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# Crime and Criminology

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# Crime and Criminology

**Fifteenth Edition**

**Sue Titus Reid, JD, Ph.D**

Reubin O'Donovan. Askew School of Public Administration & Policy  
The Florida State University

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*To Dr. Walter C. Hellinger*

*my internist at the Mayo Clinic Jacksonville (Florida) for almost 30 years*

*Thanks for your excellent medical care*





# About the Author

Sue Titus Reid, a professor in the Reubin O'Donovan Askew School of Public Administration and Policy at Florida State University, Tallahassee, has taught law students, graduate students, and undergraduate students in many states. She has served on the board of the Midwest Sociological Society and the executive staff of the American Sociological Association. She has served as chairperson, associate dean, and dean. In 1985, she held the prestigious George Beto Chair in criminal justice at the Criminal Justice Center, Sam Houston State University, Huntsville, Texas. From 1976 to 1977, she served as a visiting distinguished professor at the University of Tulsa College of Law and then joined the faculty as a professor and later served as an associate dean. In 1979, Dr. Reid received the Distinguished Alumna Award from Texas Woman's University, and in 2000, she received a university award "for excellence in teaching" at Florida State University.

Dr. Reid's formal training in criminology began in graduate school, but her interest in the field dates back to her early childhood. She was strongly influenced in her career by her father, who was born in the jail where his father, the undersheriff of a small east Texas county, lived with his family. As a child, she helped her father in his grocery store and was quite disturbed when, on three separate occasions, he was victimized by criminals, one an armed robber. In each instance, the offender took all the cash and checks; no one was ever apprehended, and the family was temporarily left homeless as a result of the business failure.

Dr. Reid graduated with honors from Texas Woman's University in 1960 and received graduate degrees in sociology (MA in 1962 and PhD in 1965) from the University of Missouri-Columbia. In 1972, she graduated with distinction from the University of Iowa College of Law. She was admitted to the Iowa Bar that year and later to the District of Columbia Court of Appeals. She has also been admitted to practice before the U.S. Supreme Court.

Dr. Reid is unique among authors in the criminal justice field because of her distinguished qualifications in both law and the social sciences. She launched her text publishing career with *Crime and Criminology* in 1976, and this edition is the fifteenth, making it the first text in criminology to go into that many editions. Dr. Reid's other titles include *The Correctional System: An Introduction*; *Criminal Law: The Essentials* 3d edition; *Criminal Justice Essentials*, 10th edition; and *Criminal Law*, 9th edition. She has contributed articles to the *Encyclopedia of Crime and Justice* and the *Encyclopedia of American Prisons*, as well as to other books, in addition to publishing scholarly articles in both law and sociology.

Dr. Reid's contributions to her profession have been widely recognized nationally and abroad. In 1982, the American Society of Criminology elected her a fellow "for outstanding contributions to the field of Criminology." Other national honors include the following: Who's Who Among Women; Who's Who in America; Who's Who in American Education; Who's Who in Criminal Law; 2,000 Notable Women (Hall of Fame for Outstanding Contributions to Criminal Law, 1990); Personalities of America; and Most Admired Woman of the Decade, 1992.

Her international honors include numerous recognitions from the International Biographical Centre (IBC), Cambridge, England, including the prestigious International Order of Merit. The IBC named Dr. Reid an inaugural member as one of the Top 100 Educators—2008, an honor limited by the IBC "to those individuals who, in our belief, have made a significant enough contribution in their field to engender influence on a local, national or international basis." Among the other international honors received by Dr. Reid are the following: International Woman of the Year, 1991-1992; International Who's Who of Intellectuals; International Who's Who of Professionals; International Who's Who of Professional and Business Women; International Order of

Merit, 1993; Who's Who in the World; International Biographical Centre, England, Marquis Who's Who in the World; and the Manchester Who's Who Among Executive and Professional Women.

Dr. Reid has traveled extensively to widen her knowledge of criminal justice systems in the United States and in other countries. In 1982, she was a member of the Eisenhower Foundation sponsored People-to-People Crime Prevention delegation to the People's Republic of China. Her international travels included a three-month study and lecture tour of ten European countries

in 1985. She has served as a legal consultant, and she is an honorary member of the Jackson, New Hampshire Police Department.

In August 2010, the Commission on Physical and Mental Disabilities of the 400,000-member American Bar Association featured Dr. Reid as its monthly spotlight on lawyers and judges who, despite disabilities, have made significant contributions to the legal profession.

Dr. Reid lives in Texas and New Hampshire while continuing her teaching as a Professor at Florida State University.

# Brief Contents

*Preface* xxvii  
*Acknowledgments* xxxv

## **Part I Introduction to the Study of Crime and Criminology 1**

1. Crime, Criminal Law, and Criminology 3
2. The Measurement of Crime and Its Impact 17

## **Part II Explanations of Criminal Behavior 43**

3. Early Explanations of Criminal Behavior and Their Modern Counterparts 45
4. Biological and Psychological Theories of Criminal Behavior 65
5. Sociological Theories of Criminal Behavior I: The Social-Structural Approach 91
6. Sociological Theories of Criminal Behavior II: The Social-Process Approach 131

## **Part III Types of Crime 165**

7. Violent Crimes 167
8. Property Crimes 195
9. Business- and Government-Related Crimes 219
10. Drug Abuse, Drug Trafficking, and Organized Crime 247

## **Part IV Criminal Justice Systems 281**

11. U.S. Criminal Justice Systems 283
12. Police 319
13. Court Systems 357

## **Part V Social Reaction to Crime: Corrections 399**

14. The Confinement of Offenders 401
15. Corrections in the Community 433

**Appendix A** Amendments to the U.S. Constitution 471  
**Appendix B** How to Read a Court Citation 477

*Glossary* 479  
*Case Index* 497  
*Name Index* 501  
*General Index* 511  
*Photo Credits* 535



# Contents

*Preface* xxvii  
*Acknowledgments* xxxv

## Part I

### Introduction to the Study of Crime and Criminology 1

#### *Chapter 1: Crime, Criminal Law, and Criminology* 3

*Chapter Outline* 3

*Introduction* 3

#### **The Concept of Crime** 4

An Act or Omission 5

The Intent Requirement and Its Exceptions 5

Violation of the Elements of Criminal Law 7

Without Justification or Defense 8

Felony or Misdemeanor 8

The Judge or Jury as Final Decision Maker 9

#### **The Concept of Law** 9

Law as Social Control 9

The Extent of Criminal Law 11

#### **Criminology and the Study of Crime** 12

*Summary* 13

*Key Terms* 14

*Study Questions* 14

*Brief Essay Assignments* 15

*Internet Activities* 15

*Notes* 15

## *Chapter 2: The Measurement of Crime and Its Impact 17*

*Chapter Outline 17*

*Introduction 17*

**Sources of Crime Data 19**

The *Uniform Crime Reports (UCR)* 19

The National Incident-Based Reporting System (NIBRS) 23

The National Crime Victimization Survey (NCVS) 24

Self-Report Data (SRD) 24

The National Criminal History Improvement Program (NCHIP) 25

**Crime in the United States: An Overview 26**

National Crime Victimization Survey (NCVS) Data 26

*Uniform Crime Report (UCR)* Data 27

**Characteristics of Offenders 28**

**Characteristics of Crime Victims 29**

**Criminal Justice Systems and Crime Victims 32**

**Analysis of Crime Data Collection 33**

**Research in Criminology 34**

Basing Policy Decisions on Research 34

The Search for Explanations 35

Selection of a Research Method 35

Errors in Interpreting Data 36

The Importance of Research Methods 36

*Summary 37*

*Key Terms 38*

*Study Questions 38*

*Brief Essay Assignments 39*

*Internet Activities 39*

*Notes 39*

## **Part II**

## **Explanations of Criminal Behavior 43**

### *Chapter 3: Early Explanations of Criminal Behavior and Their Modern Counterparts 45*

*Chapter Outline 45*

*Introduction 45*

**The Historical Background of Punishment and Criminal Law 46**

The Classical Beginnings 46

The Neoclassical School	49
The Positivist School	49
The Classical and Positivist Schools Compared	51
<b>Punishment Philosophies</b>	<b>51</b>
Incapacitation	51
Retribution	52
Just Deserts	52
Rehabilitation	53
Deterrence	54
<i>Research on Deterrence</i>	54
<i>Policy Implications of Deterrence Theory</i>	57
<i>Deterrence and Rational Choice Theories</i>	57
<i>Moral Filtering and Deterrence</i>	59
<b>Summary</b>	<b>60</b>
<b>Key Terms</b>	<b>60</b>
<b>Study Questions</b>	<b>61</b>
<b>Brief Essay Assignments</b>	<b>61</b>
<b>Internet Activities</b>	<b>61</b>
<b>Notes</b>	<b>61</b>

## ***Chapter 4: Biological and Psychological Theories of Criminal Behavior 65***

<b>Chapter Outline</b>	<b>65</b>
<b>Introduction</b>	<b>65</b>
<b>Biological Factors and Criminal Behavior</b>	<b>66</b>
Lombroso and the Positivists	67
Physique and Crime	68
Genetic Factors	69
<i>Studies of Families</i>	69
<i>Studies of Twins</i>	69
<i>Studies of Adoptees</i>	70
<i>Genetics and Behavior: A Modern View</i>	70
Biosocial Factors	71
Obstetric Factors	73
Neurological Factors	73
<b>Psychological Factors and Criminal Behavior</b>	<b>75</b>
Mental Illness: A Brief Look	75
Personality Theory	76
Intelligence and Crime	77
Cognitive Development Theory	79
Behavior Theory	79
Learning Theory	80
<b>Implications of Biological and Psychological Theories</b>	<b>82</b>



<i>Summary</i>	86
<i>Key Terms</i>	86
<i>Study Questions</i>	86
<i>Brief Essay Assignments</i>	87
<i>Internet Activities</i>	87
<i>Notes</i>	87

## *Chapter 5: Sociological Theories of Criminal Behavior I: The Social-Structural Approach 91*

<i>Chapter Outline</i>	91
<i>Introduction</i>	91
<b>Statistical Background of Studies of Crime</b>	94
<b>Ecological Theories</b>	94
The Chicago School and Its Impact	94
Contemporary Research on Urban Crime and Delinquency	96
<b>Anomie/Strain Theories</b>	99
<b>The Study of Gangs</b>	103
<b>Cultural Transmission Theories</b>	105
<b>Crime and the Family</b>	108
<b>The Routine Activity Approach</b>	110
<b>The Conflict Perspective</b>	111
<b>Critical Criminology</b>	113
<b>Social-Structural Theories and Female Criminality</b>	116
Women's Liberation Theory	117
Strain Theory	118
Critical Theory	118
Feminist Theory	120
<i>Summary</i>	122
<i>Key Terms</i>	123
<i>Study Questions</i>	123
<i>Brief Essay Assignments</i>	124
<i>Internet Activities</i>	124
<i>Notes</i>	124

## *Chapter 6: Sociological Theories of Criminal Behavior II: The Social-Process Approach 131*

<i>Chapter Outline</i>	131
<i>Introduction</i>	131
<b>Learning Theory</b>	132

<b>Social Learning Theory</b>	<b>132</b>
Sutherland's Differential Association Theory	132
Akers's Social Learning Theory	134
<b>Control Theory</b>	<b>136</b>
Hirschi's Bonding Theory	137
Gottfredson and Hirschi's Self-Control Theory	138
<b>Labeling Theory</b>	<b>141</b>
Emergence and Early Development	141
Braithwaite's Restorative Justice	143
Sampson and Laub's Cumulative Disadvantages	144
Evaluation	144
<b>Integrated Theories</b>	<b>146</b>
Akers: Conceptual Absorption	147
Developmental and Life-Course Theories	147
<i>Sampson and Laub: Age-Graded Theory</i>	148
<i>Moffitt: Developmental Theory</i>	150
Cullen and Colvin: Social Support or Coercion	151
Tittle: Control Balance	151
Elliott, Ageton, and Cantor: Integrated Strain/Control	152
Conclusion to Integrated Theories	153
<b>Conclusion to Criminal Behavior Theories</b>	<b>153</b>
<b>Policy Implications of Criminal Behavior Theories</b>	<b>155</b>
<i>Summary</i>	157
<i>Key Terms</i>	158
<i>Study Questions</i>	158
<i>Brief Essay Assignments</i>	159
<i>Internet Activities</i>	159
<i>Notes</i>	159

## Part III

## Types of Crime 165

### *Chapter 7: Violent Crimes 167*

<i>Chapter Outline</i>	167
<i>Introduction</i>	167
<b>The Study of Types of Crime</b>	<b>169</b>
<b>Serious Violent Crimes</b>	<b>169</b>
Murder and Nonnegligent Manslaughter	170
Rape	171
Robbery	173
Aggravated Assault	174
<b>Explanations of Violent Crime</b>	<b>174</b>

<b>Other Violent Crimes</b>	<b>175</b>
Domestic Violence	175
<i>Intimate Partner Violence (IPV)</i>	176
<i>Child Abuse</i>	177
<i>Elder Abuse</i>	181
Violence on Campus	182
Kidnapping	183
Hate Crimes	184
Stalking	185
<b>Terrorism</b>	<b>185</b>
<b>The Fear of Crime</b>	<b>186</b>
<b>Guns and Violent Crime</b>	<b>188</b>
<b>The Media, Pornography, and Violent Crime</b>	<b>189</b>
<i>Summary</i>	<i>190</i>
<i>Key Terms</i>	<i>191</i>
<i>Study Questions</i>	<i>191</i>
<i>Brief Essay Assignments</i>	<i>191</i>
<i>Internet Activities</i>	<i>192</i>
<i>Notes</i>	<i>192</i>

## *Chapter 8: Property Crimes 195*

<i>Chapter Outline</i>	<i>195</i>
<i>Introduction</i>	<i>195</i>
<b>Serious Property Crimes</b>	<b>196</b>
Burglary	197
Larceny-Theft	199
Motor Vehicle Theft	200
Arson	201
<b>Lesser Property Crimes: A Sample</b>	<b>202</b>
<b>Identity Theft</b>	<b>203</b>
<b>Computer and Cyber Crimes</b>	<b>204</b>
Types of Crimes	206
Controlling Computer and Cyber Crimes	208
<b>Professional and Career Criminals</b>	<b>209</b>
Professional Criminal Behavior: The Early Approach	209
Contemporary Conceptualizations of Professional Thieves	209
Career Criminals: The Modern Approach	210
Recent Research	212
<i>Summary</i>	<i>214</i>
<i>Key Terms</i>	<i>215</i>
<i>Study Questions</i>	<i>215</i>

<i>Brief Essay Assignments</i>	215
<i>Internet Activities</i>	216
<i>Notes</i>	216

## ***Chapter 9: Business- and Government-Related Crimes 219***

<i>Chapter Outline</i>	219
<i>Introduction</i>	219
<b>Business-Related Crimes: An Overview</b>	220
Definition and Extent	220
A Sociological Analysis	222
<b>Types of Business-Related Crimes: A Selection</b>	224
Conspiracy	225
Bribery and Extortion	225
Embezzlement	225
Securities and Investment Crimes	226
Environmental Crime	230
Workplace Violations	232
Mail and Wire Fraud	233
Fraud Against the Elderly	234
Health Care Fraud	234
<b>Government-Related Crimes</b>	236
Obstruction of Justice	236
Contempt of Court	237
Treason	237
Political Crimes and Official Misuse of Power	238
Civil Rights Violations	239
<b>Controlling Business- and Government-Related Crimes</b>	240
<i>Summary</i>	241
<i>Key Terms</i>	242
<i>Study Questions</i>	242
<i>Brief Essay Assignments</i>	243
<i>Internet Activities</i>	243
<i>Notes</i>	243

## ***Chapter 10: Drug Abuse, Drug Trafficking, and Organized Crime 247***

<i>Chapter Outline</i>	247
<i>Introduction</i>	247
<b>Drug Abuse</b>	248

Data	248
The Impact of Drug Abuse	251
<i>Effects on the Abuser</i>	251
<i>Fetal Abuse</i>	252
<i>Campus and Intimate Partner Violence</i>	253
<i>Economic Cost</i>	255
<i>Criminal Activity</i>	255
The Debate over Drug Laws	257
<i>The Federal Approach: The War on Drugs</i>	257
<i>State Approaches: The Legalization Debate</i>	261
<i>The Treatment Approach</i>	263
<b>Drug Trafficking</b>	<b>265</b>
<b>The Control of Drug Abuse and Drug Trafficking</b>	<b>266</b>
<b>Organized Crime</b>	<b>267</b>
The Concept of Organized Crime	267
The History and Organization of Organized Crime	268
The Control of Organized Crime	270
<i>Summary</i>	273
<i>Key Terms</i>	274
<i>Study Questions</i>	274
<i>Brief Essay Assignments</i>	275
<i>Internet Activities</i>	275
<i>Notes</i>	276

## Part IV

## Criminal Justice Systems 281

### *Chapter 11: U.S. Criminal Justice Systems 283*

#### *Chapter Outline 283*

#### *Introduction 283*

#### **Concepts of U.S. Criminal Justice 284**

- The Philosophy of the Adversary System 284
- The Reality of the Adversary System 285
- Other Special Characteristics of U.S. Criminal Justice Systems 285

#### **The Stages in U.S. Criminal Justice Systems 287**

- Investigation Prior to Arrest 287
- Arrest 287
- Booking 287
- Initial Appearance 288
- Preliminary Hearing 288
- Information 288
- Indictment 288
- Arraignment 288

Reduction of the Charge	288
Trial	288
Sentencing	288
Appeals and Remedies	289
Incarceration	289
Release	289
<b>Selected Constitutional Rights of Defendants</b>	<b>289</b>
The Right to Be Free from Unreasonable Searches and Seizures	289
<i>Vehicle Searches</i>	290
<i>Person Searches</i>	293
<i>Home Searches</i>	295
<i>Cell Phone Searches</i>	296
The Right Not to Testify Against Oneself	297
The Right to Counsel	300
The Right to Trial by Jury	303
<b>Victims' Rights</b>	<b>305</b>
<b>Defendants' Rights Versus Victims' Rights</b>	<b>308</b>
<b>U.S. Criminal Justice Systems: An Assessment</b>	<b>308</b>
<b>The U.S. Criminal Justice Systems and Terrorism</b>	<b>312</b>
<i>Summary</i>	312
<i>Key Terms</i>	313
<i>Study Questions</i>	313
<i>Brief Essay Assignments</i>	314
<i>Internet Activities</i>	314
<i>Notes</i>	314

## *Chapter 12: Police 319*

<i>Chapter Outline</i>	319
<i>Introduction</i>	319
<b>The Emergence of Formal Policing</b>	<b>320</b>
<b>Public Policing in the United States</b>	<b>321</b>
Rural, County, Municipal, and State Policing	322
Policing at the Federal Level	322
Campus Security	324
<b>International Policing</b>	<b>324</b>
<b>Private Security</b>	<b>325</b>
<b>Police Personnel</b>	<b>325</b>
Qualifications, Recruitment, and Training	325
Female and Minority Officers	328
<b>The Nature of Policing</b>	<b>329</b>
Police Functions	329
Policing Models	333

<b>Police Decision Making</b>	<b>335</b>
The Right to Stop and Question	335
The Sociology of Arrest	336
Racial Profiling	337
The Use of Force	338
Intervention in Intimate Partner Violence Cases	339
Intervention in Mental Health Cases	341
<b>Police Misconduct</b>	<b>341</b>
<b>The Control of Policing</b>	<b>342</b>
Police Professionalism and Departmental Control	342
Community Control	343
Control Through the U.S. Department of Justice	343
Control Through the Courts	343
Criminal and Civil Liability	348
<b>Intelligence Led Policing (ILP)</b>	<b>348</b>
<i>Summary</i>	<i>348</i>
<i>Key Terms</i>	<i>349</i>
<i>Study Questions</i>	<i>349</i>
<i>Brief Essay Assignments</i>	<i>350</i>
<i>Internet Activities</i>	<i>350</i>
<i>Notes</i>	<i>350</i>

## *Chapter 13: Court Systems 357*

<i>Chapter Outline</i>	<i>357</i>
<i>Introduction</i>	<i>357</i>
<b>Court Systems</b>	<b>358</b>
<b>Focus on Specialized Courts</b>	<b>361</b>
Juvenile Courts	361
Domestic Violence Courts	364
Drug Courts	365
Mental Health Courts	365
Veterans' Courts	366
<b>The Role of Lawyers in Criminal Court Systems</b>	<b>366</b>
Prosecution	366
Defense	367
<b>Pretrial Processes</b>	<b>370</b>
Bail	371
Plea Bargaining	373
<b>The Trial of a Criminal Case</b>	<b>374</b>
<b>Sentencing</b>	<b>376</b>
The Sentencing Process	379
Three Strikes and You're Out	380
Crack/Powder Cocaine Sentencing Reform	380

Race and Ethnicity Discrimination	381
Gender Discrimination	382
Sentencing Guidelines	383
<b>Capital Punishment</b>	<b>383</b>
Deterrence and Capital Punishment	386
The Future of Capital Punishment	386
<b>Appeals and Other Legal Challenges</b>	<b>387</b>
<i>Summary</i>	<i>390</i>
<i>Key Terms</i>	<i>391</i>
<i>Study Questions</i>	<i>392</i>
<i>Brief Essay Assignments</i>	<i>392</i>
<i>Internet Activities</i>	<i>392</i>
<i>Notes</i>	<i>394</i>

## Part V

# Social Reaction to Crime: Corrections 399

## Chapter 14: The Confinement of Offenders 401

<i>Chapter Outline</i>	<i>401</i>
<i>Introduction</i>	<i>401</i>
<b>The Emergence of Prisons for Punishment</b>	<b>402</b>
<b>U.S. Contributions to the Emergence of Prisons</b>	<b>402</b>
The Pennsylvania and Auburn Systems	402
Prison Expansion	403
The Reformatory Era	404
The Modern Era of American Prisons: An Overview	404
<b>Institutions for the Confinement of Adult Offenders</b>	<b>405</b>
Correctional Populations	405
Jails	407
Prisons	408
Private Jails and Prisons	409
<b>The Inmate's World</b>	<b>410</b>
Prisonization	410
Female Inmates	412
Elderly and Physically and Mentally Challenged Inmates	413
Juveniles in Corrections	415
<b>The World of the Inmate's Family</b>	<b>416</b>
<b>Prison and Jail Violence</b>	<b>417</b>
Self-Inflicted Violence	417
Sexual Violence	418



Riots 419

Escape 422

**Control Within Prisons: The Role of Correctional Officers 422**

**Inmates' Legal Rights 424**

*Summary 426*

*Key Terms 427*

*Study Questions 427*

*Brief Essay Assignments 428*

*Internet Activities 428*

*Notes 428*

## ***Chapter 15: Corrections in the Community 433***

*Chapter Outline 433*

*Introduction 433*

**Diversion 435**

**Community Corrections: An Attempt at Reintegration 436**

Community Work Service, Fines, and Restitution 437

Halfway Houses 438

Shock Incarceration and Boot Camps 439

Day Reporting Centers 440

House Arrest 440

Electronic Monitoring and Global Positioning Systems 441

Probation 442

**Release from Incarceration 444**

Reentry: The Challenge 444

Parole 447

**Probation and Parole Revocation 450**

**Focus on Sex Offenders 451**

Registration and Related Laws 451

Civil Commitment of Released Sex Offenders 454

**The Future of Corrections 456**

An Evaluation of Community Corrections 456

*Focus on California 457*

*Focus on South Carolina 458*

Juvenile Justice 458

Other Issues 460

Evidence-Based Practices 461

<i>Summary</i>	462
<i>Key Terms</i>	463
<i>Study Questions</i>	463
<i>Brief Essay Assignments</i>	464
<i>Internet Activities</i>	464
<i>Notes</i>	465

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*Appendix A: Amendments to the U.S. Constitution 471*

*Appendix B: How to Read a Court Citation 477*

*Glossary 479*

*Case Index 497*

*Name Index 501*

*General Index 511*

*Photo Credits 535*



# Preface

As a discipline, criminology is concerned with the causes of crime—the traditional emphasis of sociologists—as well as with criminal justice and correctional systems. The exploration of these areas in this text features the integration of law with pertinent social science theories and empirical studies. This integrated approach is the result of my dual degrees in law and criminology, my years of teaching criminology to undergraduates, my background as a law professor and legal consultant, and my experiences as a social scientist.

In teaching undergraduates, I have been impressed with their eagerness to learn how law relates to the traditional topics covered in criminology and criminal justice courses, even to the point that they enjoy reading and briefing court cases. For this reason, I have included within the text, and in the supplement, excerpts from appellate opinions to illustrate decisions and legal thinking and to demonstrate the role of courts in criminal justice systems.

The responses to the 14 previous editions of this text confirm that students and faculty find the integration of law and social science to be an interesting and effective approach to the study of criminal behavior. No less important to users of earlier editions has been the text's assessment of society's response to criminal behavior. Therefore, I have retained the text's integrated approach but have made some significant revisions and numerous updates, the most important of which are detailed later in the section titled "The Fifteenth Edition."

As a social scientist, I want to ensure that the text discusses the results of recent social science research on criminal justice systems and does so in the context of theory. Summaries and critiques of classic works in criminology, analyses of recent social science research, and attention to major social science theorists who have contributed significantly to the study of crime are greatly expanded in this edition, which also features the utilization of these contributions in the practical world of policy.

## Features

As in previous editions, I have included learning aids to help students comprehend the text's wealth of material. The book has also been designed not only to have visual appeal but also to better draw students into the text material. Each chapter of the fifteenth edition begins with an outline and a brief overview of the chapter. As an aid to students' mastery of the vast array of legal and social science vocabulary terms, the key terms are identified in boldface within the text and listed at the end of each chapter. They are also collected in a comprehensive glossary at the end of the text for easy reference. Each chapter closes with a built-in study guide consisting of a chapter summary, review questions, brief essay assignments, and Internet activities.

Exhibits, tables, and figures support the book's integration of social science research and law. These features provide insights and background information on current events, legal decisions, and other topics of interest, including the most recent crime and victimization data. Appellate court opinions are excerpted in the text and in the supplement, which is a new feature to this edition. Faculty requested reduced coverage for students, but many also wanted access to carefully edited judicial opinions. We chose to add a supplement, which is free online, and which adds the detailed information (especially case excerpts) that some faculty prefer, while reducing the printed text. All legal citations have been checked to determine whether any changes were made on appeal; all statutes have been updated to the latest possible time during the production process of this text; all Internet sources were accurate as of the accessed dates.

Appendix A, the Amendments to the U.S. Constitution, provides a quick and easy reference for the reader who wishes to read the full amendments referred to in

the text and supplement. Appendix B discusses how to read a case citation. The indexes are divided by cases, names, and general subject topics.

## The Fifteenth Edition

Significant content changes have been made in this edition. Although the text retains its 15-chapter format for ease of use in both semester- and quarter-length courses, changes have been made to the outlines within some chapters, and many new topics have been added, along with current research on topics covered in previous editions. Many of these changes are indicated in the discussion here. One significant change is that the text has been reduced in length, with most case excerpts and other detailed material moved to an on-line supplement. This supplement is available free at the companion website that accompanies this text to faculty who adopt the text and to their students who purchase the printed edition of the text. This procedure enabled us to reduce the size of the text but continue to provide additional materials to students and faculty and thus keep the cost of the text at a reasonable level.

Part I, “Introduction to the Study of Crime and Criminology,” introduces the study of criminology and criminal law. Chapter 1, “Crime, Criminal Law, and Criminology,” explains and analyzes the concept of crime. Its discussion of the concept of law covers the nature and purpose as well as the limits of law, looking in particular at law as a method of social control. This chapter illustrates the text’s goal of integrating social science theory and the law. Supplement 1.1 excerpts a 2016 Massachusetts case, *Commonwealth v. Magadini*, which illustrates the criminal defense of necessity advanced by a homeless person. To illustrate the extent to which the criminal law should cover behavior such as consensual sexual behavior between adults in private, Supplement 1.2 features excerpts from the U.S. Supreme Court case, *Lawrence v. Texas*, striking down the Texas statute criminalizing sex between members of the same gender. The text chapter discusses the current issue of whether the use of marijuana for medicinal purposes should be legal.

Chapter 2, “The Measurement of Crime and Its Impact,” focuses on the compilation of crime data through official and unofficial methods, utilizing the most recent FBI data available for a full year, that of 2015. The chapter also includes the FBI’s preliminary data for the first six months of 2016. The chapter also presents victimization data, including recent victimization data on physically and mentally challenged persons.

Part II, “Explanations of Criminal Behavior,” contains four theory chapters. Chapter 3, “Early Explanations of Criminal Behavior and Their Modern Counterparts,” begins with a section on the historical background of punishment and criminal law and proceeds to an examination of the contributions of Cesare Beccaria, Jeremy Bentham, and others in the classical school. That school is contrasted with the neoclassical and positivist schools of thought, followed by a discussion of punishment philosophies. The discussions on rehabilitation, deterrence, and rational choice were significantly increased and updated. Chapter 3, like the following three theory chapters, contains exhibits that present features or summarize the contributions of the major criminological theorists discussed in that chapter. Supplement 3.4 details the results of a 2016 publication analyzing a survey in conservative Texas that shows public support for rehabilitation over incarceration. Exhibit 3.5, new to this edition, summarizes the focused deterrence program in Boston: the Boston Operation Ceasefire. Supplement 3.8 summarizes the articles in a 2015 edition of *Criminology & Public Policy*, which discuss focused deterrence and other strategies for reducing crime. The chapter contains a new discussion on the moral filtering of criminal action alternatives, including situational action theory.

Chapter 4, “Biological and Psychological Theories of Criminal Behavior,” recognizes the increasing attention being given to factors such as chemical imbalance, substance abuse, psychological problems, and intelligence, as they may be related to criminal behavior, especially violence. A complete discussion of criminology cannot ignore these issues even though they remain controversial. Exhibit 4.1 features an analysis of juvenile brains and how the U.S. Supreme Court has reacted to studies of them and the relationship to legal issues of punishment, while the text updates the White House BRAIN initiative. Supplement 4.1 presents the earlier study of the Jukes and the Kallikacks, whose family histories were traced to support the belief that crime and other acts of social deviance are inherited, along with a modern counterpart of that approach, detailing the example of a father on death row and his son, both of whom were accused of committing unusual but similar crimes even though the son had no contact with his father after age four. Supplement 4.2 discusses Charles Goring’s challenges to early biological approaches to explaining criminal behavior, while Supplement 4.3 discusses the moral and legal issues of sterilizing criminals. Supplement 4.4 discusses a modern case of a family of criminals, including a 2016 update. The exhibit on the Human Genome Project was

updated and moved to Supplement 4.5. Supplement 4.6 discusses diet and human behavior. The Supplement contains new information on the study of twins.

Mental illness, a critical topic in criminal justice systems today, is mentioned in several chapters; this chapter sets the stage for that attention. Exhibit 4.2 graphs the data of the prevalence among U.S. adults age 18 or older of any mental illness (AMI) and those of serious mental illness (SMI). Exhibit 4.4 details recent legal cases concerning mental illness and capital punishment and is updated with 2015, 2016, and 2017 court decisions.

Part II concludes with two chapters on sociological explanations of criminal behavior. Chapter 5, “Sociological Theories of Criminal Behavior I: The Social-Structural Approach,” focuses on the relationship between social structure and criminal behavior. This edition features a discussion of Secure Communities and deportation efforts (Supplement 5.2), with mention of the role of immigration in the 2016 presidential election and of former President Obama’s immigration plan and its path to and from the U.S. Supreme Court. It adds the immigration issues under President Trump.

Significant additions were made to the discussion of anomie/strain theory, especially the contributions of Agnew and others, along with the expansion and update of the discussion of social disorganization and collective efficacy and a new notation on the *new parochialism*.

The critical criminology section was reduced and some moved to the supplement; some heads in that and other sections were omitted to shorten the text.

Chapter 6, “Sociological Theories of Criminal Behavior II: The Social-Process Approach,” focuses on the processes by which criminal behavior may be acquired. The chapter contains significant additions to several theories, such as Sutherland’s differential association, Akers’ social learning theory, Hirschi’s social control theory, labeling theory, and Vermont’s restorative justice approach. Some of the updates are in the supplement.

Part III, “Types of Crime,” begins with Chapter 7, “Violent Crimes,” which introduces the study of criminology typologies. This chapter contains the latest available official data on both offenders and victims. It contains an updated and enhanced discussion of rape, noting the recently adopted “new” definition by the FBI and contrasts it with what the agency refers to as the *legacy definition*. The chapter adds recent violent crimes, including those committed by police and against police. The discussion of rape includes those on college and university campuses and reactions to them. It introduces the

California sexual consent statute as an example of an effort to assure that “no” means “no.”

The discussion of robbery introduces the home invasion robbery/murder in the Connecticut case involving the family of Dr. William A. Petit Jr., along with the discussion of that state’s changes in its death penalty. The supplement contains an excerpt from the state’s discussion and the holding of this case concerning capital punishment.

Chapter 7 features a new section on violence on college and university campuses and discusses the case of Dylann Roof and the Charleston church murders. Most of the discussion of terrorism was moved to the supplement. The gun control campus carry issue is noted, especially in Texas.

Two U.S. Supreme Court cases are excerpted in Chapter 7’s supplement: *District of Columbia v. Heller*, the 2008 case involving the ban on hand guns, and *Caetano v. Massachusetts*, decided unanimously by the Court in 2016, upholding the use of a stun gun by a woman against her abusive boy friend. Finally, the chapter notes recent violent crimes, such as the Orlando shooting in 2016, the 2017 hospital shooting in New York City, and the 2017 shooting of U.S. Congresspersons at a baseball game in the Washington, D.C. area.

Chapter 7 includes mention of the trial and sentencing of Michele Carter, the teen who was convicted of involuntary manslaughter for texting her boyfriend to commit suicide, which he did.

Chapter 8, “Property Crimes,” includes expanded and updated information on the four serious property crimes—burglary, larceny-theft, motor vehicle theft, and arson—as well as some property crimes considered lesser offenses, such as check and credit card fraud. Increased coverage of identity theft, one of the fastest-growing property crimes, is featured, along with Exhibit 8.2, which defines the three “hot topics” of the Internet Crime Complaint Center (IC3)’s for 2015. The text updates information on cybercrime and adds sexting to both the chapter and the Supplement. Exhibit 8.3 analyzes cyberbullying and contains excerpts from a 2016 North Carolina Supreme Court case holding that state’s statute unconstitutionally broad. The Supplement notes the Florida statute aimed at underage persons, which raises the issue of who is the victim and who is the perpetrator in sexting cases.

Supplement 8.10 contains an excerpt from *Elonis v. United States*, which concerns the use of the Internet to communicate a threat. The text adds the 2015 Cybersecurity bill that Congress passed and President Obama



signed. The supplement contains the case of Maynard Wentworth, who, with his wife, sued Snapchat as well as the woman who was driving over 100 MPH and recording her selfie on Snapchat when her car struck that of Wentworth, causing him brain damage.

Chapter 9, “Business- and Government-Related Crimes,” features the cases of numerous offenders, all of which have been updated concerning their trials, sentences, and appeals. Both the supplement and the text include recent insider trading cases, including one decided by the U.S. Supreme Court during its 2016-2017 term.

New to this edition is Exhibit 9.2, “Recent Insider Trading and Other Securities Cases,” which updates previously featured cases and adds two new ones, including that of Andrew Caspersen, who pleaded guilty in July 2016 to \$40 million in securities fraud, with victims including his mother and the family of a former girl friend who was killed in the 9/11 attacks on the World Trade Center.

The chapter updates the case of Donald Blankenship, who led the Massey Energy Company in Charleston, West Virginia, and was sentenced in 2015 to one year in prison for conspiring to violate federal safety standards in a West Virginia coal mine, leading to the deaths of 29 minors four years previously.

The chapter includes and updates numerous types of civil and criminal fraud and includes recent health care fraud cases. In particular, it notes (in Supplement 9.14) the conviction and sentencing of Dr. Jacques Roy to 35 years in prison for health care fraud.

Supplement 9.15 contains a brief excerpt from the appellate case reversing the obstruction conviction of baseball giant Bary Bonds. The supplement also contains an excerpt from a case involving an enemy combatant (who is a U.S. citizen) and his right to counsel. Chapter 9 also updates the case of Arizona sheriff Joe Arpaio, convicted of contempt of court (and pardoned by President Trump) and notes the Volkswagen AG case of fraud concerning emission controls.

Chapter 10, “Drug Abuse, Drug Trafficking, and Organized Crime,” includes the latest available data on substance abuse, including the effects on users of such drugs as Ecstasy and marijuana and an update on the opioid epidemic. It contains new research on recovering meth users and how they symbolically distinguish themselves from “meth heads.”

The text includes a discussion of a roadside drug test used in Texas, in which 298 suspects pleaded guilty and many could not post bond and thus were detained in jail

until lab tests showed the tests revealed false positives. The text updated information on drug sentencing, enhancing the discussion on race discrimination; an excerpt from *Armstrong v. United States* is included in the supplement. The discussion of the New York Rockefeller laws and their revisions was enlarged and included in the supplement.

The discussion on drug treatment was enlarged and includes the Comprehensive Addiction and Recovery Act, signed by President Barack Obama on 22 July 2016. It mentions the U.S. Surgeon General’s report issued in November 2016 concerning the number of U.S. persons who will have a substance abuse problem at some time in their lives (1 in 7) and how few are treated (1 in 10). It updates the discussion on cartels, especially the current Mexican cartels, and moved the discussion of the three cartels to the supplement. It updated information on organized crime and put recent cases in the supplement.

Fetal abuse, caused by pregnant women ingesting illegal drugs, was updated with recent cases (see, for example, Supplement 10.1). The chapter also covers drug abuse on college and university campuses, including date rape associated with drugs. The chapter updates the economic cost of drug abuse and the state approaches to drug abuse, including the changes in New York’s Rockefeller laws, which were the most stringent in the nation. The use of marijuana for medicinal use, introduced in Chapter 1, and for recreational use, is analyzed in light of the latest developments. Specifically, the text discusses the Colorado cases of *Coats v. Dish Network* and *Colorado v. Russell*.

Chapter 10 notes the case of *Anderson v. Loetscher*, decided by the Seventh Circuit Court of Appeals, in which the U.S. Supreme Court lifted an injunction against a Wisconsin fetal protection statute. Thus, in some cases, pregnant adult women may be jailed if they are abusing alcohol or other drugs. The discussion of treatment includes the Comprehensive Addiction and recovery Act, signed by President Obama in 2016 and mentioned the U.S. Surgeon General’s report issued in November 2016 concerning the number of U.S. persons who will have a substance abuse problem at some time in their lives (one in seven) and how few are treated (one in ten).

Chapter 10 also refers to President Trump’s appointment in March 2017 of a commission on the Opioid epidemic, chaired by New Jersey Governor Chris Christie, noted that committee’s initial report to the president, among other recommendations, that the president declare the opioid crisis a national emergency. The text notes the initial reactions of the president to refuse that recommendation but later to accept it.

Treatment rather than punishment of nonviolent drug abusers is discussed, along with drug courts and drug testing. Information on drug trafficking is updated.

Chapter 10 updates the extradition and scheduled trial of El Chapo. The supplement contains an updated discussion of drug cartels.

The final focus of Chapter 10, organized crime, was moved primarily to the supplement after updating.

Part IV, “Criminal Justice Systems,” includes three chapters. The outline of Chapter 11, “U.S. Criminal Justice Systems,” contains an overview of the processes of the adversary systems characteristic of the United States. Supplement 11.1, on wrongful convictions, contains recent examples of inmates who have been released after enduring many years of incarceration for crimes they did not commit. Supplement 11.2 explains the work of the Innocence Project, which is involved in many of these exonerations.

All of the stages in U.S. criminal justice systems are listed and briefly explained in the text chapter, which also focuses on selected constitutional rights of defendants. Chapter 11 covers search and seizure of vehicles, homes, and persons and the right not to testify against oneself, the right to counsel, and the right to trial by jury. All of these involve significant legal updates, and those cases are noted and discussed. Examples are the following: *Rodriguez v. United States* (concerning dog sniffs of cars); *Safford v. Redding*, in which the U.S. Supreme Court ruled against the strip searching for drugs of a high school girl (Supplement 11.9); *Maryland v. King* involving taking DNA evidence from a suspect and using it to convict him of another crime committed years earlier (Supplement 11.20); two U.S. Supreme Court cases (combined) focusing on searches of arrestees’ cell phones; *Birchfield v. North Dakota*, in which the U.S. Supreme Court upheld warrantless breath tests but not warrantless blood tests in an arrest for suspicion of drunk driving; and *Heien v. North Carolina*, 2014, in which the U.S. Supreme Court upheld a car search when the officers were incorrect concerning their understanding of state law and stopped a vehicle because one brake light was not functioning.

The case of Michael Skakel is updated in the supplement. The nephew of Ethel Kennedy may be going back to prison after the Connecticut Supreme Court reversed the state’s lower court, which had ordered a retrial. New to this edition is Exhibit 11.2, based on a series of 2016 criminology articles on whether the use of tasers by police affects cognitive ability and thus figures into a suspect’s response to a *Miranda* warning. Attention to

recent cases is illustrated by the mention of *Foster v. Chatman*, *Warden*, in which the U.S. Supreme Court refused to approve the state of Georgia’s rejection of two black prospective jurors and the March 2017 case of *Peña-Rodriguez v. Colorado*, in which the Supreme Court considered challenges when jurors indicated a racial bias (or other animus) toward the defendant that may have influenced their voting.

Chapter 11 also discusses victims’ rights and compares those with defendants’ rights before turning to a section on “U.S. Criminal Justice Systems: An Assessment,” and, finally, “U.S. Criminal Justice Systems and Terrorism.”

Chapter 12, “Police,” discusses the emergence of policing in Europe and the United States, modern policing in England and Wales (Supplement 12.1), and expands public policing in the United States, which includes rural, county, municipal, state, and federal policing as well as security at U.S. borders and on campus and university campuses. The chapter and its supplement include significant updating on policing issues, such as the following: racial profiling, vehicle pursuits, policing of mentally challenged persons, U.S. Department of Justice consent decrees, and such recent cases as *Utah v. Strieff*, decided by the U.S. Supreme Court in 2016 (see Exhibit 12.3). The chapter updates police civil liability, illustrated by the case of Eric Garner, who died after being put in a choke hold by police in New York City. The supplement updates the text’s previous discussion of *Hurrell-Harring v. New York* with the 2014 settlement agreement, which occurred one day prior to the scheduled trial date.

Chapter 13, “Court Systems,” provides an overview of the criminal justice processes that occur in the courts, from pretrial to posttrial and including coverage of specialized courts: juvenile, domestic violence, drug, mental health and veterans’ courts. With regard to juveniles, the text and the supplement include discussions and excerpts from recent U.S. Supreme Court decisions such as *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*. The Texas truancy laws and changes in them are examined. A 2017 Kentucky case holding that the death penalty is unconstitutional in the case of Travis Bredhold, who was 18 years and 5 months old when he committed robbery and murder, is noted.

The chapter’s discussion of prosecution covers the current case unfolding in Florida, in which a prosecutor is suing the governor for removing murder cases from her control after she stated that she would not seek the death penalty in future cases.



Supplement 13.10 contains an excerpt of the opinion by Justice Sotomayor, dissenting from the Court's 2016 decision to hear the case of *Elmore v. Holbrook*, which involved an indigent defendant sentenced to death in what has come to be called the "remorse defense" case. His public defender, who had never tried a death penalty case, presented only a one hour defense concerning his client's remorse about the murder; he did not present evidence of possible brain damage, etc. The text also updates the discussion on public defender systems, noting that some states are being sued—and public defender offices are winning—for lack of funding.

The text includes the case decided by the U.S. Supreme Court in February 2017, *Buck v. Davis*, a Texas case, in which the defendant's public defender called an "expert" who testified regarding future dangerousness. The witness testified that being black is a predictor of future dangerousness. The text also includes a brief discussion of *Lee v. United States*, decided by the U.S. Supreme Court in June 2017, in which the Court held that the appellant, who had lived in the United States as a lawful permanent resident but not as a citizen and who entered into a guilty plea on a drug charge after his attorney told him the plea would not result in deportation, had ineffective assistance of counsel and should be permitted to withdraw his guilty plea. The fact was that the guilty plea did subject the defendant to mandatory deportation.

The text also discusses the 2017 case of *United States v. Walker*, in which a West Virginia federal trial judge refused to accept a plea bargain in a drug case, holding that the information concerning illegal drug sales and heroin and opioid addiction that would be revealed during a trial but not made public in a plea bargain, was in the community's interest, and thus warranted a public trial.

Exhibit 13.5 features excerpts from the "Report on the Future of Legal Services in the United States," passed by the ABA in August 2016. These recommendations are a summary of all that is wrong with criminal justice courts and systems, from racism to overcrowding to lack of funding.

The text updates sentencing clemency data as of 3 January 2017. President Barack Obama granted more commutations than all of the previous nine presidents combined. Most of the recipients were nonviolent drug offenders serving very long sentences. In contrast, a new exhibit (13.3), "The Trump White House Sentencing Policy," reproduces the 10 May 2017 memo of U.S. attorney general Jeff Sessions to all prosecutors in which he details a new policy of longer sentences.

The three-strikes policy is updated in terms of data on its success or failure, along with its impact on racial minorities and prison overcrowding. The changes in laws relating to crack/powder cocaine are updated and analyzed.

California's Proposition 47, designed to reduce prison populations, is noted, with more discussion on that state's system to follow in Chapter 14.

Chapter 13's coverage of capital punishment is significantly expanded and updated with the latest issues, data, and court decisions, including the following: Juvenile issues concerning capital punishment were moved to Supplement 13.17 and enlarged to include an excerpt of *Roper v. Simmons* and some of the concurring and dissenting opinions. Supplement 13.18 includes an excerpt from *Glossip v. Gross*, decided by the U.S. Supreme Court in 2015 and concerning methods of execution. *Kansas v. Carr* holds that in capital sentencing, the trial judge is not required to tell a jury that the standard of beyond a reasonable doubt is not required in a jury instruction. Recent cases concerning the execution of mentally challenged persons are noted here and in Chapter 4. Chapter 13 also contains additional coverage on the impact of gender, race, and ethnicity in sentencing decisions.

In 2016, the U.S. Supreme Court held the Florida capital punishment sentencing procedures unconstitutional. The case of *Hurst v. Florida* is excerpted in Supplement 13.20. Florida did revise its statute after *Hurst*, and in October 2016, in *Perry v. Florida*, the Florida Supreme Court held that most of the provisions of the revised statute could be held constitutional under *Hurst*. The chapter also discusses the 2017 U.S. Supreme Court case of *McWilliams v. Dunn*, concerning the Court's 1985 case, *Ake v. Oklahoma*, which involved the right of a defendant who is mentally challenged to have access to expert psychiatric evaluation and testimony at his or her trial.

New to this chapter is Exhibit 13.4, "Do Justice Stephen G. Breyer's Dissents Predict the Future of the Death Penalty?" This exhibit quotes the brief dissenting opinion of Breyer in *Tucker v. Louisiana*, in which the Court refused to hear an appeal on the death penalty. Breyer argued that the Court should hear a case in which the issue of whether the death penalty constitutes cruel and unusual punishment is briefed by the attorneys.

The discussions on overcrowded courts and violence in courts was updated and moved to the supplement.

Part V, "Social Reaction to Crime: Corrections," consists of two chapters. Chapter 14, "The Confinement of

Offenders,” includes a brief historical account of the emergence of prisons and jails for punishment; discusses U.S. contributions to this movement; and distinguishes among community corrections, jails, and prisons. Jail and prison overcrowding is one focus of this chapter; the review analyzes the attempted solutions to this serious problem. Supplement 14.1 features an updated discussion of California prisons and the state’s efforts to meet the federal court orders concerning prison overcrowding. The discussion on private prisons was updated and included in the supplement. The August 2016 report on for-profit prisons is noted, including a class action lawsuit against a Mississippi prison and an indictment against the commissioner of that state.

The Prison Rape Elimination Act of 2003 discussion is updated with data published in June 2016. A new section on “The World of the Inmate’s Family” discusses issues regarding reintegration of inmates back into society, a focus of a recent issue of *Criminology & Public Policy*. The exhibit on prison riots was updated with inclusion of an Alabama uprising in 2016, including the subsequent action by the U.S. Department of Justice, which announced in October of that year that it would investigate men’s prisons in that state. The 2017 violence in which South Carolina inmates killed four mentally challenged inmates in an effort to get the death penalty, is noted. The entry on Rikers Island is updated to 2015 and 2016, including the conviction of 8 correctional officers for beating an inmate in 2012 and the governor’s announcement that Rikers Island would be phased out over a ten year period, with inmates incarcerated in several smaller jails in the various jurisdictions.

The text discussion of prison escape is updated to include the 2015 prison escape in Clinton, New York, which was aided by a female supervisor in that institution and a 2017 escape from the Orange County Jail in Los Angeles, in which the inmates filmed their efforts prior to their capture. The 2017 successful prison escape in Alabama, by use of peanut butter, was noted.

Finally, Chapter 14 updates the three topics concerning the legal rights of inmates (physical restraint and discipline, ADA, general health issues) and moved them to the Supplement. A new section on solitary confinement is included and excerpts the dissenting opinions of two justices (Justice Breyer in *Glossip v. Gross* and Justice Kennedy in *Davis v. Ayala*).

Chapter 15, “Corrections in the Community,” contains a discussion of the types of community correctional facilities and programs. The chapter begins with a brief historical overview and then looks at community correc-

tions in terms of reintegration and justice reinvestment, with Exhibit 15.1 discussing the goals of justice reinvestment and Exhibit 15.2 discussing the 2008 passing of the Second Chance Act, which is designed to assist inmates in their reentry back into society. It then turns to a focus on diversion.

The discussion of various types of community correctional facilities contains recent examples of efforts to improve the programs. A section entitled “Reentry: The Challenge,” discusses the need for preparing inmates for reentry back into society, for development programs, and for evaluating the effects of those programs. It includes an analysis of the problems of such programs as Project Greenlight and current research on the relationship between program integrity and program effectiveness.

Disagreement on the effectiveness of programs is illustrated by a new discussion on the pros and cons of one probation program: Hawaii’s Opportunity Probation with Enforcement (HOPE), that spread quickly as a more effective way to deal with probation. The November 2016 edition of *Criminology & Public Policy*, which is devoted to the approach, was used to illustrate how scholars disagree on the success of this program.

New information on probation is included in Supplement 15.14, which reproduces an excerpt from a New York case in which a judge sentenced a woman to probation rather than a prison term because of all the collateral damages that would have affected her as a felon who served time in prison. Medical parole is noted in the parole discussion, and examples are cited. Risk assessment is a major issue in determining probation and parole, and Supplement 15.15 excerpts *Wisconsin v. Loomis*, in which the supreme court of that state holds that a risk assessment predictive tool may be used in part to assess a sentence but states that the court may not rely on that assessment.

Obviously, a major goal of prerelease and release programs is to reduce recidivism, and in that light, Supplement 15.5 contains data published in 2016 on recidivism of releases in the federal system. The parole discussion is updated with information on a contempt citation in New York of the parole board for not giving a reason for parole in the case of a 70-year-old model inmate, who died a few months later of an apparent suicide.

Megan’s laws, requiring the registration of sex offenders, continue to attract widespread attention, and this section is broadened to include a general focus on sex offenders. The information on Megan’s laws is viewed historically and in light of recent statutory and judicial changes. Particular attention is given to a 2016 Kansas

case holding that lifetime registration requirements for sex offenders does not constitute cruel and unusual punishment. That case overruled three opinions issued earlier in the day, all three of which ruled the opposite. In another case, in *Karsjens v. Piper*, a federal judge in Minnesota declared that the state's involuntary commitment of sex offenders after they are released from prison is unconstitutional and ordered a review of all 720 inmates' cases, but in January 2017, the Eighth Circuit reversed.

Chapter 15 adds information on registration requirements for released juvenile sex offenders, includes an excerpt from *Belleau v. Wall*, upholding requiring a sex offender to wear a GPS monitor, and discusses the North Carolina statute prohibiting registered sex offenders from using certain social media. This case, *State v. Packingham*, was decided by the U.S. Supreme Court in February 2017. The case is excerpted in Exhibit 15.3.

Supplement 15.15 excerpts *State v. Loomis*, in which the supreme court of Wisconsin held that a risk assessment predictive tool may be used in part to assess a sentence but stated that the court may not rely on that assessment.

Chapter 15 closed the text with a discussion on the future of corrections. This analysis includes such topics as an evaluation of community corrections (which contains a focus on California and one on South Carolina),

juvenile justice, and evidence-based practices. The supplement to Chapter 15 discusses the 2016 case decided by the U.S. Supreme Court, *Nichols v. United States*, regarding the federal statute concerning failure to register as a sex offender.

Note: This text went to press too late to include the FBI's 2016 *Uniform Crime Report* data. Those data will be available in the supplement where appropriate.

## Supplements Package

This edition of *Crime and Criminology* is accompanied by valuable supplements for the instructor. The Instructor's Manual includes chapter outlines, web resources, additional classroom activities and answers to end-of-chapter questions, as well as guidance on how to teach the course effectively. A comprehensive Test Bank is also provided. Finally, a complete set of PowerPoints help with lecture preparation. In addition, as described earlier in this Preface, a supplement with additional instructional material is available. All of these supplements are provided free of charge at the companion website that accompanies the text. Please contact your Wolters Kluwer sales representative for more information.

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# Crime and Criminology





## Part I

# Introduction to the Study of Crime and Criminology

The study of crime and criminology is a complex but fascinating venture. It should begin with an understanding of the basic concepts of crime, criminal law, and criminology, and those topics are the focus of the first chapter of Part I. The chapter explores the meaning of these concepts in the context of which behaviors should be covered by the criminal law and whether the discipline of criminology should focus on a broader range of behaviors.

Chapter 2 concludes the introductory material with a focus on how crime is measured. It looks at the collection and analysis of crime and victimization data, the characteristics of offenders and victims, and the treatment of victims in criminal justice systems. The discussions pay close attention to gender, race and ethnicity, age, and disability, and include information on physically challenged victims. The chapter also considers research in criminology.

**Chapter 1:** Crime, Criminal Law, and Criminology

**Chapter 2:** The Measurement of Crime and Its Impact





# 1

# Crime, Criminal Law, and Criminology

## Introduction

This first chapter provides an introduction to the study of crime and the criminal. The concept of crime is explored, followed by an analysis of the concept of law and the distinction between civil law and criminal law. Criminal law as an agent of social control is discussed in relation to which behaviors should be included within the reach of criminal law. In its final section, the chapter discusses criminology and the study of crime.

They were innocent children at Sandy Hook Elementary School in Newtown, Connecticut, on December 14, 2012, when an armed young man wearing combat gear opened fire and killed them, along with six educators and himself (he had killed his mother in their home earlier that day). The nation mourned as families wept and wondered: Why would Adam Lanza, a former student at this school, commit such crimes, creating one of the deadliest homicide massacres at a U.S. school? The nation was just recovering from the shock of a mass killing of 12 patrons in an Aurora, Colorado, theater in July 2012. James E. Holmes, the alleged killer, entered a plea of not guilty by reason of insanity. He was convicted and sentenced to life in prison.

Homicides also occur on an individual basis. On the day in September 2009 when she was to be married, a beautiful, petite, bright young woman who was studying for a PhD in pharmacy at Yale University, was buried.

## Chapter Outline

### Introduction

#### The Concept of Crime

An Act or Omission

The Intent Requirement and  
Its Exceptions

Violation of the Elements of  
Criminal Law

Without Justification or  
Defense

Felony or Misdemeanor

The Judge or Jury as Final  
Decision Maker

#### The Concept of Law

Law as Social Control

The Extent of Criminal Law

#### Criminology and the Study of Crime

#### Summary

#### Key Terms

#### Study Questions

#### Brief Essay Assignments

#### Internet Activities

#### Notes

Her body was found stuffed behind a basement wall in an animal lab where she was conducting research for her degree. Raymond Clark III was arrested and charged with the strangulation of Annie Le in a crime that stunned her coworkers, saddened her family and friends, and captured media attention for weeks. Clark was a lab technician, described as a control freak, whose motive may have been a dispute over how the mouse cages were attended. He eventually entered a guilty plea to murder and attempted sexual assault in a plea bargain that resulted in a 44-year sentence.

On April 15, 2013, one of the top annual events in Boston, Massachusetts, ended with the explosion of two home-made pressure cooker bombs close to the finish line of the Boston Marathon, resulting in the deaths of three people, including an 8-year-old bystander, and injuries to 264 people, some of whom suffered limb amputations. In the following days, a 27-year-old campus police officer was killed by the two brothers who were the prime suspects of the crime. Tamerlan Tsarnaev, 26, was killed in a shoot-out with police, while his younger brother, Dzhokhar, 19, was captured, hospitalized with a throat wound, and subsequently charged with the crimes. He was convicted and sentenced to die by lethal injection.

He was only 16, an innocent bystander in a fight between rival gang members on a Chicago street. Derrion Albert was beaten to death as he walked home from school in September 2009. He was not a member of either gang, just in the wrong place at the wrong time. Five young men are serving time for his murder.

These and other crimes, such as the 9/11 terrorist attacks, the 1995 bombing of the federal building in Oklahoma City, the sending of mail bombs by the Unabomber, and the shootings by teenagers in schools in several U.S. cities, have led many to ask why people engage in violent acts. The senseless and unexplainable violence of these acts is frightening and baffling. But violent crimes are not the only concerns. In addition to



Derrion Albert, age 16, was killed by teen gang members in Chicago in 2009 as he walked home from school. He was not a gang member but, rather, a random victim of gang violence. Five young men are in prison for Albert's murder.

the traditional serious property crimes of burglary, larceny-theft, auto theft, and arson, the numerous allegations of fraud and related crimes by corporate executives and others have resulted in the erosion of confidence in corporate America and the loss of billions of dollars to investors, employees, and other victims.

Such crimes lead us to examine theories of crime **causation** and prevention and to question how to process offenders. Attempts to explain and control criminal behavior involve many disciplines. Although other disciplines are mentioned, this text focuses on the social sciences and their interaction with criminal law, the legal mechanism by which society reacts to crime and through which it attempts to prevent criminal behavior.

The study of crime should begin with an analysis of that concept.

## THE CONCEPT OF CRIME

The concept of **crime** formulates the basis for a study of criminal behavior. The word is difficult to explain, as not all agree on how it should be defined. This text uses the legal approach because that is the basis for permitting

the state to take action against persons accused of crimes. But before we dissect the legal definition of the word *crime*, it is important to understand that other approaches are also important.

Social scientists argue that if we are interested in knowing *why* people engage in behavior that is

detrimental to society, we should go beyond the legal definition of crimes and include behavior that is defined as *criminal* but for which no arrests are made. We should include accused persons who are not prosecuted because of legal technicalities. The focus is on *behavior*: Why do people do what they do? This approach claims that the legal technicalities of arrest and conviction are not relevant to a study of criminal behavior.

In addition, some social scientists argue that *deviant behavior*, which is different from that of the generally held social norms but not normally covered by criminal law, should also be studied. Still others argue that criminology should explore why certain people who engage in specific acts are labeled criminal or deviant while others who engage in those same acts are not so labeled.

All these positions and approaches are important in the analysis of why people do what they do and why society reacts as it does. But in U.S. criminal justice systems, only those persons who have actually been convicted of crimes are considered criminal, and thus, it is important to focus on that approach for purposes of official data. Subsequent theory chapters discuss social science theories that may go beyond official data.

*Crime* is an act defined by law. Unless the elements specified by criminal law are present and the accused has been found guilty in a court of law either by a trial or by the defendant's confession, that individual is technically not a criminal. The following legal definition of *crime* serves as the reference point for this text:

Crime is an intentional act or omission in violation of criminal law (statutory and case law), committed without defense or justification and sanctioned by the state as a felony or misdemeanor.<sup>1</sup>

## An Act or Omission

The first part of the definition of *crime* embodies philosophies central to U.S. legal systems. A person may not be punished for his or her thoughts; criminal acts must be committed. There is one important exception to the act requirement: In some cases, a *failure to act* may be criminal, but that is true only when there is a **legal duty** to act. Moral duty does not suffice. For example, a Michigan judge dismissed murder charges against a female defendant who did not give assistance to a woman locked in a car trunk and crying for help. The victim died of dehydration. The female defendant was a passenger in the car, but there was no evidence that she was involved in (or even knew about) the crimes for which the driver was charged. The

judge dismissed the charges against her because he could not find a law that required her to aid the victim “even if she knew or suspected someone was locked in the trunk.”<sup>2</sup>

In general, we do not have affirmative duties to prevent people from being injured or killed. We may watch (and take no action) while people are brutalized by others or while a child is drowning. Unless there is a legal duty to aid, the law may not be invoked even though it may have been easy for us to prevent the injury or death in these situations. We may be moral monsters, but we have not violated the civil or criminal law. A legal duty may exist, however, if we are the parent, spouse, or other close relative, or if we have assumed a duty through a contractual relationship, such as operating a licensed day care center. Legal duties may also be imposed in other special relationships or on some professionals, such as health care professionals, fire fighters, law enforcement officers, and so on.

To be criminal, acts or omissions must be voluntary, and the actor must have control over his or her actions. If a person has a heart attack while driving a car and kills another human being, he or she should not be charged with a crime if the heart attack was an involuntary act over which the person had no control. The case might be different, however, if the individual had already experienced a series of heart attacks and therefore knew it might be dangerous to drive an automobile.

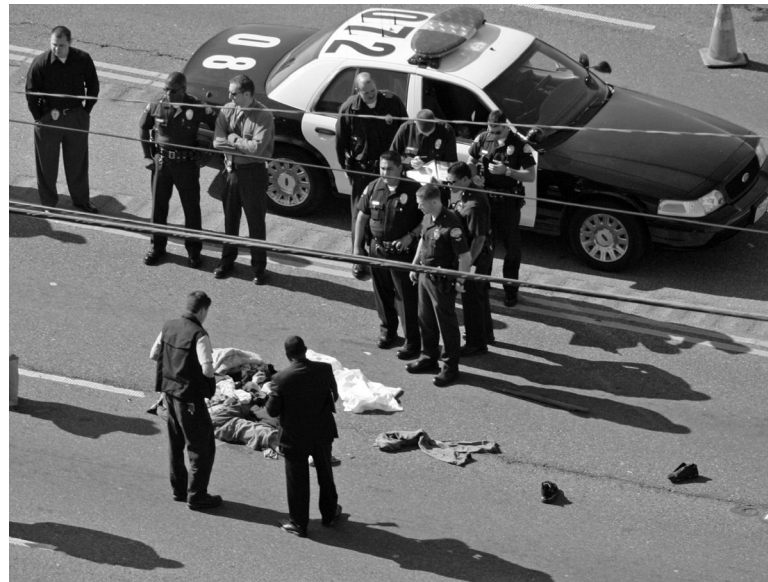
## The Intent Requirement and Its Exceptions

In addition to an act, the criminal law requires an **intent**, or ***mens rea***—the mental element—to establish that a person is **culpable**. In many cases, intent is the critical factor in determining whether an act was or was not a crime.

To illustrate, in 2003, the U.S. Supreme Court issued a critical decision regarding the requirement of intent. In *Virginia v. Black*, the Court upheld a statute that provided as follows:

It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway, or other public place.<sup>3</sup>

However, the Court held unconstitutional the following part of the statute, which provided that the burning of a cross on the property of another constituted *prima facie*



Some acts may constitute violations of both the civil and the criminal law. Vehicle drivers who cause accidents that result in property damage may be sued in civil actions for those damages. If the accidents result in personal injuries, the victims may sue for civil damages, and prosecutors may file criminal charges, especially in hit-and-run cases. The estates of deceased victims may also have civil claims for damages, including wrongful death.

evidence (evidence sufficient to establish a fact—such as, in this case, intent to intimidate—without further evidence) of an intent to intimidate. Justice Clarence Thomas, the lone dissenter, described cross burning as a unique symbol of racial hatred and intimidation. In his view, the act of cross burning is evidence of intimidation. No further proof of intent is needed. The majority did not agree, holding that the First Amendment right of free speech (which includes symbolic speech) requires that an actual intent to intimidate be shown in such cases. The Court recounted the history of cross burning, which included events that had nothing to do with intimidation.

The intent requirement for a crime is complicated and not the subject for an introductory text, but today's students, who live in a world of instant replay and social media dissemination of criminal and other events, will no doubt be interested in recent research suggesting that showing an event in slow motion might cause observers (such as a jury) to "feel like" the actor had time to develop an intent and thus conclude that an intent existed when it actually did not. "We suggest that what you can see only in the slower version is more time, or, more specifically, an actor who seems to have had more time to form and act on an intention." In the case of murder, that conclusion can be the difference between life and

death as the jury concludes that the intent for first-degree murder existed.<sup>4</sup>

Thus, the element of intent may determine the *degree* of crime committed (e.g., whether a killing is first- or second-degree murder or a **lesser included offense**, such as manslaughter). Despite the importance of *mens rea*, historically the term has not been defined clearly or developed thoroughly.

The Texas Penal Code provides an example of a frequently used approach to defining criminal intent. Texas divides legal culpability into four mental states: intentional, knowing, reckless, and criminal negligence. Each of these mental states is defined in **Exhibit 1.1**. The interpretation of these four tiers of culpability has been the subject of considerable dispute. It is clear, however, that a person may be held criminally responsible for the unintended consequences of an intended act. In addition, a person may be held criminally responsible for injury or death to a victim other than the intended victim or for a more serious degree of harm than that intended. Consider the following hypotheticals.

In the first case, Jones shot at Anders with the intent of killing him; but being a bad shot, he missed Anders and killed Williams. Jones can be charged with Williams's death. In the second case, an unhappy husband wanted to scare his wife to convince her that they should move to



## Exhibit 1.1

## General Requirements of Culpability

## TEXAS PENAL CODE, CHAPTER 6 (2017)

**Section 6.02. Requirement of Culpability.**

(a) Except as provided in Subsection (b), a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. . . .

**Section 6.03. Definitions of Culpable Mental States.**

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with

knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

another neighborhood. The husband hired a man to fire several shots into the air while his wife was walking the dog, but he was a bad shot and killed the woman. Even though there was no specific intent to kill the woman, both men could be charged with murder. They both plotted, and one carried out, an act that a reasonable person should have known could result in serious injury or death. It is possible that the charge would be reduced, but the point is that both men could be charged with murder.

There are exceptions to the requirement of a criminal intent. In some situations, employers may be liable for acts of their employees even if the employers do not know their employees are committing the acts. For example, the president of a drug company was found guilty of violating a provision of the Pure Food and Drug Act, which requires proper labeling of drugs. He did not know that the drugs had been mislabeled by his employees, who were responsible for repackaging

and labeling the drugs received from the manufacturer, but the U.S. Supreme Court upheld the conviction.<sup>5</sup>

## Violation of the Elements of Criminal Law

To be convicted of a crime, a person must violate **criminal law**. Criminal law comes from three sources: federal and state constitutions, statutes (and local ordinances), and court decisions. Statutes enacted by state legislatures and the U.S. Congress constitute **statutory law**. In contrast, **case law** is the term applied to law that develops from judicial decisions.

Another source of criminal law is **administrative law**. State legislatures and the U.S. Congress may delegate to administrative agencies—the Federal Trade Commission, the Internal Revenue Service, public universities,

human rights commissions, and others—the power to make rules, interpret those rules, and process violations. The rule-making procedures must follow specified guidelines. These rules and the decisions concerning them constitute administrative law, which is civil law, although a violation of administrative law may, in some cases, result in a criminal penalty if it becomes necessary to petition a criminal court to enforce the administrative decision. Even in that case, however, society normally does not look upon the violator in the same negative light as it does upon those who are convicted in criminal courts.

This text focuses on criminal law rather than **civil law** because criminal law provides the framework for the government's **jurisdiction** over crime. There is considerable overlap between criminal and civil law, but there are also important distinctions. When a criminal wrong has been committed, the state (or federal government) initiates action against the person accused of the crime. The state becomes involved because a crime is considered a serious threat to the welfare of the entire society as well as to the alleged victim.

In contrast, a noncriminal, or civil, wrong is considered a wrong against the targeted victim. In such cases, the victim wronged may initiate legal action against the accused. Noncriminal law refers primarily to laws (such as those governing divorce, property, or contracts) that regulate the legal rights of private parties, organizations, corporations, and so on.

Civil and criminal wrongs may be tried in different courts, although that is not always the case. Different procedural rules apply, with criminal cases involving more extensive legal safeguards because of the potentially more serious results for those found guilty. In a civil case, the defendant may be required to pay financial damages to the plaintiff or be told to stop engaging in specified activities. In a criminal case, the court may impose any number of penalties that restrict the defendant's liberty. The court may also impose fines, order restitution, community service, and so on.

## Without Justification or Defense

Individuals are not always held responsible for criminal acts; the law recognizes some extenuating circumstances. An act or omission of an act is not a crime if the individual has a legally recognized justification or **defense** for the act. For example, a

person charged with murder might use the defense of justifiable homicide. A police officer in pursuit of an armed robbery suspect who fires at the officer may be justified in killing that suspect. People may be excused from criminal liability for inflicting serious bodily harm (or even death) on others if they are in danger of being injured by those persons, but they may use only the force necessary.

An individual charged with a crime may offer evidence to defeat the criminal charge. A variety of defenses are recognized; the extent and complexity of legal defenses are beyond the scope of this text, but Chapter 4 mentions the insanity defense, one of the more publicized—although infrequently used and seldom successful—defenses.<sup>6</sup> Another seldom used defense that is gaining attention recently is that of *necessity*. **Supplement 1.1** discusses the necessity defense and excerpts a case in which the court held that a homeless person could use the necessity defense under some circumstances after being arrested for trespassing on private property in his efforts to get warm on a bitterly cold day. Homelessness has become a problem nationwide, and the American Bar Association president elected in August 2016 announced that one of her projects was to provide legal services for U.S. veterans. She volunteered in a homeless shelter and “learned that over half the needs of homeless veterans are legal.”<sup>7</sup>

## Felony or Misdemeanor

Historically, the primary distinction between a **felony** and a **misdemeanor** was that a person could be required to **forfeit** all property upon conviction of a felony but not upon conviction of a misdemeanor. In addition, during some time periods, most, if not all, felonies were capital (death penalty) offenses. Today, the two crime categories are distinguished primarily in terms of the sentences that may be imposed. Usually, a *felony* is a crime for which a person may be sentenced to a long prison term or capital punishment, while a *misdemeanor* is a less serious offense for which a short jail term (normally less than a year), a fine, a period of probation, or some other alternative to incarceration may be imposed. Some of these lesser penalties may also be imposed on persons convicted of felonies. In some jurisdictions, felonies and misdemeanors are tried in separate courts.

Currently, some jurisdictions, in an effort to reduce the number of jail and prison inmates, are revising

ordinances and statutes to remove some nonviolent minor offenses from the felony to the misdemeanor category. This trend is noted where relevant throughout the text.

## *The Judge or Jury as Final Decision Maker*

A *crime* is defined as an act or an omission of an act that violates criminal statutory or case law and for which the state has provided a penalty. Not all acts that meet these elements result in convictions. In cases that are tried before a jury, jurors may refuse to return a guilty verdict even when the facts point to the defendant's guilt, a process known as **jury nullification**. In cases tried without a jury, the judge may do the same. In other cases, the jury may convict the defendant, but the judge may grant the defendant's motion for acquittal because he or she does not think the evidence was sufficient to support a conviction. Alternatively, the judge may allow the conviction to stand but impose a light sentence. Some of these judicial decisions are highly controversial, as noted later in the text. Likewise, later discussions give attention to the roles of the judge and jury.

## THE CONCEPT OF LAW

The study of crime, the criminal, and criminal law should rest on an understanding of the concept of law. Law is important because it touches virtually every area of human interaction. Law is used to protect ownership, define the parameters of private and public property, regulate business, raise revenue, and provide compensation when agreements are broken. Laws define the nature of institutions, such as the family. Laws regulate marriage and divorce or dissolution, adoption, the handling of dependent and neglected children, and the inheritance of property.

Laws are designed to protect legal and political systems. Laws organize power relationships. They establish who is superordinate and who is subordinate. Laws maintain the *status quo* while permitting flexibility when times change. Laws, particularly criminal laws, are designed to preserve order as well as to protect private and public interests. Society determines that some interests are so important that a formal system of control is necessary to preserve them; therefore,

laws must be enacted to give the state enforcement power. Law is a formal system that may be exercised when other forms of **social control** are not effective. A closer look at the social control function of law distinguishes it from other social control efforts.

## *Law as Social Control*

Prior to the emergence of law, social control was achieved in less formal ways. Most people took care of their own needs and lived at a subsistence level. They grew or captured their own food, made their own clothing, and built their own houses. Submission to **custom** controlled most of their behavior, and laws were not necessary. Those who deviated from the group's norms were spotted easily, and the community could react with nonlegal **sanctions**. These informal sanctions, which can be more effective than laws, could include a disapproving glance, an embarrassed silence, a nod, a frown, social ostracism, and so on. The threat of being banished from a group or even from society can be an effective deterrent to deviant behavior. These informal methods of social control are most successful when the group is closely knit, making it relatively easy to know the norms and the general will of the group and to identify transgressors.<sup>8</sup>

Although there are similarities between law and other methods of social control, there are also significant differences. At least in theory, law is more specific than less formal methods of social control. In criminal law, the law defines the nature of an offense and the punishment (or range of types of punishments) to be imposed for conviction of it. Laws cannot define every possible situation that would constitute a violation, but in the United States, criminal laws are unconstitutional if they are vague. Criminal laws must be clear enough to give adequate notice to potential transgressors that they are in danger of violating them. **Exhibit 1.2** provides an example of a city ordinance that was declared void for vagueness.

A second distinction between law and other forms of social control is that law arises from a more rational procedure. It is a formal enactment by a legislative body or a court that, presumably, is the product of discussion and reflection. Laws are applicable to all transgressors unless there are justifications or defenses for their behavior. Laws specify sanctions, and only those sanctions may be applied. Laws differ from other types of social control in that their sanctions are applied exclusively by organized political agencies.



## Exhibit 1.2

## Statutes Will Be Declared Void If They Are Vague

*State v. Metzger*  
319 N.W. 2d 459 (Neb. 1982), cases and  
citations omitted

[The case involves Douglas E. Metzger, who was convicted of violating a city code that provided in part: "It shall be unlawful for any person within the City of Lincoln . . . to commit any indecent, immodest or filthy act in the presence of any person, or in such a situation that persons passing might ordinarily see the same."]

"According to the evidence, Metzger lived in a garden-level apartment located in Lincoln, Nebraska. A large window in the apartment faces a parking lot which is situated on the north side of the apartment building. At about 7:45 A.M. on April 30, 1981, another resident of the apartment, while parking his automobile in a space directly in front of Metzger's apartment window, observed Metzger standing naked with his arms at his sides in his apartment window for a period of five seconds.

The resident testified that he saw Metzger's body from his thighs on up. The resident called the police department and two officers arrived at the apartment at about 8 A.M. The officers testified that they observed Metzger standing in front of the window eating a bowl of cereal. They testified that Metzger was standing within a foot of the window and his nude body, from the mid-thigh on up, was visible. . . .

The more basic issue presented to us by this appeal is whether the ordinance, as drafted, is so vague as to be unconstitutional. We believe that it is. . . .

A criminal statute cannot rest upon an uncertain foundation. The crime and the elements constituting it must be so clearly expressed that the ordinary person can intelligently choose in advance what course it is lawful for

him to pursue. . . . A statute which forbids the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application violates the first essential elements of due process of law. It is not permissible to enact a law which in effect spreads an all-inclusive net for the feet of everybody upon the chance that, while the innocent will surely be entangled in its meshes, some wrongdoers may also be caught.

The ordinance in question makes it unlawful for anyone to commit any 'indecent, immodest or filthy act.' We know of no way in which the standards required of a criminal act can be met in those broad, general terms. There may be those few who believe persons of opposite sex holding hands in public are immodest, and certainly more who might believe that kissing in public is immodest. Such acts cannot constitute a crime. Certainly one could find many who would conclude that today's swimming attire found on many beaches or beside many pools is immodest. Yet, the fact that it is immodest does not thereby make it illegal, absent some requirement related to the health, safety, or welfare of the community. The dividing line between what is lawful and what is unlawful in terms of 'indecent,' 'immodest,' or 'filthy' is simply too broad to satisfy the constitutional requirements of due process. Both lawful and unlawful acts can be embraced within such broad definitions.

That cannot be permitted. One is not able to determine in advance what is lawful and what is unlawful." . . .

Boslaugh, Justice, dissenting.

"The ordinance in question prohibits indecent acts, immodest acts, *or* filthy acts in the presence of any person. . . . The exhibition of his genitals under the circumstances of this case was, clearly, an indecent act."

Laws are characterized by regularity, but that does not mean absolute certainty. Laws adhere to the principle of *stare decisis*, which means to abide by or adhere to rulings in previously settled cases. Laws are based on the assumption that predictability and certainty are important. Decided cases establish precedent for the

future, but courts may overrule prior decisions in the light of new facts, reasoning, or changing social conditions.

Unlike other social controls, laws do not reward conforming behavior; they are concerned primarily with negative sanctions. And unlike other social controls, in most cases, legal systems provide an appeal process.

## The Extent of Criminal Law

We should not expect to control all social behavior by criminal law. Criminal law should provide some standards, goals, and guidelines—a statement of what conduct is so important that it must be sanctioned by the state (or federal government). Criminal laws should also provide moral guidance, but controversy arises over the extent to which they should be used to regulate behavior.

In determining the acts to include within criminal law, it is helpful to distinguish between acts that are criminal within themselves and those that are criminal because they are defined as such. *Mala in se* crimes are evil in themselves. Examples are rape, murder, robbery, arson, aggravated assault, and serious property crimes, such as larceny-theft and burglary. There is general agreement that these acts are criminal. In contrast, *mala prohibita* crimes, such as public drunkenness, are considered evil because they are forbidden.

Historically, there was little difference between *mala in se* and *mala prohibita* crimes because most primitive societies did not distinguish morality, sin, and law. Today, the situation is quite different, and many acts that were previously covered by criminal law have been removed from its reach.

The serious impact of criminal law should lead us to question what kinds of behavior ought to be covered by its reach. For example, some people question the use of criminal law to enforce wearing helmets while riding bicycles or motorcycles or wearing seat belts and shoulder straps in automobiles. In the case of seat belts and shoulder straps, some jurisdictions permit arrest only if a moving violation occurs. But in 2001, the U.S. Supreme Court upheld the right of police to make a full custodial arrest even when a motorist committed the minor infraction of failure to wear a seat belt.<sup>9</sup>

This case and many others raise the issue of how extensive criminal laws should be. Requiring motorists to wear seat belts may be a worthwhile cause, especially when research data show a strong correlation between the lack of seat belt use and deaths from automobile accidents among teens (compared with very few deaths of children, as all states require that children be in proper restraints while cars are in motion, and many parents comply with these laws).<sup>10</sup> But should we use criminal law to achieve this purpose? Would civil sanctions suffice?

One area in which criminal law was used historically as a form of social control was that of private, consensual

sexual acts between adults. In 2003, in *Lawrence v. Texas*,<sup>11</sup> the U.S. Supreme Court held a Texas statute unconstitutional because it criminalized sexual acts between same-gender persons that were permitted between heterosexual persons. As the excerpt from this case, reproduced in **Supplement 1.2**, notes, in so doing the Court reversed a prior decision in which it had upheld a similar statute in Georgia.

Another type of criminal law coverage that some question is that of the manufacture, prescription, and sale of marijuana for medicinal purposes. Subsequent discussions in this text consider removing recreational marijuana use and the medicinal use of the drug from the criminal law. The drug relieves pain and other symptoms of some diseases and is tolerated by some patients who do not respond well to other drugs. As of June 28, 2017, in 29 states and the District of Columbia, it was legal under state law to use marijuana for medical reasons with a prescription from a physician.<sup>12</sup>

In the federal system, however, marijuana is a Schedule I drug, meaning it is one of the drugs that cannot be prescribed by doctors for any reason.<sup>13</sup> Schedule I drugs are permitted only when approved by the federal government for research purposes. Federal authorities take the position that the prescription of marijuana for medical reasons violates federal law and have successfully prosecuted some defendants for its growth and use. The U.S. Supreme Court has upheld the right of Congress to enact federal laws that regulate the sale of drugs and has rejected the defense that a medical necessity justifies using marijuana in violation of those laws even when state laws permit such use.<sup>14</sup> In 2013, the federal government articulated a policy regarding enforcement (or the lack thereof) of the federal laws that, in effect, preempt the state laws. This is discussed in Chapter 10.

This discussion of the use of criminal law to regulate the consensual, private sexual behavior of adults and the use of marijuana for medicinal purposes with a doctor's prescription raises the question of whether law is the best method of social control in certain areas of behavior. Whether the law serves its purpose of deterrence (see Chapter 3) is a controversial issue. Whether the law serves as an adequate symbol of morality can be questioned when the law is enforced infrequently and is not widely supported. Whether the law is used to discriminate against particular groups—such as poor people, minorities, foreigners, or persons with a same-gender sexual orientation—is also an important issue.

Attempts to legislate morality have not been successful when the laws lacked substantial support by the American people, as illustrated by the widespread violation of **Prohibition** (laws prohibiting the manufacture, sale, and use of alcohol) in the 1920s and of some laws prohibiting other drugs today. The state does, however, have an interest in preserving the morals of its people. The law must be concerned with some moral principles and cannot permit people to abuse one another; it should provide moral guidance. But can that happen if people disrespect the law because it is applied unfairly or because it is difficult or impossible to enforce? Some laws—those regulating sexual behavior, for example—cannot be enforced without violating one or more of our basic freedoms, such as the right to privacy. Therefore, in many cases, no attempt is made to enforce such laws, and this creates disrespect for the law. If these criminal laws do not deter the behavior at which they are aimed, do they serve any positive function in society?

To some extent, laws regulating moral behavior are functional. Sociologists suggest that attaching the label of *deviant* or *criminal* to some persons who violate these laws may serve a positive function for the conformists in that the process may increase their group cohesion.<sup>15</sup> But selective enforcement of the laws also serves to preserve the power of the majority—keeping the weaker, minority members of society in their places. In that sense, unequal administration of the law is functional because it keeps the status arrangements of society from being disrupted. For example, when drunks appear in public, police may react differently depending on the offenders' social status. Lower-class offenders may have a greater probability of being arrested. Upper- or middle-class offenders, in contrast, may just be driven home by police or permitted to call someone else to drive them.

Laws regulating morality may serve the function of making the majority feel that something is being done to preserve the morals of society. That is, these laws may create the impression that certain questionable behavior is disapproved of officially. It is argued that repealing these laws would condone the behavior and would not be a wise move for politicians. However, some of the statutes that regulate such crimes may have negative repercussions. Violation of privacy to obtain evidence of criminal conduct may drive demanded services underground. Laws may give the impression that something is being done when actually this is not the case.

The final section of this chapter overviews the study of criminal behavior.

## CRIMINOLOGY AND THE STUDY OF CRIME

The study of crime, criminals, and criminal law is of ancient origin, although the development of **criminology** as a discipline took place in the 1900s, with the first textbooks in the field published in the 1920s. But earlier attempts should be recognized. Chapter 3 of this text discusses some pertinent historical developments in criminal law. Other developments are also important. In June 1909, the American Institute of Criminal Law and Criminology was organized at the National Conference of Criminal Law and Criminology held at Northwestern University in Chicago. A resolution was passed that allowed the president to appoint a committee of five persons to select criminological treatises that should be translated into English. An early writer on criminology noted:

For the community at large, it is important to recognize that criminal science is a larger thing than criminal law. The legal profession in particular has a duty to familiarize itself with the principles of that science, as the sole means for intelligent and systematic improvement of the criminal law.<sup>16</sup>

Despite this step, the legal profession and policy makers have, until recently, remained generally aloof from the developments in the field of criminology, and even now, the recognition is not significant.

Today, however, most colleges and universities teach criminology and criminal justice courses; many offer graduate degrees in one or both areas. Regional professional organizations exist throughout the country. Professional journals in the field include one that focuses on education: the *Journal of Criminal Justice Education*, published by the Academy of Criminal Justice Sciences (ACJS). In addition to the ACJS, the field boasts another national and highly recognized professional association, the American Society of Criminology (ASC).

Of particular interest among professional journals in criminology and criminal justice is that of *Criminology & Public Policy*, first published in 2001 in an attempt to reduce the gap between social science research and policy decisions. Two scholars associated with the journal wrote in the first volume, "The gap between policy and knowledge appears to widen, even as the scope and depth of knowledge about crime and justice increases [sic] steadily." The journal, published by the ASC, signaled

“a timely recognition of the vitality of scholarship on crime and justice policy.”<sup>17</sup> Six years later, those two scholars proclaimed that “in academic circles,” the journal “is widely recognized as a notable success,” citing a study that ranked *Crime & Public Policy* as number 7 out of 69 journals in the field.<sup>18</sup>

Along with an increased emphasis on public policy has come greater diversion in the educational backgrounds of professionals in criminology and criminal justice. Most earlier professors of criminology and related subjects were educated in sociology, psychology, political science, or some other related discipline or were practitioners in various fields of criminal justice. Today, many professors in the field have a PhD in criminal justice or criminology, a law degree, or both. It could be argued, however, that a criminologist needs training in sociology, law, medicine, psychiatry, psychology, history, anthropology, chemistry, biology, architecture, systems engineering, political science, social work, public administration, business, communications, economics, and perhaps other disciplines.

Significant progress has been made since the introduction of criminology textbooks in the 1920s. Today, the discipline of criminology is characterized by an interdisciplinary approach, sophisticated research methods, and a strong emphasis on empirical research. Many departments emphasize the interrelationship of theory and

practice, and student demand for courses has increased significantly on many campuses.<sup>19</sup>

Modern criminologists have moved away from the discipline’s historically limited focus on explaining the behavior of criminals. The causes of crime are explored through discussions of biological, psychological, economic, and sociological theories, as the subsequent theory chapters of this text illustrate. But the modern study of crime involves more than an attempt to understand why people violate the law. The discipline of criminology includes the sociology of law, which analyzes why some acts and not others are defined as crimes, and a study of the social responses to crime, which examines why some people are processed through criminal justice systems, while others who commit the same acts are not. These areas of focus are not always separable (there is considerable overlap), and there is no agreement on which areas should receive research priorities. This text includes information on all three areas—law, criminology, and sociology, in addition to materials from other disciplines where pertinent. But some criminologists have expressed a lack of interest in including actual legal cases in their courses; thus, in this edition, most of the excerpts from legal opinions are provided online in a supplement to the text. The selections are, however, noted within the text.

## Summary

This chapter explored the meaning of crime and the nature and purpose of criminal law. Because criminal law defines criminal behavior, thus formulating the basis for the kinds of behavior on which this study of criminology focuses, the discussion is important in setting the stage for this text. Many of the questions raised throughout the text are related to the central issue of this chapter—the purposes of criminal law and the kinds of behavior that should be included within its reach. The answers to these questions determine who is and who is not a criminal and therefore who does and who does not constitute a basis for the study of criminology.

The inclusion or exclusion of morality within the reach of the criminal law affects all elements of criminal justice systems, including defendants’ rights, victims’ rights, and society’s right to be protected from criminal

behavior. Central to the entire discussion is the underlying theme of law as social control. A basic question is whether imposing sanctions discourages people from engaging in the proscribed behavior. Sociological contributions to our understanding of whether or not laws deter are crucial in the analysis of this issue.

This chapter began with an analysis of the concept of crime, exploring the elements required to establish that a crime has been committed. It analyzed the concept of law and looked at law as a method of social control, comparing it with other social controls. The chapter then turned to a discussion of the use of criminal law to control behavior that many people do not consider criminal, such as consensual sexual behavior between adults and the use of marijuana for medicinal purposes. The chapter closed with a look at criminology and the study of crime.



In conclusion, it may be argued that the main purpose of criminal law is to protect persons and property from abuse and to structure the legal rights that the society provides. However, it is not always clear what the scope of criminal law must be to encompass such goals. The law cannot control the behavior of all people in a complex society. The law should provide some standards, goals, and guidelines—a statement that defines which conduct is so important that it must be sanctioned formally. The criminal law should provide some moral guidance, but it should not be used to regulate behavior that could be regulated more effectively and more appropriately by civil law, by other agencies, or by individuals.

Nor should the law interfere with privacy rights. As one expert noted, “Any attempt to criminalize all wrong-

ful conduct would involve intolerable intrusions into citizens’ lives and choices. Much wrongdoing in people’s private and working lives should not be legally punishable because it involves areas of behavior which a free society should keep clear of the drastic intervention of the criminal law.”<sup>20</sup>

Finally, law is social. Sociological perspectives and inquiries are necessary if we are to appreciate the social nature of law.<sup>21</sup>

These and numerous other questions can be answered only when society has a thorough understanding of the causes and consequences of crime and the subsequent criminal laws designed to deal with crime. This text is an effort to provide that understanding.

## Key Terms

administrative law, p. 6  
case law, p. 6  
causation, p. 4  
civil law, p. 7  
crime, p. 4  
criminal law, p. 6  
criminology, p. 12

culpable, p. 5  
custom, p. 9  
defense, p. 8  
felony, p. 8  
forfeit, p. 8  
intent, p. 5  
jurisdiction, p. 7

jury nullification, p. 9  
legal duty, p. 5  
lesser included  
    offenses, p. 6  
*mala in se*, p. 11  
*mala prohibita*, p. 11  
*mens rea*, p. 5

misdemeanor, p. 8  
Prohibition, p. 12  
sanctions, p. 9  
social control, p. 9  
*stare decisis*, p. 10  
*status quo*, p. 9  
statutory law, p. 6

## Study Questions

1. What is meant by the concept of crime?
2. Give and explain a legal definition of *crime*.
3. Explain what is meant by a *legal duty* to act.
4. Discuss the meaning and importance of *mens rea* and the exceptions to this concept.
5. Distinguish statutory law, case law, constitutional law, and administrative law.
6. Distinguish between criminal law and civil law.
7. What is a *defense*? Illustrate.
8. Distinguish between a *felony* and a *misdemeanor*.
9. Why should a jury be permitted to determine guilt or innocence?
10. What is *jury nullification*?
11. How is law used to control people, and how does law differ from other forms of social control?
12. What are the major sources of criminal law?
13. Why does law adhere to the principle of *stare decisis*?
14. Distinguish *mala in se* and *mala prohibita* crimes, and discuss the relationship of these concepts to criminal law.
15. What did the U.S. Supreme Court hold in *Lawrence v. Texas*, and why?
16. Should any private, consensual sexual behavior be covered by criminal law? Discuss.
17. What is the legal status of using marijuana for medicinal purposes?
18. What is involved in the study of criminology?

## Brief Essay Assignments

1. Why is law an important discipline to study?
2. What types of acts should the criminal law cover and why?
3. What should be the role of criminal law with regard to regulating private, consensual sexual behavior among adults?
4. Should states be permitted to establish their own statutes with regard to the use of marijuana for medicinal purposes?

## Internet Activities

1. Considerable debate surrounds the criminalization of acts such as drug use, consensual sex by adults in private, gambling, and prostitution, thought by some to be *victimless crimes*. For information concerning the issue of prostitution, check out the Web site for the organization Coalition Against Trafficking in Women, <http://www.catwinternational.org>, accessed June 29, 2017. This Web site includes facts, statistics, and other information on prostitution and sex trafficking from a global perspective.
2. Search for information about cases that involve the prosecution of defendants who have HIV/AIDS and knowingly expose others. Under what conditions were these cases prosecuted? (That is, what type of crime was involved?) What has been the outcome of these cases? Do you think the rulings were fair? Start with the following: <http://www.cdc.gov/hiv/policies/law/states/exposure.html>, accessed June 29, 2017.

## Notes

1. Paul W. Tappan, *Crime, Justice and Correction* (New York: McGraw-Hill, 1960), p. 10.
2. "Cries Ignored, Charges Dropped," *Tampa Tribune* (July 20, 1991), p. 3.
3. *Virginia v. Black*, 538 U.S. 343 (2003). The statute in question is codified at Va. Code Ann., Section 18.2-423 (2016).
4. Eugene M. Caruso et al., "Slow Motion Increases Perceived Intent," PNAS Early Edition (May 17, 2016), p. 1, <http://www.pnas.org>, accessed August 20, 2016.
5. *United States v. Dotterweich*, 320 U.S. 277 (1943).
6. For a discussion of defenses, see Sue Titus Reid, *Criminal Law*, 9th ed. (New York: Oxford University Press, 2013), pp. 85-127; and Reid, *Criminal Law: The Essentials*, 3d ed. (New York: Oxford University Press, 2016), pp. 65-97.
7. "ABA's Veterans Legal Services Initiative Aims to Create Online Resource, Mobilize Lawyers," (August 10, 2016), <http://www.abajournal.com>, accessed August 11, 2016.
8. See, for example, Richard D. Schwartz, "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements," *Yale Law Journal* 63 (February 1954): 471-491.
9. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).
10. "Low Seat Belt Use Linked to Teenage Death Rates," *New York Times* (May 21, 2001), p. 12, referring to a report released that day by the National Safety Council.
11. *Lawrence v. Texas*, 539 U.S. 558 (2003).
12. For a list of the states and the citations of their statutes, see <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>, accessed June 29, 2017.
13. See USCS, Title 21, Section 812(c) (2017). See also the discussion in Chapter 10 of this text.
14. See *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), *injunction granted sub nom.*, 2002 U.S. Dist. LEXIS 10660 (N.D. Cal. 2002); *Gonzales v. Raich*, 545 U.S. 1 (2005), *on remand*, *Raich v. Gonzales*, 500 F.3d 850 (9th Cir. 2007); and *United States v. Rosenthal*, 2009 U.S. App. LEXIS 12571 (9th Cir. 2009).
15. Edwin M. Schur, *Crimes Without Victims: Deviant Behavior and Public Policy* (Englewood Cliffs, NJ: Prentice Hall, 1965), p. 4.
16. Willem A. Bongers, *Criminality and Economic Conditions*, trans. Henry P. Horton (Boston: Little, Brown, 1916), p. xi.
17. Todd R. Clear and Natasha A. Frost, "Criminology and Public Policy: A New Journal of the American Society of Criminology," *Criminology & Public Policy* 1(1) (November 2001): 1-3; quotation is on p. 1.

## 16      **Part I:** Introduction to the Study of Crime and Criminology

18. Todd R. Clear and Natasha A. Frost, "Informing Public Policy," *Criminology & Public Policy* 6(4) (November 2007): 633-640; quotation is on p. 635. The referenced study was conducted by Jon Sorensen et al., "An Assessment of Criminal Justice and Criminology Journal Prestige," *Journal of Criminal Justice Education* 17 (2006): 297-322, with specific reference to p. 314.
19. For an interesting and thorough analysis of the development of and then demise of the School of Criminology at Berkeley, see the recent publication by Johann Koehler, "Development and Fracture of a Discipline: Legacies of the School of Criminology at Berkeley," *Criminology* 53(4) (November 2015): 513-544.
20. Andrew von Hirsch, "Desert and Previous Convictions in Sentencing," *Minnesota Law Review* 65 (April 1981): 607.
21. Edwin M. Schur, *Law and Society: A Sociological View* (New York: Random House, 1968).