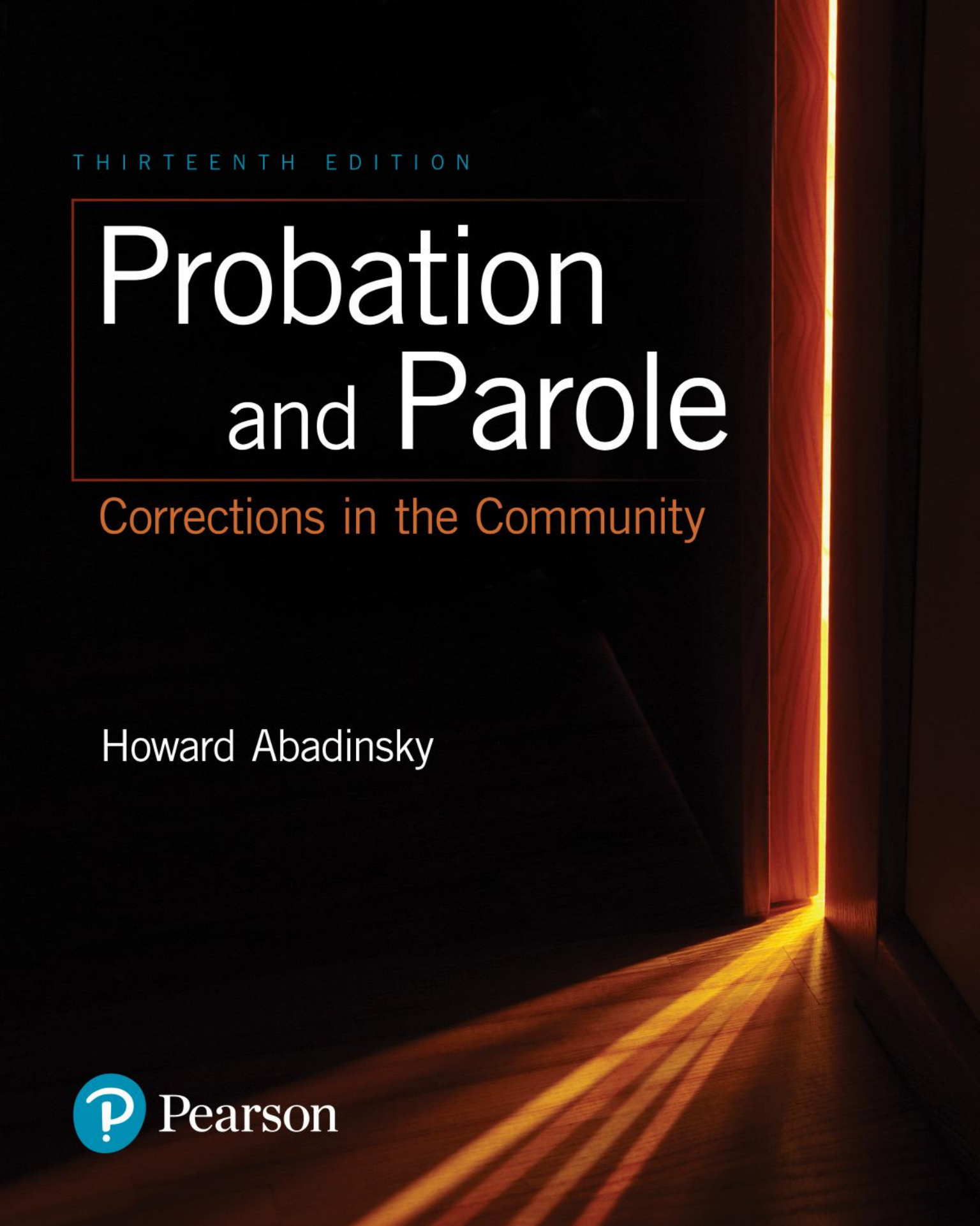
THIRTEENTH EDITION
Probation and Parole
Corrections in the Community
Howard Abadinsky
Pearson

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Probation and Parole

Corrections in the Community

Howard Abadinsky
St. John's University

Pearson

330 Hudson Street, NY, NY 10013

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Dedicated to the memory of George Torodash,
my friend and colleague at the New York
State Division of Parole.

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Brief Contents

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Contents

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Preface

New to This Edition

- Each chapter opens with Learning Objectives
- Updates on statutory changes that impact probation and parole
- Updates on probation and parole-related statistics
- Updates on probation and parole research
- Extensive chapter summaries
- Extensive end-of-chapter review questions
- New example of the long-form presentence investigation report
- Changes and trends in community supervision
- Examination and analysis of current areas of controversy in probation and parole
- Re-organized and streamlined for ease of classroom use

The first edition of this book was written while I was a senior parole officer for the New York State Division of Parole. Since that time, new concepts (or sometimes simply buzzwords) have affected both the theory and practice of probation and parole. Some, such as *community-based corrections*, had a brief life, while the *justice model* and *determinate sentencing* had long-lasting effects, creating the need for *graduated sanctions* and *intermediate punishments.* The lexicon expanded to include *restorative justice, broken windows/community-based supervision*, *place-based supervision*, *evidence-based practice*, *offender reentry*, and, more recently, *motivational interviewing* and *cognitive-behavioral therapy*.

Political posturing and sound-bite polemics often replaced careful and thoughtful policy development and produced "truth-in-sentencing" (no parole or early release) and "three strikes and you're out" (life imprisonment on third felony conviction). "Tough on crime" and "war on drugs" encountered spending curbs and tax shortfalls. As a result, a new policy (buzzword?) has become popular: *justice reinvestment*, which is shifting funds away from prisons and toward community supervision. This edition deals with these issues.

This edition contains 12 chapters organized to enhance ease of classroom use. To remain at the cutting edge of the field, this edition continues to use current materials from juvenile and adult probation and parole agencies throughout the country. (Material whose source is not cited is from the appropriate agency.) Each chapter highlights key terms (which appear in the Glossary) and ends with a list of those key terms as well as relevant Internet sites; as in previous editions, review questions that conclude each chapter have been expanded. The instructor's resource guide available for this book provides a model curriculum and test questions.

The author would like to thank Portfolio Manager Gary Bauer, Editorial Assistant Lynda Cramer, Managing Content Producer Jennifer Sargunar, Content Producer Ruchi Sachdev and Project Manager Garima Khosla, for their dedication to this project, and reviewers for their thoughtful reviews and suggestions, Brian Harte, State

University of New York at Canton; Russ Pomrenke, Gwinnett Technical College; Ruth Welters-Smith, Northwestern Oklahoma State University; April Terry, Fort Hays State University; and Arnold Waggoner, Rose State College.

Instructor Supplements

Instructor's Manual with Test Bank. Includes content outlines for classroom discussions, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

TestGen. This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

PowerPoint Presentations. Our presentations are clear and straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

Alternate Versions

eBooks. This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypearsonstore.com.

About the Author

Howard Abadinsky is professor of criminal justice at St. John's University. He was an inspector for the Cook County (IL) Sheriff's Office and a New York State parole officer and senior parole officer. A graduate of Queens College of the City University of New York, he has an M.S.W. from Fordham University and a Ph.D. from New York University. Dr. Abadinsky is the author of several books, including *Organized Crime*, 10th edition, and *Drug Use and Abuse,* 8th edition.

Howard Abadinsky welcomes comments about his work and can be reached at St. John's University, 8000 Utopia Parkway, Jamaica, NY 11439; abadinsh@stjohns.edu.

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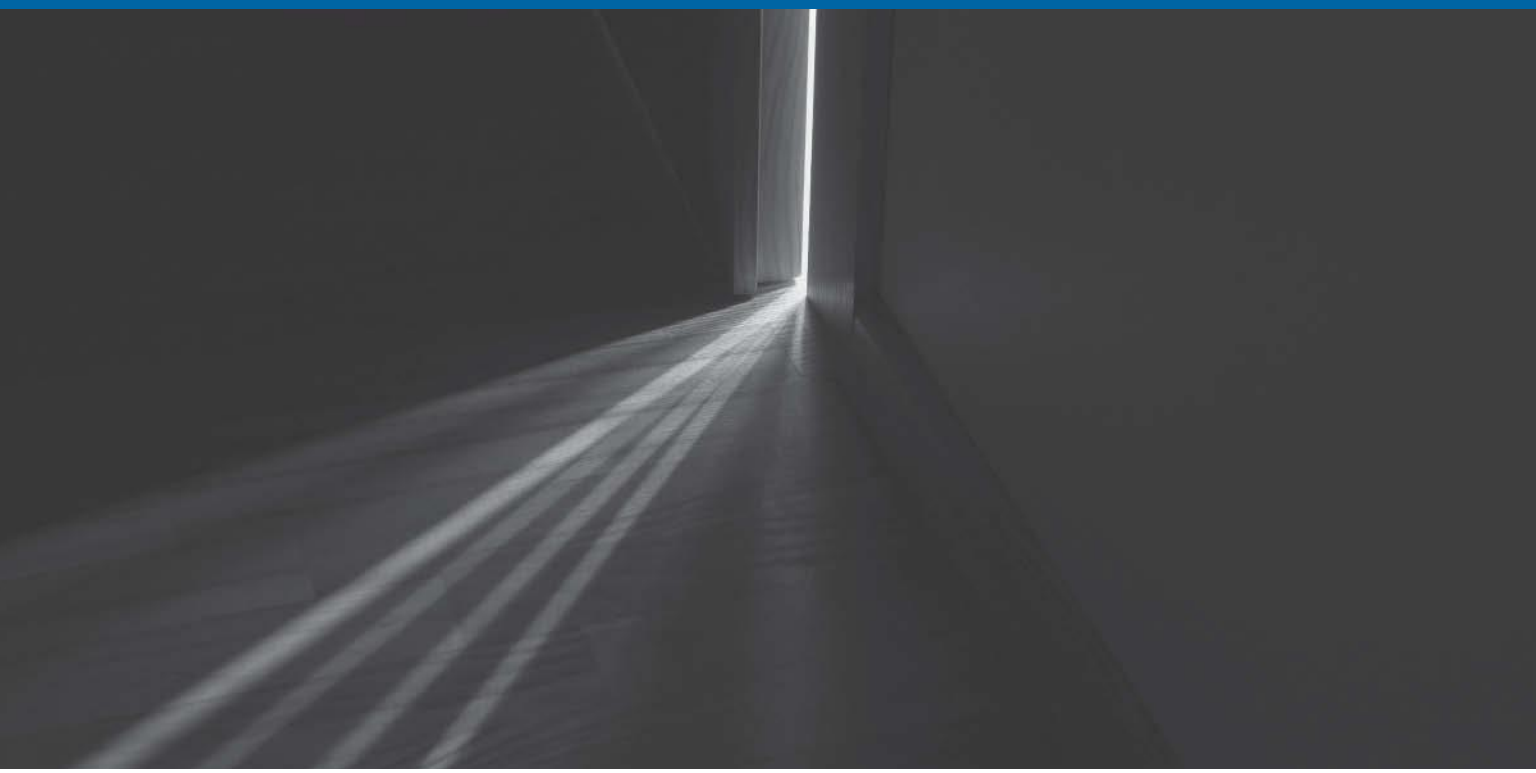

1 Probation and Parole in Criminal Justice

LEARNING OBJECTIVES

This chapter will enable the reader to:

1. *Appreciate the complexity of American criminal justice.*
2. *Understand the existence of probation and parole.*
3. *Know how disease and aging have impacted prison cost.*
4. *Realize the result of laws limiting probation and parole.*
5. *Know the reason for front-door and back-door programming.*
6. *Appreciate the difficulty in defining a "nonviolent offender."*
7. *Recognize what is meant by "Swift, Certain, Fair."*
8. *Understand classical and positive views of justice.*

9. *Distinguish between levels of evidence.*
10. *Recognize when a probation agency becomes involved.*

This chapter will explore criminal justice in the United States, locating the points at which probation and parole become operative. Complicating this examination is the variety of ways in which the system operates. While there is one criminal justice system at the federal level, the criminal justice systems of the 50 states, the District of Columbia, and U.S. territories differ. Some states, for example, combine probation and parole in a single agency, while others do not have parole or parole officers whose title varies from state to state, for example, in the State of Washington they are called Community Corrections Officers. We will examine these differences in later chapters. But first, we need to consider the "Why?" of probation and parole.

The "Why?" of Probation and Parole

While probation originated as a method for keeping minor offenders out of prison, it has become a method for controlling the prison population. Parole originated as a method for controlling the prison population and that has not changed. Every taxpayer dollar allocated to operate state prisons reduces the amount available for other state functions such as public universities and motor vehicle bureaus. The United States is a pioneer in the use of imprisonment and we continue to send a greater portion of our population to prison than any other Western democracy.

Why be concerned with probation or parole? "If you do the crime, do the time." When a probationer or parolee commits a serious crime—killing a police officer or child, for example—that generates a great deal of media coverage, questions are raised about why this person was not in prison. Even a single case can result in changes that typically make sound politics but poor practice. For reasons of *justice* (punishment to fit the crime) or *cost* (too expensive to incarcerate all offenders in prison indefinitely), most convicted offenders are not imprisoned, and more than 90 percent of all imprisoned offenders are eventually released with or without being subject to supervision by a parole officer.

Convicted offenders can be placed on probation; incarcerated and released after completion of their entire sentence; and paroled or otherwise released early to supervision in the community. If laws are enacted that limit probation or increase the length of imprisonment by abolishing discretionary release (parole), for example, there must be corresponding increases in prison space to accommodate the results. As any shopper or grocery clerk knows, you can't get 10 pounds into a 5-pound bag. Against this reality is another: *Elected officials do not lose elections for supporting increased terms of imprisonment—but they are vulnerable when supporting the diversion of tax dollars, from education and highway maintenance, for example, that thereby become necessary.*

Compared with citizens of other industrialized nations, Americans tend to be more religious and entrepreneurial. We have more billionaires, we are the world leader in Nobel Prizes, and we send more people to universities—and prisons—than any other Western nation (Murphy, 2001). Over the past four decades, there has been a dramatic increase in the use of prisons to combat crime: incarceration rates jumped by more than 700 percent since the 1970s (Henrichson and Delaney, 2012). The United States

incarcerates a greater percentage of its population than any other country in the world (Schmitt, Warner, and Gupta, 2010; Walmsley, 2011). While the United States has an incarceration rate of 690 per 100,000 residents (Kaeble et al., 2016), our neighbor to the north has a rate of about 115; England has a rate of about 150; we do compete with Russia that has a rate of about 575 (Walmsley, 2011). In the United States, there is wide variation by geography, Southern states having many times the rate of states in New England. Thus, while laws concerning crimes such as robbery, burglary, and drug trafficking are rather uniform across the country, responses vary considerably.

Key Fact

The United States leads the world in the percentage of residents who are incarcerated.

There is in excess of 1.5 million prison inmates in the United States at an annual cost of about $30,000 per inmate (Bureau of Justice Statistics, 2014; Henrichson and Delaney, 2012; Kaeble et al., 2016), while jails can hold about 750,000 (Kaeble et al., 2016). The cost of imprisonment, however, is typically underestimated because it leaves out many actual expenses such as fringe benefits for employees, which average more than 25 percent of salaries. And other state agencies pay many costs, including employee health insurance, pension contributions, and inmate hospital care, costs often overlooked when reporting prison spending (Henrichson and Delaney, 2012). The cost of building a new prison is about $250 million (Washington State Institute for Public Policy, 2006). Although a state can float bonds to underwrite the cost of prison building, thereby amortizing the cost (which includes substantial interest) over a long period, operating costs such as staff salaries and benefits for retirees must be paid immediately out of the state's operating budget—it may be politically easier to build a prison than to staff and operate one. That can help explain why in recent years more than a dozen states have closed prisons.

Adding to prison costs are the problems of acquired immuno deficiency syndrome (AIDS), tuberculosis, hepatitis C, and the increasing number of geriatric offenders, often the result of "get tough" and "three-strikes-and-you're-out" (actually *in* for life) legislation. The increasing numbers of elderly inmates—the result of longer sentences and mandatory minimums, abolishing parole release, and "three strikes"—are adding extra burdens to the prison system. Florida, for example, housed less than 12,000 elderly inmates in 2006; by 2011, the number increased to more than 17,000. Between 1995 and 2010, the number of state and federal prisoners aged 55 or older nearly quadrupled (increasing 282 percent), while the number of all prisoners grew by less than half (increasing 42 percent). In 2011, there were 124,400 prisoners age 55 or older (*Old Behind Bars*, 2012); by 2013, that number had increased to more than 131,000. In 2013, prisoners age 55 or older accounted for 9 percent of the sentenced population in state prisons, up from 3.1 percent in 1993 (Carson and Sabol 2016).

"Compared with their younger peers, older inmates have higher rates of both mild and serious health conditions, such as gross functional disabilities and impaired movement, mental illness, increased risk of major diseases, and a heightened need for assistance with daily living activities" (Chiu, 2010: 5). Because of lifestyle deficiencies, the average inmate is physiologically 10 years older than men who have never been incarcerated. Thus, 50 years is "senior inmate" status whose cost of incarceration is approximately three times that of a younger inmate (Harrison, 2006).

America's prisons have an increasing number of elderly inmates whose infirmities require wheelchairs and walkers, portable oxygen tanks, and hearing aids. They may be incontinent and, without assistance, unable to dress or bathe. Some are suffering from dementia and Alzheimer's. Dental problems may be critical and require frequent periodontal work (*It's About Time*, 2010).

While there were about a million persons on probation and 220,000 persons on parole in 1979, there are currently about 5 million adults under some form of community

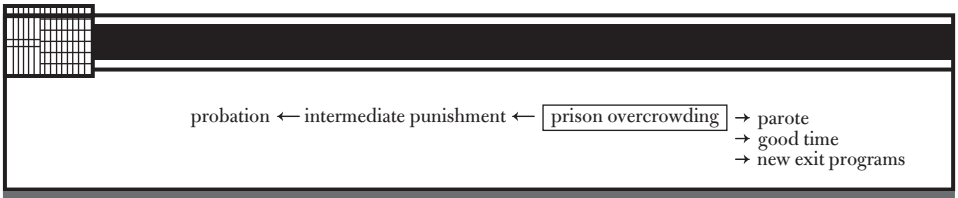

FIGURE 1.1

Key Fact

Incarceration costs about 12 times as much as probation and parole supervision. Factors of cost, mediated by overcrowded prisons, led to the widespread use of probation and parole.

supervision, more than 80 percent on probation. Incarceration costs about 12 times as much as probation and parole supervision. The extensive use of probation and parole is not based on some "liberal do-gooder," "hug-a-thug" notion, but on reality imposed by economics. In stark contrast to the amount spent on imprisonment, we spend relatively little on probation and parole, and informed observers argue that we are getting what we pay for.

The cost of imprisonment and, at times, the pressure of overcrowding leads to **front-door programs** such as intermediate punishments and **back-door programs** such as "boot camp" prisons (discussed in Chapter 10) that either keep offenders from becoming inmates or let them out early. Thus, although there was a steady decline in the percentage of inmates released by parole boards between 1980 and 2005, the percentage of prisoners being released from prisons to the community increased—despite building more than 200 prisons and hiring more than 100,000 additional correctional personnel (Glaze and Bonczar, 2006). Virginia, for example, abolished parole release in 1995 and the number of persons on probation more than doubled ("A Forecast," 2007). Interestingly, a study of inmates released in states that abolished parole revealed that they served seven months less than inmates released in states with parole (Petersilia, 2000b). Between 1995 and 2005, there was symmetry between the number of persons sent to prison and the number placed on probation. The percentage increase in the prison population was identical to the percentage increase in the probation population (Glaze and Bonczar, 2006) (Figure 1.1).

For a decade, spending on prisons has been the fastest-growing or the second-fastest-growing part of state budgets (competing with education). This increase was not the natural consequence of spikes in crime, but "the result of policy choices that sent more people to prison and kept them there longer" (Pew Center on the States, 2009: 1). "For nearly three decades, most states have dealt with lawbreakers in two ways: lock more of them up for longer periods, and build more prisons to hold them. Now many governments, out of money and buried under mounting prison costs, are reversing those policies and practices" (Steinhauer, 2009: 1). As we will discuss in later chapters, offender treatment/rehabilitation has once again become fashionable (Byrne, 2009; Rosenfeld, 2009; Taxman, 2009) with a renewed interest in so-called "prisoner reentry." In 2008, Congress passed the Second Chance Act with bipartisan support. The Act represents a federal investment in strategies to reduce recidivism as well as to reduce corrections costs for state and local governments. The bill authorized up to $165 million in federal grants to state, local, and tribal government agencies and nonprofit organizations.

Key Fact

The cost of imprisonment and, at times, the pressure of overcrowding lead to renewed interest in "prisoner reentry."

If discretionary release—parole—is not an option (many states abolished their parole boards), then allowing inmates to earn "good time" (time off for good behavior) at a rate of half or more of their sentence becomes the most viable option, an option states adopted when they moved away from indeterminate sentencing (discussed in Chapter 5).

THREE STRIKES IN CALIFORNIA

"It was sold to voters as a way of getting killers, rapists and child molesters off the streets for good." It snared a 55-year-old who is both retarded and mentally ill and who never committed a violent crime, for receiving stolen property. In 2012, California revised their three-strikes law, which had been sending shoplifters and similar offenders to prison for life, to require that the third strike be for a serious or violent felony (Staples, 2012: 10).

However, so-called **truth-in-sentencing laws** limit this approach, permitting only small grants of good time—10 or 15 percent. Most states have enacted "three-strikes-and-you're-out" statutes, meaning lifetime imprisonment on a third (or sometimes a second) felony conviction. (In 2003, the Supreme Court upheld the constitutionality of "three-strikes" laws (*Ewing v. California*, 538 U.S. 11; *Lockyer v. Andrade*, 538 U.S. 63.) As these unreleasable inmates age, they become increasingly expensive wards of the state requiring special housing—nursing homes surrounded by razor wire.

Key Fact

"Truth-in-sentencing" and "three-strikes-and-you're-out" laws have abolished parole and limited early release.

Economic crisis has brought into sharp focus the enormous cost of maintaining prisons. Some states that passed "three-strikes" laws have discovered loopholes allowing them to release inmates early. Those that still have parole boards have asked them to increase releases, whereas those without them are overhauling their sentencing laws. California, in the absence of a parole board, enacted a law permitting the release of "nonviolent" inmates without parole supervision (Archibold, 2010).

The release of nonviolent offenders is frequently offered as a way to reduce the prison population. However, as people who work in criminal justice recognize, the term "nonviolent" is disingenuous. Offenders who populate our criminal justice system are opportunists, not specialists—being convicted of a nonviolent crime does not indicate a nonviolent offender. Indeed, the most frequent conviction for a nonviolent offense is drug-related. But the world of drugs is filled with violent people and violence that is often unreported. Burglary, a property crime, can turn into a violent crime when an offender encounters a homeowner. Is a robbery "violent" if the perpetrator uses a toy or unloaded gun? Is driving while intoxicated a nonviolent crime? What if a pedestrian or occupants of another vehicle are killed?

Key Fact

An offender convicted of a property crime is not necessarily a "nonviolent" criminal.

A more recent approach is referred to as "Swift, Certain, Fair" (SCF). SCF involves immediate enforcement of probation and parole rules as violations are discovered, but the consequences result in only brief periods of incarceration, days rather than months or years that usually result from a technical violation.

Getting lost in the often-simplistic approach to crime and criminals is any serious attention to the fate of persons released from prison: uneducated, unskilled, unemployed, with a criminal record that thwarts job seeking, and now hardened by the prison experience. About 70 percent are black or Latino; more than 60 percent are younger than 30 years of age; about 70 percent have not completed high school, and about 40 percent are unable to read; more than 20 percent are incarcerated for drug offenses, and most inmates have a history of substance abuse; about one-half grew up primarily in one-parent households; and many have been victims of neglect and/or child abuse. *In America's prisons are persons who are poorer, darker, younger, and less educated than the rest of the population.* That such persons return to crime and drugs is not surprising, and the wheels of criminal justice continue to spin, generating heat but not light.

CRIMINAL JUSTICE IN BLACK AND WHITE

"If one in three white male babies born today could expect to spend time in prison during his life, rather than one in three black male babies, the politics of crime would look dramatically different. Instead of demanding harsher penalties, more prisons, and mandatory minimums, politicians would likely be calling for increased investment in education, after-school programs, and job training; expanded alternatives to incarceration; reductions in the severity of criminal sentences; and improved rehabilitation services" (Cole, 2011: 29).

▶ Criminal Justice in America

Criminal justice in America is an outgrowth of a fundamental distrust of government. Authority is divided between central (federal) and state governments, and at each level power is diffused further, shared by three branches—executive, legislative, and judicial—in a system referred to as the "separation of powers." In each state, authority is shared by governments at the municipal, county, and state levels. Thus, policing is primarily a function of municipal government, whereas jails are usually administered by county government: county sheriffs run more than 80 percent of the nation's more than 3,000 jails. Probation may be a municipal, county, or state function, whereas prison and (usually) parole systems are the responsibility of the state government, although in some states (e.g., Iowa and Oregon) parole and probation supervision is a function of the county or judicial district. There is also a separate federal system of criminal justice.

Key Fact
The system of criminal justice in the United States is not systematic.

As those who work in criminal justice recognize, there is a lack of joint planning and budgeting, or even systematic consultation, among the various agencies responsible for criminal justice. The result is **a system that is not systematic** (Figure 1.2).

Although criminal justice agencies, whose members range from police to parole officers, are interdependent, they do not, *in toto*, constitute a system arranged so that its parts result in unity. Although the operations of criminal justice agencies lack any significant level of coordination, each affects the others. A disproportionate share of the criminal justice budget (about 42 percent) goes to the agency that has the most public visibility, the police (plus 6 percent for federal law enforcement). The courts, prosecutors, and public defenders receive about 22 percent; corrections receive about 29 percent. An additional 1 percent is allocated for miscellaneous functions (U.S. Department of Justice statistics). As a result, more persons are brought into the system by the heavily funded police than the rest of the system can handle adequately.

A CLOSER LOOK

Levels of Government	Branches of Government
Federal	Executive
State	Legislative
County	Judicial
Municipal	

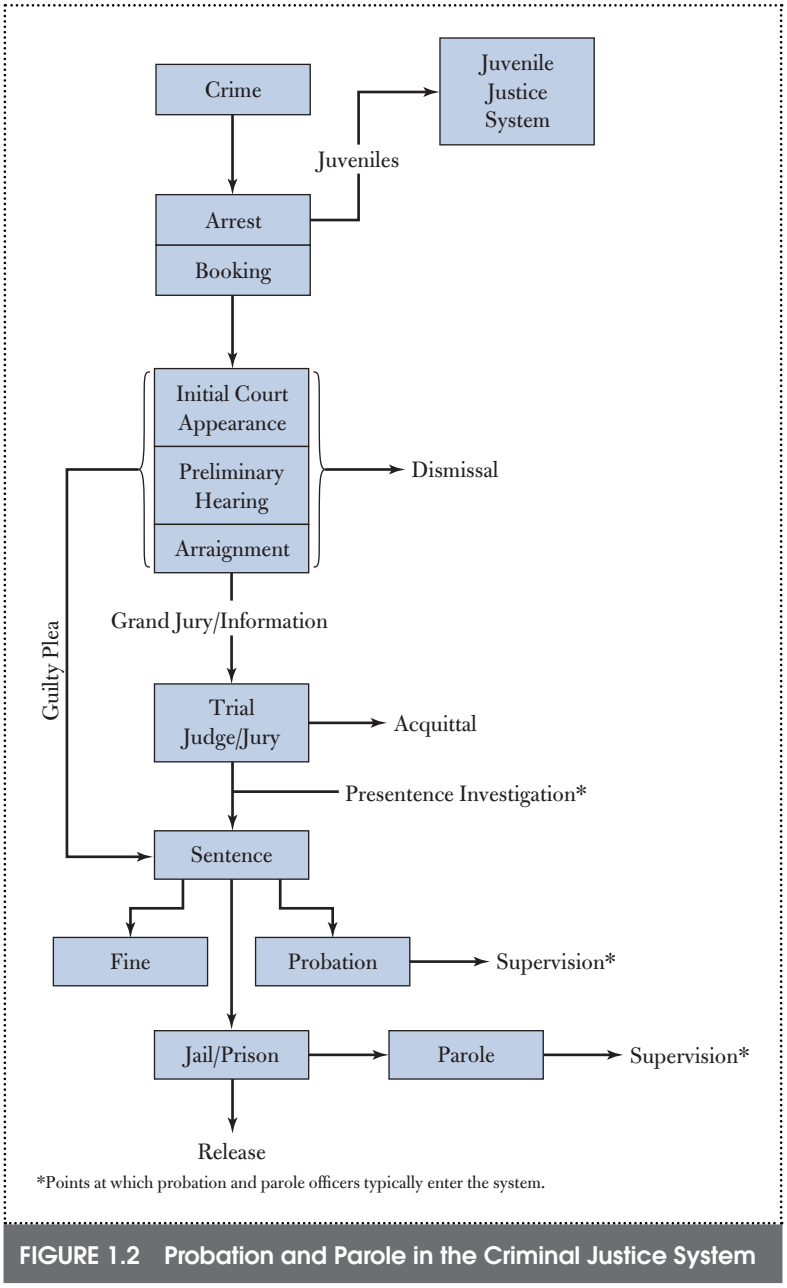

FIGURE 1.2 Probation and Parole in the Criminal Justice System

Key Fact

A disproportionate share of the criminal justice budget goes to the police, placing pressure on the rest of the system.

Increasing the number of police officers, and thereby the total number of arrests, places further pressure on the rest of the system of criminal justice.

Because of their large caseloads, judges and prosecutors tend to concentrate on the speedy processing of cases. This, in turn, encourages "bargain justice," which frequently is neither a bargain nor just. When a probation agency is understaffed, judges tend to send marginal cases to prison instead of using probation. When prisons are underfunded and overcrowded, there is pressure on the parole board to accelerate the release of inmates, thereby overburdening parole supervision, which is also usually understaffed. Many states have abolished their parole boards, and while this may make political sense it does not respond to the problem of prison overcrowding.

As pressure builds on prisons, usually the result of judicial scrutiny and financial considerations, prison officials are forced to release inmates without the benefit of the type of analyses a parole board usually provides. Some states are releasing inmates without the supervision usually provided by parole officers, leaving them adrift. In 2008, for example, 44 percent of high-risk and 27 percent of very high-risk offenders in Ohio were released without postrelease supervision (*Justice Reinvestment in Ohio*, 2011). In recent years, some of those retaining post-prison supervision limit the use of incarceration as an option for technical violators on parole (and probation). In the State of Washington, the maximum punishment for technical violations is 30 days; in North Carolina, 90 days; and in Pennsylvania, six months.

To reduce prison overcrowding, California enacted legislation that requires parole violators to serve the remainder of their sentences in county jails. However, some county jails lack space, so violators remain at-large without supervision. Prison overcrowding also places pressure on the judicial system, and more persons are placed on probation as the revolving door of criminal justice continues to spin.

Probation and parole are linked to particular segments of the criminal justice system, and criminal justice is tied to a system of laws most frequently invoked against a distinct type of offender. Law reflects the need to protect the person, the property, and the norms of those who have the power to enact laws: The criminal law reflects power relations in society. Thus, the harmful activities of those with power are often not even defined as criminal (e.g., environmental violations) but may instead constitute only a civil wrong (e.g., the savings and loan debacle of the 1980s cost taxpayers an estimated $124 billion), or the perpetrators may receive taxpayer money from the government (e.g., the federal bailout that saved financial institutions whose reckless behavior facilitated economic catastrophe). When the criminal law is invoked, the results may represent distinctions in power; burglary prosecutions, for example, routinely invoke more significant penalties than do corporate crimes. For crimes committed by large corporations, the sole punishment often consists of warnings, consent decrees, or comparatively small fines. As the title of a book by Jeffrey Reiman (1998) notes, *The Rich Get Richer and the Poor Get Prison*.

Key Fact

Criminal law reflects power relations in society.

A CLOSER LOOK

RICH MAN, POOR MAN, CRIMINAL MAN

The United States is the most economically stratified of industrial nations, the level of inequality exceeding that of any other industrialized nation (Stille, 2001). "The wealthiest 1 percent of American households—with net worth of at least $2.3 million each—owns nearly 40 percent of the nation's wealth. Further down the scale, the top 20 percent of Americans—households worth $180,000 or more—have more than 80 percent of the country's worth, a figure higher than other industrial nations" (Bradsher, 1995a: C4; Pérez-Peña, 1997). Inequality has continued to increase (Andrews, 2003) with corporate chief executives compensated at a rate more than 300 times as much as the average worker and more than 700 times as much as minimum wage earners (Dill, 2014).

A report for the Carnegie Foundation by a panel of prominent Americans revealed millions of children deprived of medical care, loving supervision, and intellectual stimulation, the result of parents overwhelmed by poverty. Many are subjected to child abuse and frequently witness random acts of violence (Chira, 1994), which means they are more likely to become juvenile delinquents and adult criminals (Widom, 1996; Widom and Maxfield, 2001). They become the pool from which the criminal justice system draws most of its clients.

What Is a Crime? Who Is a Criminal?

Quite simply, a *crime* is any violation of the criminal law, and a *criminal* is a person convicted of a crime. These definitions raise an important question: Is a person who violates the criminal law a "criminal" if he or she is not apprehended or convicted? Consider that most reported crimes do not result in an arrest and conviction. Furthermore, **National Crime Victimization Surveys** reveal that most crimes are simply not reported to the police. Thus, have probationers or parolees who are not arrested again been rehabilitated, or have they become infirm or more successful at avoiding detection? (Or have the police become either corrupt or less adept?) The issue of recidivism in probation and parole is critical, so the answer to this question has policy implications.

It is important for the study of probation and parole to consider who actually becomes identified as a criminal, since they are not representative of the U.S. population and tend to be clustered in particular sections of urban America—areas that are heavily policed—increasing the likelihood of arrest. Persons who have already been arrested become part of the official records (usual suspects) of law enforcement agencies, increasing their susceptibility to further arrests, a fact of life with which all probation and parole personnel must deal. However, on average, only about one crime in four is cleared by an arrest. The result is prisons populated and repopulated by the least skillful criminals with multiple convictions.

Early Responses to Crime

Early responses to criminal behavior ranged from the payment of fines to trial by combat, banishment, and death by torture. ***Lex talionis*** (an eye for an eye), a primitive system of vengeance, emerged and was passed down from generation to generation as each family, tribe, or society sought to preserve its own existence without recourse to a written code of laws. About 4,000 years ago, Hammurabi, king of Babylonia, authored a code inscribed on a block of diorite nearly 8 feet high and about 5 feet in circumference. Although in a written form, his laws continued the harsh tradition of *lex talionis*—many crimes, including committing theft and harboring a runaway slave, were punishable by death (Harper, 1904).

THE INFIRM BURGLAR

Jim was a skilled burglar caught in a stolen property sting; he had just been paroled. Jim sat quietly in my office as I reviewed his case folder. There was nothing that would give me confidence in a desire to avoid further criminal behavior and my facial expression was apparently conveying that reality. "Mr. Abadinsky, you don't have to worry about me." Well I'd heard that before, and became even more concerned, something my demeanor must have revealed. "No you don't understand—look at my record, only burglary, and I have flat feet." Indeed, his prison record indicated chronic fallen arches that made even walking difficult. Jim wasn't claiming rehabilitation, he was simply reporting that he was no longer capable of burglary. He completed his parole without causing this parole officer any problems.

Later, the Hebrews adopted the concept of an eye for an eye; however, this referred to financial compensation for the victim of a crime or negligence (there was no compensation for murder, which carried the death penalty), except for the "false witness," in which case "ye shall do unto him, as he had purposed to do unto his brother" (*Deuteronomy* 19: 19). A perpetrator who was unable to pay compensation was placed in involuntary servitude, a precursor to the concept of probation. The servitude could not last more than six years—release had to occur with the sabbatical year—and masters had rehabilitative obligations and responsibilities toward their charges. (Under the Code of Hammurabi, "If the thief has nothing wherewith to pay he shall be put to death" [Harper, 1904: 13].)

The Romans derided the use of restitution for criminal offenses and used the death penalty extensively in ways that have become etched in history. The fall of the Roman Empire resulted in there being little "rule of law" throughout Europe. When law was gradually restored, fines and restitution became important forms of punishment as monarchs sought funds to strengthen their military. Offenders who were unable to pay, however, were often enslaved or subjected to mutilation or death. A parallel issue in contemporary criminal justice, the extensive use of restitution and fees is discussed in Chapters 3 and 10.

Trial by combat also flourished, in part because of the difficulty of proving criminal allegations. With the spread of Christianity, trial by combat was reserved for private accusations, whereas crimes prosecuted by the crown called for trial by ordeal, an appeal to divine power. A defendant who survived the ordeal (e.g., passing through fire) was ruled innocent. The unsuccessful defendant often received verdict and punishment simultaneously. Trial by ordeal was eventually replaced with *compurgation* (wager of law): The accused was required to gather 12 reputable persons who would swear to the defendant's innocence. Reputable persons, it was believed, would not swear falsely for fear of divine retribution. Compurgation eventually evolved into testimony under oath and trial by jury (Vold and Bernard, 1986). Throughout the Middle Ages in Europe, there was a continuation of the extensive use of torture to gain confessions, and torture, flaying, or the rack often accompanied public executions.

Despite biblical admonitions—"You shall not respect persons in judgment; ye shall hear the small and the great alike" (*Deuteronomy* 1: 17)—for many centuries disparity existed in the manner in which punishment was meted out, with the rich and influential receiving little or no punishment for offenses that resulted in torture and death for the less fortunate.

▶ Classicalism

The disparate practices of meting out justice were forcefully challenged in the eighteenth century with the advent of classicalism. **Classicalism** is an outgrowth of the European Enlightenment period of the eighteenth century (sometimes referred to as the "Age of Reason") whose adherents rejected spiritualism and religious explanations for criminal behavior. During this era, philosophers, such as Montesquieu (1689–1755) and Voltaire (1694–1778), spoke out against the French penal code and inhumane and inequitable punishments. Jean Rousseau (1712–1778) and Cesare Beccaria (1738–1794) argued for a radical concept of justice based on equality. At a time when laws and law enforcement were unjust and disparate and punishment was often brutal, they demanded justice based on equality and punishment that was humane and proportionate to the offense. This revolutionary doctrine—*equality*—influenced the American

Key Fact

Classicalism views human behaviors as based on free will, a concept in law known as *mens rea*.

Revolution, with its declaration that "all men are created equal," and the French Revolution, whose National Assembly enacted a "Declaration of the Rights of Man and Citizen" (1789), which emphasized the equality of all citizens. The roots of this legal and political philosophy can be found in the concept of the social contract and natural rights.

The **social contract** is a mythical state of affairs wherein each person agrees to a pact, the basic stipulation of which is that, all men being created equal, conditions of law are the same for all: "The social contract establishes among the citizens an equality of such character that each binds himself on the same terms as all the others, and is *thus* entitled to enjoy the same rights as all the others" (Rousseau [1762], 1954: 45). According to classical thought, by nature man is free and endowed with natural rights, a philosophical basis for the first ten amendments to the U.S. Constitution, the Bill of Rights. According to John Locke (1632–1704), all men are by nature free, equal, and independent, and no one can be subjected to the political power of another without his or her own consent. These sentiments were incorporated into the U.S. Declaration of Independence as "all men are created equal" whose "governments are instituted among men, deriving their just powers from the consent of the governed."

The classical notion of the social contract stipulates that because all men are created equal, conditions of law are the same for all. Thus, Rousseau asserts, "One consents to die—if and when one becomes a murderer oneself—in order not to become a murderer's victim" (1954: 48). To be safe from crime, all people have consented to punishment if they resort to crime. This constitutes the greatest good for the greatest number; the social contract is rational and motivated by selfishness (Roshier, 1989).

Contrary to the manner in which law was being enforced, classical philosophers argued that law should respect neither rank nor station—all men are created equal—and punishment should be meted out with a perfect uniformity and in proportion to the offense. This premise was given impetus by Beccaria, who, in *An Essay on Crimes and Punishments* (1764; English edition, 1867), stated that laws should be drawn precisely and matched to punishment intended to be applied equally to all classes of men. The law, he argued, should stipulate a particular penalty for each specific crime, and judges should mete out identical sentences for each occurrence of the same offense (Maestro, 1973). This makes the administration of justice rational, whereas law is taken, uncritically, as given. Punishment has as its purpose deterrence and must be "the minimum possible in the given circumstances, proportionate to the crime, dictated by the laws" (Maestro, 1973: 33). The prosecution of defendants must be accomplished without resort to torture, common during this period. Not only is torture inhumane, but also highly unreliable for determining guilt. Unlike the position of Rousseau stated earlier, Beccaria opposed capital punishment.

According to the classical position, punishment is justified because offenders who violate the social contract are rational and endowed with **free will**. This concept, which has biblical origins (*Deuteronomy* 30: 15), holds that every person has the ability to distinguish and choose between right and wrong, between being law-abiding and criminal; in other words, behavior that violates the law is a *rational choice* made by a person with free will—in legal terms, ***mens rea***. However, there is evidence linking serious criminal behavior, that of psychopaths, to brain abnormalities (Haederle, 2010).

The classical school argues that because humans tend toward *hedonism*, that is, they seek pleasure and avoid pain, they must be restrained, by fear of punishment, from pleasurable acts that are unlawful. Accordingly, the purpose of the criminal law

is not simply *retribution*, but also *deterrence*. In sum, the "individual is responsible for his actions and is equal, no matter what his rank, in the eyes of the law" (Taylor, Walton, and Young, 1973: 2).

Two additional requirements—*certainty* and *promptness*—round out the classical position. If law is to serve its deterrent purpose, the would-be violator must be in fear of the consequences. This element of fear requires certainty, whereas promptness, seemingly based on a primitive form of behaviorism (discussed in Chapter 7), is necessary to make a more lasting impression—connecting the deed to the punishment.

The classical approach supported the interests of a rising eighteenth-century commercial class that was demanding legal equality with the privileged noble class as well as protection from the economic-driven predations of the lower class. A contradiction remains between the defense of equality and the emphasis on maintenance of an unequal distribution of wealth and property. Crime could, indeed, be a rational response to severe differentiations in wealth and opportunity. Free will is an oversimplification because one's position in society determines the degree of choice with respect to committing crimes: "A system of classical justice of this order could only operate in a society where property was distributed equally," where each person has an equal stake in the system (Taylor, Walton, and Young, 1973: 6). It is irrational for a society, which in too many instances does not offer a feasible alternative to crime, to insist that criminal behavior is simply a matter of free will; the nature of our prison population for more than 200 years belies this claim. Nevertheless, as noted by Anatole France (1927: 91), "the law [based on classicalism], in its majestic equality, forbids both the poor man and the rich man to sleep under bridges, to beg in the streets, and to steal bread."

In sum, there are eight basic tenets of classicalism (Taylor, Walton, and Young, 1973):

1. Humans are rational.
2. All persons are created equal.
3. All persons have an equal stake in society and thus an equal stake in prevention of crime.
4. Free will endows each person with the power to be law-abiding or criminal.
5. People tend toward hedonism.
6. The purpose of punishment is deterrence.
7. Punishment must be meted out fairly, with absolute equality, and in proportion to the offense.
8. Punishment must be prompt and certain.

Key Fact

The classical view promotes equality before the law and provides the basis for determinate sentencing.

The classical theory is the basis of our legal system, its pictorial representation appearing on many courthouses and documents in the form of a woman—"Justice"—carrying scales and wearing a blindfold. The classical view provides the basis for determinate sentence discussed in Chapter 5.

▶ Neoclassicalism

According to the classical position, punishment is justified because the offender who violates the social contract is rational, endowed with free will and, therefore, responsible for his or her actions no matter what the person's rank. The focus is on

laws and the legal system, not on the nature of criminal motivation. In fact, under the U.S. system of justice, an explanation is not a justification unless it reaches the level of a (legal) compulsion, at which point the law does not blame the perpetrator—no *mens rea.* Classicalism provides the basis for a rational legal system that is relatively easy to administer, except for one annoying problem: Implementing a criminal code with perfect equality has proven elusive. This problem became apparent when the French Code of 1791 attempted to implement Beccaria's reforms. Equality and **proportionality** proved more difficult in practice than in theory, and the French increasingly added to the discretionary powers of judges in the form of neoclassicalism (Roshier, 1989).

Neoclassicalism maintains the basic belief in free will while paving the way for the entry of mitigation (and subsequently aggravation) into criminal justice by considering three areas:

1. Past criminal record
2. Insanity and retardation
3. Age

Punishment can be justified only if crime is freely chosen, intentional, and rational—i.e., reasoned behavior: The neoclassicist revisions created an entrée for nonlegal experts—particularly psychiatrists and psychologists—into the courts (Taylor, Walton, and Young, 1973). These experts determine the presence of mitigation, and the system is able to continue to maintain a belief in free will. Allowing for the possibility of differences between offenders raises the specter of **determinism**, meaning that to varying degrees, the offender's choices are limited, which is the basic premise of positivism.

Key Fact

Determinism means that to varying degrees, the offender's choices are limited.

▶ Positivism

Positivism, as formulated by Auguste Comte (1798–1857), refers to a method for examining and understanding social behavior. Comte argued that the methods and logical form of the natural sciences—the scientific method—are applicable to the study of man as a social being, producing the field of social sciences. Social phenomena, Comte insisted, must be studied and understood by observation, hypothesis, and experimentation in a new discipline he called *sociology*. The classical theory is based on philosophy and law, whereas the positivist view is based on empiricism in an effort to determine the cause of crime.

Key Fact

Positivism attempts to explain the cause of crime and offers a basis for rehabilitating criminals and the indeterminate sentence.

The positivist approach to the study of crime became known as *criminology*, a discipline whose early efforts are identified with Cesare Lombroso (1835–1909), a Venetian physician. In his *L'uomo delinquente* (*The Criminal Man*), first published in 1876, Lombroso argued that the criminal is a "primitive throwback" to earlier developmental stages through which noncriminal man had already passed—the influence of **social Darwinism** is obvious (Degler, 1991). Lombroso's research centered on physiological characteristics believed indicative of criminality, although his later work (published in 1911) noted the importance of environmental factors in causing crime (Lombroso, 1968). Instead of the classical emphasis on criminal behavior as rational, positivists tend to see it as a symptom of some form of pathology: biological, psychological, or social. (Positivist theories of crime are reviewed in Chapter 7.)

SOCIAL DARWINISM

The move toward using science to explain criminality received a major impetus from the work of Charles Darwin (1809–1882). Although his first book (*Origin of Species*, published in 1859) was concerned exclusively with nonhuman organisms, his second (*Descent of Man*, published in 1871) included the idea that humanity was shaped by the forces of natural selection. Darwin's thesis was advanced by the English philosopher Herbert Spencer (1820–1903), who coined the phrase "survival of the fittest," the credo for social Darwinism. Spencer (1961: 305) argued that "there can be no rational apprehension for the truths of Sociology until there has been reached a rational apprehension of the truths of Biology." According to Spencer (1961: 2), biology did not support help for the downtrodden: "As fast as they increase the provision for those who live without labor, so fast do they increase the number who live without labor; and that with an ever-increasing distribution of alms, there comes an ever-increasing outcry for more alms."

Darwin's theory of natural selection supplied the conceptual ammunition for an ideology (later labeled social Darwinism) that allayed the qualms of the rich about not helping the poor by telling them that the latter's sufferings were an inevitable price for societal advancement that could occur only through the struggle for existence ending in the survival of the fittest and the elimination of the unfit (Andreski, 1971). "If the unworthy are helped to increase, by shielding them from that mortality which their unworthiness would naturally entail, the effect is to produce, generation after generation, a greater unworthiness" (Spencer, 1961: 313). Spencer goes on to say, "Fostering the good-for-nothing at the expense of the good is an extreme cruelty. It is a deliberate storing-up of miseries for future generations. There is no greater curse to posterity than that of bequeathing them an increasing population of imbeciles and idlers and criminals" (1961: 314).

Are criminal justice policies and practices a twenty-first-century form of social Darwinism?

While Charles Darwin and Herbert Spencer were concerned with a general construct of human evolution and its effect on society, the criminal anthropology initiated by the work of Lombroso employed evolution to explain criminal behavior. Lombroso contributed to the study of crime by using, albeit in a rather imperfect way, the tools of science and shifting the field of inquiry from law and philosophy to empiricism. The positivist view places emphasis not on the crime but on the criminal. It contradicts the theory of free will for which positivists have substituted a chain of interrelated causes and, at its most extreme, a deterministic basis for criminal behavior: The criminal could not do otherwise. Because criminal behavior is the result of social and psychological, if not physiological, conditions over which the offender has little or no control, he or she is not culpable (in legal parlance, lacks *mens rea*), so punishment is inappropriate; however, because criminals do represent a threat to society, they must be "treated," "corrected," or "rehabilitated" (or according to early Lombrosians, separated from society, perhaps castrated or executed). In practice, the change in emphasis from punishment to correction did not necessarily result in a less severe response to criminal offenders. Some modern critics contend that rehabilitation opened the door to a host of questionable schemes for dealing with offenders under the guise of "treatment" applied "for their own good." The American Friends Service Committee notes: "Retribution and revenge necessarily imply punishment, but it does not necessarily follow that punishment is eliminated under rehabilitative regimes" (1971: 20). The positivist view provides a basis for the indeterminate sentence and the juvenile court.

A CLOSER LOOK

Classical View	Positivist View
Free will	Determinism
Choice	Cause
Punishment/deterrence	Treatment/incarceration

If, as the classical view argues, a person has free will and is rational, he or she will weigh the costs of committing (or not committing) a crime. The threat of sanctions is seen as an effort to tilt the weighing process away from crime. The classical approach would view enhancing education and job skills as increasing choice away from crime, while positivists would view this response as a treatment approach to deal with the causes of crime.

The views of the classical and positive schools are important because they transcend their own time and continue to influence contemporary issues in criminal justice. The question remains: Do we judge the crime or the criminal? This is a central question in the continuing debate over sentencing—definite versus indeterminate—discussed in Chapter 5. Probation and parole, it is often argued, emanate from a positivist response to criminal behavior, a view that is disputed in this book.

▶ U.S. System of Criminal Justice

Probation and parole are part of the U.S. system of criminal justice. The next section locates these two services within that system.

▶ Entering the System

Most crimes are not responded to by the criminal justice system because they have not been discovered by or reported to the police; when reported, most crimes are never solved. For the police to arrest a suspect, they must have a level of evidence known as **probable cause**. The Ohio Adult Parole Authority offers the following definition: "Reasonable grounds for suspicion supported by facts and circumstances sufficiently strong in themselves to lead a reasonably cautious person to believe that a person is guilty of a particular crime." Probable cause is also the level of evidence required to initiate a probation or parole violation (discussed in Chapter 9), and it is significantly less than that necessary to convict a defendant in a criminal trial (beyond a reasonable doubt).

When the police effect an arrest, the subject is transported to a holding facility, usually a police station equipped with cells—a "lockup." As opposed to a jail, a lockup is used on a temporary basis, for 24 to 48 hours. During this time, the suspect will be booked, photographed, and fingerprinted, and the police will request that formal charges be instituted by the prosecutor's office. A fingerprint check will reveal whether the suspect has a previous arrest record, is wanted for other charges, or is on probation or parole.

Key Fact

Levels of evidence range from probable cause to beyond a reasonable doubt.

LEVELS OF EVIDENCE—HIGH TO LOW

Beyond a Reasonable Doubt
Guilt in a criminal trial
Finding of delinquency in juvenile court

Clear and Convincing Evidence
Used in extraordinary civil cases, such as commitment and child custody

Preponderance of the Evidence
Most civil cases
Status offense cases in juvenile court
Probation and parole revocation hearings

Probable Cause
Search warrants/arrest warrants
Summary/warrantless arrests
Probation and parole preliminary violation hearing

▶ Pretrial Court Appearances

Depending on what time of day the arrest occurred and whether it happened on a weekday, weekend, or court holiday, the suspect may have to spend 24 hours or longer in the lockup before being transported to court. At the first appearance, the primary questions concern bail and legal representation. If a defendant is under probation or parole supervision, the bail decision is affected; for example, in some jurisdictions, a probation or parole warrant will be filed to preclude release on bail. If the subject is unable to provide bail or a probation/parole warrant is filed as a detainer, he or she will be kept in jail pending further court action. Connecticut is one of only six states whose correctional agency [department of corrections (DOC)] houses both accused and unsentenced populations, presenting unique challenges for offender management. Despite the fact that the majority of accused offenders spend a relatively short time in DOC custody, they may participate in many of the same services available to the sentenced population. Due to the transient nature of this population, formal release planning may be problematic, as many inmates are released on bond or discharged from court with no prior notice to the DOC. In many jurisdictions, probation or pretrial officers or other specialized court personnel will interview defendants with a view toward assisting the judge in making a bail decision. They may even provide supervision during the pretrial stage (discussed in Chapter 4).

▶ Pretrial Hearings

At pretrial hearings (sometimes referred to as an initial appearance, preliminary hearing, or arraignment), the official charges are read aloud, the need for counsel considered, and bail set or reviewed (if it has already been set at a bond hearing). Typically, the reading of charges is waived and hearings last only a few minutes. If the case is a misdemeanor, it may be adjudicated at this time, often by a plea of guilty or dismissal of the charges on a motion by the prosecutor. If the charge constitutes a felony, a *probable cause hearing* is held to determine if the arresting officer had sufficient

evidence—probable cause—to justify an arrest. This hearing takes the form of a short minitrial during which the prosecutor calls witnesses and the defense may cross-examine and call its own witnesses.

If the judge finds probable cause—evidence sufficient to cause a reasonable person to believe that the suspect committed a crime—the prosecutor files an *information* (details of the charges), which has the effect of bringing the case to trial. In some states, the prosecutor may avoid a probable cause hearing by presenting evidence directly to a *grand jury*—generally, 23 citizens who hear charges in secret. If they vote a *true bill*, the defendant stands *indicted* and the case proceeds to trial.

▶ Trials or Guilty Pleas

Few cases entering the criminal justice system actually result in a jury trial, an expensive and time-consuming luxury that most participants attempt to keep to a minimum. About 85 to 95 percent of all criminal convictions are the result of a guilty plea, and most guilty pleas are the result of a **plea bargain**, a widely condemned practice for disposing of cases that involves an exchange wherein the defendant agrees to waive his or her constitutional right to a jury trial, providing the prosecutor with a "win" and saving the court a great deal of time and effort; the defendant is rewarded for this behavior by receiving some form of leniency. (The impact of plea bargaining on probation is discussed in Chapter 4; its effect on parole in Chapter 5.) If plea negotiations fail to result in an agreement or if one side or the other refuses to bargain, the case is scheduled for trial. (For an extensive discussion of plea bargaining, see Abadinsky, 2014.)

The trial is an adversary proceeding in which both sides are represented by legal counsel and whose rules are enforced by a judge. To sustain a criminal charge, the prosecutor must prove the *actus reus* and *mens rea*. ***Actus reus***, a wrongful act or deed, refers to the need to prove that a violation of the criminal law—a crime—actually occurred. The *actus reus* consists of a description of the criminal behavior and evidence that the accused acted accordingly. Robbery, for example, requires evidence that violence or the threat of violence was used by the accused to secure something of value to which he or she was not entitled. *Mens rea*, or "guilty mind," is a legal standard that refers to the question of *intent*: The prosecutor must be able to show that the defendant had a wrongful purpose—willfulness—in carrying out the *actus reus* that the robbery, for example, was not a case of a young man playing a trick on his friend. The defendant is presumed innocent, and therefore defense counsel need not prove anything but will typically attempt to raise doubts about the evidence or other aspects of the prosecution's case.

Each side can subpoena witnesses to present testimony and can cross-examine adverse witnesses (Sixth Amendment). The defendant can take the stand on his or her own behalf; if the defendant prefers not to testify, he or she can maintain the Fifth Amendment privilege against self-incrimination. Defendants on probation or parole may be reluctant to testify because this would subject them to cross-examination and result in a disclosure of their criminal record to the jury. After lawyers for each side have introduced all their evidence, the judge instructs the jury on the principles of law applicable to the case. Every jury is told (charged by the judge) that the facts pointing to the guilt of the defendant must be established **beyond a reasonable doubt**, as opposed to the **preponderance of the evidence**, the standard in civil and some juvenile cases as well as probation and parole revocation hearings.

Key Fact

Plea bargaining affects sentencing and therefore impacts probation and parole.

The jury now retires to deliberate in private. In most jurisdictions, the jury's decision for guilt or acquittal must be unanimous, or the result is called a *hung jury*. If the jury cannot reach a unanimous verdict, the jurors are discharged. If the prosecutor decides, the case must be tried a second time before a different jury. Except in some relatively rare instances when there are violations of both federal and state laws, the defendant who is acquitted cannot be tried again for the same charges, which would constitute *double jeopardy* (prohibited by the Fifth Amendment). If the jury finds the defendant guilty of one or more of the charges, the case moves to the sentencing stage and the probation officer enters the case, usually for the first time. (In some jurisdictions, the probation officer is involved in gathering information—the *pre-plea investigation*—for the judge during plea bargaining.)

▶ Sentences

After a verdict or plea of guilty, the judge decides on the sentence, although in some states the sentence is decided by the jury, particularly in cases of murder. The sentencing function reflects societal goals, which may be in conflict:

- *Retribution.* Punishment dimension (*lex talionis*, an eye for an eye, or just deserts) that expresses society's disapproval of criminal behavior.
- *Incapacitation.* Reduces opportunity for further criminal behavior by imprisonment.
- *Deterrence.* Belief that punishment will reduce the likelihood of future criminal behavior either by the particular offender (*individual/specific deterrence*) or by others in society who fear similar punishment (*general deterrence*).
- *Rehabilitation.* Belief that by providing services—social, psychological, educational, or vocational—an offender will be less likely to commit future crimes.
- *Restitution.* Repayment by an offender to the victim or to society in money or services for the harm committed.

Sentencing can be further complicated by concern for the following (Zawitz, 1988):

- *Proportionality.* Punishment should be commensurate with the seriousness of the crime.
- *Equity.* Similar crimes should receive similar punishment.
- *Social debt.* Severity of punishment should consider the offender's prior criminal record.

These issues are discussed in subsequent chapters.

The trial judge sets a date for a sentencing hearing and in many jurisdictions will order a presentence investigation to be conducted by the probation department. A probation officer will search court records; examine other reports, such as psychiatric and school records; and interview the defendant, spouse, employer, arresting officer, and victim. Information from the presentence investigation will be presented in the form of a written presentence or probation report, which frequently contains the probation officer's sentencing recommendation (an example appears in Chapter 4). After reviewing the report, the judge conducts a sentencing hearing at which both defense and prosecution are allowed to make statements. The judge then imposes a sentence: fine, suspended sentence, probation, incarceration, or any combination thereof. A prison sentence may be determinate (classical) or indeterminate (positivist), depending on state law. The federal system uses only determinate sentencing.

A sentence of probation places the defendant, now a convict, under the supervision of a probation officer. A sentence of incarceration results in the defendant being sent to a jail (if convicted of a misdemeanor), usually for not more than one year, or to a state or federal prison (if convicted of a felony). In most jurisdictions, a parole board can release the defendant (now an inmate) before the expiration of his or her sentence. In other states and the federal system, the inmate can be released early as the result of accumulating time off for good behavior. Parolees and (in many states) persons released for good behavior—known as ***mandatory or conditional release***—come under the supervision of a parole officer (the actual title varies from state to state).

▶ Appeals

Although the prosecutor cannot appeal an acquittal (Fifth Amendment), the defendant is free to appeal a guilty verdict in hopes of obtaining a reversal. The defendant can ask an appellate court to review the proceedings that culminated in his or her conviction. In fact, American criminal justice is rather unique for the extensive post-conviction review procedures to which a defendant is entitled. A prison inmate may petition the trial court for a new trial or take an appeal to the state's intermediate appellate court; if unsuccessful there, he or she can still appeal to the state court of last resort, and if unsuccessful in state court he or she can petition the Supreme Court. The prisoner can also attack the conviction *collaterally*, that is, using indirect means, by way of a writ of *habeas corpus*, claiming that his or her constitutional rights were violated in some way by the state court conviction. Having exhausted direct and indirect appeals in state courts, the inmate can move over to the federal courts, claiming again that the conviction was unconstitutional, usually on grounds of the lack of due process.

The appellate court cannot act as a trial court, that is, receive new evidence concerning the facts already established at the original trial. It is limited to considering new theories or legal arguments regarding the law applicable to these facts or addressing procedural issues. The appellate court can uphold the verdict, overturn it, or order it reversed and remanded to the trial court for a new trial. The appellate court can also render decisions that affect other cases by setting a precedent or handing down a ruling that governs the actions of criminal justice officials; for example, in *Morrissey v. Brewer* the Supreme Court ruled that parolees are entitled to some basic forms of due process before they can be returned to prison for violation of parole (discussed in Chapter 9).

In the next chapter, we will examine the system of justice used for juveniles.

Summary

- The criminal justice system is complicated by the manner in which it is organized.
- Probation originated as a method for keeping minor offenders out of prison, and parole as a method for controlling the prison population.
- If laws limit probation or increase the length of imprisonment, there must be increases in prison space to accommodate the results.
- The United States imprisons a higher percentage of its population than any other Western nation.

- Prison costs are exacerbated by AIDS, tuberculosis, hepatitis C, and the increasing number of geriatric offenders, often the result of "three-strikes-and-you're-out" and "truth-in-sentencing" laws.
- The cost of imprisonment and overcrowding leads to front-door and back-door programs that either keep offenders from becoming inmates or let them out early.
- The release of "nonviolent offenders" is offered as a way to reduce the prison population, but the term "nonviolent" is unclear.
- "Swift, Certain, Fair" involves immediate enforcement of probation and parole rules as violations are discovered, but for only brief periods of incarceration.
- American criminal justice is characterized by a lack of joint planning and budgeting.
- Increasing the number of police officers places further pressure on the rest of the criminal justice.
- Research into the success of probation and parole is complicated by the fact that most crime is not reported and most offenders not arrested.
- Criminal offenders—and thus probationers and parolees—are clustered in heavily policed sections of urban America.
- The concept of probation goes back to biblical times.
- The classical view of justice emphasizes free will, equality, and deterrence and provides a basis for the determinate sentence.
- The neoclassical view provides for aggravation and mitigation in criminal justice.
- The positivist response provides a basis for the indeterminate sentence and the juvenile court.
- Levels of evidence range from probable cause to beyond a reasonable doubt.
- A probation agency typically becomes involved in pretrial release and sentencing.

Key Terms

actus reus 17
a system that is not systematic *6*
back-door programs *4*
beyond a reasonable doubt *17*
classicalism *10*
determinism *13*
free will *11*
front-door programs *4*
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truth-in-sentencing laws *5*

Internet Connections

American Bar Association Criminal Justice links: **abanet.org/crimjust/links.html**

Council of State Governments: **csg.org**

General criminal justice links: **lawguru.com/ilawlib/96.htm**

Legal Resource Center: **crimelynx.com/research.html**

National Criminal Justice Reference Service: **ncjrs.org**

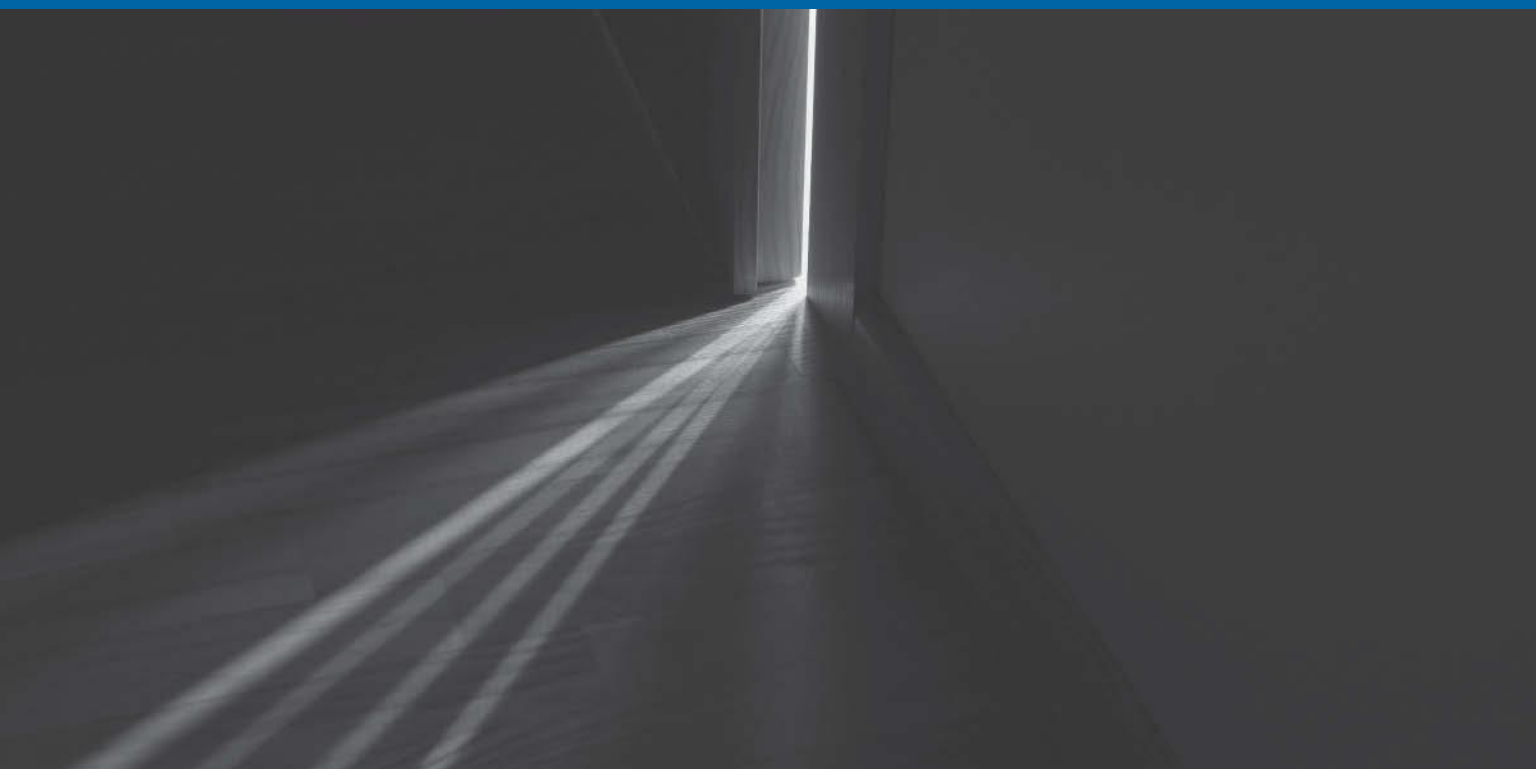
National Institute of Justice: **nij.gov**

U.S. Department of Justice links: **usdoj.gov/02organizations/02_1.html**

Vera Institute of Justice: **vera.org**

Review Questions

1. What makes the criminal justice system so complicated?
2. What was the original reason for probation?
3. What was the original reason for parole?
4. What country has the highest rate of imprisonment?
5. What factors have increased the cost of imprisonment?
6. What are the front-door and back-door programs to control the prison population?
7. What is unclear about the category of "nonviolent offender"?
8. What does a program of "Swift, Certain, Fair" involve?
9. How does increasing the number of police officers place further pressure on the rest of the criminal justice system?
10. Why is research into the success of probation and parole complicated by the fact that most crime is not reported and most offenders not arrested?
11. What are the three elements of the classical view of justice?
12. What does the neoclassical view provide in criminal justice?
13. At what two points in criminal justice does a probation agency typically become involved?



2 Probation and Parole in Juvenile Justice

LEARNING OBJECTIVES

This chapter will enable the reader to:

1. *Know the role of the probation officer in juvenile justice.*
2. *Distinguish the juvenile justice system from that for adults.*
3. *Recognize the philosophy upon which juvenile justice has traditionally been based.*
4. *Understand the role of the "child savers" in establishing the juvenile court.*
5. *Know about juvenile court jurisdiction over status offenders.*
6. *Appreciate how the juvenile court represented an extreme version of positivism.*

7. *Recognize how terms used in juvenile court differ from those used in adult court.*
8. *Realize that the use of a punitive approach in juvenile court is illogical.*
9. *Understand how In re Gault significantly changed the juvenile court.*
10. *Recognize the four types of cases handled by the juvenile court.*
11. *Know the importance of an intake probation officer.*
12. *Know the types of offenses that require that the juvenile be tried in criminal court.*
13. *Appreciate the ambivalent role of a defense lawyer in the juvenile court.*
14. *Know why in cases of neglect or abuse the judge may appoint a guardian ad litem.*
15. *Appreciate that in many jurisdictions the distinction between the adult criminal court and the juvenile court has become blurred.*
16. *Learn why juvenile court jurisdiction over status offenders is controversial.*
17. *Realize that the role of a judge in the juvenile court is more complex than in adult court.*
18. *Understand that basic to dispositions in the juvenile court is the concept of the least restrictive alternative.*
19. *Learn that juvenile court dispositions include: probation, group home, residential treatment center, and training school.*
20. *Know that juvenile aftercare (parole) supervision may be provided by a probation or parole agency, or an agency established for that purpose.*
21. *Understand why administration of juvenile services is complex.*
22. *Learn that all states have transfer laws that allow or require criminal prosecution of some young offenders.*
23. *Realize that juveniles convicted in criminal court are expensive to incarcerate.*

In contrast to the secondary role of the probation officer (PO) in adult criminal justice, the PO is at the center of juvenile justice. This chapter will examine the juvenile court, the history and unique qualities of juvenile justice, the PO's role, and pertinent legal decisions.

History of the Juvenile Court

The system of justice used for juveniles in the United States is based on a philosophy radically different from the one on which the adult criminal justice system rests. Before we can examine the services provided by a probation agency to the juvenile court, it is necessary to understand the history and philosophy of this unique institution.

Key Fact

Contemporary American concern with the problem of child abuse stands in marked contrast to our earlier history.

In Europe, from Roman times to the late eighteenth century, children were routinely abandoned by their parents; the classical philosopher Rousseau, for example, boasted of abandoning five of his children to foundling homes (Boswell, 1989). Abandoned children were subjected to extreme levels of deprivation and exploitation. English common law considered children as chattel, and a rather indifferent attitude toward children became characteristic of America, where they became creatures of exploitation. Indeed, the contemporary American concern with the problem of child abuse stands in marked contrast to our earlier history. Child labor remained an important part of economic life into the twentieth century. Children of the poor labored in mines (where their size was an advantage), mills, and factories with unsanitary and unsafe conditions.

The Supreme Court reflected the prevailing belief in *laissez-faire* capitalism and would not intervene—statutes prohibiting children younger than 12 years from employment and those limiting the workday of youngsters older than 12 years to 10 hours were ruled unconstitutional or were routinely disobeyed. Increased immigration, industrialization, and urbanization drastically altered the American society. The 10- and 12-hour workday left many children without parental supervision, and family disorganization became widespread. Many children lived in the streets where they encountered the disorder and rampant vice of the urban environment.

In the early days of colonial America, the family remained the mainstay of social control, "although by 1700 the family's inability to accommodate and discipline its young was becoming more apparent" (Mennel, 1973: xxii). Numerous laws began to appear that threatened parents for failing to properly discipline their children. Furthermore, the British practice of transporting wayward young to America for indenture, which often involved neglect, cruelty, and immorality, left many youngsters without supervision as they fled from these onerous circumstances. By the end of the eighteenth century, society began to realize that a "system of social control would have to be developed apart from the family which would discipline homeless, vagrant, and destitute children—the offspring of the poor" (Mennel, 1973: xxvii). This need led to the rise of **houses of refuge**.

▶ Houses of Refuge and Orphan Asylums

In 1817, the Society for the Prevention of Pauperism was established in response to the problem of troubled and troublesome children; and in 1824, it was renamed the Society for the Reformation of Juvenile Delinquency. The society conducted campaigns against the "corrupting" influence of taverns and theaters and opposed the use of jails to house children. Their efforts led to the establishment of houses of refuge, also called houses of reformation or reform schools (Krisberg, 1988).

The first house of refuge opened in New York in 1825 and was quickly followed by one in Boston (1826) and another in Philadelphia (1828). These institutions provided housing and care for troublesome children who might otherwise be left in the streets or, if their behavior brought them into serious conflict with the law, sent to jail or prison. The house of refuge was used "not only for the less serious juvenile criminal, but for runaways, disobedient children or vagrants" (Empey, 1979: 25–26). Orphan asylums were used for abandoned or orphaned children, for the children of women without husbands, or for children whose parents were deemed unfit. Both institutions "were established to inculcate children with the values of hard work, orderliness, and subordination and thereby ensure their future good behavior" (Mennel, 1973: 8). To

achieve these ends, however, discipline and punishments were often brutal, and the house of refuge in New York experienced group escapes and inmate uprisings.

Although these institutions were operated by private charities, their public charters included the first statutory definitions of juvenile delinquency and provided the basis for state intervention into the lives of children who were neglected or in need of supervision, in addition to those youngsters who had committed crimes (Walker, 1980). In these, charters were embodied a "medieval English doctrine of nebulous origin and meaning" (Schlossman, 1977: 8) known as ***parens patriae***, originally referring to the feudal duties of the overlord to his vassals and later the legal duties of the monarch toward his or her subjects who were in need of care, particularly children and the mentally incompetent. In its original form, *parens patriae* provided the Crown with the authority to administer the estates of landed orphans (Sutton, 1988).

Key Fact

Parens patriae provided the legal basis for the juvenile court.

"With the independence of the American colonies and the transplanting of the English common-law system, the state in this country has taken the place of the Crown as the *parens patriae* of all minors" (Lou, 1972: 4). This concept gave almost complete authority over children to the state—the Bill of Rights simply did not apply to children (*Ex parte Crouse*, 4 Wharton 9, 1838)—and *parens patriae* became the legal basis for the juvenile court. Although this concept has become identified with the rehabilitation of wayward juveniles, it originally applied only to dependent children.

▶ Child-Saving Movement

As immigration, industrialization, and urbanization continued, the fearful image of masses of undisciplined and uneducated children gave rise to the **child-saving movement**. Led by upper-class women of earlier American ancestry, the child savers were influenced by the nativist prejudices of their day as well as by social Darwinism (see Chapter 1). Natural selection resulted in an inferior underclass in need of control, but not of aid in the sense of the modern social welfare state. Something had to be done to save these children from an environment that would only lead them into vice and crime—if not rebellion—and cause them to be the progenitors of the same. Reforming juvenile justice became the task of women who "were generally well-educated, widely traveled, and had access to political and financial resources" (Platt, 1974: 77). The juvenile court was the result of their efforts, although controversy surrounds the interests and motivations of the child savers (Platt, 1974; Empey, 1979).

Key Fact

The child-saving movement provided the impetus for establishing the juvenile court.

▶ Emergence of the Juvenile Court

Although juveniles might be sent to a house of refuge, an orphan asylum, or a reformatory—there was confusion over which children should be relegated to which institution—they could be arrested, detained, and tried like any adult accused of a crime. Children older (and sometimes younger) than 14 years of age were routinely prosecuted and punished as adults. Although some modifications of the trial process with respect to juveniles occurred as early as 1869, it was the Illinois Juvenile Court Act of 1899 that established the first law creating a special comprehensive court for juveniles. Consistent with the concept of *parens patriae*, the juvenile court was given jurisdiction over neglected and dependent children in addition to children who were delinquent (e.g., persons younger than 16 years of age who had violated the law), and those whose behavior was troublesome but not criminal (e.g., truants and runaways).

Key Fact

The first juvenile court was opened in Chicago in 1899.

Nondelinquents in whom the court was interested because of their behavior became to known as **status offenders**.

Within 25 years of the Illinois Juvenile Court Act, every state but one had adopted legislation providing for one or all the features of a juvenile court organization (Lenroot and Lundberg, 1925). A book originally published in 1927 provides insight into the court's prevailing concepts (Lou, 1972: 2):

> These principles upon which the juvenile court acts are radically different from those of the criminal courts. In place of judicial tribunals, restrained by antiquated procedure, saturated in an atmosphere of hostility, trying cases for determining guilt and inflicting punishment according to inflexible rules of law, we have now juvenile courts, in which the relations of the child to his parents or other adults and to the state or society are defined and are adjusted summarily according to the scientific findings about the child and his environments. In place of magistrates, limited by the outgrown custom and compelled to walk in the paths fixed by the law of the realm, we have now socially minded judges, who hear and adjust cases according not to rigid rules of law but to what the interests of society and the interests of the child or good conscience demand. In the place of juries, prosecutors, and lawyers, trained in the old conception of law and staging dramatically, but often amusingly, legal battles, as the necessary paraphernalia of a criminal court, we have now probation officers, physicians, psychologists, and psychiatrists, who search for the social, physiological, psychological, and mental backgrounds of the child in order to arrive at reasonable and just solutions of individual cases.

Lou's statement clearly embodies the positivist view—or critics might say, positivism run amok—with the child being denied the most basic due process rights. The unstructured and informal system of juvenile justice used in Illinois quickly became the standard as juvenile courts were established throughout the United States. Differences between the adult criminal court and the juvenile court extended even to the terminology used:

Adult Criminal Court	Juvenile Court
Defendant	Respondent
Charges/indictment	Petition
Arraignment	Hearing
Prosecution/trial	Adjudication
Verdict	Finding
Sentence	Disposition
Imprisonment	Commitment
Inmate/prisoner	Resident
Parole	Aftercare

Consistent with the concept of *parens patriae,* the terminology reflects a nonpunitive approach to dealing with troubled and troublesome children. Critics often decry the lack of sufficient punishment inflicted in the juvenile court. Such comments indicate a complete misunderstanding of this court, which should *not* punish. Although the concept of *parens patriae* is paternalistic and not inconsistent with the concept of punishment (Weisheit and Alexander, 1988), the use of a punitive approach in juvenile court would simply make it a criminal court for children and, therefore, without grounding as a separate system of justice. Thus, although one could logically argue for

abolishing the juvenile court, a juvenile court that imposes punishment has no basis in American history or in logic.

Because of the noncriminal approach, the usual safeguards of due process applicable in criminal courts were absent in juvenile court proceedings: rights to counsel, to confront and cross-examine adverse witnesses, and to avoid self-incrimination. Because the focus of the juvenile court was on providing help, procedures were often informal (if not vague), and the judge, with the assistance of the probation officer, was given broad powers over young persons.

Key Fact

Until 1967, youngsters in juvenile court enjoyed no due process protection.

▶ Legal Decisions

The juvenile court continued to operate for many decades without attention or adherence to due process requirements or scrutiny by the judicial branch of government. This ended during the latter half of the 1960s, an era marked by the judicial activism of the Supreme Court with respect to issues involving civil liberties. Because of the central role of the PO in the court, juvenile cases decided by the Supreme Court affected probation services.

In 1966, the Supreme Court reviewed the operations of the juvenile court in *Kent v. United States* (383 U.S. 541). While on probation, Morris Kent, 16 years of age, was convicted in criminal court of raping a woman in her Washington, D.C., apartment and sentenced to a prison term of 30 to 90 years. In juvenile court, he would have faced a maximum term of incarceration until 21 years of age. In accord with existing federal statutes, the case had first been referred to the juvenile court, where over the objections of defense counsel, jurisdiction was waived to the criminal court. On appeal, in a 5–4 decision, the Supreme Court ruled that before a juvenile referred to juvenile court can be tried in criminal court, he or she is entitled to a waiver hearing with counsel, and if jurisdiction is waived the juvenile court judge must state the reasons.

Kent is significant for changing the Supreme Court's hands-off policy that had been in existence since the juvenile court was established in 1899. In its decision, the Court expressed concern over the lack of due process in the juvenile court:

> Although there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in more recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities, and techniques to perform adequately as representatives of the state in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds, that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

The following year, the Supreme Court addressed the issue of due process in the juvenile court (*In re Gault*, 387 U.S. 1, 1967). Gerald Gault, aged 15, had been arrested by the police on the complaint of a female neighbor that he and his friend had made lewd and indecent remarks over the telephone. Gerald's parents were not notified of their son's arrest and did not receive a copy of the juvenile court petition charging him

with delinquency. Furthermore, Gerald was not advised of his right to remain silent or his right to counsel. The complainant was not present at the hearing, nor did the judge speak with her on any occasion. Instead, Gerald's mother and two POs appeared before the juvenile court judge in his chambers. No one was sworn, nor was a transcript made of the proceeding.

At a second hearing, a conflict occurred concerning what had transpired at the first hearing. For the second time, the complainant was not present; the judge ruled that her presence was not necessary. Gerald was declared to be a juvenile delinquent and committed to a state training school for a maximum of 6 years, until he turned 21. Had Gerald been an adult (older than 18 years of age), the maximum sentence would have been a fine of not more than $50 or imprisonment for not more than 60 days. Because no appeal in juvenile court cases was permitted under Arizona law, Gerald's parents filed a petition of *habeas corpus* (a legal challenge to custody), which, although it was dismissed by the state courts, was granted (*certiorari*) a hearing by the U.S. Supreme Court.

In its decision, the Supreme Court acknowledged the helping—*noncriminal*—philosophy on which the juvenile court is based. But the decision also revealed a sense of outrage over what had transpired in the case of Gerald Gault: "Under our Constitution, the condition of being a boy does not justify a kangaroo court." The justices held that a child cannot be denied reasonable standards of due process and that he or she is entitled to the following:

- Written notice of the charges
- Right to counsel
- Protection against self-incrimination
- Right to confront and cross-examine witnesses
- Right to have written transcripts and appellate review

Because of the noncriminal nature of the juvenile court, instead of the proof beyond a reasonable-doubt standard used in criminal trials, the level of evidence for a finding of delinquency was typically that used in a civil proceeding: preponderance of the evidence. In 1970, in the case of *In re Winship* (397 U.S. 358) the Supreme Court noted: "The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of conviction resting on factual error." Accordingly, the Court ruled "the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*."

The Sixth Amendment guarantees the right to an impartial jury in criminal trials, but the Supreme Court decided against granting this right in juvenile proceedings. In the 1971 decision of *McKeiver v. Pennsylvania* (403 U.S. 528), the Court ruled that a juvenile court proceeding is not a criminal prosecution within the meaning of the Sixth Amendment. Accordingly, the Court held that the "imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the fact-finding function." Nevertheless, more than 15 states permit the use of juries in juvenile court.

In 1975, the Supreme Court was faced with the question of double jeopardy—which is prohibited by the Fifth Amendment—with respect to the juvenile court. *Breed v. Jones* (421 U.S. 519) concerned a 17-year-old who was the subject of a juvenile court petition alleging armed robbery. After taking testimony from two prosecution witnesses and the respondent, the juvenile court judge sustained the petition. At a subsequent disposition hearing, the judge ruled that the respondent was not "amenable to the care,

JUVENILE COURT STATS

More than a 30 million youth are under juvenile court jurisdiction. More than 1.5 million youth are referred to juvenile court each year, about one-quarter for offenses against persons, 40 percent for property offenses, 10 percent for drug law violations, and about a quarter for public order offenses. Other youth are charged with status offenses such as truancy and underage drinking. Approximately 60 percent of all adjudicated delinquents are placed on probation; about 25 percent are placed in a residential facility. Other dispositions include restitution, community service, or referral to another agency. (Puzzanchera, Adams, and Sickmund, 2011; Leone and Weinberg, 2010).

treatment and training program available through the facilities of the juvenile court" and ordered that Breed be prosecuted as an adult. The youngster was subsequently found guilty of armed robbery in criminal (superior) court, which led the Supreme Court to rule: "We hold that the prosecution of respondent in Superior Court, after an adjudicatory proceeding in Juvenile Court, violated that Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amendment."

In 1984, the Supreme Court (*Schall v. Martin*, 467 U.S. 253), in a strong affirmation of the concept of *parens patriae*, upheld the constitutionality of the preventive detention of juveniles. *Schall* involved a New York statute that authorizes the detention of juveniles arrested for an offense when there is "serious risk" that, before trial, the juvenile may commit an act that, if committed by an adult, would constitute a crime. In this case Gregory Martin, 14 years of age, along with two others, was accused of hitting a youth with a loaded gun and stealing his jacket and sneakers; when arrested, Martin was in possession of the gun. The Court found that juveniles, unlike adults, "are always in some form of custody"; that is, "by definition, [they] are not assumed to have the capacity to take care of themselves [but] are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*." The Court stipulated that the detention cannot be for purposes of punishment and must be strictly limited in time; the Court found that the maximum detention under the New York statute, 17 days for serious crimes and 6 days for less serious crimes, was proper.

According to Barry Feld (2003), providing greater due process rights to juveniles has had unintended consequences because it "legitimated the imposition of more

OTHER JUVENILE DECISIONS

The Supreme Court ruled imposing harsh criminal sentences on juvenile offenders violates the Eighth Amendment prohibition against cruel and unusual punishment: *Roper v. Simmons* (543 U.S. 551, 2005) prohibits imposition of the death penalty for a crime committed by a juvenile; *Graham v. Florida* (560 U.S. 48, 2010) held that no juvenile could be sentenced to life without the possibility of parole for a nonhomicide offense; *Miller v. Alabama* (132 S.Ct. 2455, 2010) struck down statutes that required courts to sentence juveniles convicted of murder to life without parole.

punitive sentences." He notes further that once juveniles are given adult-like protections, judges more readily depart from the pure rehabilitative model, which had formed the basis of the juvenile court.

Juvenile Court Procedures

The juvenile court system differs from state to state and even within states. Jurisdiction over juveniles may be located in a separate juvenile court, in a specialized branch of the superior court, or in various types of courts of limited jurisdiction. It is possible that within one state, jurisdiction may be located in two or more different types of courts. The legal age of a juvenile also varies from state to state, ranging from 14 to 18 years of age. Although juveniles are not routinely fingerprinted or photographed by the police, 47 states allow the police to fingerprint and 44 states allow them to photograph certain juveniles. In Texas, for example, all juveniles with alleged delinquent offenses that are crimes punishable by incarceration for adults are fingerprinted and entered into a statewide central repository; their criminal history record may then be accessed by law enforcement and juvenile justice agencies throughout Texas. In Pennsylvania, the records of youth 14 years of age or older are accessible to the public if the offense would have been considered a felony if committed by an adult.

A juvenile's name is not usually printed in the newspapers, and the juvenile court has historically been closed to the public. However, about two-dozen states have open hearings in certain cases. In 1997, New York reversed its long-standing policy of keeping Family Court closed to the public. Although judges still have discretion to close cases, they must have compelling and specific reasons, such as ensuring the privacy of a victim of child sexual abuse (Finder, 1997).

Historically, juvenile court records have been kept confidential, but most states now permit the release of certain juveniles' names and/or photographs, and more and more juvenile records are becoming available to more agencies and the public. In many states, there are provisions for having a juvenile record sealed—not subject to examination except by special court order—and in some jurisdictions expunged; 18 states, however, prohibit the sealing or expunging of juvenile records (Sickmund, Snyder, and Poe-Yamagata, 1997). Until 1992, the Federal Bureau of Investigation (FBI) collected records only of juveniles tried as adults, but in that year new regulations gave the FBI's National Crime Information Center (NCIC) authority to receive juvenile court information. Although states do not have to submit juvenile court records to the FBI, the NCIC can instantly transmit to law enforcement agencies and within days to some employers the juvenile court records formerly kept confidential.

A CLOSER LOOK

SEALING OF JUVENILE RECORDS IN CALIFORNIA

A youngster adjudicated in juvenile court who has reached age 18 or has been off probation for at least 5 years can request that his or her records be sealed. The petitioner must show the court that he or she has not subsequently been convicted of a felony or misdemeanor involving moral turpitude and has been rehabilitated. Law enforcement may have still have access to the records if, for example, it is necessary to show that the person has a prior conviction for the purposes of such statutes as the "three-strikes" law.

JUVENILE COURT INTAKE

"In many communities, an intake unit within the juvenile court first screens all juvenile matters. The intake unit determines whether the matter should be handled informally (i.e. diverted) or petitioned for formal handling. . . . In other communities, the juvenile court is not involved in delinquency or status offense matters until another agency (e.g., the prosecutor's office or a social service agency) has first screened the case. In other words, the intake function is performed outside the court, and some matters are diverted to other agencies without the court ever handling them. Status offense cases, in particular, tend to be diverted from court processing in this manner" (Puzzanchera, Adams, and Sickmund, 2011: 1–2).

The juvenile court typically handles four types of cases:

1. *Delinquency.* Behavior that, if engaged in by an adult, would constitute a crime.
2. *Status offense.* Behavior that, if engaged in by an adult, would not constitute a crime but (in accord with *parens patriae*) provides the basis for governmental intervention, for example, demonstrating chronic truancy, being beyond the control of parents or guardians, or running away.
3. *Neglect or abuse.* Children who are subjected to neglect or abuse by parents or guardians.
4. *Dependency.* Children who do not have parents or guardians available to provide proper care.

Key Fact

Juvenile courts handle four types of cases: delinquency, status offense, neglect, and dependency.

As part of a status offense or separately under a special addicted category, juveniles may be subject to juvenile court jurisdiction as a result of addiction to alcohol or other drugs.

Instances of delinquency, status offense, neglect or abuse, or dependency that come to the attention of authorities are often handled in a manner that does not involve the formal justice apparatus. School officials or the police, for example, may refer such cases directly to public or private social welfare or child protective agencies. Alternatively, the police may make a station adjustment, so the child is allowed to return home with parents or guardians without further action. Those situations that come to the attention of the juvenile court enter by way of the intake section, which is usually staffed by juvenile probation officers. On the eastern end of New York's Long Island, the Suffolk County Probation Department—which supervises adult offenders—is responsible for juvenile intake services at Family Court.

▶ Intake

Children are referred to the juvenile court by the police, parents, school officials, or other public or private agency personnel (Figure 2.1), although law enforcement agencies are the source of more than 80 percent of delinquency referrals and a little less than half of the status offense referrals that reach the petition stage. In some jurisdictions, all cases are received by a PO assigned to the **intake** or complaint unit; while in

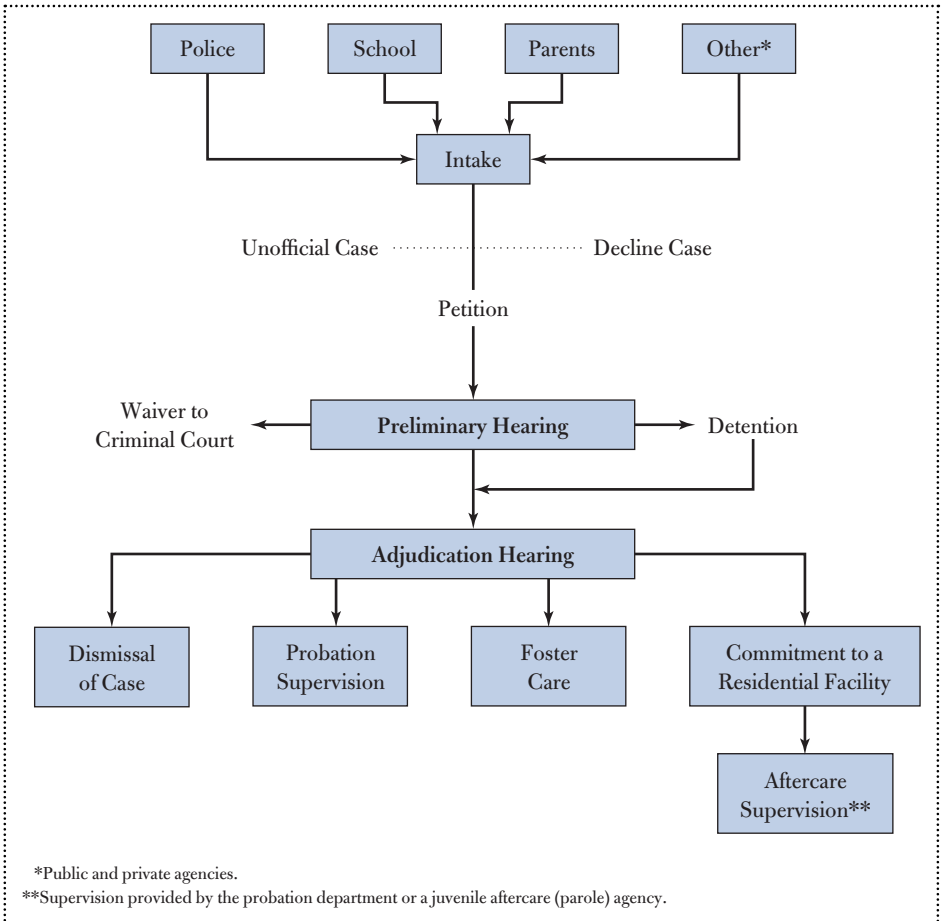


FIGURE 2.1 Juvenile Court Process

others, cases that involve criminal complaints are first sent to the prosecutor's office. The first decision to be made at intake is the custodial status of the youngster: Does the respondent's behavior make him or her a danger to himself or herself or to the safety of others? Will the youngster return to court voluntarily?

Intake in the juvenile court is unique: It permits the court to screen cases not only on jurisdictional and legal grounds but also on social dimensions. The PO interviews the presenting agent, the young person, and the child's parents or guardians. The officer then reviews court files for previous records concerning the child. If the case involves a serious crime or child abuse and has not already been screened by the prosecutor, the PO consults with that office. At this stage, the PO has a dual function: legal and social service.

Key Fact
Probation officers staff juvenile court intake.

The **legal function** requires that the PO determine whether the juvenile court has jurisdiction and also requires that the child and parents be advised of the right to counsel and the right to remain silent during the intake conference. H. Ted Rubin argues that "defense attorney participation at a[n intake] conference is rare, waivers of rights tend to be finessed, and the norm is for parents to encourage the child to discuss his or her participation in the alleged offense with the intake officer" (1980: 304; also Feld, 1988). When defense attorneys are present in juvenile court, tension is inherent in their responsibilities to the client: "a choice between the traditional

A CLOSER LOOK

JUVENILE OFFENDERS IN TEXAS

It is 1:15 a.m. in Texarkana. James, 15 years of age, and an adult male have been arrested for aggravated robbery. Police are taking the juvenile to the detention center intake unit at the Bowie County Juvenile Probation Department. Harold Harlston, a probation officer on duty, has just been called to the intake office where he must decide if James will be detained or released. On checking the records, Harlston finds that James has a prior arrest for theft, but the initial police report suggests that this time James was influenced to participate in the robbery by an older man.

Harlston awakens James's parents with a phone call. They are quite upset and head for the center. While continuing to interview James, the PO is interrupted by a call alerting him that the police are bringing in a girl involved in a street fight. She is being charged with assault—again. Harlston anticipates a long, busy night.

The girl being brought in is 14 and goes by her street name, "Decca." Streetwise, she has learned to cover her vulnerability with a defiant attitude and abusive vocabulary. She fidgets nervously as she waits for her intake interview. A file check reveals that Decca lives with her mother and several siblings. The father does not live in the home, and the family has a history of court referrals.

Harlston learns that James's parents have just arrived. He tells them their son will be held until his detention hearing, usually occurring within 48 hours. James's parents express their disappointment; they want to take James home tonight. The PO explains the seriousness of the charges and the state law allowing juveniles to be tried in adult court for offenses as serious as aggravated robbery. If James is transferred to adult court, he could be sentenced to prison. The young man is lucky; his parents express their love and pledge to stand by him. Decca is not so fortunate. When her mother is contacted, she tells the PO, "Do whatever you want with her—I'm tired."

The night is young, and Harlston learns the police are bringing in two more youths. Detention center staff prepare for overcrowding by placing temporary cots in the dining area of the 10-bed facility.

adversary role (or the procedural model that regulates professional behavior in the criminal court) and the historic treatment or rehabilitative concerns of the family [juvenile] court" (Fabricant, 1983: 41). Barry Feld reports that even when juveniles are represented by counsel, "attorneys may not be capable of or committed to representing their juvenile clients in an effective adversarial manner. Organizational pressures to cooperate, judicial hostility toward adversarial litigants, role ambiguity created by the dual goals of rehabilitation and punishment, reluctance to help juveniles 'beat a case,' or an internalization of a court's treatment philosophy may compromise the role of counsel in juvenile court" (1988: 395). Indeed, he notes that the presence of counsel may actually be disadvantageous to the juvenile—those represented by attorneys tend to receive more severe dispositions. Nevertheless, Feld, a law professor, advocates legislation that mandates counsel and does not permit a waiver of this important constitutional right.

The **social services function** involves an assessment of the child's situation—home, school, physical, and psychological—and can provide the basis for adjusting the case, that is, handling it informally without the filing of a petition. This happens in about half of the cases reaching juvenile court when the situation is not serious, when the matter can best be handled by the family, and when neither the child nor the public is in any danger. When the child is in conflict with parents or school officials, the PO may serve as a mediator.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE
COUNTY OF CLARK JUVENILE DIVISION

INFORMAL SUPERVISION AGREEMENT
In the matter of Michael Nelson
DATE OF BIRTH: July 12, 1987
COMPLAINT: School Vandalism

The minor admits the alleged offense as stated above.

The minor understands that an Informal Supervision period is an attempt by Clark County Juvenile Court Services, the minor, and his parents to resolve the alleged problems without formal judicial action.

The minor does hereby waive the right to a speedy trial and understands that he has the right to legal counsel and the right to remain silent throughout these proceedings and hereby waives these rights.

The minor understands that any information obtained during the supervision period will be admissible in evidence at any adjudicatory hearing and that the minor may withdraw from the Informal Supervision process at any time and demand an adjudicatory hearing.

The minor understands that the Clark County Juvenile Court Services or the District Attorney reserves the right to proceed on any petition heretofore filed against the undersigned and/or to proceed on other petitions for any new offense and may proceed to seek an adjudication on the pending matter in the event the minor fails to cooperate in the attempt at adjustment.

The minor and his parents further understand that the terms of this Informal Supervision Agreement are as follows:

1. That the minor will report in person to Probation Officer John Kerwin at the Clark County Juvenile Court Services, 3401 East Bonanza Road, Las Vegas, Nevada every Monday on a weekly basis, until May 30, 2011.
2. That the minor will obey all laws of the city, county, state, and federal governments.
3. That the minor will attend school unless legally excused and make every effort to maintain good conduct and an acceptable scholastic record.
4. That the minor will obey the reasonable and proper orders of his parents.
5. That the parents agree to make restitution for the damage caused by the minor to school property.

We agree to the terms and conditions of this Informal Supervision Agreement and waive the rights as stated above.

Signed Doris Nelson (Parent) Date 2/27/12

Signed Kevin Nelson (Parent) Date 2/27/12

Signed Michael Nelson (Minor) Date Feb/27/2012

ORDER
Good cause appearing therefore the minor is placed under Supervision for a period of 90 days, reviewable (if a petition was filed) on the 30th Day of May, 2012 at the hour of 10:00 A.M.

Dated this February 28, 2012

Michael Harrison
(Judge or Referee)

FIGURE 2.2 Informal Probation Agreement.

(***Source:*** Clark County, Nevada, Juvenile Division.)

If the young person and parents agree to informal processing (Figure 2.2), the juvenile can be placed under supervision of a PO, usually for a period of 90 days. Although this may save the young person and his or her parents from the trauma of court action, unofficial handling has its critics. Informal processing requires an explicit or tacit admission of guilt. The substantial advantages that accrue from this admission (the avoidance of court action) also act as an incentive to confess. This approach casts doubt on the voluntariness and truthfulness of admissions of guilt. About 20 percent of delinquency cases brought to the juvenile court result in informal or "unofficial probation."

The period of **informal probation** can be a crucial time in the life of a young person. If successful, the youngster may avoid further juvenile court processing; if unsuccessful, the child will face the labyrinth that is the juvenile court process and the serious consequences that can result. No one is more aware of this than the PO who, using all the skills and resources at his or her command, attempts to assist the youngster and the youngster's parent(s) through the crisis. Counseling, group therapy, tutoring, vocational guidance, psychiatric and psychological treatment, and recreational services, if they are available, will be put to use to help the young person. If the intake worker is professionally trained, he or she may provide the counseling, thus avoiding the time-consuming referral process—a family is most effectively aided at the time of crisis. If informal efforts are unsuccessful, the PO can file a petition—a sworn statement containing the specific charges and name(s) of the complaining witness(es), that makes the case an official one.

Key Fact

Many cases sent to juvenile court intake are handled by informal probation.

During the intake process, the PO must determine if the case is to be referred—petitioned—to the court for adjudication. Of the more than 1.5 million delinquency cases received annually by the juvenile court, a little more than half are petitioned. The filing of a petition is made through the prosecutor or directly via the clerk of the court, who sets a date for the first of three types of juvenile court hearing.

A CLOSER LOOK

JUVENILE INTAKE IN TEXAS

In Brazoria County, Texas, an intake officer, taking into consideration the nature of the offense and the juvenile's referral history, evaluates each juvenile referral to the department. If additional contact with the juvenile is required, the intake officer schedules an interview with the family to assist in the evaluation of the juvenile's school performance, behavior, and family situation. Following the assessment, the intake officer makes a recommendation using state-mandated progressive sanction guidelines and pertinent departmental guidelines. In turn, the assistant district attorney considers the officer's recommendation and directs the course of action taken on any charge.

In Harris County (Houston), law enforcement officers may take a juvenile to one of two intake-screening units at the Juvenile Probation Department. Intake screening is responsible for assessing immediate circumstances and deciding where the youth will stay prior to a court hearing. Two 24-hour intake units receive and review incoming cases.

Younger nonviolent offenders may be offered the option of voluntary participation in the Deferred Prosecution Program. This program guides youth through 6 months of intensive counseling and supervision aimed at diverting them from further contact with the juvenile justice system. When a youth is believed to present a threat to the community or to him- or herself, the youth will be held in detention awaiting a court hearing.

A CLOSER LOOK

JUVENILE INTAKE IN GRANT COUNTY (MARION), INDIANA

Most cases received by the probation department are referred by school officials and law enforcement officers after receiving and investigating complaints from private citizens. Referring agents complete an intake information form, and, on receipt, the probation department orders the child and his or her parent(s)/guardian(s) to report to the probation office for a preliminary inquiry.

The preliminary inquiry is conducted by the intake PO for the purpose of determining whether the child committed a delinquent act and if the interests of society or the child require further action. The PO advises the child and parents of the nature of the inquiry, the alleged offense, and their constitutional rights. If the child and parents choose to discuss the alleged offense and if there is a determination of delinquency, the PO recommends to the court and to the prosecutor's office either that a formal petition alleging delinquency be filed or that the matter be adjusted informally.

If the PO decides during the preliminary inquiry that an informal adjustment should be entered into, parent(s) and child must complete a preliminary investigation form that provides information about the child and the child's family: offense, education, siblings, employment, hobbies, and recreation. An agreement is negotiated, and the child and parent(s) sign an informal agreement form describing the disposition agreed on and the terms of that disposition—for example, driver's license restriction, curfew, sessions with a PO, or referral to a community drug or alcohol treatment program or for psychological treatment. An informal adjustment agreement cannot extend beyond 6 months. If, at the end of that time, the terms have not been followed or the child commits another offense, the original charges can be filed with the court as a petition. If the PO recommends a petition instead of an informal adjustment, the prosecutor will file it with the court, alleging delinquency.

▶ Preliminary Hearing

Preliminary hearings consider matters that must be dealt with before the case can proceed further. At the first hearing, the judge (or in some jurisdictions, a referee) informs the parties involved of the charges in the petition and of their rights in the proceeding. If the case involves an abused, neglected, or dependent child, a **guardian *ad litem*** is usually appointed to act as an advocate for the child. Depending on the jurisdiction, this person may be an attorney or trained lay advocate, often a volunteer. If appropriate, the hearing may be used to determine whether an alleged delinquent should remain in detention or a shelter. If the judge determines, usually with the help of the PO, that the respondent's behavior makes him or her a danger to himself or herself or to the safety of others or that he or she will probably not return to court voluntarily, the judge can order that the child remains in or be remanded to custody.

Key Fact

"Sight and sound" separation requires juveniles to be housed separately from adult offenders.

Detention facilities for juveniles have generally been inadequate. In some jurisdictions, they are merely separate sections of an adult jail. The 1974 Juvenile Justice and Delinquency Prevention Act requires **"sight and sound" separation** of juveniles held under juvenile court jurisdiction, but the statute does not apply to youth in adult facilities prosecuted as adults in state court. California outlawed the practice of jailing juveniles in 1986, and Utah makes the practice a misdemeanor.

The Dauphin County (Harrisburg, Pennsylvania) Juvenile Probation Department uses in-home detention, which provides supervision for juveniles who otherwise would be held in a detention facility. The program has two POs who share a caseload that does not exceed 14 youngsters. The clients are visited once or twice a day at their