able to hold individuals it considers enemy combatants without telling them why they have been imprisoned? Why or why not?*

Joe Raedle/Getty Images

a case in **point**

Does Fairness Matter?

Albert Holland was convicted of murder and sentenced to death. He appealed to the Florida Supreme Court and lost, and the U.S. Supreme Court refused to hear his case. Florida provides lawyers to assist in habeas cases, however, so about a month after the U.S. Supreme Court refused to hear the appeal, attorney Bradley Collins was appointed to handle Holland's case.

Collins waited until 12 days before the 1-year limit for habeas cases was up to file a habeas petition in state court. As the case wound its way through the state system, Collins eventually stopped communicating with his client, despite Holland's repeated letters to him. Holland spent several years not knowing the status of his own case. The state courts denied Holland's habeas case. Once their decision was final, he had only 12 days to file an appeal in

federal court. But Collins failed to tell Holland that the case had been decided, and Holland only discovered that fact for himself several weeks later—too late to file in federal court, according to federal law.

Holland filed a federal habeas petition anyway on his own behalf. The lower courts rejected it on the grounds that it was too late. However, when his case finally reached the U.S. Supreme Court in 2010, a majority of the Court held that in some cases where “extraordinary circumstances” exist, fairness requires extensions to the 1-year deadline.

The Court stated that Collins’s conduct had failed to meet attorneys’ ethical standards. However, the justices did not go so far as to decide that Collins’s delays and failures to communicate constituted “extraordinary circumstances.” Instead, the Court sent the case back to a lower court to determine whether Holland would finally get the habeas hearing he had been seeking for years.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- To what extent is it fair to make a defendant “pay” for the mistakes his lawyer made?
- Why are the courts very hesitant to overturn sentences or make other exceptions based on attorney misconduct?

SOURCE: *Holland v. Florida*, 560 U.S. 631 (2010).

Currently, approximately 20,000 habeas cases a year are filed in federal courts. About 1 percent of these are cases in which the defendant had been sentenced to death.¹³

Historically, there have been a few attempts to suspend the right to habeas corpus. During and shortly after the Civil War, Presidents Lincoln and Grant suspended it in selected locations. In Grant’s case, the suspension was part of a federal effort to crush the Ku Klux Klan, a southern terrorist organization whose members resisted the empowerment of the newly freed slaves. The courts declared portions of these suspensions unconstitutional. More recently, Congress and President George W. Bush tried to deny habeas to suspected enemy combatants held at a U.S. military detention camp in Guantánamo Bay, Cuba. For the most part, the U.S. Supreme Court has held that denial of habeas rights to these suspected enemy combatants violates the Constitution. If an

offender wins his habeas case, he does not go free. Usually, he will get a new trial or a new sentence.

A variety of factors influence how a judge determines a sentence. The judge is expected to weigh the severity of the individual's offense, the prior record of the offender, any relevant statutory minimums, and any sentencing guidelines meant to guide judicial discretion. To provide information about the offender to the judge and to provide victim input, the probation department prepares a presentencing report.

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Real Careers



Joan Barnett Lee/ZUMApress/Newscom

SEAN BERNHARD

Work location: Oklahoma City, Oklahoma

College(s): Southern Nazarene University (2006); University of Central Oklahoma (2008)

Major(s): Sociology with emphasis in Criminal Justice (BS); Criminal Justice Management and Administration (MA)

Job title: Probation Officer Assistant, U.S. Probation and Pretrial Services Office

Salary range for job like this: \$35,000–\$40,000

Time in job: 1.5 years

Work Responsibilities

The U.S. Probation and Pretrial Services Office in Oklahoma City has three main divisions: Presentence Investigations, Pretrial Services, and Supervision. I am currently in the Presentence Investigation Unit, which means that I write presentence reports that are used to assist the court in sentencing defendants. When writing these reports, I review investigative documents, apply sentencing guidelines, and interview defendants and family members to obtain and verify information, such as family history, education, and employment.

My other duties include completing misdemeanor reports for crimes committed on federal land, such as in national parks and military bases, and helping probation officers write collateral reports. Collateral reports, or “collaterals,” are background checks for offenders who have committed a crime in my district but will be sentenced elsewhere in the United States. To write this report, I gather records and any supporting documentation that the officer needs. Usually I am assigned between two and eight collaterals a week.

What makes my work especially exciting and meaningful is that the federal district judges rely on my reports to sentence defendants. On multiple occasions, I have been called into judges’ chambers to discuss a case and be recognized for my work.

Why Criminal Justice?

Wanting to understand the techniques psychologists use to analyze criminals, I eagerly declared my major in criminal justice, with the hope of becoming an FBI agent. However, I later learned that being color blind disqualifies me from that job. Before graduation, my professors told me that the U.S. Probation Office was hiring probation officer assistants. I applied and was hired. There are tremendous opportunities for advancement and promotion within the U.S. Probation Office. For example, I was recently promoted to probation officer. U.S. probation officers can continue to be promoted within the agency to positions such as drug specialist, supervisor, deputy chief, and chief probation officer. Along with promotions come higher salaries, which can range from the government pay scale equivalent of GS-12 to GS-17.

Expectations and Realities of the Job

I did not expect that being a probation officer assistant at the U.S. Probation Office would also mean I have to help defendants cope with the emotional stress of undergoing trial and probation. For many defendants and their families, this is their first experience with the criminal justice system, and they do not know what to expect. Therefore, it is also my responsibility to serve as a resource and provide my knowledge of the pretrial and sentencing systems to those who need it. Helping others in this way has turned out to be one of the most rewarding aspects of my job.

My Advice to Students

Keep an open mind when seeking your first job. Apply for as many positions as possible. After several years in the field, you will find that it is possible to move to other careers within criminal justice. For instance, a career as a U.S. probation officer not only allows for promotion within the

agency but also gives officers the tools and knowledge to transfer to other federal law enforcement agencies.

Presentence Investigation Report

A trial judge is supplied information for making a sentencing decision with respect to an offender in a **presentence investigation (PSI) report**, also called a *presentence report (PSR)*. This document, usually prepared by a probation officer, during a several-week interval between the conviction and the date set for sentencing. The report contains a personal history of the offender, often a victim impact statement, and a sentencing recommendation. Personal data include the defendant's marital history, prior record (including both juvenile and adult arrest history), family background, educational history, employment history, physical and mental health issues, past and present alcohol and drug use, military service, and financial situation. The report covers the state's and the defendant's versions of the offense. The final sections contain an evaluation, sentencing information or guidelines, and finally a recommendation to the court.

presentence investigation (PSI) report

A report that provides the court with a basis for making a sentencing decision by including a personal history of the offender, often a victim impact statement, and a recommendation for sentencing.

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What about the Victim?

Victim Impact Statements

Traditionally, victims of crime played only a small role in the process of trying and sentencing defendants. In fact, unless they were called as witnesses, victims would not get a chance to speak at all during a trial. If they did testify, they were limited as to what they could speak about. Victim impact statements are intended to give victims the opportunity to talk about the harms the defendant caused them and to allow these harms to be considered when the defendant is sentenced. The first victim impact statement in the United States was introduced in Fresno, California, in 1976. Today most jurisdictions allow victim impact statements.

Typically, these statements are made during a sentencing hearing. For example, after Zacarias Moussaoui was convicted for his participation in the September 11 terrorist attacks, 45 people whose family members died in the attacks made statements to the jury during the penalty phase of the trial.



Mike Derer, Pool/AP Images

The use of victim impact statements is somewhat controversial. Those who support their use argue that they give victims a voice in the criminal justice system, provide some closure to victims, and help make sentences more proportionate to the harm caused by the criminal acts. Opponents, however, claim because the sentencing authority can be made to feel pity for the victim, the victim impact statements can result in unfair and unequal treatment of some defendants and that use of the statements is therefore unconstitutional.

In 1991, the U.S. Supreme Court ruled on the constitutionality of victim impact statements. Pervis Payne had brutally murdered a woman and her 2-year-old daughter and seriously injured her 3-year-old son. During the penalty phase of his trial, the murdered woman's mother testified about the effects of the attacks on the surviving child, and the jury sentenced Payne to death. The Supreme Court held that the use of victim impact testimony does not constitute cruel and unusual punishment. However, the research is mixed; some suggest that victim impact statements tend to lead to harsher sentences; others claim the empirical evidence shows that victim statements at sentencing have little effect on severity.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Victim impact statements are supposed to help the victims of a crime achieve closure. Do you think they actually have this effect? Explain.
- What effect do you think victim impact statements have on sentences? Should they continue to be used? Why or why not?

SOURCES: Ellen K. Alexander and Janice Harris Lord, "Impact Statements: A Victim's Right to Speak, A Nation's Responsibility to Listen," July 15, 1994.

www.ncjrs.gov/ovc_archives/reports/impact/welcome.html (retrieved July 26, 2011); *Payne v. Tennessee*, 501 U.S. 808 (1991); Bryan Myes and Edith Greene, “The Prejudicial Nature of Victim Impact Statements,” *Psychology, Public Policy, and Law* 10, no. 4 (2004): 492—515; Paul G. Cassell, “In Defense of Victim Impact Statements,” September 4, 2009, *Ohio State Journal of Criminal Law* 6: 611—648.

Originally, the purpose of the PSI was to assist the judge in deciding whether to grant probation. With the shift in philosophy in many states from rehabilitation to punishment, the personal aspects of the offender became less important than the crime itself. Where specific sentencing guidelines are used, the PSI focuses on the guidelines within which the crime belongs and on information that will be used to sentence the offender within the guidelines.¹⁴

Another document that the judge will consider when deciding on the appropriate sentence is the victim impact statement. “What about the Victim?” focuses on this report from the victim’s side.

GOALS AND MODELS OF SENTENCING

Having pleaded guilty or been convicted through a trial, the defendant is sentenced by the court. The four goals of sentencing—retribution, deterrence, incapacitation, and rehabilitation—parallel the goals of punishment (see Chapter 11). Often the primary goal in sentencing varies by time period and crime. For example, one goal of sentencing may have gotten the most focus in the 1950s, but a different sentencing goal may have prevailed in the ^{page 326} 1990s. In addition, violent offenses may call for different sentencing goals than property crimes.

Retribution focuses on punishing the convicted offender for the crime. A judge opts for this sentencing goal, for example, when saying, “Owing to the severity of your crime, you deserve to be punished with a year of incarceration.” Because this goal is primarily punitive, there is little focus on whether or not the sentence will result in future criminal behavior. When society wishes retribution, it wants to punish or retaliate against a perceived harm. Often this sentencing goal is evidenced by language that the offender “deserved” the harsh sentence because of the severity of the crime. Retribution is a common goal when the crime is violent or particularly troubling to a community in some other way.

retribution

A sentencing goal focused on punishing the convicted for the crime.

The various sentencing goals can be compared based on the time frame they address. For example, one sentencing goal may be primarily concerned with preventing crime in the future; another might be most interested in the crime itself or in the offender's past behavior. In the case of the sentencing goal of retribution, society is less interested in the degree to which the sentence will prevent future crime and more determined to make sure that the sentence affords society "just deserts"—in other words, that the punishment fits the crime.

A second goal is **deterrence**, which means that the sentence is meant to serve as a lesson that such behavior will not be tolerated in society and will be punished. Deterrence can have either a specific or a general intention. *Specific deterrence* is meant to convince the individual being sentenced not to offend again. *General deterrence* focuses on convincing other members of society that they should not commit crimes either. A goal of specific deterrence is clear when a judge says, "I am sentencing you to 2 years in prison so that you understand the severity of your crime and will not do it again." Some supporters of the death penalty use the idea of general deterrence to argue that if people know they can be executed for committing murder, they will be less likely to kill someone.

deterrence

A sentencing goal focused on convincing the offender or others not to commit crime.

Deterrence is most focused on the future. The concern about influencing future behavior means that research can test whether sentences are effective in deterring crime. Supporters of the goal of using sentences to deter future criminal behavior note that punishment must be swift, certain, and sufficiently severe to have the desired impact. Of course, for general deterrence to work, people need to be aware of the harsh sentence that has been imposed and that punishment will also fall on them if they commit the same crime. Hence, deterrence relies on effective public education about the workings of the criminal justice system and sentencing policy. Research has generally been unable to find that tough sentencing results in general deterrence, although concentrated campaigns to raise awareness of strict sentences for certain types of crimes may be effective. For example, Project Safe Neighborhoods, a major initiative during the presidency of George W. Bush, was found to be effective at reducing gun crimes largely because it used a public campaign to educate people about the harsher prosecution of gun crimes.¹⁵

The third goal of sentencing, **incapacitation**, aims to disable offenders from committing future crimes. The most popular form of incapacitation is imprisonment. The assumption is that the offender will reoffend if he is not kept from doing so. Hence, like deterrence, incapacitation is a goal focused on affecting future behavior. Hence, as long as they are off the streets, the streets are deemed to be safe. Unlike deterrence, though, there is a resignation that perhaps the only way to keep offenders from committing future crimes is to “lock them up and throw away the key.” Habitual offender policies, explained in detail later in this chapter, which focus on imprisoning individuals who have broken the law repeatedly, are based on a sentencing goal of incapacitation. The 1990s saw the rise of popularity of incapacitation as a sentencing goal as the tough-on-crime philosophy gained steam and the public began to feel that the only way to stop crime was to keep repeat offenders behind bars for life. A judge is exercising the goal of incapacitation when she says, “Your past behavior illustrates that you are unwilling to end your life of page 327 crime; therefore, the best way to keep society safe from you is to sentence you to life in prison.”

incapacitation

A sentencing goal that aims to disable the offender from being able to commit future crimes.



▲ Prisoner at Work

Some inmates receive vocational training. *What goal of sentencing would encourage vocational training in prisons?*

Sacramento Bee/MCT/Landov

A final goal of sentencing, **rehabilitation**, concentrates on aiding an offender to learn skills to help prevent the person from reoffending. In the case of rehabilitation, it is assumed that an offender can change with assistance, and help is built into the sentence. For example, a sentence of probation with required attendance at drug counseling sessions allows for the possibility of rehabilitation. This sentencing goal was fairly popular in the United States from the 1950s through the 1970s. In that era, however, crime continued to rise, and the public began to lose faith in rehabilitation.

rehabilitation

A sentencing goal focused on aiding an offender to learn skills to help prevent the person from reoffending.

Today sentencing policy tends to reserve the goal of rehabilitation for specific crimes and perpetrators, and even then only in some jurisdictions. Thus in some states, such as California, first offenses for drug possession result in rehabilitation-oriented sentences, including probation and drug counseling. In terms of specific perpetrators, even though we now treat juvenile offenders more like adult offenders in many ways, the criminal justice system still generally views young people as being able to be rehabilitated. As with most criminal justice policies, these rehabilitation-oriented sentencing commitments vary by state.

A sentence rarely encompasses only one goal. For example, if a judge wishes both to punish an offender for her actions and to make sure that she will not be able to commit a future crime for a certain period of time, her sentence of 5 years in prison likely embodies the judge's dual goals of retribution and incapacitation. See the Key Concepts table below for a comparison of the goals of sentencing.

Related to the goals of sentencing are different sentencing models, a topic to which we now turn.

Indeterminate Sentences

With an **indeterminate sentence**, the offender is given a range of time he can serve, such as 5–7 years, that is dependent on his behavior while in prison. The

assumption is that during that time, rehabilitation will occur, and the offender will be motivated to change if he can reduce the time he will spend in prison by doing so. Indeterminate sentences were much more common in the 1960s, when the primary goal of the criminal justice system was rehabilitation. Since the 1980s, however, the dominant philosophy of the criminal justice system has been punishment, and indeterminate sentences are much less common [page 328](#) because they are viewed as too lenient.

indeterminate sentence

A sentence in which the offender is given a range of time he can serve, such as 5—7 years, dependent on his behavior while in prison.

KEY CONCEPTS Goals of Sentencing

What are the positives and negatives of each of the sentencing goals?

Retribution	Focused on punishment that fits the crime
Deterrence	Focused on preventing future crime from occurring by convincing the offender (specific) and others (general) that punishment will be swift, severe, and certain
Incapacitation	Focused on preventing future offenses, usually by imprisoning the offender for long periods of time
Rehabilitation	Focused on preventing future crime by helping the offender change his life

Determinate Sentences

A **determinate sentence** indicates a precise period of time that the offender must serve. For example, a sentence of 7 years in prison is a determinate sentence. However, a 7-year sentence does not mean that the offender will serve the entire 7 years. Rather, prisoners often receive good-time credits that ultimately reduce their stay in prison.

determinate sentence

A sentence that specifies a precise period of time that the offender must serve.

Beginning in the 1980s, questions arose about how judges determine sentences. In particular, studies found that Blacks received harsher sentences

than their White counterparts for similar crimes. In addition, there were complaints that judges' use of discretion resulted in too-lenient sentences. A variety of legislative interventions resulted to limit judges' ability to sentence as they felt was just. Today determinate sentences are more common than indeterminate sentences, as are statutory minimums, mandatory sentences, and sentencing guidelines.

Sentencing Guidelines and Mandatory Sentences

Presumptive sentencing models assume that judges should sentence within *sentencing guidelines*, or ranges specified for particular charges. Legislatures enacted statutory minimums to reduce both judicial discretion and sentencing disparity. A **statutory minimum** is established when a legislature sets a minimum sentence that must be imposed for a particular crime; for example, a statutory minimum might stipulate that an individual convicted of aggravated assault must be sentenced to at least 1 year in prison. Another name for statutory minimum is *mandatory minimum*.

presumptive sentencing model

A sentencing model assuming that judges should sentence within sentencing guidelines, or ranges specified for particular charges.

statutory minimum

The minimum sentence set by a legislature that must be imposed for a particular crime.

There has been a backlash against mandatory minimums. For instance, a nonprofit organization called Families Against Mandatory Minimums maintains that many drug offenses result in mandatory minimum sentences because judges are no longer allowed to adjust the sentence to fit the offender's particular role in a crime. Instead, judges are to impose the minimum, with little regard for the specific circumstances.

Both the states and the federal government have established sentencing guidelines. The motives for establishing these guidelines have included ensuring equal treatment, lessening racial disparity, and reducing a perceived leniency of federal judges.

Since sentencing guidelines have now been in place for decades, researchers are beginning to get a clear picture of the degree to which the guidelines have produced the desired results. Research has found that with respect to racial disparity, sentencing differentials have not been eliminated. In fact, similarly situated federal drug offenders of different races continue to receive different

sentences. White offenders still receive lighter sentences than their Black and Latino counterparts, with Latino offenders getting the harshest sentences of all.¹⁶ Nor do sentencing guidelines appear to reduce sex disparities in sentences. Recent research comparing sentences in time periods with and without sentencing guidelines found that female offenders were still receiving more lenient sentences than similar male offenders.¹⁷

MYTH/REALITY

MYTH: Drug offenders are treated leniently by the criminal justice system.

REALITY: Sentences for drug offenses increased greatly with the move to legislative mandatory minimums and sentencing guidelines that reduced judicial discretion.¹⁸

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Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0–6	0–6	0–6	0–6	0–6	0–6
10	6–12	8–14	10–16	15–21	21–27	24–30
20	33–41	37–46	41–51	51–63	63–78	70–87
30	97–121	108–135	121–151	135–168	151–188	168–210
40	292–365	324–405	360–Life	360–Life	360–Life	360–Life
43	Life	Life	Life	Life	Life	Life



FIGURE 10-1 USSC Sentencing Guidelines Table in Months

Ron Chapple Stock/FotoSearch/Glow Images

Congress established the U.S. Sentencing Commission (USSC) in 1984 to create sentencing guidelines for federal offenses. These guidelines took effect in January 1989, and as of 2011 more than 1 million defendants had been sentenced under the guidelines. Each federal judge is given a USSC table that classifies all federal crimes into 43 offense categories and classifies the past behavior of the defendant into 6 criminal history categories. The judge is expected to sentence the offender within the guideline indicated where the two

relevant categories intersect.¹⁹ See Figure 10-1, “USSC Sentencing Guidelines Table,” to understand this process.

A variety of constitutional challenges have been levied against the guidelines through the years, but the U.S. Supreme Court has repeatedly found them to be constitutional. The first significant high court challenge came in January 2005 with the ruling in *United States v. Booker*, but the background to this decision begins a few years earlier. Beginning in 2000, the Supreme Court had decided a series of cases that affected how sentencing guidelines could be used. The Court had held that whenever a judge relies on certain facts to give a defendant a sentence longer than the guidelines’ maximum, those facts must be determined by the *jury* to be true beyond a reasonable doubt. If the judge rather than the jury decided those facts to be true, it would violate the defendant’s Sixth Amendment rights. This rule applied in both state and federal cases. In *United States v. Booker* (2005), however, the Court held that this rule means that the federal sentencing guidelines are no longer mandatory and that appeals courts can review sentences to determine whether they are reasonable.²⁰ The federal guidelines are still important, though, because a sentence that falls within the guidelines will usually be considered reasonable.

Although a stated objective of the USSC sentencing guidelines was to ensure similar treatment for like offenders, questions quickly surfaced with respect to the recommended sentences for the possession of powder cocaine and crack cocaine. The original guidelines recommended a sentence 100 times harsher for crack cocaine than for powder cocaine. In other words, possession of 5 grams of crack cocaine brought the same sentence as possession of 500 grams of powder cocaine. Concerns arose owing to the fact that African Americans were much more likely to possess crack than powdered cocaine, and vice versa for Whites.

Supporters of these guidelines and of Congress’s harsh mandatory minimum sentence argued that the longer sentences for crack cocaine were warranted because both the use of crack cocaine and the act of dealing in that drug resulted in more violence than did use of and trafficking in powder page 330 cocaine. Recently, however, such claims have been invalidated.

For example, surveys of prison inmates show that offenders who had been under the influence of alcohol when they committed their crimes were more likely to be incarcerated for violent offenses than were those who had been using crack or powder cocaine. Furthermore, individuals under the influence of crack were no more likely to be incarcerated for a violent offense than were those under the influence of powder cocaine at the time of the offense.²¹

In November 2007, the USSC recommended a reduction in the sentencing disparity that would change the average sentence for crack offenders from 121 months to 106 months.²² In December 2007, the USSC voted unanimously to make sentenced crack cocaine offenders eligible for reduced sentences.²³ The result is expected to make 2,600 federal defendants eligible for reduced sentences.²⁴

The Supreme Court also seems to have become increasingly troubled by the racial disparity so often found in cocaine sentencing. The Court ruled in December 2007 that to address this problem, federal district judges could use their discretion to sentence a crack cocaine offender to less than the recommended guidelines. Taking the recent cases together, the Supreme Court is clearly signaling that federal judges should consult the USSC guidelines but are not strictly bound by them.²⁵

Even in some nondrug cases, judges occasionally deviate from mandatory sentencing guidelines when they feel that imposing the mandatory minimum would be unfair. One of these cases is discussed in the “Matters of Ethics” box.

The fate of some federal mandatory minimum sentencing laws remains uncertain after the 2015 Supreme Court decision in *Johnson v. United States*. In that case, the Court invalidated a law requiring increased sentences for firearms convictions when the defendant has previous convictions for violent crimes. The basis of the decision was that the law was unconstitutionally vague because it did not define “violent.”

Consecutive and Concurrent Sentences

Defendants are frequently convicted of more than one crime at once. For example, someone who robs a convenience store and hits the clerk during the process of the robbery, and who then puts up a fight when police arrive, might be convicted of armed robbery, assault and battery, being a felon in possession of firearms, and resisting arrest—all separate offenses stemming from the same chain of events. People who are found guilty of more than one crime may be given **consecutive sentences**, meaning that all of one sentence must be served before the next one begins. Alternatively, they may receive **concurrent sentences**, meaning that the time they serve counts for more than one sentence at once. If a defendant is given consecutive sentences for 3, 5, and 10 years, he will spend a total of 18 years in prison. But if he is given concurrent sentences for 3, 5, and 10 years, he will spend a total of only 10 years in prison.

consecutive sentences

Sentences that are served in sequence instead of at the same time.

concurrent sentences

Sentences that are served at the same time.

In some states, the law specifies when sentences are to be consecutive and when they must be concurrent; in other states, the decision is left to the judge's discretion. In either situation, the nature of the crimes, their relationship (if any) to one another, and the defendant's criminal history may be considered, as may be the existence of mitigating circumstances. In addition, when defendants enter plea bargaining agreements, one component of those agreements might be that their sentences run concurrently rather than consecutively.

In cases in which defendants are convicted of multiple crimes, it is possible that some of their sentences will run concurrently but others will be consecutive. This arrangement, however, can complicate the determination of matters like parole eligibility.

Controversy surrounds the decision of whether to sentence concurrently or consecutively. Some individuals and groups (such as victim advocates) say that concurrent sentences are not fair in that they dilute the importance [page 331](#) of each individual crime committed, and those with this point of view also argue that concurrent sentences serve none of the goals of punishment. On the opposite side of the debate are those who assert that consecutive sentences contribute to prison overcrowding and may result in an offender's serving extremely long sentences for what essentially was a single chain of events.

Matters of Ethics

When Is a Mandatory Minimum Sentence Unjust?

In December 2014, Kevin Rojano-Nieto was convicted of sodomizing a three-year-old relative. Because of the serious nature of the crime, no real controversy existed over his conviction. But in April of the following year, when it was time for Rojano-Nieto to receive his sentence, the judge did something unusual. Instead of sentencing Rojano-Nieto to 25 years to life in prison, as required for this kind of crime by California's mandatory sentencing law, the judge handed down a sentence of only 10 years.

The judge, M. Marc Kelly, gave several reasons for this rare decision. The foremost reason, he said, was that under the circumstances, a 25-year sentence would be cruel and unusual punishment. He said that as a judge, his primary responsibility was to uphold the Constitution, and therefore this deviation from the mandatory sentence was necessary.

According to Judge Kelly, his decision was influenced by Rojano-Nieto's youth; the defendant was only 19 at the time of the crime. He'd had a difficult childhood, including an abusive father. In addition, Rojano-Nieto had cooperated fully in the investigation, had admitted his responsibility, and had expressed considerable remorse for what he had done. Finally, Rojano-Nieto's mother—who was also the victim's mother—made an impassioned plea for leniency for her son.



Photo provided by the California Department of Corrections and Rehabilitation



Although Judge Kelly continued to stand by his decision, many people were outraged by the sentence. An online petition to appeal the sentence quickly attracted tens of thousands of signatures, and in fact the district attorney did appeal. At the same time, members of the community and three county supervisors began an effort to remove Judge Kelly from the bench. In April, 2018, an appeals court ruled the 10-year sentence was too lenient and gave Rojano-Nieto a 25 years to life sentence, as well as ordering him to register as a sex offender. The drive to remove Superior Court Judge Kelly from the bench did not succeed.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Did Judge Kelly overstep his powers when he declined to impose the mandatory minimum sentence? Or was he right in asserting that his duty to uphold the Constitution was stronger?
- Do you agree that the mandatory minimum sentence was unjust in this case? What facts would you want to know before making that decision?
- In general, are mandatory sentences a good way of ensuring equal punishments and making sure offenders receive appropriate punishments?

SOURCES: Kelly Puente, “O.C. Judge M. Marc Kelly Makes Statement for First Time Attacking Petition to Recall Him after Child Rapist’s Controversial Sentencing,” *Orange County Register*, May 12, 2015. <https://www.ocregister.com/2015/04/08/oc-judges-reduced-sentence-in-child-sex-assault-case-sparks-a-public-outcry-calls-for-him-to-step-down/> (retrieved June 9, 2015); Michael Martinez, “California Judge Faces Recall Try over Sentence in Child Rape Case,” *CNN*, April 10, 2015. www.cnn.com/2015/04/09/us/california-judge-sentencing-child-sodomy-recall-effort/ (retrieved June 9, 2015). Kelly Puente, “Man re-sentenced to 25 years for sodomizing 3-year-old girl in case that sparked public outrage,” *Orange County Register*, April 6, 2018. <https://www.ocregister.com/2018/04/06/man-re-sentenced-to-25-years-for-sodomizing-3-year-old-girl-in-case-that-sparked-public-outrage/> (retrieved October 27, 2019).

Preventive Detention

By the early 1900s, most states had enacted some form of **habitual offender statute**, a law authorizing enhanced sentences for repeat offenders, called **recidivists**, who had been previously convicted of certain offenses. In recent decades there has been a move to identify society’s most dangerous offenders and to use laws that prevent these individuals from committing future crimes by imposing lengthy incarceration in prison or in a secure mental health facility. These laws are collectively called **preventive detention laws**. [page 332](#)

The individuals whom the laws target have been convicted a number of times, thus demonstrating a tendency to relapse into criminal activity after they have been punished. California’s 1994 “three strikes, you’re out” law, for example, doubles the sentence of felons who have previously been convicted of a serious crime and calls for a 25 years to life sentence for felons with two previous violent felony convictions—even if the third crime is not violent.

habitual offender statute

A law that creates enhanced penalties for repeat offenders.

recidivist

An offender who has been previously convicted of crimes.

preventive detention laws

Legislation that allows the criminal justice system to prevent offenders from committing future crimes by lengthy incarceration in prison or secure mental health facilities.

The California law is based on the premise that a three-time offender has demonstrated an inability or unwillingness to conform to the laws of society and should be incarcerated for a long time, perhaps even for life, for the better protection of the public. Rehabilitation of recidivists is not the goal.²⁶ Washington and Georgia have even passed “two-strikes” laws that mandate a life sentence for certain offenders on their second conviction. California’s three-strikes law, though, is the broadest and most frequently used, and it is generally considered the toughest sentencing policy; for example, the third “strike” need not even be a violent crime. Yet California’s rigorous three-strikes policy has not been found to affect crime rates to any greater degree than do other states’ more limited laws.²⁷ In response to such findings, in 2018 an amended ballot initiative was introduced in California that would serve to, among other things, reduce the number of crimes eligible to be counted as strikes.²⁸ Research shows that habitual offender laws are more often applied to racial and ethnic minorities—and therefore increase sentencing disparity.²⁹

Repeat sex offenders have been targeted by special sentencing provisions that began with the *sexual psychopath laws*, first enacted in 1937 in Michigan. By 1975, more than half the states had *mentally disordered sex offender (MDSO) laws*. These laws allowed the state to confine sex offenders with a mental disease or defect for indefinite periods of time, dependent on treatment needs, in a secure psychiatric facility rather than a prison. The popularity of these laws declined as fixed-term sentencing gained acceptance. More recently, however, calls for a return to indeterminate periods of incarceration have arisen

due to the results of society's experience with fixed sentences. Many violent sex offenders with fixed sentences are released back into the community, and many of them reoffend.

Today, through a new wave of sex offender statutes, many states allow the period of incarceration to be extended beyond that of the original court-mandated sentence because of fear that these criminals, once released, will reoffend.³⁰ Under preventive detention laws, incarceration in a secure psychiatric facility can follow completion of a sentence in prison, or incarceration in prison can be extended beyond what would have been given for a particular crime had it been the offender's first or second offense. The individual is confined not for what he did but rather to prevent what he is believed likely to do in the future.

The Washington State legislature was first to enact this kind of law. In 1990, the state's lawmakers passed a civil commitment law for sexually violent predators as part of its 1990 Community Protection Act in response to a number of highly publicized sex crimes.³¹ As of 2019, 20 states and the District of Columbia have provisions for civilly committing dangerous sex offenders.³² Under these civil commitment laws, individuals can be incarcerated in secure psychiatric facilities for as long as they are deemed to present a danger to others.

Even though preventive detention laws are popular with the general public, their future is uncertain. Under existing law, sexual predators can be freed only after they have been effectively "cured." But many psychiatrists consider sexual predation to be an antisocial behavior rather than a mental illness and therefore argue that it cannot be treated. The Washington State Psychiatric Association, for example, has called for the repeal of that state's sexual predator law. The association has gone on record to assert that "[s]exual predation in and of itself does not define a mental illness. It defines criminal conduct."³³ Except when a person is mentally ill and poses a danger to self or others, preventive detention is unconstitutional. Washington's page 333 psychiatrists have raised the claim that sexually violent predator (SVP) laws give offenders what is tantamount to a sentence of life imprisonment. Thus far, however, these statutes have withstood judicial challenges to their constitutionality.



▲ Older Prison Inmates Receiving Health Care

Habitual predator laws contribute to the increase in older prisoners. *Do you think it is worth the high medical costs to keep older individuals incarcerated?*

Robert Galbraith/Reuters/Landov

Another problematic issue is that if society uses chronic recidivism as the basis for defining a mental abnormality as in the case of a sexually violent predator, the public may well call for the preventive detention of individuals who perpetrate other repeated felonies as well. Men who repeatedly batter their partners might then qualify for terms of civil commitment beyond the length of their criminal penalties. If a sexually violent predator is considered mentally ill, why is a batterer—or, for that matter, a professional thief—not given the same status? These are matters that future courts are likely to face.

Even though such issues may prompt us to question the fairness of preventive detention laws, current legislatures seem inclined toward accepting them. In 1994, the California legislature passed a “one strike rape bill,” assigning a penalty of 25 years to life for sexual assaults involving torture, kidnapping, or burglary with intent to commit rape. Repeat offender laws are controversial, but they remain popular. The public considers them the remedy for the persistent problem of offenders who have not been, and as some suggest cannot be, effectively treated.

Habitual offender laws and preventive detention contain the threat of crime by incapacitating criminals for extended periods of time. However, they come

at a high financial cost. It remains to be seen how long the public will be able to bear the expense of putting more criminals in prison for longer terms. To illustrate, older inmates have the same needs as older people in the general population. Health care needs alone raise annual costs for older inmates threefold over those for younger inmates. The RAND Corporation studied costs associated with “three strikes, you’re out” legislation in California and concluded that unless there are changes to its implementation, the result for the state will be “three strikes, and we’re broke.”³⁴ On top of these troubling facts, a 2012 study of the effects of this law concluded that it had played no significant role in the state’s declining violent crime rate.³⁵ Nonetheless, this law continues to enjoy the support of the majority of California voters—another sign that what society is learning about crime is not being translated into laws that might better control it.

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CAPITAL PUNISHMENT

A **capital crime** is an offense punishable by execution. The U.S. military, the federal government, and 29 states currently provide for capital punishment, but the offenses that constitute capital crimes vary. Most state laws specify that first-degree murder (which essentially means the murder was willful, deliberate, and premeditated) with special circumstances is a capital crime, but the specific circumstances differ by state.³⁶ *Special circumstances* are features of the crime that include torturing victims, lying in wait for them, and killing for financial gain. Jurors consider whether these special circumstances were present when deciding whether death is an appropriate sentence for the offender.

capital crime

An offense punishable by execution.

MYTH/REALITY

MYTH: Most death row inmates will be executed eventually.

REALITY: On average, fewer than 2 percent of condemned inmates are executed in any given year. The vast majority will never be executed.³⁷

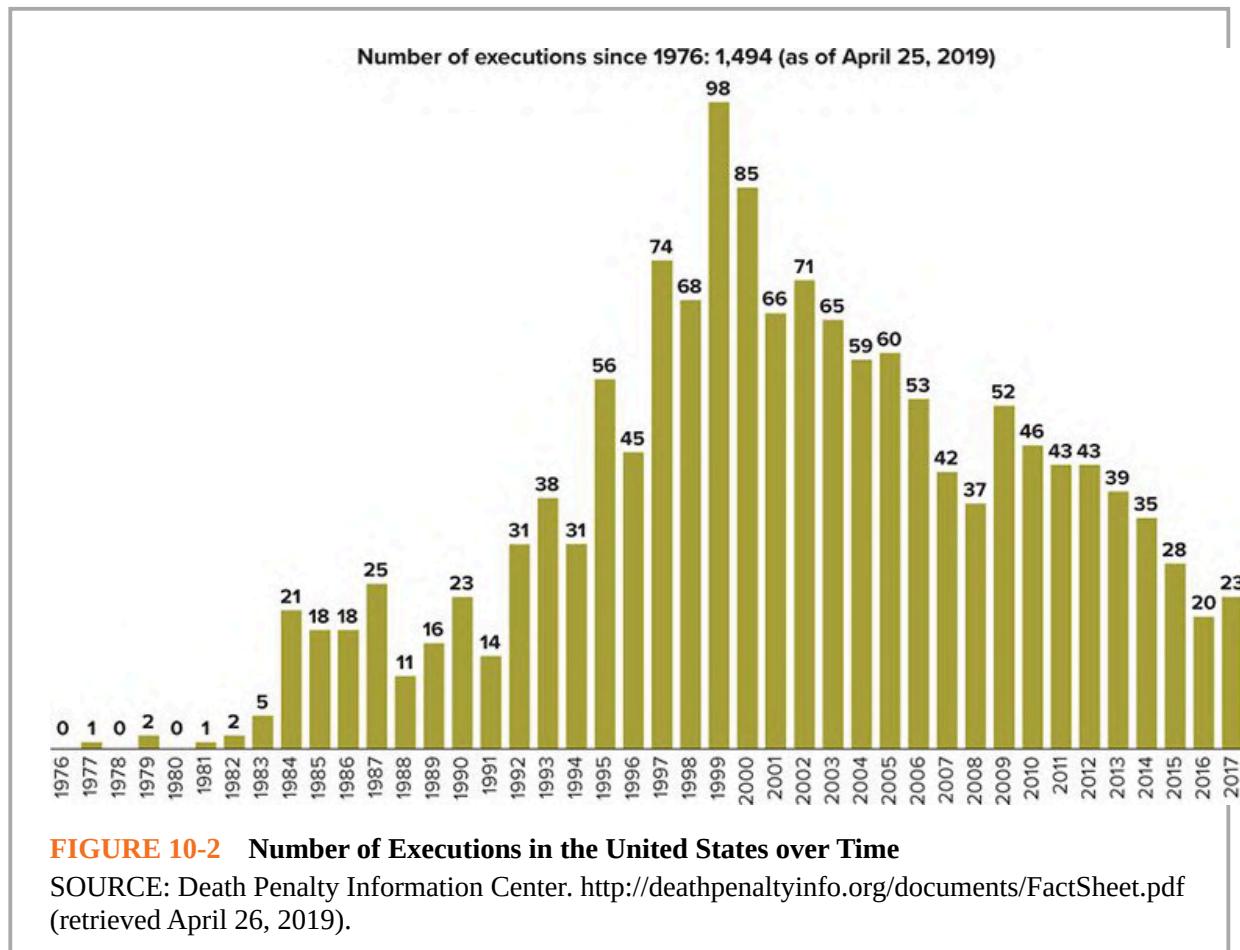
Today, very few people convicted of homicide find their way onto death row.³⁸ Over the last 30 years, fewer than 3 percent of those convicted of murder in the United States received the death penalty.³⁹ We might assume that this 3 percent represents the “worst of the worst,” but that is not necessarily true. For example, fewer than half of the 11 serial murderers convicted in 2004 were sentenced to death.⁴⁰

In 2018, 25 people were executed in the United States for committing capital crimes (Figure 10-2). Approximately, 56 percent of offenders put to death were White, 34 percent were Black, and 9 percent were Latino. As for the race of the murder victims, 76 percent of the victims were White,⁴¹ whereas Whites comprised only 50 percent of all murder victims nationally.⁴² Such discrepancy has led some to argue that capital punishment trials are most likely to occur when the victim is White.⁴³ There are regional differences in the administration of capital punishment as well. By far, the South has page 335executed the most individuals (1,220) and the Northeast has executed the least (4).⁴⁴ Near the end of 2018, there were 2,721 people on death row in the United States;⁴⁵ only 53 of them were women.



▲ The Last Public Hanging

More than 15,000 people witnessed this execution in 1936.
Newsmakers/Getty Images



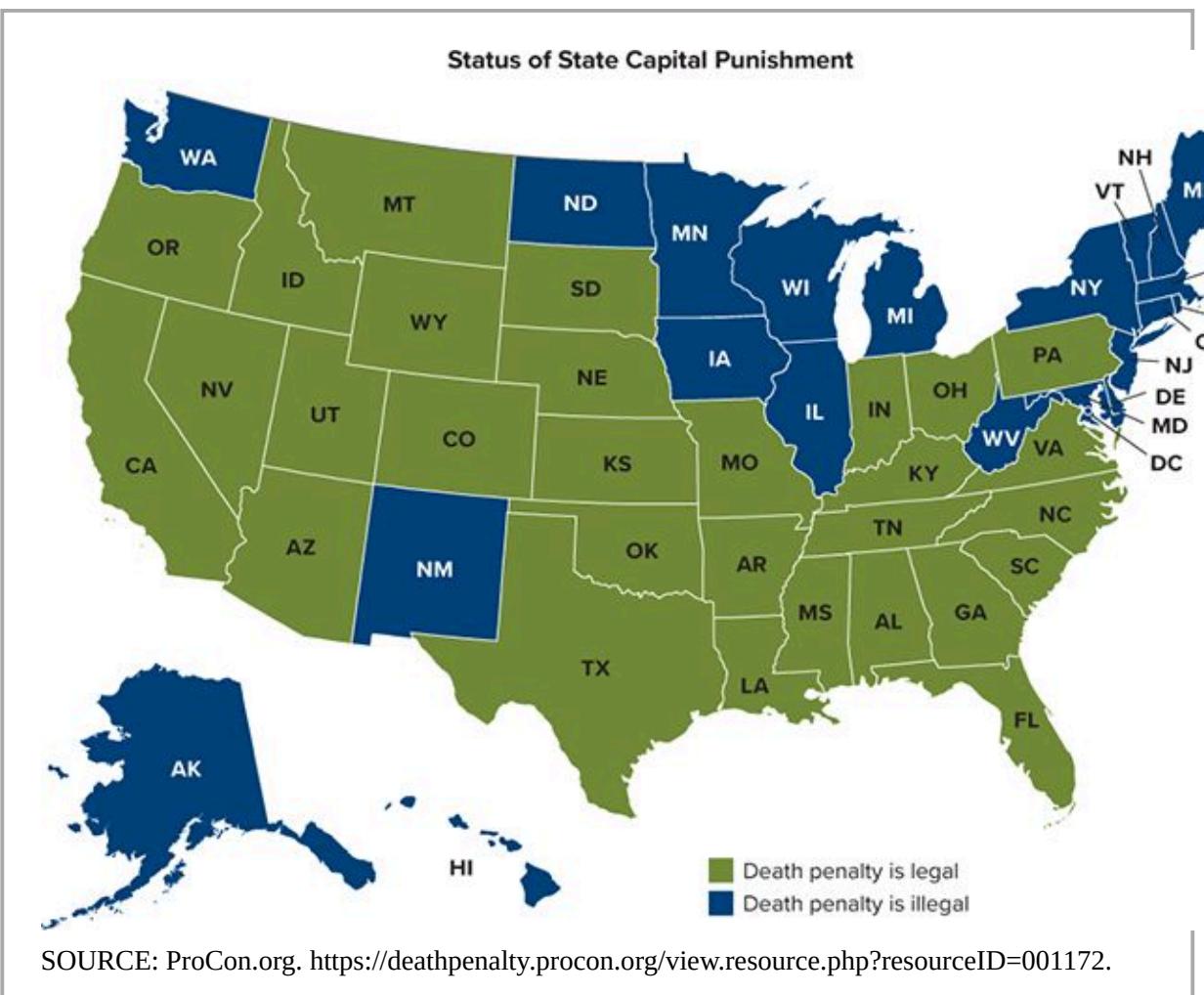
Rather than having their death sentences carried out, death row inmates tend to die in prison of natural causes, to commit suicide, to have their cases overturned, or to have their sentences reduced to life imprisonment.⁴⁶ Even though the majority of states have a death penalty statute, most have not executed anyone in decades. These variations across states have caused many to question the fairness of laws that define capital crimes and apply capital sentences differently. One glaring example was in 2008 when two men were on Louisiana's death row for crimes that did not include killing someone. One of those men, Patrick Kennedy, had his death sentence overruled by the U.S. Supreme Court in June 2008. In *Kennedy v. Louisiana* (2008), the Court ruled that Louisiana's law making the rape of a child a crime punishable by death

was unconstitutional and indicated that the death penalty would be unconstitutional in any instance in which the offender did not kill the victim.⁴⁷

The Supreme Court and Capital Punishment

European settlers, particularly those from England, brought the death penalty with them to the American colonies. Early U.S. Supreme Court decisions upheld different methods of execution. In *Wilkerson v. Utah* (1878), the Court rejected the claim that firing squads constituted cruel and unusual punishment, and in *In re Kemmler* (1890), the Court ruled similarly on electrocution. Not until the early 1970s did the U.S. Supreme Court rule against any state for its administration of capital punishment.

The “arbitrary and capricious” manner in which death sentences were imposed prior to 1972 led the U.S. Supreme Court to strike down state and federal capital punishment laws in effect at the time.⁴⁸ An _____ page 336 immediate consequence of this decision, *Furman v. Georgia* (1972), was that the death sentences of more than 600 condemned inmates were commuted to life imprisonment. In *Furman*, the Court required that states must have a two-stage trial. Guilt or innocence must be decided first, and only then must the penalty phase be conducted. Because the Court did not rule that the death penalty itself was unconstitutional, but rather that the specific laws determining how the penalty would be administered were, states were permitted to redraft their laws to make them constitutionally acceptable. In *Gregg v. Georgia* (1976), the U.S. Supreme Court upheld a series of new death penalty laws that included the new two-stage procedure (see the discussion of bifurcated trials in Chapter 9). The following year, under these new laws, Utah became the first state to resume executing condemned inmates.



Another important capital punishment case again involved Georgia. In *McCleskey v. Kemp* (1987), death penalty opponents argued that Georgia's capital punishment law was racially discriminatory. Attorneys for Warren McCleskey, an African American man convicted of killing a White police officer, presented a wide variety of systematic evidence illustrating racial disparity in how defendants were treated. In particular, the attorneys pointed out that defendants who killed White people were 11 times more likely to receive the death penalty. The Court agreed that the evidence supported the attorneys' overall claims, but the justices ruled that for McCleskey to win on the question of whether his equal protection rights were violated, he would have to prove racial discrimination in his individual case. In other words, it was not enough to show overall racial disparities. Instead, petitioner McCleskey needed to illustrate that he *personally* had been subjected to racial discrimination.⁴⁹



Wally Skalij/Los Angeles Times/Getty Images felipe caparros/Shutterstock

Real Crime Tech

TECHNOLOGY CHANGES THE DEATH PENALTY

The means of administering the death penalty have changed over time, partly because of technological advances. Public hangings did not require technological sophistication, although the hangman had to tie the knot skillfully enough to ensure a swift death rather than slow strangulation. The use of the electric chair, however, required new technology—both the generation of electricity and the creation of the execution device itself. The first execution by electrocution occurred in 1890. In 1924 cyanide gas began to be used, and the first gas chamber was constructed. More recently, the new death technology of lethal injection gained popularity, largely as a cost-saving measure. First adopted as an option in Oklahoma in 1977, lethal injection was not actually used until 1982, in Texas.

SOURCES: Phillip English Mackey, *Voices against Death: American Opposition to Capital Punishment, 1787–1975* (New York: Burt Franklin, 1976); Hugo Adam Bedau, *The Death Penalty in America* (New York: Oxford University Press, 1982); R. Bohm, *DeathQuest: An Introduction to the Theory and Practice of Capital Punishment in the United States* (Cincinnati: Anderson, 1999).

In recent years, the Supreme Court has primarily dealt with issues of who should and should not be eligible for capital punishment and questions about the constitutionality of specific methods of execution. For example, the Court has ruled that individuals with intellectual disability—defined in most states as those with an IQ lower than 70—cannot be executed.⁵⁰ The Court has also ruled that juveniles cannot be executed. In *Roper v. Simmons* (2005), the Court

held that individuals who were under 18 years of age when they killed someone could not be sentenced to the death penalty.

Every U.S. jurisdiction that has a death penalty (29 states, the U.S. military courts, and the federal government) authorizes lethal injection as the primary method of execution. In 15 of those states, however, an alternative method may be chosen. Depending on the state these methods are electrocution, gas chamber, hanging, and firing squad. In recent years, even though it is the most widely used method of execution, lethal injection has come under scrutiny by the courts. Many jurisdictions use what is referred to as a *three-drug cocktail*. The first drug is administered to make the process painless by rendering the inmate unconscious, the second drug paralyzes the individual, and the third causes death by stopping the heart. If, however, the first (anesthetic/sedative) drug fails to work properly, possibly because it is not administered properly, the inmate can experience excruciating pain from the drug that stops the heart—but she will not be able to indicate this, having been paralyzed by the second drug. Prisoners in Kentucky sought to have lethal injection deemed a violation of the Eighth Amendment because of this. In *Baze v. Rees* (2008), however, the Court upheld the use of lethal injection noting there is a risk of pain in even the most humane executions. Nonetheless, the issue with a three-drug protocol persists. California, for example, has not executed anyone since 2006 as a result. It may be that California will follow Ohio and Washington as states that moved to a single-drug protocol whereby only the first (sedative) drug is used—in lethal dosage. This is basically the approach veterinarians use to euthanize animals.⁵¹

A similar issue was recently raised by four death row inmates in Oklahoma in which the use of a particular drug, midazolam, was challenged. This drug, normally used to treat anxiety, is not a barbiturate like the sedatives generally used in the three-drug protocol. Increasingly, however, the barbiturate drugs are difficult, if not impossible, for states to obtain as manufacturers are refusing to make them available for the purpose of executions. As a result, some states have turned to midazolam to replace the conventional sedatives (like pentobarbital). However, following three apparently painful executions, including the botched execution of Clayton Lockett in 2014 in Oklahoma, the use of midazolam came into question. But similar to the ruling in the Kentucky case, the Court upheld the use of the drug in *Glossip v. Gross* (2015), the majority arguing that the death row inmates did not sufficiently make their case against midazolam—even though it has not been approved by the FDA as a drug to reliably render a person unconscious.⁵²

The Capital Punishment Trial

As we saw in Chapter 9, ever since capital punishment was reinstated in 1976, bifurcated trials have been used in capital cases—one trial to determine guilt, and, if the verdict is guilty, a second trial to establish the penalty, [page 338](#) which might be death or life imprisonment without the possibility of parole. In making this determination, jurors are instructed to weigh the *mitigating factors* argued by the defense against the *aggravating factors* presented by the prosecution during the penalty phase.

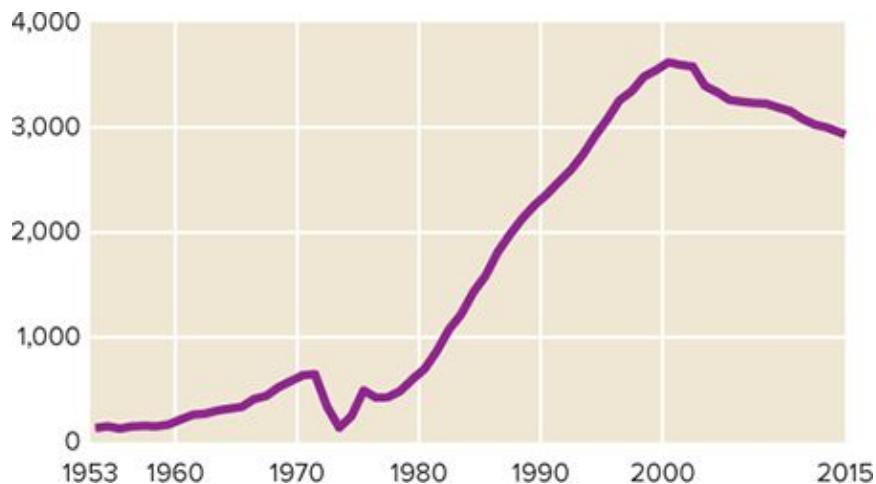


FIGURE 10-3 Defendants Sentenced to Death, 1953–2015

SOURCE: Tracy L. Snell, “*Capital Punishment, 2014–2015*” (Washington, DC: US Department of Justice, Bureau of Justice Statistics, May 2017), Figure 2, p. 1.
www.bjs.gov/content/pub/pdf/cp1415sb.pdf (retrieved April 13, 2019).

Mitigating factors are presented to provide a larger context on the life of the now-convicted offender. Defense attorneys highlight these factors to argue that the defendant does not deserve to be executed. Mitigating factors might include evidence that the offender himself had been a victim of abuse, that he suffers from mental illness, or that he previously led a very respectable life. When presenting these mitigating factors, defense attorneys hope that the jury will decide that life imprisonment would be more appropriate for the defendant.

Aggravating factors generally need to be proved to have been present in order to make execution an appropriate penalty. For example, in many states capital punishment is appropriate if the murder was especially heinous, atrocious, or cruel or if it involved torture. Alabama defines as an aggravating factor any murder committed in order to avoid arrest.⁵³ The prosecutor in the

case during the penalty phase seeks to produce evidence illustrating that any relevant aggravating factors were present in the commission of the crime so that the jury returns a sentence of death. In their deliberations, jurors ultimately weigh the mitigating factors against the aggravating factors. In 2014, the judges and juries in 72 cases decided that the offender should be executed.⁵⁴ This number is consistent with a trend since 1999 whereby the number of defendants being sentenced to death in the United States is on a significant decline (Figure 10-3).⁵⁵

Controversies Concerning Capital Punishment

Many of the people who support capital punishment argue that it serves a need for retribution—to answer injury for injury in the interest of public morality. Others favor the death penalty as a way to retaliate against the murderer. Although both of these positions have strong support among death penalty advocates, their arguments are philosophically based. Their utility is difficult to evaluate because it is hard to measure the retributive and retaliatory effects of the death penalty. On the other hand, one thing is certain: Executing an offender ensures he or she will not commit crimes in the future. Although research does not support this claim, advocates also believe that the state-sanctioned taking of a life is an effective deterrent for others who might otherwise contemplate committing murder. Opponents of this ultimate sanction argue that the death penalty per se violates human rights through its inhumane and degrading treatment of an offender.

Capital punishment is controversial not just in the United States but throughout the world. “A Global View” examines the concept from the perspective of the United Nations. The table on page 340 reports on how U.N. member countries weighed in on a groundbreaking resolution calling for a moratorium on the use of the death penalty.

Public opinion in the United States has slowly been shifting away from support of capital punishment. In 2013, the death penalty was favored by 55 percent of the adults in the United States, down from the 78 percent who had supported it in 1998.⁵⁶ Perhaps even more important, a majority _____ page 339 (52 percent) of the public favors life without parole over the death penalty (42 percent) for convicted murderers.⁵⁷

A Global View

United Nations Resolution on a Death Penalty Moratorium

Capital punishment continues to be one of the most controversial justice-related issues in the world. Beyond the fundamental ethical advocacy for the value of a human life, and besides concerns over the possibility of executing innocent persons, debates focus on cost, deterrence, social class, race, age, and gender. Within the global context, the United States remains the only Western industrialized nation to employ capital punishment.

The year 2007 marked the adoption of United Nations General Assembly Resolution 62/149. This groundbreaking measure, adopted by an overwhelming majority of United Nations member countries, called for a worldwide moratorium on the use of the death penalty, with a view to abolishing capital punishment altogether.



AFP/Getty Images

In 2016, United Nations General Assembly Resolution 71/187 reaffirmed the United Nations' stance on the use of the death penalty. The vote equaled the record number of countries who supported the moratorium resolution in 2014. The resolution called upon all countries to respect international standards providing for procedural safeguards for those facing the death penalty, to progressively restrict use of capital punishment, and to make available data on how and against whom they apply the death penalty.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What do you believe is the motivation for the U.S. advocacy for retention of the death penalty?
- Do you think international disapproval will sooner or later oblige the United States to abolish capital punishment? Explain.
- In what ways does retention of the death penalty damage the global reputation of the United States? Should this consideration make any difference in whether U.S. society retains capital punishment? Why or why not?

SOURCES: United Nations, Moratorium on the Use of the Death Penalty, 71st General Assembly Session, December 19, 2016, Resolution 71/187; Maria Donatelli, “117 Countries Vote for a Moratorium on Executions,” World Coalition Against the Death Penalty, December 19, 2014. www.worldcoalition.org/united-nations-resolution-moratorium-death-penalty-executions-general-assembly.html (retrieved June 9, 2015); Amnesty International, *UN General Assembly 2008: Implementing a Moratorium on Executions*, September 2008, ACT 50/016/2008; United Nations, *Moratorium on the Use of the Death Penalty*, 63rd General Assembly Session, 2008, Resolution 63/168; Bijou Yang and David Lester, “The Deterrent Effect of Executions: A Meta-Analysis Thirty Years after Ehrlich,” *Journal of Criminal Justice* 36, no. 5 (2008): 453—459; Amnesty International, *Death Sentences and Executions 2010*, 2011, ACT 50/001/2011.

Opposition to capital punishment is based on several concerns. Many people believe that the death penalty is applied unfairly. The *Furman* ruling did not put to rest concerns regarding racial bias in the administration of death penalty cases. Data continue to show disparities along racial lines. Blacks are disproportionately represented on death row. They make up 42 percent of death row inmates but only 13 percent of the U.S. population. Furthermore, individuals of any race who murder Whites are more likely to receive a death sentence than those who murder people of color.⁵⁸ Hence, both the race of the perpetrator and the race of the victim are related to death sentences. Some observers have concluded that racial disparities in the administration of the death penalty are evidence of racial discrimination in the criminal justice system. There is also a relationship between the economic class of _____ page 340 the victim and the sentence of the offender. If the victim was of a higher social status, a death penalty sentence is more likely than if the victim was poor or of lower social status.⁵⁹

U.N. General Assembly Resolution 71/187: Country Vote

On December 19, 2016, the United Nations General Assembly adopted its sixth resolution calling for a moratorium on the use of the death penalty. The resolution was adopted by an overwhelming majority of countries. Check how countries voted on this resolution.

In Favor

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d' Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Rep of Moldova, Romania, Russian Federation, Samoa, San Marino, Sao Tome and Principe, Serbia, Sierra

Against

Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Burundi, China, Dem PR of Korea, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Iran, Iraq, Jamaica, Japan, Kuwait, Libya, Malaysia, Maldives, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, South Sudan, Sudan, Syria, Trinidad and Tobago, United States, Yemen

Abstain

Bahrain, Belarus, Cameroon, Comoros, Cuba, Djibouti, Equatorial Guinea, Ghana, Indonesia, Jordan, Kenya, Lao PDR, Lebanon, Lesotho, Liberia, Mauritania, Morocco, Myanmar, Niger, Nigeria, Philippines, Republic of Korea, Seychelles, Thailand, Tonga, Uganda, United Arab Emirates, United Rep Tanzania, Vietnam, Zambia, Zimbabwe

Leone, Slovakia, Slovenia,
Solomon Islands, Somalia,
South Africa, Spain, Sri
Lanka, Surinam,
Swaziland, Sweden,
Switzerland, Tajikistan, The
FYR Macedonia, Timor-
Leste, Togo, Tunisia,
Turkey, Turkmenistan,
Tuvalu, Ukraine, United
Kingdom, Uruguay,
Uzbekistan, Vanuatu,
Venezuela

SOURCE: Elise Guillot, World Coalition Against the Death Penalty, “The UN General Assembly Voted Overwhelmingly for a 6th Resolution Calling for a Universal Moratorium on Executions,” December 20, 2016. <http://www.worldcoalition.org/The-UN-General-Assembly-voted-overwhelmingly-for-a-6th-resolution-calling-for-a-universal-moratorium-on-executions.html> (retrieved November 12, 2018).

Another reason for questioning the fairness of the death penalty is that a surprising number of death row inmates are later proved innocent. Since 1973, 154 people have been exonerated and released from death row as a result of evidence of their innocence.⁶⁰ The “Race, Class, Gender” box reviews how one organization, the Innocence Project, has been very successful in exonerating individuals who had not committed the crimes of which they were convicted. Perhaps because of concerns about mistakes in the criminal justice system and the risk of executing an innocent person, death sentences dropped more than 50 percent between 1999 and 2013 (see Figure 10-3).

A third consideration with respect to the death penalty focuses on whether it serves as an effective crime deterrent. Studies that have compared use of the death penalty to violent crime rates have found that threat of execution does not deter murder. For example, in 2013, the average murder rate in death penalty states was 4.4 per 100,000 people; in states without the death penalty, the rate was 3.4 per 100,000 people.⁶¹ Current research is undermining the degree to which we can believe that the likelihood of execution deters murder.

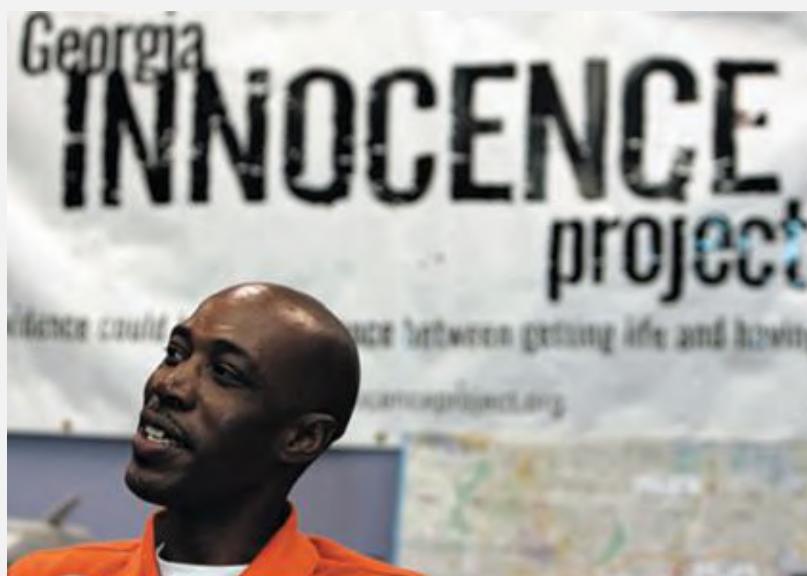
Race, Class, Gender

Exonerating the Innocent

The Innocence Project was founded by Barry Scheck and Peter Neufeld at the Benjamin N. Cardoza School of Law at Yeshiva University in 1992. Their goal was to help prisoners who could be proved innocent through DNA analysis. As of April 2019 the Innocence Project had exonerated 365 people. Twenty of those individuals were at some point on death row. The Innocence Project's clients tend to have to wait long after their wrongful conviction to see justice done; indeed, the average amount of time that the project's exonerated clients serve is 14 years.

Many who are exonerated of the crimes for which they were convicted had relied on public defenders because they were poor. Public defenders may have the best of intentions, but they are often overworked and given less than adequate resources. The Innocence Project contends that to reduce the number of wrongful convictions, national standards must be established for the indigent defense system, which currently varies greatly from state to state.

People on death row are typically not just poor; they also are largely uneducated. Forty-eight percent of death row inmates are educated at the 11th-grade level or lower. More than half have never been married.



John Bazemore/AP Images

It is also illustrative to consider the profiles of the jurors who decide whether defendants deserve the death penalty. For a citizen to become a member of a capital punishment trial jury, he must be willing to vote for the death penalty. If his feelings generally tend toward an anti-death penalty position, they cannot be so strong as to “prevent or substantially impair the performance of his duties as a juror.” Consequently, the people who are eligible to serve on capital punishment juries tend to be politically conservative, male, White, and either Catholic or Protestant. Further, a recent study found that individuals who qualified to serve on a death penalty jury had higher levels of homophobia, racism, and sexism.

So, what is the significance of these facts? The reality is that we have a largely disadvantaged group of death row inmates whose fate has been determined by jurors who tend to be unlikely either to think or to look like them.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What do you think best explains why so many people have been wrongfully convicted in the United States?
- What explains the finding that close to half of those on death row in the United States have less than an 11th-grade education and more than half have never been married? Why is that information significant?
- Will the wider application of DNA testing significantly reduce the number of persons who receive the death penalty in the United States and who are ultimately executed? Explain.

SOURCES: Brooke Butler, “Death Qualification and Prejudice: The Effect of Implicit Racism, Sexism, and Homophobia on Capital Defendants’ Right to Due Process,” *Behavioral Sciences and the Law* 25 (2007): 857–867; Tracy L. Snell, “*Capital Punishment, 2013—Statistical Tables*” (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, December 19, 2014). www.bjs.gov/content/pub/pdf/cp13st.pdf (retrieved July 4, 2015); *Wainwright v. Witt* 469 U.S. 412 (1985); Innocence Project. “DNA Exonerations in the United States.” www.innocenceproject.org/dna-exonerations-in-the-united-states/ (retrieved April 13, 2019).

Another point of controversy is the cost of capital punishment. Proponents argue that it is cheaper to execute an individual than to pay the costs of imprisoning that person for life. In fact, this argument is not true. Because of the expense of the extraordinary judicial processes required in capital cases, the costs associated with such cases typically far exceed those of life imprisonment. Since 2009, six states have abolished the death penalty—in part because of concerns related to morality and justice (e.g., the discovery of wrongful convictions) but also in part because of the high costs incurred in death penalty cases. In fact, New Mexico, the first of these states to repeal capital punishment, cited expense as the main reason for doing so.⁶²

As noted earlier, there are some indications that public and legal support for the death penalty is eroding. While the alternative sentence of life without parole may not satisfy public calls for retribution, it costs society less in terms of money and conscience: It is less expensive to house inmates for life than it is to maintain the costs associated with capital punishment. And while wrongly convicted inmates can be returned to the community, those who are executed cannot.

SUMMARY

The U.S. Constitution bans “cruel and unusual punishments,” but the exact meaning of this phrase has changed greatly between the time the Constitution was written in the late eighteenth century and the present day. Whether or not that constitutional language now makes it appropriate to ban the death penalty is a contentious issue.

Another important constitutional guarantee—the right to seek a writ of habeas corpus—affects the kind of punishment that the criminal justice system can impose. Habeas corpus proceedings involve challenging the justice of a convicted person’s trial or sentence, particularly if the sentence is death. Today, the parameters within which convicts may institute habeas corpus proceedings are narrowing.

Sentences are determined by the trial judge on the basis of presentence investigation reports and victim impact statements, which help the judge determine whether there are aggravating or mitigating circumstances that would affect the severity of the sentence. Various goals and principles of sentencing have been identified: retribution for the crime that has been committed; deterrence, to discourage others from committing the offense; incapacitation, to disable the offender from harming us again in the future; and rehabilitation, to encourage the offender to change his or her future behavior. Of these principles, rehabilitation is less frequently invoked today than it was a generation ago. Sentences of imprisonment can be either indeterminate (dependent on the convicted person’s behavior while imprisoned and on the likelihood of rehabilitation) or determinate (for a more or less precise term of years). Legislation often requires judges to impose mandatory sentences.

Capital punishment has become extremely controversial in the United States, in part because it retains strong public support (despite equally strong disapproval in other industrial democracies). Disparities of race and class in the implementation of capital punishment remain significant, and concerns regarding wrongful convictions and the expense of executions in hard economic times are beginning to take a toll on its popularity.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Describe the constitutional protections that affect sentencing.

- According to the Eighth Amendment, sentences cannot be cruel and unusual.
- Habeas corpus protections allow offenders to challenge their detainment.

Describe the various goals of sentencing.

- Retribution is a sentencing goal focused on appropriately punishing the offender in a manner equal to his crime.
- Deterrence is a sentencing goal focused on convincing the offender herself and society at large that criminal actions will be punished and therefore should not be committed.
- Incapacitation is a sentencing goal focused on reducing the ability of the offender to re-offend.
- Rehabilitation is a sentencing goal focused on helping the offender change her behavior.

Compare the different sentencing models.

- Indeterminate sentencing models include sentences with ranges rather than a specific amount of time.
- Determinate sentencing models include sentences that enumerate a specific amount of time that should be served.
- Presumptive sentencing models assume that judges should sentence within sentencing guidelines, or within ranges specified for particular charges.

Review how a capital punishment trial proceeds.

- A capital punishment trial is bifurcated.
- The first stage of a capital punishment trial decides guilt or innocence.
- In the second stage, the jury weighs both mitigating and aggravating factors to decide whether the defendant should be sentenced to death.

Outline controversies surrounding the death penalty.

- There is a growing global sentiment that the death penalty should be abolished in all countries.
- There are questions about whether capital punishment is applied fairly.
- Research indicates that the death penalty does not deter murder.
- Sentencing a person to death ultimately costs more than sentencing the person to life imprisonment because of the high costs of capital trials and the associated costs of appeals.

Key Terms

capital crime 334
concurrent sentences 330
consecutive sentences 330
cruel and unusual punishment 321
determinate sentence 328
deterrence 326
habeas corpus 322
habitual offender statute 331
incapacitation 326
indeterminate sentence 327
presentence investigation (PSI) report 324
presumptive sentencing model 328
preventive detention laws 331
recidivist 331
rehabilitation 327
retribution 326
statutory minimum 328

Study Questions

1. All of the following are goals of sentencing *except*
 - a. retribution.
 - b. rehabilitation.
 - c. victim advocacy.
 - d. incapacitation.

2. A sentence that is a range of time served, such as 2–3.5 years, is referred to as
 - a. indeterminate.
 - b. determinate.
 - c. presumptive.
 - d. a mandatory minimum.

3. A judicial order that says that someone has been wrongfully imprisoned is referred to as
- a cruel and unusual punishment.
 - preventive detention.
 - a capital offense.
 - habeas corpus.
4. Preventive detention laws generally target offenders who are
- recidivists.
 - sex offenders.
 - neither a nor b
 - both a and b
5. A punishment is cruel and unusual if
- it inflicts any pain on the defendant.
 - the defendant is under the age of 18.
 - it is rejected by the “evolving standards of decency.”
 - it does not fit the crime.
6. The number of stages in a capital punishment trial is
- one.
 - two.
 - three.
 - four.
7. The U.S. Supreme Court case that established the stages of a capital punishment trial is
- Furman v. Georgia*.
 - Gregg v. Georgia*.
 - McCleskey v. Kemp*.
 - United States v. Booker*.
8. A state that uses sentencing guidelines and mandatory minimum sentences likely has a/an
- indeterminate sentencing model.
 - determinate sentencing model.
 - presumptive sentencing model.
 - preventive detention sentencing model.
9. A presentence investigation report typically includes all of the following *except*
- statements from the defendants' family members.
 - an overview of any past crimes of which the offender has been convicted.
 - a sentencing recommendation.
 - a victim impact statement.
10. The group that the U.S. Supreme Court recently ruled to be ineligible for the death penalty is
- people with intellectual disability.
 - individuals who were under 18 when they committed their crimes.
 - both a and b
 - neither a nor b

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. What goal of sentencing do you think should be the most important, and why?
2. Which sentencing model should be used for violent crimes? Property crimes? Drug crimes?
3. There are many arguments both for and against the death penalty. Which arguments do you find most persuasive? Why?

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11 Overview of Corrections



Bettmann/Getty Images

OBSERVE → INVESTIGATE → UNDERSTAND

After reading this chapter, you should be able to:

- Define corrections and describe its role in society.

- Identify the precursors to the U.S. prison.
- Contrast the features of the Pennsylvania system with those of the Auburn system.
- Identify the defining features of reformatories and therapeutic prisons.
- Trace the defining features of industrial prisons.
- Describe and evaluate each of the four major models of corrections.
- Describe the populations found in correctional institutions today.
- Identify the types of victim services found in corrections.
- Examine the extent and nature of privatization of prisons.

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Realities and Challenges

Values are the Driving Force behind Corrections Models

On August 24, 2012, Anders Behring Breivik was sentenced to 21 years—the maximum sentence in Norway—in a Norwegian prison after he was convicted of killing 8 people in Oslo and 69 at a Utoya Island summer camp for youth interested in politics. The slaughter took place during the summer of 2011. Although psychiatric reports differed as to Breivik's sanity, ultimately it was determined that he was legally sane at the time of the attacks. He was also described as cold, callous, and methodical when he carried out his slayings armed with a fertilizer car bomb, an automatic rifle, and a handgun. He apparently planned the crime for approximately a decade. Breivik committed the slaughter because he believed he could save Norway and Europe from the spread of Islamic colonization and multiculturalism. This crime is considered the most atrocious crime Norway has experienced since the end of World War II.¹

However, because Norway's deeply ingrained values of tolerance, nonviolence, merciful justice, rehabilitation, and treatment are at the core of its correctional philosophy and law, 21 years is the longest sentence Breivik could have received.²



Caters News/Zuma Press/Newscom

Breivik is serving his sentence at Ila Prison near Oslo where he is held under the highest security Norway has to offer. The maximum-security prison holds 124 of the country's worst offenders and has 230 unarmed male and female staff. Should arms be needed, the staff will need to call the police for backup. However, staff members have access to batons and tear gas.

Breivik is cut off from contact with other offenders, and his main source of face-to-face interaction is with correctional staff. Staff duties include talking with him, exercising with him, keeping him active, and providing a humane prison regime under segregated conditions. He also has an hour a week when he can receive visits. To compensate for his lack of contact with other inmates in the facility, he has a small three-room cell totaling about 250 square feet that includes a bedroom, an exercise room, and a study area with a desk and a computer that is not connected to the Internet. He also has television access and can order appropriate books from the library.³

In 2018 Breivik, who has since changed his name to Fjotolf Hansen, appealed his case that isolation in a three-room cell where he has access to a DVD player, typewriter, books, newspapers, and exercise equipment was inhumane. The European Court of Human Rights rejected his claim.⁴

The Norwegian and U.S. corrections systems have different definitions of punishment. Norway elevates the rehabilitation and reintegration models of corrections, whereas the United States endorses the punishment and crime control models explained later in the chapter. The

challenge for the corrections system is to institute the right blend of punishment and rehabilitation that will in fact “correct” offenders and safely return them to society.

This chapter discusses a range of options for correcting inmates. We begin by defining corrections and then examining the origins of corrections. We trace the main historical stages of prison development in the United States and explore the major models of corrections. We then turn our attention to the populations who are under the supervision of corrections. We take a close look at the victim’s involvement in corrections and end the chapter by discussing the development of privately owned and operated prisons.

DEFINING CORRECTIONS

The term *corrections*, as used today, denotes society’s efforts to punish and treat individuals who break the law, and thereby to protect the public. These efforts take the form of programs, services, and facilities that deal with offenders after they enter the criminal justice system. Local, state, [page 349](#) federal, and private agencies manage the custody and treatment of convicted adult and juvenile offenders in the system.

Preview

DEFINING CORRECTIONS

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Correctional programs fall into two categories. **Institutional corrections** refer to incarceration in jails and prisons and in other types of secure confinement programs; **community corrections** refer to probation, parole, and other programs that supervise offenders within the community. The roots of today's institutional programs date back to ancient times. Practices we now associate with community corrections are a relatively recent departure from the traditional reliance on incarceration as the only means to correct offenders. (Chapters 12 and 13 address institutional and community corrections, respectively.)

institutional corrections

Incarceration in jails and prisons.

community corrections

Court-imposed programs and sanctions that allow offenders to serve their sentences within the community instead of in jail or prison.

Depending on the context, “to correct” means to make right, rectify, make amends for, chastise, compensate, or treat a defect. As it relates to criminals, the term *corrections* came into use in the United States around the turn of the twentieth century, reflecting a widely held belief that the corrections system would transform offenders into law-abiding citizens. This has never been a universally accepted belief. Indeed, for centuries, society dealt with crime and criminal activity by punishment alone. Punishment was seen as both a form of retribution (or revenge) and a deterrent to scare people into not committing crimes. Severe punishments and fear of being caught were thought to be the only way to control crime. The field of corrections subsequently moved away from a philosophy of punishment toward a philosophy of rehabilitation. As we discussed in Chapter 10, rehabilitation emphasizes changing an individual from an offender into someone who is law-abiding. However, in recent decades there has once again been an increased reliance on incarceration and punishment.⁵

Punishment and rehabilitation are two very different methods of dealing with offenders, and each is based on a different philosophy. The punishment philosophy holds that offenders must pay for their crimes and serve as a

deterrent for other would-be criminals. The rehabilitation philosophy stresses that offenders can change and should be helped to change and become productive members of the community. Some people question whether these two approaches are compatible within the same institution.⁶



▲ Medieval Punishments

Devices used to torture and extract confessions from accused offenders were sometimes very elaborate.

Hulton Archive/Getty Images

Punishment was long thought to deter crime. For example, prior to 1808, the penalty for pickpocketing in England was death by hanging. Such a harsh penalty seemed necessary to curtail this very prevalent activity. People commonly believed, in fact, that the harsher the penalty, the greater the chance of reducing the crime. To ensure the desired deterrent effect, hangings were public events, usually staged in the town square.⁷ Characterized by a festive atmosphere, a hanging would draw a throng of townsfolk from all the surrounding villages to witness the spectacle. The irony is that the highest rates of pickpocketing activity occurred at these crowded public events because the probability of getting caught was low.

If we are to believe that harsh penalties reduce crime, we must assume that potential criminals weigh the benefit and cost before committing a crime. But

criminals usually act impulsively and seem unconcerned with the future or the threat of possible future punishment.⁸ A very high percentage of _____ page 350 active criminals do not perceive any risk of being caught and therefore give no thought to the punishments for their crimes.⁹

MYTH/REALITY

MYTH: If correctional sanctions are severe enough, people will think twice about committing crimes.

REALITY: Increasingly harsh correctional sanctions do not necessarily reduce crime or recidivism.¹⁰

Harsher sanctions do not necessarily deter crime and recidivism; such sanctions actually may have the opposite effect of encouraging recidivism.¹¹ A 2006 Canadian bill introduced in Parliament noted that in Canada harsher penalties do not reduce crime.¹² A 2003 study of more than 2,300 adolescents found that those prosecuted in harsh criminal courts were more likely to be rearrested more quickly and more frequently for violent, property, and weapons offenses than the juveniles prosecuted in more lenient juvenile courts. Adolescents prosecuted in juvenile courts were more likely to be rearrested for drug offenses.¹³ Overall, harsher punishments did not result in improved public safety.¹⁴ Researchers who have studied punishment believe that the motive for harsh punishment is not deterrence but retribution.¹⁵



▲ Tower Guards on Duty

Guards in prison towers are armed with deadly weapons they can use to prevent inmates from escaping.
Mike Fiala/Getty Images

ORIGINS OF CORRECTIONS

The practices of contemporary corrections have deep roots in early forms of punishment throughout the world. Before the use of imprisonment, early punishments were not only harsh but often gruesome. The most common punishments were execution and public corporal punishments such as flogging, branding, and mutilation.

Early Forms of Confinement

An early form of imprisonment was practiced in England during the reign of William the Conqueror (1027–1087). Before the establishment of the jail as an institution, lawbreakers were sometimes confined in dedicated sections of the estates of private landowners until it was time to impose the punishment. As

time passed, offenders, the mentally ill, and others whom the government deemed undesirable were confined in mines, ships, sulfur pits, stone quarries, ship ruins (“hulks”), and dungeons.¹⁶ In the thirteenth century, the church throughout Europe held offenders in cells within monasteries to serve years of solitary penance—a practice that foreshadowed the use of isolation to “correct” disobedience.

A corrections solution known as the *plague town* arose in Europe during the fourteenth century. Plague towns were originally intended as a means to isolate people infected with the bubonic plague. The organization of these towns anticipated the defining features of later prisons: isolation, organized surveillance, custodial maintenance, regimentation, prayer, and penance.¹⁷ Another punishment option for individuals who were not sentenced to immediate death or torture during the late 1400s and 1500s was confining condemned criminals to galleys, which served the double purpose of providing laborers to row explorers’ ships. In this practice, known as *galley slavery*, the offenders were chained to their oars on ships, often without protection from the elements and with minimal food and water, and were forced to row until they died.¹⁸

The Workhouse

Another stage in the development of the modern prison system began in the sixteenth century, when Holland and England developed the first workhouses, also known as *houses of correction* and *houses of compulsory reformation*.¹⁹ The **workhouse** held a mix of people, including jobless vagrants, debtors, and sometimes serious criminals. King Edward VI of England initiated the first workhouse in 1553 at Bridewell Palace in London.

workhouse

An institution that held jobless vagrants, debtors, and sometimes serious criminals.

Admission to a workhouse was mortifying and humiliating. Men, women, and children were often segregated, families were routinely split up, and some were never brought back together again. When people entered a workhouse, their personal possessions were taken away. They were stripped, searched, cleaned, hair cut short and haphazardly, issued workhouse clothing, closely confined with others, and forced to work. They were counted regularly, fed poorly, and required to get up early and go to bed early.²⁰ Paupers were confined until they could pay off their debts.

The workhouses did take vagrants off the streets and offer employment to those who did not have jobs. They were an approach to reform that quickly spread throughout Britain and other European countries. By the late seventeenth century, workhouses were used to house a broader range of criminals and became widespread in England.²¹

Transportation

Workhouses provided a long-term strategy for detaining the poor and homeless, but European nations were faced with another problem: the growing ranks of criminals throughout society. One solution that quickly became institutionalized was **transportation**, the export of criminals to other lands. In the eighteenth century, the British practice of banishing criminals led to the establishment of foreign penal colonies.²² Transportation was popular because of growing opposition to the death penalty for all but the most serious offenses, lack of local facilities to imprison offenders, and the need for a labor force to colonize new lands. Convicts were shipped to the British colonies of America, Australia, Tasmania (currently the southernmost island state of Australia), and New Zealand.²³

transportation

The export of criminals to other lands to complete their sentences.

By 1776, as many as 2,000 criminals were being transported each year from Britain to the American colonies. These criminals were not placed in penal facilities but were sold as servants to private individuals, a practice known as **indentured servitude**. Indentured servants worked for their masters until they completed their term of servitude. The masters controlled every aspect of the servants' lives. Many of the transported convicts were guilty of only minor offenses, such as theft or shoplifting.²⁴

indentured servitude

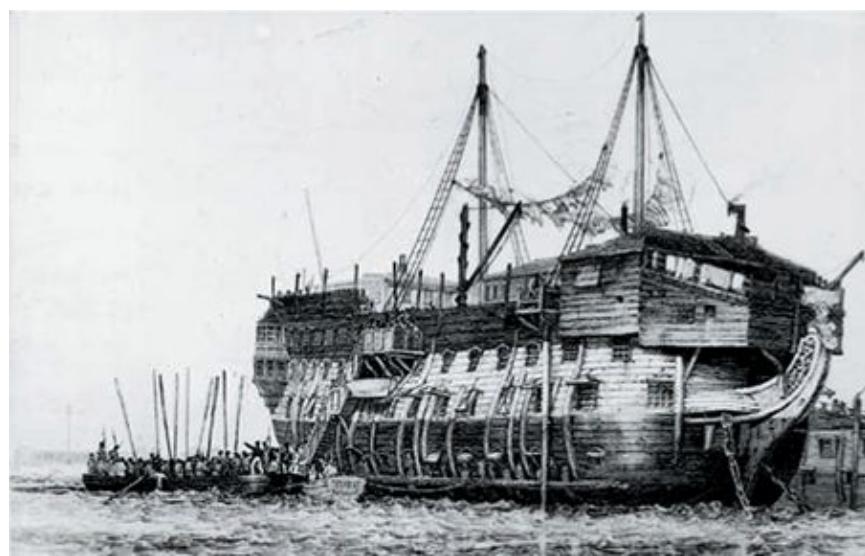
The practice of selling criminals as servants to private individuals instead of sentencing them to penal facilities.

Then, between 1787 and 1867, approximately 160,000 convicts were relocated to Australia and New South Wales from Britain and Ireland.²⁵ The French transported more than 100,000 offenders to penal colonies in French

Guiana and New Caledonia beginning in 1852 and continued this practice well into the twentieth century.²⁶

Life in penal colonies was brutal. Gallows were prominently displayed; criminals ate, slept, and worked in irons; officials used the whip, gag, solitary confinement, and other forms of torture regularly and required subservience of all criminals all the time.²⁷ Charles Anderson, age 18, was sentenced to 7 years transportation to a penal colony in Australia for breaking into some shops in England. The following excerpt vividly illustrates what happened after he tried to escape:

Recaptured, he received 100 lashes and, on being returned to Goat Island, another 100, and was ordered to wear irons for twelve months. During that twelve months, he received in all 1,200 lashes for the most trivial offences, such as looking up from his work. He page 352 escaped again, and this time was sentenced to 200 lashes, to which 100 more lashes were added by a sentence which directed as well that he be chained to a rock for two years. He was put in irons, and attached to the rock by a chain twenty-one feet long. A hollow in the rock served him for a bed, and at night a wooden lid, perforated with holes for air, was put over him and locked into position. His food was pushed into his eating vessel on a pole. Other prisoners were forbidden to speak or approach him under penalty of 100 lashes. His wounds became maggot-infested but he was refused water with which to bathe them.²⁸



▲ **Prison Hulk**

In England during the 1700s, individuals convicted of crimes were incarcerated on the abandoned hulks of ships.

Time Life Pictures/Mansell/The LIFE Picture Collection/Getty Images

“A Global View” provides a look at the practice of transportation today and the evolution of penal colonies. Isla Maria Madre is a contemporary Mexican penal colony that embodies the correctional goals of rehabilitation and reform.

A **Global** View

The Legacy of Penal Transportation and Isla Maria Madre Federal Prison

For the most part, penal colonies are a thing of past. One exception is the unique modern-day prison on Isla Maria Madre in the Pacific Ocean, off Mexico’s coast. In the early 1900s, the island prison held Mexican inmates who had been sentenced to a life of hard labor. Of the 3,000 male prison inmates on Isla Maria Madre today, most are serving sentences for drug trafficking.

In the present day, the prison is humane and has no cells or bars. The 36 correctional officers carry no guns, and inmates, who are called colonists, wear regular clothing. Furthermore, in sharp contrast to the prison’s earlier times, the corrections philosophy behind today’s Isla Maria Madre seeks to keep families and loved ones together during an inmate’s period of incarceration. Indeed, while prisoners complete their sentences—which are often lengthy—their families can live with them in houses and communities similar to those in many small Mexican towns. There are about 600 children on the island, and they go to public schools. Children, however, are sent back to the mainland by the age of 14. The prison operates as a family man work camp with each inmate subject to three roll calls a day.



Juan Garcia/MCT/Newscom

The correctional philosophy of Isla María Madre is one of humane rehabilitation and reform. To this end, the Mexican government provides a setting that closely approximates a normal community. In comparison to a typical prison, Isla María Madre is expensive to operate: The cost of incarcerating a prisoner at Isla María is about three times higher than that in other Mexican prisons. This is largely due to the expense of transporting goods to and from the island and the need to provide services not only for the prisoners but also for their families. The inmates' experiences are poles apart from those of the criminals who were transported to Australia, the American colonies, and French Guiana. The Isla María Madre prisoners are closely connected to their families throughout their incarceration—a support system necessary for successful rehabilitation. The Mexican government is exploring the possibility of building an isolation model maximum-security prison on an adjacent island known as María Magdalena. It would be used to better control major drug kingpins.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Would the United States benefit from exploring the use of prison colonies such as Isla María Madre? What factors would contribute to the success or failure of such an experiment?
- How do practices on Isla María Madre contrast with what you know of those at the U.S. military penal colony at Guantánamo Bay, Cuba?
- What are the pros and cons of housing family members in a penal colony? Do the benefits outweigh the disadvantages? Explain.

SOURCES: Stephen A. Toth, *Beyond Papillon: The French Overseas Penal Colonies, 1854–1952* (Lincoln: University of Nebraska Press, 2006); Mary Jordan, “Convicts Are Condemned to a Paradise

in Mexico," *Washington Post Foreign Service*, February 3, 2002, p. A22; American Correctional Association, *The Mexican Penal Colony at Islas Maria* (College Park, MD: ACA, 1981); Lawrence Iliff, "Mexico May Create Island Penal Colony for Drug Lords," *Dallas Morning News*, October 2007. www.banderasnews.com/0710/nr-narcoisland.htm (retrieved January 21, 2013).

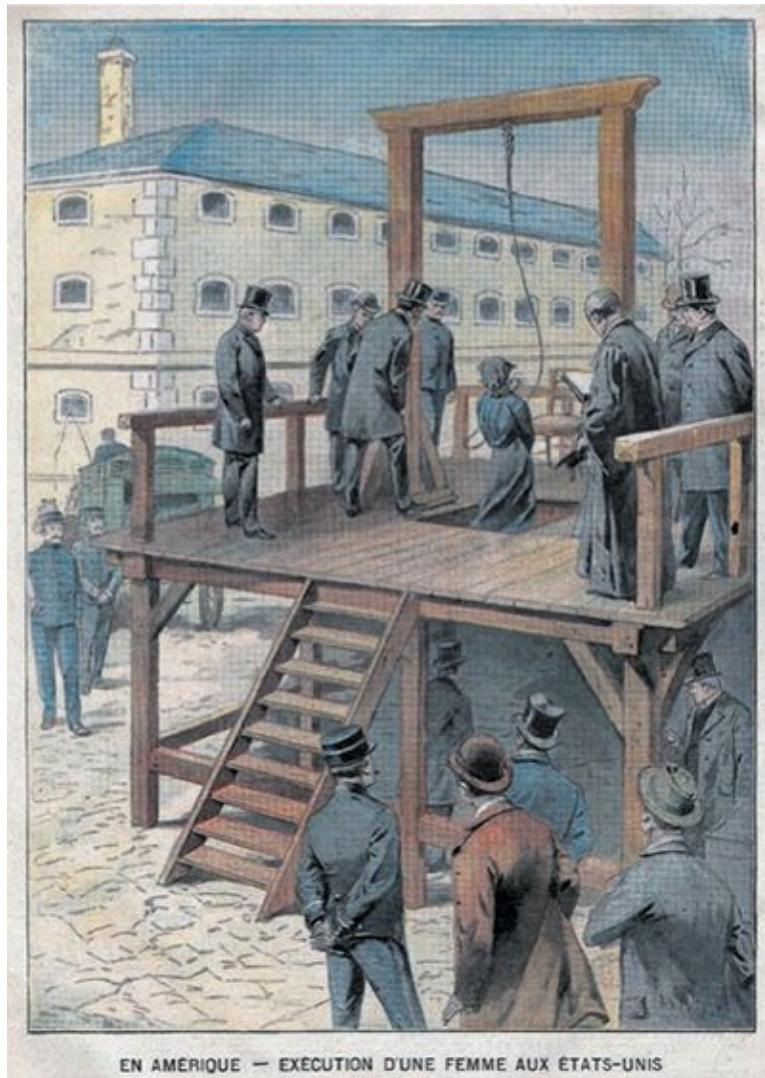
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Hulks

With the coming of the American Revolution, the British could no longer export convicts to the American colonies. Instead, they used abandoned ships, docked in British harbors, to house prisoners from the late 1700s through most of the 1800s. These abandoned ships, called **hulks**, were reconfigured as enormous holding blocks in which offenders were chained. Essentially floating dungeons, hulks perpetually stank, and a gallows was often found at the front of the vessel.²⁹ Food was scarce and frequently contaminated with mold and insects. Unsanitary conditions promoted the spread of disease. The life expectancy of prisoners held in such conditions was short. The practice of confining offenders in hulks continued for approximately 15 years until Britain began transporting convicts to Australia. Although viewed at the time as a desperate stopgap measure, hulks anticipated the modern prison in their use of incarceration as punishment.

hulks

Abandoned ships that functioned as enormous holding blocks within which offenders were chained.



EN AMERIQUE — EXÉCUTION D'UNE FEMME AUX ÉTATS-UNIS

▲ Public Punishment

Punishments during colonial times were often public spectacles.

Leemage/Universal Images Group/Getty Images

Jails in Colonial America

The term *jail* comes from the old English word *gaol*—a place of imprisonment. We can trace jails as a local form of institutional corrections back to at least 1166 in England, when Henry II ordered the construction of facilities to detain offenders awaiting trial or to carry out their sentence—typically torture, mutilation, or execution.

Prior to the development of prisons in the United States, most local jail facilities were ordinary houses—literally, *jail-houses*—without cells, where suspects were given rooms while awaiting trial. Early jail keepers were civilian

citizens or sheriffs. Many were abusive and often took bribes from inmates and their families for extra money to feed, clothe, and care for prisoners' needs. All prisoners were confined together, regardless of sex, age, or the nature of the crimes of which they were accused. As the number of offenders grew, overcrowding, poor sanitation, disease, and escape attempts were commonplace.

By the time of the American Revolution, local jails in the colonies were largely used as holding pens for suspected thieves, debtors, and murderers. Most of those confined could anticipate some form of physical, or *corporal*, punishment, such as whipping or being held in wooden stocks in public arenas, or execution. English common law (the basis of the U.S. legal system) specified that hundreds of crimes be punished in these ways.³⁰

Debtors who were confined in jail were freed during the day so that they could work to pay off their debts, but they had to return at night. Once convicted, debtors had difficulty regaining their freedom because their forced labor was needed in the workforce. In 1785, half the persons sentenced to jail in Philadelphia were debtors. Although debts were generally small, even individuals found not guilty were required to pay court fees before being released. This expense was often more than they could afford, but release from custody was not possible until all debts and fees were paid.³¹

In the Pennsylvania colony, the dominant Quaker population did not believe in harsh punishment, torture, or, in most cases, death for wrongdoers. Instead, the Quakers embraced reform. In 1682, under the leadership of William Penn, the Quakers developed a new penal code based on advanced European ideas and humanitarian thought. Penn's code, known as the *Great Law*, used imprisonment as the major penalty for offenses previously page 354punished by torture, mutilation, and death.³² In the next section, we examine how the Pennsylvania Quakers influenced prisoner confinement in the first U.S. prisons.

HISTORY OF CORRECTIONS IN THE UNITED STATES

Following the American Revolution, some prisons were built solely as confinement facilities. Philosophically, these institutions were rooted in the punishment model. Indeed, prison administrators did not believe that they could change criminal behavior in any way, so they made no pretense of

reforming or rehabilitating offenders. The prisons were intended only as alternatives to capital punishment and as deterrence for offenders and others to committing future crimes. One such institution was the Newgate Prison in Connecticut, basically a large hole in the ground where inmates lived like lepers without any supervision or care.³³ The hole was in fact the remnant of an old copper mine that became a prison in 1773.³⁴

The Pennsylvania System and the Penitentiary

As a reaction to the harsh, dehumanizing conditions of New World prisons, the Pennsylvania Quakers sought to reform the system. They established Pennsylvania as a colony with a constitution that guaranteed freedom of religion and a new penal code. Reform-minded, the Quakers embraced the rehabilitation model, believing that in the right circumstances, criminal offenders could be changed. The Quakers strongly opposed corporal and capital punishment.³⁵ In 1787, a group of Quakers formed the Philadelphia Society for the Alleviation of the Miseries of the Public Prisons; the aim of the group was to remove cruelty from the institutional process. The Quakers believed that criminals could be reformed if they were isolated and segregated in complete silence, conditions that would give them time to reflect on their crimes and to repent.

As a result of pressure from the Quakers and their prison reform group, a Philadelphia institution called the **Walnut Street Jail** opened a special wing in 1790.³⁶ This wing was the first public institution to use imprisonment as the primary method of reforming offenders.³⁷ A guiding principle for the new facility was the idea that isolation and solitude would lead to offender reform. In a crude attempt to classify prisoners, officials tried to ensure that women, vagrants, capital offenders, and debtors did not intermingle.³⁸

Walnut Street Jail

The first public institution to specifically use imprisonment as the primary method of reforming offenders.

Many scholars consider the Walnut Street Jail to be the first **penitentiary**, a term the Quakers coined from the word *penitent*, meaning sorrowful for one's sins or wrongdoings. Labor was seen as a necessary component of the system and was intended not for reform or training but as a way for the state to be reimbursed for the cost of operating the jail. Although the Walnut Street Jail seemed successful in its first decade, the experiment ultimately failed,

primarily due to overcrowding. In 1817, the Philadelphia Society began to plan a new prison system for Pennsylvania.³⁹

penitentiary

Coined from the word *penitent*, the Quakers' term for a residence where offenders would be sorrowful for their wrongdoings.

The planners specifically designed a new penitentiary to reform inmates according to the principles of absolute solitary segregation. The result was the Western Penitentiary, built in 1826 in the outskirts of Pittsburgh. [page 355](#)
Three years later, in 1829, the Eastern State Penitentiary (also called the Cherry Hill Penitentiary) was constructed in Philadelphia. The blueprint for these facilities called for small, self-contained solitary cells in which inmates slept, worked, and ate. New inmates were taken blindfolded to their cells and given a Bible. They saw only their keepers and were not allowed to communicate with one another. Nor could they leave their cells, except under unusual circumstances, until they completed their entire sentences. This system is now called the **Pennsylvania system** but is also sometimes referred to as the *Philadelphia system* or the *solitary system*.

Pennsylvania system

A system of prison administration in which inmates lived in solitary confinement, total silence, and religious penitence as the way to prevent future criminal behavior.



▲ Early Prisons

The first U.S. prisons were harsh environments.

Maurice Savage/Alamy

Under these conditions of near-total isolation, some of the prisoners developed mental disorders. In his 1842 visit to the United States, English novelist Charles Dickens described the Pennsylvania system and the effects of using solitary confinement on the mind and spirit of inmates. Although Dickens believed that the prisons he visited were originally developed to reform criminals into law-abiding citizens, he saw the system as going astray:

I am persuaded that those who devised this system of Prison Discipline, and those benevolent gentlemen who carry it into execution do not know what they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; ... [and] I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow-creature. I hold this slow and daily tampering with the

mysteries of the brain to be immeasurably worse than any torture of the body.⁴⁰

Contemporary research bears out Dickens's concerns and criticisms. Indeed, psychological damage to prisoners held in solitary confinement has been well documented (see Chapter 12).⁴¹

The Auburn System

In New York City's Newgate Prison (named after the infamous copper mine prison in Connecticut), which opened in 1797, inmates worked in groups during the day and were confined in apartment-like spaces during the night. Newgate became so severely overcrowded, however, that by 1809 the governor was forced to pardon prisoners just to make room for new inmates. The legislature thus authorized the building of a new prison in the New York State interior. Auburn State Prison, established in 1816, became the model for the **Auburn system** of prison administration.⁴²

Auburn system

A system of prison administration in which prisoners were isolated in cells at night but allowed to congregate during the day for work duty and meals, but in total silence.



▲ Auburn Prison

Prisoners moved in lockstep at Auburn Prison.

Both the Pennsylvania and the Auburn systems were based on reformation, and both relied on the completely separate confinement of inmates from one another.⁴³ The basic philosophy of each system was noncommunication among prisoners.⁴⁴ This policy was said to reduce “contamination” from other inmates.⁴⁵ But the Auburn system differed from the Pennsylvania system in one key way. Once the Pennsylvania inmates were taken to their cells, they never, until the day they were released, encountered another human being other than the official who brought them their food. They were totally and page 356 completely isolated. In the Auburn prison system, although the prisoners were isolated in cells at night, they congregated, in silence, during the day for work duty and meals. The Auburn system thus came to be known as the *congregate* (or *silent*) *system*.

The Auburn buildings featured blocks of small individual cells placed back-to-back and reaching five tiers high, a design that was cheaper to construct than that of the Pennsylvania prisons. Auburn also was more efficient in guarding and administrating congregate labor.⁴⁶ The officials believed that severe discipline would reform the inmates under their care. When they were out of their cells and working together, inmates were forbidden to exchange words or even glances with one another. They wore striped suits, walked in lockstep to allow guards tight control while moving groups of inmates, and were frequently subjected to corporal punishment such as beatings and floggings.⁴⁷ Although Pennsylvania had done away with corporal punishment, at Auburn it became *the* method to maintain strict discipline.⁴⁸

Between 1830 and 1850, people everywhere seemed to be debating which was the better system. Prison development and the need for reform garnered a great deal of attention both in the United States and in Europe. Many European prisons came to adopt the solitary Pennsylvania system, as reformers on the continent believed it to be more humane than the Auburn system, which to them seemed too harsh and impersonal. The Europeans also objected to the increasing use of corporal punishment in the Auburn system.

Most U.S. prisons, on the other hand, came to be modeled on the congregate Auburn system—not because of its correctional philosophy but for economic reasons. The Pennsylvania system needed cells large enough to accommodate an inmate 24 hours a day. Such enclosures were expensive to build and maintain compared with the Auburn cells, which were used only at night for sleeping. Furthermore, the small amount of money from the sale of handicrafts

made by prisoners in their cells in Pennsylvania did not yield enough income to support the prison. By contrast, the Auburn inmates who congregated for work generated considerable income for the prison.

In fact, an important aspect of the Auburn model was its work system—in which, essentially, a factory within the prison used convict labor to make goods for the private sector. An outside businessperson paid the prison—not the working inmate—a daily rate in accordance with the number of inmates doing work. A convict leasing system evolved, and soon other prisons in New York adopted the Auburn model. Under this convict leasing arrangement, private bidders leased prisoners for their labor, and private companies ran factories within the prison walls.⁴⁹ Revenues for the prison were a foremost concern; the welfare and reformation of the prisoner was of secondary importance. The Auburn model dominated the U.S. prison system until the early 1900s.

In reality, neither the Auburn nor the Pennsylvania system met the hopes of those who initially attempted to reform the correctional system. Prisons soon became overcrowded, and correctional officers had increasing difficulty maintaining control over inmates, leaving early reformation ideals to fall by the wayside.

The Reformatory System

By the 1860s every state but Pennsylvania had adopted the congregate system. By that time, overcrowding, cruel treatment, and corruption undermined the effectiveness of many established penitentiaries in the United States. Two and three prisoners were housed in cells designed for one, and brutal punishments were again a feature of incarceration. Money earned by inmates would often end up in administrators' pockets. The original philosophy of these prisons—noncommunication—faded away, and the prisons degenerated into institutions that used cruel regulations to maximize the productivity of their prison industries.⁵⁰

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Life at Auburn, for example, became a living hell. A report on prison conditions stated, “Within an atmosphere of repression, humiliation, and gloomy silence, the Auburn convict performed an incessantly monotonous round of activity.”⁵¹ Sing Sing Prison, also in New York and modeled after Auburn, was even worse. Legislative investigations found that some guards had wrapped their whips with wire; others had used them on the genitals of

inmates, often without reason.⁵² From such abuses a movement for reform emerged.

In 1870, the New York Prison Association issued a highly critical report on penal methods and recommended specific reforms. In the belief that the purpose of a prison should be to reform, not to punish, the association argued that an inmate's sentence should be based on how well reform is progressing. Thus, a primary recommendation was a call for indeterminate sentences—effectively telling prisons that rehabilitation was to be at the forefront of their mission and that the sentence was in the hands of the individual prisoner. Good behavior would bring early release.

New York's **Elmira Reformatory**, built in 1876 and guided by Zebulon Brockway as its superintendent, was based on principles of rehabilitation. Elmira called itself a reformatory to underscore its emphasis on reform rather than punishment. Reformatories rejected the nineteenth-century philosophies of silence, obedience, and labor. Instead they stressed rehabilitation through education, indeterminate sentences with maximum terms, and the opportunity for parole. Elmira's philosophy was so popular that many believed that it would become the dominant model for U.S. prisons. Education, central to the reform program, would include "general subjects, sports, religion, and military drill."⁵³

Elmira Reformatory

A New York reformatory that emphasized rehabilitation rather than punishment.

Whereas correctional officers in the early prisons just needed to be tough and firm, the new system called for specific training; while old-style prison cells were small, the reformatory required larger cells, state inspections, and preparations for release. In addition, all physical punishments were to be banned.⁵⁴ These ideas became so popular that the principles of the reformatory movement soon spread throughout the country, though without many of the practices necessary to make them work. For example, every state adopted the practice of classifying prisons and inmates to fit them to individualized programs, but most institutions did little to differentiate these inmates and put them into specific rehabilitation programs.⁵⁵

By the early twentieth century, many states had built institutions they called reformatories, although some were reformatories in name only.⁵⁶ In fact, most U.S. prisons, including those associated with the reformatory approach, were no more than "custodial warehouse[s] for social refuse."⁵⁷ Ultimately, the reformatory model fell from favor. Trained personnel to implement the

educational and classification systems were scarce,⁵⁸ and the programs that were offered affected only a small portion of the prison population.⁵⁹

The U.S. reformatories' failure to achieve lasting success stemmed primarily from overcrowding. Within two decades of its construction, Elmira, for example, held more than twice the number of inmates it had been designed to house, making effective rehabilitation programs impractical. Moreover, Elmira's program was intended for youthful, first-time offenders, but the institution incarcerated many older, hardened criminals—one-third of whom were repeat offenders. In the end, the reformatory movement did not live up to its billing.⁶⁰

The reformatory movement had a greater impact in Europe. In 1897, Sir Evelyn Ruggles-Brise came to the United States to study the Elmira Reformatory so as to gain insight on reforming the English prison system. Upon returning to England, he established what became known as the *Borstal system*, incorporating the principles of the reformatory model and targeting offenders ages 16–21.⁶¹ Ultimately, the Borstal system had a stronger influence on corrections and the treatment of juveniles than the reformatory movement that had inspired it.⁶²



▲ Prison Metal Shop

Inmates produce license plates and other items in prison metal shops.

Daniel Loh/AP Images

The Industrial Prison System

The course of correctional history has seen pendulum swings back and forth between rehabilitation and punishment. Following the failure of the reformatory movement, the pendulum swung back to punishment and away from treatment and rehabilitation.

The beginning of the twentieth century saw a return to the earlier practice of establishing prison industries. Using strict discipline and regimentation, prison administrators capitalized on the availability of free inmate labor to subsidize the cost of running the institution. Goods made by prisoners were sold on the open market, outside the walls of the penitentiary.⁶³ In these **industrial prisons**, or prison factories, administrators focused on creating a productive work environment rather than on prisoner rehabilitation. However, the need to establish order to maximize productivity made conditions in prisons more oppressive and violent in these years.⁶⁴ Much of the rationale for the industrial prison system was to use inmate labor to reduce the prison's costs.⁶⁵

industrial prison

A prison factory where the focus was on creating a productive work environment rather than the rehabilitation or reform of prisoners.

In the southern states, where Blacks made up more than 75 percent of the convicts, the industrial prison became little more than a setting for institutionalized slavery. Southern states leased prisoners to private parties outside the prison, who frequently misused them. Prisoners were organized into chain gangs to work on roads and were also used as a labor force on large farms and plantations. The buildings that housed prisoners were little more than small cages.⁶⁶

Prison labor served to meet the institution's needs while giving little back to the inmate other than the most rudimentary vocational training. In the context of the larger U.S. economy, however, the output of prison factories was eventually so significant that labor unions complained about unfair competition from the prison industries. Consequently, federal legislation brought the widespread use of prison labor to an end in the 1930s.⁶⁷ In 1979, Congress relaxed these legal restrictions somewhat by passing the Percy Amendment, which allowed private companies to employ prisoners under specific conditions.⁶⁸ In an example of privatization of prison labor, Whole Foods

contracted with the Colorado Corrections Industries where inmates produced fish and cheese that allowed this private food company to profit. A major controversy ensued and the practice ended in 2017. However, some other companies that have used or use inmate labor to increase company profits are McDonalds, Walmart, Victoria's Secret, At&T, Starbucks, American Airlines, Microsoft, and Nintendo.⁶⁹

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The Therapeutic Prison

With the popularity of psychology and psychoanalysis growing in the United States during the twentieth century, the concept of treatment caught the attention of prison reformers. In corrections, this therapeutic emphasis meant that, based on the **medical model**, prisoners needed treatment. According to this perspective, people, if not healthy, are ill. This model was gradually popularized during the nineteenth century, when mental illness and behavioral problems began to be viewed as diseases. However, the medical model was not implemented in the corrections field until the late 1920s, when inmates came to be seen as mostly “sick” individuals in need of treatment. In other words, criminals were “mad,” as in mentally ill, rather than “bad.” The “symptoms” of their disorders were their crimes, and it was believed that their condition could be treated by giving them programs and services while incarcerated.

medical model

A viewpoint focusing on mental illness and behavioral problems, such as committing a crime, as diseases.

The therapeutic prison gained momentum in the 1930s, giving rise to a widespread practice of diagnosing and classifying inmates. This practice established a place for psychologists and psychiatrists in U.S. prisons. Group therapy (dealing with offenders in groups rather than individually), behavior therapy (using rewards and punishments to change behavior), and aversion therapy (using noxious or painful stimuli to remove unacceptable behaviors) were just a few of the many treatment approaches to grow out of the therapeutic movement. By the mid-1960s, therapeutic programs had reached the height of their popularity in U.S. prisons.

As the 1960s came to a close, however, doubts were raised about the effectiveness of such programs to treat and “cure” offenders. The rehabilitative ideal lost favor with both the public and correctional administrators. At the

same time, the rapidly growing prison population diverted existing resources to institutional management, and funding for treatment programs faded from prison budgets.⁷⁰ Following several disturbing and brutal prison riots in the United States during the 1970s and 1980s, public opinion shifted from the plight of prisoners and focused instead on more punitive policies, replacing what had been widespread support for treatment programs.

The death knell for the rehabilitative ideal in U.S. prisons was the **Martinson Report** of 1974. Sociologist Robert Martinson, along with colleagues Douglas Lipton and Judith Wilks, analyzed published studies on the therapeutic effectiveness of more than 200 treatment programs. In looking at this broad picture, Martinson concluded that “with few and page 360 isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.” He found that certain treatments were effective for some kinds of inmates. His conclusions, however, came to be summarily reduced to “nothing works”—although Martinson himself never wrote these words.⁷¹

Martinson Report

A report, published in 1974, indicating that rehabilitative efforts, for the most part, were having little to no effect on recidivism.



▲ Lucasville Prison Riot.

Aftermath of a 10-day riot in April 1993 in Cellblock L of the Southern Ohio Correctional Facility in Lucasville, Ohio.

Lennox McLendon/AP Images

Selected Events in Corrections History

Trends and patterns in the history of corrections

1000 CE—1300 CE

Secular and church law ordaining harsh punishments for criminals evolves during the Middle Ages.

1553

Bridewell workhouse is initiated for vagrants and the homeless.

1619

Transportation of British convicts to the North American colonies begins.

1790

Walnut Street Jail opens the country's first penitentiary wing.

1816

Auburn Prison is built in New York State.

1826

Western Penitentiary is built in Pittsburgh, Pennsylvania.

1829

Eastern State Penitentiary opens in Philadelphia.

1873

First women's prison, the Indiana Reformatory Institution, opens.

1876—1900

The reformatory movement is strong.

1876

Elmira Reformatory opens.

1900—1930

The industrial prison movement is strong.

1930—1960

The therapeutic prison movement dominates U.S. corrections systems.

1960—1980

The community-based corrections movement is strong.

1980—present

The incarceration movement dominates U.S. corrections systems.

The unfortunate mantra of “nothing works” gave support once again to those who argued that what criminals needed was not treatment but punishment. The

enormous negative spin around the Martinson Report dealt a severe blow to funding for correctional treatment programs. Many researchers, including Martinson himself, attempted to correct the misunderstandings surrounding the 1974 study, but the damage had been done.⁷² Indeed, correctional rehabilitation programming has not recovered. Very little is spent today on rehabilitation programs for each U.S. prisoner. Furthermore, less than 5 percent of the inmate population has access to any treatment programs.⁷³ For example, California spends about \$82,000⁷⁴ on each prisoner annually, but only about 10 percent of the \$12.1 billion Department of Corrections and Rehabilitation budget is spent on mental health and rehabilitation programs. The majority of the remaining money is expended on custody.⁷⁵

This brief history of corrections has shown how rehabilitation and punishment have seesawed in prominence over the years in the development of the U.S. corrections system. A brief chronology of selected events in this history is displayed in the table on this page. In the section that follows, we look at how prisons today make use of the various historical models of correction we have examined.

MODELS OF CORRECTIONS TODAY

The responsibility for administering institutional and community corrections today rests at local, state, and federal levels of government and sometimes in the private sector, as illustrated in Figure 11-1. When we use the term *jail* in the following pages, we are referring to local facilities used to hold individuals who are awaiting trial or punishment and to incarcerate offenders convicted of misdemeanor crimes. When we use the term *prison*, we are referring to institutions that are funded by and responsible to the state or federal government and that hold individuals who are sentenced to longer page 361 terms. Government entities also contract with private companies to operate private jails.



Whatever the type of facility, corrections has the responsibility of keeping society—and convicted offenders—safe until the offender is, ideally, transformed from a law-violating to a law-abiding member of society. People in the United States also expect corrections to punish, deliver retribution, incapacitate, and rehabilitate offenders and then to integrate them back into society. In recent years, the goal of serving victims has been added to this list.

Accomplishment of any one of these goals, let alone all, is a monumental challenge. In large measure, they represent conflicting philosophies of corrections. In response to these goals, four different operational models have developed for correctional facilities. The punishment model developed first, followed by the crime control model, then the rehabilitation model, and finally the reintegration model. In practice, today's institutions draw from all of these models to achieve results.

Punishment Model

At the core of the **punishment model** of corrections is the assumption that the offender is inherently a bad person and deserves to be placed under correctional authority for punishment. From this perspective, offenders are not seen as individuals with particular problems in need of treatment. Rather, for the most part, they are viewed as people who choose to commit crime and should thus be punished. Rehabilitation is irrelevant, except to the extent punishment has rehabilitative potential by instilling fear in an offender, deterring the offender from committing future crimes. Treatment programs are considered a waste of resources. Appropriate and timely punishment is thought to be more cost-effective.

punishment model

A viewpoint that assumes that the offender is inherently a bad person and deserves to be placed under correctional authority for punishment.

Advocates of this model lean toward severe sanctions for offenders. They charge that the criminal justice system is too soft on criminals, compromising true justice, and that retribution should be the primary goal of corrections. They oppose many of the amenities provided by prisons such as television and special recreation programs. These advocates also criticize the use of probation, parole, and other forms of community corrections to eliminate or reduce an inmate's sentence of incarceration.

The punishment model uses negative reinforcement such as fines, incarceration, confiscation of property, heavy body-chain constraints, and isolation cells to mold behavior. This model falls short of its goal, however, because recidivism rates under this system remain high. Research indicates that punishment can temporarily change behavior and make people comply, but these changes are not long-lasting.⁷⁶ Furthermore, the punishment model may eventually release antisocial offenders back into society without having had any positive or permanent impact on their behavior. The punishment model is most likely to be found in correctional institutions with high security levels.

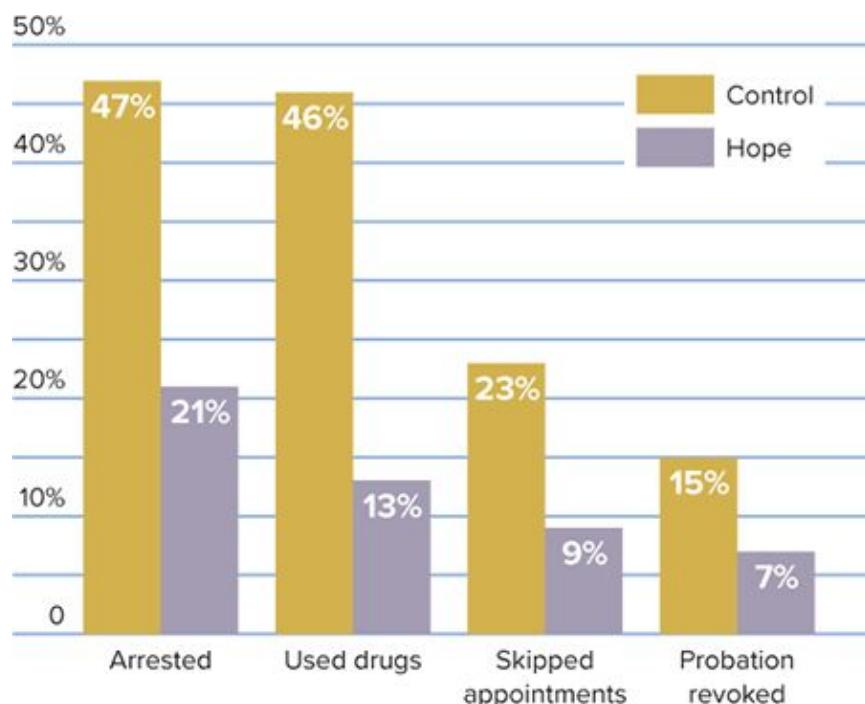
page 363

a case in **point**

Hawaii's HOPE Program for High-Risk Probation Offenders

Hawaii's Opportunity Probation with Enforcement (HOPE), an experimental probation program, began in 2004 with the goal of reducing probation violations by targeting difficult offenders like heavy drug users and domestic violence perpetrators. The program depends on the highest degree possible of offender supervision and fast tough love. Quick and certain sanctions such as on-the spot arrests are imposed for any violation that comes to the attention of authorities. Sanctions typically include brief jail time even for violations like missed appointments with probation officers. If offenders continue to transgress, they might receive progressively more jail time for subsequent breaches of rules. They also can be placed in residential treatment. HOPE differs from drug courts in that it focuses on rule violations, not

mandated drug treatment; however, treatment is available to probationers who request it or who continue to have positive drug tests.



SOURCE: National Institute of Justice, “Swift and Certain Sanctions in Probation Are Highly Effective: Evaluation of Hope Program,” February 2, 2012. <https://www.nij.gov/topics/corrections/community/drug-offenders/pages/hawaii-hope.aspx> (retrieved January 21, 2013).

Rules and consequences of the program are given to probationers by judges at the beginning. Probationers are required to call a designated hotline every weekday morning to learn if they must report to take a random drug test that day. Normally drug testing occurs weekly for the first two months.^a

To date, the results of the HOPE program have been amazing. For example, 55 percent of probationers in HOPE were less likely to be arrested for a new crime; 53 percent were less likely to have their probation revoked; 72 percent were less likely to use drugs; and 61 percent were less likely to miss probation appointments.^b

HOPE’s success is partially attributed to applying best correctional practices of having buy-in by judges, probationers, jail and law enforcement personnel, prosecutors, and public defenders (including defense attorneys)—all key players in the criminal justice system. Additionally, the success of the program is attributed to having an independent research component that publicly reports program results.^c To date, the outcomes of HOPE are so encouraging that the Bureau of Justice Assistance and National Institute of Justice have partnered to replicate the HOPE model in designated counties in Oregon, Massachusetts, Arkansas, and Texas. The replication study of approximately 1,500 probationers in the four states concluded positive results in that HOPE program probationers had fewer arrests than the control group but found they acquired more probation revocations than the control group. The researchers noted that this could have been a result of closer supervision given to the HOPE program group as opposed to the control group.^d In addition, the Research Triangle

Institute at Pennsylvania State University will do further evaluation, the results of which should be available in the near future.^e

SOURCES: ^aFriends of HOPE, “The History of HOPE Probation.” www.hopeprobation.org/ (retrieved January 21, 2013).

^bNational Institute of Justice, “‘Swift and Certain’ Sanctions in Probation Are Highly Effective: Evaluation of the HOPE Program,” February 2, 2012. <https://www.nij.gov/topics/corrections/community/drug-offenders/pages/hawaii-hope.aspx> (retrieved January 21, 2013).

^cFriends of HOPE, “Benchmarks for Success,” August 2010. www.hopeprobation.org/about/benchmarks-for-success (retrieved January 21, 2013).

^dP. K. Lattimore, D.L. MacKenzie, G. Zajac, D. Dawes, E. Arsenault, and S. Tueller, “Outcome Findings from the HOPE Demonstration Field Experiment: Is Swift, Certain, and Fair an Effective Supervision Strategy?” *Criminology & Public Policy*, 15 (2016): 1103–1141.

^eNational Institute of Justice, “‘Swift and Certain’ Sanctions in Probation Are Highly Effective.”

Crime Control Model

The **crime control model**, an extension of the punishment model, gained momentum in the United States during the early 1980s when prison building surged. Under this model, the infliction of harsh punishments on wrongdoers is not the major goal; instead, the primary goal is to suppress and contain the behavior of criminals through incarceration. “A Case in Point” illustrates an example of a corrections program that follows a crime control model.

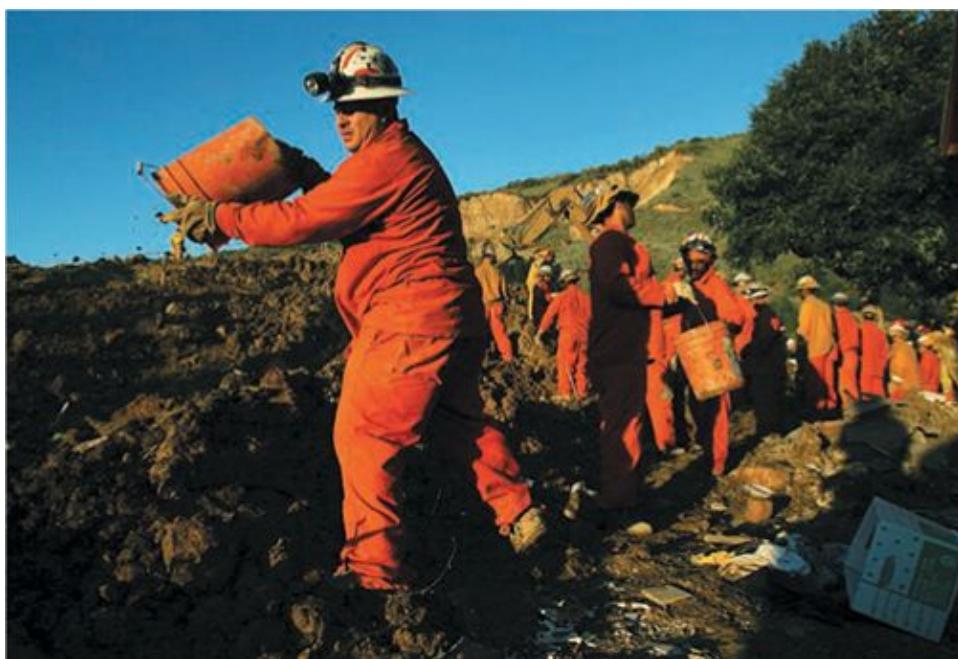
crime control model

A corrections model that has as its primary goal suppression and containment of the behavior of criminals.

Today the crime control model is used in medium-, maximum-, and supermaximum-security prisons, where the primary correctional goals are to contain and control inmates. There is little attempt to change prisoners’ behaviors, short of making them comply with rules and regulations within the walls. That is, rehabilitation and reform are not the objectives.

A drawback of the crime control model, like that of the punishment model, is that when prisons release nonrehabilitated offenders back into the community, the streets are often less safe because offenders have not learned prosocial behaviors—those that show concern for others' rights and well-being—while incarcerated. Some prisoners even learn more sophisticated crime techniques while being locked up with other offenders. The benefit of this model is that offenders are not on the streets committing crimes during their time of confinement.

The means by which offenders can be incapacitated are many. In the past, these methods included such questionable practices as overmedicating violent criminals to suppress assertive behavior, castrating sex offenders, and execution. However, today the most widely accepted and least controversial method of incapacitation is incarceration, the hallmark of the crime control model. Indeed, as crime rates rose in the 1970s, there were calls to increase the number of correctional facilities and maximize the number of inmates they house; to hire more correctional officers and give them greater page 365 power over prisoners; to reduce criminals' rights; and to push for more punitive sanctions for all kinds of offenders. The clear demand was to remove offenders from the streets so they could no longer victimize innocent citizens.



▲ Chain Gang

Prisoners are often seen working on highways in chain gangs.

David McNew/Getty Images

Real Careers



Heather Ainsworth/AP Images

ISAAC TORRES

Work location: Fresno, California

College(s): California State University, Fresno (2009)

Major(s): Criminology with Corrections Option (BS)

Job title: Correctional Officer, Population Management Unit, and Gang Officer, Fresno County Jail

Salary range for job like this: \$60,000—\$80,000

Time in job: 4 years

Work Responsibilities

My work responsibilities entail monitoring the inflow and outflow of inmates at the jail and ensuring that each inmate is appropriately housed within the facility. My workweek includes three to four 12-hour shifts that begin at 6 p.m. and end at 6 a.m. During each shift, I ensure that our inmate count is in compliance with federal guidelines to avoid overcrowding.

My unit is responsible for interviewing all newly processed inmates and assigning them a classification score by points. To do this I review the inmates' criminal history, behavior during any previous stays in the facility, nature of current charges, and any information gathered from them that would affect their safety in the facility. In addition, I respond to any institutional disturbances and investigate the need for housing changes after an incident occurs. As the designated gang

officer in my unit, I am responsible for the collection of gang information, current trends, institutional gang-related conflicts, and possible threats to the safety and security of staff, inmates, or the facility.

Why Criminal Justice?

I chose to major in criminology because I have been interested in law enforcement since my childhood. Law enforcement gives me the opportunity to have a positive impact on the lives of people who are in need. In addition, law enforcement is a well-respected and relatively stable career track that allows me to provide for my family.

Expectations and Realities of the Job

Before I started this job I was unaware that the population I would be working with had such prevalent mental health issues. The majority of the population I deal with has some sort of mental illness and/or substance abuse issue that directly affects their behavior, posing many challenges to me and my coworkers as well as threats to our safety and the safety of other inmates. It is difficult to find appropriate housing for inmates with mental health issues and to provide mental health care in a safe manner.

My Advice to Students

Enter your career with the spirit of being a team player. Sometimes collaborating with your coworkers is the only way you can get the job done.

By the late 1970s, the crime control model had become the dominant philosophy of corrections. It continues to guide current practices as a component of the tough-on-crime criminal justice response of recent decades.

Rehabilitation Model

As we saw earlier in this chapter, the **rehabilitation model** developed late in the nineteenth century in response to the harshness of the punishment model. An assumption of the rehabilitation model is *social determinism*—the idea that social factors such as poverty and lack of educational opportunities, not an individual's self-will, produce behavior. At the core of the rehabilitation model is an effort to change an offender's behavior, often using medical approaches. Thus in the nineteenth century, many forms of deviance, such as alcoholism and crime, came to be seen as treatable conditions.

rehabilitation model

A viewpoint that assumes the offender is inherently a good person and that focuses on changing the offender's behavior.

Rehabilitation can be helpful for a wide variety of crimes against persons and property precipitated by substance abuse, poverty, lack of job skills, and many types of mental illness. Intervention in the form of rehabilitation also is especially important to prevent juvenile offenders from becoming adult offenders. Rehabilitation models support programs that provide therapy, job training, and education for offenders. It is assumed that by offering these programs to those who are unable to manage themselves in society, future crimes will be prevented.

By the 1930s, correctional institutions were being developed around the medical model. Their primary mission was to treat offenders, make them better, and then return them to society as law-abiding citizens. Correctional professionals studied offenders, attempted to make accurate diagnoses, and developed treatment plans that included counseling, education, and vocational training.⁷⁷ The medical model is still used today in therapeutic community treatment programs dealing with alcohol and drug addictions. The medical model is also used to treat offenders who suffer from attention deficit disorder, other types of biologically based brain dysfunctions, and learning disabilities. It is the model of choice to treat offenders who have physical or mental illnesses. By utilizing medical model strategies and protocols, prison administrators hope to change (and perhaps cure) the offenders.

An important part of the rehabilitation model is the indeterminate sentence, which ensures that an inmate will stay incarcerated for as long as necessary to be cured. The indeterminate sentence recognizes that the length of time needed to treat and reform offenders successfully varies from individual to individual.

In addition to indeterminate sentences, a comprehensive system of classifying inmates is considered essential for effective rehabilitation. Classification is based on both the nature and the degree of risk that inmates pose for an institution and an evaluation of their specific treatment needs. This classification enables prisoners to be matched with appropriate programs designed to assist them in the reformation process.

Reintegration Model

The **reintegration model** developed gradually as a logical extension of the rehabilitation model. Its goal is to help offenders readjust and fit successfully back into the community. This objective is accomplished through supervised, structured programs that reinforce preexisting positive ties as well as through

establishing new connections with people and institutions in the community.⁷⁸ Most offenders return to their community after being released from prison.⁷⁹

reintegration model

A viewpoint that assumes that the offender must be helped to readjust and fit successfully back into the community.

In corrections, reintegration programs give offenders increased freedom and responsibility before they are released into the community without supervision. Parole is an example of a reintegration program. Another example is the **halfway house**, a loosely structured, prerelease, community-based residence that helps prisoners adjust to the community after total incarceration. Most prisons have programs that attempt to prepare offenders for release back into the community as their sentence comes to a close. Reintegration programs also are emphasized in institutions where large numbers of prisoners serve shorter sentences. Not surprisingly, many who support the reintegration model align themselves with the goals of the rehabilitation model.⁸⁰

halfway house

A loosely structured prerelease, community-based residence that helps a prisoner adjust to the community after total incarceration.

KEY CONCEPTS Principles of the Punishment, Crime Control, Rehabilitation, and Reintegration Models of Corrections

Each model approaches corrections from a different perspective and emphasizes different aspects.

	Punishment	Crime Control	Rehabilitation	Reintegration
Purpose of corrections	Retribution	Incapacitation	Behavior change	Accountability to community
Perception of offender's nature	Offender is bad	Offender is bad	Offender is human, makes mistakes, and is capable of guidance	Offender is human, makes mistakes, and is capable of guidance
Cause of offender's behavior	Free will	Free will	Social determinism	Social determinism
Treatment's role	No treatment	No treatment	Treatment needed and helpful	Treatment needed and helpful
View of offender's behavior change	Change questionable	Change questionable	Change possible	Change possible
Best practices for behavior change	Fear-producing sanctions	Incarceration	Programs	Programs

The reintegration model is based on the principles of restorative justice, a subject enjoying a great deal of attention today. **Restorative justice** focuses on the offender's responsibility to repair the hurt, damage, and injustice that the crime victim has experienced by making restitution and doing community service.⁸¹

restorative justice

A perspective that focuses on the offender's responsibility to repair the hurt, damage, and injustice that the crime victim has experienced by making restitution and doing community service.

The reintegration model holds the offender accountable to the people and communities she has injured. It seeks to return the rehabilitated offender back into society as a productive, reformed citizen who accepts responsibility for her actions, has prosocial attitudes, and no longer commits crime. See the Key Concepts feature for a comparison of the principles of the punishment, crime control, rehabilitation, and reintegration models of corrections.

PRISON POPULATIONS—WHO IS BEHIND BARS?

One in 38 adults in the United States is under some form of correctional supervision, such as probation, jail, prison, or parole.⁸² Most of these offenders—about two-thirds—are not incarcerated but are under supervision in the community.⁸³ Additionally, the U.S. incarceration rate is among the highest in the world at 658 per 100,000 population.⁸⁴ When we turn our attention to the most populous countries worldwide, the United States ranks at the top, with about 2.3 million persons incarcerated in state and federal prisons, juvenile correctional facilities, local jails, Indian Country jails, as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.⁸⁵ The United States has about 5 percent of the world's population and incarcerates about 25 percent of its people.⁸⁶ Figure 11-2 is a snapshot of the number of people locked up in the United States.

How Many People Are Locked Up in the United States?

The United States locks up more people, per capita, than any other nation. But grappling with why requires us to first consider the many types of correctional facilities and the reasons that 2.3 million people are confined there.

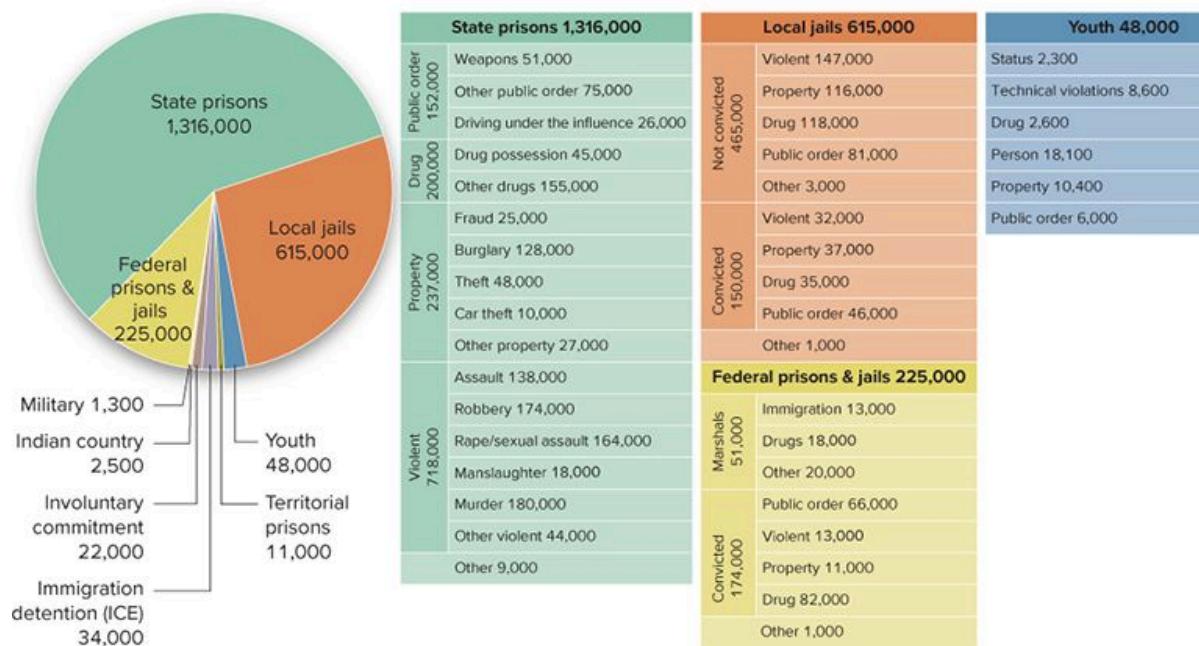


FIGURE 11-2 Numbers of People Incarcerated in the United States by Types of Facilities and Offenses Committed

SOURCE: Peter Wagner and Wendy Sawyer, "Mass Incarceration: The Whole Pie 2018, March 14, 2018," *The Prison Policy Initiative*. <https://www.prisonpolicy.org/reports/pie2018.html> (retrieved January 20, 2019).

From a global perspective, the United States incarcerates about half the world's penal population. Another country with a high incarceration rate is Russia (392 per 100,000 population). Countries with low incarceration rates include Japan (41 per 100,000 population) and Iceland (37 per 100,000 population)⁸⁷ (see Figure 11-3).

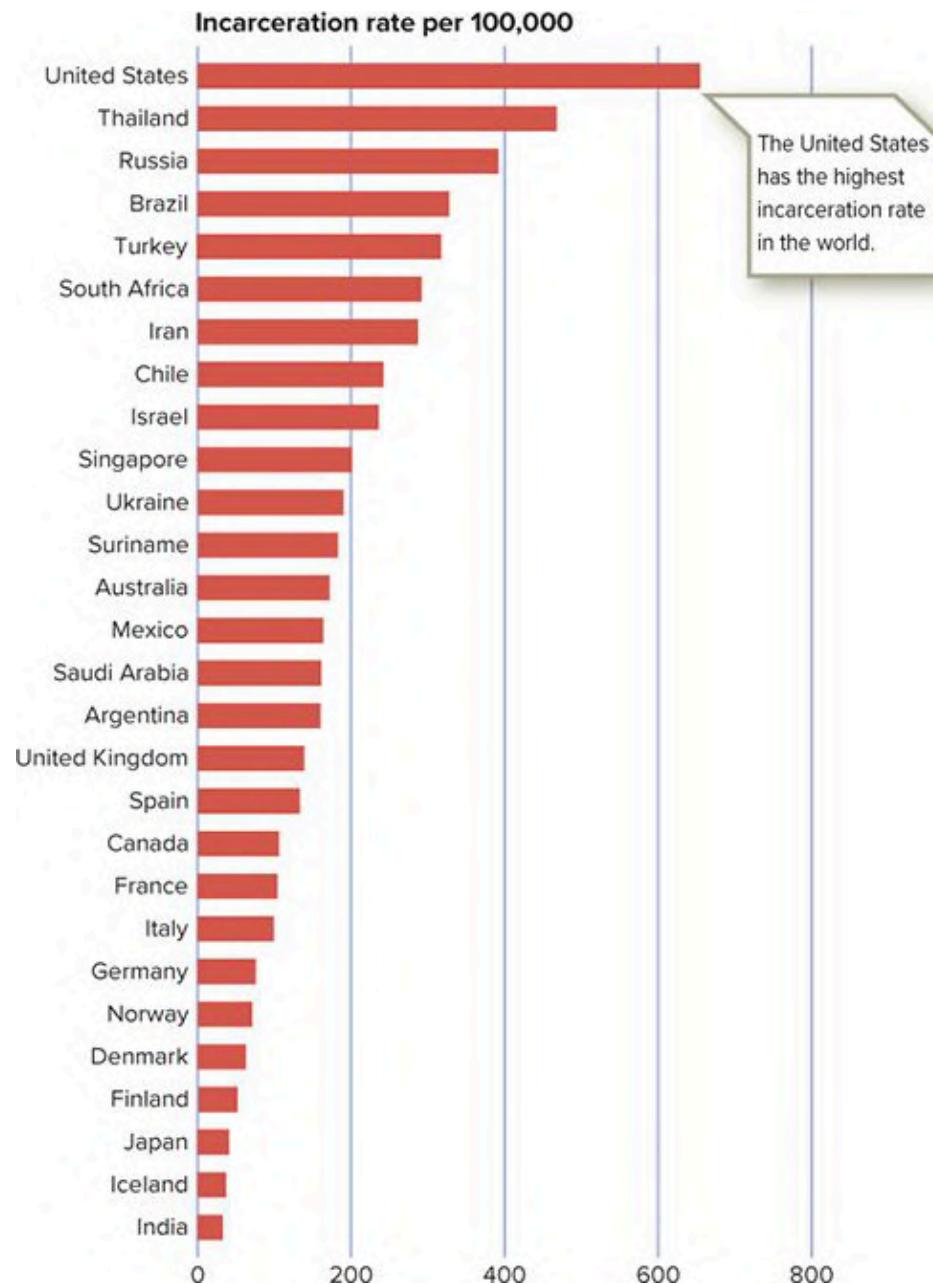
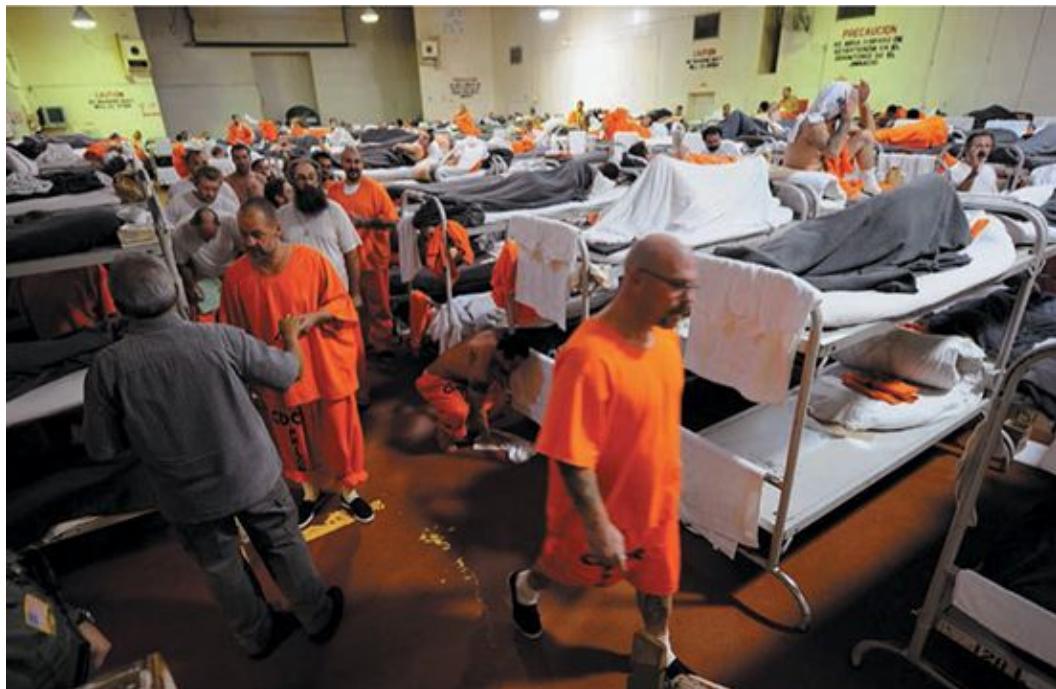


FIGURE 11-3 Incarceration Rates for Selected Countries, 2019

SOURCE: Institute for Criminal Policy Research, "Highest to Lowest: Prison Population Rate." [http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?
field_region_taxonomy_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All) (retrieved January 20, 2019).

Trends in Inmate Population Numbers

Growth in the U.S. prison population appears to be slowing. In 2016, the number of prisoners under state or federal jurisdiction in the United States started to decline as fewer individuals were being sent to prison by the courts and other factors. Since about 2010, the U.S. prison population has [page 367](#) for the most part shown a declining trend.⁸⁸ In 2016, the imprisonment rate in state and federal prisons declined by 2 percent from a year before.⁸⁹



▲ Overcrowding in Prison

When cells are not available, prisoners are double- and triple-bunked in public areas of the prison like this gym. *How does overcrowding lead to prison violence?*

Kevork Djanssezian/Getty Images

The number of jail inmates varies widely from county to county within states. Nationally, the jail inmate population has remained fairly stable since about 2011. Males represent approximately 85 percent of the national jail population.⁹⁰ However, the female jail population increased about 18 percent between 2010 and 2014 while the male jail population declined 3.2 percent during the same time frame. The female jail population appears to be the fastest-growing correctional population; however, between 2014 and 2016 the female jail population has declined somewhat.⁹¹ In 2016, the U.S. jail inmate population continued its decline since its high in 2007.⁹²

In spite of the downward national trend, California's jail population rose for a time after 2011, mainly as a result of California's Public Safety Realignment (PSR) policy, which we discuss next.⁹³

As of December 2017, California's jail population decreased 10 percent compared to October 2014 possibly revealing California's jail population is showing indications of stabilizing.⁹⁴

MYTH/REALITY

MYTH: Prisons are overcrowded because more people are committing violent crimes.

REALITY: The exploding prison population is due to changes in public policies that increase the use of prison as a sanction and that lengthen the prison sentences imposed by the courts.⁹⁵

Over the years, overcrowding has doomed every attempt at humane prison reform. Between 1970 and 1980 the prison population in the United States doubled. It more than doubled again from 1981 to 1985. These growth spurts overwhelmed both federal and state prison systems.⁹⁶ Even during periods of decreasing crime rates, prison populations have continued to increase.

For example, in the 1990s the prison population rose even though there were no increases in the rates of crimes reported either by the FBI's Uniform Crime Reports or by the National Crime Victimization Survey. In 1995, 1.75 million individuals were confined in prison or jail in the United States, and by midyear 2009 almost 2.3 million inmates were confined in these institutions.⁹⁷

The increase in prison population from the 1970s to the present largely reflects changes in public policy—changes driven by public fear. The media have highlighted sensational cases of violent crimes. News page 368 reporting has portrayed judges and parole authorities as too lenient. Both the media and politicians have taken a tough-on-crime stand that calls for more punitive and longer sentences, thus reinforcing the widespread belief that harsh punishment will reduce crime. One consequence of this changing public attitude has been that judges and parole boards have felt pressured to increase jail and prison terms as a way of assuring the public that the criminal justice system is responsive. Many state legislatures and the federal government have adopted fixed mandatory minimum sentences. Such sentencing “reforms” have left little discretion to the courts and curtailed parole release by reducing choice in parole decisions. The bottom line for prisons: overcrowding has increased.⁹⁸

However, there is evidence the tide is changing. By midyear 2015, President Barack Obama had shortened the prison sentences by executive action (commutation) of nearly 90 nonviolent, unhardened federal prisoners sentenced for drug offenses—more than any president since Lyndon B. Johnson in the 1960s. Most of the federal prisoners whose sentences were commuted were given long sentences during the 1980s and 1990s when crime rates were very high and sentences were harsher than they are now. Continuing in the policy direction of President Obama, President Donald Trump signed the bipartisan Criminal Justice Reform Act of 2018 that is frequently also referred to as the First Step Act. This legislation has given hope for early release to a large segment of federal prisoners who classify. As of 2019, federal prisoners are applying for sentence reduction and early release and it appears many will gain freedom far sooner than expected when they were sentenced. This act is positioned to significantly reduce the effects of past mass incarceration policies that disproportionately affected marginalized groups such as people of color and justice involved women.⁹⁹ In an attempt to reform the criminal justice system and abolish inequities, other reforms being considered are: easing or eliminating mandatory minimum sentencing laws, abolishing the practice of solitary confinement, eliminating requirements that make offenders identify as prisoners when applying for employment, and allowing those who have done their time to vote.¹⁰⁰

Public Safety Realignment Policy

Perhaps the most significant U.S. criminal justice reform experiment in the twenty-first century contributing to the decline of inmate populations in U.S. jails and prisons is the **Public Safety Realignment (PSR)** policy implemented in California. Major goals of realignment policy are to downsize the existing prison population, reduce prison costs, and provide treatment and reintegration services to offenders. This is accomplished by releasing nonviolent, nonserious, and non-sex offenders from state prisons to the county for supervision, and sentencing new nonviolent offenders to local jails instead of state prison. This policy is also referred to as “deinstitutionalization.” With realignment, power is shifted from the state to the counties. In a nutshell, realignment requires creating and funding of community-based correctional programs where lower-level offenders remain under the jurisdiction of county governments as opposed to state governments. Inmates released from local jails are placed under a county-directed postrelease community supervision program (PRCS) instead of California’s parole system. In addition to PSR, another factor in California’s

prison population reduction was a new law (Proposition 47) passed by voters in 2014 that reclassified some crimes as misdemeanors that had been felonies.¹⁰¹ Similarly, the federal government has plans to follow California's lead by releasing low-level, nonviolent drug offenders from its prisons in hopes of reducing prison costs.¹⁰²

Public Safety Realignment (PSR)

A policy intended to reduce mass incarceration by downsizing the prison population, reducing prison costs, and providing treatment and reintegration services to offenders.

The Supreme Court (*Brown v. Plata*) in 2011 ordered California to reduce its state prison population by tens of thousands by June 2013. California's legislature responded with the Public Safety Realignment Act of 2011, also known as AB 109 and AB 117, which will give 58 California counties \$2 billion in additional funding over a decade to fund and develop page 369 effective community-based programs that reduce recidivism. Each county can spend its portion of the money on whatever programs are determined most effective; however, counties must develop a rigorous plan for custody and postcustody. Now persons convicted of low-level, nonserious felonies serve time in county jail as opposed to prison—regardless of the length of their sentence—if they do not have serious or violent prior convictions. Furthermore, there is no more parole for low-level felons, and counties must supervise them until they are discharged. Lastly, no probation or parole violator can go back to prison for technical violations, only for a conviction of a new crime.

What about the Victim?

Implications for Victims of California's Prison Realignment Policy

In 2011, Governor Jerry Brown signed historic legislation that allowed California to address the problem of prison overcrowding. The legislation, known as AB 109 or the Public Safety Realignment Act, requires nonviolent, nonserious, and non-sex offenders who would have been sentenced to prison to be incarcerated in jail in the county within which the crime was committed. Counties also are responsible for supervising those individuals who have been released from state correctional institutions either to county jails or to local rehabilitation facilities. Although there are other provisions of AB 109, the focus herein will be on the potential for further victimization when a violent offender is classified as nonviolent and is released back into the community. A few high-profile cases have brought this issue to the forefront, and some are questioning AB 109 as a result. Furthermore, when violent

individuals are misclassified or their full violent history is not examined in the release decision, there are several ethical implications associated with community safety and further victimization.

Since its inception, some community members have called into question how AB 109 early releases will impact the community especially given that classifications are based upon the criminal's most recent crime, which may not be a violent crime and may not be indicative of a history of violent crimes. Also, some violent crimes such as intimate partner violence are not always considered violent and these individuals may be released. As a result, concerns were raised as to the potential safety threat to the community or to previous victims of repeat offenders, as is the case in intimate partner violence. Victim advocates continue to voice concerns over the release of inmates into the community, the inability to adequately monitor and supervise violent offenders, the potential for further victimization, and how to best protect the community from repeat offenders.

Since AB 109 went into effect violent crime has increased for property crimes especially motor vehicle thefts. From 2014 to 2017, California also experienced a 12 percent increase in aggravated assault and robberies in comparison to only a 3 percent increase in the other 49 states over the same period. In 2017, over 50 percent of California's 58 counties experienced an increase in violent crime and 22 counties saw increases in property crimes. Supporters of prison downsizing note that despite what appears to be an uptick in crime over a few-year period, that when looking at the height of crime in the 1980s and 1990s, crime rates are significantly reduced in California and nationwide in recent years. They further argue that there is no link or causation between prison reform laws and crime increases. Regardless of the long-term crime trends, community safety advocates are again raising concerns about AB 109 and now, several years into the reform efforts, there is already a ballot initiative slated for the 2020 ballot in California that aims at rolling back the efforts of AB 109 and other reforms that sought to reduce prison overcrowding. The 2020 ballot initiative seeks to toughen criminal penalties for some crimes such as thefts valued between \$250 and \$950 that, if passes, will be charged as felonies, will expand the definition of violent felonies, and will decrease the number of early releases for many individuals currently defined as nonviolent offenders. As other states needing to address prison overcrowding will look to the prison reforms in California for direction and answers, so to, will victim and public safety advocates as this will remain a hot button issue for the foreseeable future.

Some community members have called into question how these offenders were released into the community under AB 109. Classifications are based upon the criminal's most recent crime, which may not be violent and may not be indicative of a history of violent crimes. Also, some violent crimes such as intimate partner violence are not always considered violent and these individuals are released. As a result, there remains a potential safety threat to the community or to previous victims of repeat offenders, as is the case with intimate partner violence. Victim advocates have long voiced their concerns over the release of inmates into the community, the inability to adequately monitor and supervise violent offenders, the potential for further victimization, and how to best protect the community from repeat offenders.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do you agree with the provisions of AB 109? If not, how would you reduce prison overcrowding?
- If an offender is misclassified and/or commits a violent crime after being released, who should be responsible for the mistake? What actions should be taken to ensure that this does not occur again?
- Victims are given several rights, one of which is the right to be heard. Do you think that this right should be granted before a person is released back into the community under AB 109?

SOURCES: *California Department of Corrections and Rehabilitation Fact Sheet*, July 15, 2011. <http://www.ab109.com/wp-content/uploads/2011/08/Realignment-Fact-Sheet-CDCR.pdf> (retrieved February 12, 2013); Abbie Vansickle and Manuel Villa. “The California Experiment: The Great California Prison Experiment: Crime Is Up, The Mystery Is Why,” *The Marshall Project*. <https://www.themarshallproject.org/2018/12/20/the-great-california-prison-experiment>. December 20, 2018. (retrieved May 2, 2019); “Initiative to Toughen Criminal Penalties and Expand DNA Collection Makes 2020 California Ballot,” *Los Angeles Times*. <https://www.latimes.com/politics/essential/la-pol-ca-essential-politics-may-2018-initiative-to-toughen-criminal-1531177126-htmlstory.html> July 9, 2018 (retrieved May 2, 2019).

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Race, Class, Gender

Treating Women in Prisons ... as Second-Class Citizens of the System

How do women fare in a corrections system whose priorities are largely determined by the reality that female offenders are far outnumbered by their male counterparts? The answer to this question is particularly important when it comes to evaluating the availability and quality of medical (including mental health) care afforded to women in prison. The matter is further complicated by what common sense suggests and research shows: Females have special needs. But to what extent are prisons obligated to meet those needs? In *Estelle v. Gamble* (1976), the U.S. Supreme Court ruled that male and female inmates alike have a right to treatment. Yet incarcerated women, alone and as part of class action suits, are suing prisons for failing to provide timely and/or adequate medical care. Citing a violation of the Eighth Amendment against cruel and unusual punishment, these inmates allege they had “serious medical needs” and that prison officials exhibited “deliberate indifference” to those needs. In other words, administrators must provide timely access to needed medical care. Although this provides a guideline for determining inadequate treatment, there is no single agency to which all correctional facilities are accountable on the matter of medical care. As such we find a wide range in the quality and availability of health care services provided to inmates across the country—a situation that has invited a wave of litigation.

Binswanger et al. (2009) found that prison inmates have higher rates of chronic medical conditions (such as hypertension, asthma, arthritis, hepatitis, and cervical cancer) than the general population and that female inmates are significantly more likely than incarcerated men to report them. Male inmates can contract most of the same diseases as incarcerated women (including HIV/AIDS and breast cancer), but female prisoners are more likely to experience more severe medical problems associated with these illnesses. Bloom et al. (2008) note the higher proportion of females who enter prison with preexisting substance abuse and dependence problems—not surprising given that drug-related offenses bring so many of them to prison in the first place. In addition, mirroring the communities from which they come, female inmates are more likely to be depressed and to have posttraumatic stress disorder (related to past physical and sexual abuse) and other psychiatric problems than their male counterparts.



Jupiterimages/Getty Images

In addition, women have more special health care needs, and these needs increase with age, such as with osteoporosis and problems associated with menopause. Most apparent are the gynecologic and obstetric needs that are unique to women. Things that seem as basic as the provision of adequate sanitary supplies have become major issues in some prisons. In California, for example, recent budget cuts led to the decision to ration inmates to two tampons and one napkin for each day of their period—not sufficient for many women. This has created unsanitary conditions, not to mention increased tension among inmates given their close living quarters.

In addition to screening and medical treatment for general reproductive health, some women are pregnant when they enter prison. Nationwide, approximately 4 percent of female inmates report they were pregnant at the time of their incarceration. Beyond medical testing to confirm the pregnancy, prisons have an obligation to provide adequate prenatal care to the point of delivery of the baby (or services that may involve abortion). Many people are shocked to learn that most jurisdictions permit prisoners to be shackled to the bed during childbirth. Since 2000, only about half a dozen states have passed laws to prohibit this practice. California, for example, prohibits the use of leg and wrist restraints on women who are pregnant or who are in childbirth or recovery following the birth of a child unless there are safety concerns that otherwise dictate the particular situation.

All of the above issues gain in significance when we consider that the number of females in U.S. prisons increased more than 700 percent from 1980 to 2016—higher than the increase of males by more than 50 percent.

Although it is unfortunate that lawsuits have been a key motivator in changing the operational priorities of prison administrators, it is nonetheless encouraging to see more prison jurisdictions taking initiatives toward a more gender-responsive approach to the needs of female offenders.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Beyond the fact that there are so many fewer women than men in prison, what other reasons can you think of that have served to perpetuate the generally poor medical services offered to incarcerated women?
- In today's economy there are many people who cannot afford and therefore do not have access to adequate health care. Do you think it is fair that convicted criminals are given medical services that other law-abiding citizens do not have?
- Do you think there should be a single (national) agency to establish and monitor health care standards for incarcerated women? What would be the advantages of such an agency? Why might it not be a good idea?

SOURCES: *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251, 260 (1976); Correctional Association of New York, Women in Prison Project, "Women in Prison Fact Sheet" (April 2009). www.correctionalassociation.org/resource/women-in-prison-fact-sheet (retrieved March 17, 2013); "California Women Prisons: Inmates Face Sexual Abuse, Lack of Medical Care and Unsanitary Conditions," *Huff Post*, Los Angeles, August 3, 2011. www.huffingtonpost.com/2011/06/03/california-women-prisons_n_871125.html (retrieved March 17, 2013); Barbara E. Bloom and Stephanie S. Covington, "Addressing the Mental Health Needs of Women Offenders" (La Jolla, CA: Center for Gender & Justice, 2008). <https://www.centerforgenderandjustice.org/assets/files/FinalAddressingtheMentalHealthNeeds.pdf> (retrieved March 17, 2013); I. A. Binswanger, P. M. Krueger, and J. F. Steiner, "Prevalence of Chronic Medical Conditions among Jail and Prison Inmates in the USA Compared with the General Population," *Journal of Epidemiology and Community Health* 63, no. 11 (November 2009): 912—919. www.ncbi.nlm.nih.gov/pubmed/19648129 (retrieved March 16, 2013); Columbia Human Rights Law Review, "Special Issues of Women Prisoners," Chapter 41, in *A Jailhouse Lawyer's Manual*, 9th ed. (2011). <http://jlm.law.columbia.edu/files/2017/05/53.-Ch.-41.pdf> (retrieved March 17, 2013); Adam Liptak, "Prisons Often Shackle Pregnant Inmates in Labor," *New York Times*, March 2, 2006. www.nytimes.com/2006/03/02/national/02shackles.html?pagewanted=5&_r=50 (retrieved March 17, 2013); National Resource Center on Justice Involved Women, "Fact Sheet on Justice Involved Women in 2016." <https://cjinvolvedwomen.org/wp-content/uploads/2016/06/Fact-Sheet.pdf> (retrieved May 11, 2019).

Some of the factors that contributed to realignment were astronomical incarceration costs, declining revenues resulting in budget cuts, historic reduction in crime rates, court rulings forcing states to reduce the prison population, and demands of citizens, public safety professionals, and legislators for scientific, evidence-based practices that result in proven lowered recidivism rates. Some examples of evidence-based practices that have promise of success are flash incarceration (certain and swift detention in county jail because an

offender violated postrelease supervision conditions), community-based services, day courts, drug courts, and better risk assessment tools.

Time will ultimately tell if realignment will live up to its goals. Before realignment, the maximum sentence in county jail was one year. Now that lower-level felons serve sentences in county jail, this has changed—there is no limit on the amount of time these offenders can serve. In the meantime, California state prisons are releasing low-level felons back to counties for handling, and counties are doing their best to deal with the tidal wave of offenders coming back into the community.¹⁰³ The “What about the Victim?” box illustrates some of the problems that are emerging as a result of Public Safety Realignment in California. (See Chapter 12 for information on specific problems in jails and prisons are experiencing as a result of realignment and Chapter 13 for realignment’s implications for community-based corrections.)¹⁰⁴

Differences by Gender and Race

There are vast and continuing differences in jail rates and in state and federal prison incarceration rates by gender. Males account for about 93 percent of all inmates and females account for about 7 percent. Since 1980, the number of female prisoners has been increasing at a rate 50 percent higher than the number of male prisoners.¹⁰⁵ At the end of 2016, there was an increase of more than 700 female prisoners sentenced to more than a year in state or federal prison than in 2015.¹⁰⁶ With regard to jail populations, female inmates increased 48 percent between 1999 and 2013, making them the fastest growing correctional population.¹⁰⁷ Furthermore, although White females comprise the majority of the female prison population, the imprisonment rate for black females (97 per 100,000 black female residents) was almost double the rate for white females (49 per 100,000 white female residents).¹⁰⁸ As public safety realignment policies are being enforced, we may see declines in imprisonment rates for both men and women.¹⁰⁹ See the “Race, Class, Gender” box for a discussion of some of the distinctive medical issues incarcerated women experience.

The fact that there have always been more male than female offenders within the criminal justice system has given rise to the *chivalry hypothesis*—the belief that women offenders are treated differently from male offenders by law enforcement, the courts, corrections, and victim services. The assumption behind this hypothesis is that women are either good and in need of male guidance and gentle protection, or bad and in need of extreme punishment.

Examples of male chivalry may be a stronger inclination for male police officers not to arrest women and a greater tendency for male judges to give females release on bail, to dismiss cases involving females, and to grant women lighter sentences.¹¹⁰ In the age of the “Me Too” movement, the chivalry hypothesis may be less likely to be acted upon than in the past.

Not only are males disproportionately represented in U.S. jails and prisons—so are people of color. In 2016, approximately 27 percent of White males, 32 percent of Black males, and 22 percent of Hispanic origin males were imprisoned in state and federal prisons, as Figure 11-4 illustrates.¹¹¹ In comparison, in that same year, 47 percent of U.S. jail inmates were White, 35 percent were Black, and 15 percent were Latino.¹¹² However, it ^{page 372} should be noted that imprisonment rates between 2015 and 2016 declined for each of the following racial and/or ethnic groups: Blacks (4 percent), Whites (2 percent), and Hispanics (1 percent). When we look back a decade to 2006 and compare imprisonment rates, we find that Black imprisonment rates declined 29 percent, White imprisonment rates declined 15 percent, and Hispanic imprisonment rates declined 20 percent.¹¹³

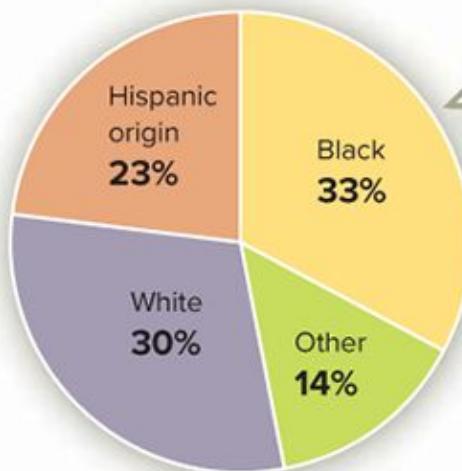


FIGURE 11-4 Estimated Percentage of Inmates Held in Custody in State or Federal Prisons by Race and Ethnic Origin, 2016

SOURCE: E. Ann Carson, “Prisoners in 2016,” Bureau of Justice Statistics, January 2018. <https://www.bjs.gov/content/pub/pdf/p16.pdf> (retrieved January 20, 2019). Table 9, 15.

Incarceration rates for inmates of either sex typically drop with increasing age. Figure 11-5 illustrates that most (about 70 percent) state and federal prison inmates are between the ages of 25 and 49.¹¹⁴ For males of any age, incarceration rates for Blacks were between five and seven times greater than those for Whites. The same overall pattern holds true for Black and White females, regardless of age group.¹¹⁵

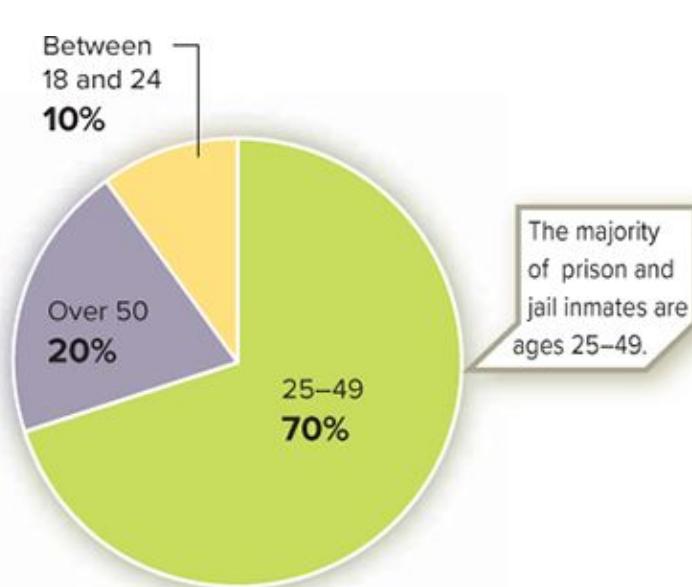


FIGURE 11-5 Estimated Percentages of Inmates Held in Custody of State and Federal Prisons by Age, 2016

SOURCE: E. Ann Carson, "Prisoners in 2016," Bureau of Justice Statistics, January 2018. <https://www.bjs.gov/content/pub/pdf/p16.pdf> (retrieved January 20, 2019). Table 9, 15.

Types of Offenders

Although the PSR policy is moving forward in California and the federal government is pushing to remove low-level drug offenders from its prisons, almost 46 percent of those confined in our nation's state prisons in 2015 were serving time for nonviolent crimes, including drug and property crimes and crimes against the public order (also called *public order crimes*). Between 2000 and 2014, the number of drug offenders in state prisons declined. Even so, the United States incarcerates more people for drug offenses than other countries. About 15 percent of inmates in state prisons incarcerated for drug offenses, and the increase in the prison population is driven by the imprisonment of drug

offenders. Among federal inmates, those incarcerated for drug offenses constituted the largest number of prisoners (over 50 percent).¹¹⁶

Federal Prison Inmates

In 2019, approximately 180,290 inmates were under the jurisdiction of the Federal Bureau of Prisons. To handle overcrowding about 11 percent were held in privately managed prisons. The population of federal prison inmates is about 93 percent male. Most inmates are White (about 58 percent). Blacks constitute about 38 percent of the population, and Native Americans and Asians together compose about 4 percent of federal inmates. About 32 percent of the population are classified as being of Hispanic ethnicity. The majority of federal inmates are between 26 and 49 years of age.¹¹⁷

Individuals sentenced for drug offenses constituted the largest number of federal inmates (about 46 percent) in November 2018. About 18 percent of federal offenders committed weapons, explosives, and arson offenses, and 6.5 percent committed immigration offenses.¹¹⁸

The federal prison population steadily increased between 1980 and 2013; however, it has steadily decreased between 2013 and 2017.¹¹⁹ This is partially due to changes in the federal government's decades' long policy of mass incarceration.¹²⁰ It is the hope that the 2018 Criminal Justice Reform Act will significantly reduce the U.S. federal inmate population.

State Prison Inmates

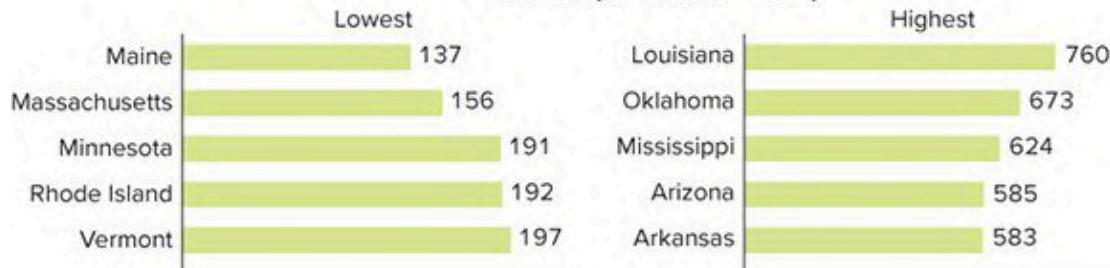
Each of the 50 U.S. states operates a prison system. The number of prisons each state runs is determined by the number of prisoners sentenced by the courts to state institutions. States vary widely in the number of state prisons and prisoners. For example, California (129,593 inmates), Texas (163,909), Florida (101,424), and New York (51,727) operate large prison systems; North Dakota (1,795), Vermont (1,750), and Maine (2,279) have small prison systems.¹²¹

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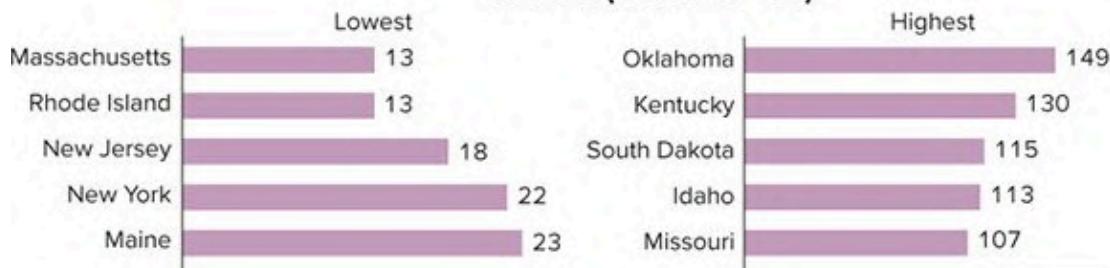
Figure 11-6 illustrates the highest and lowest state incarceration rates in 2016. As of 2016, the state prison incarceration rate for U.S. males was 847 per 100,000 population and for females was 64 per 100,000 population.¹²²

Highest and Lowest State Incarceration Rates (per 100,000), 2016

Overall (National = 450)



Women (National = 64)



Men (National = 847)



FIGURE 11-6 Highest and Lowest State Incarceration Rates (per 100,000), 2016

SOURCE: The Sentencing Project, “Highest and Lowest State Incarceration Rates per 100,000, 2016.” <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> (retrieved January 25), 4; E. Ann Carson, “Prisoners in 2016,” Bureau of Justice Statistics Bulletin (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, January 2018).

Noninstitutional or Community Corrections

Chapter 13 addresses the role that community corrections plays in the broader correctional system. Here we consider the population under the supervision of community corrections programs, to distinguish it from institutional populations.



▲ Ensuring Security

Federal prisons are secure environments, and prisoners cannot move around at will. *Why do people believe federal prisons are country club environments?*

Tannen Maury/AFP/Getty Images

Correctional programs administered in the community include probation and parole. In 2016, 1 in 55 adults (about 4,537,100 people) were under the authority of federal, state, or local probation or parole agencies.¹²³ See Figure 13-4 in Chapter 13 for additional data on adults under community supervision and on probation or parole.

Among probationers, about 75 percent are male; of parolees, about 87 percent are male.¹²⁴ The majority (55 percent) of individuals on probation are White; 28 percent are Black, and 14 percent are Latino.¹²⁵ Approximately, 45 percent of adults on parole is White, 38 percent is Black, and 15 percent is Latino.¹²⁶ Even though the number of individuals in correctional page 374 programs in the community is considerably larger than the number of inmates in U.S. jails and prisons, the demographic characteristics of these populations are similar. The main exception is that there are more females and Whites under community supervision than there are incarcerated in jails and prisons.

VICTIM INVOLVEMENT IN CORRECTIONS

Traditionally, correctional institutions have focused solely on the offender, to the exclusion of the victim. *Victim services* is a fairly recent concept in the context of corrections, having begun in 1984 with a *victim-witness notification program* within the federal prison system. This program requires corrections personnel to contact or notify victims and witnesses when there is a change in an inmate's status. By 1987, the American Correctional Association (ACA) had created a task force to address the issues, concerns, and rights of victims. Within 10 years, some state correctional institutions had opened specific offices to work with victims.

These offices represent the rights and interests of victims in relation to offenders in the correctional system and before parole boards. For example, they notify victims about inmates' location and movement within the system, changes in their status (such as movement from a maximum- to a medium-security facility, death while incarcerated, or escape), their release into the community, and the status of pardons or executions. Victims also are informed about parole hearings and educated about their rights to attend and to participate by discussing the impact of the crime on their life. When victims take part in parole hearings, they can request the implementation of specific conditions, such as preventing a parolee from living in the same county as the one in which the victim resides, and they can ask for the issuance of a protection order upon the offender's release.



▲ Parole Officer

Parole officers are responsible for protecting society by monitoring parolees so they will not reoffend.
Mikael Karlsson/Alamy

Victim Services within Institutions

Victim services offices work with individuals who are victimized within a correctional institution, including correctional officers, staff, and administrators. For example, if a correctional officer is assaulted on the job, victim services can assist with crisis intervention and referrals for long-term counseling. If a visitor has a face-to-face contact visit with an inmate and is not protected by a barrier (for example, glass) and is emotionally or physically abused during a visit, that person, too, is eligible for victim services. Corrections also protects victims and witnesses from inmate contact by monitoring phone and mail correspondence.

In addition, victim services may work with correctional personnel in discussing a traumatic event after it occurs, to ensure that the affected parties receive appropriate services and to prevent future violent incidents; this intervention process is also known as *critical incident debriefing*. For example, if a riot occurs within a correctional institution, victim services may be called on to work with those correctional officers who were involved.

Victim services offices can also help inmates who are physically or sexually abused by staff or inmates while incarcerated. These offices can assist victims in identifying safe and appropriate services in the institution and in the community postrelease. They also help inmates file grievances with a third party, such as an ombudsman, about the victimization and the page 375 postvictimization response to the incident. Some common inmate grievances include lack of access to medical or mental health care, improper service provision, or failure to respond to the incident in a timely manner.¹²⁷

Victim Impact Panels and Classes

Victim impact panels and classes provide an opportunity for crime victims to tell a group of offenders about how the crime has affected their lives and those of their families, friends, and neighbors. The latter provision is important if the crime affected the whole community, as in the case of the death or kidnapping of a child. These panels typically include three or four speakers who are victims, each of whom spends about 15 minutes telling his or her story in a nonjudgmental, neutral manner. Normally, the specific offenders of the speakers are not present. Some time is usually dedicated to questions and answers, but the panel's main purpose is for the victims to speak to offenders rather than for victims to engage in a dialogue with their offenders.

Victim impact panels were initiated in 1982 as a method of changing the attitudes of first-time drunk drivers after their conviction in traffic court and of repeat drunk drivers who were serving time in prison. Because of the devastating consequences of drunk driving on its victims and on society, MADD (Mothers Against Drunk Driving) considered it critical to change the generally accepted attitude that these incidents were "accidents" rather than crimes. In 2016, 28 percent of the 10,497 traffic deaths in the United States were alcohol-related.¹²⁸ MADD contends that an effective way to change attitudes is to confront drunk drivers with firsthand testimony from the victims of drunk-driving crashes.

Early research indicates that there is no difference in the recidivism rates of either DWI (Driving While Intoxicated) offenders who go to a DWI school or those who attend victim impact panels.¹²⁹ Despite the paucity of data on the effectiveness of these panels, in March 2008 the National Highway Transportation Safety Administration (NHTSA) called for the continued use and expansion of victim impact panels for first-time and repeat DWIs.¹³⁰

The positive feedback from both victims and offenders who have participated in victim impact panels have led the courts to order them for individuals who commit crimes other than driving while intoxicated, such as property crimes, physical assault, intimate partner violence, child abuse, elder abuse, and homicide. The survivors or family members of victims often serve on the panels—in prison and jail settings, with parolees, and in treatment programs, as well as in defensive driving schools, youth education programs, and training forums for juvenile and criminal justice professionals. These panelists serve society by helping their listeners better understand the scope and trauma caused by the victimizations.

Viewing Executions

In capital punishment cases, once an offender has been sentenced, many years can pass before the execution takes place. Legislators and corrections departments in a number of the states that have capital punishment must decide whether the members of a victim's family should be permitted to attend the execution of their loved one's murderer. Witnessing the execution helps bring closure for some but may not be right for everyone. States that permit such attendance allow survivors to make that choice for themselves.¹³¹

In general, state offices that provide services to victims will assist them with the experience of viewing an execution. For example, in Texas, the victim witnesses generally meet with a representative of the Texas Department of Criminal Justice, Victim Services Division, on the afternoon of the execution at a designated location in Huntsville, Texas. The witnesses learn about the execution protocol and view a video that includes footage of the execution chamber and the witness viewing room. The witnesses are then page 376 advised what to expect from the time they arrive at the prison until their departure.¹³²

UNDERSTANDING PRIVATE PRISONS

Privatization is the transfer of government programs and functions to the private sector.¹³³ The movement to privatize the operation of government prisons and security stems from the problem of prison overcrowding and also reflects the aggressiveness of the prison industry, which has taken advantage of a political climate that favors privatization (see “Matters of Ethics”). The privatization of prisons and security presents a number of issues and challenges to the criminal justice system. One of the largest private prison companies is CoreCivic, previously known as the Corrections Corporation of America (CCA). They currently house over 90,000 inmates in over 60 facilities.

privatization

Transfer of government programs and functions to the private sector.

Private Prisons

The shift toward prison privatization began in the 1980s, fueled by the belief that private enterprise could build and run prisons more efficiently and less expensively than the government. This idea was especially attractive to federal and state governments that increasingly were struggling to curtail skyrocketing costs.¹³⁴

Trends in Privatization in Corrections In 1983, private, for-profit, prison-building corporations began competing for contracts with local, state, and federal governments, mostly in southern states with high crime rates, large prison populations, weak labor unions, and strong right-to-work laws restricting union activity. Now almost every state contracts with private firms to manage the incarceration of juvenile and adult inmates. According to the Bureau of Justice Statistics, the private prison population for federal inmates declined by 19 percent from year-end 2016 to year-end 2017. Private federal and state prisons at the end of December 2017 housed 8 percent of all inmates.

Costs of Privatization Although the original rationale for use of private prisons was financial savings, private prisons are in fact no less expensive to operate than government-run prisons.¹³⁵ To realize savings, some private prisons cut back on spending for prisoner health, provide lower salaries for personnel, and reduce staff training. One analysis of 24 independent studies concluded that private prisons were no more cost-effective than public prisons.¹³⁶ A more recent study found similar results.¹³⁷

The growth of private prisons was aided in 2001 when at least \$628 million in tax-free bonds and other public subsidies went to private prisons, with almost 75 percent of these private institutions receiving public subsidies.¹³⁸ The receipt of tax dollars allowed these private institutions to operate profitably. By lobbying the public and politicians for longer sentences for inmates and more prisons, private companies looked to increase their profits further.¹³⁹

Quality The evidence on the quality of private prisons is mixed. Some studies in New Mexico and West Virginia indicated that privately operated prisons provide higher-quality services than publicly operated prisons, but this claim was not supported by other studies.¹⁴⁰ Services included in these studies were food preparation, medical and dental care, education, job training, religious services, and other rehabilitative programming. Other studies also reported that the common practice of hiring lower-paid workers in private prisons negatively affects public safety and inmate care.¹⁴¹ In addition, in some states private prisons keep their costs down by specifying what kind of prisoners they accept—for example, these private prisons might reject page 377 higher-cost inmates such as those with health problems. The state is then left to keep the high-cost inmates.¹⁴²

Matters of Ethics

Making Money on Prisoners

The fact that private prisons are lucrative business has led to charges of corruption in several states. For example, in 2010 the New Mexico corrections secretary refused to penalize a private prison contractor for understaffing prisons it operated—a violation of its contract with the state. New Mexico lost more than \$18 million in penalties due to this lack of contract enforcement. The state saved money, but at the expense of adequately staffing the prison. It turns out that the corrections secretary in New Mexico was a former employee of and a warden for the same private prison corporation. Furthermore, the prison corporation had been accused of unfair political activity by contributing to the campaign of a candidate for sheriff while using unregistered lobbyists to secure a lease renewal of a jail it operated.

In another case, a private prison company took advantage of the small town of Hardin, Montana. It convinced the town to sell \$27 million in bonds for the construction of a facility that was built but never used. The bonds have since gone into default.

President Trump's 2018 policy of separating family members seeking asylum in the United States drew increased attention to immigrant detention centers. Many such detention centers are run by private companies such as CoreCivic and GEO group. While 9 percent of prisoners are held in private prisons, up to 73 percent of immigrants are held in private facilities. The argument for private prisons is that they can provide the same functions at a lower cost, but studies question the veracity of that claim. Given Trump's stated promise to imprison as many illegal immigrants as possible, the assumption is that the numbers of people seeking refugee status in the United States will continue to increase the private prison populations.



Matthew Brown, File/AP Images



OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Construct a compelling argument for barring current or former employees of private prison corporations who assume political office from developing contracts with private prison corporations.
- Should states be allowed to contract with private corporations to incarcerate prisoners? Why or why not?
- What concerns arise when families seeking asylum are held in detention centers run by private companies?

SOURCES: Trip Jennings, “No Penalties for Understaffed Private Prisons,” *New Mexico Independent*, September 2, 2010; Trip Jennings, “Corrections Secretary’s Previous Work for Private Prison Operator Highlighted,” *New Mexico Independent*, September 7, 2010; Trip Jennings, “NM Could Have Repeatedly Fined Private Prisons for Low Staffing Levels,” *New Mexico Independent*, September 10, 2010; Trip Jennings, “Corrections Gave Up \$18 Million in Uncollected Penalties,” *New Mexico Independent*, September 15, 2010; *East County Magazine*, “Private Prison Group Uses Unregistered Lobbyists while Giving Money to Sheriff Gore.” www.eastcountymagazine.org/node/3463 (retrieved December 31, 2010); Matthew Reichback, “Private Prison Developer Behind Montana Fiasco Involved in Construction of NM Private Prisons,” *New Mexico Independent*, October 12, 2009; Clyde Haberman, “For Private Prisons, Detaining Immigrants Is Big Business,” *The New York Times*, October 1, 2018.

On the positive side, one Florida study found lower rates of recidivism among inmates released from privately operated prisons than among those released from public facilities.¹⁴³ However, complicating any assessment of the quality of private prisons is the fact that many researchers contend that most comparisons of outcomes use flawed methods, which makes it impossible to be certain whether private prisons are better or worse than their public counterparts.¹⁴⁴

There have also been charges of lax oversight in the running of private prisons. In August 2010, three convicts, two of whom were convicted murderers, escaped from a private prison in Arizona using a pair of wire cutters.¹⁴⁵ Prisons in Arizona house convicts not just from Arizona but from all over the United States, and the state places no restrictions or security constraints on the kinds of prisoners private prisons can accept.¹⁴⁶ Moreover, this is not the first such escape from a private prison in Arizona. A U.S. Justice

Department report in 2016 found that private prisons were more violent for both inmates and correctional officers.¹⁴⁷

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Legal Issues In *Richardson v. McKnight* (1997), the U.S. Supreme Court held that an employee of a private firm who is sued cannot invoke the qualified immunity defense that is available to state government employees (see Chapter 7).¹⁴⁸ The Court noted that because private firms seek to maximize profits and minimize costs, they must be subject to liability rules to prevent them from engaging in harmful activities for the sake of realizing cost benefits. Private firms do not have all the same protections against lawsuits that government entities do; thus a government entity using a private prison may be at risk of lawsuits. If a state uses a private corporation to run a prison and someone sues the private company over prison conditions, the state also may be vulnerable unless it can clearly show it had no knowledge of the problem.

An important—and as yet unsettled—issue is the use of force, including deadly force, by guards and officers. Private prisons could face civil liability and criminal lawsuits for violating the rights of inmates.¹⁴⁹

Faith-Based Prisons

Faith-based prison programs comprise rehabilitation and other services offered by religious organizations to inmates in private prisons. In these programs, community volunteers from different religious groups act as personal mentors to inmates both during incarceration and after release. Inmates' belief in God is said not to be a requirement, and volunteers are not allowed to persuade inmates to change their beliefs. Religious instruction is supposed to accompany, rather than to supplant, other services, such as psychological counseling and treatment for addiction.

faith-based prison programs

Services provided when a private prison corporation builds or operates a prison under contract with a government agency and invites religious organizations to offer rehabilitation services to the inmates.

In 2001, President George W. Bush signed executive orders creating the White House Office of Faith-Based and Community Initiatives and Centers for Faith-Based and Community Initiatives in five cabinet departments: Justice, Education, Labor, Health and Human Services, and Housing and Urban

Development. According to Bush, “The indispensable and transforming work of faith-based and other charitable service groups must be encouraged ... whether run by Methodists, Muslims, Mormons, or good people of no faith at all.”¹⁵⁰ Although President Barack Obama expressed some support for faith-based initiatives, he did not deal with the issue of faith-based prisons.

In some cases, faith-based programs are housed in separate dormitories within a prison; in other instances, the entire prison is faith-based. The first faith-based prison opened in Florida in 2003 and now has faith-based programs in 16 different facilities. As of 2005, 19 states and the federal government had faith-based prison programs.¹⁵¹ Theoretically, faith-based programs are to offer instruction in all faiths equally. However, in Florida, more than 90 percent of inmates are Christian, 5 percent are Muslim, and fewer than 1 percent are Jewish. Atheists and members of pagan religions, such as Wicca and Odinism, are on waiting lists for housing in faith-based prisons.¹⁵²

MYTH/REALITY

MYTH: Faith-based prisons are more effective in reducing recidivism than are traditional prisons.

REALITY: Research findings on the efficacy of faith-based prisons are not clear.¹⁵³

Advocates of faith-based prison programs claim that the approach cuts recidivism rates more than do traditional prison rehabilitation and job training programs and that the approach results in fewer disciplinary actions. Critics argue there is as yet no valid study supporting any such claims.¹⁵⁴ Even as of February 2014, research has not been able to confirm that faith-based programs are more effective than others.¹⁵⁵

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The Future of Private Prisons

Private prisons in the United States are big business, and the industry expects continued growth.¹⁵⁶ In reality, however, the population is beginning to decline. Supporters of private prisons argue that having stockholders to whom they must report imposes “market accountability” on corporations, which want to prevent their stock prices from dropping.¹⁵⁷ However, although the potential

for economic gain for private prison companies is great, the real benefits to the government—and for inmates—are as yet unclear.

SUMMARY

U.S. correctional facilities today are under tremendous pressure because of the huge number of convictions that are still being churned out of the criminal justice system even though crime continues to decline. Many governing bodies are wrestling with the consequences. Should they build more prisons? Or should they try to reduce the correctional population through mandating shortened sentences, parole, and treatment programs that attempt to prepare the inmate for return to the community? In some ways, this dilemma reflects the historical swings from punishment to rehabilitation to punishment and back again. California's attempt at realignment is the most recent example.

The philosophy governing a particular correctional institution depends to some extent on the degree of overcrowding and on the severity of the inmates' crimes. Individuals with long sentences tend to be strictly regulated (under the punishment model) or incapacitated through incarceration (the crime control model). Those who are classified as ill generally are offered treatment (under the rehabilitation model), and those who serve shorter sentences may be prepared for return to the community (under the reintegration model). Public opinion, media coverage of crime, and sympathy for victims may sway which direction governing and correctional officials lean in sentencing and treating offenders.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Define corrections and describe its role in society.

- Corrections is one of the components of the criminal justice system, including but not limited to probation, parole, prisons, and jails.
- Corrections is responsible for managing and treating offenders after they enter the criminal justice system.
- It refers to the social control and punishment of offenders through a system of imprisonment and rehabilitation programs.

Identify the precursors to the U.S. prison.

- Corporal punishment, such as flogging, branding, and mutilation, was used regularly throughout the early history of punishment.

- Torture as punishment was commonplace prior to incarceration.
- Church confinement, in which offenders were held in cells within monasteries to serve years of solitary penance, substituted for immediate death and corporal punishment during the early years of penology.
- Transportation and banishment led to the establishment of foreign penal colonies.
- Galley slavery condemned criminals to a life sentence of rowing ships prior to the use of incarceration as punishment.
- The confinement of prisoners in hulks of abandoned ships led to the development of contemporary prisons on land.
- Workhouses held a mixture of people, including jobless vagrants, debtors, and sometimes serious criminals, and paved the way for the development of prisons.
- Primitive jails sometimes took the form of dedicated sections of estates where private landowners confined lawbreakers until it was time to impose their punishment.

Contrast the features of the Pennsylvania system with those of the Auburn system.

- The Pennsylvania system demanded inmates' solitary confinement, silence, and isolation. Offenders saw only their keepers; all work and meals took place in offenders' individual cells.
- The Auburn system featured severe discipline and corporal punishment for offenders. Work and meals took place with other offenders outside their cells but in silence; offenders did not live in solitary confinement cells but page 380 rather had cell block living arrangements; and they moved about in lockstep fashion.

Identify the defining features of reformatories and therapeutic prisons.

- Indeterminate sentences—those featuring the release of offenders when they had been reformed—were instituted to promote rehabilitation in the prison system.
- The rehabilitation and treatment of offenders became a popular concept at the Elmira Reformatory and during the reformatory movement.
- The goal of reformation was to enable an offender to be released into society and not offend again.
- Parole is early and conditional release from custody.
- Classification systems for prisons and inmates should make it easier for custodial programs to better meet the needs of the inmates.

Trace the defining features of industrial prisons.

- Industrial prisons used inmates' labor to pay for their cost of operating.
- These prisons were modeled after factories.
- Industrial prisons practiced oppressive and violent discipline and regimentation.

Describe and evaluate each of the four major models of corrections.

- The punishment model assumes that offenders are inherently bad and must be punished. Studies have found that after correctional punishment, many offenders become more antisocial than before.
- The crime control model uses incarceration to suppress the behavior of criminals and keep them off the streets. Most offenders are eventually released back to the streets, where they commit more crimes.
- The rehabilitation model seeks to change an offender's behavior; it views offenders as sick and capable of being cured. Most U.S. prisons do not emphasize rehabilitation.
- The reintegration model aims to help offenders readjust successfully back into the community. For reintegration to work, correctional programs must help offenders learn to take responsibility for their crimes.

Describe the populations found in correctional institutions today.

- Overcrowding is a major problem; it is due not to higher crime rates but to changes in policy that imprison more offenders for longer terms.
- Prison populations are overwhelmingly male and disproportionately Black.
- Most offenses are not violent but are nonviolent drug offenses.
- The number of federal prison inmates is increasing at a greater rate than the populations of state prisons.
- The number of individuals in community or noninstitutional programs (such as probation and parole) outnumbers those in prisons and jails but represents the same demographics.

Identify the types of victim services found in corrections.

- Correctional institutions are responsible for the facilitation and mediation of inmate–victim interactions.
- Correctional institutions organize victim impact panels and classes for inmates to inform them about the effects of crime on the victim's life.
- Correctional institutions are responsible for assisting victims in the process of viewing executions.

Examine the extent and nature of privatization of prisons.

- Private prisons are based on the rationale that private enterprise can run prisons more efficiently and less expensively than the government can.
- Faith-based prison programs are developed when a private prison corporation builds or operates a prison under contract with a government agency and invites religious organizations to offer rehabilitation services to the inmates.

Key Terms

Auburn system 355
community corrections 348
crime control model 362
Elmira Reformatory 357
faith-based prison programs 378
halfway house 364
hulks 353
indentured servitude 351
industrial prison 358
institutional corrections 348
Martinson Report 359
medical model 359
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Pennsylvania system 355
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Public Safety Realignment (PSR) 368
punishment model 361
rehabilitation model 364
reintegration model 364
restorative justice 365
transportation 351
Walnut Street Jail 354
workhouse 351

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Study Questions

1. The term *corrections* refers to
 - a. probation and parole.
 - b. jails and prisons.

- c. juvenile detention facilities.
d. all of the above
2. The corrections model that assumes most offenders will remain in the community and that society will benefit if offenders have connections to institutions in free society is
a. punishment.
b. rehabilitation and treatment.
c. crime control.
d. reintegration.
3. Of the following, the group that is most disproportionately represented in the U.S. prison population is
a. African Americans.
b. Latinos.
c. Whites.
d. Asian Americans.
4. The function of the practice of transportation was to
a. eliminate convicts from Britain.
b. colonize new British territories.
c. circumvent the death penalty.
d. all of the above
5. The ____ system's major characteristic was absolute solitary confinement.
a. Pennsylvania
b. Auburn
c. reformatory
d. industrial
6. Very harsh punishments
a. tend to decrease criminal activity.
b. tend to increase criminal activity.
c. do not make a difference in criminal activity.
d. are justified by scholarly research.
7. The first prison in the United States was
a. Bridewell.
b. the Walnut Street Jail.
c. the Western Penitentiary.
d. Cherry Hill.
8. The indeterminate sentence was a part of the history of the ____ model.
a. rehabilitation
b. crime control
c. punishment
d. reintegration
9. Most of the inmates in U.S. prisons are serving time for
a. murder.
b. burglary.
c. drug offenses.
d. car theft.
10. The crime control model is a way to
a. teach control to inmates.

- b. control crime in the inner city.
- c. control crime by using harsh punishments.
- d. control crime by imprisoning and incapacitating offenders.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. How have U.S. correctional practices changed since the colonial period?
2. Describe some of the punishments that were precursors to prison, and explain how they evolved to become contemporary correctional practices.
3. Which of the models of corrections do you think has been most successful in accomplishing the goal of correcting an offender's unlawful behavior? Why?
4. Compare and contrast the Pennsylvania and Auburn systems. Why was Auburn more successful?
5. How do programs such as California's Public Safety Realignment policy reduce mass incarceration and contribute to the welfare of society?

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12 Jails and Prisons



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OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Distinguish between jails and prisons.

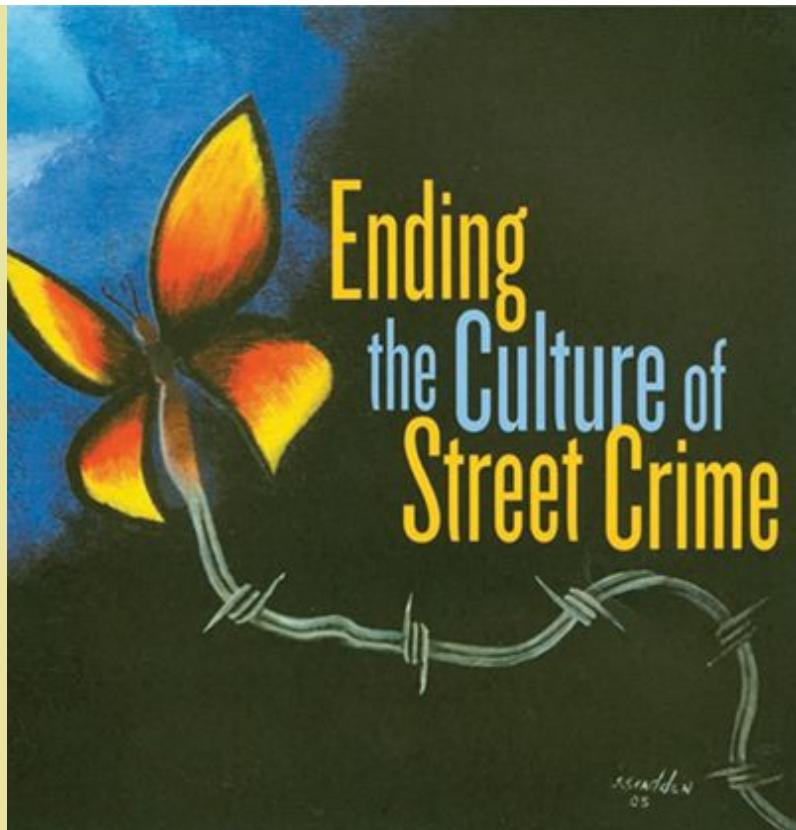
- Differentiate among minimum-, medium-, maximum-, and supermaximum-security prisons.
- Apply the concept of professionalization to the role of correctional officers.
- Describe the rights of prisoners and those that are denied.
- Characterize the inmate subculture.
- Outline the differences between male and female prison life.
- Describe methods of treatment and rehabilitation in prisons.
- Detail the ways incarceration affects the prisoner's family life.

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Realities and Challenges

Spending a Lifetime Imprisoned

Few people can imagine what it might be like to spend a lifetime behind bars. Yet in the United States, almost 53,290 adults (more than a 23 percent increase since 1992).¹ and about 2,100 juveniles² are serving sentences of life without parole. The United States is the only nation that sentences people to life without parole for crimes committed before age 18. However, because of recent Supreme Court rulings in *Miller v. Alabama* and *Montgomery v. Louisiana* juveniles sentenced mandatorily to life without the possibility of parole now have a chance for release. To date 21 states and the District of Columbia banned life sentences without the possibility of parole for juveniles. Known as "lifers," these individuals are not released from prison on parole. Rather, they are sentenced to prison until death—a bleak, unforgiving punishment. Normally lifers die in prison from natural causes. The number of "lifers" has increased about 23 percent since 1992.



Lifers Inc. at SCI Graterford

Lifers (and “nonlifers” as well) must deal with many personal challenges and tough questions, such as, How do I make the highly structured—and often hostile—prison environment my home? How can I gain meaning from my incarceration? What do I want to do in prison and with the rest of my life? What will happen to my relationship with my family in the community? What will it be like to become old and sick in prison? How can I give something back to society? Prisoners can cope with a life sentence in a positive or negative way.

One way that some lifers are transforming their prison experience while at the same time becoming a force for good is through their involvement in the Long Incarcerated Fraternity Engaging Release Studies (LIFERS, Inc.) and its Lifers Public Safety Initiative. LIFERS, Inc., originated in 1978 in a therapy group of male lifers from the maximum-security State Correctional Institution at Graterford, Pennsylvania. These individuals recognized the harm their crimes had inflicted on others and wanted their voice from behind bars to count in the

fight against crime and violence.³ Between 1980 and 1981 the group was recognized by the Graterford administration and the Pennsylvania Bureau of Corrections and received nonprofit corporation status. At first the members’ primary organizational goal was to change Pennsylvania’s policy on life sentences, but the goal shifted to emphasize the prevention of crime and violence—both inside and outside prisons.⁴

The lifers contribute to the prevention effort by analyzing crime from the perpetrator’s perspective and by sharing with criminal justice professionals and others the mind-set and practices that caused their own crime. They have partnered with Pennsylvania’s End Violence Project, a nonprofit organization dedicated to breaking the cycle of violence, and

taken a program in transformational leadership—a leadership style that seeks to stimulate positive change in individuals. In 2003, approximately 100 lifers held an anticrime summit at Graterford—attended by criminal justice professionals, social workers, lawmakers, victim advocates, and religious leaders—during which they explored community partnerships that might contribute to deterring crime and violence. LIFERS recognizes that the majority of prisoners will be released to the community. Thus, the organization is also actively developing projects and programs that are geared to eliminating the culture of crime not only inside but also outside prisons. The goal is to empower prisoners to transform their lives by assuming personal and community responsibility.⁵

As much as many authorities in the criminal justice field dislike the use of incarceration when other methods are available, jails and prisons are a necessity. It is important for all to recognize that even individuals who will spend the rest of their lives incarcerated can gain some sense of purpose within the prison walls—and thereby have a positive impact on society.

Society has a vested interest in the effects of incarceration because the vast majority of inmates one day return to the community. Furthermore, during the past 30 years, the jail and prison population has grown by over 500 percent.⁶ There is evidence that the tide is changing and the prison population is declining in some states. For example, by 2015 New Jersey experienced a 35 percent decline; New York, 29 percent; Alaska, 27 percent; California, 26 percent; Vermont, 25 percent; and Connecticut, 22 percent. The federal prison system has also experienced population decline. In the future as a result of the 2018 Criminal Justice Reform Act (First Step Act), the federal prison population is expected to experience further reductions.⁷ This chapter provides an overview of incarceration in the criminal justice system. We explore the realities of the corrections system, the culture of prison life, and the challenges of making these elements work to the benefit of both prisoners and society.

Preview

THE STRUCTURE OF CORRECTIONS

PRIISONER RIGHTS

LIFE IN PRISONS AND JAILS

WOMEN IN PRISON

REHABILITATION AND TREATMENT IN PRISON

THE IMPACT OF PRISON ON FAMILY LIFE

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

THE STRUCTURE OF CORRECTIONS

MYTH/REALITY

MYTH: Incarcerating criminals reduces crime in society.

REALITY: Although jails and prisons remove offenders from the streets and reduce their ability to commit crimes in the community as long as they are incarcerated, there is evidence that incarceration does not deter criminal behavior in the long run. The number of persons incarcerated in U.S. jails and prisons remains high as crime rates have decreased,⁸ but recidivism rates remain excessive.⁹

The most common formal sanction for criminal behavior today is **incarceration**, the confinement of an individual against his will in the criminal justice system (in a jail or prison) or a mental health facility (a secure psychiatric institution). Indeed, legislative initiatives to put more criminals behind bars (the policy of mass incarceration) have wide popular support, even though shutting up more people in jails and prisons has not stemmed the tide of crime or recidivism.¹⁰ What increasing the number of inmates has done is to create major problems for both inmates and correctional employees.

incarceration

Confinement against one's will in the criminal justice system (in a jail or prison) or a mental health facility (a secure psychiatric institution).

Jails

A **jail** is a local facility operated by municipal and regional governments such as cities, counties, and parishes. Some local governments contract with private agencies to provide jail services. Jails house pretrial individuals believed to present a risk of danger or flight and those serving short-term sentences of incarceration. They are not intended for housing long-term prisoners. Jails also hold individuals awaiting probation or parole revocation hearings, as well as people with mental disorders who are awaiting transfer to psychiatric facilities. In 2018, 615,000 persons were locked up in adult jails. The majority (465,000) were those awaiting trial and not convicted.¹¹ It also appears many U.S. jails are refusing to continue to be way stations for suspects en route to deportation.¹²

jail

Municipal or regional facility that houses pretrial individuals believed to present a risk of danger or flight, those awaiting probation or parole revocation, and those sentenced to less than year incarceration.

Most large cities and many towns throughout the United States have a jail. There are about 3,300 local jails in the United States operating at a high fiscal cost. Jails are one of a community's largest investments, and funding is allocated from the same sources that support public hospitals, schools, social services, roads, and many other vital functions of local government. Reducing jail expenditures and populations is easier said than done and will require collaboration among police, prosecutors, judges, and community corrections officials.¹³ Juvenile jails, known as *juvenile halls*, are discussed in Chapter 15.

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The U.S. Department of Justice estimated that local communities spent between \$22.2 to \$26.4 billion in 2011 on jails. However, the costs are incomplete because other government agencies contribute to expenses not included in jail budgets. Some additional expenses may include jail employee benefits; inmate health care; education and other programs for incarcerated people; capital costs such as purchasing and maintaining buildings; legal judgments, claims, and settlements; and administration such as human resources and information technology. Unfortunately the national

price tag for jails remains tricky to pin down.¹⁴ In recent years costs have increased substantially due to the cost of shifting of mental health care to the jails.¹⁵ Estimates of the cost per day for an inmate vary by state and by who conducts the study. Jails are normally less expensive to operate than prisons because they offer fewer programs and services to inmates. Should states follow California's lead and adopt Public Safety Realignment policies (see Chapter 11), jail populations, and costs may increase.¹⁶

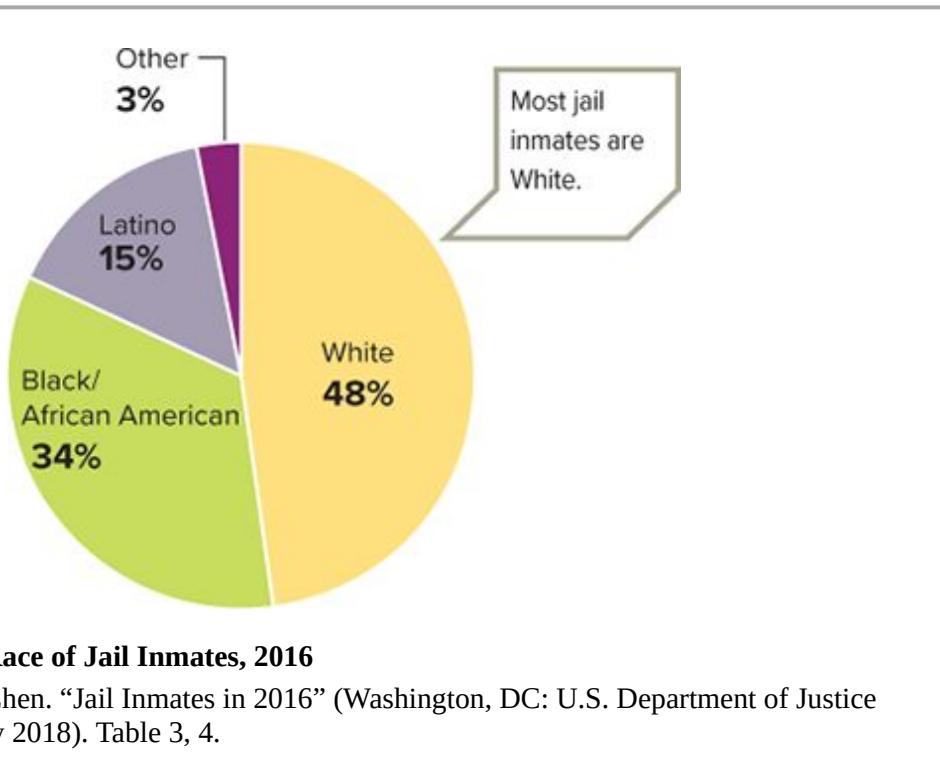
Problems in Jails Jail overcrowding is a major problem nationwide. However, their populations have been declining since 2008. In 2016 only 17 percent of our nation's jails were operating at or above 100 percent capacity.¹⁷

Because jails are used to hold suspected offenders until trial, one obvious solution to overcrowding is to simplify and expedite pretrial activities, such as by using a credit card program to facilitate the processing of bail bonds. Another solution is to reduce the time that sentenced inmates spend in jail. Some counties, for example, substitute labor for jail time in the case of inmates sentenced to 30 days or more, thus freeing up space while saving money.

Using local jails to incarcerate people with mental illnesses overtaxes the jail system. Today about 15 percent of males and 31 percent of females confined in jails have a serious mental illness compared to 3.2 percent and 4.9 percent, respectively, in the general population. Schizophrenia, major depression, and bipolar disorder are common among those incarcerated in jails.¹⁸ To cope with the large numbers of people with mental illness who are ending up in their jails, some counties are sending offenders who are diagnosed with serious mental illness—but deemed treatable—to community health facilities.¹⁹ Many communities, however, do not have resources, other than jail, to handle the mentally ill criminal population—a problem not only for the individuals who commit crimes but also for the communities to which most will soon return. Some sheriffs are demanding that jails stop being used as de facto asylums for the mentally ill and dumping grounds for poor and drug-addicted individuals. They advocate for treatment before jail and within jails as a way to reduce jail populations caused by policies of mass incarceration. Furthermore, sheriffs are pushing to get inmates who are charged with low-level, nonviolent offenses out of jail more quickly.²⁰

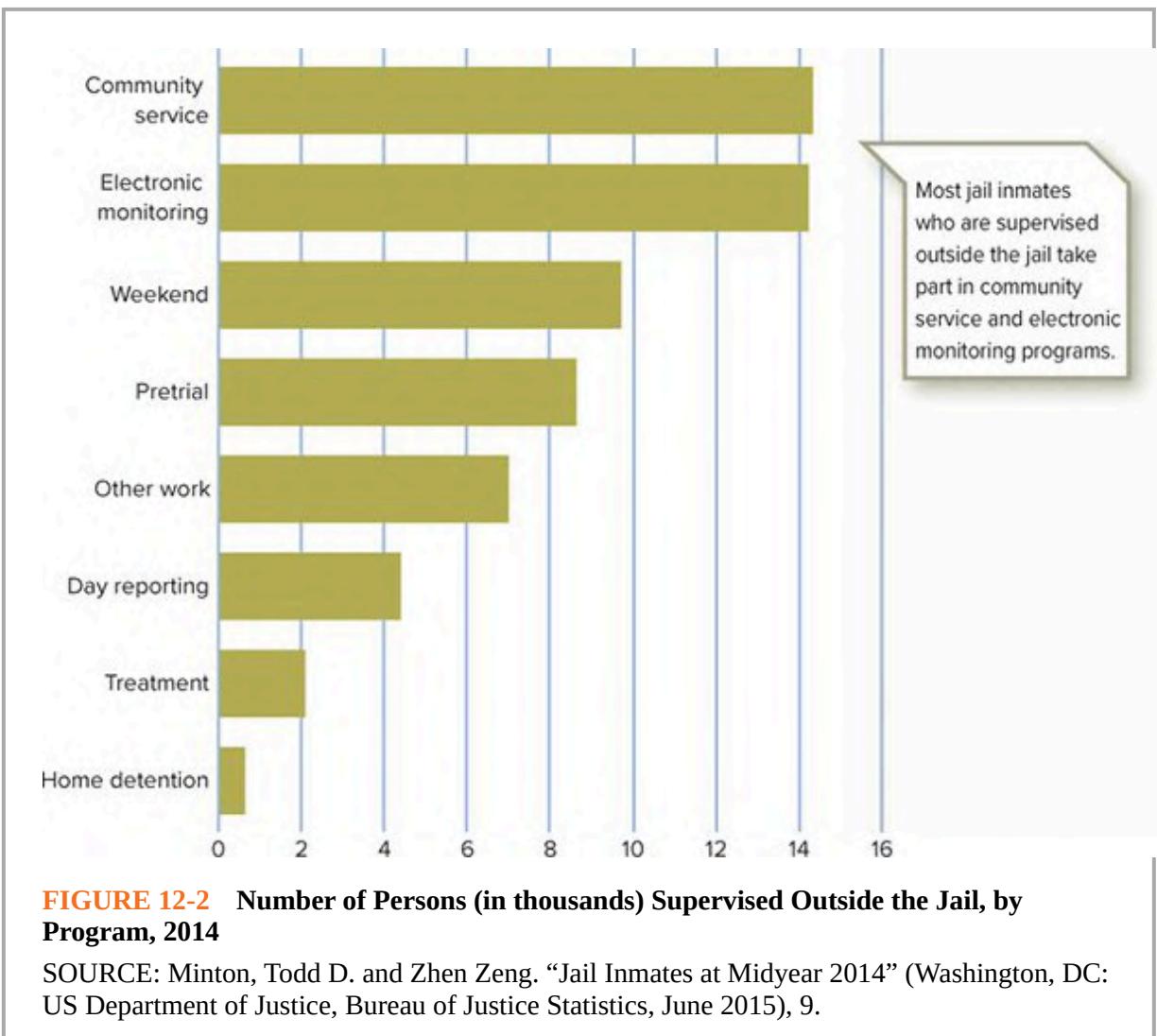
Despite the problems jails face some manage to develop innovative programs. One example, is Richmond, Virginia's Jail Fatherhood Program. They teach inmate fathers etiquette, proper dress, and then hold a father–daughter formal dance on jail premises. The date with dad program is much anticipated and helps inmates and their daughters create bonds with each other.²¹

The Jail Population At midyear in 2016, about 85 percent of the jail population was male. As Figure 12-1 illustrates, Whites made up 48 percent of persons incarcerated in jails; Blacks, 34 percent; Latinos, 15 percent; and other races, approximately 3 percent. The majority of jail inmates (65 percent) had not yet been sentenced but were awaiting court action.²²



In 2016, jail authorities also supervised 54,200 people in programs outside of jail.²³ About 8 percent were in an alternative program—such as home detention or electronic monitoring—that permitted them to remain out of jail. Similar programs include work release and community service;

weekends in jail; day programs; and mandatory drug, alcohol, or mental health treatment programs. As Figure 12-2 shows, the most popular community corrections program is community service. Treatment programs account for only 3.3 percent of individuals under supervision outside of jail.²⁴



Prisons

A **prison**, also known as a *penitentiary* or *reformatory*, is a secure facility where offenders serve a year or more after their trial and conviction. In the United States, a prison's authority over violators comes from the state and the federal government. There are approximately 1,821 adult U.S. prisons

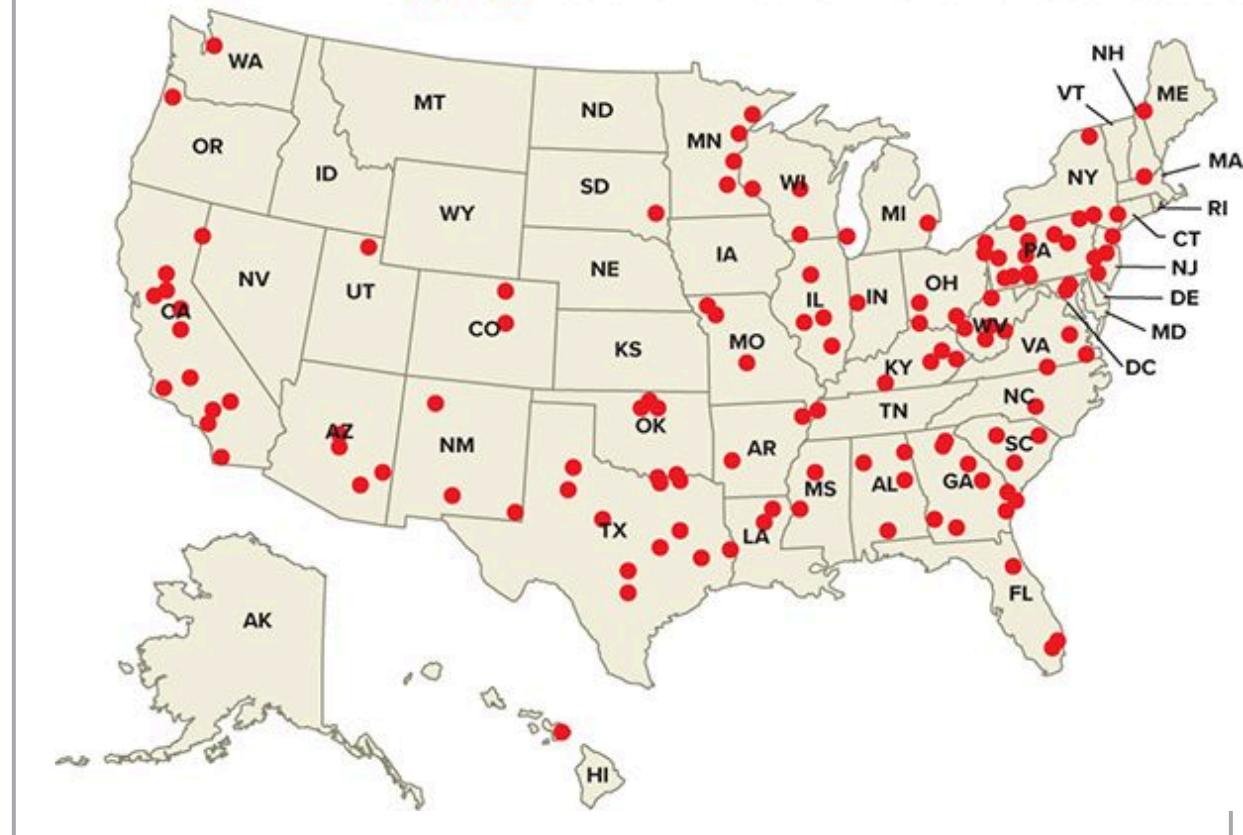
under the administration of state correctional agencies and the Federal Bureau of Prisons.²⁵ This number includes privately contracted prisons, which are also responsible to a state or the federal government. In addition, prisons include specialized facilities for confining parolees and shock incarceration facilities (“boot camps”).²⁶ The U.S. military operates its own prisons, which house military personnel convicted of major crimes and those who are national security risks, such as prisoners of war and enemy combatants.

prison

A secure state or federal facility that holds offenders sentenced to incarceration of 1 year or more.

One hundred two federal prisons—not including military prisons—fall under the jurisdiction of the Federal Bureau of Prisons. The map above shows the locations of the Federal Bureau of Prisons facilities. Generally they hold offenders who violate federal laws, whereas state prisons hold those who violate state laws. In 2018, about 225,000 prisoners page 392 were confined in federal institutions, far fewer than the approximate 1,316,000 million in state prisons across the country.²⁷

Mapping Federal Prisons in the United States



Rising Prison Costs The average cost of incarcerating prisoners is high and rising, largely due to rising staffing costs and health care expenditures.²⁸ The total national per-inmate cost of state prisoners is \$31,286, but there is wide variation in expenditures by the states. For example, the amount spent per year on prison inmates in New York is about \$60,000, whereas in Kentucky the amount spent is almost \$15,000. Factors that contribute to this variation are overcrowding and greater incarceration of low-level offenders.²⁹ Costs of housing special needs prisoners—such as older adults, juveniles, and mentally or physically impaired offenders—are also high, as are required medical services for inmates. In 2015 the cost of incarcerating inmates in federal prisons was about \$32,000 annually and \$88 daily.³⁰ Figure 12-3 illustrates the increases between 1985 and 2016, a period when state corrections costs rose dramatically.

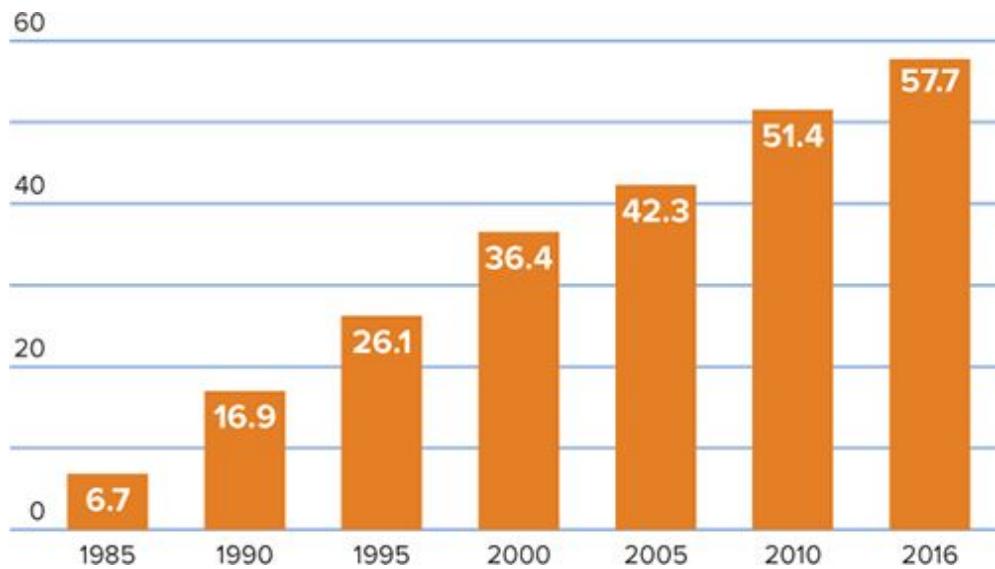
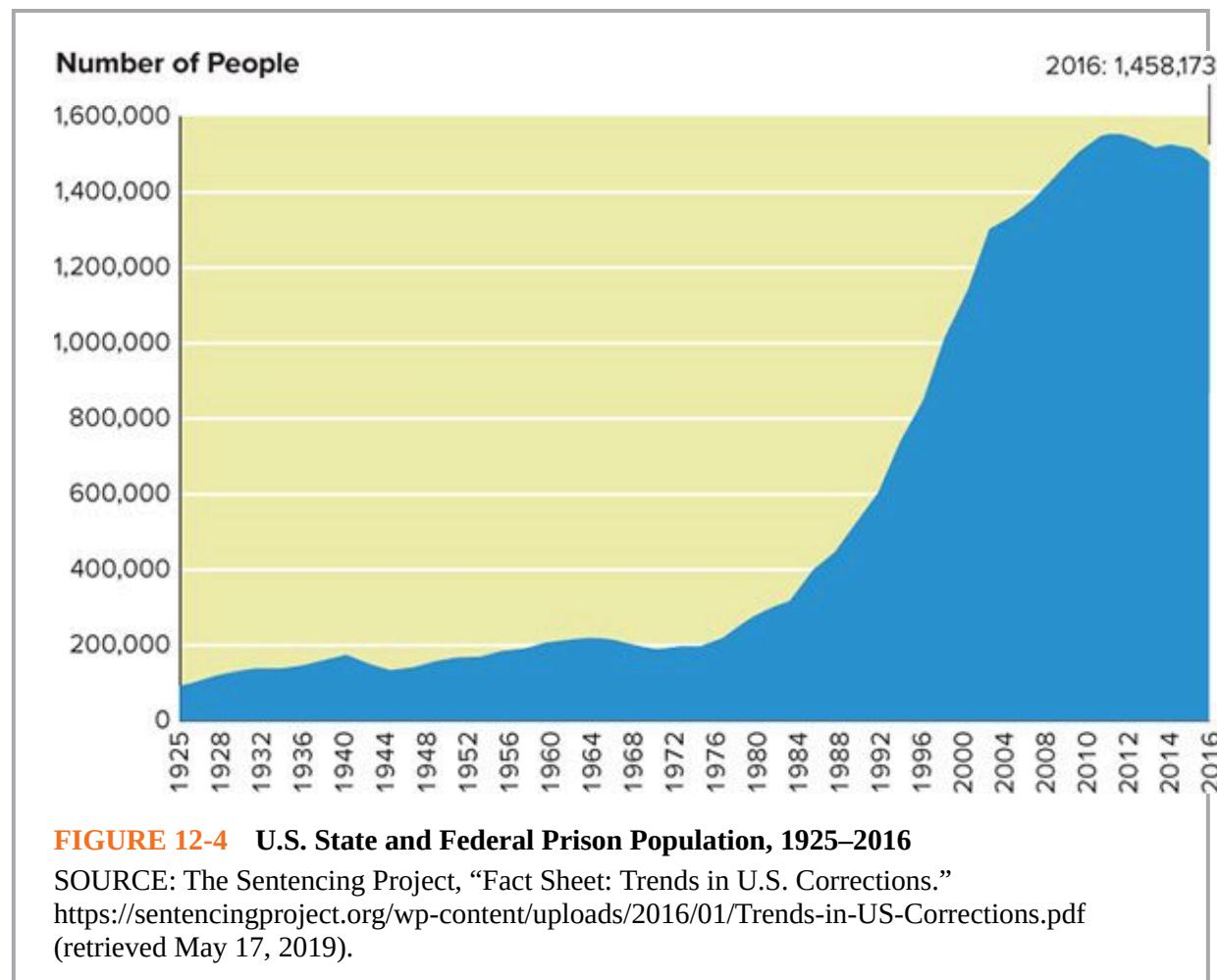


FIGURE 12-3 State Expenditures on Corrections in Billions, 1985–2016

SOURCE: The Sentencing Project, “Fact Sheet: Trends in U.S. Corrections.”
<https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>
 (retrieved May 17, 2019).

Prison Populations The rate of incarceration in the United States remains the highest in the world. It is also well known that the United States has nearly 5 percent of the world’s population and about 25 percent of [page 393](#) the world’s prisoners.³¹ The number of persons incarcerated in U.S. state prisons rose from 319,598 in 1980 to 1,316,000 in 2018.³² Increases in the prison population were driven mainly by policies of mass incarceration and changes in sentencing laws, not by changes in crime rates.³³ Figure 12-4 shows how state and federal policies of mass incarceration influenced prison populations over time.



Although the U.S. incarceration rate continues to be high, the significant news is that the U.S. prison population has been declining since 2010, perhaps reflecting a shift away from a four-decade-long policy of mass incarceration and “get tough” sentencing practices.³⁴ In 2016, there was a slight decrease in the prison population of about 1 percent from the year before indicating a slow decline in the national imprisonment rate.³⁵ Factors make it difficult to predict if the decline will continue, however, the downward direction is promising.³⁶ The decline in the state prison population has been fueled by states’ determination that they can reduce prison populations, save money, and yet not jeopardize public safety.³⁷ A major hopeful step to reduce federal prison populations was the enactment of the 2018 Criminal Justice Reform Act also known as the First Step Act. In Chapter 11, we discussed the Public Safety Realignment (PSR) Act, California’s response to the 2011 U.S. Supreme Court order to reduce prison

overcrowding. Although California's prison population is declining, it is too early to tell whether the state's PSR policy will deliver the types of treatment that will reduce offender recidivism and make communities safer.

Racial disparities exist in our nation's state and federal prisons as can be seen in Figure 12-5. Blacks and people of color are incarcerated at disproportionate rates. People of color represent more than 60 percent of those incarcerated. Furthermore, Black men are six times more likely to be imprisoned than White men. Latino men are almost 3 times more likely to be imprisoned than White men. Recent national tragedies—such as the deaths of Black men like Freddie Gray in Maryland, Michael Brown in [page 394](#) Missouri, and Walter Scott in South Carolina—are stimulating a growing U.S. conversation not only about police and public opinion and use of force (see Chapters 6 and 7) but about mass incarceration policies that disproportionately incarcerate people of color. Such conversations frequently are precursors to criminal justice system reforms.³⁸ Prisoners, like people in general, gravitate toward those who are like themselves racially, ethnically, and culturally. Male prisoners, and the gangs they form, segregate themselves largely by race for safety, support, and protection. This practice creates problems for prison management, which, in the face of organized groups of inmates, literally cannot let its guard down.



SOURCE: The Sentencing Project, “Fact Sheet: Trends in U.S. Corrections.”
<https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>
(retrieved May 17, 2019).

Types of Prisons

State and federal prisons are classified as minimum-, medium-, maximum-, or supermaximum-security facilities. These institutions are often referred to by levels, beginning with Level 1 for minimum-security prisons, Levels 2 and 3 for medium-security prisons, Level 4 for a maximum-security prison, and advancing to Level 5 for a supermaximum-security prison.

Minimum-Security Prisons **Minimum-security prisons** hold offenders who have short sentences, are nonviolent, and are unlikely to attempt escape or pose risks to others in the institution. Sometimes offenders are transferred to minimum-security institutions at the end of long sentences to prepare for release. Such facilities tend to be smaller and may resemble a campus, with buildings arranged in cottage style. Inmate housing units are dormitory style with communal toilets and showers, although some have individual sleeping quarters. In either case, this arrangement represents a significant departure from locked cells. Minimum-security facilities might not have perimeter fencing, and generally no armed correctional officers patrol the grounds. Prisoners have a great deal of freedom of movement and may be permitted to wear civilian clothes instead of uniforms. The inmates are encouraged to pursue education, work, and treatment programs when available.

minimum-security prison

An institution that holds offenders who have short sentences, are nonviolent, and are unlikely to attempt escape or pose risks to others in the facility.



▲ A Minimum-Security Prison

Minimum-security institutions do not allow inmates access to life beyond the prison perimeters. *How does life in a minimum-security prison differ from life outside the prison?*

Dale Sparks/AP Images

MYTH/REALITY

MYTH: Minimum-security prisons are country club environments.

REALITY: In general, prisons have a harsh, undesirable environment.³⁹

Minimum-security prisons are often referred to as country clubs because their atmosphere can be casual and rules appear relaxed. But even though it is a low-security setting, a minimum-security prison is page 395 populated with felons, and violent outbursts can occur at any time. Although inmates in minimum-security facilities have more freedom than those in other prisons, they may not leave, and their activities are greatly restricted. They are allowed few personal possessions, visits are limited, and privacy is nonexistent. The loss of personal freedoms causes some individuals tremendous stress. Living conditions may be cramped and unsanitary. There may be little opportunity for work, education, or treatment, and personal safety is never assured.

Medium-Security Prisons Inmates in **medium-security prisons** are under greater control than in minimum-security prisons, and their movement is restricted to areas that have close surveillance. Gun towers hold armed correctional officers who carefully watch barbed- or razor-wire perimeters. *Sally ports*—secure entrances with a series of gates or doors—control movement between closed zones. Closed-circuit monitoring and other security mechanisms are positioned virtually everywhere. Prisoners may take part in limited educational, vocational, and therapeutic programs, but the inmates are subject to *lockdown* (confinement to their cells) at any time. The numerous prisoner counts each day shut down all activities and require inmates to report to a designated area for the count.

medium-security prison

An institution in which inmates are under greater control than in minimum-security prisons, and their freedom of movement is restricted to areas that are under close surveillance.

Inmates usually share cells in a medium-security prison. Typically, the buildings have several wings and two tiers, with each tier housing about 150–200 inmates in double-bunk cells. Some prisons have open dorm sections that contain about 12 double bunks. Public bathroom areas are heavily used. There is a communal area for inmates to interact with others. Officer stations are located so they can view the entire housing unit at any given time.⁴⁰ Privileges include mail, limited and monitored visitation, radio, television, work release, and furlough. However, few prisoners are able to take part in vocational and educational programs.

Maximum-Security Prisons Inmates in **maximum-security prisons** are subject to high levels of control. Physical barriers severely restrict the mobility of prisoners. Inmates are shackled when they are moved.

maximum-security prison

An institution in which inmates are subject to high levels of control and where their mobility is severely restricted by physical barriers.

These prison facilities are often constructed of massive concrete walls. Armed guards conduct foot patrols, and others carry out surveillance in towers. Lethal electrical fences, infrared and motion-sensing devices, and electronic locking systems to keep inmates in confinement are standard features of maximum-security prisons. Inmate counts typically take place

four times a day. Depending on prison policies, inmates are either locked in their cells or are expected to stand outside their cells during counts. Recounts are done immediately if numbers do not tabulate. Inmates know that they are subject to daily inspections, constant surveillance, and random searches.⁴¹

In a maximum-security prison, cells are set back-to-back in tiers in the center of a secure building, making escape more difficult. Prisoner living quarters are arranged in separate units or sections known as *cell blocks*, each having its own security system and correctional officers. Individual cells have sliding doors with locks operated by remote control. Toilet facilities are in the cells because prisoners are often confined there many hours each day. When allowed out, they must remain in the cell block or in a specially caged area. When leaving their cell block, inmates are shackled and accompanied by correctional officers. These inmates may be allowed visitors but only under highly secure conditions. Death rows are normally in maximum-security prisons.



John Gaines/The Hawk Eye/AP Images



David Goddard/Getty Images



Peter Macdiarmid/Getty Images

▲ Different Prison Designs

Prison architecture varies greatly.



▲ Inside a Cell Block

Cell blocks are secure, and prisoners are watched around the clock. *In what ways does lack of privacy affect prisoners?*

Danny Johnston/AP Images

Fewer than 0.1 percent of prisoners housed in all types of prisons escape, and prison escapes are on the decline.⁴² The probability that a prisoner in a maximum-security level prison will escape is even lower. Despite publicity

surrounding the 2015 prison break of Richard Matt and David Sweat (shown in the photos) at Clinton Correctional Facility in upstate New York and the drug lord “El Chapo” Guzman’s escape from what was allegedly the most secure prison in Mexico, prison breaks in high-security prisons are not common and often involve collaboration with and cooperation of prison staff.⁴³

Supermaximum-Security Prisons **Supermaximum-security (supermax) prisons** provide the highest level of security possible—solitary confinement—using the latest correctional technology. Most inmates are isolated because their level of violence poses a risk of serious harm to other inmates and to the correctional staff. Some have gang affiliations that would give them inordinate power in the prison or make them targets of other gangs. Others possess an antagonistic temperament or antisocial disposition. Inmates deemed high escape risks are also housed here.

supermaximum-security (supermax) prison

A facility that provides the highest level of security possible—solitary confinement—using the latest correctional technology.



▲ New York’s Clinton Correctional Facility Prison Break

Despite media coverage, prison breaks from maximum-security prisons are rare events.

New York State Police/Getty Images

Judges do not usually sentence offenders to supermax prisons. Rather, offenders are sent there because of extreme misbehavior in other prisons, such as killing or attempting to kill other inmates or staff. Supermax prisons

are said to confine the worst of the worst. Prisoners contained in supermax prisons are not controllable in the traditional types of segregation units available in other prisons.

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KEY CONCEPTS Types of Prisons

Minimum-, medium-, maximum-, and supermaximum-security institutions are difficult places to do time.

Minimum-Security Prisons	Medium-Security Prisons	Maximum-Security Prisons	Supermaximum-Security Prisons
Hold those with short sentences who are nonviolent and not likely to escape	Hold those with longer sentences and both violent and property offenders	High levels of control House violent prisoners Severe restriction of prisoner mobility Shackled movement Gun towers Lethal electrical fencing Infrared and motion-sensing devices Electronic locking systems Daily life dominated by counts and random searches Daily inspections Constant surveillance Cell block living units Cell confinement Toilets in cells	Solitary confinement Total isolation from other prisoners House antisocial violent prisoners with antagonistic temperaments High escape-risk prisoners 23 hours a day cell confinement in a soundproof cell 1 hour of recreation alone in walled recreation area slightly larger than a cell 24-hour electronic surveillance No interaction or eye contact with inmates or staff Strip searches whenever a prisoner leaves a cell At least two correctional officers must accompany the fully shackled prisoner when moved Rehabilitation programs are rare and televised into cells
Smaller facilities	Larger facilities		
Dormitory-style housing units	Cell confinement and sometimes dorm confinement		
Communal toilet facilities			
May or may not have perimeter fencing	Daily activity dominated by counts		
Normally no gun towers	Prisoner movement is restricted		
More casual atmosphere	High surveillance of public social areas		
Minimal restriction of movement and dress	Officer stations in each housing unit		
Rehabilitation programs are encouraged	Sally ports Closed zones Close surveillance Gun towers Barbed- and razor-wire perimeter fencing Limited rehabilitation programs		

A whole institution can be designated supermax, but so can a single wing within a maximum-security institution, usually a housing unit or cell block. There is uncertainty regarding how many U.S. inmates currently are held in long-term solitary confinement. It is estimated that there are approximately 57 supermax institutions or housing units in state and federal prisons and approximately 80,000 inmates confined in supermax prisons or wings.⁴⁴ The only supermax prison in the federal system is known as ADX. It is located

near Florence, Colorado. Reliance on these facilities in the United States may be on the decline due to criticisms that they are expensive to build and operate, violate constitutional guarantees against cruel and unusual punishment, and damage the mental health of those who live and work within them. California, New York, and the federal government have put into place measures to change the use of solitary confinement.⁴⁵

Supermax conditions are severe. They are clean, sanitary, and have the latest high-tech security devices. However, make no mistake—they are the modern-day version of dungeons. Inmates spend 23 hours in their cells and 1 hour in a solid-walled secure recreation area only slightly larger than a cell. In the typical supermax facility, prisoners live within featureless concrete and steel enclosures and are under constant electronic surveillance. Mattresses on concrete slabs serve as beds. Toilets are next to beds and are typically timed by prison authorities to flush at intervals, not after every use. When windows to the outside world are present, they are typically no wider than 4 inches, and there may be small, security-reinforced skylights in some cells. Food is provided through locked food ports in cell doors. [page 398](#) Cells are soundproof and designed to minimize social contact; inmates are not permitted even eye contact with other inmates or staff. All incoming mail is read and censored before delivery. Prisoners are subject to strip searches whenever they leave their cells and are typically accompanied by at least two correctional officers. Treatment and vocational programs are rare. When they do exist, they tend to be confined to the inmate's cell and consist of televised programming.⁴⁶

These isolating features take on particular importance when we consider that most of the inmates released from supermax prisons go directly into the community, with little or no “decompression” to ease them back into the mainstream.⁴⁷ Because this kind of confinement denies the basic human need to interact with others, such institutions are often accused of “manufacturing madness.”⁴⁸

Prisoner Classification Systems

The **classification** of inmates is a crucial area of prison management. Classification determines which inmates go to which institutions and the specific conditions under which they will be confined. Prisons themselves are classified into different **security levels** depending on the danger level

associated with the inmates being housed. Inmates, on the other hand, are classified according to **custody levels**—the risk of danger they pose to other prisoners and to correctional staff. Classification differs in men’s and women’s prisons. Women’s prisons tend to confine all custody levels within the same facility, whereas in men’s facilities custody levels may be spread among prisons.⁴⁹

classification

Determination of which inmates go to which institutions and the specific conditions under which they will be confined.

security level

The degree of danger associated with the inmates being housed in a prison.

custody level

The degree of danger an inmate poses to other prisoners and to correctional staff.

Custody levels are determined by inmate criteria such as the crime committed, sentence length, record of past violence, prior institutional behavior, and social and medical factors such as substance abuse. An inmate may be placed in a high-security prison yet be a low (custody) risk in that institution, with privileges denied to other higher-(custody) risk inmates. These decisions are based on **risk classification**, an assessment of the level and kind of risk an individual presents to correctional staff and other inmates.

risk classification

An assessment of the level and kind of risk an individual presents to correctional staff and other inmates.

Risk classification follows a complex protocol. An offender sentenced to prison first goes to a centralized classification facility where a team of experts conducts a battery of tests to evaluate security risk and program needs. Offenders generally stay there fewer than 90 days. While in the centralized facility, they are subject to high-security practices and isolation from others.

Correctional Staff

Correctional officers—otherwise known as *prison guards*—describe their job as the hardest in the world, even more difficult than the jobs of police and firefighters. The reason they give is that the work stress and the risks to their personal safety are constant. Consider how they must do their job while trying to maintain order and discipline in a population that for the most part has little regard for authority.⁵⁰ It is not surprising that they often see themselves as “forgotten people in a hostile social system made up of politicians, the public, prison administrators, and inmates.”⁵¹ Many correctional officers say that they feel alienated and resent negative stereotypes that portray them as brutal, unfeeling, rigid, authoritarian individuals who enjoy the power they can wield over the inmates.⁵² A famous research study contributed to these negative images of correctional officers.⁵³



▲ The Stanford Prison Experiment

Social psychologist Philip Zimbardo's experiment probed the psychological effects of being a “prisoner” and a “guard” in a simulated prison setting. *On what bases might the study be criticized?*

Philip G. Zimbardo, Inc.

The study centered on an experiment conducted at Stanford University in 1971 by social psychologist Philip Zimbardo. The project page 399 involved the creation of a simulated prison. In a scenario that might sound like the plot of an action film set in a war zone, it took the prison's "guards" no time to act aggressively, abusively, and even sadistically toward the prisoners. Equally rapidly, the prisoners became passive, hopeless, depressed, and dehumanized.

This classic study, known as the Stanford Prison Experiment, was designed to explore the psychological effects of being a "prisoner" and a "guard" in a simulated environment.⁵⁴ The 24 subjects, all students, were middle-class male volunteers; none had been previously exposed to the criminal justice system. The "prisoners"—decided by a coin toss—were held in a mock prison-type environment in a basement on the Stanford University campus.

Designed to last 2 weeks, the experiment had to be cut short after 6 days because the "guards" and "prisoners" were behaving in such unexpected and disturbing ways. Some students were so troubled by their actions that they needed professional counseling afterward.

Zimbardo and his team of researchers inferred that the prison social structure powerfully determines human behavior, leading individuals to suspend or abandon their personal values. The experiment raises questions about how the social environment of jails and prisons can influence the effectiveness of the corrections system.⁵⁵

Although Zimbardo's experiment is considered a classic in the study of corrections institutions, it has been criticized on the grounds that professional correctional officers are well-trained professionals—but the student participants were not. It has also been pointed out that the students who enacted the role of correctional officers were behaving in ways that they thought officers should act. In other words, they may have been reacting to stereotypes rather than to the specific situation at hand. A further criticism of the study is that the students who were in the roles of the prisoners were already demeaned before the experiment even began by the clothing they were required to wear.

Zimbardo's study was not a scientifically controlled experiment but rather a pilot study that was never pursued. However, in 2001 the BBC Prison Study was carried out in a more scientifically controlled way.⁵⁶ A college campus and a prison are very different environments, and the conditions

imposed on the experiment were in many ways arbitrary and not like actual conditions in a prison. Nonetheless, this study does raise some important questions as to whether a correctional officer's attitudes and behavior might be influenced by the environment and nature of the prison itself.

Who Are Correctional Officers? In a study of officers at Auburn Prison, today a maximum-security facility in Auburn, New York, Lucien X. Lombardo painted a sympathetic picture of correctional officers. Lombardo saw the officers as having been attracted to their careers primarily for job security, only to be later left, basically alone, in a hostile, dangerous, and ambiguous environment.⁵⁷ Even those who begin their careers wanting to be helpful to inmates and assist in their rehabilitation process are thwarted. New officers are thrown into their jobs with little help and thus are forced to fend for themselves or to rely on more seasoned officers to show them the ropes. Inmates, correctional administration, and even fellow officers are page 400 often hostile to these naïve newcomers.⁵⁸



▲ Ever Watchful

Correctional officers are watching whenever prisoners gather.

Derek Davis/Portland Press Herald/Getty Images

Lombardo found that each assignment puts different demands on the officer. For example, a yard officer must be seen as an aloof figure who watches, listens, and controls the inmates, whereas a housing block officer must deal with security, housekeeping, supervision, and human services. Officers must enforce rules with discretion and use their authority wisely and humanely to cultivate inmates' cooperation.⁵⁹ Job satisfaction is greater among officers working in more service-oriented prisons than in traditional custody-oriented institutions.⁶⁰

Studies of police officers have shown that those who have attended college tend to be more flexible and less authoritarian than those who have not.⁶¹ In the case of correctional officers, all correctional institutions require a high school diploma or its equivalent, but about 22 states require a college degree.⁶² The Federal Bureau of Prisons requires at least a bachelor's degree plus 3 years of experience. All states offer on-the-job training, and some states and agencies provide specialized training academies.⁶³

Negative attitudes and perceptions of inmates on the part of correctional officers create a barrier that distances them from inmates. In the extreme, some correctional staff may view inmates as less than human.⁶⁴ For example, in the 1990s, correctional officers in California were charged with staging gladiator-style fights among prisoners and shooting unarmed prisoners for sport.⁶⁵ In the Stanford Prison Experiment, Zimbardo attributed the behavior of both correctional officers and prisoners to factors in the situation, not to individuals' personalities. He believed the prison social structure was an inherently unhealthy environment that produced the aberrant, antisocial behavior of "guards" and "prisoners."⁶⁶

With the shift by the public and by policymakers to more punitive attitudes toward offenders, one might expect that correctional officers' outlooks toward prisoners would mirror this trend. That has not been the case, however. Indeed, a study of the attitudes of correctional officers found that as a group they have tended to have a more positive view and expressed support for rehabilitation programs for inmates.⁶⁷

Professionalization From early times, the job of prison guard was one of low status. Guards were considered little more than the custodians of inmates. There was scant change until the 1970s, when the American Correctional Association (ACA) developed standards for the training of

guards. Over time, guards became correctional officers as the field focused on a more humane model of corrections. The ACA training standards eventually became the basis for certification criteria of officers.

The 1990s marked an additional turning point for the field of corrections and correctional personnel. To gain public confidence and to combat an increasingly negative image, correctional agencies focused on the professionalization of officers, implementing plans that had proved successful for the law enforcement community. Professionalism requires a commitment to a clearly articulated set of ideals and standards that instill pride in officers and raise the public's view of the profession. For an occupation to be regarded as a profession, members acquire specialized knowledge and develop skills consistent with these ideals. They abide by an established code of ethics policed by other members of the profession.⁶⁸

The key to professionalization is education. In 1991, a joint task force of correctional administrators and academics endorsed a standardized curriculum consisting of 18 semester hours of higher education coursework in corrections.⁶⁹ The conversion of correctional work from an occupation to a profession required, among other changes, raising the educational minimum for entry-level positions, providing incentives for continuing education, and increasing entry-level salaries.⁷⁰

New standards of recruitment and training for correctional officers better equip the prison staff to handle the high level of stress on the job. A new regimen of practices creates a supportive subculture that page 401 reinforces professional attitudes and competencies. Formal education alone is not sufficient. Pre- and in-service training are the most important ways correctional agencies can increase the professionalism of their officers and help set the tone and shape the attitudes of an institution.⁷¹

PRISONER RIGHTS

MYTH/REALITY

MYTH: Once an inmate has served time, the debt owed to society is paid and life as usual can resume.

REALITY: Many rights are taken away from offenders during and after they serve time in prison. In some states, ex-offenders lose civil rights such as the right to vote, hold public office,

serve on a jury, have occupational licenses, and own a firearm. Incarceration may affect the life of the ex-convict long after release.⁷²

Until the 1960s, convicted offenders had no civil rights other than those granted by specific laws. Under the **hands-off doctrine**, courts were reluctant to interfere with prison management, and an inmate had little legal recourse if subjected to abuse and neglect while in custody. For all intents and purposes, convicted prisoners were considered civilly dead. In 1964, however, the U.S. Supreme Court ruling in *Cooper v. Pate* gave prisoners access to the courts by granting them the right to bring civil actions against prison authorities for violations of civil rights.⁷³ Inmates could now sue for officer brutality, inhumane conditions, and inadequate nutrition and medical care. Also in the *Cooper* decision, the Court specifically held that Muslim inmates had the right to challenge prison officials for acts of religious discrimination under the Civil Rights Act of 1871.

hands-off doctrine

An approach that made courts reluctant to interfere with prison management or prisoner rights.

An individual serving time for a crime today still loses certain rights. For example, she may be barred from holding public office. In many states, even after having served her sentence, she loses the right to serve on a jury, to be a witness, and to own a firearm. She also may lose rights of employment forever by being stripped of or barred from holding occupational licenses such as those for therapist, doctor, nurse, dental hygienist, or bartender.

What about the right to vote? State governments determine whether and when convicted felons can vote, and the resulting picture is a very mixed bag.⁷⁴ Vermont and Maine, for example, permit prison inmates to vote. In 38 states, inmates are not permitted to vote until they complete their period of incarceration (and 23 of those extend that to terms of probation and parole). In contrast, convicted felons in nine states may be barred from voting permanently.⁷⁵ The issue is a contentious one. Florida voters passed a constitutional amendment that took effect January 2019 restoring the right to vote for those with prior felony convictions (except for murder and sex offenses) once they complete all terms of their sentence. Within five months the Florida House and Senate passed a bill requiring former felons to first finish paying back all fines and court fees before their voting rights would be

restored.⁷⁶ At the time of this writing, a federal judge has ordered that, temporarily, the new law will not apply to former felons who are financially unable to pay outstanding fines and fees. A final decision on the matter is likely to come in mid-2020.⁷⁷

Due Process Rights

In 1974, in *Wolff v. McDonnell*, the Supreme Court applied Fourteenth Amendment procedural rights to prison inmates, guaranteeing them not only access to the courts but also due process in disciplinary hearings.⁷⁸ In accordance with the *Wolff* decision, prisoners must be notified of charges, be able to call witnesses, have the right to assistance in a defense, and have the right to an impartial hearing before any administrative decisions are made that could deprive them of their rights or freedom. Such protection is particularly important in situations where a disciplinary action could take away an inmate's **good time credits** (time removed from a prison sentence for satisfactory behavior), thus jeopardizing early release, or where an administrative decision places an inmate in solitary confinement. In *Wolff*, the Court also declared racial discrimination intolerable except where "prison security and discipline" necessitated a particular action, such as assigning an inmate to a certain cell block because of imminent racist threats. The dominance of race-based gangs inside today's American prisons has presented prison officials with major challenges in this regard. For example, in 2014 a class action was launched by prisoners against the California Department of Corrections and Rehabilitation (CDCR) over its policy calling for the lockdown of all inmates of a particular race following incidents of race-based violence. If, for example, violence was perpetrated by a Latino gang, all Latino inmates in the prison would be locked down—regardless of whether they had taken part in the incident. The inmates charged that this was a violation of their Fourteenth Amendment right to equal protection under the law. CDCR argued the practice was necessary to maintain security in the facility. Lockdowns result in the denial of family visits, work assignments, yard times, and the like. They can last for months or even years. Although aspects of the case are pending, CDCR has agreed to cease race-based lockdowns.⁷⁹

good time credits

Time taken off a prison sentence for an inmate's satisfactory behavior or for participating in a prison program.

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Real Careers



Image Source

ANGELA SOLORZANO

Work location: Downey, California

College(s): East Los Angeles City College (2004); California State University, Los Angeles (2007)

Major(s): Administration of Justice (Associate's); Criminal Justice (BS)

Job title: Detention Services Officer, Los Padrinos Juvenile Hall

Salary range for job like this: \$46,000–\$55,000

Time in job: 3 years

Work Responsibilities

I am a deputized peace officer who supervises detained juveniles during their activities within the living unit. I am primarily responsible for their safety and security, which means controlling and restraining combative or emotionally disturbed juveniles and providing them with situational counseling to help them perform their daily routines.

A typical workweek for me is 40 hours with 2 days off. Detention services officers at Los Padrinos Juvenile Hall can work any of three shifts: 6 a.m. to 2 p.m., 2 p.m. to 10 p.m., or 10 p.m. to 6 a.m. I have worked all three shifts, and each involves facilitating a different routine.

6 a.m.—2 p.m.: Awaken the juveniles, make sure that they groom for school, eat breakfast and lunch, attend scheduled court hearings, and receive medical care or counseling, as needed.

2 p.m.—10 p.m.: Pick up detainees from school and conduct recreational programs. Ensure that detainees eat dinner, shower, and receive medical attention or counseling, as needed.

10 p.m.—6 a.m.: Supervise detainees during sleeping hours. Make sure that they receive medical attention, as needed. Assist them with getting up for court appearances or being transported to a facility to serve their sentence.

Regardless of which shift I work, I always need to chart the behavior of the detainees and report it to the probation officer and the court. The juvenile system is focused on rehabilitation, and we as a department hope that our services and guidance will help these young adults return to society and become productive individuals.

Why Criminal Justice?

Ever since I was a child, I enjoyed watching crime-solving TV shows like *Matlock*; *Murder, She Wrote*; *Columbo*; and *People's Court*. But not until high school did I realize how much I wanted to break the barrier into law enforcement, which has traditionally been a male profession. Ultimately, I would like to be a judge, and working as a detention services officer is a stepping-stone toward reaching this goal.

Expectations and Realities of the Job

Before I started this job, I thought I would make a difference in the lives of all the juveniles at the facility. As it turns out, not all detainees are as open to rehabilitation and services as I had expected. To be an effective detention officer, I always have to be willing to dedicate additional time and effort to those who require it. I am disappointed that the system does not rehabilitate all of the detainees, but when a juvenile does emerge from the facility a changed citizen, I know that my job is worthwhile.

My Advice to Students

To be a successful detention services officer you have to be willing to serve and respect the juveniles with whom you work. This can mean being patient with someone who has a mental illness, or being accepting of someone who comes from a different social or cultural background. You must put aside your own opinions, emotions, and beliefs and not judge the juveniles for the crimes they have been accused of committing.

Rights guaranteed by the Eighth Amendment prohibiting cruel and unusual punishment were addressed in the Supreme Court's decision in *Estelle v. Gamble* (1976).⁸⁰ The *Estelle* ruling required that "deliberate indifference" to an inmate's alleged plight be proved in order for that inmate's challenge to succeed. This standard is difficult to meet, however. In 1986, in the case of *Daniels v. Williams*, the Supreme Court held that neglect or unintentional acts causing injury are insufficient grounds, on their own, to assign culpability to corrections officials.⁸¹ For prison officials to be held responsible for an injury, the inmate must show that the officials had knowledge of a situation and deliberately allowed it to occur. Merely being careless in their duties is not a constitutional violation.

During the so-called prisoner rights era (1970–1991), the U.S. Supreme Court tended to support the rights of prisoners in accordance with the Constitution. This era came to a close in 1991 when the composition of the Court shifted, and the majority of justices began to support prison administrators. In close 5–4 decisions, changing just one justice on the Court can change the entire philosophy of its decisions.

Such was the case when the Supreme Court decided in 1991 that prison conditions such as overcrowding do not violate the Constitution because overcrowded conditions are not the result of "deliberate indifference."⁸² The Court also ruled that the prohibition against cruel and unusual punishment is not applicable to overcrowding because this standard implies intent on the part of the perpetrator and in this case the intent of overcrowding is not malicious. However, in 2011 the Supreme Court ruled that California did violate the Constitution by overcrowding its prisons.⁸³ Many other gray areas thus await future judicial determinations.

First Amendment Rights

The First Amendment of the U.S. Constitution guarantees freedom of speech and freedom of religion. In *Procunier v. Martinez* (1974), California inmates asserted that state regulations censoring a prisoner's mail were unconstitutional because they violated freedom of speech and expression.⁸⁴ One such regulation had banned letters that criticized prison conditions. Another had barred the use of law students and other legal paraprofessionals

to conduct attorney-client interviews with inmates. The U.S. Supreme Court struck down these state regulations as unconstitutional.

When prison authorities restrict an inmate's religious practice, they usually justify their decision by claiming a need for institutional security. Sometimes, however, questions are raised about the legitimacy of a prisoner's stated religion. For example, in one case that ultimately was thrown out by a federal appeals court, inmates claimed that they were members of the Church of the New Song (CONS) and were required to eat steak and drink Harveys Bristol Cream sherry as part of their religious practice. For more mainstream religions whose strictures do not interfere with the security of the institution, inmates have the right to practice their faith. For example, in 1972 the Supreme Court affirmed the right of an inmate to practice Buddhism in the case of *Cruz v. Beto*.⁸⁵

A variety of other court opinions have addressed aspects of inmates' First Amendment rights. In 1987, the Supreme Court held in *O'Lone v. Estate of Shabazz* that prison officials were not required to alter a Black Muslim's work schedule to enable him to attend Friday afternoon services, as long as they had a rational reason for the restriction.⁸⁶ In 2005, the U.S. page 404District Court in Colorado ruled that a Muslim inmate did not have to register as Jewish to receive kosher meals in order to meet his religious dietary requirements.⁸⁷ More recently, in response to a lawsuit, the Wyoming State Penitentiary agreed to adjust Muslim prisoners' mealtimes if those scheduled times interfered with the inmates' required prayers.⁸⁸ In 2005, in *Cutter v. Wilkinson*, the Supreme Court unanimously upheld the constitutionality of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), which protects the religious freedom of prison inmates.⁸⁹

LIFE IN PRISONS AND JAILS

Institutional life for inmates and staff is centered on custody and security. The result for prisoners is monotony and regimentation, yet the climate can turn to violence in an instant as individuals and gangs compete for scarce resources in the prison.

The Inmate Subculture

Prisons are one type of **total institution**, a facility responsible for, and in control of, virtually every aspect of life for those who live and work within them, including food, shelter, medical assistance, clothing, and safety. These total institutions exist within the broader society yet are isolated from it. Contacts with outsiders are limited and tightly controlled. The “Matters of Ethics” box discusses how an inmate with a long or life sentence might leap at an opportunity to be a research subject to have a change in the routine of everyday prison life.

total institution

A facility responsible for, and in control of, every aspect of life for those who live and work within it, including food, shelter, medical assistance, clothing, and safety.

When people depend on an institution to meet their basic needs—such as those for food, shelter, and friends—to the point of being unwilling, or unable, to function in the outside world, we say that those individuals are a product of **institutionalization**. The more time offenders spend incarcerated, the more likely that institutionalization will occur. *State-raised convicts* are those who spend more of their lives in confinement—in juvenile halls, detention centers, training schools, jails, or prisons—than in free society. There are ex-convicts who, not long after their release, commit new crimes in order to be sent back to prison, where they know what is expected of them. Their friends are there, and the institution meets their most basic needs of food and shelter.

institutionalization

The state of being dependent on an institution to meet one’s basic needs—such as those for food, shelter, and friends—to the point of being unwilling, or unable, to function in the outside world.

Having all one’s needs provided by a single institution, however, comes at a price. Unique subcultures develop that establish values, roles, and communication patterns and largely determine how inmates relate to one another. The behaviors of the “guards” and “prisoners” in the famous Stanford Prison Experiment demonstrate how these roles affect behavior. Correctional officers and prisoners are frequently suspicious of and hostile toward one another. The prisoners see the officers who enforce the rules of the institution as their adversaries. The officers in turn see prisoners as untrustworthy and manipulative.⁹⁰ Each group behaves according to an “us

versus them” mentality. Given such an environment, it is not surprising that Zimbardo found that he had to terminate his experiment prematurely.

Prisonization is the process of socialization whereby prisoners adopt the norms, values, and beliefs of the **inmate subculture** as their own. The longer offenders spend in prison, the more they become prisonized. Such inmates become decidedly opposed to authority, for instance, and resist those in authority.⁹¹ They learn not to share information with their keepers and not to portray themselves as needy, weak, or vulnerable. They are suspicious of the motives of others. An inmate who firmly accepts these values becomes increasingly difficult to rehabilitate to life outside of prison.

prisonization

A process of socialization whereby prisoners adopt the norms, values, and beliefs of the inmate subculture as their own.

inmate subculture

The norms, values, and beliefs that develop among prisoners.

How Subcultures Form The inmate subculture has its own norms, language, and roles (see table on prison slang terms).⁹² How this subculture arises in a prison has long been the subject of two competing schools of thought: the deprivation model and the importation model.

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Matters of Ethics

Prisoners as Research Subjects

Captive populations such as prisoners—especially those with lengthy or life sentences—will experience situations where daily routines are unchanged and produce boredom, minimal stimulation, and monotony. In short, prisoners’ lives are dull in part because incarceration centers on custody and security. Prisons are dangerous places, and inmates may experience stress and anxiety about their physical safety. Thus, when there is an opportunity for prisoners to participate in an activity, such as clinical research, that is out of the ordinary and might take them away from the daily regimentation of incarceration, they may jump at the

chance to participate. However, because of the environment of incarceration, educational disadvantage, diminished social support and contact with family and friends in the community, prisoners are vulnerable. This vulnerability may affect their ability to make decisions about their own welfare and can lead to ethical issues such as the freedom of a prisoner to make a genuine voluntary and uncoerced decision to participate as a subject in a research study.



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The Belmont Report was published in 1979 by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research and contains guidelines for the protection of human research subjects. In the United States any institution that does research that is supported or conducted by the U.S. Department of Health and Human Services (DHHS) must agree to protect human subjects with an acceptable statement of ethical principles. The Office for Human Research Protections (OHRP) is responsible for ensuring compliance with human subject protection policy.



Today laws and regulations codified by federal executive agencies are in place to better protect prisoners as research subjects. Other agencies such as the Federal Bureau of Prisons have additional policies and safeguards regarding research involving inmate subjects. Review committees or Institutional Review Boards (IRBs) for protection of human subjects are essential to assess risk by maximizing possible benefits to prisoners' health or welfare and minimizing possible harms (psychological, physical pain, injury) to prisoners.

Prisoner research subjects must volunteer and be informed participants. Informed consent involves whether subjects are given the information they need to understand the risks they take by participating. Furthermore, inmates need to comprehend what they are giving consent to. Intellectually deficient, mentally disabled, or terminally ill inmates may not be able to give valid consent.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do we need to pay close attention to prisoners who may consent to become subjects of prison research? Why or why not?
- Are prisoners incapable of providing true informed consent to participate in a prison research study? Explain.
- Should prison research where prisoners are subjects only include studies that promote the betterment of prisons?

SOURCES: T. H. Stone, *Prisoners as Human Subjects: Researcher Reference Guide* (Kentucky: Institute for Bioethics, Health Policy and Law University of Louisville School of Medicine, 2004); Board on Health Sciences Policy, Committee on Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research, Lawrence O. Gostin, Cori Vanchieri, and Andrew Pope (Eds.), *Ethical Considerations for Research*

Involving Prisoners (Washington, DC: The National Academies Press, 2007); “Guidance for Research Involving Prisoners,” Rutgers, The State University of New Jersey, 2011. <http://orsp.rutgers.edu/index.php?q=content/guidance-research-involving-prisoners-human-subjects> (retrieved February 3, 2013).

The **deprivation model** proposes that the **pains of imprisonment**—the deprivation of liberty, autonomy, security, personal goods and services, and heterosexual relations—lead to the development of a distinctive inmate subculture to cope with the pain of these losses. The subculture forms its own **inmate code**, or rules of behavior. Inmates are not to exploit one another. They are to be strong in confronting the pains of imprisonment. And they are to oppose prison authority. In short, rules such as “Don’t rat on others,” “Don’t lose your cool,” and “Don’t trust the guards” motivate inmates’ behavior. The inmate subculture provides solidarity and the means by which inmates collectively cope with incarceration.⁹³

deprivation model

The perspective that the hardships prisoners endure lead to the development of a distinctive way of behaving in prison.

pains of imprisonment

The deprivations inmates experience, such as those related to liberty, autonomy, security, personal goods and services, and heterosexual relations.

inmate code

Rules of behavior that inmates follow.

In contrast, the **importation model** holds that the inmate subculture does not arise from prison circumstances but rather is imported from the outside when offenders enter.⁹⁴ For example, aspects of the drug subculture of the streets become part of the inmate subculture.⁹⁵

importation model

The perspective assuming that inmate subculture does not develop as a result of prison circumstances but rather is brought in, or imported, from the outside when offenders enter.

In reality, both inside and outside factors contribute to the development of the inmate subculture.⁹⁶ Adherence to the inmate code does not necessarily lead to solidarity (or less violence). Male inmates divide _____ page 406

themselves primarily along racial lines. The tensions between racially diverse inmates—not between inmates and correctional officers—account for most of the instability in prisons today.⁹⁷ For female inmates, prison is by and large a different world, as we will see later in the chapter.

Prison Slang Terms

Prisoners have their own language.

Slang Term	What It Means
Beef	A crime
Bullet	1-year period of time
CO or hack	Correctional officer
Dorm	Security housing unit
Fish	A new arrival, first-timer to a prison, or anyone not wise to prison life
Gated out	Released from prison
Ink	Tattoo
Mule	Someone who smuggles drugs into an institution
Rolled up	Arrested
Shank	Prison-made knife
Turned out	Being forced into homosexual acts
Bootie flu	AIDS/HIV
The ninja	
The hole	Solitary confinement
Tipped up	Gang affiliated
Yolked	Muscular

Racial Concerns During the 1970s, a number of court decisions ruled as unconstitutional prison practices that assigned inmates to cells or programs on the basis of their race. Prison officials widely expressed concern that forced integration would fuel already strong tensions among inmates and lead to significantly more violence. Some violence did occur in response to integration, but not as much as predicted. Still, much of the violence in men's prisons today occurs between gangs of different racial affiliations.⁹⁸

Racial and ethnic tensions are a significant feature of male prison life in the United States. Unlike the world outside, male prisons tend to be dominated by people of color. Some commentators have argued that as a result, the minority White males have greater difficulty adjusting to the prison environment than do men of color.⁹⁹ Whites also tend to be victimized more frequently and severely. Evidence suggests that Whites are raped more than any other racial group.¹⁰⁰

Institutional Gangs and Prison Violence

Prison gangs are a major aspect of prison life, providing support for and protection of their members. As overcrowding has increasingly plagued U.S. prisons, the prison subculture has become more fragmented and disorganized. Inmates have come to see life in prison as more dangerous than before. Belonging to a gang, however, provides members with a sense of stability as well as protection.¹⁰¹ Most gangs are racially segregated, with members coming from the same city—and often the same neighborhood.¹⁰²

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Prison gangs manage drug trafficking—not only within the prison but often also on the streets through associates in the community with whom they communicate. They also control the availability of many illegal goods and services in prisons.

Gangs operate in the prisons in at least 40 states, as well as in federal prisons.¹⁰³ The rise of violent racist prison gangs began in part as a result of the desegregation of the U.S. prison populations in the 1960s. Racist rhetoric and animosity increase tensions within prisons and undermine security.¹⁰⁴ The Aryan Brotherhood, one of the first and best-known racist prison gangs, began at San Quentin Prison in California. There are other such White

supremacist gangs with neo-Nazi identification in prisons. Because gangs tend to identify themselves along racial lines, Black, Latino, and Asian gangs also have formed. Visitors carry messages back and forth between gang members in prison and street gangs.



▲ Gang Identity

Prison gang members show their affiliations by their tattoos and gestures.

Jose Cabezas/AFP/Getty Images

According to estimates from the National Gang Intelligence Center (NGIC), there are approximately 230,000 prison gang members in federal and state prisons in the United States. Prison gangs are comprised of a select group of inmates who belong to a structured group often with an established hierarchy and code of conduct. Some prison gangs are highly structured such as the Aryan Brotherhood and Nuestra Familia, whereas others, like the Mexican Mafia (La Eme), do not adhere to a strict structure. Prison gangs differ from street gangs in the size of membership, which tends to be smaller in the confined space of a correctional institution, and in the diversity of the gang's involvement in illicit activities. Those seeking membership in a prison gang do so because of their street gang affiliations and the need for

protection while incarcerated. Prison gangs tend to be more powerful within state institutions than in federal institutions. Some prison gangs can be susceptible to extremist viewpoints and embrace a militant stance and authority within the prison. Some speculate that U.S. prisons will become a breeding ground for terrorism and the Islamic State of Iraq and Syria (ISIS).¹⁰⁵

Prison gang-related crimes are a growing threat within correctional institutions and in the larger community as family on the outside move closer to the prison. Family members facilitate crime-related activity as messengers, smuggle contraband (especially cell phones) during visits, and even assist in escapes. Cell phones are particularly problematic because Internet access allows for unmonitored communication, text messaging, e-mails, and social media activity. Incarcerated gang members also garner more respect on the streets, allowing for easy influence in the community.

Gang members are also infiltrating jobs held by criminal justice practitioners, including those working in corrections. This poses significant safety concerns as gang members then have access to sensitive data, receive security clearances, and can influence investigations and operations, in addition to receiving specialized training and access to weapons.¹⁰⁶

Control of Gang Violence Strategies to control gang activity begin by identifying **security threat groups (STGs)**—inmates who, when they collaborate, can jeopardize the institution’s security. Typically, inmates in an STG are members of White supremacy groups, street gangs, cults, [page 408](#) or outlaw motorcycle gangs who use intimidation and violence to control drug trafficking, gambling, and extortion in prison. Many build loyalty by appealing to inmates’ existing racial hatred and their need for protection from other inmates.¹⁰⁷ Most prison gangs have a paramilitary organization with rules and regulations. While in prison, gang members tend to associate with other members in their gang.

security threat group (STG)

Inmates who, when they collaborate, can jeopardize the institution’s security.

Gang affiliations are sometimes difficult to identify. Gang-related tattoos, self-admission, possession of gang-related literature, and the monitoring of correspondence with outside known gang members are some of the ways

officials identify gang affiliations.¹⁰⁸ Most experts believe that prison gangs will never be completely eliminated. Once a member joins a gang, it is extremely difficult to leave.¹⁰⁹

Some observers allege that correctional officers encourage—or do not discourage—racial violence to minimize the possibility that inmates will organize themselves against the officers.¹¹⁰ Others point to STG policies as the source of many tensions that result in violence. For example, it is not uncommon for state corrections departments to separate gang members from the general population and to keep different gangs from having direct contact with one another. Many states have special lockdown units or *gang blocks* specifically for housing STG inmates. Some critics charge that prison administrations arbitrarily classify prisoners as members of STGs based on racial stereotyping.¹¹¹

MYTH/REALITY

MYTH: Prison riots are evidence that inmates are violent and dangerous.

REALITY: Prison riots are often the result of administrative policies that inmates resist. When offenders feel that their needs are dismissed by correctional administrators and perceive that other avenues to express grievances are exhausted, riots can occur.¹¹² Since the 1930s, psychologists have linked frustration with aggression.¹¹³ Incarceration can produce frustrations that can lead to violence.¹¹⁴

Prison Riots Riots are only one form of prison violence. When they occur, however, they generate media attention because they frequently harm both inmates and staff. Prison riots are not new or commonplace but when they erupt they can be sudden and dangerous. Indeed, it is estimated that since 1855, 500 prison riots have erupted in the United States, most at maximum- or medium-security facilities.¹¹⁵

Prison riots arise from a variety of factors: the authoritarian and demeaning behavior of some correctional officers, conflict between gangs, the subculture of violence, deprivations associated with imprisonment, racial tensions, boredom, overcrowding, and poor prison management. Riots recently erupted in Texas, Arizona, and California prisons.¹¹⁶ Also in 2018 at the Lee Correctional Institution in South Carolina, seven inmates were stabbed to death and 17 people were wounded in an eight-hour-long series of

fights that spread through three sections of the institution. Forty-four guards were on duty for 1,583 inmates. The riots broke out over illegal cellphones.¹¹⁷ Yet some riots appear to happen randomly, and this reality makes it impossible to predict such uprisings.¹¹⁸ “A Global View” describes the unique ways international prisons attempt to make prison life less violent and more humane for incarcerated inmates.

Two of the most infamous U.S. prison riots broke out at Attica Prison in New York in 1971 and at the New Mexico State Prison in Santa Fe in 1980. These two inmate revolts were very different in nature. At Attica the rioters attempted to force reforms such as more exercise and better food and programs. It was reported that the Attica correctional officers who were taken hostage were protected by inmates from violence. Nonetheless, as authorities moved in to quell the riot, 43 inmates and hostages died. In other words, the abuses that occurred took place *after* the riots, as officers violently retaliated against the prisoners. At Santa Fe there were no demands for reforms, just violence on the part of inmates against other inmates and against officers. This riot was rooted in the harassment and abuse of inmates. The underlying driving forces were revenge and counterrevenge.¹¹⁹

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A Global View

Incarceration For Punishment in Contrast to Incarceration As Punishment: Prisons Around the World that Defy Hard Time



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Distinctions exist as to how prisons throughout the world incarcerate people and what happens within their walls during their stay. Some global prison systems exist to make the incarceration experience as hard and painful as possible for its inhabitants. In contrast, some prison systems operate as if incarceration itself and the resulting lack of freedom is punishment and furthermore it is essential for all inmates—even those with violent histories—to be treated with dignity, respect, and kindness while they are incarcerated. Such prisons operationalize the policy of treating inmates with basic human decency, empathy, caring, and compassion. Additionally, they embrace the viewpoint that moral and social responsibility is the main justifications of incarceration. Without dignified and respectful treatment of prisoners, prosocial reintegration of

prisoners back into society cannot be achieved. The following examples are a few prisons throughout the world that set aside the philosophy of hard time and offer distinct humane models of incarceration.

Finland Suomenlinna Prison is an open prison that has no barbed wire but rather a modest picket fence to outline its borders. It holds about 100 men of whom about a tenth are lifers and there are approximately 28 staff. In fact, the facility has trouble with tourists who frequently wander in. There is no ban on cell phones or e-mail addresses. Instead of cell blocks there are wood cabins with cooking facilities, living rooms, and saunas. The staff does not see prisoners as prisoners but instead as “citizens who need services” allowing for the prison’s total focus on rehabilitation.

Norway Halden Prison is wholly focused on helping inmates for life after they get out. Also, there are no life sentences or the death penalty in Norway. Inmates cook, play video games, shoot hoops frequently with staff, and sleep on plush beds. Rooms resemble college dorms rather than cells. The idea is to treat convicts like people, so when they reenter society they will have a healthy mind-set. Bastov Prison is another prison in Norway where inmates do their time with farming, fishing, skiing, tennis, and horseback riding programs.

New Zealand Otago Corrections Facility has very comfortable bedrooms for inmates. Additionally, the prison amenities are designed to keep people feeling like members of society.

Bolivia San Pedro Prison located in downtown La Paz has served for two decades as a home for about 3,000 inmates and their families. The prison has a primary school for the children of inmates. Notoriety came to the prison when Rusty Young wrote the book *Marching Power* about the unusual micro-city prison. Prisoners are expected to earn a living and buy their cells during their incarceration and many earned a living at an in-house cocaine factory on the facility grounds. The prison was featured as a tourist attraction in Lonely Planet guidebooks, and travelers who wanted to stay within the prison could pay an entrance and hotel fee to spend time with prisoners.

Austria Justice Center Leoben isn’t like most prisons architecturally. It was designed by Joseph Hohensinn with floor-to-ceiling windows, allowing inmates to see the outdoors and to let in abundant light. Some of the windows even open up to balconies. There are two inscriptions by the entrance, each pronouncing inmates’ right to dignity and humanity. The belief is that inmates must feel comfortable in a nurturing environment for them to have time to think about the crimes they committed before release back into society.

Spain Aranjuez Prison lets parents and children stay with their incarcerated family members. A major goal is to prevent children from realizing, as long as possible, that their parent is behind bars.

Indonesia Pondok Bambu Prison is a women’s prison. Luxury rooms are available for purchase, and some inmates have to bribe officials to obtain them.



Bernat Armangue/AP Images

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Sweden Sollentuna Prison upholds the Scandinavian value of rehabilitation and inmates are allowed to cook their own food, watch TV, and exercise in the facility's weight room.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Explain how treating incarcerated populations with dignity, respect, and kindness can result in positive outcomes for society.
- Explain the downsides of treating incarcerated populations with empathy, caring, and compassion.
- How can treating incarcerated populations with dignity, respect, and kindness affect the correctional officer's job and the overall environment of the prison?
- Compare how prisons that operationalize incarceration *as* punishment as opposed to incarceration *for* punishment motivate inmates to return to their communities as law-abiding citizens.

SOURCES: Helen Lewis, “The Warden Had to Lock the Gates at Suomenlinna Prison—Because People Kept Getting In,” May 30, 2017. <https://www.newstatesman.com/world/europe/2017/05/warden-had-lock-gates-suomenlinna-prison-because-people-kept-getting> (retrieved April 25, 2019); Jessica Benko, “The Radical Humanness of Norway’s Halden Prison,” March 26, 2015. <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden->

prison.html (retrieved April 25, 2019); Rob Kidd, "Hotel? Try the Milton Hilton," August 30, 2018. <https://www.odt.co.nz/regions/south-otago/hotel-try-milton-hilton> (retrieved April 25, 2019); Vicky Baker, "Bolivia's San Pedro 'Tourist Prison,' 20 Years On," *BBC News*, February 25, 2017. <https://www.bbc.com/news/world-latin-america-39074991> (retrieved April 26, 2019); "This Luxury Prison Is Cushy Enough to Get Locked Up In." <https://www.buzznick.com/luxurious-jail/> (retrieved April 26, 2019); Chris Weller, "12 Photos of Prisons from Around the World that Defy American Stereotypes of 'Hard time,'" *Business Insider*, November 3, 2017. <https://www.businessinsider.com/prisons-around-the-world-defy-american-stereotypes-2017-4> (retrieved April 26, 2019).



Alyssa Bereznak/Yahoo News

Real Crime Tech

PERSONAL COMMUNICATION TECHNOLOGY AND PRISONS

Tablet computers may be the future of communications used in prisons and may alter the prison environment radically. Tablets are inexpensive (about \$70) and appeal to prison officials and inmates. Although "clunky" compared to tablets in the outside world, they are hard to destroy or alter, and they are designed to have clear plastic cases so contraband can be easily detected. Application color schemes and symbols may need to be changed to conform to prison rules regarding gangs, etc. Tablets will have numbers and passwords that will belong to individual inmates. These devices will allow inmates to play games, listen to music, write e-mails, make low-quality videograms, send e-cards, and communicate with the outside world. Any outside communications will be synched at a designated kiosk, and prison officials will review them to

make sure the communications are safe, innocuous, and undamaging. If prison officials judge that communications conform to prison rules, inmates will be allowed to forward their messages to recipients. To date, prisons in Idaho and New Jersey have ordered tablets. Tablets may make cell phones—and the problems resulting from their use in prisons—a thing of the past.^a In some prisons controversy is erupting over plans to use the devices to replace postal mail, physical books, and even in-person visits.^b

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Because of the need to strictly control communications between inmates and the outside world, cell phones in most U.S. prisons are considered contraband for inmates. Controlling cell phones in prisons, jails, and correctional camps has become a major problem as inmates use them to communicate with their families and friends, but also to threaten their victims, commit other crimes, and even plan escapes.^c

The Florida Department of Corrections confiscated 4,200 cell phones from the state's prisons in 2013. Roughly 30,000 cell phones have been found in California prisons since 2014. In an attempt to control the use of cell phones and other illegal laptops, some prisons have purchased jamming equipment, some are using specially trained dogs to sniff out the phones, and others have built expensive high fences to prevent phones from being thrown into the prison. The state of New York has even purchased X-ray chairs so that visitors' bodies can be scanned to detect cell phones in body cavities. In further attempts to curtail cell phone use, the federal government and many states have enacted harsh penalties that range from forfeiture of up to 90 days good time credits for inmates in California and felony convictions with possible sentences up to 15 years for non-inmates in Mississippi.^d Another innovative communications technology used in prisons and jails has to do with voice-print capturing and storing. Several county jails and prisons in Arizona, Arkansas, Texas, New Mexico, Michigan, Florida, Massachusetts, Colorado, and Wisconsin use or have purchased voice recognition system technology to acquire and digitize voices of incarcerated people to obtain voice-prints. The voice-prints are unique biometric signatures and they are placed into large biometric databases. More states and counties are likely to acquire and use voice-print capture tools. Supporters for the technology indicate that the databases could help authorities uncover gang-related activity, aid in prison security, and prevent crime. Critics argue that the technology could seriously violate prisoners' rights.^e

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Can you think of any positive reasons for allowing inmates to have access to the Internet?
- Is there a constitutional issue here? If yes, which one and why?
- Since there are some countries that do allow access to cell phones and computers, might this become a managed privilege for different custody levels? To what end?
- Can collected voice-prints be problematic for pretrial detained inmates if charges are dropped or they are found not guilty?
- Discuss some of the issues with prisons retaining biometric voice-prints in databases after inmates have served their time.

SOURCES: ^aAlyssa Bereznak, “This Tablet Is the Future of Personal Prison Technology,” *Yahoo.com*, July 9, 2015. www.yahoo.com/tech/this-tablet-is-the-future-of-personal-prison-123582456509.html (retrieved July 12, 2015).

^bMelendez, “Can Screen Time Replace the Warmth of a Hug? Prisons Make a Big Push on Devices,” *FastCompany*, October 12, 2018. <https://www.fastcompany.com/90249550/can-screen-time-replace-the-warmth-of-a-hug-prisons-make-a-big-push-on-devices> (retrieved January 24, 2019).

^cKevin Johnson, “Smuggled Cellphones Flourish in Prisons,” *USA Today*, November 20, 2008. www.usatoday.com/tech/wireless/2008-11-20-cellphone_N.htm (retrieved June 21, 2015).

^dKevin Roose and Pendarvis Harshaw, “Inside the Prison System’s Illicit Digital World,” *Fusion*, February 3, 2015. <http://fusion.net/story/41931/inside-the-prison-systems-illicit-digital-world/> (retrieved June 21, 2015); California Department of Corrections and Rehabilitation, “Fact Sheet: Contraband Cell Phones in CDCR Prisons and Conservation Camps,” April 14, 2015. www.cdcr.ca.gov/Contraband-Cell-Phones/K-9-overview.html (retrieved June 21, 2015).

^eGeorge Joseph and Debbie Nathan, “Prisons Across the U.S. are Quietly Building Databases of Incarcerated People’s Voice Prints,” January 30, 2019. <https://theintercept.com/2019/01/30/prison-voice-prints-databases-securus/> (retrieved May 12, 2019).

It appears that some riots can be prevented if prison policies provide inmates with accessible means to voice their complaints. These avenues include surveys and inmate councils that relay concerns to prison officials.¹²⁰ There is evidence that sustained prison riots are less prevalent today because of the high percentage of nonviolent offenders serving time, the fact that the most dangerous prisoners serve time in supermaximum-security prisons, and because better prison management has been mandated by the courts. High-tech surveillance approaches, new restrictions on prisoner movement, and the introduction of highly trained security teams known frequently as Correctional Emergency Response Teams (CERTs) have also played an important role in the decline in prison riots.¹²¹

Sex and Sexual Assault in Prison Sexual assault is physically and emotionally devastating, and its scars can last a lifetime.¹²² In 2008, according to the Department of Justice, almost 10 percent of prisoners reported sexual violence in jails and prisons, including allegations of sexual assault by correctional staff.¹²³ The general opinion is that these figures are much lower than the actual number of such incidents.¹²⁴ Many men who are

victims of male rape in prison are reluctant to report these incidents due to either embarrassment or fear of retaliation.¹²⁵ One study of the federal prison system estimates that about half of the rape victims interviewed had not told anyone about their experience. Another factor in underreporting is that some prison officers simply do not report the assaults to the authorities. These officers may consider rape the price the offender must pay for his crime.¹²⁶

The community outside prison generally views sexual assaults by males on other males as homosexual acts. Inmates, however, do not see these acts in the same way. Rather, the aggressor sees himself as a masculine heterosexual and views the passive individual as effeminate and homosexual. Thus, inmates tend to look upon physically stronger aggressors who force sex on a weaker inmate not as rapists but as dominant males asserting their manhood.¹²⁷

MYTH/REALITY

MYTH: Sexual violence against and exploitation of inmates of the same gender are primarily the result of a lack of heterosexual opportunities.

REALITY: Sexual violence and exploitation in prisons are mostly centered on power, status, and control—not on sexual needs.¹²⁸

Male prisoners with certain characteristics—such as youth, attractive looks, small stature, and naiveté—who enter a correctional facility as first-time offenders are immediately identified by other prisoners and targeted by some for sexual assault.¹²⁹ Twenty-two percent of male inmates claim to have been raped or forced into sex while incarcerated. Only 29 percent of these victims reported their rape to the authorities. These figures mask the much larger scope of sexual assault, including the many instances—technically not rape—in which inmates consent to being sexually exploited after being threatened with rape or other types of violence.¹³⁰

Often staff members ignore sexual assaults, but they also can contribute to them. In one notorious case in California's Corcoran Prison, correctional officers were accused of punishing inmates by placing them in cells with known prison rapists.¹³¹

Illegal Drugs

Illegal drugs and other contraband are pervasive within jails and prisons, even though these substances are strictly prohibited. Despite aggressive prison search practices, drugs are continually smuggled into institutions by visitors as well as by correctional personnel (Figure 12-6).¹³² Of particular concern nationally and internationally is how technology is transforming how inmates obtain drugs and other contraband. For example, recently in a Maryland prison it was discovered that drones attempted to fly in drugs, tobacco, porn videos, and weapons. In other prisons mobile phones, chargers, and USB drives, were intercepted. Since 2015 drones have been used as much as 33 times to smuggle illegal items into prisons resulting in at least 10 states calling for legislation to ban them from flying over prisons.¹³³ Prison services continually research and introduce new technology such as drone detection systems to make it easier to detect illegal items.¹³⁴ Furthermore, alcohol is easy to obtain while incarcerated. It can be smuggled into the prison from the outside as contraband, or with some yeast, sugar, and water, inmates can easily make a form of alcohol (called *pruno*).¹³⁵

Although the majority of drug offenders are convicted of nonviolent crimes, inmates under the influence of prohibited substances may become aggressive and pose a risk to themselves, other inmates, or prison staff.¹³⁶ Drug use then becomes not only a problem for the inmate but also a concern for the institution. Some inmates, however, claim that the use of drugs such as cannabis and tranquilizers calms them, enhances their ability to deal with the prison environment, and improves their psychological health.¹³⁷

Solitary Confinement

While supermax institutions specialize in providing solitary confinement, all prisons have the ability to place inmates in solitary when necessary. Each day 80,000 to 100,000 people are isolated in their cells for 23 hours and sometimes lasting from days to years.¹³⁸ **Solitary confinement** involves physically segregating inmates from other inmates and severely restricting their interactions, which are generally limited to correctional staff. Solitary confinement cells are bare and austere and thus provide virtually no sensory stimulation. Inmates often become disoriented and may emerge with mental disorders that they did not have before their isolation.¹³⁹ Recently, several

states and the federal prison system have called for reexamining [page 413](#) solitary confinement's use in U.S. prisons. In 2019 a lawsuit was filed in Florida seeking to end the practice in the state.¹⁴⁰

solitary confinement

Isolation of an inmate that denies the person the basic human need to interact with others.

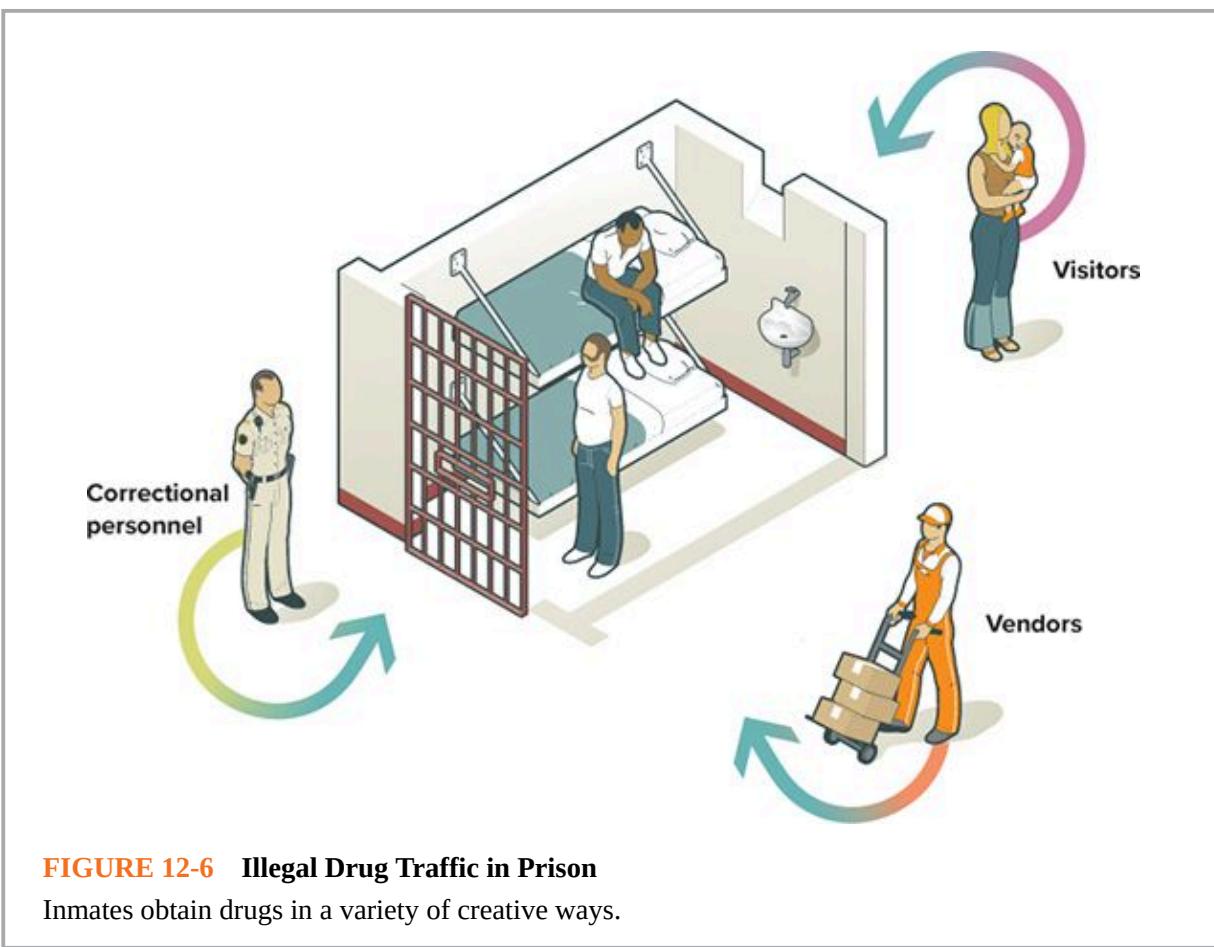


FIGURE 12-6 Illegal Drug Traffic in Prison

Inmates obtain drugs in a variety of creative ways.

An inmate may be placed in solitary for disciplinary reasons, a practice called **punitive segregation**. Prisoners can be assigned to punitive segregation for violent behavior, setting fires, and possession of contraband such as illegal drugs, among other offenses. Prison authorities must follow a legal process before taking such an action, however, because prisoners have legally protected liberties, though not all the rights possessed by defendants in criminal court. Prison officials also may place an inmate in solitary to provide him with supervision and control beyond that given to the general prison population; this practice is called **administrative segregation**. “Ad seg” inmates include those

who are considered likely targets of physical (including sexual) harm by other inmates because of the nature of their crimes (such as sex crimes against children), the notoriety of their offenses, or their gang affiliation. Other inmates are placed in administrative segregation because they pose a threat to others or to themselves.

punitive segregation

Isolation of an inmate for disciplinary reasons, to provide additional supervision and control of the individual.

administrative segregation

Placement of an inmate in solitary confinement to provide him with supervision, protection, and control beyond that given to general prison population.



Drones are increasingly used to smuggle drugs and other illegal items into prisons
Mike Davies/Alamy Stock Photo

The United States holds more prisoners in solitary confinement than any other country. Some 25,000 U.S. inmates are isolated in supermax facilities, and many more are held in some form of isolation for varying amounts of time in maximum-security prisons. The use of prolonged solitary confinement is relatively recent in U.S. prisons. The first supermax prison opened in 1983; by the end of the 1990s, approximately 60 supermax facilities had opened, and nearly all maximum-security prisons had established units for solitary confinement.¹⁴¹

Solitary confinement does a good job of protecting a prison population by isolating individuals who are prone to violence and harm to others. But many of those who are isolated are not in that category, and their isolation only feeds a tendency toward irrational behavior, anger, and violence. Studies have found

that prolonged isolation from human contact leads to brooding, retaliation fantasies, hallucinations, panic attacks, withdrawal, and in some cases a catatonic state in which the person's movements and expressions significantly decline. Moreover, being deprived of human contact does a poor job of preparing inmates who are freed to adjust to the outside community.¹⁴² In fall 2015 California's *Ashker v. Brown* case ushered in the end solitary confinement in the state's prisons. Almost all prisoners who spent more than 10 years in isolation were ordered to be released immediately into the general population. New York and the federal government are also overhauling their solitary confinement systems resulting in a victory for inmates and the criminal justice reform movement.¹⁴³

What are the alternatives to solitary confinement? Some groups have suggested limiting isolation to 90 days. Some favor abolishing the system altogether. Beginning in the 1980s, Britain gradually moved away from using solitary confinement because correctional officials found that it did not diminish prison violence, it was costly, and the public did not support it. As an alternative, the British corrections system developed a strategy to prevent violence instead of heaping punishments on violent behavior. Noting prisoners who act violently in one kind of environment will behave reasonably in another setting, the British began to give the prisoners more rather than less control; provided them more opportunities for work, education, and mental health treatment; and allowed them to earn rights for certain privileges. This preventive approach has had good results, and the use of isolation in British prisons is now minimal.¹⁴⁴

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WOMEN IN PRISON

In 1873 the first women's prison, the Indiana Reformatory Institution, opened. Before then, the few women who were imprisoned were confined with men or kept in separate sections of men's prisons. It was common for male correctional officers and prisoners to sexually abuse female inmates, and pregnancy often resulted. Women imprisoned in male prisons lived a highly restricted existence compared to their male counterparts. They typically had only limited access to clergy, doctors, exercise, fresh air, and light.¹⁴⁵ Attention to women's prisons and the incarceration of women, however, gained gradual momentum in the late nineteenth and twentieth centuries. The term "justice involved women" is used

progressively more often to refer mainly to women who are incarcerated and who are under the authority of the criminal justice system in some form.¹⁴⁶



▲ Prison Crowding

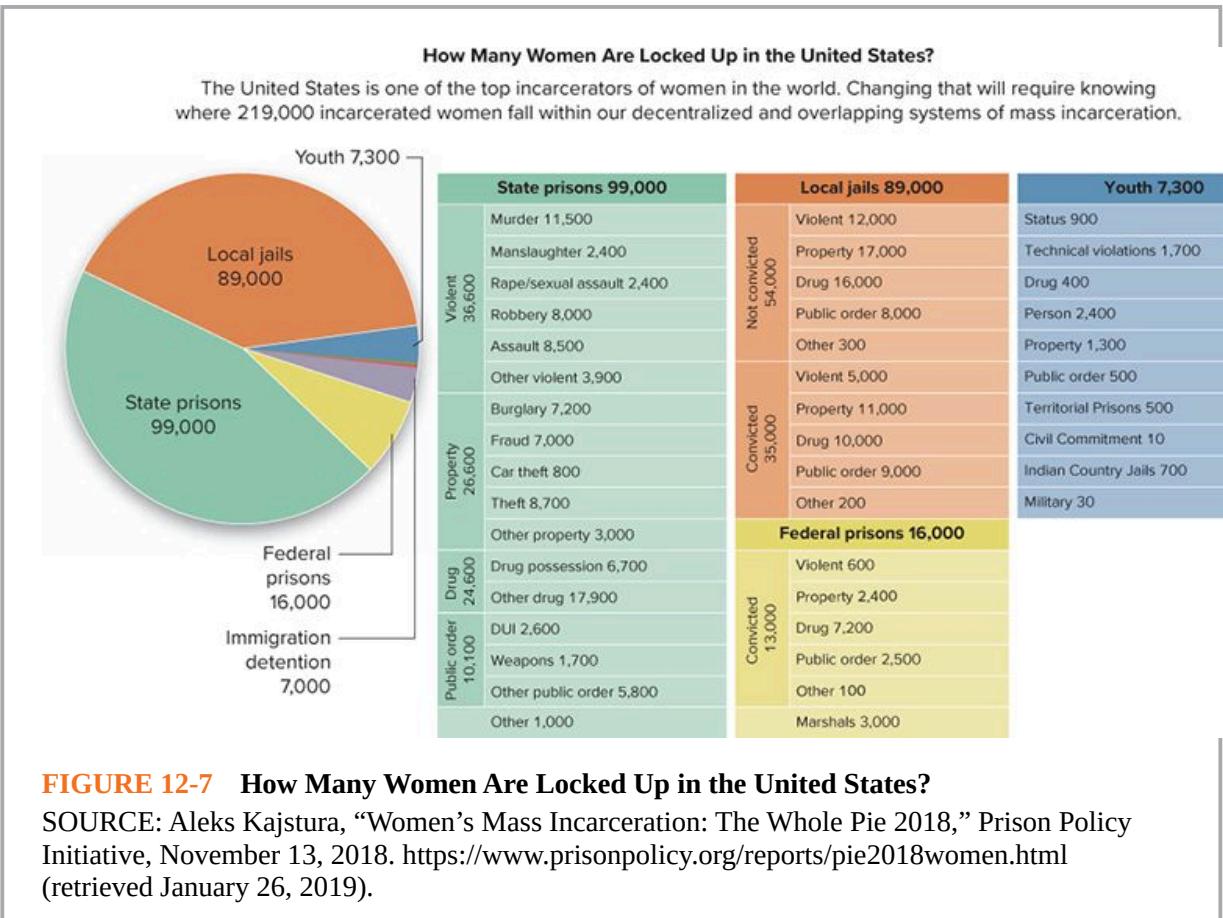
When prisons are overcrowded, public spaces are used as dormitories.

Robin Nelson/PhotoEdit

The Female Prison Population

Women make up approximately 7 percent of state and federal prison inmates.¹⁴⁷ (See Figure 12-7.) Although fewer women than men are incarcerated in U.S. prisons, the female population is growing rapidly—an increase more than 700 percent since 1980.¹⁴⁸ Between 1980 and 2016, the number of women in U.S. prisons rose at twice the rate of growth for men.¹⁴⁹ By the end of 2016 compared to the prior year, 20 states and the federal Bureau of Prisons indicated modest decreases in the female prison [page 415](#) populations. The progress, however, impacted male more than female prisoners. For example, between 2009 and 2015 the number of men imprisoned in a state prison fell more than 5 percent, while the number of women imprisoned fell only 0.29 percent.¹⁵⁰ Some reasons for the rise in the female prison population include the increase in the crime rate for women, the “get tough” movement and harsher policies for dealing with crime, the drug epidemic, treating women’s imprisonment as an afterthought thereby holding back efforts to decarcerate women, and a shift in the mid-1980s to mandatory sentencing, which no longer permitted judges to consider family and gender

factors in sentencing. The move to mandatory sentencing put an end to the chivalry (judicial courtesy) that had influenced the sentencing of women during earlier years.¹⁵¹



Of all female inmates in U.S. prisons during 2016, about twice as many White females as Black or Hispanic females were in a state or federal prison. Additionally the imprisonment rate for Black females was 97 per 100,000 and White females was 49 per 100,000. Although a few states such as California, New York, and New Jersey began decarcerating state prisons a number of years ago, women of color in U.S. prisons still have significantly higher incarceration rates than White women.¹⁵² And most women incarcerated in U.S. prisons are not young. The majority are in their 30s and 40s, representing approximately 58 percent of all incarcerated women.¹⁵³ Additionally, in 2016 approximately 62 percent of women in contrast to 58 percent of men incarcerated in state or federal prisons were 39 or younger.¹⁵⁴

Characteristics of Women’s Prisons

Women are imprisoned in various types of facilities. They may be housed in prisons only for females or in a separate wing of a men’s institution. Rarely, women may be held in “coed” prisons in which the females are housed separately from the males but share programs for both sexes. Institutions for women are primarily run according to a custodial model and have few rehabilitation programs.

With the increasing number of women being sentenced to prison, overcrowding has become a problem. For example, California’s prisons for women are 171–200 percent over capacity.¹⁵⁵ Federal women’s facilities are also over capacity. The era of designing small cottage-style women’s prisons is fading. Many jurisdictions are likely to follow California’s lead in building large women’s prisons. One women’s prison complex in California incarcerates more than 7,000 women and is the world’s largest prison complex for women. Given the overcrowding in California prisons and the largely nonviolent offenses women commit and the federal guidelines to release prisoners in California (see Chapter 11’s section on Public Safety Realignment policy), approximately 4,500 female inmates may be released to the community in community correction facilities, rehabilitation programs, and private residences with monitoring devices. Furthermore, California has reached out to the private sector to house minimum-security women within 1 year of release in a 300-capacity female reentry facility. It is too soon to tell whether prison realignment policy will contribute to a trend toward smaller women’s prisons.

How Women Do Time in Prison

Male and female prisoners respond differently to custody and supervision and have different needs. Yet the policies, procedures, and practices developed for male inmates have traditionally been imposed on female prisoners. Frequently these approaches do not work well. Many women are subject to difficulties and complications not experienced by male prisoners. For example, they might be the primary caretaker of children, they may have female-related [page 416](#) medical and mental health needs, or they may have experienced more physical and sexual abuse than typical male offenders.¹⁵⁶ Additionally, women are more likely than men to commit property crimes and drug offenses and less likely to commit violent crimes. When women do commit violent crimes, they often do them in self-defense, frequently in situations of intimate partner violence and not in a premeditated way.¹⁵⁷ A gender-specific model for

programs in women's prisons is essential for effective treatment of incarcerated women.¹⁵⁸

Race, Class, Gender

A Pregnant Inmate Program

Pregnant inmate programs and prison nursery programs are the exception, not the norm. The Washington Corrections Center for Women—one of the exceptions—developed a program in 1999 called Her Hand Rocks the Cradle that combines a residential parenting program with Early Head Start. Her Hand Rocks the Cradle allows eligible inmates, classified as minimum-security level and serving sentences of less than 3 years, to remain with their babies during their sentence. They live in a designated unit and are given support and education. Importantly, these women have time to bond with and develop trust with their infants. To date approximately 500 women have raised their babies through the program since it began.

Each mother has a room with a bed, a crib or toddler bed for the child, and a dresser. The unit contains a communal playroom with toys, a children's bathing room, clothes washing facilities, a place to prepare snacks, and enclosed outside play areas. Pediatricians and counselors are available on a regular basis. Caregivers—volunteer inmates trained to take care of and be responsible for the children while their inmate mothers are working, attending school, going to therapy, and attending to other institutional requirements—are essential to the success of Her Hand Rocks the Cradle.

The program provides an alternative to foster care, adoption, or abortion. Advocates say that it encourages mothers to participate in rehabilitation programs because they are motivated to provide the best they can for their children when they return to the community.

At the heart of the program is the Children of Incarcerated Parents Bill of Rights:

- I have the right to be kept safe and informed at the time of my parent's arrest.
- I have the right to be heard when decisions are made about me.
- I have the right to be considered when decisions are made about my parent.
- I have the right to be well cared for in my parent's absence.
- I have the right to speak with, see, and touch my parent.
- I have the right to support as I struggle with my parent's incarceration.
- I have the right not to be judged, blamed, or labeled because of my parent's incarceration.
- I have the right to a lifelong relationship with my parent.

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The education and bonding experiences provided by the program and the handful (approximately 10 in other states, jails and the federal Bureau of Prisons) are intended to strengthen family ties—with the hope that those who participate will not reoffend.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What are the rights of pregnant prison inmates? What are the rights of children whose mothers are in prison?
- What obligations, if any, do prisons have for caring for pregnant prisoners?
- How do both mothers and children benefit from special programs like Her Hand Rocks the Cradle?



Mikael Karlsson/Alamy

SOURCES: Cheryl Hanna-Truscott and others, *Her Hand Rocks the Cradle*, a photodocumentary project at the Washington Corrections Center for Women. www.residentialparenting.com/ (retrieved April 25, 2007); Nell Bernstein, *Children of Incarcerated Parents Bill of Rights* (San Francisco: Northern California Service League). www.norcalserviceleague.org/billrite.htm (retrieved April 25, 2007); Melissa Santos, “I Really Want Him to Have a Different Life.’ How Some Female Inmates are Raising Babies Behind Bars,” *The News Tribune*, April 6, 2017. <https://www.thenewstribune.com/news/politics-government/article140712783.html> (retrieved January 26, 2019).

The social structure that develops in women’s prisons is different from that in men’s prisons. Some evidence suggests that women have greater social support needs than men while incarcerated.¹⁵⁹ Women in prison tend to develop closer and more personal relationships than men. Although men may bond with one another (e.g., as members of a gang), they avoid emotional entanglements that could be problematic. In marked contrast, imprisoned women tend to create pseudo or “play” families with kinship alliances that mimic the family structure of the wider society. Within these surrogate families, they _____ page 417

take on roles such as mother, father, sister, aunt, and uncle and develop emotional and sometimes sexual relationships with other incarcerated women. These family-type units provide a support network for dealing with prison life and separation from their true families.

Incarceration takes an enormous toll on women who are mothers and primary caregivers for children; moreover, pregnant inmates have special needs. Women who are pregnant when they enter prison, or who become pregnant while there, present particular management challenges, including the need to provide prenatal and obstetric care, gynecologic care, and proper nutrition.¹⁶⁰ Until the 2018 Criminal Justice Reform Act, a routine practice was the shackling of pregnant prisoners on the belly and arms during labor and delivery. Shackling women while in labor can possibly lead to problems such as hemorrhage, decreased fetal heart rate, and permanent brain damage to the infant. It took a long time to convince legislators that shackling should be abolished. The amount of time an inmate mother is allowed to spend with her newborn before separation varies with jurisdiction—but all jurisdictions impose a limit. Separation is particularly painful, especially if the infant must be placed in foster care or given up for adoption.¹⁶¹ The “Race, Class, Gender” box describes an innovative pregnant inmate program of the Washington Corrections Center for Women’s Residential Parenting.

Overall, the atmosphere of a women’s prison differs significantly from that of a men’s institution. There is far less violent behavior, sexual aggression is almost nonexistent, and homosexual activity is generally consensual.¹⁶² A study of the racial climate in women’s institutions found no evidence of serious racial conflicts among female inmates.¹⁶³ In fact, many pseudo family structures are interracial, in marked contrast to the situation in most men’s prisons, where interracial tensions run high. Although women tend to do their time using less physical aggression than men, incarceration for women is not without problems.

Problems of Incarcerated Women

Women in prison experience many difficulties. Typically, their problems are related to drug abuse, separation from children and other family members, physical and mental health issues, educational inadequacies and vocational unpreparedness, a history of abuse, and sexual abuse in prison.

Drug Abuse Most women in prison are incarcerated for nonviolent crimes that involve drugs and property offenses.¹⁶⁴ About 80 percent of women in jail and prison have substance abuse problems. About 25 percent of women sentenced to state prison are serving time for drug offenses, compared to 15 percent of men.¹⁶⁵

The needs of incarcerated women with drug problems differ from those of their male counterparts.¹⁶⁶ Prior to arrest, women drug users are more likely to call in sick for work assignments, have more reproductive-related medical problems, be HIV-positive, have children living with them at the time of incarceration, and have incomes of less than \$600 per month.¹⁶⁷ Drug treatment programs need to focus on gender-related mental health, employment, education, economic, social, relationship, family, medical, and housing issues.¹⁶⁸

Separation from Family and Children Most incarcerated women (more than 65 percent) have children who are minors.¹⁶⁹ One of the chief differences between incarcerated women and men is the degree to which children are priorities to each, with women placing a higher priority on their offspring.¹⁷⁰ These women are more likely than fathers in prison to be the primary caretakers of their children so when they are locked up the family faces great disorder, confusion, and insecurity. Moreover, there are fewer prisons for women than for men. The result is many incarcerated women are page 418 locked up great distances from their homes making visits difficult and expensive. Also women carry fear their children may be placed in foster care making it difficult and perhaps impossible to reunite with them when they are released.¹⁷¹

Physical and Mental Health Issues Many women in prison face health issues. In addition to HIV, incarcerated women may have an infectious disease such as hepatitis or tuberculosis and may suffer from sexually transmitted infections. Women prisoners also have unique healthcare issues dealing with reproduction, menopause, and nutrition. Typical mental health problems include guilt, depression, fear, and anxiety, as well as substance abuse and mood, personality, and psychotic disorders. Many female inmates experience posttraumatic stress disorder (PTSD) in connection with their incarceration.¹⁷² Moreover, destructive behaviors, frequently viewed as psychological in origin, result in

self-injury such as cutting, head banging, and burning.¹⁷³ Suicidal behavior is yet another serious problem for some incarcerated women.¹⁷⁴

Many female inmates come from unstable family backgrounds that might contribute to their development of emotional and behavioral difficulties. For example, approximately 67 percent of women in prison have one or more family members who had been incarcerated.¹⁷⁵ Also, many incarcerated women come from homes with only one parent.¹⁷⁶

Another problem facing incarcerated women with mental disorders is that they tend to have difficulty negotiating their lives in prison. They frequently break rules and engage in assaultive acts that affect other inmates and staff. Such acts may result in women facing greater likelihood of disciplinary actions and more harsh sanctions compared to men in prison who commit similar acts.¹⁷⁷ As a result, they are often penalized by being segregated from others in the general population, a practice that can exacerbate their mental illness.¹⁷⁸

Educational Inadequacies and Vocational Unpreparedness Incarcerated women have educational obstacles and achieve very low levels of formal education. Approximately 64 percent of women in prison do not have a high school diploma, yet only 16 percent of them achieve a GED while imprisoned.¹⁷⁹

These women also have limited job skills and so are poorly prepared for work when they are released. One reason for this is that women's prisons do not meet the need or demand for educational and vocational program opportunities.¹⁸⁰ They have a difficult time supporting themselves and their families. When they do find work, it is usually minimum wage and typically does not pay enough to support their needs. Women gravitate to jobs that pay less, compared to men who tend to seek higher-paying jobs such as auto mechanics, welding, truck driving, and electrical work.

History of Abuse Many incarcerated women report a history of physical and sexual abuse.¹⁸¹ Many of them were raised strictly and had childhoods characterized by severe physical child abuse in which regular spanking and violent beatings were the norm. These women also report that the abuse tended to blindside them, coming without any warning.¹⁸² A study of women incarcerated in a large southern prison system found that 68.4 percent of the women reported lifetime sexual victimization, 17.2 percent reported in-prison

sexual victimization, and 3 percent reported having been a victim of a completed rape.¹⁸³

Sexual Abuse in Prison Women usually commit few violent crimes during incarceration.¹⁸⁴ Women's prisons have lower rates of sexual violence than men's prisons, and the violence takes different forms, from sexual pressure, intimidation, and coercion to sexual assault.¹⁸⁵ Like male prisoners, page 419 female inmates underreport sexual coercion and assaults for fear of possible repercussions.¹⁸⁶ They fear that they may lose privileges, be subjected to disciplinary action themselves, or be shunned or attacked by other inmates.

The most common form of sexual abuse of female inmates is forced sex with male staff. Men compose over 50 percent of the custody force in women's prisons.¹⁸⁷ Male prison staff may conduct unwarranted pat-downs and strip searches, address female prisoners in humiliating ways, use inappropriate language, and observe women unnecessarily under the pretext of surveillance. For victims of past sexual abuse, these intrusions can be especially traumatic. Such abuse by male prison staff is difficult to avoid because female prisoners cannot remove themselves from their situation, grievance procedures may be inadequate, employees do not take responsibility for their actions, and the public does not take an interest in the problem.¹⁸⁸

In general, however, female inmates, like their male counterparts, complain that reports of sexual abuse are not formally investigated.¹⁸⁹ Of investigated and substantiated reports of sexual violence and harassment, approximately half implicate correctional staff.¹⁹⁰ Regardless of the employee's gender, under federal law all sexual relations between staff and inmates constitute abuse—even when an inmate consents to sexual relations—because of the power that correctional employees have over inmates.¹⁹¹ Consent is never a legal defense. One measure that can reduce abuse of female prisoners by male staff is to increase the penalties for staff sexual abuse of inmates.¹⁹²

In response to documented abuse of male and female inmates, the **Prison Rape Elimination Act (PREA)** was unanimously passed by Congress and signed into law by President George W. Bush in September 2003.¹⁹³ The legislation established the National Prison Rape Elimination Commission (NPREC) to develop national standards for detecting and preventing prison rape, as well as for punishing perpetrators. NPREC provides grants to states to implement policies and practices that reduce or prevent rapes in prison and gives the commission authority to collect data on a broad range of sexual

misconduct.¹⁹⁴ NPREC's authority covers not only adult prisons and jails but juvenile and community correctional facilities as well.

Prison Rape Elimination Act (PREA)

Legislation that established the National Prison Rape Elimination Commission to develop national standards for detecting and preventing prison rape, as well as for punishing perpetrators.

REHABILITATION AND TREATMENT IN PRISON

Prisons today are under increasing pressure to move from simply being custodial to being therapeutic, offering programs to equip inmates for life after prison and providing treatment for various needs, including the needs of special populations such as those with disabilities, elder adults, and those who are ill. The 2018 Criminal Justice Reform Act (First Step Act) gives Americans increasing hope that rehabilitation and treatment programs for incarcerated populations will increase in number and be effective.

Inmate Labor

Chapter 11 outlined the development of the industrial prison movement. It described labor unions' objections to what they felt was unfair competition from prisons, and the unions' consequent pursuit of legal means to restrict the sale of goods made with inmate labor. As a result of these union initiatives, when prisoners were sentenced to incarceration with "hard labor," increasingly the labor was very difficult and only used for prison maintenance, it was rarely rehabilitative or of value after release.¹⁹⁵ Moreover, the routine inmate work assignments, such as sweeping floors and washing dishes, rarely provided meaningful experience for future jobs in the community. They fostered neither pride nor the hope of supporting families after prison.



▲ Meaningful Work

Some prison programs put inmates to work training dogs.

Brennan Linsley/AP Images

Meaningful Work Assignments Today's prison officials agree that useful, productive work is important for rehabilitation. A trend toward allowing private companies to take advantage of the prison labor force has given inmates more meaningful work and helped prepare them for reentry into the community. Particularly when there was low unemployment in the general population coupled with high incarceration rates, new job opportunities for U.S. inmates were actively developed, such as telemarketing, staffing call centers, arranging business meetings, and manufacturing computer circuit boards. A recent example of a meaningful work program at California's San Quentin Prison was called Code 7370, the first prison computer coding program in the United States. The project partnered with Silicon Valley's technology industry to turn adult inmates into computer coders so upon release they will be able to find decent jobs most likely in customer service. Today, this has evolved into a new mentorship activity connecting these trained adults with youth offenders at the Ventura Youth Correctional Facility in Camarillo, California. It teaches them the same coding skills in a program called The Last Mile.¹⁹⁶

In 2000, more than 80,000 inmates in 36 states were employed in private sector jobs and were earning between \$0.25 and \$7.00 an hour.¹⁹⁷ Today felon

labor programs call on inmates to do everything from building car parts in Virginia to battling mudslides and fires in California. Female inmates in Tennessee train dogs to make them more adoptable; in Missouri, they train service dogs to assist people with disabilities.

Prison officials view these programs as a benefit both to inmates and to the community.¹⁹⁸ For private business, the use of prison inmates is a way of cutting costs by employing cheap labor without the need to outsource these jobs in foreign countries. During bad economic times, in fact, the use of prison labor as a cost-saving measure might increase. On the downside, an increase in the use of prison labor might hurt outside businesses that cannot compete with this cheaper labor source.

Benefits of Prison Work Programs In 2001 the Florida Department of Corrections published a study of academic, vocational, and substance abuse programs; it offered to determine whether they were effective in reducing recidivism. The study found that 70 percent of those who completed the Graduate Equivalency Diploma (GED) had not been rearrested during a 24-month follow-up period after their release. Inmates who received a GED and participated in work release for at least 60 days were 10.1 percent less [page 421](#) likely to reoffend than inmates who completed their GED but had no work experience. The study also determined that inmates who earned a vocational certificate were 14.6 percent less likely to reoffend than those who did not complete such programs, and inmates who completed substance abuse programs were 6.2 percent less likely to commit new crimes than those who did not.¹⁹⁹ In short, inmates in work programs are less likely to reoffend than those without that experience.²⁰⁰

DIS Connects

Diving for Rehabilitation

The idea of having inmates don wetsuits and oxygen tanks for a deep-sea dive might seem highly unusual. But beginning in 1970 the California Prison Industry Authority developed a very successful commercial deep-sea diving program at a minimum-security facility in Chino. This is the only program in the world for inmates seeking to become commercial divers.

There are only about 600 commercial deep-sea divers worldwide, so the need for qualified workers is great. The trained inmates in Chino's Leonard Greenstone Memorial Marine Technology Training Center are virtually assured good-paying jobs ranging from \$50,000 to \$100,000 annually in areas such as underwater construction, offshore oil drilling, and dam repair. The program accommodates about 100 inmates, lasts approximately 11 months, and follows a strenuous curriculum of diving physics, navigation, report writing, air systems, welding, seamanship, dive medicine, blueprint reading, diesel engines, and marine construction. Of the prisoners who start the program approximately 85 percent drop out before completion due to its arduous and taxing demands. It also fosters the development of professional attitudes, confidence, pride, determination, perseverance, initiative, and courage. The low rates of recidivism for offenders in this program suggest that such skills and attitudes go far toward paving the way to their successful reentry into society.



California Prison Industry Authority (CALPIA)

Overcrowding and budgetary problems in California prisons forced the closure of this program in 2003, but the California Department of Corrections and Rehabilitation restarted it in 2006 and taxpayers do not pay for it. Funding comes from inmate-produced goods and services under the California Prison Industry Authority. Program administrators report that recidivism rates among the inmate graduates are as low as 6 percent, whereas over 52 percent of inmates return to incarceration during the first 2 years after release. This creative approach illustrates the disconnect between, on the one hand, the urgent need to prepare inmates to make a comfortable living without having to resort to crime, and, on the other hand, the many work programs that (when available) prepare prisoners only for low-paying jobs.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What jobs are prisoners prepared for after completing the deep-sea diving training?
- What is the best way to set up a rehabilitation program like the one that develops deep-sea diving skills?
- What aspects of this training program do you think make it a successful form of rehabilitation?

SOURCES: Kevin Johnson, “California Diving Program Helps Anchor Ex-Inmates,” *USA Today*, July 14, 2008. www.usatoday.com/news/nation/2008-07-13-Reentry-inmates_N.htm (retrieved February 10, 2009); “PIA Re-establishes Commercial Diving Center: Training Touted as Effective Tool in Reducing Recidivism,” *California Department of Corrections Staff News*, December 15, 2006. www.pia.ca.gov/Public_Affairs/pdfs/Dec%202015%20Staff%20News%20fnl%20fnl.pdf (retrieved July 29, 2011); State of California Prison Industry Authority, “Career Technology Training (CTE)—Marine Technology Training Center,” 2011. <http://pia.ca.gov/OffenderDevelopment/MarineTech.aspx> (retrieved May 2, 2015); CBS San Francisco, “Program Offers California Inmates a Second Chance through Diving,” February 6, 2012. <http://sanfrancisco.cbslocal.com/2012/02/06/program-offers-california-inmates-a-second-chance-through-diving/> (retrieved February 3, 2013). Terri Hardy an OPEC staff, “CALPIA’s Commercial Dive Program Makes Splash with Re-Dedication Ceremony,” *Inside CDCR*, December 14, 2018. https://www.insidecdcr.ca.gov/2018/12/calpias-commercial-dive-program-makes-splash-withrededication-ceremony/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%253A%2BInsideCDCR%2B%2528Inside%2BCDCR%2529 (retrieved January 26, 2019).

Another benefit of prison work programs is the economic gain for the states that have them. California prisons generate more than \$150 million in direct annual sales of products made with inmate labor. In California, prison products can be sold only to government agencies; however, in other states such as Nevada, inmates make cars sold on the open market. In Oregon, jeans are produced and sold to the public under the label “Prison Blues.”²⁰¹ The “Disconnects” box describes a work program that teaches inmates deep-sea diving, a skill that directly helps them change their lives upon release.

Prison labor has always been a mainstay of the correctional process; however, it has also been an argumentative subject, especially when considering very low inmate wages and the meaningless forms of repetitive, maintenance-type work that usually has little benefit to the inmates after their release. Although the use of private prisons have received page 422 significant media coverage touted as a positive application of the business model, in public and federal prisons a decline in inmate wages has

occurred over the past few decades. “Data compiled by the Prison Policy Initiative shows that the average incarcerated worker in state and federal prison now earns *86 cents* per day, a 7 cent decrease from 2001 when inmates earned 93 cents for a day’s work.”²⁰²

a case in **point**

The National Emotional Literacy Program for Prisoners

The majority of sentenced prisoners will be released back into society, and many will return to the communities where they committed their crimes. Knowing this reality, isn’t it better in terms of public safety for prisons to have programs for incarcerated offenders that may help them overcome the mind-set and patterns of violence and addiction that led to the commission of crime in the first place? One such program that is gaining momentum and support in a number of U.S. prisons and internationally is Lionheart Foundation’s emotional literacy projects for inmates.

The National Emotional Literacy Project encompasses several assumptions. First, inmates must learn to have dignity, self-respect, and respect for others before they can exhibit positive behavioral change and take responsibility for their actions. Another equally important premise is that emotional illiteracy is the major factor underlying crime. A third assumption is that emotional literacy can be learned at any point and place in a person’s life—even prison or jail. Lastly, when people are emotionally literate they can better deal with stress, tension, and impulses; understand and manage themselves; communicate more effectively; develop better social skills (including empathy); and operate in the world in a prosocial way.



Courtesy of The Lionheart Foundation

The emotional literacy program curriculum is detailed in a self-help book titled *Houses of Healing: A Prisoner's Guide to Inner Power and Freedom* by Robin Casarjian. It is written for prisoners and contains powerful, research-driven exercises for prisoners to complete. The exercises relate to the situations and feelings incarcerated populations experience. Exercises deal with issues such as childhood pain, loss, anger, stress, coping strategies, and forgiveness. Inmates and a variety of correctional staff have expressed high regard for the emotional literacy approach to rehabilitation. In the future, when prisons and jails are under the gun to develop cost-effective rehabilitative programs that produce evidence-based results, we may see more emotional literacy programs proliferate in correctional environments, and scientific studies may generate data-driven studies on effectiveness.

Another interesting program that helps female inmates in five Oklahoma prisons to heal emotionally is called Poetic Justice. The eight-week program was started in 2014 by Ellen Stackable, an English teacher, when she learned her state had the highest rate of incarceration for women. The program involves weekly classes where the inmates meditate, learn about poetry and creative writing, brainstorm, and write in a safe environment. At the end of the program the women receive a printed book of their group's work. The sharing through writing is a way the inmates work through trauma and heal. To date it has reached more than 2,500 inmates.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- In what ways does emotional illiteracy contribute to crime?
- Can an emotionally literacy program work with prisoners suffering from serious mental illnesses? Why or why not?
- Can learning how to better read feelings in others and oneself result in negative outcomes? Explain.

- How can creative writing help offenders heal from trauma?

SOURCE: The Lionheart Foundation, “National Emotional Literacy Projects.” www.lionheart.org/prison (retrieved February 2, 2013); Robin Casarjian, Jenny Phillips, and Richard Wolman, “An Emotional Literacy Intervention with Incarcerated Individuals,” The Lionheart Foundation. <https://lionheart.org/wp-content/uploads/2012/11/An-Emotional-Literacy-Intervention-HOH1.htm> (retrieved January 26, 2019); Meghan Dunn, “Locked Up and Learning to Write, Women Prisoners Find a Safe Space,” CNN, December 9, 2018. <https://www.cnn.com/2018/08/16/us/cnnheroes-ellen-stackable-poetic-justice/index.html> (retrieved January 31, 2019).

Treatment Programs

Treatment programs are designed to help inmates change the illegal or destructive behavior that led to their prison sentence. The “Case in Point” box illustrates inmates participating in an emotional literacy rehabilitation [page 423](#) program. Another interesting program in Oklahoma women’s prisons is called Poetic Justice. The program involves weekly classes where the women meditate, learn about poetry and creative writing, brainstorm, and write in a safe environment. Many treatment programs target anger management and drug and alcohol abuse.²⁰³ Others focus on education, vocational skills, and parenting. Some inmates require medications to manage impulsivity, depression, and anxiety before they can benefit from behavioral approaches or psychotherapies. Treatment tailored to the specific needs of individual inmates is most likely to have an impact and, it is estimated, could cut recidivism by as much as 50 percent.²⁰⁴

Today’s treatment programs expect offenders to take responsibility for their crimes. When counseling is provided to inmates who have no desire to change or participate, the results are poor, an outcome that reinforces the “nothing works” mentality.²⁰⁵

Prison-based drug treatment programs have the advantage of operating in a controlled residential environment over a long period of time. One popular drug treatment strategy makes use of the concept of a therapeutic community.²⁰⁶ First used in England in the 1940s, the *therapeutic community* (or *milieu therapy*) separates inmates with a particular problem, such as substance abuse, from the general prison population. The assumption is that the

social climate experienced by inmates in prison will affect their behavior upon release. Thus every effort is made to create an environment in which inmates will take responsibility for their actions. Staff—including correctional officers, counselors, and administrators—are specially recruited in this effort. The therapeutic community approach engages inmates in productive experiences that include education, group therapy, peer pressure, and town hall-style decision making.²⁰⁷

Whatever the mode of treatment, the most effective prison programs dedicate specific funds to drug treatment, are operated by specialists contracted by the prison, and employ treatment specialists—as opposed to relying on prison personnel to deliver treatment.²⁰⁸ Unfortunately, such programs tend to be few. Furthermore, the plight of inmates with drug problems is often compounded by other factors, such as mental illness. In fact, a growing proportion of inmates have special needs to which jails and prisons are expected to respond.

The Needs of Special Populations

Inmates in U.S. jails and prisons are diverse, and many have special needs. Offenders with such needs pose unique problems. They are highly vulnerable to exploitation by the general inmate population, must be closely monitored for their safety, and require special accommodations while incarcerated. We consider some of the most frequently encountered special populations in this section.



▲ Elder Adult Inmates

Elder inmates are a growing population in today's prisons.

Andrew Burton/Getty Images

Elder Adult Inmates In recent years, the prison populations have been cautiously decreasing, reflecting many years work by states to enact decarceration policies to manage and reverse mass incarceration, contain costs, and keep crime rates low; however, the prison population continues to age.²⁰⁹ Older inmates are defined as age 55 and older. From 1999 to 2016, the number of people 55 or older in state and federal prisons increased 280 percent. During the same period, the number of younger adults only grew 3 percent. [page 424](#) The reality is older inmates surged from 3 percent of the total prison population to 11 percent.²¹⁰ Now constituting 1 of every 23 prisoners, older inmates are the fastest-growing population in state prisons.²¹¹ (See Figure 12-8.)

A major explanation for the increase is that inmates are serving more time today than in previous decades has to do with the nature of the crimes committed. Many of today's elder inmates were convicted of serious, violent offenses when they were younger. Also today typically when a person 55 or older is convicted of a crime, it is usually for a violent crime like assault, rape, or murder.²¹²

The cost of confining elder inmates is high—approximately \$2.1 billion annually.²¹³ Most of the expense is attributable to the costs of health care.

Many jails and prisons are not prepared to deal with the medical problems, physical disabilities, and chronic and terminal illnesses that come with aging. Elder adult inmates require special accommodations such as hearing aids, bath rails, wheelchairs, and walkers. Those with age-related dementia and senility need constant supervision. These factors require correctional institutions to take on many of the functions of nursing homes. As another sign of the times, prison programs that give hospice care to dying inmates are becoming more common in U.S. correctional institutions.²¹⁴

Older inmates are generally given lighter-duty work assignments in the institution. Such practices can create resentment among younger inmates and thus present management problems for the administration. For these reasons, a case can be made for establishing prisons exclusively for geriatric inmates, as well as for granting parole to more nonviolent, low-risk elder adult inmates.²¹⁵

State policies that provide for early release on humanitarian or compassionate grounds are rarely applied to older inmates. Because of the serious nature of their crimes and the lengthy sentences they were given, few elder adult inmates receive early release.²¹⁶ Most, however, pose a low risk of recidivism.²¹⁷ The 2018 Criminal Justice Reform Act (First Step _____ page 425 Act) may contribute to the return of some older inmates back into the community.

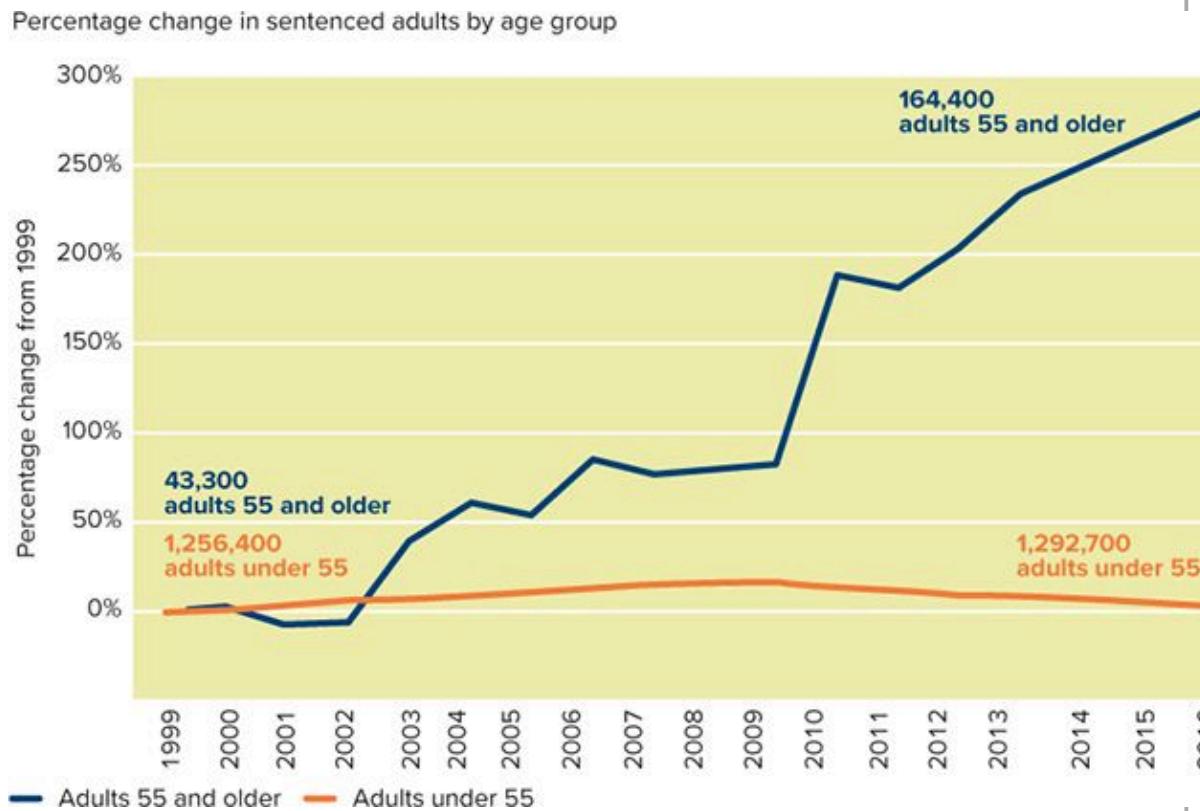


FIGURE 12-8 The Number of Older Prisoners Grew by 280%, 1999–2016

SOURCE: Matt McKillop and Alex Boucher, “Aging Prison Populations Drive Up Costs,” Pew Charitable Trusts, February 20, 2018. <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs> (retrieved January 27, 2019).

Inmates with Mental Disorders An inmate with a mental disorder is one who has impaired cognitive, emotional, or behavioral functioning. Impairment may have stemmed from social, psychological, biochemical, or genetic factors or from purely physical factors such as head trauma and infection.

Unfortunately, individuals who are mentally disordered or intellectually disabled (defined as having an IQ below 70) far too often end up in U.S. jails and prisons and not in the care of the mental health system. The number of inmates with psychological disorders who are in correctional institutions is four times greater than in the general population.²¹⁸ Recent estimates indicate about 1 in 7 state and federal inmates (14 percent) and 1 in 4 jail inmates (26 percent) showed behavior indicating serious psychological distress. Also 37 percent of prisoners and 44 percent had been told by a mental health professional they had a mental disorder.²¹⁹ As noted in other chapters, this situation is one long-term outcome of the large-scale release of patients from psychiatric facilities to the

community—part of the deinstitutionalization of mental hospitals that began in the mid-1950s.

Clearly, inmates with mental disorders present significant challenges for correctional institutions. Psychotic, personality, mood, and substance abuse disorders are common problems within inmate populations, but by far the most common mental disorders state and federal prisoners suffer from are depressive disorder (24 percent of prisoners and 31 percent of jail inmates) and manic depression, bipolar disorder, and mania (12 percent).²²⁰ Because the symptoms may include hallucinations, bizarre behavior and beliefs, paranoia, depression, mania, self-mutilation, anxiety, and poor self-care, these inmates are easy prey for institutional predators who are on the lookout to take advantage of others, sexually and otherwise. Furthermore, mentally ill prisoners tend to have higher rates of misconduct, more accidents in prison, and higher recidivism rates than prisoners without mental illness.²²¹ Other issues for management are whether to remove afflicted inmates from the general population and how much support to provide them. Correctional staff must monitor inmates with mental disorders more closely (for instance, to assess their risk of suicidal or violent behavior) and must be prepared to administer psychoactive (affecting the mind) medications when needed. Some inmates require disciplinary segregation because of their threatening behavior; others require administrative segregation because of their vulnerability. Either way, segregating them is akin to punishing them for their symptoms.²²²

MYTH/REALITY

MYTH: Inmates with mental disorders are housed in hospitals, not jails and prisons, and given treatment.

REALITY: The population of inmates with mental disorders in jails and prisons is surging. Treatment is spotty where it exists at all and may consist of tranquilizing drugs administered more for control than for treatment.²²³

Treatment for mental disorders in jails and prisons is mostly driven by the institution's management resources rather than by the needs of the inmate. Few psychologists and psychiatrists are available on staff, and mental health services tend to be exhausted by calls for crisis intervention (for instance, an inmate's attempt to hang himself in his cell) and the need to manage problematic symptoms (such as a delusional inmate's screaming at 3 a.m. about satellites trying to control his mind). Psychoactive medications, which

essentially are used as chemical straitjackets, have become the _____ page 426 treatment of choice; with few exceptions, other methods, such as intensive psychotherapy, are not available. Most facilities lack enough sufficiently trained staff to properly diagnose and treat inmates with the wide range of mental disorders they bring with them or develop during their incarceration.²²⁴ To effectively manage the seriously mentally ill in corrections, we must identify how they become justice-involved in the first place. Additionally, we must invest in early detection, interventions, and treatment, and encourage collaboration between justice and mental health systems.²²⁵

Sex Offenders As a group, sex offenders commit a wide range of offenses, including voyeurism, exhibitionism, child molestation, Internet child pornography, and rape. Sex offenders are predominantly male. One study of sex offenders in 12 countries, for example, found only 2.2 percent of sex offenses reported to police are committed by females (although victimization surveys indicate the number of female perpetrators to be 6 times higher than that).²²⁶

Of special concern to prison and jail administrators are sex offenders who victimize children. Inmates and correctional staff alike consider child molesters the lowest of the low in the status hierarchy of prison society. These offenders routinely experience hostility, threats, and beatings from other inmates. As a result, they are frequently placed in protective custody or in special institutions.

A growing trend in the United States is to incarcerate persistent sex offenders beyond their prison terms under civil commitment programs. In **civil commitment**, a judge decides that a person is mentally ill and a danger to himself or others, and incarcerates that person indefinitely in a mental hospital rather than a prison. Normally an individual who is convicted of a sex crime and sent to prison is released once his sentence has been served, but an individual deemed mentally ill and likely to engage in sexually violent behavior in the future can be incarcerated in a mental hospital indefinitely—or at least until he no longer has a mental disorder that makes him dangerous. This type of commitment has been used for sexual offenders throughout the United States. Once a sex offender completes his sentence, he may then be subject to a state judicial hearing to ascertain whether he should continue to be incarcerated in a secure psychiatric facility. If the state rules that such an offender is eligible for civil commitment, he can be confined in such a facility until such time as he is no longer deemed dangerous.

civil commitment

The process in which a judge decides that a person is mentally ill and is a danger to himself or others, and incarcerates that person indefinitely in a mental hospital rather than a prison.

Civil commitment programs are popular with the public but expensive to operate. The cost of housing a sex offender for a year can average more than \$100,000.²²⁷ For example, in 2010, the cost of incarcerating one sexually violent predator each year at the state hospital in Coalinga, California, was \$185,000, which was 4 times higher than for a year in prison and almost 4 times higher than the cost to attend a year at Stanford University.²²⁸ Furthermore, these programs have a number of troubling aspects. First and foremost is the question of the legality of extending an individual's incarceration not for what he did in the past but for what he may do in the future. Another concern is that available treatments appear to have had limited effectiveness with this population.²²⁹

Inmates with Physical Disabilities Prisons are required by federal law to make accommodations for inmates with physical disabilities. Approximately 32 percent of state and federal prisoners and 40 percent of jail inmates reported having at least one disability.²³⁰ These inmates number less than 1 percent of the total in state prisons.²³¹ Still, every prison system has offenders with physical disabilities to manage. Correctional institutions are required to follow the Americans with Disabilities Act (ADA) of 1990, which mandates reasonable access and accommodation to most prison programs. Most jails and prisons, however, remain limited in their facilities and programs for inmates with physical disabilities.²³²

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In a 1997 case, inmates with disabilities in California brought a class action suit charging, among other things, that prisons did not provide them equal access to vocational education and work opportunities, thus keeping them from earning credits to reduce their sentences.²³³ In a 1998 case, the U.S. Supreme Court deliberated whether convicted offenders with disabilities have the same rights as those who are not disabled.²³⁴ The offender in the case was disabled by hypertension—high blood pressure—and was thus considered ineligible for a camp program for juveniles that would have reduced his prison time. In both cases, the Court gave the incarcerated individuals the same ADA rights as nonincarcerated people.

Inmates with physical disabilities are a vulnerable population. Prisons respond to the needs of inmates with physical disabilities in a number of ways. Personnel are trained to be sensitive to inmates' needs for safety and to assist medical personnel. Procedures are developed to protect them from being exploited by the general prison population and to be evacuated in case of a fire or other emergency. Also, correctional personnel are trained to do specialized wheelchair, prosthesis, and strip searches and to safely use restraints such as handcuffs and leg and body chains on paralyzed inmates or inmates who might use crutches. Prison work opportunities are provided so that inmates with disabilities can have the opportunity to reduce their sentences by acquiring work credits. Special accommodations are made for inmates who need assistance with eating their meals.²³⁵

There are also housing accommodations for inmates with physical disabilities who need more space than other inmates because of wheelchair requirements. Also, these inmates may not be physically able to clean their cells as inmates in the general population are required to do. In such cases, other arrangements are made.²³⁶

Foreign-Born Inmates Foreign-born inmates are offenders who may lack U.S. citizenship. Many such individuals find their way into the corrections system simply by residing in this country without lawful documentation. If they have not committed other criminal acts, they are normally referred to as *resident aliens*. If, however, they have committed additional crimes, they become *criminal aliens*. Federal and state prisons in New York, Texas, California, Florida, and Illinois have substantial populations of criminal aliens. These states attract immigrant populations because of their vitality, climate, variety, and promise of jobs.²³⁷

It is the responsibility of federal and state prisons to incarcerate inmates regardless of their citizenship. It is estimated that approximately 32 percent of federal inmates are foreign born.²³⁸ It is the responsibility of the U.S. Bureau of Immigration and Customs Enforcement (ICE) to undertake legal action to deport criminal aliens from the United States.



▲ Foreign-Born Inmates

Correctional personnel must make sure foreign-born inmates understand the policies and procedures of the prison.

Denis Poroy/AP Images

Both criminal and resident aliens present problems for jails and prisons. For one thing, many foreign-born offenders do not speak English. For another, they may have cultural needs that are difficult to accommodate, such as dietary restrictions or daily prayers to perform at specific times. Security concerns and institutional procedures may make it difficult to meet inmates' daily prayer needs. Another issue is that family members are often miles or countries away, a factor contributing to these inmates' isolation. Also, institutions page 428 housing foreign-born offenders may experience outbreaks of diseases rarely seen in the United States, such as polio, plague, and malaria.²³⁹ Consequently, many prisons are screening and treating foreign-born inmates for tuberculosis (TB) infection and disease. The TB incidence is high within this population, and providing treatment may prevent the spread of the disease not only within prisons but also throughout the United States.²⁴⁰

AIDS and Ill Inmates Maintaining the health of inmates in correctional facilities is a complex and challenging objective. Many inmates enter facilities in poor health since the inmate population is largely drawn from the most disadvantaged segments of society, with significant health care needs but limited access to regular care. Too, once incarcerated, the conditions of confinement often have a negative impact on health.²⁴¹ The presence of illness and disease in the prison environment poses two serious problems for administrators of jails and prisons. On the one hand, they want to prevent the spread of communicable diseases such as tuberculosis, hepatitis, and AIDS to otherwise healthy inmates and staff. On the other hand, inmates with serious illness require special handling because of their weakened physical state, medical needs, lack of privacy, stigma attached to their illness, and fear of dying in prison.

The prevalence of HIV/AIDS in inmate populations is 2.5 times higher than in the general U.S. population.²⁴² However, the rate of HIV/AIDS among state and federal prison inmates has been declining steadily. At year-end 2015, an estimated 17,150 prisoners in the custody of state and federal correctional authorities were known to be living with HIV, down from year-end 2014. This was the first year that the total number of state and federal prisoners with HIV fell below the estimated number in 1991 (17,680), when HIV data were first collected by the Bureau of Justice Statistics. From 2010 to 2015, the AIDS-related mortality among state prisoners ranged from 4 to 6 deaths per 100,000 persons in custody. Among federal prisoners, the AIDS-related mortality rate between 2010 and 2015 ranged from none to 4 deaths per 100,000 persons in custody.²⁴³

The spread of sexually transmitted infections (STIs), including the AIDS virus, is common in prisons. Because all sexual activity outside conjugal visits is prohibited in U.S. prisons, distributing condoms to inmates could be seen as condoning—and indeed facilitating—this illegal activity. On the other hand, not distributing condoms facilitates the transmission of the AIDS virus and other STIs throughout the prison and beyond. Most inmates will be released, many will be infected and most of these individuals will have sexual relations with members of the community.

Identifying inmates who have HIV/AIDS can be difficult because testing policies in correctional institutions vary in different jurisdictions. Most recent research reveals that 15 states test all prisoners for HIV and 17 states offer opt-out HIV testing. Eight states offer opt-in testing. At the federal level, opt-out testing is offered to all prisoners.²⁴⁴ Mandatory testing has been very

controversial among researchers and public policy advocates.²⁴⁵ Although there are many good reasons for testing, among them getting early treatment for infected inmates and safeguarding prison personnel, there are also serious drawbacks, including potential breaches in the confidentiality of prison records as well as segregation and discrimination of infected inmates.²⁴⁶ The extremely high direct and indirect costs of testing—and treatment—have also been cited among the disadvantages. Once an inmate has been diagnosed, the prison has the moral and legal obligation to provide treatment.²⁴⁷

Not knowing who may spread a communicable disease raises anxiety levels of both inmates and staff. In correctional settings, the Centers for Disease Control and Prevention recommends that HIV screening be provided upon entry into prison and before release, and that voluntary HIV testing be offered periodically during incarceration.²⁴⁸

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Health Care Continuity for Released Prisoners Correctional institutions are increasingly recognizing the importance of facilitating care continuity for individuals returning to the community. These institutions take a variety of steps, often in partnership with other agencies, to smooth re-entry from a health care standpoint and preserve in-prison investments. Such efforts include helping individuals acquire health coverage, maintain medication regimens, identify and connect with outside providers, and learn about safely managing their disease(s).²⁴⁹

Transgender Prisoners Lesbian, gay, bisexual, transgender, and intersex inmates face a variety of challenges and dangers that make them particularly vulnerable during incarceration. The National Institute of Corrections is actively involved in providing current and useful information to correctional agencies to respectfully and safely manage transgender offenders. Some issues have to do with housing, hormone treatment while incarcerated, health care related to gender transition, conjugal visits, and susceptibility to physical and sexual violence while in the general prison population. Many prisons will place identified inmates in administrative segregation or protective custody to keep them safe; however, frequently such segregation prevents them from taking part in educational, vocational, and recreational opportunities made available to the general prison population.

Transgender people have a gender identity, or a sense of being male or female, that is opposite their assigned gender at birth. In our nation's correctional institutions, gender classifications are based on genitalia as opposed to the inmate's perceived gender identity. Transgender people who have not undergone complete genital surgery normally are classified by their birth sex for the purpose of prison housing, regardless of how long they have lived as a person of the opposite gender or how much medical gender reassignment has occurred prior to incarceration. After complete genital surgery, transgender prisoners are normally classified and housed according to their reassigned sex.²⁵⁰ In 2015 California adopted a sex reassignment surgery policy for prisoners, making it the first state in the nation to do so.²⁵¹ In 2018, the Trump Administration rolled back a policy rescinding some protections for transgender people in federal prisons. Now federal prisons will use biological sex as the initial determination as to housing, not gender identity.²⁵² About 40 percent of state and federal adult transgender prisoners report sexual victimization while incarcerated as compared to about 27 percent of adult transgender jail inmates. Additionally, about 24 percent of the prison victimization was inmate-on-inmate compared with about 17 percent of staff sexual misconduct.²⁵³ Lesbian, gay, bisexual, transgender, and intersex advocates would like to see prisons that only house transgender inmates. New York has responded by opening a housing unit for transgender women in its largest jail.²⁵⁴

THE IMPACT OF PRISON ON FAMILY LIFE

Separation places major stresses on family relationships. Male and female inmates are removed from daily interactions in the family. Mothers and fathers are not available to participate in making decisions for their children. Also, children may come to know their caregivers as parents. Male and female inmates in committed relationships before incarceration may worry that their partners will engage in sexual relationships with others during their absence.

Some programs encourage parent-child contact in correctional settings. Girl Scouts Behind Bars, for example, is an enhanced visitation program in which incarcerated mothers and their daughters meet twice per month. Some state and federal programs for pregnant inmates allow them to have their page 430children with them in a community-based corrections facility.



▲ Family Visits

Prisoners look forward to rare visits with their families.

Mario Anzuoni/Reuters/Newscom

Approximately 60–80 percent of all incarcerated female offenders have minor children, usually at least two.²⁵⁵ Being identified as a prisoner, a member of a disgraced group, is particularly difficult for inmates with families. Although more than half of male inmates also have at least one minor child, incarceration tends to be more painful for women because it cuts them off not only from friends and family but especially from their children.²⁵⁶ If the incarcerated woman is head of the household, children suffer even more from their mother's absence. Many female inmates are single, divorced, or separated and have typically assumed sole physical, financial, and emotional responsibility for their children. It is not surprising that with incarceration comes guilt over the breakup of the family, worry about the care of their children, and fear of losing custody rights during their absence.²⁵⁷

Among the many problems of incarcerated mothers, one of the most stressful is the inability to maintain regular contact with their children and their children's caregivers. Many times, children are afraid of going into the prison.²⁵⁸ Incarcerated men tend to have more contact with their partners than do female inmates. Because female partners are more likely to bring the

children with them on visits, male prisoners have more opportunity to see their children than do most female inmates.

Further complicating matters is that imprisoned mothers have difficulty explaining to their children why they are not with them and why they are in prison. If a mother faces a long prison term, her children may come to see their caregiver as their parent, a development that makes the transfer of care to the biological mother upon release difficult for all.²⁵⁹

A few prisons provide inmates with opportunities for **conjugal visits**—an extended private visit by an inmate’s lawful spouse or registered domestic partner.²⁶⁰ These visits often occur in a small apartment or trailer inside the prison grounds. These programs provide inmates with private meetings, perhaps over a weekend, with their spouses and families and accommodate the possibility of sexual contact. The primary purpose is to facilitate keeping the marriage or family intact, thus increasing the probability of the inmate’s rehabilitation.²⁶¹ The practice of conjugal visits in state prisons appears to be diminishing. In 2014, Mississippi and New Mexico stopped their programs. Today only four states continue this practice: California, Connecticut, New York and Washington.²⁶²

conjugal visit

An extended private visit by an inmate’s lawful spouse or registered domestic partner.

Federal prisons do not permit conjugal visits, and, as previously mentioned, just four states allow them.²⁶³ Even when permitted, however, conjugal visits may be restricted. Inmates at risk of transmitting diseases, as well as unmarried inmates, may be barred from having conjugal visits.²⁶⁴ California also allows conjugal visits for domestic partners of gays and lesbians.²⁶⁵ Despite the presumed importance of visitation, the U.S. Supreme Court has held that conjugal visiting in prison is not a right and therefore is not protected under the due process clause of the Constitution.²⁶⁶ Research has shown that conjugal visits have a beneficial effect on inmates, by lowering sexual violence and reducing recidivism.²⁶⁷

SUMMARY

It is hard to imagine what it might be like to spend time incarcerated behind bars. Still, jails and prisons are a necessity.

Despite high rates of incarceration, crime rates remain high, a reality challenging the notion that imprisonment is an effective punishment for and a deterrent to crime. Rising costs, whether for jails or prisons, create problems for the authorities with jurisdiction over the facilities. For inmates and correctional employees, a major problem is overcrowding. Moreover, the staff in corrections must work in a hostile and dangerous environment, overseeing and controlling large numbers of inmates, many of whom are angry and resentful and have little regard for authority. Inmates contend with near-constant surveillance, lack of privacy, and cramped living conditions—even in minimum-security prisons. Problems escalate in higher-level security prisons that house more dangerous and violent offenders and where levels of control are more restrictive. For both correctional staff and inmates, personal safety—at any level prison—is always at risk.

Just as for men in prison, overcrowding is a problem for women inmates as more and more women are being sentenced to prison. The policies, procedures, and practices developed for male inmates have traditionally been imposed on female prisoners, even though female prisoners have different needs and face additional problems not experienced by male inmates. However, women in prison tend to develop closer and more personal relationships than men.

In addition to providing custodial care of inmates, prisons are coming under increased pressure to provide rehabilitative and therapeutic programs to prepare inmates for reintegration into society. Prisons are charged with developing meaningful and productive work training and experience for inmates as well as effective treatment for mental disorders, behavioral problems, and drug use—all orders for institutions already facing a great many challenges.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Distinguish between jails and prisons.

- Jails are operated by municipal and regional governments; prisons are operated by states or the federal government.
- Jails house pretrial detainees, individuals awaiting parole or deportation, and those serving short-term sentences; prisons hold offenders sentenced to more than 1 year.

Differentiate among minimum-, medium-, maximum-, and supermaximum-security prisons.

- Minimum-security prisons are intended to hold offenders who have short sentences, are nonviolent, and are unlikely to attempt escape or pose risks to the general public.
- Medium-security prisons are intended for inmates needing greater oversight and supervision than prisoners in minimum-security prisons. Prisoners are allowed freedom of movement only within secured areas.
- Maximum-security prisons use high levels of control on prisoners, and prisoners have limited freedom of movement within the facility.
- Supermaximum-security prisons offer the highest level of prison security possible—solitary confinement—using the latest advancements in correctional technology.

Apply the concept of professionalization to the role of correctional officers.

- Professionalization is the commitment to a set of ideals and standards that raise the view of the occupation and instill pride in the profession itself.
- Professionalization requires standards of education, recruitment, and entry-level salaries.
- Correctional officers need a professional infrastructure on which they can rely and through which they can develop professional attitudes and competencies.

Describe the rights of prisoners and those that are denied.

- A prisoner may lose the right to public office, vote, serve on a jury, be a witness, or own a firearm.
- A prisoner may lose the right of employment by being stripped of an occupational license.
- Until the 1960s, courts were reluctant to interfere with prison management and adopted a hands-off doctrine in protecting prisoner rights. In the prisoner rights era (1970–1991), the courts tended to support the rights of prisoners, but the pendulum swung back again toward less protection in the 1990s with changes in the composition of courts.

Characterize the inmate subculture.

- *Institutionalization* refers to a prisoner's excessive dependency on prison as a way of life.

- *Prisonization* refers to the inmate's internalization of the inmate subculture's norms, values, and beliefs as the inmate's own.
- Total institutions can foster institutionalization, prisonization, and an environment that can cause inmates to lose their sense of identity.

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Outline the differences between male and female prison life.

- Men tend to bond together in prison gangs and resort to violence; women tend to bond together in surrogate families that provide a support network for dealing with prison life and separation from their true families.
- Male inmates are subject to high numbers of sexual assaults, including male rape; in women's prisons, sexual aggression is almost nonexistent, and homosexual activity is generally consensual.
- Women who are pregnant have special challenges such as medical care during pregnancy; women who give birth while in prison face infant separation issues.

Describe methods of treatment and rehabilitation in prisons.

- Prison officials today agree that useful, productive work is important for inmates' rehabilitation. Meaningful work programs lead to lower rates of recidivism for those who take part in them.
- Treatment programs help inmates change illegal or destructive behavior, such as violence, anger, and alcohol and drug abuse. When treatment programs are tailored to individual inmates and professionally staffed, recidivism declines by as much as 50 percent.
- Prisons must meet the special needs of certain populations, such as elder adult inmates; those with mental disabilities; sex offenders; those with physical disabilities; those born in foreign countries; lesbian, gay, bisexual, transgender, and intersex prisoners; and individuals who are HIV-positive or have AIDS.

Detail the ways incarceration affects the prisoner's family life.

- Incarceration causes an inmate to be identified with a disgraced group.
- Incarceration cuts prisoners off from their family, friends, and children.

- Incarceration takes inmates away from physical, financial, and emotional responsibility and from their children.
- Incarceration causes inmates to worry about their children and the possible loss of custody rights during their absence.

Key Terms

administrative segregation 413
civil commitment 426
classification 398
conjugal visit 430
custody level 398
deprivation model 405
good time credits 402
hands-off doctrine 401
importation model 405
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punitive segregation 413
risk classification 398
security level 398
security threat group (STG) 407
solitary confinement 412

supermaximum-security (supermax) prison 396

total institution 404

Study Questions

1. U.S. prisons are normally operated at levels.
 - a. County and city
 - b. State and federal
 - c. Federal and county
 - d. State and city
2. After conviction, a felon in many states is deprived of
 - a. the right to serve on a jury.
 - b. the right to hold public office and vote.
 - c. the right to carry a firearm.
 - d. all of the above
3. Which of the following statements is true?
 - a. Women and men experience prison life in the same ways.
 - b. Policies, procedures, and practices imposed on male and female prisoners should not differentiate according to gender.
 - c. Male prisoners have more physical and sexual abuse in their preincarceration histories than women prisoners.
 - d. Incarceration tends to be especially painful for women because it cuts them off from friends, family, and children.
4. The term *prisonization* refers to
 - a. dependency on the institution.
 - b. the acquisition of the convict code.
 - c. the prison's provision of all of the offender's needs.
 - d. the internalization of the norms, values, and beliefs of the inmate subculture as the inmate's own.
5. The importation model is concerned with
 - a. importing slaves into the United States.
 - b. importing the inmate subculture into prisons.
 - c. ways in which sexually transmitted infections are imported into prisons.
 - d. methods by which drugs are imported into prisons.
6. STG stands for
 - a. sexually transmitted gene.
 - b. secretive transsexual group.
 - c. security threat group.
 - d. scientific technology group.

7. Which of the following is/are a cause(s) of riots in prisons?
 - a. Attitudes of correctional officers
 - b. Prison management
 - c. Racial tensions
 - d. All of the above
8. Which of the following inmate special populations is/are likely to pose problems for prison management?
 - a. Pregnant inmates
 - b. Elder adult inmates
 - c. Mentally disabled inmates
 - d. All of the above
9. PREA stands for
 - a. Prison Reduction Economic Activity.
 - b. Prison Rehabilitation Educational Activities.
 - c. Prison Rape Elimination Act.
 - d. Penal Responsibility Educational Act.
10. Conjugal visit programs in the United States allow inmates who have behaved well to spend time with
 - a. their significant other.
 - b. their lawfully married spouse or registered domestic partner.
 - c. their common law wife or husband.
 - d. all of the above

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. What is the difference between prison security levels and prisoner custody levels? Why do some maximum-security prisons classify inmates as having minimum, medium, and maximum custody levels? Explain.
2. What are the similarities and differences in the ways female and male inmates do time?

3. Identify the reasons for prison and jail overcrowding. What do you see as some solutions to this problem?
4. What are the positive and negative outcomes of today's shift away from a policy of mass incarceration and "get tough" sentencing practices?

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13 Community Corrections



Tiffany Rose/WireImage/Getty Images

OBSERVE → INVESTIGATE → UNDERSTAND

After reading this chapter, you should be able to:

- Identify the distinctive features of probation.

- Contrast intensive and traditional supervision probation.
- Assess the success of probation.
- Identify the distinctive features of parole.
- Evaluate the success of parole.
- Describe the role of intermediate sanctions.
- Identify various types of intermediate sanctions.
- Describe private sector and risk-based community corrections.

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Realities and Challenges

Susan Burton: A New Way of Life Reentry Project

For over two decades now, Susan Burton has done profoundly important work providing a community-based corrections treatment program called A New Way of Life Reentry Program, which to date has helped thousands of women transition back into their community after incarceration. Recently, Michelle Alexander, author of the book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, likened Burton to Harriet Tubman for her efforts to provide social justice.¹ During the 1980s and 90s, Burton was in and out of prison, serving six terms for drug offenses. But in 1997, she got clean of drugs and dedicated herself to improving community-based corrections for women and girls. To implement her calling, she worked, saved her money, purchased a house in the Watts area of Los Angeles, and began to assist other former female inmates who were in recovery.



Thinkstock/Getty Images

Burton is now a chemical dependency counselor, and she has helped women to reintegrate into the community after incarceration. As a result of her efforts, she was one of the top 10 CNN Heroes for 2010, a year in which she also received the Gleitsman Citizen Activist Award, given by Harvard University's Kennedy School of Government, and the Contributions Across Time Award, bestowed by the Watts Labor Community Action Committee.

Burton's program in South Central Los Angeles helps female ex-cons by providing housing and reentry support, promoting the rights of individuals with a history of convictions and incarceration, and building the confidence of previously incarcerated women. Burton believes that there is a "window of opportunity to get people from incarceration into a positive lifestyle."² To aid the women in making that transition successfully, her reentry project assists them with food, clothing, transportation, employment, and custody of their children. When they are ready to live independently, Burton helps provide housing and furniture. Most of Burton's funding comes from private donations.

A New Way of Life is a model reentry project that demonstrates the positive results of community corrections programs. Under Burton's dedicated leadership, former criminal justice offenders can find the resources and support they need to reenter the community successfully. Her grassroots community organizing effort challenges rules, laws, policies, and attitudes hoping to break the cycle of mass incarceration.

Public opinion tends to question the wisdom and efficacy of allowing offenders to serve their sentences outside institutions and in the community. People generally feel that incarceration protects public safety and that community corrections too often "coddles" criminals. But being behind bars does not help the offender get adjusted to society and prepare for reintegration—and in fact may socialize the offender to a criminal lifestyle. As we will see, today these crosscurrents are playing out in political and legal arenas and at state and federal levels of government as more people find fault with the negative effects of mass incarceration and as states and counties shift from institutional to community corrections to ease stretched budgets, reduce prison overcrowding, and get the most out of public safety expenditures.

This chapter provides an overview of community corrections, or non-jail sentencing, beginning with its purpose and goals. We also address the practices of the two major forms of community corrections in the United States: probation and parole. Finally, we examine intermediate sanctions that provide offenders with alternative avenues for reintegration into the community.

DEFINING COMMUNITY CORRECTIONS

Community corrections includes a diverse array of programs and sanctions that allow offenders to serve their sentences within the community instead of in jail or prison. Most offenders supervised in community corrections programs are considered nonviolent and low risk and therefore pose a minimal [page 445](#) threat to the public.

community corrections

Court-imposed programs and sanctions that allow offenders to serve their sentences within the community instead of in jail or prison.

Preview

DEFINING COMMUNITY CORRECTIONS

PROBATION

PAROLE

INTERMEDIATE SANCTIONS

OTHER TYPES OF COMMUNITY CORRECTION

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

As we saw in Chapter 11, society expects corrections to punish, rehabilitate, and reintegrate the offender and control crime at the same time. A community corrections sentence can accomplish these goals by allowing the offender to stay in the community, remain employed, maintain family connections, pay taxes, and make restitution to victims. A further benefit is that offenders who can remain in the community do not become *institutionalized*, or socialized to the prison environment and to its subculture of violence. Some evidence suggests that correctly managed community corrections programs can reduce recidivism.³

The most common community corrections are probation and parole. Community corrections also includes strategies such as community service, mediation, sex registers, house arrest, and work release. Both public and private agencies provide programs for community corrections, including halfway houses and drug treatment centers. These community-centered practices and programs are available at each stage of the criminal justice system: before trial, during trial, and after trial. Community corrections also includes supervision of offenders who have completed prison or jail terms and who have been released from prison and jail to serve remaining sentences on work release or other programs such as probation and parole.

PROBATION

Probation is an alternative to jail or prison in which the offender remains in the community under court supervision, usually within the caseload of a probation officer who is an officer of the court. Individuals who receive probation are those whose crimes are not serious enough for imprisonment and who are allowed to serve their sentences under community supervision. (This chapter focuses on adult probation; Chapter 15 discusses juvenile probation.) Although the U.S. criminal justice system incarcerates more people than ever before, probation, not imprisonment, is the most frequent criminal sanction.

probation

An alternative to jail or prison in which the offender remains in the community under court supervision, usually within the caseload of a probation officer who is an officer of the court.

Purpose and Goals of Probation

The basic purpose of probation is to allow the probationer an opportunity to be rehabilitated without incarceration. As probation is a “creature of the courts,” in

some circumstances probation can be combined with incarceration. Probation typically diverts the offender from jail or prison. Probation (from the Latin word meaning “to prove”) gives offenders the chance to prove themselves to be law-abiding in the community and not to be incarcerated.⁴

The goal of probation is twofold: to protect society and to rehabilitate the offender. Thus probation encompasses rehabilitation, reintegration, punishment, and deterrence, as well as crime control. The founding principle of probation is the idea that human beings are capable of change and that with proper supervision, resources, and services, offenders can be rehabilitated at the same time that public safety is protected.

Figure 13-1 shows the number of people who were under adult correctional supervision from 2006 to 2016. In 2016 about 56 percent of those offenders were on probation, more than on parole and in jail and prison combined. Today probation continues to be the leading type of correctional control, although the probation population has shown a decline. The probation population experienced annual decreases of 2 percent from 2008 to 2016.⁵

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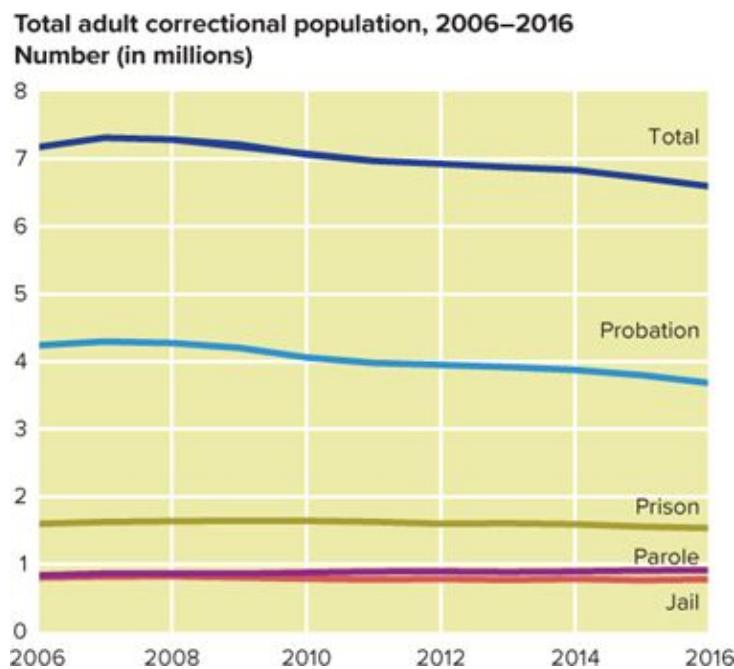


FIGURE 13-1 Persons under Adult Correctional Supervision in the United States, 2006–2016

SOURCE: Danielle Kaeble and Mary Cowhig, “Correctional Populations in the United States, 2016,” *Bureau of Justice Statistics*, April 2018. <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>

(retrieved May 15, 2019).

Probation is a privilege, not a right.⁶ Some people today view probation as a lenient practice. When it was originally conceived, however, probation was considered to be another serious form of punishment, albeit one that was served in the community. The earliest form of what we now know as probation existed in English criminal laws of the Middle Ages. Royal pardons, judicial reprieve, and sanctuary in the church where fugitives were immune to arrest offered some degree of protection from the severe sanctions of the era. In the fourteenth century, English courts also began to practice “binding over for good behavior”—a form of temporary release to allow the offender time to secure a pardon or to try to obtain a lesser sentence.⁷

Both England and the American colonies recognized the court’s power to suspend a sentence, as well as the accused person’s right of **recognizance**, or “an obligation to the court.” Usually this obligation required the accused, if released on his own recognizance (or his own word), to perform some legally specified act, such as appearing at trial, as an alternative to being incarcerated. With a little help from a Boston shoemaker named John Augustus, these early practices eventually evolved into the practice of probation.⁸ In 1841 Augustus attended a Boston police court and bailed out a “common drunkard.” He returned to court 3 weeks later with the offender in tow, now sober and apparently changed for the better. Thus was launched Augustus’s 18-year career as a forerunner of today’s probation officer. Although a volunteer, he was asked by the court to evaluate whether various offenders were good prospects for probation. Today the background investigation that grew from his efforts is considered a cornerstone of modern probation practice.

recognizance

Literally, “an obligation to the court” that usually requires the accused, if released on his own word, to perform some legally specified act, such as appearing at trial, as an alternative to being incarcerated.

Not until after Augustus’s death in 1859 was the first probation statute passed in Massachusetts. The concept of probation eventually spread throughout the United States, especially with the growth of the juvenile court movement. Today, all states and the federal government offer both juvenile and adult probation services.⁹

Traditional Conditions of Probation

MYTH/REALITY

MYTH: Probation is a lenient sanction.

REALITY: Probation can impose substantial burdens. Limits often are placed on the offender's behavior, he might face fees and other costs, and the stigma attached to being on probation can make it difficult for the probationer to obtain a job. In addition to restitution, the offender's monetary burden could include fines and fees for services such as drug testing, counseling, and anger management classes.¹⁰

The standard (also called traditional) conditions imposed on all *probationers*—those who are serving probation—require that the offender must do the following, regardless of the crime:

- Report on a regular basis to the probation department.
- Obtain and maintain employment or attend school or training.
- Allow the probation officer to visit the probationer's home or place of employment.

page 447

The offender must *not* do the following:

- Commit any additional crimes while on probation.
- Change residence without first notifying the probation officer.
- Associate with persons who have criminal records.

Probationers are required to report to their probation officer on a predetermined schedule, perhaps as often as once a week. The frequency depends on the type of crime committed, the offender's prior criminal record, and the perceived risk to the community. Failure to appear can result in revocation of probation. The court may also set other special conditions, such as regular drug or alcohol testing, attendance at an Alcoholics Anonymous group, or active participation in a treatment plan or an anger management program. Furthermore, probationers are required to pay fines and restitution to victims, obey all laws (even minor ones like jaywalking), and appear at any scheduled court appearances. The court can combine conditions, as in the case of requiring both restitution and community service. Other sanctions might include a suspended jail sentence, fines, and random searches. Although the probation officer will usually make a recommendation, the court sets the length

of probation, and only the court can modify or revoke the term or the conditions.



▲ Probation Officer with Probationer

Probation officers are required to make sure probationers understand the conditions of their probation.
How can probation officers be sure that probationers understand the terms of their probation?

Aaron Roeth Photography

Probationers can expect unannounced visits at home or at work at any time, especially if the probation officer suspects that something might be wrong. These visits, along with the stigma attached to being a convicted offender, can make it difficult for the probationer to find and keep employment. The probationer may be prevented from using alcoholic beverages or be required to undergo medical, psychiatric, or psychological treatment; reside in an institution or a community corrections facility for a specified period; or participate in a designated treatment program. The offender may be required to remain at home during certain nonworking hours and be monitored by an electronic device. A violation of any one of these conditions could result in revocation of probation. However, probation officers have discretion and can

simply give violators a warning before taking formal action. This response is of concern to critics of the Public Safety Realignment (PSR) policy and advocates of deinstitutionalization discussed in Chapter 11.

In an attempt to stop the flow of technical violators (those who violate conditions of probation or parole—for example, not showing up for an appointment, failing to observe a curfew, having an alcoholic beverage—but do not commit a new crime) back into penal institutions and reduce the costs of incarceration, some states such as Louisiana and Delaware have taken legislative steps to make sure technical violators receive alternative sanctions that are proportionate to their violations of the conditions of probation or parole.¹¹

Intensive-Supervision Probation

Some probation programs target high-risk offenders who have been convicted of serious crimes and would ordinarily be prison-bound; they require a high level of supervision and surveillance and strict probation conditions. **Intensive-supervision probation (ISP)** describes a variety of programs characterized by smaller officer caseloads and closer surveillance. The premise behind ISP is that smaller caseloads enhance rehabilitation and public safety by creating greater contact between the probation officer and the offender. These programs also enable offenders to remain employed while serving their sentences.

intensive-supervision probation (ISP)

A variety of probation programs characterized by smaller officer caseloads and closer surveillance.

ISP programs vary greatly. They can be found in pretrial programs, diversion programs, day reporting centers, and DWI courts. In addition to increased supervision, they may include house arrest, curfews, mandated restitution, specific restrictions on where the offender may live, page 448 drug or alcohol testing and treatment programs, and the use of electronic devices for monitoring the offender's whereabouts.¹² Offenders who enter an ISP program are screened and assessed thoroughly.

Evaluations of ISP programs have been inconclusive. One reason for outcome uncertainty is that ISPs tend to be matchless in that each program introduces different combinations of elements at different points in time, making it difficult to determine effectiveness. An early review of an ISP program in Georgia found it to be effective.¹³ It relied on teams of two probation officers with small caseloads. However, Georgia traditionally sends a

higher proportion of offenders to prison than other states, so those diverted from prison may already have been less of a risk than those diverted elsewhere. The program, in effect, sorted out those offenders who were easier to deal with and more amenable to supervision. Thus the participants might have done well regardless of the program.¹⁴ Another recent study conducted for the National Highway Traffic Safety Administration concluded that ISP programs reduced the recidivism of DWI offenders.¹⁵

Other studies question whether ISP programs were responsible for reported successful outcomes. A study by the RAND Corporation concluded that judges used extra caution in sentencing offenders to ISP programs, a practice that perhaps biased study results.¹⁶ Another study of 14 California counties found no significant differences between the recidivism of juvenile probationers in a special program and those in traditional probation.¹⁷ Although smaller caseloads seem to provide greater protection to the community, studies do not clearly show them to enhance rehabilitation or decrease recidivism.¹⁸

The state of New York ISP program makes finding employment for high-risk ISP offenders a major goal. It limits caseloads to 21 probationers per officer, and in 2005 it began helping offenders learn new skills and change their behaviors. In that year, 61 percent of probationers were successfully discharged from the program, with 32 percent unsuccessful and 7 percent in the “neutral” category (probationers who died or were transferred to another jurisdiction).¹⁹

Today it is estimated that the annual cost of supervising a person in the community pending trial and after sentencing is between \$4,000 and \$4,400 compared to incarcerating a person in prison or jail, which is estimated between \$32,000 and \$35,000 annually.²⁰ However, the cost of even the page 449 most expensive probation services is significantly lower than the cost of prison incarceration. The dramatic difference can be seen in Figure 13-2, which shows the cost of prison, parole, and probation in Colorado and the differences among supervision categories.²¹

Daily cost details: Colorado

Per offender per day costs vary substantially both between and within supervision categories.

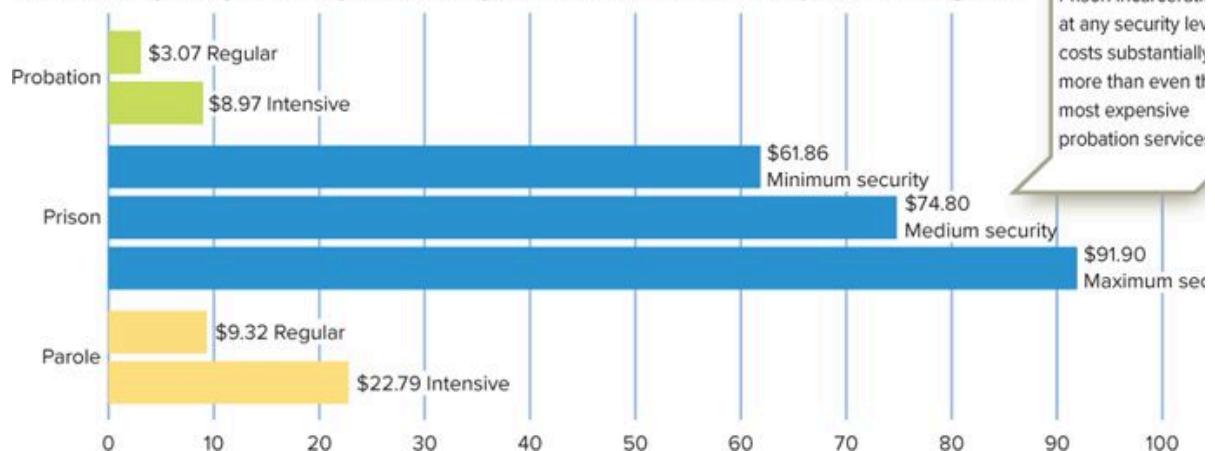


FIGURE 13-2 Daily Costs per Offender in Colorado, 2007

SOURCE: Pew Center on the States, “One in 31: The Long Reach of American Corrections” (Washington, DC: Pew Charitable Trusts, 2009).

https://www.pewtrusts.org/~media/assets/2009/03/02/pspp_1in31_report_final_web_32609.pdf
(retrieved April 22, 2011).

Who Serves Probation?

At the end of 2016, about 4.5 million U.S. adults were on probation, or probationers constituted 81 percent of adults under community supervision.²² Of these probationers, about 75 percent were being actively supervised.²³ “Active supervision” means that probationers are required to report regularly—either in person, by mail, or by telephone—to a probation officer. In contrast, probationers on “inactive supervision” are generally convicted of misdemeanors or less serious felonies and have little, if any, contact with the probation officer, whose large caseload, called a *banked* (or *bank*) *caseload*, makes such individuals probationers in name only. Probationers who are part of a banked caseload simply have to fill out forms each month to report such changes as address, employment or school.

A survey of California’s adult probation systems found that county probation departments are increasingly using banked caseloads rather than traditional supervision. The survey also indicated that banked caseloads can reach as high as 3,000 probationers per officer due to scarce resources, increased offender population, and inadequate numbers of staff.²⁴ Another study addressed the relationship between caseloads and property crime rates for every county in California over a 9-year period. Researchers found that as probation caseloads

increased, crime increased too. They concluded that smaller caseloads can and do reduce crime: As probation supervision decreases, the opportunities for a probationer to reoffend rise.²⁵ See the “Race, Class, Gender” box for a discussion of how celebrities and those with the resources to pay expensive lawyers might have different experiences than most people on probation.

Of adults on probation nationwide in 2016, 75 percent were male and 25 percent were female. Furthermore, 55 percent of those on probation were White, 28 percent were Black, 14 percent were Latino, and the remaining 3 percent were Native American, Asian, Native Hawaiian, Pacific Islander, or of two or more races.²⁶ In 2009, proportionate to the offender population, more White offenders received probation than Blacks and Latinos, who received more prison sentences.²⁷ Figure 13-3 shows the racial and ethnic breakdown of U.S. adults on probation in 2016. It is important to also note that in California since the implementation of the PSR policy (see Chapter 11), the number of probationers increased. In 2010 the probation population was 149,000, and in 2016 the probation population was 239,735.²⁸ It is premature to conclude that over time California’s probation departments will successfully provide evidence-based services that will protect public safety and assist probationers to lead crime-free lives.

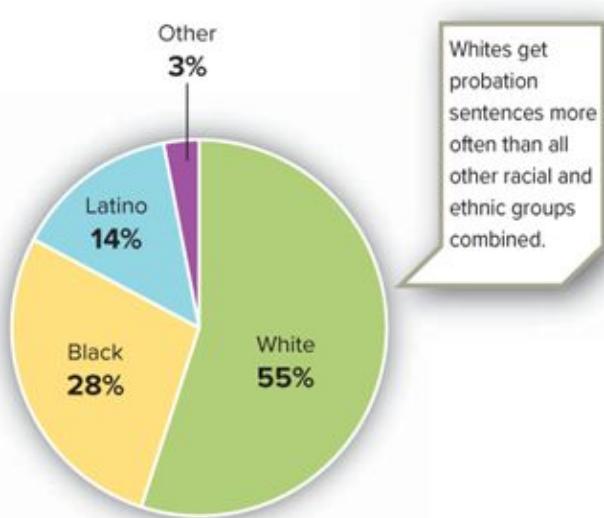


FIGURE 13-3 Racial and Ethnic Characteristics of U.S. Adults on Probation, 2016

SOURCE: Danielle Kaeble, *Probation and Parole in the United States, 2016* (Washington, DC: Bureau of Justice Statistics, April 2018).

Roles and Tasks of the Probation Officer

Probation officers—often referred to as *arms of the court*—are responsible for making recommendations to the court as to sentencing, for supervising offenders placed on probation by the court, and for seeing that court orders are carried out. Probably the most important task of probation officers is to help the court determine who should be placed on probation by providing the presentence investigation report (see Chapter 10).

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Race, Class, Gender

Celebrity Justice?

As you've learned, there are more Whites on probation than all other races combined. Why? There are many questions surrounding the fact that in some cases the offender will be sentenced to probation whereas in others, even though the crime is the same, the offender will receive a jail or prison sentence. High-profile celebrity cases also raise concerns that if the offender weren't rich and famous, the sentence would be different.

Lyndsay Lohan's many contacts with the criminal justice system definitely raised some eyebrows. Lohan was a childhood star who grew up to be a major movie star and singer. Her breakout movie, as both a commercial hit and talented actress, was *The Parent Trap* in 1998. She went on to star in other movies, including *Freaky Friday* and *Mean Girls*. She also released two albums, which earned platinum and gold status, respectively.

Although it seemed that Lohan had it all, she was also fighting an addiction to drugs and alcohol. Her troubles with the law started in May 2007 when she was arrested for drunk driving. Despite 45 days in an addiction rehabilitation center, she was arrested again in July 2007 for possession of cocaine, driving under the influence, and driving with a suspended license. This time she was sentenced to one day in jail, community service, an alcohol education program, and 3 years of probation. In 2010, after a series of probation violations, she was ordered to jail for 90 days; however, she only served 14 of those days before being released. In February 2011, she was arrested again for theft of a necklace. This time she was sentenced to 120 days in jail, but instead of being in jail, she was allowed to serve the time under house arrest. The rationale given was that the jail was overcrowded. She continued to commit probation violations. In March 2013, she was found guilty of reckless driving that resulted in a car accident. This time she was sentenced to 2 additional years of probation.



Michael Nelson-Pool/Getty Images

In May 2015, it appeared that Lohan would not complete the number of hours of community service required to meet the terms of her probation. If the hours were not met, she could have been ordered to jail. Of course, that had happened before and Lohan hadn't served much (or any) time in a cell. Still, as the deadline to complete 100 hours of service approached, she had to work with two community service organizations. She ended up serving 10- to 12-hour shifts at a social service facility that was open 24 hours a day. On May 28th, a judge certified that Lohan had completed the required number of hours and she was released from probation for the first time in almost 8 years. During that time, she had 50 court hearings, 20 of which she was required to attend in person.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do you think that Lohan received different treatment than someone who wasn't a celebrity would?
- Do you think she received a better legal defense because she had the resources to pay expensive lawyers?
- What do you think of the practice of not having a person serve time in jail even though he or she was actually sentenced to jail?

SOURCES: Melissa Russo, "Lyndsay Lohan Moonlights to Complete Court-Ordered Service by Deadline, Judge Ends Probation," NBC New York, May 28, 2015. www.nbcnewyork.com/news/local/Lindsay-Lohan-Meets-Community-Service-Deadline-New-York-City-305268241.html; "Police: Actress Lindsay Lohan Arrested for Driving under the Influence of Alcohol," CNN, May 26, 2007; Richard Winton and Andrew Blankstein, "Just Out of Rehab, Lohan Arrested Again on DUI, Drug Charges," *The Seattle Times*, July 25, 2007; Anthony

McCartney, "Lohan's Wings Clipped by New Jail, Probation Terms," *The Wall Street Journal*, Associated Press, November 2, 2011.

In order to issue a proper recommendation to the court, probation officers must investigate the events surrounding the crime (such as aggravating or mitigating circumstances, the use of weapons, and injuries to victims) and obtain a solid history of the offender. In effect, the probation officer is the court's fact-finder. The officer gathers information about the offender's family, education, employment, mental and physical health, motivations, attitudes, and skills. Importantly, the officer also assesses the risk that an offender's release might pose to the community. In addition to making a recommendation regarding probation, the probation officer recommends a plan and conditions for release.²⁹

However, the role of probation officer is not just that of investigator and court enforcer. The officer is also expected to assist offenders in solving everyday problems so they can develop a constructive and law-abiding pattern of living. The following scenario presents a typical day in the life of a probation officer:

Joe, a probation officer in a small rural county, gets to work about 8 a.m. Already there are four calls from the wife of one of his probationers. Her husband, Ted, on probation for a minor drug offense, has been page 451 clean for the last 5 months since he was arrested. Last night he made the mistake of going out with some of his buddies, getting drunk, getting into a fight, and getting arrested. He is now in jail, and she is afraid he will lose his job and go to prison because he violated his probation. Joe may have to write a report and recommend to the court that Ted's probation be revoked. Before he can call Ted's wife back, he must see two probationers in the waiting room. One is seeing him to discuss the results of a positive drug test, and Joe might have to arrest him. In the afternoon Joe needs to pay a home visit to a probationer who did not show up for his appointment last week. He may need to have the police standing by because the probationer has been known to be violent. Later in the day, Joe has an appointment with an employment agency that might be interested in hiring some of Joe's clients.

Probation officers are frequently expected to accomplish the dual roles of protecting society by supervising offenders in the community (which may mean arresting and incarcerating them) and treating offenders by counseling them

and assisting them with other services. Successfully carrying out these sometimes conflicting roles can be taxing. Ethical problems can arise, as the “Matters of Ethics” box illustrates. Starting in the 1970s, the probation officer’s role gradually and increasingly focused on a law enforcement and surveillance mind-set of “tail them, nail them, and jail them.” This mentality has led to mass incarceration, higher public safety costs, lack of differentiation in case supervision, and oversupervision of low-risk probationers, making it difficult for probation officers to carry out daily functions and solve problems in the community. However, evidence indicates that the law enforcement role of supervision is being reinvented to emphasize accurate assessment, effective interaction, motivation to change, and understanding the kinds of programs and interventions that will lead to law-abiding behavior.³⁰

How Successful Is Probation?

Success rates for probation programs are usually measured by recidivism—specifically, whether the offender has been rearrested. If the individual completes the term of probation without a new arrest, he is deemed a success. However, this method of measuring success has been questioned—in one case, as early as 1937, by Bennet Mead, whose original article on the topic was reprinted in 2005. Specifically, Mead criticizes the criminal justice field for defining success only as the absence of failure.³¹ The concept of success, he argues, must recognize other possible forms of achievement, such as improving work skills and employment, remaining clean and sober, establishing or maintaining family and relationship ties, and practicing fiscal responsibility. However, while all of these factors may truly indicate success, they are not easily measured or quantified. Thus recidivism is still the variable that is universally used to measure success.

In 2016, 50 percent successfully exited probation because they completed their term or were discharged early.³² The other 50 percent exited probation via incarceration, and other unsatisfactory ways such as absconding, death, warrants, and the like.³³

A probationer who violates one or more of the conditions of probation—called a *technical violation*—may be taken back to court. The judge may then revoke probation and send the offender to jail, even though the offender has committed no new crime. Examples of technical violations are not showing up for an appointment, not obeying a curfew, and having an alcoholic drink. Rates of revocation for technical violations can vary greatly from place to place

because the court has complete discretion over whether to revoke. page 452
An offender in one jurisdiction may be sent back to jail for a technical violation, whereas an offender in the next county may just get a slap on the wrist and be sent home for the same violation. In some jurisdictions the majority of probation revocations are for technical violations.³⁴ A study in Ohio found that smaller rural counties imposed more technical violations than did larger urban ones.³⁵ In an attempt to curb the flow of technical violators back into penal institutions and reduce the costs of incarceration, some states, such as Louisiana and Delaware, have taken legislative steps to make sure technical violators receive alternative sanctions that are proportionate to their violations of the conditions of probation or parole.³⁶

Matters of Ethics

Relationships Between Correctional Personnel and Offenders

Difficult issues can arise in the relationship between correctional personnel, such as correctional officers and probation and parole officers, and the individuals under their supervision. The ethical standard of prohibiting “dual relationships”—those in which the parties have both a professional and a personal association—is considered sacred in counseling and psychotherapy relationships between counselors and counselees. Dual relationships can interfere with the psychological boundaries necessary for the counselor to maintain professional objectivity and can lead to unethical conduct. Say, for example, a counselee is unable to pay for treatment, and her therapist has the woman clean the therapist’s home as payment. That conduct is unethical. Outside social contact between counselors and counselees is discouraged, too, and it is expected that professional and private roles be kept separate and distinct. Professional organizations and state licensing boards enforce these ethical standards—and violations may result in serious consequences.

Relationships are not clear-cut in the correctional environment. Maintaining such strict boundaries is often challenging. Correctional personnel play a number of different roles in offenders’ reformation and are sometimes expected to wear different hats. For example, probation and parole officers are bound to be advocates, resource persons, counselors, investigators, friends, problem solvers, helpers, and enforcers of the law. Each role dictates different types of interaction with and expectations of the offender, and in many ways a different relationship. Boundaries can easily blur. In the helping role, for example, friendships can develop. When this happens, the parties can lose objectivity—and might even cross sexual boundaries. The American Probation and Parole Association has enacted a resolution encouraging the passage of laws that criminalize staff sexual misconduct.

Because there is an unequal power relationship between correctional personnel and offenders who are under their supervision, any form of intimate relationship, even consensual, is considered unethical and unlawful. When such lines are crossed, the repercussions can be severe. For example, a Wyoming probation officer was convicted of second-degree sexual assault upon a female probationer. A Lucas County, Ohio, probation officer engaged in consensual sex with her probationer. The sentencing judge pointed out regardless of the consent there is a natural imbalance of power that cannot be erased by consent.



OBSERVE → INVESTIGATE → UNDERSTAND

- Do you think that the penalty of felony is too severe if a correctional worker has sex with an offender under his or her supervision? Explain.
- What other inappropriate dual relationships might a correctional worker have? Would the behavior be criminal, or a breach of ethics? Explain.
- Name other ethical issues that correctional personnel might face.

SOURCES: Ruth E. Masters, *Counseling Criminal Justice Offenders*, 2nd ed. (Thousand Oaks, CA: Sage, 2004), 21–22; Kim Boland-Prom and Sandra C. Anderson, “Teaching Ethical Decision Making Using Dual Relationships Principles as a Case Example,” *Journal of Social Work Education* 41, no. 3 (Fall 2005); American Probation and Parole Association, “Resolution: Staff Sexual Misconduct,” enacted August 2003. www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=825560aa-b5da-46b7-95bf-57debadaaa5c (retrieved May 24, 2015); “Wyoming Supreme Court Upholds Probation Officer’s Conviction for Sexual Assault,” *Criminal Legal News*, December 14, 2017. <https://www.criminallegalnews.com/2017/dec/14/wyoming-supreme-court-upholds-probation-officers-conviction-sexual-assault/> (retrieved February 23, 2019); Jennifer Feehan, “Former Lucas Co. Probation Officer Sentenced for Sex with Client,” *Toledo Blade*, December 5, 2017. <https://www.toledoblade.com/local/courts/2017/12/04/Former-Lucas-Co-probation-officer-sentenced-for-sex-with-client/stories/20171204127> (retrieved February 23, 2019).

Revocation of probation also can occur if the offender is found to possess any controlled substances or firearms or fails to submit to drug testing ordered by the court or the probation officer. The probationer who violates these conditions often has to pay fines as well as risk revocation.

In 1973 the U.S. Supreme Court ruled that probationers are entitled to certain due process rights if the court is to revoke probation.³⁷ Probationers must be allowed to present evidence on their own behalf, to receive written notice of the hearing and the charges against them, and to challenge and confront the evidence and witnesses. In addition, probationers might have the right to legal counsel if the case warrants an attorney's advice and services.

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The Future of Probation

In the future, the success of probation will be dependent on a number of factors. More financial resources will need to be redirected to probation agencies. Money will be needed to reduce large caseloads by hiring and training more probation officers in standard and specialized areas so officers can develop greater skills to assist probationers. One specialized area is in the area of addiction. Agencies must acknowledge and know the cycles of addiction and recovery because so many probationers struggle with drug and alcohol abuse. Such specialized training will help officers move away from the standardized, one-size-fits-all type of supervision that for decades has emphasized rule enforcement and a "lock them up" mentality in contrast to individualized rehabilitative care and treatment of probationers.

This paradigm shift has the potential to change the culture of probation supervision for the better. To accomplish changes in the way probationers are supervised, agencies will need to reshape their goals and officer roles to better balance treatment and rule enforcement. One promising form of supervision is behavioral management that combines the officer's enforcement responsibilities with a duty to teach and model prosocial behavior for the probationer. This form of supervision should assist the probationer to develop motivation, engagement, and responsibility; enable better officer-probationer relationships; and foster effective reintegration and better outcomes.

Keys to success will be tied to the probationers' needs for specific types of supervision, and agencies will have to administer better individual needs and risk assessment tools to determine the type and extent of supervision delivered. They will also need to use technologies with reliable research on effectiveness;

move away from imposing unnecessary restrictions on low-risk probationers; use well-researched, evidence-based best practices; use graduated responses and incentives for rule violations such as “halfway back” programs, which are community-based responses with secure residential options; use programs that allow probationers to earn discharge from probation; embrace performance incentive funding programs that reward agencies with some of the money states receive from reducing the number of offenders sent back to prison for violating a rule of probation; and provide adequate levels of support and benefits for probation officers who are on the front line.³⁸

Trends in probation include electronic monitoring of offenders, increased automation in the workplace, and greater use of alternative sanctions and victim restitution.³⁹ Programs such as *evidence-based practice*, which sets out a structured format for interviewing and supervision techniques, are gaining favor.⁴⁰ Evidence-based probation organizes probation services guided by research and uses such practices as motivational interviews, intervention, and behavioral treatment to directly influence the probationers’ behavior.⁴¹

PAROLE

Parole is the early conditional release of a prisoner from incarceration after the person successfully serves a portion of the sentence in prison. In this section, we examine adult parole, its meaning and philosophy, and issues related to this type of community corrections.

parole

An early release from prison conditional on complying with certain standards while free.

Purpose and Goals of Parole

The purpose of parole is to reward inmates who follow prison rules and behave positively while incarcerated and to provide citizens with a more cost-effective form of supervision than incarceration without sacrificing protection of society. We must be mindful that parole is important to the public health needs of Americans because at least 95 percent of all prisoners will be released from prison at some point and nearly 80 percent will be released to parole supervision.⁴² The average yearly cost of supervising parolees is page 454 normally higher (approximately \$2,727) than the average yearly cost of supervising probationers (approximately \$1,248).⁴³



▲ Parole Board Meeting

Parole board members make decisions about a prisoner's eligibility requirements and suitability for parole. *What types of release conditions do parole boards set?*

Mikael Karlsson/Alamy

Parole aims to provide inmates who no longer need imprisonment with close supervision and appropriate programs in the community that will help them rehabilitate and reintegrate. Offenders who are paroled from prison promise to follow specific rules. (The French word *parole* means "word" or "promise.") Parole officers provide the supervision, aftercare, and support services to help offenders reintegrate into the community. Like probationers, parolees can be sent back and incarcerated if they violate their conditions of parole. They are granted the privilege (not a right) of completing their sentence in the community. In short, parole is conditional supervised release in the community.

MYTH/REALITY

MYTH: Probation and parole are the same thing.

REALITY: Typically, probation is a judicial sanction used in place of incarceration. Parole, on the other hand, is an administrative procedure for early release after an offender has served time in prison. Both probation and parole are conducted in the community, with conditions and under supervision, and the revocation of either usually leads to imprisonment.

Although parole and probation officers both supervise offenders in the community and use similar casework techniques, parole is an *administrative*

function, whereas probation is a *judicial* function (see the Key Concepts table comparing probation and parole). Thus **parole boards**, not judges, grant permission for selected offenders who have served a portion of their sentence in prison to serve their remaining time in the community. As of 2018, about 16 states had abolished the parole function in favor of determinate sentencing and other legislative reforms. Parole boards in states that have page 455 determinate sentencing continue to exist to make decisions about felons who were sentenced prior to determinate sentencing. A state's governor normally appoints parole board members—citizens with experience in criminal justice or related fields—to the board, although practices vary from state to state. In most states, victims are given the right to provide a victim impact statement to the parole board requesting any special conditions on the release (e.g., release in a county other than the one where the victim lives and the grant of a restraining order).

parole board

A group of people authorized by law to grant permission for selected offenders—after serving a portion of time in prison—to serve their remaining sentence in the community.

KEY CONCEPTS Comparison of Probation and Parole

Probation

- A judicial function
- Judges grant probation
- Takes place in the community
- Requires conditions
- Can be revoked
- Supervision by a probation officer
- Probationers typically are not prisoners
- Criminal records normally less serious
- No “ex-con” stigma
- Reintegration is less of an adjustment
- Offenders are on a caseload

Parole

- An administrative function
- Parole boards grant parole
- Takes place in the community
- Requires conditions
- Can be revoked
- Supervision by a parole officer
- Parolees are released from prisons
- Criminal records more serious
- Entails “ex-con” stigma
- Reintegration is a major adjustment
- Offenders are on a caseload

Probation

Restitution may be ordered by a judge

Parole

Restitution may be ordered by a parole board

The fact that parolees tend to have more serious prior criminal records than probationers explains why they served in prison rather than in jail or on probation. Reintegration is often more difficult for parolees because individuals who serve time in prison tend to become institutionalized; that is, they adjust to prison life and have difficulty readjusting to the outside world.⁴⁴ Parolees' options are limited, and a number of their rights are restricted. They are unable to vote in many states, to hold political office, to work in certain professions, or to enter into contracts. The label "ex-con" frequently becomes their primary identity and overshadows all aspects of their life. Frustration with that stigma can lead to defeatist attitudes and actions.⁴⁵

Offenders can be released on parole in one of two major ways. In **mandatory release**, the law requires early release after an offender has served a specified time in prison. In **discretionary release**, a parole board decides whether the offender meets eligibility requirements and is ready for discharge. In either type of release, parole boards are responsible for setting the conditions for release and have the authority to return offenders to prison when they violate rules. Parole officers report directly to parole boards (not courts) and have the main responsibility for supervising parolees.

mandatory release

Early release mandated by law after an offender has served a specified time in prison.

discretionary release

A procedure by which a parole board decides whether the offender meets eligibility requirements and is ready to be released from prison.

Discretionary release gives parole boards a great deal of power. Release depends on a state's sentencing structure and on the parole board's assessment of whether the prison has prepared the offender enough to reenter the community, whether continued incarceration might be harmful to the offender's eventual reintegration, whether the offender's mind-set is positive toward reentry, and whether the offender has a viable parole plan. In recent decades many states have opted to release prisoners at the end of their prison terms and then place them on a shorter term of mandatory postrelease supervision by a

parole officer.⁴⁶ A *parole plan* is a proposed course of action the parolee will follow upon release to ensure success on parole.

Modern parole is typically administered at two levels of government—state and federal—depending on whether offenders violate state or federal criminal codes. Congress abolished parole at the federal level on November 1, 1987. (See “Challenges to Parole” section for more information.) As a result, offenders sentenced to federal prisons who complete their sentences and are released are required to complete a term of supervised release in the community. State systems vary, but normally parole and probation are separate functions at the state level. The federal system is centralized, standardized, and uniform and employs officers who work in both probation and parole to assist offenders. Most states hire parole officers who work exclusively with either adult or juvenile populations. Federal probation and parole officers supervise both parolees and probationers simultaneously and work with offenders of all ages.



▲ Parolee in Court

A parolee arrested for a crime committed while on parole will frequently go to trial on the charges.
iStock.com/Wavebreakmedia

Who Is Paroled?

By the end of 2016, approximately 874,800 adults were on parole from federal and state prisons. Fifteen percent of those on parole were federal offenders and 87 percent of those on parole were state offenders.⁴⁷ This means that about 1 in 288 adults per 100,000 people in the United States were under parole

supervision.⁴⁸ In 2016, the parole population increased about eight page 456 times during the previous decade, the increase driven by states. In comparison, exits from parole decreased.⁴⁹

Most prison inmates—and therefore most parolees—are male, poor, undereducated, unskilled, people of color, young, and convicted of property or drug offenses. Thirty-one percent of parolees in 2016 were on parole for drug offenses. Approximately 30 percent were supervised for violent offenses; 21 percent for property offenses; and the rest for weapons and other offenses.⁵⁰

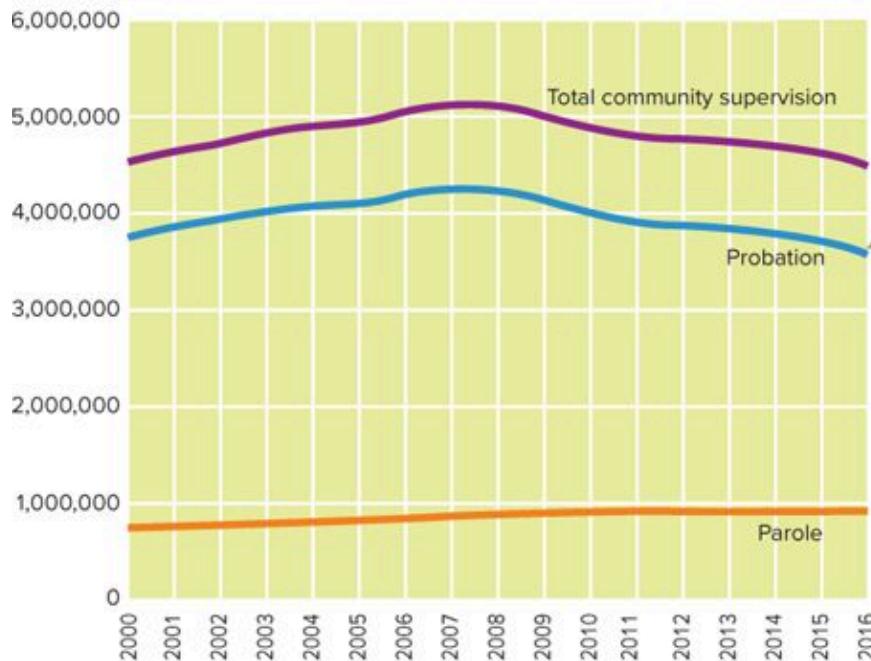
At the end of 2016, about 13 percent of adults on parole were female.⁵¹ Although their numbers are on the rise, women parolees are released to the community with limited help to secure employment, housing, health care, mental health and substance abuse services, transportation, and child care.⁵² Additionally, many parolees have learning disorders and cognitive problems.⁵³ Many have entered the prison system with—and bring to parole—such problems as homelessness, unemployment, separation from their children, sexual and physical abuse, and mental health and addiction issues.⁵⁴

In 2016, approximately 45 percent of individuals on parole were White; 38 percent Black; 15 percent Latino; and 2 percent people of other races and ethnicities.⁵⁵ Blacks made up approximately 13 percent of the U.S. population and almost half of the prison population, but under the new tough-on-crime policies they were not being granted parole as frequently as Whites.⁵⁶ Incarceration custody rates for Black males were higher than for any other race.⁵⁷ The average age of state parolees is rising because inmates are being sentenced to, and staying in prison for, longer periods of time. In 1990 the median age of a parolee was 31, and in 1999 it was 34. About 26 percent of all those entering parole were age 40 or older.⁵⁸

All these data suggest a shift in the profile of individuals who reenter the community. The number of drug offenders remains high, and the number of older parolees is increasing.⁵⁹ Because of the higher incarceration rates of women, the number of women on parole is also high.⁶⁰ Figure 13-4 shows the changes in the probation, parole, and community supervision page 457 populations between 2000 and 2016. In 2016 the total community supervision and probation populations experienced decreases while the parole population experienced a slight increase, perhaps due in part to prison reform efforts to decarcerate.⁶¹

Adults under community supervision, probation, and parole on December 31, 2000–2016

Year-end population



Growth in community supervision and probation appears to be slowing, whereas growth in parole appears to be increasing.

Note: The scale along the vertical axis has been adjusted and the parole population is represented as five times its size to illustrate the change in each group over time. The reporting methods for some probation and parole agencies changed over time.

FIGURE 13-4 Total Adults under Community Supervision and on Probation or Parole, 2000–2016

SOURCE: Danielle Kaeble, *Probation and Parole in the United States, 2016* (Washington, DC: Bureau of Justice Statistics, April 2018).

Roles and Tasks of the Parole Officer

Parole officers are charged with helping offenders readjust to the community and preventing new crimes. They carry a caseload, have regular contact with parolees, and perform other duties. The number of hours a parole officer spends supervising a parolee depends on case and agency priorities. High-priority cases may take 4 hours each month of supervision time, while low-priority cases may require only 1 hour of supervision time in some jurisdictions.⁶² In their assistance role, officers operate as resource brokers and advocates by developing parole plans that specify what inmates must have in place before they are released. After release, parole officers operate as social workers, counselors, and life coaches, making arrangements for housing, employment, education, counseling, medical care, referrals to other agencies, and the like.

In their supervisory role, parole officers conduct surveillance, monitor drug tests, enforce conditions of parole, conduct investigations, initiate revocation hearings, carry out parole searches, seize evidence, make arrests, and place parolees in custody. Parolees are subject to surprise searches conducted by parole officers—both of their premises and their body, at any time, and without a search warrant. Such searches may result in arrest. A tragic example in which the supervisory function of parole officers, among others, went terribly awry is the Jaycee Dugard kidnapping case discussed in the “Case in Point” box.⁶³

How Successful Is Parole?

Successfully completing parole means that the parolee did not have a violation serious enough to be returned to custody and was not rearrested for a new offense.⁶⁴ The parole completion rate has consistently risen. In 2016, approximately 52 percent of those exited from parole had successfully completed their supervision or were discharged.⁶⁵

In 2016, approximately 24 percent of parolees had their parole revoked and were returned to prison with a new sentence, and the remainder were returned to prison for some other unknown reason or for treatment.⁶⁶ Overall, the rate at which parolees had their parole revoked and were returned to prison for a new crime decreased between 2008 and 2012. However, between 2012 and 2014, the rate at which parolees had their parole revoked and were returned to prison rose about 6 percent but declined to 5.2 percent in 2014.⁶⁷ The at-risk parole population returned to prison remained stable at about 9 percent between 2008 and 2014.⁶⁸ Overall the parolees at risk for reincarceration rate has declined from 2000 to 2014 but increased slightly (0.5 percent) between 2015 and 2016.⁶⁹

As drug offenders, older inmates, and women inmates are released on parole, they will be subject to parole violations. Some 70 percent of parolees who were returned to prison had committed a technical violation.⁷⁰ These violations can include moving to a new residence without the permission of a parole officer, taking a shopping trip to a city not in the parolee’s county of residence without permission, and leaving the state without permission. Driving a car, failing a drug test, or taking a sip of champagne to toast a bride and groom during a wedding reception can result in revocation if those acts were specified as violations of parole. Time will tell whether states will follow California’s lead and do away with parole revocation for technical violations as the Public Safety Realignment Act of 2011 requires (see Chapter 11). The 2018

Criminal Justice Reform Act (First Step Act) policies have touted the need for doing away with reincarceration for offenders who have minor technical violations.

page 458

a case in **point**

Parole and the Jaycee Dugard Case

In 1991, Phillip Garrido, a registered sex offender in California, kidnapped 11-year-old Jaycee Dugard, and he subsequently held her captive in his backyard compound for 18 years. During this time Garrido repeatedly raped Dugard, and she gave birth to two children.

The criminal justice system failed at several key points in this case. First, Garrido had been released from prison in January 1988, even though he had received a 50-year sentence in 1977 for kidnapping and raping another girl. Upon discharge from prison, Garrido was under the supervision of federal parole authorities. Then in 1999, the U.S. Parole Commission granted Garrido early release from parole based on what was determined to have been a clear prison record. At this point, the California Department of Corrections and Rehabilitation (CDCR) took over Garrido's supervision. Yet, despite some 60 visits by parole officers between 1999 and 2009, Jaycee's imprisonment in the backyard went undetected.

After Garrido's arrest in 2009 for Dugard's captivity, many specific mistakes and apparent errors in judgment came to light. For example, CDCR had failed to classify Garrido as a sexual predator; parole officers had been tardy in visiting his home and had not made a home visit until 2000; parole officers had failed to speak with Garrido's neighbors or to communicate with police agencies about him; parole officers had not followed up on reports that Garrido had violated his parole conditions; and parole and law enforcement officers had failed to notice that children were living on Garrido's property. Perhaps California's parole system would have been more effective if the burden were not on the parole board to prove that offenders were a public safety risk before releasing them on parole and if the state had used a sex offender assessment tool.^a

Apart from the missteps that occurred in the Dugard case, without a proactive parole officer who intervenes to protect society if necessary, offenders are more likely to fail upon their return to the community. The argument that abolishing parole is consistent with being tough on crime and beneficial to public safety may be misguided.^b

Dugard's story doesn't end with a broken life. She has worked tirelessly to not only heal herself but to also help others. She was compensated by the state of California with \$20 million for parole officers' repeated mistakes in not finding her. She has written two books: *A Stolen Life and My Book of Firsts*. She's also founded the organization JAYC (Just Ask Yourself to Care), which not only helps others who have suffered trauma, but also works with law enforcement to train officers about behavioral clues that can lead them to investigate or

search a property. Instead of being bitter and defeated, Dugard has risen as a survivor who is helping save others.^c

OBSERVE → INVESTIGATE → UNDERSTAND

- When there are such great failures by a parole officer, should he or she be held responsible? If so, how? If not, why?
- Are there any policy changes that you think should be made in light of the details of this case?
- Do you think parole officer training should be changed or enhanced in some way?

SOURCES: ^aNick Monacelli, “New Garrido Videos, Psych Reports Highlight Parole System Flaws,” *New10 ABC*, August 2, 2011. www.news10.net/new/article/148396/29/DA-on-mission-to-prevent-repeat-of-Dugard-horror (retrieved August 2, 2011).

^bPeggy B. Burke, *Abolishing Parole: Why the Emperor Has No Clothes* (Lexington, KY: American Probation and Parole Association, 1995).

^cMeg McConahey, “Jaycee Dugard’s Courageous Path Reclaiming ‘Stolen Life,’” *The Press Democrat*, September 8, 2018.

A parolee accused of a new crime while on parole normally faces severe consequences and will likely be held in jail until the new charges are resolved. If convicted, the parolee will attend a revocation hearing to determine how much extra prison time he must serve. The high number of parole violators who are returned to prison, combined with new court commitments, has forced prisons to develop new strategies to house all these individuals.⁷¹

The rate of parole violations varies greatly from state to state. California is at the top of the list, with approximately 67 percent of parolees returning to prison; at the low end are Alabama and Indiana, where fewer than 10 percent of parolees return. The rest of the states fall between these extremes.⁷²

Not surprisingly, most parole failures occur within the first 6–12 months of release.⁷³ A significant factor in these failures is that for many parolees discharged after a long incarceration, life outside prison is distressing and even

overwhelming. Most leave with limited resources—the clothes on their back, few job skills, low literacy, no reliable means of transportation, and little money. They may have physical and mental problems or addiction. They must report to parole officers they may not know, and employment they were promised may not materialize. Practices such as suing ex-cons for the cost of incarceration after being released to the community threaten successful reintegration efforts. This “pay-to-stay” trend is intended to put part of the burden of funding the criminal justice back on offenders.⁷⁴ Such page 459 problems would quickly stress many of us.

Challenges to Parole

A multistate study in 2005 compared the criminal activity of inmates released from prison without parole (**unconditional release**) and those released on parole by mandatory and discretionary release. The researchers found that 2 years after release, 62 percent of unconditional releases and 61 percent of mandatory release parolees had been rearrested at least once. Of the discretionary release parolees, 54 percent had been rearrested. The researchers concluded that although the difference was surprisingly small, doing away with parole might not be in society’s best interest.⁷⁵

unconditional release

Release of an inmate from prison without parole.

Other analysts of parole are not so sure. In the late 1970s, the practice of parole came under attack on the grounds that rehabilitation programs were not effective.⁷⁶ This conclusion fed into popular beliefs that prisons and rehabilitation programs were pampering dangerous criminals. Parole also was challenged on the basis that open-ended (indeterminate) sentences were “cruel and unusual punishment” because they were uncertain or that they gave too much discretion to parole boards.⁷⁷

Responding to these challenges, the Sentencing Reform Act of 1984 abolished parole for offenders sentenced under federal guidelines. Instead they had to complete their full sentences—minus time for good behavior—with federal prison. Unlike parole, such determinate sentences do not offer offenders the support needed to reintegrate. They may even put the community at greater risk because the offender is not supervised upon release.

The U.S. Parole Commission is responsible for eligible federal offenders who committed offenses before November 1, 1987. The commission also has

oversight for paroling eligible offenders sentenced under the Uniform Code of Military Justice, transfer treaty cases, and state probationers and parolees in federal witness protection programs.

Several landmark U.S. Supreme Court cases in the 1970s changed the way parole was revoked. In 1972, parolees were granted limited due process rights when a process of revocation is initiated.⁷⁸ As noted earlier, in 1973 probationers were granted limited rights to counsel in revocation hearings, and the Court left it to the hearing body to decide on a case-by-case basis whether counsel should be provided.⁷⁹ The ruling in this case also applied to parolees. In 1979, however, the Court ruled that parole was a privilege, and states are still determining what privileges parolees may have during revocation hearings.⁸⁰

Some critics are calling for the parole system to better protect society by becoming more involved in the community, expanding community collaboration initiatives, placing the protection of society before the treatment of offenders, and enforcing the punishment of parole violations.⁸¹ These approaches have roots in both the crime control and the punishment models of corrections discussed in Chapter 11. Others have more optimistic viewpoints but call for parole to step up and do better sex offender management. The parole system must also focus on the mentally disordered, substance abuser, and geriatric populations. It must develop practices that take into account the differences between supervising females and males, and it cannot ignore juveniles in the adult system. Another challenge for parole is to provide housing opportunities for those released to the community to be supervised.⁸²

INTERMEDIATE SANCTIONS

Intermediate sanctions are judicial punishments that do not require long terms of incarceration but stop short of allowing offenders to remain in the community on probation with minimal supervision. Hence, these sanctions are not quite prison or jail and not quite traditional probation. Some intermediate sanctions require offenders to live in a communal residence (such as a page 460 community center or a halfway house) while participating in work and rehabilitation programs; others allow offenders to live at home but under close supervision (such as through electronic monitoring devices). Intermediate sanctions reinforce the need for offenders to take responsibility for their actions while providing more structure than traditional probation provides. They also

broaden the range of alternatives available to deal with offenders' different needs.

intermediate sanctions

Judicial punishments that do not require incarceration but stop short of allowing offenders to remain in the community on probation with minimal supervision.

KEY CONCEPTS Comparison of Intermediate Sanctions by Degree of Supervision

	High Supervision	Medium Supervision	Low Supervision
Community service		X	
Restorative justice		X	
Mediation		X	
Restitution			X
House arrest	X		
Shock programs	X		
Fines and forfeitures			X
Community centers		X	
Work release		X	

Intermediate sanctions are also called **diversion** because they divert the offender from prison or jail. Diversion programs are a form of sentencing, and they are frequently run by law enforcement agencies, the courts, a district attorney's office, and outside community agencies. In addition to diverting offenders from incarceration, they may also prevent the offender from being criminally charged and having a record. Such sanctions sometimes occur at the end of incarceration to give the offender more freedom and control in preparation for release. Many different types and varieties of community corrections are available in the criminal justice system today, and even more creative strategies will likely be developed as prison and jail populations remain high. One point is very clear: Community corrections are less expensive than sanctions that include incarceration.⁸³ So, the future appears to be ripe for the further development of community corrections. If you are interested in working in this burgeoning field, some careers in community corrections include community residential treatment director, community work coordinator, court advice worker, drug court officer, community corrections officer, and home detention officer.

diversion

An intermediate sanction that is used in place of incarceration and may prevent offenders from having a criminal charge and record.

We describe some of the most common forms of intermediate sanctions next. See the Key Concepts table to understand how they compare in their degree of supervision.

Community Service

Community service began in 1966 in Alameda County, California, as a punishment for traffic offenders. It then became popular as a condition of probation for a wide range of white-collar violations.⁸⁴ Today community service requires the offender to provide a specific number of hours of unpaid labor for the community in a public service activity, such as working for a nonprofit agency, hospital, public park, or poverty program, picking up roadside litter, or removing graffiti. This service is considered to represent an offender's atonement for the harm done to society, with his personal contribution as a way of demonstrating contriteness. If a person does page 461 not complete community service, a judge can order more service hours or send the person to jail. In some cases, judges will include restitution as part of a sentence to go beyond just providing free labor. Restitution can also be a specific amount of money paid or specific tasks performed directly for the victim or the community as reparation for damage done to community property or private property. Research indicates that community service, when part of restitution, compared with incarceration, is associated with lower rates of recidivism.⁸⁵

community service

Performance by an offender of free labor for the community as reparation for the injury done to society.



▲ Offenders Doing Community Service

When offenders do community service, society receives the benefit of their free labor as atonement for their crime.

Mike Simons/AFP/Getty Images

Restorative Justice

Restorative justice emphasizes the offender's responsibility to participate with other stakeholders, victims, and members of the community in repairing the injury and damage caused by the criminal behavior.⁸⁶ These goals are accomplished through a cooperative process among participants in victim-offender mediation, victim assistance providers, ex-offender assistance programs, restitution, and community service.⁸⁷

restorative justice

A process that involves all the persons who have a stake in an offense coming together to jointly resolve the disruption, damage, and injury so that the end result is a restoration of the disrupted relationships.

Restorative justice is an alternative way of thinking about crime. It looks at crime as harm done to people and the community rather than just as a breach in the legal code. It elevates the role of crime victims and community members by actively engaging them in the justice process, and it holds offenders accountable to the people and communities they have injured. The goal is for healing and forgiveness to replace punishment and retribution. Restorative

justice practices are found in Native cultures in the United States and Canada and among indigenous cultures around the globe. They have also been adopted by some faith-based organizations, especially the Mennonites.⁸⁸ Based on a meta-analysis of 22 studies, general support was found for the effectiveness of restorative justice principles.⁸⁹ Restorative justice continues to be at the forefront of contemporary reform discussions as a realistic, effective, and significant alternative to traditional retributive justice systems.⁹⁰

Restitution, Fines, and Forfeitures

Court-ordered monetary repayment to the victim for losses, damages, or expenses suffered at the hands of the offender is called **restitution**. This approach has a long history. The Code of Hammurabi (ca. 1750 BCE) [page 462](#) and the Hebrew Bible prescribed restitution to the victims of theft. In the Twelve Tables of Roman Law (ca. 449 BCE), convicted thieves were required to pay double the value of stolen goods. English medieval law contained a detailed restitution schedule. Following the Norman invasion of Britain in 1066, however, retributive justice began to replace the restitution system; crimes came to be viewed as offenses against the state that disturbed the “king’s peace.”

restitution

Court-ordered reparations with services and/or monetary repayment to the victim for losses, damages, or expenses suffered at the hands of the offender.

On the principle that crimes are in fact committed against individuals and not the state, we can view restitution as payment of a debt owed to the victim, not a state-mandated punishment or fine paid to the state. In this way, restitution can be one part of restorative justice sanctions; it is in practice often ordered as a condition of probation.

The financial impact on victims is staggering. The U.S. Government Accountability Office estimates that the cost of crime ranges anywhere from \$690 billion to \$3.41 trillion. The cost of crime ranges so greatly as we have both tangible costs that can be measured such as the costs to prevent crimes (e.g., security systems); costs as a consequence of crime (e.g., medical bills, lost wages, funeral expenses, to name but a few); and costs in response to crime such as the criminal justice system including law enforcement, courts, and correctional institutions. However, there are also intangible costs that are far harder to measure such as fear of crime, avoidance behaviors, and post-

traumatic stress disorder (PTSD), plus primary/secondary victims' pain, suffering, and lost quality of life. Another compounding factor in estimating the cost of crime has to do with the inability to define and measure certain types of crime, such as cybercrimes, as well as underreporting.⁹¹

Such statistics underscore the importance of restitution. However, for restitution to be truly meaningful, the offender must be strictly accountable to pay the prescribed amount. Similarly, the criminal justice system must be accountable for collecting and processing restitution and for enforcing collection when offenders are delinquent.⁹² In many cases courts ask for more restitution than is likely to be collected (only about 7 percent of ordered restitution is actually collected). When offenders are not able to afford restitution, little can be done to collect it.⁹³

Because many victims never receive restitution monies, some states are taking innovative steps to investigate the convicted offender's assets, preserve them, and file paperwork to garnish any source of income, including wages, lottery winnings, and awards in civil lawsuits. Kansas provides the victim with access to all the offender's financial assets and income until the restitution is paid. Pennsylvania allows the prosecutor to preserve the offender's assets at the time a criminal complaint is filed. In California, it is a misdemeanor and sometimes a felony for an offender to dispose of property to avoid paying restitution. The consequence of willfully failing to pay restitution can be revocation of probation or parole.⁹⁴

Vermont created a Restitution Fund that is a centralized unit affiliated with the Vermont Center for Crime Victims. A 15 percent surcharge is added to all criminal and traffic fines, which is then deposited into the Restitution Fund. The monies are then advanced to crime victims, up to a cap of \$10,000, while the fines are being collected from offenders. Since its inception in 2004, more than \$6 million has been disbursed to 5,600 crime victims. Florida instituted Project Payback, which focuses not only on enforcing restitution orders for juvenile offenders, but also on training for job skills to ensure that juveniles can make the payments to victims. Those participating in this program have given over \$3,500 to victims since the program's inception.⁹⁵

Restitution can serve as an act of atonement or remorse and can help offenders take responsibility for their behavior. It can also greatly reduce recidivism when coupled with other rehabilitative processes such as mediation and negotiated sanctions between offenders and victims.⁹⁶ One argument against restitution, however, is that a financial penalty has little, if any, effect on a wealthy defendant. Conversely, such sanctions may

be harsh for poor defendants who already have overwhelming financial burdens.⁹⁷

DIS Connects

Complicated Justice

Sometimes who deserves incarceration instead of fines, restitution, or probation is not only contested in the courts but also in the media. On January 29, 2019, Jussie Smollett, a star of the popular show *Empire*, reported that he was targeted in a racialized and homophobic manner. Smollett said he was victimized in a way that included a noose around his neck and physical injuries. The incident reportedly happened in Chicago and immediately received national attention. As the story unfolded, it became less clear that the facts of that early morning were exactly as Smollett reported.

The Chicago police contended that Smollett's story was not corroborated by the evidence they uncovered. The police forwarded to the district attorney's office that Smollett had conspired with two brothers, Abimbola Osundairo and Olabinjo Osundairo, to fake the attack. The district attorney's office on March 26, 2019, however, decided to drop the 16 charges of disorderly conduct related to alleged false reporting against Smollett. The district attorney's office dropped the charges in exchange for giving up his \$10,000 bail bond and for his already served community service. One explanation from the district attorney's office was that a conviction was likely to be difficult.



Terrence Antonio James/Chicago Tribune/TNS/Alamy

The mayor of Chicago, Rahm Emmanuel, and the Chicago Police Department did not agree with the prosecutor's decision. They publicly stated such immediately and followed up in April 2019 with a civil suit to reimburse the city for the costs of the investigation. According to the police department, Smollett cost them \$130,000 for the investigation that they consider fraudulent. For his part, Smollett maintains that he was a victim and that any notion that he conspired in his victimization is inaccurate.

This chain of events led some to question whether Smollett was dealt with in a way that “regular” people would have experienced. Was Smollett case influenced by his celebrity status? When we have opposing understanding of facts how is the justice system supposed to sort through these differing contentions?

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do celebrities receive different justice than people who are not celebrities?
- How does media coverage affect how justice is meted out?
- How can we create a system that minimizes the influence of celebrity?

SOURCE: Mitch Smith, “Chicago Sues Jussie Smollett, Seeking Costs of Police Investigation into Attack Claim,” *New York Times*, April 11, 2019.

Fines imposed by judges constitute another form of monetary payment, but to the state, not the victim. Offenders must pay or forfeit a specific sum of money as a penalty for committing an offense. The fines may be in addition to or instead of incarceration or other sanctions and usually punish relatively minor misdemeanors and infractions. Different agencies of the criminal justice system are responsible for collecting them.

fines

Payments, imposed by judges, that require offenders to pay or forfeit a specific sum of money as a penalty for committing an offense.

Fines are often criticized as being unfair. For someone as wealthy as actor Mel Gibson, for instance, the \$1,300 fine he paid in 2006 for speeding and driving under the influence was a penalty without much weight or personal impact. The “Disconnects” box describes the controversial Jussie Smollett case, which included him sacrificing his \$10,000 bail bond, serving in the same function as a fine. An alternative approach is **day fines**, also called *structured fines*. Day fines originated in Scandinavia and are relatively new in the United States. Instead of imposing the same penalty regardless of ability to pay, day fines determine a fair fine for a specific offender, using formulas similar to those used to calculate spousal and child support payments. The fines are based on a scale that ranks the severity of offense and the offender’s daily income and number of dependents.⁹⁸ A recent example is that of a Finnish businessman

who was fined €54,000 (or the equivalent of about \$60,000) for _____ page 464 going 15 miles over the posted 50 miles per hour sign. The police searched a federal taxpayer database to assess the fine based on man's income. In 2002 a Nokia executive was fined \$103,000 for the same type of violation, and NHL player Teemu Selanne received a \$39,000 fine for reckless driving in 2000.⁹⁹

day fines

Fines based on what is fair for a specific offender to pay; also called structured fines.



▲ Victim—Offender Mediation

The mediation process allows victims to tell offenders how the crimes affected their lives.

Lannis Waters/The Palm Beach Post/Zumapress/Newscom

Forfeiture refers to the confiscation by law enforcement of profits made by committing a crime and of property used to commit a crime. Asset forfeiture has been used in the prosecution of drug trafficking and organized and environmental crimes.

forfeiture

Confiscation by law enforcement of profits made by committing a crime and of property used to commit a crime.

Mediation

Victim–offender mediation brings victims and offenders face-to-face to work out a restitution and restorative strategy under the direction of a trained counselor or mediator. The mediation may include family and community members who wish to take part.

victim–offender mediation

A process that brings victims and offenders face-to-face to work out a restitution and restorative strategy under the direction of a trained counselor or mediator.

During the mediation meeting, both the offender and the victim can reveal how the crime affected their lives. Victims may communicate their feelings about being victimized, and the offender can accept responsibility, express remorse, and perhaps even make an apology.¹⁰⁰ These programs have high participant satisfaction rates and reduce the criminal behavior of offenders who participate.¹⁰¹ Mediation is not appropriate for all victims, however. In fact, for some it can reinforce the trauma associated with the crime.¹⁰²

House Arrest

House arrest (or home confinement) restricts offenders to their home during the time they are not working or attending a treatment program. Such confinement may be either a condition of intensive-supervision probation or a stand-alone sanction. House arrest is a sentence given by a court or a condition imposed when a defendant is awaiting trial at home rather than in jail. In some authoritarian countries such as China, Myanmar (Burma), and Sudan, house arrest is a way of silencing political dissenters without giving them a criminal trial that might bring negative publicity to the government in power.¹⁰³

house arrest (home confinement)

An intermediate sanction that restricts offenders to their homes during the time they are not working or attending treatment programs.

House arrest is not a new concept; it was used to confine England's King Richard II to Pontefract Castle in 1399. In the seventeenth century, Galileo was placed under house arrest for his assertion that the earth revolved around the sun. He remained there for 9 years until his death in 1642.¹⁰⁴

The basic goal of home confinement is to permit offenders to be employed and to support themselves and their families while continuing their punishment. It has the advantage of reducing jail and prison overcrowding and incarceration

costs while promoting reintegration into the community. Candidates for home confinement tend to be first offenders who have close family ties, are employed full-time, and do not have drug or alcohol problems.¹⁰⁵ It is clear that house arrest is not as harsh a sentence as is incarceration, but the physical restrictions and shaming effects that result are significantly punitive.¹⁰⁶

Studies have examined house arrest for adults, but little research has examined the implications of house arrest for juveniles. A recent study of Israeli youth revealed that house arrest, without electronic monitoring, can enable the start of positive developmental processes. However, effectiveness depends on concurrent professional, therapeutic, and rehabilitative care, given the potential developmental dangers of house arrest at the critical stage of adolescence.¹⁰⁷

Electronic Monitoring

Electronic monitoring, sometimes called *technocorrections*, uses technology to enforce house arrest or to keep track of an offender on intensive-supervision probation or specialized parole. Courts can order such monitoring for those awaiting trial who might not be able to make bail but for whom temporary incarceration is not appropriate.

electronic monitoring

Enforcing house arrest or monitoring the whereabouts of an offender through electronic sensors, placed around the offender's ankle, that send a continuous signal.

Electronic monitoring uses a transmitter placed around the offender's ankle that sends a continuous signal. If the signal is broken by the offender's departure from a designated area, a correctional employee checks to see whether the break was authorized. If not, the employee notifies the probation officer, the parole officer, or the court. Most home signal devices are waterproof, can report tampering, and cannot be removed without special tools.¹⁰⁸

A large study of Florida offenders placed on electronic monitoring found that monitoring significantly reduced the likelihood of failure under community supervision. The decline in the risk of failure was 31 percent, compared with offenders placed on other forms of community supervision.¹⁰⁹ Although research such as the Florida study suggests that electronic monitoring can help reoffending rates, the expanded use of the technology has occurred largely in

the absence of data demonstrating effectiveness for various types of offenders at different stages of the criminal justice process.¹¹⁰

Shock Programs

A **shock program** uses short-term incarceration to frighten the offender by instilling uncertainty about whether the offender will be released and, if so, when. This approach merges punishment with leniency, generally at military-style boot camp programs (see Chapter 15). Technically, shock programs are not a form of community corrections; they are considered intermediate sanctions, but we include them here.

shock program

A short-term incarceration program used to frighten the offender by instilling uncertainty about whether the offender will be released and, if so, when.

Shock Probation **Shock probation** combines probation with short-term incarceration. Shock probation is different than a split sentence in that it requires a petition from the defendant to a judge and there is no guarantee that supervised release in the community (probation) will be granted. With split sentencing, however, defendants know that they will be released on probation after spending a predetermined mandatory amount of time behind page 466 bars. The rationale of shock probation is to avoid the overpenalization of a first-time offender by imposing a long period of incarceration. This sanction requires that an offender serve a short time—normally 30 to 90 days—in prison or jail and then be resentenced to probation. Most of these programs target young offenders who are nonviolent substance abusers without previous incarcerations in adult facilities and who do not have mental health problems.

shock probation

A combination of probation and short-term incarceration.



▲ Electronic Monitoring Device

Boris Roessler/picture alliance/Getty Images



Ann Heisenfelt/AP Images

Real Crime Tech

PROBATION KIOSKS

Today many agencies, including the New York City Department of Probation, are using automated reporting machines called **probation kiosks** to monitor low-risk nonviolent offenders. After an initial face-to-face meeting with a probation officer, the offender checks in regularly at a kiosk that resembles an ATM machine or a computer. Kiosks are often located in probation offices, courthouses, and police departments and typically use biometric identification such as a handprint or fingerprint scan. After verifying his identity, the offender updates a profile with work information, change of address, and any arrests or new warrants since the last check-in. False information will generate a response from the probation department. The kiosk system allows flexibility in reporting times to low-risk offenders who might be working or in school and provides a more successful

reentry to the community for the offender by reducing interruptions to the offender's daily schedule. It can also save time for staff and appears to be financially attractive for agencies. Many kiosks also permit clients to pay fees and fines by using a credit card or depositing funds into a secure lockbox attached to the kiosk. Some kiosks can be programmed to issue a receipt for the visit. Some reporting kiosks can also direct the client to report for a drug test or see a probation officer.

probation kiosk

An automated reporting machine, resembling an ATM or a computer that monitors low-risk nonviolent offenders.

Probation kiosks can free probation officers to spend more time with high-risk offenders on a face-to-face basis. In Dallas, however, authorities were using kiosks to monitor high-risk probationers as well, a practice that reduced costs but eliminated valuable personal contact with probation officers. Concern heightened when it became known that about half the offenders in the program were on probation for having committed felonies, including drug-related crimes, robberies, and organized crime activities. As a result, the program was suspended. More research is needed about the extent to which kiosk systems are used throughout the country and how effective they are in comparison to traditional supervision.

SOURCES: National Law Enforcement and Corrections Technology Center, "TechBeat." www.justnet.org/TechBeat%20Files/NYCProbationSpr01.pdf (retrieved August 1, 2011); "Probation Kiosk Draws Concerns," *Dallas Morning News*, September 19, 2005. www.kioskmarketplace.com/article.php?id=14969&na=1 (retrieved January 20, 2007); Brooks Edgerton, "Probation Kiosk Program Suspended," *Dallas Morning News*, November 9, 2007. www.dentonrc.com/sharedcontent/dws/news/longterm/stories/092905dnmetprobationkiosk.1f3eb626b.html (retrieved March 7, 2009); Vera Institute of Justice, *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 20; Erin L. Bauer, Carol A. Hagen, Angela D. Greene, Scott Crosse, Michele A. Harmon, and Ronald E. Claus. "Kiosk Supervision: A Guidebook for Community Corrections Professionals" (Rockville, MD: Westat, 2015). <https://www.ncjrs.gov/pdffiles1/nij/grants/250174.pdf> (retrieved January 31, 2019).

The shock can occur on a couple of levels, one of which is the experience of being locked up itself. Incarceration is meant to be so vividly unpleasant that the offender fears returning to jail or prison and thus avoids further criminal behavior. After the incarceration, the offender may experience shock at being released on probation so swiftly. Shock programs may make offenders more receptive to probation supervision by showing them what awaits them if they violate their probation conditions.¹¹¹ Shock programs are often combined with electronic monitoring.

Shock programs have been used for about 60 years in the United States. Despite its popularity, there is little evidence that shock probation reduces recidivism or has a long-term positive effect on an offender's behavior.¹¹² Recidivism rates of those who successfully completed the shock incarceration programs were similar to those of comparable offenders who spent a longer time in prison without shock programs. In addition, the more intensely

offenders were supervised in the community after they were released—that is, the more contact they had during aftercare—the better they adjusted.¹¹³

Shock probation programs are not without problems. For one thing, they make offenders' needs for rehabilitation secondary to the smooth running of the institution. Another issue is that such programs tend to deliver drug treatment to all offenders in the same way.¹¹⁴ In a study examining drug treatment in 43 state and 2 federal shock incarceration (boot camp) programs, offenders were rarely assessed to see whether they were receptive to treatment. Furthermore, most shock incarceration programs did a poor job of preparing drug offenders for community release.¹¹⁵

Shock Parole *Shock parole* is similar to shock probation, but it applies to those who have been sentenced to prison. The paroling authority—instead of the judge—makes the decision to release the prisoner after a short prison stay, in hopes that the incarceration experience has shocked her into law-abiding behavior. The unanticipated release is expected to be an incentive to the offender to stay out of prison in the future.¹¹⁶

Sex Offender Registers and Tracking

MYTH/REALITY

MYTH: Strangers are more likely to molest children than family members.

REALITY: Only 10 percent of sex offenders are strangers. The other 90 percent are family, friends, and acquaintances.¹¹⁷

Laws that require sex offenders to register with law enforcement in the community where they reside and to be tracked were originally enacted to enable parents to protect their children's safety. Unfortunately, most of the legislation related to policing sex offenders focuses on the _____ page 467 "stranger perpetrator." However, children are actually at much greater risk of molestation by family members and acquaintances than by strangers. The rhetoric around sex offenses perpetuates parents' fears of strangers rather than prompting an objective assessment of the people who are regular features in their children's lives.

Sex Offender Registers The call for sex offender registration in the United States began in 1994 following a series of highly publicized acts by sex offenders who had prior records of sexual offenses. These crimes created a perception that sex offenders are more likely to reoffend than other types of offenders and led to federal and state legislation. The 1994 Violent Crime Control and Law Enforcement Act and the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act set guidelines for the establishment of sex offender registers. Then in 1996, Megan's Law refined the ways in which states could constitutionally notify the public about sex offenders, and the Pam Lychner Act passed in that same year established a national sex offender database while providing assistance to states without sex offender programs of their own.¹¹⁸

In 2005 Florida legislators passed Jessica's Law, which most other states subsequently copied. The law restricts convicted sex offenders from living near or around schools or parks where children congregate. Many of these laws also allow for the tracking of these individuals by means of GPS (global positioning system) devices. Some states mandate that tracking continue for the life of the offender.¹¹⁹ In March 2011, however, a court in California found that California's Jessica's Law was unconstitutional, and the presiding judge ordered agencies to stop applying the restriction as to where an offender could live.¹²⁰ Opponents of the law argue that it is unconstitutional in that it is overly restrictive and makes it impossible for sex offenders to live at all in densely populated cities.¹²¹

Results from studies throughout the United States suggest that residency restrictions at best have a marginal effect on sexual recidivism.¹²² What research does indicate, however, is that residential restrictions make it more likely for an offender to become homeless—and a lack of stable and permanent housing increases the likelihood that offenders will reoffend.¹²³ The “What about the Victim?” box explores various difficulties with these laws.

All states now have laws requiring convicted sex offenders to register with local police when placed on either probation or parole. Some states require the offender to remain registered while under supervision, some for a fixed number of years, and some for life. Some states assess the risk of individual sex offenders when they are released into society and set reporting requirements accordingly.¹²⁴

Strong public support for registration laws can make it politically risky for an officeholder to vote against new and sometimes harsh laws. Like many other

states, California makes no distinction between habitual offenders at high risk of reoffending and individuals who pose little or no threat.

Some studies show that sex offenders can experience harassment, threats, evictions, loss of jobs, family breakups, or loss of life as a result of registration laws. For example, two sex offenders were shot to death in Maine by a man who got their names from the state's online register.¹²⁵ One problem is that many states make no distinctions among different types of sex offenders. A person arrested for indecent exposure or a youth who engages in consensual sex with another youth may be treated the same as a rapist or sexual predator. In a 2-year study, Jamie Fellner of Human Rights Watch found that laws in California enacted to protect children often punished consensual sex between teenagers, the antics of streakers, and other nonviolent offenses.¹²⁶

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What about the Victim?

Jessica's Law—and Its Unintended Consequences

Jessica's Law is named after Jessica Lunsford, a 12-year-old girl who was abducted, raped, and murdered in 2005 in Florida by a previously convicted sex offender. Florida, followed by over 40 states, passed such legislation as a reaction to this heinous crime. Most of these laws restrict registered sex offenders from living near schools and parks and enhance the state's ability to track them. In California, Jessica's Law (Proposition 83) allows not only residency restrictions but also the attachment of GPS (global positioning system) devices for monitoring the wearer's whereabouts for life. The intent is to prevent sex offenders from temptation to harm by forcing them to stay away from children. In short, Jessica's Law aims to create "predator-free zones."



Steve Satushek/Ocean/Corbis

However, this legislation has had certain unintended consequences. For example, many of the laws do not differentiate between potentially dangerous sex offenders and those who have committed nonviolent sexual crimes such as indecent exposure. And particularly problematic are the restrictions against sex offenders living within 2,000 feet of parks and schools. Critics say that in most cities, the residency restrictions leave no space in which offenders can live, rendering many of them either in violation of the law or homeless. Moreover, since Jessica's Law took effect in California, increasing numbers of sex offenders have identified themselves as transient—and as such, they are especially hard to track. Also, there have been challenges to the constitutionality of parts of the law, as in California in 2011. In Iowa legislators revised the state law restricting convicted sex offenders' residences after determining that such restriction was unenforceable.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Do you believe that restricting the residence of previously convicted sex offenders will affect the possibility of recidivism? Explain.
- How should previously convicted sex offenders be handled after being released from prison?

SOURCES: Editorial, "The Flaw in Jessica's Law," *Los Angeles Times*, November 6, 2010; Denise Zapata and Kevin Crowe, "Jessica's Law Too Vague to Enforce?" *Sign on San Diego*, November 20, 2009. www.signonsandiego.com/news/2009/nov/29/jessicas-law-too-vague-enforce/ (retrieved March 12, 2011); "Jessica Lunsford Act (Jessica's Law Proposition 83)," *Personal Injury*. <http://www.personal-injury-info.net/jessica-lunsford-act.htm> (retrieved March 12, 2011); California Department of Corrections and Rehabilitation, Division of Adult Parole Operations, "Sex Offender Information." <https://www.cdcr.ca.gov/parole/parole/sexf-offender-facts/> (retrieved March 12, 2011).

MYTH/REALITY

MYTH: Sex offender registers have been proved to protect the public from sexual predators.

REALITY: There is little evidence that these registers provide effective protection from or act as a deterrent to repeat sex offenders.¹²⁷

Although sex offender registers are popular with the general public, there is little evidence that they actually protect the public. A sex offender study that dealt with a sample of rapes in 10 states did not show that registration laws had any effect on the number of rapes committed, although there is some evidence that the laws motivate some sex offenders not to reoffend on release.¹²⁸ On the

basis of his study of California's laws, Jamie Fellner contends that instead of reducing sexual offenses, registers force offenders underground and out of range of supervision. In his opinion, the registration laws do more harm than good.¹²⁹

Sex offender notification and registration laws have been challenged in the courts on constitutional grounds. The challenges center on issues such as violations of due process, double jeopardy (prohibiting being page 469punished twice for the same crime), ex post facto law (prohibiting a person from being charged for a crime committed before a law was enacted), and the "cruel and unusual punishment" protection in the Constitution. To date, the laws have withstood the challenges.

A major argument for sex offender registers is that they enable police to investigate sex crimes more easily, on the assumption that sex offenders are likely to repeat. But the Center for Sex Offender Management claims that this reasoning is a myth and that recidivism rates for sex offenders are lower than for the general criminal population.¹³⁰



▲ Sex Offender Tracking

States now have laws requiring convicted sex offenders on probation or parole to register with local police so that the offenders can be tracked.

Jeff Chiu/AP Images

Tracking Sex Offenders—Global Positioning Systems The **global positioning system (GPS)** is a satellite-based system placed in orbit by the

U.S. Department of Defense and made available for civilian use in the 1980s. Twenty-four satellites circle the globe and send microwave signals to receivers that can calculate a user's exact location, direction, and speed.

global positioning system (GPS)

A satellite-based system that can calculate users' exact locations, direction, and speed. Many states use GPS systems to monitor sex offenders while they are on parole.

Twenty-three states have laws requiring GPS tracking devices to monitor convicted sex offenders in an effort to deter additional crimes. Some GPS units can be programmed with certain exclusion zones where an offender may not go. Many states use GPS systems to monitor sex offenders while they are on parole, and several states monitor registrants permanently.

Research looking into the effectiveness of GPS devices is inconclusive. A major study funded by the U.S. Department of Justice found flaws in research designs trying to show the effectiveness of GPS monitoring.¹³¹

Community Centers

Day reporting centers and residential community centers offer additional structure and supervision for offenders.

Day Reporting Centers *Day reporting centers* are places in the community, either public or private, where offenders report their daily activities, schedules, and plans to program staff.¹³² Such centers offer offenders a daily contact point, with immediate access to people who can assist them if problems arise. Centers also provide additional supervision for high-risk offenders by monitoring their employment and residence status and providing drug testing. Some offenders are required to report to centers daily to take part in specific activities. Others are required to call in on a regular basis. It is not unusual for offenders to be required to contact their centers 60 times a week.¹³³ Offenders remain in day reporting center programs until they are deemed successful or until they reoffend.

Residential Community Centers *Residential community centers* are also known as halfway houses, community treatment centers, and community correctional centers. An offender can be sentenced to serve time directly in a community treatment center, or he may be released from prison to a center as a "halfway" step between incarceration and freedom.

To ease adjustment, centers provide offenders with greater structure and control than does either probation or parole, but less than jails and prisons. They offer a variety of support services such as counseling, education, and job placement assistance. The residents usually attend work or educational programs. Typically, they must sign in and out of the house and abide by curfew rules, but they are generally free to come and go. Once they adjust to the demands of the community, offenders find residence elsewhere. Some community treatment centers specialize in working with either women or men. Some specialize in dealing with addicted, mentally disordered, homeless, or veteran offenders as well as other types of special needs offenders.

Work and Study Release Programs

The concept for **work release** or **furlough** was first authored by Wisconsin state senator Henry Huber in 1913. It later became the Huber Law.¹³⁴ These programs were first used extensively in the 1950s. In these programs, selected inmates worked for pay in the community and returned to a correctional facility each night. Originally, work release participants were low-risk offenders (those convicted of misdemeanors or nonviolent crimes), but they now also include felons and youthful offenders. Variations of work release now include weekend sentences, extended work release, and release for vocational or educational (**study release**) programs. Allowing inmates to work or study outside prison helps them establish and maintain links to the community.¹³⁵

work and study release (furlough)

Partial release of inmates to work or study in the community and return to a correctional facility each night.

Many of these programs are situated in halfway houses.¹³⁶ Others are located in specially built, small minimum-security facilities located in and around towns or in more restrictive facilities such as jails or prisons, from which offenders are permitted to leave only to work, study, or perform community service.

Access to work release programs has decreased since 1994 because of political pressure to keep offenders out of the community. The public has often opposed halfway house programs as well, even for low-risk jail inmates. In 2000, residents in Orange County, California, became outraged at the approved

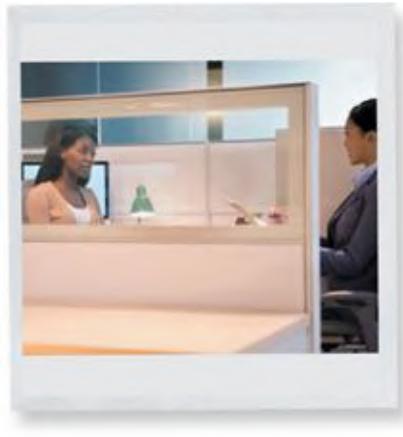
opening of a work furlough program in their neighborhood.¹³⁷ Slightly over 2 months later the Orange County Board of Supervisors vetoed the proposal.¹³⁸ In 2006, residents in the mid-Mississippi valley forcefully opposed a plan for a halfway house for work release prisoners in their neighborhood.¹³⁹ These public fears seem counterproductive, because studies show that these programs are effective and that few offenders commit crimes while working.¹⁴⁰

Washington State has maintained its commitment to its work release program since its inception in 1967. Only 5 percent of the inmates on work release committed new crimes while working in the community, and 99 percent of those crimes were less serious property offenses, such as forgery or theft.¹⁴¹ Other studies show positive but somewhat more tentative results.¹⁴² In support of work release programs nationwide, in 2014 the U.S. Department of Labor announced it was launching a \$30 million program to fund 15 grants for nongovernmental organizations in key population areas of the United States.¹⁴³ Work release has also been found to increase employment for released prisoners, and it has demonstrated the ability to reduce recidivism, albeit modestly.¹⁴⁴

OTHER TYPES OF COMMUNITY CORRECTIONS

Just as there is a movement to privatize prisons (see Chapter 11), there also is a movement to privatize community corrections. Drug testing and treatment, electronic monitoring, and halfway houses are all activities in which private sector firms may take the place of government agencies.

Real Careers



Robert Nicholas/Getty Images

MALISSA MINARD

Work location: Cincinnati, Ohio

College(s): University of Cincinnati (2004); Northern Kentucky University (2007)

Major(s): Criminal Justice (BS) with a minor in Addictions; Public Administration (MA)

Job title: Probation Officer II, Hamilton County

Salary range for job like this: \$30,000—\$40,000

Time in job: 5 years

Work Responsibilities

A typical workweek consists of monitoring cases and clients by taking victim impact statements, interviewing arresting officers, and making service referrals to outside agencies. My findings must be well documented in reports, which are then shared with attorneys and judges and reviewed to determine sentencing for the offender.

Why Criminal Justice?

Working as a probation officer allows me to combine my interest in law enforcement with my desire to help people. I knew this was the field that I wanted to enter after taking an internship with federal probation during my senior year of college and working full-time during college at the Talbert House in the Pathways and Adapt program for female offenders. At the Talbert House, I began as an activity security monitor, tracking the behavior and movement of clients, including home and employment verifications. After about a year, I was promoted to case manager. In my new role, I completed assessments and intake evaluations and provided information for probation and parole officers.

Eventually I would like to advance to federal probation officer and finally federal chief, which will give me the opportunity to manage other probation officers. My 5 years as a probation officer will help qualify me for such promotions.

Expectations and Realities of the Job

Because I was exposed to the work of a probation officer during my internship and prior work experience, I understood the daily tasks and pressures of the job and knew what pay and benefits to expect. The only aspect of the job that I did not fully understand as an intern was the significance of a probation officer's work. I am responsible for helping offenders regain their livelihood through counseling, rehabilitation programs, and mentoring. My supervisors have emphasized the importance of always being fair, courteous, and professional with offenders.

My Advice to Students

Get all the experience possible while still in school. Most agencies actively seek out student interns. Working in the field during my studies helped me make a seamless transition from school to work. Not only did I know what to anticipate as a working probation officer, but I was already used to the working lifestyle. Finally, practical work experience is required for most entry-level positions in the criminal justice field.

A number of states have some form of private probation services. They justify the practice by its cost-effectiveness. Connecticut and Colorado privatized much of their community supervision of low-risk offenders in order to focus on higher-risk offenders in the community, thereby increasing public safety as they see it. Delaware contracts with a private group to supervise individuals awaiting trial. Florida, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Tennessee, Utah, Wisconsin, and Wyoming use private agencies to supervise a subset of their offenders who are on probation.¹⁴⁵ However, this practice has engendered some controversy. A class action lawsuit was filed in Tennessee, for example, alleging that a private probation company was “bilking and extorting” money from probationers who had to pay for its supervision services. The firm is also accused of tripling the terms of individuals’ probation and charging higher fees for other services that courts or local counties normally provide at a low cost. This company operates in about 45 states.¹⁴⁶

The majority of community supervision agencies and releasing authorities make use of risk and needs assessment tools to ensure the public is not at risk and that defendants and offenders receive the kind of programs and plans that maximize the probability of leading law-abiding lives.¹⁴⁷ In this approach, risk assessment tools evaluate data and assign a score to an offender that reflects the likelihood that the offender will reoffend after release. Administration and routine readministration of validated risk and needs assessment tools to defendants and offenders is essential for public safety and providing community programs that best assist offenders.¹⁴⁸ The U.S. Parole

Commission's salient factor score (SFS) is a statistical measure dependent on such factors as age of the offender, addiction history, history of violence, and conduct in prison. Figure 13-5 provides an example of a risk assessment scoring form. A score of 0 reflects a very good risk on parole or probation, and a score of 4 a poor risk.

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF PAROLE AND PROBATION

P&P NO.

--	--	--	--	--

OFFENDER'S NAME _____
LAST NAME _____ FIRST NAME _____

OTHER NO. _____

RISK ASSESSMENT

1. PRIORITY CASES (check all that apply. DDMP do not score):	7. NUMBER OF PRIOR SUPERVISION PERIODS (Parole/Mandatory Supervision/Probation/Monitor/Juvenile):
<ul style="list-style-type: none"> • Parole or Mandatory Supervision Case _____ 1. <input type="checkbox"/> • Child Abuse related offense _____ <input type="checkbox"/> • Sex related offense _____ <input type="checkbox"/> • Other _____ <input type="checkbox"/> a. One or more checks _____ Enter 15 b. None of the above _____ Enter 0 	7. <input type="checkbox"/> a. Two or more _____ Enter 4 b. One _____ Enter 2 c. None _____ Enter 0
2. TOTAL LIFETIME FELONY CONVICTIONS: (including juvenile and current offense)	8. NUMBER OF SUPERVISION PERIODS RESULTING IN UNSATISFACTORY CLOSINGS (Parole/Mandatory Supervision/Probation/Monitor):
<ul style="list-style-type: none"> a. Two or more _____ Enter 4 b. One _____ Enter 2 c. None _____ Enter 0 	8. <input type="checkbox"/> a. Two or more _____ Enter 4 b. One _____ Enter 2 c. None _____ Enter 0
3. CONVICTION OR JUVENILE ADJUDICATION FOR (include current offense, add all categories and enter total):	9. IMPACT OF DRUG USE ON BEHAVIOR:
<ul style="list-style-type: none"> a. Domestic Violence related offense (current offense only) _____ Add 6 b. 643B or felony drug or sex offense within last 5 years _____ Add 6 c. 643B or felony drug or sex offense more than 5 years ago _____ Add 4 d. Other assaultive offenses _____ Add 4 e. Fraud, forgery, deceptive practices _____ Add 2 f. Theft, auto theft, B&E _____ Add 1 g. None of the above _____ Enter 0 	9. <input type="checkbox"/> a. High _____ Enter 4 b. Low _____ Enter 2 c. None _____ Enter 0
4. TOTAL DWI/DUI CONVICTIONS (DWI/DUI cases only):	10. IMPACT OF ALCOHOL USE ON BEHAVIOR:
<ul style="list-style-type: none"> a. Two or more _____ Enter 4 b. One _____ Enter 2 c. None _____ Enter 0 	10. <input type="checkbox"/> a. High _____ Enter 4 b. Low _____ Enter 2 c. None _____ Enter 0
5. BAL (Blood Alcohol Level) AT TIME OF ARREST (DWI/DUI cases only):	11. EMPLOYMENT HISTORY FOR PAST 12 MONTHS (Prior to incarceration, if applicable):
<ul style="list-style-type: none"> a. Refused/unknown _____ Enter 3 b. 14 and above _____ Enter 3 c. 10 to 13 _____ Enter 2 d. 09 and below _____ Enter 1 e. Not Applicable _____ Enter 0 	11. <input type="checkbox"/> a. Unemployed and virtually unemployable _____ Enter 2 b. Part-time, seasonal, unstable employment or underemployed _____ Enter 1 c. Full-time employment, no difficulties reported; homemaker; full-time student; retired; or disabled and unable to work _____ Enter 0
6. AGE AT FIRST CONVICTION OR JUVENILE ADJUDICATION:	12. IMPRESSION OF OFFENDER RISK:
<ul style="list-style-type: none"> a. 19 or younger _____ Enter 4 b. 20 to 25 _____ Enter 2 c. 27 or older _____ Enter 0 	12. <input type="checkbox"/> a. High _____ Enter 5 b. Average _____ Enter 3 c. Low _____ Enter 0
<input type="checkbox"/> Total Score	
SEX OFFENDER: y <input type="checkbox"/> yes n <input type="checkbox"/> no	DOMESTIC VIOLENCE OFFENDER: y <input type="checkbox"/> yes n <input type="checkbox"/> no

Instructions: Check appropriate block

SCORING AND OVERRIDE

SCORE BASED CLASSIFICATION:

CRIMINAL	INTENSIVE	STANDARD	ADMINISTRATIVE
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DDMP	WEEKLY	BIWEEKLY	MONTHLY

CHECK HERE IF THERE IS AN OVERRIDE

OVERRIDE EXPLANATION IF NEEDED: _____

DATE ASSIGNED _____

FINAL CATEGORY OF CLASSIFICATION:

CRIMINAL	INTENSIVE	STANDARD	ADMINISTRATIVE
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DDMP	WEEKLY	BIWEEKLY	MONTHLY

APPROVED _____

DATE _____

AGENT/MONITOR LAST NAME _____

FIRST INITIAL _____ DATE _____

CHANGE AGENT/MONITOR ASSIGNMENT TO _____

LAST NAME _____ FIRST INITIAL _____

OPERATOR'S INITIALS: _____

DATE: _____

FIGURE 13-5 Maryland's Risk Assessment Scoring Form

SOURCE: State of Maryland.

Risk analysis also assists in determining the kind of supervision that probationers and parolees will need on the street. Potentially violent offenders are of particular concern. When correctional workers are able to identify those likely to reoffend, they can dedicate scarce resources to treatment that specifically meets the needs of these offenders and ultimately protects the community. Ohio and California are examples of states that also have tools to calculate parole risk. In 2008 California began using a computer-based parole violation sentencing tool called the parole violation decision-making instrument (PVDMI).¹⁴⁹

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A major problem with risk-based assessment is that it is impossible to make accurate predictions all the time. Typically, the assessment instruments overestimate the odds of reoffending, a result that may protect society but also punishes some offenders for future crimes they are not likely to commit.¹⁵⁰

SUMMARY

Community corrections allows offenders to spend all or part of their sentence in the community through a wide range of programs and practices, including probation, parole, work and study release, community service, house arrest, registers and tracking, electronic monitoring, and vocational, educational, and drug treatment programs. Individuals who are allowed to take part in community corrections are generally nonviolent offenders or offenders judged to be low risk.

The advantages of community corrections are that offenders can maintain ties to family and the community while serving their sentence and not become socialized to an institution. By reducing the prison and jail populations, community corrections saves costs for local, state, and federal governments. But public opinion resists the idea of releasing offenders, especially sex offenders, into the community—and politicians often follow the lead of public opinion in the legislation they write concerning corrections. Despite the lower recidivism rates achieved in community corrections, and today's push for "justice reinvestment" or reallocation of institutional savings to community-based treatment and other services it appears likely that incarceration will continue to be the sentence of choice.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

Review

Identify the distinctive features of probation.

- In probation, the offender is sentenced by a judge and conditionally released into the community under court supervision to serve a sentence.
- A probation officer supervises the offender in the community.
- Probation is a privilege, not a right.
- Probation is the most frequently used form of correctional supervision in the United States.
- Whites get probation more often than do Blacks and Latinos combined.

Contrast intensive and traditional supervision probation.

- Intensive-supervision probation (ISP) programs are characterized by smaller officer caseloads, closer surveillance, and more contact between probation officer and offender than traditional probation.
- ISP programs were designed primarily to target high-risk offenders who would otherwise be prison-bound; traditional probation applies mainly to low-risk offenders.

Evaluate the success of probation.

- Probation is less expensive than incarceration.
- Success in probation is difficult to assess because recidivism is all that is usually measured, and revocation can vary enormously by jurisdiction and location.
- About half of those on probation completed their term satisfactorily.

Identify the distinctive features of parole.

- Parole is an administrative procedure that allows inmates to serve their remaining sentence in the community conditionally under the supervision of a parole officer.
- Social reintegration is the objective of parole.
- Revocation of parole is possible if an offender violates the terms of parole or reoffends.

Evaluate the success of parole.

- Parole is less expensive than incarceration.
- Parole rewards inmates who follow prison rules and behave positively while incarcerated.
- Parole provides inmates who no longer need imprisonment with supervision and appropriate programs in the community.

Describe the role of intermediate sanctions.

- Intermediate sanctions are judicial punishments that do not require long terms of incarceration but stop short of allowing offenders to remain in the community on probation with minimal supervision.
- Intermediate sanctions are not quite prison and not quite traditional probation; they encourage offenders to take responsibility for their actions but under closer supervision than traditional probation.
- Some intermediate sanctions require offenders to live in a communal residence.

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Identify various types of intermediate sanctions.

- Community service is a practice whereby offenders are sentenced to activities that provide a benefit to the public.
- House arrest is a practice that requires offenders not to leave their residence.
- Electronic monitoring is a way to monitor offenders' whereabouts by using technology.
- Community centers offer halfway house residential and treatment options.
- Work and study release programs allow inmates to leave a correctional facility during the day to work or go to school in the community.

Describe private sector and risk-based community corrections.

- Private sector firms, instead of public agencies, run some community corrections programs, such as halfway houses and drug treatment.
- Some community corrections programs make use of risk assessment of offenders to determine who can participate and what treatment is appropriate.

Key Terms

community corrections 444
community service 460
day fines 463
discretionary release 455
diversion 460
electronic monitoring 465
fines 463
forfeiture 464
global positioning system (GPS) 469
house arrest (home confinement) 464
intensive-supervision probation (ISP) 447
intermediate sanctions 459
mandatory release 455
parole 453
parole board 454
probation 445
probation kiosk 467
recognizance 446
restitution 461
restorative justice 461
shock probation 465
shock program 465
unconditional release 459
victim–offender mediation 464
work and study release (furlough) 470

Study Questions

1. The term *community corrections* refers to
 - a. probation.
 - b. supervision in communities.
 - c. parole.
 - d. all of the above.
2. Probation and parole are similar in that
 - a. a judge sentences an offender to both probation and parole.
 - b. a parole board grants probation and parole.
 - c. both probation and parole officers supervise offenders in the community.
 - d. both probationers and parolees have to deal with the label “ex-con.”
3. Of the following sanctions, the one that is *not* considered an intermediate community corrections sanction is
 - a. jail.
 - b. shock probation.
 - c. house arrest.
 - d. restitution.
4. Which of the following is not considered a technical parole violation?
 - a. leaving the state without parole agent permission
 - b. moving into a new residence without parole agent permission
 - c. failing to report to a scheduled office visit
 - d. committing a new crime
5. _____ refers to the use of technology to enforce house arrest or to monitor the location of the offender.
 - a. Technocorrections
 - b. Entrapment
 - c. Cybervision
 - d. Norplant implant
6. Which statement is not true?
 - a. Probation is a right that must be granted for certain crimes.
 - b. Probation is a privilege.
 - c. Probation officers do not make the ultimate decision as to who gets probation.
 - d. Probation officers make recommendations as to who should get probation.
7. The term *recognizance* means
 - a. recognition of the authority of the court.
 - b. recognition of an inmate’s rights.
 - c. release of a prisoner on his word.
 - d. the search for the truth in a hearing.
8. The term *diversion* means
 - a. diverting a criminal away from crime.
 - b. diverting an offender from jail before or during trial as an intermediate sanction.
 - c. distracting an offender so she can adjust to incarceration.
 - d. changing the method of treatment to improve the offender’s behavior.

9. ISP stands for
 - a. international subjective profiles.
 - b. immediate suicidal precautions.
 - c. inmate's substantial progress.
 - d. intensive-supervision probation.
10. The decision to revoke an offender's probation is made by a
 - a. probation officer.
 - b. review board.
 - c. judge.
 - d. probation officer and a judge.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. What are the similarities and differences between probation and parole?
2. What are some pro and con arguments for the use of intermediate sanctions as alternatives to incarceration? Which arguments do you find more compelling? Why or why not?
3. Is victim–offender mediation really a type of punishment for the offender? Why or why not?

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14 Understanding and Helping Victims



Alex Wong/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Differentiate among victims' various responses to trauma.
- Identify the major historical milestones that have influenced the formation of victimology, victim services, and the victims' rights movement.
- Describe the types of crisis intervention programs that work with crime victims.
- Identify the various types of victims and the roles and responsibilities of victim advocates.
- Differentiate between Adult Protective Services and TRIADS.
- Describe the various kinds of collaborative responses to victims.

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Realities and Challenges

From the Victims' Perspectives

It was 10 a.m. on a Monday. Three men entered the Garden State Bank in a small, peaceful upstate New Jersey town. The first man yanked a mask over his face and pointed a big black pistol at Susan Thoresen, a teller with 2 years' experience. Susan's stomach immediately turned to jelly. The two other robbers also put on masks and pulled out pistols. One went to the door to stop customers from leaving. The other jumped on the counter and yelled, "Everyone

get on the floor or I'll start killing people!" Susan smelled urine and noticed a puddle emerging at the feet of her colleague to the left.



Suffolk County PD/Splash News/Newscom

The robbers ordered Susan and the other tellers to fill backpacks with all the money in their drawers. At first Susan was paralyzed; then she began to move as if in a dream. Shock kept everyone in the bank speechless and motionless. In less than two minutes the robbers were gone. There was complete silence until a customer timidly went up to the guard and whispered, "You should call the police now."

Five long minutes later, many police officers arrived with weapons drawn. The sight of more guns caused Susan to choke; she tried to speak but could not, and then she started to cry. Two coworkers tried to comfort her, but she couldn't stop. The bank's vice president seemed elated that no one was hurt; in fact, she was laughing nervously, and then told everyone, "Take the rest of the morning off. We'll close the bank until 1 p.m.; come back after lunch." Susan finally regained some composure, and then she called her husband at his job. As she told him the story of what had happened, she became fearful again and thought she would faint.

In the following week, the bank tellers all had different experiences: flashbacks, anxiety, insomnia, stomach pains, and the strong urge to tell their stories of the robbery over and over again. They experienced a variety of symptoms into the second week and beyond: headaches, lack of sleep, fear the robbers would return, and, for some, feelings of panic when they came to work each morning. Then came the police investigators, hours of questioning, and being forced to remember their ordeal; each time the fear came flooding back. Some of the police were kind, but others were annoyed that no one had sounded the alarm to give them a chance to catch the robbers. The bank president was relieved the stolen money was insured, and that consequently none of the bank's customers would lose their savings. Officially, the bank returned to "business as usual," but that was not true for the tellers.

Susan felt it was strange that everyone focused on the bank's money and the robbers, but not on the tellers. Over the next 6 months, two tellers resigned, one started seeing a psychiatrist, and one began secretly carrying a gun in her purse. In fact, everyone in the bank during the robbery suffered some degree of victimization. Susan thought it was odd that none of the investigators nor the bank supervisors seemed to recognize the impact of their victimization, which clearly prolonged their suffering and delayed their recovery. The victims felt that their story also needed to be told. Ultimately, Susan and three other valuable

employees resigned from the bank, and those who remained continued to experience a range of symptoms that affected both their job performance and their private lives. (This event is a hypothetical illustration of bank robbery victims' typical experiences.)

This chapter focuses on the victims of crime. We identify their numbers; examine political, social, and intervention trends over the past 50 years; characterize the main types of victims; and probe how victims are affected by their victimization. We look at how society responds to all the different types of crime victims, as well as the special services that are available to ease victims' suffering, facilitate their recovery, and prepare them for their role in the criminal justice process. Finally, we consider how these services are supported by a wide range of laws, policies, programs, and research—the result has been a greatly improved status for crime victims in the United States.

RECOGNIZING VICTIMIZATION

In 1972 the U.S. government started collecting data about crime victims on a regular basis (see Chapter 2). Official statistics from 1993 to 2010 show that property and violent victimization had been steadily declining. Following this period of declining victimizations, the National Crime Victimization [page 483](#) Survey data show a plateau period from 2010 to 2015, recently changing to slight increases from 2015 to 2017 in violent crime as shown in Figure 14-1. This chart also shows that during the period from 1993 to 2017, approximately just under half of all violent victimizations were reported to the police. In the 2017 NCVS survey, 45 percent of violent victimizations were reported.¹ Despite these declines and increases, tens of millions of people become crime victims every year.

Rate of violent victimization and violent victimization reported to police, 1993–2017 Rate per 1,000 persons age 12 or older

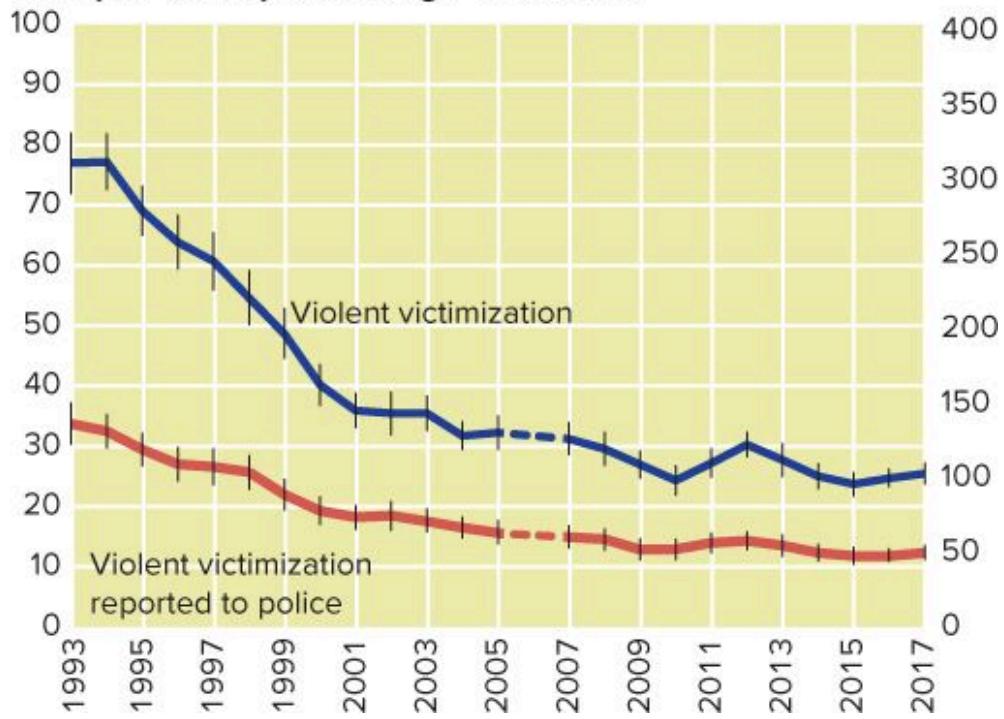


FIGURE 14-1 Violent and Property Victimization, 1993–2017

SOURCE: Rachel E. Morgan and Jennifer L. Truman, "Criminal Victimization, 2017," *Bureau of Justice Statistics Bulletin* (Washington, DC: US, Department of Justice, December 2018). www.bjs.gov/content/pub/pdf/cv17.pdf.

Preview

RECOGNIZING VICTIMIZATION

THE ORIGINS OF VICTIM ADVOCACY

WORKING WITH VICTIMS

TYPES OF VICTIM SERVICE ASSISTANCE

VICTIM ASSISTANCE FOR ELDER ADULTS

COLLABORATIVE RESPONSES TO VICTIMS

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

The experience of being victimized takes most people completely by surprise, especially if it has never happened to them before. The fear of dying, of seeing others die, or of being seriously injured is often accompanied by terror. Under these circumstances, **psychic trauma**, which results from severe emotional stress, immobilizes the victim's mind and body and can result in long-lasting emotional injury.

psychic trauma

Severe emotional stress that immobilizes the victim's mind and body and can result in long-lasting emotional injury.

Each person responds differently to stress. Even though all the tellers in the New Jersey bank robbery described in the chapter opener were witnesses to the same event, each one brought to work that day a different history with personal stress and crisis, and different coping strengths and weaknesses. Such differences result in a variety of responses. Resilient people might show no significant effects and cope well. Other individuals might show mild effects and recover within a few minutes or hours, while others may present extreme effects and take days, weeks, or months to heal (and some may never heal completely). In the aftermath of a crime, observers of victims are generally not familiar with the dynamics of psychic trauma and can easily misinterpret what they see and not understand the way victims cope. The president of that New Jersey bank might have assumed those who appeared calm were not in crisis. Other observers and the police could also easily dismiss the victims' plight and shift their focus to the search for offenders and the lost money.

The New Jersey bank robbery demonstrates that society is often slow to recognize who victims are, how they become victimized, how much they suffer, and how important it is to provide them with psychological and social support. The reality is that all victims suffer to some degree, whether they have experienced a crime, a traffic accident, a natural disaster, or a war. Many need some level of help or intervention to recover. As a society, we have lately come to understand the magnitude and the character of victimization. We now

have the added tools of victimization surveys and empirical research to provide us with a more accurate and complete picture.

This chapter describes who victims are, why society needs to be concerned about them, how victimologists have tried to explain victim behavior, how society influences victim services, and what methods and services are needed if we are to make victims whole again. One way to understand the impact on victims is to read their own words on the aftermath of their victimizations (see “What about the Victim?”).

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THE ORIGINS OF VICTIM ADVOCACY

In preliterate societies, one of the main goals of the community was to make the victim whole again. Most early cultures involved victims and their families when searching for solutions to their conflicts, thus giving victims a dominant role in righting the wrongs committed against them. Later, in more formal societies, laws required equity to be restored between offender and victim, as in the Code of Ur-Nammu in ancient Sumeria and in the Code of Hammurabi of ancient Babylon.² Equity meant that whatever was taken from the victim must also be equally taken from the offender, a principle enshrined in a famous phrase in Hammurabi’s Code, “an eye for an eye and a tooth for a tooth,” which also appears in the Judeo-Christian Bible.

What about the Victim?

The Words of Crime Victims are Often Timeless Truths

The following statements are from real victims soon after their victimization:

- “He said, ‘Move or yell and I’ll kill you.’ I didn’t doubt his words.”
- “I didn’t hear anything about the case for almost a year. Then all of a sudden they called me up at work and said, ‘Come down to court right away. The trial is going to take place.’”
- “It is almost impossible to walk into a courtroom and describe in detail the thing you most want to forget. It is also devastating to have to face your assailant. Although you are surrounded by people and deputies of the court, the fear is still overwhelming.”
- “Why didn’t anyone consult me? I was the one who was kidnapped, not the Commonwealth of Virginia.”

- “I’m a senior citizen, but I never considered myself old. I was active, independent. Now I live in a nursing home and sit in a wheelchair. The day I was mugged was the day I began to die.”
- “What others see as an inconvenience is for the victim an endless nightmare.”
- “I will never forget being raped, kidnapped, and robbed at gunpoint. However, my sense of disillusionment of the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process.”

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Why are there fewer thefts reported to the police than assaults?
- Why is the incidence of injury very low among victims of robbery?
- Why do people who experience the same traumatic event suffer in different ways?

SOURCE: President’s Task Force on Victims of Crime: Final Report (Washington, DC: Government Printing Office, 1982).

This victim-centered approach reached its height in Europe during the Early Middle Ages (ca. 400–1000 CE), a period sometimes called the *golden age of the victim*.³ In this era, crime victims were at the center of the justice process; they participated in responding to the crime and in determining the offender’s punishment. A thousand years later, however, with the advent of the Industrial Revolution in the mid-eighteenth century, societies rejected traditional models of community governance. Nations became more centralized, and government functions focused more on efficiency and specialization; and, significantly, justice systems replaced the older focus on the victim with an emphasis on the witness. As legal systems evolved in these years, the writings of the classical criminologists, and later the positivists, were mostly concerned with criminal law and the severity of punishment for the defendant, as well as with the nature of criminal behavior. The victims would not be considered important again until the mid-twentieth century.

The Romanian lawyer Beniamin Mendelsohn coined the word *victimology* in 1947, calling attention to the need to understand crime from the experience of the victims, that is, to comprehend how people are victimized and how the criminal justice system treats them. The next year, in 1948, a well-known psychiatrist Frederick Wertham echoed this perspective by observing that by sensationalizing the murderer, society had forgotten the victim. Wertham

concluded that to thoroughly understand the murderer, it was essential to also understand the victim, and he thus argued that “a science of victimology was needed.”⁴ Wertham later wrote a book, *A Sign for Cain*, in which he presented what he saw as the negative impulses that exist in society; its title was a metaphor for the evildoer.⁵ How interesting it is that he would use the sign of Cain as a metaphor in his book and yet not recognize how the victim in that biblical story was ignored. One can only speculate how history would have been altered for victims had the opposite metaphor been created—i.e., sign of Abel.

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The Sign of Abel

In the Judeo-Christian Bible, the fourth chapter of the Book of Genesis tells how Cain murdered his younger brother Abel. Thus in Judeo-Christian tradition, Cain is the first murderer. Today, the expression “the sign of Cain” refers to the stigmatization of someone as an evildoer, and we can view the label as a metaphor for the way some societies find the image of the offender more interesting than the image of the victim. Abel, as the Bible’s first victim, was not so immortalized. Other religious traditions have had similar accounts of early victimizations, which have mostly downplayed the role of the victim and emphasized the offender. Although societies have professed a desire to reject murderers for their violence and to help victims by taking care of their needs, often the cultural and legal support systems have done the opposite.⁶

One of the most significant outcomes of World War II was the shock and revulsion that people felt on learning about the Holocaust, Nazi Germany’s murder of just more than 6 million people, mostly Jews. This horrific event helped to refocus people’s attention on the victims.



▲ Cain Killing Abel

Islam, Christianity, and Judaism all tell the story of Cain, the son of Adam and Eve, killing his brother Abel. Cain is considered the first murderer and Abel the first victim. *Explain the irony of how and why these brothers have been remembered throughout history. How does Abel symbolically reflect the image of victims today in the struggle to have equal status with offenders?*

Geoffrey Clements/Corbis/Getty Images

Social Forces Leading to the Victims' Rights Movement

Influential social movements arose in the 1960s and 1970s that demanded civil rights for various ethnic minority groups, women's rights, children's rights, gay rights, law and order, and putting an end to the Vietnam War. These movements popularized nonviolent protest, protection of the disadvantaged, equality of opportunity, and the right to be free of pain and suffering and to be treated with respect and dignity. Thus they paved the way for the victims' rights movement, victim assistance, and victim advocacy.

The idea of victim assistance is relatively new, emerging only during the mid-1970s. Initially, victim assistance was provided largely by people who had themselves been victimized, as specific treatments for crime victims had not yet been developed. Victims were often stigmatized as having somehow

been partially to blame for their misfortunes; thus, assisting and comforting them was left mainly to the volunteer efforts of other victims who could understand their feelings and help them recover through peer support groups. This tradition continues today in many victim assistance and victim advocacy programs across the United States.

Research on the benefits of peer support groups has been sparse. A recent study examining victims of crime and traffic accidents has suggested, however, that sharing or having contact with other victims may not be helpful as a treatment method—and may actually be harmful. This research suggests that recovery is more likely when guided by a therapist skilled in the use of evidence-based supportive interventions.⁷

Other significant influences that contributed to the rise of the new discipline of victimology were the first victimization surveys conducted in 1966 for the President's Commission on Law Enforcement and the Administration of Justice (see Chapter 2). By revealing the **dark figure of crime** (victims who did not report their victimization to the police), these surveys made clear the full range of victim types and the large number of victims (at least twice as many as the Uniform Crime Reports showed). The results of these surveys demonstrated the need for further study of both victims who reported and victims who did not report, and for the expansion of services for all of them.⁸

dark figure of crime

The number of victims who did not officially report their victimizations to the police.

A rising level of crime from the mid-1960s until the early 1980s spurred concerned citizens to demand a national response. This crime wave was in large part attributed to massive numbers of post–World War II “baby boomers” reaching their mid-teen years. It is at this stage of life page 486 that most young people begin to pull away from parental controls; experiment with relationships, new identities, and role models; and test the limits of acceptable behavior. Consequently, many boomers got into trouble with the law. To cope with this crime surge, the Omnibus Crime Control and Safe Streets Act of 1968 created a federal agency called the Law Enforcement Assistance Administration (LEAA). This major national effort against crime poured vast amounts of federal funds into the fight against delinquency and crime, and ultimately also into research and programs for victims.⁹



▲ Demonstrating for Women's Rights

Women's rights activism paved the way for the victims' rights movement.

Bettmann/Getty Images

In the early 1970s the women's movement catalyzed the establishment of the first three rape crisis centers, including California's Bay Area Women

Against Rape, Seattle Rape Relief, and Washington, DC-based DC Rape Crisis Center. Feminist activist Susan Brownmiller's influential book on the history of rape added credibility to the victims' rights movement in general and to efforts to combat violence against women in particular.¹⁰ By the end of the 1970s, most large cities and many smaller ones had rape crisis centers, staffed mostly by feminists who lobbied on behalf of sexual assault victims and provided them with legal information, counseling, and training in defensive tactics.

In his 1975 book *The Victims*, Frank Carrington argued that courts were too permissive and that excessive concerns about prisoners' rights, as well as a general weakening of law enforcement, were largely responsible for the 1960s crime surge. Carrington insisted that supporting victims was more important than protecting the rights of the accused.¹¹ Several influential victim-oriented groups arose during the 1970s, including the National Organization for Victim Assistance (NOVA) in 1976, Parents of Murdered Children in 1978, and Mothers Against Drunk Driving (MADD) in 1980.¹² Together, concern for victims and the widely shared public sentiment that the criminal justice system had grown too permissive brought pressure on the criminal justice system to get tough on crime—for example, by lengthening sentences and otherwise imposing harsher punishments on offenders. In response to this pressure, many state legislatures passed minimum sentencing laws. The President's Task Force on Victims of Crime of 1982 focused national attention on the plight of crime victims; and the Attorney General's Task Force on Violent Crime launched a campaign to toughen penalties and to induce prosecutors to focus more on victims and their rights.¹³

Today LEAA no longer exists. In its place are national sources of federal money, such as the 1984 Victims of Crime Act (VOCA). Under this law, fines collected from convicted federal criminals are redistributed to provide for victim compensation and victim assistance programs throughout the United States.¹⁴

In 1994 Congress passed the original Violence Against Women Act (VAWA). Its primary objective was to support the investigation and prosecution of violent crimes against women, but it also contained provisions designed to offer women better protection from those who had offended against them, especially in the period after the offender's arrest.¹⁵

Advocates for victims point out that although defendants are protected by the Bill of Rights and by major Supreme Court decisions, nowhere does the

Constitution address the rights of victims. In the late twentieth century, repeated attempts were made to enact the so-called Victims' Rights Amendment. In 2004, however, these efforts collapsed amid page 487 Congress's concerns that such an amendment would undermine law enforcement and clash with long-established criminal defendants' rights.

To replace this proposed amendment, in October 2004 Congress enacted and President George W. Bush signed into law the Crime Victims' Rights Act. This legislation declares that the victims of those who break federal laws will be "reasonably protected" against the accused, including being promptly notified if the alleged perpetrator escapes or is released from custody. The act also provides for the fair, dignified, respectful, and prompt treatment of victims by federal prosecutors, and the right to "full and timely restitution as provided by law."

Today, almost two decades later, a vast array of service programs have emerged to produce a broad range of programs for victims, with a large group of committed professionals who work as victim advocates, victims' rights activists, and victimologists. International, federal, and state rights have been greatly enlarged to ensure that a wider variety of victims are treated with dignity, fairness, and care. Public policies attend to victims' suffering, needs, and recovery, and innovative strategies are aimed at preventing victimization.

In January 2005, Ted Poe, Republican congressman from Texas, Jim Costa, Democratic congressman from California, and Katherine Harris, former Republican congresswoman from Florida, created the Congressional Victims' Rights Caucus (VRC) to advocate for all victims of crime in Congress. Its main objective was to protect the victims' funds, specifically the Victims of Crime Act (VOCA) and the Violence Against Women Act (VAWA). Over the following decade, some examples of key victim-focused legislative reforms have included the Adam Walsh Child Protection and Safety Act of 2006 (for missing children); the Cruise Vessel Safety and Security Act (to protect passengers on cruise ships); the Victims of Child Abuse Act Reauthorization of 2013; and the Justice for Victims of Trafficking Act of 2014.¹⁶ On December 8, 2018, Representative Pete Olson (Republican from Texas) was selected to serve as a new co-chair of the Congressional Victims' Rights Caucus. Representative Jim Costa (Democrat from California) continues as the other Co-Chair of the Caucus. Olson began his tenure at the start of the 116th Congress, which convened on January 3, 2019, and will conclude on January 3, 2021.¹⁷

WORKING WITH VICTIMS

U.S. culture abounds with distorted images of reality. Crime stories typically lavish attention on offenders, police, and lawyers but rarely spend much time on the victims, their suffering, or the services they vitally need to recover. Even the television show *Law & Order: Special Victims Unit* is largely about police investigators and the laboratory skills they use to identify offenders and not about victims. Moreover, the media dwell on victimizations that are relatively rare—murder and forcible rape—while giving much less play to the victimizations that occur the most frequently—theft and burglary.

When we think of crime victims, most of us imagine people who are targets of street crimes, to which the media devote most attention. Victims of Uniform Crime Reports Part II offenses—such as fraud, vandalism, drug abuse violations, drunkenness, and vagrancy—generally suffer less and get less attention. Importantly, however, the victims of *all* crimes are affected to some degree, depending on the nature of the force used against them; their economic loss; the social, psychic, and physical resources available to them; and the setting in which the victimization takes place.

The **primary victim** is the person injured or killed as a direct result of a criminal act. A **secondary victim** is an individual who is affected by the primary victim's suffering and who experiences sympathetic pain. A man who learns that his sister has been raped, and who consequently suffers page 488 emotional distress, is a secondary victim of the attack. A closely related term, **secondary victimization**, refers to the insensitivity and abuse of the primary victim by family, friends, medical personnel, police, prosecutors, and judges, which is manifested in the process of trying to help the victim and in identifying, prosecuting, punishing, and treating the offender. Sometimes people not in the criminal justice system—medical personnel, mental health workers, social workers, clergy, and even family and friends—also are responsible for secondary victimization.

primary victim

A person injured or killed as a direct result of a criminal act.

secondary victim

An individual who experiences sympathetic pain as a result of a primary victim's suffering.

secondary victimization

A negative situation that results from the insensitivity and abuse of the primary victim by family, friends, medical personnel, police, prosecutors, and judges; manifested in the process of trying to help the victim

and in identifying, prosecuting, punishing, and treating the offender.

When a victim is killed, his or her close relations are called **survivors**. Victims who cope well and are able to resume a normal life also consider themselves survivors, a term that helps them reject the hopelessness of the victim label and signifies that they consider their suffering and sense of helplessness to be over.

survivor

A relative or loved one of a person who has been killed; also, a crime victim who copes well and manages to resume a normal life.

Crime victimization means injuring or killing a human being through behavior that is prohibited by law. It focuses on the victim rather than on the offender or the criminal event. **Victim recidivism**, or *repeat victimization*, occurs when a person, household, or business is victimized more than once. For almost two decades, victim recidivism of a small number of victims has been known to account for a disproportionately large number of victimizations. This means that people who are victimized even once are at a higher risk of further victimization than those who have not been victimized.¹⁸ One British research study reported that 4 percent of victims accounted for 44 percent of all victimizations in personal crimes.¹⁹ For property offenses, another British study found a mere 2 percent of property crime victims experience 41 percent of all property crimes. According to this study, career burglars took advantage of information gained during successful burglaries to easily strike the same location again.²⁰ These findings suggest that if we could stop repeat victimization, we might prevent a large proportion of all victimizations.

crime victimization

Injuring or killing a human being through behavior that is prohibited by law; the term focuses on the victim rather than on the offender or the criminal event.

victim recidivism

Victimization of a person, household, or business more than once; also called repeat victimization.

In the aftermath of victimization, we expect society to help victims cope with their misfortunes. **Victim services** are dedicated activities conducted to help reduce victims' suffering and facilitate their recovery.²¹

victim services

Dedicated activities conducted to help reduce victims' suffering and facilitate their recovery so that they can return to a normal life.

Victim Advocates

A **victim advocate** is a person who directly provides victim services; victim advocates work in intimate partner violence programs, rape crisis centers, district attorney's offices, police departments, Child Protective Services, and Adult Protective Services. A victim advocate may also be assigned to another agency within a particular justice system—federal, judicial, military, juvenile, or tribal, for example. Victim advocates are not the only occupational group with direct contact with victims. Law enforcement, correctional officers, and medical personnel also have such direct contact with victims, but their focus is usually on the victims' immediate or specific needs rather than the long-term, wider concerns that victim advocates address.

victim advocate

A person who is a direct provider of victim services and who works in intimate partner violence programs, rape crisis centers, district attorneys' offices, police departments, Child Protective Services, and Adult Protective Services; other victim advocates can be assigned to other agencies within the criminal justice system.



▲ Victim Advocate Meeting with Volunteers

Seema Singh, victim advocate for the state of New Jersey, meets with volunteer members of the Asian Women's Safety Net, a domestic violence task force. The 12 women of the task force support and guide women who are victims of intimate partner abuse.

David Wa/Alamy

Victim advocates assist victims with obtaining community services such as health care, housing, education, and employment and support victims in every phase of the criminal justice process to help them suffer less and achieve recovery. Advocates provide crisis intervention and accompany [page 489](#) victims to the hospital and to court. They also support victims as they interact with staff members at social and legal agencies who may not understand or be sympathetic to the victimization.²²

Victim advocates help victims navigate the confusing criminal justice system by explaining court procedures and ensuring victims' rights. In a 2-year study that followed victims of intimate partner violence, those who used advocacy services experienced greater safety and a better quality of life. Nearly a quarter of those who worked with an advocate experienced no further physical abuse, whereas of those who did not have an advocate, only 10

percent were free of abuse. Compared to women who did not have an advocate, those who had one obtained more of the resources they sought, showed fewer symptoms of depression, and were more effective at acquiring social services.²³

During the 1980s and 1990s, specializations developed among advocates as they began working with specific kinds of victims: children, victims of intimate partner violence or sexual assault, elder adults and dependent adults, homicide survivors (or those who had survived the homicide of a loved one), and victims of gang violence, human trafficking, and cybercrimes (also called Internet crimes). Partly due to limited funding, few services yet exist to assist victims of cybercrimes and economic crimes, such as white-collar offenses and identity theft. One of the new challenges for victim advocates is the rise of acts of victimization being video-recorded with cell phones.

Victim Advocates and Federal Crimes In 1988, the U.S. Office for Victims of Crime (OVC) created the Federal Crime Victim Assistance Fund to help victims of federal crimes.²⁴ Each year the OVC allocates funds to the U.S. Attorneys' Offices and the Federal Bureau of Investigation (FBI). Victim advocates in the federal system, known as *victim witness specialists*, work with these two federal agencies to assist victims of federal crimes exclusively. Other federal agencies, including the U.S. Postal Service, are expanding their operations to include victim advocates.

Victim witness specialists are responsible for helping victims of terrorism, counterintelligence, cybercrime, public corruption, civil rights violations, organized crime, major theft, and violent crime. Sometimes victim witness specialists work in other countries with victims of *trafficking in persons (TIP)*, also called *human trafficking*, or with victims such as those slain in the *femicides*—murders of women—that are occurring in large numbers in Juarez, Mexico, and Guatemala City, Guatemala. In the border city of Juarez, a network of *maquiladoras* (factories) draws thousands of poor young girls from all over Mexico. The women lack protection from what is a largely corrupt police force. In Juarez—home to one of Mexico's largest drug cartels, as well as to approximately 1.5 million people and a transient population of about 500,000—these women face a mostly ineffective criminal justice system.²⁵ Over the past decade, at least 400 women reportedly have been raped, mutilated, and brutally murdered, and the fate of many others remains unknown. Due to the mishandling of credible evidence and official indifference, successful prosecution for these crimes has been a major

challenge. This situation has attracted international attention, but a solution has yet to be found. Relatives and friends of the victims have suffered extensive trauma. Local victim advocates have helped many by providing not only direct services but also by coordinating lobbying efforts aimed at reforming Mexican laws to support community prevention programs.²⁶

In at least three other Latin American countries—El Salvador, Guatemala, and Honduras—women are also being killed at unusually high rates. Based on a study in 2011, the highest rates are in El Salvador, where gender-motivated killings of women reached just over 600 in 2011. These numbers give El Salvador the dubious distinction of having the highest rate of femicide in the world. Despite efforts by women’s rights activists, government officials, and progressive legislation, less than 3 percent of these cases are brought to justice.²⁷

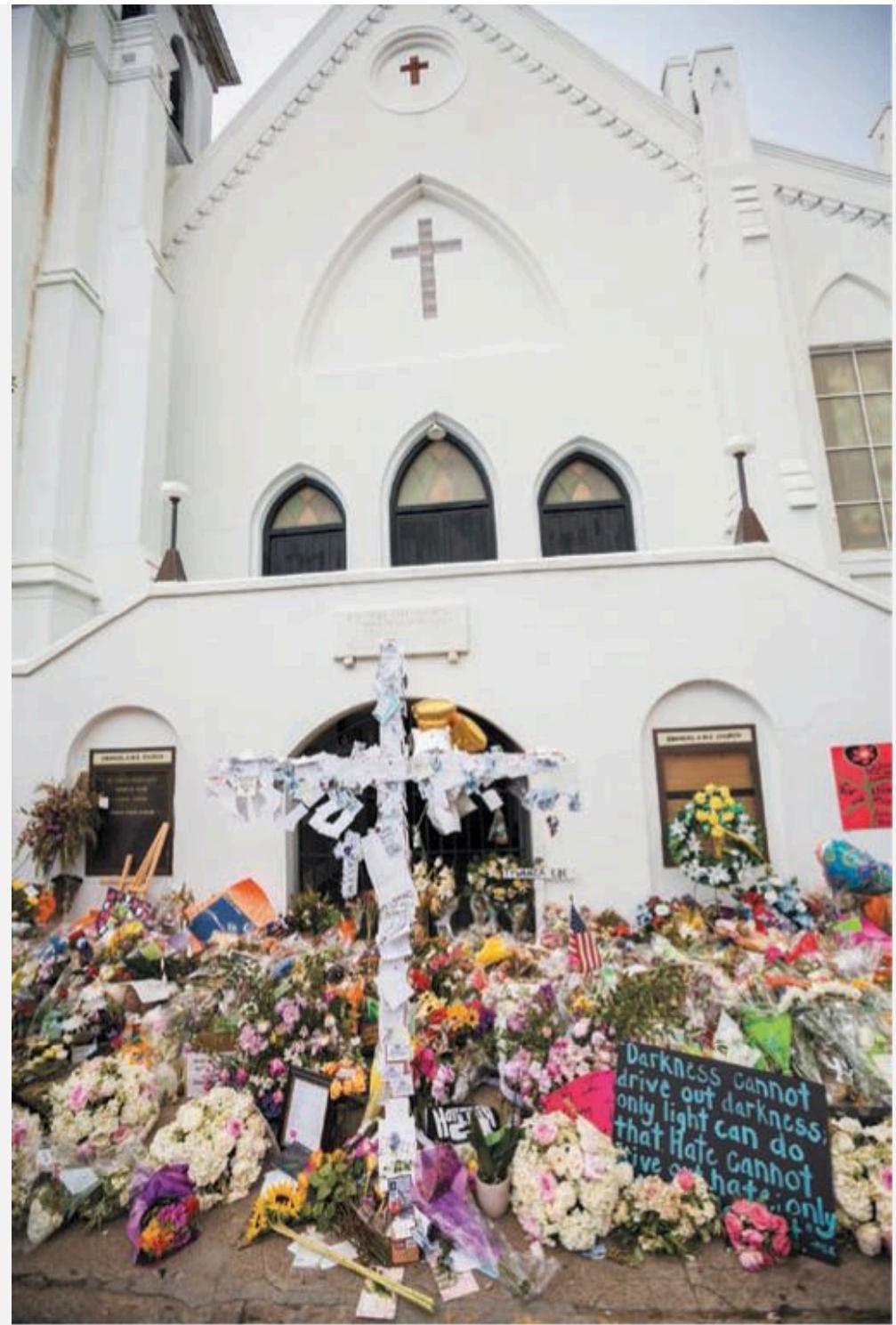
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Race, Class, Gender

Hate and Violence in the United States

The Emanuel African Methodist Church in Charleston, South Carolina, was founded in 1816 and is one of the country’s oldest Black churches. On the evening of June 17, 2015, a young White man joined a small prayer group at the church. He sat with the group for almost an hour before pulling out a handgun and opening fire. He shot 10 people, killing 9 of them, before fleeing the church. The following morning, 21-year-old Dylann Roof was arrested; he was soon charged with nine murders.

According to several reports, Roof admitted to the murders soon after he was in custody. But other reports emerged as well—that Roof uttered racial slurs during the crime, that he had a history of White supremacist activity, and that he purposely chose the church because of its history in the Civil Rights movement. Although South Carolina had no hate crime law at the time of the shooting, officials almost immediately began to call the event a hate crime because it appeared to have been motivated by the victims’ race.



Richard Ellis/Alamy

Since this time, there have been countless acts of violence due to hatred and bias. As of April 2019, the Southern Poverty Law Center (SPLC), which monitors the activities of domestic hate groups and extremists, is tracking 1,600 extremist groups operating in the United States. On October 27, 2018, 11 people were murdered and 7 injured when a lone gunman stormed the Tree

of Life synagogue in Pittsburgh, Pennsylvania, with several semiautomatic weapons shouting, “all Jews must die.” Six months to the day later in April 2019, a young, White lone gunman walked into Congregation Chabad in Poway, California, fueled by online White supremacist hatred and shot at the congregants killing one and leaving three wounded.

In addition to mass killings and hate related violence, there is also a surge in hate speech and bias in schools with derogatory language, Nazi salutes and swastikas, and confederate flags. Cell phone cameras and social media illustrating graffiti, chants of “build the wall,” or students depicted in blackface. In 2018, elementary school staff dressed up for Halloween as Mexicans and a wall. While some of these incidents make it to the media, countless others do not. In a report conducted by the SPLC of 2,776 educators, more than two-thirds witnessed a hate or bias incident at their school and less than 5 percent were reported to the news media. Most of these incidents were not addressed by or denounced by school leaders and in 57 percent of the cases, no one was disciplined. Out of the 43 reports for September 2018, 35 cases were anti-Black racism and 5 incidents were anti-LGBTQ, 4 were anti-Semitic, and 2 were anti-immigrant. Eleven of the hate incidents occurred on social media and 11 incidents were perpetrated by adults, including board members, a principal, and administrative staff. Each of these incidents, whether hate speech or acts of violence, have devastating impacts on not only those who are the primary victims, but also those who are broadly targeted by hate.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What do you think are the contributing factors to the surge in hate- and bias-related violence?
- What can be done to address hate and bias crimes in schools?
- What can we do as a society to address hate and bias?

SOURCES: Donovan X. Ramsey, “Charleston Lawmaker Will Introduce Hate Crime Legislation in Wake of Church Shooting,” *Huffington Post*, June 22, 2015. www.huffingtonpost.com/2015/06/22/charleston-hate-crime_n_7637886.html (retrieved June 23, 2015); Katie Rogers, “Charleston Shooting Reignites Debate about Confederate Flag,” *New York Times*, June 19, 2015. <https://www.nytimes.com/2015/06/20/us/charleston-shooting-reignites-debate-about-confederate-flag.html?searchResultPosition=1> (retrieved June 23, 2015); Jon Swaine, “Leader of Group Cited in ‘Dylann Roof Manifesto’ Donated to Top Republicans,” *The Guardian*, June 22, 2015. www.theguardian.com/us-news/2015/jun/21/dylann-roof-manifesto-charlston-shootings-republicans (retrieved June 23, 2015); Affan Chowdhry, “Questions Surround Reluctance to Label Charleston Shooting as ‘Terrorism,’” *The Globe and Mail*, June 19, 2015. <https://www.theglobeandmail.com/news/world/charleston-shooting-renews-debate-over-labelling-incidents-as-terrorism/article25045158/> (retrieved June 23, 2015); Southern Poverty Law Center website. <https://www.splcenter.org/20180723/terror-right#2018> (accessed May 13, 2019); Ray Sanchez and Artemis Moshtagian, “Mayor Says Synagogue Shooting in California That Left 1 Dead and 3 Wounded Was a ‘Hate Crime,’” *CNN*, April 29, 2019. <https://www.cnn.com/2019/04/27/us/san-diego-synagogue/index.html> (accessed May 5, 2019); Cosandra Dillard, “Hate at School: September 2018,” Southern Poverty Law Center, 2018. <https://www.tolerance.org/magazine/hate-at-school-september-2018> (accessed May 13, 2019).

When a victim is murdered, as with the above femicides, an advocate will assist the survivors (usually family members and friends).²⁸ In the United States, victim witness specialists also work with the OVC, which is responsible for monitoring federal agency compliance with the guidelines set by the U.S. attorney general for victim and witness assistance; these standards aim to ensure that federal victims and witnesses are treated fairly and that their statutory rights are met.²⁹

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Real Careers



Purestock/Getty Images

LIA CHACON

Work location: Orange County, California

College(s): California State University, Fresno (2008)

Major(s): Criminology (BS)

Job title: Legal Advocate

Salary range for job like this: \$28,000–\$35,000

Time in job: 1.5 years

Work Responsibilities

The mission of the intimate partner violence agency where I work is to help victims regain control of their lives through effective legal action. As a legal advocate in the agency, I assume two primary roles. First, I act as a resource of knowledge by informing victims of their rights and the processes of the legal system. Second, I serve as moral support by accompanying victims to their court appearances.

The victims who come to our agency are usually referred by law enforcement, the courthouse, or social services. My first encounter with clients is always emotional: They are discouraged and in desperate need of assistance. But as clients get closer to their goals, such as finding a safe place to live, their self-confidence increases. For example, I once helped a woman gather witness testimony to prove spousal abuse and secure a restraining order against her husband for herself and her children.

Why Criminal Justice?

Although I had been interested in criminal justice since high school, I did not discover victimology until I started college. When I took my first victimology class, I wanted to learn more. I got my first hands-on experience working with victims during my senior year of college, when I took an internship at the Victim Offender Reconciliation Program. In my role as mediator, I was able to see how some guidance can really make a difference in a person's life. In the future, I plan to teach so that I might inspire people as my professors inspired me.

Expectations and Realities of the Job

I was pleasantly surprised to find that the agency I work for encourages me to attend workshops and take continuing education courses to better assist our clients. With this type of support from my employer, I expect to be able to help the agency expand by providing more services to our clients.

My Advice to Students

Dare to dream! Upon graduating from college, I knew I wanted to work as a victim advocate. However, I was unsure whether an entry-level employee could apply for such a position. So I went online and applied for the lowest job opening at one of the best-known intimate partner violence agencies in Fresno. To my surprise, although I applied for a lower position, I was offered employment as a victim advocate. Just by having the interview to present my skills and career goals, I was able to secure the job of my dreams.

Victim Advocates and Tribal Lands Regardless of whether they live on tribal lands, Native Americans are victimized at much higher rates than other U.S. populations. Violence against women, in particular, has reached unprecedented levels, with more than 80 percent having experienced violence.

Native American women have the highest rate of forcible sexual assault and experience intimate partner violence at up to 10 times more than the rest of the U.S. population. Indigenous women, on some reservations, are murdered at more than 10 times the national average.³⁰ The state and federal justice systems have traditionally failed to provide protection or to prosecute due to not reporting the crime and law enforcement lacking the jurisdiction to respond, investigate, and arrest, which contribute to an inability to prosecute.

Responding to these high victimization rates among Native Americans, as well as to the unique challenges faced by the criminal justice system in responding to crimes, in 1987 the federal government created the Victim Assistance in Indian Country (VAIC) program. VAIC's 52 component programs provide direct services, including crisis intervention, emergency shelter, crisis hotlines, counseling, emergency transportation of victims to a safe location, and court accompaniments.³¹ In response, a few efforts are underway. The Office for Victims of Crime (OVC) awarded page 492 almost \$8.5 million to support crime victims services for counseling, transitional housing, emergency services, and transportation in Native American communities in 10 states.³² A bipartisan bill, Not Invisible Act of 2019, is winding its way through Congress with the hopes of creating an advisory committee of local, tribal, and federal agencies to work collaboratively to address the problem.³³



▲ **Victim Services on Tribal Lands**

Victimization rates are high among Native Americans.

Design Pics/Don Hammond

Victim Advocates and the Military In 1994, the Department of Defense (DOD) mandated the creation of victim and witness assistance programs for all branches of the military, with the aim of helping victims and witnesses deal with the investigation, prosecution, and punishment of crimes committed on military bases or by military personnel. The programs also provide victim services. Since 1994, the DOD has worked with the Office of Victims of Crime to create policies, programs, and training to promote victims' rights and to ensure that victim services are provided at military installations in the

United States and around the world. When services are not available on a military base, the DOD enters into agreements with community victim service providers for service provision and referrals.

In 2018, the Pentagon estimated that more than 20,500 members of the armed forces were raped or sexually assaulted, a nearly 40 percent increase over the 14,900 estimate just two years earlier. Given that this is such an underreported crime, the actual statistics are likely much higher. The investigations and prosecutions remain within the chain of command of the military, which has inherent conflicts of interest. In May 2019, Senator Martha McSally (Republican from Arizona) recently admitted to being sexually assaulted while serving in the military. She is proposing legislation to create a Sexual Assault Unit within the Department of Defense to transfer the investigation and prosecution of these crimes from the military to civilians. This would be another step toward trying to address the longstanding problem of sexual assault within the U.S. military.³⁴

Death Notification

One of the most difficult tasks is to tell someone that a loved one has died. Death notifications are usually delivered in person by medical personnel, coroners or medical examiners, law enforcement officers, spiritual leaders, social service workers, or victim advocates.

When carrying out this painful assignment, the notifier must identify herself and the organization she represents, ensure that she is speaking to the appropriate person, and identify the victim by name. Equally important is not to hide the harsh reality of death by using euphemisms such as “he has passed away,” “she is no longer with us,” or “he has gone to a better place.” Such phrases can be very confusing, particularly if there is a language or cultural barrier. The survivor should be given enough details about the date of death, the time of day, and the location (such as a car, a school, or an apartment) to understand how it occurred, but a great deal of detail is not necessary, particularly in the case of a violent death. If the survivor asks for further details, however, the advocate should answer honestly. Finally, the advocate can assist the survivor with identifying the victim, contacting the appropriate spiritual leader (if any) for guidance, and making funeral arrangements.³⁵

Crime Victim Compensation

Victim compensation is paid for through the Crime Victims Fund, which was established under the Victims of Crime Act (VOCA) of 1984. Funding for the Crime Victims Fund is made possible through fines and penalties paid by those convicted of federal crimes, forfeited bail bonds, and other page 493 assessments collected through the U.S. Attorney's Offices, federal courts, and Federal Bureau of Prisons. As of 2018, the fund balance was over \$12 billion, of which \$3.4 billion was distributed to local victim service and victim compensation programs throughout the United States.³⁶ At the state level, **crime victim compensation** programs provide financial assistance to victims and their families throughout the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. Any victim of violent or personal crime is eligible for compensation to help offset the costs of medical care, counseling, lost wages or support, and funerals. In most states, property crimes are not covered under compensation programs.

crime victim compensation

Programs administered at the state level to provide financial assistance to victims and their families.

MYTH/REALITY

MYTH: Victims can make money as a result of the crime(s) committed against them.

REALITY: Victims must exhaust all sources of insurance, restitution, or other benefits before they can retain state compensation funds; and the upper limit of compensation is different in each state.³⁷

Victim compensation is not an opportunity for victims to make money from their circumstances. Each state sets a limit on compensation funds, usually \$25,000 per victim.³⁸ To receive funding, the victim must report the crime promptly (usually within 30 days) and cooperate with law enforcement and the prosecution; he or she must not have contributed to the victimization (say, by starting a brawl), must not be in jail or on probation or parole, and must have exhausted all other insurance or benefits such as health insurance, worker's compensation, and lawsuits.³⁹ Crime victims apply for funding in the state where the crime was committed, not in the state where they live.

Under the USA PATRIOT Act, enacted in the wake of the 9/11 terrorist attacks, victims of international terrorism and their families are eligible for

compensation through a special fund administered by the federal Office for Victims of Crime.⁴⁰

Each year, about \$500 million is distributed to more than 200,000 victims in the United States. Across the states, the average allocation per victim is \$2,000. Figure 14-2 shows how the funds were distributed in 2005.⁴¹ Of the 53 percent given for medical expenses, approximately \$17 million was paid to victims when they had out-of-pocket expenses associated with completing a sexual assault forensic exam. Approximately 50 percent of those receiving victim compensation are for assault and more than one-third of those are to victims of intimate partner violence. Homicide survivors are paid about 10 percent of the overall compensation benefits while 8 percent goes to victims of sexual assault. Almost 30 percent of all recipients of victim compensation are children.⁴² Outside the United States, many foreign countries also have compensation programs, as noted in “A Global View.”

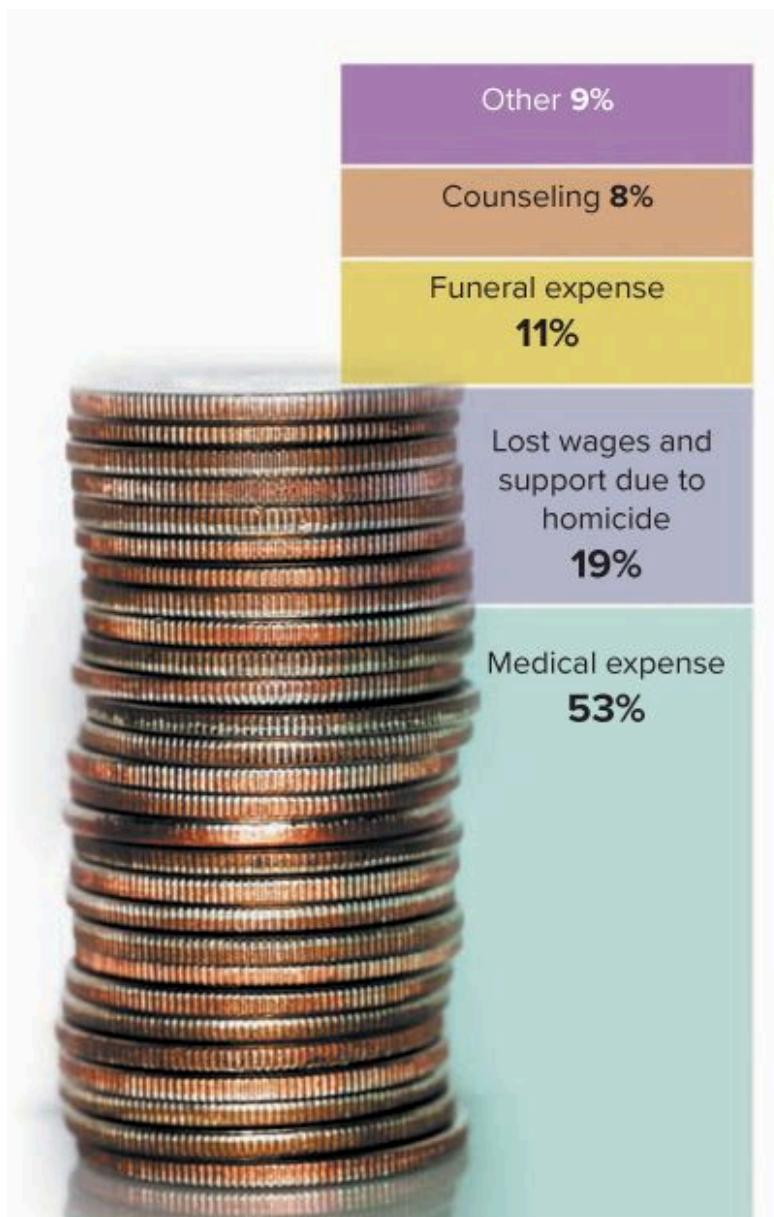


FIGURE 14-2 Victim Compensation Payments, 2005

Stockbyte/PunchStock

SOURCE: National Association of Crime Victim Compensation Boards. www.nacvcb.org/ (retrieved July 30, 2011).

Compensation programs are funded from fees and fines collected from state and federal offenders and from the Victims of Crime Act (VOCA), the federal law that provides funding for victim services and compensation programs.

State and federal taxes are not used for these funds. The Key Concepts table lists eligibility requirements for individuals receiving victim compensation.

Victim Recovery

In the immediate aftermath of a victimization, ideally the first official personnel to be notified are victim advocates. It is their responsibility to give victims at least three kinds of help: psychological first aid, survivor support, and treatment interventions to facilitate recovery.

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A Global View

Victim Compensation Programs in Foreign Countries

Lara Logan, a correspondent for the CBS TV newsmagazine *60 Minutes*, was covering the violent uprising of Egyptian citizens against the government of President Hosni Mubarak. On February 11, 2011, she went to Tahrir Square to interview individuals who were celebrating Mubarak's exit from political power. As the cameraman was changing the battery, the mood turned from jubilation to violence. Logan's Egyptian colleagues, hearing men in the crowd say that they wanted to remove her pants, notified her that the crew should leave immediately. The mob quickly descended upon Logan, separating her from her producer and crew, who were helpless to provide assistance. Logan was groped and touched; then her clothes were ripped, and she was beaten and sexually assaulted with such severity that she felt she was going to die. Logan estimated that several hundred men participated in the 40-minute attack before a group of civilians and Egyptian soldiers rescued her.^a

Logan's horrific—but thankfully unusual—experience is an example of the various types of crimes that can occur when a person is traveling in an unstable foreign country. The United States and 35 other countries have victim compensation programs to help offset the costs of victimizations such as Logan's. In 2005, the U.S. Department of State surveyed countries that have full diplomatic relations with the United States to determine the extent of compensation available for victims. The survey showed that some countries require the victim to file a police report before leaving the country in order to be eligible for compensation. The majority of international victim compensation programs cover funeral and burial expenses, health and mental health care, disability, and loss of employment. Some countries extend compensation to include court expenses such as fees for court-related travel, translations, documents, and expert witnesses. Still other countries provide support for temporary living arrangements and replacement for personal items, including clothes. Some countries do not have a maximum award ceiling, while many determine compensation on a case-by-case basis, taking into account the victim's financial ability to cover the costs. Other eligibility requirements stipulate that a foreign victim be a citizen of a European Union country or have a similar diplomatic affiliation or that the victim be a temporary or permanent resident. Some

countries provide compensation only for victims of terroristic acts. As a result of the survey, the U.S. Office of Victims of Crime created the Directory of International Crime Victim Compensation Programs.^b



CBS/Landov

Egypt is one of the 35 foreign countries that has a victim compensation program. In the case of Lara Logan, however, it is unclear what, if any, victim compensation she will be eligible to receive.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How do victim compensation programs in foreign countries differ from those of the United States?
- What do you think about the eligibility requirement that is related to the victim's ability to pay?
- Some countries do not have a maximum victim compensation award. Do you think the United States should remove the maximum award restrictions? Explain.

SOURCES: ^aBrian Stelter, "CBS Reporter Recounts a 'Merciless' Assault," *New York Times*, April 28, 2011. www.nytimes.com/2011/04/29/business/media/29logan.html?src=twr&pagewanted=all (retrieved April 30, 2011).

^bU.S. Department of Justice, Office for Victims of Crime, "Directory of International Crime Victim Compensation Programs." <https://www.ovc.gov/publications/infores/ServingVictimsAbroad/directoryinternational.html> (retrieved July 19, 2011); U.S. Department of Justice, Office for Victims of Crime, "Online Guide from OVC: Resource Guide for Serving U.S. Citizens Victimized Abroad," April 2008.

www.ojp.usdoj.gov/ovc/publications/infores/ServingVictimsAbroad/directoryinternational.html
(retrieved April 30, 2011).

Most laypeople can provide psychological first aid with minimal training. It includes recognizing that someone has been victimized and ensuring that he is removed from danger and placed in a safe environment. When there is physical injury, victims' workers must ensure that victims are first taken to a medical facility and given emergency attention and subsequently put in contact with a victim assistance agency.

The challenge for all victim advocates is to know how to perform crisis intervention, to assess victims, and to use that assessment to create a treatment plan to determine the victim's short- and long-term mental health needs; they must also be able to refer the victim to appropriate community service providers and to carry out the treatment plan to help the victim achieve recovery. Recovery is perhaps the most important goal of victim services. A recovered victim is one who has come to terms with having been victimized and who acknowledges what was lost. Going through this process assists him in finding meaning from the experience and finally integrating what has been learned so that he can resume a functional life.

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KEY CONCEPTS Eligibility Requirements for Receiving Victim Compensation

Any victim of violent or personal crime is eligible for compensation to help offset the costs of the crime.

Victims of property crimes are not eligible to receive victim compensation.

Eligible costs include medical care, counseling, lost wages or support, and funerals.

Each state sets a limit on compensation funds, usually \$25,000 per victim.

To receive funding, the victim must report the crime promptly (usually within 30 days), cooperate with law enforcement and the prosecution, not have contributed to the victimization (say, by starting a brawl), not be in jail or on probation or parole, and exhaust all other insurance or benefits such as health insurance, worker's compensation, and lawsuits.

Crime victims apply for funding in the state where the crime was committed, not in the state where they live.

Working with someone who has experienced a traumatic event can be difficult because victims have different reactions. Some victims experience shock and numbness, intense emotion, fear, distress, guilt, anger and resentment, depression and loneliness, and isolation. Others have more physical responses, such as anxiety, panic, headaches, gastrointestinal problems, sleeplessness, and loss of appetite.⁴³ Yet despite their different reactions, most victims go through a three-phase process of impact, recoil, and recovery achievement.

The *impact stage* occurs in the immediate aftermath of a crime and is marked by shock, horror, and numbness. Some victims may be at further risk because they are vulnerable and unable to protect themselves, though others may think and act in a rational manner. Only about 10 percent of victims experience panic.⁴⁴ At the impact stage, the victim is primarily concerned with basic needs such as rescue, safety, warmth, and food. As soon as victim advocates and those working with victims identify appropriate interventions, referrals should be made for mental health services to assist the victim with long-term recovery. In this phase, ideally therapy should be offered to victims during the victim's first meeting with a victim advocate or other allied professionals, such as law enforcement and medical and mental health practitioners.

In the *recoil stage*, victims show more varied responses to the crime, including self-blame, fear, anxiety, helplessness, and impaired memory and decision making. These feelings can be all-consuming and can affect the victim's work, school, and social life. Insomnia, headaches, changes in appetite and libido, and lowered energy are all common physical and psychological responses to varying levels of preoccupation.⁴⁵

Helping a victim in the recoil stage requires more extensively trained, more experienced specialists who can assess victims' needs and give appropriate support. Specific tasks include providing basic information about victims' situations, offering advocacy services, accompanying victims to various agencies to ensure that they receive needed services, and helping them, if they wish, to cooperate with authorities in the criminal justice system.

As advocates and allied professionals work with victims through this phase, therapy should again be offered to help the victim recover. Victim therapy can be short or long term. **Short-term therapy** is usually administered by clinical psychologists, clinical social workers, and marriage and family counselors. It focuses on individual therapy, relationship therapy, peer support, page 496 and group therapy, and it assists victims who have minor phobias

or fears, eating and sleeping disorders, problems with managing stress, and health issues. **Long-term therapy** usually focuses on the victim's responses to trauma, symptoms of posttraumatic stress disorder (PTSD), anxiety disorders, depression, terminal conditions, and dysfunctional behaviors that render victims vulnerable. In some cases it deals with major phobias or fears and other trauma-related symptoms. It also may include institutional care, in which psychiatrists must administer psychotherapy, and it may include medication and close observation in a hospital. In any setting, the therapist's objective is to alleviate suffering and reduce trauma symptoms so that the person can resume a functional life. Prosecutors, too, are interested in facilitating victim recovery because individuals who suffer trauma may become psychologically impaired and thus unable to cooperate in the prosecution of offenders.

short-term therapy

Treatment usually administered by clinical psychologists, clinical social workers, and marriage and family counselors to address immediate mental health concerns.

long-term therapy

Treatment focusing on the victim's responses to trauma, symptoms of PTSD, anxiety disorders, depression, terminal conditions, and dysfunctional behaviors that render victims vulnerable.

The *final stage* toward recovery usually involves an extended period of struggle during which the victim alternates between the effects of impact and recoil, but with less severe responses. Many individuals also experience PTSD, which includes recurring memories of the traumatic event. Regardless, however, of what may seem like setbacks, triggered perhaps by a reminder or an anniversary, the victim is usually moving forward in this stage, resuming normal activities and coping with the crime's aftermath. The crime is a part of her life, but not—as in previous stages—the whole of it.⁴⁶ The stages of achieving recovery are illustrated in the Key Concepts table.

KEY CONCEPTS Postvictimization Stages and Mental Health Response Options

Postvictimization Stages

The *impact stage* occurs in the immediate aftermath of a crime and can be marked by shock, horror, confusion, fear, panic, numbness, anger, paralysis, amnesia, and withdrawal. These responses can be accompanied by spontaneous urination, bowel release, defensive body movements, fainting, screaming, crying, self-injuring behaviors, temporary blindness

Mental Health Response Options

Short-term therapy is usually administered by clinical psychologists, clinical social workers, and marriage and family counselors. Initially it can include crisis intervention, removal to a safe place, and psychological first aid. Later it can include individual therapy,

and/or deafness, high blood pressure, heart attack, or stroke.

In the *recoil stage*, victims show more varied and continuing responses to the crime, including self-blame, health issues, phobias, persistent fear, anxiety, trauma, PTSD, helplessness, and depression. They may also experience eating, sleeping, and relationship disorders; extreme withdrawal; alcohol and drug abuse; chronic pain, especially headaches, stomachaches, and backaches; frequent grieving; gastrointestinal problems; hyperarousal; aggression; impaired memory; decision making difficulties; intrusive recollections; excessive worry; and suicide.

The *final stage* is achieving recovery, an extended period of struggle in which the victim alternates between the effects of impact and recoil but with less severe responses—ultimately having fewer symptoms, an improved self-identify, and the resumption of a functional lifestyle.

relationship therapy, peer support, prolonged exposure therapy, eye movement and desensitization therapy, and group therapy.

Long-term therapy is usually administered by psychiatrists or clinical psychologists who can treat victims for extended periods of time, even recommending hospitalization, medication, and lifestyle changes. Interventions can include methods such as individual psychotherapy, relationship therapy, prolonged exposure therapy, flooding therapy, eye movement and desensitization therapy, and group therapy.

To help achieve recovery, mental health professionals focus on reducing PTSD symptoms, helping victims understand themselves through self-examination, and restoring victims' control over their life.

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a case in **point**

School Shootings in the United States

On the morning of December 14, 2012, in Newtown, Connecticut, Adam Lanza fatally shot his mother as she lay in bed. Then 20-year-old Lanza drove to nearby Sandy Hook Elementary School. Heavily armed, he shot his way into the locked school and then shot numerous people inside, killing 20 young children and 6 adults. When police arrived, Lanza killed himself with a shot to the head. This was one of the deadliest mass shootings in American history.

Sadly, Sandy Hook is only one of 111 such active shooter cases in which the shooter is actively killing or attempting to kill people in schools in the United States since 1970. In May 2019, the *New York Times* analyzed shootings at elementary, middle, and high schools and found that 202 were killed and 454 were injured in active shooter cases. In 16 cases, no

one was injured despite shots being fired. In 2018 alone there were 29 people killed and 48 injured in three shootings in Florida, Kentucky, and Texas. The Parkland, Florida, shooting inspired students to lead a movement to tighten gun laws nationwide. Despite these efforts, by May 7, 2019, when two suspects entered STEM School in Highland Ranch, Colorado, killing 1 student and injuring 8 others, that was the 26th time a gun was fired on a school campus in 2019 alone. During these 26 shootings, 6 people died and another 28 were injured. We have learned, all too painfully, that school shootings can happen anywhere. Active shooters tend to have a few traits in common—the majority are White males and current or former students of the targeted school. When we look at college campuses, then the number of victims increases. However, the demographics of the shooting and the shooter begin to shift. Most shootings on college campuses tend to take place at the end of the semester and at the end of the school year in April, May, and June. April is the deadliest month for campus shootings with 32 deaths at Virginia Tech in 2007, 7 murders at Oikos University in 2012, and most recently when 2 died on April 30, 2019, at the University of North Carolina—Charlotte. Like active shooters in earlier grades, campus active shooters are often current or former students, but, in contrast, the majority are non-White.

The survivors of these massacres and the families of those who died must cope with the aftermath of their own school shooting, but with each new school shooting the pain and trauma are vividly renewed.

OBSERVE → INVESTIGATE → UNDERSTAND

- What services does your school offer for victims of violent crime? Are they sufficient?
- What kinds of efforts should an institution, an agency, or a community put into preparing for a violent crime like the Sandy Hook shooting?
- Aside from the obvious—those who were injured and the families of those who were killed—who else might be a victim of a large-scale violent attack? What forms does that victimization take?

SOURCES: Becky Bratu, “Connecticut School Shooting Is Second Worst in US History,” *NBC News*, December 14, 2012. http://usnews.nbcnews.com/_news/2012/12/14/15909827-connecticut-school-shooting-is-second-worst-in-us-history (retrieved June 5, 2015); Stephen J. Sedensky III, “Sandy Hook Final Report,” Office of the State’s Attorney, Judicial District of Danbury, November 25, 2013. www.ct.gov/csao/lib/csao/Sandy_Hook_Final_Report.pdf (retrieved June 5, 2015); “Sandy Hook Massacre: Adam Lanza Acted Alone and Had an Obsession with Mass Killings,” *The Independent* (London), November 26, 2013. www.independent.co.uk/news/world/americas/sandy-hook-killer-adam-lanza-acted-alone-and-had-an-obsession-with-mass-killings-such-as-columbine-says-report-8963342.html (retrieved June 5, 2015); Margaret Hartmann, “Post-Newtown, States Passed More Gun-Rights Laws, Not Restrictions,” *New York Magazine*, April 4, 2013. <http://nymag.com/daily/intelligencer/2013/04/post-newtown-states-loosen-gun-restrictions.html> (retrieved June 5, 2015); Lisa Miller, “Orders of Grief,” *New York Magazine*, November 3, 2013. <http://nymag.com/news/features/newtown-2013-11/>

(retrieved June 5, 2015); Alex Hider, “There have been 26 school shootings in the United States in 2019.” *The Denver Channel*. May 13, 2019. <https://www.thedenverchannel.com/news/national/there-have-been-26-school-shootings-in-the-united-states-in-2019> (accessed May 13, 2019); Weiyi Cai and Jugal K. Patel, “A Half-Century of School Shootings Like Columbine, Sandy Hook and Parkland,” *The New York Times*, May 11, 2019. <https://www.nytimes.com/interactive/2019/05/11/us/school-shootings-united-states.html> (accessed May 13, 2019); No author, “University of North Carolina at Charlotte shooting has these things in common with other campus shootings,” *The Conversation*, 2019. <http://theconversation.com/university-of-north-carolina-at-charlotte-shooting-has-these-things-in-common-with-other-campus-shootings-116409> (accessed May 13, 2019).

Victim advocates have many different responsibilities as they provide assistance to victims throughout the stages of recovery. The work of victim advocates in helping victims is highlighted in “A Case in Point.”

Vicarious Trauma

The psychological distress experienced by persons who know about a traumatic event directly experienced by another person and who feel that person’s pain is sometimes called **vicarious trauma** or **compassion fatigue**. Many individuals who come into direct contact with victims can experience this secondary victimization, including law enforcement officers, medical care providers, victim advocates, individuals providing mental health services, and even family members and friends. This form of trauma may manifest itself as stress, burnout, fatigue, loss of empathy, or taking on the victim’s suffering as one’s own. Sometimes the practitioner may feel as if she has experienced the victim’s reenactment of the crime. Others experience nightmares, avoidance and emotional numbing, hypersensitivity, and substance abuse.⁴⁷

vicarious trauma (compassion fatigue)

Psychological distress experienced by those who know about a traumatic event experienced by another person and who feel the victim’s pain.

These experiences can be particularly problematic if the practitioner has intimate knowledge about the details of the crime or has experienced trauma in his own life. In either situation, the practitioner experiences difficulty in the

course of learning more about the crime and working with the victim. This result is problematic in two respects—first, the victim is not receiving the best, most objective services; and second, the service provider is suffering along with the victim, with few outlets for personal thoughts, feelings, fears, and anxieties.⁴⁸

It is not clear why some people are likely to experience vicarious trauma and others are not, or what affects the extent, severity, or duration of vicarious trauma. Organizations can assist their employees who work with victims and who experience vicarious trauma by providing a quiet room for relaxation, by extending the number of personal days off, by allowing for shorter workdays and workweeks, and by providing counseling. In combination, such practices can provide short- and long-term support.⁴⁹

TYPES OF VICTIM SERVICE ASSISTANCE

Being a crime victim is frightening and confusing. Victims may call the police, seek medical care, or even flee their homes with no clothes, no money, and crying children in tow. Many do not know where to go, what to do, or how to get help. Until the 1970s, victims had few options other than to turn to law enforcement and medical personnel to help them cope with the trauma and recover from the crime. Today, however, thousands of programs, services, and resources can help victims to repair their lives and property, to obtain rights while seeking justice, and to try to heal.

Crisis Intervention

After a traumatic event, **crisis intervention** can provide immediate assistance. Such intervention can assume a number of forms, including responding to a crime scene, transporting a person to a shelter, providing medical assistance, helping a victim locate a missing loved one, or simply providing a shoulder to cry on. During crisis intervention, victim services personnel must ask what victims want and need. Instead of making assumptions about what is in the victim's best interest, advocates should provide options so that victims can begin to make their own choices about the future.⁵⁰

crisis intervention

Immediate psychological assistance after a traumatic event.

Effective crisis intervention depends on accurately assessing the situation, working with the victim to determine immediate needs, and focusing treatment on those needs.⁵¹ Referrals to other organizations address longer-term needs. From the victim service providers' perspective, work with victims is usually highly taxing. Advocates often must be on call all hours, day and night. Frequently they must hear and see the results of extreme victimizations—stressful experiences that take a toll on the advocates and require them to also receive counseling. Good victim advocacy requires extensive training, personal maturity, experience with victims, and constant supervision. In some cases, supervisors must provide their employees with breaks away from fieldwork and even insist on vacations and periodic counseling to avert burnout or compassion fatigue. A well-run victim service agency requires a balanced number of advocates to cover the existing workload, so that victims receive referrals and adequate treatment in a timely manner that can lead to recovery.

Hotlines

Most local and national victim services agencies provide a telephone crisis hotline 24 hours a day, 7 days a week, through which a victim (as well as secondary victims) can discuss any type of victimization, get information and resources such as shelter and child care, and learn how to get a protective order. Hotlines are staffed by volunteers and professionals trained in [page 499](#) crisis intervention techniques and victim services. They provide immediate short-term counseling to help victims through the crisis, but not ongoing, long-term counseling, therapy, or treatment. Instead, the hotline worker will provide information and referrals for these types of services.⁵²

Each year the National Network to End Domestic Violence (NNEDV) sponsors a census that collects data on service provision to victims of intimate partner violence over a 24-hour period. The census provides a one-day snapshot of service provision throughout the United States. The most recent data reported in 2018 showed that 90 percent of domestic violence programs participated in the census. In a single day, local service providers answered 19,147 calls and the National Domestic Violence hotline answered 2,205 calls, which averages to more than 14 calls every minute in a 24-hour period.⁵³

Shelters and Transitional Housing

MYTH/REALITY

MYTH: Victims of intimate partner violence are partially at fault for their situation because they will not leave their abusers.

REALITY: Abusers often economically and psychologically distance their victims from the rest of society. It is often financially difficult for a victim to leave a batterer, especially if the victim has children.⁵⁴

A major premise of victim services is that most victims are not to blame for the crime they experience. Thus victims of intimate partner violence are not responsible for the abuse they experience at home—the batterer is. Many times, a batterer will isolate the victim from her family and friends, use physical and sexual force to intimidate her, psychologically taunt her, and control the couple's finances.

These factors leave the victim afraid for her safety yet with few resources to escape. Some victims will flee to seek safety; some may be thrown out of their homes by their battering partner. When victims leave, typically going first to family and friends, batterers often follow, asking forgiveness, begging for a second chance, and promising never to be violent again. Many victims are encouraged to return by those who want to keep the family together, including children who want to be with their father. This pressure, coupled with the lack of financial resources to venture out on their own, means that many victims return to their batterer. The average victim will leave and return several times before finally terminating the relationship.



▲ Women and Children in an Intimate Partner Violence Shelter

All major U.S. cities have special protective places where women who are victims of abuse and violence by their partners can go for a brief time to escape the danger and stay in safety, often with their children.

Randy Pench/Zuma Press/Newscom

Shelters are a temporary housing option for battered women and their children. They offer a safe place to escape a violent relationship; provide an opportunity to determine options for legal, medical, social, housing, education, employment, and child care; and make it possible to rebuild a life free of violence.

The maximum time a person may stay in a shelter is set by state law and can range from 30 to 90 days. Most shelters offer 60 days.⁵⁵ If a victim contacts the police, they will often drive her and her children directly to the

shelter. If she calls a hotline, the person answering the phone will usually contact the police for her. In most states, the shelter location is kept private to help ensure the safety of the residents; in California, it is a misdemeanor to disclose the shelter's location.

Shelters usually are large, older homes in residential neighborhoods, unmarked but renovated to meet the residents' safety needs. Perimeter cameras and secure entries help to protect residents. Typically, shelters house approximately 25 women and children.⁵⁶ According to the data released by the NNEDV for the 2017 census day, programs provided services to 72,245 victims, including 40,470 who used emergency or transitional housing services. The remaining used services for children's support or advocacy (84 percent), transportation (54 percent), legal advocacy (53 percent), prevention and education (48 percent), and adult counseling (30 percent). Despite what seems to be an incredible amount of service provision, there were also 11,441 unmet requests for services, of which 65 percent were for housing.⁵⁷

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Real Careers



Ilene MacDonald/Alamy

TINA FIGUEROA-RODRIGUEZ

Work location: Madera, California

College(s): California State University, Fresno (2007)

Major(s): Criminology (BS), Victimology Option

Job title: Victim Services Manager

Salary range for job like this: \$40,000–\$53,000

Time in job: 8 years

Work Responsibilities

I supervise daily operations of the rape crisis center, the victim/witness center, and the intimate partner violence program. I ensure that staff members comply with policy standards; develop protocols for crisis response; and train staff on procedures for working with crime victims. In practical terms, I monitor services at the battered women's shelter by selecting files at random and verifying that progress is being properly documented. I train our staff members by developing instructional materials and organizing training sessions. Our facility receives funding from state and federal grants to provide these services. I have been delegated the task of maintaining compliance with funding sources and researching new funding opportunities.

Why Criminal Justice?

I majored in criminology because the field is very broad and there are many professions from which to choose. Wanting to work with abused or at-risk youth, I researched potential career paths and came up with many possibilities, such as a correctional officer at juvenile hall, juvenile probation officer, and victim services advocate. To prepare myself for such a career, I earned a Victim Services Certificate from CSUF during the summer. For this certificate, I had to take courses in family violence, victim rights, intimate partner violence, and child abuse.

Expectations and Realities of the Job

I did not expect grant funding to be so readily available to crisis facilities. That is not to say the money is simply given out. First, a center needs to apply for a grant. Once a grant is awarded, the center must comply with the guidelines outlined by the funding source and update that source with regular progress reports. One way our center has benefited from grant money is with the installation of a modern child-friendly interview room for children who have been sexually assaulted. It is designed with creative art and playful colors, but at the same time hidden cameras and microphones aid investigators in their work.

My Advice to Students

Begin to develop your resume and start searching for jobs while still in college. The application process can take up to 1 year because employers typically administer some or all of the following: background check, physical assessments, interviews, and entry exams. Most agencies require personal references, so it is important to begin that process while you are still on campus and can readily meet with your professors. Depending on the job for which you are applying, you may

need to acquire other certifications. For example, to work at a battered women's shelter, victim/witness agency, or rape crisis center in California, you need to complete 60 hours of training. The sooner you begin your employment search, the sooner you can identify the credentials you will need for applying for the job.

MYTH/REALITY

MYTH: If there is space in an intimate partner violence shelter, victims are not turned away.

REALITY: Individuals can be denied entry if they are alcoholics, drug abusers, or elder adults who were not abused by an intimate partner. Some shelters cannot accommodate victims with a disability, and most also deny housing to male children over 13.⁵⁸

At the shelter, an advocate will determine the victim's needs and those of her children (if she has them) through an *intake* process. At intake, a shelter employee helps the victim complete a questionnaire as the prospective shelter resident. The questionnaire is a means of screening a client to page 501 determine whether she and her children are eligible to enter the shelter. It inquires about the extent of the violence and continued threat to the victim and her children, mental health status, suicidal tendencies, financial and social support resources, employment and school matters, and alcohol or drug use. If the shelter staff believe that the victim or her children will be a threat to themselves or other residents, or if their needs exceed the limits of what the shelter can provide, they will not be permitted residence and will be offered alternative housing options.

Many shelters will not admit someone who has a serious mental illness or is under the influence of alcohol or drugs. Those who pose a threat to themselves or other residents will not be allowed to enter. Furthermore, despite Americans with Disabilities Act (ADA) requirements that all public buildings be wheelchair-accessible, have elevators, and otherwise accommodate victims with a disability, some shelters are not in compliance and cannot accept such victims.

Women who are in same-sex relationships may use shelter services, but male victims do not have access to intimate partner shelter services.⁵⁹ If a male victim needs shelter, he must go to another facility, like a homeless shelter—not an ideal setting because there is usually no intake screening process or security measures that preclude the batterer from entering the facility and further harming the victim. As such, a homeless shelter is not as

safe as a shelter for battered women, with its perimeter cameras or fencing, secure access points, or extra patrol and security features.

People often wrongly believe that only the woman in a violent relationship is abused. In reality, a man abusing his partner is also likely abusing any children in the home. Returning children to a violent home without the abuser's having received treatment is not advisable, because the abuser is likely to hurt or sexually assault the children to get back at the victim.⁶⁰

Even if a child is not physically or sexually abused there, growing up in a violent home has a long-term detrimental impact. The Centers for Disease Control and Prevention report that 68–80 percent of children who grow up in violent homes also witness the assaults.⁶¹ Since the early 1990s, research has focused greater attention on the psychological effects on children of witnessing violence. Recent studies indicate that children who are trapped in such settings suffer chronic symptoms of traumatic stress, anxiety, depression, and suicidal behaviors.⁶² They are also at risk for substance abuse, medical and health issues, parental mental health issues and unemployment, poverty, and malnutrition.⁶³ Moreover, children who witness severe or chronic violence are more likely to have psychological problems at younger ages if the violence is frequent and if it happens in close proximity—within the home versus in the community—and to a loved one versus to a stranger.⁶⁴ Some studies indicate that children who witness the abuse of their mothers may be as traumatized as if they were the direct victims of abuse.⁶⁵ As a result, it is important for children to be removed from a violent environment and not be returned to that environment until it is certain the violence has ended.⁶⁶

A limited number of studies have evaluated shelter programs. They suggest that such services may be more helpful to battered women than traditional counseling services alone.⁶⁷ Those who stay in a shelter experience fewer and less intense incidents of new violence. After even a short stay of 14 days, women tend to experience less depression and feel a greater sense of hope.⁶⁸ In a 2004 statewide evaluation of shelter programs in Illinois, researchers found that intimate partner violence victims felt safe while in a shelter and gained important information about violence. Increased support and the counseling programs offered contributed to their improved ability to make decisions, as well as to their greater self-esteem and coping skills.⁶⁹

Sexual Assault Resource Centers

Direct victim support—including hospital and court accompaniments; individual counseling; hotline services; community education; and advocacy for political, social, and institutional change—is offered at *rape crisis centers*, also referred to as *sexual assault resource centers*.⁷⁰

MYTH/REALITY

MYTH: Only young, pretty women are sexually assaulted.

REALITY: Any person can be the victim of a sexual assault.⁷¹

Sexual assault resource centers help educate the community to understand that no one “asks for” or wants to be sexually assaulted, that anyone can be a target, that rape is a violent act of power and dominance (not of sex), and that victims are far more likely to be raped by someone they know than by a stranger. These centers also focus prevention programs on school-age children, who are most at risk for sexual assault.

In traditional approaches, no services were available for secondary rape victims. Over time, however, the administrators of sexual assault centers and other victim service programs realized the impact of vicarious trauma on family and friends and broadened their work to include services for loved ones. They now also place greater emphasis on outreach to underserved populations such as minority and immigrant groups for whom English is a second language. Recent government budget cuts have required some sexual assault centers to merge with other victim service providers such as intimate partner violence programs and to work with more diverse victim populations.

Sexual Assault Nurse Examiners

The first **sexual assault nurse examiner (SANE)** program was created in Minnesota in 1977. By the mid-1990s, many hospitals in the United States and around the world had sexual assault nurse examiners on staff. These nurses provide 24-hour first-response medical care and crisis intervention for rape victims in hospitals and clinics.

sexual assault nurse examiner (SANE)

Nurse who provides 24-hour first-response medical care and crisis intervention for rape victims in hospitals and clinics.

In a case of sexual assault, the victim's body is considered a crime scene. It is thus essential that she go to the hospital as quickly as possible and not eat, drink, shower, brush her teeth, or urinate until after she has been seen by the SANE nurse, who will conduct a forensic exam that produces a "rape kit" (with or without the presence of a victim advocate, depending on the victim's wishes). The nurse will have received extensive training in evidence collection, use of specialized equipment such as a colposcope (a lighted magnifying instrument used during gynecological exams), chain-of-evidence requirements, expert testimony, injury detection and treatment, pregnancy and emergency contraception, STD/AIDS testing, rape trauma syndrome, and local victim services. By the mid-2000s, special pediatric examiners were also being trained to work with the youngest victims of sexual assault, those under 2 years old.⁷²

Community Education and Outreach

One of a victim service provider's critical roles is to offer community education and outreach to victims who may not know about services. Education can be community-based through groups such as AARP (formerly known as the American Association of Retired Persons), Boy Scouts and Girl Scouts, and Rotary Club; or school-based through elementary, junior high, high school, and colleges and universities. Education enables the victim services organization to raise awareness about various types of victimization, provide an expanded definition of victimization, target specific populations most likely to be victimized, discuss particular services, and dispel misconceptions about crime and victims.

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Matters of Ethics

When a Survivor Wants to Meet the Offender

Working with someone who has survived a traumatic event can be a long-term relationship that goes beyond providing initial crisis services and referrals and navigating the criminal justice system. If you are ever an advocate for such a person, you may find yourself having continued contact with an individual who has no one else to turn to for assistance.



Oscar Sosa/AP Images

Imagine, for example, that you are a victim advocate who is working with “Jim,” a homicide survivor whose sister was one of several women who was kidnapped, brutally raped, and ultimately murdered. The murderer is now incarcerated and on death row. As the date nears, Jim decides that he would like to speak to the person who killed his sister—to ask him several questions in order to understand why he did what he did and to gain a sense of perspective and closure.



As an advocate, you contact the state Department of Corrections (DOC) to determine whether such a meeting is possible. As a liaison among the DOC, Jim, and the offender, you

find out that the offender agrees to this meeting but expresses no remorse. In fact, he states that if given the chance to do it again, he would gladly murder all those women, adding that “they deserved it anyway.” You inform Jim about these sentiments and note your concerns about his continued long-term recovery if he moves forward with a face-to-face meeting. Jim understands but insists on meeting with his sister’s murderer. Consider: What ethical issues does this situation raise?

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- As a victim advocate, should you continue to facilitate this meeting? Why or why not?
- Knowing that this meeting will be difficult for Jim—and perhaps even detrimental to him—how do you balance what Jim wants with what may be best for his continued recovery?
- What actions should you consider to ensure that if the meeting occurs, it is a safe environment for Jim?

Lack of knowledge about available services can stem from a language barrier, immigrant status, or a culture that limits a victim’s ability to seek protection against abusers. Other barriers include race, geography, disability, and sexual orientation. In the case of sexual orientation, the victim may perceive victim service providers as homophobic and unwilling to provide services. As such, some same-sex victims have individual barriers that prevent them from seeking services even though they may know of their availability. Victim service providers must use creative means of reaching these diverse populations and the public, including word-of-mouth from those who used the services in the past; advertisements in local and non-English newspapers, buses, train stations, and public restrooms; and billboards on streets and highways. Public service announcements on the radio, television, and Internet, including language-specific media, are critical tools for reaching individuals who may be illiterate or non-English speaking or who have limited reading skills.⁷³

There are a number of ethical dilemmas that arise in working with victims. One such dilemma is noted in the “Matters of Ethics” box.



▲ Victims' Rights Advocate Bret Vinocur

Bret Vinocur, holding a photo of Bruce Lower—a man who spent 16 years in prison for killing a 3-year-old girl—speaks to the Ohio Senate Criminal Justice Committee at the Ohio Statehouse in Columbus.

Renee Sauer/Columbus Dispatch/AP Images

VICTIM ASSISTANCE FOR ELDER ADULTS

Elder adults, usually defined as those over 65 years old, have unique needs as victims compared to individuals in other age groups. Although elder adults may seek services from regular victim service providers, some programs specifically serve elder adult victims. One type of elder resource that is largely lacking in most communities is emergency shelters for elder abuse victims. With the continuing aging of the post–World War II baby boomers, this type of service will likely become a more critical need over the next 20 [page 504](#) years. Based on data from the U.S. Bureau of the Census, Figure 14-3 shows that projections for the year 2050 for people 65 and over will reach almost 90 million (20.2 percent of the total population) and those 85 and over will reach almost 20 million people (4.3 percent of the total population).

**Population age 65 and over and age 85 and over, selected years
1900–2008 and projected 2010–2050 (millions)**

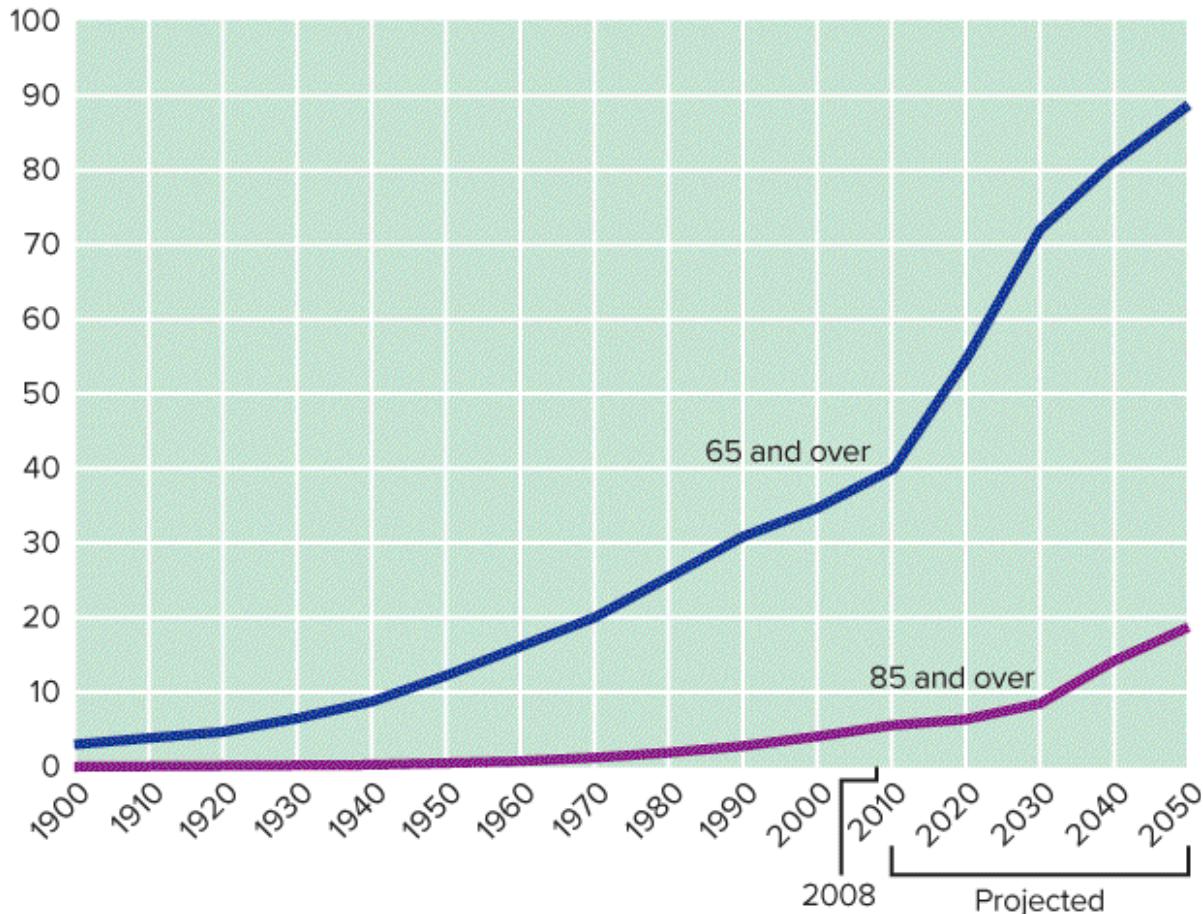


FIGURE 14-3 America's Growing Elderly Population

SOURCE: U.S. Census Bureau, Decennial Census, Population Estimates and Projections.

Adult Protective Services

Elder abuse is a relatively new area of criminal justice intervention, but it is not a new phenomenon. Once viewed as a private matter, it was first formally addressed in the United States in the mid-1970s, with the creation of the **Adult Protective Services** program, funded under Title XX of the Social Security Act. Adult Protective Services provides help and safeguards for elder adults and dependent adults with disabilities who are in danger of being mistreated or neglected, who cannot protect themselves, or who have no one to assist them. Each state has its own unique program that operates without a federal funding stream and thus is based on state resources. The mandatory reporting provision

of Adult Protective Services in all states was motivated by concerns about an increase in reports of abuse and neglect among elder and dependent adults.⁷⁴

Adult Protective Services

State services provided to dependent adults who are in danger of being mistreated or neglected, who are unable to protect themselves, or who have no one to assist them.

According to a 2017 national study, most Adult Protective Services' agencies reported about 235,000 victims of elder abuse, including self-neglect. "While the data in the new federal reporting system—called the National Adult Maltreatment Reporting System—is full of gaps and aberrations, what is clear is that the number of abuse and neglect cases is soaring nationwide."⁷⁵

In the victim services field, it is never clear exactly what is indicated by an increase in reporting. Does the increase mean that there is more abuse? Does it mean that more education about the issue has caused more people to report abuse and to seek services? Or does it mean that there are simply more elder adults available to be abused?⁷⁶

TRIADS

Police departments, sheriff's offices, and senior groups (like AARP) in many communities have joined in a collaborative effort called **TRIADS** to reduce the victimization of elder adults. The first TRIAD was created in 1989 in St. Martin Parish, Louisiana. Today, district attorneys' offices, fire departments, agencies and departments on aging, emergency social and medical services, and other community organizations that work directly with elder adults are members of TRIADS. TRIADS work through a cooperative partnership to prevent elder abuse and neglect, decrease fears of these victimizations, and improve services. They also inform elder adults about crimes such as identity theft, teach them ways to reduce their vulnerability, provide transportation to hospitals and courtrooms, repair damage to homes, and increase their awareness of other community resources.⁷⁷

TRIAD

A collaborative effort among police departments, sheriff's offices, and senior groups (like AARP) to reduce crime and the victimization of elder adults.

COLLABORATIVE RESPONSES TO VICTIMS

Although a wide range of 1960s social activism set the stage, the emergence of efforts in support of crime victims owes the most to the women's movement, which put considerable pressure on the criminal justice system to do more to protect victims, ensure their rights, and help them seek justice. Responding to this pressure, the criminal justice system has created programs to address specific types of crimes, streamlined the investigation and prosecution of cases, experimented with alternative sanctions to deter criminal behavior, and worked to ensure victims' rights.

To accomplish its mission, the criminal justice system needs crime victims—and victims, in return for their cooperation, want to be treated fairly (see the “Disconnects” box). They do not want to have to endure further victimizations at the hands of the criminal justice system itself. To help recover from their injuries and trauma and to rebuild their relationship with the community, victims need the assistance of many different professionals from diverse disciplines. Rarely does a single approach or a simple answer address all of a victim's problems. The need to provide victims with comprehensive services has inspired many organizations to form partnerships.

Intimate Partner Violence Councils

By the late 1980s, intimate partner violence service providers realized that there was a problem in the lack of coordination of health, social, and other services across the criminal justice system. Battered women who did not receive all the services they needed might fall through the social safety net or, even worse, return to their abusive partners. Thus intimate partner violence service partnerships were created.⁷⁸ In different places these have various names, but most often they are called domestic violence councils, coordinating councils, response teams, or roundtables. Regardless of the name, their goals are the same: to work collaboratively to end intimate partner violence, increase survivor safety, and raise the accountability for batterers.

Despite the early efforts and widespread adoption of intimate partner violence councils, few of these programs have been evaluated. A 2006 evaluation in one midwestern state with 44 intimate partner violence councils found that councils varied in size from 8 to 116 members and were in existence from 7 months to 16 years, with an average of about 5 years. Members were drawn from intimate partner violence programs (law

enforcement, prosecutors and district courts, and legal services), batterer intervention programs, health and mental health care organizations, social service agencies, Child Protective Services, faith-based organizations, educational institutions, and local businesses. Interestingly, however, only 29 percent of the councils included an intimate partner violence survivor.



▲ Texas Council on Family Violence “Silent Witness” Campaign

Survivor Angela Catalina De Hoyos speaks at an intimate partner violence rally at the Texas State Capitol to remember the 115 women killed in 2004 by their intimate partners.

Braden Wolfe/MCT/Newscom

The study found that leaders of these councils perceived the organization as an important step in creating a coordinated community response to intimate partner violence. On average, they rated their councils as moderately effective at accomplishing their goals. The study concluded that councils can play a positive role in addressing intimate partner violence, but it recommended that they focus more on criminal justice than on health care or education. Although interagency cooperation contributes to increasing rates of identification and intervention and reducing violence, determining its overall effectiveness will require more research.⁷⁹

DIS Connects

When Victims Are Revictimized

In 2002 in Springdale, Arkansas, a 14-year-old juvenile, Josh Duggar, sexually molested four of his younger sisters at different times. His parents found out and reported it to the police. The juvenile was punished by the father and also went through a 5-month Christian counseling program. The police record was then sealed.

Thirteen years later, Josh Duggar was a 27-year-old father of three and a TV celebrity on a conservative Christian program. On May 19, 2015, a national celebrity gossip tabloid, *In Touch*, found out about Duggar's earlier transgressions and got a copy of the police report from the Springdale chief of police by invoking the Freedom of Information Act (FOIA). The tabloid promptly posted the juvenile report on their website with the names of the victims redacted. In response, Josh confirmed the molestations in a Facebook statement. The local juvenile judge ordered the official police report destroyed and expunged.

Josh Duggar's parents, Jim Bob and Michelle Duggar, also celebrities on a Christian TV show, *19 Kids and Counting*, agreed to do a CNN television interview on June 3, 2015, and revealed that the victims were their daughters. Two days later, a Fox News reporter interviewed two of the four sisters, Jill and Jessa, who were now married with children of their own and were also part of their parents' TV show. They were upset at being revictimized by this turn of events. The image of their model Christian family had been tainted, some of the supporters of their show withdrew their commercials, and later that year the show was canceled.



FOX News Channel/Getty Images

In spite of both the police chief and the city attorney researching whether the report had to be released under the state FOIA law, there seemed to be confusion over the legality of the chief's actions. An Arkansas state senator, Bart Hester, noted that because this report was made public, the victims had been revictimized, contrary to the intent of the law designed to protect the identities of minors, and he wondered whether all child sex-crime victims' identities in Springdale might now be at risk of being exposed to the public.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Whose best interests are served by revealing the details of this police report: the offender's, the victims', or the media's? Who is responsible for this secondary victimization of the victims?
- If this offender has never again molested anyone and has led a law-abiding life, what is the point of this media frenzy in a gossip tabloid? Are there conflicting interests?
- How much concern was shown to the victims after their first victimization, and what type of response do they need now?

SOURCES: Larry Henry, "Senator: Springdale Police Chief Should Be Fired over Child Sex-Crime Report," 5 News, May 23, 2015. <http://5newsonline.com/2015/05/23/senator-springdale-police-chief-should-be-fired-over-child-sex-crime-report/> (retrieved June 24, 2015); Mary Bowerman, Timeline: Duggar Sex-Abuse Scandal, USA Today (June 4, 2015). www.usatoday.com/story/life/people/2015/05/28/timeline-josh-duggar-19-kids-and-counting-tlc-sex-abuse-scandal/28066229/ (retrieved June 24, 2015); Lisa de Morales, "Josh Duggar Sisters/Victims: TLC Series 'Window Of Opportunity' God Allowed," Deadline.com, June 5,

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Sexual Assault Response Teams

Local police officers, victim advocates, SANE practitioners, and prosecutors make up the **sexual assault response team (SART)**, which in many states works to determine the most effective way to respond to sexual assault. SARTs investigate recent cases of sexual assault to learn how they were handled, whether mistakes were made, and when something was done well. They also examine what types of sexual assaults occur; by whom, when, and where they were perpetrated; what preventive measures can be taken; and what services are needed. The goal is to improve reporting practices, to provide more effective services, and to remove barriers that prevent investigating and prosecuting rape.⁸⁰

sexual assault response team (SART)

In many states, a collaboration of local police officers, victim advocates, SANE practitioners, and prosecutors seeking to determine the most effective way to respond to sexual assault.

Specialized Units

Recognizing differences among victims and their responses to crimes, all levels of the government have created units to provide specialized training for practitioners who work with a single type of victim with special needs. These units are primarily located in law enforcement agencies, district page 507 attorneys' offices, and government-run victim services agencies like Child Protective Services and Adult Protective Services.

Specialized units give practitioners knowledge, skills, and experience in working with assigned victims. Although every victim is different, there are similarities among victims of a particular type of crime, such as intimate partner violence, sexual crime, child abuse, elder abuse, property crime, and homicide. In addition to providing direct victim services, specialized units develop interview strategies and training curricula for others who may work with these victims but are not housed in a specialized unit.⁸¹

One example of a specialized unit is a *multidisciplinary interview center (MDIC)*, also known as a child advocacy center. Here, child victims of physical and sexual assault are interviewed by a trained specialist in a child-friendly environment. The MDIC staff coordinates the interviews of law enforcement, prosecutors, defense attorneys, and others who may have to talk with the child about the victimization. Before meeting the child, the interviewer collects questions from all participants in the process. Thus the victim has to retell her story about the crime only once to the trained specialist, without having to repeat it multiple times, in different locations, and to different people.⁸²

Restorative Justice

A process that gives victims the opportunity of having a stronger role in the justice process, *restorative justice* recognizes that the individual victims *and* offenders are the true victims of the crime conflict. It seeks to empower the victim to resolve the conflict, move beyond her vulnerabilities, and achieve closure. It also focuses on trying to have the offender make amends rather than relying only on punishment as a response to victimization.⁸³

In the late 1970s, some communities in the United States began to adopt restorative justice to rehabilitate juvenile offenders who committed property crimes, showing them the impact of their actions on victims. By the mid-2000s, many more restorative justice programs were being used for all types of offenses, including personal crimes, homicides, family violence, and even sexual assault.⁸⁴ Participants may be victim advocates, victim services providers, and those trained to understand the dynamics of abusive relationships. As practiced in the United States, the restorative justice process takes place outside the formal criminal justice system. Recall that in the United States it is “the people,” not the individual victim, who prosecute accused offenders and who, if they are found guilty, punish them.

Controversies over Restorative Justice Restorative justice programs are controversial when they are attempted in cases of family violence and sexual assault due to the violent nature of these crimes, the relationship between victim and offender, and the power imbalances inherent in these situations. Critics point to the victim’s safety; the potential for the offender to pressure, coerce, or manipulate the victim into accepting certain outcomes; and the possibility that the remedy will be too lenient and send the wrong message to

the offender.⁸⁵ The emphasis on forgiveness can even serve to continue family violence: Batterers often ask forgiveness, only to batter again.⁸⁶

Proponents of restorative justice respond that the ideals of other programs neither minimize the victimization itself nor call for reconciliation.⁸⁷ They highlight as well the merits of justice alternatives and the availability of more options for women, offenders, and the community than the criminal justice system can provide. Critics, on the other hand, oppose diverting an offender from the criminal justice system because it gives the appearance of being lenient on crime.⁸⁸

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Restorative Justice in Global Perspective Restorative justice is a primary form of seeking redress in many parts of the world. The principles of restorative justice have a long history and are consistent with many world religions. In restorative justice, a community takes an active role in handling its own problems through open dialogue and mediation with victims and with offenders that makes them accountable for their involvement in victimization.

In Australia, restorative justice is a form of “reintegrative shaming,” in which the community shames the offender for her crime. It is believed that the condemnation implicit in shaming helps the offender realize the impact of her crimes, motivating her to stop offending and to pursue opportunities to reintegrate into the community. The Czech Republic’s Department of Probation has a restorative justice program that brings together victims, offenders, and mediators to develop presentence reports and determine alternative sanctions for the crime. The mediator works with offenders specifically to improve interpersonal relationships, understand the implications of the crime for society, and address its consequences, as well as to determine the type of rehabilitation—substance abuse treatment, anger management, education, or job training—needed to prevent reoffending.

Community and family group conferencing is another restorative justice model, launched in 1989 in New Zealand and also used in Australia, the United States, and South Africa. This program is based on the principles of sanctioning and dispute resolution common among the Maori, New Zealand’s indigenous population. Managed by the police and used primarily with juvenile offenders, it outlines the consequences of the crime and encourages youth to reform rather than reoffend. The victim and the offender’s family, friends, and community work together to determine appropriate sanctions and

outcomes, to explore prevention, and to support the offender in meeting the conference's guidelines. If the offender does not comply, the community and family group reconvenes to determine whether more restrictive supervision or custody is needed.

Another, and more controversial, type of restorative justice program in New Zealand is the Youth Justice Conference, an approach centered on conferences specifically designed for juvenile sexual offenders and their victims. This approach found that the Youth Justice Conference provides a just process for most young offenders, keeps youth accountable for their actions, addresses the needs of victims and offenders, and contributes to a reduction in recidivism. The restorative outcome is improved when victims, offenders, and their families each participate, engage, and are satisfied with the process. Using a therapeutic approach, a neutral location for meetings, and a briefing for all parties regarding the process contributes to healing outcomes for participants, especially victims.⁸⁹

In the United States, traditional restorative justice programs are largely offered only to juvenile offenders. Since the mid-2000s, however, a new type of restorative justice program has emerged in the States, known as the *listening project*. The listening project method features an arrangement, akin to a focus group, whereby the victim or victims of a sexual assault meet with a victim service provider and a victim advocate to discuss any aspect of the crime that the survivors feel comfortable discussing. The purpose is to give survivors an opportunity to have a voice regarding their own experiences, to ask questions and receive answers, to validate their experiences and feelings, and to receive support and diminish self-blame. Participants mention achieving a sense of empowerment by speaking out and providing input to service providers about resolution needs following their assault.⁹⁰ Clearly, restorative justice can benefit some victims, but there are limits to what it can achieve.

SUMMARY

A journey that began in 1947 with Benjamin Mendelsohn's pioneering work—which coincided with the United Nations' 1948 Universal Declaration of Human Rights—has grown into a worldwide movement on behalf of crime victims. In the mid-1960s the United States launched the National

Crime Victimization Surveys, which for the first time measured the full scope of victimization and paved the way for new insights about victims and their role in the criminal justice process. This new information helped to create victim programs and served to prompt legislators to enact needed laws.

Victim assistance programs began providing services to all types of victims, and in 1976 the National Organization for Victim Assistance was created to help forge a new profession of victim advocates, enabling them to share their knowledge and become a national voice on behalf of victims. In 1984 the U.S. Department of Justice established the Office for Victims of Crime and Congress enacted the Victims of Crime Act, which together serve as major resources for helping victims. In 1985 the United Nations adopted its Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, in which all the nations of the world agreed that victims should be treated with dignity and respect and should receive a wide range of rights.

All these events helped to bring about important innovations in laws, programs, research, and policies that have significantly improved the status of crime victims in this country. What began as a lone voice in Europe has become a world movement that has significantly humanized the way victims are treated and that continues to make progress toward the goal of treating all victims with the fairness, care, respect, and dignity they deserve.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Differentiate among various victims' responses to trauma.

- Psychic trauma, which results from severe emotional stress, immobilizes the victim's mind and body and can result in long-lasting emotional injury.
- Resilient persons might show no effects of trauma and may cope well.
- Victims may show mild effects and recover in a few minutes or hours, but some might display extreme effects and need days, weeks, or months to recover (or not, especially when treatment is not provided).

Identify the major historical milestones that have influenced the formation of victimology, victim services, and the victims' rights movement.

- Early human cultures placed victims at the center of their legal procedures, giving them a dominant role in righting the wrongs committed against them.
- The Code of Ur-Nammu and the Code of Hammurabi called for restoring equity between the offender and the victim.

- In the 1960s and 1970s, social activists in such efforts as civil rights, women's rights, children's rights, gay rights, and opposition to the Vietnam War paved the way for the rise of the victims' rights movement.
- In 1966, the first victimization surveys were conducted for the President's Commission on Law Enforcement and the Administration of Justice.
- Under the Victims of Crime Act (VOCA) of 1984, funds were distributed throughout the United States for victim compensation and victim assistance programs.
- In 1994, Congress enacted the Violence Against Women Act (VAWA) to support the investigation and prosecution of violent crimes against women.

Describe the types of crisis intervention programs that work with crime victims.

- Crisis intervention offers immediate assistance to victims.
- Crisis hotlines operate 24 hours a day, 7 days a week, and through them the primary victim and secondary victims can discuss any type of victimization, get information and access resources such as a shelter or child care, and find out how to get a protective order.
- Shelters are short-term housing options for victims fleeing an abusive home.
- Rape crisis centers provide immediate assistance to victims of a sexual assault, as well as personnel to accompany victims to the hospital and to court.
- Sexual assault nurse examiners (SANEs) provide immediate assistance and conduct the rape exam for victims of a sexual assault.

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Identify the various types of victims and the roles and responsibilities of victim advocates.

- A primary victim is the person injured or killed as a direct result of a criminal act.
- A secondary victim is someone who, experiencing sympathetic pain, is affected by the primary victim's suffering.
- Secondary victimization occurs when the primary victim is abused a second time, usually by family, friends, and members of the criminal justice system, when they try to help the victim or use them in their efforts to arrest, prosecute, sentence, and punish the offender.
- *Survivor* is a term used to describe a relative or loved one of someone who has been killed, as well as a crime victim who copes well and manages to resume a normal life.

- Victim advocates are direct providers of victim services.
- Other victim advocates are assigned to a particular justice system—federal, judicial, military, juvenile, or tribal.
- The role of the victim advocate is to help the victim to achieve recovery by providing assistance with such community services as health care, housing, education, and employment, as well as to support the victim in every phase of the criminal justice process.

Differentiate between Adult Protective Services and TRIADS.

- Adult Protective Services is a program that provides safeguards and help to elder adults and dependent adults with disabilities who are in danger of being mistreated or neglected, who are unable to protect themselves, or who have no one to assist them.
- A TRIAD is a collaborative effort among some police departments, sheriff's offices, those who work with elder adults, and representatives of elder adult groups (such as AARP or a local agency on aging) to address issues of interest to the elder adult community.

Describe the various kinds of collaborative responses to victims.

- Intimate partner violence councils work collaboratively to end intimate partner violence, help ensure survivor safety, and increase batterer accountability.
- The SART is made up of local police officers, victim advocates, SANE practitioners, and prosecutors who collaborate to determine the best and most effective way to work on sexual assault cases.
- Restorative justice aims to empower the victim to resolve the conflict, to move beyond perceived vulnerabilities, and to achieve closure. Restorative justice focuses on having the offender make amends for his actions rather than on increasing punishments.

Key Terms

Adult Protective Services 504
crime victim compensation 493

crime victimization 488
crisis intervention 498
dark figure of crime 485
long-term therapy 496
primary victim 487
psychic trauma 483
secondary victim 487
secondary victimization 488
sexual assault nurse examiner (SANE) 502
sexual assault response team (SART) 506
short-term therapy 495
survivor 488
TRIAD 504
vicarious trauma (compassion fatigue) 497
victim advocate 488
victim recidivism 488
victim services 488

Study Questions

1. A mother mourning the loss of a child due to criminal behavior is a/an
 - a. primary victim.
 - b. secondary victim.
 - c. secondary victimization.
 - d. inconsequential victim.
2. _____ has been a long-standing societal response in the United States.
 - a. Victim ignoring
 - b. Victim criticism
 - c. Victim rights
 - d. Victim concern
3. All of the following influenced the victims' rights movement *except*
 - a. the President's Commission on Law Enforcement and the Administration of Justice.
 - b. the women's movement.
 - c. World War II.

- d. the civil rights movement.
4. The condition of being free of dysfunctional symptoms caused by victimization, such as difficulty working, sleeping, eating, and forming relationships, is referred to as
- victim recidivism.
 - revictimization.
 - crisis intervention.
 - victim recovery.
5. The organization that investigates allegations of abuse against elder adults and dependent adults is called
- Adult Protective Services.
 - Child Protective Services.
 - TRIAD.
 - the Office for Older Victims of Crime.

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6. _____ provides immediate 24-hour, 7 days a week crisis intervention to all primary and secondary victims, as well as information, resources, and referrals for more long-term assistance.
- A sexual assault nurse examiner
 - A hotline
 - The Office for Victims of Crime
 - Mandatory reporting
7. A specialized nurse who performs forensic exams for victims of sexual assault is called a/an
- SANE.
 - SART.
 - POMC.
 - OVC.
8. All of the following can be repaid by victim compensation programs *except*
- medical expenses.
 - counseling.
 - pain and suffering.
 - funeral expenses.
9. Victim compensation programs set maximum limits on the amount a victim can receive. Most state maximums are set at
- \$10,000.
 - \$25,000.
 - \$50,000.
 - \$75,000.
10. A group that is victimized at much higher rates than other populations in the United States is
- Native Americans.
 - Blacks.
 - Whites.
 - Latinos.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. Explain why it is important to understand the impact of victim blaming in victimology and victim services.
2. Should a person on probation or parole who is also a victim of a crime be denied victim compensation? Explain.
3. Should restorative justice be used for intimate partner violence and sexual assault related crimes? Why or why not?

Endnotes

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15 Juvenile Justice



Mike Fiala/Hulton Archive/Getty Images

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- Describe the early treatment of youthful offenders.

- Analyze current juvenile crime rates and trends.
- Evaluate the philosophy behind the creation of juvenile courts.
- Describe the breadth and limitations of juvenile court jurisdiction.
- Compare and contrast the constitutional rights of juvenile and adult offenders.
- Characterize the types of juvenile correctional facilities in the United States.
- Analyze the victimization of juveniles and the services available to support them.

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Realities and Challenges

Alternatives for Juveniles

In Lake County, Ohio, youths who are incarcerated in the juvenile detention center can take part in a garden program. Mentored by local master gardeners, they grow vegetables on the center's grounds. The harvest is eventually prepared in a special meal. In California, incarcerated girls may get a chance to rehabilitate and train dogs that have been rescued from high-kill shelters. These dogs are later placed for adoption. In Jefferson County, New York, juveniles awaiting trial may be housed in a cottage-like setting and where they attend public schools and are encouraged to become engaged in their community. In Bibb County, Georgia, a new program targets students who commit minor crimes in public schools. Instead of being funneled into the justice system, these students are given access to counseling and other programs.

While these programs take different approaches, they all stem from similar principles. All of them are based on the idea that instead of simply receiving punishment, youths who commit crimes ought to be given opportunities for treatment and rehabilitation.



David Montesino/Tacoma News Tribune/TNS/Alamy

The roots of the Western criminal justice system reach back centuries, but only within the last 100 years or so has the system given special attention and treatment to offenders who are not yet adults. Throughout the twentieth century and into the twenty-first, society has struggled with the perplexing question of how to deal with children who commit crimes. Should we focus on rehabilitation or punishment? How can a juvenile justice system process delinquents and reduce delinquency yet not deny juveniles fairness and justice? What kinds of incarceration and treatment programs should we provide, and how should these differ from adult programs? At what point should we treat a youthful offender as an adult?

This chapter describes youth crime today and interactions between law enforcement and youths. We trace the evolution of juvenile courts and the

Supreme Court cases that have significantly affected the rights of children accused of crimes. We explore the procedures in the juvenile judicial and correction systems and how they differ from those of the adult system, and we examine the growing trend to try juveniles as adults. The chapter closes with a look at the support services for juveniles who are victims, not offenders.

A BRIEF HISTORY OF JUVENILE JUSTICE

Throughout most of recorded history, young offenders were tried by the same courts that tried adults and were subject to the same sanctions, including incarceration and execution. Even the concept of “adolescent” is itself recent.¹ Historically, parents had nearly absolute authority over their small children, whom the law treated as chattel—literally, property. Children took on the responsibilities of adulthood at a very young age. For example, they often were expected to work and help support their family at ages 4 or 5, and they usually married in their early teens.

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Even so, some people understood that youthful criminals should not always be treated like adults. For example, English common law recognized the **infancy defense**, by which children under age 7 could not be criminally prosecuted because they were too young to form *mens rea*, or criminal intent. A child between the ages of 7 and 14 could be prosecuted, but only if the prosecutor could prove that the child knew that what he had done was wrong. After reaching age 14, a child was prosecuted like an adult. The American colonies adopted the infancy defense, and many states still recognize it in some form.²

infancy defense

A defense holding that children under age 7 could not be criminally prosecuted because they were too young to form *mens rea*, or criminal intent.

Preview

A BRIEF HISTORY OF JUVENILE JUSTICE

JUVENILE CRIME TODAY

POLICE AND YOUTH CRIME

THE MODERN JUVENILE COURT SYSTEM

PROCESSING JUVENILE OFFENDERS

JUVENILE CORRECTIONS

VICTIMIZATION AND VICTIM SUPPORT SERVICES

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

Early Methods of Control

Changes in the European economy during the sixteenth and seventeenth centuries brought people from rural areas to the cities and increased the number of individuals living in poverty. Crime rates went up. The traditional method of controlling children—the family—no longer sufficed because parents commonly toiled long hours away from home, often leaving children alone. Many impoverished parents were unable to provide for their children at all; children were abandoned or orphaned and left to beg, steal, or starve. Those in power, increasingly concerned about the threat they perceived from errant or unmanageable youths, created several methods to deal with them.

One option was **binding out** (sometimes called *placing out*), sending children to live with relatively wealthy families who provided food, shelter, and clothing, the basic necessities of life. In return, the children were obligated to work for the families until adulthood, typically doing manual labor such as farming and domestic duties. Another option was to send the children to institutions that served as poorhouses and prisons for young and old alike. The first of these was Bridewell, which opened in London in 1556. Similar institutions were soon built throughout England, some with specific facilities for youths. Inmates in such institutions were required to work long hours at tasks such as textile manufacturing.³

binding out

The practice of sending children to live with relatively wealthy families who provided the child with the basic necessities of life in return for labor.

The colonization of North America brought another solution for problem children in England: They were encouraged—or required—to immigrate to the colonies, where they provided a ready source of labor. The distinction between this practice of *indentured servitude* and actual slavery was slight, and young indentured servants were often mistreated. In the colonies, children who committed crimes were controlled by their parents, their communities, and their churches. Parents had few restrictions on their authority over their children. Actions we would consider abusive today, such as beating children with rods, were not only permitted but often encouraged. Several colonies authorized capital punishment for children who disobeyed their parents, although it was seldom, if ever, carried out.⁴

As the Industrial Revolution began at the end of the eighteenth century, conditions for children in the United States were often appalling. Many lived in dire poverty, and those as young as 4 worked in factories and mines, under dangerous conditions and for very little pay. Initially, children who committed crimes and poor children were placed in adult jails and workhouses. In 1825 in New York, an organization called the Society for the Prevention of Pauperism opened the House of Refuge, the first institution specifically for youths. Other cities soon established their own refuges to house criminal children as well as orphans and the destitute. The philosophy was to keep the inmates from a life of poverty and crime by imposing strict discipline and order and requiring them to perform hard work such as making furniture or nails if they were boys, or sewing or doing laundry if they were girls. Conditions within the houses of refuge were often deplorable: Racism and sexism were common, adults beat the children, and stronger children preyed upon the weak.⁵

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The Child Saving Movement

By the middle of the nineteenth century, most child advocates recognized the need for separate correctional institutions for children. Some states, counties, and cities opened their own institutions for wayward youth. These were called **reform schools** or *industrial schools*, and they housed children who were delinquent (who committed crimes), disobedient, or otherwise wayward.⁶

However, no special legal procedures for juveniles were available until the early twentieth century, when juvenile courts were created.

reform school

An industrial school that housed children who were delinquent, disobedient, or otherwise wayward.



▲ Child Laborers

Until well into the twentieth century, even young children often worked long hours in dangerous jobs.

Bettmann/Getty Images

In the late 1800s, a number of middle-class and wealthy women became activists for better living conditions for children. Known as the **child savers**, these women lobbied for child labor regulations, laws against child abuse, and a specialized justice system that would focus on the needs of youths. Largely due to their efforts, the first juvenile court opened its doors in Chicago in 1899. By 1925, all but two states had specialized juvenile courts.⁷

child savers

Women in the 1800s who lobbied for child labor regulations, laws against child abuse, and a specialized justice system that would focus on the needs of youths.

Several factors made it logical to try young people in juvenile rather than adult court and not impose adult sanctions on them. First, adult correctional institutions were dangerous places for children. Not only were the young preyed upon by adult inmates, but youths usually learned new criminal behaviors there. Second, early intervention can lead to full rehabilitation of children. Third, because children do not yet have the cognitive ability to fully appreciate the consequences of their actions, they should not be held fully responsible for them as adults are. Finally, troubled children often live in troubled families. They have not yet had the opportunity to mature and move away from negative family influences.

Juvenile courts were intended to be less formal than adult courts. Instead of focusing on punishment, they were to use the treatment model (see Chapter 11) and emphasize solving children's problems and preventing crime. The legal doctrine of *parens patriae*—literally, “parent of the country”—gives the government authority to step in and make decisions about children, even against the wishes of their parents, when doing so is in the children's best interests. The juvenile court judge, who often did not even have a law degree, was given much more discretion than a criminal court judge and would sit down with the child and other interested parties, such as the parents, determine what the problems were, and devise a solution. The intention was that children would have many more placement options than adults, so a treatment plan could be tailored to each child's needs.

parens patriae

A legal doctrine that gives the government authority to step in and make decisions about children, even against the wishes of their parents, when doing so is in the children's best interests.

Unlike adult criminal cases, juvenile cases were not public, and children were often referred to by their initials rather than their names. Juvenile records were usually kept private and often erased once the child reached adulthood. The creators of juvenile courts even devised a new vocabulary to avoid the stigma of criminal corrections.

MYTH/REALITY

MYTH: The problems faced by the juvenile justice system are recent because juveniles today are much more delinquent than they were 100 years ago.

REALITY: The problems the juvenile justice system faces are not related to changes in juvenile behavior. From its creation, the juvenile justice system encountered problems, such as large caseloads and an overwhelmed and undertrained staff.⁸

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The promises of the juvenile court were never realized. Almost as soon as the courts opened, they found themselves with enormous caseloads that made it impossible for judges to give each child individualized attention. Courts were understaffed and poorly funded, and judges often had little or no experience or training in dealing with children. Cases were completed in as little as 10 minutes, and placement options remained few, especially for females. As the juvenile court system enters its second century, these problems remain even as new ones surface. Nevertheless, the juvenile court remains an important part of the justice system.⁹



▲ Early Juvenile Court

Compared to adult courts, juvenile courts were intended to be less formal.

National Child Labor Committee Collection, Library of Congress, Prints and Photographs Division [LC-DIG-nclc-04645]

JUVENILE CRIME TODAY

The term **juvenile delinquency** refers to the illegal acts that are committed by juveniles (also called *minors*—individuals not considered adults and therefore not responsible for their actions in the legal sense). Depending on the state, a minor is anyone under the age of either 18 or 21. An additional category of misbehavior by children is the **status offense**, an act that would not be a crime if committed by an adult. Examples of such offenses are running away from home, curfew violations, and school truancy.

juvenile delinquency

Illegal acts that are committed by minors.

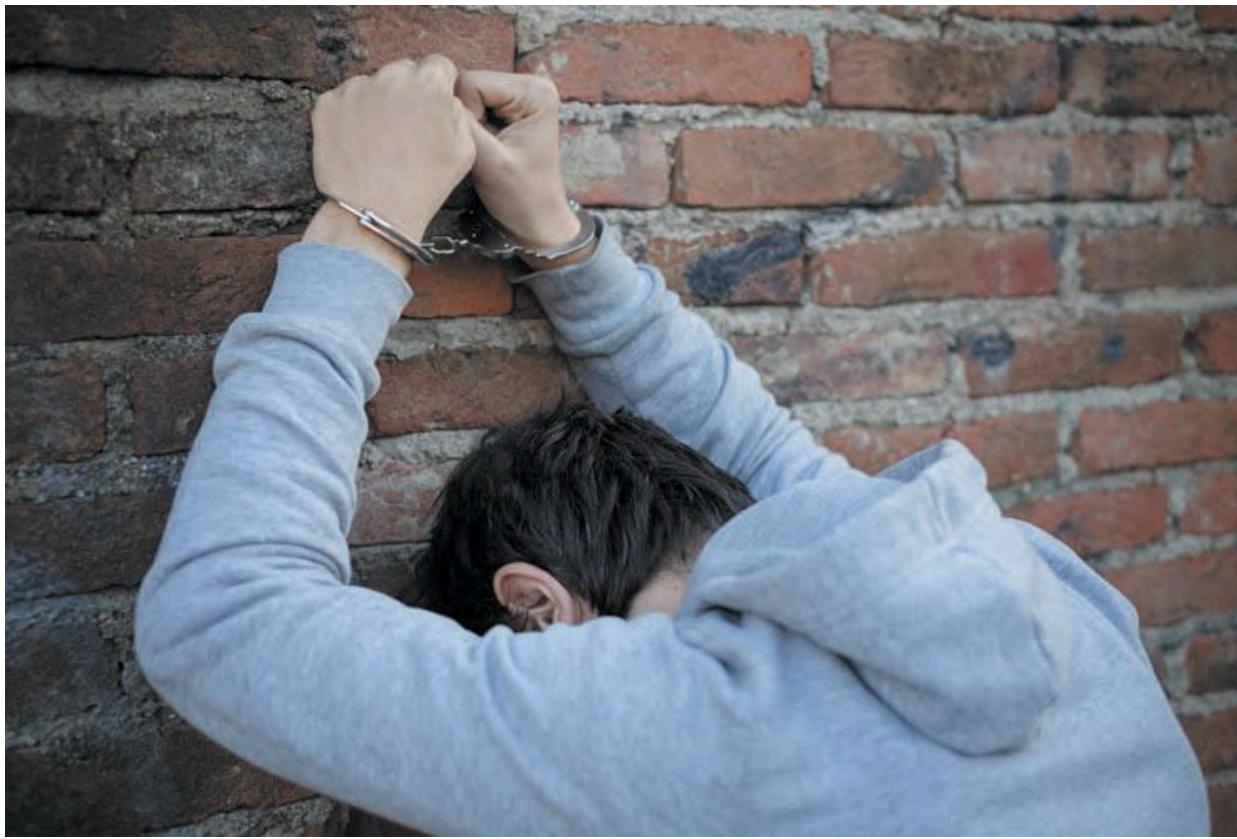
status offense

An offense that is illegal only because the defendant is a child, such as playing truant or running away.

Causes of Juvenile Delinquency

Over the years, sociologists, criminologists, psychologists, and biologists have proposed many different theories regarding the causes of juvenile delinquency. These theories cover a large range of explanations and include a host of sociological, psychological, and biological factors (see Chapter 3). For many decades, a number of specific social factors have received particular attention for their contributions to delinquent behavior.¹⁰

Many researchers have tied delinquency to family factors such as poor parenting.¹¹ Parental rejection and lack of supervision and involvement are strong predictors of conduct problems and delinquency. Poor page 520 parenting skills are specifically linked to the seriousness of the delinquency.¹² Delinquent behavior is also connected to a juvenile's experiences at school.¹³ In fact, research has identified a "school-to-prison pipeline" for students who fail in school, have a history of suspensions or expulsions, or drop out of their own accord.¹⁴



▲ Poverty and Delinquency

Youths who grow up in poor neighborhoods with a lot of crime seem to be more likely to engage in delinquent behavior. *How would you explain the relationships between poverty and delinquency?*

tommaso altamura/Alamy

The connection of class differences among juveniles to the likelihood of delinquent acts has been studied extensively. Historically, lower social class was tied to delinquency. The poor have long been seen as more criminal and more delinquent.¹⁵ But those views were based on the use of arrest data. When self-report surveys gained popularity in the 1950s, they seemed to show that middle-class juveniles were committing more delinquent acts than was previously thought.¹⁶ Early studies based on these surveys concluded there was little, if any, difference between social classes regarding delinquency. More recent research, however, suggests a more complex picture in that factors such as race and gender, in addition to affecting how an individual juvenile experiences his or her social status, also have their own roles to play in the development of delinquency.

With respect to race, Blacks have a higher **arrest rate** (the number of arrests per 100,000 persons) than do Whites, although the difference has narrowed

since the mid-1990s. But arrest rates do not tell the complete story. Which crimes come to the attention of the police and who gets arrested are the factors that determine the final arrest statistics. A Black youth growing up in a poor neighborhood will more likely attract police attention than will a White youth in a middle-class environment.¹⁷

arrest rate

The number of arrests per 100,000 persons.

Measuring Juvenile Crime

MYTH/REALITY

MYTH: Juvenile crime rates are skyrocketing.

REALITY: Juvenile crime rates have been decreasing since 1994, especially for violent crimes.¹⁸

Despite the problems and the built-in bias of arrest data, the most common way to measure the amount of juvenile crime in the United States today is to look at arrest rates.¹⁹ Contrary to impressions given by the media, since 1994 violent crime arrests for juveniles have consistently decreased. Figure 15-1 shows the juvenile Violent Crime Index arrest rates between 1980 and 2016. Beginning in 1994, these rates declined for 10 years. After climbing slightly from 2004 to 2006, juvenile arrests resumed their decline to the point where they were at their lowest level in decades.

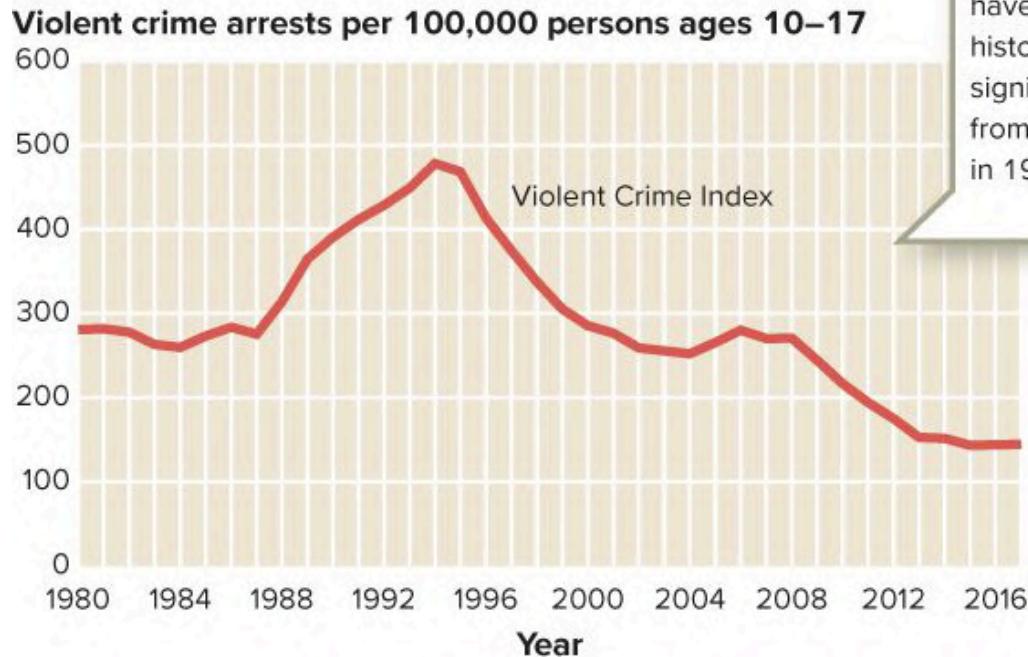
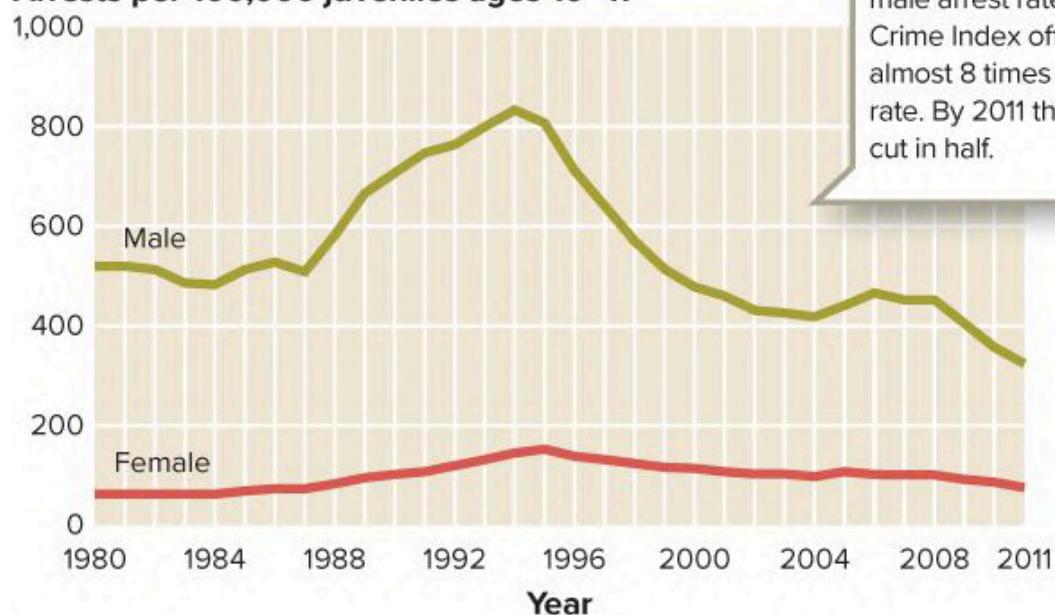


FIGURE 15-1 Juvenile Arrest Rates for Violent Crimes, 1980–2016

SOURCE: Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book.
http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05218&selOffenses=35. October 22, 2018 (retrieved May 28, 2019).

The reductions in juvenile arrest rates for violent crimes have been examined in terms of the gender and race of those arrested. Although there was a decrease in the number of arrests of both male and female juveniles, the drop was less for female than male arrests for most crimes. Figure 15-2 page 521 shows the changing arrest rates for male and female juveniles from 1980 to 2011 for violent crimes such as aggravated assault, robbery, and murder.

Arrests per 100,000 juveniles ages 10–17



In the 1980s, the juvenile male arrest rate for Violent Crime Index offenses was almost 8 times the female rate. By 2011 this gap was cut in half.

Arrests per 100,000 juveniles ages 10–17

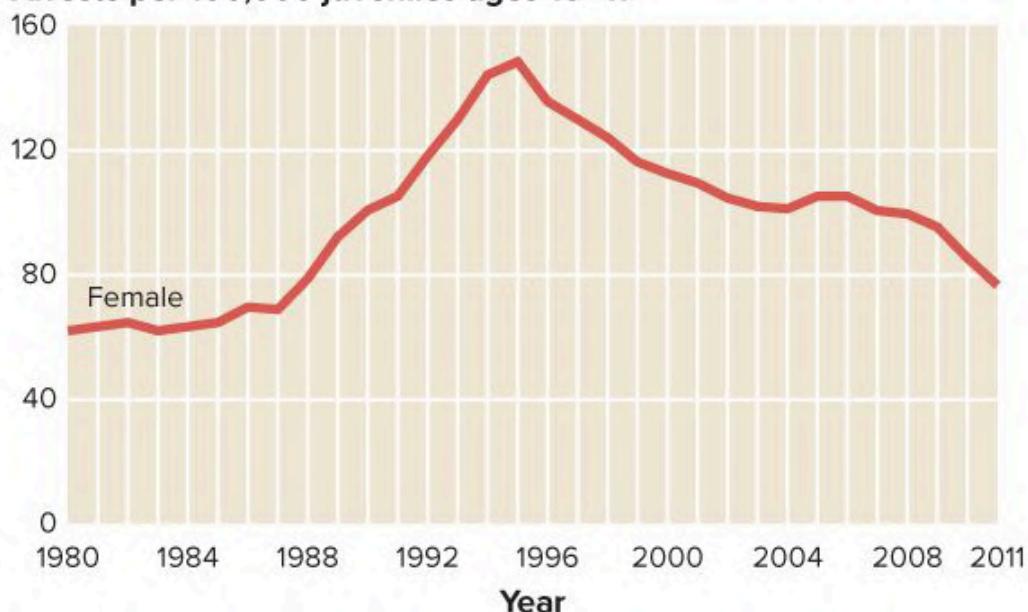
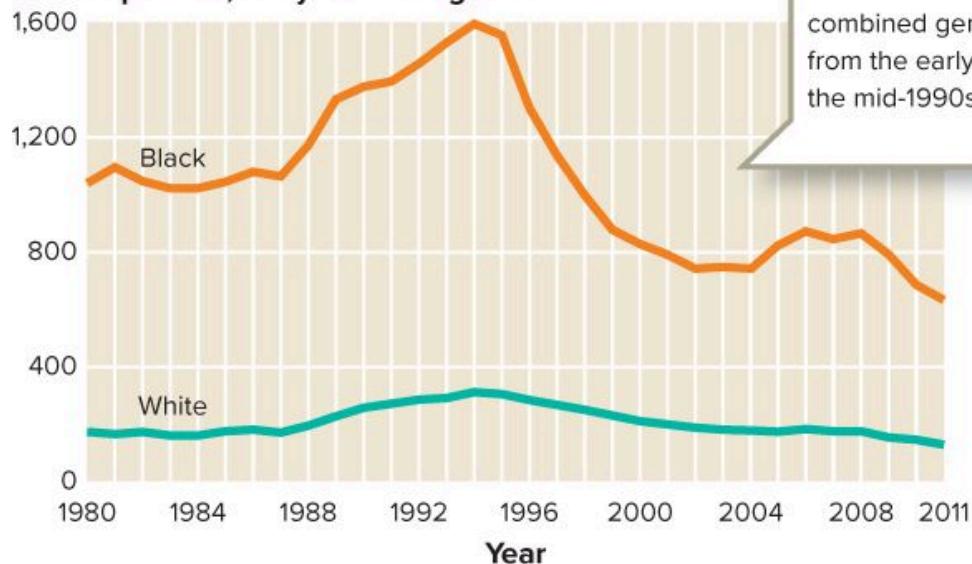


FIGURE 15-2 Juvenile Arrest Rates for Violent Crime Index Offenses by Sex, 1980–2011

SOURCE: Charles Puzzanchera, "Juvenile Arrests 2011," *Juvenile Justice Bulletin* (Washington, DC: U.S. Department of Justice, December 2013). www.ojjdp.gov/pubs/244476.pdf (retrieved July 7, 2015).

Between 1980 and 2011, we see a similar trend with respect to the race of juvenile offenders. After the peak in 1994, juvenile arrests for violent crimes in all racial subgroups studied [Blacks, Whites (including Latinos), Asians, and American Indians] were at their lowest rates since 1980. Figure 15-3 shows the arrests of Black and White juveniles from 1980 to 2011. Note the decrease in the rate of violent crimes attributed to both White and Black juveniles, particularly for Black juveniles. Also apparent is the disproportionate rate of Black juvenile arrests. In 2011, 10- to 17-year-old Black juveniles comprised 17 percent of the U.S. population, yet they made up 51 percent of the violent crime arrests for juveniles. Compare this to White juveniles, who were 76 percent of the population but accounted for only 47 percent of violent crime arrests.²⁰

Arrests per 100,000 juveniles ages 10–17



In each racial group, the juvenile arrest rate for all violent offenses combined generally increased from the early 1980s through the mid-1990s and then declined.

Arrests per 100,000 juveniles ages 10–17

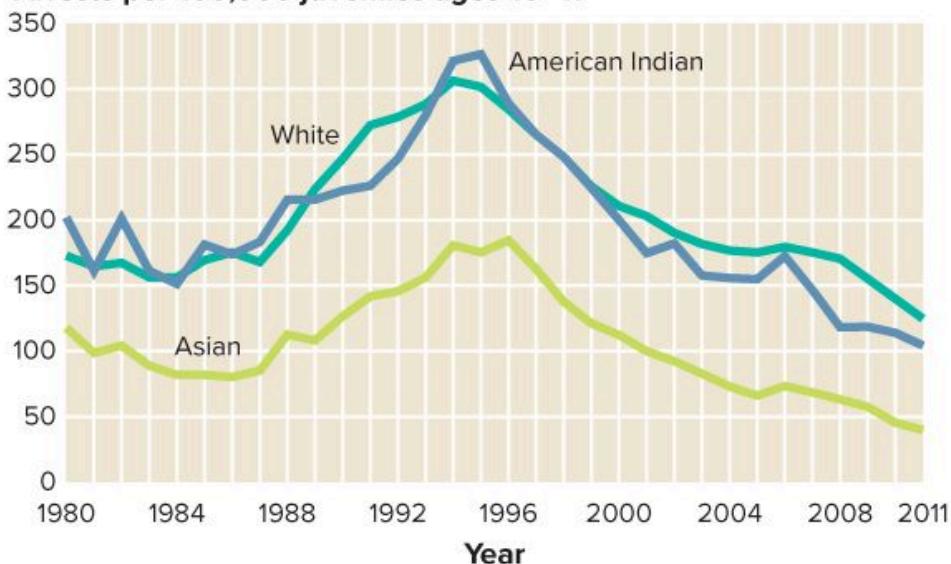


FIGURE 15-3 Juvenile Arrest Rates for Violent Crime Index Offenses by Race, 1980–2011

SOURCE: Charles Puzzanchera, "Juvenile Arrests 2011," *Juvenile Justice Bulletin* (Washington, DC: U.S. Department of Justice, December 2013). www.ojjdp.gov/pubs/244476.pdf (retrieved July 7, 2015).

Murders by juveniles more than doubled from the mid-1980s until 1993. The juvenile murder rate has been on the decline ever since. By 2011, juvenile

murder arrest rates reached and continue to be at historical lows. Experts attribute much of this decline to a decrease in the killing of minority males by other minority males. The rate of other violent and nonviolent offenses committed by juveniles also dropped. For example, in 2011 the rate for juveniles arrested for burglary was 75 percent of what it was in the 1980s, and the arrest rate for forcible rape dropped 40 percent from 2002 to reach its lowest level in three decades.²¹

What explains these decreases? In searching for answers, we must remember that the official numbers underreport the actual extent of juvenile crime in the United States. Many delinquent acts are never reported, and many that are do not result in an arrest. Fewer than 50 percent of all violent crimes are reported to the police, and close to 35 percent of all U.S. police departments do not provide complete arrest statistics. The *Juvenile Offenders and Victims: 2014 National Report*, the most reliable national data available, is used by practitioners throughout the field.²² However, because of underreporting, criminal justice professionals also use methods other than arrest statistics to measure crime.

Self-report studies help to fill in the missing data. Self-report data may be inaccurate because self-reports rely on the memory and honesty of the person reporting, but they do show a large discrepancy from the official arrest data.²³ Victimization surveys are another method of determining the _____ page 522 amount of crime. These surveys collect information directly from a representative sample of the general population rather than relying on police records. The advantage of using victimization surveys compared to other ways of measuring crime is that unreported crime is also included. Unfortunately, data from the National Crime Victimization Survey—the most often cited victim survey—does not include information from victims of crime under 12 years of age. Since many crimes against youths are perpetrated by other youths, this survey does not capture those incidents.

POLICE AND YOUTH CRIME

A juvenile usually enters the justice system by way of the police. Police often try to handle trivial offenses such as curfew violations informally—by issuing a citation, meeting with the juvenile and his or her parents, or some other informal arrangement or understanding. Handling a juvenile offense informally prevents formal arrest and a court proceeding that could result in incarceration and even a criminal record. A police decision to make an arrest—many

jurisdictions use the term *detain*—automatically triggers an [page 523](#) investigation by authorities of the **juvenile justice system**. If the court places the youth on probation, any violation of probation could bring further court action—and possibly more serious charges.

juvenile justice system

The juvenile justice system is the main formal legal structure used to respond to and process minors who commit crimes.

Juvenile arrests have been on the decline for more than a decade. In 2016, arrests of juveniles totaled 856,130, the fewest in nearly four decades. Arrests of juveniles peaked in 1996 at nearly 2.7 million. In comparison, the number in 2016 was 68 percent less than in 1996. From 2007 through 2016, arrests of female juveniles decreased less than males in several offense categories (e.g., assault, robbery, vandalism, and drug and alcohol abuse). More than half (53 percent) of juvenile arrests for violent crime in 2016 involved Black youth; 44 percent, White youth; 2 percent, American Indian youth; and 1 percent, Asian youth. For property crime arrests, the proportions were 58 percent White youth, 38 percent Black youth, 2 percent American Indian youth, and 2 percent Asian youth. (Not all agencies provide ethnicity data through the Uniform Crime Reporting program; therefore, arrest figures for juveniles of Hispanic ethnicity are not available.)²⁴

Police Discretion

Police have a large amount of latitude in how to handle juveniles. In other than serious cases, this latitude is necessary, and the police are called on to make judgments on whether to warn the offender, handle the case informally, or detain the individual. Not every juvenile offense ends in arrest, nor should it. Accumulating evidence points to the detrimental effects on adolescent development that system involvement and confinement impose.²⁵ The President's Task Force on 21st Century Policing specifically recommends reduction of aggressive law enforcement practices that stigmatize youth. [President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (Washington, DC: Office of Community Oriented Policing Services, 2015).]

Many of the police officers' judgments are necessarily subjective and are based on factors other than the offense. One important factor is the attitude and demeanor of the juvenile. A polite juvenile stands a better chance than one who

is hostile. There is some evidence that police may treat male and female juveniles differently.²⁶ Other biases can affect a police officer's decision as well. For example, some officers may treat juveniles who are from minority and disadvantaged communities more harshly.²⁷ Factors such as more frequent patrolling of Black and Latino neighborhoods and racial profiling by officers—whether conscious or unconscious—exacerbate the situation.²⁸

If a juvenile case is handled informally, a citation or reprimand may be issued. This action could require the juvenile and the parents to appear at the police station for a meeting with the officer. If, however, the juvenile is detained, he or she is usually brought to a facility like a juvenile hall and is referred to the probation department. At this point formal juvenile court procedures are set in motion.



▲ D.A.R.E. in the Classroom

Police officer Jenifer Rodriguez distributes D.A.R.E. name tags to Grant Elementary School fifth-graders in Santa Monica, California.

Christopher W. Rosacker

Police in the Neighborhood and Schools

Police have long worked with juveniles in the community, providing positive role models. One common program is the Police Athletic League (PAL). Although a study evaluating such programs did not show strong positive changes in the youth who participated, most of the youth in these programs reported the experience as very positive.²⁹ Since earnestly committing to a community policing philosophy in 2013, the Camden, New Jersey, Police Department has been exemplary in its involvement with youth. The police regularly hold meet-the-officer fairs at parks and churches, engage enthusiastically with youth at their baseball games, participate in hybrid touch and tackle football games, and facilitate ingress of “Mister Softee” trucks into neighborhoods. Officers stand at school crossings and street corners where in the past drugs and violence flourished. Testimonies abound about the positive influence the police have on local youth.³⁰

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Matters of Ethics

Police in the Schools

Many U.S. schools have full-time police officers, called *school resource officers (SROs)*, stationed within them. Although this practice began in the 1960s, it has increased considerably in the wake of several highly publicized school shootings over the past two decades. School resource officers usually are sworn members of the local police force, but some large school districts have their own police departments.

However, the use of police in schools is not without controversy. The Final Report of the Federal Commission on School Safety highlighted the importance of defining the roles and responsibilities of SROs. The Commission strongly advocated creation of a memorandum of understanding (MOU) between schools and law enforcement agencies. These MOUs should include a discussion of key areas such as training expectations, duties and responsibilities, funding, information sharing, and student discipline. The SRO MOU operative within the Montgomery County (Maryland) public schools was cited as exemplary and a model for such.



Jahi Chikwendiu/The Washington Post/Getty Images



A controversial topic has been whether the presence of SROs increases the likelihood that students will be pushed into the juvenile justice system for misbehaviors that arguably are better left to school administrators to resolve. Research in this area is limited. Some studies indicate that SROs can deter students from committing assaults on campus as well as bringing weapons

to school. Other studies suggest that children in schools with SROs might be more likely to be arrested for low-level offenses. The benefits or detrimental effects of SROs can vary across school districts and are dependent on recruitment policies, training systems, and clearly delineated responsibilities.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What are the potential benefits and risks of stationing police officers in schools full-time?
- Do you think it is ethically correct to involve formal law enforcement in schools? Why or why not?
- Under what circumstances do you believe that it is appropriate for police officers to become involved in a student's misbehavior?

SOURCES: Texas Appleseed, “Texas’ School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools.” www.texasappleseed.net/images/stories/reports/Ticketing_Booklet_web.pdf (retrieved March 11, 2011); Nathan James and Gail McCallion, “School Resource Officers: Law Enforcement Officers in Schools,” *Congressional Research Service Report for Congress*, June 26, 2013; Tierney Sneed, “School Resource Officers: Safety Priority or Part of the Problem?” *U.S. News & World Report*, January 30, 2015. www.usnews.com/news/articles/2015/01/30/are-school-resource-officers-part-of-the-school-to-prison-pipeline-problem (retrieved May 20, 2015); Federal Commission on School Safety, “Final Report of the Federal Commission on School Safety” (Washington, DC: U.S. Government Printing Office, 2018). <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf> (retrieved March 6, 2019).

Across the United States, police–school liaison programs aim to reduce violence and crime in and around schools and provide positive adult–youth connections.³¹ The National Council of Juvenile and Family Court Judges is at the forefront of a collaborative initiative to reduce the number of referrals to the juvenile justice system for school-based behaviors through the establishment of judicially led school-justice partnerships. These partnerships seek to enhance collaboration and coordination among schools, law enforcement, and juvenile justice officials to help students succeed in school and prevent negative outcomes for youths and communities. It is anticipated this collaboration will lead to pooling of data from across the partnerships to forge data-driven best practices.³²

It is likely that police will continue to assume a role in the schools. In order to develop and maintain effective partnerships between police and schools, it is essential that key areas be addressed. Of paramount importance is defining the role and responsibilities of officers within the school environment. Another important factor is the selection of officers for school-related assignments. At a minimum, officers should express a strong interest in youth, be adaptable to working in a school setting, and possess good communication skills. Another critical area is the training officers undergo prior to placement in a school environment, which should include a wide range of youth-related topics.³³ The “Matters of Ethics” box addresses these essential elements.

THE MODERN JUVENILE COURT SYSTEM

Juvenile courts were created with different goals from those of adult criminal courts. Rehabilitation rather than punishment was to be the focus, and the court’s primary interest was to be on the child rather than on the offense. Although the process in juvenile courts has evolved to be quite similar to that of adult courts, some important distinctions remain, including differing terminology, narrower jurisdiction, and more restricted procedural rights for juvenile defendants.

Juvenile Court Jurisdiction

Juvenile courts are courts of limited jurisdiction, meaning that they have the power to hear only certain kinds of cases defined by the child’s behavior and age. Juvenile courts can hear *delinquency cases*, in which a minor is accused of committing a criminal act, as well as *status offense cases*, in which the offense is illegal only because the defendant is a child. In the past, status offenses were often vaguely defined. Children could be brought before the court and, ultimately, placed in facilities for behavior that was considered “vicious,” “immoral,” “profane,” “incorrigible,” or “indecent.” Other behaviors that could subject a child to the juvenile court included selling things, singing or playing an instrument in public, loitering, staying out at night, frequenting dance halls, and being sexually promiscuous. Although juvenile courts have generally treated males more harshly for delinquency, females have generally experienced harsher treatment for status offenses such as breaking curfew. This bias may result from stereotypes that appear to support the need to protect

females and to control their sexual behavior. Finally, juvenile courts may also hear *dependency cases*, in which a child's parents cannot or will not care for her properly.³⁴



▲ Juvenile in Court

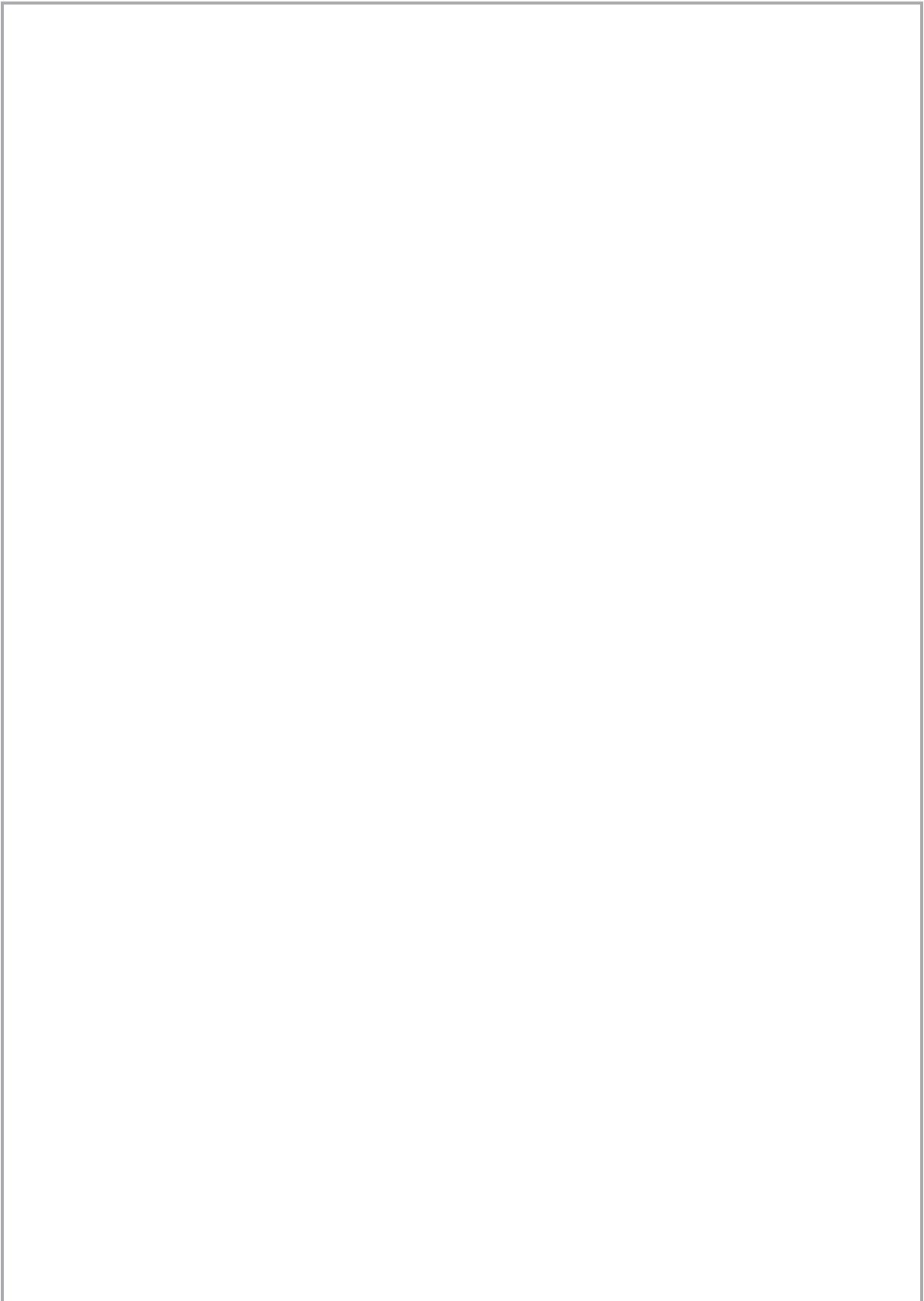
All states have laws permitting juveniles to be tried in juvenile courts.

H. Armstrong Roberts/ClassicStock/Getty Images

It might seem strange for a single court to have jurisdiction over a grade school truant, an armed teenage robber, and a preschooler abandoned by parents, but there is logic behind this plan. All three youths have a problem that needs fixing. They may even have the same problem: inadequate parental guidance and supervision. The system was devised under the assumption that curbing minor offenses today will help prevent criminal behavior later—that when a young person makes a mistake and undergoes some form of punishment or rehabilitation, he is more likely to avoid errant behavior in the future. As one early proponent wrote, “The problem for determination by the judge is not,

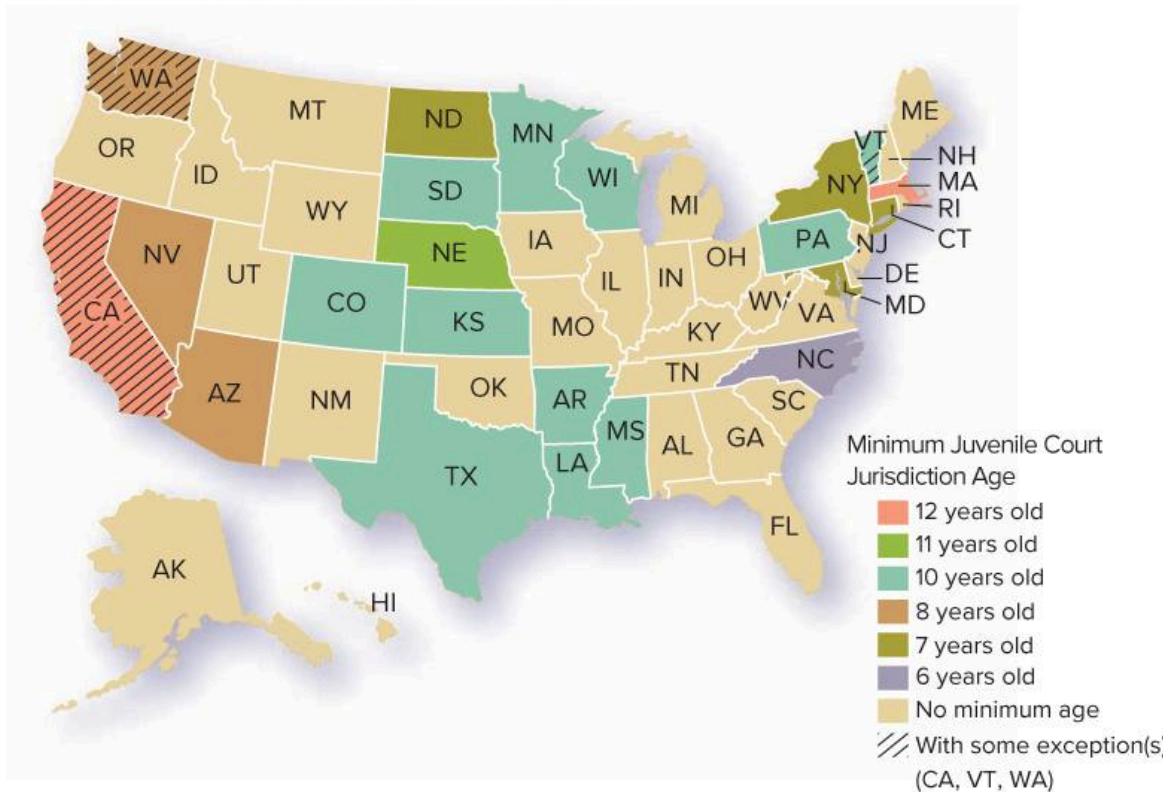
‘Has this boy or girl committed a specific wrong,’ but ‘What is he, how has he become what he is, and what had best be done in his interest and in _____ page 526 the interest of the state to save him from a downward career?’”³⁵

The upper and lower age limits for the legal definition of a child vary from state to state (see the figure “Mapping Juvenile Court Jurisdiction”). In most states, an offender is eligible for juvenile court until age 18. In 45 states, juvenile court jurisdiction expires on a person’s 17th birthday, and in the remaining 5 states, a 16-year-old who commits a crime must be tried as an adult.³⁶ By 2019, many states had already raised the maximum age for juvenile court eligibility or were considering doing so. In some states, the maximum age might even be raised above 18.

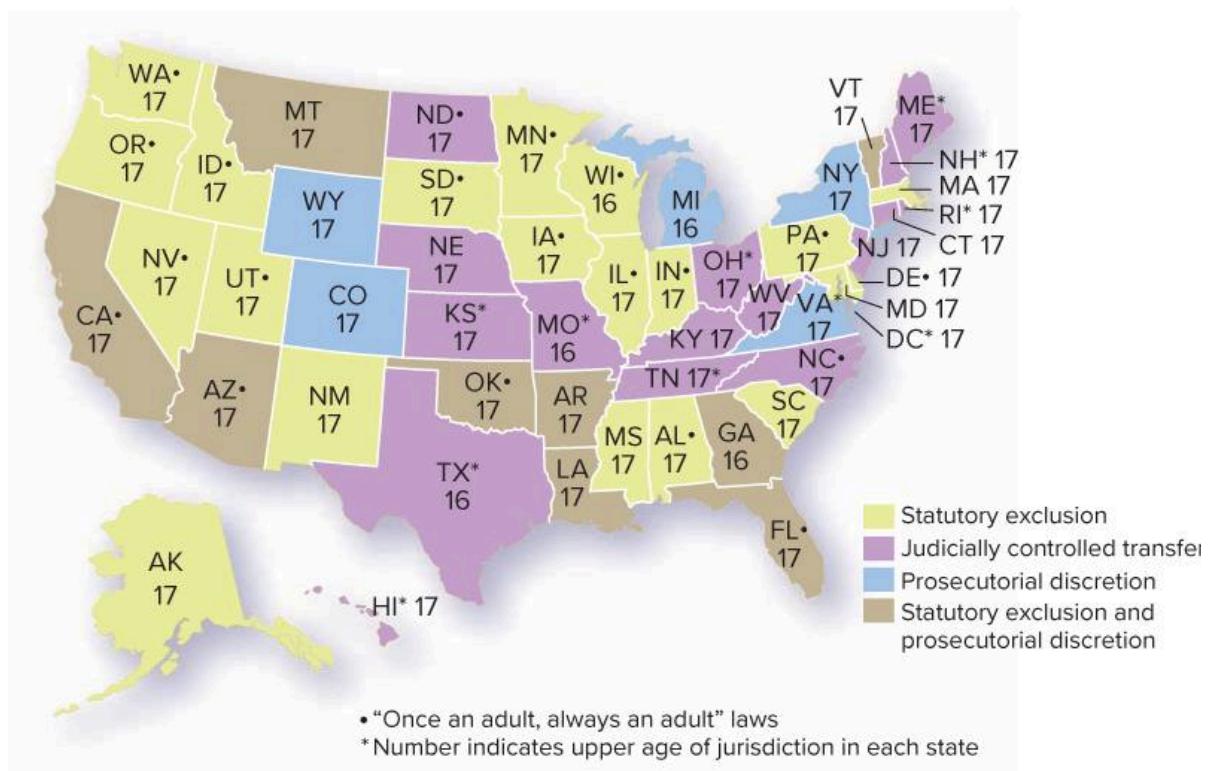


Mapping Juvenile Court Jurisdiction

In 28 states, it is legal to prosecute a 5-year-old in juvenile court



Juvenile age of jurisdiction and transfer to adult court laws



Minimum Age for Waiver

Age for Waiver	States with Minimum Age
No minimum	Alaska, Arizona, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Maryland, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin
10	Kansas, Vermont
12	Colorado, Missouri, Montana
13	Illinois, Mississippi, New Hampshire, New York, North Carolina, Wyoming
14	Alabama, Arkansas, California, Connecticut, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Ohio, Texas, Utah, Virginia
15	New Mexico

SOURCE: Building Blocks for Youth, "Charts on Transferring Youth to Criminal Court." http://jjpl.org/Publications_JJ_InTheNews/JuvenileJusticeSpecialReports/BBY/ycat/transchart.html (retrieved July 20, 2011).

In most states, once the juvenile court has heard a case, its jurisdiction may extend beyond the offender's 18th birthday. For example, if a 15-year-old is judged delinquent in juvenile court, the juvenile justice system may confine her in juvenile facilities or monitor the delinquent through probation even after she turns 18. The most common maximum age of a confined or monitored delinquent is 20, although it ranges between 18 and 24 depending on the state.³⁷ No matter how serious the crime, offenders tried in juvenile court must be released from custody on their 21st birthday (or 25th in a few states).

Some states also have a minimum age for juvenile court jurisdiction, a reflection of the common law idea that young children cannot form criminal intent. Children younger than the minimum who commit criminal acts cannot be tried either as juveniles or as adults; if their actions are serious, however, they and their families may be referred to counseling or other social services

(see the figure “Mapping Juvenile Court Jurisdiction”). This minimum age varies from 6 in North Carolina to between 7 and 10 in 12 other states.³⁸

Most states have no minimum age for juvenile court jurisdiction, and very young children who commit crimes may be brought before juvenile courts. In recent years, children as young as age 7 have been charged with crimes such as murder, attempted armed robbery, and arson.³⁹ In 1996, a 6-year-old boy in California kicked and beat a 1-month-old infant, causing the baby permanent brain damage. Despite his age and the fact that he was mildly mentally challenged, the boy was charged with attempted murder and held for several months in a juvenile detention facility. The prosecutor told reporters, “It doesn’t matter whether you’re 6 or you’re 106. If you do something that hurts somebody else, with knowledge of the wrongfulness of it, you’re responsible for it, period.” Eventually, the judge ruled the boy incompetent to stand trial, and he was sent to live in a group home for troubled children.⁴⁰

Juvenile Court Waivers

The founders of the juvenile justice system recognized that the system would not be appropriate for all youthful offenders. The seriousness of their crimes, the complexity of their problems, or their relatively advanced age might make them less amenable for treatment within the juvenile system. Thus mechanisms exist to permit the juvenile court to waive jurisdiction and allow the transfer—or **waiver**—of these offenders to adult court. In the past 20 years, nearly every state has expanded the methods and circumstances under which page 528 juveniles may be waived, and most have lowered the minimum age for waiver.⁴¹ Some states have no minimum at all; others specify minimums as young as 10 (see the table above).

waiver

A mechanism to permit the transfer of some juvenile offenders to adult court.

Types of Waivers Waiver laws vary from state to state. Almost all states use at least one of three major methods, and some use a combination.

The first kind of waiver is called **judicial waiver**. Under this method, a prosecutor or probation officer recommends that a child be tried as an adult. The juvenile court judge then determines whether the child is fit to be treated within the juvenile system. The U.S. Supreme Court has held that juveniles are entitled to certain due process rights during this hearing, including access to probation reports and a statement by the judge of the reasons for her decision.⁴²

State statutes specify what ages and offenses are eligible for judicial waiver and what factors the judge must consider in the decision.

judicial waiver

Means by which a judge designates a juvenile to be tried in adult court.

The second way that a child may be tried as an adult is through **statutory exclusion**, in which state laws categorically exclude certain ages and offenses from juvenile court jurisdiction. For example, in Wisconsin children as young as 10 who are accused of first- or second-degree intentional homicide are automatically sent directly to adult court.

statutory exclusion

The categorical exclusion, by state law, of certain ages and offenses from juvenile court jurisdiction.

The third method for waiver is called **direct file, or prosecutorial waiver**. For certain ages and offenses, the prosecutor can choose whether to bring the case to juvenile or adult court. No hearing is held, and no legal criteria apply. The decision is left entirely to the prosecutor's discretion and cannot be appealed.

direct file (prosecutorial waiver)

A method that allows the prosecutor to choose whether to bring the juvenile's case to juvenile or adult court.

Problems with Waivers The use of waivers has increased and often enjoys popular or political appeal as part of a tough-on-crime approach. However, critics and scholars raise several objections to waiving children to be tried in adult courts. One is that waivers perpetuate racial and ethnic biases. There is evidence that minority youths are disproportionately likely to be tried as adults.⁴³

MYTH/REALITY

MYTH: Only the most violent juveniles are tried as adults.

REALITY: A large proportion of juveniles tried as adults are accused of nonviolent crimes.⁴⁴



▲ Juveniles Tried as Adults

In recent years, juveniles have increasingly been tried in adult courts.

Michelle Morrow/The Tennessean/AP Images

A second objection to the use of waivers is that prosecutorial waiver results in uneven and unfair patterns of transfers. Because prosecutors are elected, they may choose to waive a case if they believe that doing so is a politically popular decision. Thus the proportion and kinds of cases waived under direct file may vary a great deal from one county to the next, depending on the philosophy and motives of each county's prosecutors. In one study, fewer than 20 percent of the waived cases were crimes against persons.⁴⁵ On any given day in 2004, approximately 2,500 people under the age of 18 were confined in adult prisons; 40 percent of these youths had committed nonviolent crimes, and only 13 percent had committed homicide or sex offenses.⁴⁶

A third major criticism is that waivers send children to adult jails and prisons.⁴⁷ Clearly children in prisons are vulnerable to sexual page 529exploitation and physical injury. Furthermore, an increasing body of research

demonstrates that children tried as adults are more likely to reoffend after release, as shown in the case of Lionel Tate.⁴⁸

Landmark U.S. Supreme Court Cases

For nearly seven decades after its inception, the juvenile court functioned more informally than adult courts. One result of this informality was that children were given virtually none of the due process protections adults receive. They were not permitted assistance of counsel, were not allowed to confront and cross-examine witnesses, and did not have the right to avoid self-incrimination. They did not have to be found guilty beyond a reasonable doubt, and judges rather than juries decided their fate. Due process rights were thought to be unnecessary because the court's goal was to treat, not to punish. The assumption was that due process requirements would actually impede juvenile courts' abilities to treat young offenders.

In theory, it made sense for wayward youths to trade due process rights for compassionate rehabilitation. But in reality, from the very beginning, most children received neither from courts too overwhelmed to provide careful consideration of individual cases. As the U.S. Supreme Court wrote in 1966, “[T]here may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”⁴⁹ Consequently, in a series of cases, the Supreme Court gradually reformed the way juvenile courts operated by granting children certain rights.

In re Gault (1967)—Establishing Due Process for Juveniles The Court decision that was key to the establishment of due process in the modern juvenile justice system was *In re Gault*, decided in 1967.⁵⁰ “A Case in Point” describes this landmark case. Once *Gault* was decided, children brought before the juvenile court were entitled to several of the most basic rights that adult defendants are guaranteed—the right to be notified of the charges against them, to confront and cross-examine witnesses, to remain silent, to obtain a transcript of the proceedings, and to appeal the court’s decision. Perhaps most significant, juveniles were also entitled to the assistance of an attorney.

As a result of gaining these rights, what was once envisioned as an informal conversation between concerned parties now acquired many of the characteristics of an adult criminal trial. While in the past about a quarter of

juvenile court judges did not have any formal training in law, a law degree is now essential.⁵¹

In re Winship (1970)—Proof Beyond a Reasonable Doubt for Juveniles

Three years after *Gault*, the Supreme Court considered another important issue: What should be the standard of proof in juvenile cases? While the long-standing common law rule had been that adults must be found guilty beyond a reasonable doubt, juvenile cases usually needed to be proved only by a preponderance of the evidence—the same standard used in civil cases. The case that brought this issue before the Court concerned 12-year-old Samuel Winship, who had been sent to a training school for up to 6 years for stealing \$112 from a locker.⁵² In *In re Winship*, the state of New York argued that the lesser standard of proof was appropriate in juvenile cases because it was suited to the juvenile court's rehabilitative purposes. A majority of the Supreme Court disagreed, however, holding that the due process clause in the Constitution requires proof beyond a reasonable doubt in juvenile as well as adult cases.

McKeiver v. Pennsylvania (1971)—No Jury Trials for Juveniles

After *Gault* and *Winship*, the juvenile system began to resemble the adult criminal system in many important respects. Advocates of the changes argued that they were necessary to ensure that young offenders would be treated fairly. Critics feared that the reforms would interfere with the juvenile justice system's mission of rehabilitation and erase any meaningful distinction between the juvenile and adult systems. The Supreme Court discussed this controversy when it decided a third landmark case, *McKeiver v. Pennsylvania*, which centered on whether juveniles were entitled to jury trials.⁵³ *McKeiver* was actually several consolidated cases involving juveniles charged with a broad variety of offenses.

a case in **point**

Gerald Francis Gault Has His Day in Supreme Court

On June 8, 1964, in Gila County, Arizona, a woman complained to police about sexually suggestive prank phone calls she had received. That afternoon, the local sheriff arrested her neighbor, 15-year-old Gerald Francis Gault, and took him to the juvenile detention facility. Gault's parents did not even know he had been arrested until they arrived home from work and could not find him.

The next day, a petition stating that he had been delinquent was filed against Gault in juvenile court. He and his parents were not given a copy. Hearings were held that day and again 6 days later in front of a juvenile court judge. During the hearings, Gault was not read his rights before being questioned, no lawyers were present, and Gault was not given the chance to consult with an attorney. The neighbor who had issued the complaint was not there. Probation officers gave the judge a referral report, but Gault and his parents were not allowed to see it.



Ernest K. Bennett/AP Images

No record was made of the proceedings, at the end of which the judge found Gault delinquent. Although Gault's only previous run-in with the law was being present when a friend stole a wallet from a purse, the judge committed him to the state industrial school until he was 21—a period of nearly 6 years. The maximum sentence an adult could have received for the offense was 2 months in jail or a \$50 fine. Under Arizona law, Gault was not allowed to appeal to the state appeals court.

Gault filed a federal *habeas corpus* petition, which eventually reached the U.S. Supreme Court. Justice Abraham Fortas wrote an opinion for the Court that was highly critical of the state of juvenile justice in the United States. Justice Fortas wrote, "In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of

care implied in the phrase ‘due process.’ Under our Constitution, the condition of being a boy does not justify a kangaroo court.” The Court went on to grant juveniles several basic due process rights.

Gerry Gault was finally released after having been incarcerated for nearly 3 years. He had a long and successful military career, earned vocational degrees, and today is a heavy equipment operator who has been married for over 35 years.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Why do you think young Gault was punished so much more severely for his offense than an adult would have been for the same offense?
- In your opinion, what is the most serious due process right of which Gault was deprived? State your reasons.
- If the juvenile justice system had been meeting its goals, do you think the Supreme Court would have been as likely to grant juveniles due process rights? Why or why not?

SOURCES: *In re Gault*, 387 U.S. 1, 28—29 (1967); “Protecting America’s Children—Assessing the Promise of *In re Gault* 40 Years Later,” Open Society Institute, OSI Forum. <https://www.opensocietyfoundations.org/events/protecting-america-s-children-assessing-promise-re-gault-40-years-later> (retrieved June 18, 2007).

McKeiver was a contentious case for the Court—four justices joined in one opinion, two justices wrote two separate concurring opinions, and three justices dissented. In the end, however, a majority agreed that children in juvenile proceedings are not entitled to juries. The Court admitted that the juvenile justice system was a failure but was not ready to give up on it altogether. Justice Harry Blackmun wrote, “There is a possibility, at least, that _____ page 531 the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.”⁵⁴

Breed v. Jones (1975)—Double Jeopardy and Juvenile Cases In 1975, the Supreme Court granted another important right to juvenile offenders. Gary

Jones, 17, was accused of committing an armed robbery. The juvenile court judge ruled that Jones had in fact committed the robbery but also that he was “unfit for treatment as a juvenile”—that is, he was not likely to be rehabilitated by the juvenile justice system. The judge ordered him tried in adult court, where Jones was found guilty of the robbery. When Jones appealed to the U.S. Supreme Court, the Court held that the Fifth Amendment’s double jeopardy clause applies to juvenile proceedings. A person cannot be tried in both juvenile and adult courts for the same offense.⁵⁵

MYTH/REALITY

MYTH: Minors cannot be interrogated without the presence of their parents or an attorney.

REALITY: Like adults, children may waive their *Miranda* rights and be questioned without lawyers present. In fact, unless a juvenile specifically asks for a parent, the parent need not even be notified that the child is being questioned.⁵⁶

Other Important Cases Several other cases are of particular importance to juvenile offenders. In *Fare v. Michael C.* (1979), the Supreme Court refused to extend extra protections to juveniles during police interrogations.⁵⁷ Under the Court’s decision in this case, police may interrogate children without their parents’ or an attorney’s presence, and any statements the children make will be admissible in court.

In 1984, in *Schall v. Martin*, the Court held that minors may be subjected to preventive detention.⁵⁸ That is, children accused of crimes may be held not only to ensure that they appear in court, but also to protect them from adverse home conditions or to prevent them from committing additional offenses while their case is pending. The following Disconnects box highlights some of the laws throughout the United States that punish truancy.

Until 2005, children could be sentenced to death. In 1944, 14-year-old George Stinney was put to death in the electric chair for having killed two girls.⁵⁹ In cases decided in 1988 and 1989, the Supreme Court held that capital punishment was constitutional for offenders over 15.⁶⁰ Between 1976 and 2004, 22 people who were younger than 18 when they committed murder were executed in the United States, and 73 more were on death row.⁶¹ Only a handful of other nations—Pakistan, Bangladesh, Rwanda, and Barbados—executed juveniles during this time.⁶² However, in 2005 the Supreme Court

held in *Roper v. Simmons* that the death penalty for people younger than 18 when they committed murder is cruel and unusual punishment.⁶³

More recently, the Supreme Court has ruled on the constitutionality of sentencing children to life without parole. In the 2010 case *Graham v. Florida*, the Court held that juveniles could not be sentenced to life without parole for crimes less serious than murder.⁶⁴ The defendant in that case had committed an armed burglary at age 16, and when he later violated his probation he was sentenced to life in prison. This case left open the possibility that youths who commit murder can still receive life without parole. At the time of the decision, there were 129 juveniles in the United States who were serving life without parole for crimes other than murder, and another 2,000 who were serving life for homicide.⁶⁵ Two years later, the Court extended this decision to ban life without parole for juvenile offenders convicted of any offense, including murder.⁶⁶

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DIS Connects

Punishing Truancy

Eileen DiNino, a single mother, was sentenced to the Berks County Jail in Reading, Pennsylvania, because she owed more than \$2,000 in fines and fees over the truancy of her two teenaged sons. DiNino is but one of the more than 1,600 parents, mostly moms, locked up in the same jail for the same reason. In Pennsylvania, once a student misses more than three days due to unexcused absences, the child and parents are referred to court and a judge will issue a \$300 fine for each additional absence, as well as additional fees to cover court costs. If a parent is indigent, the parent can petition the court documenting the family's inability to pay. Failure to submit the necessary paperwork will result in jail time, as it did in DiNino's case.

Although jail time associated with truancy is on the decline, school administrators, police, and courts throughout the United States struggle with how to keep young people in school and hold both the student and parents or guardians accountable for unexcused absences. A Georgia law authorizes the removal of a driver's license from a truant teen, whereas a Tennessee law decreases welfare payments to parents with a truant child. Since 2002, states have passed approximately 23 attendance-related bills each year, and one-third of states passed laws that require further court involvement and stiffer legal penalties for truants and their parents. West Virginia requires parents to attend a conference with school officials or be sent to court, and Nebraska passed a law that 20 or more absences, even if the majority of these absences are excused, will be subject to court intervention. The strictest state is Texas, which prosecuted 113,000 cases of truancy in 2013 alone

—more than twice the total number of truancy cases in all other states combined. These prosecutions disproportionately impacted minority students; almost 20 percent of truancy cases involved African American students, yet these students represent less than 13 percent of the student body statewide. Similarly, 64 percent of reported cases involved Latino students, who only represent 52 percent of the total student body. Students with disabilities were also charged with truancy even when they were absent for special education or medical reasons.^a

Chronic absenteeism, or missing at least 10 percent of the school year, is also a problem. In California, more than 1 in 10 students throughout the state was chronically absent during the 2017—2018 academic year. The data are startling when you look at the most at-risk student groups such as: foster youth (26 percent), homeless youth (23 percent), African American students (20 percent), students with disabilities (18 percent), and low-income students (14 percent) who were each chronically absent. Those in the education field have noted the connection between chronic absenteeism, inability to read at grade level, and increased high school drop out rates. For some, chronic absenteeism is the pipeline from education to prison.^b In 2015—2016, nationwide, over 7 million students (about 16 percent) missed 15 or more days of school. Approximately 800 school districts report that more than 30 percent of students missed at least three weeks of school.^c In an attempt to address this issue, chronic absenteeism is one of the factors that will be used to rate districts and how successfully they are serving their students. In California, chronic absenteeism is considered contributing to the delinquency of a minor, which is a Class A misdemeanor. Those parents/guardians found guilty can be put in jail for up to year or fined up to \$2,500. Other states are also grappling with chronic absenteeism—in Illinois, 9 or more unexcused absences is considered child neglect, which is a misdemeanor. Parents or guardians who neglect their child in this manner can be fined up to \$1,500 or put in jail for up to 30 days.^d

It is unclear whether any of these efforts have a positive impact on increasing school attendance or decreasing the correlates of not attending school such as delinquency, lower academic achievement, and dropping out of school. Instead, treating truancy as a crime seems to have the unintended consequences of decreasing school attendance and pushing families further into poverty.^e There is a backlash under way against the penalties against students and parents for truancy. As a result, greater emphasis is being placed on ways to encourage students to go to school, including identifying academic courses of interest or locating after-school programs of interest such as sports, vocational training, and/or the arts.

OBSERVE → INVESTIGATE → UNDERSTAND

- How do you think truancy should be addressed?
- Should parents be held accountable when their children do not attend school?
- Should truancy be treated like a crime?

SOURCES: ^a Alisa Semiens, “Report: Texas Prosecutes More Truancy Cases Than All Other States Combined,” *Texas Observer*, March 5, 2015. www.texasobserver.org/report-texas-prosecutes-truancy-more-than-all-other-states-combined/#.VPmSNQxGHXA.twitter (retrieved June 10, 2015).

^b David Washburn, “Chronic Absenteeism in California Schools Up Slightly, New Data Show,” *EdSource: Highlighting Strategies for Student Success*, January 31, 2019.

<https://edsource.org/2019/chronic-absenteeism-in-california-schools-up-slightly-new-data-show/607993> (accessed May 6, 2019).

^c U.S. Department of Education, “Chronic Absenteeism in the Nation’s Schools: A Hidden Educational Crisis,” U.S. Department of Education, January 2019. <https://www2.ed.gov/databistro/chronicabsenteeism.html#one> (accessed May 8, 2019).

^d Kelsey Sheehy, “Skipping High School Can Lead to Fines, Jail for Parents,” *U.S. News & World Report*, August 13, 2012. <https://www.usnews.com/education/blogs/high-school-notes/2012/08/13/skipping-high-school-can-lead-to-fines-jail-for-parents> (accessed May 8, 2019).

^e Dana Goldstein, “Inexcusable Absences: Skipping School Is a Problem. But Why Is It a Crime?” *New Republic*, March 6, 2015. www.themarshallproject.org/2015/03/06/inexcusable-absences?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20150306-128 (retrieved June 10, 2015).

Finally, in a series of decisions the Supreme Court has ruled on children’s Fourth Amendment search and seizure rights when they are in school. In general, these cases hold that school officials and school resource officers—police officers based inside public schools (see the “Matters of Ethics” box)—must respect students’ rights against unreasonable searches and seizures, but these rights are limited compared to those of adults. For example, reasonable suspicion, rather than probable cause and a search warrant, is sufficient to justify searches of students and their belongings.⁶⁷ Furthermore, schools may conduct random drug testing of all students engaged in extracurricular activities.⁶⁸ However, in 2009 the Supreme Court held that the strip search of a 13-year-old girl by school officials who believed that she had page 533 prescription-strength ibuprofen and knives violated her Fourth Amendment rights.⁶⁹

PROCESSING JUVENILE OFFENDERS

Describing how juvenile offenders are processed is difficult because there is considerable regional variation in the juvenile justice system. The process in one county or state may be quite different from the process elsewhere. Figure 15-4 shows the typical way in which cases flow through the juvenile justice system. In this section we look at each of the major steps in detail. Although many juvenile court procedures closely resemble adult procedures, notice that they use different terminology to avoid the stigma associated with adult criminal convictions.

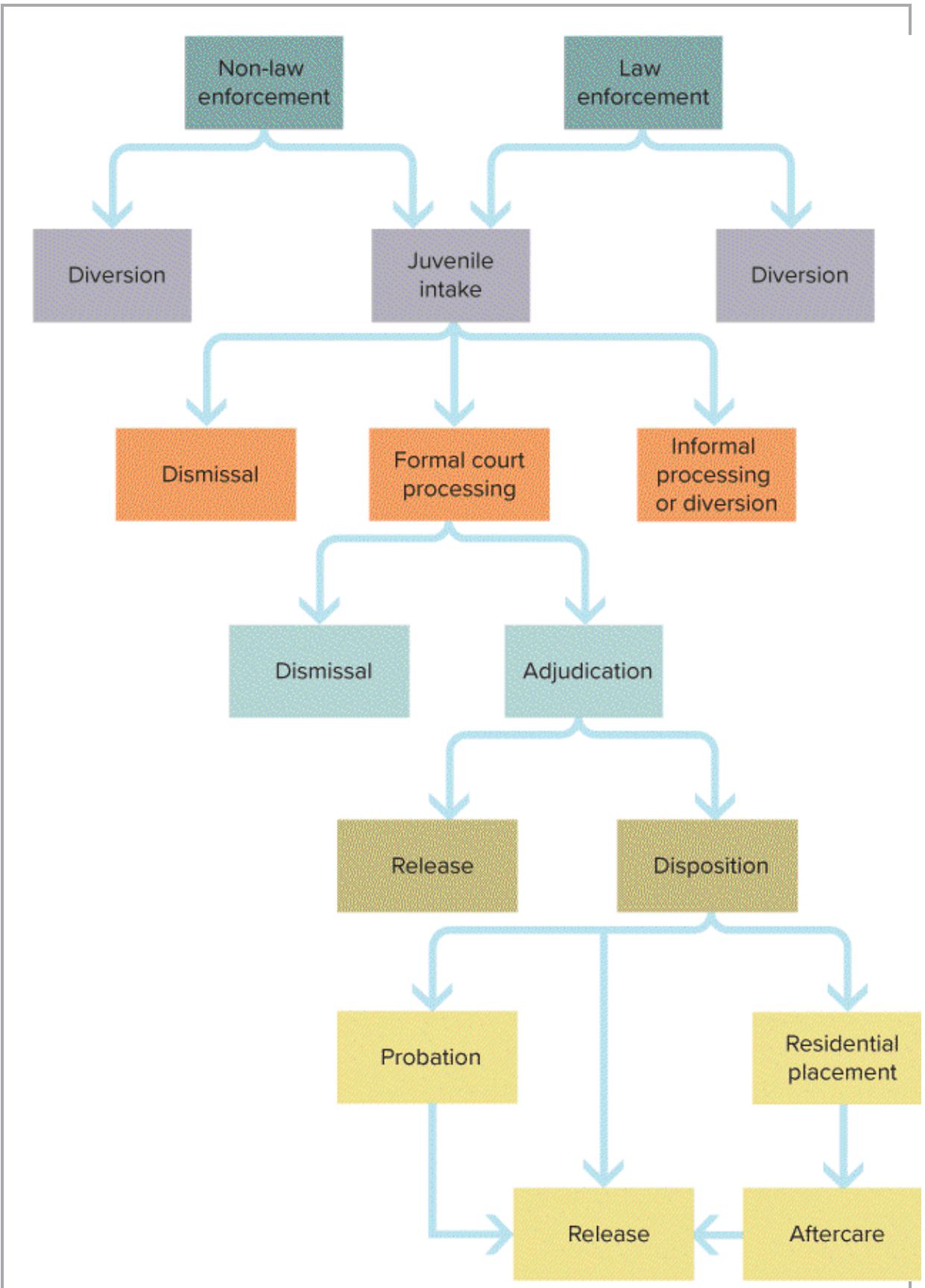


FIGURE 15-4 Juvenile Case Flow

Arrest

A child may enter the justice system via a referral from parents, school officials, probation officers, or other adults. Most, however, enter the same way that the majority of adults do: They are arrested by police. In 2017, for example, 81 percent of all delinquency cases were referred by law enforcement.⁷⁰

In 2010, 23 percent of arrested juveniles were handled by the police department without further referral. Sixty-eight percent were referred to juvenile court, and the remaining 8 percent were referred directly to adult court.⁷¹

When police choose to pursue a case against a child, that child is usually taken to a juvenile detention center, known as a **juvenile hall**. However, children may sometimes be held in adult jails, particularly when no juvenile facility is available. An estimated 1 percent of the population in jails in 2004 was under age 18.⁷² Children held in adult jails are more likely than children held in juvenile facilities to suffer violent or physical attacks or to commit suicide.⁷³

juvenile hall

A juvenile detention center.

The 1974 Juvenile Justice and Delinquency Prevention Act prohibited holding juveniles in adult facilities, but with exceptions. Children may be housed with adults for up to 48 hours—or longer, if weekends or holidays intervene—while arrangements are made to transfer them to a juvenile facility. Children also may be housed in jails if they are separated from adult inmates or if they will be or have been tried as adults. The act, amended by Congress several times, currently seeks to address the disproportionate number of juveniles of color in the criminal justice system, encourage alternative sanctions for status offenders, and remove juveniles from adult jails and other adult facilities.⁷⁴

Unlike adult offenders, people held in juvenile detention facilities are not constitutionally entitled to a swift “probable cause” hearing (see Chapter 9).

However, each state has a statute that mandates that a detention hearing occur within a certain amount of time—usually 24 hours.

Intake

Shortly after a juvenile is taken into custody, the process of **intake** begins, during which an official decides whether to release the juvenile, refer the case to court, or put the juvenile under some other supervision. In most states, a prosecutor will consider the case. The prosecutor may choose not to proceed any further, in which case the child is released. Under some circumstances, the prosecutor may file charges against the child in adult court. The prosecutor may also refer the case to juvenile court. The formal document that initiates a juvenile case is called a **delinquency petition**; it lays out the specific allegations against the child and serves much the same function as a criminal complaint does for an adult defendant.

intake

The process during which an official decides whether to release the juvenile or refer the case to court or put the juvenile under some other supervision.

delinquency petition

The formal document that initiates a juvenile case and lays out the specific allegations against the child; serves much the same function as a criminal complaint.

In some states, the **intake officer**—who typically is a probation officer—makes the initial decision about whether to proceed with a case. The intake officer may choose to handle the case informally by dropping it; placing the child on **informal probation** (as long as the child obeys certain conditions and stays out of trouble, the case will not proceed any further); or assigning the child to a diversion program, such as substance abuse treatment. Alternatively, the intake officer can handle the case formally by recommending that it be heard in juvenile court. In some jurisdictions, the intake officer can also recommend a transfer to adult criminal court. However, the ultimate decision on waivers usually rests with the prosecutor.

intake officer

The probation officer who makes the initial decision about whether to proceed with a case.

informal probation

A situation in which as long as the child obeys certain conditions and stays out of trouble, the case will not proceed any further, such as to court.

The intake officer usually determines whether to release the child to parents or guardians or to detain the child in custody while waiting for the case to go to court. Bail is rarely used in juvenile cases, primarily because the juveniles' parents or guardians are expected to ensure the child's appearance in court, and children present much less of a flight risk than adults.

Nationwide, about half of all cases are settled informally at intake. The likelihood that a case will be handled formally has increased since 1985, primarily due to policy changes demanding that the system get tough on crime and treat juvenile offenders more like adults.⁷⁵



▲ Guards Restraining Juveniles

On occasion, some inmates in juvenile facilities must be restrained.

Spencer Grant/PhotoEdit

Diversion

When juvenile cases are handled informally, one option is to place the child in a diversion program. The **diversion program** is meant to rehabilitate children,

provide more effective early intervention for troubled youths, and reduce juvenile court caseloads—all without burdening offenders with the stigma associated with going to court. Diversion programs are usually available for first-time, nonviolent offenders and may be aimed at specific groups, such as very young offenders or substance abusers.

diversion program

A program that handles juvenile cases informally rather than formally through the juvenile court and that is intended to rehabilitate, provide more effective early intervention, and reduce juvenile court caseloads.

One common program is the **teen court**, in which teenagers serve as jurors and often as judges, attorneys, and bailiffs as well. Although there are more than 600 teen courts in the United States, so far there has been page 535 little research on their effectiveness in reducing recidivism.⁷⁶ Another popular diversion option is a restorative justice program such as community service.

teen court

A court in which teenagers serve as jurors and often as judges, attorneys, and bailiffs as well.

Juvenile diversion programs produce mixed results. Some appear to reduce recidivism, whereas others seem to be no more effective than traditional juvenile court dispositions.⁷⁷ A diversion program that is no more effective than traditional methods may still be worth pursuing because it costs less, reduces court caseloads, and carries less of a stigma.

Preventive Detention

When the decision is made to take a juvenile to court, the question arises of what to do with the child until the court date. Should the child be released to parents or guardians or be kept in a detention center (serving the same purpose as the adult's jail)? About one in five arrested juveniles is held in **preventive detention** in a juvenile facility while awaiting a court appearance, either to ensure appearance at trial or to prevent the child from committing dangerous acts.⁷⁸

preventive detention

Custodial holding of children accused of crimes, to ensure they appear in court but also to protect them from adverse home conditions or to prevent them from committing additional offenses while their case is pending.

Preventive detention of adults is permitted only when the adults are accused of violent felonies or have a previous record of dangerous behaviors.⁷⁹ Children, however, can be detained under broader circumstances, such as when the intake staff determines that they require diagnostic evaluation, pose a threat to the community, or will themselves be at risk if released.⁸⁰ Most juvenile detainees are not accused of violent crimes. In 2010, for example, 25 percent of detainees were accused of crimes against persons, 37 percent of property crimes, 26 percent of public order crimes, and 12 percent of drug offenses.⁸¹

A number of problems are associated with preventive detention of juveniles. One is that detention is used unequally. Boys are more likely than girls to be detained, even for the same offenses, and non-White children are more likely to be detained than are White children. In 2017, for instance, 21 percent of White juveniles were detained, but 30 percent of Black juveniles had to remain in custody pending their hearing.⁸²

A second problem with preventive detention is that it is difficult to determine accurately whether a youth will be dangerous if released. A large proportion of juveniles who are detained—perhaps 74 percent—would have presented very little risk to the community, as evidenced by the fact that 61 percent of those found to be delinquent are given probation, and only 26 percent are placed in a facility of any kind.⁸³ The mistaken detention of low-risk youths creates problems for them because, among other effects, detained youths are more likely to be found delinquent and to receive a more severe sentence than those who are not detained.⁸⁴

A third problem is that conditions in detention centers can be poor. Overcrowding is common. In 2010, for example, 39 percent of juveniles in Maryland, 40 percent in Missouri and Nevada, and 83 percent in the District of Columbia were in overcrowded facilities.⁸⁵ Youths in overcrowded conditions are more likely to be victimized by other youths, to suffer physical and mental health problems, to be maltreated by staff, and to lack adequate diagnosis and treatment. Luckily, this trend appears to be improving nationwide. In 2017, 18 percent of facilities were operating at capacity and 3 percent were above capacity. The remaining 79 percent were below capacity.⁸⁶

One promising solution to these problems is the standardized use of a tool called the **risk assessment instrument**—a worksheet that measures the degree of risk in a given case. The intake officer enters specific information about the case and the juvenile into the instrument, such as the number of prior arrests, previous violations, and absence of parental supervision. The resulting score predicts the likelihood that the juvenile will commit more crimes or fail to

appear in court. The intake officer can then base a detention _____ page 536 decision on this score. Risk assessment instruments may reduce the rate of detentions, as well as race and gender bias, without creating increased danger to the public.⁸⁷

risk assessment instrument

A worksheet that measures the degree of risk present in a given case.

Adjudication

In 2010, 1.4 million juvenile cases were handled formally through filing a petition sending a juvenile to court. This was a substantial increase since 1985.⁸⁸ The increase in formal petitions was likely a consequence of tough-on-crime policies.

When the prosecutor files a petition in a juvenile case, the juvenile may plea bargain or not. If not, the court proceeding in which a judge determines whether a juvenile has committed an offense is an **adjudication hearing**, not a criminal trial.

adjudication hearing

A hearing to determine whether the juvenile committed the action as charged.

In many respects, however, an adjudication hearing resembles a criminal trial. A prosecutor, who must prove guilt or innocence beyond a reasonable doubt, brings the case. The juvenile is entitled to be represented by an attorney, although in some jurisdictions, fewer than half of juveniles have a lawyer. (Some research suggests that juveniles represented by counsel actually receive more severe treatment.)⁸⁹ Witnesses are sworn and evidence is produced. A typical juvenile court judge may hear 30–50 cases each day, with the result that each case gets only a few minutes. Unlike criminal cases, juvenile cases in many states are closed to the public to avoid further stigmatization of the child. A recording or transcript of the proceedings is made in case the juvenile later wishes to appeal.

The most striking difference from a criminal trial is the lack of a jury in an adjudication hearing. The judge determines whether the prosecution has met its burden of proof. If not, the petition will be dismissed, and, just as in criminal cases, the youth cannot be retried for the same offense. If the prosecution has met its burden, the youth is **adjudicated delinquent**, the juvenile equivalent of

being found guilty. In 2016, 52 percent of petitioned cases resulted in a delinquency adjudication.⁹⁰

adjudicated delinquent

The equivalent in the juvenile system of being found guilty in adult court.

Disposition

Adults who are found guilty are given sentences and often a sentencing hearing. Once again, the terminology differs for juvenile court: Those adjudicated delinquent are given a **disposition**, often at a disposition hearing. Before the hearing, a probation officer prepares a predisposition investigation report that outlines the juvenile's personal and family history. The probation officer may be present during the hearing, along with a defense attorney (and perhaps a prosecutor), the child, the parents, social workers, and other interested parties.

disposition

The result or outcome for those juveniles adjudicated delinquent.

Juvenile court judges have broad discretion over a wide variety of dispositions. The most common disposition, however, is probation. Other alternatives include private treatment centers, group homes, foster homes, shelters, boot camps, wilderness camps, and state-run training schools or secure facilities. Juveniles may be ordered to pay fines or restitution or to do community service.

Until the 1970s, instead of being given sentences of a fixed length as adults receive, juveniles were given indeterminate commitments. Effectively, their dispositions would continue as long it took to "cure" them of whatever problems led them to crime. Rather than being proportionate to the severity of the offense, the length of time juveniles spent as wards of the juvenile system was determined by the complexity of their problems and their response to treatment. As a result, youths could be incarcerated significantly longer than adults who had committed the same offense. (Gerry Gault, who would have spent nearly 6 years in a reform school for making lewd phone calls, is a good example.) In recent years, however, many states have been making juvenile dispositions of fixed length and in proportion to the seriousness of the crime. Other states still use indeterminate commitments but limit them to the maximum time an adult could serve for the same crime.⁹¹

Sealing and Expunging Juvenile Records

Labeling theory states that if a person is stuck with a negative label, such as “criminal” or “delinquent,” that label will negatively affect the person’s future behavior.⁹² For this reason, juvenile hearings are usually closed to the public. Moreover, the media may be prohibited from publishing the names of juvenile offenders, and when court decisions about juveniles are published, the decisions often replace the juveniles’ names with initials.

In addition, juvenile records may sometimes be sealed or expunged. When a juvenile record such as an arrest, court, or probation record is **sealed**, most people will be denied access to it, and the person who committed the offense can claim to have no criminal record. When a record is **expunged**, it may be destroyed entirely or accessible only by court order.

sealed

A term describing a juvenile record that is made inaccessible.

expunged

A term describing a court record that is destroyed or made legally unavailable.

MYTH/REALITY

MYTH: All juvenile records are automatically erased when the person becomes an adult.

REALITY: Although some juvenile records may be sealed or expunged, the process is rarely automatic. Even sealed and expunged records may still remain available under some circumstances.

The laws concerning sealing and expunging juvenile records vary greatly by jurisdiction and may be available only for certain offenses, after a certain amount of time has passed, or if certain conditions are met (for instance, the offender has not been arrested since that offense). Some jurisdictions prohibit sealing or expunging offenses, sometimes for certain crimes and sometimes for all offenses. In most jurisdictions, sealing and expunging are not automatic; the offender must go through a particular process, usually only after reaching adulthood.

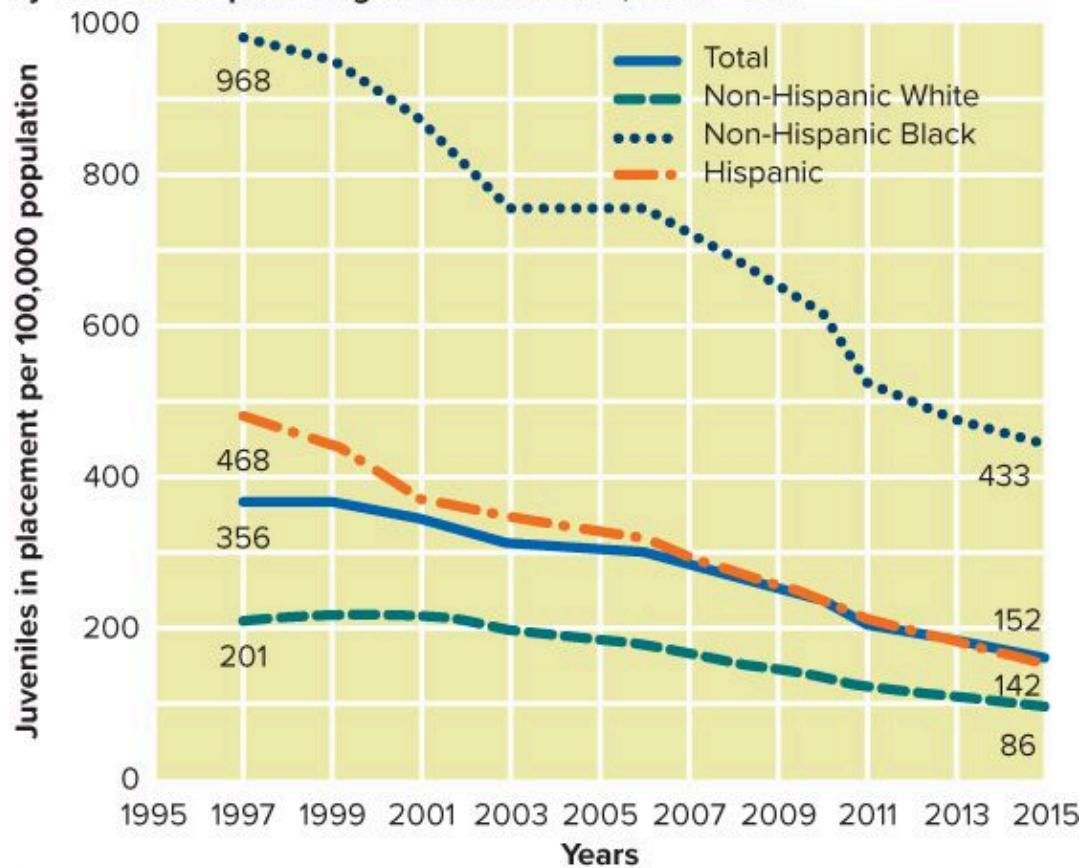
Just because a record is sealed or expunged does not mean that it disappears. For example, a state may seal its own records, but related records may remain

in private or federal databases. Some law enforcement agencies may still have access to sealed or expunged records.

JUVENILE CORRECTIONS

Normally the term *juvenile corrections* refers to a variety of practices used to handle juveniles who break the law. Some of the practices include residential placement in juvenile detention facilities, correctional facilities, group homes, and shelters (Figure 15-5). Other programs provide nonresidential supervised placement in the community such as probation and parole.

**Juveniles in residential placement¹ per 100,000 population,²
by race and hispanic origin: selected Years, 1997–2015**



¹The Census of Juveniles in Residential Placement collects data from all juvenile residential custody facilities in the United States, asking for information on each youth assigned a bed in the facility on the last Wednesday in October. Residential facilities include detention centers, shelters, reception/diagnostic centers, group homes, boot camps, ranch/wilderness camps, residential treatment centers, and long-term secure facilities.

²Rates are calculated per 100,000 juveniles ages 10 through the upper age of each state's juvenile court jurisdiction.

FIGURE 15-5 Juveniles in Residential Placement, 1997–2015

SOURCE: Child Trends, “Juvenile Incarceration: Key Facts about Juvenile Incarceration.” <https://www.childtrends.org/indicators/juvenile-detention> (retrieved February 1, 2019).

Before the *Gault* decision, when establishing due process rights, juvenile courts took into account not only the offense but also such factors as school performance, family functioning, addiction problems, attitude, and prior history in order to serve the best interests of minors.

Following *Gault*, juvenile courts became increasingly adversarial and legalistic and less oriented toward social welfare.⁹³ Some states, among them Washington, took a step away from the original juvenile court philosophy and

adopted sentencing guidelines that identified specific dispositions for specific offenses, regardless of the juvenile's social history.⁹⁴ Individualized rehabilitation programs and specified treatment plans lost importance. Although probation was still the most common sanction, incarceration became increasingly popular, especially with the media and the public.⁹⁵ However, since 1997 we see evidence of a reverse in the trend of incarcerating youth. There has been what some call a revolution in the attitude of the state toward offending children. Between 2005 and 2015 the rates of juvenile confinement have fallen (Figure 15-5). Despite the decline, the United States has the highest rate of youth confinement than any developed country and those in confinement are there due to technical violations of probation, public order offenses, status offenses, drug offenses, and low level property offenses. Today also there are less severe alternatives to incarcerating youth, and they appear to work. Community-based programs, including diversion programs, drug treatment, evening reporting centers, treatment clinics, and family programs, have been shown to be less costly than detention or incarceration and to help youth stay out of trouble and to not reoffend.⁹⁶

Incarceration

MYTH/REALITY

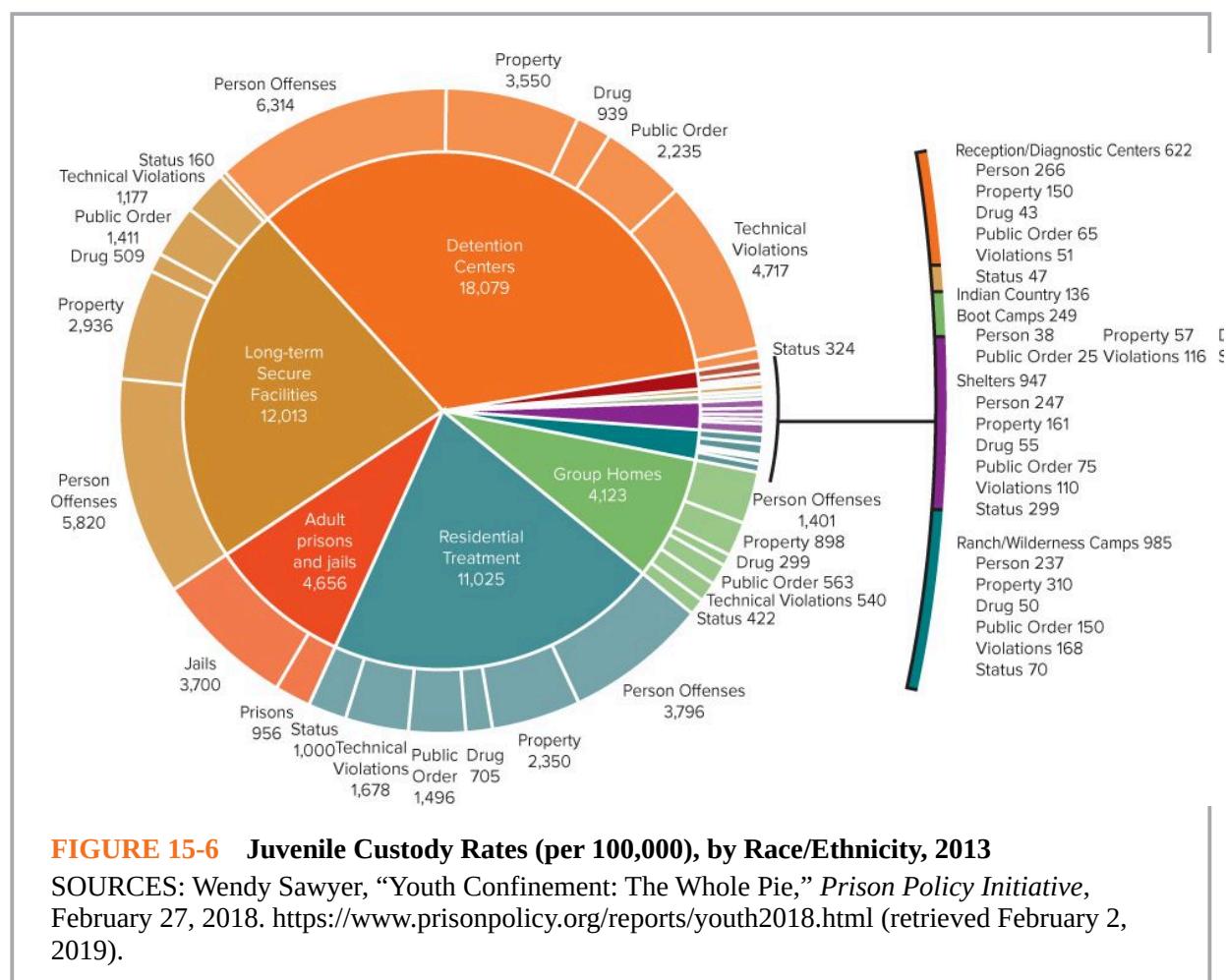
MYTH: Everyone locked up in juvenile institutions is, in fact, a juvenile.

REALITY: Juvenile correctional jurisdiction often extends into young adulthood; many people in juvenile institutions are actually in their early 20s.⁹⁷

Many jurisdictions have moved from rehabilitation models of delinquency to more punishment-oriented models, especially for juveniles convicted of violent offenses. Juvenile court critics have argued that punishment of juveniles must be longer and more severe.⁹⁸ In response, many states have implemented tough-on-crime policies, including waivers, that send juveniles to adult court and increase the use of incarceration. There is evidence the harsh punishment trend for juveniles may be changing, however, and the pendulum may be swinging back again to the rehabilitation model for justice-involved youth. An example was in 2016, the U.S. Supreme Court ruled that offenders who committed crimes when they were juveniles and received life sentences without

parole had the right to apply for parole or seek reduced sentences, giving hope to as many 1,500 prisoners some who committed their crimes as young as age 13.⁹⁹

The number of juveniles in custody rose dramatically until 2000, when it began to decline steadily. In 2018 there were approximately 53,000 juveniles locked up in facilities away from home. Ninety-five percent of these youth were locked up for a delinquency offense and 5 percent were held for a status offense. Less than 40 percent were held for a crime against a person.¹⁰⁰ See Figure 15-6 to examine how U.S. youth are locked up and for what types of crimes.¹⁰¹ The 2015 Census of Juveniles in Residential Placement (CJRP) indicates between 1997 (when the data collection began) and 2015, the number of justice-related youth confined continued to drop. The overall number of confined youth decreased by 54 percent most likely because a number of states cut their youth incarceration rates by 50 percent or more.



The decline, however, did not affect all race and ethnicity groups equally. People of color are disproportionately represented in juvenile correctional institutions. Between 2006 and 2015 Whites in residential placement declined 54 percent, compared to 45 percent for minority youth in general [page 539](#) and 45 percent for Hispanic youth. Minority youth made up the majority of males and females in residential placement. Blacks were the largest racial proportion among males (42 percent) and Whites were the largest racial proportion among females (37 percent). In 2015, minority groups accounted for 69 percent of detentions with Black males accounting for the largest group. The Black detention rate was about 6 times the detention rate of White youths.¹⁰²

Types of Juvenile Correction Facilities

A juvenile court judge who believes that a juvenile must be removed from home and placed in a correctional facility often has a choice between a community-based program or a larger custodial facility. Short-term detention facilities tend to be locally operated; long-term facilities are mostly run by the states. Group homes are predominantly private but may be contracted by local, state, and federal agencies to provide services for juveniles.

Large State-Run Facilities Although there are more local facilities in the United States, larger (designed for more than 50 youths) state-run facilities (also referred to as long-term secure facilities) house the majority of juveniles and are used for longer incarcerations.¹⁰³ They tend to be secure institutions with locked gates and fences or razor-wire walls. About 62 percent of long-term secure facilities also use “mechanical restraints” like handcuffs, leg cuffs, restraining chairs, and the like, and they can isolate youth in locked rooms for four or more hours.¹⁰⁴ Many long-term secure facilities have treatment programs for drug abuse and education.

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The larger juvenile facilities have been accused of gross mistreatment and abuse of youth, committed sometimes by inmates but mostly by staff.¹⁰⁵ Many social structures and interactions of male inmates are based on the power one inmate has over another and on physical attacks, coercion, and sexual exploitation.¹⁰⁶ Physical and sexual abuse of juveniles by staff in state custodial institutions has been well documented, largely because of the media attention that lawsuits and scandals generate. The sexual misconduct of staff

against youth was reported at a rate of 11 percent for state institutions as opposed to a rate of 3 percent for local and private facilities.¹⁰⁷ Because many people assume that state institutions are probably safer than local ones, these statistics are troubling.



▲ Juvenile Corrections Facility

There are a variety of kinds of juvenile corrections facilities.

Andrew Lichtenstein/Corbis/Getty Images

Almost 10 percent of juveniles held in juvenile custody reported having been sexually abused in their current facility during the span of a year. Abuse typically commences within about 6–12 months of incarceration.¹⁰⁸ Most of those who commit sexual abuse in juvenile facilities are corrections staff, not inmates, and many report their sexual abusers were female. There is painfully little research on female staff members who commit sexual abuse on juveniles. What we do know is that many women abusers are new to their jobs, young, and may believe themselves to be well-meaning and caring. Additionally, boys reported much higher rates of abuse committed by female staff members than girls reported. Studies also confirm that most juveniles report being abused repeatedly during the course of a year and report 11 or more instances of occurrence as opposed to a single incident. Juveniles submit to the abuse for a

variety of reasons such as being physically forced, fear, need for sex, protection, and the desire for special privileges.¹⁰⁹

In adult correctional facilities, most of the abuse that occurs is inmate against inmate, whereas in juvenile facilities, the majority of abuse is perpetrated by staff members against the juveniles. The mistreatment of juveniles in custodial correctional facilities is not limited to the United States but rather seems rooted in the nature of total institutions themselves. As the Stanford Prison Experiment illustrates (see Chapter 12), institutions tend to bring out the worst in the keepers and the kept. A study in Israel found that victimization and violence by peers and by staff was commonplace in juvenile correctional facilities.¹¹⁰



▲ Juveniles in Group Counseling

Group counseling is common in juvenile corrections facilities.

Steve Yeater/AP Images

Juveniles in Adult Prisons In 2018 there are approximately 4,700 juveniles detained or incarcerated in adult penal institutions. About 1 in 10 youths are confined in adult facilities. We also know that youth held in adult facilities are in extreme danger. Correctional personnel frequently have to put youth in isolation to keep them safe from predatory adults. Also we know isolation can produce harmful mental effects such as anxiety, depression, paranoia, and suicide.¹¹¹ Juveniles of color are overrepresented and are more frequently sentenced to harsher terms of punishment than White juveniles. Furthermore, these juveniles are at high risk of sexual victimization, and they are about 36 times more likely to commit suicide than if they were in juvenile corrections institutions. Transferring juveniles to adult institutions also appears to increase the likelihood of continued criminality and does not appear to protect the community.¹¹²

Juveniles housed with adult prisoners can easily be victimized by adults. Victimization takes the form of stealing property and physical and sexual assaults.¹¹³ Juveniles in adult prisons also are prone to recidivism. A study comparing 15- and 16-year-olds who were sentenced in adult court with those who were sentenced in juvenile court showed that the juveniles tried as adults reoffended and were reincarcerated at rates higher than those tried in juvenile court. Furthermore, there is reason to believe that juveniles who receive adult sentences experience greater stigma that can interfere with future work options.¹¹⁴

Real Careers



CostinT/iStockphoto.com

ERICA KNUTSEN

Work location: Austin, Texas

College(s): University of Florida, Gainesville (2006); University of Pennsylvania (2007)

Major(s): Criminology (BA); Criminal Justice (MS)

Job title: Policy Writer, Department of Policy and Accreditation, Texas Youth Commission

Salary range for job like this: \$35,000—\$42,000

Time in job: 2 years

Work Responsibilities

I am a policy writer for the Texas Youth Commission (TYC), the state's juvenile corrections agency. My primary function is to develop and maintain agency policies, procedures, and forms. I also post new policies online and transmit them agencywide to staff and volunteers, maintain policy history, and serve as the agency's liaison with the *Texas Register*, the newspaper of record.

New leadership at TYC has made significant changes to improve the services provided to the youth in its care. As a result, during the past year I have been very busy writing case management standards and treatment policies.

Why Criminal Justice?

I originally decided to major in criminal justice because I wanted to be a special agent for the FBI. However, after taking several courses, I began considering a career in juvenile justice. I did not know much about possible careers in this field, so I sought relevant work experience. First, I interned at Project Payback, a restorative justice and restitution program housed within the Victim

Services Division of the State Attorney's Office in Gainesville, Florida. My favorite aspect of this job was teaching juveniles the skills necessary for obtaining and maintaining a job.

I also worked part-time as a project assistant for the Florida Network of Victim Witness Services (FNVWS), which provides support and technical assistance for advocates in the emerging fields of victim assistance and witness management. This position made me realize how recently the rights of crime victims have been established in the criminal justice system. With my collective experience, I hope one day to work in juvenile victim services.

Expectations and Realities of the Job

My understanding of the juvenile justice system has changed after working in both the Florida and Texas systems. I had expected the system to focus primarily on rehabilitation, but I have found a balance between services rendered and jail sentencing. But policies are always evolving, and I have been glad to see that the treatment of youth in the criminal justice system is a concern for lawmakers.

My Advice to Students

First, be proactive in your job hunt. Contact employers, and if you do not hear from them, call them back and inquire about your application. Consider a wide range of opportunities. The glory of criminal justice is that it is such a broad field, and a connection with a government official, or even a psychologist, can sometimes yield a career possibility. Finally, consider graduate school. While many careers in criminal justice do not require a master's degree, having one can strengthen any resume. If you decide to apply to graduate school, be sure to take a statistics course, a prerequisite for many programs.

Figure 15-7 shows the number of youth held in adult jails and state prisons over the past three decades. Between 1990 and 2016 the numbers began an obvious decline. However, data from the Bureau of Justice Statistics indicate that juveniles locked up in adult jails increased between 2015 and 2016.

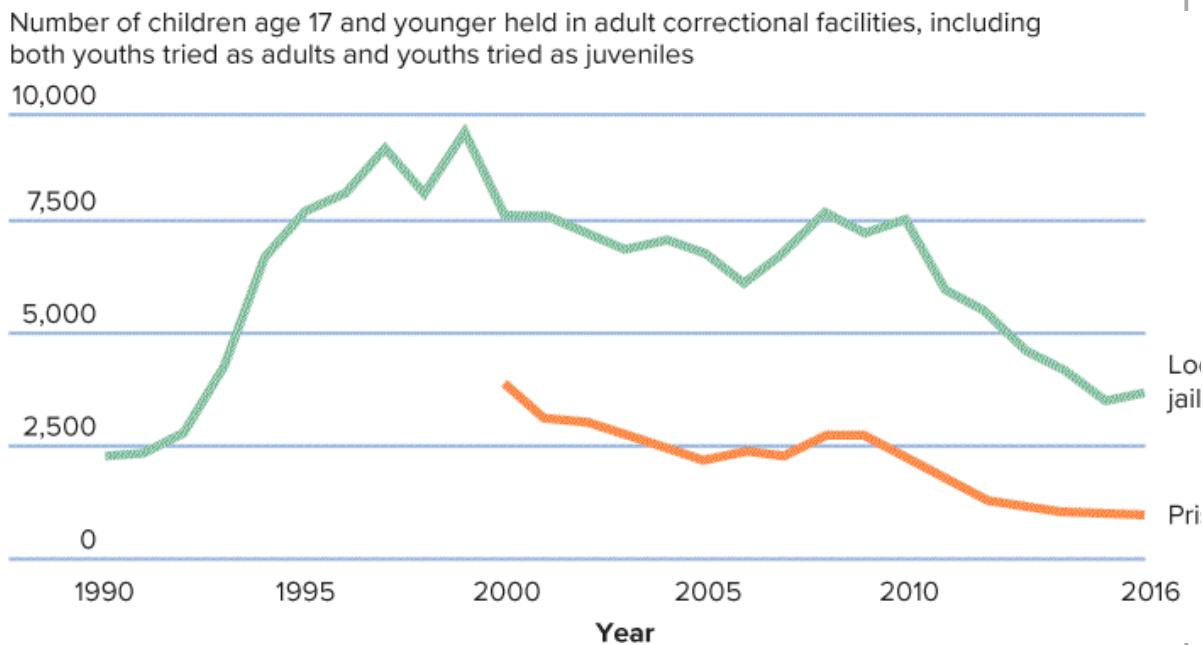


FIGURE 15-7 Number of Youth Held in Adult Jails and State Prisons, 1990–2016

SOURCES: Maddy Troilo, “Locking Up Youth with Adults: An Update,” *Prison Policy Initiative*, February 27, 2018. <https://www.prisonpolicy.org/blog/2018/02/27/youth/> (retrieved February 2, 2019).

Group Homes A minor who does not need a secure custodial setting but cannot return home might be placed in a group home. Small community programs such as group homes have a significant advantage in that they allow the juvenile to live in the community, attend school, and take [page 542](#) advantage of resources there. Research shows that combining services—such as medical treatment and job training with good aftercare and reintegration services—offers the juvenile offender the best chance of reducing postrelease arrests.¹¹⁵ Group homes, shelters, and ranch and forestry wilderness camps tend to be private facilities contracted by state and local governments to provide services to juveniles. Group homes outnumber all other types of facilities where juveniles are housed.¹¹⁶

Institutions for Female Juveniles The first correctional facility for female juveniles was founded in Lancaster, Massachusetts, in 1856. Its emphasis on domestic work such as sewing and house cleaning continues in many schools for females to the present day. Very little research has been conducted on juvenile females in corrections compared to juvenile males. Like adult female inmates, juvenile female inmates develop subcultures, called *pseudo families*

(see Chapter 12), to cope with the stress and difficulties of confinement. The pseudo families provide incarcerated young women with a sense of affection and belonging and mimic the roles parents, spouses, siblings, and children play in the wider community.¹¹⁷ The needs of girls in corrections are different from those of boys. For correctional efforts to be effective, corrections personnel must take this into account. Some of the issues for girls are separation by gender in housing and programming, gender-responsive training for personnel, pregnancy and sexual health care, respect for privacy, access to family and children, and protection from abuse in institutions.

The number of juvenile female offenders is far below that of males. Fourteen percent of juvenile offenders in residential corrections placement in 2011 were female.¹¹⁸ However, incarceration of female juveniles is increasing at a higher rate than for young males.¹¹⁹

Alternatives to Incarceration

Most juvenile offenders are not incarcerated. Alternatives to serving time in a correctional facility include probation and other approaches, such as boot camps and day treatment.

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Probation The most common disposition for youthful offenders is probation. Nearly a half million youth are given some sort of probation annually. Also Black, Latino, and other youth of color are overrepresented in its use.¹²⁰ Probation is frequently referred to as the “workhouse” of the system of juvenile justice and is used at many points of the juvenile justice system. It is ordered as a formal sanction for adjudicated juveniles and is often used as a way of diverting status or first-time juvenile offenders from the courts. It can also be used as a way of informally monitoring at-risk juveniles and, hopefully preventing them from future crime. For example, in 2015 probation was ordered as a criminal sanction in 49 percent of court cases compared to 11 percent for other uses.¹²¹ Sometimes the use of juvenile probation as a sanction is met with public outcry as in the case of a Texas teen that attracted national attention after a witness indicated that the teen was a victim of “affluenza” (wealthy parents that never set limits on children). The Texas teen killed four people while driving drunk and received a 10-year probation term after receiving treatment in a lockdown residential treatment facility.¹²²

A juvenile on probation is usually required to report to a probation officer at regular intervals, to attend school, and may be required to attend a specific program such as counseling or other treatment. The probation officer is responsible for supervising the juvenile and reporting any new violations to the court. Violations or new offenses can revoke probation and send the juvenile back to court on new charges. Probation officers also help the juvenile solve the problems that got her into trouble in the first place.

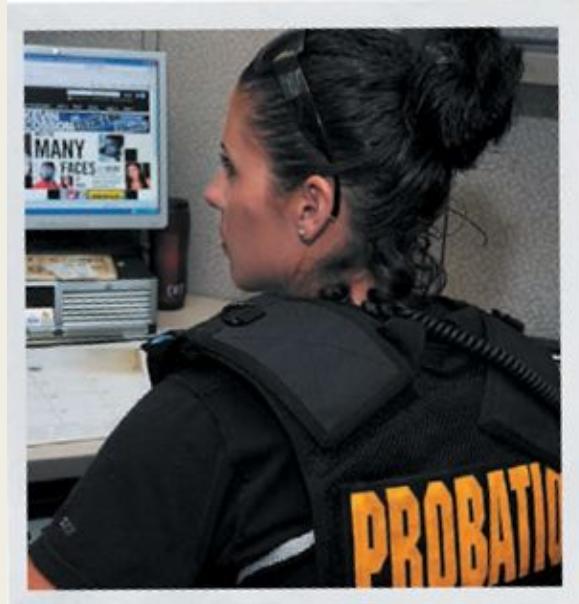
Probation officers act as both enforcer and social worker at the same time. But because probation caseloads in many jurisdictions are high, officers seldom are able to offer more than occasional guidance. Because each state's juvenile justice system is different, it is difficult to define, measure, compare, and report juvenile recidivism rates. This has led some to conclude there is no national juvenile recidivism rate.¹²³ Some, however, continue to estimate juvenile probation recidivism percentages from 40 percent to 70 percent.¹²⁴ Noninstitutional programs such as intensive-supervision probation (ISP) use probation officers who closely monitor juveniles, especially those at high risk of recidivism. ISP might be coupled with regular or random drug testing. (See Chapter 13 for a discussion of ISP.) In 2017 the National Council of Juvenile and Family Court Judges called for the support of non-boilerplate, innovative developmentally appropriate juvenile justice probation practices that rely on the latest knowledge of adolescent development and brain science. They advocate probation departments develop individualized case plans with the youth, their families, and community-based resources. The new practices are intended to instill pro-social development while holding the probationers accountable and not endangering public safety.¹²⁵

Fines and restitution are usually conditions of probation. The court orders the juvenile to make payments to the victim or the court or requires the juvenile to work in some community project for a length of time.¹²⁶ The "Juvenile Justice Realignment" bill (Senate Bill 81) became California law in 2007, leading to juvenile justice reform and requiring probation agencies to shoulder the primary responsibility of handling juvenile offenders at the local level. It limited the types of offenders who could be committed to juvenile correctional facilities and shifted the emphasis from institutional confinement at the state level onto the counties to provide innovative and evidence-based programs that would assist juvenile offenders in living more law-abiding lives. Realignment resulted in a decrease in the juvenile state institution population, but questions still remain about its long-term effectiveness and California still incarcerates

juveniles at a rate of 271 per 100,000, which is higher than the national average.¹²⁷

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Real Careers



Zuma Press/Alamy

JULIA MARTINEZ MORRIS

Work location: San Antonio, Texas

College(s): Texas State University–San Marcos (2005, 2007)

Major(s): Criminal Justice (BS); Criminal Justice (MS)

Job title: Senior Juvenile Probation Officer, Bexar County

Salary range for job like this: \$30,000—\$36,000

Time in job: 2 years

Work Responsibilities

I supervise 15 to 18 juveniles in the community on intensive-supervision probation and intensive community-based probation. I maintain five to seven face-to-face contacts with each juvenile per

month through office, home, and school visits. I am responsible for making sure that juveniles adhere to the conditions of their probation. When juveniles violate a condition of probation, I refer them for additional services or submit a motion to modify disposition to the juvenile court. After several violations, I can place the juvenile at the detention center.

During the court process I act as a representative for the Department of Juvenile Justice and make a recommendation to the court during the juvenile's disposition hearing. Recommendations include continued probation, probation with specialized programs, placement at a short- or long-term residential facility, or commitment to the Texas Youth Commission (for felony offenders only).

I typically work 40 to 50 hours a week, which includes detention visits, detention hearings, office visits, drug tests, home visits, curfew checks, and school visits. I can receive phone calls 24 hours a day regarding a juvenile. I often receive phone calls from parents reporting that their child missed curfew and sometimes from the Detention Center Intake reporting that a probationer was arrested.

Why Criminal Justice?

I started at a junior college and was interested in restaurant/hotel management. A peer who told me about a field trip his class took to a prison stirred my interest in criminal justice classes. When I transferred to Texas State University, I took a juvenile justice class in which juveniles from the Texas Youth Commission in Giddings, Texas, were guest speakers. After I heard these juveniles talk about their past, their crimes, and their rehabilitation, I knew I wanted to be a probation officer.

Expectations and Realities of the Job

I have learned that you do not go into criminal justice for the money. There is job security, there are good benefits, and you can make a living, but you can sometimes feel overwhelmed, overworked, and underpaid. However, I get job satisfaction when one of my juveniles completes probation. It makes it all worthwhile.

My Advice to Students

Be a team player. We have to assist when someone is away or needs to detain a juvenile or requires a partner for home visits. If you try and do a job in criminal justice alone, you will burn out. You need the help and support of your coworkers. If you are a team player, people will assist you every step of your career.

Parole Just as in the adult criminal justice system, the juvenile justice system has many parallel functions and job duties that focus on assisting incarcerated juveniles to successfully transition from an institutional setting back into the community and civilian life, and simultaneously protect the safety of society. Juvenile field parole officers (or agents as they are sometimes called) are classified as peace officers and have power to arrest and detain those who interfere with them during their duties or arrests. To accomplish the goals of successful reintegration and aftercare, juvenile parole officers work with offenders after they complete their institutional time. Juvenile parole officers

develop individual parole plans in consultation with juvenile offenders, parents and guardians, counselors, teachers, and others to ensure a healthy shift back to civilian life. Additionally, juvenile parole officers have ongoing contact and monitor paroled juvenile offenders to ensure their compliance with their parole plans and other conditions of release. In some jurisdictions juvenile [page 545](#) parole officers also perform the job of probation officers.¹²⁸

Other Programs Many jurisdictions divert first-time offenders, especially those arrested for petty offenses, to a youth service bureau, a community-based agency, a school or church program, or a counseling center. Sometimes they just dismiss the case, often with some form of compensation to the victim or a mediation agreement between the juvenile and the victim.

Boot camps use a model of military basic training, strict discipline, rigid rules, and behavior modification to command the attention of out-of-control delinquent juveniles. Critics point out that camps are only as good as the officers who operate them. On the negative side, these camps provide opportunities for physical abuse and injuries—and such misdeeds have occasionally resulted in the deaths of juveniles, as in the case of Martin Lee Anderson, who died in a boot camp after guards kicked and punched him and subjected him to ammonia fumes. Although boot camps are popular with the public and a cost-effective alternative to incarceration, studies have shown they are no more successful in reducing recidivism than are traditional programs.¹²⁹ It seems that better aftercare is needed if they are to be effective in reducing recidivism.¹³⁰

boot camp

A facility that uses a model of military basic training, strict discipline, rigid rules, and behavior modification to command the attention of out-of-control delinquent juveniles.

Day treatment facilities (sometimes called *day reporting centers*) provide noninstitutional sanctions that are structured and community based—such as recreation, counseling, and scholastic programs—often after school. Structured activities led by positive adult role models provide the stable environment that many troubled juveniles lack at home. Some centers allow probation officers to monitor large numbers of juveniles efficiently.¹³¹ Day treatment centers offer many of the same programs but are less expensive than residential facilities and have met with success in various jurisdictions.¹³² As discussed in “A Global View,” some countries use less formal counseling options for youthful offenders and victims.

A Global View

Preventing Youth Violence in Croatia

Despite a fairly recent history of civil war, Croatia has a very low rate of violent crime. So it came as a particular shock to residents of this small country when 18-year-old Luka Ritz was beaten to death in 2008. What made the crime even more shocking was that it was committed by a group of youths who were about the same age as the victim and that it was perpetrated almost completely at random: The group had simply set upon Ritz and his friend as they were walking home one night.

In response to the murder, Ritz's friends and family created Facebook pages in his memory and wore T-shirts that read "Ja Sam Luka Ritz" ("I am Luka Ritz, too"). Supporters displayed posters and held antiviolence rallies and concerts. Perhaps the most significant result, however, was the founding of the Luka Ritz Counseling Centre against Child and Youth Violence.

In October 2010, the Counseling Centre opened its doors in Zagreb, Croatia's capital and Ritz's hometown. The organization seeks both to prevent youth violence and to provide services to its victims. The center sponsors school workshops, seminars for children and parents, film workshops for teenagers, puppet shows for younger children, and individual and online counseling for victims. Ritz's parents, who helped to found the center, are active in its operations, and many young people, including some of Ritz's friends, volunteer there.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- How did the reaction to Luka Ritz's murder in Croatia differ from reactions to similar crimes in the United States? What do you think explains the difference?
- How can ordinary people—as opposed to government agencies—act to prevent violence?
- If you were to create a counseling center similar to the one in Croatia, what goals and activities would it involve?

SOURCE: *Savjetovalište Luka Ritz*. www.savjetovaliste.hr/ (retrieved March 11, 2011).

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What about the Victim?

Consequences of Child Victimization

Teenagers are more than twice as likely as adults to be victims of violent crime. Homicide is the third leading cause of death among children under 12 and the fourth leading cause of death among teenagers. In general, younger children tend to be victimized by parents or other family members, whereas older teens tend to be victimized by other young people.

Violence against children is troubling, not only because of its immediate effects on the young victims but also because of the lingering effects of the trauma. One unsettling aftereffect is an increased suicide rate among juvenile victims. Rates of teen suicide are shockingly high: Suicide is the third leading cause of death among teenagers. A recent study concluded that girls who were physically attacked by someone they dated are at increased risk of attempting suicide. Boys who were sexually assaulted were 4 times as likely than other boys to attempt suicide. Nearly 1 in 10 youths in this study had attempted suicide within the past year.

Child victims of crime are also at increased risk of committing offenses themselves. Ample research demonstrates that children abused or neglected by their parents are more likely than other children to become delinquent, and at earlier ages. Child victims of sexual abuse are more likely to molest children later, and most young people who kill have a history of serious child abuse. Even witnessing violence can adversely affect children. A recent study suggested that children who observe intimate partner abuse between their parents are more likely to bully other children. As discussed in Chapter 2, bullied children sometimes react by committing violence against others or even themselves.

This research underscores how important it is to pay close attention to young victims of crime. Society seems increasingly eager to view children who engage in dangerous and illegal behavior as criminals instead of as victims of their families, the juvenile justice system, and the child welfare system.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Why do you think young victims of violent crime are so prone to attempt suicide?
- Would teenage crime victims in college be less vulnerable to suicidal tendencies than teenage victims in high school? Why or why not?
- Because the juvenile offender is often the product of childhood abuse, what steps should the criminal justice system take to deliver a fair and just verdict in such cases?

SOURCES: Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report* (Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2006), chap. 7. www.ojjdp.gov/ojstatbb/nr2006/downloads/chapter7.pdf (retrieved August 12, 2011); Elyse Olshen, Katharine H. McVeigh, Robin A. Wunsch-Hitzig, and Vaughn I. Rickert, “Dating Violence, Sexual Assault, and Suicide Attempts among Urban Teenagers,” *Archives of Pediatric and Adolescent Medicine* 161 (2007): 539–545; Joseph P. Ryan, “Dependent Youth in Juvenile Justice: Do Positive Peer Culture Programs Work for Victims of Child Maltreatment?” *Research on Social Work Practice* 16 (2006): 511–519; A. Scott Aylwin, Lea H. Studer, John R. Reddon, and Steven R. Clelland, “Abuse Prevalence and Victim Gender among Adult and Adolescent Child Molesters,” *International Journal of Law & Psychiatry* 26 (2003): 179–190; Dorothy Van Soest, Hyun-Sun Park, and Toni K. Johnson, “Different Paths to Death Row: A Comparison of Men Who Committed Heinous and Less Heinous Crimes,” *Violence & Victims* 18 (2003): 15–33; Carol Anne Davis, *Children Who Kill: Profiles of Pre-Teen and Teenage Killers* (London: Allison & Busby, 2003); Anna C. Baldry, “Bullying in Schools and Exposure to Domestic Violence,” *Child Abuse & Neglect* 27 (2003): 713–732.

VICTIMIZATION AND VICTIM SUPPORT SERVICES

Juveniles are not just perpetrators of crime in the United States; often they are also victims. In addition to being victims of many of the same crimes that victimize adults, many children are also victims of child abuse and neglect. A majority of crimes against juveniles ages 12–17 are not reported to the police or to other authorities. Even when the crimes are serious or involve weapons or injury, they are less likely to be reported than if they had happened to an adult.¹³³ The different ways in which teen victims are affected by crime and violence are illustrated in “What about the Victim?”

The good news is that the victimization of juveniles declined between 1993 and 2003 for all types of crimes and among all racial groups.¹³⁴ Nonetheless, we can distinguish unique victimization patterns among juveniles. Younger juveniles have a greater chance of being victimized than older juveniles; African Americans are more likely to be victimized than Whites, but Latino and non-Latino juveniles have about the same likelihood of being victimized.¹³⁵ Research indicates that “victimization rates increase and peak during late adolescence and early adulthood, and that violent victimization is much rarer than theft victimization among juveniles.” These findings also confirm that “victimization is correlated with many negative life outcomes.”¹³⁶

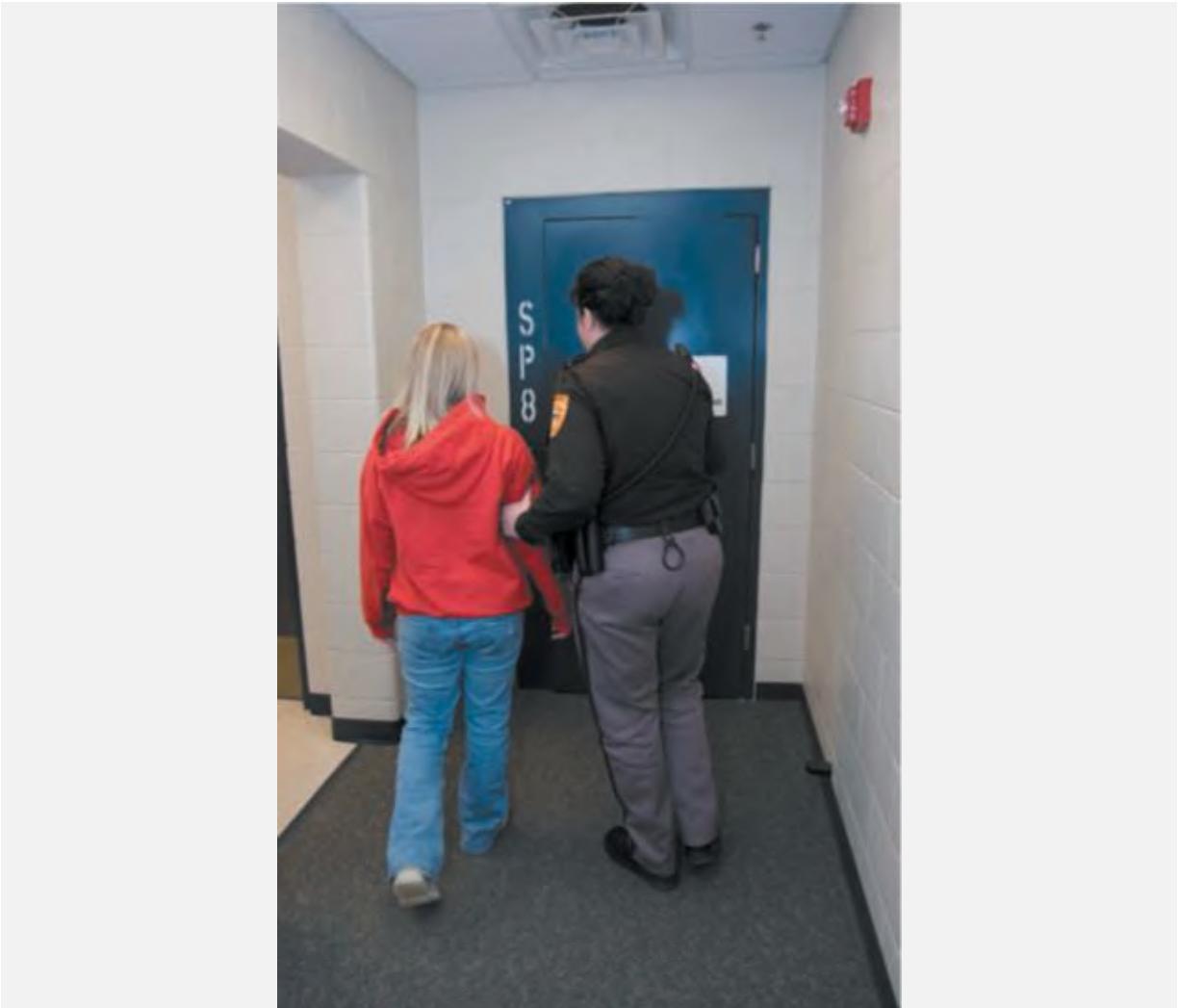
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Race, Class, Gender

Victimization of Female Delinquents

Girls are less likely than boys to enter into the juvenile justice system. For example, in 2017, 29 percent of arrested juveniles were female. The proportion of female violent offenders is even lower; in 2017 it was 20 percent. In part because of their relative rarity in the juvenile justice system, and in part due to stereotypes about gender, female juvenile offenders receive less attention than males—in the media, in research, and among policymakers.

However, there are many strong arguments why female juvenile offenders should be considered more often and more carefully. For one thing, while overall juvenile offending has decreased over the past decades, the proportion of young female offenders has increased. Furthermore, there is evidence that female delinquents are more likely than their male counterparts to have been previously victimized, and therefore they may be coping with additional trauma.



Mikael Karlsson/Alamy

According to a recent multi-agency report, girls in the juvenile justice system have previously experienced physical or sexual abuse at shockingly high rates. In Oregon, for example, 93 percent of the girls in the juvenile justice system reported previous victimization. In a study from South Carolina, 81 percent of delinquent girls reported that they had been sexually abused.

In many cases, this history of abuse is a direct cause of the delinquent behavior itself. Abused girls may run away from home, become involved in drug or alcohol abuse, or become victimized in sex trafficking—all of which could result in them becoming enmeshed in the justice system. Furthermore, youths who have been abused are at greater risk for mental health issues.

If we wish to reduce delinquency among all youths, it's important to also consider the unique experiences and characteristics of female delinquents. Researchers have strongly urged states to promote specialized services for girls who become involved in the justice system.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- In what ways might abuse victimization lead to delinquency among girls?
- How have assumptions and biases about gender affected our juvenile justice system?
- What might be some of the characteristics of successful programs for dealing with at-risk girls?

SOURCES: Office of Juvenile Justice and Delinquency Prevention (2019), “Statistical Briefing Book,” retrieved June 1, 2019 from <https://www.ojjdp.gov/ojstatbb/crime/qa05104.asp?qaDate=2017>; Human Rights Project for Girls (2015), “The Sexual Abuse to Prison Pipeline: The Girls’ Story,” retrieved June 1, 2019 from http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf; Office of Juvenile Justice and Delinquency Prevention (2018), “Specialized Responses for Girls in the Juvenile Justice System,” retrieved June 1, 2019 from <https://www.flcourts.org/content/download/402743/3454090/Girls-in-the-Juvenile-Justice-System.pdf>; Center for Children and Youth Justice (2018), “Gender Responsive Juvenile Justice: A Girls Court Literature Review Update,” retrieved June 1, 2019 from <https://ccyj.org/wp-content/uploads/2019/01/CCYJ.GirlsCourt.LitReview.6-30-18.pdf>.

Victim advocates serving juvenile victims recognize how the period of transition from childhood into the teen years represents significantly higher levels of vulnerability. Consequently, they are calling for specific prevention strategies aimed at identifying dysfunctional families and suggesting more proactive early interventions. Some services assist those already victimized to help children with stress and trauma; other services are aimed at detecting situations in which young people might find themselves vulnerable to specific forms of victimization where changes in their life patterns can divert their vulnerabilities in significant ways. The “Race, Class, Gender” box discusses the particular issues of victimization among female offenders.

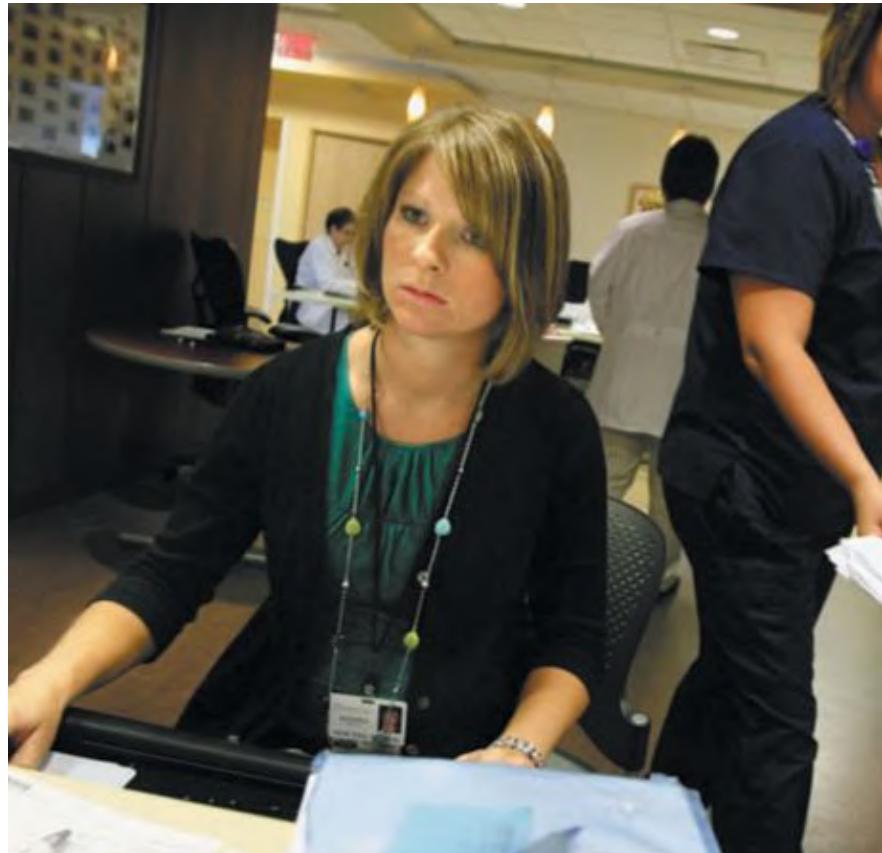
Child Protective Services

One way in which the justice system deals with young victims of crime is through **Child Protective Services (CPS)**, a county-level government organization in all 50 states and some U.S. territories, whose trained staff investigates allegations of child abuse and neglect. CPS operates a 24-hour, 7-days-a-week hotline to receive anonymous calls. If CPS does not determine that the child is at risk, the case will remain open, usually for 1 year. If there are no further calls reporting suspected abuse, the case will then be closed, but all cases can be reopened if necessary.

Child Protective Services (CPS)

County-level government organizations in all 50 states whose trained staff members investigate allegations of child abuse and neglect.

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Madalyn Ruggiero/AP Images

Real Crime Tech

USING TECHNOLOGY FOR ASSESSMENTS

Structured Decision Making (SDM) is an assessment system that is used to promote safety for those who are most at-risk including children who are under the supervision of Child Protective Services (CPS), those in foster care, or still others in the juvenile justice system. SDM uses an evidence- and research-based system to create structured assessments allowing for greater consistency and validity for each decision at key points in a child's life. SDM includes service standards, timely reassessments, and analytics pertaining to workload and accountability. In the realm of CPS, SDM largely focuses on assessments for: intake, safety, risk, family strengths, and needs, risk and reunification reassessments. For those in the Foster Care system, SDM focuses more on estimating the likelihood of negative placement outcomes, assessment of a placement including potential threats

to a child's safety at that placement, and a provision of care assessment to determine a foster parents' ability to meet the child's needs.

Since the removal and return of children is such an emotional issue, some workers seem to welcome the objective scoring of the computer to back up or help them with these difficult, sometimes traumatic decisions. Intuition may indeed be helped by solidly based statistics showing the likelihood of safety for the child. First used for these child at-risk populations, SDM has since expanded for use in Adult Protective Services (APS) and welfare-to-work participants.

SOURCE: National Council on Crime and Delinquency, The SDM Model in Child Protection, <https://www.nccglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare> (accessed May 6, 2019).

If CPS confirms abuse and neglect, the agency has several options. It can remove the child from the home and place her in foster care or with extended family members. CPS works to strengthen family bonds by mandating attendance at anger management, substance abuse, and parenting skill classes, as a preventive tool either before a child is removed or before family-child reunification can take place. After relocating a child, CPS continues its investigation, monitors the child's adjustment to the new home, and secures counseling, academic assistance, or other services. The agency determines when it is safe for the child to be reunited with the family or whether a permanent placement outside of the home is needed instead. CPS staff members also prepare court reports and initiate criminal proceedings on behalf of the child. Finally, CPS trains foster parents and acts as an adoption agency to help them adopt foster children.

Mandatory Reporting Laws

In the course of their work, many different professionals come in contact with young people who show signs of being victimized. A **mandatory reporting law** requires any professional who has regular contact with a child to report any reasonable suspicion of physical or sexual abuse or neglect to the proper law enforcement or protective services. The professionals required to report such suspicions include health care practitioners, law enforcement officers, school personnel, day care providers, spiritual leaders, social workers, mental health practitioners, medical examiners and coroners, members of the clergy, and lawyers. A mandated professional who fails to report an allegation of abuse or neglect is subject to state legal sanctions, such as civil penalties and loss of license. If the person who reports the abuse or neglect acted in good faith or had a reasonable suspicion, he is immune from liability.

mandatory reporting law

Law requiring that professionals who have regular contact with a child report any reasonable suspicions of physical or sexual abuse or neglect to the proper law enforcement or protective services agencies.

The national mandatory reporting law was part of the Child Abuse Prevention and Treatment Act (CAPTA) of 1974 and has since been amended several times. In the late 1990s, all 50 states extended mandatory reporting requirements to include older and dependent adults because of their vulnerability to abuse and neglect.¹³⁷

Court Appointed Special Advocates

A **Court Appointed Special Advocate (CASA)** is a volunteer selected by the courts to protect the rights and interests of child victims of abuse, neglect, or abandonment. Without CASAs, child victims might get lost in the large and often overburdened judicial and welfare systems. The appointment is normally for 2 years. During this time, the volunteer visits the child at home, school, or other locations such as a day care facility, the public library, or a relative's home to talk with the child and determine what services the child needs to excel at home, in school, and in the community. The CASA volunteer contacts Child Protective Services if there is a suspicion of abuse, if the child has to be removed from home, or if service referrals are needed. CASA volunteers are trained to speak on behalf of the child in all court proceedings.

Court Appointed Special Advocate (CASA)

A volunteer selected by the courts to protect the rights and interests of child victims of abuse.

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SUMMARY

Juvenile justice was created as a way to deal informally with troubled and delinquent children. The original intent was rehabilitation rather than punishment, with the state or local authority acting as *parens patriae*, especially when the real parents were absent or abusive. But as the system grew and overwhelmed the judges, as due process rights granted to juveniles "legalized" the process of justice, and as public opinion backed tough-on-crime policies, the system became more formal. It took on more and more aspects of the adult criminal justice process, with some juveniles even being tried in adult courts.

Most people agree that juvenile justice has yet to live up to its promise. There are, however, glimmers of hope. Many jurisdictions have implemented plans such as youth mentoring, teen courts, youth drug courts, and restorative justice programs, which may successfully prevent young people

from offending or reoffending. What seems to work best are programs that best fit the original goals of the juvenile justice system: They are small; they are tailored to each youth's individual needs; they address the complexity of a youth's problems (including their own prior victimizations), rather than simplistically trying to fix one or two issues; they focus on offenders' successful reentry into the community; and they provide the opportunity for youthful offenders to achieve something meaningful.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Describe the early treatment of youthful offenders.

- Until the nineteenth century, young offenders were usually treated the same as adults.
- The infancy defense prohibited the prosecution of people under age 7.
- Delinquents in England could be bound out, placed in institutions, or sent to America.
- The first U.S. institution for juveniles opened in 1825.
- By the middle of the nineteenth century, many jurisdictions had created reform schools for wayward youths.

Analyze current juvenile crime rates and trends.

- While male juvenile arrest rates for violent crimes are higher than for females, their rates are dropping more substantially.
- Arrest rates for Black juveniles are dropping faster than the average, but Blacks are still disproportionately represented among youthful offenders.

Evaluate the philosophy behind the creation of juvenile courts.

- Special courts were created for youths because they were less culpable than adults and more likely to be rehabilitated.
- Juvenile courts were intended to treat delinquency rather than punish it.
- Juvenile courts were intended to be less formal than adult courts.

- The legal doctrine that supports juvenile courts is *parens patriae*.

Describe the breadth and limitations of juvenile court jurisdiction.

- Juvenile court jurisdiction is defined by age and behavior.
- Juvenile courts have the power to hear both delinquency and status offense cases as well as dependency cases.
- Certain actors in the juvenile justice system can choose to waive jurisdiction over juveniles and send them to adult courts.

Compare and contrast the constitutional rights of juvenile and adult offenders.

- Juveniles' due process rights are more limited than adults' rights.
- Juveniles, like adults, have the right to an attorney, to be found guilty beyond a reasonable doubt, and to appeal.
- Juveniles do not have the right to a jury.
- Juveniles have no special rights regarding interrogation.
- Schoolchildren have limited Fourth Amendment rights (search and seizure).

Characterize the types of juvenile correctional facilities in the United States.

- Incarceration of juveniles is dropping.
- Community settings work better than large institutions in treating delinquents.
- Large juvenile institutions are prone to abuse of juveniles by both staff and inmates.
- Alternatives to incarceration include group homes, boot camps, and day treatment centers, all of which have varying degrees of success.

Analyze the victimization of juveniles and the services available to support them.

- Juveniles are often victims of crimes, many of which go unreported.
- Child Protective Services (CPS) investigates child abuse and neglect and decides whether to remove a child from a family setting.

- Mandatory reporting laws require professionals to report signs of child victimization.
- Court Appointed Special Advocates (CASAs) are volunteers who protect the rights and interests of child victims.

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Key Terms

adjudicated delinquent 536
adjudication hearing 536
arrest rate 520
binding out 517
boot camp 545
Child Protective Services (CPS) 547
child savers 518
Court Appointed Special Advocate (CASA) 548
delinquency petition 534
direct file (prosecutorial waiver) 528
disposition 536
diversion program 534
expunged 537
infancy defense 517
informal probation 534
intake 534
intake officer 534
judicial waiver 528
juvenile delinquency 519
juvenile hall 533
juvenile justice system 523
mandatory reporting law 547
parens patriae 518
preventive detention 535

reform school 518
risk assessment instrument 535
sealed 537
status offense 519
statutory exclusion 528
teen court 534
waiver 527

Study Questions

1. The first juvenile courts were created in approximately
 - a. 1550.
 - b. 1800.
 - c. 1900.
 - d. 1950.
2. In recent years, violent crime arrests of juveniles in the United States have
 - a. increased.
 - b. decreased.
 - c. increased or decreased depending on the race of the juvenile.
 - d. remained the same.
3. A juvenile court typically would have jurisdiction over a case involving
 - a. a 15-year-old accused of stealing a car.
 - b. a 13-year-old who has not been attending school.
 - c. a 6-year-old who has been abandoned by her parents.
 - d. all of the above.
4. The *Gault* decision
 - a. was decided by the U.S. Supreme Court.
 - b. granted juveniles the right to an attorney.
 - c. allowed juveniles to confront and cross-examine witnesses.
 - d. all of the above.
5. Of the following, the one that will *not* usually be allowed during a juvenile court case is
 - a. assistance from an attorney for the juvenile.
 - b. a jury.
 - c. hearsay evidence.
 - d. confrontation and cross-examination of witnesses.
6. The juvenile equivalent of a criminal trial is called
 - a. a delinquency petition.

- b. detention.
 - c. an adjudication hearing.
 - d. a disposition hearing.
7. The disposition most commonly used by the juvenile court is
- a. a group home.
 - b. a treatment facility.
 - c. probation.
 - d. a residential institution.
8. An adjudication hearing
- a. is used for an informal decision by the juvenile court.
 - b. is the juvenile court equivalent of sentencing in adult court.
 - c. determines whether the juvenile has committed the offense.
 - d. determines whether the juvenile is fit to be tried by the juvenile court.
9. A juvenile court waiver
- a. is used by the youth to waive the right to bail.
 - b. permits a juvenile to be tried as an adult.
 - c. permits a youth who is over the age of 18 but younger than 21 to be handled as a juvenile.
 - d. is used by the juvenile court to waive extradition.
10. Which statement is correct?
- a. The number of female juveniles in custody is almost as great as the number of male juveniles in custody.
 - b. The rate of female juvenile arrests is rising faster than the rate of male juvenile arrests.
 - c. There is evidence that female juvenile delinquents are becoming increasingly more violent.
 - d. all of the above.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. How can we ensure a juvenile justice system that is fair, while still allowing it to achieve its original goals of treatment and rehabilitation?

2. Under what circumstances should a child be held criminally liable in adult court for his behavior?
3. What are likely to be the characteristics of successful juvenile correctional programs? How would these differ from adult programs?

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16 Evolving Challenges in Criminal Justice



Micah Escamilla/San Bernardino Sun/ZUMA Wire/Alamy

OBSERVE → INVESTIGATE → UNDERSTAND

After reading this chapter, you should be able to:

- Describe the nature and extent of cybercrime, and identify techniques used to investigate this type of crime.
- Discuss the nature and extent of identity theft, and describe strategies used to contend with it.
- Explain the interaction between the law and intelligence gathering with regard to terrorism, and discuss emergent complexities of terrorism and terrorism prevention.
- Define hate crime and explain its operation as a penalty enhancer.
- Identify the factors contributing to civil disorder in its traditional as well as its evolving forms, and discuss prevention strategies.
- Analyze the tensions between safeguarding civil liberties and infringing on individual rights.
- Identify challenges and treatment regimens for victims with a disability; for immigrants; for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) victims; and for hate crime victims.

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Realities and Challenges

The Rise of Far-Right Extremism

The spate of terrorist incidents by far-right perpetrators during 2018 and 2019 marked a critical juncture in these types of incidents. While the number of attacks by far-right extremists had quadrupled between 2016 and 2017,¹ the magnitude of what transpired during 2018 and 2019 was unprecedented and resoundingly shocking.

For five days in October 2018, 16 improvised explosive devices were delivered through the U.S. Postal Service to prominent Democrats and critics of President Donald Trump. Thankfully, no one was hurt by these dangerous devices, but the perpetrator's actions left an air of fear and divisiveness. Prior to his arrest the suspect, Cesar Sayoc, was living in a van plastered with pro-Trump and anti-Democrat stickers.²



Brendan Smialowski/AFP/Getty Images

On the day after the arrest of the individual who mailed the 16 explosive devices, October 27, 2018, Robert Bowers drove to the Tree of Life Synagogue in Pittsburgh, Pennsylvania, where members of the congregation gathered to engage in religious worship. Bowers entered the building armed with three Glock .357 handguns and a colt AR-15 rifle. He then opened fire, killing 11 worshippers and seriously injuring 2 others. Before entering the synagogue, the assailant posted on the website gab.com, “Hebrew Immigrant Aid Society likes to bring in invaders that kill our people. I can’t sit by and watch my people get slaughtered. Screw your optics, I’m going in.”³

Just a few months later, on February 15, 2019, U.S. Coast Guard Lieutenant Christopher Hasson was arrested pursuant to a Maryland grand jury indictment for illegal possession of firearm silencers, possession of firearms by a drug addict and unlawful user, and possession of a controlled substance. In a court filing, prosecutors said Hasson had espoused white supremacist views for years. Also found in his possession was a computer spreadsheet “hit” list of prominent Democrats such as House Speaker Nancy Pelosi and Senate Democratic Leader Chuck Schumer.⁴

As the United States reeled from the succession of hate-laced events brought to the fore, thousands of miles away a man steeped in the culture of the extreme-right Internet was readying a rambling manifesto for publication on a right-wing forum. Posting of the manifesto would herald the onset of a savage attack by the author on two mosques in the city of Christchurch, New Zealand. On March 15, 2019, 28-year-old Australian white nationalist Brenton Tarrant embarked on a murderous rampage, using five firearms to kill 50 Muslim worshippers, livestreaming the assault to the world in graphic detail.⁵ Tarrant’s heinous attack sparked worldwide revulsion and condemnation. Moreover, the shooting represented a staggering corruption of a form of

communication that promised to draw people together but has also pried them apart into warring camps.⁶

Feeding off the March New Zealand live-streamed assault, on August 3, 2019, an anti-immigrant shooter opened fire on people shopping at a Walmart in El Paso, Texas. The gunman's white nationalist manifesto heralding an imminent attack was uploaded to an online message board minutes before killing 22 shoppers.⁷

Violent, terroristic extremism driven by right-wing ideologies is growing at an alarming pace.⁸ Although violent left-wing groups and individuals also present a threat, far-right networks appear to be better armed and larger. To be clear, the terms "right-wing extremists" and "left-wing extremists" do not correspond to political parties in the United States, such as Republicans and Democrats. Opinion polls show that Republicans and Democrats equally loathe terrorism. Thus, terrorism perpetrated by right-wing extremists commonly refers [page 557](#) to the use or threat of violence by subnational or nonstate entities whose goals may include racial, ethnic, or religious supremacy. Right-wing terrorists generally criticize the democratic state for its liberal social welfare policies and its permitting minorities and immigrants into the national labor force as well as occupying positions of power or influence. On the other hand, terrorism committed by left-wing extremists is often focused on opposition to capitalism or imperialism and on protection of the environment or animal rights issues.⁹

Preview

FIGHTING CYBERCRIME

TARGETING IDENTITY THEFT

COMBATING TERRORISM

PROSECUTING HATE CRIMES

CONTROLLING CIVIL DISORDER

SAFEGUARDING CIVIL LIBERTIES

MEETING EMERGING CHALLENGES IN VICTIMOLOGY

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

The acute urgency for curbing extremism cannot be overstated. Conspiracy theories fueling violence have reached a critical juncture. While violent right-wing extremism is a serious and growing threat, it can be contained and effectively defeated. Developing a playbook to confront the threat will require strategic planning and careful execution. Countermeasures must be based on evidence of what has worked among past counterterrorism actions and hate-motivated crimes, tailored through analysis of the ideology, motivation, and techniques of extremist groups.¹⁰ Strategies to contend with this emergent form of terrorism are examined in the Terrorism section of this chapter, and prosecution of hate crimes is addressed in the corresponding section of this chapter.

This chapter focuses on current and emerging issues in the criminal justice system. Cybercrime, terrorist activities, and hate crimes, for example, are forcing criminal justice professionals to pave new paths in the detection, investigation, prosecution, and prevention of crime and changing the way these individuals do their jobs. At the same time, the tension between ensuring public safety and safeguarding individuals' rights heightens, as new law enforcement technologies, methods, and procedures designed to protect the public may infringe on individuals' rights to privacy and other civil liberties. Another mounting concern is recognizing the rights and needs of *all* victims of crime, including—perhaps especially—those whose victimization has been neglected, ignored, or minimized. In the sections that follow, we examine the issues surrounding crimes and victimization that represent evolving challenges for the criminal justice system.

FIGHTING CYBERCRIME

Information technology has driven unprecedented advances in productivity and the spread of information, but it has also triggered new forms of criminal behavior. Online fraud and electronic theft of proprietary information (economic espionage) were nonexistent only a few years ago but now account for extraordinary losses. Many of the world's most valuable companies have found

themselves squarely in the crosshairs of sophisticated hackers, some of whom are backed by the resources of nation-states.¹¹

Cybercrime is any crime that relies on a computer and an electronic network for its commission.¹² It exploits, for illicit purposes, the electronic highway upon which computer transmissions travel. The Internet has become the catalyst for many forms of criminal activity,¹³ such as theft of intellectual property, extortion, child pornography, identity theft, fraud, stalking, and bullying. These are viewed as cybercrimes, but they are considered traditional crimes if they do not occur electronically in cyberspace.

cybercrime

Any crime that relies on a computer and a network for its commission; crime that exploits the electronic highway over which computer transmissions travel.

Beyond the traditional crimes elevated to cybercrime status, there are malicious acts emergent with the advent of computerization. Two such illicit activities are data breaches and denial of service attacks. Both are increasing in frequency, sophistication, and severity of impact and warrant page 558 illumination.¹⁴ A **data breach** is an incident in which sensitive, protected, or confidential data have been viewed, stolen, or used by an individual who is not authorized to do so.¹⁵ The number of significant data breaches in the United States in 2017 hit a high of more than 1,500, up almost 45 percent over 2016. In one incident in 2018, the data of 29 million Facebook users was stolen.¹⁶ An especially egregious situation is the degree to which the Chinese government has engaged in intellectual property theft. China is estimated to be responsible for 50–80 percent of intellectual property theft worldwide, and over 90 percent of cyber-enabled economic espionage in the United States. Chinese espionage has not only damaged U.S. companies, but has also saved China research and development expenses in catching up in several critical industries.¹⁷

data breach

An incident in which sensitive, protected, or confidential data have been viewed, stolen, or used by an unauthorized individual.

Beyond the data breach threats posed by nation-states are those posed by **hacktivism**. Hacktivists use web-based tools to effect social or political change or an elevation of civil disobedience into cyberspace. Technological advances involving the Internet, such as social media, have provided a significant electronic forum for social activists to advance their causes. The Internet platform also provides the advantage of anonymity.¹⁸ Some hacktivists have

taken to defacing government websites as well as websites of groups who oppose their ideology.

hacktivism

The practice of gaining unauthorized access to a computer system and carrying out various disruptive actions as a means of achieving political or social goals.

Ransomware is a form of data breach in which malicious software targets critical data and systems for the purpose of extortion. It is the fastest growing cybercrime.¹⁹ Ransomware usually infects computer systems when a user opens an e-mail attachment or cloud-based document received from an unknown source. After a recipient has been locked out of the data or system the cyber actor demands a ransom payment in order for the user to regain access to the data or system. For individuals, a primary threat is the loss of valuable data like family photos. For businesses, the threat poses not only the loss of valuable data but also work flow interruption, and the resultant loss in revenue.²⁰ When municipalities are targeted, there can be severe cascading effects on the populace. For example, real estate transactions and payments to city departments cannot be processed. In worst-case scenarios, such as has occurred in Baltimore, 911 dispatch systems can be compromised.²¹

ransomware

A malicious software targets critical data and systems for the purpose of extortion.

Unlike data breaches, **denial of service attacks** do not steal anything. The intention is to compromise the availability of networks and systems.²² Distributed denial of service attacks are automated attacks that run simultaneously from multiple computers. The attack that took down Sony's PlayStation Network and Sony Entertainment Network in 2014 was a distributed denial of service attack. Distributed service attacks are becoming the "weapon of choice" for hackers. More recently, in February 2018 GitHub, a web-based hosting service, was the victim of the largest ever distributed denial of service attack and peaked at 1.35 terabytes (equivalent to approximately 2,000 CD-ROM discs' storage).²³

denial of service attack

An act done with the intention of compromising the availability of networks and systems.

Extent of Cybercrime

The Center for Strategic and International Studies, a Washington think tank, estimates that cybercrime costs the global economy up to \$600 billion annually, with the United States sustaining annual losses exceeding \$100 billion. While cybercrime ranks third in dollar value (behind government corruption and narcotics trafficking) as a global scourge, it is the global leader in its ability to make hundreds of millions of people victims. It is estimated that two-thirds of the people online—more than two billion individuals—have had their personal information stolen or compromised. The increasing growth in cybercrime may be attributed in large part to the agility of cybercriminals in quickly adopting new technologies and leveraging black markets and digital currencies.²⁴

What about the Victim?

Victimization in the Wake of Cybercrimes

In the United States, the Federal Bureau of Investigation (FBI) is the lead agency that investigates cybercrimes, which are increasingly becoming more sophisticated and dangerous. The nation's infrastructure and networks, both public and private, are targeted for data used for research and development, as well as trade secrets. Computer intrusions including counterterrorism, counterintelligence, and criminal are major priorities given the potential impact on national security. It is estimated that billions of dollars are spent each year in just repairing systems hit by cyberattacks when businesses or 911 services are compromised. One of the more common types of cybercrimes is ransomware, a type of malware that locks valuable digital files with a demand for a ransom to unlock the files. Typically, the impacted organization will open an e-mail that appears to be from a legitimate source and will open an infected attachment or click on an infected URL. Once the infection is present, files will be encrypted on local and networked drives. Users are usually unaware that their computer and/or files were encrypted until they cannot access needed data. In recent years, businesses such as schools, hospitals, state and local government agencies, and even law enforcement agencies have fallen prey to ransomware that disrupts business operations, effects financial losses, and jeopardizes the organizations' reputations. The FBI does not support paying a ransom, but instead recommends focusing on prevention—training employees, technical prevention, and data continuity plans. The perpetrators can be anyone from a low level computer hacker seeking bragging rights to businesses, organized crime rings selling information on the black market, and terrorist organizations.



1MoreCreative/iStockphoto.com

Private citizens are also the targets for identity theft, cyberstalking, harassment and bullying, invasion of privacy, and personal data breaches, and children are particularly vulnerable to predators using social media. Adults are also falling victim to theft, robbery, and sexual assaults via dating apps. In 2018, police in Denver, Colorado, identified 53 victims of crimes who met the suspect through dating apps. Thirty-four percent of the crimes were rape, which accounted for 5 percent of the rape cases Denver police responded to in 2018. The FBI estimates that Americans lost about \$82 million to online dating fraud in the first 6 months of 2014, which is likely low as victims often do not report the crimes. Victims of intimate partner violence are also noting the use of technology for stalking, surveillance, monitoring, and revenge porn or the intentional distribution of nonconsensual explicit images. As of 2019, 41 states and the District of Columbia have laws that criminalize revenge porn, which is a new and evolving area of the law. In order to be found guilty of revenge porn, the perpetrator must be distributing an image that is sexual in nature and not just an unflattering picture. The victims of cybercrimes can be far ranging from organizations to private citizens and children. It can be difficult to help those who have been victimized because these are often underreported crimes, and even though laws are emerging, they can rarely keep pace with the rapidly changing nature of cybercrimes.

In response to the range of cybercrimes, the FBI is enhancing its Cyber Division's investigative capacity to better coordinate a cohesive investigative strategy for these complex crimes. The FBI also has trained cyber squads in each of the 56 field offices and headquarters who specifically work to address computer intrusions including intellectual property, personal information, child exploitation, and fraud. There is also a Cyber Action Team that travels around the world to gather intelligence on the most dangerous cyberattacks that threaten national security. The National Cyber-Forensics & Training Alliance (NCFTA), created in 1997, is an international model for collaboration between law enforcement, private industry, and academia to share resources and to identify and stop emerging cyber threats. The NCFTA is continually evolving in an attempt to keep up with the ever-changing cyber crime world.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Why do predators solicit victims using social media?
- Why are cybercrimes so underreported?
- How can detection and prevention efforts be improved if reporting rates remain low?

SOURCES: Federal Bureau of Investigation, *Cyber Crime*. <https://www.fbi.gov/investigate/cyber> (accessed May 6, 2019); Jessica Porter, “More than 50 Crimes in Denver Linked to Dating Apps in 2018,” *TheDenverChannel.com*, January 8, 2019. <https://www.thedenverchannel.com/news/local-news/more-than-50-crimes-in-denver-linked-to-dating-apps-in-2018> (accessed May 6, 2019); Doug Shadel and David Dudley, “Are You Real? Inside an Online Dating Scam,” *AARP The Magazine*. <https://www.aarp.org/money/scams-fraud/info-2015/online-dating-scam.html> (accessed May 6, 2019); FindLaw, “State Revenge Porn Laws.” <https://criminal.findlaw.com/criminal-charges/revenge-porn-laws-by-state.html> (accessed May 6, 2019).

Detection and Investigation

Traditional investigative strategies do not readily apply to cybercrime, where the offender is often a faceless entity. Internet cafés, open wireless routers, libraries, and a host of other venues allow almost anyone access to the Internet with virtually complete anonymity. The place where the crime occurred is hard to identify: Did the crime take place where the perpetrator’s computer is located? Or was the crime site that of the victim’s computer, which may be in another state or even another country? Could the location of the Internet server be considered the place where the crime took place? Or was the crime location somewhere in between? Victims and offenders can be on different sides of the world. To make investigation even more complicated, the laws in most countries, including those in the United States, have not kept up with technology. As a result, [page 560](#) criminals are often prosecuted using laws intended to combat crimes in the nonvirtual (“real”) world. Laws to prosecute computer-related crimes are often not as ample or broad as those used to confront their traditional counterparts. For example, computer fraud (18 U.S.C. Section 1030) is not considered a predicate offense (i.e., an action that provides underlying resources for another criminal act) for racketeering under the Racketeer Influenced and Corrupt Organizations (RICO) Act, a primary tool used to prosecute organized crime.²⁵

The complexity of cybercrime demands technologically sophisticated investigative techniques, including computer forensics, collaboration, and training. **Computer forensics** is the application of the knowledge and methods used in computer science to law enforcement. Computer forensic experts are asked, for example, to recover deleted files, locate hidden files, trace website activity, and produce a variety of other forms of digital evidence for use in criminal and civil proceedings.²⁶ Digital evidence is commonly associated with electronic crime such as online child pornography or credit card fraud. However, digital evidence is now routinely obtained to prosecute all types of crimes.²⁷ For example, examination of the computer hard drive belonging to a person of

interest might reveal that he researched online chloroform recipes days before his wife disappeared.

computer forensics

Application of the knowledge and methods used in computer science to law enforcement purposes (such as recovery of deleted files or website activity).



▲ Computer Forensics Analyst at Work

Computer forensic analysts recover data from electronic devices such as computers, e-mail, BlackBerries, and iPhones and then give a thorough report on their findings relevant to the case.

Ed Zurga/AP Images

Multiple crime activities and locations are commonplace in cybercrime. Within networked environments, evidence may reside on any number of machines using a variety of operating systems, in many different physical or network locations, and in multiple jurisdictions. Yet search and seizure operations must adhere to legal requirements that minimize intrusions into network operations.

Prevention Strategies

Like investigation of cybercrime, prevention of cybercrime also requires collaboration among law enforcement, the private sector, and even international agencies. Much cybercrime is **transnational crime**, taking place across national boundaries. Moreover, some cybercrime may be legal in one country but illegal in another. For example, pornographic material depicting 16-year-olds is illegal in the United States but legal in Iceland and Germany.²⁸ In 2006, the United States ratified the Council of Europe Convention on Cybercrime, the first international treaty to address Internet crimes by coordinating national laws, improving investigative techniques, and increasing cooperation among nations.²⁹ “Operation Atlantic” is an example of FBI agents working with European countries to set up an electronic dragnet; the operation has led to the apprehension of producers of child pornography from France, Italy, the Netherlands, Spain, and the United Kingdom.³⁰

transnational crime

Crime orchestrated across a national boundary from where the crime actually occurs.

Within the United States, federal, state, and local law enforcement entities, as well as private sector professionals, often work together, exchanging information and hardening crime targets. Local law enforcement agencies’ cybercrime units are increasingly using their Web presence to educate the public about and raise awareness of cybercrime.³¹ The Department of Homeland Security’s Information Network has been expanded to include private sector stakeholders and infrastructure owners. The private sector has an important role in the prevention and detection of cybercrime as it owns and operates 85 percent of all critical infrastructures.³²

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KEY CONCEPTS Challenges to Fighting Cybercrime

Offenders are anonymous and can work from any private or public computer.

The location of the crime is difficult to identify and can range from the perpetrator’s computer to the victim’s computer to a network server in between.

Cybercrime can be transnational, and its prosecution can be complicated by conflicting laws and enforcement practices in different countries.

Detecting cybercrime is expensive and requires technologically sophisticated techniques and training.

Evidence for a crime may reside on many computers across many networks.

Search and seizure operations must meet legal requirements and minimally affect normal computer network operation.

Legislative bodies have enacted legislation targeting cybercrime. An initial federal statute to contend with fraud committed via computer was 18 U.S.C. 1030, the Computer Fraud and Abuse Act.³³ Other statutes have been enacted to combat child pornography and unauthorized access to computer-stored records.³⁴ In 2013 “U.S. Executive Order—Improving Critical Infrastructure Cybersecurity” bolstered cybersecurity protections for the nation’s critical infrastructure networks by authorizing the government to increase the volume, timeliness, and quality of cyber threat information shared with private sector entities to enable enhancement of their security measures.³⁵ In 2015 “U.S. Executive Order—Promoting Private Sector Cybersecurity Information Sharing” provided a framework for expanded information sharing designed to help companies work together with the federal government to quickly identify and protect against cyber threats.³⁶

Some experts predict that by the year 2025 technology will have advanced by an equivalent of 5,000 years, paving the future path through cyberspace with possibilities—and threats—unimaginable today.³⁷ Unchecked growth in surveillance technology, for instance, could result in recording virtually all activity for retrieval and prosecution. However, just as is the case today, the use of twenty-first century technology for evidence gathering will come face-to-face with that eighteenth-century guarantor of protection against unreasonable government intrusion: the U.S. Constitution. The “duel” should be intriguing.

TARGETING IDENTITY THEFT

Identity theft is unauthorized use of another person’s identifying information to obtain credit, goods, services, money, or property, or to commit a felony or misdemeanor.³⁸ Some criminologists consider identity theft to be “the” crime of the twenty-first century.³⁹ Typical offenses associated with identity theft include credit card fraud, fraudulently obtaining loans, and bank fraud. Fraudulently obtained funds may be used to finance larger criminal enterprises, including gang, drug, and terrorist activities.

identity theft

Unauthorized use of another person's identifying information to obtain credit, goods, services, money, or property, or to commit a misdemeanor or felony.

MYTH/REALITY

MYTH: Those who refrain from purchasing goods or services online are protected from becoming victims of identity theft.

REALITY: Minimizing use of online purchases does not necessarily correlate with a decreased potential for victimization. Personal identifying information can be obtained offline (for example, via “dumpster diving” or eavesdropping) as well as online.⁴⁰

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Identity theft can occur in both physical and cyber domains. In both situations, the intent and outcome (stolen personally identifiable information) are the same. In the physical, “real” world a criminal can steal mail containing credit/debit cards and then withdraw cash or make purchases. In the cyber world, a computer hacker can easily steal the same personally identifiable information by, for example, hacking into point-of-sale systems and remotely installing “keystroke loggers.” These devices then capture victims’ credit card information when cards are swiped.⁴¹

In 2016, the U.S. Department of Justice reported an estimated 26 million persons, or approximately 10 percent of all U.S. residents age 16 or older, reported they had been victims of identity theft during the preceding 12 months.⁴² A 2018 study by Javelin Strategy & Research revealed the incidence of identity theft rose 8 percent from 2016 to 2017. With the adoption of embedded chip cards and terminals, a shift away from physical stores to online venues was noted.⁴³

A significant difference between identity theft and other property crimes is that identity theft can continue for months, during which time the victim may feel helpless and experience a lack of control over her life. These stresses may result in psychological and physical illness.⁴⁴

When identity theft was first recognized as a widespread problem, police agencies, victim assistance advocates, and private industry usually operated independently in investigating cases. Subsequently, a joint effort of the U.S. Department of Justice’s Office of Community Oriented Policing Services and the Major Cities Chiefs Association produced plans for state-level identity theft coordination centers. Today these centers facilitate the flow of information and

promote collaboration among state, local, and federal law enforcement agencies, the Federal Trade Commission, and corporate entities.⁴⁵

The FBI's Internet Crime Complaint Center (IC3) has firmly established its role as a resource for both victims of Internet crime and law enforcement agencies. For victims, IC3 provides a convenient and easy-to-use reporting mechanism. For law enforcement agencies, the IC3 serves as a conduit for gathering data for research and development of analytical reports for local, state, federal, and international law enforcement and regulatory agencies.⁴⁶ In addition to the FBI's IC3, the Identity Theft Resource Center (ITRC) is a nonprofit organization established to support victims of identity theft in resolving their cases and to broaden public education in the understanding of identity theft and data breaches. The ITRC conducts independent surveys and studies to educate consumers and businesses on best practices for fraud reduction.⁴⁷

A Contextual Framework for Combating Identity Theft

A contextual framework of stakeholders and their roles and interactions assists in illuminating actions to combat identity theft. Four main stakeholders help combat identity theft through a variety of activities. Stakeholders are (1) identity owners, (2) identity issuers, (3) identity checkers, and (4) identity protectors. It is the identity owners' responsibility to safeguard their identifying information. An identity issuer's responsibility is to verify the receiver's true identity before issuing a valid certificate that a validating institution can then use to verify this identity. Identity issuers not only issue secure identity certificates but also protect sensitive personal identifiable information held in databases. Identity checkers must verify that two items are valid: the owner's identity certificate and the holder's identity. When authenticating identities, the checker must establish and use strict authentication processes. Identity protectors can be government legislators, law enforcement agencies, the legal system, and public and private technical security solution providers. Secure identity management requires collaboration between all stakeholders. Figure 16-1 illustrates the information flows and interactions among stakeholders comprising a contextual page 563 framework for combating identity theft.⁴⁸

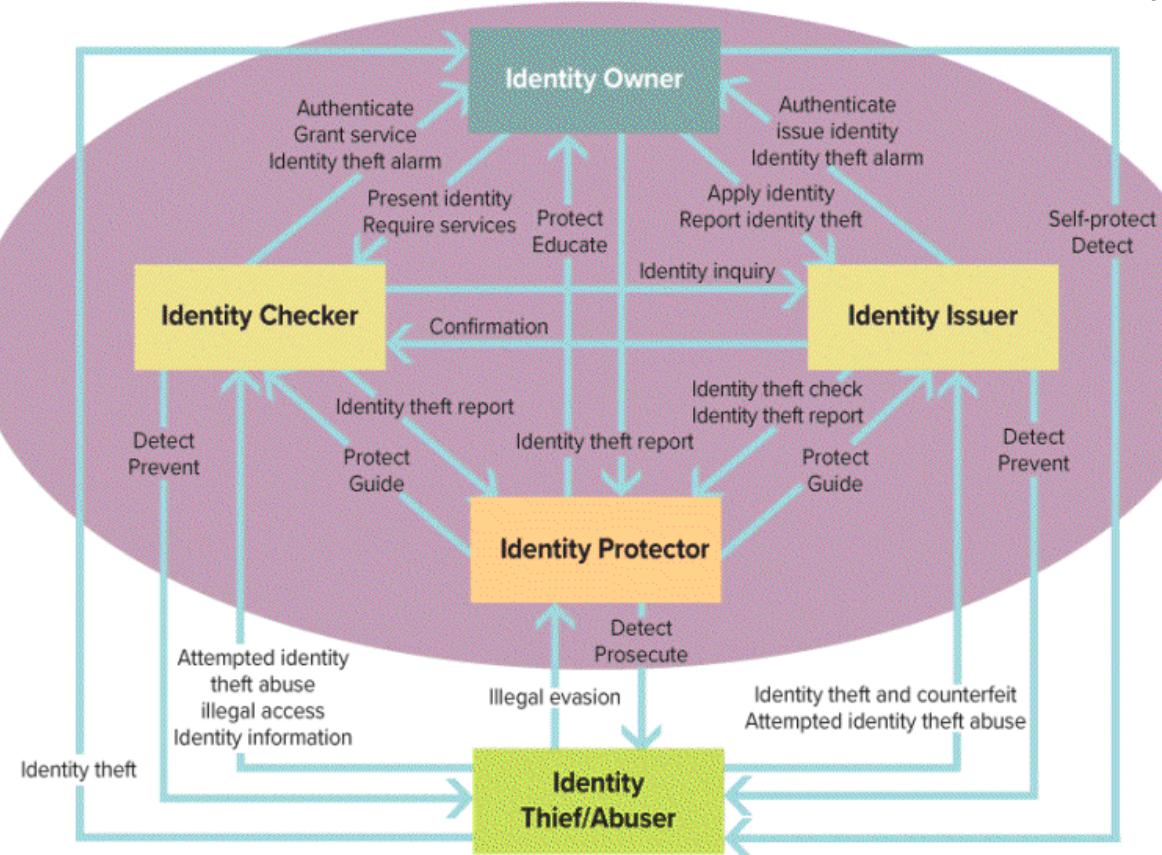


FIGURE 16-1 Contextual Framework for Combating Identity Theft

Within the schematic, rectangles represent the major stakeholders and arrows indicate their interactions and information flows.

SOURCE: George E. Higgins, *Cybercrime: An Introduction to an Emerging Phenomenon* (McGraw-Hill Education, 2012), p. 77. Copyright © 2012 by McGraw-Hill Education. All rights reserved. Used with permission.

Prevention Strategies

The most effective way to combat identity theft is to prevent it from occurring. Education and employment of advanced technologies are integral to its prevention. The more aware people are of threats and the potential for severe harm, the more motivated they will be to exercise preventive measures. Identity protectors play a major role in public education, as do identity issuers and checkers who focus on customer education. Identity theft prevention technologies such as biometrics and smart cards are continually evolving. Biometrics can confirm identities through unique human characteristics such as fingerprints or retinal. Smart cards, which embed integrated circuits, can store biometric information to deliver secure and accurate identity verification.

Beyond education and technology, business owners and organizational heads must recognize identity theft as a risk and wholeheartedly commit to its proactive management. Risk is determined by three primary factors: assets (e.g., employees' Social Security numbers), threats (e.g., Internet hacking), and vulnerabilities (e.g., an onlooker observing inputting of PINs). Following an assessment of the dynamics among assets, threats, and vulnerabilities, a skilled security solution provider can select countermeasures to protect assets from possible threats depending on the likelihood of each threat and develop policies to reduce threats and vulnerabilities. Thus, it is essential that identity security managers understand the elements comprising the risk management process in order to implement appropriate, responsive countermeasures.⁴⁹

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COMBATING TERRORISM

Terrorism, according to the U.S. Code, is “premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”⁵⁰ Terrorism has been categorized as “international” or “domestic.” International terrorism against the United States is foreign based, whereas domestic terrorism involves groups that are based in, and operate entirely within, the United States.⁵¹ However, there is no universally agreed-upon definition of terrorism. Even within the United States, the FBI, the Department of Homeland Security, and the Department of Defense have different definitions of terrorism, reflecting the priorities and particular interests of the specific agency.

terrorism

Premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.

In the past, terrorism was relatively easier to define because terrorist bodies typically had a readily identifiable structure and chain of command. Today, the “structural” aspect of terrorist entities may consist of a shared philosophy among close-knit autonomous cells communicating via digital technologies or lone wolves acting independently without any direct outside command or direction. Among certain individuals such as white supremacists, there is tacit support from like-minded individuals, and thus the seeming lone wolf is really a member of a pack with shared values. The common thread is that all terrorist acts involve violence.

In 2017 a total of 8,584 terrorist attacks occurred worldwide, which was a 23 percent decrease over 2016. The attacks resulted in 18,753 deaths, a 27 percent decrease over 2016. Of the 18,753 people killed in terrorist attacks in 2017, approximately one-fourth were perpetrators of attacks. The attacks took place in 100 countries, although they were heavily concentrated in five countries: Afghanistan, Iraq, Nigeria, Somalia, and Syria.⁵²

Today's terrorist landscape is fluid and complex, and as such requires a strategy to contend with an agile and adaptive terrorist threat. The U.S. strategy for counterterrorism focuses on six thematic areas:

- Pursuing terrorists to their source.
- Isolating terrorists from their source of support.
- Modernizing and integrating the U.S. counterterrorism tools and authorities.
- Protecting American infrastructure and enhancing resilience.
- Countering terrorist radicalization and recruitment.
- Strengthening the counterterrorism capabilities of U.S. international partners.⁵³

Terrorism and the Law

Acts of terrorism are prosecuted as offenses within existing laws. If terrorists intentionally set a building on fire, the charge against the perpetrators is arson, not terrorism. If someone dies in the blaze, the perpetrators will likely be charged with murder.



▲ ISIL's MediaSkill Set

ISIL demonstrated particular skill in employing new media tools to propagandize and to attract recruits.
amer ghazzal/Alamy

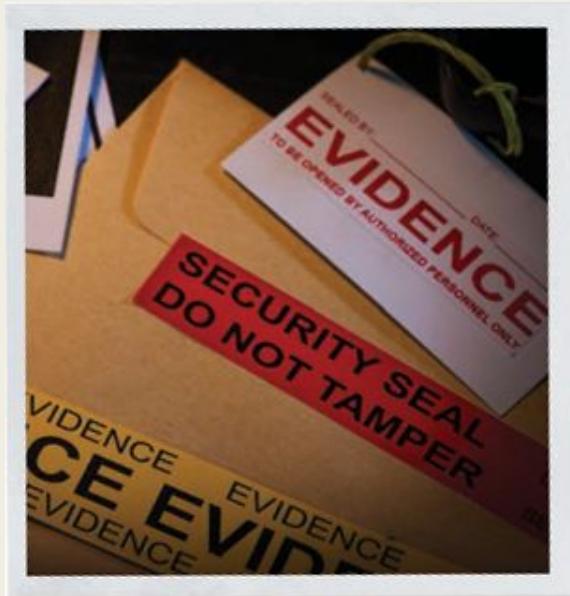
Following the 9/11 terrorist attacks, Congress enacted the **USA PATRIOT Act** (which is an acronym for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism). This law was intended to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and to strengthen U.S. measures to prevent and detect terrorism. Critics of the act charged that the broad authority given to the government under the law's provisions [page 565](#) amounted to an “overnight revision of the nation’s surveillance laws that vastly expanded the government’s authority to spy on its own citizens.”⁵⁴ Implementation of the PATRIOT Act rekindled the long-standing debate between the crime control and the due process models of justice (see Chapter 1).

USA PATRIOT Act

A law—officially, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act—enacted by Congress following the 9/11 terrorist attacks, intended to

deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and to strengthen measures to prevent and detect terrorism.

Real Careers



Predrag Vuckovic/iStockphoto.com

AMY ZELSON MUNDORFF

Work location: New York, New York

College(s): Syracuse University (1991); California State University (1999); Simon Fraser University (2009)

Major(s): Archaeology (BA); Anthropology (MA); Archaeology (PhD)

Job title: Forensic Anthropologist, Office of Chief Medical Examiner, New York City

Salary range for job like this: \$40,000–\$120,000

Time in job: 5 years

Work Responsibilities

From 1999 through September 2001, I was responsible for establishing protocol for all forensic anthropology-related matters for the city of New York. During this time, I analyzed more than 250 forensic anthropological cases, including standard medical examiner cases with bone trauma or pathology and unidentified, decomposed, burned, mummified, or skeletonized remains to help identify individuals. I participated in search and recovery of human remains, prepared case reports,

and testified as an expert witness in court. I also provided training to medical examiners, medical students, fellows, and interns and lectured on forensic anthropology to law enforcement agencies and district attorneys.

Following 9/11, I was primarily involved with the mortuary operations and identification efforts of the World Trade Center (WTC) victims. I was part of a team that established standards and procedures for the WTC Human Identification Project and developed protocols for handling and processing human remains, DNA sampling, and quality assurance procedures. I met with family members to review individual cases and attended “family group” meetings to update family members on the progress of the identification project. I was also part of the disaster identification team for the 2001 crash of American Airlines flight 587 and the Staten Island ferry crash in 2003.

Why Criminal Justice?

I fell into the field of forensic anthropology. As an undergrad, I was an archaeology major. While attending a summer archaeology field school in Jamaica in 1988, I helped excavate a skeleton and became fascinated with the stories human bones could tell. Following graduation, I worked as an archaeologist in Hawaii and California for about 5 years, where I participated in excavating skeletal remains. I returned to school for a master’s, focusing in forensic anthropology. During my master’s program, I volunteered one summer at the Office of Chief Medical Examiner, New York City; that was when I decided I wanted to do forensic anthropology full-time.

Expectations and Realities of the Job

The job is both better and more frustrating than I expected. It’s better in the sense that I work with every subfield of forensics, so I learn a tremendous amount. Unlike forensic investigators on TV, forensic scientists don’t work in a vacuum, solving every aspect of the crime themselves. I worked with brilliant forensic pathologists, odontologists, radiologists, fingerprint experts, toxicologists, histologists, biologists, detectives, and more. We pooled our expertise to help identify individuals or determine someone’s cause and manner of death. On the other hand, the job is more frustrating than I had anticipated because not every case is solved. Not being able to identify remains or help solve a homicide is one of the most difficult aspects of my work.

My Advice to Students

Don’t hesitate to ask for help or advice on the job. When confronted with a particularly challenging case, reach out to other colleagues with more experience and seek their opinion.

Another piece of advice is to include something on your resume that separates you from your fellow graduates. For me, it was showing practical experience working at a medical examiner’s office. During one of my summer breaks from graduate school, I called the medical examiner office where I wanted to work and offered my services for free. No one turns down free labor! I interned there for the summer, made fantastic contacts, and learned a tremendous amount. When I graduated, I wrote the chief medical examiner a letter suggesting it was time to hire a forensic anthropologist full-time and that person should be me. And they did. I was the first full-time forensic anthropologist hired at New York City’s Office of Chief Medical Examiner.

The PATRIOT Act’s provisions expired in 2015, prompting enactment of the **USA FREEDOM Act**. “USA FREEDOM” is an acronym that stands for “Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and Online Monitoring.” Most significantly,

the USA FREEDOM Act bans the bulk collection of phone records _____ page 566 and Internet metadata, and it limits data collection to the extent reasonably practical when there is reasonable suspicion that a suspect is linked to a terrorist organization. The act extended the “lone wolf” and “roving wiretap” surveillance provisions of the PATRIOT Act.⁵⁵

USA FREEDOM Act

Antiterrorism legislation enacted in 2015. The acronym stands for Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and Online Monitoring. Principally, the act imposes new limits on the bulk collection of telecommunications metadata. It also restores authorization for roving wiretaps and tracking lone wolf terrorists.

Matters of Ethics

Airport Screening Protocols and Privacy Concerns

Aviation security technology is undergoing rapid changes to keep the flying public safe and to make the check-in, bag drop, ID verification, and boarding experience faster and well-organized for passengers in a time where travel volume is increasing. Soon documents like passports and paper tickets may be less necessary or even obsolete. The Transportation Security Administration (TSA) is planning to expand facial recognition or biometrics technology at U.S. airports to identify and authenticate domestic travelers. U.S. Customs and Border Protection (CBP) has been using facial recognition scanning terminals to screen non-U.S. residents on international flights in about a dozen U.S. airports since 2015. In 2018 the Trump Administration laid out its proposal to expand the use of this technology to U.S. citizens by requiring them to undergo facial scans before boarding an airplane. Currently, TSA personnel manually compare passengers in front of them to their ID photos. It is believed an automated process in partnership with CBP can more accurately and competently match passengers to their passport photos and visas. The technology can also help identify people who overstay their visas. The system is referred to as the Biometric Pathway and will be used for international travelers, TSA Precheck passengers, and, in due course, domestic passengers.

CBP hopes to have facial recognition scanning terminals installed in all U.S. airports within four years. Cameras are triggered when passengers step onto designated footprints. Photos are sent to CBP where they are authenticated and flight manifest checks are verified. The whole process takes from 3 to 5 seconds. If things do not match, a gate agent steps in to scan a passenger’s passport and help out.



Bill O'Leary/The Washington Post/Getty Images



Already critics of facial recognition technology are raising concerns about privacy and racial bias, and for CBP to be more transparent about how the screening algorithm operates. Some critics argue the technology is not yet ready for widespread use because of legal and technical problems. Others argue the technology is not accurate in identifying ethnic minorities or those wearing glasses, hats, and scarves. Many are concerned with what the Department of Homeland Security will do with the information obtained from the scans in the future. As facial recognition

technology moves into more airports, more questions are bound to arise about the revolution we are experiencing in aviation security.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- Is subjecting airline passengers to facial recognition scanning terminals less or more intrusive than requiring them to remove shoes and belts before boarding? Explain.
- Does the use of facial recognition biometric technology for security outweigh the privacy rights of the individual? Why or why not?
- What kinds of safeguards should be in place for the handling of facial recognition biometric scanning data? Explain.

SOURCES: Dami Lee, “TSA Lays Out Plans to Use Facial Recognition for Domestic Flights,” *The Verge*, October 15, 2018. <https://www.theverge.com/2018/10/15/17979688/tsa-precheck-facial-recognition-airport-cbp-biometric-exit> (retrieved February 4, 2019); Bryon Naylor, “Facial Scanning Now Arriving at U.S. Airports,” *NPR*, March 18, 2016. <https://www.npr.org/2018/03/16/593989347/facial-scanning-now-arriving-at-u-s-airports> (retrieved February 4, 2019); Katie Dangerfield, “Say Cheese: U.S. Airports Plan to Scan Your Face at Security, Bag Check and Boarding,” *Global News*, October 18, 2018. <https://globalnews.ca/news/4567183/facial-recognition-technology-u-s-airports/> (retrieved February 4, 2019); AP Staff, “Microsoft Warns that Facial Recognition Tech Brings ‘Human Rights Risks.’” <https://globalnews.ca/news/4331725/microsoft-facial-recognition-technology-risks/> (retrieved February 4, 2019).

Just as the USA FREEDOM Act has provided for a more reasonable approach to data collection, the technology employed at U.S. airport screening facilities has been modified to be less invasive. Advanced imaging technology has enhanced passenger privacy by eliminating passenger-specific images, which had frequently provoked indignation among the traveling public. The “Matters of Ethics” box contrasts the previously employed backscatter scanner with advanced imaging technology.

Terrorism and Intelligence

Law enforcement plays a threefold role against terrorism: protection of the community, emergency response, and intelligence gathering and sharing.⁵⁶ As depicted in Figure 16-2, **intelligence** is the product of the application of [page 567](#) analytical reasoning to data or information to develop a reliable picture of the environment or situation.⁵⁷

intelligence

Product of the application of analytical reasoning to data or information in order to develop a reliable picture of an environment or a situation.

$$\text{Data or Information} + \text{Analysis} = \text{Intelligence}$$

FIGURE 16-2 Intelligence Recipe

“Intelligence” is refined information.

Early development of intelligence can give law enforcement personnel the opportunity to intervene before a terrorist incident occurs. For instance, information regarding one person’s purchase of a large quantity of ammonium nitrate (fertilizer) in one locale could be combined with information about another individual’s purchase of fuel oil in another nearby locale to yield intelligence that the ingredients for a powerful explosive now reside in the area. Combining this intelligence with other information—such as a police agency’s field interview reports of an individual taking a number of photos around the base of a bridge spanning a large river—would result in increased patrol of the bridge, as well as surveillance of the individuals making the ammonium nitrate and fuel oil purchases.

Protection and emergency response have long been functions of the police, but the intelligence function of policing, which may be the most important law enforcement function of the twenty-first century, is still developing.⁵⁸ **Intelligence-led policing (ILP)** is the collaborative collection and analysis of data by intelligence analysts, field officers, and senior leaders to improve crime control strategies, allocation of police resources, and operations.⁵⁹ The term “intelligence-led policing” originated in Great Britain at a time when police budgets were being cut. Police officials de-emphasized response to service calls and accorded priority to creating intelligence units that focused on the most prevalent offenses and the most prolific offenders.⁶⁰

intelligence-led policing (ILP)

Collaborative collection and analysis of data by intelligence analysts, field officers, and senior leaders.

Intelligence analysts are individuals with expertise in discerning “intelligence” from “information.” Analysts examine information brought to the attention of police agencies to look for patterns and associations. By linking otherwise unrelated pieces of data together, intelligence analysts can identify

existing threats of terrorist activity and enforcement opportunities.⁶¹ *Field officers* are law enforcement generalists who, in the course of their duties, come across information that should be forwarded to analysts for analysis. *Senior leaders* are law enforcement agency personnel who make operational decisions based on the intelligence provided to them by analysts.

MYTH/REALITY

MYTH: “Intelligence” and “information” are the same thing.

REALITY: A crucial distinction is that collected information must be analyzed to produce intelligence.⁶²

Intelligence is the lifeblood of antiterrorism operations—but only if it reaches the people who need to act on it. Local law enforcement agencies traditionally were attuned to crime only within their own communities. After the 9/11 terrorist attacks, however, nonfederal authorities began forming **fusion centers**, regional intelligence hubs that pool and analyze information from many jurisdictions and share it with those to whom it directly applies (see “A Case in Point”). National agencies, particularly the Department of Homeland Security (DHS) and the FBI, have become increasingly involved, with DHS providing personnel with intelligence and operational skills to the fusion centers.⁶³

fusion center

Regional intelligence hub that pools and analyzes information from many jurisdictions and shares it with those to whom it directly applies.



Kletr/Shutterstock

Real Crime Tech

DRONES AS TERRORIST WEAPONS

Drones can be employed by terrorists for intelligence, surveillance, and reconnaissance missions, or they can be weaponized. Indeed, two armed drones had been deployed in an attempt to assassinate the President of Venezuela in 2018. Of utmost concern is that the barriers for entry for individuals determined to learn the intricacies of small unmanned aerial systems are exceedingly low. Crafting an adequate defense to combat this threat will require sustained coordination among governmental and private sector entities. While the effectiveness of regulations and countermeasures is uncertain, the danger of drone-borne terrorism is not.

SOURCE: The Soufan Center, “Terrorists’ Use of Drones and Other Emerging Technologies,” October 3, 2018. https://www.thecipherbrief.com/column_article/terrorists-use-drones-and-other-emerging-technologies (retrieved November 22, 2018).

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a case in point

The Fusion Center Approach to Preventing Terrorism

In the wake of the 9/11 terrorist strikes, the concept of fusion has emerged as the fundamental process to facilitate the sharing of homeland security-related intelligence. *Fusion* refers to the process of managing the flow of information and intelligence across all levels and sectors of government and the private sector. *Fusion centers* are the facilities that house the personnel and equipment responsible for gathering, analyzing, and sharing the intelligence used to identify emerging threats of terrorism and other serious crimes. Currently, there are 79 recognized fusion centers owned and operated by state and local entities. These facilities get federal support in the form of deployed intelligence officers, technical assistance, exercise support, security clearances, and connectivity to federal systems.^a

Detection of the planning of a terrorist incident often requires piecing together separate bits of information that, when assembled, point to the potential for a terrorist action. For example, reports of thefts of power company vans from one locale, coupled with those detailing burglaries at stores selling professional uniforms in a neighboring city, could indicate a plot to cripple a vital facility’s operating capability. In addition to obtaining information from official police reports, fusion centers seek to use information gathered from other public agency employees such as sanitation workers and firefighters. A number of centers operate tip hotlines.^b



John Moore/Getty Images

While the Department of Homeland Security has been the driving force for the creation of fusion centers, local officials have taken advantage of the pooled resources and analytical capabilities afforded through the centers to address conventional crime. Massachusetts, for example, has co-located its fusion center, the Commonwealth Fusion Center (CFC), with the New England High Intensity Drug Trafficking Area.^c

While fusion centers have been praised for their capability of identifying potential terrorist threats, they have also been the subject of criticism for their potential for compromising civil liberties. Some politicians have openly called for fusion centers to wiretap mosques and spy on foreign students. Local police departments also have been collecting suspicious activity reports on persons using binoculars or taking pictures with no apparent aesthetic value. These policing activities are technically illegal under federal law, which requires reasonable suspicion that an individual is involved in criminal conduct.^d

Fusion centers must have in place effective and robust privacy and civil rights policies and protections.^e To this end, each fusion center has an individual assigned to promote the fusion center's privacy, civil rights and civil liberties protections, processes, and efforts.^f If centers fail to make privacy and civil rights protections a priority status, the network may find itself unsustainable—a criminal justice reality and a challenge of substantial importance.

OBSERVE ➔ INVESTIGATE ➔

UNDERSTAND

- Given that fusion centers were formed primarily to combat terrorism, is it appropriate for employees of these centers to use their intelligence for suppressing conventional crime activities? Explain.
- Would it be appropriate for fusion centers to collect information on individuals involved in nonviolent public protests—for example, demonstrations against globalization or taxation policies? Why or why not?

SOURCES: ^aU.S. Department of Justice, *Fusion Center Guidelines*, special report prepared in collaboration with the U.S. Department of Homeland Security, April 2006, 3.

^bTorin Monahan and Neal A. Palmer, “The Emerging Politics of DHS Fusion Centers,” *Security Dialogue* 40, no. 6 (2009): 619.

^cDavid Lambert, “Intelligence-Led Policing in a Fusion Center,” *FBI Law Enforcement Bulletin* 79, no. 12 (2010): 3.

^dMonahan and Palmer, “The Emerging Politics of DHS Fusion Centers,” 628–629.

^eBureau of Justice Assistance, “2014 National Network of Fusion Centers Final Report” (Washington, DC, January 2015), 24.

^fU.S. Department of Homeland Security, “2017 National Network of Fusion Centers Final Report” (Washington, DC, October 2018), A-2.

Information from the community at large can be a vital ingredient in developing intelligence. Alert citizens help to prevent conventional crime, and they can help to foil acts of terrorism as well. For example, a ^{page 569} landlord’s suspicions might be triggered if a large number of individuals use a rented apartment on an irregular basis. A retailer or a wholesaler might notice purchases of large amounts of hydrogen peroxide or ammonium nitrate—both components of improvised explosive devices—and might report such transactions to local authorities. A student may acquire knowledge of a classmate’s compilation of a “hit list.” Community-based training programs, such as those established by the Teaneck, New Jersey, Police Department, have drawn praise from numerous community groups and helped empower citizens to be proactive in preventing terrorism.⁶⁴

Prevention Strategies

Designing terrorism prevention, while addressing often cited accusations of focusing disproportionately on certain segments of society, is complicated by the fact that many different entities have roles in the area. Countering violent extremism in the United States has been an interagency effort, amid four federal security-focused agencies: U.S. Department of Homeland Security, U.S. Department of Justice, Federal Bureau of Investigation, and National Counterterrorism Center.

Nongovernmental entities have assumed significant roles as well. Engagement and intervention efforts often require access to such capabilities as mental health services, employment assistance, and other capacities maintained by nonprofit and service organizations.⁶⁵

At the local level law enforcement needs to be vigilant for **precursor crimes**, offenses committed for the purpose of enabling acts of terrorism. Criminal activities with which terrorists have been associated include ATM fraud, counterfeiting of postage stamps and food products, money laundering, staged accidents, and video piracy.⁶⁶ In addition, the possession of forged documents, illegal border crossings, and other comparatively minor crimes may serve directly to support preparations for terrorism. Patrol officers should view vehicle stops and all preliminary investigations as opportunities to intervene in terrorism.

precursor crime

Offense committed for the purpose of enabling acts of terrorism, such as illegal border crossings or forged documents.

Terrorism prevention activities may be grouped into three phases, each with distinct goals. The early phase focuses broadly on vulnerable populations. This entails either bolstering resistance to radicalization or curtailing factors such as extremist messaging in the environment. The middle phase includes activities focusing on individuals at risk of radicalization. Such activities are designed to encourage referrals for intervention and effectively deliver intervention programming. The late phase addresses individuals who have transgressed to involvement in the criminal justice system. This phase aims to deliver services, often from within the federal prison system, intended to prevent recurrence of criminal activity. Thus these phases may be viewed along a spectrum of community and government involvement. At one end are community-centered initiatives that may consist of messaging that is directed toward an array of issues, many of which are not specifically terrorism-oriented. At the other end are government-driven initiatives in which government and law enforcement, for example, a police-managed program to connect troubled youth to counseling.⁶⁷

With the emergence of the **lone wolf** as a prominent threat, crowdsourcing presents a potentially powerful mechanism for collecting large amounts of data on potential lone wolf terrorism indicators identified by citizens. **Crowdsourcing** is defined as “an online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals.”⁶⁸ Use of electronic intercepts, inherent to a top-down (that is, governmentally initiated) searching method, may be less likely to identify lone wolves, as a lone wolf rarely contacts a known terrorist group in a traceable manner.⁶⁹ A national crowdsourcing intelligence program leveraging citizen volunteerism would need to be well publicized and user-friendly, and there would need to be education on reliable indicators of lone wolf preparation and planning.

lone wolf

A terrorist who is not a member of a known terrorist group and who does not take orders from a chain of command when conducting acts of terror.

crowdsourcing

An online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals.

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PROSECUTING HATE CRIMES

A **hate crime** is a criminal offense committed because of the victim’s race, ethnicity, religion, sexual orientation, or other group affiliation. Despite the name, the offender need not actually hate the victim to be convicted. In some jurisdictions, hate crimes are known as *bias crimes* or *ethnic intimidation crimes*. Typical examples of hate crimes include burning a cross in the yard of a Black family, painting a swastika on a synagogue wall, and gay bashing—beating a person who is or is assumed to be gay.

hate crime

Criminal offense committed because of the victim’s race, ethnicity, religion, sexual orientation, or other group affiliation.

Crimes motivated by bias are ancient, but most laws against them are new, having been enacted in the 1980s and 1990s. Almost all states now have a hate crime law of some kind. On the federal level, after many years of debate, in 2009 Congress passed the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, which created federal sanctions for hate crimes as well. The act

was named after two hate crime victims: Shepard, a gay college student from Wyoming who was beaten and left tied to a fencepost to die; and Byrd, a Black Texan who was dragged to death behind a pickup truck. In addition, federal law requires the U.S. Department of Justice to collect specific data related to hate crimes from local law enforcement agencies. In 2017 police departments reported 7,175 hate crime incidents involving 8,437 offenses that were classified as hate crimes; however, most hate crimes probably do not get reported to the police.⁷⁰



▲ Swastikas and SS initials on Muslim Gravestones

Hate crimes are widespread and send an intimidating message that targeted groups are unwelcome and unsafe in a community.

Thomas Wirth/AFP/Getty Images

MYTH/REALITY

MYTH: Most people who commit crimes based on hatred, bias, or discrimination face hate crime charges or longer sentencing.

REALITY: Prosecutors have extraordinary discretion regarding how to charge suspects and often do not seek hate crime penalties.⁷¹

Many hate crime laws operate as **penalty enhancers**, meaning they add to the penalty for the underlying criminal act. For example, vandalizing another person's property is ordinarily a Class B misdemeanor. If, however, the vandalism is determined to have been motivated by the victim's race and prosecuted under hate crime laws, the charge can be raised to a Class A misdemeanor, thus increasing the potential punishment.

penalty enhancer

Attribute that adds to the penalty for a crime.

Hate crimes require evidence not only of *actus reus* and *mens rea* (see Chapter 4) but also of the offender's motive. To obtain a conviction for a hate crime, the prosecutor must prove that the defendant's acts were motivated (at least in part) by the victim's race, ethnicity, religion, or sexual orientation. Because it is often difficult, if not impossible, to assess another person's motives accurately,⁷² convictions for hate crimes are rare. Of the 1,093 hate crimes reported to California police in 2017, only 65 resulted in convictions.⁷³

Considerable controversy surrounds the topic of hate crimes, including debate about which groups need protection. Many states do not include victims' sexual orientation or gender identity as criteria for hate crimes, and only a few include disability or age.⁷⁴ As the "Race, Class, Gender" box describes, immigrants are also often victims of hate crimes.

As shown in Figure 16-3, more than half of hate crimes are motivated by race/ethnicity/ancestry. Others are motivated by religion, sexual orientation, or disability.

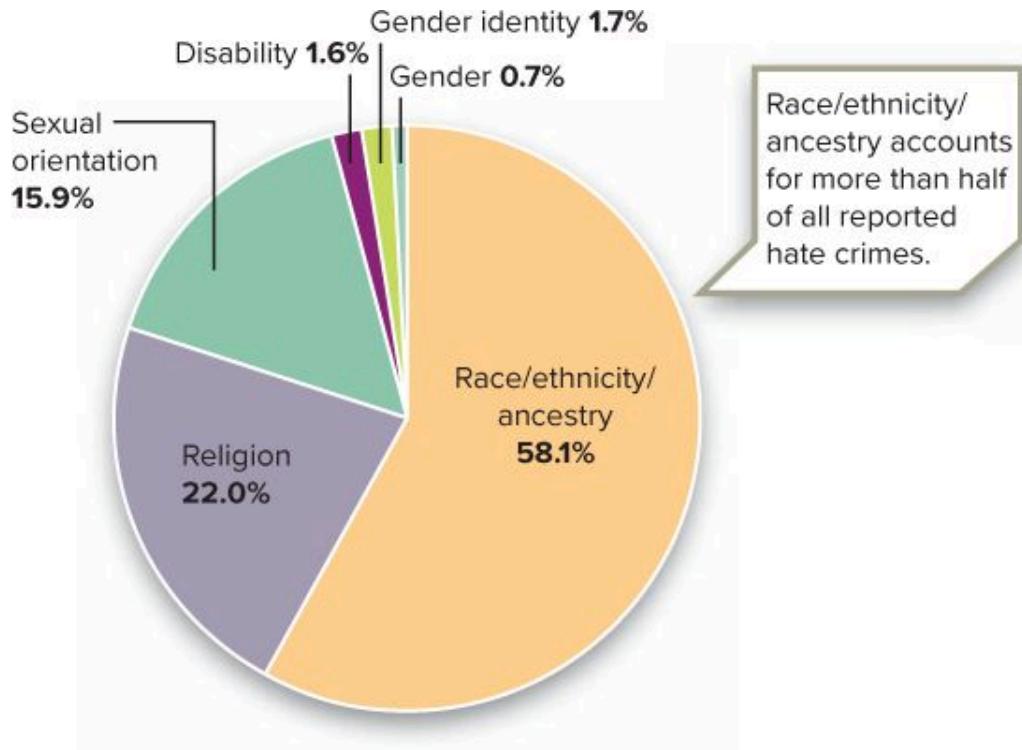


FIGURE 16-3 Types of Hate Crimes

SOURCE: U.S. Department of Justice, Federal Bureau of Investigation, “Hate Crime Statistics, 2017.” <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses> (retrieved May 8, 2019).

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Race, Class, Gender

The Killing of Onesimo “Marcelino” Lopez-Ramos

In the end, one teenager was dead and three other teenagers were in jail facing murder and possible hate crime charges.

Onesimo “Marcelino” Lopez-Ramos immigrated to Jupiter, Florida, from Guatemala when he was 16. By 2015 he was 18. To help support his family, he worked long hours—seven days a week—as a pizza cook. Coworkers said he was a kind young man. His older brother said he was unassuming and religious.

In the very early hours of April 18, 2015, Lopez-Ramos was hanging outside a friend’s house with a few other young people, quietly talking and drinking beer. Several new people approached. According to witnesses, the interchange seemed friendly at first, with Lopez-Ramos greeting the newcomers with a handshake. But soon the newcomers turned violent, and they crushed Lopez-

Ramos's skull with a rock, killing him. Lopez-Ramos's brother was injured as well, although not fatally.

Less than a week later, three teenagers were arrested: Austin Taggart, 18; David Harris, 19; and David's brother Jesse Harris, 18. Reportedly, the suspects laughed and told police they had been "Guat hunting"—that is, specifically looking for Guatemalan immigrants to rob and harass. In May 2018, Jesse Harris was convicted of first degree murder and a hate crime and sentenced to life in prison. As of May 2019, his brother and Taggart had not yet been tried.

Violence against Guatemalans was not new in Jupiter. The town has a large proportion of Guatemalan immigrants, many of whom are paid in cash and are therefore seen as easy robbery targets by some people. In addition, some residents reported having been targeted in the past with racial slurs as well as physical attacks. Community organizations and police have worked together to improve the situation, but still a young man is dead, apparently solely because of his ethnicity.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

- What do you think motivates some people to commit crimes such as this one? To what extent do you think this particular crime was influenced by mainstream anti-immigrant rhetoric?
- Victims of hate crimes frequently do not report the crimes to the police. Do you think this might be a particular problem when the victims are immigrants? How can victims be encouraged to report these crimes?
- What do you think might be effective methods of preventing hate crimes in your community?

SOURCES: Juan Ortega, "Hate Crime Suspected in Killing of 18-Year-Old Man; Three Arrested in Jupiter," *Sun Sentinel*, April 27, 2015. www.sun-sentinel.com/local/palm-beach/fl-jupiter-killing-folio-20150425-story.html (retrieved June 12, 2015); Tim Rogers, "Why Some Guatemalans in This Florida City Fear White Guys Driving Big Pickup Trucks," *Fusion.net*, May 2, 2015. <http://fusion.net/story/129549/why-some-guatemalans-in-this-florida-city-fear-white-guys-driving-big-pickup-trucks/> (retrieved June 12, 2015).

The least violent hate crimes tend to be motivated by religious bias; these crimes are usually property-related crimes or vandalism. Jewish people were targeted in 58.3 percent of the hate crimes based on religion.⁷⁵ Anti-Muslim hate crimes are also common, especially since 9/11. However, various jurisdictions may categorize these crimes differently—either as crimes based on religion (Islam) or ethnicity (Arab or Middle Eastern) or in the category of "other." Thus the actual prevalence of these specific crimes is not always clear from the official data.

Blacks are more likely than Whites to be victims of racially motivated hate crimes. Younger people tend to be the target of violent hate crimes; more than half of all victims of violent hate crimes are under age 24.⁷⁶

CONTROLLING CIVIL DISORDER

Civil disorder is a disturbance by a group of people that is symptomatic of a major sociopolitical problem. Normally such disorder arises from a spontaneous gathering in response to some perceived injustice. Any assembly of persons that poses a threat of collective violence or a breach of the peace is subject to laws against civil disorder.⁷⁷

civil disorder

Disturbance by a group of people that is symptomatic of a major sociopolitical problem.

The severity of the disturbance usually corresponds to the degree of outrage among participants. Even citizens not directly involved in a civil disorder may experience major disruptions in their daily lives. Chaos at the site may constrain travel and commerce; residents may fear for their safety. When page 572 public order is disrupted, the police act as a control force with a threefold mission: to preserve life, to protect property, and to restore order. They may suspend their response to routine criminal activities (such as taking a report of a burglary or theft) and encourage citizens to defer reporting less serious offenses until order has been restored.



▲ Sports Fan Rioting

Excitement, passion, adrenaline, and alcohol can turn a happy event, like a sports team's title victory, into a riot.

Gerard Burkhart/Getty Images

Causes of Civil Disorder

Research on the riots of the 1960s examined the dynamics of crowds and mobs and identified some elements common to episodes of civil disorder. A **crowd** is defined as a group of individuals drawn together by common values and feelings about a current matter. A crowd, although unorganized and without leadership, is ruled by collective reason, is aware of the law, and generally respects its principles.

crowd

A leaderless group of individuals, generally respectful of the law, drawn together by common values about a current matter.

Like a crowd, a **mob** is drawn together by common values, but otherwise it is quite different. First, a mob is not law-abiding. A mob usually is organized, has a leader, and is ruled by emotion. Its creation is usually sparked by a climactic event, such as an organized expression of sympathy or resentment. Zealots mill about from one small group to another, rousing emotions that build to a high state of collective tension and excitement. Mob members lose their personal identity and become anonymous in the large group, a psychological effect that absolves them of personal responsibility for any destructive acts that ensue.⁷⁸ Sports fans watching an athletic event, for instance, may become either angered at a loss or overjoyed by a win and then act collectively in ways that include breaking laws. At first, a few people begin to act and then others follow, spurred by their sudden anonymity in a large group of their peers.⁷⁹ Automobiles are overturned, bonfires set in the streets, and businesses vandalized—usually with no premeditation.

mob

A group that is not law-abiding, with a leader, that is ruled by emotion.

Major riots often are the result of an accumulated reservoir of grievances. Groups may congregate—and mob behavior might follow—because of an *accumulated reservoir of grievances*.⁸⁰ For example, the Los Angeles riots that occurred after the 1992 acquittal of White police officers accused of beating Black motorist Rodney King took place in a climate of racial unrest. For months, television stations had played and replayed video footage of King's beating taken by a bystander, effectively priming the public mood. Many people of color were experiencing what they believed to be social and economic inequities as well as discriminatory treatment by the justice system. All that was needed to ignite disorder was a *precipitating incident*; the acquittal of the White officers charged with beating King served that purpose.⁸¹ The same accumulated reservoirs of grievances appeared to have been present in the riots that took place in Ferguson, Missouri, and Baltimore, Maryland, following questionable uses of force by police in 2014 and 2015, respectively.

MYTH/REALITY

MYTH: Civil disorders are usually spontaneous and unpredictable.

REALITY: Civil disorders require some precipitating incident, which may be spontaneous. However, civil disorders are often predictable because the “tinder” upon which they are ignited has accumulated visibly over time.⁸²

Today's social protests are being carried out by groups that are considerably better prepared and more organized than those in the past. Whatever the issue, individuals both inside and outside the community—and even those outside the country—can connect with one another online to participate in social protests.⁸³ Not only can the Internet markedly facilitate pre-event mustering (as in the flash mob process—the sudden assemblage of a group of people at a predetermined time and place to perform a predefined action, and then just as quickly to disperse), but protest organizers now commonly employ customized Google maps to track police movements. Some organizers have even created specific icons to reveal in real time the location and number of types of police resources, a strategy that can neutralize the effectiveness of law enforcement's tactical planning.⁸⁴



▲ A Flash Mob Materializes in an Instant

Flash mobs, while usually not assembled for political purposes, illustrate the capability of telecommunications to enable the instantaneous mustering of individuals.

Prevention Strategies

Commissions convened in the 1990s identified the quality of the relationship between the community and its police force as the most significant factor in preventing or resolving civil disorder.⁸⁵ Good relationships can enable quick and effective intervention when unrest develops. If unrest is allowed to progress to angry confrontation with authorities, the likelihood of violence is strong.⁸⁶

In the wake of the Occupy Wall Street protests in late 2011, law enforcement developed a protest containment strategy termed “strategic incapacitation.” The hallmarks of strategic incapacitation are spatial containment, surveillance, and information management. Spatial containment entails dividing public and private spaces into hard zones (which restrict activists from accessing and disrupting the targets of grievances), free speech zones, soft zones (buffer areas adjacent to “hard” zones), and free press zones. Surveillance involves employment of high-tech cameras at fixed points, as well as roving police videographers. Real-time images enable shifting of resources to hot spots. The information obtained via surveillance and other sources is managed at central command centers. Although intended to be a proactive means of ensuring First Amendment protections while maintaining public order, an unintended consequence of delineating corridors for free speech and free press is that doing so can exhaust rather than invigorate those engaging in political behavior. In addition, excessive surveillance and concerns about how information gained through surveillance might be used can stifle public protest. Moreover, restricting members of the press to specific zones, frequently termed “press pens,” has been criticized as impeding the broader citizenry’s access to information and the capacity to make informed comments.⁸⁷

Research on prevention of civil disturbance confirms the strategic need for proactive relationship building by police. For that matter, the message from top-level management greatly influences the behavior and mind-set of frontline officers. Shaping appropriate attitudes occurs through an ingrained understanding that police work involves building relationships with members of the public officers are sworn to protect. This approach begins with defining the mission and safeguarding the fundamental rights of people to gather and speak out. The philosophy should reflect the agency’s core values in viewing _____ page 574 citizens as customers. Group members are more likely to comply with the law when they perceive that officers act with justice and legitimacy. Moreover, participants perceive the legitimacy of police actions based on how officers interact with the assembled masses throughout an event. Violence may ensue if people think police officers treat them unfairly. Communicating

expectations, negotiating continually, and emphasizing the goal of safety are vital. Incorporating these three elements into operations plans for mass assemblages has been shown to significantly improve the quality of crowd management and riot prevention.⁸⁸

SAFEGUARDING CIVIL LIBERTIES

A recurrent dilemma within the U.S. criminal justice system is protecting people and property without infringing on constitutionally guaranteed individual liberties. More and stricter laws, greater leeway for police officers and other criminal justice professionals, and harsher punishments might make us all safer, but perhaps at the cost of decreasing the freedoms we now enjoy. For example, police would likely catch more criminals if they were allowed to search houses whenever they wished without first getting search warrants, but then all people would be at perpetual risk of having their privacy invaded.

The U.S. Constitution prohibits the government from making laws that violate certain rights, among them the rights to freedom of expression, religion, and privacy. However, the Constitution does not specify the precise nature of those rights, nor the circumstances, if any, under which they may be overridden. Furthermore, individuals often disagree over whether freedom or safety is more valuable, so proposed laws and policies are frequently subject to vigorous debate.

At numerous times in the country's history, a crisis has justified—at least in the mind of many people—fairly extensive infringements on individual liberties. The right to a writ of habeas corpus, which allows people to challenge their incarceration in court, was suspended or denied several times, including during and after the Civil War, during World War II, and following the 9/11 terrorist attacks. Rights of free assembly and free expression were frequently overlooked during the Red Scare of the 1950s, for fear of the spread of communism. During the war on drugs of the 1980s and 1990s, law enforcement was generally given more latitude to conduct warrantless searches. And during the “war on terrorism” after 9/11, Congress passed laws authorizing warrantless monitoring of telephone calls and Internet activity. As of 2019, federal authorities have increasingly detained and deported people who are seeking to enter the United States or who have already entered. The justification for these acts is the prevention of crimes that might be committed by undocumented people.

The extraordinary measures undertaken by law enforcement have at times called into question whether officials are adhering to the rule of law—the underpinning of the U.S. system of justice (see Chapter 4). The rule of law states that all people within the United States, regardless of their citizenship status, are

covered by the provisions of the U.S. Constitution and all the statutory law (law enacted by authorized lawmaking bodies, such as Congress) that evolves from it. In essence, this means that we must objectively consider the facts about any criminal act and disregard any bias toward or against an individual's race or status when making a decision to interfere with that person's freedom.



▲ **Acquitted Terror Suspect Shoue Hammod**

Shoue Hammod was charged with terrorist offenses and went to trial in Melbourne, Australia, because he made a comment to his wife over the telephone about terrorist training.

Julian Smith/AAP Image

The “war on terrorism” has had considerable effects on immigrants and persons visiting the United States on a visa.⁸⁹ Law enforcement has detained many people fitting the terrorist profile of Middle Eastern heritage, temporary visa status, Muslim faith, male gender, and young adult age. Critics vehemently condemn the practice of detaining suspects without formally charging them with a criminal offense.

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In addition, the U.S. Department of Justice has expanded the FBI’s authority to permit the surveillance of religious institutions, websites, libraries, and organizations without any finding of criminal suspicion before the fact.⁹⁰ Critics

of these surveillance guidelines contend that they give the state too much power to infringe on individuals' privacy. They argue that the focus of these practices on individuals with a specific ethnic, national, or racial heritage constitutes racial profiling.⁹¹

MEETING EMERGING CHALLENGES IN VICTIMOLOGY

Although it may be easy to recognize the victims of a specific crime, many other crime victims remain in the shadows. These include individuals whom tradition has not identified as victims, or whose victimizations have gone unnoticed, or who have had limited access to assistance programs. What does the future hold for addressing the needs of such people and the challenges they face?

Victims with Disabilities

As many as one of every five individuals in the United States may have a disability such as a psychological disorder, reduced intellectual functioning, limited mobility, or inability to communicate. Some people are born with a disability, and others' disabilities result from an accident, a disease, or a criminal victimization. People with a disability are more vulnerable to victimization, are typically less able to protect themselves, have more trouble contacting law enforcement, often find victim services inaccessible, and have more difficulty recovering. They also are more likely to experience repeat victimizations by the same offender than individuals who do not have disabilities.⁹²



▲ Victim with a Disability

A victim in a wheelchair testifies in court.

Danny Drake, The Press of Atlantic City/AP Images

In 1998, the National Crime Victimization Survey (NCVS) was mandated through the Crime Victims with Disabilities Awareness Act to collect data specifying the types of crimes against, and the characteristics of, victims with disabilities. In 2007, the NCVS first included questions about disability and victimization. Between 2009 and 2015, people with disabilities were victimized at almost twice the rate of those without disabilities. In 2013, almost 15 percent of children who were abused or neglected also had a disability. Those with behavioral problems and with emotional disturbances were abused at the highest rates, 24 percent and 19 percent, respectively.⁹³ In 2015, people with disabilities 12 years of age and older experienced a violent victimization at a rate of nearly 30 out of every 1,000 people as compared to 12 out of every 1,000 people who did not have a disability. For those with cognitive disabilities, the number was 60 out of 1,000 people. When looking at serious violent victimization, those with a single type of disability were victimized at a rate of 11 out of 1,000 people and those with multiple disabilities experienced serious violent crimes at a rate of 14 out of 1,000 individuals. Almost 95 percent of people with disabilities who experienced a violent crime were able to identify the perpetrator. Of these, 40

percent were victimized by an acquaintance including caregivers and 15 percent by an intimate partner.⁹⁴

Most crime victims, regardless of ability, experience some level of trauma and thus most need services after the crime. Those with disabilities must be treated equitably and have the same access to services. Two federal laws prohibit discrimination on the basis of disability: the Americans with page 576 Disabilities Act (ADA), enacted in 1990, and Section 504 of the Rehabilitation Act of 1973. The former applies to state and local governments, and the latter to entities receiving financial assistance from the federal government. Both laws require that law enforcement make reasonable modifications to enable crime victims with a disability to benefit equally from participating in all agency services, programs, and activities. When law enforcement responds to victims appropriately and compassionately, victims are more willing to cooperate by providing information vital to the investigation and prosecution of the offender.

In 2002, the U.S. Department of Justice created a handbook to assist law enforcement in responding to the specific needs of crime victims with disabilities. Among the guidelines, which are helpful not only for law enforcers but also for anyone working with crime victims with a disability, are the following:

- Rethink negative attitudes about people with a disability.
- Remember that having a disability does not equate to being unhealthy or unintelligent.
- Use person-first language and do not label a person by disability. For example, it is more appropriate to say “a person with a disability” than “a disabled person.” By doing so, you are indicating that the disability is secondary to the person.
- Speak directly to the victim even if a third party is present to assist, and ask victims how to communicate most effectively with them. Do not speak in a childlike or condescending manner.
- Ensure that the victim is safe before leaving the scene. If she is not, provide an alternative caregiver or shelter. A victim advocate can provide vital information to assist in the situation.
- Do not assume that family members, service providers, or caretakers are safe for the victim. Sometimes these individuals are the perpetrators, a

situation that may inhibit a victim's ability to disclose the victimization and raise fears of retribution.

- Make sure to document the victim's disabilities and to include specific communication, transportation, medication, or other accommodation needs.
- Do not show curiosity about the disability outside the bounds of providing assistance; also, do not express pity about the disability (such as "I'm sorry you are suffering from a mental illness"), show admiration for the victim's ability to accomplish things despite having a disability, or make insensitive comments (such as "She's disabled and he raped her anyway"). Such remarks can be very painful to a victim with a disability or members of the victim's family.⁹⁵

In 2009, the first National Professional Training Conference on Responding to Crime Victims with Disabilities was held. The program provided foundational and advanced training for individuals in the disability and victim services fields. The conference focused on improving knowledge and skills, streamlining services, and fostering collaborative partnerships among those who serve crime victims with disabilities.

Today many organizations are providing outreach and modified services for victims with disabilities. Individually and collectively, they are diminishing the trauma and crisis associated with victimization. The future should bring greater collaboration between victim and disability service providers; more training for first responders, service providers, and caretakers; better screening for appropriate services; and greater accessibility to services. Each of these interventions will help victims with a disability move toward long-term healing and recovery. More remains to be done, however, as illustrated by the "Disconnects" box, which highlights substantial gaps in the services available for victims with disabilities.

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DIS Connects

Helping or Hurting Victims with Disabilities?

Individuals with disabilities are victimized at higher rates than those without disabilities. According to the most recent data collected through the National Crime Victimization Survey (NCVS) in 2013, people with disabilities experienced 21 percent of all violent victimizations. The rate of violent victimization for people with disabilities was double the rate for those who did not identify as having a disability and three times the rate for serious violent victimization. The rate at which people with disabilities experienced aggravated assaults increased from 4 per 1,000 in 2009 to 7 per 1,000 only 4 years later. In 2013, 39 percent of people with a disability experienced serious violence (for example, rape or sexual assault, robbery, or aggravated assault) as compared to 29 percent of people who did not have a disability. One-fourth of people with disability believed that they were targeted because of their disability. Regardless of gender, both males and females with disabilities experienced higher rates of victimization than people without a disability. When factoring in race, both Whites and Blacks with disabilities experienced higher rates of violent victimization than other races. The highest rates of victimization were experienced by people with cognitive disabilities (67 per 1,000) followed next by people with hearing disabilities (17 per 1,000). Those with multiple disability types experienced more victimization and more violent victimization than those with a single type of disability.

In terms of the victim–offender relationship, those who victimized people with disabilities were people the victim knew well or acquaintances (41 percent), strangers (31 percent), or intimate partners (15 percent). Almost 60 percent of people with disabilities were victimized between 6 a.m. and 6 p.m. Police were more likely to be notified when a person with a disability experienced a victimization (48 percent) as compared to victims without a disability (44 percent). Nonreports were due to the matter being handled in an alternative manner or the victim feeling that the situation was not serious enough to merit police intervention. In terms of receiving victim services, people with disabilities (12 percent) were somewhat more likely to receive assistance than people without disabilities (8 percent).

Many of the crimes against people with disabilities go unreported, and although more victims with disabilities seek services than do people without disabilities, the majority still do not seek services. Victims who do report their victimization may interact with law enforcement, service providers, prosecutors, and allied professionals who have limited training in working with this population. These victims must overcome not only the trauma of the crime but also the prevalent misperceptions, stereotypes, and myths about victims with disabilities.

Services for victims with disabilities may be limited, and victims may have difficulty accessing the help that is available. Organizations with ramps in the back or at the side of the building add an extra burden of access, are not welcoming, and raise safety concerns related to entering from an isolated access point. For safety reasons, victim services are often not located at a building's ground level. Thus the victim may have to move farther through a building that may not have an elevator or large doors and hallways to accommodate wheelchairs and other assistive devices. Written materials may not be available in Braille or large print, causing additional hardships for visually impaired victims.

Those who have difficulties with speech may be asked to write about their victimization to help the officer or service provider understand the crime. This request, however, raises further difficulties for victims. The duty of a first responder or service provider is to help the victim, not cause greater trauma and anxiety. Special communication devices and access to sign language interpreters are necessary but not always available.

The large size of many courthouses (as well as other buildings victims may have to visit) may require victims to navigate long distances to reach their destination. Bathrooms may not be easily accessible and/or may be far from the safety afforded in the courtroom, contributing to the victims' vulnerability. Victims with communicative disorders may benefit from assistive devices to ease giving testimony and victim impact statements.

Victims with disabilities who experience intimate partner violence may have difficulty leaving an abusive partner due to the lack of shelter services that provide assistive accommodations. Consider that some shelters are converted older homes that have limited services to assist people with physical disabilities. These facilities may have availability only on upper levels; the bathroom may be far from the bedroom; and the living space may not be accessible. Moreover, telecommunication devices (TTY/TTD—text communication devices for the deaf) may not be readily available to help victims keep in contact with loved ones. The resulting isolation can contribute to further depression, fear, and anxiety.

To close these gaps, a three-pronged approach is needed. First, increasing the availability and accessibility of services will assist with victim recovery and the assurance of victims' rights. Next, continuing multidisciplinary cross-training for service providers, criminal justice professionals, and individuals from the disability community will contribute to the efficient and effective provision of services. Finally, greater awareness of the needs of victims with disabilities will help promote the implementation of appropriate policies to help these individuals.

OBSERVE ➔ INVESTIGATE ➔ UNDERSTAND

After reading this chapter, you should be able to:

- What are some other identifiable gaps in services for victims with disabilities?
- What specific steps can be taken to provide better outreach to crime victims?
- If a victim with a disability requests prerecorded testimony or victim impact statements, should the request be granted? Why or why not?

SOURCES: Erika Harrell, "Crime Against Persons with Disabilities, 2009–2013—Statistical Tables" (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, May 2015), NCJ 248676. www.bjs.gov/content/pub/ascii/capd0913st.txt (retrieved June 12, 2015). Cheryl Guidry Tyiska, "Working with Victims of Crime with Disabilities," OVC *Bulletin*, U.S. Department of Justice, Office for Victims of Crime, September 1998. <http://permanent.access.gpo.gov/lps125160/disable.pdf> (July 22, 2011).

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Immigrant Victims

Some people think of trafficking in persons (TIP) when thinking about victimization against immigrants. However, on a more basic level, immigrants are persons who are in the United States (or some other nation) from another country. That condition of being a foreigner makes them vulnerable, and thus they can be victims of many different crimes both while they are in their new country of residence and when they return to their home country. No matter where the crime occurs, a number of programs and services in the United States assist immigrant victims—whether they are trafficked, illegal, or legal.



▲ Immigrant Victims

Family and friends try to make sense of their loss after a shooting rampage at the American Civic Association, a nonprofit organization providing services to immigrants in Binghamton, New York, where a gunman killed 13 people, then took his own life.

Matt Rourke/AP Images

MYTH/REALITY

MYTH: Immigrant victims will be deported if they call the police or seek services after a crime.

REALITY: Federal and state laws protect immigrant victims from deportation if they contact the police. Some states provide benefits to those victimized by TIP, intimate partner violence, and other serious crimes.⁹⁶

For an immigrant victim to qualify for benefits, credible evidence must be produced indicating that the person is a victim. Such evidence may be police reports, physical evidence, and documentation from social service or health care providers. If there is no evidence, the individual's sworn statements about the victimization may suffice. Victims who assist police in investigating Trafficking in Persons (TIP) and work to prosecute traffickers may apply for a *T visa*, which

means they request continued presence in the United States through the U.S. Office of Refugee Resettlement (ORR). Individuals whom the office certifies as TIP victims are eligible for federal benefits.⁹⁷

Immigrant victims of intimate partner violence are eligible for access to shelters, food banks, soup kitchens, the Supplemental Nutrition Program for Women, Infants, & Children (WIC), emergency medical services including prenatal care and care during labor and delivery, community clinics, and services provided by nonprofit organizations. Children also are eligible for school breakfast and lunch programs and the Child Health and Disability Prevention (CHDP) program. These benefits are available regardless of whether the victim contacts and cooperates with the police. Immigrants who have suffered substantial physical and mental abuse such as intimate partner violence, sexual assault, prostitution, female genital mutilation, kidnapping, servitude, false imprisonment, and other crimes can apply for *U* visas. This type of visa, which gives victims temporary legal status and eligibility for work in the United States, is granted only if victims cooperate in the investigation and prosecution of a crime.⁹⁸ In March 2011, the U.S. Citizenship and Immigration Services created a new deferred action status, which allows individuals who were lured to the United States and then forced into prostitution to apply to live and work while their court cases are pending.⁹⁹

Local, state, and federal programs for immigrant victims are intended to help the victims reestablish healthy and normal lives and to support them if they wish to serve as witnesses in the prosecution of offenders. The labyrinth of immigrant services, government agencies, and applicable rules requires page 579 collaboration among agencies providing aid to immigrant victims.

First responders, service providers, and government workers need training in the unique challenges of working with immigrant victims. Finally, outreach and educational programs are particularly important because immigrant victims are often unaware of services, do not believe that they are eligible for them, and do not know how to access them. They often distrust law enforcement and government officials and fear that reporting a crime will expose them to deportation.¹⁰⁰

In a directive to his prosecutors dated April 6, 2018, U.S. Attorney General Jeff Sessions adopted a “zero-tolerance” policy for those who improperly enter the United States. The essence of this action was that parents or guardians who were with children at the time of their illegal crossing or legal asylum seeking at the U.S. southwest border would be separated and jailed into federal and/or private facilities and these children would be placed under federal supervision and then into holding shelters or foster homes (see an earlier mention of related

information on this in the “Matter of Ethics” box in Chapter 11). Approximately 3,000 children (including some infants) were forcibly and abruptly separated as a result of their parent’s or guardian’s *misdemeanor* act: mostly and legally applying for asylum. Basically, three agencies were involved in the implementation of this policy: the U.S. Department of Health and Human Services (HHS), the Department of Homeland Security (DHS), and the Office of Refugee Resettlement (ORR). Three months later the HHS Inspector General issued a report stating that roughly 700 children may have been separated in the year *prior* to the April directive issued by AG Sessions. Furthermore, because of poor coordination among these three federal agencies the exact number of children involved was *unknown*.¹⁰¹

In response to this policy and its application to immigrant and asylum seeker families, national and international criticism erupted aimed at President Trump and his administration. Consequently, on June 20, 2018, the president signed an executive order to end family separations at the border. Despite this executive action, a government report found that in the following nine months, 245 children had nonetheless been separated from their families—some of these were without documentation for their eventual reunification.¹⁰² The scientific evidence from previous years dating back to World War II research on similar child-parent separations points to long-term psychological and physical damage of these children, their families and the communities involved.¹⁰³

One of the strangest features of this “zero-tolerance” policy was that originally it did not include a plan to eventually reunite these children with their parents after the legal process was over. This gross disregard for the immediate and long-term victimization and suffering of these children and their parents or guardians is a violation of their human rights, their dignity, and the moral standards of this country. The irony of this situation is that most of these victims were/are not criminals but rather were persons who had escaped extreme poverty, violence, and oppression in their home countries, mostly from Honduras, El Salvador, and Guatemala and were peacefully seeking asylum from the U.S. government.¹⁰⁴

LGBTQ Victims

Members of the lesbian, gay, bisexual, transgender, and questioning (LGBTQ) community experience victimization, but there is little research on the prevalence of the problem, and services for these victims are limited. One research effort is conducted each year by the National Coalition of Anti-Violence Programs (NCAVP), a national network of more than 35 community-based organizations that provide services to address violence against LGBTQ individuals, persons

who are HIV-infected, and those affected by HIV/AIDS through family or friends. In 2007, the NCAVP released two reports on violence and another on intimate partner violence against people who identify as LGBTQ.

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The first report focused on bias-motivated incidents in 2007. The data are based on reported incidents in 13 states: California, Colorado, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Texas, Vermont, and Wisconsin. In 2007, the 2,430 victims who reported anti-LGBTQ violence represented a 24 percent increase from 2006. The number of reported murders doubled over the same 1-year period, from 10 in 2006 to 21 in 2007. Other increases occurred in reported sexual assaults (61 percent), noninjury incidents (28 percent), and the use of weapons (5 percent). Some decreases were noted as well: Minor injuries fell by 6 percent, and serious injuries were down by 11.7 percent.

The first report also revealed that strangers were less likely than acquaintances to commit bias-motivated crimes against LGBTQ individuals. Strangers accounted for 809 incidents in comparison to 1,741 acquaintance incidents in 2007. Another finding was that almost half the incidents implicated multiple offenders, and one-quarter were serial offenses; some offenders targeted the LGBTQ individual multiple times before the victim called for help. In addition, nearly half the cases reported in the study did not result in a call to the police. When the victim did contact law enforcement, just under a quarter of the cases resulted in an arrest.¹⁰⁵

The NCAVP report on intimate partner violence, based on data received from 14 member organizations representing 11 states (Arizona, California, Colorado, Illinois, Massachusetts, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Texas), revealed slightly more than 3,500 cases of intimate partner violence and four deaths in 2006, a 15 percent decrease over the previous year. It is unclear whether the decrease resulted from fewer cases of intimate partner violence, fewer people seeking services, or a combination of other unknown factors.¹⁰⁶

In 2010, the National Center for Victims of Crime (NCVC) and the National Coalition of Anti-Violence Programs released a groundbreaking report on victim assistance for the LGBTQ community. The report, based upon a nationwide survey of victim services for LGBTQ victims, reveals major gaps, including inconsistent access to culturally competent services and deficiencies in LGBTQ-focused community outreach and staff training.¹⁰⁷

These reports called for changes at the local, state, and federal level to address victimization within the LGBTQ community. The recommendations include the following:

- Implement a comprehensive awareness campaign to create a societal climate that fosters respect and shuns violence against all people.
- Adopt LGBTQ-inclusive and nondiscriminatory policies and practices that are implemented and enforced.
- Establish and promote anti-bias units within law enforcement, including training and resources to investigate and sanction inappropriate police response.
- Increase funding for research, training, and provision of services to LGBTQ individuals.¹⁰⁸
- Increase collaborative partnerships between LGBTQ antiviolence programs and victim service providers to ensure equal access of all victims to state and federal protections.¹⁰⁹

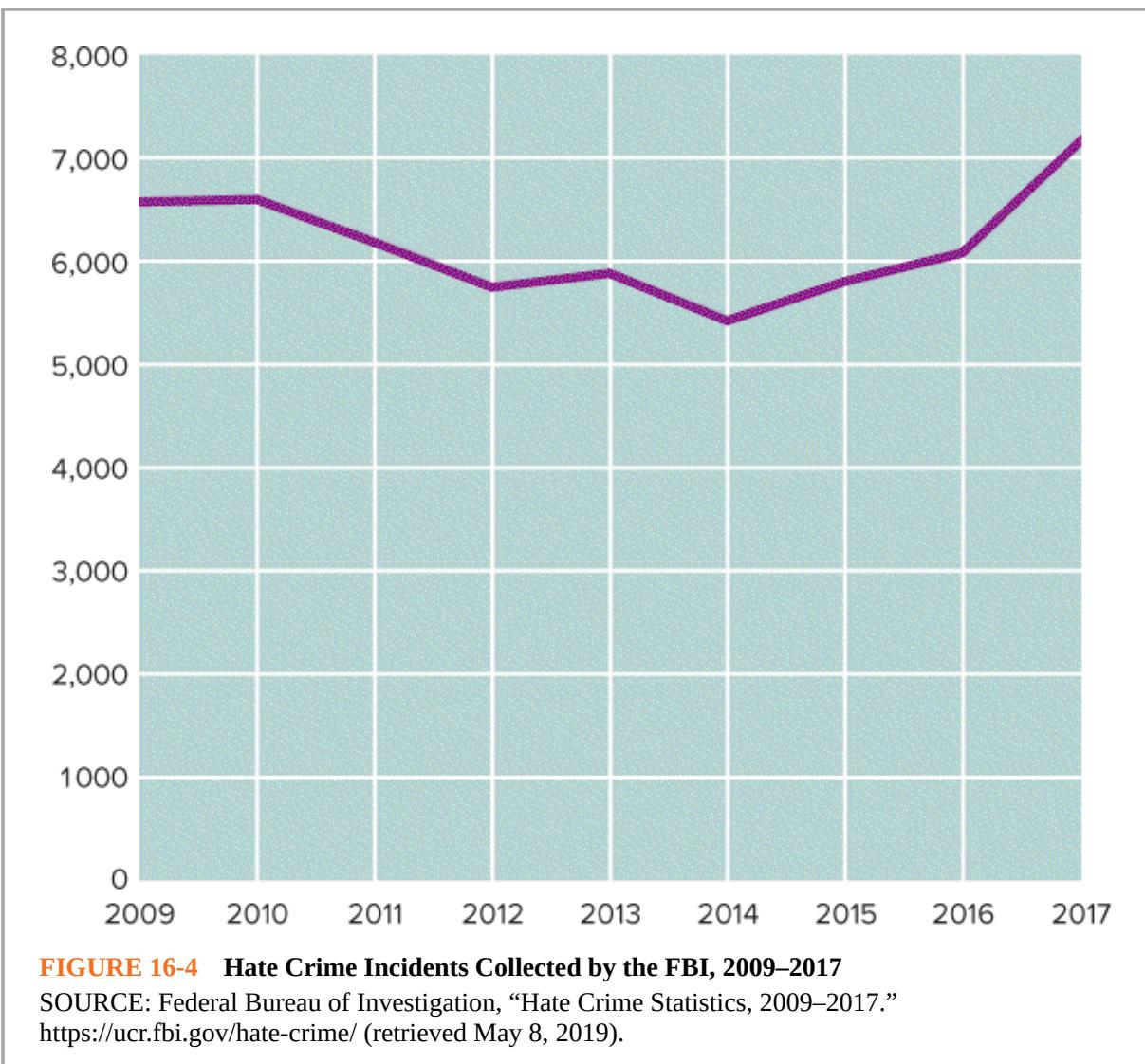
These recommendations, along with additional research, can lead to a greater understanding of the prevalence and nature of violence within the LGBTQ community. The more that is known about these problems, the more society can accomplish to raise awareness—and to offer a more effective response.

Hate Crime Victims

Increases in global migration have brought to many countries newcomers from a wide variety of cultures—individuals who speak different languages and practice different religions. Some native residents perceive the new immigrants and their differences as threats to the stability of the host countries, an attitude page 581 resulting in conflicts based on fear, frustration, and anger. Victims of hate crimes (discussed earlier in this chapter from a prosecution perspective) often suffer as much pain and trauma as victims of street crimes—or even more. Official responses to hate crime victimizations include research;¹¹⁰ passage of laws;¹¹¹ and training in cultural diversity and tolerance for law enforcement professionals,¹¹² communities, and students.¹¹³

One of the major challenges of providing adequate services for hate crime victims is ensuring accurate reporting of these offenses. In compliance with the 1990 Hate Crime Statistics Act, the FBI added hate crimes to the National Incident-Based Reporting System (NIBRS). All states must provide accurate

reporting of hate crimes so that resources can be distributed to meet the needs of all hate crime victims. This is increasingly acute as hate crimes have exhibited a recent surge in incidents as may be seen in Figure 16-4.



In 2017, approximately 16,000 law enforcement agencies nationwide participated in the Hate Crime Statistics Program. Of these, slightly over 2,000 law enforcement agencies reported 7,175 hate crime incidents. The majority of these were single-bias incidents with almost 8,500 victims and approximately 6,300 offenders. The remaining 69 cases were multiple-bias incidents involving 335 victims and 63 known offenders. Single-bias and multiple-bias incidents were motivated largely by three main factors: race/ethnicity/ancestry bias (58 percent—single incidents and 60 percent—multiple), followed by religious bias

(22 percent—single and 21 percent—multiple), and sexual orientation bias (16 percent—single and multiple). When looking at each of these subcategories in greater detail, those experiencing bias due to race/ethnicity/ancestry, 49 percent were African American bias, 18 percent were anti-White bias, and 11 percent were anti-Latinx bias. Religious bias was perpetrated against Jewish people (58 percent) and Muslim (19 percent). Anti-gay male bias accounted for 58 percent of sexual orientation bias, followed by LGBTQ (multi-group) bias, and 12 percent were classified as bias against those who identify as lesbian.¹¹⁴

Victims with Posttraumatic Stress Disorder

Certain emotional consequences of some crimes result in serious negative symptoms that interfere with a survivor’s ability to function, especially after about 3 months. These residual symptoms are what is labeled *posttraumatic stress disorder*. A study published in the *Journal of Traumatic Stress* revealed that crime victims were more likely to develop posttraumatic stress disorder over their lifetime than were victims of other stressful events (25 percent compared to 9 percent).¹¹⁵

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KEY CONCEPTS Challenges to Victimology and Victim Services

Crime victims have been largely ignored in research, policy, and practice; access to services continues to be inadequate to their needs.

Some persons—especially individuals with disabilities, immigrants, LGBTQs, and the discriminated—have recently been identified as more vulnerable to being victimized. If they become victims, they have had more difficulty in accessing needed assistance.

New laws, policies, strategies, and practices have been developed to address needed services for crime victims.

New and innovative forms of treatment for crime victims with PTSD have emerged, including exposure therapy, cognitive therapy, anxiety management training, psychoeducation, and critical incident stress debriefing.

Effective treatment methods for crime victims suffering from posttraumatic stress disorder (PTSD) include exposure therapy, cognitive therapy, anxiety management training, and psychoeducation. In *exposure therapy* the therapist directly introduces cues that trigger the trauma, such as images, smells, and sounds, while providing therapeutic support during the victim’s fear responses.

By systematically and gradually confronting the unrealistic fears with psychosocial support in a safe environment, victims are able to reduce their stress linked to these special trauma-associated cues. *Cognitive therapy* teaches victims to identify and change the way they think about their traumatic event and to strengthen their beliefs about safety, trust, power, competence, esteem, and intimacy. *Anxiety management therapy*, which relies on muscle relaxation and controlled breathing, with a special emphasis on the physical symptoms of distress, helps victims cope with the anxieties that are associated with their victimization. *Psychoeducation* emphasizes teaching victims adaptive coping techniques that can help them recover. This treatment method is often used with other interventions as a starting point to help provide victims with accurate information about their victimization and typical responses to it.¹¹⁶

Research has been sparse on the benefits of peer support groups for PTSD victims. Recent studies on the effectiveness of these groups have found that sharing experiences or just having contact with other victims without the presence of a mental health practitioner has not been very helpful—and may be harmful.¹¹⁷

Another victim treatment that has gained some acceptance is psychological debriefing, especially the model referred to as *critical incident stress debriefing*. This model was originally proposed as an early intervention method to help large numbers of people who had been traumatized in emergency situations such as disasters. The technique, used primarily to prevent or reduce posttraumatic stress, usually takes place in a group setting soon after the traumatic event. A facilitator encourages members of the group to describe what happened, their thoughts and emotions as the event was happening, and any physical or psychological responses to the event. The facilitator then provides tips on how to deal with these responses, summarizes the group meeting, and assesses the need for follow-up with any members of the group.¹¹⁸ More rigorous and controlled studies are required before this treatment strategy can be supported as an effective method to prevent trauma, especially among all disaster victims.¹¹⁹

One of the major challenges facing victim assistance practitioners today is the continuing need for the professionalization of their craft. Professionalization essentially means ensuring competence in one's field by the establishment of national standards. Victims need competent treatment that enhances their chances for recovery. Care providers have the responsibility to use practices that are based on research evidence—and that offer the best chances of reducing victims' suffering and facilitating their recovery.

SUMMARY

This chapter focused on some key contemporary issues facing the criminal justice system and providers of victim services. Among these challenges is the urgent need to deal effectively with new types of crime, including cybercrime, terrorism, and hate crimes. Fighting such crimes, as well as controlling civil disorder in both its traditional and its new forms, often heightens the inherent tensions among providing safety and security for all people, prosecuting crimes, and safeguarding individuals' constitutionally guaranteed civil liberties.

Prior to the 1970s, crime victims had been ignored, though some had limited access to programs that gave them vital assistance. Today victims who require specialized services are being recognized, and professionals are developing new strategies to address the harm done to these victims and to extend effective services to them.

OBSERVE → INVESTIGATE → UNDERSTAND

Review

Describe the nature and extent of cybercrime, and identify techniques used to investigate this type of crime.

- Cybercrime is any crime that relies on a computer and a network for its commission (for example, digital child pornography, identity theft, and online fraud schemes).
- Ransomware is the fastest growing cybercrime.
- The complexity of cybercrime demands a technologically sophisticated investigative response that includes computer forensics, collaboration, and training.
- Laws to prosecute cybercrime are often not as ample or broad as those used to confront cybercriminals' traditional counterparts.

Discuss the nature and extent of identity theft, and describe strategies used to contend with it.

- It is difficult to total the specific losses incurred via identity theft because many occurrences are not reported, and there is no single source of data on this type of criminal activity.

- State-level identity theft coordination centers facilitate the flow of information and collaboration among state, local, and federal law enforcement agencies and the Federal Trade Commission and corporate entities in combating identity theft.

Explain the interaction between the law and intelligence gathering with regard to terrorism, and discuss terrorism prevention.

- The September 11, 2001, terrorist attacks on the United States heightened the concerns of the U.S. criminal justice system about terrorism as a serious criminal activity.
- Acts of terrorism are prosecuted as offenses within existing laws.
- Implementation of the USA PATRIOT Act (and later the USA FREEDOM Act) rekindled the long-standing debate between the crime control and due process models of justice.
- Early development and communication of intelligence can give law enforcement personnel the opportunity to intervene before a terrorist incident occurs.
- Police need to be vigilant regarding precursor crimes, which are offenses committed for the purpose of enabling acts of terrorism.

Define hate crime and explain its operation as a penalty enhancer.

- A hate crime is a criminal offense committed because of the victim's race, ethnicity, religion, sexual orientation, or other group affiliation.
- Many hate crime laws operate as penalty enhancers, meaning that they add to the penalty for the underlying criminal act.

Identify the factors contributing to civil disorder in its traditional as well as its emergent forms, and discuss prevention strategies.

- Frequently, civil disorder arises from an accumulation of grievances and then a precipitating incident ignites rioting.
- The Internet has significantly increased opportunities for mustering protesters.
- The most significant factor in preventing or resolving civil disorder is the quality of the relationship between the community and its police force.

Analyze the tensions between safeguarding civil liberties and infringing on individual rights.

- The rule of law states that all people within the United States, regardless of their citizenship status, are covered by the provisions of the U.S. Constitution and all the statutory law that evolves from it.
- Measures such as the USA PATRIOT Act and the USA FREEDOM Act have called into question whether officials are adhering to the rule of law.

Identify challenges and treatment regimens for victims with a disability; for immigrants; for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) victims; and for hate crime victims.

- Individuals with developmental disabilities are 4—10 times more likely to become crime victims than others.
- To be eligible for benefits, an immigrant victim must present credible evidence of the victimization, such as police reports, physical evidence, and documentation from social service or health care providers.
- Members of the LGBTQ community experience victimization, but little is known about the prevalence of the problem, and services to LGBTQ victims are limited.
- Official responses to hate crime victimizations include research, passage of laws, and training in cultural diversity and tolerance for law enforcement professionals, communities, and students.
- Effective treatment methods for crime victims with posttraumatic stress disorder include exposure therapy, cognitive therapy, anxiety management training, psychoeducation, and critical incident stress debriefing.

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Key Terms

- civil disorder 571
- computer forensics 560
- crowd 572
- crowdsourcing 569

cybercrime 557
data breach 558
denial of service attack 558
fusion center 567
hacktivism 558
hate crime 570
identity theft 561
intelligence 567
intelligence-led policing (ILP) 567
lone wolf 569
mob 572
penalty enhancer 570
precursor crime 569
ransomware 558
terrorism 564
transnational crime 560
USA FREEDOM Act 565
USA PATRIOT Act 564

Study Questions

1. An example of a cybercrime is
 - a. online fraud.
 - b. identity theft.
 - c. digital child pornography.
 - d. all of the above
2. This strategy for combating identity theft, which enables illustration of the information flows and interactions among stakeholders, is called
 - a. a contextual framework.
 - b. intelligence-led policing (ILP).
 - c. the fusion center approach.
 - d. critical incident stress debriefing.
3. Intelligence is the product of the application of _____ to data or information.
 - a. analytical reasoning
 - b. computer forensics
 - c. a moving target indicator system
 - d. the rule of law

4. Of the following crimes, the one that is *not* a precursor crime is
- forging documents.
 - crossing a border illegally.
 - drunken driving.
 - money laundering.
5. An example of a hate crime is
- beating a person because he is homosexual.
 - painting a swastika on a synagogue wall.
 - burning a cross on the property of a Black family.
 - all of the above
6. The majority of hate crimes are motivated by
- sexual orientation.
 - victim disability.
 - race/ethnicity/ancestry.
 - religion.
7. The most significant factor in preventing civil disorders is
- a decisive chief law enforcement officer.
 - a strong tie between the community and its law enforcement entity.
 - a nation's laws.
 - all of the above
8. One law that prevents discrimination against individuals based on disability is
- the
- American Discrimination Act.
 - Americans with Disabilities Act.
 - Disabilities and Rehabilitation Act.
 - U.S. Disabilities Act.
9. Immigrant victims of intimate partner violence are not eligible to
- access shelters, food banks, or soup kitchens.
 - call the police because they will be deported.
 - access emergency medical services including prenatal care and care during labor and delivery.
 - automatically gain U.S. citizenship.
10. The treatment method used with crime victims suffering from posttraumatic stress disorder that teaches victims to identify and change the way they think about their traumatic events is
- relational management therapy.
 - cognitive therapy.
 - psychoeducation.
 - exposure therapy.

Critical Thinking Questions

For further review, go to the SmartBook 2.0 study module for this chapter.



1. How are cybercrime, terrorism, and certain types of civil disorder changing the way criminal justice professionals do their jobs?
2. What actions can law enforcement take to prevent terrorism? How should these actions be balanced against individuals' civil liberties and rights to privacy?
3. Which is more important—security or freedom? Why?

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Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be paid twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defence.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Study Question Answers

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Chapter 1

1. D;
2. C;
3. D;
4. C;
5. A;
6. A;
7. D;
8. B;
9. C;
10. B

Critical Thinking Questions: *Answers will vary.*

Chapter 2

1. B; 2. D; 3. C; 4. B; 5. A; 6. D; 7. D; 8. A; 9. D; 10. A; 11. A
- Critical Thinking Questions:** *Answers will vary.*

Chapter 3

1. C;
2. D;
3. A;
4. C;
5. A;
6. A;
7. D;
8. C;
9. A;

10. A Critical Thinking Questions: *Answers will vary.*

Chapter 4

1. A;
2. B;
3. D;
4. A;
5. B;
6. D;
7. C;
8. B;
9. A;

10. A Critical Thinking Questions: *Answers will vary.*

Chapter 5

1. A;
2. A;
3. C;
4. C;
5. B;
6. D;
7. B;
8. A;
9. C;
10. D

Critical Thinking Questions: *Answers will vary.*

Chapter 6

1. C;
2. C;
3. C;
4. C;

5. A;
6. B;
7. C;
8. D;
9. A;
10. C

Critical Thinking Questions: *Answers will vary.*

Chapter 7

1. C;
2. A;
3. B;
4. A;
5. A;
6. C;
7. D;
8. B;
9. D;
10. C

Critical Thinking Questions: *Answers will vary.*

Chapter 8

1. D;
2. B;
3. C;
4. A;
5. B;
6. D;
7. C;
8. A;
9. A;

10. B

Critical Thinking Questions: *Answers will vary.*

Chapter 9

1. A;
2. D;
3. C;
4. A;
5. A;
6. C;
7. C;
8. C;
9. B;
10. C

Critical Thinking Questions: *Answers will vary.*

Chapter 10

1. C; 2. A; 3. D; 4. A; 5. C; 6. B; 7. A; 8. C; 9. A; 10. C

Critical Thinking Questions: *Answers will vary.*

Chapter 11

1. D; 2. D; 3. A; 4. D; 5. A; 6. C; 7. B; 8. A; 9. C; 10. D

Critical Thinking Questions: *Answers will vary.*

Chapter 12

1. B; 2. D; 3. D; 4. D; 5. B; 6. C; 7. D; 8. D; 9. C; 10. B

Critical Thinking Questions: *Answers will vary.*

Chapter 13

1. D; 2. C; 3. A; 4. D; 5. A; 6. A; 7. C; 8. B; 9. D; 10. C

Critical Thinking Questions: *Answers will vary.*

Chapter 14

1. B; 2. A; 3. C; 4. B; 5. A; 6. B; 7. A; 8. C; 9. B; 10. A
- Critical Thinking Questions:** *Answers will vary.*

Chapter 15

1. C; 2. B; 3. D; 4. D; 5. B; 6. A; 7. C; 8. C; 9. B; 10. B

Critical Thinking Questions: *Answers will vary.*

Chapter 16

1. D; 2. A; 3. A; 4. C; 5. D; 6. C; 7. B; 8. B; 9. D; 10. B

Critical Thinking Questions: *Answers will vary.*

Glossary

A

abuse of authority Police disregard for policies, rules, or laws in the performance of their duty.

actus reus The specific act required to convict a person for a specific crime.

adjudicated delinquent The equivalent in the juvenile system of being found guilty in adult court.

adjudication hearing A hearing to determine whether the juvenile committed the action as charged.

administrative segregation Placement of an inmate in solitary confinement to provide him with supervision, protection, and control beyond that given the general prison population.

adolescence-limited offenders Young people who participate in antisocial behavior for a limited period of time during adolescence while maintaining school performance and respectful relationships with parents and teachers.

adult learning Method of learning that emphasizes engaging the learner by incorporating the learner's experiences in the curriculum.

Adult Protective Services (APS) State services provided to older people and dependent adults who are being mistreated or neglected, are unable to protect themselves, or have no one to assist them.

aggressive order maintenance Policing activities that address noncriminal or minor offenses that affect residents' quality of life.

alternative sentence A sentence that is served in a treatment facility or in community service.

American Law Institute Rule (ALI Rule) A standard for insanity that asks whether the defendant lacked the substantial capacity to appreciate the criminality of the act or conform to the law.

anomie A feeling of alienation or a condition that leaves people feeling hopeless, rootless, cut off, alienated, isolated, disillusioned, and frustrated.

appellate brief A document containing legal arguments in an appellate case, submitted to a court by attorneys for one party.

appellate courts Courts that hear appeals from trial courts or other lower courts.

arraignment A hearing before a judge or magistrate during which the complaint is formally read.

arrest rate The number of arrests per 100,000 persons.

assault and battery A harmful or offensive physical attack by one person upon another.

atavism The belief that criminals are evolutionarily primitive or subhuman people characterized by certain "inferior" identifiable physical and mental characteristics.

attenuation An exception to the exclusionary rule that applies when the link between the unconstitutional acts and the evidence becomes weak due to intervening time or events.

attorney general A state's head law enforcement officer; also the head of the U.S. Department of Justice.

attorney—client privilege The right of a person to prevent the government from asking his lawyer to provide evidence of the content of discussions between the person and his attorney.

Auburn system A system of prison administration in which prisoners were isolated in cells at night but allowed to congregate during the day for work duty and meals, but in total silence.

automobile exception An exception to the warrant requirement holding that police do not need warrants to search automobiles, just probable cause.

B

bail A sum of money deposited by a defendant with a court to ensure the defendant's appearance at trial.

bench trial A trial in which guilt is determined by a judge rather than by a jury.

beyond a reasonable doubt The standard of proof required to criminally convict a person.

bifurcated trial A two-part trial in which different issues of the case are decided in separate hearings—for instance, one part deciding guilt and the second deciding the penalty.

binding out The practice of sending children to live with relatively wealthy families who provided the child with the basic necessities of life in return for labor.

bipolar disorder A major mood disorder manifested by bouts of serious depression alternating with periods of extreme elation and exaggerated self-importance.

blue code of silence Adherence to a code of conduct that places loyalty to fellow officers above all other values by not reporting on a fellow officer's misconduct.

booking The process of photographing and fingerprinting a suspect and creating the police record of personal information and the crime(s) with which the suspect is initially being charged when taken into custody.

boot camp A facility that uses a model of military basic training, strict discipline, rigid rules, and behavior modification to command the attention of out-of-control delinquent juveniles.

broken windows theory Theory proposing that disorder leads to crime because criminals assume a neighborhood that tolerates disorder will also ignore criminal acts.

burden of proof The burden of proving a particular thing in court.

burglary Entering another's property with the intent to commit a felony such as larceny.

C

capital crime An offense punishable by execution.

case law Decisions judges have made in previous court cases.

case-in-chief A stage in a criminal trial during which a party presents the main body of evidence.

chain of command The line of authority that extends throughout an organization.

challenge for cause Excusing potential jurors from a jury because they might be biased in that case.

change of venue Relocation of a case to another court because the case has received too much publicity in the original jurisdiction for the defendant to receive a fair trial.

child abuse Neglect of and/or violence against children.

child neglect Chronic and repetitive failure to provide children with food, clothing, shelter, cleanliness, medical care, or protection from harm.

Child Protective Services (CPS) County-level government organizations in all 50 states whose trained staff members investigate allegations of child abuse and neglect.

child savers Women in the 1800s who lobbied for child labor regulations, laws against child abuse, and a specialized justice system that would focus on the needs of youths.

civil commitment A process in which a judge decides a person is mentally ill and is a danger to himself or others, and incarcerates that person indefinitely in a mental hospital rather than a prison.

civil disorder Disturbance by a group of people that is symptomatic of a major sociopolitical problem.

civil law (1) The system of laws, sometimes known as the Roman system, used in many countries that do not use the common law system; or (2) noncriminal law, or law that concerns disputes between individual parties.

civilianization A component of community policing that increases the number of community residents active in policing by assigning civilians to tasks previously performed by sworn officers.

classical school of criminology A body of theories of crime causation that views criminal behavior as the product of the offender's free will. The criminal is choosing to break the law.

classification Determination of which inmates go to which institutions and the specific conditions under which they will be confined.

clear and convincing evidence An intermediate standard of proof, sometimes required for certain defenses such as the insanity defense.

commissioner An individual who presides over the early stages of some criminal trials or serves as judge in specialized courts.

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common law The legal system created in England after the Norman Conquest and still used in the United States today.

communications interoperability The ability of police and other public safety agencies from different jurisdictions to talk and share data.

community corrections Court-imposed programs and sanctions that allow offenders to serve their sentences within the community instead of in jail or prison.

community policing Philosophy of policing that emphasizes crime prevention and focuses on developing positive relations between the police and the public.

community service Performance by an offender of free labor for the community as reparation for the injury done to society.

community-oriented policing A policing strategy that depends on getting community members to address the problems that plague their neighborhoods.

compassion fatigue Occurs when a practitioner working with a victim experiences trauma after learning more about the crime and working with the victim.

complaint The document containing the initial crimes with which a defendant is charged.

CompStat A computerized statistical program that integrates information from crime maps across a community for department leaders' review.

computer forensics Application of the knowledge and methods used in computer science to law enforcement purposes (such as recovery of deleted files or website activity).

concurrent sentences Sentences that are served at the same time.

conflict perspective A view of crime as one outcome of a struggle among different groups competing for resources in their society.

conjugal visit program An extended private visit by an inmate's lawful spouse or registered domestic partner.

consecutive sentences Sentences that are served in sequence instead of at the same time.

consensus perspective A view of crime that sees laws as the product of social agreement or consensus about what criminal behavior is.

consent A defense against criminal liability because the victim actually gave the defendant permission to engage in the prohibited acts.

constitution A document that specifies the components of a government, the duties of each component, and the limits of their power.

containment theory Theory emphasizing that some of the factors that keep behavior in check are personal, such as self-concept, self-control, goal-directedness, conscience, tolerance for frustration, sense of responsibility, realistic levels of aspiration, and identification with lawful norms.

contempt of court Violation of a court's order, punishable by fine, jail time, or both.

corpus delicti "The body of the crime"; the specific elements that must be proved to convict someone of a specific offense.

corrections The systematic, organized effort by society to punish offenders, protect the public, and change an offender's behavior.

corruption Misconduct motivated by personal gain, such as skimming seized narcotics monies.

Court Appointed Special Advocate (CASA) A volunteer selected by the courts to protect the rights and interests of child victims of abuse.

court of general jurisdiction A court that can hear nearly any type of case.

court of last resort The highest court to which a case may be appealed.

court of limited jurisdiction A specialty court that can hear only cases of a certain type.

crime analysis The application of processes designed to analyze information pertinent to crimes and to develop correlations useful in crime prevention, resource deployment, investigations, and suspect apprehension.

crime control model A model of the criminal justice system that emphasizes the efficient arrest and processing of alleged criminal offenders. Its primary goal is to suppress and contain the behavior of criminals.

Crime Index An officially compiled statistical measure of the incidence of crime in the United States.

crime mapping A technique used by police to pinpoint the locations and times of crimes.

crime prevention Measures taken to reduce the opportunity for crime commission by individuals predisposed to such.

crime victim compensation Programs administered at the state level to provide financial assistance to victims and their families.

crime victimization Injuring or killing a human being through behavior that is prohibited by law; the term focuses on the victim rather than on the offender or the criminal event.

crimes against morality Particular public order crimes, which include offenses related to sexuality, prostitution, gambling, and pornography.

crimes against persons Attack or threats of an attack to a person's body, including murder and manslaughter (taking a life), sexual assault, kidnapping, robbery (theft with force or the threat of force), and battery (the intentional unwanted touching of one person by another).

criminal intent The degree to which a defendant must have intended his or her actions or the consequences of those actions.

criminal justice system The interdependent actors and agencies—law enforcement agencies, the courts, the correctional system, and victim services—at the local, state, and federal levels of government that deal with the problem of crime.

criminal law A body of laws in which people are punished by the government for specific prohibited actions.

criminalistics The application of scientific techniques to recognizing, identifying, individualizing, and evaluating physical evidence in legal proceedings.

crisis intervention Immediate psychological assistance after a traumatic event.

critical theory A branch of social conflict theory concerned with the ways in which structural conditions and social inequalities influence crime.

cross-examination A stage in a trial when attorneys question the opposing side's witnesses.

crowd A leaderless group of individuals, generally respectful of the law, drawn together by common values about a current matter.

crowdsourcing An online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals.

cruel and unusual punishment A sentence or conditions of confinement that, within the time period of sentencing or confinement, go beyond what is acceptable to society.

cultural deviance theory The view that the adoption of negative and antisocial values learned in neighborhoods and subcultures produces criminal behavior.

culture conflict Clash between the norms of conduct for one group and the norms of conduct for another group.

custody The incarceration of persons either accused or convicted of a crime.

custody level The degree of danger an inmate poses to other prisoners and to correctional staff.

cybercrime Any crime that relies on a computer and a network for its commission; crime that exploits the electronic highway over which computer transmissions travel.

D

damages Payments a defendant must make to a winning plaintiff in a civil lawsuit to compensate the plaintiff for the injuries or costs the defendant's actions have caused.

dark figure of crime The group of unreported and unrecorded crimes as revealed by crime victim surveys.

data breach An incident in which sensitive, protected, or confidential data have been viewed, stolen, or used by an unauthorized individual.

day fines Fines based on what is fair for a specific offender to pay; also called structured fines.

decentralization of command The fanning out of substations in various areas so the police maintain a physical presence throughout the community.

defendant The person against whom criminal charges or a civil lawsuit are filed.

defense attorney The lawyer who represents the defendant in a criminal case.

delinquency petition The formal document that initiates a juvenile case and lays out the specific allegations against the child; serves much the same function as a criminal complaint.

denial of service attack An act done with the intention of compromising the availability of networks and systems.

deprivation model The perspective that the hardships prisoners endure lead to the development of a distinctive way of behaving in prison.

derivative evidence rule An extension to the exclusionary rule holding that evidence derived from something that is illegally searched or seized is itself inadmissible; also known as the fruit of the poisonous tree doctrine.

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designer drugs Drugs that mimic the chemical makeup of particular illicit drugs, named for the fact that drug manufacturers may change the chemical structure to get around existing drug laws.

desistance The cessation of crime commission.

determinate sentence A sentence that specifies a precise period of time that the offender must serve.

deterrence A sentencing goal focused on convincing the offender or others not to commit crime.

deviance The violation of a norm.

Diagnostic and Statistical Manual of Mental Disorders (DSM) The standard classification reference used by mental health professionals in the United States.

differential association theory Theory that criminal behavior is learned during normal social interactions, and the same learning principles are involved in reinforcing criminal and law-abiding behavior.

direct examination A stage in a trial when attorneys question their own witnesses.

direct file (prosecutorial waiver) A method that allows the prosecutor to choose whether to bring the juvenile's case to juvenile or adult court.

directed verdict A motion made by a defense attorney after the prosecution has rested its case; the motion asks for the judge to direct the jury to find the defendant not guilty due to the prosecution's failure to meet its burden of proof.

discovery The process in which an attorney requests that opposing counsel or other parties provide certain evidence or information.

discretion Authority to act in a manner that officers judge most appropriate for a given situation.

discretionary release A procedure by which a parole board decides whether the offender meets eligibility requirements and is ready to be released from prison.

disposition The result or outcome for those juveniles adjudicated delinquent.

district attorney (DA) The lawyer who prosecutes criminal cases at the local level.

diversion An intermediate sanction that is used in place of incarceration and may prevent offenders from having a criminal charge and record.

diversion program A program that handles juvenile cases informally rather than formally through the juvenile court and that is intended to rehabilitate, provide more effective early intervention, and reduce juvenile court caseloads.

double jeopardy The Fifth Amendment right that protects anyone from being tried twice for the same offense.

drones Unmanned aerial vehicles used for surveillance and other purposes.

drug offenses Public order crimes that include the unlawful possession, use, manufacturing, selling, growing, making, or distributing of drugs classified as having potential for abuse.

dual arrest The arrest of both parties in a physical altercation instead of identifying and arresting only the primary aggressor.

due process The right, guaranteed by the Fifth and Fourteenth Amendments, that laws and processes should be fair.

due process clause A clause of the U.S. Constitution that represents the proposition that government laws and proceedings must be fair.

due process model A model of the criminal justice system that emphasizes individual rights at all stages of the justice process.

duress A defense in which the defendant claims he or she was forced or coerced into committing a crime.

Durham Rule A standard for insanity that asks whether the defendant's conduct was the product of a mental disease or defect.

E

elder abuse Any knowing, intentional, or negligent act by a caregiver or another person that causes harm or serious risk of harm to a vulnerable adult 60 years of age or older.

electronic monitoring Enforcing house arrest or monitoring the whereabouts of an offender through electronic sensors, placed around the offender's ankle, that send a continuous signal.

Elmira Reformatory A New York reformatory that emphasized rehabilitation rather than punishment.

emotional abuse A form of victimization by means of power or control that harms the victim's sense of self and is sometimes referred to as psychological abuse, including verbal threats, social isolation, intimidation, exploitation, or routinely making unreasonable demands, terrorizing, shaming, and putting the victim down.

en banc An appeals case presided over by a larger than usual panel of judges (more than three judges).

entrapment A situation in which law enforcement officers or agents trap or trick a person into committing a crime that the person would not otherwise have committed.

evidence-based policing The use of the best available research on the outcomes of police work to implement guidelines and evaluate agencies, units, and officers.

exclusionary rule The rule that illegally obtained evidence cannot be used against a criminal defendant at trial.

expert witness An individual who has specialized knowledge of some scientific or technical matter intended to help the trier of fact understand particular evidence or specific facts in a case.

expunged A term describing a court record that is destroyed or made legally unavailable.

F

faith-based prison programs Services provided when a private prison corporation builds or operates a prison under contract with a government agency and invites religious organizations to offer rehabilitation services to the inmates.

federal courts The system in which federal crimes are prosecuted consisting of district courts, appellate courts or circuit courts, and the U.S. Supreme Court.

felony A serious criminal offense that brings a potential punishment of a year or more in state or federal prison.

feminist criminology The application of feminist thought and analysis to the study of crime.

fines Payments, imposed by judges, that require offenders to pay or forfeit a specific sum of money as a penalty for committing an offense.

first-degree murder The most serious kind of murder. To be convicted of first-degree murder, an offender must have purposely killed the victim and must have planned the killing at least a short time in advance.

forensic science laboratories Facilities using scientific or technical methods to process and analyze evidence.

forensics The application of scientific knowledge and methods to criminal and civil investigations and legal procedures, including criminal trials.

forfeiture Confiscation by law enforcement of profits made by committing a crime and property used to commit a crime.

fragmentation The lack of coordination among law enforcement agencies in the same geographic region due to the existence of many small departments.

frankpledge Peacekeeping system in early England in which a group of 10 local families agreed to maintain the peace and make sure lawbreakers were taken into custody and brought to court.

fruit of the poisonous tree doctrine Another name for the derivative evidence rule, which excludes evidence derived from an illegal search or seizure.

fusion center Regional intelligence hub that pools and analyzes information from many jurisdictions and shares it with those to whom it directly applies.

G

geographic information systems (GIS) A technology that uses a computerized mapping system to produce descriptions of crime occurrence and analyzes the relationships between variables such as location and time.

global positioning system (GPS) A satellite-based system that can calculate users' exact locations, direction, and speed. Many states use GPS systems to monitor sex offenders while they are on parole.

going rate A generally agreed-upon sentence for a defendant based on the crime and prior record.

good faith exception Exception to the exclusionary rule allowing illegally obtained evidence to be used if officers relied in good faith on an invalid warrant.

good time credits Time taken off a prison sentence for an inmate's satisfactory behavior or for participating in a prison program.

grand jury Panel of citizens who may investigate certain crimes and determine whether sufficient evidence exists to bring a defendant to trial.

guilty but mentally ill (GBMI) Verdict for a person recognized to be mentally ill but still considered criminally responsible for the crime.

H

habeas corpus A written judicial order requiring that a prisoner's case be reviewed in court to determine if the person is being held unconstitutionally.

habitual offender statute A law that creates enhanced penalties for repeat offenders.

hacktivism The practice of gaining unauthorized access to a computer system and carrying out various disruptive actions as a means of achieving political or social goals.

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halfway house A loosely structured prerelease, community-based residence that helps prisoners adjust to the community after total incarceration.

Hammurabi's Code The second earliest known written law, which was set down by Babylonian king Hammurabi (1792—1750 BCE). The basic principle was that violators should suffer punishment equal to their offense.

hands-off doctrine An approach that made courts reluctant to interfere with prison management or prisoner rights.

hate crime Criminal offense committed because of the victim's race, ethnicity, religion, sexual orientation, or other group affiliation.

hearsay evidence Any statement made by a witness that is not based on that witness's personal knowledge.

homelessness The state of having no fixed, reliable, or adequate nighttime residence.

homicide The act of unjustifiably causing the death of another human being.

hot spot An area of concentrated crime or higher risk of victimization.

house arrest (home confinement) An intermediate sanction that restricts offenders to their homes during the time they are not working or attending treatment programs.

hulks Abandoned ships that functioned as enormous holding blocks within which offenders were chained.

hung jury A jury that is unable, after concerted effort, to reach a verdict.

I

identity theft Unauthorized use of another person's identifying information to obtain credit, goods, services, money, or property, or to commit a misdemeanor or felony.

immigration offenses Violation of federal immigration law, which determines whether a person is an alien and stipulates all the legal rights, duties, and obligations aliens have in the United States.

importation model The perspective assuming that inmate subculture does not develop as a result of prison circumstances but rather is brought in, or imported, from the outside when offenders enter.

in chambers Meeting that occurs between attorneys and a judge in the judge's office rather than in the courtroom.

incapacitation A sentencing goal that aims to make it impossible for the offender to commit a future crime.

incarceration Confinement against one's will in the criminal justice system (in a jail or prison) or a mental health facility (a secure psychiatric institution).

inchoate crimes Crimes that have been begun but not completed or are crimes that are completed by someone else.

indentured servitude The practice of selling criminals as servants to private individuals instead of sentencing them to penal facilities.

independent source Exception to the exclusionary rule permitting the use of evidence discovered independently of any improper search or seizure.

indeterminate sentence A sentence in which the offender is given a range of time he can serve, such as 5—7 years, dependent on his behavior while in prison.

indictment A document issued by a grand jury after it finds probable cause, formally listing the charges against the defendant.

industrial prison A prison factory where the focus was on creating a productive work environment rather than the rehabilitation or reform of prisoners.

inevitable discovery Exception to the exclusionary rule allowing illegally obtained evidence to be admissible if it would inevitably have been discovered through legal means.

infancy A defense that sometimes protects very young offenders from criminal liability because they do not understand the consequences of their actions.

infancy defense A defense holding that children under age 7 could not be criminally prosecuted because they were too young to form mens rea, or criminal intent.

informal probation A situation in which as long as the child obeys certain conditions and stays out of trouble, the case will not proceed any further, such as to court.

information A document filed by a prosecutor after a preliminary hearing, formally listing the charges against the defendant.

infraction A minor violation of a local ordinance or state law that brings a potential punishment of fines.

inmate code Rules of behavior that inmates follow.

inmate subculture The norms, values, and beliefs that develop among prisoners.

insanity A defense in which the defendant admits committing the criminal act but claims not to be culpable due to mental illness.

institutional corrections Incarceration in jails and prisons.

institutionalization The state of being dependent on an institution to meet one's basic needs—such as for food, shelter, and friends—to the point of being unwilling, or unable, to function in the outside world.

intake The process during which an official decides whether to release the juvenile or refer the case to court or put the juvenile under some other supervision.

intake officer The probation officer who makes the initial decision about whether to proceed with a case.

intelligence Product of the application of analytical reasoning to data or information in order to develop a reliable picture of an environment or a situation.

intelligence The capacity to learn or comprehend, manifested by the ability to solve problems and adapt to life's everyday experiences.

intelligence-led policing (ILP) Collaborative collection and analysis of data by intelligence analysts, field officers, and senior leaders.

intensive-supervision probation (ISP) A variety of probation programs characterized by smaller officer caseloads and closer surveillance.

intermediate sanctions Judicial punishments that do not require incarceration but stop short of allowing offenders to remain in the community on probation with minimal supervision.

intimate partner violence An assault on a person with whom the attacker is intimately involved.

involuntary manslaughter A killing that results from an offender's careless actions.

irresistible impulse test A standard for insanity that asks whether the defendant had a mental disease or defect, as a result of which the defendant was unable to control his or her behavior.

J

jail Municipal or regional facility that houses pretrial individuals believed to present a risk of danger or flight, those awaiting probation or parole revocation, and those sentenced to less than 1 year incarceration.

judicial waiver Means by which a judge designates a juvenile to be tried in adult court.

jurisdiction A court's legal power to hear particular kinds of cases.

jury nullification The power of juries to refuse to apply Illegal laws when they feel applying them would be unjust.

justice of the peace A judge who handles matters such as warrants, infractions, and the early stages of a criminal case.

juvenile delinquency Illegal acts that are committed by juveniles.

juvenile hall A juvenile detention center.

juvenile justice system The justice system that attempts to address important distinctions between children and adults and differs from the adult system in many respects.

L

labeling theory Theory that the social process that individuals experience has the potential to define them as "bad" or "good," and that some people become bad because others do not believe them to be good.

larceny A type of theft that includes both completed and attempted taking of cash or property from a location *without* attacking or threatening the victim and without obtaining permission.

law enforcement The police agency's application of the criminal code to specific situations.

laws Formal rules of conduct sanctioned by the state.

lay witness A person who has personally seen or heard information relevant to the case at hand; also called a fact witness or eyewitness.

legitimacy A measure of the extent to which the public trust the police, are willing to defer to police authority, and believe police actions are morally justified and appropriate.

life course persistent offenders Those who engage in delinquency at young ages and continue their criminal behavior throughout their lives.

line activities The principal activities performed by law enforcement officers, including patrol, follow-up investigation, and traffic operations.

local legal culture A shared understanding of how cases should be processed.

lone wolf A terrorist who is not a member of a known terrorist group and who does not take orders from a chain of command when conducting acts of terror.

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long-term therapy Treatment focusing on the victim's responses to trauma, symptoms of PTSD, anxiety disorders, depression, terminal conditions, and dysfunctional behaviors that render victims vulnerable.

looking-glass self The idea that we come to define ourselves the way we perceive that others see us.

M

magistrate A judge who handles matters such as warrants, infractions, and the early stages of a criminal case.

maintaining order Peacekeeping activities, including enforcement of quality of life laws such as no loitering.

mala in se A behavior categorized as morally wrong (“evil in itself”).

mala prohibita A statutory crime that reflects public opinion at a moment in time.

mandatory arrest policy Requires officers to make an arrest when there is evidence of an assault.

mandatory release Early release mandated by law after an offender has served a specified time in prison.

mandatory reporting law Law requiring that professionals who have regular contact with a child report any reasonable suspicions of physical or sexual abuse or neglect to the proper law enforcement or protective services.

manslaughter A killing in which the offender is less blameworthy than for murder; it usually carries a less severe penalty than murder.

Martinson Report A report, published in 1974, indicating that rehabilitative efforts, for the most part, were having little to no effect on recidivism.

mass murder Multiple murders that occur at one place and at one time.

maximum-security prison An institution in which inmates are subject to high levels of control and where their mobility is severely restricted by physical barriers.

McNaughtan Rule A standard for insanity that asks whether the defendant was unable to know what he or she was doing or to distinguish right from wrong.

medical model A viewpoint focusing on mental illness and behavioral problems, such as committing a crime, as diseases.

medium-security prison An institution in which inmates are under greater control than in minimum-security prisons, and their freedom of movement is restricted to areas that are under close surveillance.

mens rea The level of criminal intent, or the mental state usually required to convict a person of a criminal act.

minimum-security prison An Institution that holds offenders who have short sentences, are nonviolent, and are unlikely to attempt escape or pose risks to others in the facility.

Miranda warnings Notifications that police must give suspects about their rights prior to beginning custodial interrogation.

misdemeanor A criminal offense that is punished by fines or a maximum of a year in a county or city jail.

missing children Children not accounted for by their next of kin because they were kidnapped or killed, wandered away due to a developmental disability, or are intentionally missing in order to escape violence at home.

mistrial A judge’s ruling that declares a trial invalid, often because of a hung jury.

mob A group that is not law-abiding, with a leader, that is ruled by emotion.

Model Penal Code A suggested code of criminal law drafted by the American Law Institute and used to guide the states in modernizing their laws.

moral panic The reaction by a group of people based on exaggerated or false perceptions about crime and criminal behavior.

moral reasoning Application of a set of ethical principles based on what society views as good versus bad behavior.

motor vehicle theft A property crime that involves the theft of a motorized road vehicle.

N

National Crime Victimization Survey (NCVS) A statistical sampling of households and individuals who have been personally victimized by specific crimes.

National Incident-Based Reporting System (NIBRS) A U.S. crime index (not yet fully national in scope) compiled by the FBI and the Department of Justice that tracks detailed information about 22 categories of crime incidents and arrests.

necessity A defense in which the defendant must demonstrate that he or she had to commit the crime to avoid more severe consequences.

neoclassical school of criminology A theory of crime causation that recognizes differences in circumstances and assumes that some people—such as children, the insane, and the intellectually deficient—cannot reason. In such cases the criminal justice system must look at the offender's ability to comprehend the consequences of his or her criminal actions in determining appropriate punishments.

neurotransmitter A chemical secreted by neurons that facilitates the transmission of information from one neuron to another.

neutralization theory Theory that if people break the law, they overcome their feelings of responsibility through rationalizations.

no contest (nolo contendere) A plea in which a defendant admits that sufficient evidence exists to convict him, but he does not actually admit his guilt.

noble cause Justification for wrongdoing committed by an officer based on the premise that the end justifies the means.

norm A rule that makes clear what behavior is appropriate and expected in a particular situation.

not guilty by reason of insanity (NGRI) A verdict in which the jury determines that the defendant is not criminally culpable due to mental illness.

O

opening statements Initial statements made by attorneys to a jury outlining the case they will present during the trial.

ordinances Laws enacted by local governments such as cities and counties.

organized crime An ongoing criminal conspiracy that profits from providing illicit goods and services, using or threatening violence to facilitate its criminal enterprise and to maintain monopolistic control of illicit markets.

P

pains of imprisonment The deprivations inmates experience such as those related to liberty, autonomy, security, personal goods and services, and heterosexual relations.

parens patriae A legal doctrine that gives the government authority to step in and make decisions about children, even against the wishes of their parents, when doing so is in the children's best interests.

parole An early release from prison conditional on complying with certain standards while free.

parole board A group of people authorized by law to grant permission for selected offenders—after serving a portion of time in prison—to serve their remaining sentence in the community.

peacemaking criminology A branch of criminology that views crime as a form of violence and urges criminology to advocate a nonviolent, peaceful society.

penalty enhancer Attribute that adds to the penalty for a crime.

penitentiary Coined from the word *penitent*, the Quakers' term for a residence where offenders would be sorrowful for their wrongdoings.

Pennsylvania system A system of prison administration in which inmates lived in solitary confinement, total silence, and religious penitence as the way to prevent future criminal behavior.

peremptory challenge An attorney's removal of a prospective juror she feels will not be sympathetic to her side of the case.

petit jury Small groups of citizens who determine whether a criminal defendant is guilty of the crimes with which he is charged.

physical abuse The condition whereby an individual suffers serious physical injury from the intentional aggressive acts of others, such as slapping, spanking, beating, biting, burning, strangling, hitting, kicking, shaking, or pushing.

plaintiff The party who initiates the lawsuit in a civil case.

plea A defendant's formal denial or admission of guilt.

plea bargain An agreement between defendants and prosecutors, in which a defendant pleads guilty to the original or reduced charges in exchange for a lesser sentence.

police—community reciprocity A policing practice that relies on collaboration between police and community members to solve and prevent crime.

police occupational subculture Norms and beliefs embraced by most officers in a given country.

police organizational subculture Norms and beliefs particular to an individual department.

political crimes Violent or nonviolent acts that society perceives as threats to a government's survival.

positivist school of criminology The view that criminal behavior is a product of biological, psychological, and social forces beyond a person's control.

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postpartum psychosis A serious mental illness characterized by hallucinations, delusions, and obsessive thoughts about the baby.

precedent Previous court decisions that have binding authority on subsequent cases.

precursor crime Offense committed for the purpose of enabling acts of terrorism, such as illegal border crossings or forged documents.

predictive policing Taking data from a wide array of sources, analyzing them, and using the results to anticipate, prevent, and respond more effectively to future crime.

preliminary hearing A proceeding in which a judge determines whether probable cause exists to bring the defendant to trial for the crimes with which he has been charged.

preponderance of the evidence The standard of proof required to win a civil lawsuit.

presentence investigation (PSI) report A report that provides the court with a basis for making a sentencing decision by including a personal history of the offender, often a victim impact statement, and a recommendation for sentencing.

presumptive sentencing model A sentencing model assuming that judges should sentence within sentencing guidelines, or ranges specified for particular charges.

preventive detention The practice of holding a suspect without bail because he is believed to pose a potential danger to the community or to be at risk of fleeing the jurisdiction.

preventive detention (juvenile) Custodial holding of children accused of crimes, to ensure they appear in court but also to protect them from adverse home conditions or to prevent them from committing additional offenses while their case is pending.

preventive detention laws Legislation that allows the criminal justice system to prevent offenders from committing future crimes by lengthy incarceration in prison or secure mental health facilities.

preventive patrol Officers' maintenance of a visible presence in communities to serve as a deterrent to a variety of street-level crimes.

primary victim A person injured or killed as a direct result of a criminal act.

prison A secure state or federal facility that holds offenders sentenced to incarceration of 1 year or more.

Prison Rape Elimination Act (PREA) Legislation that established the National Prison Rape Elimination Commission to develop national standards for detecting and preventing prison rape, as well as for punishing perpetrators.

prisonization A process of socialization whereby prisoners adopt the norms, values, and beliefs of the inmate subculture as their own.

private security The nongovernmental, private sector practice of protecting people, property, and information; conducting investigations; and otherwise safeguarding an organization's assets.

privatization The transfer of government programs and functions to the private sector.

proactive foot patrol A component of community policing in which officers walk beats to learn more about the people in the neighborhoods they patrol and to develop relationships with them.

probable cause The amount of evidence necessary to obtain a warrant or conduct most searches and seizures.

probation An alternative to jail or prison in which the offender remains in the community under court supervision, usually within the caseload of a probation officer.

probation kiosk An automated reporting machine, resembling an ATM, that monitors low-risk nonviolent offenders.

problem-oriented policing A policing strategy based on conducting specific and detailed research on a community's problems to discover the underlying dynamics of crime.

procedural justice Providing an opportunity for a citizen to explain his side of a story in a given situation and for the officer, in turn, to make his decisions in a fair manner.

property crimes The taking of money and/or material goods without the use of force, as well as the intentional destruction of property.

prosecutorial discretion The prosecutor's power to determine when to bring criminal charges and which charges to bring.

psychic trauma Severe emotional stress that immobilizes the victim's mind and body and can result in long-lasting emotional injury.

psychopathy A personality disorder involving specific cognitive and emotional deficits that is exhibited by a lifelong pattern of antisocial behavior about which the individual has no remorse.

psychoses Serious mental disorders that cause individuals to be out of touch with reality and unable to cope with the demands of everyday living.

public order crimes A wide variety of offenses considered immoral or public nuisances, including disorderly conduct, disturbing the peace, loitering, public intoxication, panhandling, bigamy, drunk driving, weapons violations, prostitution, obscenity, gambling, and possession of controlled substances.

public safety exception Exception to *Miranda* requiring police to interrogate suspects without first warning them of their rights if there is a significant threat to public safety.

Public Safety Realignment (PSR) A policy intended to reduce mass incarceration by downsizing the prison population, reducing prison costs, and providing treatment and reintegration services to offenders.

punishment model A viewpoint that assumes the offender is inherently a bad person and deserves to be placed under correctional authority for punishment.

punitive segregation Isolation of an inmate for disciplinary reasons, to provide additional supervision and control of the individual.

Q

qualified immunity When a government official is shielded from being held personally responsible for an action they took in their official capacity.

R

racial profiling Police contact with an individual initiated because of the person's skin color or ethnicity.

ransomware A malicious software that targets critical data and systems for the purpose of extortion.

rape trauma syndrome The three phases (acute, outward adjustment, and resolution) of symptoms that many sexual assault victims experience.

rational choice theory A theory of crime causation that assumes that criminals choose to commit crime because they believe that the benefits they will derive will outweigh the risks of getting caught.

reasonable suspicion Amount of evidence necessary for officers to conduct a stop-and-frisk or *Terry* stop.

recidivism The habitual relapse into criminal behavior.

recidivist victims Persons who are victimized repeatedly.

recidivist An offender who has been previously convicted of crimes.

recognizance Literally, “an obligation to the court” that usually requires the accused, if released on his own word, to perform some legally specified act, such as appearing at trial, as an alternative to being incarcerated.

recusal The act by which a judge removes herself from a case because she may be biased or may have the appearance of being biased.

referee An individual who presides over the early stages of some criminal trials or serves as judge in specialized courts.

reform school An industrial school that housed children who were delinquent, disobedient, or otherwise wayward.

rehabilitation A sentencing goal focused on aiding an offender to learn skills to help prevent the person from reoffending.

rehabilitation model A viewpoint that assumes the offender is inherently a good person and that focuses on changing the offender’s behavior.

reintegration model A viewpoint that assumes that the offender must be helped to readjust and fit successfully back into the community.

remand The act by which an appellate court sends a case back to a lower court for further proceedings.

restitution In a criminal case, the money a defendant must pay a victim to compensate the victim for damages. Sometimes, services are also performed to benefit the victim.

restorative justice A perspective that focuses on the offender’s responsibility to repair the hurt, damage, and injustice the crime victim experienced by making restitution, doing community service, and making an apology.

retribution A sentencing goal focused on punishing the convicted for the crime.

risk assessment instrument A worksheet that measures the degree of risk present in a given case.

risk classification An assessment of the level and kind of risk an individual presents to correctional staff and other inmates.

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robbery A crime against a person in which the offender takes personal property from the victim by either using or threatening force.

routine activities theory Theory suggesting that crime occurs when an opportunity is available, the victim is not adequately protected, and the effort brings reward. Applied to victims, the theory argues that some individuals’ daily activities make them more vulnerable than others to being victimized.

rule of law The guiding principle of the U.S. legal system, which states that no single person is more powerful than the law.

S

sanctions Prescribed consequences intended to reinforce people's conformity to norms.

schizophrenia A serious mental illness characterized by an individual's split from reality due to profound aberrations in cognitive functioning.

sealed A term describing a juvenile record that is made inaccessible.

search incident to arrest A warrantless search of a person and the area around that person, conducted shortly after the person is arrested.

secondary victims Individuals who experience sympathetic pain as a result of a primary victim's suffering. Family and friends of an individual who have been victimized.

secondary victimization The suffering of crime victims caused by their subsequent treatment by the police, the courts, or personal acquaintances.

second-degree murder In most states, an intentional killing that is not planned ahead of time.

security level The degree of danger associated with the inmates being housed in a prison.

security threat group (STG) Inmates who, when they collaborate, can jeopardize the institution's security.

self-report Surveys in which individuals (who are guaranteed confidentiality) reveal offenses that they have committed but for which they may or may not have been arrested and held accountable. These surveys uncover another part of the dark figure of crime.

sequestered Referring to a Jury that is kept separate from outside contact during a trial.

serial murderer The killing of three or more people over an extended period of time for personal gratification.

service activities Non-law enforcement activities performed by officers on an as-needed basis.

sexual assault nurse examiner (SANE) Nurse who provides 24-hour first-response medical care and crisis intervention for rape victims in hospitals and clinics.

sexual assault response team (SART) In many states, a collaboration of local police officers, victim advocates, SANE practitioners, and prosecutors seeking to determine the most effective way to respond to sexual assault.

sexual victimization Forced or coerced sexual intimacy.

sexual violence A range of crimes including vaginal, anal, digital, and/or oral penetration that can include the use of weapons and foreign objects to torture and terrorize the victim.

shock probation A combination of probation and short-term incarceration.

shock program A short-term incarceration program used to frighten the offender by instilling uncertainty about whether the offender will be released and, if so, when.

short-term therapy Treatment usually administered by clinical psychologists, clinical social workers, and marriage and family counselors to address immediate mental health concerns.

siege mentality Police view of themselves as a "band of brothers"—or "sisters"—against everyone else in society.

social bond theory Theory detailing the social bonds people have with society, consisting of attachment, commitment, involvement, and belief.

social conflict theory The view that crime is the result of conflict between a society's wealthy and powerful people on the one hand, and its poor and powerless people on the other hand.

social control theory Theory that an individual's belief system, the police, and parental supervision are important in preventing the individual from getting into trouble.

social disorganization theory The theory that explains crime rates by examining city neighborhood characteristics.

social learning theory Theory that behavior is learned and is maintained or extinguished based on the rewards or punishments associated with it.

social norm A rule that specifies how people are expected to behave.

social process theory The view that criminal behavior results from successive interactions with others and with society's institutions.

solitary confinement Isolation of an inmate that denies person the basic human need to interact with others.

solvability The likelihood that a crime will be solved.

span of control The extent of an individual's authority, or the number of individuals that one person is responsible for overseeing.

special prosecutor A prosecutor who is appointed specifically for one particular case, usually because of his specialized knowledge or experience.

spree murder The killing of several people within a fairly narrow period, such as several hours or days.

stalking Willfully, maliciously, and repeatedly following or harassing another person and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or for the safety of his or her family.

standing The legal ability to assert a particular constitutional claim.

state courts The system in which state crimes are prosecuted; it includes both trial and appellate courts.

status offense An offense that is illegal only because the defendant is a child, such as playing truant or running away.

statutes Laws enacted by state legislatures or by Congress.

statutory crime An act that is criminal because it is prohibited by law.

statutory exclusion The categorical exclusion, by state law, of certain ages and offenses from juvenile court jurisdiction.

statutory minimum The minimum sentence set by a legislature that must be imposed for a particular crime.

stop-and-frisk Police action allowing the police, with reasonable suspicion, to briefly detain a person, question him about his activities, require him to show identification, and frisk him, or pat him down for weapons; also known as a *Terry stop*.

strain theory Theory that extraordinary pressures make people more likely to commit crime.

strict liability offenses Crimes that have no *mens rea* requirement; a person who commits the requisite *actus reus* may be convicted of the offense regardless of intent.

student bullying A form of victimization in which a student is repeatedly exposed to threats and harmful acts from other students over a period of time.

subculture A group that has some of the same norms, values, and beliefs as members of the dominant, mainstream culture but also other norms, values, and beliefs *not* held by society at large.

subpoena A legal document ordering a person to appear in court.

supermaximum-security (supermax) prison A facility that provides the highest level of security possible—solitary confinement—using the latest correctional technology.

support activities Additional policing activities that support line activities, such as communications, custody, and forensics.

survivor A relative or loved one of a person who has been killed; also, a crime victim who copes well and manages to resume a normal life.

sworn personnel Police department employees entrusted with arrest powers; usually referred to as *peace officers*.

T

teen court A court in which teenagers serve as jurors and often as judges, attorneys, and bailiffs as well.

terrorism Premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.

Terry stop Another name for stop-and-frisk, in which the police, with reasonable suspicion, briefly detain a person, question him about his activities, require him to show identification, and frisk him or pat him down for weapons.

testimonial evidence Words or statements made by a person.

torts Civil disputes in which one party sues another for the damages the defendant's actions have caused.

total institution A facility responsible for, and in control of, every aspect of life for those who live and work within it including food, shelter, medical assistance, clothing, and safety.

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transnational crime Crime orchestrated across a national boundary from where the crime actually occurs.

transportation The export of criminals to other lands to complete their sentences.

TRIAD A collaborative effort among some police departments, sheriff's offices, and senior groups (like AARP) to reduce crime and the victimization of elder adults.

U

unconditional release Release of an inmate from prison without parole.

Uniform Crime Reports (UCR) An annual series of U.S. statistical measures of the incidence of selected crimes reported to police departments and compiled by the FBI.

unity of command The requirement that each individual within an organization reports directly to a single individual higher in the chain of command.

USA FREEDOM Act Antiterrorism legislation enacted in 2015. The acronym stands for Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and Online Monitoring. Principally, the act imposed new limits on the bulk collection of telecommunications metadata. It also restores authorization for roving wiretaps and tracking lone wolf terrorists.

USA PATRIOT Act A law—officially, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act—enacted by Congress following the 9/11 terrorist attacks, intended to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and to strengthen measures to prevent and detect terrorism.

use of force continuum Guideline depicting the appropriate amount of force a law enforcement officer may use in particular kinds of situations.

V

vehicular manslaughter In some states, a classification for a death that results from careless driving.

venire A group of people called to be prospective jurors.

vicarious trauma (compassion fatigue) Psychological distress experienced by those who know about a traumatic event experienced by another person and who feel the victim's pain.

victim advocate A professional who assists the victim during the postvictimization period.

victim impact statement A victim's written statement, usually in the Presentence Report, about how the experience with crime affected him or her. Sometimes judges ask victims to read this statement in open court prior to sentencing called elocution.

victim recidivism Victimization of a person, household, or business more than once; also called repeat victimization.

victim services A range of resources—such as shelters, transitional housing, counseling, and 24-hour hotlines—aimed at reducing the suffering and facilitating the recovery of victims, especially those who participate in the criminal justice process.

victim surveys Interviews with large numbers of individuals (including but not limited to actual victims) who have been personally affected by specific crimes.

victimless crimes Often called crimes against public order and considered victimless because they usually have no identifiable victim, e.g., public drunkenness, vagrancy, obscenity, and prostitution.

victim—offender mediation A process that brings victims and offenders face-to-face to work out a restitution and restorative strategy under the direction of a trained counselor or mediator.

victimology The scientific study of victims, which includes their behaviors, injuries, assistance, legal rights, and recovery.

vigilantism Use of volunteer, self-appointed committees organized to suppress crime and punish criminals.

voir dire The process of questioning prospective jurors about their background, opinions, and knowledge relevant to a particular case.

voluntariness test Rule that confessions are inadmissible unless made willingly.

voluntary manslaughter Killing in the heat of passion.

W

waiver A mechanism to permit the transfer of some juvenile offenders to adult court.

Walnut Street Jail The first public institution to specifically use imprisonment as the primary method of reforming offenders.

warrant A legal document, based on probable cause, permitting police to conduct a search or seizure or to arrest someone.

watch system Peacekeeping system in which particular men were assigned the job of watchman and became responsible for patrolling the streets, lighting lanterns, serving as a lookout for fires, and generally keeping order.

wedding cake model An explanation of the workings of the criminal justice system that shows how cases get filtered according to the seriousness of the offense.

white-collar crime Illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain.

work and study release (furlough) Partial release of inmates to work or study in the community and return to a correctional facility each night.

workhouse An institution that held jobless vagrants, debtors, and sometimes serious criminals.

writ of certiorari A request that a case be heard by an appellate court such as the U.S. Supreme Court.

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