

CRIMINAL JUSTICE IN ACTION

Eleventh
Edition

LARRY GAINES
ROGER LEROY MILLER



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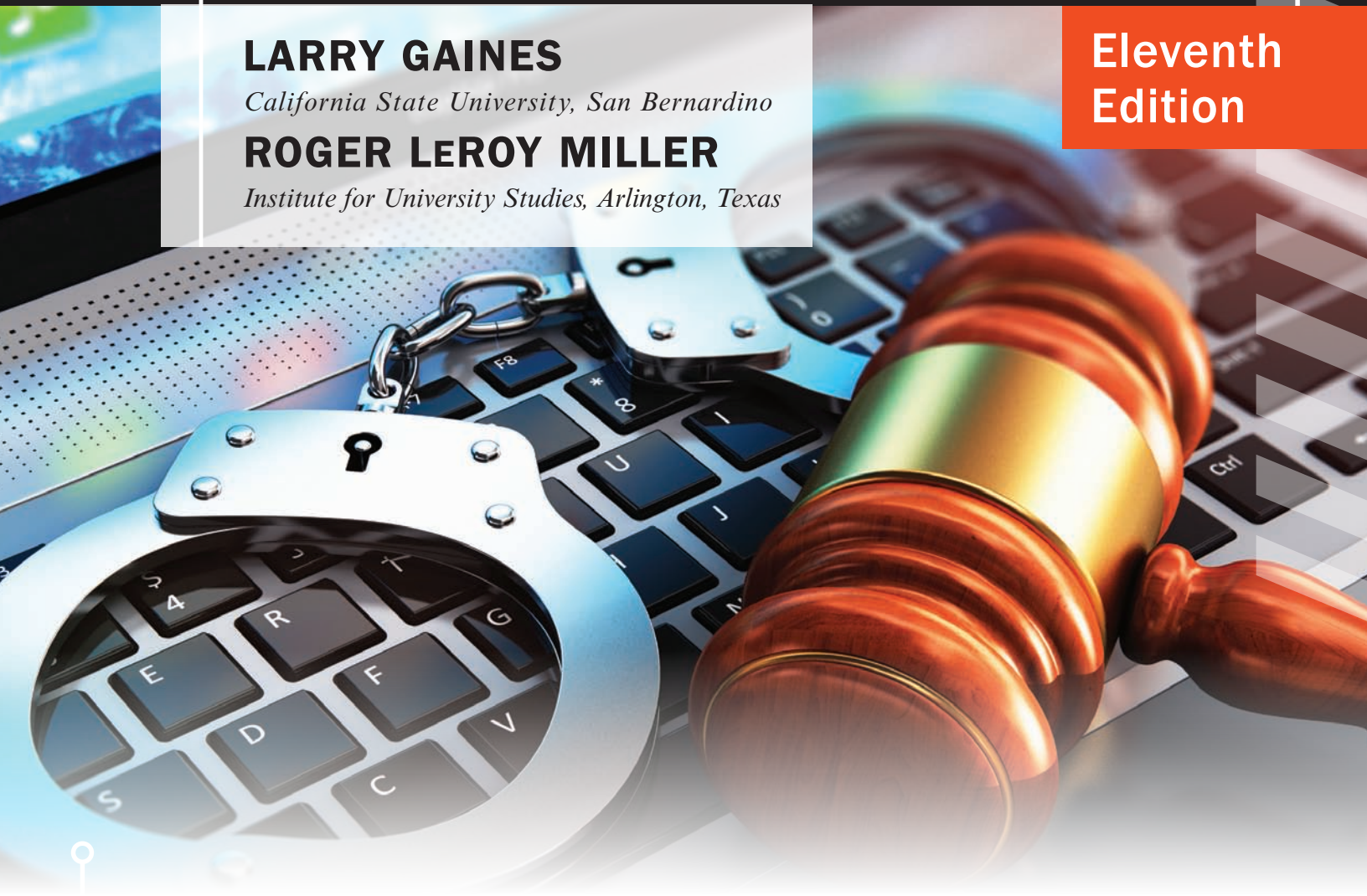
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**Eleventh
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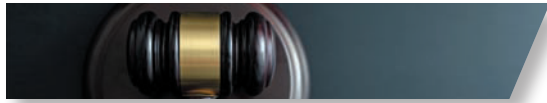
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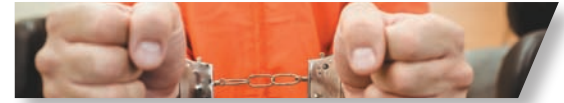
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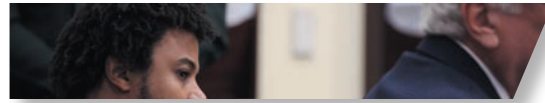
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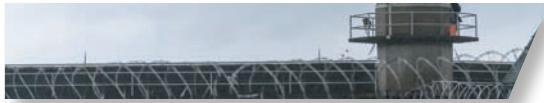
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PREFACE

Expect the unexpected. This maxim has always applied to criminal justice, but never has it rung as true as it does today. Accordingly, this latest edition of the best-selling *Criminal Justice in Action* series continues to illuminate the field, using facts, analyses, and true-life examples to help students understand the discipline's core principles in the context of dramatic change. The authors also continue their tradition of asking students to think critically and ethically about the American criminal justice system, long tasked with upholding the nation's laws and ideals.

Additionally, *Criminal Justice in Action*, the Eleventh Edition, combines print and digital resources to an unprecedented degree. Aided by the advice of our many adopting professors, we have created a wealth of online activities designed to challenge students by immersing them in the counterbalancing interests, concepts, and theories that confront criminal justice professionals. With that end in mind, this introductory textbook offers a template for students who don't just want to learn about the world in which they live, but also strive to transform it.

Ethics, Discretion, and Public Policy

Over its eleven editions, *Criminal Justice in Action*'s central mission has been to teach students how the criminal justice system works. The textbook also provides a platform for contemplation and critique, primarily through the following three components:

- **Policy Matters.** This chapter-ending feature gives students the opportunity to “dig deeper” into a policy issue introduced earlier in the text. The *Policy Matters* feature includes two parts. First, an in-depth summary of the controversy surrounding the issue. Second, several review questions and an assignment, new to this edition, entitled “The Balancing Act,” in which students must consider opposing positions on the topic at hand. Subjects covered that are new to this edition include police use-of-force policies (Chapter 6), crime-fighting facial recognition software (Chapter 7), and the role of prosecutors in death penalty reform (Chapter 11).
- **Ethics Challenges.** Each chapter contains several of these short challenges, placed at the end of a section. Besides reinforcing an important concept

from that section, the challenges allow students to explore their own values in the context of the criminal justice system. New subjects include animal protection laws and due process (Chapter 4), vaccines for prison inmates (Chapter 14), and the shackling of youths in juvenile court (Chapter 15).

- **Discretion in Action.** This feature asks students to step into the shoes of a criminal justice professional or other CJ participant and make a difficult decision. A number of new *Discretion in Action* features drive home the pivotal role that discretion plays in the criminal justice system, covering topics such as free speech and violent online content (Chapter 8), prosecuting fraternity brothers for hazing deaths (Chapter 6), and the criminal justice system's response to encouraging suicide (Chapter 11).

This expanded coverage of ethics, policy, and discretion allows us to present a *panoramic* view of important criminal justice issues. Chapter 6, for example, opens with a discussion of the doctrine of qualified immunity in the context of police use-of-force. Throughout the chapter, issues of police accountability in a number of different areas, including wrongful force, are addressed. Finally, the chapter-closing *Policy Matters* feature asks students to balance the obvious need for police to use deadly force at times with the equally obvious need to protect society from unreasonable police force.

Careers in Criminal Justice

We are well aware that many students using this text are interested in a criminal justice career. Consequently, as in previous editions, each chapter of *Criminal Justice in Action, Eleventh Edition*, includes a **Careers in CJ** feature in which criminal justice practitioners present personal accounts of their professions. These features also include a **Social Media Career Tip**, designed to help students succeed in today's difficult labor market by successfully navigating the opportunities and pitfalls of searching for employment online.

To this same end, each chapter of the Eleventh Edition also includes a feature entitled **Getting LinkedIn**. These items focus on professions such as computer forensics, victim advocacy, or homeland security, providing students with information on how to

best research the profession while visiting the popular business-oriented social networking website.

Changes to the Eleventh Edition

Each chapter in the Eleventh Edition begins with a new “ripped from the headlines” vignette that introduces the themes to be covered in the pages that follow. Immediately following the vignette, a **new “YES or NO” question** challenges students to reexamine any conclusions they may have drawn from the preceding account. As will be discussed in more detail shortly, this edition also includes a **new Cybersecurity and CJ feature** that adds to the textbook’s already extensive treatment of cyber crime.

Furthermore, the text continues to reflect the ever-changing nature of our topic, with hundreds of new references to **research involving crime and criminal behavior** and **real-life examples describing actual crimes**. The Eleventh Edition also includes numerous **new features and figures**, as well as **discussions of every relevant United States Supreme Court decision** that has been handed down since the previous edition.

Concentrated Critical Thinking

As with previous editions, the Eleventh Edition of *Criminal Justice in Action* focuses on developing critical thinking. Almost every feature and photo caption in the textbook includes a critical thinking question, and students are provided with five additional such questions at the end of each chapter. Chapter-opening vignettes are followed by a critical analysis “YES or NO” question that relates back to the vignette and introduces themes important to the upcoming chapter.

At the beginning of each chapter, students are also introduced to up to ten **learning objectives (LOs)** for that chapter. For example, in Chapter 8, “Courts and the Quest for Justice,” Learning Objective 3 (LO3) asks students to “Explain the difference between trial and appellate courts.” The area of text that furnishes the information is marked with an LO3 graphic, and, finally, the correct answer is found in the chapter-ending materials. This continuous active learning will greatly expand students’ understanding of dozens of crucial criminal justice topics.

Chapter-by-Chapter Organization of the Text

This edition’s fifteen chapters blend the principles of criminal justice with current research and high-interest examples of what is happening in the world of crime and crime prevention right now. Each chapter is concisely summarized below.

Part 1: The Criminal Justice System

Chapter 1 provides an introduction to the criminal justice system’s three major institutions: law enforcement, the courts, and corrections. The chapter answers conceptual questions such as “what is crime?” and “what are the values of the American criminal justice system?” It also includes new discussions on several important crime issues, including gun crime and gun control, cyber crime, and white collar crime.

Chapter 2 focuses on criminology, giving students insight into why crime occurs before shifting their attention toward how society goes about fighting it. The chapter addresses the most widely accepted and influential criminological hypotheses, including choice theories, trait theories, sociological theories, social process theories, social conflict theories, and life course theories.

Chapter 3 furnishes students with an understanding of two areas fundamental to criminal justice: (1) the practical definitions of crime, such as the difference between felonies and misdemeanors and different degrees of criminal conduct, and (2) the various modes of measuring crime, including the FBI’s Uniform Crime Reports and the U.S. Department of Justice’s National Crime Victimization Survey.

Chapter 4 lays the foundation of criminal law. It addresses constitutional law, statutory law, and other sources of American criminal law before shifting its focus to the legal framework that allows the criminal justice system to determine and punish criminal guilt.

Part 2: The Police and Law Enforcement

Chapter 5 acts as an introduction to law enforcement in the United States today. This chapter offers a detailed description of the country’s numerous local, state, and federal law enforcement agencies and examines the responsibilities and duties that come with a career in law enforcement.

Chapter 6 puts students on the streets and gives them a gritty look at the many challenges of being a law enforcement officer. It starts with a discussion of the importance of discretion in law enforcement and then moves on to policing strategies and issues in modern policing, such as use of force, corruption, and the “thin blue line.”

Chapter 7 examines the sometimes uneasy relationship between law enforcement and the U.S. Constitution by explaining the rules of being a police officer. Particular emphasis is placed on the Fourth, Fifth, and Sixth

Amendments, giving students an understanding of crucial concepts such as probable cause, reasonableness, and custodial interrogation.

Part 3: Criminal Courts

Chapter 8 takes a big-picture approach in describing the American court system, giving students an overview of the basic principles of our judicial system, the state and federal court systems, and the role of judges in the criminal justice system.

Chapter 9 provides students with a rundown of pretrial procedures and highlights the role that these procedures play in America's adversary system. Thus, pretrial procedures such as establishing bail and plea bargaining are presented as part of the larger "battle" between the prosecution and the defense.

Chapter 10 puts students in the courtroom and gives them a strong understanding of the steps of the criminal trial. The chapter also attempts to answer the fascinating but ultimately frustrating question, "Are criminal trials in this country fair?"

Chapter 11 links the many different punishment options for those who have been convicted of a crime with the theoretical justifications for those punishments. The chapter also examines punishment in the policy context, exploring the consequences of several decades' worth of "get tough" strategies and investigating recent trends in a more lenient direction.

Part 4: Corrections

Chapter 12 makes an important point, and one that is often overlooked in the larger discussion of the American corrections system: Not all of those who are punished need to be placed behind bars. This chapter explains the community corrections options, from probation to parole to intermediate sanctions such as intensive supervision and home confinement.

Chapter 13 focuses on prisons and jails. The phenomenon known as "mass incarceration" has pushed these institutions to the forefront of the criminal justice system, and this chapter explores the various issues—such as overcrowding and the emergence of private prisons—that have resulted from a prison population boom that is only now showing signs of subsiding.

Chapter 14 is another example of our efforts to get students "into the action" of the criminal justice system, this time putting them in the uncomfortable position of being behind bars. It also answers the question, "What happens when the inmate is released back into society?"

Part 5: Juvenile Justice

Chapter 15 examines the juvenile justice system, giving students a comprehensive description of the path taken by delinquents from first contact with police to trial and punishment. The chapter contains a strong criminological component as well, scrutinizing the various theories of why certain juveniles turn to delinquency and what steps society can take to stop them from doing so before it is "too late."

Special Features

Supplementing the main text of *Criminal Justice in Action, Eleventh Edition*, are more than one hundred eye-catching, instructive, and penetrating special features. These features have been designed to enhance the student's understanding of a particular criminal justice issue.

Careers in CJ: As stated before, many students reading this book are planning a career in criminal justice. We have provided them with an insight into some of these careers by offering first-person accounts of what it is like to work as a criminal justice professional. Each Careers in CJ feature also includes a Social Media Career Tip to help students succeed in today's competitive labor market for criminal justice professionals.

Mastering Concepts: Some criminal justice topics require additional explanation before they become crystal clear in the minds of students. This feature helps students to master many of the essential concepts in the textbook.

Cybersecurity and CJ: The text already contains dozens of examples of how well-established and emerging technologies impact the American criminal justice system on a daily basis. This new feature goes deeper into the murky expanse where crime and cyberspace interconnect, examining topics such as cyberterrorism, cell phone encryption, and juvenile hacking.

Discretion in Action: This feature puts students in the position of a criminal justice actor in a hypothetical case or situation that is based on a real-life event. The facts of the case or situation are presented with alternative possible outcomes, and the student is asked to take the part of the criminal justice professional or lay participant and make a decision. Students can then consult Appendix B at the end of the text to learn what actually happened in the offered scenario.

Comparative Criminal Justice: The world offers a dizzying array of different criminal customs and codes, many of which are in stark contrast to those accepted in the United States. This feature provides dramatic and sometimes perplexing examples of foreign criminal justice

practices in order to give students a better understanding of our domestic ways.

Landmark Cases: Rulings by the United States Supreme Court have shaped every area of the criminal justice system. In this feature, students learn about and analyze the most influential of these cases.

Myth vs Reality: Nothing endures like a good myth. In this feature, we try to dispel some of the more enduring myths in the criminal justice system while at the same time asking students to think critically about their consequences.

Extensive Study Aids

Criminal Justice in Action, Eleventh Edition, includes a number of pedagogical devices designed to complete the student's active learning experience. These devices include the following:

- Concise **chapter outlines** appear at the beginning of each chapter. The outlines give students an idea of what to expect in the pages ahead, as well as a quick source of review when needed.
- Dozens of **key terms** and a **running glossary** focus students' attention on major concepts and help them master the vocabulary of criminal justice. The chosen terms are boldfaced in the text, allowing students to notice their importance without breaking the flow of reading. On the same page that a key term is highlighted, a margin note provides a succinct definition of the term. For further reference, a glossary at the end of the text provides a full list of all the key terms and their definitions.
- Each chapter has numerous **figures**, which include graphs, charts, and other forms of colorful art that reinforce a point made in the text.
- Hundreds of **photographs** add to the overall readability and design of the text. Each photo has a caption, and most of these captions include a critical-thinking question dealing with the topic at hand.

Supplements

MindTap® for Introduction to Criminal Justice The most applied learning experience available, MindTap is dedicated to preparing students to make the kinds of reasoned decisions required as criminal justice professionals faced with real-world challenges. Available for virtually every Criminal Justice course, MindTap offers customizable content, course analytics, an e-reader, and more—all within your current learning management system. The new MindTap for *Introduction to Criminal Justice* delivers a rich array of assignments, including—“*Think, Decide,*

Act” multi-step decision-making scenarios, “*Fast Facts*” audiocast episode activities, chapter quizzes, as well as riveting “*Mission Critical*” real-life stories that apply learning while addressing the human element of criminal justice covering topics of de-escalation, mental and emotional health, and implicit bias.

Instructor's Manual with Lesson Plans The manual includes learning objectives, key terms, a detailed chapter outline, a chapter summary, lesson plans, discussion topics, student activities, “What If” scenarios, media tools, and sample syllabi. The learning objectives are correlated with the discussion topics, student activities, and media tools.

Downloadable Word Test Bank The enhanced test bank includes a variety of questions per chapter—a combination of multiple-choice, true/false, completion, essay, and critical thinking formats, with a full answer key. The test bank is coded to the learning objectives that appear in the main text, and identifies where in the text (by section) the answer appears. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage so instructors can be sure they are working with an assessment and grading resource of the highest caliber.

Cengage Learning Testing Powered by Cognero, the accompanying assessment tool is a flexible, online system that allows you to import, edit, and manipulate test bank content, and deliver tests from your LMS Online PowerPoint® Lectures. Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint slides reflect the content and organization of the new edition of the text and feature some additional examples and real-world cases for application and discussion.

Acknowledgments

Throughout the creation of the eleven editions of this text, we have been aided by hundreds of experts in various criminal justice fields and by professors throughout the country, as well as by numerous students who have used the text. We sincerely thank all who participated in the revision of *Criminal Justice in Action*. We believe that the Eleventh Edition is even more responsive to the needs of today's criminal justice instructors and students alike because we have taken into account the constructive comments and criticisms of our reviewers and the helpful suggestions of our survey respondents.

We continue to appreciate the extensive research efforts of Shawn G. Miller and the additional legal assistance of William Eric Hollowell. Senior Product Manager Mike Worls supplied crucial guidance to the project through his suggestions and

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A special word of thanks must also go to those responsible for creating the MindTap that accompanies *Criminal Justice in Action*, including the support of the Digital Delivery Lead, Kristin Hinz, and Content Manager, Marta Healey-Gerth. We are also grateful to

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Any criminal justice text has to be considered a work in progress. We know that there are improvements that we can make. Therefore, write us with any suggestions that you may have.

L. K. G.

R. L. M.



This book is dedicated to my good friend and colleague, Lawrence Walsh, of the Lexington, Kentucky Police Department. When I was a rookie, he taught me about policing. When I became a researcher, he taught me about the practical applications of knowledge. He is truly an inspiring professional in our field.

L.K.G.

To Charlie French,

Let's keep doing
triathlons together for
many years to come.

R.L.M.



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CHAPTER 1

CRIMINAL JUSTICE TODAY

To target your study and review, look for these numbered Learning Objectives throughout the chapter.

Chapter Outline		Corresponding Learning Objectives
What Is Crime?	1	Describe the two most common models of how society determines which acts are criminal.
	2	Define <i>crime</i> .
The Purpose of the Criminal Justice System	3	Explain two main purposes of the criminal justice system.
The Structure of the Criminal Justice System	4	Outline the three levels of law enforcement.
	5	List the essential elements of the corrections system.
Discretion and Ethics	6	Explain the difference between the formal and informal criminal justice processes.
	7	Define <i>ethics</i> , and describe the role that it plays in discretionary decision making.
Crime in Focus	8	Explain how background checks, in theory, protect the public from firearm-related violence.
	9	Outline the three major reasons why the Internet is conducive to the dissemination of child pornography.
	10	Indicate some of the ways that white-collar crime is different from violent or property crime.

Fatal Restraint



▲ Demonstrators in Miami, Florida, demand a response by the American criminal justice system following George Floyd's death in Minneapolis. Tverdokhlit/Shutterstock

Darnella Frazier was walking by a grocery store on the south side of Minneapolis when she saw police officers pinning a man to the ground. Frazier took out her cell-phone and began recording. On the resulting video, the suspect, an African American named George Floyd, can be heard repeatedly saying, “I can’t breathe.” The video also shows a white Minneapolis police officer named Derek Chauvin impassively kneeling on Floyd. Eventually, Floyd’s eyes close and his head falls to the pavement. An ambulance arrives to remove Floyd’s lifeless body. “The police killed him,” Frazier says on the video, “right in front of everybody.”

An hour later, Floyd was indeed pronounced dead at a local hospital. This tragic incident began with Chauvin and several other officers responding to a report that someone had tried to make a purchase at the grocery store using a counterfeit twenty-dollar bill. They arrested Floyd, who, handcuffed, forcefully resisted being placed in the squad car. To subdue Floyd, Chauvin kept his knee

on Floyd’s neck for eight minutes and forty-six seconds, the final three minutes of which Floyd was unresponsive. A subsequent report by the Minneapolis Police Department said that its officers are trained to know that the method Chauvin used to restrain Floyd is “inherently dangerous.”

Floyd’s death sparked demonstrations across the United States, some of which led to extensive violence and property damage. The focus of the protests—excessive use of force by law enforcement against members of minority groups—has been a persistent problem for the American criminal justice system. In fact, African Americans are three times more likely than white Americans to be killed by the police, and confrontations with law enforcement are the sixth-leading cause of death for young Black men in this country. Minneapolis Mayor Jacob Frey spoke for many when he said, of Floyd’s fate, “Being Black in America should not be a death sentence.”

YES OR NO?

Should police officers be permitted to use force against a suspect who is being detained for questioning about a non-violent crime such as passing counterfeit currency? Yes or no? Why?

1. If you answered yes: At what point does Officer Derek Chauvin’s use of force against George Floyd change from justifiable to unjustifiable? Why? What additional information, if any, would you need to make this determination?
2. If you answered no: According to the Minneapolis police officers at the scene, George Floyd refused their repeated requests to show them his hands and was acting “erratically.” Does such behavior justify the use of force by police to detain a suspect? Why or why not?

WHAT IS CRIME?

Former Minneapolis police officer Derek Chauvin was initially charged with third degree murder and second degree manslaughter in connection with George Floyd's death. Although these two crimes carry a combined maximum sentence of thirty-five years in prison, the news disappointed many observers. "We expected a first degree murder charge," said Floyd's family in a statement. "We want a first degree murder charge."¹ In Minnesota, a person found guilty of first degree murder is subject to a sentence of life imprisonment.

To prove first degree murder, however, law enforcement officials would have to show that Chauvin *intended* to kill Floyd. By contrast, a defendant in Minnesota can be convicted of third degree murder if that defendant caused someone's death in a dangerous act "without regard for human life."² According to Richard Frase, a professor of criminal law at the University of Minnesota, unless investigators were able to find any specific reason that Chauvin wanted Floyd dead, it would be difficult to find the former police officer guilty of first degree murder.³

As this example shows, *crime* is not simply a general term for a violent act, or for behavior that seems dishonest or dangerous or morally wrong. A **crime** is a wrong against society that is *proclaimed by law* and that, if committed under specific circumstances, is punishable by the criminal justice system.

Determining Criminal Behavior

One problem with the definition of crime just provided is that it obscures the complex nature of societies. A society is not static—it evolves and changes, and its concept of criminality evolves and changes as well. In the wake of George Floyd's death, many state and local governments changed their laws regarding the use of police force. The Minneapolis City Council, for example, banned the use of chokeholds by law enforcement agents.⁴

International examples also show how different societies can have different concepts of criminality. Russia's legislature has criminalized the act of making social media posts that "blatantly disrespect" the country, Russia's official state symbols, or Russian authorities. Repeat offenders can be sentenced to fifteen days in prison.⁵ It is highly unlikely that American courts, bound by our traditions of freedom of speech, would allow any similar legislative action.

To more fully understand the concept of crime, it will help to examine the two most common models of how society "decides" which acts are criminal: the consensus model and the conflict model.

The Consensus Model The term *consensus* refers to general agreement among the majority of any particular group. Thus, the **consensus model** rests on the assumption that as people gather together to form a society, its members will naturally share similar norms and values. Those individuals whose actions deviate from the established norms and values are considered to pose a threat to the well-being of society as a whole and must be sanctioned (punished). The society passes laws to control and prevent unacceptable behavior, thereby setting the boundaries for acceptable behavior within the group.

The consensus model, to a certain extent, assumes that a diverse group of people can have similar **morals**. In other words, they share an ideal of what is "right" and "wrong." Consequently, as public attitudes toward morality change, so do laws. In seventeenth-century America, a person found guilty of *adultery* (having sexual relations with someone other than one's spouse) could expect to be publicly whipped, branded, or even executed. Furthermore, in the early 1900s, one could walk into a pharmacy and purchase heroin. Today, social attitudes have shifted to consider adultery a personal issue, beyond the reach of the state, and to consider the sale of heroin a criminal act.

LEARNING OBJECTIVE

1

Describe the two most common models of how society determines which acts are criminal.

Crime An act that violates criminal law and is punishable by criminal sanctions.

Consensus Model A criminal justice model in which the majority of citizens in a society share the same values and beliefs. Criminal acts are acts that conflict with these values and beliefs and that are deemed harmful to society.

Morals Principles of right and wrong behavior, as practiced by individuals or by society.

Conflict Model A criminal justice model in which the content of criminal law is determined by the groups that hold economic, political, and social power in a community.

Deviance Behavior that is considered to go against the norms established by society.

The Conflict Model Some people reject the consensus model on the ground that moral attitudes are not constant or even consistent. In large, democratic societies such as the United States, different groups of citizens have widely varying opinions on controversial issues of morality and criminality such as abortion, the war on drugs, immigration, and assisted suicide. These groups and their elected representatives are constantly coming into conflict with one another. According to the **conflict model**, then, the most politically powerful segments of society—based on class, income, age, and race—have the most influence on criminal laws and are therefore able to impose their values on the rest of the community.

Consequently, what is deemed criminal activity is determined by whichever group happens to be holding power at any given time. Because certain groups do not have access to political power, their interests are not served by the criminal justice system. For instance, more than seven of every ten elected prosecutors in the United States are white men, while only 5 percent of these posts are held by members of minority groups.⁶ Given the authority of prosecutors to decide which criminal charges will be brought against defendants, this lack of diversity can contribute to the mistrust of law enforcement felt in many minority communities.

LEARNING
OBJECTIVE

2

Define *crime*.

▼ Nearly every state in the nation has local laws that ban cigarette smoking in workplaces, restaurants, and/or bars. **Based on the definition in the text, is smoking considered *deviant* behavior in our society? Do you consider it deviant behavior? Explain your answers.**

Ehab Edward/Shutterstock.com

An Integrated Definition of Crime

Considering both the consensus and conflict models, we can construct a definition of crime that will be useful throughout this textbook. For our purposes, crime is an action or activity that is:

1. Punishable under criminal law, as determined by the majority or, in some instances, by a powerful minority.
2. Considered an *offense against society as a whole* and prosecuted by public officials, not by victims and their relatives or friends.
3. Punishable by sanctions based on laws that bring about the loss of personal freedom or life.

At this point, it is important to understand the difference between crime and **deviance**, or behavior that does not conform to the norms of a given community or society. Deviance is a subjective concept. For example, some segments of society may think that smoking marijuana or killing animals for clothing and food is deviant behavior. Deviant acts become crimes only when society as a whole, through its legislatures, determines that those acts should be punished—as is the situation today in the United States with using certain drugs but not with eating meat. Furthermore, not all crimes are considered particularly deviant—little social disapproval is attached to those who fail to follow the letter of parking laws. In essence, criminal law reflects those acts that we, as a society, agree are so unacceptable that steps must be taken to prevent them from occurring.



ETHICS CHALLENGE

What is a widespread activity that, although considered “normal” in modern American society, goes against your personal values or morals? What is the likelihood that this activity eventually will become illegal in the United States?

THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM

Defining which actions are to be labeled “crimes” is only the first step in safeguarding society from criminal behavior. Institutions must be created to apprehend alleged wrongdoers, to determine whether these persons have indeed committed crimes, and to punish those who are found guilty according to society’s wishes. These institutions combine to form the **criminal justice system**. As we begin our examination of the American criminal justice system in this introductory chapter, it is important to have an idea of its purpose.

Maintaining Justice

As its name implies, the explicit goal of the criminal justice system is to provide *justice* to all members of society. Because **justice** is a difficult concept to define, this goal can be challenging, if not impossible, to meet. Broadly stated, justice means that all individuals are equal before the law and that they are free from arbitrary arrest or seizure as defined by the law. In other words, the idea of justice is linked with the idea of fairness. Above all, we want our laws and the means by which they are carried out to be fair.

Justice and fairness are subjective terms, which is to say that people may have different concepts of what is just and fair. If a woman who has been beaten by her husband retaliates by killing him, what is her just punishment? Reasonable persons could disagree. Some might think that the homicide was justified and that she should be treated leniently. Others might insist that she should not have taken the law into her own hands. Police officers, judges, prosecutors, prison administrators, and other employees of the criminal justice system must decide what is “fair.” Sometimes, their course of action is obvious, but often, as we shall see, it is not.

Protecting Society

Within the broad mandate of “maintaining justice,” Megan Kurlychek of the University at Albany, New York, has identified four specific goals of our criminal justice system:

1. To protect society from potential future crimes of the most dangerous or “risky” offenders.
2. To determine when an offense has been committed and provide the appropriate punishment for that offense.
3. To rehabilitate those offenders who have been punished so that it is safe to return them to the community.
4. To support crime victims and, to the extent possible, return them to their precrime status.⁷

LEARNING OBJECTIVE

3

Explain two main purposes of the criminal justice system.

Criminal Justice System

The interlocking network of law enforcement agencies, courts, and corrections institutions designed to enforce criminal laws and protect society from criminal behavior.

Justice The quality of fairness that must exist in the processes designed to determine whether individuals are guilty of criminal wrongdoing.



▲ What would be some of the benefits of making it a crime to operate an unauthorized drone? What would be some of the drawbacks of such a law?

Dmitry Kalinovsky/Shutterstock.com

Again, though these goals may seem straightforward, they often are difficult to achieve. For example, drones have become a significant problem for law enforcement. Not long ago, these unmanned aerial vehicles were practically nonexistent. Now, at least 1.5 million have been registered with the Federal Aviation Administration.⁸ Many more unregistered or homemade “flying robots” have also taken to the skies.

Drones contribute to a wide variety of illegal behavior, from smuggling drugs across the U.S. border or into prisons, to interfering with fire-fighting helicopters, to dropping makeshift bombs in backyards. For the most part, however, local police departments do not have the authority to seize rogue drones unless an officer sees the vehicle engaged in a crime.⁹ Indeed, there are few criminal laws that directly address the unauthorized operation of drones. Clearly, as drone use becomes even more widespread, the criminal justice system will need to find more effective ways to protect society from wrongdoing involving these devices.

THE STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM

Society places the burden of maintaining justice and protecting our communities on those who work for the three main institutions of the criminal justice system: law enforcement, the courts, and corrections. In this section, we take an introductory look at these institutions and their role in the criminal justice system as a whole.

The Importance of Federalism

To understand the structure of the criminal justice system, you must understand the concept of **federalism**, a form of government in which powers are shared by the national (federal) government and the states. The framers of the U.S. Constitution, fearful of tyranny and a too-powerful central government, chose the system of federalism as a compromise.

Federalism in Action The appeal of federalism is that it establishes a strong national government capable of handling large-scale problems while allowing for state powers and local traditions. For example, in the mid-1990s, Oregon became the first state to legalize physician-assisted suicide for certain terminally ill patients. The federal government threatened to block this law by prosecuting Oregon doctors who carried it out. In *Gonzales v. Oregon* (2006), the United States Supreme Court supported the states’ ability to regulate medical issues such as physician-assisted suicide without federal interference.¹⁰ By the 2020s, nine states and the District of Columbia had legalized the practice.

Federal Criminal Law The Constitution gave the national government certain express powers, such as the power to coin money, raise an army, and regulate interstate commerce. All other powers were left to the states, including police power, which allows the states to enact whatever laws are necessary to protect the health, morals, safety, and welfare of their citizens.

As the American criminal justice system has evolved, the ideals of federalism have ebbed somewhat. Specifically, the powers of the national government have expanded significantly. In the early 1900s, only about one hundred specific activities were illegal under federal criminal law. Today, there are about five thousand

Federalism A form of government in which a written constitution provides for a division of powers between a central government and several regional governments.

federal criminal statutes, meaning that Americans are increasingly likely to come in contact with the federal criminal justice system.¹¹

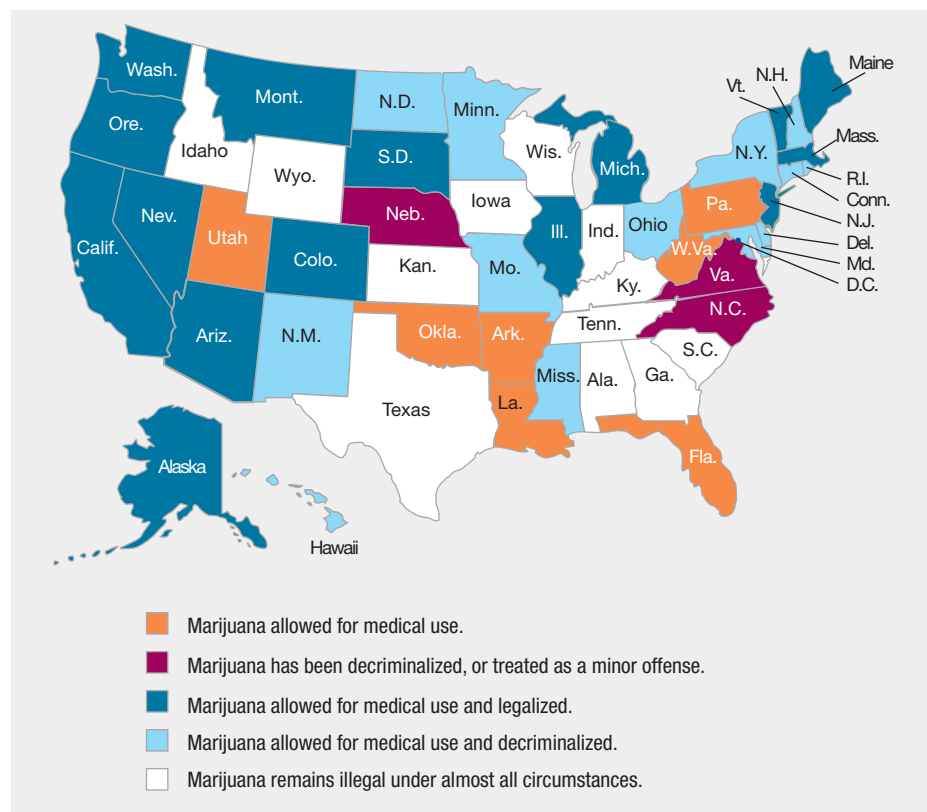
Marijuana and the States Today, issues relating to federalism are an important part of the ongoing clash between federal and state marijuana laws. Under federal law, any use of marijuana is illegal. Indeed, the Drug Enforcement Administration (DEA) has repeatedly reaffirmed marijuana's status as a Schedule 1 drug—in the same category as heroin—because of its “high potential for abuse.”¹² At the same time, the recreational use of small amounts of marijuana is legal in fifteen states plus Washington, D.C. Nearly forty states allow marijuana consumption for medicinal purposes, and possession of small amounts of the drug has been decriminalized in sixteen states, meaning that its use is treated as an infraction similar to a traffic violation rather than as a crime. (See Figure 1.1.)

In *Gonzales v. Raich* (2005), the United States Supreme Court ruled that, when it comes to marijuana regulation, “if there is any conflict between federal and state law, federal law shall prevail.”¹³ How, then, have numerous states been able to pass laws that clearly are incompatible with federal marijuana prohibitions?

For the most part, federal law enforcement officials have chosen to ignore recreational and medical marijuana use in “pot-friendly” states, as long as the drug is not sold to minors or exported to states where it is illegal. Nonetheless, in a single year, the DEA has seized about two million marijuana plants and confiscated nearly \$35 million worth of marijuana-related contraband in states where the drug has been legalized.¹⁴

FIGURE 1.1 Marijuana and Criminal Law

As this map shows, most states—representing about three-fourths of the population of the United States—allow for the use of marijuana under certain circumstances. Remember that *any* use of the drug is outlawed under federal law.



LEARNING OBJECTIVE

4

Outline the three levels of law enforcement.

Law Enforcement The ideals of federalism can be clearly seen in the local, state, and federal levels of law enforcement. Though agencies from the different levels cooperate if the need arises, they have their own organizational structures and tend to operate independently of one another. We briefly introduce each level of law enforcement here and cover them in more detail in Chapters 5, 6, and 7.

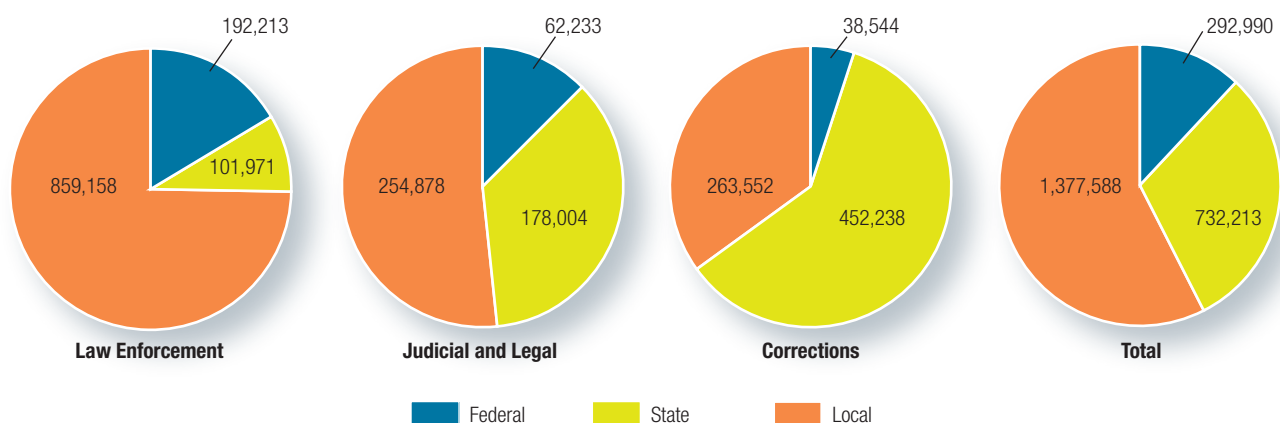
Local Law Enforcement On the local level, the duties of law enforcement agencies are split between counties and municipalities. The chief law enforcement officer of most counties is the county sheriff. Those who hold the position of sheriff are typically elected, often for a two- or four-year term. In some areas, where city and county governments have merged, there is a county police force, headed by a chief of police. As Figure 1.2 shows, the bulk of all police officers in the United States are employed on a local level. More than two-thirds of the local police departments in the United States employ fewer than twenty-five police officers, though a large city such as New York may have a police force of about 36,000.¹⁵

Local police are responsible for the “nuts and bolts” of law enforcement work. They investigate most crimes and attempt to deter crime through patrol activities. They apprehend criminals and participate in trial proceedings, if necessary. Local police are also charged with “keeping the peace,” a broad set of duties that includes crowd and traffic control and the resolution of minor conflicts between citizens. In many areas, local police have the added obligation of providing social services such as dealing with domestic violence and child abuse.

State Law Enforcement Hawaii is the only state that does not have a state law enforcement agency. Generally, there are two types of state law enforcement agencies, those designated simply as “state police” and those designated as “highway patrols.” State highway patrols concern themselves mainly with infractions on public highways and freeways. Other state law enforcers include fire marshals, who investigate suspicious fires and educate the public on fire prevention. State fish, game, and watercraft wardens police a state’s natural resources and often oversee its firearms laws. Some states also have alcoholic beverage control officers, as well as agents who investigate welfare and food stamp fraud.

Federal Law Enforcement The enactment of new national laws over the past forty years has led to an expansion in the size and scope of the federal government’s participation in the criminal justice system. Among other things, these laws have dealt with terrorism, guns, drugs, and violent crime. The Department of Homeland Security, which we will examine in detail in Chapter 5, combines the police powers of twenty-four federal agencies to protect the United States from terrorist attacks. Other federal agencies with police powers include the Federal

FIGURE 1.2 Local, State, and Federal Employees in Our Criminal Justice System



Source: Bureau of Justice Statistics, *Justice Expenditure and Employment Extracts, 2013—Final* (Washington, D.C.: U.S. Department of Justice, June 2018), Table 2.

Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the U.S. Secret Service, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In fact, almost every federal agency, including the postal and forest services, has some kind of police power.

Federal law enforcement agencies operate throughout the United States, and often work in cooperation with their local and state counterparts. There can be tension between the different branches of law enforcement, however, when state criminal law and federal criminal law are incompatible. For example, as noted earlier, even though a number of states have legalized the sale and possession of small amounts of marijuana, the drug is still illegal under federal law. Consequently, federal officers are authorized to make marijuana arrests in those states, regardless of the content of those states' criminal codes.

The Courts The United States has a *dual court system*, which means that we have two independent judicial systems, one at the federal level and one at the state level. In practice, this translates into fifty-two different court systems: one federal court system and fifty different state court systems, plus that of the District of Columbia. In general, defendants charged with violating federal criminal law will face trial in federal court, while defendants charged with violating state law will appear in state court.

The *criminal court* and its work group—the judge, prosecutors, and defense attorneys—are charged with the weighty responsibility of determining the innocence or guilt of criminal suspects. We will cover these important participants, their roles in the criminal trial, and the court system as a whole in Chapters 8, 9, 10, and 11.

Corrections Once the court system convicts and sentences an offender, that person is delegated to the corrections system. (Those convicted in a state court will be under the control of that state's corrections system, and those convicted of a federal crime will find themselves under the control of the federal corrections system.) Depending on the seriousness of the crime and their individual needs, offenders are placed on probation, incarcerated, or transferred to community-based correctional facilities.

- *Probation*, the most common correctional treatment, allows the offender to return to the community and remain under the supervision of an agent of the court known as a probation officer. While on probation, the offender must follow certain rules of conduct. When probationers fail to follow these rules, they may be incarcerated.
- If the sentence includes a period of *incarceration*, the offender will be remanded to a correctional facility for a certain amount of time. *Jails* hold those convicted of minor crimes with relatively short sentences, as well as those awaiting trial or involved in certain court proceedings. *Prisons* house those convicted of more serious crimes with longer sentences. Generally speaking, counties and municipalities administer jails, while prisons are the domain of federal and state governments.

▼ America's state and federal prisons hold just under 1.5 million inmates, while, on any given day, about 745,000 inmates are locked up in the nation's jails. **What are the basic differences between prisons and jails?**

View Apart/Shutterstock.com



- *Community-based corrections* have increased in popularity as jails and prisons have been plagued with problems of funding and overcrowding. Community-based correctional facilities include halfway houses, residential centers, and work-release centers. They operate on the assumption that not all convicts need or benefit from incarceration in jail or prison.

The majority of inmates released from incarceration are not finished with the corrections system. The most frequent type of release from a jail or prison is *parole*, in which an inmate, after serving part of the sentence in a correctional facility, is allowed to serve the rest of the term in the community. Like someone on probation, a parolee must conform to certain conditions of freedom, with the same consequences if these conditions are not followed. Issues of probation, incarceration, community-based corrections, and parole will be covered in Chapters 12, 13, and 14.

The Criminal Justice Process

In its landmark report, the President's Commission on Law Enforcement and Administration of Justice asserted that the criminal justice system

is not a hodgepodge of random actions. It is rather a continuum—an orderly progression of events—some of which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view.¹⁶

The commission's assertion that the criminal justice system is a "continuum" is one that many observers would challenge.¹⁷ Some liken the criminal justice system to a sports team, which is the sum of an indeterminable number of decisions, relationships, conflicts, and adjustments.¹⁸ Such a volatile mix is not what we generally associate with a "system." For most, the word **system** indicates a certain degree of order and discipline. That we refer to our law enforcement agencies, courts, and correctional facilities as part of a "system" may reflect our hopes rather than reality. Still, it will be helpful to familiarize yourself with the basic steps of the *criminal justice process*, or the procedures through which the criminal justice system meets the expectations of society. These basic steps are outlined in Figure 1.3.

In his classic study of the criminal justice system, Herbert Packer, a professor at Stanford University, compared the ideal criminal justice process to an assembly line "down which moves an endless stream of cases, never stopping."¹⁹ In Packer's image of assembly-line justice, each step of the **formal criminal justice process** involves a series of "routinized operations" with the end goal of getting the criminal defendant from point A (arrest by law enforcement) to point B (the criminal trial) to point C (if guilty, the punishment).²⁰ As Packer himself was wont to point out, the daily operations of criminal justice rarely operate so smoothly. In this textbook, the criminal justice process will be examined as the end product of many different decisions made by many different criminal justice professionals in law enforcement, the courts, and corrections.

DISCRETION AND ETHICS

Practically, the formal criminal justice process suffers from a serious drawback: it is unrealistic. Law enforcement agencies do not have the staff or funds to investigate every crime, so they must decide where to direct their limited resources. Increasing caseloads and a limited amount of time in which to dispose of them constrict many of our nation's courts. Overcrowding in prisons and jails affects both law enforcement agencies and the courts—there is simply not enough room for all convicts.

System A set of interacting parts that, when functioning properly, achieve a desired result.

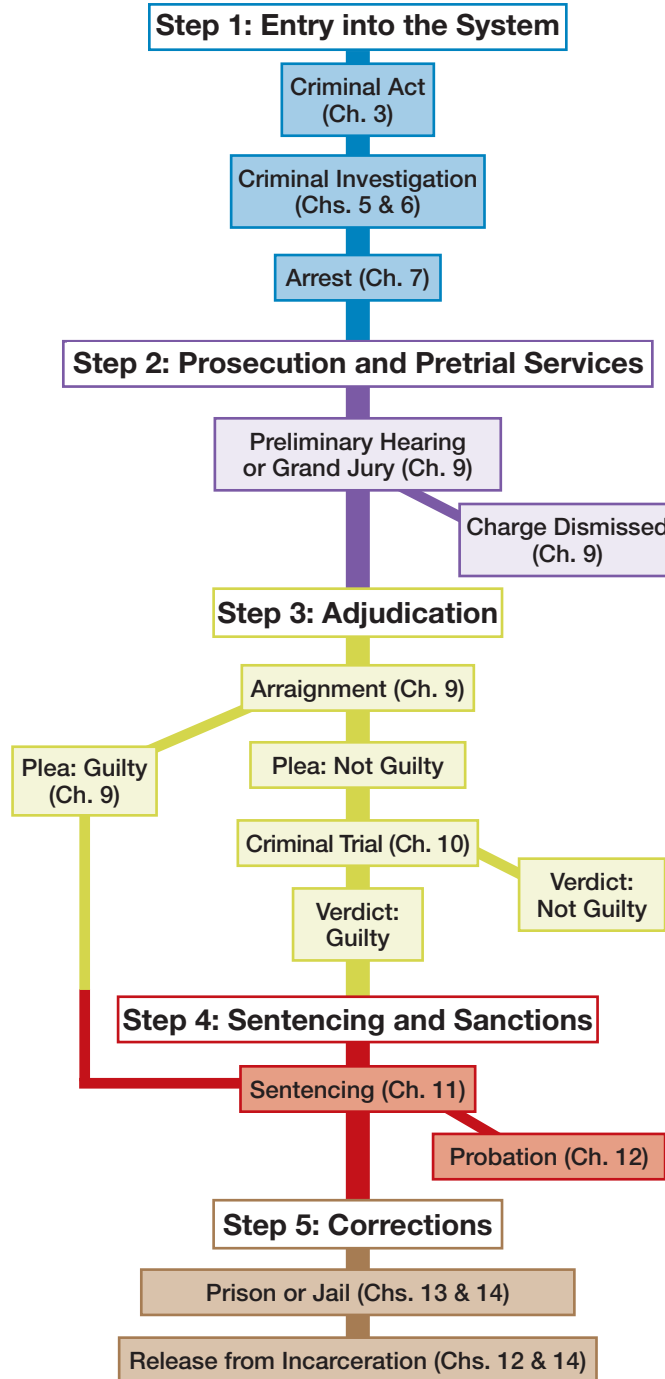
Formal Criminal Justice Process

The model of the criminal justice process in which participants follow formal rules to create a smoothly functioning disposition of cases from arrest to punishment.

12 Criminal Justice in Action

FIGURE 1.3 The Criminal Justice Process

This diagram provides a simplified overview of the basic steps of the criminal justice process, from criminal act to release from incarceration. Below each step, you will find the chapter of this textbook in which the event is covered.



The criminal justice system relies on *discretion* to alleviate these pressures. By **discretion**, we mean the authority to choose between and among alternative courses of action, based on individual judgment and conscience. Collectively, the discretionary decisions made by criminal justice professionals are said to produce an **informal criminal justice process** that does not operate within the rigid confines of formal rules and laws.

Discretion The ability of individuals in the criminal justice system to make operational decisions based on personal judgment instead of formal rules or official information.

Informal Criminal Justice Process A model of the criminal justice system that recognizes the informal authority exercised by individuals at each step of the criminal justice process.

Informal Decision Making

By its nature, the informal criminal justice system relies on the discretion of individuals to offset the rigidity of criminal statutes and procedural rules. For example, even if a prosecutor believes that a suspect is guilty, that prosecutor may decide not to bring charges against the suspect if the case is weak or the police erred during the investigative process. In many instances, prosecutors will not squander the scarce resource of court time on a case they might not win. Some argue that the informal process has made our system more just. Given the immense pressure of limited resources, the argument goes, only rarely will an innocent person end up before a judge and jury.²¹

Interpreting the Law In many instances, criminal justice professionals must use their discretion to interpret laws that are overly broad, vague, or even obsolete. For example, although twenty states still ban adultery, such laws are routinely ignored by authorities.²²

Nearly every municipal area that allows electric scooters bans their use on sidewalks—a prohibition that is routinely ignored. In Los Angeles, nearly one million scooter rides occur in an average month, with many taking place illegally on the sidewalk. Yet, during the month of June 2019, Los Angeles police officers issued only about 170 citations for this particular infraction.²³ Clearly, the officers were using their discretion to ignore most violators. The St. Louis Metropolitan Police Department (SLMPD) spoke for many law enforcement agencies by pointing out that it would be “challenging to prioritize scooter enforcement” when the SLMPD’s main focus was on violent crime.²⁴

In later chapters, we will examine many other circumstances that call for discretionary decision making by law enforcement officers. We will also cover discretion on the part of judges, who must interpret the law when overseeing criminal trials and sentencing guilty defendants, and corrections officials, who have a great deal of discretion in determining how to control prison and jail inmates. (See this chapter’s *Discretion in Action* feature for insight into how the informal criminal justice process applies to a distinct form of child pornography.)

The Pitfalls of Discretion Unfortunately, the informal criminal justice system does not always benefit from measured, rational decision making. Individual judgment can be tainted by personal bias, erroneous or irrational thinking, and plain ill will. When this occurs, discretion becomes “the power to *get away* with alternative decisions [emphasis added].”²⁵ Indeed, many of the rules of the formal criminal justice process are designed to keep its employees from substituting their own judgment for that of the general public, as expressed by the law.

One of the primary arguments for easing marijuana laws, a subject discussed earlier in the chapter, is that those laws are often selectively (and unfairly) enforced. In Washington, D.C., for example, a Black person is eleven times more likely than a white person to be arrested for public consumption of marijuana, while in New York City African Americans are eight times more likely to be arrested on low-level marijuana crimes than are whites.²⁶ (Numerous surveys have showed that marijuana usage rates between the two races are similar.)²⁷ In Chapter 7, you will learn more about *racial profiling*, which is the police practice of improperly targeting members of minority groups based on personal characteristics such as race or ethnicity.

Discretion in the courts has also come under criticism. Associate Supreme Court justice Antonin Scalia (1936–2016) believed that discretion in the courts tends to cause discriminatory and disparate criminal sentences, a subject we will discuss in Chapter 11. According to Scalia, the need for fairness and certainty in the criminal justice system outweighs the practical benefits of widespread and unpredictable discretionary decision making.²⁸



DISCRETION IN ACTION

The “Sexting” Scandal

The Situation The first hint of a serious problem came from an anonymous tip on the high school’s Safe2Tell hotline. According to the tipster, numerous students were using a photo vault app to share inappropriate images of themselves. Following a lengthy investigation by school officials and local law enforcement, the full extent of the “sexting” activity was revealed: more than one hundred students, both male and female, had contributed photos of themselves posing nude or in their underwear. As far as the investigators could determine, none of these images had been posted on the Internet or shown to adults, and no coercion or bullying was involved.

The Law Under state law, any person who takes, receives, or shares a photo of a “naked body part” of someone under the age of eighteen has committed a Class C felony child pornography offense. Under the law, the fact that such activity is consensual is irrelevant. A conviction for a Class C

felony is punishable by four to twelve years in a state prison and a fine of up to \$750,000.

What Would You Do? You are the prosecutor responsible for deciding the fate of the students involved in this “sexting” scandal. With nearly unlimited discretion, you have several choices: (1) you can charge the students with committing crimes involving child pornography; (2) you can require that they undergo counseling; or (3) you can do nothing, relying on the students’ parents to “straighten them out.” Note that any student convicted of child pornography charges would be required to register as a sex offender, making it difficult to find or keep a job and secure affordable housing in the future. How would you use your discretion in this situation?

To see how a prosecutor in Cañon City, Colorado, reacted in similar circumstances, go to Example 1.1 in Appendix B.

Ethics and Justice

How can we reconcile the need for some sort of discretion in criminal justice with the ever-present potential for abuse? Part of the answer lies in our initial definition of discretion, which mentions not only individual judgment but also *conscience*. Ideally, actors in the criminal justice system will make moral choices about what is right and wrong based on the norms that have been established by society. In other words, they will behave *ethically*.

Ethics in criminal justice is closely related to the concept of justice. Because criminal justice professionals are representatives of the state, they have the power to determine whether the state is treating its citizens fairly. If some law enforcement officers in fact make the decision to issue an electric scooter citation on the basis of the offender’s race, then they are acting not only unethically but also unjustly.

Ethics and the Law The line between ethics and justice is often difficult to discern, as ethical standards are usually not written into criminal statutes. Consequently, individuals must often “fill in” the ethical blanks. To make this point, ethics expert John Kleinig uses the real-life example of a police officer who refused to arrest a homeless person for sleeping in a private parking garage. A local ordinance clearly prohibited such behavior. The officer, however, felt it would be unethical to arrest a homeless person under those circumstances unless that person was acting in a disorderly manner. The officer’s supervisors were unsympathetic to this ethical stance, and he was suspended from duty without pay.²⁹

Ethics and Critical Thinking Did the police officer in the preceding example behave ethically by inserting his own beliefs into the letter of the criminal law? Would an officer who arrested peaceful homeless trespassers be acting unethically? In some cases, the ethical decision will be *intuitive*, reflecting an automatic response determined by a person’s background and experiences. In other cases, however, intuition is not enough. *Critical thinking* is needed for an ethical

LEARNING OBJECTIVE

7

Define *ethics*, and describe the role that it plays in discretionary decision making.

Ethics The moral principles that govern a person’s perception of right and wrong.

response. Throughout this textbook, we will use the principle of critical thinking—which involves developing analytical skills and reasoning—to address the many ethical challenges inherent in the criminal justice system.

ETHICS CHALLENGE

Refer back to this section's discussion of the police officer who refused to arrest the nonviolent homeless person for ethical reasons. Did the officer act properly in this situation, or should he have carried out the law regardless of his personal beliefs? Explain your answer.

CRIME IN FOCUS

In the United States, a crime occurs every four seconds.³⁰ Federal, state, and local legislation provides for the classification and punishment of hundreds of thousands of different crimes, from jaywalking to first degree murder. It would be difficult, if not impossible, to neatly summarize “crime in the United States.” As we close the first chapter of *Criminal Justice in Action*, however, we can provide a comprehensive survey of criminality in this country, starting with a look at violent crime.

Violent Crime

Crimes against persons, or *violent crimes*, have come to dominate our perspectives on crime. There are four major categories of violent crime:

- **Murder**, or the unlawful killing of a human being.
- **Sexual assault** and *rape*, which refer to various coerced actions of a sexual nature against an unwilling participant.
- **Assault** and **battery**, two separate acts that cover situations in which one person physically attacks another (battery), or, through threats, intentionally leads another to believe that they will be physically harmed (assault).
- **Robbery**, or the taking of funds, personal property, or any other article of value from a person by means of force or fear.

Murder The unlawful killing of one human being by another.

Sexual Assault Forced or coerced sexual intercourse or other sexual acts.

Assault A threat or an attempt to do violence to another person that causes that person to fear immediate physical harm.

Battery The act of physically contacting another person with the intent to do harm, even if the resulting injury is insubstantial.

Robbery The act of taking property from another person through force, threat of force, or intimidation.

Capital Crime A criminal act that makes the offender eligible to receive the death penalty.

Victim Any person who suffers physical, emotional, or financial harm as the result of a criminal act.

Violent crimes are further distinguished by *degree*, depending on their circumstances. These circumstances include the intent of the person committing the crime, whether a weapon was used, and any additional wrongdoing that may have taken place in connection with the underlying crime. In many states and under federal law, first degree murder is a **capital crime**, meaning that the offender is eligible for the death penalty.

With exceptions that we will discuss shortly, a crime involves at least two participants: the offender and the *victim*. (A **victim** is a person against whom a crime has been committed or who is directly or indirectly harmed by a criminal act.) The criminal justice system strives to be understanding and accommodating of victims, particularly victims of violent crimes. We will explore the extent to which these efforts have been successful throughout this textbook.

Gun Violence and Mass Shootings

According to data gathered by the federal government, firearms—handguns, rifles, and shotguns—are used in 73 percent of the nation's murders, 39 percent of its robberies, and 26 percent of its aggravated assaults.³¹ Statistics aside, gun

violence attracts national attention on a regular basis, particularly in the wake of high-profile shootings. For example, a gunman killed 22 people and wounded 26 others when he opened fire inside a crowded Walmart in El Paso, Texas. Fifteen hours later, another nine people were killed and 27 wounded by an assailant outside a bar in Dayton, Ohio.

These tragedies are referred to as *mass shootings*. The most widely accepted definition of a mass shooting is “an incident in which four or more people (not including the shooter) are killed or wounded.” By this measure, a mass shooting takes place about every eleven days in the United States.³²

The overall statistical impact of mass shootings is relatively small. Only about 1 percent of all firearm deaths occur as a result of these incidents, a number that pales in comparison with, for example, gun homicides linked to **street gang** activity.³³ Still, because of their shocking nature, mass homicides have focused national attention on gun violence in a way that “average” gun crimes do not.

Gun Control Policy Some place the blame for mass shootings with the relatively easy access to firearms in the United States. According to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, about 11 million firearms are manufactured in the United States each year.³⁴ The Small Arms Survey estimates that there are approximately 393 million firearms in the United States, not counting illegally owned guns and weapons on military bases.³⁵

Street Gang A group of people, usually three or more, who share a common identity and engage in illegal activities.



CAREERS IN CJ

F. W. Gill Gang Investigator



Courtesy of F. W. Gill

The problem, for most of these kids, is that nobody cares. Their parents don't, or can't, get involved in their children's lives. (How many times have I heard parents deny that their son or daughter is a gang banger, even though it's obvious?) Teachers are in the business of teaching and don't, or can't, take the time to get to know their most troubled students. So, when I'm dealing with gang members, the first thing I do is listen. I don't lecture them, I don't tell them that they are throwing away their lives. I just listen. You'd be amazed how effective this can be—these kids, who look so tough on the outside, just want an adult to care.

Not that there is any magic formula for convincing a gang member to go straight. It is very difficult to get someone to change lifestyles. If they don't want to change—really want to change—then nothing I can say or do is going to make much of a difference. Unfortunately, there are many lost causes. I've even had a couple of cases in which a juvenile was afraid to leave the gang because his father was a gang member, and he insisted that the boy stay in the gang. I have had some success in convincing gang members to turn their lives around by joining the military. The military provides discipline and a new outlook on life, things that these kids badly need. The way I look at it, in some cases, war is the best shot these kids have at saving their own lives.

SOCIAL MEDIA CAREER TIP When posting on Facebook, assume that your post will be read by a potential employer. If you think the post might reflect poorly on you as a potential gang investigator, if that is a career that interests you, keep it offline.



FASTFACTS

Youth Intervention Specialist/Gang Investigator

Job Description:

- Conducts assessments and refers at-risk youth to appropriate activities, programs, or agencies.
- Serves as a liaison between the police department, schools, other agencies, and the community regarding gang and other youth-related matters.

What Kind of Training is Required?

- A bachelor's degree in counseling, criminal justice, or other social science-related field. Bilingual (English/Spanish) skills are desired.

Annual Salary Range?

- \$80,000–\$90,000

Supporters of stricter *gun control* would like to see these numbers significantly reduced. **Gun control** refers to policies that federal and state governments implement to limit access to firearms. Opponents of gun control counter that someone who is planning to commit a crime with a gun is probably going to obtain that firearm illegally. Consequently, stricter gun control “prevents only law-abiding citizens from owning handguns.”³⁶

Regulating Gun Ownership The Second Amendment to the U.S. Constitution states, “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Because this language is somewhat archaic and vague, the United States Supreme Court has attempted to clarify the amendment’s modern meaning. In two separate rulings, the Court stated that the Second Amendment provides individuals with a constitutional right to bear arms and that this right must be recognized at all levels of government—federal, state, and local.³⁷

Background Checks In both of its Second Amendment cases, the Supreme Court emphasized that, to promote public safety, the government could continue to prohibit certain classes of individuals from legally purchasing firearms. The primary method for doing so involves **background checks** of individuals who purchase firearms from federally licensed gun dealers. The mechanics of background checks are regulated by the Brady Handgun Violence Prevention Act, enacted in 1993.³⁸

Known as the Brady Bill, this legislation requires a person wishing to purchase a gun from a licensed firearms dealer to complete an application. The application process includes a background check by a law enforcement agency, usually the FBI. Applicants can be prohibited from purchasing a firearm if they are: (1) fugitives from justice, (2) convicted felons, (3) unlawful drug users and drug addicts, (4) domestic violence offenders, (5) mentally ill, (6) in the country illegally, and (7) subject to a dishonorable discharge from the military.

Mental Health Issues Any person who has been involuntarily committed to a “mental institution” or “adjudicated as a mental defective” is barred from purchasing or possessing firearms. A person may be designated “mentally defective” when a court or other legal entity determines one of the following:

1. The person is a danger to themselves or others.
2. The person lacks the mental capacity to manage daily affairs.
3. The person has been found insane or incompetent to stand trial by a criminal or military court.³⁹

A widespread perception exists among Americans that mental health is a leading contributor to gun violence, particularly mass shootings.⁴⁰ In fact, a relatively small percentage of those who commit violent crimes in this country suffer from mental illness, meaning that gun control efforts might be better served by focusing on other areas of concern.⁴¹ (See this chapter’s *Comparative Criminal Justice* feature to learn about a country that has much stricter gun laws than the United States.)

The Loophole Problem For four years, Illinois law enforcement officials were aware that, as a violent felon, Gary Martin did not have the right to own his handgun. They took no steps to confiscate the firearm, however, and Martin eventually used it to kill five co-workers. Martin’s example highlights a significant problem with background checks: due to inaction or error, the checks often fail to keep firearms out of the hands of dangerous individuals.

Furthermore, the system contains significant loopholes. For one, gun dealers are permitted to sell firearms to individuals whose background checks have not been completed within three days. Other loopholes involve sales over the Internet

**LEARNING
OBJECTIVE**

8

Explain how background checks, in theory, protect the public from firearm-related violence

Gun Control Efforts by a government to regulate or control the sale of guns.

Background Check An investigation of a person’s history to determine whether that person should be, for example, allowed to legally purchase a firearm.



The German Way

In Germany, gun ownership is a privilege rather than a right. This distinction does not appear to have had much impact on German acceptance of firearms—the country has the fourth highest number of legal guns per capita in the world. When it comes to gun control, however, Germany imposes constraints on firearm sales and possession that are far more stringent than restrictions in the United States.

TOUGH GUN LAWS

To start, before purchasing a gun in Germany, an adult must obtain an ownership license, or *Waffenbesitzkarte*. This entails a background check to determine whether the applicant has a history of criminal behavior, alcohol or drug abuse, mental illness, or any other attribute that might place them at risk for violent behavior. The applicant must also pass a “specialized knowledge test” that proves knowledge of how to handle a gun and ammunition. Any applicant under the age of twenty-five must undergo a further psychological exam to ensure fitness for gun ownership.

In addition, German authorities emphasize the importance of firearm storage. As part of the licensing process, applicants must prove that they will keep the gun in a safe place where it can be accessed only by its owner. Officers of the state Criminal Office have the authority to carry out random inspections at the homes of gun owners to ensure that they are properly storing their weapons. Supporters of these extreme measures point out that Germany has one of the lowest rates of gun-related deaths in the world, and the country rarely experiences mass shootings.

FOR CRITICAL ANALYSIS

Before purchasing a gun in Germany, a person must convince authorities that the weapon is needed for a specific purpose, such as hunting, competing in shooting competitions, or providing professional security. Self-defense is *not* an acceptable reason for owning a gun in Germany. What is your opinion of this policy?

or at gun shows, neither of which requires a background check. Consequently, an estimated 22 percent of gun purchases are made without a background check, meaning that numerous people who are legally barred from owning guns are able to obtain them anyway.⁴²

State Firearm Laws For the most part, gridlock in the U.S. Congress has kept that body from passing significant firearms legislation in recent years. (Generally speaking, Republicans oppose stricter gun control legislation and Democrats favor it.) Constant state level legislative activity has filled this federal vacuum, resulting in a dizzying array of different gun laws in the United States. For example, unlike the federal government, eight states ban the sale and ownership of assault weapons, which fire high-speed, low-caliber rounds at a rapid speed.⁴³

The popularity of so-called “red flag” laws has also spread through state legislatures. These “extreme risk protection orders” allow family members or local officials to petition a court to temporarily bar someone from possessing a firearm. The court will, typically, approve the order if the person is deemed to pose a danger to themselves or others. It is difficult to measure the effectiveness of these laws, which are on the books in at least 17 states. Several studies do suggest, however, that they reduce the incidence of suicide, which is the most common form of death-by-firearm in the United States.⁴⁴

As befits a federalist system, many states have gun laws that are less restrictive than federal regulations. For instance, forty-six states permit “open carry”—the popular term for allowing people to carry firearms in plain sight. In thirty-one of these states, the gun owner does not need any license or permit to do so.⁴⁵ One response to mass shooting in schools has been to authorize teachers to bear arms while on the job. At least eleven states allow this practice. (To see how states have handled the question of “open carry” on college campuses, go to the *Policy Matters* feature at the end of the chapter.)



▲ A shooting at the Tree of Life synagogue in Pittsburgh claimed the lives of eleven worshippers. **Under what circumstances would this act be an example of domestic terrorism?** Brendt A Petersen/Shutterstock

GETTING Linked in™

Those who feel as though their First Amendment rights, or any other constitutional rights, have been violated often seek help from civil liberties or civil rights lawyers. You can connect with these criminal justice professionals on LinkedIn by searching for “civil rights lawyers” or “civil liberties lawyers,” or by entering the search term “legal aid.”

Terrorism The use or threat of violence to achieve political objectives.

Domestic Terrorism Acts of terrorism that take place on U.S. soil without direct foreign involvement.

Civil Liberties The basic rights and freedoms guaranteed to American citizens by the U.S. Constitution, particularly the Bill of Rights.

Domestic Terrorism

First, David Anderson and Francine Graham fatally shot Jersey City (New Jersey) Detective Joseph Seals as he approached their van. The couple then drove to a nearby kosher supermarket, walked in, and began firing. Before being killed by police, Anderson and Graham murdered three people in the store. Initially, law enforcement treated these attacks as random acts of violence. After finding examples of anti-Jewish and anti-law enforcement bias in the assailants’ online history, however, local and federal investigators treating the killings as a case of *domestic terrorism*.

A Significant Threat **Terrorism** can be broadly defined as the use of staged violence to achieve political goals. In today’s criminal justice landscape, American criminal law

differentiates between *international terrorism* and domestic terrorism. International terrorism involves actors who have been inspired, enabled, or directed by foreign terrorist organizations. The attacks of September 11, 2001—when terrorists hijacked four commercial airliners and used them to kill nearly three thousand people in New York City, Virginia, and rural Pennsylvania—are a crucial example of international terrorism. Carried out by the extremist Islamic terrorist group al Qaeda, which is based in the Middle East, these attacks have profoundly impacted the American criminal justice system, as we will see throughout this textbook.

In contrast, the FBI defines **domestic terrorism** as violent criminal acts committed to further ideological goals stemming solely from domestic influences, such as those of a political, religious, racial, or social nature.⁴⁶ The murders in Jersey City, discussed above, are considered domestic terrorism because Anderson and Graham most likely planned the attacks to express their anti-Jewish and anti-police biases.

The FBI expends considerably more resources on international terrorism investigations than ones involving domestic terrorists. The federal agency arrests more domestic terrorism suspects, however, often reacting to crimes that have already been committed.⁴⁷ While extremist Islamic groups such as ISIS, al Qaeda, and Hezbollah are the primary focus of international terrorism investigations, domestic terrorist activity is dominated by anti-government actors, many of whom are motivated by white-supremacist ideologies.⁴⁸ According to the FBI, more Americans have died in domestic terrorist attacks than international terrorist attacks since September 11, 2001.⁴⁹

Civil Liberties As noted in the opening of this chapter, law enforcement officials cannot prosecute a suspect solely based on activity that is protected by the First Amendment. Consequently, in most instances, hateful speech or membership in a hate group are not crimes. As a former FBI director put it, American law must be careful to distinguish the “mouth runners”—those who merely talk about their anti-American or violent beliefs—from potential terrorists.⁵⁰ So, for example, Ohio resident Damon Joseph was not in danger of arrest for telling an undercover FBI agent that he hated “the gays, the Christians, the Catholics, the Jews, you name it.” Rather, he was arrested for taking possession of two assault rifles in preparation for an attack on a local synagogue.⁵¹

This distinction demonstrates the important role that **civil liberties** play in our criminal justice system. The term refers to the personal freedoms guaranteed by the U.S. Constitution, particularly the first ten amendments, called the Bill of Rights. Concerns about balancing personal freedoms and personal safety permeate our criminal justice system. In fact, an entire chapter of this

textbook—Chapter 7—is needed to properly examine the rules that law enforcement must follow to protect the civil liberties of crime suspects.

Property Crime

Although violent crime draws more attention from the public, the most common form of criminal activity is *property crime*. Generally speaking, property crimes are those crimes in which the goal of the offender is some form of economic gain or the damaging of property. There are three major forms of property crime:

1. Pocket-picking, shoplifting, and the stealing of any property without the use of force are covered by laws against **larceny**, also known as *theft*.
2. **Burglary** refers to the unlawful entry of a structure with the intention of committing a serious crime, such as theft.
3. *Motor vehicle theft* describes the theft or attempted theft of a motor vehicle. Motor vehicles include any vehicle commonly used for transportation, such as a motorcycle or motor scooter, but not farm equipment or watercraft.

Arson is also a property crime. It involves the willful and malicious burning of a home, automobile, commercial building, or any other construction.



▲ Many states punish burglary of an occupied structure more harshly than burglary of an unoccupied structure. **What is the purpose behind this legal strategy?** sdecoret/Shutterstock.com

Public Order Crime

The concept of **public order crime** is linked to the consensus model discussed earlier in the chapter. Historically, societies have always outlawed activities that are considered contrary to public values and morals. Today, the most common public order crimes include public drunkenness, prostitution, gambling, and illicit drug use.

These crimes are sometimes referred to as victimless crimes because they often harm only the offender. As you will see throughout this textbook, however, that term is rather misleading. Public order crimes may create an environment that gives rise to property and violent crimes.

Cyber Crime

The latest variation on crime is directly related to the presence of computers in everyday life. The Internet, with billions of users worldwide, is the site of numerous **cyber crimes**—defined simply as crimes that take place in the virtual community of the Internet.

It is difficult, if not impossible, to determine how much cyber crime actually takes place. Often, people never know that they have been the victims of this type of criminal activity. Furthermore, businesses sometimes fail to report such crimes for fear of losing customer confidence. Some estimates, however, are available. According to the cyber security firm Symantec, one in ten websites are “malicious,” meaning they were created with the intent of furthering a scam, fraud, or attack.⁵² The Herjavec Group, a technology consulting firm, calculates that, on a global scale, cyber crime costs businesses \$6 trillion annually.⁵³

Larceny The act of taking property from another person without the use of force with the intent of keeping that property.

Burglary The act of breaking or entering a structure (such as a home or office) without permission for the purpose of committing a felony.

Public Order Crime Behavior that has been labeled criminal because it is contrary to shared social, values, and norms.

Cyber Crime A crime that occurs online, in the virtual community of the Internet.

Outline three major reasons why the Internet is conducive to the dissemination of child pornography.

Child Pornography Online The example of *child pornography* shows how cyber crime has raised the stakes for the criminal justice system. (Child pornography is the illegal production and sale of material depicting sexually explicit conduct involving a child.) In the late 1970s, about 250 child pornography magazines were circulating in the United States, and it was relatively easy for law enforcement to confiscate hard copies of these publications.⁵⁴ Today, in a single year, tech companies have reported as many as 45 million illegal online images of children being sexually abused.⁵⁵

Clearly, child pornography has become much easier to disseminate online. The reasons for this include:

1. **Speed.** The Internet is a quick means of sending visual material to multiple locations. Child pornographers can deliver their material much faster and more security online than through regular mail.
2. **Security.** Any illegal material that passes through the hands of a mail carrier is inherently in danger of being discovered. This risk is significantly reduced with e-mail. Furthermore, Internet sites that offer child pornography can protect their customers with passwords, which keep random web surfers (or law enforcement agents) from stumbling on the sites or chat rooms.
3. **Anonymity.** Obviously, anonymity is the most important protection offered by the Internet for sellers and buyers of child pornography, as it is for any person engaged in illegal behavior in cyberspace.⁵⁶

A great deal of child pornography is also available on the *dark web*, which can only be accessed through special methods designed to obscure the identity of providers and users. Because of these factors, courts and law enforcement have had a difficult time controlling not only child pornography but also a wide variety of other online wrongdoing, including *cyber fraud*.

Cyber Fraud Any misrepresentation knowingly made over the Internet with the intention of deceiving another and on which reasonable persons would and do rely on to their detriment.

Cyber Fraud Fraud is any misrepresentation knowingly made with the intention of deceiving another and on which reasonable persons would and do rely to their detriment. **Cyber fraud** is fraud committed over the Internet. Two widely reported forms of cyber crime are *advance fee fraud* and *online auction fraud*.

In the simplest form of advance fee fraud, consumers order and pay for items, such as automobiles or antiques, that are never delivered. Online auction fraud is also fairly straightforward. A person lists an expensive item for auction, on either a legitimate or a fake auction site, and then refuses to send the product after receiving payment. Or, as a variation, the wrongdoer may send the purchaser an item that is worth less than the one offered in the auction.

As Figure 1.4 shows, *confidence/romance frauds* also claim numerous victims online. In these scams, the perpetrator will create a false online persona and deceive the victim into a friendly or romantic relationship. The perpetrator then convinces the victim to provide financial information, money, or other items of value. For example, a man falsely calling himself Terry Garcia and claiming to be a U.S. army captain



"You know, you can do this just as easily online."

in Syria struck up an online romance with an unsuspecting female victim. Before being arrested by federal agents, he convinced her to send him \$200,000 to smuggle a non-existent bag of diamonds out of that war-torn country.⁵⁷

Cyber Theft A **data breach** is an incident in which unauthorized persons access and steal confidential or protected information. In cyberspace, those who carry out data breaches are not subject to the physical limitations of the “real” world. A thief with network access can steal data stored in a networked computer from anywhere on the globe. Only the speed of the connection and the thief’s computer equipment limit the quantity of data that can be stolen.

Identity Theft **Identity theft** occurs when the wrongdoer illegally obtains a form of identification—such as a name, date of birth, or Social Security number—and uses the information to access and steal the victim’s financial resources. According to the federal government, about 10 percent of Americans aged sixteen and older are victims of identity theft each year.⁵⁸

The vast majority of identity theft victims (85 percent) experience data breaches involving existing bank and credit card accounts.⁵⁹ Online, identity thieves can steal financial information by fooling websites into thinking that they are the true account holders. For example, important personal information such as one’s birthday, hometown, or employer that is available on social media sites can be used to convince a third party to reveal the victim’s Social Security or bank account number.

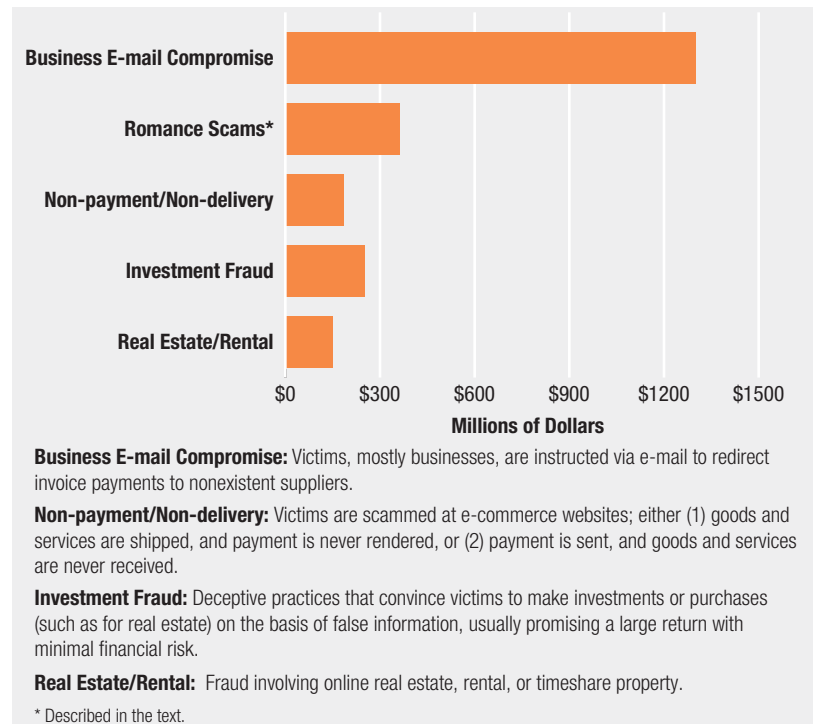
Password Theft The more personal information a cyber criminal obtains, the easier it is to find a victim’s online username. Once the online username has been compromised, it is easier to steal a victim’s password, which is often the last line of defense to financial information.

Cyber thieves use a variety of programs to steal passwords. One of the most common is called a *brute force attack*, in which a site is bombarded with combinations of letters, numbers, and figures until the correct password “clicks.” Another technique, called *keystroke logging*, relies on software that embeds itself in a victim’s computer and records every keystroke made on that computer. More traditionally, *shoulder surfers* will simply move into a position where they can look over the shoulder of someone who is entering passwords or other sensitive information into a computer or ATM machine.

Phishing In a distinct form of identity theft known as **phishing**, the perpetrators “fish” for financial data and passwords from consumers by posing as a legitimate business such as a bank or credit card company. The “phisher” may send an e-mail asking the recipient to “update” or “confirm” vital information. Often, the e-mail includes a threat that an account or some other service will be discontinued if the information is not provided. Once the unsuspecting individual enters the information, the phisher can sell it or use it to masquerade as that person or to access the victim’s bank or credit account.

FIGURE 1.4 Fraudulent Activity on the Internet

The Internet Crime Complaint Center highlights the most frequently reported Internet crimes. These crimes, along with the annual total losses reported by their victims, are detailed below.



Source: Internet Crime Complaint Center, *IC3 2018 Internet Crime Report* (Glen Allen, Va.: National White Collar Crime Center, 2019), 20.

Data Breach The illegal appropriation of protected or confidential information.

Identity Theft The theft of personal information, such as a name, driver’s license number, or Social Security number.

Phishing Sending an unsolicited e-mail that falsely claims to be from a legitimate organization in an attempt to acquire sensitive information from the recipient.

Hacker A person who uses computers to gain unauthorized access to data.

Another form of phishing, called *spear phishing*, can be difficult to detect because the messages seem to have come from co-workers, friends, or family members. As the public has become more sensitive to less sophisticated methods of cyber theft, spear phishing can be alarmingly effective. The cybersecurity firm ZeroFox estimates that spear phishing messages sent through social media are opened by as many as two-thirds of their intended targets.⁶⁰

Cyberterrorism Cyberterrorists use technology and the Internet to cause fear, violence, or extreme financial harm. Such cyberattacks are designed to damage a nation's infrastructure, which includes its power companies, water treatment plants, airports, chemical plants, and oil refineries.

In a worst-case scenario, a cyberattack could allow a terrorist organization to seize control of the federal air traffic control system or shut down national power grids. "This is a much bigger threat over time than losing some credit cards to cyber criminals," said one security expert.⁶¹ (This chapter's *Cybersecurity and CJ* feature relates how a number of countries, including the United States, have turned to cyberattacks as a continuation of conflict by other means.)

Hacking A **hacker** is someone who uses one computer, smartphone, or other device to break into another. In general, hackers take advantage of flaws in computer software or hardware, known as *vulnerabilities*, that allow them to enter the targeted system without permission.

Hacking is unnervingly frequent in the United States. Each hour, government agencies, businesses, and individuals are subjected to hundreds of hacking attempts. A single hack can impact massive numbers of victims. For example, hackers stole the personal data of about 145 million Americans when they breached the defenses of the consumer credit reporting agency Equifax.



CYBERSECURITY AND CJ

On the Cyberattack

The cyber ambush of Estonia, a country in Northern Europe with about the same population as New Hampshire, was sophisticated and effective. Massive numbers of rogue computers launched *distributed denial of service (DDoS)* attacks on the nation's digital infrastructure. (As part of a DDoS, hackers flood a targeted system with malicious software, much of it meaningless electronic "traffic," causing the system to crash and become inaccessible.) Within hours, Estonia's Internet ceased to function. Its citizens could not access banks, media outlets, government agencies, or any other online services.

Though it refused to accept any responsibility, many observers blamed Russia for the incident. At the time of the botnet invasion, Russia's government was upset with Estonia for making military alliances with the United States and Europe.

DIVIDED NATIONS

Russia is hardly the only country to be suspected of involvement in cyberattacks. Operatives in Iran, for instance, are believed to have launched DDoS attacks against a number of

targets in the United States, including several major banks, a small dam in New York State, and a Las Vegas casino whose owner had been critical of the country's rulers. Using spear-phishing techniques, APT10, a group sponsored by the Chinese government, apparently carried out a cyberattack on U.S. utility companies. The United States seems to have engaged in cyber operations against the Iranian government as punishment for Iran's alleged involvement in the bombing of Saudi Arabian oil facilities.

CRITICAL THINKING

As a high school student in Georgia, Kim Anh Vo was a member of the United Cyber Caliphate, a loose group of volunteers who pledged to serve the Islamic State. International terrorist groups such as the Islamic State and al Qaeda have been somewhat successful in recruiting individuals such as Vo to engage in small-scale cyber crime on their behalf. For the most part, however, these groups have not been as effective in launching cyberattacks as have the countries described in this feature. What might be some of the reasons for this?

Malware Hackers rely on malicious software, or **malware**, to carry out their illegal activities. Over the past few decades, a dizzying array of malware has been developed, and more complex forms of this software are introduced each year. For our purposes, the four general categories of malware listed below provide a helpful summary of the threat.

1. A *worm* is a software program that is capable of reproducing itself as it spreads from one computer to the next.
2. A *virus* also able to reproduce itself, but must be attached to an “infested” host file to travel from one computer network to another.
3. *Trojans* are, at first glance, useful pieces of software that do damage when installed and activated on a computer.
4. *Botnets* allow a hacker to “take over” another computer without the knowledge of the targeted computer’s owner. That computer is then used to spread malware, thus hiding the hacker’s identity.

For the most part, viruses, Trojans, and botnets require a careless act, such as clicking on a file or attachment, to spread to targeted computers. Worms, in contrast, can move from computer to computer without further human action.

Ransomware Often, the basic forms of malware are combined into a blended threat. An example of a blended threat is *ransomware*, which is similar to a Trojan in that it must be activated by a computer user. Once this happens, the malware *encrypts* all the files on the targeted computer system. **Encryption** is the process of encoding information stored on computers in such a way that only authorized parties have access to it. When a computer system is infected with ransomware, its owners are unable to access their own files, and must pay hackers a fee to unlock the data.

About 200,000 organizations report being subjected to ransomware each year, paying an average of \$85,000 to extricate themselves from the situation.⁶² School districts and city governments have proved particularly susceptible to these attacks, due to their limited anti-hacking budgets and expertise.

White-Collar Crime

Crimes occurring in the business context are popularly referred to as *white-collar crimes*, an unofficial umbrella term for wrongdoing marked by deceit and scandal. Ordinarily, **white-collar crime** involves an illegal act or series of acts committed by an individual or a business entity using some nonviolent means to obtain a personal or business advantage.

To differentiate white-collar crime from “regular” crime, criminologists Michael L. Benson of the University of Cincinnati and Sally S. Simpson of the University of Maryland focus on technique. For example, in an ordinary burglary, a criminal uses physical means, such as picking a lock, to get somewhere forbidden—someone else’s home—to do something that is clearly illegal. Furthermore, the victim is a specific identifiable individual—the homeowner.

In contrast, white-collar criminals usually (1) have legal access to the place where the crime occurs; (2) are spatially separated from the victim, who is often unknown; and (3) behave in a manner that is at least superficially legitimate.⁶³ (To better understand how white-collar crime is different from violent and property crime, see this chapter’s *Mastering Concepts* feature.)

Embezzlement When a person who is entrusted with another person’s funds or property wrongfully appropriates it, *embezzlement* occurs. **Embezzlement** differs from the property crime of larceny because the wrongdoer does not physically take the property from another’s possession, and it is not robbery, because

Malware Malicious software programs, such as viruses and worms, that are designed to cause harm to a computer, network, or other device.

Encryption The translation of computer data into a secret code with the goal of protecting those data from unauthorized parties.

White-Collar Crime Nonviolent crimes committed by business entities or individuals to gain a personal or business advantage.

Embezzlement The fraudulent appropriation of funds or other property by a person who was entrusted with the funds or property.

LEARNING OBJECTIVE 10

Indicate some of the ways that white-collar crime is different from violent or property crime.



MASTERING CONCEPTS

Elements of White-Collar Crime

1. **Deception:** White-collar crime almost always involves a party who deceives and a party who is deceived.

Example: A sham health care company misleads customers into buying what they believe to be comprehensive health care insurance that covers preexisting conditions, prescription drugs, emergency surgeries, and laboratory testing. In fact, the plans are worthless.

2. **Abuse of Trust:** A white-collar criminal often operates in a position of trust and misuses that trust for personal benefit.

Example: A financial advisor with a large brokerage firm steals \$2 million from clients, using the funds to make mortgage payments and go on lavish international vacations.

3. **Concealment:** To continue their illegal activities, white-collar criminals need to conceal those activities.

Example: In odometer fraud, an automobile dealership “rolls back” the odometers of used cars so that a higher price can be charged for the vehicles. As soon as the fraud is discovered, the scheme can no longer succeed.

4. **Victims:** Often, white-collar crime does not target individuals but rather large groups of people or even abstract concepts such as “society” or “the environment.”

Example: Tens of thousands of borrowers with student loan debt falsely claim low or zero income, allowing them, collectively, to avoid paying \$4 billion worth of loans. The victims here are U.S. taxpayers, who must cover this shortfall.

force or fear is not used. Typically, embezzlement is carried out by an employee who steals funds. Banks are particularly prone to this problem, but embezzlement can occur in any business context.

Mail and Wire Fraud One of the most potent weapons against white-collar criminals are the federal laws that prohibit mail fraud and wire fraud.⁶⁴ These laws make it a federal crime to devise any scheme that uses the U.S. mail, commercial carriers (such as FedEx or UPS), or wire (including telegraph, telephone, television, e-mail, and online social media) with the intent to defraud the public.

These laws are often applied when persons send advertisements via e-mail or social media with the intent to obtain cash or property by false pretenses. The maximum penalty under these statutes is substantial. Persons convicted of mail or wire fraud may be imprisoned for up to twenty years and/or fined.

Bribery Also known as influence peddling, *bribery* occurs in the business world when somebody within a company or government sells influence, power, or information to a person outside the company or government who can benefit. A county official, for example, could give a construction company a lucrative contract to build a new jail. In return, the construction company would give some of the proceeds, known as a *kickback*, to the official.

Securities Fraud Securities fraud covers illegal activity in the stock market. Stockbrokers who steal funds from their clients are guilty of securities fraud, as are those who engage in *insider trading*, which involves buying or selling securities on the basis of information that has not been made available to the public.

Corporate Violence For legal purposes, a corporation can be treated as a person capable of forming the intent necessary to commit a crime. So, when a natural gas pipeline owned by the Pacific Gas and Electric Company (PG&E) exploded in San Bruno, California, killing eight, wounding 58, and destroying 38

homes, a criminal investigation ensued. PG&E was eventually found guilty of five felony counts of pipeline safety violations and fined \$3 million.

PG&E is also under constant threat of criminal sanctions for causing a series of destructive deadly wildfires in California in recent years.⁶⁵ The damage that resulted from PG&E's illegal and potentially illegal activity is an example of *corporate violence*. In contrast to assaults committed by individual people, **corporate violence** results from policies or actions undertaken by a corporation.

RICO and Racketeering Because of their complexity and cost, most white-collar crime investigations are carried out by the federal government. Federal prosecutors are also in a unique position to enforce the federal Racketeer Influenced and Corrupt Organizations Act (RICO), which makes it illegal to receive income through a pattern of *racketeering*.⁶⁶

RICO was originally designed to combat *organized crime*. Unlike white-collar crime, organized crime operates illegitimately by, among other things, providing illegal goods and services, such as illegal drugs, gambling, and prostitution. The definition of **racketeering** is so inclusive, however—basically covering any attempt to earn illegal income involving more than one person—that it can be used against a broad range of criminal activity, white-collar or otherwise. For example, top executives at Insys Therapeutics were convicted of racketeering for bribing doctors to overprescribe a potent painkiller that Insys had developed.⁶⁷

Corporate Violence Physical harm to individuals or the environment that occurs as the result of corporate policies or decision making.

Racketeering The criminal action of being involved in an organized effort to engage in illegal business transactions.

Policy Matters

Concealed Carry on Campus

How Things Stand

A number of mass shootings have taken place on American college campuses. Tragically, for example, a student at Virginia Tech University in Blacksburg fatally shot thirty-three people and injured twenty-three others. Nearly a decade later, ten people were killed and nine injured by a gunman at Umpqua Community College in Roseburg, Oregon. More recently, a former student killed two and injured four others on the grounds of the University of North Carolina at Charlotte.

As a Result. . .

Such incidents inevitably raise a question central to the gun control debate—would allowing guns on campuses make those places more or less safe? All fifty states allow citizens to carry concealed handguns in public, although the conditions for doing so vary. Only ten states, however, have specific legislation permitting *concealed carry* on college campuses. Twenty-three states leave the decision to ban concealed weapons to individual institutions of higher learning, and sixteen states forbid concealed weapons on college campuses outright.⁶⁸

Supporters of concealed carry on campus argue that students and faculty members with weapons are better able to protect themselves and others from a wide variety of crimes, including mass shootings and sexual assaults. They also wonder why Second Amendment rights should vanish when a person sets foot on a college campus. Opponents counter that allowing students—many of whom are struggling with stress and other potential mental health issues—to arm themselves is a recipe for disaster.

Up for Debate

“It’s not that I’m afraid of getting attacked all the time. It’s more like a fire extinguisher or a seatbelt. You always have [your gun] and hope you never have to use it. If I call 911, it might be ten minutes before they get here. It might be more. It’s nice to know you have ultimate responsibility for your safety.”⁶⁹

—**Huyler Marsh, student, University of Texas at Austin**

“The Second Amendment allows for a well-regulated militia. What we have is not a well-regulated militia. It’s a twenty-one-year-old with a backpack . . . I’m worried about accidents. Having a weaponized campus is going to make it feel that much less welcoming.”⁷⁰ —**Lisa Moore, professor, University of Texas at Austin**

What’s Your Take?

Review the discussion in this chapter on “Gun Control Policy” before answering the following questions.

1. What are the general arguments for and against allowing adults to carry concealed weapons in public? Are you in favor of concealed carry? Why or why not?
2. Many professors are concerned that students may be afraid to participate in heated discussions on controversial topics when they know guns are present in the classroom. What is your opinion of this issue?

The Balancing Act

As you learned in the chapter, red flag laws allow law enforcement officers, acting on court orders, to take guns from people who are considered a danger to themselves or others. What if states that permitted concealed carry on college campuses also allowed professors, faculty, and other students to make red flag requests concerning those who behaved suspiciously on campus. Would this make these colleges safer? What potential problems could occur when red flag laws are applied in this manner? What would campus police think of this kind of red flag law, particularly if they were required to carry out the court orders? Explain your answers.



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SUMMARY

For more information on these concepts, look back to the Learning Objectives throughout the chapter.

LEARNING OBJECTIVE

1

Describe the two most common models of how society determines which acts are criminal.

The consensus model argues that the majority of citizens will agree on which activities should be outlawed and punished as crimes. It rests on the assumption that a diverse group of people can have similar morals. In contrast, the conflict model argues that in a diverse society, the dominant groups exercise power by codifying their value systems into criminal laws.

LEARNING OBJECTIVE

2

Define crime. Crime is any action punishable under criminal statutes. Because a crime is considered an offense against society, alleged criminals are prosecuted by the state rather than by victims. Crimes are punishable by sanctions that bring about a loss of personal freedom or, in some cases, life.

LEARNING OBJECTIVE

3

Explain two main purposes of the criminal justice system.

The first purpose of the criminal justice system is to provide justice to society by ensuring that all individuals are treated equally under criminal law. The second purpose is to protect society, a far-reaching objective that involves the fair treatment of crime victims and those who may or may not have committed criminal acts.

LEARNING OBJECTIVE

4

Outline the three levels of law enforcement.

Because we have a federal system of government, law enforcement occurs (a) at the federal (national) level, (b) at the state level, and (c) at the local level. Because crime is mostly a local concern, most employees in the criminal justice system work for local governments. Agencies at the federal level include the FBI, the DEA, and the U.S. Secret Service, among others.

LEARNING OBJECTIVE

5

List the essential elements of the corrections system.

Criminal offenders are placed on probation, incarcerated in a jail or prison, transferred to community-based corrections facilities, or released on parole.

LEARNING OBJECTIVE

6

Explain the difference between the formal and informal criminal justice processes.

The formal criminal justice process involves the somewhat mechanical steps that are designed to guide criminal defendants from arrest to possible punishment. For every step in the formal process,

though, someone has discretion, and such discretion leads to an informal process. Even when prosecutors believe that a suspect is guilty, they have the discretion not to prosecute, for example.

LEARNING OBJECTIVE

7

Define ethics, and describe the role that it plays in discretionary decision making.

Ethics consist of the moral principles that guide a person's perception of right and wrong. Most criminal justice professionals have a great deal of discretionary leeway in their day-to-day decision making, and their ethical beliefs can help ensure that they make such decisions in keeping with society's established values.

LEARNING OBJECTIVE

8

Explain how background checks, in theory, protect the public from firearm-related violence.

Any person who wants to buy a firearm from a federally licensed dealer must go through an application process that includes a background check. This process is designed to keep firearms out of the hands of individuals who are deemed safety risks. Consequently, applicants will fail the background check—and have the gun purchase denied—if they exhibit any one of a number of dangerous tendencies, including showing signs of mental illness, having a felony conviction, being addicted to illegal drugs, or engaging in domestic violence.

LEARNING OBJECTIVE

9

Outline three major reasons why the Internet is conducive to the dissemination of child pornography.

The Internet provides (a) a quick way to transmit child pornography from providers to consumers; (b) security, such as untraceable e-mails and password protected websites and chat rooms; and (c) anonymity for buyers and sellers of child pornography.

LEARNING OBJECTIVE

10

Indicate some of the ways that white-collar crime is different from violent or property crime.

A wrongdoer committing a "regular" crime usually uses physical means to get somewhere that person should not be in order to do something clearly illegal. Also, the victims of violent and property crimes are usually easily identifiable. In contrast, a white-collar criminal generally has legal access to the crime scene and is acting in a seemingly legitimate manner. Furthermore, victims of white-collar crimes are often unknown or unidentifiable.

QUESTIONS FOR CRITICAL ANALYSIS

1. How is it possible to have a consensus about what should or should not be illegal in a country with several hundred million adults from such diverse races, religions, and walks of life?
2. What would be some of the drawbacks of having the victims of a crime, rather than the state (through its public officials), prosecute criminals?
3. Relate the concept of federalism to state laws regarding physician-assisted suicide. What are the benefits of having several states permit a practice that is generally banned throughout the United States? What are the drawbacks? Should the federal government be able to ban the practice in states where it has won the support of voters? Why or why not?
4. Using the Internet or the news media, find three recent examples of domestic terrorism. What factors do these examples have in common? How are they different?
5. A doctor is arrested for (a) giving a prostitute prescription opioid pain pills in return for sex and (b) providing patients with minor injuries with unneeded prescription opioid pain pills for an extra fee. Should either of these illegal activities be considered white-collar crimes? Why or why not?

KEY TERMS

assault 16	deviance 6	malware 25
background check 18	discretion 13	morals 5
battery 16	domestic terrorism 20	murder 16
burglary 21	embezzlement 25	phishing 23
capital crime 16	encryption 25	public order crime 21
civil liberties 20	ethics 15	racketeering 27
conflict model 6	federalism 8	robbery 16
consensus model 5	formal criminal justice process 12	sexual assault 16
corporate violence 27	gun control 18	street gang 17
crime 5	hacker 24	system 12
criminal justice system 7	identity theft 23	terrorism 20
cyber crime 21	informal criminal justice process 13	victim 16
cyber fraud 22	justice 7	white-collar crime 25
data breach 23	larceny 21	

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How to Read Case Citations and Find Court Decisions

Many important court cases are discussed throughout this book. Every time a court case is mentioned, you will be able to check its citation using the endnotes on the final pages of the chapter. Court decisions are recorded and published on paper and on the Internet. When a court case is mentioned, the notation that is used to refer to, or to cite, the case denotes where the published decision can be found.

Decisions of state courts of appeals are usually published in two places, the state reports of that particular state and the more widely used *National Reporter System* published by West Group. Some states no longer publish their own reports. The *National Reporter System* divides the states into the following geographic areas: Atlantic (A. or A.2d), North Eastern (N.E. or N.E.2d), North Western (N.W. or N.W.2d), Pacific (P., P.2d, or P.3d), Southern (So., So.2d, or So.3d), and South Western (S.W., S.W.2d, or S.W.3d). The 2d and 3d in these abbreviations refer to the *Second Series* and *Third Series*, respectively.

Federal trial court decisions are published unofficially in West's *Federal Supplement* (F.Supp. or F.Supp.2d), and opinions from the circuit courts of appeals are reported unofficially in West's *Federal Reporter* (F., F.2d, or F.3d). Opinions from the United States Supreme Court are reported in the *United States Reports* (U.S.), the *Lawyers' Edition of the Supreme Court Reports* (L.Ed.), West's *Supreme Court Reporter* (S.Ct.), and other publications. The *United States Reports* is the

official publication of United States Supreme Court decisions. It is published by the federal government. Many early decisions are missing from these volumes. The citations of the early volumes of the *United States Reports* include the names of the actual reporters, such as Dallas, Cranch, or Wheaton. *McCulloch v. Maryland*, for example, is cited as 17 U.S. (4 Wheat.) 316. Only after 1874 did the present citation system, in which cases are cited based solely on their volume and page numbers in the *United States Reports*, come into being. The *Lawyers' Edition of the Supreme Court Reports* is an unofficial and more complete edition of Supreme Court decisions. West's *Supreme Court Reporter* is an unofficial edition of decisions dating from October 1882. These volumes contain headnotes and numerous brief editorial statements of the law involved in a given case.

Citations to decisions of state courts of appeals give the name of the case; the volume, name, and page number of the state's official report (if the state publishes its own reports); and the volume, unit, and page number of the *National Reporter*. Federal court citations also give the name of the case and the volume, name, and page number of the reports. In addition to the citation, this textbook lists the year of the decision in parentheses. Consider, for example, the case *Miranda v. Arizona*, 384 U.S. 436 (1966). The Supreme Court's decision in this case may be found in volume 384 of the *United States Reports* on page 436. The case was decided in 1966.



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