

2

EDITION

CRIME AND CRIMINAL JUSTICE

CONCEPTS AND
CONTROVERSIES

STACY L.
MALLICOAT



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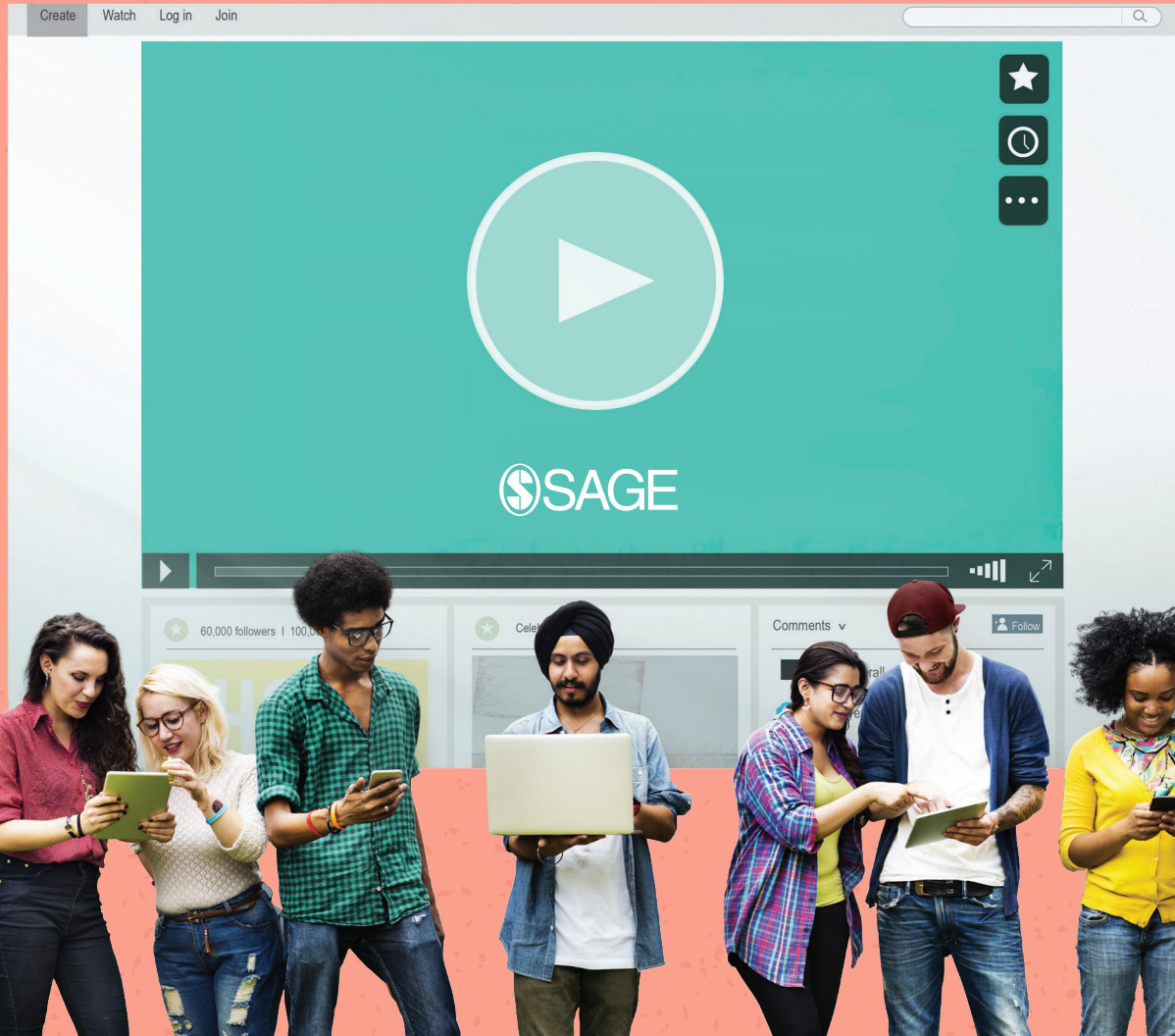


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COURSE **OUTCOMES** FOR INTRODUCTION TO CRIMINAL JUSTICE:

ARTICULATE the foundations of criminal justice, including definitions, theories, typologies, measurement issues, and the law.

EXAMINE the development of policing organizations and strategies and the challenges faced by police.

EXPLAIN the structure and processes of the judiciary at the local, state, and federal levels.

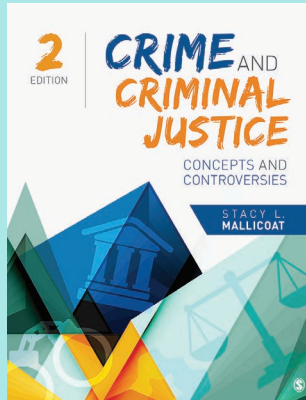
IDENTIFY the goals, methods, and effectiveness of various forms of corrections.

ANALYZE important criminal justice issues and their impact on society.



Want to see how these outcomes tie in with this book's chapter-level objectives?
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Muskingum University

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CONTROVERSIES

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PREFACE

This text is a unique approach to studying the concepts and controversies of the criminal justice system. Like many introductory texts, this book covers the major structures, agencies, and functions of the criminal justice system. In each chapter, you will learn about the different features and functions of our criminal justice system. You'll also learn about examples of high-profile cases and how the criminal justice system has responded to these crimes. The book also provides an in-depth look at the role of victims and policy in our criminal justice system, two topics that are often either absent or covered in a limited fashion in most texts. In addition, this book provides a unique look at some of the emerging issues in criminal justice in the twenty-first century, such as homeland security, transnational crime, and the use of drones. Finally, you'll learn about some of the cutting-edge issues and debates that face the criminal justice system today.

Organization of the Book

This book is divided into 14 chapters, with each chapter dealing with a different subject related to the criminal justice system. Each chapter begins with an issue or topic relevant to the themes that are discussed in the chapter. Each chapter summarizes some of the basic terms and concepts related to the subject area. Each chapter also provides the following features:

Spotlights. Each chapter presents either case studies or special topic discussions on the issues presented in the chapter. These spotlights provide you with the opportunity to learn about an issue in depth or to investigate a real-world event in light of the terms and concepts presented in the text.

Around the World. Each chapter presents an international example of how criminal justice systems function around the world.

Careers in Criminal Justice. Each chapter provides an example of a criminal justice career that you may choose to pursue.

Current Controversies. Within each chapter, you'll be presented with two current controversies that the criminal justice system faces. Within each of these debates, you'll be presented with the pros and cons of each topic, followed by critical thinking questions to help you think more deeply about these key issues.

Chapter Contents

Chapter 1: Crime and Criminal Justice provides an introduction to the issues of crime and justice. In this chapter, you will learn about the criminal justice system and the different models that help describe its functions. You'll also learn about the role of the media and how information about crime is shared with the public. The chapter concludes with two Current Controversy debates. The first, by Kareem L. Jordan, questions whether justice is served by our criminal justice system. The second, by Amanda Burgess-Proctor, investigates whether the media is a credible source on crime.

Chapter 2: Concepts of Law and Justice investigates the concepts of law and justice within our criminal justice system. In this chapter, you will learn about the development of law and how it relates to the criminal justice system. The chapter begins with a discussion on the different sources of law in the United States. The chapter then focuses on the different types of law and their relationship to the criminal justice system. You'll also learn about the different legal defenses that are used in the criminal courts to explain or justify criminal behaviors. The chapter concludes with two Current Controversy debates. The first, by Clayton Mosher and Scott Akins, looks at the debate over legalizing marijuana. The second, by Alissa Ackerman, questions whether sexual harassment should be included as a form of sexual assault.

Chapter 3: Defining and Measuring Crime looks at the types of crime that our criminal justice system manages. This chapter begins with a review of the different types of crime and how we classify these offenses. The chapter then turns to a discussion

of how crime is measured in society. You'll learn about the different official sources of crime data, such as the Uniform Crime Reports, the National Incident-Based Reporting System, and the National Crime Victimization Survey, as well as self-reported studies of crime. You'll also learn about international databases of crime that can be used to understand the presence of crime around the world. The chapter concludes with two Current Controversy debates. The first, by Henry N. Pontell, Gilbert Geis, Adam Ghazi-Tehrani, and Bryan Burton, looks at whether white-collar crime is considered harmful to society. The second, by Vaughn Crichlow, addresses whether or not violent crime is on the rise.

Chapter 4: Explanations of Criminal Behavior investigates the different theoretical explanations for criminal behavior. This chapter begins with a discussion about the classical theories of crime. The chapter then explores biological and psychological explanations of crime, in which theorists historically looked at factors such as biology and genetics to help understand criminal behavior. This chapter also looks at how external social factors such as poverty, family, and peers can help to explain crime. The chapter then moves to a review of some of the contemporary theories of crime, such as life course theory and feminist criminology. The chapter concludes with two Current Controversy debates. The first, by Kenethia McIntosh-Fuller, questions whether race and class can impact criminal behavior, and the second, by Robert Schug, asks whether mental illness causes crime.

Chapter 5: Victims and the Criminal Justice System highlights the issues that victims of crime face in dealing with the criminal justice system. This chapter looks at the role of victims in the criminal justice system. The chapter begins with a discussion of the history of the victims' rights movement and then turns to a review of the theories that help to explain criminal victimization. This is followed by a discussion of the types of victims and an exploration of the extent of victimization both within the United States and worldwide. The chapter concludes with two Current Controversy debates. The first, by Allison Foley, explores whether universities are best suited to respond to cases of rape and sexual assault among college students, while the second, by Kimberly J. Cook, investigates how a restorative justice model might help in the healing process for victims.

Chapter 6: Criminal Justice Policy focuses on how policy can shape and is shaped by the criminal justice system. The chapter begins with a discussion on the need and function of criminal justice policies. The chapter then looks at how policies are developed and the role of politics in this process. The chapter concludes with two Current Controversy debates related to criminal justice policies. The first, by David Bieri and Sarah Craun, looks at whether sex offender registries are an effective tool for keeping the public safe. The second, by Thaddeus Lateef Johnson and Natasha N. Johnson, asks whether the United States should change its laws about gun control.

Chapter 7: Policing Organizations and Practices presents the different types of police organizations and practices. This chapter begins with a look at the historical roots of policing and then presents the different types of police organizations. The chapter then turns to a review of the various styles of policing, such as order maintenance, community policing, and problem-oriented policing. The chapter concludes with two Current Controversy debates. The first, by Meghan Hollis and Amber Richey, asks whether targeted policing is a good strategy. The second, by Shelly Arsneault, questions whether street-level bureaucracy is a good practice in criminal justice.

Chapter 8: Issues in Policing highlights some of the issues that the police face both as individual officers and as an organization at large. The chapter begins with a discussion of the legal issues in policing and the rules that impact how police officers do their job. The chapter next turns to a discussion of ethical challenges, corruption, racial profiling, and the use of force and how these issues can have an effect on the public's perception of the police. The chapter then looks at the nature of police legitimacy and how these types of issues can serve as a threat. The chapter concludes with two Current Controversy debates. The first, by Bill Sousa, investigates how body cameras should be utilized in the line of duty, and the second, by Lorenzo M. Boyd, asks whether police discretion is helpful or harmful to our criminal justice system.

Chapter 9: Courts and Crime discusses the role of courts in our criminal justice system. In this chapter, you will learn about the structure of the American court system and its relationship to the criminal justice system. The chapter begins with a discussion about how courts are organized. The chapter then looks at the different participants in

the courtroom and their roles. After that, the chapter moves to a discussion of the stages of a criminal court case. The chapter concludes with two Current Controversy debates related to the criminal court system. The first, by Julius (Jay) Wachtel, asks whether physical evidence should be required in serious criminal cases. The second, by G. Max Dery, asks whether we should limit the use of plea bargains in criminal cases.

Chapter 10: Punishment and Sentencing introduces you to the different types of sentencing practices that are used in the criminal justice system. The chapter begins with a discussion about the various philosophies that guide sentencing practices. The chapter then looks at the different types of sentences. The chapter concludes with two Current Controversy debates related to the criminal court system. The first, by Kimberly Dodson, asks whether habitual sentencing laws deter offenders. The second, by Connor Bell and Gavin Lee, looks at whether we should abolish the death penalty.

Chapter 11: Prisons and Jails highlights the various programs and practices that make up the field of community corrections. In this chapter, you will learn about each of these programs and how they balance the safety and security of the community with the needs of the offender. You'll also learn about the process of reentry after prison and the role of parole. The chapter concludes with two Current Controversy debates. The first, by Brett Garland, investigates whether we should use supermax facilities to control violent offenders. The second, by Sean Wilson, investigates whether prisons should be designed to punish or rehabilitate inmates.

Chapter 12: Community Corrections focuses on the role of correctional institutions such as prisons and jails. In this chapter, you will learn about the structure of prisons and jails in the United States. The chapter begins with a historical review of how prisons and jails developed. It then looks at the current state of jails and the different types of populations that these facilities serve. The chapter then turns to a review of prisons and highlights how issues such as security levels impact the design and organization of a facility. You'll then learn about life behind bars and how issues such as violence, programming, and health care can impact the quality of life of inmates. You'll also learn about the legal rights of prisoners and how landmark Supreme Court cases have impacted the prison environment. Finally, you'll hear about the role of correctional officers in the prison. The chapter concludes with two Current Controversy debates. The first, by Monica Solinas-Saunders and Melissa Stacer, asks whether employers should be permitted to ask applicants about their criminal history. The second, by Christine Scott-Hayward, looks at whether parole is an effective correctional strategy.

Chapter 13: Juvenile Justice shows how the juvenile justice system functions as a separate but similar counterpart to the criminal justice system. The chapter begins with a discussion of the history of the juvenile justice system and then turns to a review of the key decisions by the U.S. Supreme Court on juveniles. Next, the chapter examines the structure of the juvenile court and some of the differences between the juvenile and criminal courts. The chapter also explores juvenile waivers. The chapter concludes with two Current Controversy debates. The first, by Alicia Pantoja, Sanna King, and Anthony Peguero, asks whether zero-tolerance policies have made schools safer. The second, by Schannae Lucas, addresses whether or not the juvenile court system should be abolished.

Chapter 14: Transnational Criminal Justice concludes the text with an investigation of the global issues that are facing the criminal justice system. The chapter begins with a discussion of terrorism and then addresses homeland security. It also explores some of the privacy threats that exist due to the use of drones. Finally, the chapter turns to a discussion of border control. The chapter also looks at how issues such as human trafficking, organized crime, and drugs and arms trafficking impact both the United States and international criminal justice systems. The chapter concludes with two Current Controversy debates. The first, by Gus Martin, asks whether enemy combatants should be denied due process rights. The second, by Zahra Shekarkhar, discusses whether immigration impacts crime.

Through this text, I hope that you gain a strong foundation in the organization and issues of our criminal justice system. For those students who are majors in criminal justice, this text supplies the foundation to build your future coursework on. For students who have enrolled in an introductory course to satisfy a basic requirement or who are taking the course out of a general interest in crime, the information in this text will provide you with a new lens to look at how crime and our criminal justice system work together as a function of society.

New to the Second Edition

New Current Controversy boxes, such as these:

- Current Controversy 1.2: Is the Media a Credible Source on Crime?
- Current Controversy 2.2: Should Sexual Harassment Be Identified as a Form of Sexual Assault?
- Current Controversy 3.2: Is Violent Crime on the Rise?
- Current Controversy 5.1: Are Colleges and Universities the Best Place to Respond to Campus Sexual Assault?
- Current Controversy 6.2: Should the United States Increase Its Laws About Gun Control?
- Current Controversy 7.1: Is Targeted Policing a Good Policing Strategy?
- Current Controversy 10.2: Should We Abolish the Death Penalty?
- Current Controversy 11.1: Should We Use Solitary Confinement to Control Violent and Disruptive Behaviors?
- Current Controversy 11.2: Should Prisons Punish or Rehabilitate Offenders?
- Current Controversy 12.1: Should Employers Be Permitted to Ask About Criminal History?

New or expanded coverage of critical topics, including the following:

- A brief history of the American criminal justice system
- Criminal defenses
- Constitutional rights under criminal law
- Masculinities and crime
- Queer criminology
- Tasers and the use of force
- Women and minorities in the judiciary
- Judicial selection
- Bail and pretrial release
- California's prison realignment
- Supermax prisons
- Inmate classification
- The incarceration of women
- Financial issues behind bars
- Prison riots
- Legal rights of prisoners
- Reentry
- Transnational criminal justice
- Cyberterrorism
- The Trump administration and the travel ban

New case studies and spotlights, including the following:

- The wrongful conviction of Ricky Jackson
- Sexual harassment in Hollywood
- Mental illness and gun control

- The victims of the Seal Beach salon shooting
- Mandatory arrest policies
- The importance of a diverse police force
- Race and the use of deadly force by police
- The role of technology in searches
- Recent Supreme Court cases, including *Utah v. Streiff*, *Riley v. California*, *Carpenter v. United States*, *Birchfield v. California*, *Collins v. Virginia*, *Byrd v. United States*, and *Class v. United States*
- The case of Larry Nassar
- Lynching and mass incarceration
- The case of Bill Cosby
- The case of Michelle Carter
- Terrorism in London, England
- Statistics, graphs, and tables have all been updated to demonstrate the most recent trends in criminal justice

Digital Resources

Interactive eBook

Learn more at edge.sagepub.com/mallicoatccj2e/access



Career Videos: In the Interactive eBook, interviews are available with criminal justice professionals discussing their day-to-day work and current issues related to technology, diversity, and cutting-edge developments in their field.



SAGE News Clips: In the Interactive eBook, relevant news clips are available that deepen students' understanding of key concepts and help students apply knowledge.



Criminal Justice in Action: Decision-Making Scenarios: In the Interactive eBook, original animations are available that give students the opportunity to apply the concepts they are learning and to check for a deeper understanding of how these concepts play out in real-world scenarios.



Journal Articles: Articles from highly ranked SAGE journals such as *Crime and Delinquency*, *Theoretical Criminology*, *Criminal Justice Review*, and more can be accessed.

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SAGE edge for Instructors supports teaching by making it easy to integrate quality content and create a rich learning environment for students.

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- Editable, chapter-specific **PowerPoint® slides** offer complete flexibility for creating a multimedia presentation for the course.
- **Lecture notes** summarize key concepts by chapter to ease preparation for lectures and class discussions.
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- **Multimedia resources** include timely and relevant video, audio, and web links to further explore topics and highlight responses to critical thinking questions.
- Coursepacks provide easy LMS integration.

Student Resources

SAGE edge for Students provides a personalized approach to help students accomplish their coursework goals in an easy-to-use learning environment.

- Mobile-friendly **eFlashcards** strengthen understanding of key terms and concepts.
- Mobile-friendly **practice quizzes** allow for independent assessment by students of their mastery of course material.
- **Learning objectives** reinforce the most important material.
- **Multimedia resources** include timely and relevant video, audio, and web links to further explore topics and highlight responses to critical thinking questions.
- **EXCLUSIVE!** Access to full-text **SAGE journal articles** that have been carefully selected to support and expand on the concepts presented in each chapter.

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PART I

Foundations of Criminal Justice

CHAPTER 1

Crime and Criminal Justice

- **Current Controversy 1.1:** *Is Justice Served by Our Criminal Justice System?*
- **Current Controversy 1.2:** *Is the Media a Credible Source on Crime?*

CHAPTER 2

Concepts of Law and Justice

- **Current Controversy 2.1:** *Should Marijuana Be Legalized?*
- **Current Controversy 2.2:** *Should Sexual Harassment Be Identified as a Form of Sexual Assault?*

CHAPTER 3

Defining and Measuring Crime

- **Current Controversy 3.1:** *Is White-Collar Crime Harmful to Society?*
- **Current Controversy 3.2:** *Is Violent Crime on the Rise?*

CHAPTER 4

Explanations of Criminal Behavior

- **Current Controversy 4.1:** *Is There a Relationship Between Race and Class and Criminal Behavior?*
- **Current Controversy 4.2:** *Does Mental Illness Cause Crime?*

CHAPTER 5

Victims and the Criminal Justice System

- **Current Controversy 5.1:** *Are Colleges and Universities the Best Place to Respond to Campus Sexual Assault?*
- **Current Controversy 5.2:** *Is Restorative Justice an Effective Tool for Victims?*

CHAPTER 6

Criminal Justice Policy

- **Current Controversy 6.1:** *Are Laws Requiring Sex Offender Registries Effective?*
- **Current Controversy 6.2:** *Should the United States Increase Its Laws About Gun Control?*



1

Crime and Criminal Justice

Learning Objectives

- Identify the major stages of the criminal justice system
- Explain the importance of discretion and ethics in the criminal justice system
- Describe the different tiers of the wedding cake model
- Compare and contrast the crime control model with the due process model
- Assess how media can impact the criminal justice system

On May 19, 1975, Harold Franks was the victim of a robbery-murder in Cleveland, Ohio. The 59-year-old money order salesman was walking from a local neighborhood store when he was approached by two men, one of whom subsequently tossed acid in Franks's face and shot him in the chest. A second bullet broke through the window of the store and hit Anna Robinson, the store owner's wife. While she survived, Franks died at the scene. The take from the crime was \$425 from Franks's briefcase.

Within a week of Franks's murder, the police had an eyewitness who stated that he had seen the three men who robbed and shot Franks. Eddie Vernon was just 12 years old when he identified 18-year-old Ricky Jackson as the man who shot Franks. Vernon also identified Ronnie and Wiley Bridgeman as co-conspirators to the crime. None of the three men had had any previous engagements with the law, and no physical or forensic evidence linked them to this crime. The gun used in the crime was never found, nor was the getaway car that was used to flee the scene. The only evidence presented by the prosecution was the testimony of Eddie Vernon, whose stories about the crime were inconsistent. Despite defense witnesses who contradicted Vernon's description of the events, Jackson and the Bridgeman brothers were found guilty. Even though each was tried separately, it took the local courts less than four months after the murder to convict and sentence all three to death. In 1978, the state struck down the death penalty and all three had their sentences commuted to life in prison.

It was over two decades before any of the men saw life outside of the prison walls. In 2001, Wiley was granted parole, and his brother Ronnie was released the following year. During a chance encounter, Wiley ran into Eddie Vernon at the City Mission, a shelter in Cleveland, but he could not convince Vernon to speak out about his testimony. Wiley returned to prison in 2002 on a parole violation. Jackson remained behind bars. Ronnie (who later changed his name to Kwame Ajamu) worked with local reporters and the Ohio Innocence Commission to try and clear their names and get Wiley and Jackson released.

In 2013, Vernon recanted his testimony and stated that he had been pressed by the police to lie about seeing Jackson and the Bridgeman brothers at the scene of the Franks murder. It took over a year for the court to hold a hearing on a petition for a new trial for Jackson. The judge vacated the convictions for all three men, and the prosecutor dismissed their charges.

Ricky Jackson served 39 years, three months, and nine days in prison. His case stands as the longest incarceration sentence of an exonerated individual in the United States.¹

This text is designed to provide an overview of our criminal justice system. In each chapter, you will learn about different features and functions of this system. You'll also learn about different high-profile cases and how the criminal justice system has responded to these crimes, and examples of how criminal justice issues are handled in a global context will be provided. As a student of criminal justice, you'll also learn about some of the different careers that you might pursue within this field. Finally, you'll explore some of the cutting-edge issues and debates that face the criminal justice system today.

In this chapter, you will learn about the criminal justice system and the different models that help describe its functions. You'll also learn about the role of the media and how information about **crime** is shared with the public. The chapter concludes with two explorations of current controversies that debate the pros and cons of key issues in criminal justice. The first, by Kareem L. Jordan, questions whether justice is served by our criminal justice system. The second, by Amanda Burgess-Proctor, asks whether the media is a credible source on crime.



Ricky Jackson, 57, of Cleveland, center, with his lawyers, looks skyward after being released from his life sentence for a 1975 murder.

© AP Photo/Phil Long

Crime: An act that is against the law and causes a punishment.

Brief History of the American Criminal Justice System

Throughout this text, you'll learn about the basic features of our criminal justice system, the origins of these features, and how past practices evolved into our current system. Politics played a significant role in the development of our criminal justice system as well as in justice itself during early colonial America. Justice during this period was broadly shaped by the traditions of the English common law system. There were few legal professionals among the early settlers, which gave government leaders wide latitude in shaping the system. This meant that religion and, in particular, puritanical values were strong influences on the development of our criminal codes. The fact that religion had such an influence on our system is rather ironic, given that many settlers came to America to escape the religious persecution under English law.

During these early colonial times, there was no unified criminal code. As such, the definition of crime and the types of punishments that were used varied from colony to colony. For example, the law in Massachusetts was dominated by puritanical values, and the influence of religion was significant. Judges were highly ranked political and religious leaders in the community, and criminals were seen as individuals who had sinned. Indeed, there was very little distinction between criminal acts and sins. Trials were a form of religious ceremony, "an occasion for repentance and reintegration: a ritual for reclaiming lost sheep and restoring them to the flock."² While the death penalty was a legally recognized punishment for offenses such as witchcraft, adultery, assault in anger, and poisoning (as well as premeditated murder and manslaughter),³ its use varied between the colonies. Massachusetts law required testimony by two or three witnesses in order to sentence someone to death. Without these witnesses, the individual would receive a lesser punishment. In Virginia, punishments and executions were carried out in public as a way both to warn would-be offenders and to reinforce the legitimacy of the criminal justice process and religious rule.⁴ In contrast, Pennsylvania was heavily influenced by the Quakers. William Penn was the first Quaker reformer, and he abolished the death penalty for all crimes except murder. He also believed that prisons should be used to incapacitate and reform individuals, not simply to punish them. His work became a primary influence in the development of the first American prisons.

Following the Revolutionary War, the colonists continued to develop a new system of justice. The Founding Fathers had a strong belief in protecting the rights of those accused of a crime. We see this influence throughout the Bill of Rights and its emphasis on due process. They were also concerned about creating a system that was transparent and regulated, which can be seen through the codification of our criminal laws. Finally, the Founding Fathers valued a legal system that balanced the needs of Federalism with states' rights. As you can see, the core features of the new government system were closely linked to the development of the criminal justice system. Over time, these structures and practices evolved into the system we have today. And, as you will learn throughout this text, these practices continue to evolve into the twenty-first century.

Police: Police are tasked with investigating crime and apprehending offenders.

Courts: The courts are responsible for determining whether an offender should be charged with a crime and also manage the process to determine whether the offender should be held criminally responsible for the crime.

Stages of the Criminal Justice System

There are three major components of the criminal justice system: police, courts, and corrections. Each of these systems functions both in relationship to the others and as a separate entity. In terms of the criminal justice system, the **police** are tasked with investigating crime and apprehending offenders. The **courts** are responsible for determining whether an offender should be charged with a crime and managing

the process to determine whether he or she should be held criminally responsible. The courts are also responsible for handing down a punishment in cases where the court determines that the offender is guilty of a crime. It is then up to the **corrections** system to carry out the punishment as ordered by the court. Throughout this text, you'll be exposed to all of these groups and learn about their key functions and processes.

With so many different players, how do these components work together to form our criminal justice system? While the police, courts, and our correctional systems all have different roles and responsibilities, each group makes decisions that ultimately impact the other groups. Figure 1.1 highlights how a case moves through the different stages of the criminal justice system.

Policing

Police officers are generally the first point of contact in the system, and they learn about crime in a variety of ways. They might be called to the scene of a crime to take a statement from a victim or witness or to preserve and collect evidence in a case. If an offender is identified, the police may arrest the offender. In cases in which the perpetrator is unknown, the police investigate the crime in an attempt to identify a suspect.

The Courts

Once this information is collected and processed, it is forwarded on to the courts. Here, a district attorney (also called a prosecutor) will review the information and determine what charges, if any, will be filed against an offender, also known as the **defendant**. In order to proceed with a case, the prosecutor must prove that she or he has probable cause that the accused committed the crime. If someone has been arrested and is currently in custody, courts will begin the proceedings on whether the offender is eligible for release or must stay in custody. The offender will also plead guilty or not guilty at an arraignment. If the offender enters a guilty plea, the judge will issue a sentence. If the offender pleads not guilty, then the case will proceed. The prosecutor may choose to take the case to trial or may decide to offer a plea bargain, which generally allows the offender to enter a guilty plea for a lesser charge and reduced sentence. While it is the responsibility of the district attorney to carry out the legal proceedings of the case, it is the job of the defense counsel to ensure that the rights of the accused are upheld and to defend the client throughout the criminal justice process.

The judge is an impartial moderator of the court process. The judge resolves disputes between the prosecution and the defense. In some cases, the judge may also be responsible for making a decision on whether the defendant is guilty or not guilty. In other cases, a jury determines the outcome. A jury is made up of a group of citizens who are charged with reviewing the evidence presented in court and then making a decision about the defendant's guilt. In certain cases (like capital punishment cases), a jury is also responsible for determining the sentence for the guilty offender. However, in the majority of criminal cases, it is up to the judge to make this decision during a sentencing hearing.

Corrections

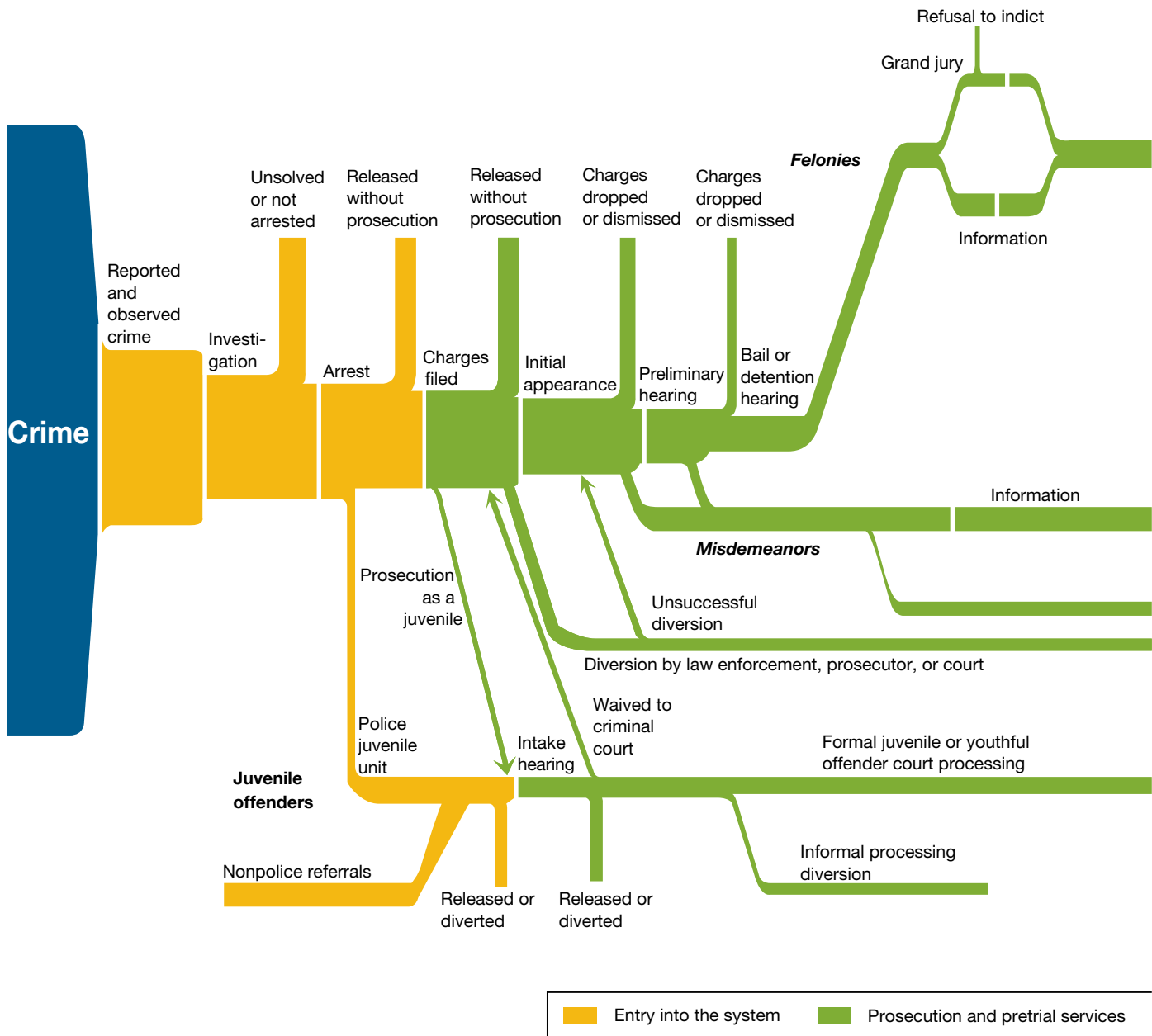
If an offender is sentenced to a period of incarceration, he or she will serve that sentence in either a jail or prison. In other cases, an offender may be sentenced to community-based supervision, such as probation. This allows the offender to remain in the community rather than being sent to a facility.⁵

Corrections: The corrections system carries out the punishment as ordered by the court.

Defendant: Someone who has criminal charges filed against her or him.

FIGURE 1.1

The Criminal Justice Process



Source: Bureau of Justice Statistics, "Criminal Justice System Flow Chart," August 2, 2018, <http://www.bjs.gov/content/largechart.cfm>.

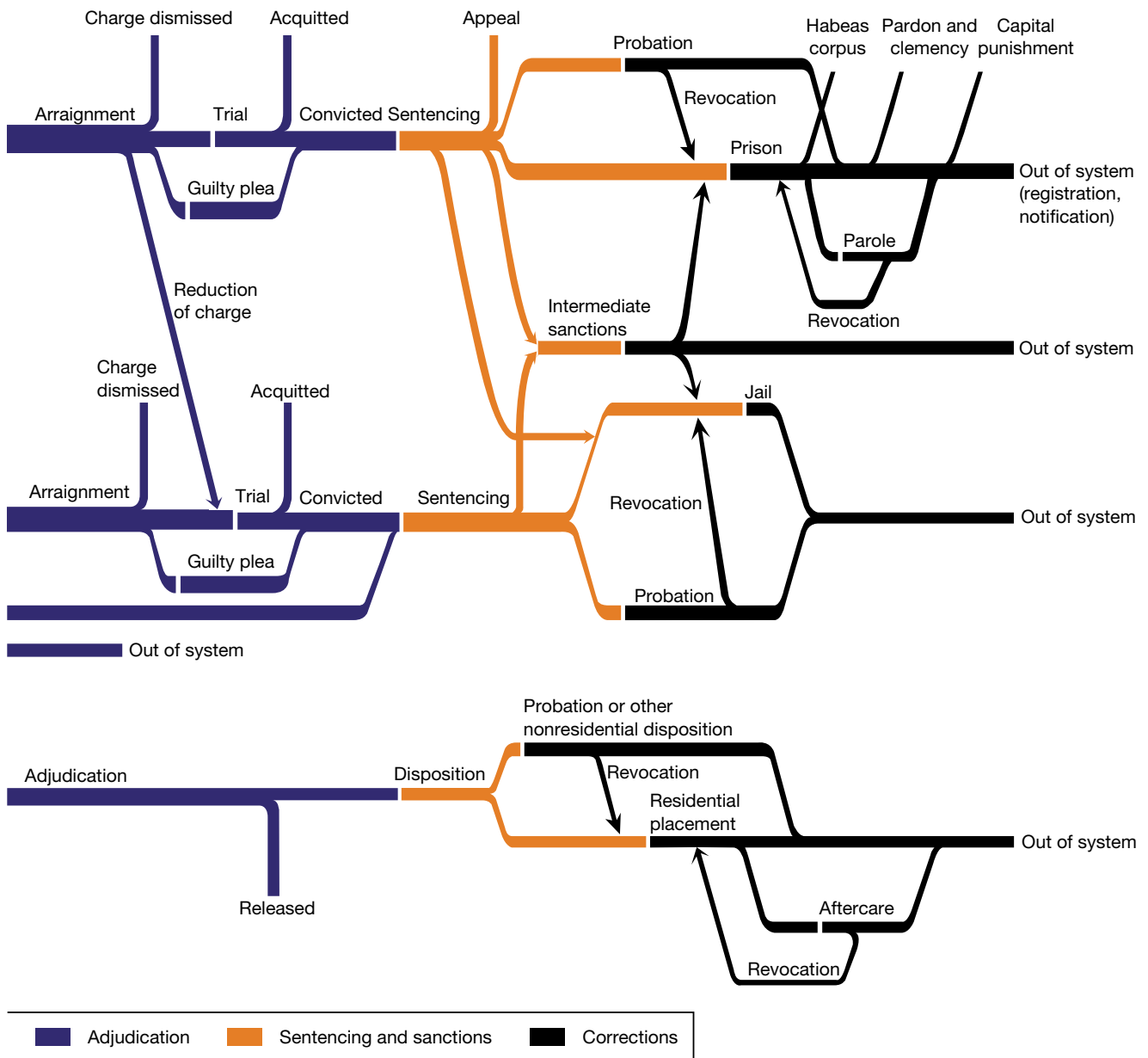
Discretion and Ethics in the Criminal Justice System

Discretion: The power of criminal justice officials to make decisions.

Ethics: The understanding of what constitutes good or bad behavior.

The decision-making power of criminal justice agents is called **discretion**. Discretion refers to the freedom to make decisions. It is perhaps the most powerful tool of the criminal justice system. Laws and policies can help guide the discretion of individuals in the criminal justice system, such as the police, prosecutors, and the courts.

Related to this issue is the question of **ethics**. Ethics in criminal justice refers to the understanding of what constitutes good or bad behavior. As agents of criminal justice



exercise their discretion, they may face ethical challenges about which course of action is the most appropriate. Ethics can help guide the decision-making process. In some cases, ethical violations occur. Consider the case that you were introduced to at the beginning of this chapter. Eddie Vernon was pressured by the police to identify Ricky Jackson and his friends as the men who shot and killed Harold Franks. Was this ethical behavior on the part of the police? Throughout this text, you'll learn about how the police, courts, and correctional systems are faced with ethical challenges.

Another example of the use of discretion by our criminal justice system can be observed by investigating how different types of offenders are treated by the system. For example, there is a large body of research highlighting the mistreatment of individuals



So You Want to Work in Criminal Justice?

There are many different opportunities to work in the criminal justice system. Throughout this text, you'll learn about the different types of jobs that are available throughout the police, courts, and correctional agencies. In addition, there are also opportunities for employment with organizations and agencies that are affiliated with or linked to the criminal justice system, such as offender treatment programs and facilities, social services, and victim assistance programs.

As you think about the type of career that you might be interested in, consider what issues or topics you are most drawn to in criminal justice. What are the requirements to work in these fields? Do you need a bachelor's degree or a graduate degree? Is there specialized training that is involved? Will being fluent in multiple languages help you in your career? You will also want to consider how your personality fits with your career choice. Are you someone who likes to work as part of a team, or do you prefer work that is more independent? Your answers to these questions will help you determine what your future career might look like.

Many jobs within criminal justice agencies are government related. This means that postings for these positions can be quite competitive and involve several steps as part of the application process. Jobs are typically advertised online with each agency. For example, if you are interested in working for a local police agency, you would want to seek out information about the hiring department for that specific city or county. Meanwhile, jobs with the federal government (such as the Department of Homeland Security) are often posted on the USAJobs website for all federal agencies. If you are thinking about a job in the federal government, make sure you consider different types of agencies since many agencies employ similar types of positions. For example, maybe you're set on being

a special agent for the Federal Bureau of Investigation (FBI). These jobs are often very competitive, and only a few people are selected from a large pool of applicants. But there are several opportunities for these types of positions within other federal agencies, such as the U.S. Fish and Wildlife Service or the Office of Criminal Investigations for the U.S. Food and Drug Administration.

Some criminal justice occupations require a number of different security screenings as part of the application process. Many jobs require that applicants undergo a background investigation, and applicants may also be required to complete a polygraph examination. Finally, applicants are often required to complete a physical fitness test and submit to a drug test.

In order to get a sense of the types of career opportunities that are available, you may want to consider an internship with a criminal justice agency. Internships are a great way to get applied experience with an agency in the criminal justice field. Depending on the requirements of your educational program, an internship may be part of the curriculum, or you may be able to receive academic credit for your work with an agency. You should talk with a faculty member or adviser from your program to determine whether this is an option for you. Depending on the placement, internships may involve paid or unpaid work. Alternatively, you might consider volunteering with an agency. Unlike an internship, which usually requires that a specific number of hours be completed over a specific period of time, volunteer opportunities can vary dramatically. While volunteer work may involve basic tasks (whereas internships can involve more professional tasks), volunteers serve an important role for organizations, and such opportunities can also provide a window into the different types of careers that are available within the organization.

at every stage of the criminal justice system based on their race or gender. In other cases, you'll note that certain groups receive preferential treatment. In some cases, we blame increases in crime on certain groups of individuals, such as immigrants or the mentally ill. Yet many of these populations require increased attention by the criminal justice system as a result of their unique needs for services and rehabilitation. You'll be exposed to some of these findings throughout this text as well as within some of the debates on current controversies.

The Wedding Cake Model of Justice

While Figure 1.1 earlier in this chapter demonstrates how a case can move through the criminal justice system, not all cases are handled in the same way. Some cases may be handled more informally because they are minor offenses. In other instances, some offenders may receive preferential treatment as a result of their status in society. The **wedding cake model** (Figure 1.2) helps us understand how cases can be treated

Wedding cake model: Model that demonstrates how cases are treated differently by the criminal justice process.

differently by the criminal justice process. Consider that a wedding cake is generally made up of several different tiers, with the largest tier appearing at the bottom of the cake and tiers decreasing in size as one moves up to the top layer of the cake, which is the smallest.

If we apply this analogy to the criminal justice system, the bottom layer of the cake represents the largest number of cases that are handled by the criminal justice system. **Misdemeanors** are the least serious types of crimes that are typically handled by the criminal justice system. However, these types of cases also make up the majority of those in the system. Given the nature of these offenses, the majority of these cases are not resolved by a trial, and the offenders in these cases are offered plea bargains with reduced sentences or other lower-level punishments. Generally speaking, the maximum punishment for a misdemeanor crime is less than one year in jail. In comparison, punishment for a **felony** crime can range from more than one year in prison to life without the possibility of parole or, in some cases, the death penalty. The severity of the punishment is linked to the severity of the crime.

The second tier is smaller and composed of lower-level felony cases. These cases are typically nonviolent in nature, and the offenders in these cases are generally lower-level offenders. Like misdemeanors, many of these cases are handled with plea agreements and generally do not involve significant incarceration sentences. The next tier is filled with upper-level felony cases, which tend to be violent in nature and involve offenders with significant criminal histories. Unlike the cases in the lower levels, these cases are more likely to proceed to a trial if the offender pleads not guilty. If the offender is found guilty, she or he will likely face time in prison.

Finally, the top layer of the cake represents the high-profile cases. These cases tend to be covered by the media and often involve the potential for significant penalties, such as life in prison or the death penalty. However, other cases that are also found in this category involve well-known offenders, such as celebrities. For example, rapper Nelly was accused of raping a young woman on his tour bus in Washington State. Nelly protested the charges and argued that he was the victim of a false accusation. Prosecutors ultimately were unable to file charges against him as the accuser decided not to cooperate with the authorities.⁶ Another example of a high-profile case was that of Anthony Weiner. The former New York congressman was sentenced to 21 months for engaging in a sexting conversation with a 15-year-old girl. Weiner pled guilty to the charge of transferring obscene material to a minor. His lawyer requested that Weiner be sentenced to probation so that he could continue to participate in treatment for his sex addiction. Although the prosecutor requested a sentence of 21 to 27 months, in many ways Weiner benefited from leniency from the court as this crime carries a maximum penalty of 10 years.⁷

Louis Tomlinson, a member of the boy band One Direction, was arrested in March 2017 for assaulting a paparazzo who was taking photos of the star and his girlfriend at the Los Angeles Airport. As a celebrity, which layer in the wedding cake model would this case represent? If this was a case between two ordinary citizens, how would this case be viewed differently? Should cases involving celebrities be viewed differently by the criminal justice system? Why or why not?

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FIGURE 1.2

The Wedding Cake Model of Justice



Source: © iStockphoto.com/azshooter.

Misdemeanors: Lower-level crimes that are punished by less than one year in jail. Punishments can also involve community-based sanctions, such as probation.

Felony: Serious crime that can be punished by more than one year in prison.

Models of Criminal Justice

Within our criminal justice system, there are two competing ideologies: the crime control model and the due process model (Table 1.1).⁸

The Crime Control Model

The **crime control model** believes that the most important function of the criminal justice system is to suppress and control criminal behavior as a function of public order in society. This philosophy is often aligned with a more conservative perspective. The crime control model focuses on a criminal justice system that processes criminals in an efficient, consistent manner. Justice under the crime control model resembles an assembly line. Under this model, the plea bargain is an essential tool as it allows the wheels of justice to continue to move. Trials are viewed as taking up excessive time in the system and can slow down the efficiency of the “factory.” Here, the focus is on swift and severe punishments for offenders. For example, supporters of a crime control model would argue that the identification and detention of enemy combatants following the 9/11 terror attacks was a good policy in fighting against future terrorist threats. Any risk of violating individual liberties was considered secondary to the need to protect and ensure the safety of the community.

The Due Process Model

In contrast, the **due process model** believes that the protection of individual rights and freedoms is of utmost importance. The due process model embodies more of a liberal perspective compared with the crime control model. One could argue under the due process model that it is better for the guilty to go free than to risk incarcerating or executing the innocent. In contrast to his identification of the crime control model as an assembly line, Packer suggested that the due process model resembles an obstacle course, consisting of a variety of legal challenges that must be satisfied throughout the criminal justice process in order to hold someone accountable for a criminal action (and therefore punish that person for said action). The due process model emphasizes the formalized legal practices of the criminal justice process and requires that each stage of the criminal justice system represent a fair and equitable treatment of all cases and all offenders. Drawing from the 9/11 example used earlier, supporters of the due process model would argue that individuals identified as enemy combatants were denied their due process rights and were therefore detained by the U.S. government illegally following the 9/11 terror attacks. Under the due process model, it is not acceptable to engage in such practices just to suppress the risk for potential harm. While liberals would argue that the crime control model infringes on the rights of individuals, conservatives fear that the due process model ignores crime victims and gives criminals too much leeway to escape “justice.”

Crime control model: Model of criminal justice that advocates for the suppression and control of criminal behavior as a function of public order in society.

Due process model: Model of criminal justice that believes the protection of individual rights and freedoms is the most important function of the system.

| TABLE 1.1 | | | | | |
|--|---|--|---|--|---|
| Crime Control Model Versus Due Process | | | | | |
| MODEL | MAIN GOAL | VALUES | PUNISHMENT | EXAMPLE | CONCERNS WITH THIS MODEL |
| Crime Control | Suppress and control criminal behavior as a function of public order in society | A criminal justice system that processes criminals in an efficient and consistent manner | Should be swift and severe; it is important that offenders be punished for their crimes | Criminal justice as an assembly line | Infringes on the rights of individuals |
| Due Process | Protects the rights and freedoms of individuals | A criminal justice system that represents a fair and equitable treatment of all cases and all offenders during each stage of the process | Should be fair and just; it is better for the guilty to go free than to risk incarcerating the innocent | Criminal justice as an obstacle course | Ignores crime victims and gives criminals too much leeway to escape justice |



Under the crime control model, criminal justice is seen as an assembly line where efficiency and productivity are valued. The due process model views criminal justice as an obstacle course made up of legal challenges to protect individual rights. Which approach makes more sense to you?

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The Influence of the Media on the Criminal Justice System

The majority of Americans have limited direct experience with the criminal justice system. As a result, what most people know about crime comes not from personal interactions but perhaps from the experiences of others known to them (peers and family members) or within the general community.

The mass media also has significant power in shaping individuals' perceptions of crime and justice.⁹ The scope of the media is extensive since it includes "mechanisms for public presentations of entertainment, propaganda, and nonfiction information."¹⁰ More important than the levels of media consumption is how the information is interpreted.¹¹ For the majority of Americans, the images generated by the media regarding crime and criminal justice are often internalized as "facts" about the world we live in.¹²

"The public's perception of victims, criminals, deviants, and law enforcement officials is largely determined by their portrayal in the mass media."¹³ However, the content and prevalence of stories relating to crime presents a distorted view of the realities of the criminal justice system. The popular expression "If it bleeds, it leads" represents the prevalent position of crime stories for media outlets. While stories about violent crime make up almost one-third of all news time, that does not reflect the reality of crime in society.¹⁴ These exaggerations have a direct relationship to public understanding of crime. Adding to this equation are findings that individuals tend to retain the content of these stories, affirming any negative notions regarding crime, criminals, and criminal justice.¹⁵

"The public's perception of victims, criminals, deviants, and law enforcement officials is largely determined by their portrayal in the mass media."

The CSI Effect

In addition to the portrayal of crime in the news, stories of crime, criminals, and criminal justice have been a major staple of television entertainment programming. These images, too, present a distorted view of the reality of crime as they generally present crimes as graphic, random, and violent incidents. Entertainment television about crime has covered a variety of topics, including policing, courtroom portrayals, forensic investigations, and corrections. For example, the different installments of the *Law & Order* series cover all aspects of the criminal justice system, from offenders to police and investigators to the court process and its actors. These crime dramas have such an impact on individuals that criminologists have begun to study what is known as the *CSI* effect, which references the popular crime drama *CSI: Crime Scene Investigation*. In this program, crimes are solved in a single episode using sophisticated techniques of crime analysis that aren't readily available or utilized in a typical criminal case. The *CSI* effect



Crime, Law, and Justice From a Global Perspective

The issues of crime, law, and justice vary dramatically around the world. While many other countries have similar functions, practices, and policies compared with the American criminal justice system, there are many countries whose perceptions of crime and punishment are very different. For example, in countries such as Pakistan and Turkey, honor killings have been carried out in cases of adultery—or even perceived infidelity. Harsh punishment can even be handed down for acts that many Western cultures would consider to be normal, everyday occurrences, such as requesting a love song on the radio or strolling through the park. However, not only are such acts rarely reported, even when they are brought to the attention of legal authorities; the perpetrators are rarely identified, and, as a result, such crimes often go unpunished.^a Other crimes are often punished more severely than they would be in the American legal system. In March 2016, Otto Frederick Warmbier, a student from the University of Virginia, was sentenced to 15 years of hard

labor in North Korea after he was arrested for committing a hostile act against the state. His crime? Warmbier confessed to tearing down a poster of a political slogan at the hotel where he was staying as part of a student tour group.^b Warmbier spent 17 months in North Korea before he was released. However, his return home was anything but a joyous occasion as he was on his deathbed when he arrived and had suffered from a number of abuses. He died within a week of returning to the United States.^c

Throughout this text, you'll learn about various examples of crime, law, and justice from countries around the world. As you read about these examples, consider how they relate to the American criminal justice system. Are there features that you can identify as similar to the practices that we use here? How are things different? Are there ways in which these systems could benefit from our experiences here in the United States? Or are there features in other countries that we should consider adopting as part of our system?

CRITICAL THINKING QUESTIONS

1. How are issues of culture reflected in the development of crime, law, and justice in a global society?
2. Research a case in which an American was punished for a crime in a foreign country. How was this person treated in the foreign legal system? Would he or she be treated in a similar fashion if the crime had happened in the United States?

can have a significant impact on real issues of criminal justice. For example, juries may believe that DNA evidence is readily available and required in every case in order to secure a conviction.

Reality TV

Crime is also present in reality TV programming. From *COPS* to *Forensic Files*, viewers are afforded the opportunity to see the criminal justice system in action. In addition, networks such as A&E, the Discovery Channel, Investigation Discovery, and the History Channel have made documentaries about crime and justice a major component of their programming. Even airing real-life criminal justice cases on networks such as Court TV (now truTV) can have an effect on the public. Often it is the atypical, high-profile cases, such as the trials of O. J. Simpson, Casey Anthony, and George Zimmerman, that garner the greatest attention. This fascination with crimes of violence has created a demand for multiple avenues of information about issues of crime and justice. Live streaming of these proceedings on cable television and online, as well as updates via social media, provides an all-access pass to the courtroom action. Such attention also creates “wanna-be” experts out of ordinary citizens. As in many other high-profile cases, these themes were displayed in the case of Jodi Arias (see Spotlight feature).

The Media and Perception of Crime Rates

While there is documentation that the saturation of crime stories on the news impacts viewers' opinions of crime, how does crime as “entertainment” influence fears about

crime and victimization? Crimes of murder and violence in general are overemphasized in television entertainment.¹⁶ For example, the victimization of women is often portrayed by “movie of the week” outlets such as Lifetime TV that showcase story lines of women being sexually assaulted, stalked, or otherwise injured by a stranger. Unfortunately, these popular-culture references paint a false picture of the realities of crime since most women are not maltreated by strangers (as portrayed in these story lines) but are victimized by people known to them.¹⁷ While the enjoyment of reality-based crime programming is related to punitive attitudes on crime, such an effect is not found for viewers of fictional crime dramas.¹⁸ However, viewers of nonfiction television shows (such as *The First 48*) can experience increased fear of crime.¹⁹

Influencing Public Policy

While the public’s concern about crime may be very real, it can also be inflamed by inaccurate data on crime rates or a misunderstanding about the community supervision of offenders and recidivism rates. Indeed, a fear of crime, coupled with the public’s perception about rising crime rates, contributes to a lack of faith by citizens in the efficacy of the criminal justice system.²⁰ Watching television news programs also contributes to this because the increased viewing of local news is associated with punitive beliefs in



Dramatic and reality-based television programming about crime and criminal justice is designed to entertain the public, not educate. Such programming can lead to an inaccurate understanding of the criminal justice system. What are some inaccuracies you can spot in your favorite crime drama?

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SPOTLIGHT

The State v. Jodi Arias

Violence. Murder. Lies. And a woman behind it all. The case of Jodi Arias had everything it needed to be a television movie. Yet this was no fictionalized story line. Over the course of her four-month trial, every moment was broadcast on cable television. In addition, there was no shortage of “legal experts” waiting to give their opinion on the events of the day, the evidence presented, or the demeanor of the defendant.

Arias was charged and ultimately convicted for the murder of her boyfriend, Travis Alexander. This was no simple murder but rather an act of extreme aggression as Alexander was found in his shower, where he had been stabbed 27 times, had his throat slit, and been shot in the head. But it wasn’t just the excessive nature of the crime that drew the attention of the media. Arias was the perfect candidate to fuel the media fire. The frenzy began when Arias changed her story about the crime several times. At first, she denied any involvement in the murder. Later, she alleged that she and Alexander had been attacked by two masked intruders who murdered Alexander but allowed her to

live. During the trial, her story was amended once again to one of self-defense. Arias asserted that Alexander had frequently abused her throughout their relationship and that she killed him during one of these attacks. However, she claimed that she did not remember the specific events of his death and that she had blocked out these events due to her emotional trauma.^a

One of the particularly sensationalized parts of the trial involved Arias’s own testimony, which lasted 18 days. Under Arizona law, members of the jury are allowed to submit questions to the accused should she or he choose to take the stand to offer a defense. “Some of the questions seemed to serve no other purpose but to mock Arias and illustrate the jurors’ annoyance with her claims.”^b While Arias was convicted of first-degree murder, the same jurors were unable to reach an agreement on the sentence, resulting in a hung jury. During a second sentencing hearing, the jury was unable to reach a unanimous verdict on a death sentence. As a result, Arias was sentenced to life without the possibility of parole.^c

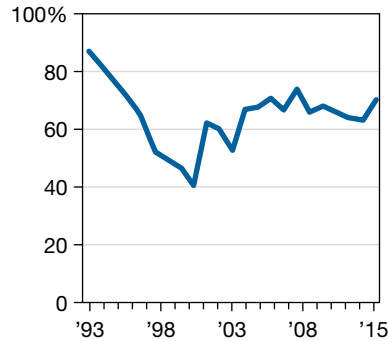
CRITICAL THINKING QUESTIONS

1. Why do you think this case was so sensationalized in the media?
2. What impact might the media representation of this case have on other cases before the courts?

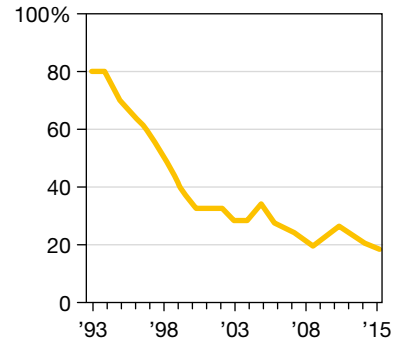
FIGURE 1.3

Public Perception of Crime Rate at Odds With Reality

% saying there is more crime
in the U.S. than a year ago



Violent crimes per 1,000
persons ages 12 and older



Source: Pew Research Center, "Perceptions of Crime Rate at Odds With Reality," January 31, 2018, http://www.pewresearch.org/fact-tank/2016/11/16/voters-perceptions-of-crime-continue-to-conflict-with-reality/ft_16-11-16_crime_trend-2.

the punishment of offenders.²¹ Together, these factors can influence a rise in the public dialogue about crime, which can lead to changes in criminal justice policies. Agents of criminal justice can respond to a community's fear of crime by increasing police patrols while district attorneys pursue tough-on-crime stances in their prosecution of criminal cases. Politicians respond to community concerns about violent crime by creating and implementing tough-on-crime legislation, such as habitual sentencing laws like "three strikes," and targeting perceived crimes of danger, as the so-called war on drugs attempts to do. Unfortunately, "public policy is influenced more by media misinformation and sensationalized high profile cases than by careful or thoughtful analysis."²²

The use of the public's fear of crime as momentum for generating policies to control crime can be a dangerous incentive. Chapter 6 of this text highlights the development of criminal justice policies. Indeed, many of our criminal justice policies have been named after crime victims or high-profile events that helped inspire or influence the development and passage of such legislation. Given that much of the public's fear of crime is not generated from personal experiences, it is important to remain aware of the role of the media in generating fear (and therefore crime control policies; see Figure 1.3). "Even if information coming through the media causes fear, first amendment protections for freedom of the press have to be respected and many follow the credo that the public has a right to know regardless of the outcome."²³

Conclusion

The criminal justice system contains powerful tools to combat crimes, such as laws, discretion, and ethics. Each of these tools is used at different stages to move cases through the system. However, there are often competing interests that impact this process and how agents of the system respond to cases. Throughout this text, you'll learn about the functions of each stage of the system as well as the challenges that arise. As you read the Current Controversy debates at the end of this chapter, consider how the tools used by the criminal justice system both help and harm society. How do we balance the diverse needs of society with our criminal justice system? With competing interests throughout society, how do we know if justice is served?

CURRENT CONTROVERSY 1.1

Is Justice Served by Our Criminal Justice System?

—Kareem L. Jordan—

Introduction

There is not an easy way to define justice. There is some debate on whether “justice” means a fair process, regardless of the outcome, or a fair outcome, regardless of the process. In other words, is justice based on the *means* or the *ends*? Historically, the American criminal justice system has defined justice in terms of process, with the hope that the correct outcome will be achieved. In fact, some would suggest that the criminal justice system’s process is thought to be so fair that it is better to let many of those criminally guilty go free than to punish one innocent person. Stated differently, the criminal justice process should be fair and set such a high threshold for conviction that the outcomes should be presumed “just” because the process was “just.”

If we look at this issue through the lens of policing, we would argue that one of the primary responsibilities of the police is to enforce the laws established by lawmakers.²⁴ Police officers have the legal authority to deprive people of their physical freedom (e.g., temporarily detain and/or arrest) if appropriate circumstances exist. They also have the legal authority to use force (even deadly force) in certain situations. How do we determine whether justice is served in these cases? Is justice about whether the law is followed? What if the law itself or its application is viewed as unjust?

PRO: Justice Is Served by Our Criminal Justice System

Police represent the first stage in serving justice. Crimes are reported to the police, who, in turn, respond to identify and apprehend a suspect. A just policing system means that the police exercise their responsibilities based on objective factors, without regard to discriminatory practices.²⁵ For example, police officers should only arrest when they have, at a minimum, probable cause for believing that a crime was committed. This ensures that the police have a minimum legal standard to meet in order to make an arrest. Such a standard ensures that all cases are handled in a similar fashion, which promotes a just and fair system.

The court plays an integral role in the criminal justice system. After an arrest takes place, the court is the venue where certain important decisions and actions occur: bail decision, the trial, and sentencing, if convicted. During the court process, the prosecutors and judges are presumed to want justice, though again, it is not always clear that every key actor in the system agrees on the definition.²⁶ Judges are actors in the court process who interpret the law in such a way to provide impartiality in outcomes. The decisions of judges are to be based on the law and legally relevant factors (e.g., offense charged, prior record of defendant, conviction offense, etc.). In order to minimize potential biases in court, judges are typically required to use written statutory guidelines to help guide in their decision making. These sentencing guidelines ensure that each case of a similar nature is decided in a similar fashion. Such a process is a key characteristic of a just system.

The American correctional system is considered the last phase of the criminal justice system.²⁷ There is debate on whether the purpose of the correctional system is to rehabilitate or punish. Most of those under correctional supervision will return to the community at some point.²⁸ In some cases, the correctional system helps prepare offenders for (re)integration into the community (i.e., rehabilitation). In other cases, the sentence is designed to punish the offender. The correctional system is unique because it must be responsive to the orders of the criminal court. If defendants are convicted in the court system and sentenced to confinement, the correctional system must confine those offenders in either a local or state correctional facility. Or if convicted offenders are sentenced to community supervision, the correctional system must supervise those offenders in the community to ensure they are adhering to the conditions set by the court. Depending on how you define the role of our correctional system, both options can be considered ways in which justice is served.

Under the crime control model, justice is served by cases moving through the system in a consistent, efficient, and fair manner. The majority of cases in our system are managed in this fashion. As a result, we can say that justice is served by our criminal justice system.

PRO

CON

CON: Justice Is Not Served by Our Criminal Justice System

We have examples throughout each stage of the criminal justice system wherein justice is not served. Consider how injustices occur in policing. While research generally indicates that those objective factors influence the decision to arrest and use force, empirical studies also find that extralegal factors influence these very important acts by police officers.²⁹ For instance, Blacks are more likely to be arrested, be given a speeding ticket rather than a warning,³⁰ and be victims of police use of force.³¹ In cases of discriminatory applications of the law, would we suggest that the quest for justice has failed? We also have examples of injustices occurring within our court system. In practice, legally relevant factors are the biggest predictors of court outcomes. Most research does find that the seriousness of the offense and prior record are the factors that largely influence judicial decision making. Other factors, though, are also significant in this process. Empirical research generally indicates that race, gender, and age influence particular outcomes.³² Blacks are less likely to be released on bail³³ and are sentenced more harshly than Whites.³⁴ Hispanics are also shown to have some harsher sanctions within the court process.³⁵ While males are generally sentenced more harshly than women (due to men committing more serious offenses), research does indicate that females are sometimes given more punitive sentences than males, especially when they commit offenses that are generally viewed as counter to the "traditional" and historical roles of females.³⁶ Stated differently, females are often treated more leniently than males in court outcomes because of the patriarchal view of females being weak and needing protection. However, when females step outside of those "traditional behaviors," they are given harsher outcomes than males as a form of punishment for not being consistent with the established gender roles. In addition, age has been shown to influence court decisions. The impact of age on court decisions varies, though, based on the age of the offenders. Although race, gender, and age have independent effects on court decisions, the combination of the three has been shown to produce a very substantial impact. Young Black males are often treated more harshly than most groups, which can be observed when examining court outcomes.³⁷ One rationale provided is that this group is perceived to be more dangerous and threatening.³⁸ Although crime statistics debunk the myth of the "dangerous" Black male, it still appears to enter the decision-making process within the criminal court process. In these cases, does it appear that justice is always a fair and equitable process?

As a result of these processes, the correctional population can reflect many of the problems that exist within the criminal justice system. Many jails and prisons are overcrowded, which results in more uncomfortable and tighter living conditions, decreased services and programming, and increased costs to address the needs (food, health care, etc.) of those confined.³⁹ Some have challenged whether these conditions are a violation of the Eighth Amendment protection against cruel and unusual punishment. In addition, the racial/ethnic makeup of those confined is indicative of a broken criminal justice system, given the disproportionately higher numbers of minority inmates who fill our nation's correctional institutions.⁴⁰

Summary

The ideals of the criminal justice system allow for justice to be served. After all, the law provides for certain due process rights for every individual who is accused of a crime. But does the reality differ from the ideal? Certainly, we can say that the criminal justice system is not overrun with systematic discrimination, which would occur across all stages of the criminal justice system, in every jurisdiction, and at all times. At the same time, it is reasonable to conclude that pure justice is an elusive concept and that discrimination does occur.⁴¹ So where does that leave us? Do we have the best system that is possible? Or are there opportunities for reform at a fundamental level?

Discussion Questions

1. Do you believe that the criminal justice system is fair and just? Or are some groups more likely than others to have a negative experience?
2. What does it mean for justice to be served? How might this change depending on the perspective of the community? The criminal justice system? The victim?

CURRENT CONTROVERSY 1.2

Is the Media a Credible Source on Crime?

—Amanda Burgess-Proctor—

Introduction

The American public has long been fascinated by crime.

Consider the case of Harry K. Thaw. The wealthy heir to a coal and railroad fortune, Thaw fatally shot renowned architect Stanford White during a theater performance on the rooftop of New York's Madison Square Garden, reportedly to avenge White's prior relationship with model and entertainer Evelyn Nesbit, whom Thaw had since married. The "trial of the century," as it came to be known, dominated newspaper headlines. Media coverage was so overwhelming that the jury in Thaw's criminal trial was sequestered for the duration of the proceedings—the first use of such sequestration in U.S. history.⁴² The murder that so fully captured the nation's attention occurred on June 25, 1906.

Today, more than a century later, there are dozens of outlets for crime-related media content both fictional (such as the prolific *Law & Order* franchise) and nonfictional (including reality shows like *The First 48*). There is even a cable television channel, Investigation Discovery, dedicated entirely to 24-hour true crime content. Just recently, SiriusXM satellite radio announced expansion of its programming via the Law & Crime network, which promises to "broadcast live high-profile trials and riveting crime cases in a new, exclusive programming lineup."⁴³ Perhaps rivaled only by cooking and home improvement, criminal justice is among a handful of topics that can sustain this level of media saturation.

Some observers might argue that such media exposure is welcome as it offers the general public knowledge about the criminal justice system and allows lay citizens to understand their criminal legal rights. Other observers may fret that this media frenzy perpetuates inaccurate, exaggerated, or otherwise unrepresentative views of crime and the criminal justice system. Either way, media amplification of crime events—especially those involving serious, violent victimization—can create the false impression that such crimes occur more frequently than they actually do.

Another dimension to consider is that media content has become increasingly decentralized. Prior generations received their news from a limited number of sources: a few main national newspapers, three national broadcast networks (ABC, CBS, and NBC), and local newspapers and television newscasts. Today, given an Internet connection and a smartphone, users can access news outlets from nearly anywhere on Earth. The decentralization of news media and the resulting proliferation of content adds complexity to the current crime media landscape. As a result, identifying reputable sources of crime and justice news can be increasingly challenging.

Hence the question: "Are the media a good source of information about crime?" Before this question can be answered, it is important to clarify what the term *the media* actually means. Generally speaking, there are two types of media: news media and entertainment media. However, classification of content as either "news" or "entertainment" is complicated by popular multi-episode, true-crime documentary programming like the 2015 Netflix series *Making a Murderer*⁴⁴ and the public radio podcast *Serial*.⁴⁵ Another way to classify media is by the method of transmission. Traditional sources of print media (newspapers and magazines) and broadcast media (radio and television) have been joined by websites, blogs, YouTube channels, social media sites, and other electronic content, dramatically expanding the pool of available information. In this context, the precise definition of the media may be difficult to identify.

PRO: The Media Is a Credible Source on Crime

Examples of excellent reporting on crime and justice stories can be found in every medium, and high-quality investigative journalism has uncovered some of the most newsworthy crime stories in recent years.

One reputable source of crime information is the Marshall Project,⁴⁶ "a nonpartisan, nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system." Named after Thurgood Marshall, the first African American United States Supreme Court justice, the Marshall Project provides investigative journalism on a host of crime and justice topics, and in 2016 was awarded a Pulitzer Prize for its reporting.⁴⁷

PRO

Another reputable source of crime information is the Crime Report,⁴⁸ “the nation’s only comprehensive news service covering the diverse challenges and issues of 21st century criminal justice in the U.S. and abroad.” Featuring pieces of original investigative journalism, a daily digest of top crime and justice headlines, and commentary from criminal justice experts, the Crime Report is a worthwhile resource for crime news.

The Crime & Justice Research Alliance⁴⁹ (CJRA) likewise deserves mention. A joint effort of two leading criminological organizations, the American Society of Criminology and the Academy of Criminal Justice Sciences, the CJRA “is a centralized resource of authoritative experts and scholarly studies created to provide policymakers, practitioners and the public direct access to relevant research on crime and criminal justice issues.” Among other valuable resources, the CJRA provides a monthly newsletter that is available free to download.

Finally, podcasts can be a useful tool for members of the public, including students, to learn about crime and justice issues in an accessible manner. A good example is Ear Hustle,⁵⁰ which is recorded and produced entirely within California’s San Quentin prison and which brings listeners a firsthand account of life “on the inside.” For more academic content, the National Institute of Justice has a podcast⁵¹ focused on informing listeners about the latest trends in criminal justice research.

These examples make clear that there are many ways in which the media, broadly defined, “get it right” when it comes to crime information.

CON

CON: The Media Is Not a Credible Source on Crime

However, it is also possible to identify examples of times the media “get it wrong” when it comes to crime information. Hoaxes, rumors, and urban legends are by no means a new phenomenon, and likely have existed for as long as humans have been communicating with one another. Eighteenth-century essayist Jonathan Swift wryly observed that “falsehood flies, and the truth comes limping after it.”⁵² Unfortunately, the Internet and social media have made it even easier for false or misleading crime information to “fly.”

Not all misinformation about crime is the result of a purposeful attempt to mislead. In fact, news stories about crime—like other areas of significant interest to the general public—are ripe for misrepresentation in part because the public appetite for these stories is insatiable. The more voraciously the public consumes crime-related headlines, the more incentive there is for media outlets to quickly (and, sometimes, carelessly) provide fodder to consumers.

Unfortunately, in the United States especially, distorted depictions of crime often are raced and classed and so perpetuate stereotypes of criminality among people of color, poor people, and members of other marginalized groups. As evidenced by the 1980s uproar over “crack babies”⁵³ and the 1990s obsession with juvenile “superpredators,”⁵⁴ the U.S. news media bears the scars of the moral panics⁵⁵ it once helped perpetuate. Thus, it is essential for media consumers to exercise caution when consuming crime and justice information, particularly if the news source is not reputable and/or if the assertions presented are not supported by evidence.

Summary

So, how can savvy consumers better navigate this ever-expanding crime media landscape? First, it is a good idea to diversify your media diet. As with the food you consume, it is best to rely mostly on a range of news sources that offer intellectual diversity and that “nourish” your brain. To do this, it is helpful to distinguish between *information* (like empty calories, this is the mere existence of consumable content) and *knowledge* (this is content that offers analysis, context, or otherwise fortifies your understanding of a subject). Prudent media consumers also should be skeptical of strident knowledge claims, whatever the source, and to seek out information that is supported by research evidence. For example, the National Institute of Justice maintains a website called CrimeSolutions.gov⁵⁶ that makes it easy to identify which crime and justice policies empirical evaluation research has determined to be effective.

Taking heed of Swift’s warning and bearing in mind the damaging impact of distorted crime information, we each have a responsibility to help ensure that the media “get it right” when it comes to information about crime.

Discussion Questions

1. Have you ever had a friend or relative share a crime-related news item that you realized was inaccurate or misleading? If so, what did you do? What are strategies for helping to correct public misperceptions about crime?
2. Do you think fictional television programs like *Law & Order*, *NCIS*, *Criminal Minds*, and others *help* or *hurt* the public's understanding of the criminal justice system? What about reality-based programming like *Making a Murderer* or *The First 48*?
3. Think of an example of a recent high-profile news story related to crime. What was your initial understanding of this story based on the immediate headlines? Did your perception of the story change at all as more information became available? How so?

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KEY TERMS

| | | | |
|---------------------|----|--------------------|----|
| Corrections | 5 | Due process model | 10 |
| Courts | 4 | Ethics | 6 |
| Crime | 3 | Felony | 9 |
| Crime control model | 10 | Misdemeanors | 9 |
| Defendant | 5 | Police | 4 |
| Discretion | 6 | Wedding cake model | 8 |

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DISCUSSION QUESTIONS

1. What are the three main components of the criminal justice system?
2. How might discretion be used in a positive manner? A negative manner?
3. How does the wedding cake model illustrate how cases are processed by the criminal justice system?
4. What are the differences between the crime control model and the due process model?
5. How do the media influence the public's fear of crime?
6. How do the media influence public policy related to criminal justice?

LEARNING ACTIVITY

1. Pick a television show about criminal justice. As you watch this show, highlight areas that you think might lead the general public to make incorrect assumptions about the criminal justice system.

SUGGESTED WEBSITES

- **U.S. Department of Justice:** <https://www.justice.gov>
- **National Institute of Justice:** <http://www.nij.gov>
- **Crime, Media, Culture:** <http://cmc.sagepub.com>

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Career Video



1.1 Craig Hemmens: Professor

Criminal Justice in Practice



1.1 Overview of the Criminal Justice System

SAGE News Clip



1.1 Sessions: Help on the Way to Fight Violent Crime

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- **Post-tests** to check your progress and ensure mastery of key learning objectives.





ytwong/Getty Images

2

Concepts of Law and Justice

Learning Objectives

- Compare how criminal law differs from civil law
- Identify the historical influences of modern American criminal law
- Describe the four different sources of law
- Discuss the burden of proof required in a criminal case
- Define the four components of a criminal act
- Explain the different types of criminal defenses

On July 20, 2012, during a midnight showing of the film *The Dark Knight Rises*, James Holmes entered a Century 16 movie theater in Aurora, Colorado. Dressed in tactical clothing, Holmes set off tear gas grenades and opened fire into the theater audience. At the end of his rampage, 12 people were dead and 70 others were injured. He was apprehended outside of the movie theater.¹

In addition to filing 24 counts of first-degree murder, 116 counts of attempted first-degree murder, and one count of illegal possession of explosives,² the district attorney stated that the state would seek the death penalty in the case. At the time, Colorado had only three people residing on death row, and the last execution had been carried out in 1997.³ Holmes's attorneys indicated that they would be pursuing an insanity defense. The state sent out juror summonses to 9,000 candidates, and 12 jurors and 12 alternates were selected. The trial began on April 27, 2015.⁴ After more than 11 weeks of testimony, the trial concluded and jury deliberations began. It took 12 hours for the jury to find Holmes guilty of all crimes. Although the court-appointed forensic scientist testified that Holmes suffered (and continues to suffer) from significant mental illness, jurors believed Holmes understood that his actions were wrong at the time of the crime.⁵ This finding made it such that an insanity defense was unsuccessful, and the jury found Holmes guilty.

The same jury was then faced with the task of determining whether James Holmes should be sentenced to death for his crimes or if he should be sentenced to life without the possibility of parole. They heard stories about Holmes's childhood and evidence about his history of delusions and mental illness. They heard stories about the victims and the lives that were lost or irrevocably damaged as a result of Holmes's actions.⁶ In the end, the jury could not reach a unanimous verdict on the death penalty. Holmes received 12 sentences of life without the possibility of parole—one for each victim—and an additional 3,318 years for the nonlethal crimes.⁷

In this chapter, you will learn about the development of law and how it relates to the criminal justice system. The chapter begins with a discussion on the different sources of law in the United States. The chapter then focuses on the different types of law and their relationship to the criminal justice system. You'll also learn about the different legal defenses that are used in the criminal courts to explain or justify criminal behaviors. The chapter concludes with two Current Controversy debates. The first, by Clayton Mosher and Scott Akins, looks at the debate over legalizing marijuana. The second, by Alissa Ackerman, questions whether we should identify sexual harassment as a form of sexual assault.

Types of Law

Civil Cases

In the United States, we have two separate court systems to respond to our two primary areas of law: civil law and criminal law. **Civil law** governs disputes between individuals or private parties (which can include corporations) and generally involves violations of private acts, such as contracts, property disputes, and family law. In these cases, the person who initiates the case is referred to as the **plaintiff**, and the person who is responding to the case is the defendant. The burden to prove the case is placed on the plaintiff. Under civil law, the plaintiff must provide evidence to prove her or his case by the **preponderance of the evidence**. This means that if the evidence presented is more likely to prove that the law was violated, then the plaintiff wins the case. Under civil law, the form of punishment is financial.



James Holmes appears in a Colorado courtroom with his attorney shortly after his arrest. Holmes was convicted of a mass shooting in an Aurora, Colorado, theater during a screening of *The Dark Knight Rises*. Why was his insanity defense unsuccessful?

Pool/Getty Images News/Getty Images

Civil law: Law that governs disputes between individuals or private parties and generally involves the violation of private acts.

Plaintiff: A person who brings a suit in a civil case.

Preponderance of the evidence: The burden of proof in a civil case. Refers to when the totality of the evidence exceeds a 50% likelihood that the law was violated.

One of the most famous civil court cases was *Liebeck v. McDonald's Restaurants* (1994), otherwise referred to as the McDonald's hot coffee case. Ms. Liebeck ordered a cup of coffee from the drive-thru at a local McDonald's. While sitting in the passenger's seat, she placed the cup between her knees to steady the coffee while she removed the lid to add cream to the beverage. She subsequently spilled the contents of the cup over her groin and legs and suffered third-degree burns as a result of the high temperature of the beverage. Her burns were so extensive that she required several skin grafts and was partially disabled for two years as a result of her injuries. Ms. Liebeck sought assistance from McDonald's to cover her medical expenses. Despite several requests for a settlement, McDonald's refused. She filed a suit with the civil court of New Mexico (where she resided), and her lawyers alleged that by serving the coffee at such a high temperature, McDonald's was guilty of gross negligence. The jury in the case agreed with Ms. Liebeck and awarded her \$160,000 in damages for her pain and suffering. The jury also awarded punitive damages in the case of \$2.7 million.⁸

Criminal Cases

In contrast to civil law, criminal law cases are brought by the government against a defendant for violating a specific law. In a criminal law case, the burden of proof is **beyond a reasonable doubt**. Figure 2.1 demonstrates how this burden of proof is different from other forms of proof that are used throughout our justice system. This means that in order to convict a defendant of a crime, the court must find that there is little doubt according to the reasonable or typical individual that the defendant committed the crime. Depending on the type of crime that the defendant is convicted of, he or she may receive probation, spend time in jail or prison, or be executed as punishment for the crime. You'll learn more about the different types of punishment in Chapter 10.

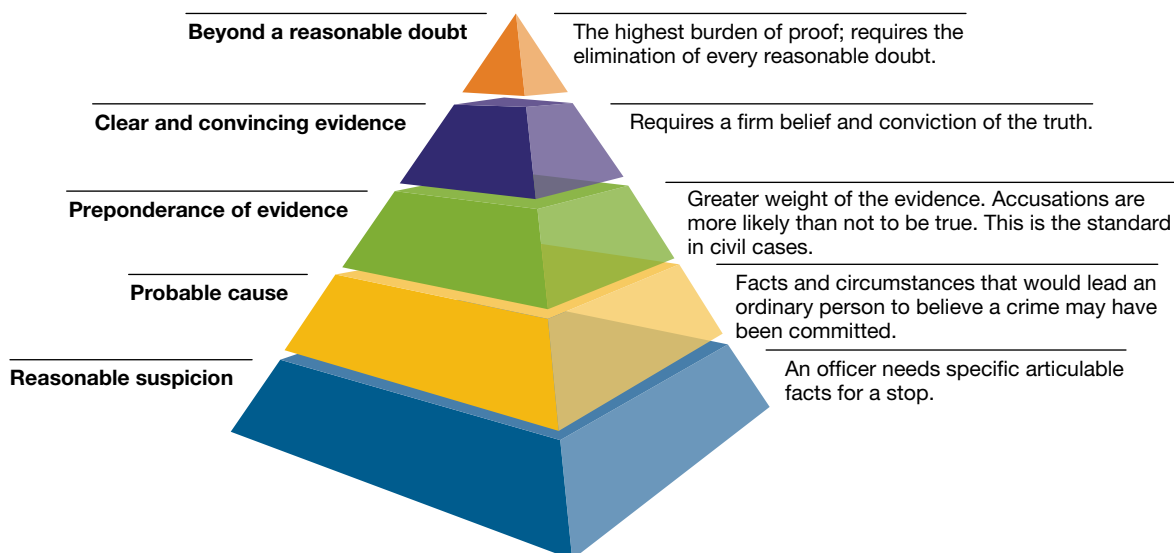
Federal Criminal Laws

Beyond a reasonable doubt:
In order to convict a defendant of a crime, the court must find that there is little doubt according to the reasonable person standard.

Federal criminal laws are enacted by the legislative branch of the federal government. Federal law related to criminal justice includes the regulation of firearms, drugs, money laundering, fraud, and a variety of other criminal activities. Federal law also governs activities within federal government buildings, in national parks, and on tribal land. In addition, federal law violations can be triggered when crimes occur across state lines.

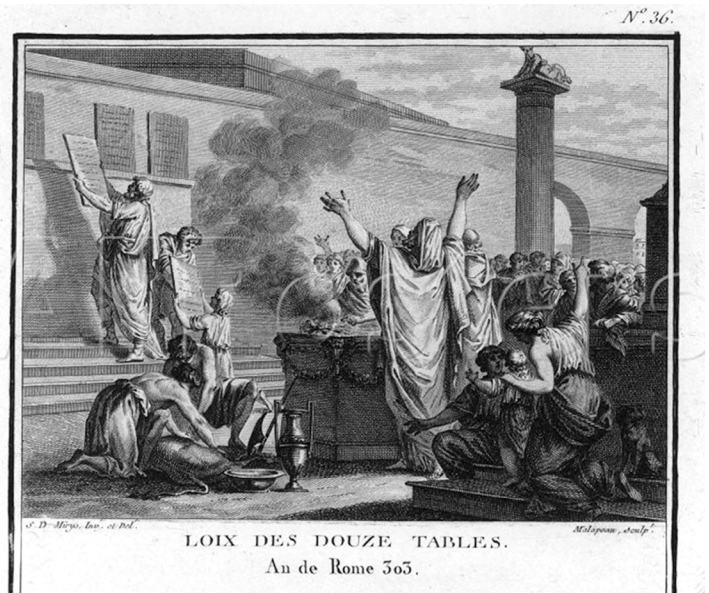
FIGURE 2.1

Burden of Proof



State Criminal Laws

States also have the power to make laws prohibiting behaviors under the Tenth Amendment. Unlike federal criminal law, which applies to all 50 states as well as the District of Columbia and U.S. territories, state law is limited to the specific geographic jurisdiction of that state. While criminal laws may have similar characteristics across the nation, there are also differences in the types of behaviors that are defined as criminal from state to state, as well as in the types of punishments that violators are subjected to. For example, several states, such as Washington, Colorado, and California, have legalized the recreational use of **marijuana**, but the majority of states continue to criminalize the behavior. Alabama's criminal law defines the personal possession of marijuana as a misdemeanor, but subsequent possessions can be charged as felonies. Meanwhile, several other states have decriminalized simple possession or limited its enforcement to a civil violation. Even in states that have decriminalized marijuana possession, several have created specific laws about the amount that one is permitted to possess. While Mississippi state law allows for someone to possess up to 30 grams of marijuana in a first offense, Maryland's law on the decriminalization of marijuana only allows for the possession of 10 grams or less. You'll learn more about this debate in Current Controversy 2.1 at the end of this chapter.



The Twelve Tables represented the codified customs of early Roman law. What influences of Roman law and English common law can we see in the American legal system today?

Public domain

Municipal Criminal Laws

A municipality can have its own body of law. In terms of jurisdiction, these laws are generally the most limited as they are only applied to a specific city or county. Municipal criminal law is limited to cases involving infractions and misdemeanors. An infraction is a violation that is punishable by a fine but does not carry a potential jail sentence. Unlike misdemeanors and felonies, cases involving infractions do not involve jury trials, nor is the accused provided an attorney if she or he cannot afford one (though defendants are permitted to hire an attorney if they wish). The most common type of infraction is a traffic violation, but infractions can also include jaywalking and disturbing the peace. Infractions are also unique in that they follow the burden of proof similar to a civil case—preponderance of the evidence. Cases that involve misdemeanor crimes at the municipal level are handled just like misdemeanors under state and federal law, and these cases are managed by the same due process protections.

Sources of Law

If we look throughout history, we see several references to law and legal systems. One of the earliest examples of law can be found in the code of Hammurabi, which dates back to 1754 BCE and contained references to 282 different laws. It is here that we find the first reference of **lex talionis**, which argued that the punishment should fit the nature of the crime. For example, the law against slander stated that “if anyone ‘point the finger’ at a sister of a god or the wife of any one, and can not prove it, this man shall be taken before the judges and his brow shall be marked.”⁹ In contrast, ancient Roman law developed through centuries of customs that were passed down from one generation to another. These customs later became codified in 449 BCE as the Twelve Tables and stood as the foundation of the Roman law. As the Roman Empire expanded, so did its legal system. During the third century BCE, we see the emergence of the first legal scholars. These trained jurists were tasked with interpreting the law, much like the U.S. Supreme Court does today. Indeed, Roman law significantly influenced much of Western law, including the English common-law system.¹⁰ English common law emerged during the Middle Ages. Henry II (1154–1189 CE) established a system whereby judges were sent out to

Marijuana: Drug derived from the cannabis plant.

Lex talionis: Latin term that refers to the theory that punishment should fit the crime. The concept derives from ancient law and is referenced in biblical texts as *eye for an eye*.

resolve disputes throughout the country. One of the key features that emerged under the common-law system was the doctrine of **stare decisis** (which means “to stand by things settled” in Latin). This refers to a system of **precedent** whereby future legal decisions are required to take into consideration previous rulings. This means that a court should issue a ruling that aligns with not only its own previous decisions but also the rulings of higher-level courts. This system is still in use today.

Both Roman law and English common law heavily influenced the American legal system. Today, we can find laws among four primary sources: constitutional law, statutory law, administrative law, and case law.

Constitutional Law

A constitution serves to establish and govern a government.¹¹ The U.S. Constitution stands as the highest law of our country and embodies the principles from which all other legal rules and processes are derived. It was written in 1787 in Philadelphia and was ratified by nine states on June 21, 1788. The first 10 amendments compose the Bill of Rights, and several of these amendments relate directly to criminal law. Table 2.1 highlights the **constitutional law** protections that the Bill of Rights provides. The framers of the Constitution were particularly concerned about preserving due process for individuals who are accused of a crime.

Most of the rights that we refer to as part of our criminal justice process come from the Fourth, Fifth, Sixth, and Eighth Amendments. The Fourth Amendment protects individuals against unreasonable searches and seizures. Perhaps the best understanding of this is that police officers are generally required to obtain a warrant before conducting a search of your home. You’ll learn about this rule of law as well as its exceptions in Chapter 8. The Fifth Amendment protects against double jeopardy and self-incrimination.

Double jeopardy means that a person cannot be tried for a crime more than once. So if an individual is found not guilty by the court, she or he cannot be retried for the same case in the future. **Self-incrimination** means that a person has the right to remain silent and does not have to respond to questions that might implicate himself or herself in a criminal offense.

The Sixth Amendment provides for the right to a speedy trial by an impartial jury of one’s peers in the jurisdiction where the crime occurred. It also provides for the right to be informed of the nature of the charges, to confront any witnesses that will testify against you, and to present witnesses in your own defense. It also provides for the right to an attorney. In many ways, it is the provisions of the Sixth Amendment that have structured our criminal courts system. You’ll learn more about this structure and its processes in Chapter 9. Finally, the Eighth Amendment protects against cruel and unusual punishment. Perhaps the most commonly known argument involving the Eighth Amendment is the use of the death penalty, but this amendment has also been invoked

Stare decisis: Latin for “to stand by things settled.” Refers to the system of precedent.

Precedent: Refers to the legal standard whereby future decisions are required to take into consideration previous rulings.

Constitutional law: Law that is specified by either a state or the U.S. Constitution.

Double jeopardy: A person cannot be tried for a crime more than once.

Self-incrimination: A person has the right to remain silent and does not have to respond to questions that might implicate himself or herself in a criminal offense

TABLE 2.1

Constitutional Rights That Relate to Criminal Law

| AMENDMENT | PROTECTION |
|----------------------|--|
| First Amendment | Protects freedom of religion, freedom of speech, and freedom of the press as well as the right to assembly. |
| Second Amendment | Protects the right to bear arms. |
| Fourth Amendment | Protects against unreasonable searches and seizures. |
| Fifth Amendment | Protects against double jeopardy and self-incrimination. Provides due process protection in criminal cases. |
| Sixth Amendment | Provides for the right to a speedy trial by an impartial jury of one’s peers in the jurisdiction where the crime occurred. Provides the right to be informed of the nature of the charges, to confront witnesses against oneself, and present witnesses in one’s defense. Provides the right to an attorney. |
| Eighth Amendment | Protects against excessive bail and cruel and unusual punishments. |
| Fourteenth Amendment | Extends due process protections to the states. |

to defend against other practices, such as the use of solitary confinement and mandatory sentencing schemes. It also protects against excessive bail.

Several of the amendments have been used to challenge various practices within the criminal justice system, such as the application of the Eighth Amendment to reduce prison overcrowding. You'll learn more about the rights of convicted individuals and the incarcerated in Chapters 11 and 12.

In addition to the U.S. Constitution, each state has its own constitution that serves as a binding document for all laws at the state level. However, these laws bind only that specific state. This means that state laws must abide by the rules set forth in not only that state's constitution but the U.S. Constitution as well. If a law is challenged, it is up to either the state supreme court or the U.S. Supreme Court to determine whether the law violates the relevant constitution. As you will see throughout this book, many of our policies and practices of criminal law have been established through the constitutional review process.

Statutory Law

Federal Statutory Law

Statutory law refers to laws that are established by governments. Federal law is created by members of Congress, who first introduce a bill in either the House or the Senate (wherever their seat is held). These bills are then debated by a committee (and in some cases a subcommittee, which comprises a small number of congressional members). Once the bill is approved by committee, it is returned to the House or the Senate for general debate. At this stage, members can reject the bill, propose amendments to the bill, or pass the bill. The bill is then sent to the president, who either signs the bill and allows it to become a law or vetoes the bill. However, Congress can override the presidential veto with a two-thirds vote by each of its chambers.¹²

State Statutory Law

At the state level, statutory law is proposed by a member of the state legislature and is debated in a fashion similar to the federal process. Once a majority of the members of the state legislature approve the measure, it is sent to the state's governor for approval. State law exists in partnership with federal law. In cases where there is a conflict between state and federal law, it is up to the federal court system to resolve these disputes. Since each state has its own set of laws for its jurisdiction, you may often find differing and contradictory approaches to issues.

In addition to legislators, citizens of several states can create laws as a result of direct democracy. Twenty-four states allow for laws to be adopted via a ballot initiative process. Under a direct initiative, signatures are gathered by registered voters to place an initiative on the election ballot. If the measure passes by a majority vote, then the initiative is enacted into law. This method of direct democracy is particularly popular in California, which has used this practice to enact a number of state laws, including several related to criminal justice. For example, Proposition 83 (otherwise known as Jessica's Law) was passed by a vote of 70.5% of Californian voters in 2006 and was designed to increase the punishment for individuals who are convicted of sex crimes against adults and children. The law also increased the postincarceration restrictions on convicted sex offenders through residency requirements and requiring offenders to wear GPS tracking devices. The law was challenged on the grounds that the residency requirements, which prohibited convicted sex offenders from living within 2,000 feet of a school or park, were too strict. Since many offenders were forced to live on the streets (which could be viewed as a violation of their parole), the court held that these provisions were a violation of the liberty and privacy interests of the individuals. The court also held that restricting the residency of convicted offenders did little to protect the community. In its decision, the California supreme court determined that while such restrictions could be upheld in certain types of cases (like those involving victims under the age of 14), a blanket restriction was unconstitutional.¹³

Statutory law: Laws that are established by governments.

Administrative Law

Administrative law refers to the body of law that governs the creation and function of state and federal government agencies. Administrative law focuses on the powers that are granted to these agencies, the types of rules that they make, and how these agencies are linked to other areas of the government as well as the general public. Administrative law spans across virtually every topic, including intelligence, security, banking, finance, food, education, and communications—if there is a governmental agency involved in its regulation, then administrative law is at the center of this discussion. The primary source for administrative law is the Federal Administrative Procedure Act (APA). The APA has four primary purposes: (1) to mandate that government agencies inform the public of the nature, procedures, and rules of their organization; (2) to provide a process whereby the public can participate in making such rules; (3) to establish and implement a uniform process by which rules are made and violations are adjudicated; and (4) to define the scope of judicial review.¹⁴ Current administrative law is published daily in the *Federal Register* and is reorganized on an annual basis into the *Code of Federal Regulations*.

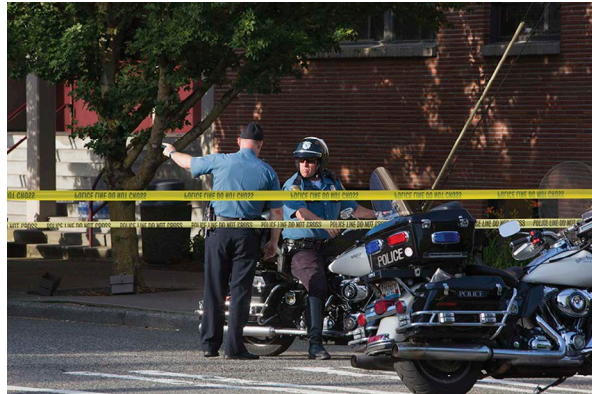
Administrative law: Body of law that governs the creation and function of state and federal government agencies.

SPOTLIGHT



Concealed Weapons on College Campuses

The issue of allowing concealed weapons on college campuses has seen significant debate in recent years. While some states have passed laws permitting the practice, others have moved in the opposite direction to oppose it. While all 50 states have laws that allow citizens to carry concealed weapons in certain circumstances, only 19 states permit individuals to carry a concealed weapon on a college campus. An additional 23 states allow individual campuses to determine their own policies on the practice.^a In June 2015, Texas governor Greg Abbott signed Senate Bill 11, which permits individuals with a concealed handgun license to legally carry on college campuses. The sponsor of the bill, Allen Fletcher, argued that since Texas law already permits individuals with a concealed weapons permit to carry in public, it was likely that many students already carried in class unbeknownst to university faculty and staff.^b As in other states, Texas state colleges and universities must create policies for their individual campuses that determine where concealed weapons can be carried. While the law does provide the creation of gun-free zones, it is unclear as to how these zones can be defined.^c Texas already allows teachers in public elementary and secondary schools to carry a concealed weapon in the classroom if they have permission from their school district superintendent.^d Meanwhile, other universities are



Local police arrive on scene at Seattle Pacific University on June 5, 2014, after Aaron Ybarra opened fire in the university library, killing one student and injuring two others. Should concealed weapons be allowed on college campuses?
Mat Hayward/Stringer/Getty Images News/Getty Images

purchasing bulletproof whiteboards for professors to help protect in the case of an active shooter.^e California governor Jerry Brown signed a bill in October 2015 banning concealed guns from all California schools, including universities.^f In addition, states such as Michigan and Montana have vetoed bills that would permit the expansion of concealed weapon carry laws on college campuses.^g

CRITICAL THINKING QUESTIONS

1. Do you think that allowing concealed weapons on college campuses will increase or decrease student safety?
2. What are the laws for concealed weapons carry for your state? What do these laws mean for the schools in your community?