

INTRODUCTION TO

CRIMINAL JUSTICE

Seventeenth Edition

LARRY J. SIEGEL | JOHN L. WORRALL

INTRODUCTION TO CRIMINAL JUSTICE

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Larry J. Siegel and John L. Worrall

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This book is dedicated to my children, Eric, Andrew, Julie,
and Rachel, to my grandchildren, Jack, Kayla, and Brooke,
to my sons-in-law, Jason Macy and Patrick Stephens,
and to my best friend, life partner, and wife, Therese J. Libby

L.J.S.

This book is dedicated to my wife, Sabrina.
Thank you for your continued love and support.

J.L.W.

ABOUT THE AUTHORS

LARRY J. SIEGEL was born in the Bronx, New York. While living on Jerome Avenue and attending City College of New York (CCNY) in the 1960s, he was swept up in the social and political currents of the time. He became intrigued with the influence contemporary culture had on individual behavior: Did people shape society, or did society shape people? He applied his interest in social forces and human behavior to the study of crime and justice. After graduating CCNY, he attended the newly opened School of Criminal Justice at the State University of New York at Albany, earning both his M.A. and Ph.D. degrees there. After completing his graduate work, Dr. Siegel began his teaching career at Northeastern University, where he was a faculty member for 9 years. He also held teaching positions at the University of Nebraska–Omaha and Saint Anselm College in New Hampshire, before joining the faculty at the School of Criminology and Justice Studies at the University of Massachusetts, Lowell (UML); he is now Professor Emeritus at UML.

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BRIEF CONTENTS

PART ONE THE NATURE OF CRIME, LAW, AND CRIMINAL JUSTICE 1

- CHAPTER 1** Crime and Criminal Justice 2
- CHAPTER 2** The Nature and Extent of Crime 38
- CHAPTER 3** Understanding Crime and Victimization 82
- CHAPTER 4** Criminal Law: Substance and Procedure 132

PART TWO THE POLICE AND LAW ENFORCEMENT 165

- CHAPTER 5** Public Policing and Private Security 166
- CHAPTER 6** The Police: Organization, Role, and Function 208
- CHAPTER 7** Issues in Policing 248
- CHAPTER 8** Police and the Rule of Law 298

PART THREE COURTS AND ADJUDICATION 341

- CHAPTER 9** Court Structure and Personnel 342
- CHAPTER 10** Pretrial and Trial Procedures 392
- CHAPTER 11** Punishment and Sentencing 440

PART FOUR CORRECTIONS 487

- CHAPTER 12** Community Sentences: Probation, Intermediate Sanctions, and Restorative Justice 488
- CHAPTER 13** Corrections: History, Institutions, and Populations 522
- CHAPTER 14** Prison Life: Living in and Leaving Prison 548

PART FIVE CONTEMPORARY CHALLENGES IN CRIMINAL JUSTICE 599

- CHAPTER 15** Juvenile Justice 600
- CHAPTER 16** Crime and Justice in the New Millennium 638

CONTENTS

Preface xv

PART ONE

The Nature of Crime, Law, and Criminal Justice 1



CHAPTER 1

Crime and Criminal Justice 2

| | |
|---|----|
| Is Crime a Recent Development? | 4 |
| Crime in the Old West | 5 |
| Crime in the Cities | 5 |
| Creating Criminal Justice | 6 |
| Federal Involvement | 6 |
| Evidence-Based Justice: A Scientific Evolution | 7 |
| The Contemporary Criminal Justice System | 8 |
| Scope of the System | 9 |
| The Formal Criminal Justice Process | 12 |
| Formal Procedures | 12 |
| The Criminal Justice Assembly Line | 16 |
| The Informal Criminal Justice System | 18 |
| The Courtroom Work Group | 19 |
| The Wedding Cake Model of Justice | 19 |
| Perspectives on Justice | 21 |
| The Crime Control Perspective | 21 |
| The Rehabilitation Perspective | 22 |
| The Due Process Perspective | 23 |
| The Nonintervention Perspective | 23 |
| The Equal Justice Perspective | 26 |
| The Restorative Justice Perspective | 26 |
| Perspectives in Perspective | 27 |
| Ethics in Criminal Justice | 28 |
| Ethics and Law Enforcement | 29 |
| Ethics and the Court Process | 32 |
| Ethics and Corrections | 32 |
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 33 |
| SUMMARY | 34 |
| KEY TERMS | 35 |
| CRITICAL THINKING QUESTIONS | 35 |
| NOTES | 36 |



CHAPTER 2

The Nature and Extent of Crime 38

| | |
|--|----|
| How Is Crime Defined? | 40 |
| Consensus View | 40 |
| Conflict View | 42 |
| Interactionist View | 42 |
| What Are the Different Categories of Crime? | 43 |
| Violent Crimes | 43 |
| Property Crimes | 45 |
| Public Order Crimes | 46 |
| Economic Crimes | 47 |
| Sources of Crime Data | 50 |
| The Uniform Crime Reports (UCR) | 50 |
| National Incident-Based Reporting System (NIBRS) | 54 |
| National Crime Victimization Survey (NCVS) | 54 |
| Self-Report Surveys | 55 |
| Evaluating Sources of Crime Data | 57 |
| Crime Trends | 60 |
| Trends in Violent Crime and Property Crime | 60 |
| Trends in Victimization | 61 |
| What the Future Holds | 61 |
| Crime Patterns | 67 |
| The Ecology of Crime | 67 |
| Social Class, Socioeconomic Conditions, and Crime | 68 |
| Age and Crime | 69 |
| Gender and Crime | 70 |
| Explaining Gender Differences in the Crime Rate | 70 |
| Race and Crime | 71 |
| Chronic Offending and Crime | 73 |
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 75 |
| SUMMARY | 76 |
| KEY TERMS | 77 |
| CRITICAL THINKING QUESTIONS | 77 |
| NOTES | 77 |



CHAPTER 3

Understanding Crime and Victimization 82

The Cause of Crime 84

- Choice Theory** 84
- Rational Crimes 85
- Situational Crime Prevention 87
- General Deterrence 89
- Specific Deterrence 90

Trait Theories 92

- Biochemical Factors 93
- Neurological Factors 94
- Genetic Factors 94

Psychological Theories 97

- Psychodynamic Theory 97
- Cognitive Theory 98
- Personality and Crime 99
- IQ and Crime 99

Sociological Theories 100

- Social Structure Theory 100
- The Disorganized Neighborhood 102
- Social Process Theories 105

Critical Criminology 110

- State-Organized Crime 110
- Support for Critical Theory 111

Developmental Theories 112

Criminal Careers 112

- Latent Trait Theory 113
- Life Course Theory 114
- Trajectory Theory 115

Theories of Victimization 117

- Victim Precipitation 117
- Lifestyle Theory 119
- Routine Activities Theory 119

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 121

- SUMMARY 121
- KEY TERMS 122
- CRITICAL THINKING QUESTIONS 123
- NOTES 123



CHAPTER 4

Criminal Law: Substance and Procedure 132

Foundations 134

The Development of Criminal Law 135

- The History of Criminal Law 135
- The Common Law 137

Sources of the Criminal Law 139

- Constitutional Limits 139

Classifying Crimes 140

- Felonies and Misdemeanors 140
- The Legal Definition of a Crime 141

Criminal Defenses 144

- Excuse Defenses 145
- Justification Defenses 148
- Changing Defenses 152

Reforming the Criminal Law 152

- Reducing Prison Populations 152
- Expanding Voting Rights 154
- Minimizing Collateral Consequences 155
- Legalizing Marijuana 155
- Controlling Technology 156
- Protecting the Environment 157
- Responding to Terrorism 157

The Law of Criminal Procedure 158

- Judicial Interpretation 158
- Due Process of Law 160

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 161

- SUMMARY 161
- KEY TERMS 163
- CRITICAL THINKING QUESTIONS 163
- NOTES 163

PART TWO

The Police and Law Enforcement 165



CHAPTER 5

Public Policing and Private Security 166

The History of Police 168

- Private Police and Thief Takers 168
- The London Metropolitan Police 169
- Law Enforcement in Colonial America 170
- Early Police Agencies 171
- Twentieth-Century Reform 172
- The Emergence of Professionalism 173

Policing From the 1960s to the Present 174

- Policing in the 1960s 174
- Policing in the 1970s 174
- Policing in the 1980s 175
- Policing in the 1990s 175
- Policing since 2000 176

The Agencies of Law Enforcement 177

- The U.S. Justice Department 177
- The Department of Homeland Security (DHS) 182
- State Law Enforcement Agencies 183
- County Law Enforcement Agencies 185
- Metropolitan Law Enforcement Agencies 186

| | |
|---|-----|
| Private Policing | 187 |
| Reasons for Private Policing | 188 |
| Private and Public Police Compared | 188 |
| Types of Private Policing | 190 |
| Criticisms of Private Policing | 191 |
| Technology and Law Enforcement | 192 |
| Identifying Criminals | 192 |
| Locating Criminals | 193 |
| Crime Scene Investigation | 195 |
| Crime Mapping | 196 |
| Biometrics and Next-Generation Identification | 198 |
| DNA Testing | 199 |
| Social Media and Networking | 200 |
| Predictive Analytics | 200 |
| Smart Sensors and Virtual Patrols | 201 |
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 201 |
| SUMMARY | 202 |
| KEY TERMS | 203 |
| CRITICAL THINKING QUESTIONS | 204 |
| NOTES | 204 |



CHAPTER 6

The Police: Organization, Role, and Function 208

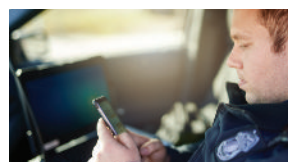
| | |
|---|-----|
| The Police Organization | 210 |
| The Police Role | 211 |
| The Patrol Function | 213 |
| Patrol Activities | 214 |
| Improving Patrol | 214 |
| The Investigation Function | 220 |
| How Do Detectives Detect? | 222 |
| Sting Operations | 223 |
| Undercover Work | 223 |
| Evaluating Investigations | 224 |
| Improving Investigations | 224 |
| Using Technology | 225 |
| Community Policing | 226 |
| Implementing Community Policing | 227 |
| The Challenges of Community Policing | 228 |
| Overcoming Obstacles | 229 |
| Problem-Oriented Policing (POP) | 230 |
| Criminal Acts, Criminal Places | 230 |
| Intelligence-Led Policing | 232 |
| Intelligence and the Intelligence Process | 234 |
| Fusion Centers | 234 |
| Evidence-Based Policing | 236 |
| Police Support Functions | 237 |
| Improving Police Productivity | 240 |
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 242 |
| SUMMARY | 242 |
| KEY TERMS | 243 |
| CRITICAL THINKING QUESTIONS | 244 |
| NOTES | 244 |



CHAPTER 7

Issues in Policing 248

| | |
|---|-----|
| Who Are the Police? | 250 |
| Police and Education | 251 |
| Minorities in Policing | 251 |
| Women in Policing | 253 |
| The Police Profession | 256 |
| Police Culture | 256 |
| Police Personality | 257 |
| Police Style | 258 |
| Police Discretion | 260 |
| Factors Influencing Discretion | 260 |
| Racial Profiling | 264 |
| Skeptical Accounts | 266 |
| Can Racial Profiling Be Justified? | 267 |
| Problems of Policing | 268 |
| Job Stress | 268 |
| Fatigue | 269 |
| Violence and Brutality | 272 |
| Corruption | 274 |
| Use of Force | 277 |
| Race and Force | 278 |
| Deadly Force | 278 |
| Nondeadly Force | 284 |
| Police as Victims | 286 |
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 289 |
| SUMMARY | 289 |
| KEY TERMS | 290 |
| CRITICAL THINKING QUESTIONS | 291 |
| NOTES | 291 |



CHAPTER 8

Police and the Rule of Law 298

| | |
|---|-----|
| Police and the Courts | 300 |
| Search and Seizure | 301 |
| Defining a Search | 301 |
| Defining An Arrest | 303 |
| Search Warrants and Arrest Warrants | 304 |
| Warrant Requirements | 307 |
| Probable Cause | 307 |
| Neutral and Detached Magistrate | 309 |
| Particularity | 309 |
| Serving the Warrant | 310 |
| Warrantless Searches and Arrests | 311 |
| Exigent Circumstances | 312 |
| Field Interrogation: Stop and Frisk | 315 |
| Search Incident to a Lawful Arrest | 317 |
| Automobile Searches | 318 |

| | |
|---|-----|
| Consent Searches | 321 |
| Plain View | 323 |
| Crimes Committed in an Officer's Presence | 324 |

| | |
|--|-----|
| Electronic Surveillance | 325 |
| Surveillance Law | 326 |
| Technologies for Local Law Enforcement | 327 |

| | |
|-------------------------------|-----|
| Interrogation | 327 |
| The <i>Miranda</i> Warning | 328 |
| The <i>Miranda</i> Rule Today | 329 |
| The Impact of <i>Miranda</i> | 329 |

| | |
|--------------------------------|-----|
| Pretrial Identification | 331 |
|--------------------------------|-----|

| | |
|---|-----|
| The Exclusionary Rule | 331 |
| Current Status of the Exclusionary Rule | 332 |
| The Future of the Exclusionary Rule | 333 |

| | |
|---|-----|
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 336 |
|---|-----|

| | |
|------------------------------------|-----|
| SUMMARY | 337 |
| KEY TERMS | 338 |
| CRITICAL THINKING QUESTIONS | 338 |
| NOTES | 339 |

PART THREE

Courts and Adjudication 341



CHAPTER 9 Court Structure and Personnel 342

| | |
|--------------------------------|-----|
| State Court Systems | 345 |
| Courts of Limited Jurisdiction | 345 |
| Courts of General Jurisdiction | 346 |
| Model State Court Structure | 349 |

| | |
|-----------------------|-----|
| Federal Courts | 349 |
|-----------------------|-----|

| | |
|------------------------|-----|
| District Courts | 353 |
| Federal Appeals Courts | 354 |
| The U.S. Supreme Court | 355 |

| | |
|-------------------------|-----|
| Court Congestion | 356 |
|-------------------------|-----|

| | |
|--------------------------|-----|
| The Judiciary | 358 |
| Other Judicial Functions | 360 |
| Judicial Qualifications | 362 |
| Selecting Judges | 362 |
| Judicial Alternatives | 363 |
| Judicial Decision Making | 365 |

| | |
|---------------------------|-----|
| The Prosecutor | 367 |
| Types of Prosecutors | 369 |
| The Prosecutor in Society | 369 |
| Prosecutorial Discretion | 372 |
| Overzealous Prosecution | 374 |

| | |
|---|-----|
| The Defense Attorney | 375 |
| The Role of the Criminal Defense Attorney | 376 |
| Ethical Issues | 376 |

| | |
|---------------------------------|-----|
| Defending the Accused | 377 |
| Legal Services for the Indigent | 378 |
| The Private Bar | 382 |
| Public versus Private Attorneys | 383 |
| Problems of the Criminal Bar | 384 |

| | |
|---|-----|
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 386 |
|---|-----|

| | |
|------------------------------------|-----|
| SUMMARY | 386 |
| KEY TERMS | 388 |
| CRITICAL THINKING QUESTIONS | 388 |
| NOTES | 389 |



CHAPTER 10 Pretrial and Trial Procedures 392

| | |
|------------------------------------|-----|
| Procedures Following Arrest | 394 |
|------------------------------------|-----|

| | |
|-------------------------------------|-----|
| Bail | 395 |
| The Legal Right to Bail | 395 |
| Making Bail | 396 |
| Alternative Bail Release Mechanisms | 396 |
| Types of Bail | 397 |
| Pretrial Detention | 397 |
| Bail Reform | 401 |

| | |
|--------------------------|-----|
| Pretrial Services | 403 |
|--------------------------|-----|

| | |
|--|-----|
| Charging the Defendant | 403 |
| The Indictment Process: The Grand Jury | 404 |
| The Information Process: The Preliminary Hearing | 405 |
| Arraignment | 406 |
| The Plea | 406 |

| | |
|--|-----|
| Plea Bargaining | 408 |
| The Nature of the Bargain | 409 |
| Pros and Cons of Plea Bargaining | 409 |
| The Problem of False Confessions | 411 |
| Legal Issues in Plea Bargaining | 412 |
| The Role of the Prosecutor in Plea Bargaining | 412 |
| The Role of the Defense Counsel in Plea Bargaining | 413 |
| The Role of the Judge in Plea Bargaining | 414 |
| The Victim and Plea Bargaining | 414 |
| Plea-Bargaining Reform | 414 |

| | |
|---------------------------|-----|
| Pretrial Diversion | 415 |
|---------------------------|-----|

| | |
|---------------------------|-----|
| The Trial | 416 |
| Legal Rights during Trial | 417 |
| The Trial Process | 423 |

| | |
|---|-----|
| ETHICAL CHALLENGES IN CRIMINAL JUSTICE | 433 |
|---|-----|

| | |
|------------------------------------|-----|
| SUMMARY | 434 |
| KEY TERMS | 435 |
| CRITICAL THINKING QUESTIONS | 436 |
| NOTES | 436 |



CHAPTER 11

Punishment and Sentencing 440

| | |
|--|-----|
| The History of Punishment | 442 |
| From Exile to Fines, Torture to Forfeiture | 442 |
| Public Work and Transportation to the Colonies | 443 |
| The Rise of the Prison | 444 |

The Goals of Punishment 445

| | |
|-------------------------|-----|
| General Deterrence | 445 |
| Incapacitation | 446 |
| Specific Deterrence | 446 |
| Retribution/Just Desert | 447 |
| Rehabilitation | 447 |
| Diversion | 448 |
| Equity/Restitution | 448 |
| Restoration | 448 |

Imposing the Sentence 449

| | |
|---|-----|
| Concurrent versus Consecutive Sentences | 450 |
| The Effect of Good Time | 450 |

Sentencing Models 450

| | |
|-------------------------|-----|
| Indeterminate Sentences | 451 |
| Determinate Sentences | 451 |
| Mandatory Sentences | 454 |
| Truth in Sentencing | 456 |

How People Are Sentenced 458

| | |
|---------------------------------|-----|
| What Factors Affect Sentencing? | 459 |
|---------------------------------|-----|

Capital Punishment 465

| | |
|-------------------------------------|-----|
| Arguments for the Death Penalty | 466 |
| Arguments against the Death Penalty | 468 |
| Legal Issues in Capital Punishment | 475 |

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 478

| | |
|------------------------------------|-----|
| SUMMARY | 478 |
| KEY TERMS | 480 |
| CRITICAL THINKING QUESTIONS | 481 |
| NOTES | 481 |

PART FOUR

Corrections 487



CHAPTER 12

Community Sentences: Probation, Intermediate Sanctions, and Restorative Justice 488

The Concept of Probation 490

| | |
|-------------------------------------|-----|
| Community Sentencing | 491 |
| The History of Community Sentencing | 491 |

| | |
|--|-----|
| Contemporary Probation Services | 492 |
| Conditions of Probation | 492 |
| Awarding Probation | 493 |
| Administration of Probation Services | 494 |
| Duties of Probation Officers | 495 |
| Legal Rights of Probationers | 499 |
| How Successful Is Probation? | 502 |
| What Causes Probation Success and Failure? | 502 |
| The Future of Probation | 503 |

Other Alternatives to Imprisonment 506

| | |
|--------------------------------------|-----|
| Advantages of Intermediate Sanctions | 506 |
| Fines | 507 |
| Forfeiture | 508 |
| Restitution | 509 |
| Shock Probation and Split Sentencing | 509 |
| Intensive Probation Supervision | 510 |
| House Arrest/Electronic Monitoring | 510 |
| Residential Community Corrections | 512 |

Restorative Justice 513

| | |
|----------------------------|-----|
| The Concept of Restoration | 513 |
| Restoration Programs | 514 |
| Restoration in Practice | 515 |
| Court-Based Programs | 515 |

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 516

| | |
|------------------------------------|-----|
| SUMMARY | 516 |
| KEY TERMS | 518 |
| CRITICAL THINKING QUESTIONS | 518 |
| NOTES | 518 |



CHAPTER 13

Corrections: History, Institutions, and Populations 522

The History Of Correctional Institutions 524

| | |
|--|-----|
| The Origin of Corrections in the United States | 525 |
| Creating a Correctional System | 525 |
| The Pennsylvania System | 526 |
| The Auburn System | 526 |
| Creating a Prison Industry | 527 |
| Prison Reform Efforts | 528 |
| Prisons in the Twentieth Century | 528 |
| The Development of Parole | 529 |
| Contemporary Correctional Institutions | 531 |

Jails 532

| | |
|-----------------------------|-----|
| Jail Populations and Trends | 533 |
| Jail Conditions | 533 |
| New-Generation Jails | 534 |

Prisons 535

| | |
|--------------------------------|-----|
| Maximum-Security Prisons | 535 |
| Super-Maximum-Security Prisons | 535 |
| Medium-Security Prisons | 538 |
| Minimum-Security Prisons | 538 |

Alternative Correctional Institutions 538

- Prison Farms and Camps 538
- Shock Incarceration in Boot Camps 539
- Community Correctional Facilities 539
- Private Prisons 540

Inmate Populations 540

- Population Trends 541

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 542

- SUMMARY 543
- KEY TERMS 545
- CRITICAL THINKING QUESTIONS 545
- NOTES 545



CHAPTER 14 Prison Life: Living in and Leaving Prison 548

Men Imprisoned 551

- Living in Prison 551
- Adjusting to Prison 552
- The Inmate Social Code 553
- The New Inmate Culture 554

Women Imprisoned 555

- Female Institutions 555
- Female Inmates 555
- Adapting to the Female Institution 556

Prison Violence 557

- Individual Violence 557
- Collective Violence 558
- Sexual Violence 559

Correctional Rehabilitation 561

- Individual and Group Counseling 561
- Faith-Based Programs 563
- Drug Treatment Programs 563
- Treating the AIDS-Infected Inmate 564
- Educational and Vocational Programs 564
- Can Rehabilitation Work? 567
- Female Correctional Officers 570

Prisoners' Rights 570

- Substantive Rights 572
- Overcrowding 577

Leaving Prison 578

- The Parole Board 579
- Parole Hearings 579
- Is There a Legal Right to Parole? 580
- The Parolee in the Community 581
- The Effectiveness of Parole 582
- Why Do People Fail on Parole? 582
- The Problem of Reentry 583
- The Risks of Reentry 586

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 591

- SUMMARY 591
- KEY TERMS 592
- CRITICAL THINKING QUESTIONS 593
- NOTES 593

PART FIVE

Contemporary Challenges in Criminal Justice 599



CHAPTER 15

Juvenile Justice 600

The History of Juvenile Justice 602

- Care of Children in Early America 603
- The Child-Saving Movement 603
- The Reform Movement Spreads 604
- Establishment of the Juvenile Court 605
- Juvenile Justice Today 607

Police Processing of the Juvenile Offender 611

- Helping Juvenile Offenders 611
- Use of Discretion 611

Legal Rights of Juveniles in Custody 614

- Police Investigation in the School Setting 614

The Juvenile Court Process 616

- The Intake Process 616
- The Detention Process 617
- Bail 618
- Plea Bargaining 618
- Waiver of Jurisdiction 619
- Should Youths Be Transferred to Adult Court? 620
- Adjudication 622
- Disposition and Treatment 622
- Juvenile Sentencing Reform 623

The Juvenile Correctional Process 624

- Probation 624
- Intensive Supervision 625
- Institutionalization 625
- Deinstitutionalization 625
- Aftercare 626
- Preventing Delinquency 628

The Future of Juvenile Justice 630

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 632

- SUMMARY 633
- KEY TERMS 634
- CRITICAL THINKING QUESTIONS 634
- NOTES 635



CHAPTER 16

Crime and Justice in the New Millennium 638

| | |
|---|-----|
| Globalization and Justice | 640 |
| Corporate Enterprise Crime | 642 |
| Fraud on Wall Street | 642 |
| The Subprime Mortgage Scandal | 643 |
| Billion-Dollar Management Fraud | 647 |
| Strategies to Control Corporate Crime | 648 |
| Enforcement of Corporate Crime Laws | 648 |
| Green Crime | 649 |
| Forms of Green Crime | 650 |
| Enforcing Environmental Laws | 651 |
| Cybercrime | 652 |
| Cybertheft: Cybercrimes for Profit | 653 |
| Pornography and Prostitution | 655 |
| Cybervandalism: Cybercrime with Malicious Intent | 656 |
| Cyberbullying | 657 |
| Cyberwarfare | 658 |
| The Extent and Costs of Cybercrime | 658 |

| | |
|--------------------------------------|-----|
| Controlling Cybercrime | 659 |
| Enforcing Laws against Cybercrime | 660 |
| Transnational Organized Crime | 661 |
| Transnational Crime Groups | 662 |
| Controlling Transnational Crime | 665 |

| | |
|----------------------------|-----|
| Terrorism | 667 |
| Defining <i>Terrorism</i> | 667 |
| Who Is the Terrorist? | 668 |
| The Contemporary Terrorist | 670 |
| Terrorism in the Courts | 672 |

The Future of Criminal Justice 675

| | |
|-----------------------|-----|
| Predicting the Future | 676 |
|-----------------------|-----|

ETHICAL CHALLENGES IN CRIMINAL JUSTICE 678

| | |
|-----------------------------|-----|
| SUMMARY | 679 |
| KEY TERMS | 681 |
| CRITICAL THINKING QUESTIONS | 681 |
| NOTES | 681 |

Appendix: The Constitution of the United States 686

| | |
|---------------|-----|
| Glossary | 696 |
| Name Index | 706 |
| Subject Index | 722 |
| Case Index | 740 |

FEATURES



SPOTLIGHT ON CRIME STEREOTYPES

| | |
|---|-----|
| Immigration and Crime | 66 |
| Do Robbers Stereotype Their Victims? | 118 |
| Stop and Frisk | 265 |
| Implicit Bias in Judicial Decision Making | 366 |
| Race and Sentencing | 462 |
| Minority Overrepresentation in Juvenile Justice | 612 |



CRIMINAL JUSTICE AND TECHNOLOGY

| | |
|--|-----|
| Is Property Crime Really on the Decline? The Problem of Online Offending | 62 |
| Can Brain Scans Predict Criminal Behavior? | 95 |
| Automated License Plate Recognition | 194 |
| Body-Worn Cameras | 218 |
| Drones | 220 |
| Through-Wall Radar | 314 |
| Increasing Security/Reducing Escapes | 536 |



EVIDENCE-BASED JUSTICE

| | |
|--|-----|
| Are Sex Offenders Dangerous? | 30 |
| Do Police Fudge Crime Statistics? | 53 |
| CrimeSolutions.gov | 88 |
| How Successfully Are Guns Used in Self-Defense? | 150 |
| The Police Presence and Deterrence | 215 |
| Are Tasers Effective? | 288 |
| Which Bail Release Mechanism Is Most Effective? | 400 |
| Do Three-Strikes Laws Deter? | 455 |
| Hawaii Hope | 498 |
| Treating Inmates with Cognitive-Behavioral Therapy | 562 |
| Who Makes It on the Outside? | 584 |
| Steps to Respect | 627 |



ANALYZING CRIMINAL JUSTICE ISSUES

| | |
|--------------------------------------|-----|
| America's Opioid Epidemic | 48 |
| Explaining Trends in Crime Rates | 62 |
| Does the Media Cause Violence? | 107 |
| Stand-Your-Ground Laws | 148 |
| Was There a Ferguson Effect? | 270 |
| Suicide by Cop | 282 |
| Police Canine Searches | 304 |
| Specialized Courts | 347 |
| COVID-19 and Court Delays | 359 |
| Defending the Despised | 379 |
| Strange Plea Agreements | 410 |
| Reducing Wrongful Convictions | 468 |
| Can Criminals Be Reformed? | 494 |
| Elderly Inmates | 542 |
| Criminal Records and Reentry Success | 588 |
| Global Trafficking in Persons | 660 |
| Who Is a Terrorist? | 668 |



CAREERS IN CRIMINAL JUSTICE

| | |
|----------------------------|-----|
| Police Officer | 10 |
| Crime Analyst | 41 |
| Criminologist | 86 |
| Attorney | 138 |
| Loss-Prevention Specialist | 189 |
| Victim Advocate | 239 |
| Intelligence Analyst | 261 |
| Postal Inspector | 316 |
| Prosecutor | 368 |
| Paralegal | 429 |
| Forensic Psychologist | 461 |
| Probation Officer | 501 |
| Corrections Counselor | 531 |
| Correctional Officer | 569 |
| Social Worker | 627 |
| Drug Enforcement Agent | 666 |



REFORMING CRIMINAL JUSTICE

| | |
|---|-----|
| Reduce the Number of Crimes | 24 |
| First Step Act | 153 |
| Commission on Law Enforcement and the Administration of Justice | 178 |
| Strengthening Community–Law Enforcement Ties | 228 |
| Getting at the Dark Figure of Police Shootings | 279 |
| Eliminating Cash Bail | 398 |
| Reform Mandatory Minimums | 457 |
| Abandon Private Probation | 505 |
| Reforming Solitary | 574 |



PREFACE

The U.S. justice system has become an enterprise costing more than \$150 billion each year. It employs millions of people in law enforcement, courts, and correctional agencies. *Introduction to Criminal Justice* was written to help students interested in justice better understand this enormous and complex system and to aid their journey in introductory-level criminal justice courses. The text analyzes and describes the agencies of justice and the variety of procedures they use to apprehend, adjudicate, and treat criminal offenders. It covers what most experts believe are the critical issues in criminal justice and analyzes their impact on the justice system. The primary goals in writing this, the seventeenth edition, remain as they have been for previous editions:

- To provide students with a thorough knowledge of criminal justice agencies
- To be as thorough and up to date as possible
- To be objective and unbiased
- To challenge students to think critically about justice

Every attempt has been made to present the material in an interesting, balanced, and objective manner, making sure that no single political or theoretical position dominates the text. Instead, we present the many diverse views that shape the contemporary criminal justice system and characterize its interdisciplinary nature. Diversity of opinion is what the study of criminal justice is all about and is the central focus of the text. We have tried to provide a text that is scholarly and informative, comprehensive yet interesting, and well organized and objective while at the same time being provocative and thought provoking.

ORGANIZATION OF THE TEXT

Part One gives the student a basic introduction to crime, law, and justice—from as far back as the American Revolution into the new millennium. The first chapter briefly describes the history of criminal justice, the agencies of justice, and the formal justice process, and it introduces students to the concept of the informal justice system, which involves discretion, deal making, and plea bargains. The chapter also describes the major perspectives on justice. Chapter 2 addresses such questions as: How is crime measured? Where and when does it occur? Who commits crime? Who are its victims? What social factors influence the crime rate? Chapter 3 covers crime patterns and theories of crime. Chapter 4 provides a discussion of the criminal law and its relationship to criminal justice.

Part Two provides an overview of the law enforcement field. Four chapters cover the history and development of law enforcement; the role, organization, and function of police in modern society; issues in policing; and police and the rule of law.

Part Three is devoted to the adjudication process, from pretrial indictment to the sentencing of criminal offenders. Chapters focus on organization of the court system, an analysis of the prosecution and defense functions, pretrial procedures, and the criminal trial. Topics included range from court structure

to the processing of felony cases, indigent defense systems, attorney competence, legal ethics, pretrial services, and bail reform. Part Three wraps up with a chapter on punishment and sentencing.

Part Four focuses on the correctional system, including probation, intermediate, sanctions, and restorative justice. The traditional correctional system of jails, prisons, community-based corrections, and parole are also discussed at length. Such issues as the problem of prisoner reentry are analyzed.

Part Five covers special topics in criminal justice. The juvenile justice system chapter contains information on preventive detention of youths, including waiving youths to the adult court. Part Five also includes a chapter on criminal justice in the new millennium. It covers topics such as corporate enterprise crime, cybercrime, transnational organized crime, and terrorism. This final chapter reflects the challenges now facing the justice system in the new millennium.

SPECIAL FEATURES

We have created a comprehensive, proven learning system designed to help students get the most out of their first course in criminal justice. We have included new photographs to appeal to visual learners and make material more relevant and meaningful. Carefully updated tables and completely redrawn figures highlight key chapter concepts. Marginal definitions of key terms; concise, bulleted end-of-chapter summaries that align with chapter learning objectives; and a comprehensive end-of-book glossary all help students master the material. Web App links appearing in the text's margins let students explore topics further via the Internet.

Boxed Features

We have included a number of thematic boxes to introduce students to some of the field's most crucial programs, policies, and issues, providing them with an opportunity to analyze the material in greater depth.

- **Spotlight on Crime Stereotypes** A new feature for the seventeenth edition, this feature takes a look at the role of stereotyping in the criminal justice process. Its aim is to help readers identify decision points at which bias can occur, then arm them with the tools and information to move past stereotyping. Example topics include stereotypes surrounding immigration and crime and in judicial decision-making. One of the boxes even looks at whether criminals stereotype their victims.
- **Reforming Criminal Justice** These features highlight recent efforts to change America's criminal justice system. In fairness, reform is nothing new; criminal justice has been in constant flux for as long as it has been around. Lately, however, we are hearing from an ever-louder chorus of lawmakers and practitioners who are frustrated with what they believe is a bloated and costly justice system that seems to have little effect on crime. They are calling for massive overhauls in the name of promoting justice and reducing costs.
- **Fact Check** These marginal boxes compare students' opinions on controversial criminal justice topics to the public's opinion. It then compares poll results to the reality surrounding the problem at hand. For example, the box in Chapter 3 explores opinions concerning the best approach to dealing with crime, then compares those results to what we know about effective crime control policy.

- **Careers in Criminal Justice** We have updated this popular addition to the previous edition with the latest career paths in criminal justice. These boxes contain detailed information on salaries, educational requirements, and future prospects.
- **Criminal Justice and Technology** This feature focuses on some of the latest efforts to modernize the system using contemporary technological methods. For example, Chapter 8's Criminal Justice and Technology box discusses the use of through-wall radar by police departments engaged in search activities.
- **Analyzing Criminal Justice Issues** This feature helps students to learn and think critically about current justice issues and practices. For example, an Analyzing Criminal Justice Issues box in Chapter 11 features efforts to reduce wrongful convictions.
- **Evidence-Based Justice** This feature summarizes the scientific evidence about the effectiveness of various criminal justice strategies and programs. For example, the Evidence-Based Justice box in Chapter 6 examines the research on the crime prevention effects of police work.
- **The Evolution of . . .** This feature summarizes the evolution of key Supreme Court decisions. For example, Chapter 8 discusses the evolution of *Carroll v. United States*, the key vehicle search case, and *Miranda v. Arizona*, which of course deals with confessions and interrogations. The feature summarizes nearly every subsequent Supreme Court case that builds on, expands, or restricts the original case.

Other Important Chapter Features

We have included numerous learning tools in every chapter to aid student mastery of the material. A few of the most valuable study aids we provide are the following.

- **Ethical Challenges in Criminal Justice: A Writing Assignment** Each chapter has a writing assignment that challenges students to solve an ethical dilemma they may someday confront while working within the justice system. The dilemma in Chapter 16, for example, focuses on whether it is ethical for government officials to engage in certain surveillance activities.
- **Web Apps** These are designed to guide students to websites that provide them with additional information if they want to conduct further research on the topics covered in the text.
- **Concept Summaries** Throughout the chapters, these tables or lists summarize the content of important concepts found in the chapter so students can compare and contrast ideas, views, cases, findings, and so on. For example, in Chapter 3 a Concept Summary reviews concepts and theories of criminology.
- **Significant Cases** Several chapters reference multiple Supreme Court decisions. At the end of each of these chapters is a new Significant Cases in . . . feature. For example, before the chapter summary at the end of Chapter 11 is a table summarizing significant cases in punishment and sentencing. Contents of the table include the name of the case, the year it was decided, the key issue at stake, and the Supreme Court's decision. While it was impossible to summarize every significant case, we believe readers will enjoy the comprehensiveness of the case selections we have included.

NEW IN THIS EDITION

Because the study of criminal justice is a dynamic field of scientific inquiry and the concepts and processes of justice are constantly changing and evolving, the seventeenth edition has been thoroughly revised.

Chapter-by-Chapter Changes

Chapter 1: A new opening story features the 2020 police killings of George Floyd, Ahmaud Arbery, and Breonna Taylor—and the subsequent riots and protests. The latest criminal justice system size and cost estimates are included. A new Evidence-Based Justice box considers whether sex offenders are as dangerous (based on their recidivism records) as we are led to believe. The latest research and statistics are also included.

Chapter 2: The chapter now begins with discussion of the recent uptick in hate crimes across America. Also, the first of the new Spotlight on Crime Stereotypes boxes appears in this chapter. Its focus is on immigration and crime. The very latest official and self-report crime statistics are included. Finally, a new Analyzing Criminal Justice Issues box examines America's opioid epidemic.

Chapter 3: A revised chapter opening story features the problem of mass shootings in America, including recent examples like the 2018 Parkland shooting and the 2017 Route 91 Harvest festival shooting in Las Vegas. Key updates include recent research on using brain scans to predict criminal activity and the role of social media consumption in criminal behavior. Finally, a new Spotlight on Crime Stereotypes box discusses how robbers stereotype their victims.

Chapter 4: A new chapter opening story features the Amber Guyger shooting in Dallas. Guyger, a former police officer in Dallas, was sentenced to prison for killing a man in his apartment after claiming she mistakenly thought it was her own. The latest criminal justice reforms are discussed, including efforts to reduce prison populations, expanded voting rights for convicted criminals, and minimizing collateral consequences for the convicted. A new Criminal Justice Reform box discusses the federal First Step Act.

Chapter 5: Chapter 5 now begins with a detailed overview of police ambush killings. A new Reforming Criminal Justice box features the activities of President Trump's Commission on Law Enforcement and the Administration of Justice. Also included is a new section on smart sensor technology in policing and the use of virtual patrols. Updates on next-generation identification are also included. The latest facts and figures pertaining to America's law enforcement organizations are also included throughout the chapter.

Chapter 6: This chapter begins with a story about predictive policing—whether it is possible to accurately forecast the “when” and “where” of criminal activity. Boxed features in this chapter discuss body cameras, police drones, and reform efforts intended to improve police–community relationships. A new section on evidence-based policing is also included.

Chapter 7: Chapter 7 opens with a new story about how COVID-19 has affected law enforcement. A new Spotlight on Crime Stereotypes box looks at stop and frisk controversies in New York City. New data on police assaults and killings are included, as are the most recent studies on the so-called Ferguson effect in policing.

Chapter 8: A new chapter opening story features the Supreme Court's recent decision in *Carpenter v. United States*, the widely cited 2018 cell phone search case. The latest Supreme Court decisions are also included and summarized.

Chapter 9: Lawsuits against the pharmaceutical industry are discussed in this chapter's new opening story. A new Spotlight on Crime Stereotypes box

looks at the issue of bias in judicial decision-making, and another new box looks at the role of COVID-19 in causing court closures/delays. The Analyzing Criminal Justice Issues box, Defending the Despised, is updated with a focus on Donna Rotunno, one of the attorneys who represented Harvey Weinstein. The latest court workload statistics are reported throughout, as well.

Chapter 10: Chapter 10 begins with a new story about the issues associated with convicting police officers for wrongful killings. Also included is a new Reforming Criminal Justice box on the movement by states to eliminate cash bail. The latest research and court cases on pretrial and trial procedures are included.

Chapter 11: A new chapter-opening story features the stories of Harvey Weinstein and other high-profile males in the entertainment industry, many of whom were ousted from their positions, and several of whom were convicted of crimes, for their involvement in sex scandals. The latest in sentencing statistics and cases are included, and the capital punishment section has been updated with the latest statistics.

Chapter 12: Chapter 12 begins with a new chapter opening story on *Timbs v. Indiana*, a 2019 U.S. Supreme Court case dealing with asset forfeiture. The case began with the forfeiture of Timbs' \$42,000 Land Rover in which he had transported heroin that he sold to an undercover officer. A new Evidence-Based Justice box features Hawaii Hope, a controversial probation program for drug-involved offenders. The latest probation/community corrections statistics are included, as is the most recent research on the efficacy of community sentencing approaches.

Chapter 13: Statistics on jail and prison populations have been revised and updated. The chapter also reviews the recent decline in the prison population after so many years of growth.

Chapter 14: A new chapter-opening story features COVID-19 outbreaks in prisons and jails, coupled with moves to give elderly inmates early release in an effort to stave off the pandemic. The latest incarceration statistics are also included.

Chapter 15: Chapter 15 includes a new chapter opener that examines the relevance of research on adolescent development in juvenile justice reform. A new Evidence-Based Justice box features the Steps to Respect bullying prevention program, and a new Spotlight on Crime Stereotypes box discusses minority overrepresentation in the juvenile justice system. The latest juvenile delinquency data have been included, as have recent Supreme Court cases relevant to juvenile justice.

Chapter 16: A new chapter-opening story looks at utility giant Pacific Gas and Electric, particularly its admission to manslaughter (for failing to properly maintain electrical lines) in connection with the deadly Camp wildfire in California. The chapter also includes updates on the latest in corporate and cybercrime developments, including the Wells Fargo fraudulent account scandal, busting dark web child pornography rings, and scams against the elderly.

ANCILLARY MATERIALS

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 they will have to as criminal justice professionals faced with real-world challenges. Available for virtually every Criminal Justice course, MindTap offers customizable content, course analytics, an ereader, and more—all within your current learning management

system. The new MindTap for Intro CJ 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 RESOURCE 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 from the text’s test bank or elsewhere, including your own favorite test questions
- create ideal assessments with your choice of 15 question types (including true–false, multiple choice, opinion/Likert scale, and essay)
- create multiple test versions in an instant using drop-down menus and familiar, intuitive tools that take you through content creation and management with ease
- deliver tests from your LMS, your classroom, or wherever you want—plus, import and export content into other systems as needed.

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

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To the reviewers of this edition as well as those for all previous editions, thank you.

*Larry J. Siegel
John L. Worrall*



The Nature of Crime, Law, and Criminal Justice

PART ONE

PART ONE OF THIS TEXT covers the basic issues and concepts of crime, law, and justice. Chapter 1 covers the justice process and the organizations that are entrusted with conducting its operations: the police, courts, and corrections. It provides an overview of the justice system and sets out its most important agencies, processes, and concepts. Chapter 2 looks at the nature and extent of crime, and Chapter 3 tries to answer the question, why do people commit crimes? Chapter 4 covers criminal law, analyzing both its substantive and procedural components.

CHAPTER 1

Crime and Criminal Justice

CHAPTER 2

The Nature and Extent of Crime

CHAPTER 3

Understanding Crime and
Victimization

CHAPTER 4

Criminal Law: Substance and
Procedure

CHAPTER 1

Crime and Criminal Justice

CHAPTER OUTLINE

Is Crime a Recent Development?

Crime in the Old West
Crime in the Cities

Creating Criminal Justice

Federal Involvement
Evidence-Based Justice:
A Scientific Evolution

The Contemporary Criminal Justice System

Scope of the System
Careers in Criminal Justice: Police Officer

The Formal Criminal Justice Process

Formal Procedures
The Criminal Justice Assembly Line

The Informal Criminal Justice System

The Courtroom Work Group
The Wedding Cake Model of Justice

Perspectives on Justice

The Crime Control

Perspective

The Rehabilitation

Perspective

The Due Process

Perspective

The Nonintervention

Perspective

Reforming Criminal

Justice: Reduce the Number of Crimes

The Equal Justice

Perspective

The Restorative Justice

Perspective

Perspectives in

Perspective

Ethics in Criminal Justice

Ethics and Law

Enforcement

Evidence-Based

Justice: Are

Sex Offenders

Dangerous?

Ethics and the Court

Process

Ethics and Corrections

LEARNING OBJECTIVES

- L01** Define the concept of criminal justice.
- L02** Summarize the long history of crime in America.
- L03** Discuss the formation of the criminal justice system.
- L04** Name the three basic component agencies of criminal justice.
- L05** Describe the size and scope of the contemporary justice system.
- L06** Describe the formal criminal justice process.
- L07** Articulate what is meant by the term *criminal justice assembly line*.
- L08** Discuss the wedding cake model of justice.
- L09** Explain the various perspectives on criminal justice.
- L010** Discuss the ethical issues that arise in criminal justice.



Spencer Platt/Getty Images News/
Getty Images

Hundreds of protesters march in downtown Brooklyn over the killing of George Floyd by a Minneapolis Police officer on June 05, 2020 in Minneapolis. Floyd's death, one of the most recent in a series of deaths of African Americans at the hands of police, set off protests across the country.

On May 25, 2020, as states began to relax restrictions stemming from the coronavirus pandemic, George Floyd, a 46-year-old African American man, died after being arrested for allegedly passing counterfeit currency. In a cell phone video seen around the world, Minneapolis police officer Derek Chauvin knelt on Floyd's neck for almost 9 minutes as he was detained. Floyd was heard saying, "I can't breathe." "Please, the knee in my neck. ..." When he appeared to pass out, bystanders urged the officer to get off Floyd. "Bro, he's not moving," one man said. Another asked, "Did they [expletive] kill him, bro?" Twenty minutes into the arrest, an ambulance arrived at the scene, but Floyd soon went into cardiac arrest and was later pronounced dead at a nearby hospital.

Several months earlier, Ahmaud Arbery, a 25-year-old African American man was fatally shot while jogging in Brunswick, Georgia.² Arbery had been chased and confronted by two white males, Travis McMichael and his father Gregory (Gregory had thought Arbery resembled the perpetrator in a series of recent nearby break-ins). The whole incident was recorded by another man, William Bryan, who was following in a second vehicle. Three shots were heard in the footage, with the last one fired point blank before Arbery fell to the ground facedown. For almost 3 months, no arrests were made, but when an attorney gave a copy of the shooting video to a local radio station that posted it on its YouTube channel, it soon went viral. Condemnation was swift, and on May 7, 2020, the McMichael men were arrested and charged with felony murder and aggravated assault. Bryan was later arrested and charged with felony murder.

On March 13, 2020, Breonna Taylor, a 26-year-old African American woman, was fatally shot by police officers in Louisville, Kentucky.³ Sergeant Jonathan Mattingly, Detective Brett Hankison, and Detective Myles Cosgrove, forced entry into the Taylor's apartment, prepared to serve a "no knock" search warrant to look for drugs. Taylor's boyfriend, Kenneth Walker, a licensed gun owner, woke to the noise and thought the officers were intruders. He exchanged gunfire with them. Officers fired a total of 28 times, and Taylor was killed in the crossfire. Walker survived the incident and was charged with attempted murder of a police officer, but the charges were

later dropped. No drugs were found, and it later came to light that Taylor was not even a target of the police investigation.

Ahmaud Arbery's death captured national headlines, as did Breonna Taylor's, yet George Floyd's death was the straw that broke the camel's back. It set off a firestorm of protests and violence across the nation. For days on end, tens of thousands of people flocked to the streets to express outrage and sorrow. Several early protests turned violent, with stores looted, cars set on fire, and buildings vandalized, leading to heated confrontations between protestors and police. The protests became so intense in some cities that the National Guard was called in. President Trump even threatened to use the military if governors would not calm things down. The violent protests mostly gave way to more organized and peaceful marches. Even police officers were seen "taking a knee" with protestors and marching in solidarity with them to express their condemnation of racial bias and bigotry. In the largest protest, some 150,000 people descended on Washington, DC, calling for an end to the violence and to racial inequality in the United States. Soon, politicians called for sweeping reforms to America's police departments and for improvements in the criminal justice system.

This text serves as an introduction to the study of criminal justice. This chapter covers some basic issues and concepts, beginning with a discussion of the concept and study of criminal justice. The major processes of the criminal justice system are then examined to provide an overview of how the system functions. Because no single view exists of the underlying goals that help shape criminal justice, the varying perspectives on what criminal justice really is—or should be—are set out in some detail.

criminal justice system

The system of law enforcement, adjudication, and correction that is directly involved in the apprehension, prosecution, and control of those charged with criminal offenses.

The public relies on the agencies of the **criminal justice system** for protection from elaborate schemes. This loosely organized collection of agencies is responsible for protecting the public, maintaining order, enforcing the law, identifying transgressors, bringing the guilty to justice, and treating criminal behavior. The public depends on this vast system, which employs more than 2 million people and costs taxpayers more than \$450 billion per year, to protect them from criminals and to bring justice to their lives. The criminal justice system is now taking on new duties, including protecting the country from international and domestic terrorists, transnational organized crime syndicates, and cybercriminals, groups that were almost unknown a decade ago. Member agencies must cooperate to investigate complex criminal conspiracies and meet these new challenges.

IS CRIME A RECENT DEVELOPMENT?

L01 Define the concept of criminal justice.

Because of the extensive media coverage of high-profile criminal events, people are routinely heard to say, "Crime is getting worse every day" and "I can remember when it was safe to walk the streets at night," but their memories may be colored by wishful thinking. Crime and violence have existed in the United States for more than 200 years, and the crime rate was much higher 100 years ago than it is today.

Crime and violence have been common since the nation was first formed.⁴ Guerilla activity was frequent before, during, and after the Revolutionary War. Bands supporting the British (Tories) and the American revolutionaries engaged in savage attacks on each other, using hit-and-run tactics, burning, and looting.

Crime in the Old West

After the Civil War, many former Union and Confederate soldiers headed west with the dream of finding gold or starting a cattle ranch. Some even resorted to murder, theft, and robbery. The notorious John Wesley Hardin (who is alleged to have killed 30 men) studied law in prison and became a practicing attorney before his death. Henry McCarty, better known as the infamous “Billy the Kid,” participated in range wars and may have killed more than 20 people before being gunned down in 1881 by Sheriff Pat Garrett; Billy had just turned 22. Others formed outlaw bands that terrorized the Western territories. There is no more storied bad man in the history of America than the outlaw Jesse James, who made his living robbing banks and trains. A folk hero, James remained an active outlaw until April 3, 1882, when he was shot in the back by Bob Ford, a fellow gang member, who did the deed in order to claim a \$5,000 reward. Folktales aside, James was in fact more of an impulsive killer than a latter-day Robin Hood. In September 1864, during the Civil War, Jesse, riding with the guerilla band led by Bloody Bill Anderson, held up a train in the town of Centralia, Missouri, and helped to kill 22 unarmed Union soldiers on board.⁵

Facing these outlaws was an equally colorful group of lawmen who developed reputations that have persisted for more than a century. Of these, none is more famous than Wyatt Earp. In 1876, he became chief deputy marshal of Dodge City, Kansas, a lawless frontier town, and he later moved on to Deadwood, in the Dakota Territory. In 1879, Earp and his brothers Morgan and Virgil journeyed to Tombstone, Arizona, where he eventually was appointed acting deputy U.S. marshal for the Arizona Territory. The Earps, along with their gunslinging dentist friend Doc Holliday, participated in the famous O.K. Corral gunfight in 1881, during which they killed several members of a rustler gang known as the Cowboys.

Crime in the Cities

The Old West was not the only area where gang activity flourished. In East Coast cities, gangs bearing colorful names such as the Hudson Dusters and the Shirt-tails battled rivals for control of the streets. In New York City, many gangs, including the Plug Uglies, the Swamp Angels, the Daybreak Boys, and the Bowery Boys, competed for dominance in the Five Points section of the lower East Side. Gang battles were extremely brutal, and men were killed with knives, hatchets, cleavers, and anything else that could puncture or slice flesh.

The Civil War also produced widespread business crime. The great robber barons bribed government officials and plotted to corner markets and obtain concessions for railroads, favorable land deals, and mining and mineral rights on government land. The administration of President Ulysses S. Grant was tainted by numerous corruption scandals.

From 1900 to 1935, the nation experienced a sustained increase in criminal activity. This period was dominated by Depression-era outlaws who later became mythic figures. Charles “Pretty Boy” Floyd was a folk hero among the sharecroppers of eastern Oklahoma, and the whole nation

FACT CHECK



YOUR OPINION: Is there more or less crime in the United States as there was last year?

PUBLIC OPINION:

MORE: 64%

LESS: 24%

REALITY: Violent and property crime victimizations increased from 2010 to 2012, then declined until 2015, at which point they started increasing. There is always a lag between crime data and current events, so it is unclear as of this writing whether the upward trend is continuing. Either way, crime remains significantly lower today relative to 20 years ago. For example, the violent crime victimization rate was around 80 per 1,000 people in 1993; it is less than 30 today.

DISCUSSION: What fuels perceptions that crime is more of a problem than it really is?

Sources: Gallup, 52% Describe Problem of Crime in the U.S. as Serious, <https://news.gallup.com/poll/268283/describe-problem-crime-serious.aspx> (accessed March 2, 2020); Rachel E. Morgan and Barbara A. Oudekerk, *Criminal Victimization, 2018* (Washington, DC: Bureau of Justice Statistics, 2019).

eagerly followed the exploits of its premier bank robber, John Dillinger, until he was killed in front of a Chicago movie house. The infamous “Ma” Barker and her sons Lloyd, Herman, Fred, and Arthur are believed to be responsible for killing more than 10 people, and Bonnie Parker and Clyde Barrow killed more than 13 before they were slain in a shootout with federal agents.

The crime problem, then, is not a recent phenomenon; it has been evolving along with the nation itself. Crime has provided a mechanism for the frustrated to vent their anger, for business leaders to maintain their positions of wealth and power, and for those outside the economic mainstream to take a shortcut to the American dream. To protect itself from this ongoing assault, the public has supported the development of a wide array of government agencies whose stated purpose is to control and prevent crime; to identify, apprehend, and bring to trial those who violate the law; and to devise effective methods of criminal correction. These agencies make up the criminal justice system.

CREATING CRIMINAL JUSTICE

L02 Summarize the long history of crime in America.

In 1829, the first police agency, the London Metropolitan Police, was created both to keep the peace and to identify and apprehend criminal suspects. A huge success in England, police agencies began to appear in the United States around the mid-nineteenth century. Another nineteenth-century innovation, the penitentiary (or prison) offered an alternative to physical punishments such as whipping, branding, or hanging.

As criminal justice developed over the next century, these fledgling agencies of justice rarely worked together in a systematic fashion. It was not until 1919—when the Chicago Crime Commission, a professional association funded by private contributions, was created—that the work of the criminal justice system began to be recognized.⁶ The Chicago Crime Commission acted as a citizens advocate group and kept track of the activities of local justice agencies. The commission still carries out its work today and is active in administering anticrime programs.⁷

In 1931, President Herbert Hoover appointed the National Commission of Law Observance and Enforcement, which is commonly known as the Wickersham Commission. This national study group made a detailed analysis of the U.S. justice system, helped usher in the era of treatment and rehabilitation, and found that the existing system of justice was flawed by too many rules and regulations.⁸

The modern era of criminal justice can be traced to a series of research projects begun in the 1950s under the sponsorship of the American Bar Foundation (ABF).⁹ The ABF project discovered that the justice system contained many procedures that had been kept hidden from the public view—investigation, arrest, prosecution, and plea negotiations—and that justice professionals had a great deal of latitude in decision making. For the first time, the term *criminal justice system* began to be used, reflecting a view that justice agencies could be connected in an intricate, yet often unobserved, network of decision-making processes.

Federal Involvement

L03 Discuss the formation of the criminal justice system.

In 1967, the President’s Commission on Law Enforcement and Administration of Justice (the Crime Commission), which had been created by President Lyndon B. Johnson, published its final report, *The Challenge of Crime in a Free Society*.¹⁰ At about the same time, Congress passed the

Safe Streets and Crime Control Act of 1968, providing for the expenditure of federal funds for state and local crime control efforts.¹¹ This act helped launch a massive campaign to restructure the justice system. It funded the National Institute of Law Enforcement and Criminal Justice, which encouraged research and development in criminal justice. Renamed the National Institute of Justice in 1979, it has remained a major source of funding for the implementation and evaluation of innovative experimental and demonstration projects in the criminal justice system.¹²

The Safe Streets Act provided funding for the **Law Enforcement Assistance Administration (LEAA)**, which, throughout its 14-year history, granted hundreds of millions of dollars in federal aid to local and state justice agencies. On April 15, 1982, the program came to an end when Congress ceased funding it. Although the LEAA attracted its share of criticism, it supported many worthwhile programs, including the development of a vast number of criminal justice departments in colleges and universities and the use of technology in the criminal justice system.

Law Enforcement Assistance Administration (LEAA)

Federal agency that provided technical assistance and hundreds of millions of dollars in aid to state and local justice agencies between 1969 and 1982.

Evidence-Based Justice: A Scientific Evolution

With continued funding from federal agencies such as the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics—as well as from private foundations such as the Pew and Annie E. Casey foundations—the study of criminal justice has embraced careful research analysis to support public policy initiatives. Whereas programs, policies, and procedures may have been shaped by political goals in the past, a mature justice system now relies more on the scientific collection of data to determine whether programs work and what policies should be adopted. According to this “What Works” movement,¹³ empirical evidence, carefully gathered using scientific methods, must be collected and analyzed in order to determine whether criminal justice programs work and whether they actually reduce crime rates and offender recidivism. Programs must now undergo rigorous review to ensure that they achieve their stated goals and have a real and measurable effect on behavior. **Evidence-based justice** efforts have a few unifying principles¹⁴:

- **Target audience.** Programs must be reaching the right audience. A drug treatment program that is used with groups of college students caught smoking pot may look successful, but can it work with hard-core substance abusers? It is important for programs to work with high-risk offenders who have the greatest probability of recidivating. Targeting low-risk offenders may make programs look good, but it really proves little because the client group might not have repeated their criminal offenses even if left untreated.
- **Randomized experiments.** Whenever possible, random experiments are conducted. For example, two groups of drug users are randomly selected, the first group is placed in the special treatment program, and the other is treated in a traditional fashion, such as being put in prison. If the recidivism rates of the experimental group are superior, we have strong evidence that the novel treatment method really works. Although it is sometimes difficult to select subjects randomly, other methods (such as matching subjects on key characteristics such as age, race, gender, and prior record) can be substituted.
- **Intervening factors.** Evidence-based programming must consider intervening factors that enhance or impede program success. A community-based crime prevention program that is used in a high-income

evidence-based justice

Determining through the use of the scientific method whether criminal justice programs actually reduce crime rates and offender recidivism.

neighborhood may be met with general approval and prove effective in reducing local problems, such as kids drinking at night in the local park. But will the program work in a high-crime area where well-armed gangs frighten residents? Conversely, a program that is deemed a failure with a group of at-risk kids living in an inner-city neighborhood may work quite well with at-risk youngsters living in a rural environment.

- **Measurement of success.** Evidence-based programs must develop realistic measures of success. For example, a treatment may seem to work, but careful analysis might reveal that the effect quickly wears off; long-term measures of program effectiveness are needed. Program retention must also be considered. A program for teens may seem to work because those who complete the program are less likely to commit crime in the future. But before success is declared and the program is adopted on a national level, research must closely evaluate such issues as the dropout rate: Are potential failures removed before the program is completed in order to ensure overall success (and continued funding)? And what about selectivity? Is the program open to everyone, including repeat offenders, or is it limited to people who are considered to have the greatest potential for success?
- **Cost-effectiveness.** Programs may work, but the cost may be too high. In an era of tight budgets, program effectiveness must be balanced with cost. It is not enough for a program to be effective; it must also be efficient.

Scientific research is now being used to dispute commonly held beliefs that may be misleading and erroneous. For example, the track record of school-based drug education programs has proven to be spotty at best: the evidence shows that the best intentions do not necessarily result in the best practices.¹⁵ Throughout the text, we will highlight programs that have passed careful, evidence-based evaluations *and* some that have failed to stand up to such scrutiny.

> WEB APP 1.1 <

Visit <http://www.crimesolutions.gov/> for an overview of the federal government's latest evidence-based justice initiative.

THE CONTEMPORARY CRIMINAL JUSTICE SYSTEM

- L04** Name the three basic component agencies of criminal justice.

social control

A society's ability to control individual behavior in order to serve the best interests and welfare of the society as a whole.

The contemporary criminal justice system is society's instrument of **social control**. Some behaviors are considered so dangerous that they must be either strictly controlled or outlawed outright; some people are so destructive that they must be monitored or even confined. The agencies of justice seek to prevent or reduce outlawed behavior by apprehending, adjudicating, and sanctioning lawbreakers. Society maintains other forms of informal social control, such as parental and school discipline, but these are designed to deal with moral—not legal—misbehavior. Only the criminal justice system has the power to control crime and punish outlawed behavior through the arm of the criminal law.

The contemporary criminal justice system can be divided into three main components: law enforcement agencies (see the Careers in Criminal Justice feature), which investigate crimes and apprehend suspects; the court system, which charges, indicts, tries, and sentences offenders; and the correctional system, which incapacitates convicted offenders and attempts to aid in their treatment and rehabilitation (see Figure 1.1).

Criminal justice agencies are political entities whose structure and function are lodged within the legislative, judicial, and executive branches of the government:

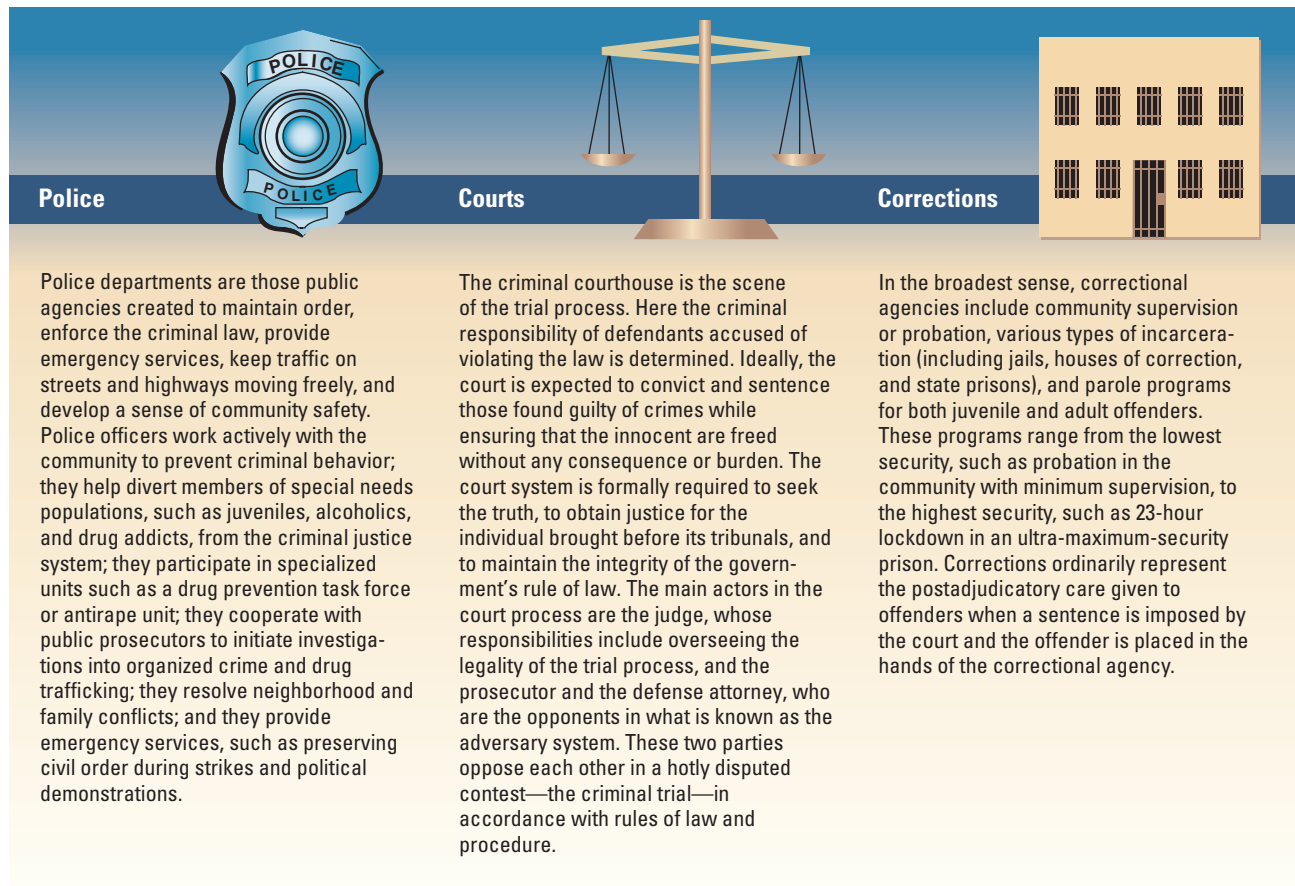


FIGURE 1.1 Components of the Criminal Justice System

- **Legislative.** Under our current justice system, the legislature defines the law by determining what conduct is prohibited and establishes criminal penalties for those who violate the law. The legislative branch of government helps shape justice policy by creating appropriations for criminal justice agencies and acting as a forum for the public expression of views on criminal justice issues.
- **Judicial.** The judiciary interprets existing laws and determines whether they meet constitutional requirements. It also oversees criminal justice practices and has the power to determine whether existing operations fall within the bounds of the state constitution and, ultimately, the U.S. Constitution. The courts have the right to overturn or ban policies that conflict with constitutional rights.
- **Executive.** The executive branch of government is responsible for the day-to-day operation of justice agencies. It does not make or interpret the laws but is trusted with their enforcement. In this capacity, it must create and oversee the agencies of justice, determine their budget, and guide their direction and objectives. Laws cannot be enforced unless the executive supplies crime control agencies with sufficient funding to support their efforts.

> WEB APP 1.2 <

For extensive details on justice system expenditures, visit <https://www.bjs.gov/index.cfm?ty=pbse&sid=33>.

Scope of the System

Because of its varied and complex mission, the contemporary criminal justice system in the United States is monumental in size. It now costs state

TABLE 1.1 Justice Expenditure

| AMOUNT (THOUSANDS OF DOLLARS) | | | | |
|-------------------------------|-----------------------|-------------------|--------------------|------------------|
| Activity | State and Local Total | State Governments | County Governments | City Governments |
| Total justice system | \$233,483,760 | \$86,868,791 | \$71,684,805 | \$69,058,355 |
| Police protection | \$109,210,078 | \$15,003,016 | \$29,596,808 | \$59,702,889 |
| Judicial and legal | \$46,256,957 | \$22,825,679 | \$17,767,223 | \$5,274,743 |
| Corrections | 78,016,725 | \$49,040,096 | \$24,320,774 | \$4,080,723 |

Source: Bureau of Justice Statistics, *Justice Expenditure and Employment Extracts* (Washington, DC: Bureau of Justice Statistics, November 7, 2019, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6728> (accessed March 2, 2020)).

and local governments more than \$450 billion per year for civil and criminal justice (see Table 1.1 for details). And that is just for direct expenditures and employment. Estimates place the total indirect cost of crime in excess of \$3 trillion per year.¹⁶

One reason why the justice system is so expensive to run is that it employs more than 2 million people in thousands of independent law enforcement, court-related, and correctional agencies. The nation now has almost 18,000 law enforcement agencies, including more than 12,000 local police departments, 3,000 county sheriffs' offices, and 49 state police departments (every state has one except Hawaii).¹⁷ In addition, there are 2,000 other specialized law enforcement agencies ranging from transit police in large cities to county constables.

These police and law enforcement agencies now employ more than a million people; more than 765,000 are sworn personnel with general arrest powers, and the rest are civilian employees. Of these, about 600,000 work in local agencies, 350,000 in county sheriffs' offices, and 90,000 for state police.¹⁸ There are nearly 17,000 courts; more than 8,000 prosecutorial agencies employ around 80,000 people; and about 1,200 correctional institutions (such as jails, prisons, and detention centers) employ around half a million people. There are also thousands of community corrections agencies, including more than 3,500 probation and parole departments.



CAREERS IN CRIMINAL JUSTICE

POLICE OFFICER

DUTIES AND CHARACTERISTICS OF THE JOB

Police officers are responsible for enforcing the written laws and ordinances of their jurisdiction. Police officers patrol within their jurisdiction and respond to calls wherever police attention is needed. Duties can be routine, such as writing a speeding ticket, or more involved, such as responding to a domestic disturbance or investigating a robbery. Their nonpatrol duties include testifying in court and writing reports of their law enforcement actions. Some officers will choose or be chosen to work in specialized

units such as the well-known special weapons and tactics (SWAT) teams or canine (K9) corps.

Police officers patrol jurisdictions of various sizes and have varying duties based on the nature of their jurisdiction. For example, sheriffs and their deputies enforce the laws within a county. State police primarily patrol state highways and respond to calls for backup from police units across their state. Institutions such as colleges and universities often have their own police forces as well, which enforce laws and rules in this specific area.

(Continued on next page)



CAREERS IN CRIMINAL JUSTICE (CONTINUED)

Police work can be an intense and stressful job; it sometimes entails encounters with hostile and potentially violent people. Police are asked to put their lives on the line in order to preserve order and safety. Their actions are watched closely and reflect upon their entire department. Because the places that police protect must be watched at all times, police work shifts may fall on weekends and holidays. Quite often it is the younger police officers who take these less desirable shifts. Additionally, police officers often have to work overtime; 45-hour workweeks are common.

JOB OUTLOOK

Government spending ultimately determines how many officers a department has. Overall opportunities in local police departments will be excellent for individuals who meet the stringent psychological, personal, and physical qualifications. Many openings are created by the need to replace workers who retire and those who leave local agencies for federal jobs or for employment in private-sector security.

Most police officers are employed at the local level, so this is where a majority of the jobs are found. There are generally more opportunities for employment in larger departments, such as those that serve large urban or suburban areas. Not surprisingly, most opportunities exist in areas with comparatively high crime rates or low salaries.

SALARY

The most recent data available indicate that the median salary (half are above, half below) for police and sheriffs' patrol officers is \$63,380. Overtime pay and various incentives, such as a salary bump for college graduates, can quickly increase the base salary, even well about the six-figure mark. However, smaller agencies in rural areas tend to pay considerably less than their urban counterparts.

OPPORTUNITIES

Police work is often appealing to many because of the good benefits and retirement policies. These factors may

contribute to the fact that for the better-paying positions, such as state police, there may be more applicants than available positions. This competition means that those with qualifications such as a college education will have a better chance of being hired. After several years, those with the proper education who build a reputation for good work can rise in the ranks of their department or be assigned to other desirable positions, such as detective or investigator.

QUALIFICATIONS

To be a police officer, you must be in good shape mentally and physically, as well as meet certain education requirements and pass written tests. New police officers undergo thorough, rigorous training and testing—normally by spending 12 to 14 weeks at a local police academy—before they go out on the streets. During training, new officers learn diverse skills that will be necessary for their job, such as knowledge of laws and individual rights, self-defense, and first aid. Applicants can also expect to be asked to pass lie detector and drug tests.

Because of the enormous responsibility associated with being a police officer, certain personal qualities are considered indispensable for future officers. These include responsibility, good communication skills, good judgment, and the ability to make quick decisions.

EDUCATION AND TRAINING

In most cases, one needs a high school diploma to be a police officer, but more and more jurisdictions are requiring at least some college education. Some college credits may be enough for an applicant to obtain a position on the police force, but more education, generally in the form of a bachelor's degree in a relevant field (especially criminal justice), is necessary for being promoted and moving up in rank.

Source: "Police and Detectives," *Occupational Outlook Handbook* (Bureau of Labor Statistics, U.S. Department of Labor), <https://www.bls.gov/ooh/protective-service/police-and-detectives.htm> (accessed March 2, 2020).

The system is massive because it must process, treat, and care for millions of people. Although the crime rate has declined substantially in the past several years, more than 10 million people are still being arrested each year, including 520,000 for violent crimes and almost 1.2 million for property crimes.¹⁹ In addition, the juvenile courts handle about 1.5 million juveniles. Today, state and federal courts process, convict, and sentence over 1 million adults each year.²⁰ It is not surprising, considering these numbers, that today nearly 7 million people are under some form of correctional supervision, including 2.2 million men and women in the nation's jails and

prisons and an additional 4.6 million adult men and women being supervised in the community while on probation or parole.²¹ How can this trend be explained? The answer is that people are more likely to be convicted than in the past and, if sent to prison or jail, to serve more of their sentence. The cost of corrections is now about \$80 billion per year, a cost of about \$36,000 per inmate, reinforcing the old saying that “It costs more to put a person in the state pen than to send a student to Penn State.”

THE FORMAL CRIMINAL JUSTICE PROCESS

L05 Describe the size and scope of the contemporary justice system.

> WEB APP 1.3 <

For more information about data on the criminal justice system, visit <http://www.bjs.gov>.

Another way of understanding criminal justice is to view it as a process that takes an offender through a series of decision points beginning with arrest and concluding with reentry into society. During this process, key decision makers resolve whether to maintain the offender in the system or to discharge the suspect without further action. This decision making is often a matter of individual discretion, based on a variety of factors and perceptions. Legal factors, including the seriousness of the charges, available evidence, and the suspect’s prior record, are usually considered legitimate influences on decision making. The fact that the suspect’s race, gender, class, and age may also influence decision outcomes is troubling. Critics believe that such extralegal factors determine the direction a case will take, whereas supporters argue that the system is relatively fair and unbiased.²²

In reality, few cases are actually processed through the entire formal justice system. Most are handled informally and with dispatch. The system of justice has been roundly criticized for its “backroom deals” and bargain justice. It is true that most criminal suspects are treated informally, but more important is the fact that every defendant charged with a serious crime is entitled to a full range of legal rights and constitutional protections.

Formal Procedures

The formal criminal process includes a complex series of steps, from initial contact to postrelease.

INITIAL CONTACT In most instances, an offender’s initial contact with the criminal justice system takes place as a result of a police action:

- Patrol officers observe a person acting suspiciously, conclude the suspect is under the influence of drugs, and take her into custody.
- Police officers are contacted by a victim who reports a robbery; they respond by going to the scene of the crime and apprehending a suspect.
- An informer tells police about some ongoing criminal activity in order to receive favorable treatment.
- Responding to a request by the mayor or other political figure, the local department may initiate an investigation into an ongoing criminal enterprise such as gambling, prostitution, or drug trafficking.
- A person walks into the police station and confesses to committing a crime—for example, he killed his wife after an altercation.
- Initial contact can also be initiated by citizens when no crime is involved—for example, when a parent files a petition in juvenile court alleging that his child is out of control and needs to be placed in a state detention facility.

INVESTIGATION The purpose of the criminal investigation is to gather enough evidence to identify a suspect and support a legal arrest. An investigation can take just a few minutes, as when a police officer sees a crime in progress and apprehends the suspect quickly. Or it can take many years and involve hundreds of law enforcement agents. Dennis Rader, the notorious BTK (Bind, Torture, Kill) serial killer, began his murderous streak in 1974 and was finally apprehended in 2005 after an investigation that lasted more than 30 years. Gary Ridgway, the Green River killer from Washington State, was apprehended some 20 years after killing his first victim. He was convicted of 48 murders and later confessed to twice that number.

During the investigative stage, police officers gather information in an effort to identify the perpetrator of a crime, understand the perpetrator's methods and motives, and determine whether the crime was an individual event or one of many similar crimes committed by a single individual. Gathering information means engaging in such activities as interviewing victims and witnesses at the crime scene, canvassing the neighborhood to locate additional witnesses, securing the crime scene, and then conducting a thorough search for physical evidence, such as weapons, fluids, and fingerprints.

Experienced officers recognize that all material gathered during a criminal investigation must be carefully collected, recorded, classified, processed, and stored. Because they may have to testify at trial under strict rules of evidence, they know that even early in the investigatory process, all evidence must be marked for identification and protectively packaged. If the police fail to follow proper procedures, the “chain of evidence” may be broken, tainting the evidence and making it inadmissible in court. Similarly, police must follow proper procedures while interviewing and/or searching suspects, being careful to uphold the constitutionally guaranteed right to privacy. If police overstep the boundaries set by the law to protect the rights of the accused, relevant information may later be excluded from trial.

ARREST An arrest is considered legal when all of the following conditions exist:

- The police officer believes there is sufficient evidence, referred to as “probable cause,” that a crime is being or has been committed and that the suspect is the person who committed the illegal act.
- The officer deprives the individual of freedom.
- The suspect believes that he is now in the custody of the police and has lost his liberty. The police officer is not required to use the word “arrest” or any similar term to initiate an arrest, nor does the officer have to handcuff or restrain the suspect or bring him to the police station.

Under most circumstances, to make an arrest in a misdemeanor, the officer must have witnessed the crime personally, a principle known as the **in-presence requirement**. However, some jurisdictions have waived the in-presence requirement in specific classes of crimes, such as domestic violence offenses, enabling police officers to take formal action after the crime has been committed even if they were not present when it occurred. Arrests can also be made when a magistrate, presented with sufficient evidence by police and prosecutors, issues a warrant authorizing the arrest of the suspect.

CUSTODY After an arrest and while the suspect is being detained, the police may wish to search for evidence, conduct an interrogation, or even encourage a confession. Witnesses may be brought to view the suspect in a lineup or in a one-on-one confrontation. Because these procedures are

L06 Describe the formal criminal justice process.

in-presence requirement

A police officer cannot arrest someone for a misdemeanor unless the officer sees the crime occur. To make an arrest for a crime the officer did not witness, an arrest warrant must be obtained.

Miranda warning

Miranda v. Arizona established that suspects under arrest must be advised that they have no obligation to answer questions and that they are entitled to have a lawyer present during questioning, if necessary, at no expense to themselves.

nolle prosequi

The decision by a prosecutor to drop a case after a complaint has been made because of, for example, insufficient evidence, witness reluctance to testify, police error, or office policy.

grand jury

A group of citizens chosen to hear charges against persons accused of crime and to determine whether there is sufficient evidence to bring those persons to trial.

true bill of indictment

The action by a grand jury when it votes to indict an accused suspect.

so crucial and can have a great impact at trial, the U.S. Supreme Court has granted suspects in police custody protection from the unconstitutional abuse of police power, such as illegal searches and intimidating interrogations. If a suspect who is under arrest is to be questioned about her involvement in or knowledge of a crime, the police must advise her of her right to remain silent and inform her that she is under no obligation to answer questions. Furthermore, recognizing that the police can take advantage of or exploit the suspect's psychological distress, the Court has ordered interrogating officers to advise the suspect that she is entitled to have a lawyer present and that the state will provide one at no charge if she cannot afford legal services. This so-called **Miranda warning** must be given if the police intend to use the answers against the person in a criminal case. If the arrested person chooses to remain silent, the questioning must stop. (*Miranda* will be discussed further in Chapter 8.)

CHARGING If the arresting officers or their superiors believe that sufficient evidence exists to charge a person with a crime, the case will be turned over to the prosecutor's office. The prosecutor's decision whether to charge the suspect with a specific criminal act involves many factors, including evidence sufficiency, crime seriousness, case pressure, and political issues, as well as personal factors such as a prosecutor's own specific interests and biases.

Charging is a critical decision in the justice process. Depending on the prosecutor's interpretation of the case, the suspect could be charged with a felony or a misdemeanor, and the subsequent differences between the charges can be vast. It is also possible that after conducting a preliminary investigation of its legal merits, prosecutors may decide to take no further action in a case; this is referred to as a **nolle prosequi**.

PRELIMINARY HEARING/GRAND JURY Created in England in the twelfth century, the grand jury's original purpose was to act as a buffer between the king (and his prosecutors) and the common citizen. The practice was instituted in the colonies, and later the U.S. Constitution mandated that before a trial can take place, the government must first show probable cause to believe that the accused committed the crime for which he is being charged. In about half the states and in the federal system, this determination is made by a grand jury in a closed hearing. In its most classic form, the **grand jury** consists of 12 to 23 persons who convene in private session to evaluate accusations against the accused and determine whether the evidence warrants further legal action. If the prosecution can present sufficient evidence, the grand jury will issue a **true bill of indictment**, which specifies the exact charges on which the accused must stand trial.

In some instances, and especially in the federal system, prosecutors have used the grand jury as an investigative instrument directed against ongoing criminal conspiracies, including racketeering and political corruption. In this capacity, the grand jury has wide, sweeping, and almost unrestricted power to subpoena witnesses and solicit their testimony and to hand down indictments. Because the power to use the grand jury in this way is virtually in complete control of the prosecutor, and thus its proper application depends on his or her good faith, critics have warned of abuse and potential "witch hunts."

In most states (and ironically, in England, where the practice began), the grand jury system has either been replaced or supplemented by the preliminary hearing. In a preliminary hearing, the prosecution files a charging document (usually called an "information") before a lower trial court, which then conducts an open hearing on the merits of the case. During this

procedure, the defendant and the defendant's attorney may appear and dispute the prosecutor's charges. The suspect will be called to stand trial if the presiding magistrate or judge accepts the prosecutor's evidence as factual and sufficient.

Both the grand jury and the preliminary hearing are designed to protect citizens from malicious or false prosecutions that can damage their reputations and cause them both financial distress and psychological anguish.

ARRAIGNMENT Before the trial begins, the defendant will be arraigned, or brought before the court that will hear the case. At this time, formal charges are read; the defendant is informed of his constitutional rights (the right to be represented by legal counsel and to have the state provide one if he is indigent); an initial plea (not guilty or guilty) is entered in the case; a trial date is set; and bail issues are considered.

BAIL/DETENTION Bail is a money bond levied to ensure the return of a criminal defendant for trial, allowing the defendant to remain in the community prior to trial. Defendants who do not show up for trial forfeit their bail. Those people who cannot afford to put up bail or who cannot borrow sufficient funds for it remain in state custody prior to trial. In most instances, this means an extended stay in a county jail or house of correction. If they are stable members of the community and have committed nonviolent crimes, defendants may be released on their own recognizance (promise to the court), without bail.

PLEA BARGAINING After an arraignment, if not before, the defense and prosecution discuss a possible guilty plea in exchange for reducing or dropping some of the charges or agreeing to a request for a more lenient sentence or some other consideration, such as placement in a treatment facility rather than a maximum-security prison. It is generally accepted that almost 90 percent of all cases end in a plea bargain, rather than a criminal trial.

TRIAL/ADJUDICATION If an agreement cannot be reached or if the prosecution does not wish to arrange a negotiated settlement of the case, a criminal trial will be held before a judge (bench trial) or jury, who will decide whether the prosecution's evidence against the defendant is sufficient beyond a reasonable doubt to prove guilt. If a jury cannot reach a decision—that is, if it is deadlocked—the case is left unresolved, leaving the prosecution to decide whether it should be retried at a later date.

SENTENCING/DISPOSITION If after a criminal trial the accused has been found guilty as charged, he will be returned to court for sentencing. Possible dispositions may include a fine, probation, some form of community-based corrections, a period of incarceration in a penal institution, and, in rare instances, the death penalty.

APPEAL/POSTCONVICTION REMEDIES After conviction, the defense can ask the trial judge to set aside the jury's verdict because the jury has made a mistake of law, such as misinterpreting the judge's instructions or convicting on a charge that was not supported by the evidence. Failing that, the defendant may file an appeal if, after conviction, she believes that her constitutional rights were violated by errors in the trial process. Appellate courts review such issues as whether evidence was used properly, whether the judge conducted the trial in an approved fashion, whether jury selection was properly done, and whether the attorneys in the case acted appropriately. If the court finds that the appeal has merit, it can rule that the defendant be given a new trial or, in some instances, order her outright release.

CORRECTIONAL TREATMENT After sentencing, the offender is placed within the jurisdiction of state or federal correctional authorities. The offender may serve a probationary term, be placed in a community correctional facility, serve a term in a county jail, or be housed in a prison. During this stage of the criminal justice process, the offender may be asked to participate in rehabilitation programs designed to help her make a successful readjustment to society.

RELEASE Upon completion of the sentence and period of correction, the offender will be free to return to society. Most inmates do not serve the full term of their sentence but are freed through an early-release mechanism, such as parole or pardon, or by earning time off for good behavior. Offenders sentenced to community supervision simply finish their term and resume their lives in the community.

POSTRELEASE After termination of their correctional treatment, offenders may be asked to spend some time in a community correctional center, which acts as a bridge between a secure facility and absolute freedom. Offenders may find that their conviction has cost them some personal privileges, such as the right to hold certain kinds of employment. These may be returned by court order once the offenders have proved their trustworthiness and willingness to abide by society's rules.

The Criminal Justice Assembly Line

L07 Articulate what is meant by the term *criminal justice assembly line*.

To justice expert Herbert Packer, the image that comes to mind from the criminal justice process is an assembly-line conveyor belt down which moves an endless stream of cases, never stopping, carrying them to workers who stand at fixed stations and who perform, on each case as it comes by, the same small but essential operation that brings it one step closer to being a finished product—or, to exchange the metaphor for the reality, a closed file.²³ Criminal justice is seen as a screening process in which each successive stage (prearrest investigation, arrest, postarrest investigation, preparation for trial or entry of plea, conviction, disposition) involves a series of routinized operations whose success is gauged primarily by their ability to pass the case along to a successful conclusion.²⁴

According to this view, each of the stages is a decision point through which cases flow. At the investigatory stage, police must decide whether to pursue the case or to terminate involvement because insufficient evidence exists to identify a suspect, because the case is considered trivial, or because the victim decides not to press charges. At the bail stage, a decision must be made whether to set bail so high that the defendant remains in custody, to set a moderate bail, or to release the defendant on her own recognizance. Each of these decisions can have a critical effect on the defendant, the justice system, and society. If an error is made, an innocent person may suffer or, conversely, a dangerous individual may be released to continue to prey upon the community.

In practice, many suspects are released before trial because of a procedural error, evidence problems, or other reasons that result in a case dismissal by the prosecutor (*nolle prosequi*). Although most cases that go to trial wind up in a conviction, others are dismissed by the presiding judge because of a witness's or complainant's failure to appear or because of procedural irregularities. Thus, the justice process can be viewed as a funnel that holds many cases at its mouth and relatively few at its stem end.

Theoretically, nearly every part of the process requires that individual cases be disposed of as quickly as possible. However, the criminal justice

process is slowed by congestion, inadequate facilities, limited resources, inefficiency, and the nature of governmental bureaucracy. When defendants are not processed smoothly, often because of the large caseloads and inadequate facilities that exist in many urban jurisdictions, the procedure breaks down, and the ultimate goal of a fair and efficient justice system cannot be achieved.

Figure 1.2 illustrates the approximate number of offenders removed from the criminal justice system at each stage of the process. As the figure shows, most people who commit crimes escape detection, and of those who do not, relatively few are bound over for trial, convicted, and eventually sentenced to prison. However, more than a million people are convicted on felony charges each year—about 30 percent of all people arrested on felony charges. About 70 percent of people convicted on felony charges are sentenced to a period of incarceration, either in state prison or in a local jail. Of the remainder, about 25 percent receive a probation sentence with no jail or prison time. The rest receive fines, restitution, treatment, community service, or some other penalty (e.g., house arrest or periodic drug testing).²⁵ The average prison sentence is about 5 years; most imprisoned felons are able to get out early via parole, early release for good behavior, or both. Concept Summary 1.1 shows the interrelationship of the component agencies of the criminal justice system and the criminal justice process.

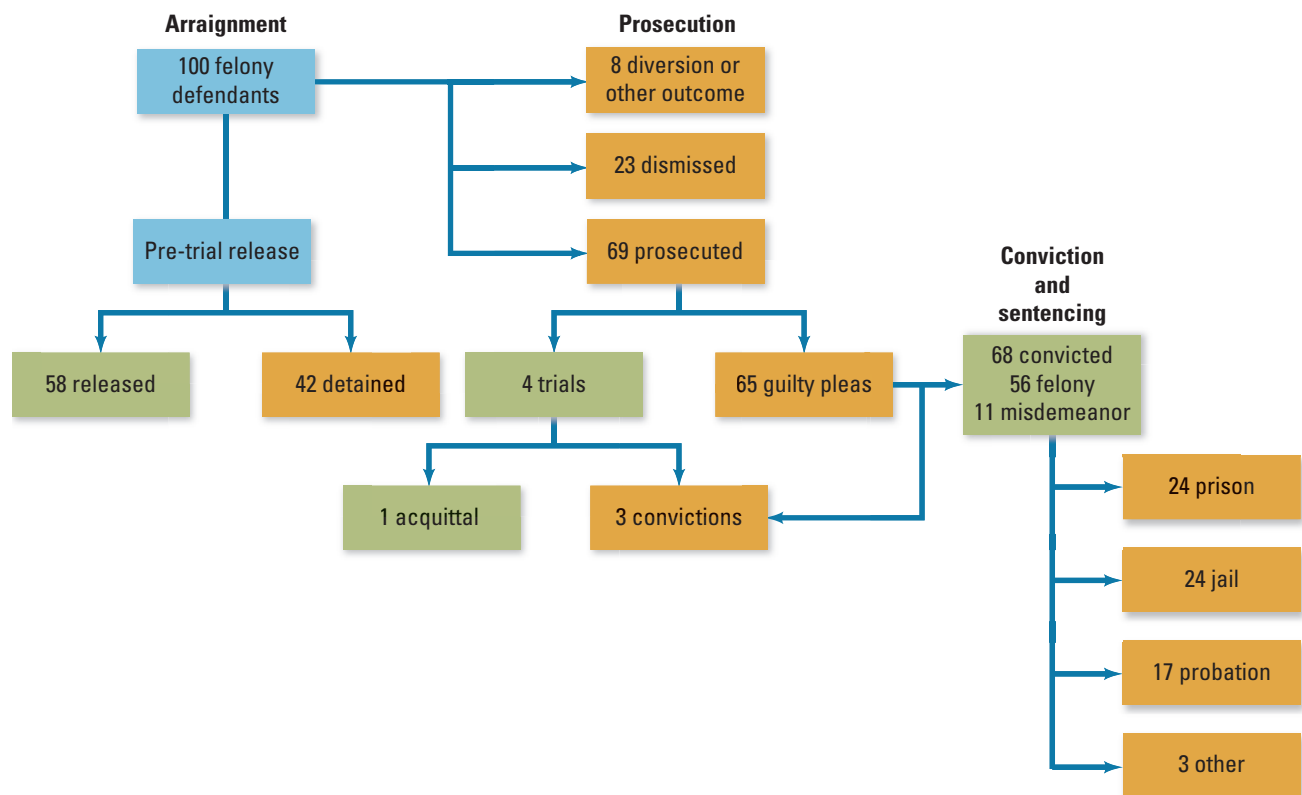


FIGURE 1.2 Typical Outcome of 100 Felony Defendants

Source: T. H. Cohen and T. Kyckelhahn, *Felony Defendants in Large Urban Counties, 2006* (Washington, DC: Bureau of Justice Statistics, 2010), p. 1.

CONCEPT SUMMARY 1.1

The Interrelationship of the Criminal Justice System and the Criminal Justice Process

| The System: Agencies of Crime Control | The Process |
|---------------------------------------|---|
| Police | <ol style="list-style-type: none"> 1. Contact 2. Investigation 3. Arrest 4. Custody |
| Prosecution and Defense | <ol style="list-style-type: none"> 5. Complaint/charging 6. Grand jury/preliminary hearing 7. Arraignment 8. Bail/detention 9. Plea negotiations |
| Courts | <ol style="list-style-type: none"> 10. Adjudication 11. Disposition 12. Appeal/postconviction remedies |
| Corrections | <ol style="list-style-type: none"> 13. Correction 14. Release 15. Postrelease |

THE INFORMAL CRIMINAL JUSTICE SYSTEM

The traditional model of the criminal justice system depicts the legal process as a series of decision points through which cases flow. Each stage of the system is defined by time-honored administrative procedures and controlled by the rule of law. The public's perception of the system, fueled by the media, is that it is composed of daredevil, crime-fighting police officers who never ask for overtime or sick leave, crusading district attorneys who stop at nothing to send the mob boss up the river, wily defense attorneys who neither ask clients for cash up front nor cut short office visits to play golf, no-nonsense judges who are never inept political appointees, and tough wardens who rule the yard with an iron hand. Yet it would be overly simplistic to assume that the system works this way for every case. Although a few cases illustrate all the rights and procedures that make up the traditional, formal model, many are settled in an informal pattern of cooperation between the major actors in the justice process. For example, police may be willing to make a deal with a suspect to gain his cooperation, and the prosecutor may bargain with the defense attorney to get a plea of guilty as charged in return for a promise of leniency. Law enforcement agents and court officers are allowed tremendous discretion in their decisions whether to make an arrest, to bring formal charges, to handle a case informally, to substitute charges, and so on. Crowded courts operate in a spirit of getting the matter settled quickly and cleanly, instead of engaging in long, drawn-out criminal proceedings with an uncertain outcome.

The recognition of the informal justice process has spurred development of two concepts—the courtroom work group and the wedding cake model—that help us better understand how U.S. justice really operates.

The Courtroom Work Group

Whereas the traditional model regards the justice process as an adversary proceeding in which the prosecution and defense are combatants, the majority of criminal cases are cooperative ventures in which all parties get together to work out a deal.

This **courtroom work group**, which is made up of the prosecutor, defense attorney, judge, and other court personnel, functions to streamline the process of justice through the extensive use of plea bargaining and other trial alternatives. Instead of looking to provide a spirited defense or prosecution, these legal agents (who have often attended the same schools, know one another, and have worked together for many years) try to work out a case to their own professional advantage. Their goal is to remove “unnecessary” delays and avoid formal trials at all costs. Because most defendants who have gotten this far in the system are assumed to be guilty, the goal is to process cases efficiently rather than to seek justice.

In most criminal cases, cooperation, not conflict, between prosecution and defense appears to be the norm. The adversarial process comes into play in only a few widely publicized criminal cases involving rape or murder. Consequently, more than 90 percent of all cases are settled without trial.

What has developed is a system in which criminal court experiences can be viewed as a training ground for young defense attorneys looking for seasoning and practice. It provides a means for newly established lawyers to receive government compensation for cases they take to get their practice going and an arena in which established firms can place their new associates for experience before they assign them to paying clients. Similarly, successful prosecutors often look forward to a political career or a highly paid partnership in a private firm. To further their career aspirations, prosecutors must develop and maintain a winning track record in criminal cases. Although the courtroom work group limits the constitutional rights of defendants, it may be essential for keeping the overburdened justice system afloat. Moreover, it is not clear that the informal justice system is inherently unfair to both the victim and the offender. Rather, evidence shows that the defendants who benefit the most from informal court procedures commit the least serious crimes, whereas most chronic offenders gain relatively little.²⁶

courtroom work group

A term used to imply that all parties in the justice process work together in a cooperative effort to settle cases efficiently rather than to engage in a true adversarial procedure.

The Wedding Cake Model of Justice

Samuel Walker, a justice historian and scholar, has come up with a dramatic way of describing the informal justice process. He compares it with a four-layer cake, as depicted in Figure 1.3.²⁷

LEVEL I The first layer of Walker’s model is made up of the celebrated cases involving famous people and those charged with committing particularly heinous crimes that capture national headlines. Cases in the first layer of the criminal justice wedding cake usually receive the full array of criminal justice procedures, including competent defense attorneys, expert witnesses, jury trials, and elaborate appeals. The media typically focus on Level I cases, and the TV-watching public gets the impression that most criminals are sober, intelligent people, and most victims are members of the upper classes—a patently false impression.

L08 Discuss the wedding cake model of justice.

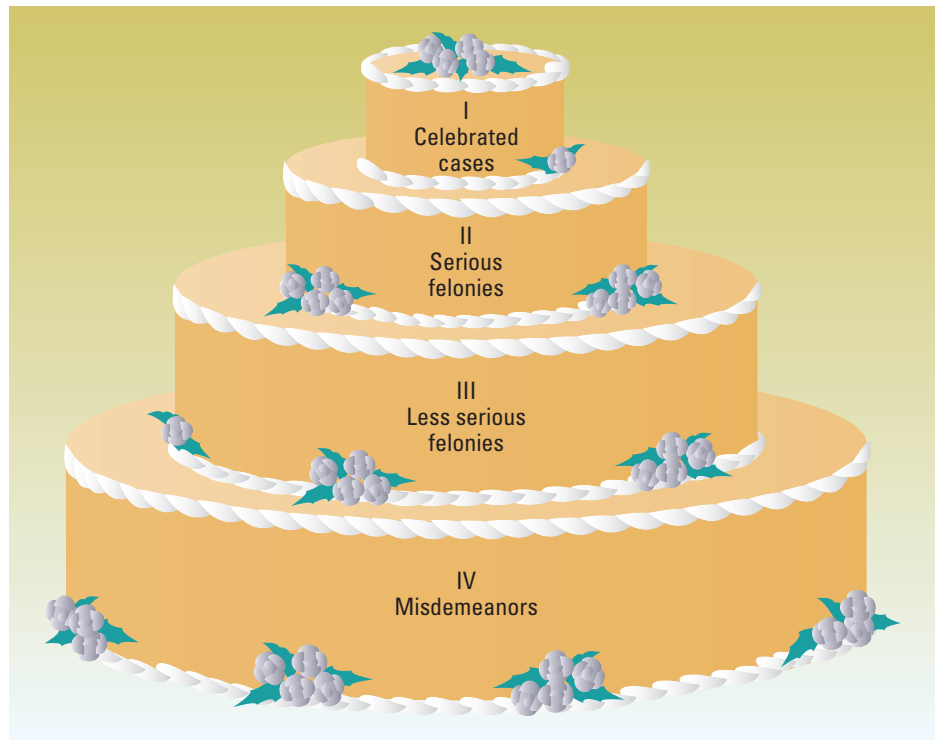


FIGURE 1.3 The Criminal Justice Wedding Cakey

Source: Based on Samuel Walker, *Sense and Nonsense about Crime 2006* (Monterey, CA: Brooks/Cole, 1983).

LEVEL II In the second layer are the serious felonies—rapes, robberies, and burglaries—that have become all too familiar in U.S. society. These are serious crimes committed by experienced offenders. Burglaries are included if the amount stolen is high and the techniques that were used indicate that the suspect is a pro. Violent crimes, such as rape and assault, are vicious incidents against an innocent victim and may involve a weapon and extreme violence. Robberies involve large amounts of money and suspects who brandish handguns or other weapons and are considered career criminals. Police, prosecutors, and judges all agree that these cases demand the full attention of the justice system. Offenders in such Level II cases receive a full jury trial and, if convicted, can look forward to a prison sentence.

LEVEL III Although they can also be felonies, crimes that fall in the third layer of the wedding cake are less serious offenses committed by young or first-time offenders or involving people who knew each other or were otherwise related: An inebriated teenager committed a burglary and netted \$50; the rape victim had gone on a few dates with her assailant before he attacked her; the robbery involved members of rival gangs and no weapons; the assault was the result of a personal dispute, and there is some question about who hit whom first. Agents of the criminal justice system relegate these cases to the third level because they see them as less important and less deserving of attention. Level III crimes may be dealt with by an outright dismissal, a plea bargain, reduction in charges, or (most typically) a probationary sentence or intermediate sanction, such as victim restitution.

LEVEL IV The fourth layer of the cake is made up of the millions of misdemeanors, such as disorderly conduct, shoplifting, public drunkenness, and minor assault. The lower criminal courts handle these cases in assembly-line fashion. Few defendants insist on exercising their constitutional rights

because the delay would cost them valuable time and money. As the typical penalty is a small fine, everyone wants to get the case over with.²⁸

The wedding cake model of informal justice is an intriguing alternative to the traditional criminal justice flowchart. Criminal justice officials handle individual cases differently, yet there is a high degree of consistency in the way particular types or classes of cases are dealt with in every legal jurisdiction. The model is also useful because it shows that all too often public opinion about criminal justice is formed on the basis of what happened in an atypical case.

Perspectives on Justice

Since the 1960s, when the field of criminal justice began to be the subject of both serious academic study and attempts at unified policy formation, significant debate has continued over the meaning of the term *criminal justice* and how the problem of crime control should be approached. After decades of research and policy analysis, criminal justice is still far from a unified field. Practitioners, academics, and commentators alike have expressed irreconcilable differences concerning its goals, purpose, and direction. Some conservatives believe the solution to the crime problem is to increase the number of police, apprehend more criminals, and give them long sentences in maximum-security prisons. In contrast, liberals call for increased spending on social services and community organization. Others worry about giving the government too much power to regulate and control behavior and to interfere with individual liberty and freedom.

Given the multitude of problems facing the justice system, this lack of consensus is particularly vexing. The agencies of justice must try to eradicate such diverse social problems as substance abuse, gang violence, pornography, cybercrime, and terrorism, all while respecting individual liberties and civil rights. The agencies of the justice system also need adequate resources to carry out their complex tasks effectively, but this often seems to be wishful thinking. Experts are still searching for the right combination of policies and actions that will significantly reduce crime and increase public safety while upholding individual freedom and social justice.

Considering the complexity of criminal justice, it is not surprising that no single view, perspective, or philosophy dominates the field. What are the dominant views of the criminal justice system today? What is the role of the justice system, and how should it approach its tasks?

The Crime Control Perspective

According to the **crime control perspective** on criminal justice, the proper role of the justice system is to prevent crime through the judicious use of criminal sanctions. People want protection from dangerous criminals and expect the government to do what is necessary to make them feel secure; crime control is part of the democratic process.²⁹ Because the public is outraged by crime, it demands an efficient justice system that hands out tough sanctions to those who violate the law.³⁰

According to crime control philosophy, if the justice system operated in an effective manner, most potential criminals would be deterred from crime. The few who broke the law would be apprehended, tried, and punished so that they would never again risk committing a crime. Effective law enforcement, strict mandatory punishment, and expanding the use of prison are the keys to reducing crime rates. Although crime control may be expensive, reducing the appeal of criminal activity is well worth the price.

EFFECTIVENESS AND EFFICIENCY According to the crime control perspective, the true goal of the justice system, protecting society, can be

LO9 Explain the various perspectives on criminal justice.

crime control perspective

A model of criminal justice that emphasizes the control of dangerous offenders and the protection of society through harsh punishment as a deterrent to crime.

achieved through more effective police protection, tough criminal punishments, and the incapacitation of hardened criminals. If the system could be made more efficient, few would be tempted to break the law, and its effectiveness would improve.

Crime control advocates do not want legal technicalities to help the guilty go free and tie the hands of justice. They lobby for the abolition of legal restrictions on law enforcers.³¹ The police may sometimes be forced to use tactics that abridge civil liberties for the sake of effectiveness, such as profiling people at an airport on the basis of their race or ethnic origin in an effort to identify and apprehend suspected terrorists. Civil libertarians are wary of racial profiling, but crime control advocates argue that we are in the midst of a national emergency and that the ends justify the means.

ABOLISHING LEGAL ROADBLOCKS One impediment to effective crime control is the legal roadblocks set up by the courts to protect the due process rights of criminal defendants. Several hundred thousand criminals go free every year in cases dropped because courts find that police have violated the suspects' *Miranda* rights.³² Crime control advocates lobby for abolition of the exclusionary rule, which requires that illegally seized evidence be barred from criminal proceedings. Their voices have been heard: a more conservative Supreme Court has given police greater latitude to search for and seize evidence and has eased restrictions on how police operate. However, research shows that even in this permissive environment, police routinely violate suspects' rights when searching for evidence, and the majority of these incidents are never reviewed by the courts because the search was not followed up by arrest or citation.³³

In recent years, the crime control model has emerged as the dominant vision of justice. Its proponents have helped shape public attitudes toward crime and its control. As a result, the American public seems quite punitive toward criminals, and about two-thirds approve the availability of the death penalty.³⁴

The Rehabilitation Perspective

If the crime control perspective views the justice system in terms of protecting the public and controlling criminal elements, the **rehabilitation perspective** sees the justice system as a means of caring for and treating people who cannot manage themselves. Advocates of this perspective view crime as an expression of frustration and anger created by social inequality. Crime can be controlled by giving people the means to improve their lifestyle through conventional endeavors.

The rehabilitation concept assumes that people are at the mercy of social, economic, and interpersonal conditions and interactions. Criminals themselves are the victims of racism, poverty, strain, blocked opportunities, alienation, family disruption, and other social problems. They live in socially disorganized neighborhoods that are incapable of providing proper education, health care, or civil services. Society must help them compensate for their social problems.

ALTERNATIVES TO CRIME Rehabilitation advocates believe that government programs can help reduce crime on both a societal (macro) and an individual (micro) level. On the macro, or societal, level, research shows that as the number of legitimate opportunities to succeed declines, people are more likely to turn to criminal behaviors, such as drug dealing, to survive. Increasing economic opportunities through job training, family counseling, educational services, and crisis intervention is a more effective

rehabilitation perspective

A perspective on criminal justice that sees crime as an expression of frustration and anger created by social inequality that can be controlled by giving people the means to improve their lifestyles through conventional endeavors.

crime reducer than prisons and jails. As legitimate opportunities increase, violence rates decline.³⁵

Society has a choice: pay now, by funding treatment and educational programs, or pay later, when troubled youths enter costly correctional facilities over and over again. This view is certainly not lost on the public. Although the public may want to get tough on crime, many people are willing to make exceptions—for example, by advocating leniency for younger offenders.³⁶

The Due Process Perspective

Advocates of the **due process perspective** argue that the greatest concern of the justice system should be treating fairly all those accused of crimes.³⁷ This means providing impartial hearings, competent legal counsel, equitable treatment, and reasonable sanctions. The use of discretion within the justice system should be strictly monitored to ensure that no one suffers from racial, religious, or ethnic discrimination. The system must be attuned to the civil rights afforded every citizen by the U.S. Constitution. Therefore, it is vexing to due process advocates when the Supreme Court extends the scope of law enforcement's reach, enabling police agencies to monitor and control citizens at the expense of their right to privacy.

Although many views exist of what the true goals of justice should be, the system undoubtedly must be expected to operate in a fair and unbiased manner. Those who advocate the due process orientation point out that the justice system remains an adversarial process that pits the forces of an all-powerful state against those of a solitary individual accused of committing a crime. If concern for justice and fairness did not exist, the defendant who lacked resources could easily be overwhelmed.

Miscarriages of justice are common. Numerous criminal convictions have been overturned because newly developed DNA evidence later showed that the accused could not have committed the crimes. Many of those who were falsely convicted spent years in prison before their release.³⁸ Evidence also shows that many innocent people have been executed for crimes they did not commit.

Because such mistakes can happen, even the most apparently guilty offender deserves all the protection the justice system can offer. Having a competent attorney who mounts a spirited defense may mean the difference between life and death. When Talia Roitberg Harmon and William Lofquist studied the cases of people who had been falsely convicted of murder, they found that those who employed private counsel were much more likely to be exonerated than those who could not afford a private attorney.³⁹ Is it fair that a life-or-death outcome may rest on the ability to afford private counsel?

Those who question the due process perspective claim that the legal privileges that are afforded to criminal suspects have gone too far and that the effort to protect individual rights now interferes with public safety. Is it fair, they argue, for evidence to be suppressed when it is obtained in violation of the constitutional right to be free from illegal search and seizure, even if it means that a guilty person goes free? Yet many people who appear guilty may actually be victims of slipshod justice. Certainly, the danger of convicting an innocent person still remains a frightening possibility.

The Nonintervention Perspective

Supporters of the **nonintervention perspective** believe that justice agencies should limit their involvement with criminal defendants. Regardless of whether intervention is designed to punish people or to treat them, the

due process perspective

A perspective on criminal justice that emphasizes individual rights and constitutional safeguards against arbitrary or unfair judicial or administrative proceedings.

nonintervention perspective

A perspective on criminal justice that favors the least intrusive treatment possible: decarceration, diversion, and decriminalization.



REFORMING CRIMINAL JUSTICE

REDUCE THE NUMBER OF CRIMES

The onus is on everyone to “know” the criminal law. Ignorance is no defense; you are responsible for knowing when your behavior runs afoul of the law. The problem is there are a lot of laws. A *lot*. There are over 5,000 criminal laws at the federal level alone. Add to that the penal codes from 50 different states and the result is a bewildering array of legal provisions that not even seasoned lawyers and judges can keep track of. The law also continues to change, usually by growing. Every year sees thousands of new laws go into effect. Experts call this overcriminalization, and whether you like it or not, it creates a costly enforcement problem. And as Michael van Beek notes, overcriminalization “severely reduces citizens’ respect for the law. When laws are routinely ignored or not consistently enforced, they lose their gravitas. This teaches citizens that the law itself does not matter; what matters is what the state decides to enforce.”

Fixing the overcriminalization problem is a priority for liberals and conservatives alike. In 2013, the Judiciary Committee of the Republican-controlled U.S. House of Representatives created an “Overcriminalization Task Force.” The National Association of Criminal Defense

Lawyers (NACDL) claimed that “our nation’s addiction to criminalization backlogs our judiciary, overflows our prisons, and forces innocent individuals to plead guilty not because they actually are, but because exercising their constitutional right to a trial is prohibitively expensive. . . .” Others call overcriminalization a “national plague,” noting that “when more and more behaviors are criminalized, there are more and more occasions for police, who embody the state’s monopoly on legitimate violence, and who fully participate in humanity’s flaws, to make mistakes.”

Many of overcriminalization’s loudest critics lament the size of the U.S. Code—that is, the number of federal laws. As Texas senator Ted Cruz wrote in *Solutions: American Leaders Speak Out on Criminal Justice*, “Having thousands of criminal laws scattered throughout the entire Code works an intolerable hardship on the public akin to Caligula posting his laws high up to make them difficult for the public to see.” Florida Senator Marco Rubio raised similar points in the same document: “There are now thousands of federal crimes; indeed so many that legal experts cannot agree on a specific number.

ultimate effect of any involvement is harmful. Whatever their goals or design, programs that bring people in contact with a social control agency—such as the police, a mental health department, the correctional system, or a criminal court—will have long-term negative effects. Once involved with such an agency, criminal defendants may be watched, people might consider them dangerous and untrustworthy, and they can develop a lasting record that has negative connotations. Bearing an official label disrupts their personal and family life and harms parent–child relationships. Eventually, they may even come to believe what their official record suggests; they may view themselves as bad, evil, outcasts, troublemakers, or crazy. Thus, official intervention promotes, rather than reduces, the tendency to engage in antisocial activities.⁴⁰

Noninterventionists are concerned about the effect of the stigma that convicted criminals bear when they are branded “rapist” or “child abuser.” As horrifying as these crimes are, such labels imply chronic criminality, and they will stick with the perpetrators forever. Noninterventionists point out that this may not be in the best interests of society. Once labeled, people may find it difficult to be accepted back into society, even after they have completed their sentence. It is not surprising, considering these effects of stigma and labeling, that recidivism rates are so high. When people are given less stigmatizing forms of punishment, such as probation, they are less likely to become repeat offenders.⁴¹

Fearing the harmful effects of stigma and labels, noninterventionists have tried to place limitations on the government’s ability to control people’s

This is despite the fact that the Constitution gives the federal government no general criminal jurisdiction.”

States, too, have their share of criminal laws, and arguably more. Marc Levin, writing for the American Bar Association, points to the state of Texas and its 1,700 criminal offenses, including “11 felonies relating to the harvesting and handling of oysters.” He also criticizes Arizona’s 4,000 statutory offenses and laments an arcane law from Rhode Island where a person can be sentenced to two years in prison for rebuilding a car without a license! There are plenty of “stupid laws,” as a website devoted to uncovering them (www.stupidlaws.com) suggests. Maybe ignorance should be a defense!

What can be done? Levin calls on legislators to answer two key questions. First, “should it be against state law?” This requires answering other questions. Is the free market unable to exert proper controls? Do state governments do a better job than local governments in regulating such actions? Can existing laws not be invoked? The second key inquiry is “should it be a crime?” Again, more questions need to be answered. Is there a victim? Is society actually harmed by the action? Is the conduct inherently wrong? And so on. The answer

is probably “no” in the case of a great many superfluous state laws. Nevertheless, Congress and state legislatures are glacially slow to repeal outmoded, redundant, and silly criminal laws.

Sources: Michael van Beek, “Ridiculous Laws Are Symptom of America’s Overcriminalization Problem,” *The Hill* (March 4, 2020), <https://thehill.com/opinion/criminal-justice/484928-ridiculous-laws-are-symptom-of-americas-overcriminalization-problem> (accessed March 5, 2020); Charles G. Koch and Mark V. Holden, “The Overcriminalization of America,” *Politico.com*, January 7, 2015, <http://www.politico.com/magazine/story/2015/01/overcriminalization-of-america-113991> (accessed March 2, 2020); National Association of Criminal Defense Lawyers, *Overcriminalization*, <http://www.nacdl.org/overcrim/> (accessed March 2, 2020); George Will, “America Might at Long Last Be Ready to Stare into the Abyss of Its Criminal Justice System,” *National Review*, December 10, 2014, <http://www.nationalreview.com/article/394392/plague-overcriminalization-george-will> (accessed March 2, 2020); Ted Cruz, “Reduce Federal Crimes and Give Judges Flexibility,” In Imimai Chettiar and Michael Waldman (eds.), *Solutions: American Leaders Speak Out on Criminal Justice* (New York: New York University School of Law, 2015), p. 32; Marco Rubio, “A Step toward Freedom: Reduce the Number of Crimes,” In Imimai Chettiar and Michael Waldman (eds.), *Solutions: American Leaders Speak Out on Criminal Justice* (New York: New York University School of Law, 2015), p. 94; Marc A. Levin, “At the State Level, So-Called Crimes Are Here, There, Everywhere,” *Criminal Justice* 28(2013):4–9.

lives. They have called for the **decriminalization** (reduction of penalties) and legalization of nonserious victimless crimes, such as the possession of small amounts of marijuana, public drunkenness, and vagrancy. This is getting more and more popular, as this chapter’s Reforming Criminal Justice box attests.

Noninterventionists demand the removal of nonviolent offenders from the nation’s correctional system, a policy referred to as **deinstitutionalization**. First offenders who commit minor crimes should instead be placed in informal, community-based treatment programs, a process referred to as “pretrial diversion.”

Sometimes the passage of new criminal laws can stigmatize offenders beyond the scope of their offense, a phenomenon referred to as “widening the net of justice.” For example, a person who purchases pornography on the Internet may be labeled a dangerous sex offender, or someone caught for a second time with marijuana may be considered a habitual drug abuser. Noninterventionists have fought implementation of community notification-type laws that require convicted sex offenders to register with state law enforcement officials and that allow officials to publicly disclose when a registrant moves into a community. Their efforts have resulted in rulings stating that these laws can be damaging to the reputation and future of offenders who have not been given an opportunity to defend themselves from the charge that they are chronic criminal sex offenders.⁴² As a group, noninterventionist initiatives have been implemented to help people avoid the stigma associated with contact with the criminal justice system.

decriminalization

Reducing the penalty for a criminal act without legalizing it.

deinstitutionalization

The policy of removing from secure confinement as many first offenders of minor, nonviolent crimes as possible and treating them in the community.

equal justice perspective

A perspective on criminal justice based on the idea that all people should receive the same treatment under the law and should be evaluated on the basis of their current behavior, not on what they have done in the past.

racial animus model

The view that white America has developed a mental image of the typical offender as a young, inner-city black male who offends with little remorse.

restorative justice perspective

A perspective on criminal justice that sees the main goal of the criminal justice system as making a systematic response to wrongdoing that emphasizes healing victims, offenders, and communities wounded by crime. It stresses peacemaking, not punishment.

The Equal Justice Perspective

The **equal justice perspective** asserts that all people should receive the same treatment under the law. The discretion routinely employed in criminal justice making has created a system of individualized justice that can be unfair, and that unfairness undermines the goals of the system. Frustration arises when two people commit the same crime but receive different sentences or punishments. The resulting anger and sense of unfairness will increase the likelihood of recidivism.

The equal justice model has legitimacy, according to its advocates, because there is still evidence that perceptions of race shape the contours of how Americans think about crime and its control. According to the **racial animus model**, white America has developed a mental image of the typical offender as a young, inner-city black male who offends with little remorse.⁴³ Criminal justice decision makers have responded to the general public's perceptions by endorsing mass imprisonment and the death penalty. Their views rest on the belief that the targets of these harsh crime control efforts are young African American men, a group already feared and loathed by the white majority. These feelings are supported by political pundits who constantly dwell on the failings of the court system and the "coddling of criminals." It is therefore important to ensure the equal treatment of all defendants, regardless of their race or class.⁴⁴

To remedy this situation, each criminal act must be treated independently and punished proportionately. Punishment must not be based on race, class, or status, nor on past events for which people have already paid their debt to society. It is also critical not to base punishment on often erroneous guesses about what defendants may do in the future. The treatment of criminal offenders must be based solely on present behavior. Punishment must be equitably administered and based on the principle of "just deserts."

The equal justice perspective has had considerable influence in molding the nation's sentencing policy. An ongoing effort has been made to reduce discretion and guarantee that every offender convicted of a particular crime receives equal and precisely computed punishment. This change has been particularly welcome, given the charges of racial discrimination that have beset the sentencing process. A number of initiatives have been designed to achieve this result, including mandatory sentences, which require that all people convicted of a crime receive the same prison sentence. Truth-in-sentencing laws require offenders to serve a substantial portion of their prison sentence behind bars, thus limiting their eligibility for early release on parole.

The Restorative Justice Perspective

According to the **restorative justice perspective**, the true purpose of the criminal justice system is to promote a peaceful and just society; the justice system should aim for peacemaking, not punishment.⁴⁵ The restorative justice perspective draws its inspiration from religious and philosophical teachings ranging from Quakerism to Zen. Advocates of restorative justice view the efforts of the state to punish and control as "crime encouraging" rather than "crime discouraging." The violent punishing acts of the state, they claim, are not unlike the violent acts of individuals.⁴⁶ Therefore, mutual aid, not coercive punishment, is the key to a harmonious society. Without the capacity to restore damaged social relations, society's response to crime has been almost exclusively punitive.

According to restorative justice, resolution of the conflict between criminal and victim should take place in the community in which that conflict

originated, not in some far-off prison. The victim should be given a chance to voice his story, and the offender can directly communicate her need for social reintegration and treatment. The goal is to enable the offender to appreciate the damage she has caused, to make amends, and to be reintegrated into society.

Restorative justice programs are now being geared to these principles. Mediation and conflict-resolution programs are now common in efforts to resolve harmful human interactions ranging from domestic violence to hate crimes.⁴⁷ Police officers, as elements of community policing programs, are beginning to use mediation techniques to settle disputes instead of resorting to formal arrest.⁴⁸ Financial and community service restitution programs as an alternative to imprisonment have been in operation for more than two decades.

Perspectives in Perspective

The variety of tactics being used to combat crime today aptly illustrates the impact of the various perspectives on the operations of the criminal justice system. Advocates of each view have attempted to promote their vision of what justice is all about and how it should be applied. During the past decade, the crime control and equal justice models have dominated. Laws have been toughened and the rights of the accused curtailed, the prison population has grown, and the death penalty has been employed against convicted murderers. Because the crime rate has been dropping, these policies seem to be effective. They may be questioned if crime rates once again begin to rise. At the same time, efforts to rehabilitate offenders, to provide them with elements of due process, and to administer the least intrusive treatment have not been abandoned. Police, courts, and correctional agencies supply a wide range of treatment and rehabilitation programs to offenders in all stages of the criminal justice system. Whenever possible, those accused of a crime are treated informally in nonrestrictive, community-based programs, and the effects of stigma are guarded against.

Although the legal rights of offenders are being closely scrutinized by the courts, the basic constitutional rights of the accused remain inviolate. Guardians of the process have made sure that defendants are afforded the maximum protection possible under the law. For example, criminal defendants have been awarded the right to *competent* legal counsel at trial; merely having a lawyer to defend them is not considered sufficient legal protection.

CONCEPT SUMMARY 1.2

Key Elements of the Perspectives on Justice

| Perspective on Justice | Main Beliefs |
|----------------------------|---|
| Crime control perspective | <ul style="list-style-type: none"> The purpose of the justice system is to deter crime through the application of punishment. The more efficient the system, the greater its effectiveness. The role of the justice system is not to treat people but, rather, to investigate crimes, apprehend suspects, and punish the guilty. |
| Rehabilitation perspective | <ul style="list-style-type: none"> In the long run, it is better to treat than to punish. Criminals are society's victims. Helping others is part of the American culture. |

(Continued)

CONCEPT SUMMARY 1.2 (Continued)

| | |
|---------------------------------|--|
| Due process perspective | <ul style="list-style-type: none"> • Every person deserves his or her full array of constitutional rights and privileges. • Preserving the democratic ideals of American society takes precedence over the need to punish the guilty. • Because of potential errors, decisions made within the justice system must be carefully scrutinized. • Steps must be taken to treat all defendants fairly, regardless of their socioeconomic status. • Illegally seized evidence should be suppressed even if it means that a guilty person will go free. • Despite the cost, the government should supply free legal counsel at every stage of the justice system to prevent abuse. |
| Nonintervention perspective | <ul style="list-style-type: none"> • The justice process stigmatizes offenders. • Stigma locks people into a criminal way of life. • Less is better. Decriminalize, divert, and deinstitutionalize whenever possible. |
| Equal justice perspective | <ul style="list-style-type: none"> • People should receive equal treatment for equal crimes. • Decision making in the justice system must be standardized and structured by rules and regulations. • Whenever possible, individual discretion must be reduced and controlled. • Inconsistent treatment undermines respect for the system. |
| Restorative justice perspective | <ul style="list-style-type: none"> • Offenders should be reintegrated into society. • Coercive punishments are self-defeating. • The justice system must become more humane. • Crime is a community-level problem. |

In sum, understanding the justice system today requires analyzing a variety of occupational roles, institutional processes, legal rules, and administrative doctrines. Each predominant view of criminal justice offers a vantage point for understanding and interpreting these complex issues. No single view is *the* right or correct one. Each individual must choose the perspective that best fits his or her ideas and judgment—or they can all be discarded and the individual's own view substituted. The various perspectives on justice and their key elements are set out in Concept Summary 1.2.

ETHICS IN CRIMINAL JUSTICE

LO10 Discuss the ethical issues that arise in criminal justice.

Both the general public and criminal justice professionals are concerned with the application of ethics.⁴⁹ Both would like every police officer on the street, every district attorney in court, and every correctional administrator in prison to be able to discern what is right, proper, and moral; to be committed to ethical standards; and to apply equal and fair justice. These demands are difficult to meet, however, because justice system personnel are often forced to work in an environment in which moral ambiguity is the norm.

Should a police officer be forced to arrest, a prosecutor to charge, and a correctional official to punish a woman who for many years was the victim of domestic abuse and in desperation retaliated against her abusive spouse? Who is the victim here, and who is the aggressor? And what about the parent who attacks the man who has sexually abused her young child?

Should she be prosecuted as a felon? And what happens if the parent mistakenly attacks and injures the wrong person? Can a clear line be drawn between righteous retribution and vigilante justice? As students of justice, we are concerned with identifying the behavioral standards that should govern everyone involved in the administration of justice. And if these standards can be identified, can we find ways to disseminate them to police departments, courts, and correctional agencies around the nation?

Ethics in criminal justice is an especially important topic today, considering the power granted to those who work in, operate, and control the justice system. We rely on the justice system to exert power over people's lives and to be society's instrument of social control, so we give the system and its agents the authority to deny people their personal liberty on a routine basis. A police officer's ability to arrest and use force, a judge's power to sentence, and a correctional administrator's authority to punish an inmate give them considerable personal power, which must be governed by ethical considerations. Without ethical decision making, individual civil rights may suffer, and personal liberties guaranteed by the U.S. Constitution may be trampled upon.

The need for an ethical criminal justice system is further enhanced by cyber-age advances in record keeping and data recording. Agents of the criminal justice system now have immediate access to our most personal information, ranging from arrest record to medical history. Issues of privacy and confidentiality, which can have enormous economic, social, and political consequences, are now more critical than ever.

Take, for instance, the Megan's Law movement, which began in New Jersey in 1994 after 7-year-old Megan Kanka was murdered by a paroled child molester who had moved in across the street. The form of Megan's Laws differs from state to state, but most require law enforcement officials to maintain a registry of convicted sex offenders living in the area and make this registry available to the public. Although monitoring convicted sex offenders may seem like an effective crime deterrent, the American Civil Liberties Union has fought the effort around the nation because they consider such laws overreaching and dangerous. Monitoring of sex offenders has also been challenged on the grounds that it simply does not work, an issue discussed in the Evidence-Based Justice feature.

Ethical issues transcend all elements of the justice system. Yet specific issues shape the ethical standards in each branch.

Ethics and Law Enforcement

Ethical behavior is particularly important in law enforcement because police officers have the authority to deprive people of their liberty. And in carrying out their daily activities, they also have the right to use physical and even deadly force.

Depriving people of liberty and using force are not the only police behaviors that require ethical consideration. Police officers have considerable discretion in choosing whom to investigate, how far the investigation should go, and how much effort is required—does an investigation merit undercover work, listening devices, surveillance? While carrying out their duties, police officers must be responsive to the public's demand for protection and at the same time remain sensitive to the rights and liberties of those they must deter from committing crime and/or control. In this capacity, they serve as the interface between the power of the state and the citizens it governs. This duality creates many ethical dilemmas. Consider the following:

- Should law enforcement agents target groups whom they suspect are heavily involved in crime and violence, or does this practice lead to



EVIDENCE-BASED JUSTICE

ARE SEX OFFENDERS DANGEROUS?

Between the late 1980s and early 1990s, three sexual homicides consumed the headlines. In October 1989, Jacob Wetterling, age 11, was abducted from his home by a masked stranger; his body wasn't found until 2016. In 1993, Polly Klaas, 12, was abducted from her bedroom, sexually assaulted, and later killed. A year later, Megan Kanka went missing from her New Jersey home. She was later found sexually assaulted and murdered. These cases ushered in a number of new laws aimed at keeping tabs on sex offenders and limiting where they can live. To this day, it seems not a year goes by without some horrific tale of the rape and murder of a child. Most recently, the news has shifted beyond the U.S. border. In late 2019, three men were jailed for life in connection with the rape, torture, and murder of an 8-year-old girl in the Kashmir region of Pakistan.

Murders are rare, but they are also the tip of the iceberg. Looking at rape and sexual assault, there were over 700,000 reported victimizations in 2018 (most recent year for which data were available at the time of this writing). According to the National Sexual Violence Resource Center, "one in four girls and one in six boys will be sexually abused before they turn 18 years old." Indeed, The Rape, Abuse &

Incest National Network estimates that an American is sexually assaulted every 73 seconds. Sexual violence, an even broader category of offenses, is believed to cost \$3.1 trillion over the course of victims' lives. And due to underreporting, all these estimates are probably on the low side.

The extent of the problem notwithstanding, the public is wildly misinformed about the extent to which sex offenders are dangerous recidivists. Research shows that the vast majority of sex offenders are known to their offenders, that news horror stories of "stranger danger" are exaggerated and misleading. A study by Christina Mancini and Kristen Budd concluded that public perceptions about sex offenders—and subsequently the laws enacted to control, punish, and rehabilitate them—are based on faulty assumptions. Calling it a "big lie," the *Washington Post* reported that "[m]uch of the destructive, extra-punishment punishment we inflict on sex offenders is due to the widely held belief that they're more likely to re-offend than the perpetrators of other classes of crime." In short, the public believes sex offenders are notorious for reoffending, that their recidivism rates are among the highest for all recorded offenses.

racial/ethnic profiling? Is it unethical for a security agent to pay closer attention to a young Arab male getting on an airline flight than she pays to a clean-cut American soldier from upstate New York? Why suspect a blue-eyed, blonde soldier of being a terrorist when the 9/11 terrorists were of Arab descent? But don't forget that Tim McVeigh, who grew up in rural Pendleton, New York, and spent more than 3 years in the army, went on to become the Oklahoma City Bomber. How can police officers balance their need to protect public security with the ethical requirement that they protect citizens' legal rights?

- Should police officers tell the truth even if it means that a guilty person will go free? Let's say that a police officer stops a car for a traffic violation and searches it illegally. In so doing, he finds a weapon that was used in a particularly heinous shooting in which three children were killed. Would it be ethical for the officer to lie on the witness stand and say he noticed the gun on the car seat in plain sight (and hence subject to legal and proper seizure)? Or should he tell the truth and risk having the charges against the suspect dismissed, leaving the offender free to kill again?
- Should police officers be loyal to their peers even when they know that these officers have violated the law? A new officer soon becomes aware that his partner is taking gratuities from local gangsters in return for looking the other way and allowing their prostitution and bookmaking

What do the data show? According to recent Bureau of Justice Statistics figures, among persons released from prison and tracked over time, just 8 percent were rearrested for rape or sexual after 9 years (fewer were convicted). And while sex offenders were three times as likely as other offenders to be arrested for rape or sexual assault during the 9 years after their release, it is important to note again that just 8 percent were. The same study also concluded that “[r]ape and sexual assault offenders were less likely than other released prisoners to be arrested.”

Another study with a longer follow-up revealed similar patterns. Just 10 percent of child molesters were reconvicted for a sex offense in 3 years, but that went up to 41 percent in 25 years. Turning to rapists, the study found that just one in four were reconvicted of a sex crime within 25 years.

The numbers also vary depending on how recidivism is measured. Is it offending? Arrest? Conviction? And what offenses should be included? How researchers choose to answer these questions will greatly affect the incidence of recidivism. No matter the choice, it is simply not the case that the vast majority of sex offenders are chronic reoffenders who, when released, immediately prey on unsuspecting victims. The author of one of the most comprehensive reviews on the subject concluded as follows:

Interpreting recidivism rates of sex offenders correctly is crucial in understanding the general risk to the public...the intricacies and complexities of the issue have not been grasped by the media that provide a distorted perception of recidivism based on a few sensational cases.

CRITICAL THINKING

1. What fuels the perception that sex offenders are rampant recidivists?
2. What is the best indicator to measure for sex offender recidivism, and why?

Sources: Rachel E. Morgan and Barbara A. Oudekerk, *Criminal Victimization, 2018* (Washington, DC: Bureau of Justice Statistics, 2019); National Sexual Violence Resource Center, *Statistics About Sexual Violence*, https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf (accessed March 2, 2020); www.rainn.org/statistics; Office for Victims of Crime, *Sexual Violence*, https://ovc.ncjrs.gov/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_SexualViolence_508_QC.pdf (accessed March 2, 2020); Christina Mancini and Kristen M. Budd, “Is the Public Convinced That ‘Nothing Works?’: Predictors of Treatment Support for Sex Offenders Among Americans,” *Crime & Delinquency* 62(2016):777-99; Radley Balko, “The Big Lie About Sex Offenders,” *The Washington Post*, March 9, 2017; Mariel Alper and Matthew R. Durose, *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005–14)* (Washington, DC: Bureau of Justice Statistics, 2019); Robert A. Prentky, Austin F.S. Lee, Raymond A. Knight, and David Cerce, “Recidivism Rates among Child Molesters and Rapists: A Methodological Analysis,” *Law and Human Behavior* 21(1997): 635–659; Keith Soothill, “Sex Offender Recidivism,” *Crime and Justice* 39(2010): 145–211.

operations to flourish. Should the rookie file a complaint and turn in his partner? Will she be labeled a “rat” and lose the respect of her fellow officers? After all, gambling and prostitution are not violent crimes and do not really hurt anyone. Or do they?

- Is it ethical for police agencies to profit financially from their law enforcement activities? Police departments have instituted a number of money-making schemes ranging from selling ads on the back of police cars to ticket-writing campaigns. In some instances, individual officers can benefit. For example, when contractors are required to have paid police officer details present at job sites, officers are paid two or three times the standard wage. Profiting from police services is controversial, and it can also have unexpected consequences.

How can law enforcement officers be aided in making ethical decisions? Various national organizations have produced model codes of conduct that can serve as behavioral guides. One well-known document created by the International Association of Chiefs of Police says⁵⁰:

As a Law Enforcement Officer my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional Rights of all men to liberty, equality and justice. . . .

Ethics and the Court Process

Ethical concerns do not stop with an arrest. As an officer of the court and the “people’s attorney,” the prosecutor must seek justice for all parties in a criminal matter and should not merely be targeting a conviction. To be fair, prosecutors must share evidence with the defense, not use scare tactics or intimidation, and represent the public interest. It would be inexcusable and illegal for prosecutors to suppress critical evidence, a practice that might mean the guilty walk free and the innocent are convicted.

Prosecutorial ethics may be tested when the dual role of a prosecutor causes her to experience role conflict. On the one hand, she represents the people and has an obligation to present evidence, uphold the law, and obtain convictions as vigorously as possible. In the adversary system, it is the prosecutor who takes the side of the victims and on whom they depend for justice.

However, as a fair and impartial officer of the court, the prosecutor must oversee the investigation of crime and make sure that all aspects of the investigation meet constitutional standards. If during the investigation it appears that the police have violated the constitutional rights of suspects—for example, by extracting an illegal confession or conducting an illegal search—the prosecutor has an ethical obligation to take whatever action is necessary and appropriate to remedy legal or technical errors, even if that means rejecting a case in which the defendant’s rights have been violated. Moreover, the canon of legal ethics in most states forbids the prosecutor from pursuing charges when there is no probable cause and mandates that all evidence that might mitigate guilt or reduce the punishment be turned over to the defense.

> WEB APP 1.4 <

To read more about the ethical responsibilities of prosecutors, visit <https://tinyurl.com/kh47hvg>.

THE DEFENSE ATTORNEY As an officer of the court, along with the judge, prosecutors, and other trial participants, the defense attorney seeks to uncover the basic facts and elements of the criminal act. In this dual capacity of being both an advocate for defendants and an officer of the court, this attorney often experiences conflicting obligations to his client and his profession. Suppose a client confides that she is planning to commit a crime. What are the defense attorney’s ethical responsibilities in this case? Obviously, the lawyer would have to counsel the client to obey the law; if the lawyer assisted the client in engaging in illegal behavior, he would be subject to charges of unprofessional conduct and even to criminal liability.

Ethics and Corrections

Ethical issues do not cease to arise when a defendant has been convicted. The ethical issues surrounding punishment are too vast to discuss here, but they include the following:

- Is it fair and ethical to execute a criminal? Can capital punishment ever be considered a moral choice?
- Should people be given different punishments for the same criminal law violation? Is it fair and just when some convicted murderers and rapists receive probation for their crimes, while others are sentenced to prison for the same offense?
- Is it fair to grant leniency to criminals who agree to testify against their co-conspirators and therefore allow them to benefit from their perfidy, while others not given the opportunity to “squeal” are forced to bear the full brunt of the law?
- Should some criminal inmates be granted early release because they can persuade the parole board that they have been rehabilitated, while

others who are not so glib, convincing, or well spoken are forced to serve their entire sentence behind bars?

- Should technology be used to monitor offenders in the community? Would it be ethical to track a probationer's movements with a GPS unit attached to an ankle bracelet she is required to wear at all times? Should her Internet use and computer downloads be monitored?
- Should profit be an issue in correctional administration? There has been a trend to privatize aspects of corrections, ranging from outsourcing food and health services to running the prisons themselves. Is it ethical to turn the care and custody of incarcerated people over to corporations that may give profit higher priority than treatment?

Ethical standards are also challenged by the discretion afforded to correctional workers and administrators. Discretion is involved when a correctional officer decides to report an inmate for disorderly conduct, which might jeopardize his or her parole. And although the Supreme Court has issued many rulings related to prisoners' rights, implementing these mandates is left to others, who may or may not carry them out in an orderly way.

Correctional officers have significant coercive power over offenders. They are under a legal and professional obligation not to use unnecessary force or to take advantage of inmates' powerlessness. One example of abuse is an officer beating an inmate; another is a staff member coercing an inmate to have sex. These abuses of power can occur because of the powerlessness of the offender relative to the correctional professional. One national survey uncovered evidence that this breach of ethics is significant: of the thousands of incidents of sexual violence in prison each year, more than 40 percent involved staff-on-inmate sexual misconduct, and more than 10 percent involved staff sexual harassment of inmates. In other words, staff members were involved in more cases of sexual violence and harassment in correctional facilities than were inmates!⁵¹

Ethical considerations pervade all elements of the justice system. Making ethical decisions is an increasingly important task in a society that is becoming more diverse, pluralistic, and complex every day.



ETHICAL CHALLENGES IN CRIMINAL JUSTICE

A WRITING ASSIGNMENT

Cities across the country have installed “red light cameras” that take snapshots of busy intersections, capturing the license plates of cars that are running the light, under the assumption that this use of technology would simultaneously save lives and generate millions of dollars in extra fines. However, researchers have started to challenge this assumption. Some studies have shown that while red light cameras may prevent accidents in intersections (so-called right-angle crashes), they are also responsible for a greater number of rear-end accidents, which occur after people slam on their brakes to avoid entering the intersection on a red light. A number of cities have started to remove red light cameras. Some states even prohibit them altogether. The critics claim that the cameras do little more than generate revenue.

Write about the ethics of red light cameras. In doing so, answer the following questions: Is it ethical to remove or reduce a crime/safety device that is effective but does not generate profits? Should financial concerns ever play a role in the justice system? If so, when and how? What other possible sources of revenue generation exist within the criminal justice system?