

CALLIE MARIE RENNISON

MARY **DODGE** 



# Dear Student,

This edition of *Introduction to Criminal Justice: Systems, Diversity, and Change* represents a new and exciting adventure that explores uncharted territories and technologies that will give you more insight about offenders and victimization. The book is designed to widen your perspective and challenge how you think about crime.

This textbook and associated course is created to offer you the same sense of excitement and passion that has inspired our interest in the criminal justice system. Historical, contemporary, and, at times, controversial coverage of the criminal justice system represents subject matter that goes beyond the mundane in your college studies. The actual world of policing, corrections, and courts can be far more enticing than what is portrayed on the news or fictional crime shows. The real world of policy and how it impacts both the criminal justice system and everyone in society is shared. This textbook will ignite your interest in criminal justice and the wide variety of topics related to moral, ethical, and practical situations that a large percentage of the population face daily.



Real cases and stories are memorable. The lives of offenders and victims have narrative drive that shows the interconnected nature of criminal justice. This book uses real-world examples to illustrate the theoretical concepts necessary to understand the criminal justice system. They are not designed to evoke pity, or anger, but rather to share the reality of the system, which will assist you in applying the concepts presented in this textbook. The case studies portray the relationships among the police, courts, and correctional system by highlighting interactions of victims, criminal justice professionals, and offenders, which illuminate controversial issues in the process.

During your journey through the criminal justice system, you first meet Jennifer Schuett, an 8-year-old girl who was abducted from her bedroom, brutally raped, nearly decapitated, and left for dead by a police impersonator. Her case exemplifies the investigative difficulties and issues involved in victim engagement. Second, you meet Esther Lucero, a young woman who was labeled by the criminal justice system as a violent offender, though the details of her case demonstrate the importance of considering mitigating circumstances and ensuing consequences of offending behavior. In this narrative, her numerous interactions with the system teach valuable lessons about probation, jail, prison, and, ultimately, justice. Another important aspect of Esther's case is the difficulty she faced reentering the community. Third is the complex and at times disturbing case of Joshua Paul Benjamin, a young man who was convicted of child sexual assault. His journey through the criminal justice system is chronicled and shows the outcome of how his own victimization experiences resulted in criminal behavior. Last is the case of Danny Madrid, who as an adolescent became involved with a group of delinquent peers and joined a neighborhood gang. Initially, the group engaged in spray-painting graffiti around their Southern California neighborhood. This behavior escalated to minor street crimes and eventually gun violence. Danny served time in prison after a shooting that left a rival gang member paralyzed. The narratives of these real-life case studies throughout the chapters offer a fresh, exciting, and inside glimpse of the connectedness of the criminal justice system.

This book exposes you to topics often underrepresented in the criminal justice system. Importantly, the text introduces criminal justice policy and how policymakers' decisions affect our lives. The criminal justice system presents an untold number of ways to imagine yourself as a policy maker—one faced with the reality of difficult decisions. Always ask yourself, "How would I solve this issue?" Additionally, the study of victims and diversity is an undeniably powerful force in our criminal justice system that helps define who and what we represent, and how we make decisions. For policymakers, the crucial issues extend far beyond arrest, trial, and incarceration. The victimization caused by criminal behavior is essential to a complete understanding of how, for example, women, minorities, and other people of color are acknowledged and treated in a system historically focused on offenders.

This book represents your introduction to engaging and complex materials that will challenge you and develop your passion to learn more about the dynamic field of criminal justice.

Sincerely,

Callie Marie Rennison

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Mary Dodge

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# Introduction to Criminal Justice

**Fourth Edition** 

# From Callie: This work is dedicated to two professors who changed the trajectory of my professional life: Jon Lorence, PhD, and Robert Erikson, PhD.

From Mary: For Lucie, Phillip, Kelly, Tam, Val, and Mary-Fred. In memory of Michael Dodge, Gilbert Geis, and Jere Stahl.

# Introduction to Criminal Justice

# Systems, Diversity, and Change

**Fourth Edition** 

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SAGE Publications, Inc. 2455 Teller Road Thousand Oaks, California 91320 E-mail: order@sagepub.com

SAGE Publications Ltd. 1 Oliver's Yard 55 City Road London, EC1Y 1SP United Kingdom

SAGE Publications India Pvt. Ltd. B 1/I 1 Mohan Cooperative Industrial Area Mathura Road, New Delhi 110 044 India

SAGE Publications Asia-Pacific Pte. Ltd. 18 Cross Street #10-10/11/12 China Square Central Singapore 048423 Copyright © 2022 by SAGE Publications, Inc.

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Printed in Canada

Library of Congress Cataloging-in-Publication Data

Names: Rennison, Callie Marie, author. | Dodge, Mary, 1960- author.

Title: Introduction to criminal justice: systems, diversity, and change / Callie Marie Rennison, University of Colorado Denver, Mary Dodge, University of Colorado Denver.

Description: Fourth Edition. | Thousand Oaks : SAGE Publications, Inc, 2021. | Revised edition of the authors' Introduction to criminal justice, [2020]

Identifiers: LCCN 2020031275 | ISBN 9781544398730 (paperback) | ISBN 9781544398747 (epub) | ISBN 9781544398754 (epub) | ISBN 9781544398761 (ebook)

Subjects: LCSH: Criminal justice, Administration of—United States. | Crime—United States.

Classification: LCC HV9950 .R48 2021 | DDC 364.973—dc23

LC record available at https://lccn.loc.gov/2020031275

Acquisitions Editor: Jessica Miller
Content Developmental Editors:
Laura Kearns and Adeline Grout
Editorial Assistant: Sam Diaz

Production Editor: Veronica Stapleton Hooper

Copy Editor: Sarah Duffy Typesetter: Hurix Digital Proofreader: Dennis W. Webb

Indexer: Integra

Cover Designer: Scott Van Atta Marketing Manager: Victoria Velasquez This book is printed on acid-free paper.

20 21 22 23 24 10 9 8 7 6 5 4 3 2 1

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# **PREFACE**

# A Fresh Approach

Introductory criminal justice textbooks are easy to find, but difficult to dissect. Each text takes a relatively standard and staid approach that fails to interactively engage undergraduate students. Worse, existing hard copy books are expensive, and toting them around campus between classes is cumbersome. Admittedly, traditional textbooks are enormous, and adding extra weight to your backpack means making choices. How often do you bring your textbook to class? We hypothesize that this is a rare event, and we understand. Textbook accessibility and readability represent key elements to a successful classroom experience.

Our approach differs compared with many existing introduction to criminal justice books. We offer an exciting and passionate comprehensive overview of all aspects of the criminal justice system. In fact, once students' interest for a particular topic is sparked, they often register for classes devoted specifically to the area. This textbook prepares students for future classes by enhancing critical thinking skills and offering a broad understanding—including controversies—associated with each topic. Overall, there are four primary reasons this text is superior: cost, passion, connectedness, and coverage.

#### Cost

Existing books have become ridiculously expensive, which is problematic for two reasons. Some introduction to criminal justice books cost almost \$200! This is problematic because the cost of attending university has increased dramatically over time. Expensive textbooks are an additional expense and difficult for students to bear. This is also problematic given many textbooks have a very limited life span. Books focused on events from a single year may cost less money, but because they change every year, bookstores refuse to buy them back. This situation means no recovered costs to contribute to next semester's books. Students need an accurate, interesting, and comprehensive text that engages them at a reasonable cost. This textbook is affordable and accurate, and it addresses a field of great interest—the criminal justice system.

#### **Passion**

Many existing books are unsuccessful in conveying the passion and excitement of the criminal justice system. By offering some facts, sticking to mainstream criminal justice topics, and avoiding controversial topics, often textbooks require professors to scramble to bring in relevant and engaging outside information. Why not just include this engaging information in the text? We felt it was time that a new introduction to criminal justice text was developed that incorporated both the excitement inherent in the system and full coverage of associated topics. This approach allows students to delve into the material that enhances and challenges perspectives to the criminal justice system.

#### Connectedness

Part of the staleness of existing textbooks is their failure to connect topics across chapters. This discrete presentation of material leaves many students bewildered. Stated simply, system connections are weak in other available texts. One chapter in these books covers police. Then a chapter covers courts. Texts then move on to corrections. Missing are the connections and interrelationships of these components of the criminal justice system. The parts of the criminal justice system are not discrete monoliths—the system is interactive. This textbook avoids the old-school approach and introduces exciting new pathways. First, four true criminal justice cases are followed chapter to chapter. By weaving the stories throughout the text, the connectedness of the system becomes apparent. The first case focuses on Jennifer Schuett, who as an 8-year-old was abducted from her bedroom, raped, nearly decapitated, and left for dead by a police impersonator. The crime illustrates the investigative difficulties of some cases and how victims engage the criminal justice system. The second case woven throughout the text is an exploration of the life of Esther Lucero, who was arrested, charged with assault, and served two prison sentences. The third case is that of Joshua Paul Benjamin, who as a young man

was convicted of sexual violence against children. His journey through the criminal justice system is chronicled, and his attempts to establish a "normal" life as a previous sex offender who faces life-long stigmatization are examined as he lives now as a law-abiding citizen. The continued devastating consequences of Joshua's earlier offenses leave him without employment and struggling to find a place to call home. Finally, the fourth case is of a young man named Danny Madrid, who joined a gang in Los Angeles, California. His life and associations with delinquent peers ultimately resulted in gun violence and a subsequent prison sentence. Danny's case exemplifies the complex nature of gangs, prison, and reentry. The examination of actual case studies throughout the chapters offers a fresh, exciting, and real-world glimpse of the connectedness of the criminal justice system. This approach highlights the interactions of victims, criminal justice professionals, offenders, and controversial issues found in the criminal justice process.

# Coverage

The fourth major distinction of the current text is the incorporation of substantive areas throughout the book that are traditionally neglected. Most texts neglect victims, and when they are mentioned, they tend to be discussed in a paragraph or two in what looks to be an afterthought. Another example is the presentation in too many extant books of terrorism as a "new" topic in the criminal justice system. Terrorism has a long history and deserves attention beyond a summary in the wrap-up chapter. Other texts fail to note the importance of white-collar crime or cybercrime. Diversity—an undeniably powerful force in our criminal justice system—often goes unmentioned! Additionally, extant texts rarely address the role of the media in the public's view of crime, offenders, and victims. How can the role of the media go without mention, given its power in shaping the public's view—and ultimately policy—of criminal justice—related topics?

Policy also is largely absent from textbooks. In contrast, this book offers materials needed to understand the criminal justice system with a policy emphasis. The focus on policy implications and applications encourages students to use critical thinking skills. The material confronts difficult topics and challenges students to think about the difficult policy issues inherent in the criminal justice system. Students are encouraged to think about gray areas associated with policymaking, the discretion in the criminal justice system, and unintended consequences—both positive and negative. Controversial questions in the criminal justice system are common. What approach would you take in mandatory arrest policies? How to enforce medical or legalized marijuana in states that defy federal law? How do victim impact statements in juvenile proceedings influence proceedings? Given overcrowding, should the United States be forced to release prisoners? Are sex offender registries fair? Do they benefit larger society? How is the militarization of policing changing law enforcement? These issues may seem simple—and they are often presented as easily answered—but in reality they are complex, and policymakers' decisions regarding them affect our lives profoundly.

# **Distinctive Characteristics of This Text**

# **Special Topic Boxes**

Special topic boxes focusing on *policy issues, ethical issues, common misconceptions*, and *contemplating careers* associated with the criminal justice system are included in each chapter. The purpose is to engage and enhance students' critical thinking skills by considering difficult topics or concepts associated with the system. Policy issues are largely absent from existing books, whereas they are highlighted in these chapters. The policy issues include, for example, difficulties in counting crime, the appropriate role of law enforcement officers, and policing domestic violence. Ethical Issues boxes are integrated into each chapter to reinforce and emphasize text narrative. Ethics in the criminal justice system is a subject often treated in an isolated manner, summarily covered in five or so pages. Ethical behavior and decision making apply to all aspects of the system, and the book provides the opportunity to approach each topic in a more thoughtful manner. Ethical topics covered include, but are not limited to, self-defense and the castle doctrine, the use of marijuana by those in the criminal justice system, and off-duty officer behavior. Many concepts and terms related to the criminal justice system are widely misunderstood by students. Using Common Misconceptions boxes, we offer clarity about terms such as *prison*, *jail*, *parole*, *probation*, *robbery*, *burglary*, *discretion*, and *discrimination*. Finally, each

chapter includes information related to criminal justice careers that students might wish to explore further. Information provided includes characteristics and skills needed by individuals in these roles, responsibilities associated with the careers highlighted, and additional information such as work environment and salary. This career-specific information is designed to engage student interest in a variety of fields in criminal justice.

## **End-of-Chapter Features**

Aside from the features described above, the text offers several end-of-chapter features designed to further enhance students' learning experiences:

- Key points. These summary statements emphasize major concepts that are important to grasp after reading the chapter.
- Key terms. Basic and, perhaps, unfamiliar words and concepts introduced in the chapter are defined to help improve study skills.
- Review questions. These questions are designed to help students review for exams and determine whether they fully understand key topics covered in the chapter.
- Critical thinking matters. These questions are offered to encourage independent thought about topics or to be used by the professor or instructor to promote class discussion. These questions show that many issues are not black and white but rather far more complex in nature and outcome.

# For Whom Is This Book Suited?

The primary audience of this text is undergraduates in criminology, criminal justice, sociology, public policy, and political science. While the book would be useful in a variety of classes devoted to these topics, we see the adoption of this text in undergraduate introduction courses. This text can be widely adopted in undergraduate study abroad programs. Our comprehensive and engaging presentation of the criminal justice system will help those around the world better understand the reality—that is, the good, bad, and ugly—of the criminal justice system in the United States.

#### What's New in This Edition

This edition builds on the solid foundation of the first three editions. The fourth edition reflects the many changes that have occurred in the criminal justice system, particularly with an emphasis on changes in policy and law, technology and diversity. With the change in the White House and the attorney general's office, high-level actors in the criminal justice system are dealing with a climate far different than what has been seen in previous administrations. Further, the new administration has adopted policies that are in stark contrast with established practices, including the use of private prisons, perspectives on recreational marijuana, the role of police, and even constitutional rights previously agreed upon. Immigration policies have shifted, and individuals are being deported who have lived in the nation for decades. Others who have legally sought asylum are being kept in prison-type settings. Deferred Actions for Childhood Arrivals (DACA) students are in the news because their status has been placed in limbo. Socially, a great deal has changed in sexual harassment, technology, and social media. Since the earlier editions of this book, there have been multiple international Women's Marches as well as the #MeToo and the #TimesUp movements. People who have been sexually victimized are speaking up in numbers previously unheard of in the United States and around the world. More women and people of color are running for elected office than previously documented. Many elements in the criminal justice system and in society have changed dramatically as a result of these many changes, and change is occurring rapidly.

A second related transformation is the expanded coverage and discussion of diversity. Where possible, we included additional information on Asians, American Indians, and members of the LGBTQ community. We expanded coverage of why diversity matters, with attention to changes in immigration and how that is related to the criminal justice system, marijuana, and sexual violence issues. With the additional attention these topics have received, providing greater coverage is important.

Third, this edition includes updated statistics and estimates on crime, victimization, and elements of the criminal justice system, using the most recent data available. Many of these estimates are not available elsewhere, but have been provided by us using valuable data sources.

In addition, the following substantively new materials have been added to this fourth edition:

- New case study of Esther Lucero's experiences during arrest, plea bargains, prison, parole, and reentry.
- Expanded coverage of Black Lives Matter.
- Enhanced coverage of fatal shootings by police.
- Several updated Policy Issues boxes address current and controversial topics in the field of criminal
  justice.
- Updated material on the decriminalization and legalization of marijuana.
- Increased coverage of specialized courts.
- Introducing social media evidence in the courts: how emojis might influence a trial.
- Increased coverage of the parameters of prison and effects of solitary confinement.
- Updated full-page infographics that illustrate the story of an issue in criminal justice through data.
   These infographics assist students in making connections between data on the same topic and encourage critical thinking.
- Updated statistics and data are included where available.

# **THANK YOU**

his book benefited from the contributions of many. I hope to sufficiently thank them all, though it seems impossible. Still, I will do my best. First, I extend a heartfelt thanks to Jennifer Schuett, Joshua Paul Benjamin, Esther Lucero, and Danny Madrid. These individuals graciously shared their stories as our four case studies in the book, and as a result, this text offers readers a deeper understanding of the complexities of the criminal justice system and how it touches *all* people. Your experiences highlight the consequences of crime on victims, offenders, criminal justice workers, family members, friends, and citizens. Without your generous sharing, these important dimensions of the criminal justice system could not have been portrayed in this text.

Because of the multitude of people who spend their lives thinking about and researching topics related to victims, statistics, police, courts, white-collar crime, terrorism, technology, advocates, corrections, and other relevant criminal justice topics, this book was possible. These dedicated researchers include my coauthor, Mary Dodge. When Mary and I first met, we talked about our areas of interest, learning that substantively we worked in very different areas. We also discovered that in important ways we were quite similar: We are both dedicated to teaching about the criminal justice system in a passionate, dynamic, and realistic way that engages students. I think our collaborative effort in this text reflects this approach.

A hefty thank-you is extended to the University of Colorado Denver's School of Public Affairs. The School of Public Affairs offers a supportive and engaging atmosphere, with fascinating colleagues, eager students, and a gorgeous physical setting. I feel so fortunate to be able to conduct my work in such an environment. Extra thanks go to Dean Paul Teske for his continued support for this work and all of the research I do.

This book would simply not exist without the support and guidance of Jerry Westby and now Jessica Miller and her team at SAGE. Some team members came and went throughout this process, but each is deserving of my gratitude. Aside from Jerry, the team members included Jessica Miller, Nicole Mangona, Laura Kearns, Adeline Grout, Sarah J. Duffy, and Veronica Stapleton Hooper.

A part of SAGE's work was to line up numerous reviewers as the book progressed. This panel of reviewers clearly spent their valuable time providing thoughtful feedback and criticisms that improved our work. A special thanks to the following:

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And last, but by no means least, I deeply thank my husband and best friend, Dave Vaughan. He has quietly lived with me as I toiled away on chapters in the throes of workaholism and absenteeism. During this process, he has spent a lot of time outside climbing, riding, and hiking without me. He's never complained and always encouraged. There aren't really the words needed to express how much your support means to me. Thank you.

—Callie Marie Rennison

Like Callie, I share deep gratitude for all the people willing to invest their time and energy in this book, including the SAGE team, reviewers, and my colleagues at the School of Public Affairs. Thanks go to all my students, many of whom are now colleagues, who have inspired and challenged me over the years. Special thanks to Joe Airey, Steve Addison, Carolyn Berry, Alison Burke, Dan Burke, Megan Burns-Pratt, Fran Gomez, Victoria Josupait, Tracie Keesee, Kaitlin Levy-Liotard, Fireman Ross, Carol Peeples, Skylar Steele, Jace Valcore, Vicki Van Antwerp, David Walcher, Nicole Weiffenbach, Jerry Williams, Daneilla Johner, Kate Jimmerson, Nancy Contreras, Jessica Rosenthal, Patricia Woodin, Katie Didier, Annie Miller, Katyie Wells, and all the students in my Introduction to Criminal Justice courses. My deepest appreciation goes to my family and friends, Lucie Sarkisian, Phillip Dodge, Kelly Keating, Tammy and David Fenimore, Valerie and Craig MacDonald, and Jere, Mary, and Fred Stahl for their unconditional love and acceptance. Also, I wish to acknowledge the incredible scholars and colleagues who have inspired my work and who will be deeply missed: Gilbert Geis, Bill Chambliss, Joan McCord, Rita J. Simon, John Irwin, and Dale Sechrest.

-Mary Dodge

# **ABOUT THE AUTHORS**



Callie Marie Rennison is professor and former associate dean of faculty affairs in the School of Public Affairs, University of Colorado Denver. She has also served as the director of the Office of Equity and Title IX coordinator at the University of Colorado Denver Anschutz Medical Campus. She earned a PhD in 1997 in political science from the University of Houston, University Park. Her areas of research interest include investigating the nature, extent, and consequences of violent victimization, with an emphasis on research methodology, quantitative analysis, and measurement. Much of this research focuses on violence against women, violence against minority groups such as African Americans and Hispanics, crime data, and victim interaction with the criminal justice system. Callie recently served on a National Academies committee

examining domestic sex trafficking of minors in the United States. Her research has appeared in numerous journals, including the *Journal of Quantitative Criminology, Justice Quarterly, Violence and Victims*, and *Violence Against Women*. Callie has taught a variety of graduate and undergraduate courses, including statistics, research methods, murder in America, crime and the media, and introduction to criminal justice.

Callie was awarded the School of Public Affairs Research and Creative Activities Award in 2013, the Teaching Award in 2011, and the Service Award in 2015. In 2016, she was awarded the American Society of Criminology's Bonnie S. Fisher Victimology Career Award to recognize significant contributions in the area of victimology over her lifetime.



Mary Dodge earned her PhD in 1997 in criminology, law, and society from the School of Social Ecology at the University of California, Irvine. She received her BA and MA in psychology from the University of Colorado at Colorado Springs. She is a full professor at the University of Colorado Denver in the School of Public Affairs. Her research articles have appeared in the American Journal of Criminal Justice, Women & Criminal Justice, Contemporary Issues in Criminology, International Journal of the Sociology of Law, The Prison Journal, Police Quarterly, Journal of Contemporary Criminal Justice, and the Encyclopedia of White-Collar and Corporate Crime. Her most recent articles explore public opinion and white-collar crime and misconduct by policewomen. She and Gilbert Geis coedited the book Lessons of Criminology and share authorship on the book Stealing Dreams: A Fertility Clinic Scandal. She

is also the author of *Women and White-Collar Crime*. Her research and writing interests include women in the criminal justice system, white-collar crime, policing, prostitution, and courts. Currently, she is the co-editor-in-chief for *Crime*, *Law & Social Change*.

Mary was the 2007 recipient of the campuswide University of Colorado Denver Excellence in Teaching Award. She received the School of Public Affairs Teaching Award in 2001, 2005, 2006, and 2016 and the Research and Creative Activities Award in 2002 and 2004. In 2011, she received the School of Public Affairs and University of Colorado's awards for excellence in service. Her research often involves collaboration with local and national police departments and law enforcement agencies.



# **FOUNDATIONS**

Chapter 1

An Introduction to Crime and the Criminal Justice System

Chapter 2

The Nature and Extent of Crime

Chapter 3
Criminal Justice and the Law



# AN INTRODUCTION TO CRIME AND THE CRIMINAL JUSTICE SYSTEM



# **Introduction: Making Our Way Through the Criminal Justice System**

The criminal justice system comprises institutions, policies, and practices with the goal of maintaining social control and deterring crime through sanctions and rehabilitation. The criminal justice system is explored in numerous books. Many of these books present the cold hard facts in chapters that make it difficult for students to really understand the system and its ties to ethics, policy, people, and our everyday lives. Many students have firsthand experience with the criminal justice system. At a minimum, most have been exposed to elements of the criminal justice system (not all accurate) through the media. Perhaps you were convicted of driving while intoxicated or received a speeding ticket. Or perhaps a family member was incarcerated or served a community corrections sentence. It may be that a family member was deported, or your own Deferred Action for Childhood Arrivals (DACA) status has you living in a place of limbo. Maybe you were a victim of violent crime. Maybe your credit card numbers were stolen and used to make purchases online. Or your bank account was hacked and your life savings taken. Perhaps your car was stolen or your home was burglarized. Many people grieve after the homicide of a family member or friend. As unpleasant as any of these scenarios are, each provides a glimpse into the complexities of the huge industrial nature of the criminal justice system. Students in

criminology, criminal justice, and sociology courses often comment that the material they read in textbooks seems unconnected to the real world. It is not unusual to learn from those who become involved in the criminal justice system through direct or indirect means that their experiences are different from the material and stories frequently portrayed in other textbooks, general books, and the media.

Crime and the criminal justice system commonly are sensationalized in the books we read, the television shows we watch, and the gruesome headline news stories we view daily. The real stories in the criminal justice system can be complex, and each case touches individuals in far-reaching ways. The goal of this book is to demonstrate how the system works in reality and to familiarize you with the complicated path from first contact with the criminal justice system—whether as witnesses, victims, or offenders—to exiting the system (for those who do exit). To demonstrate how this happens, we introduce four real people and describe their actual experiences with the criminal justice system throughout the book. None of them wanted to be involved with the system, but for years, and even decades, their lives have been intertwined and entangled with law enforcement, courts, and corrections. For some, if not each one of our case studies, involvement with the system will continue until their deaths. The true stories related to their cases and experiences are used to enhance and inform the contextual material presented in each chapter. This chapter introduces those case studies: Jennifer Schuett, Esther Lucero, Joshua Paul Benjamin, and Danny Madrid.

# What Is the Criminal Justice System?

Laws that define crime represent a small portion of the legal field and create a large web of entanglements. Society needs a way to deal with individuals who violate these laws and those who are victims of crime, hence the development of the criminal justice system. The criminal justice system comprises three primary components: law enforcement, courts, and corrections. Law enforcement is charged with investigating crime and apprehending individuals alleged to have committed crimes. Courts are responsible for interpreting and applying the law. The correctional component protects society from criminals through housing, monitoring, and other community-based programs. In some instances, corrections involves incarceration in jails or prisons, while in other cases it consists of supervision in the community, parole, or probation. In the most extreme cases, it means putting someone convicted of a crime to death.

# LEARNING **OBJECTIVES**

After finishing this chapter, you should be able to:

- List the three primary components of the criminal justice system.
- Identify the paths on which a crime may be handled in the criminal justice system.
- Summarize why consensus for an exact definition of crime is difficult.
- Explain why crime definitions may change over time.
- Review the five perspectives of the criminal justice system.
- Critique how the consensus and conflict models help and hinder public policy.
- Identify key elements in the relationship between crime and the media.
- Differentiate between criminal justice and criminology.

Criminal justice: The system of institutions, policies, and practices with the goal of maintaining social control and deterring crime through sanctions and rehabilitation.

Law enforcement: Law enforcement agencies are charged with investigating crimes and arresting individuals alleged to have committed crimes.

Courts: The courts are responsible for interpreting and applying the law.

**Corrections:** Functions to protect society from criminals through housing, monitoring, and other communitybased programs.

#### **CASE STUDY**

# Jennifer Schuett: A Case of Attempted Murder and Rape

On August 10, 1990, 8-year-old Jennifer was abducted from her bedroom at 2:30 a.m. The offender, a complete stranger, covered her mouth, assuring her that she was safe because he was a police officer. He told her this while running down the sidewalk with her in his arms.

He placed Jennifer in his vehicle and sped away from the apartment complex where she lived with her mother. The man later stopped the car and brutally raped Jennifer. In an effort to remove the only witness to his heinous violent crime, he slashed her throat from ear to ear and left her in a vacant field, thinking she was dead.2

The Jennifer Schuett case reminds us that crime generally involves victims. Too often, accounts of crime-whether in textbooks or in the general media-fail to acknowledge the individuals harmed in incidents. Historically, work in criminology and criminal justice overlooked victims, rendering them little more than witnesses at a trial (if a trial occurred). In some cases, when a victim was acknowledged, it was to blame them for part of or the entire incident.3 The past several decades have witnessed an emphasis on the role of the victim in the criminal justice system. Victims now have increased resources and assistance to help in recovery, and policy and research efforts provide greater understanding of victimization. We follow Jennifer and her forced introduction to the criminal justice system throughout this text.



Eight-year-old Jennifer Schuett. What type of person would harm a little girl? How should the criminal justice system handle such an offender? Jennifer Schuett

## Esther Lucero: A Case of Plea Bargains, Incarcerations, and Reentry

Esther Lucero's life involved unforeseen pathways that resulted in happiness and hardship. She grew up in a tightly bonded family, which eventually became largely extended after her parents divorced when she was 7 years old. She grew up in a primarily Hispanic neighborhood and now self-identifies as a Spanish, Mestizo Indian or Chicana Lesbian. Esther was the middle child with



their children. They also provided opportunities to travel. Her father was a producer and often took the family on trips to see concerts in places like Telluride, Colorado, an elite, well-known music festival and skiing area. Esther grew up in Denver, Colorado, and attended Catholic school, which likely shielded her from many of the challenging experiences associated with public education. In fact, her education was extensive and of high quality, but her worldview, by her own admission, was somewhat limited. Esther's early voyage to selfawareness was turbulent, like many young adults who face personal and societal challenges as they attempt to determine their place in the world. Esther, however, faced greater marginalization to establish herself as she struggled with being a Chicana gay woman. Eventually, her social identification also would include that of being a felon.

an older brother and sister. Esther's parents protected and nurtured

Esther Lucero How did an arrest after a violent fight affect the life of this young woman? Did the criminal justice system go too far sentencing her to prison by ignoring that her actions may have been self-defense? Esther Lucero

#### Joshua Paul Benjamin: A Case of Sexual Assault

Joshua Paul Benjamin was a happy boy living with his parents and sister in a Midwestern city.4 He liked building intricate towers of blocks and speeding around the house on his plastic push motorcycle. Like many little boys, he was bright, curious, and active. Though Joshua was high energy, he was also caring and patient, and loved to cuddle with his mother. Tragedy struck when Joshua was only 3 years old and the front door to his home was left unlocked. Joshua discovered this unlocked door and rushed outside, eager to visit a friend who lived across the street. He never arrived at his friend's house. As Joshua darted out from between two parked vehicles on the street, an oncoming car hit him. The accident happened so quickly that the driver never had time to hit the brakes.

Joshua was rushed to the hospital in critical condition, where doctors informed his parents that he would either die or have brain damage as a result of his injuries. After about 10 days, Joshua emerged from a coma unable to communicate, with a paralyzed left side. At home

following discharge, Joshua dragged himself through the house on the floor. His life changed dramatically after charges of sexual assault against a child emerged, and the ensuing events, as described in later chapters, resulted in Joshua's lifetime involvement in the criminal justice system.

## Danny Madrid: A Case of a Gang Member and **Attempted Murder**

As a young boy growing up in a predominantly Latino and Black neighborhood in South Los Angeles, Danny Madrid dreamed of one day becoming an astronaut. Danny's dreams as a small child faded when he became involved with a gang at the age of 13. He was asked to join the gang by the older boys in the neighborhood, and because he had known the gang members' younger siblings since early childhood, life on the streets with these boys seemed natural. With his new peer group, Danny engaged in graffiti, drug crimes, and other street-level crimes in the Los Angeles area. Not surprisingly given these offenses, Danny's clashes

with law enforcement increased substantially. In addition, violent conflicts with rival gangs were common. Eventually, Danny was assaulted, or "packed," by a group of rival gang members. In retaliation, he and a friend got in a car with a gun to seek revenge against the rivals. That day in 1990, Danny's life took a turn for the worse.



Tragedy struck Joshua Paul Benjamin when he was a toddler. He was hit by a car while crossing the street. Could anyone have known that the resulting injury would ultimately lead to his entanglement in the criminal justice system? © istockphoto.com/malerapaso

The death penalty is a controversial issue and is addressed more fully in the discussion of courts and sentencing later in the text. Part of the debate over capital cases focuses on issues of retribution and the chance of executing an innocent person. Another important aspect of the criminal justice system—one that has received increased and much deserved attention in recent years—is the victim. Now a greater emphasis is placed on incorporating victims into the system, and paying attention to their needs and wishes is more apparent in law enforcement, courts, and corrections.

# Size of the System

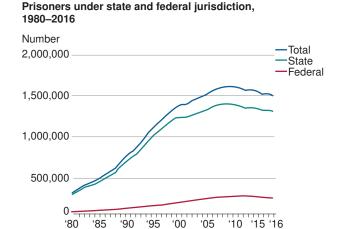
The criminal justice system is enormous and costly even in light of reductions in violent and property crimes since the early 1990s. Through 2007, annual growth in the system was dramatic (it has declined slightly since). Why is the criminal justice system in the United States so large and costly? It is large because an enormous proportion of the juvenile and adult population is under the control of the criminal justice system. By the end of 2016 in the United States (the most recent data available), more than 6.6 million individuals were being supervised in the adult correctional system, which includes incarceration in local jails and prisons,

and parole or probation (see Figure 1.1). This corresponds to 1 in every 38 adults, which is the lowest rate measured since 1994. While smaller, large numbers of individuals continue to be under the control of the criminal justice system. At the end of 2016, the majority of these adults were being supervised in the community (nearly 3.7 million on probation and 874,800 on parole). In addition, more than 2.2 million adults were incarcerated at the end of 2016 (740,700 in local jails and 1.5 million in prisons).5 Though decreasing since 2007, the prison and jail populations are so enormous that some describe the United States as "addicted to incarceration."6



Danny Madrid found himself a member of a gang at a young age. Not surprisingly, this led to several interactions with law enforcement. How did such a young person become involved in this life? Danny Madrid

# Individuals Incarcerated Under State and Federal Jurisdiction, 1980–2016



Bureau of Justice Statistics, National Prisoner Statistics, 1980-2016

# Gender, Race, and Hispanic Origin in the System

The adult imprisonment rate differs greatly by the offender's gender, race, and Hispanic origin. At the end of 2017, men were imprisoned at a rate of 829 per 100,000, which is more than 13 times greater than the 63 per 100,000 rate for women (see Infographic 1.1 later in the chapter). Black non-Hispanic men were imprisoned at a rate of 2,336 per 100,000, which is almost six times the rate of 397 per 100,000 that characterizes White non-Hispanic men. During the same period, differences in the imprisonment rate were apparent for women by race and Hispanic origin as well. Black non-Hispanic women were imprisoned at a rate of 92 per 100,000, while their White non-Hispanic and Hispanic counterparts were imprisoned at much lower rates: 49 per 100,000 and 66 per 100,000, respectively.

Not all of the differences in imprisonment rates are based solely on variation in criminal behavior. Research indicates that some personal characteristics are associated with a greater likelihood of harsher punishment. In other words, a White woman and a Black man committing the same criminal act may be treated differently in the criminal justice system. The White woman may never be arrested, while the Black man may find himself incarcerated. This lack of equity in justice is reflected in the quotation by Judge Sturgess: "Justice is open to everyone in the same way as the Ritz Hotel." In other words, powerful citizens who are wealthy and in the majority may receive lenient treatment, while people living in poverty and people of color are treated harshly. Given the serious consequences of being incarcerated, this inequity is important to recognize.

Differences in the likelihood of being sanctioned in the community or incarcerated also are associated with characteristics of the victim. One example where this is evident is capital punishment. In theory, we reserve capital punishment for our most extreme criminals. But is this the reality? A look at statistics demonstrates that less than 2% of murderers were given death sentences. What accounts for why such a small percentage of offenders were sentenced to death when 98% of murderers were not? Some research points to specific factors associated with a greater likelihood of getting the death penalty. These aspects include murders committed with torture, grave risk of death to others, being a Black offender, and committing a murder with another felony. Furthermore, research shows that a Black defendant who kills a non-Black victim has the highest likelihood of being sentenced to death compared with Black-on-Black, non-Black-on-non-Black, and non-Black-on-Black homicide. These findings hold true even when other characteristics, such as torture, risk to others, and additional felonies, are taken into account.

# The Cost of the Criminal Justice System

The enormous size of the criminal justice system, particularly in corrections, stems partly from the public's desire for longer and harsher sentences. Policymakers who wanted to be "tough on crime" and gain favor with

# COMMON MISCONCEPTIONS

# THE DIFFERENCE BETWEEN PRISON, JAIL, PAROLE, AND PROBATION

Students, citizens, and the media often confuse the terms prison and jail. As will be presented in greater detail in subsequent chapters, these terms designate different institutions. Jails are local facilities managed by cities and counties that perform a somewhat overlapping but distinct purpose from prisons and penitentiaries. While prisons hold individuals convicted of crimes, jails hold both those convicted of crimes and individuals who have not been convicted. Jails, for example, detain people who have not been offered bail and those who cannot make bail prior to a trial. Prisons hold persons convicted of more serious offenses serving longer sentences; jails typically detain individuals who have been convicted of misdemeanors serving sentences of less than 1 year (in some jurisdictions jails may hold for longer periods of time). Another exception is the case of prison overcrowdingjails may then incarcerate people who have committed felonies in state and federal prisons who are serving longer sentences (for a fee). Knowing this, you should recognize that someone sentenced to 15 years of incarceration will likely spend most of that time in prison, not in jail.

Two other commonly confused terms are *probation* and *parole*. These are not synonyms, but refer to two different situations. Probation and parole are types of sentences. Probation is a sentence that suspends or delays a term of full-time incarceration in prison or jail. In return for the

suspended or delayed sentence, the judge orders the offender returned to the community, where they must abide by certain rules and conditions. Since its inception, the use of probation (and other intermediate sanctions) has become the most common form of sanction administered in the United States. Typically, a person given probation has not served time in a jail or prison for that particular offense. A person just released from prison may be placed on parole as part of their sentence. Parole operates like probation in that the offender is released from prison back into the community, where they must abide by certain rules and conditions. Failure to comply with those rules often means returning to prison.

# Think About It

- Do jails hold only those convicted of minor crimes for which a sentence of less than 1 year is given? Explain.
- Under what circumstances might a local jail hold people who would typically be incarcerated in a federal prison? Explain.
- 3. If someone is on parole, does this mean they have never served time in prison? Why or why not?

voters implemented legislation such as three-strikes, habitual offending, and mandatory sentencing laws. The result was a massive expansion of the criminal justice population, a large number of people working in the system, and an equally dramatic increase in the cost of the system. In 2013, Ted Gest noted that the U.S. criminal justice system employed 2.4 million people at an annual cost of \$212 billion. To put this in perspective, each person in the United States, regardless of age, paid \$670 in 2013 to support the criminal justice system. Costs differ by location. The cost of state incarceration (a part of the overall criminal justice system), for example, varies greatly. Research by Mai and Subramanian found that in 2015

the total cost per inmate averaged \$33,274 and ranged from a low of \$14,780 in Alabama to a high of \$69,355 in New York. Eight states—Alaska, California, Connecticut, Massachusetts, New Jersey, New York, Rhode Island, and Vermont—had a cost per inmate above \$50,000. Eighteen, mostly southern, states had costs less than \$25,000, while 19 states had costs between \$25,000 and \$50,000.

While estimating the cost of the criminal justice system is challenging, and even following declines in the number of people incarcerated in states in response to the 2008 recession, it is clear that when considering only state incarceration, the criminal justice system is expensive for taxpayers.

In some locales, scarce economic resources as well as massive overcrowding have highlighted the need to consider options other than incarceration. Since 2009, California has been under a federal court order to reduce overcrowding in the system. The 2009 court order was finally met in early 2015 after the implementation of Proposition 47, which lowered the punishment for six common nonviolent property and drug crimes from felonies to misdemeanors. Crimes such as forging checks, shoplifting, and possessing small amounts of illegal drugs were affected. Incidents involving more than \$950, those including violence (e.g., murder), or certain sexual offenses were excluded. In 2015, a Stanford University report found that Proposition 47 resulted in a

drop of the state's prison population by about 13,000, resulting in an estimated state savings of approximately \$150 million in 2015 alone. Changes due to Proposition 47 more proportionally impacted women compared to men who are incarcerated, as 8% of the people released were women. At this time, women make up only 4% of the prison population. Overall, the California prison population has decreased by more than 45% since 2006.<sup>13</sup>

This change reflects a backing away from previously enacted "get tough on crime" policies. Politicians throughout the nation are increasingly fans of releasing people convicted of nonviolent crimes or using punishment that incorporates more parole and probation versus incarceration in order to save money. Yet public safety continues to be an important concern, and policymakers are vying for public approval. Consequently, legislation in the United States continues to lean toward harsh punishment, despite the financial costs. As stated by the Sentencing Project: "Our criminal justice system today is like a bicycle stuck in one gear: the prison gear."14

# How Does the Criminal Justice System Work?

The criminal justice system is large, varied, complex, and it encompasses many systems and services found among governments at the local, state, and federal levels. For this reason, no single description or illustration can accurately describe the criminal justice system, as no single component acts in isolation. The entire system requires that particular steps be taken to offer citizens due process and minimize undue governmental intervention. Figure 1.2, developed by the Department of Justice's Bureau of Justice Statistics, illustrates the most common steps found in the criminal justice system. While this depiction offers the most common linear pathways, in reality each section of the criminal justice system overlaps and functions with feedback from others. Conventional wisdom suggests that police officers, for example, arrest a suspect following an investigation. Then they present the suspect and information from the investigation to the prosecutor for consideration of charges. In reality, law enforcement officers may or may not arrest a suspect based on input from a district attorney during the investigation. Some research indicates, for example, that arrest for rape and sexual assault is more likely if the prosecutor feels that the case can be won at trial, based on whether there is particular evidence that the offender committed the crime. These circumstances result in instances in which some evidence that a rape occurred can be associated with an alleged offender's evading arrest and remaining free to reoffend.

# A Road Map

The criminal justice system process begins when a crime becomes known to law enforcement. However, in many instances, crimes fail to come to the attention of law enforcement. In 2018, for example, only about 43% of violent crimes and 34% of property crimes were reported to the police. In other words, about 6 in 10 of all violent and 7 in 19 of all property crimes are never reported to law enforcement. The degree to which crime is reported to the police depends on the type of crime considered. About 63% of robbery is reported, while only about 29% of property theft becomes known to law enforcement. Motor vehicle theft is the most likely of street crimes to be reported; about 79% of these crimes are brought to the attention of law enforcement. In contrast, rape and sexual assault are least likely to be reported; only 25% of this violence is brought to the attention of the police.15

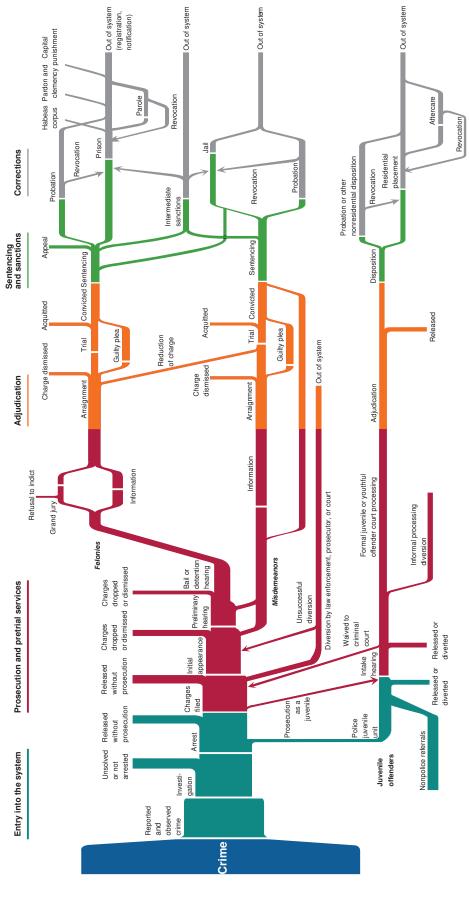
Once alerted, law enforcement agents investigate whether a crime has occurred. If a determination is made that a crime occurred, attempts to identify and apprehend the offender(s) are made. Evidence gathered from the investigation is presented to prosecutors, who, using their discretion, determine whether formal charges will be filed. If no charges are filed, the accused is released from their involvement in the system. If charges are filed, prosecutors may proceed toward plea bargaining or trial, or may decide to drop charges in an act known as nolle prosequi.

If charged, the accused appears before a judge or magistrate in person or via video and is informed of the charges against them. Several other things may happen at this point depending on the jurisdiction and elements of the crime. First, the determination of guilt and punishment may be dispensed. Or the defendant may be assigned a public defender if the charges are serious enough and the accused lacks sufficient resources to retain an attorney independently. Also, the judge or magistrate may determine if bail is warranted.

Nolle prosequi: Latin for "be unwilling to pursue," this is commonly used by a prosecutor to willingly terminate legal proceedings before trial or before a verdict. The statement is often construed as an admission that the charges cannot be proven.

▼ FIGURE 1.2

# A Road Map of the Criminal Justice System



Source: Bureau of Justice Statistics. (2014). Criminal justice system flowchart. Retrieved from http://www.bjs.gov/content/largechart.cfm.

In some jurisdictions a grand jury may be convened to investigate and issue an indictment or no bill. Grand juries, in some respects, are tasked with determining if the prosecutor has sufficient evidence to proceed with charges. A no bill indicates that insufficient evidence is present to proceed with the case, and the accused is released if they are in jail.

The next step is generally an arraignment. At the arraignment the charges are read, the defendant is informed of their rights, and the defendant enters a plea—whether it be guilty, not guilty, or nolo contendere (i.e., accepting penalty without admitting guilt). The judge may or may not accept the plea, and the defendant may or may not be sentenced immediately. Some defendants opt for trials by jury, while others request trials by judge.

At trial, the prosecution and defense present evidence and question witnesses, while the judge rules on legal issues. At the conclusion of the trial, a conviction or acquittal on the charges is levied. Following this verdict, the sentence is imposed either immediately or in a second hearing by the judge. For some capital cases, a jury may determine the sentence. Some defendants may appeal the case on the basis of procedural or constitutional errors—not on the basis of an alleged "wrong" outcome.

Punishment differs greatly. Those sentenced to a year or less incarceration generally spend that time in a jail. Offenders sentenced to longer terms of incarceration are usually sent to a prison. The length of the punishment may be indeterminate (i.e., not based on a fixed number of years) or determinate (i.e., based on a fixed number of years). In most cases, the judge sentences the offender to an indeterminate sentence in the form of a range of years to be served (e.g., 7 to 10 years). Often, parole boards determine when the convicted individual is released following any mandatory time in prison. Parole boards also set conditions of the release. Violation of parole conditions may mean that the offender is returned to prison to complete their sentence.

In some cases, those accused avoid jail or prison. These individuals may be sentenced to house arrest, boot camps, intensive supervision, drug treatment, and/or electronic monitoring. In community corrections the development and use of continually improving technology play a greater role.

# The Victim

Missing from this classic road map of the criminal justice system is the victim or survivor. Opinions differs as to whether an individual who experienced a crime should be called a "victim" or a "survivor." We are of the opinion that each person should identify in a way they are comfortable with. For purposes of this text, we primarily use the term "victim" because we are generally describing a group of individuals that include those who survived the victimization and some who did not.

Victim interaction with the criminal justice system takes many forms. Victims (or their family members in the case of murder) have numerous things to attend to, some of which are outside the scope of the criminal justice system. They may need medical care, emotional and/or psychological support, and/or assistance with insurance agencies. One action they or others around them may take is to alert the police about the crime. If the police become involved, then the victim becomes a crucial "witness" to the crime. Victims will be questioned, often repeatedly, about the crime. They may feel that they are losing control as the machinations of the criminal justice system churn ahead regardless of their desires or input. Victims report great variation in playing a role or being informed about the investigation and criminal justice proceedings. Increasingly, victims are paired with advocates. Victim advocates, also referred to as victim service providers, victim/witness coordinators, or victim/ witness specialists, are trained professionals who support crime victims throughout the process. Working to support victims, advocates provide information about available options. These resources may help educate victims about criminal justice system proceedings and offer options for needed emotional, psychological, or financial support that is available. Advocates educate victims about their rights and in some cases attend court proceedings with the victims. If you or someone you know becomes a victim of a crime, it is strongly advised that you become informed about your rights and consider seeking out a victim advocate to assist in navigating the process.16

# by a grand jury that indicates that insufficient evidence is present to proceed with the case.

No bill: A decision made

# Nolo contendere: A plea made by a defendant in which they neither admit nor dispute guilt. It is commonly referred to as a "no contest" plea.

### Indeterminate sentence:

Sentence given to a defendant in the form of a range of years to be served (e.g., 3 to 7 years).

Victim advocates: Trained professionals who support crime victims as their cases move through the criminal justice system.

# Crime and the Importance of Personal Liberties

Crime affects the lives of everyone. For some people, this means being a victim of violence, having property stolen, having a home burglarized, or losing money to unscrupulous businesses or identity thieves. For other individuals, it means losing a family member to homicide or watching a loved one suffer devastating personal and property losses because of the criminal acts of others. Or for some it may mean being deprived of personal liberties as a consequence of criminal conduct. For all of us, crime means funding a massive criminal justice

system with taxpayer money and dealing with the aftermath of large proportions of our population being confined or monitored by the correctional system. With large sums of money flowing into the criminal justice system, fewer resources are available for other social institutions, such as community centers, prevention programs, transportation, and education. These consequences are clearly felt by students who are forced to pay higher tuition or forgo an education altogether as state funding to education is diverted elsewhere.

The consequences of crime also affect us all in terms of personal liberties. A strong relationship exists between increased criminalization of behavior and greater loss of personal freedoms. On one hand, in order to ensure the greatest good for the greatest number (also referred to as utilitarianism), legislation is required to prohibit certain behaviors. Constitutional freedoms, on the other hand, ensure certain inalienable rights. Legal controversies over the rights afforded by the U.S. Constitution are common and often depend on whether a strict interpretation of the language is applied. In contrast, some legal experts believe that changes in contemporary society require a broader interpretation. Judicial activism is said to occur when decisions are influenced by personal or political underpinnings. Balancing personal freedoms and public safety concerns can present difficult policy challenges.

Some commentators and scholars argue the 2001 USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), signed into law by President George W. Bush, is one example of how citizens are losing personal freedoms. <sup>17</sup> The September 11, 2001, terrorist attacks in New York, Virginia, and Pennsylvania, arguably the greatest contemporary tragedies of this type to occur on U.S. soil, changed domestic and foreign policies and law enforcement in ways that have affected the entire populace. The USA PATRIOT Act, among other things, reduced restrictions on intelligence collection and broadened discretion in detaining and deporting immigrants suspected of terrorist activities. In May 2011, President Barack Obama signed a 4-year extension of the provisions for roving wiretaps, searches of business records, and surveillance of individuals with no connection to a particular terrorist group. Opponents of the act argue that the provisions overextend the powers of the Federal Bureau of Investigation (FBI) and allow monitoring of telephone calls, e-mails, and financial records without the added safeguard of a search warrant. 18 Contemporary evidence and the information revealed by Edward Snowden, a former Central Intelligence Agency and National Security Agency (NSA) employee who copied and leaked classified NSA information in 2013, supported the notion that records of individual U.S. citizens are being collected. Many portions of the PATRIOT Act that lacked congressional approval expired in 2015. During the same year, the USA Freedom Act was passed. It continued many elements found in the USA PATRIOT Act, but halted the NSA from gathering a massive amount of phone data on citizens. Instead, the USA Freedom Act allows phone companies to retain consumer data that can be accessed by the NSA once federal court permission is obtained. In August 2019, the outgoing director of national intelligence sent a letter to Congress indicating the Trump administration's intention to permanently extend several provisions of Foreign Intelligence Surveillance Act (FISA) in the USA Freedom Act, which expired in December 2019. Authority for reauthorization of these provisions is shared by the Judiciary and Intelligence Committees in the U.S. Senate and the U.S. House of Representatives. In 2018, President Donald Trump signed a 6-year extension of FISA (Section 702), despite his earlier claims that it had been used to spy on his campaign.

# What Is Crime?

Sometimes the most difficult questions to answer are the simplest ones. For example: What is crime? The most commonly accepted answer is that crime is the breaking of a law for which the criminal justice system or some other governing authority prescribes punishment. Crimes are defined differently across geographic regions such as localities, states, and nations. Further, different places may apply different names to the exact same criminal acts. Additionally, what constitutes a crime may be contingent on the characteristics of the person committing the act or the person being victimized. For instance, some acts by minors are illegal (i.e., status offenses), whereas the same actions by adults are legal. Definitions of crime are not static; they change over time. Certain actions once illegal are now legal, and new restrictions on behavior may have been unthinkable years ago.

# **Street Crimes**

When asked to identify a crime, most people will respond by listing offenses regularly portrayed in the media: murder, rape, or robbery. But these responses represent an incomplete set of crimes. These acts are commonly

### Inalienable rights:

Rights that are universal and not contingent on laws or beliefs specific to a particular government or culture.

### Judicial activism:

Deviation from the literal meaning of the Constitution to take into account the present situation, including complex societal advances.

### **USA PATRIOT Act:**

The 2001 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act was signed into law by President George W. Bush to strengthen security measures designed to protect the United States from attack.

### **USA Freedom Act: A**

2015 law that came into effect the day after the USA PATRIOT Act expired. This act restored many provisions of the PATRIOT Act but limited the collection of telecommunication metadata of citizens by the National Security Agency.

Crime: The breaking of a law for which the criminal justice system or some other governing authority prescribes punishment.

referred to as street crimes. Street crimes are considered those that are relatively common and serious, involving a victim and an offender who come together in space and time. These events include crimes such as homicide, rape, sexual assault, robbery, and physical assault. Some people view street or violent crimes only as those involving a stranger who commits a crime. Although this happens, a large proportion of violent crime occurs between people known to each other. In 2018, for example, 53% of male victims and 29% of female victims of nonfatal violence reported that the offender was a stranger. 19 People generally perceive violent or street crimes as involving deadly weapons such as firearms, knives, or clubs. In reality, most street crimes rarely involve weapons. The public frequently views street crimes with great fear, believing that offenses will inevitably lead to injury or even death. In reality, street crime is relatively unlikely to lead to physical injury or death, though it can and does happen.

# **Property Crimes**

The public also is familiar with **property crime**, which includes motor vehicle theft, burglary, and property theft. Regardless of the year considered, property crimes are far more common than violent street crimes, much to the surprise of those who are influenced by media accounts of unlawful incidents (see Infographic 1.1). A consistent finding is that motor vehicle theft is the least common form of property crime and property theft is the most common form of property crime in the United States. Additional information on property crime is presented in Chapter 2.

# Victimless Crimes

Some crimes historically referred to as victimless crimes involve illegal behavior that does not (in theory) directly affect another individual.<sup>20</sup> Commonly cited examples of victimless crimes include prostitution, drug use, and gambling. While some people indicate that there are no victims of these crimes, others disagree. Drug use, for example, may increase rates of burglary as users attempt to gain more resources to continue their habit. Prostitution may increase violence because sex workers are frequently assaulted as a result of their status. Prostitution also may be directly responsible for the trafficking of minors, as meeting the demand of clients (criminal offenders) requires the control of younger and younger people forced into the sex trade. Gambling may lead to financial ruin, requiring families to be supported through governmental programs. Are these really victimless crimes? Many scholars argue that the term "victimless crime" is antiquated and inaccurate.

# White-Collar Crimes

As noted, when people think about criminals and the criminal justice system, they tend to focus on street or property crimes and how law enforcement, courts, and corrections handle them. Rarely do people envision white-collar crimes, which affect far more people than street or property crimes. Edwin Sutherland, in his presidential address to the American Sociological Society, first recognized white-collar crime as a serious problem in 1939.21 (The name of this organization was later changed to the American Sociological Association to avoid the embarrassing acronym.) Sutherland described white-collar crime as a "crime committed by a person of respectability and high social status in the course of his occupation."22 White-collar crime is ill defined, but generally conceived of as lying, cheating, and stealing by occupational, corporate, and government actors using a wide range of frauds. While there is no consensus, the following often are considered white-collar crimes:

- Street crimes: These crimes are relatively common and serious. involving a victim and offender who come together in space and time.
- Property crime: Crime against property. The most common forms of property crime include burglary, property theft (aka larceny), and motor vehicle theft.

# Victimless crimes:

These criminal offenses are thought not to involve victims because they cause no direct harm to individuals other than the offenders.

- bribery
- securities fraud
- **Ponzi schemes**
- mortgage fraud
- misuse of pension funds
- bank fraud
- unsafe products

- violations of public trust
- medical fraud
- insider trading
- price fixing
- toxic dumping
- fiduciary fraud
- religious fraud

# **POLICY ISSUES**

# CRIMINAL OFFENDING AND UNDOCUMENTED IMMIGRATION

Criminal offending is an issue that concerns most everyone. For some, criminal offending by undocumented immigrants is especially troubling. Some high-profile cases of immigrants committing violence include the 2015 murder of Kathryn "Kate" Steinle, who was walking on Pier 14 in San Francisco's Embarcadero (the eastern shoreline in San Francisco that is a popular tourist destination, with many restaurants, shops, and an iconic clock tower) when she was shot by Jose Ines Garcia Zarate. Garcia Zarate had just completed almost 4 years in federal prison, had seven prior felony convictions, and had been deported five times. He admitted to shooting Steinle, but claimed that when handling the firearm it accidentally discharged. In contrast, the prosecution argued that Garcia Zarate intentionally fired the gun when he shot and killed Steinle. Ultimately, the jury acquitted Garcia Zarate of murder, manslaughter, and assault. He was convicted of being a felon in possession of a firearm, which carries a sentence of 16 months to 3 years in prison. As a result of this case, the U.S. House of Representatives passed "Kate's Law" in honor of Steinle. This bill—which is an amendment to the Immigration and Nationality Act-calls for an increase in penalties for undocumented immigrants who return to the United States and commit crimes. To date, the bill has not cleared the U.S. Senate.

Cases like this raise the question: How many crimes do undocumented and documented immigrants commit? Findings show that immigrants commit crime and are incarcerated at rates lower than people born in the United States. A 2015 National Academy of Sciences report, for example, indicates that immigrants commit fewer crimes and at lower rates than those born in the United States. The same conclusion was reached by the Libertarian Cato Institute, which demonstrated that "illegal immigrants are 44 percent less likely to be incarcerated than natives" and that "legal and illegal immigrants are underrepresented in the incarcerated population while natives are overrepresented." Bersani's research indicates that immigrants are less crime prone than those who were born in the United States.23 Additionally, children of immigrants commit crime at rates mirroring the native-born. What of crime committed by undocumented immigrants? Many people argue that every undocumented person has committed a crime because they are in the country without documentation. But what of violent and property crimes? Unfortunately, quality data on the degree to which undocumented immigrants commit crime is challenging to obtain. Yet Ousey and Kubrin found in a meta-analysis of students that overall the immigration-crime association is negative and weak.24 The authors reiterate the challenge of finding quality data and acknowledge that without better data, understanding the degree to which undocumented immigrants commit crimes (aside from undocumented entry into the county) remains a mystery.

# Think About It

- 1. Should we be gathering data specifically on undocumented immigrants and crimes they commit? Would you as a taxpayer be willing to fund this massive undertaking? What would you do with the findings of this research?
- 2. What are some explanations for repeated research findings that immigrants are less likely to commit crimes compared to native-born individuals in the United States? Why might the level of criminality of those born to immigrants be greater than those not born here?
- 3. Do you agree with the premise behind the proposed "Kate's Law"? Should those in the country without documentation be given harsher sentences than others? Should taxpayers shoulder the cost for these penalties, or should the individuals be deported? What are advantages and disadvantages of the way you propose these individuals be handled?

White-collar crimes are not victimless crimes. A single fraud or scam can destroy a corporation, bankrupt families through lost savings and pensions, lead to home foreclosures, introduce toxic elements in the environment, and ultimately cost investors and taxpayers billions of dollars. Though rarely thought of, and often given brief mention in criminal justice texts, white-collar crime affects more people than street and property crime combined. David Friedrichs, a distinguished scholar, noted that losses from white-collar crime might be as high as \$250 billion annually, compared with the estimated \$4 billion annually attributed to losses involving robbery and burglary.<sup>25</sup> Major corporate scandals like the collapse of Enron have focused more attention on white-collar criminals. Enron CEO Kenneth Lay was indicted on 11 counts of securities fraud and other charges and later found guilty of 10 of those. Lay was sentenced to just over 24

years in prison (but died before he began serving his sentence). Xuyen Thi-Kim Nguyen, another white-collar criminal, was convicted of one count of conspiracy, two counts of mail fraud, and seven counts of wire fraud in conjunction with mortgage fraud. She disappeared in 2005 before sentencing. She is currently a fugitive and is wanted by the FBI.26

Much of the debate over the definition of white-collar crime exemplifies the slippery slope of distinguishing what should be regarded as criminal. An academic argument between Sutherland and Paul Tappan developed into an important basis for thinking about the crime label.<sup>27</sup> Sutherland questioned the legal definition of criminal behavior. He believed that the conviction of a criminal act was an unnecessary condition for determining whether a person committed an offense.28 Tappan argued, however, that sociological constructs such as antisocial behavior, conduct norms, and deviance fail to differentiate criminal versus noncriminal. In other words, in a much more legalistic approach, Tappan believed that only people convicted of crimes with specific penalties could be considered criminals. While their argument may appear to be a matter of semantics, what constitutes white-collar crime continues to vary, and unethical behavior today may later be labeled as criminal.29

# Cybercrime

Over the last several decades, people have faced a rapidly growing type of crime called **cybercrime**. Broadly, cybercrime is illegal activity committed using a computer or computer networks as the primary method of commission. Examples of cybercrime include the following:

- network intrusions
- dissemination of computer viruses, malicious code, botnets, and various e-mail scams such as phishing
- denial-of-service attacks
- identity theft
- stalking
- cyberbullying

- fraud
- theft of service
- online gambling
- trade secret theft
- securities fraud
- child pornography
- Zoom bombing

ferent types of crime. Consider that decades ago, several of these crimes (e.g., network intrusions, dissemination of malicious code, viruses, botnets, phishing, denial-of-service attacks) were nonexistent, given the lesser technology that was available. Overall, these crimes fail to neatly fit in a typology of violent and property crime. Yet it appears that some cybercrime refers to a different method used to commit violent crimes (e.g., bullying, stalking), property crimes (e.g., identity theft), and white-collar crimes (e.g., securities fraud). Clearly, there is some overlap, as even the FBI releases statistics on what it refers to as "white-collar cybercrime." Additional overlap is found between cybercrime and terrorism because some incidents of the latter are being committed using computers. Terrorists are making great advancements in devising ways that can adversely affect critical networks and infrastructure in the United States. Imagine if the banking or air traffic control system were attacked. On the home front, smart grid and smart home products are means by which criminals can infiltrate houses. Many people use Amazon Echo-type devices in their homes. While they may provide some conveniences, they also represent a potential vulnerability for hackers. In time, greater clarity defining the boundaries of cybercrime will emerge.

This list of cybercrimes reveals a controversy as to whether the offenses represent unique and dif-

Cybercrime: A form of illegal activity using a computer or computer networks as the primary method of commission. Examples of cybercrime include network intrusions, dissemination of computer viruses, and phishing.

# **Terrorism**

**Terrorism** is a crime that receives a great deal of attention in the public and in academic studies.<sup>31</sup> Though a variety of definitions of terrorism are used by different agencies and groups, it generally includes these characteristics:

- It is committed by subnational or extremist clandestine groups that may or may not include groups in the United States.
- It is premeditated.
- Targets are noncombatants.
- Acts have the purpose of influencing an audience.
- Acts tend to be cross-national (international vs. domestic terrorism).
- Acts generally seek political, social, or economic change.

Terrorism: The completed or threatened use of coercion and/or violence against a population of people with the goal of changing political, religious, or ideological positions.

Though public awareness has increased since the 9/11 terrorist attacks, terrorism has a long history in the United States. A relatively recent act of domestic terrorism was the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. Several domestic terrorists were responsible for this deadly bombing. The two most widely known were Timothy McVeigh and Terry Nichols. Lesser known were accomplices Michael and Lori Fortier. Michael Fortier was McVeigh's army roommate. All of these individuals were sympathizers of the American Militia Movement and self-proclaimed survivalists. They were especially incensed because they believed that the government was infringing on their right to bear arms. In addition, these individuals were enraged about past government actions at Ruby Ridge and Waco.

McVeigh was responsible for actually detonating the ammonium nitrate fertilizer-based bomb at the Murrah Federal Building. He parked a van, which hid

the 4,800-pound bomb, in a loading zone and detonated it using a 5-minute and a 2-minute fuse. Nichols built the bomb. The Fortiers were considered accomplices given their knowledge of the attack as well as their assistance in the planning. As a result of these actions culminating in the blast on April 19, 1995, 680 people were injured and 168 people lost their lives. Nineteen of those killed were under age 6, as a day care center operated in the building.

McVeigh was tried and found guilty on 11 counts of murder and conspiracy. He was sentenced to death and executed on June 11, 2001. Nichols also was found guilty and ultimately sentenced to 161 consecutive life terms without the possibility of parole. Michael Fortier was tried and sentenced to 12 years in prison and a \$75,000 fine. In 2008, after serving 10 years, Fortier was released and entered the Witness Protection Program, in which he was given a new identity. Lori Fortier was given immunity, and as a result she was never tried or convicted.

International terrorism continues to receive increased attention as the number of terrorist organizations and attacks increases. Terrorism goes beyond all geographic boundaries and ethnicities. The most prominent



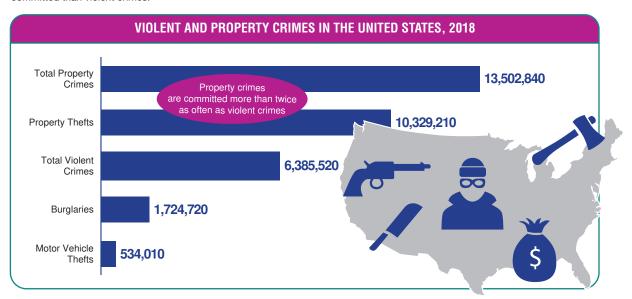
Alfred P. Murrah Federal Building, Oklahoma City, shortly after a domestic terrorist bombing in 1995. How did this act of terrorism differ from 9/11? What explanations account for the government's failure to respond to this act of terror in the same way it did following 9/11? What would you have done after the Oklahoma City bombing to minimize the possibility of future terrorist acts? AP Photo/Bill Waugh

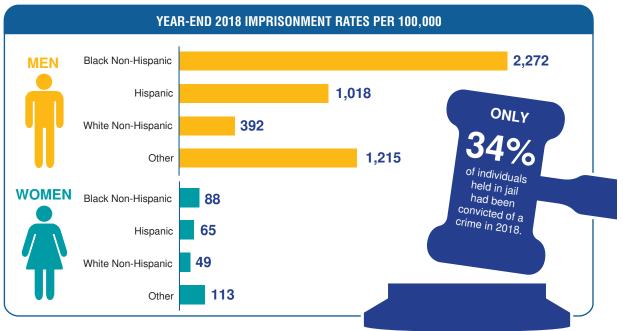
# ▼ INFOGRAPHIC 1.1

# **DATA MATTERS:** THE STORY IN NUMBERS

# RATES OF IMPRISONMENT AND RATES OF CRIME

The imprisonment rate for people in the United States is high, and that is especially the case for particular groups. In general, men are imprisoned at rates much higher than women. And among men, Black non-Hispanic men are incarcerated at the highest rates. Many of those incarcerated committed personal and property crimes. In the United States, property crimes are committed in far higher numbers than personal and violent crimes. In fact, there are about three times more property crimes committed than violent crimes.





# **CRITICAL THINKING QUESTIONS:**

- 1. How does incarcerating such a large number of our citizens benefit our society? How does it harm it?
- 2. Do you find it surprising that there are far fewer violent crimes than property crimes in the United States?
- 3. What may influence people to believe that violent crime is so much more common?

  Sources: Carson, E. A. (2020). Prisoners in 2018, April 2020. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

group currently associated with terrorism is the Islamic State of Iraq and the Levant (also known as ISIL or ISIS), which is responsible for many recent bombings and murders worldwide. In June 2016, for example, nearly 40,000 citizens of Fallujah, in Iraq, were trapped when ISIS militants surrounded the city with snipers and cut off food supplies. Additionally, four people were arrested in Germany after one member of a sleeper cell revealed their plot to bomb German metro stations. And in the United States, three Minnesota men were found guilty of plotting to join ISIS. These three incidents are only a small fraction of the threats and actions by ISIS in just a single month.

# **Crime Definitions Change Over Time**

Crime is not new. Where there have been people, there has been crime. And something that has remained constant is the notion that crimes can be either *mala in se* or *mala prohibita*.

*Mala in se* refers to behavior that is immoral and inherently wrong by nature. *Mala prohibita* describes behavior that is prohibited by law. Until recently, marijuana use was considered illegal as a result of *mala prohibita*. What constitutes *mala prohibita* has changed over time. In some cases, previously illegal behavior has become decriminalized, while in other instances, what had been ordinary behavior is now illegal. As of early 2020, 11 states (Alaska, California, Colorado, Washington, Illinois, Michigan, Oregon, Nevada, Maine, Vermont, and Massachusetts) and the District of Columbia had legalized the possession of small amounts of marijuana for personal consumption (possession and growing) and 33 states had legalized medical marijuana, though the drug remains illegal under federal law.<sup>32</sup> With more laws, we have more criminals. But through decriminalization—the reduction or abolition of penalties associated with behaviors—fewer offenders are in the system. Other decriminalization examples include justifiable homicide and adultery.

# Justifiable Homicide

While **justifiable homicide**—the lawful and intentional taking of another's life—has always been legal, what *constitutes* justifiable homicide has changed over time. For an act to be defined as justifiable homicide, there must be evidence that the suspected offender (e.g., a robber) presented an imminent threat to the life or well-being of another. This threat includes murder, manslaughter, armed robbery, and rape. Law enforcement officers or citizens killing in self-defense or to defend others, state-sanctioned executions, and killing during times of war are all considered justifiable homicides.

Recent changes in some state laws have expanded situations in which justifiable homicide is possible. Historically if a burglar were to enter a home or business, it was expected that the resident or business owner obey a *duty to retreat*. That is, the resident first had to try to avoid conflict and take steps to avoid a confrontation with the offender. Only after attempts at de-escalation could the homeowner or business owner use force, including deadly force. Currently, 23 states, including Florida, Texas, Pennsylvania, and Tennessee, have adopted laws referred to as the "castle doctrine."

Broadly, the **castle doctrine** and "make my day" laws state that residents are no longer required to retreat if threatened by intruders. Instead, they may justifiably use force, including deadly force, against intruders if they or other individuals are threatened. There is some variation in how expansively the castle doctrine applies. In some states, such as Texas and Florida, it applies to one's home or business, one's motor vehicle, public places, and any other location a person has a right to be. In Colorado, an offender must enter a "dwelling," which is inhabited, in order for the other person to claim justifiable homicide.

# **Adultery**

Another example of decriminalization of behavior is **adultery**. Historically, adultery was criminal behavior defined as sex between a *married woman* and a person other than her spouse. The basis for this distinction focused on paternity. That is, this law sought to prevent a husband from supporting or leaving an inheritance to another man's child or children because of his wife's adulterous behavior.

Over time most states have decriminalized adultery; however, definitions of adultery and the associated punishment vary by state. Currently, in New York, adultery occurs when two people engage in sexual activities and at least one of the members of the pair has a living spouse. In Minnesota, adultery occurs when a married woman has sex with a man who is not her husband. In this scenario both the man, whether married or

Mala in se: One of two types of illegal behavior. Mala in se refers to behavior that is sinful and inherently wrong by nature.

Mala prohibita: One of two types of illegal behavior. Mala prohibita describes behavior that is prohibited by law. What constitutes mala prohibita is dynamic and has changed over time.

### **Decriminalization:**

The act of ending or reducing criminal penalties associated with some behaviors.

# Justifiable homicide:

The lawful killing of another person, such as when a law enforcement officer or a citizen kills in self-defense or to defend another.

Castle doctrine: A legal doctrine that states that homeowners are no longer required to retreat if threatened by intruders. In some states it extends beyond homes.

Adultery: In general, sex by a married person with someone other than their spouse; specific laws differ by state, as does the level of criminality associated with it.



A crash resulting from drunk driving. Given the aftermath of some drunk driving accidents, do you feel the offense should be dealt with more harshly or less harshly than it currently is? What do you think is the appropriate BAC threshold making DUI a crime?

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not, and the woman have committed adultery. In Michigan, adultery is a felony punishable with jail or some other intermediate sanction. In contrast, adultery results in a \$10 fine in Maryland. In the U.S. military, adultery is an offense for which one can be court-martialed. The prosecution of adultery, while uncommon, still occurs in the military.

# **Driving Under the Influence**

While marijuana and adultery are examples of decriminalization, in other instances behavior has become increasingly criminalized. By expanding what is considered criminal behavior, we increase the number of offenders and the number of persons under control of the criminal justice system. One example of increased criminalization applies to driving under the influence (DUI).

Consider, for example, people who drink alcohol or take drugs and then get behind the wheel of a vehicle or on a motorcycle and drive. At times, this behavior results in terrible and deadly accidents. While it has been prohibited to drive drunk in some places for more than a century, convictions were rare. In 1910, New York became the first state to implement a drunken driving law; however, there was no specific definition of what constituted driving while intoxicated. In general, the accepted limit was 0.15% blood alcohol content (BAC). This means that a person with a BAC of 0.15% has 15 grams of alcohol in 10 liters of blood. Drunk drivers rarely received jail or prison time, and victims received no restitution or justice. The offenders would merely go home and try to deal with their "problem" in a private and personal way. This approach to drunk driving changed in the late 1970s, and the crime is now associated with serious penalties.

Leading the increased criminalization of DUI was Candace Lightner, the founding president of Mothers Against Drunk Driving (MADD).<sup>33</sup> In 1980, Lightner's 13-year-old daughter Cari was hit from behind by a drunk driver as she walked to a church carnival in her neighborhood. The driver, who had momentarily blacked out because of too much alcohol, regained consciousness after killing Cari and drove off, leaving her badly mutilated body in the street. The man was a repeat offender who was out on bail following a separate hit-and-run drunk driving incident only 2 days before he killed Cari. Cari's death represented his fifth offense in 4 years. Four days after Cari's death, Lightner started MADD when she discovered that the offender who had been apprehended would not receive any jail or prison time for killing Cari.

Since then, there has been a flurry of changes to the laws related to drunk driving and punishment. All states have clearly defined BAC levels that result in criminal charges and penalties, though the laws and punishment vary by state. Currently, all states have established the legal BAC limit as 0.08%. While BAC is uniform across states, punishment is not. In some states, a first offense means mandatory jail time, while in others a first offense is not seen as a crime. In other states a separate offense (driving while ability impaired, 0.05% BAC) may also be charged.

# Rape

Rape is another example of a crime that has seen an expansion in its definition over time. While rape has always been a crime and considered *mala in se*, how it has been legally defined has changed. For example, originally, the FBI defined rape as the "carnal knowledge of a female forcibly and against her will." In 2011, the FBI definition was changed to broaden the behaviors that constitute rape: "penetration, no matter how slight, of the vagina or anus with a body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." This modification meant that for the first time, the FBI recognized that boys and men could be victims of rape. This change also recognized that rape involves more than the penetration of a vagina by a penis. A women can commit rape, and rape can be committed by something other than a penis (e.g., fingers, objects such as sticks), and the penetration can occur in places other than a vagina (e.g., anus). In 2013, the FBI removed the word *forcibly* from its definition of rape to further reflect contemporary understanding of

Rape: A type of violent crime considered *mala in se* that includes "penetration, no matter how slight, of the vagina or anus with a body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."

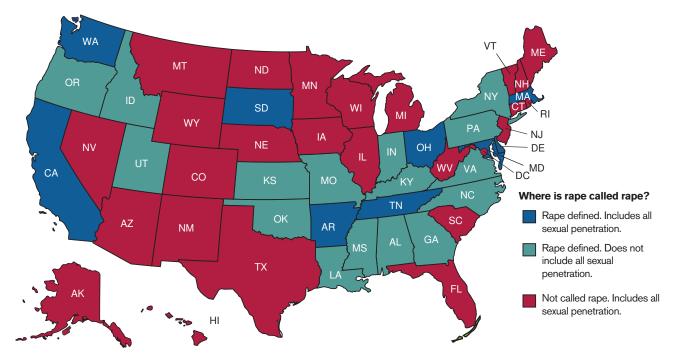
# **CASE STUDY**

Esther Lucero, like many young women, faced an incident that may have resulted in rape, though, unfortunately, the event resulted in Esther's first arrest. One evening, Esther and her girlfriend decided to go out for drinks at a local bar. At some point her partner left the bar, and Esther was alone and somewhat out of her element. After having a few beers and worried that her partner was not going to return, Esther grabbed her girlfriend's jacket and decide to leave. Two men, however, attempted to stop her, accusing her of stealing the jacket. The men pulled her to the back of the bar and started beating her. Despite her cries for help, no one came to assist her during the incident. She feared the worst—that the men would rape her. Finally, they threw her out the backdoor. Esther was angry and indignant, so she threw some bricks knocking out the windows of several cars. The owner of the bar came out and grabbed her. They fought until he had her face down on the ground. Esther then grabbed a box cutter from her pocket and cut the man's hand.

rape. Rape does not have to involve force, but it does involve a lack of consent, such as when a person is unconscious. Additional changes in the definition of rape and related laws included those that recognize that rape can occur between married partners. Prior to 1975, rape by definition could not occur between married partners.<sup>35</sup> Currently, all states have marital rape laws, although it took almost 20 years to codify the seriousness of rape between a husband and wife. (Some people argue that it is still not taken seriously.) South Dakota was the first state to make marital rape a crime. In 1993, North Carolina became the last. See Figure 1.3 for a map of rape laws by state.

Countless instances of behaviors have become increasingly criminalized or decriminalized. These changes reflect transformations in our understandings of behaviors and shifts in societal norms. In the past, rape was considered a crime of sex and lust. As such, marital rape seemed impossible. Today researchers and others recognize rape as a violent crime of power and control. Thus, statutes have been (and continue to need to be) changed to reflect this greater understanding, and rape shield laws were enacted to protect the privacy of victims. Rape shield laws restrict a defendant's ability to cross-examine a rape victim about past sexual behavior and prohibit revealing the identity of a rape victim. <sup>36</sup> In some states, protections are even broader.

▼ FIGURE 1.3 Map of Rape Laws by State



Source: Alan Kennedy, University of Colorado Denver

Before these statutes were enacted, rape victims' prior behaviors were used as evidence to mitigate the crime, which had a chilling effect on victims' willingness to go forward. In the case of Jennifer Schuett, one would think that she would not have had to worry about being accused of luring her attacker given she was 8 years old at the time. It seems unthinkable that anyone would accuse a child of such a thing. Yet it happens. Consider the case of an 11-year-old Cleveland, Texas, girl who was gang-raped by 18 men in 2010.<sup>37</sup> The defendant's attorney publicly portrayed the young victim as a "seductive man-luring spider." Changes in rape laws are one step in the right direction to convey that rape is a crime of violence and that victims are not responsible for their victimization. Like the perpetrator in the Schuett case, evidence points toward rape being an act of power and control by the perpetrator.<sup>38</sup>

Many express confusion about what constitutes rape, sexual assault, and sexual abuse. This is not surprising given the varied meanings attributed to each. In addition, even researchers use these words in a non-uniform way. While not definitive, these terms are frequently defined as follows:

Sexual abuse: This phrase is generally used to describe sexual violence committed against children. It can include actions such as forced touching, requiring the child to sexually touch the perpetrator, or forcing them to watch sexual activity. Regardless of the specific acts, sexual abuse is criminal behavior.

Sexual assault: This encompasses a variety of acts that are sexual in nature, including unwanted touching, kissing, rubbing, groping, or forcing the victim to touch the perpetrator in sexual ways. Some argue that sexual assault includes rape, yet many others see them as distinct.

Rape: According to the FBI, rape is "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."

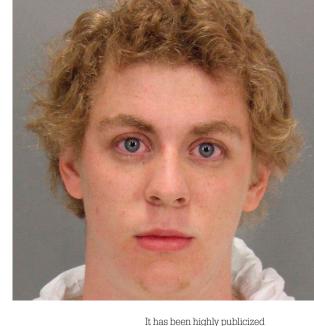
Discussing the FBI's definition of rape makes sense given this book is examining the national criminal justice system (versus smaller jurisdictions). The FBI collects, analyzes, and archives crime data through the Uniform Crime Reporting (UCR) Program (Chapter 2 covers this and other national data collection efforts in depth). The word uniform in the title of the almost 100-year-old FBI effort points to a vexing issue about crimes in the United States that remains today: that different jurisdictions use different definitions and labels for the exact same criminal offense. This means that one could be convicted of rape according to the FBI, while the state in which the violence was committed may call it sexual assault, sexual battery, sexual abuse, gross sexual imposition, criminal sexual penetration, forcible sodomy, sexual misconduct, or something else. Currently, all of these descriptions are used by at least one state to refer to nonconsensual vaginal penetration.

As of mid-2016, only eight states included all forms of sexual penetration in their legal definition of rape. More than 25 states do not define rape in their statutes, instead using less descriptive and more vague terms such as sexual assault. Further, many states classify the violence depending on the body orifice penetrated, and penalties vary based on this criterion as well. While some may argue this is a meaningless semantic discussion, it is not. Why not?

- Sentences may differ across place depending on the nature of the sexual violence committed. Sentences must reflect the nature of the violence committed.
- Calling rape anything but rape minimizes the violence experienced by the victim. Explaining to a rape victim that the offender is being charged with "sexual assault" is difficult. Hearing that the offender is not being charged with rape (when they have committed a rape) makes the victim feel that the criminal justice system is minimizing their experience.
- Calling rape anything but rape allows the offender to minimize the violence they committed. Those working with sex offenders note that getting offenders to acknowledge the magnitude of the violence they committed is made more difficult when the offenders believe that they "only committed sexual assault."

# Brock Turner: A Case Study in Defining Rape

A highly publicized example that illustrates these issues is that of Brock Turner. Turner, while a student at Stanford University, was caught by two men in the act of assaulting an unconscious women, as it happened outside of the Kappa Alpha fraternity house on campus. While it has been widely publicized that this assault occurred behind a trash dumpster, Turner's attorney disputes that aspect of the crime. In one legal document, Turner's attorney notes that at least from the witnesses' perspective, the victim was found "clearly in front of the dumpster, not in any way 'behind' it."39 Turner initially was charged with five felonies. Two of those were dropped. He was charged with two counts of rape, but because no evidence that he penetrated his victim with his penis was found, the rape charges were dropped. At the time of this violent act, California law required a penis to be used for one to be guilty of a rape. Ultimately, Turner was convicted of the other three felony charges: assault with intent to rape an intoxicated woman, sexually penetrating an intoxicated person with a foreign object (his fingers), and sexually penetrating an unconscious person with a foreign object.



Turner's convictions resulted in his serving 3 months of a 6-month sentence in jail before being released and returning to his parents' home in Ohio. Many people were appalled at the apparent leniency of his sentence. As a result of Turner's sentence (as well as sentences given to other offenders who came before him), Judge Aaron Persky was recalled from the bench in mid-2018. He was the first judge in 86 years to have been recalled in California. Others who are more familiar with the way sexual violence is handled in the criminal justice system are shocked that Turner served any time at all. The Turner case also has resulted in renewed scrutiny of state rape laws.

Results of the *Turner* case prompted legal changes in California. The statutory definition of rape in California when Turner was convicted differed from the definition used by the FBI (and other data collections systems). Turner's actions, as determined by the California jury, fit the standards for the FBI definition of rape, as well as certain other state definitions. In part due to Turner's conviction and because the rape charges had been dropped, the California legislature passed AB701 to amend the rape statute and added a section to the state's penal code mandating that "all forms of nonconsensual sexual assault may be considered rape."

Turner's entanglement in the criminal justice system continued after serving 3 months in jail. In late 2017, his attorney filed an appeal. This 172-page brief argued that the appellant, Turner, was deprived of

- a fair trial and his right to present a defense by the trial court's erroneous exclusion of all testimony by character witnesses attesting to his honesty and veracity;
- a fair trial by the prosecution's failure to present constitutionally sufficient evidence as to any of the three counts of conviction;
- a fair trial by the court's failure to instruct *sua sponte* on lesser included offenses (*sua sponte* "indicates that a court has taken notice of an issue on its own motion without prompting or suggestion from either party"40);
- a fair trial by prosecutorial misconduct in repeatedly portraying certain evidence in a false, misleading, and prejudicial manner;
- a fair trial by the trial court's failure to adequately respond to a critical jury question during deliberations.

As noted earlier in the chapter, appeals can be made after a conviction based on procedural or constitutional errors, not merely because the defendant disagrees with the verdict. The appellate document requested that Turner's convictions be overturned or that Turner receive a new trial. If Turner were retried and convicted again, he could not receive a longer sentence than the 6 months he received at the original trial.

that Brock Turner was a Stanford student who sexually victimized an unconscious female college student behind a dumpster at a fraternity party. Turner was convicted of three felony charges: (1) assault with intent to rape an intoxicated woman, (2) sexually penetrating an intoxicated person with a foreign object, and (3) sexually penetrating an unconscious person with a foreign object. According to the FBI definition, the penetrative actions constituted rape. According to the law in California at the time of his conviction, his actions constituted sexual assault (the law was changed shortly thereafter to reflect nonconsensual penetrative actions as rape). As a result of his convictions, Brock Turner served 3 months of a 6-month sentence. Some people are appalled at how short this sentence was and how little time he served. Others who are more familiar with the way sexual violence is handled in the criminal justice system are shocked that he was found guilty and served any time at all. What would you call the acts committed by Brock Turner? Rape? Sexual assault? Why? Do you think Turner served enough time? Not enough? Why? Santa Clara County Jail

# ETHICAL ISSUES

# SHOOT OR DON'T SHOOT?

In many states, homeowners have the right to confront and use deadly force when intruders enter their homes. In some jurisdictions, laws specifically state that people who are defending their property may shoot a burglar or another criminal only in a "dwelling." In one case, a man who freed himself after being tied up during a home invasion grabbed his gun and ran outside and began shooting at the burglar, who had stolen his car. He killed the driver, who then crashed the vehicle into a neighbor's home. In another case in the same state, a man shot and killed a person who was stealing from his storage shed. In the first case, prosecutors decided not to file charges against the homeowner. In the second example, the man was charged with voluntary manslaughter. Other difficult cases have arisen when

inebriated people have entered the wrong house and were shot by property owners.

# Think About It

- 1. If a burglar leaves your house with your money, television, and stereo, would you give chase and shoot? Explain how this decision should or should not be legal.
- 2. If a person is breaking into an unattached garage, would you make the argument that this building qualifies as a dwelling?
- 3. Is the taking of another person's life over property loss an ethical, moral, or legal issue? Explain.

In July 2018, Turner's attorney brought these arguments before three California appellate judges. He argued that Turner had never intended to rape an unconscious woman and that he had only been interested in engaging in "sexual outercourse." His attorney claimed sexual outercourse occurs when people are clothed and do not have penile contact, such as the aggressive thrusting witnessed by bystanders the night of the assault. The court denied Turner's appeal, ruling that the claims lacked merit. Turner's convictions stand, and he is required to register as a sex offender for the rest of his life.

# The Criminal Justice System: Purpose and Perspectives

People often are surprised by the lack of agreement related to the *purpose* of the criminal justice system. Some individuals believe its purpose is to control and punish offenders and to protect society. Others view rehabilitation as the purpose of the system. Yet others believe the purpose of this massive system is to ensure that all accused are treated fairly and/or to restore justice. This section identifies the major perspectives on the purpose of the criminal justice system. While each is presented as a distinct *perspective*, they are not necessarily mutually exclusive.

# **Crime Control**

A popular view is that the role of the criminal justice system is to prevent crime by shrewdly and harshly punishing offenders. This viewpoint, referred to as the **crime control perspective**, finds that when punishment is weak or avoided, offenders do not fear apprehension and continue to commit crimes. As a result, the public is left unprotected and crime increases. This model holds that all offenders—violent or not—are greedy, impulsive, and/or thrill-seeking individuals. Offenders choose to commit the crime and must be punished. In order for a system operating under this perspective to function properly, effective law enforcement, long sentences, and strict mandatory punishment (especially the use of prison time) are required. This expensive and punitive perspective of the criminal justice system is currently in vogue and has resulted in part in the enormous growth of the number of individuals under the supervision of the criminal justice system. This growth occurred until recently despite documented declines in violent and property offending that started in the early to mid-1990s.

Research indicates that, while popular, in practice the crime control model is not effective, efficient, or economically sound. About two thirds of all offenders commit additional crimes even after being punished. Recidivism rates this high indicate a level of ineffectiveness in terms of deterring future criminal behavior.

Crime control perspective: A popular view of the role of the criminal justice system. This perspective states that the goal of the system is to prevent crime by shrewdly and harshly punishing offenders.

Furthermore, the implementation of longer and tougher sentences coupled with high rates of recidivism often results in families being torn apart. Children are raised in an environment of less (or no) supervision, and spouses left behind must frequently turn to public assistance (i.e., your tax dollars) to survive. This approach has fueled an increase in prison construction at great financial and social expense. Also, more law enforcement officers and criminal justice workers are being hired, resulting in further increased costs.

# Rehabilitation

Another perspective holds that the purpose of the criminal justice system is to rehabilitate offenders. This rehabilitative perspective asserts that the role of the criminal justice system is to care for and treat people who are unable take care of themselves. The rehabilitative perspective is based on the notion that offending is the result of blocked opportunities such as employment (and no money), inadequate education, lack of transportation, and poor adult role models. In essence, those who commit crime are victims of social inequality. Many people believe that when individuals are provided with the opportunity to achieve and support themselves through legitimate means, they will do so and avoid the consequences of committing crime. This perspective is based on the underlying belief that people commit crime because it is their only option.

Based on this concept, the role of the criminal justice system is to provide individuals with the means to improve their lives through education, training, and social skills. With these necessary tools, individuals can support themselves in legitimate ways once released. The rehabilitative perspective also comes with a large price tag. Offender education and rehabilitation are costly. Some experts, however, argue that the price in terms of money and damage by offending is even greater if we allow those least able to survive to continue their deviant and offending ways. Society can pay now in terms of offering skills or pay later in terms of incarceration.

# **Due Process**

The due process perspective focuses on the criminal justice system's purpose of ensuring that all people accused of crimes are treated fairly and equally. The basis of the due process perspective is found in the U.S. Constitution. Specifically, the Fifth and Fourteenth Amendments address each citizen's right to due process in the administration of justice. The due process clauses exist to protect citizens accused of crimes from capricious detainment and denial of freedom, inequitable use of capital punishment, and/or the taking of property by the government as a result of a criminal or civil proceeding. Everyone accused of a crime should be treated equitably by law enforcement, the courts, and corrections. This perspective means that detainment should be fairly distributed, every person should receive fair hearings and trials, engaged and competent attorneys should represent the accused, and sentencing (if appropriate) should be evenhanded. The due process perspective holds that the criminal justice system should not allow inequitable treatment based on any characteristics, including the accused person's race, ethnicity, age, income, or religious preference.

A system that operates contrary to the principles of due process is the antithesis of the U.S. Constitution and what our criminal justice system stands for. Unfortunately, as discussed throughout this text, there are myriad examples in which the criminal justice system has failed to uphold its due process purpose. Arrest, incarceration, and the death penalty are not equitably distributed. Documented cases indicate that competent legal representation and judicial behavior are not even handedly dispersed throughout the system.

# **Restorative Justice**

The restorative justice perspective finds that the appropriate role of the criminal justice system is to repair the harm caused by criminal behavior. This perspective holds that the criminal justice system should not operate through punishment, but rather through cooperation among victims, offenders, and members of the community. Together, some or all of these actors share with one another how the crime affected them and reach consensus on a satisfactory method of resolution (Figure 1.4). Whereas other perspectives tend to focus on punishing the offender and satisfying legal principles, this approach focuses on the victims of crime. Victims are able to share in detail with offenders (if appropriate) how their crimes harmed them. The community is involved because local citizens (versus the state) are considered victims as well. Offenders are expected to take responsibility for their actions and to "pay" for them through agreed-upon means. The outcome may

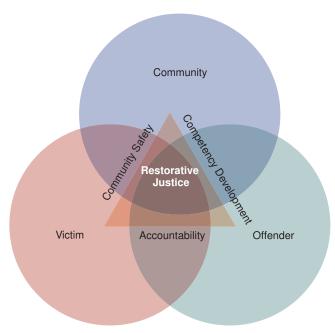
Rehabilitative perspective: A view that the purpose of the criminal justice system is to rehabilitate offenders.

**Due process** perspective: A view that the role of the criminal iustice system is to ensure that all people accused of crimes are treated fairly and equally in the system.

Restorative justice perspective: A view that the appropriate role of the criminal justice system is to restore justice as best as possible through repairing the harm caused by criminal behavior.

### ▼ FIGURE 1.4

# **Restorative Justice Approaches**



Source: Reprinted with permission from the Center for Restorative Youth Justice. ww.restorativeyouthjustice.org.

include paying restitution, repairing damaged property, and/or serving the community. Though not widely implemented in the United States, research finds that restorative justice results in the highest rate of victim satisfaction and offender accountability.

# **Nonintervention**

In contrast to the other perspectives, which identify what the criminal justice system should do, the **nonintervention perspective** argues for noninterference. Proponents contend that the appropriate role of the criminal justice system is to be as minimally intrusive as possible. Any intrusion by the criminal justice system is harmful because it stigmatizes an individual as an "offender." Some people believe that the stigma from criminal justice system interaction results in a self-fulfilling prophecy whereby offenders view themselves as failures or delinquent and, as a result, find navigating the noncriminal world more and more difficult. Newly minted offenders, for example, are less able to find work given their records and often are unable to establish and maintain healthy relationships. Taken together, these increased difficulties enhance the chances of recidivism. This perspective advocates for the decriminalization and legalization of nonserious, victimless crimes such as public drunkenness, vagrancy, and possession and use of marijuana. Noninterventionists argue for the release of all nonviolent offenders from the correctional system as well as the release from oversight (e.g., parole, probation) of others.

# **Criminal Justice and Public Policy**

The beginning of the chapter noted how everyone is affected by the criminal justice system through public policy. The criminal justice system is our method of social control and reflects both a **consensus model** and a **conflict model**. Social control represents the methods used to ensure conformity and compliance among its members. The government and laws typically accomplish formal social control. Informal social control may be instilled, for example, through peer pressure to act a certain way. A closely related concept is the idea of a social contract. This perspective developed from the work of early philosophers who believed that organized societies are created by an agreement that is mutually beneficial to the whole. The social contract gives power to the government or state to provide protection and ensure well-being among citizens.

Nonintervention perspective: A view that the appropriate role of the criminal justice system is to be as minimal and nonintrusive as possible.

# Consensus model: A

theoretical view of the criminal justice system that highlights the collaborative nature of the system. The components of the criminal justice system work in unison to achieve justice.

# Conflict model: A

theoretical view of the criminal justice system that highlights the adversarial nature of the system.

Components of the criminal justice system work in competition to produce a fair outcome or justice.