# Introduction to the American Criminal Justice System

# INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM

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# ABOUT THIS BOOK

## Welcome to our Work in Progress!

This course is exciting because the textbook is still being written. This means that you have an opportunity to help make it better. You can give valuable feedback to the textbook authors by completing the feedback survey at the end of each chapter. Please note: You may see errors or inconsistencies in the current version.

We are working to ensure that all textbook content is accessible. If you encounter an accessibility issue, please let your instructor know right away.

## Accessibility Statement

This book was created with a good faith effort to ensure that it will meet accessibility standards wherever possible, and to highlight areas where we know there is work to do. It is our hope that by being transparent in this way, we can begin the process of making sure accessibility is top of mind for all authors, adopters, students and contributors of all kinds on open textbook projects.

There are many known issues and potential barriers to accessibility in this version of **Introduction to the American Criminal Justice System**. When we revise and publish this Pressbook in the next phase of this project, these issues will be addressed. If you encounter an accessibility issue that you need fixed, please let your instructor know right away.

## Equity Lens

The Open Oregon Educational Resources Targeted Pathways Project seeks to dismantle structures of power and oppression entrenched in barriers to course material access. We provide tools and resources to make diversity, equity, and inclusion (DEI) primary considerations when faculty choose, adapt, and create course materials. In promoting DEI, our project is committed to:

1. Ensuring diversity of representation within our team and the materials we distribute
2. Publishing materials that use accessible, clear language for our target audience
3. Sharing course materials that directly address and interrogate systems of oppression, equipping students and educators with the knowledge to do the same

Designing and piloting openly licensed, intersectional, and antiracist course materials is one starting point among many when addressing inequities in higher education. Our project invites students and educators to engage with us in this work, and we value spaces where learning communities can grow and engage together.

We welcome being held accountable to this statement and will respond to feedback submitted via our contact page.

## Course Learning Outcomes

Educators, students, and future employers all benefit when course-level learning outcomes guide our shared work. When course-level learning outcomes are public, institutions demonstrate a commitment to equitable student success through the potential for increased collaboration and inclusive course design. This project analyzed learning outcomes across the state of Oregon to identify themes and commonalities. Authors used this analysis as a basis for developing course outcomes that could match the curriculum of multiple institutions in Oregon while still considering their local needs and context.

See Supporting Cross-Institutional OER Teams in Open Practices and Learning Outcomes Alignment for additional information.

## Pedagogical Foundations

The authors of this book embraced an equity-minded design for structure, scope, and sequence of chapters and chapter content. They sought to honor the needs and experiences of students who are often underserved in higher education in Oregon. Authors considered Transparency in Teaching and Learning (TILT), Universal Design for Learning (UDL), and Culturally Responsive Teaching to design meaningful learning pathways for you. You will find rich images and multimedia in addition to written content. You will also find provocative discussion questions that align with learning outcomes and objectives.

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# HOW TO NAVIGATE THIS BOOK

## Table of Contents

Every page of this book has a button labeled "**Contents**" in the upper left corner. You can click anywhere on that button to show the book's table of contents. Clicking the button again hides the table of contents.

In the table of contents, you can click on a title of a chapter to navigate to the beginning of that chapter.

You can also click on the "+" in the table of contents to see the chapter's sections and navigate directly to that place in the book.

## Turning a Page

Every page of this book has a button in the lower right corner labeled "**Next →**" that you can click to move forward, and another button in the lower left corner labeled "**← Previous**" that you can click to move backward.

For example:

# CHAPTER 1: CRIME, CRIMINAL JUSTICE, AND CRIMINOLOGY

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 1.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

Welcome to CCJ230! This book was made with you, the reader in mind, and developed with an intentional diversity, equity, and inclusion framework. An important aspect of this text is the Sections on crime prevention science (CPSc) solutions in every chapter. The "CPSc solutions' ' or crime solution, is the name we use in this book to refer to specific evidence based programs, practices, and policies. Each has been scientifically verified as the best known "crime solutions" for specific "crime problems" (Crime Solutions, 2023). Previous texts have tended to discuss crime problems, while failing to properly mention available crime solutions to solve those crime problems. Crime problems or "crime is deemed by many, if not most, people to be one of the most disquieting social problems" (Treviño, 2018). However, the omission of "crime solutions" is a missed opportunity, especially for many readers who experience these crime problems in their communities and universities. It can be very empowering for those who learn about "crime problems" to also learn about "crime solutions". We therefore hope to increase the readers' awareness and support for these CPSc solutions which are now readily available everywhere.

In this chapter, we will focus on defining crime and the American criminal justice system. As we cover the different models and creation of laws within the system, we will also discuss the components that make up the system. Finally we will briefly look at the role of victims within the criminal justice process. At the end of each chapter there will be critical thinking questions. Consider these questions carefully as the purpose of these questions is to encourage students to move beyond knowing information and get to the heart of what they really think and believe.

## 1.1.1 Learning Objectives

1. Describe the differences between deviance, rule violations, and criminality.
2. Explain the differences between the interactionist, consensus, and conflict views in the creation of laws.

3. Identify the three components of the criminal justice system: Police, Courts, and Corrections.
4. Briefly identify the unique role of victims in the criminal justice process.

## 1.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- consensus view
- crime control model
- crimes against the person
- criminal justice system
- criminalized act
- Deviance
- Folkways
- Misdemeanor
- victim-impact statements
- crime prevention science (CPSc) solutions

## 1.1.3 Licenses and Attributions for Chapter Overview and Learning Objectives

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# 1.2 CRIME AND THE CRIMINAL JUSTICE SYSTEM

Many criminologists define crime as the violation of the laws of a society by a person or persons that are subject to those laws. Thus, crime as defined by the State or Federal government. Essentially, crime is what the law states. A violation of the law, stated in the statute, would make the actions criminal (Lynch et al, 2015).

For example, if someone murdered another individual in the process of stealing their car. Most people would see this as a straightforward example of crime. We often see murder and robbery as wrong and harmful to society, as well as social order. However, there are times when crime is not as straightforward, and people may hesitate to call it criminal. In some communities, it is illegal to give food to homeless street beggars. If one were to violate this law and give food to a homeless person, it would not involve harm to individuals but to the social order.

We will talk later about how we may create laws based on what can cause harm. Harm can be to the social order, physical, economic, social, emotional, environmental, and more. The **criminal justice system** is a major social institution that is tasked with controlling crime in various ways. Police are tasked with detecting crime and detaining individuals. Courts adjudicate and hand down punishments. The correction system implements punishments and/or rehabilitative efforts for people who have been found guilty of breaking the law.

# 1.3 CRIMINAL JUSTICE PROCESS

**Crime** is any unlawful act based on the government of a place. It is a social problem that all governments have in common. When the law is broken, the criminal justice system must respond to try and make society whole again. The criminal justice system comprises various agencies that try to work together to reduce and prevent crime.

Challenges may arise when agencies do not work together or try to work together inefficiently. One of the values of the United States is that local agencies will control their local community, including their justice system. But at times, this may create unexpected complications.

## 1.3.1 Licenses and Attributions for Criminal Justice Process

# 1.4 DEVIANCE, RULE VIOLATIONS, AND CRIMINALITY

From a sociological perspective, social norms are all around us and are accepted norms and behaviors that are defined within a specific group. The group you are in can change, which means the norms and behaviors that are acceptable at any given time may change.

**Deviance** is behavior that departs from or violates the established social norm. Erich Goode, an American sociologist, argues that four things must happen for something deviant to take place or exist:

1. a rule or norm must be established;
2. someone has to violate that rule or norm;
3. there must be an audience or someone, that witnesses the act and judges it to be wrong; and
4. there is likely going to be a negative reaction from that audience that can come in many forms (i.e., criticism, disapproval, punishment, and more). (Goode, 2015).

Watch this video on deviance to understand the historical context of the term deviant and learn how what is considered "deviant" can actually change over time.

## 1.4.1 Consider "Spare the Rod, Spoil the Child" Myth/ Controversy

Disciplining children is a primary function of the family. Many people believe it is acceptable, or even necessary, to spank their children. Spanking is a form of corporal punishment. Why do parents spank their children? For some parents, they spank as a form of punishment (Remember operant conditioning? It is a form of positive punishment). They are using physical means to stop a behavior from happening again. These are ideological beliefs.

Other parents might say that they've been spanked as a child, and they turned out fine. This belief reinforces the family upbringing myth. Additionally, other parents might feel pressure to discipline their child with physical force. Some parents "think" they seem "weak" if they do not spank their child. Furthermore, grandparents and other family members might encourage new parents to spank their children.

Please listen or read the National Public Radio's podcast on spanking (NPR's – "The American Academy of Pediatrics On Spanking Children: Don't Do It, Ever.")

There is a difference between physical discipline and physical abuse, but it is a fine line. If you are in favor

of spanking, would you let another family member spank your child? Would you let a stranger? Why or why not? It is not illegal to spank children in the United States, but decades of research have recommended other methods of punishment and discipline besides physical force. At the very least, it is easy for children to learn that violence (spanking) is an appropriate method to get what you want. Parents who spank their children because their child "hit" another child or sibling might want to reflect on how this may actually teach a child to use violence as a means of correcting another person's behavior.

## 1.4.2 Licenses and Attributions for Deviance, Rule Violations, and Criminality

# 1.5 SOCIAL NORMS: FOLKWAYS, MORES, AND TABOOS

Norms can be internalized, making an individual conform without external rewards or punishments. There are four types of social norms that can help inform people about behavior that is considered acceptable: folkways, mores, taboos, and law. Further, social norms can vary across time, cultures, places, and even subgroup (Goode, 2015).

## 1.5.1 Folkway

Think back to your first experiences in school, and surely you can identify some folkways and mores learned. Folkways are behaviors that are learned and shared by a social group. We often refer to this as "customs" in a group that are not morally significant, but they can be important for social acceptance (Augustyn et al, n.d.). Each group can develop different customs, but there can be customs that are embraced at a larger, societal level.

Imagine sitting in a college classroom with sixty other people around. As a professor who teaches early morning classes, it is always encouraged to eat if hungry. However, everyone must be considerate of those around them. You should not chew loudly. That would be considered rude, and it is against class "customs" to do so. To make it worse, imagine burping without saying, "excuse me." These would be folkway violations. Remember, this may not be disrespectful in all cultures, and it is very subjective.

## 1.5.2 Mores

Perhaps stricter than folkways are mores because they can lead to a violation of what we view as moral and ethical behavior. **Mores** are norms of morality, or right and wrong, and if you break one, it is often considered offensive to most people of a culture (Sumner, 1906). Sometimes a violation can also be illegal, but other times it can just be offensive. If a more is not written down in legislation, it cannot get sanctioned by the criminal justice system. Other times it can be both illegal and morally wrong.

If one attended a funeral for a family member, no one would expect to see someone in bright pink clothes or a bikini. Most people are encouraged to wear black clothing out of respect. There may not be specific rules or laws that state expected attire to wear to a funeral. It would be against what most of American society views as right and wrong to attend a funeral in a bikini or be in hot pink leotards. It would be disrespectful to the

individual people who are mourning. Both mores and folkways are taught through socialization with various sources: family, friends, peers, schools, and more.

## 1.5.3 Taboo

A **taboo** goes a step further and is a very negative norm that should not get violated because people will be upset. Additionally, one may get excluded from the group or society. The nature and the degree of the taboo are in the mores (Sumner, 1906).

## 1.5.4 Licenses and Attributions for Social Norms: Folkways, Mores, and Taboos

# 1.6 INTERACTIONIST VIEW

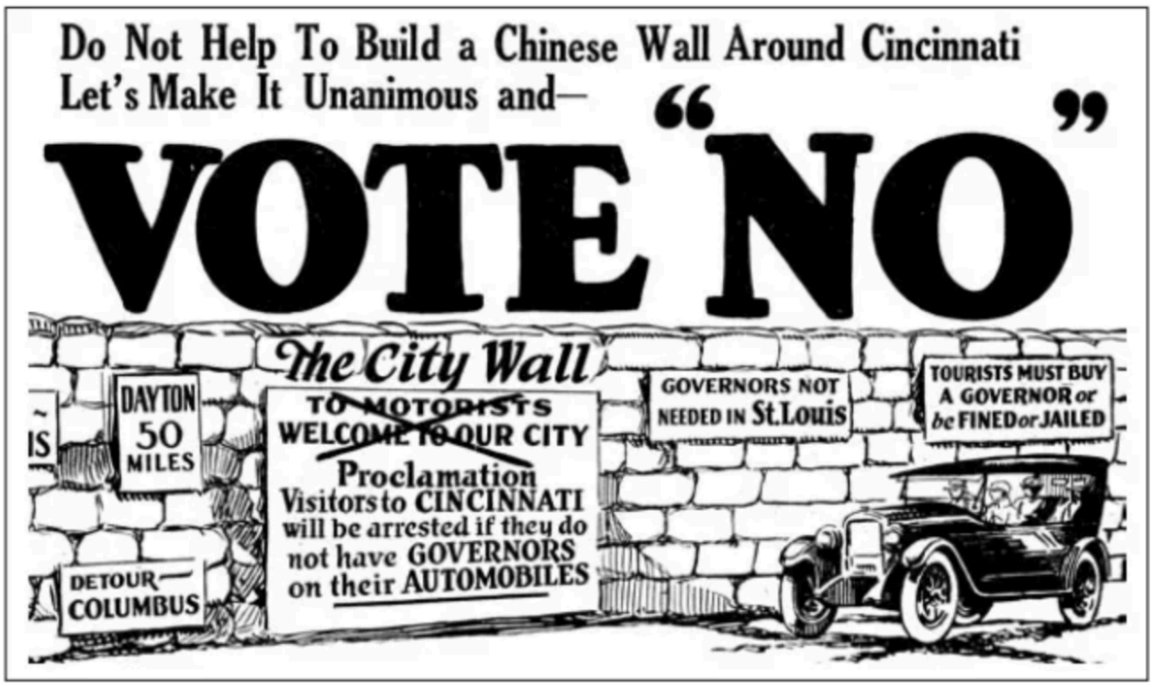
Typically, in our society, a deviant act becomes a criminal act that can be prohibited and punished under criminal law when a crime is deemed socially harmful or dangerous to society (Goode, 2016). In criminology, we often cover a wide array of harms that can include economic, physical, emotional, social, and environmental. The critical thing to note is that we do not want to create laws against everything in society, so we must draw a line between what we consider deviant and unusual versus dangerous and criminal. For example, some people do not support tattoos and argue they are deviant, but it would be challenging to suggest they are dangerous to individuals and society. However, thirty years ago, it may have been acceptable to put into dress code rules guiding our physical conduct in the workspace that people may not have visible tattoos and may not be as vocal as they would be today. Today, tattoos may be seen as more normalized and acceptable. This could lead to many upset employees saying those are unfair rules in their work of employment if they are against the dress code.

We have a basis for understanding the differences between deviance, rule violations, and criminal law violations. Therefore we can now discuss who determines if a law becomes criminalized or decriminalized in the United States. A **criminalized act** is when a deviant act becomes criminal, and law is written, with defined sanctions, that can be enforced by the criminal justice system (Farmer, 2016).

## 1.6.1 Jaywalking (Example)

In the 1920s, auto groups aggressively fought to redefine who owned the city street. As cars began to spread to the streets of America, the number of pedestrians killed by cars skyrocketed. At this time, the public was outraged that elderly and children were dying in what was viewed as 'pleasure cars' because, at this time, our society was structured very differently and did not rely on vehicles. Judges often ruled that the car was to blame in most pedestrian deaths and drivers were charged with manslaughter, regardless of the circumstances. In 1923, 42,000 Cincinnati residents signed a petition for a ballot initiative that would require all cars to have a governor limiting them to 25 miles per hour, which upset auto dealers and spurred them

into action to send letters out to vote against the measure.

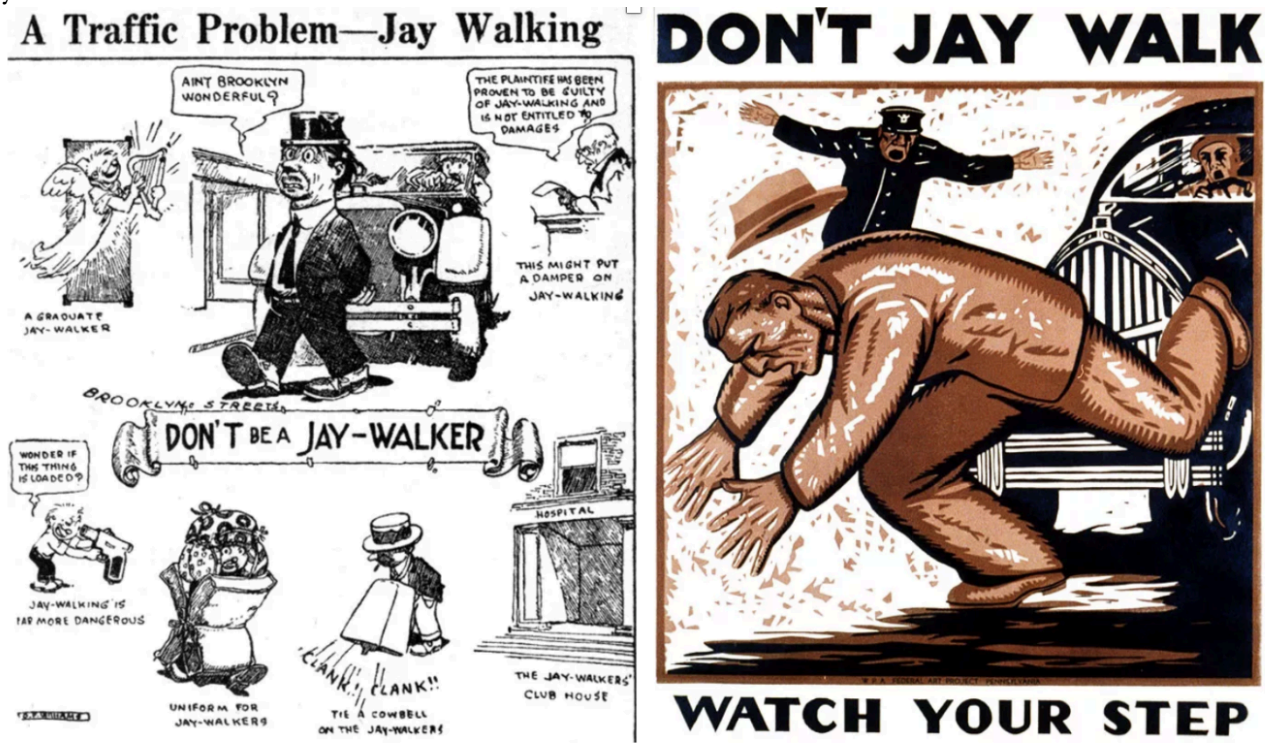



A 1923 ad in the Cincinnati Post, taken out by a coalition of auto dealers. (Cincinnati Post)

Figure 1.1. Vote No.

It was at this point that automakers, dealers, and others worked to redefine the street so that pedestrians, not cars, would be restricted. Today, these law changes can be seen in our expectations for pedestrians to

only cross at crosswalks.




Government safety posters ridicule jaywalking in the 1920s and '30s. (National Safety Council/Library of Congress)

Figure 1.2. Don't Jaywalk.

Watch this video to understand the derogatory origins of jaywalking which explains how the auto industry created a criminal act through propaganda.

## 1.6.2 Licenses and Attributions for Interactionist View

Figure 1.1. Vote No a 1923 ad in the Cincinnati Post is in the Public Domain.

Figure 1.2. Don't Jaywalk a government poster from 1928 is in the Public Domain.

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# 1.7 CONSENSUS VIEW AND DECRIMINALIZING LAWS

Another view of how laws become created is the consensus view. It implies consensus (agreement) among citizens on what should and should not be illegal. This idea states that all groups come together, regardless of social class, race, age, gender, and more, to determine what should be illegal. This view also suggests that criminal law is a function of beliefs, morality, and rules that apply equally to all members of society (Dawe, 1970).

## 1.7.1 Marijuana Legalization (Example)

One example of decriminalization that came from a vote of consensus in states like Colorado, Washington, and Oregon was the legalization of recreational marijuana. Recently, Texas has shown signs of potentially decriminalizing marijuana and seeking reform laws. According to the latest University of Texas/Texas Tribune poll, more than half of the state's registered voters support marijuana legalization in the state (a consensus). But only 16 percent said possession of marijuana should remain illegal under any circumstances. Marijuana is certainly a great example of decriminalization, whether it is for recreational or medicinal purposes. (University of Texas/Texas Tribune Poll, 2018). Read the full article Led by Democrats and young adults, most Texas voters want to legalize marijuana, UT/TT Poll finds for more information on Texas proposing changes. Some of the results from the poll can be seen in figure 1.4.

## 1.7.1.1 Should Marijuana be legal in Texas? (Graph)

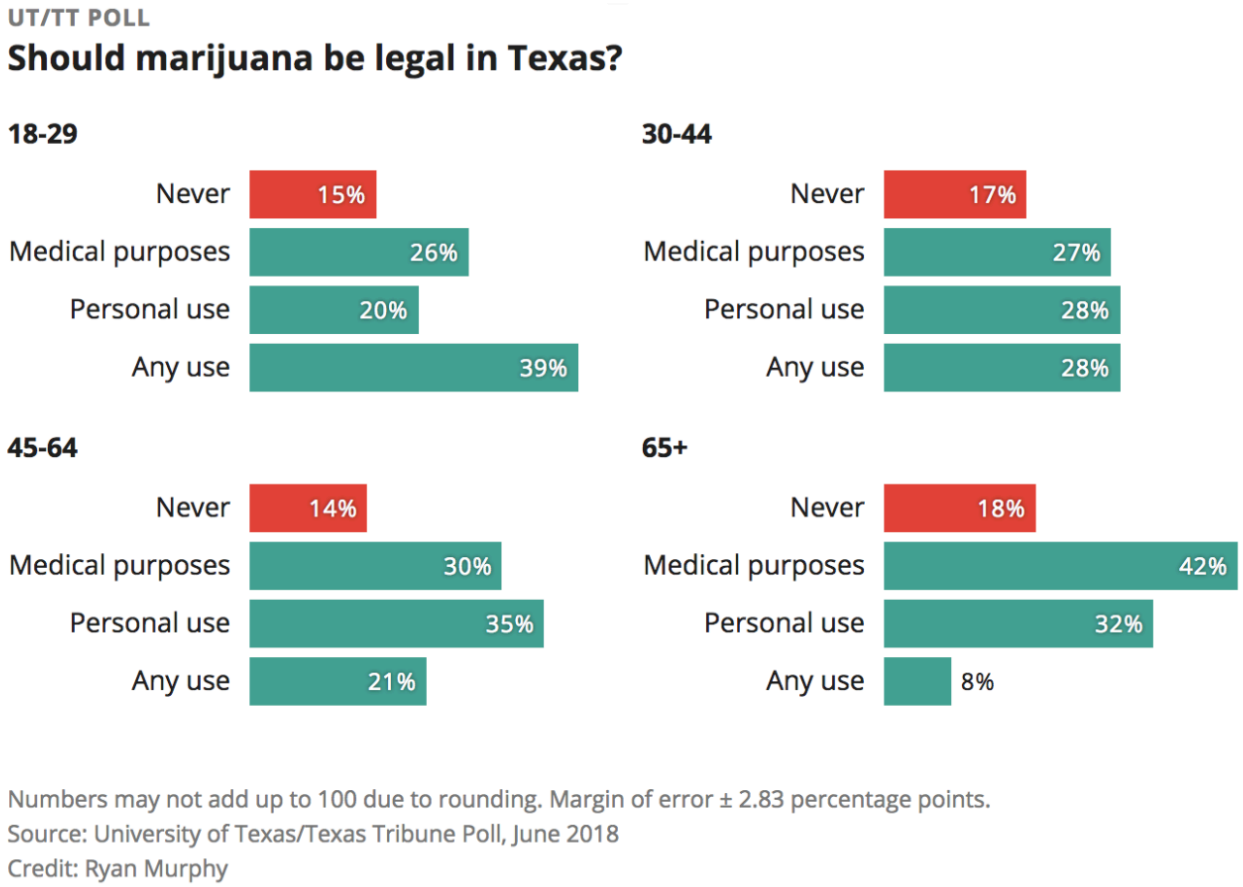


Figure 1.4. A bar graph from the University of Texas/Texas Tribune Poll, June 2018 showing

## 1.7.2 Adam Ruins Everything: The Sinister Reason Weed Is Illegal (Video)

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=180#oembed-1*

Figure 1.5. Watch the YouTube Video "Adam Ruins Everything – The Sinister Reason Weed is Illegal [Youtube Video]."

## 1.7.3 Licenses and Attributions for Consensus View and Decriminalizing Laws

Figure 1.4. Should marijuana be legal in Texas? by Ryan Murphy with the Texas Tribune statistical research funded by PBS and NPR is in the Public Domain.

Figure 1.5. "Adam Ruins Everything – The Sinister Reason Weed is Illegal [Youtube Video]."

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# 1.8 CONFLICT VIEW

A third perspective of how we define crime or create laws is the conflict view. **Conflict view** sees society as a collection of diverse groups that can include owners, workers, wealthy, poor, students, professionals, younger, older, and more. This view recognizes that the creation of laws is unequal and may not have consensus like in the example discussed previously (Hawkins, 1987).

The conflict view suggests that groups are often in constant conflict with one another. Unlike the consensus perspective, the conflict view would suggest that the crime definitions are controlled by those with wealth, power, and social position in society. Essentially, laws are made by a select group in society, and the laws protect the 'haves.' Criminality shapes the values of the ruling class and is not of 'moral consensus' (Boundless, 2016). There are many examples we use in the criminal justice field that demonstrate the conflict view in action.

## 1.8.1 Edwin Sutherland: White Collar Crime (Example)

Edwin Sutherland, a sociologist, first introduced white-collar crime in 1939. He later published articles and books on the topic (Sutherland, 1940). He was concerned with the criminological community's preoccupation with low-status offenders and "street crimes" and the lack of attention given to crimes by people in higher status occupations.

Sutherland wrote a book, *White Collar Crime*, that sparked lots of debate (Sutherland, 1949). There is still very little focus on white-collar crime and even less enforcement of it in the United States. From the conflict view, this would be because white-collar crimes are committed by the rich and powerful.

## 1.8.2 Licenses and Attributions for Conflict View

# 1.9 THE POLICE, COURTS, AND CORRECTIONS

As previously stated, the criminal justice system is part of every level of government including local, state, and federal governments. The agencies associated with these levels can work together or work separately. In the previous example about marijuana legalization, the federal government has not legalized recreational or medicinal marijuana, but some states have. States have disagreed with federal law, but federal law essentially has the final say. If the federal government wanted to punish states for selling marijuana they indeed could since it remains a Schedule I drug.

In this book, we have dedicated at least one chapter to explore each of the three main components of the criminal justice system. They include: police, courts, and corrections. This section will briefly introduce the police, courts, and correctional systems and how they often function with each other. Subsequent chapters will further focus on how they each operate as entities.

## 1.9.1 Police

The first point of contact with the criminal justice system for most individuals is the police or law enforcement. We often refer to them as first responders. They are the individuals who enforce laws, respond to calls, and may apprehend the offender. Other times, police may witness a crime while on patrol. They make initial contact, investigate crimes, apprehend offenders/potential offenders (arrest), and then book them in the local jail. It is not the purview of law enforcement to determine guilt or innocence, hand down punishments, or implement the punishment (Fuller, 2019).

During an investigation, police officers may need to obtain a search warrant. The Fourth Amendment of the Constitution requires that police officers have probable cause before they search a person's home, their clothing, car, or other property. There are some exceptions which will be explored later on. In order to ensure due process, searches usually require a search warrant, issued by a "neutral and detached" judge. Arrests also require probable cause and often occur after police have gotten an arrest warrant from a judge. Depending on the specific facts of the case, the first step may be an arrest (Investigation, 2014). In figure 1.6. police officers can be seen on stand-by.


Figure 1.6. A photograph of Police on Standby

## 1.9.2 Courts

The second phase of the criminal justice system is the courts. The courts consist of several different officers and volunteers. They include judges, prosecutors, defense attorneys, and juries. The primary role of the courts is to determine whether a suspected offender should be charged with a crime. If so, the court will also decide what charges should exist, decide if the suspect is guilty, and impose punishment if necessary. The convicted person or party may choose to appeal to a higher court to try to overturn their conviction. The United States Supreme Court is the highest court in the American court system, and they make the final decision on cases before them. The Court is not required to hear every case and they only take a few cases each year (Appeal, 2014). An image of the U.S Supreme Court can be seen in figure 1.6.

Figure 1.7. The U.S. Supreme Court.

Figure 1.8. Photography of Brendan Dassey, a juvenile charged with murder.

Brendan Dassey, pictured in figure 1.7 and featured in the Netflix documentary, *The Making of a Murderer*

in 2015, was charged with murder as a juvenile. Dassey's 2007 conviction was questionable because his videotaped confession with police was problematic. Dassey was 16 without a lawyer or parent present during his confession. He appeared scared on camera, and his lawyers say he had a low IQ making him susceptible to suggestion. Dassey was found guilty with his uncle Steven Avery in the 2005 murder of Teresa Halbach, a 25-year-old photographer in Manitowoc, Wisconsin. The United States Supreme Court declined to hear his appeal and did not provide a reason why (Victor, 2018).

Many people have argued that the Public Defender system is inefficient and does not adequately address public defense needs. Watch this video to learn more.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=182#oembed-1*

Figure 1.9. "Adam Ruins Everything – Why the Public Defender System is So Screwed Up [Youtube Video] [Youtube Video]."

## 1.9.3 Corrections

Once a defendant has been found guilty, the correctional system helps carry out the punishment that is ordered by the court. The defendant may be ordered to pay financial restitution or a fine and not have to serve time incarcerated. In other cases, an offender could get sentenced to a period of incarceration, at either a jail or prison.

Offenders that get sentenced to less than one year will serve their sentence in a local jail, but longer sentences will serve time in prison and may be held in a cell as pictured in figure 1.8. However, offenders can also get sentenced to community-based supervision, such as probation. An essential part of corrections is helping former offenders with re-entry or reintegration into society. Proper re-entry may involve parole, community-based supervision, employment, education, and other necessary rehabilitation activities (Ray, 2021).

Figure 1.10. Oregon facility cell.

## 1.9.4 Licenses and Attributions for The Police, Courts, and Corrections

Figure 1.6. Police on Standby by John Griffin / Philadelphia Weekly via Philadelphia Weekly.

Figure 1.7. The U.S. Supreme Court Joe Ravi is licensed under CC-BY-SA 3.0.

Figure 1.8. Brendan Dassey by Eric Young / Herald Times Reporter via "AP Images"

Figure 1.9. "Adam Ruins Everything – Why the Public Defender System is So Screwed Up [Youtube Video] [Youtube Video]."

Figure 1.10. Oregon Facility Cell by Motoya Nakamura / The Oregonian via "pacific-northwest-news."

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# 1.10 THE CRIME CONTROL AND DUE PROCESS MODELS

The criminal justice system can be quite complicated, especially in the attempt to punish offenders for wrongs committed. Society expects the system to be efficient and quick, but the protection of individual rights and justice being fairly delivered takes time. Ultimately, the balance of these goals is ideal, but it can be challenging to control crime and quickly punish offenders, while also ensuring constitutional rights are not infringed upon while delivering justice.

In the 1960s, legal scholar Herbert L. Packer created models to describe exceeding expectations of the criminal justice system. These two models can be competing ideologies in criminal justice, but we will discuss how these models can be merged or balanced to work together. The first tension between these models is often the values they place as most important in the criminal justice system, the crime control model, and the due process model (Packer, 1964).

The **crime control model** focuses on having an efficient system, with the most important function being to suppress and control crime to ensure that society is safe and there is public order. Under this model, controlling crime is more important to individual freedom. This model is a more conservative perspective. In order to protect society and make sure individuals feel free from the threat of crime, the crime control model would advocate for swift and severe punishment for offenders. Under this model, the justice process may resemble prosecutors charging an 'assembly-line': law enforcement suspects apprehend suspects; the courts determine guilt; and guilty people receive appropriate, and severe, punishments through the correctional system (Roach, 1999). The crime control model may be more likely to take a plea bargain because trials may take too much time and slow down the process.

The **due process model** focuses on having a just and fair criminal justice system for all and a system that does not infringe upon constitutional rights. Further, this model would argue that the system should be more like an 'obstacle course,' rather than an 'assembly line.' The protection of individual rights and freedoms is of utmost importance (Yerkes, 1969).

## 1.10.1 Licenses and Attributions for The Crime

## Control and Due Process Models

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# 1.11 HOW CASES MOVE THROUGH THE SYSTEM

The criminal justice process is not what gets portrayed on television, and most cases do not go to trial or result in a prison sentence. Part of the problem is that our current system is overloaded and ensuring due process and crime control can be more challenging than one thinks. In order to effectively process cases through the criminal justice system, discretion is an important tool for police, prosecutors, judges, and correctional officials. Discretion provides freedom to make decisions, specifically it is the power to make decisions on issues within legal guidelines. Many people see discretion as the most powerful tool of the criminal justice system (Kessler & Piehl, 1998) (Gottfredson, M., & Gottfredson, D., 1988).

## 1.11.1 Discretion Exercise Box

Police officer discretion refers to the power or authority of a police officer to make decisions regarding the best course of action to take in a given situation. This discretion allows police officers to use their judgment in deciding whether or not to make an arrest, issue a citation, or use force.

For example, as a new Nigerian foreign student in America, I once tried to kill a squirrel in front of my college grounds. The campus police were immediately called by witnesses who became very angry with me. Within a few minutes, the police officer came up and asked why I was chasing the squirrel. I told him that I wanted the squirrel for dinner. After he explained that my behavior was illegal, I apologized and promised to never hunt again without a permit. He gave me a verbal warning and kindly escorted me to class, without issuing a ticket. In this case, the officer used his discretion to determine the appropriate response to the situation based on his assessment of the circumstance. Just like in many professions, the criminal justice employees are given the discretionary authority to make decisions.

Describe a time when you, a close friend, or family member was impacted by a police officer's use of discretion. How significant was the financial impact of the decision such as detention, arrest, ticketing, citation, or warning?

**Ethics** refers to the understanding of what constitutes good or bad behavior and helps to guide our actions. Ethics are important in the criminal justice system because people working in the system get authority, power, and discretion by the government (Sellers, 2015).

# 1.11.2 Funnel Effect (Example)

The "funnel effect" is one way to describe how cases move through the U.S. justice system. The funnel effect in the criminal justice system refers to the process by which the number of cases gradually decreases as they move through the system. This can occur for a variety of reasons, such as police not knowing, plea bargaining, diversion programs, and dismissals. Here is an example to explain the funnel effect in the criminal justice system:

Suppose 20 people commit the crime of selling drugs. Of the 20, ten of the incidents are unknown to police, the other ten a police officer arrests the individuals for delivery of a controlled/illegal substance. All ten of the arrested individuals are charged and brought to court. However, as the cases move through the criminal justice system, the number of cases begins to decrease.

First, the prosecutor may choose to drop charges against one individual because they do not have enough evidence to secure a conviction. This leaves nine cases in the system. Next, the defense attorneys for three individuals may negotiate plea bargains with the prosecutor, agreeing to plead guilty to a lesser offense in exchange for a reduced sentence. This leaves six cases in the system. Then, the judge may refer two individuals to a diversion program, which is an alternative to traditional prosecution that focuses on rehabilitation rather than punishment. This leaves four cases in the system.

Finally, after a trial, one individual is found not guilty, while the other three are convicted and sentenced to prison. This leaves only three cases that resulted in a conviction and sentencing. Thus, the initial 20 criminal actions have been whittled down to only three that resulted in a conviction and sentencing, illustrating the funnel effect Samuel Walker (2006) referred to as the criminal justice system. It is referred to as this because most cases do not go through all steps in the system, some because of discretion, and a large portion because they are unknown to police. The question remains: is the criminal justice system effective at catching, prosecuting, convicting, and punishing offenders? Sometimes it's important for the system to be able to exercise discretion but too much can also be wrong, finding that balance is very important.

Sometimes a judge may use discretion to release a domestic violence offender to community probation when an officer did not have that discretion at the time of the incident and was required to make the arrest. Some offenders may be at a higher risk of reoffending and thus this is considered when determining next steps. We will discuss this later when talking about using evidence-based practices in the criminal justice system.

## 1.11.3 Licenses and Attributions for How Cases Move Through the System

# 1.12 MEDIA COVERAGE OF CRIMES

My grandfather writes and sends me a daily email. This morning he discusses the violent times we are all living in and how murder is everywhere. He discusses how he worries about the future of his family members because the United States is a dangerous place to live. He often provides explanations for this 'increase in crime' that I, as a criminologist, know to be untrue. Sometimes he will say kids are violent because of social media or video games, other times he will blame it on immigrants. Regardless, my grandfather lives in fear. He is fearful of someone breaking into his home, and at the age of 80, had a security screen installed in their nice suburban area in Colorado. He avoids downtown Denver because of his belief it is overrun by 'gang bangers.'

However, where could all these ideas come from for him? My grandfather has never worked in the criminal justice system, he never studied it, he did not attend college but has such strong thoughts about policies that need to be enacted, problems with society, and he often states them as a fact. The answer: THE NEWS. Perhaps watching too much television can cause an overestimation of rates of crime both in reality and in the media (Hetsroni & Tukachinsky, 2006).

Media is not a terrible thing that is conspiring to ruin our minds. It can be very beneficial and can help share information, but we need to be aware of the downfalls of media and even which media we choose to watch. Many major news outlets are vetted resources for good news coverage but we also need to be aware of bias present in news converge and remember that "if it bleeds it leads" meaning that the news often reports crime because people are interested in watching "exciting" news coverage. Research has shown that entertainment and news media create an image that we are living in a dangerous world (Jewkes, 2015). It can be easy to become fearful after watching too much news if we let ourselves fall trap to losing the facts. "Factfulness recognizes when we get negative news, and remembering that information about bad events is much more likely to reach us. When things are getting better, we often do not hear about them, which can lead to a systematically too-negative impression of the world around us, which is very stressful" (Rosling, 2018).

Public knowledge of crime and justice is derived largely from the media. Research has examined the impact of media consumption on the fear of crime, punitive attitudes, and perceived police effectiveness. Studies have found that the more crime-related media an individual consumes, the more fearful of crime they are (Dowler, 2003) (Kort-Butler & Sittner-Hartshorn, 2011).

However, we also are attracted to specific types of crime and victims when we choose to consume media. In other words, the media is aware of our crime preferences and will report on those more. Sociology professor Barry Glassner describes what he calls the 'ideal crime story' for journalists to report. He notes that society likes to read about innocent victims, likable people, and the perpetrator needs to be scary and uncaring about the crime (2009).

Our society is fascinated with crime and justice, where we spend hours watching films, reading books,

television shows and social media that keep us constantly engaged in crime "talk." Perhaps what we do not always realize is that the mass media plays an important role in the construction of criminals, criminality, and the criminal justice system. Our understanding and perceptions of victims, criminals, deviants, and police are largely determined by their portrayal in the mass media (Dowler, 2003).

The majority of public knowledge about crime and justice is derived from the media. (Roberts & Doob, 1986) (Surette, 1990) (Kappeler & Potter, 2018). Gallup polls are a type of public opinion poll conducted by the Gallup Organization, one of the world's leading research-based, global performance-management consulting companies. These polls are used to gather information about people's attitudes, opinions, beliefs, and behaviors on a wide range of social, economic, and political issues. Gallup polls are conducted through telephone interviews, online surveys, and face-to-face interviews, and they typically involve asking a random sample of individuals a series of questions about a specific topic. The results of the Gallup polls are often used by governments, businesses, and the media to inform their decision-making processes, and they are considered to be one of the most reliable and respected sources of public opinion data. Since Gallup polls began asking whether crime had increased in 1989, a majority of Americans have usually said that crime increased every year. . There is only one year where people did not think it did, which followed 9/11 (Swift, 2016).

Despite decreases in U.S. violent and property crime rates since 2008, most voters say crime has gotten worse during that span. Mostly, Americans' perceptions of crime are often at odds with the data (Gramlich, 2016). Research has also shown that there are stark differences across party lines. Specifically, almost eight-in-ten voters who supported President Donald Trump (78%) said this, as did 37% of backers of Democrat Hillary Clinton. Just 5% of pro-Trump voters and a quarter of Clinton supporters said crime has gotten better since 2008, according to the survey of 3,788 adults (Gramlich, 2016). All of this is at odds with official data reports that will get discussed in more detail in the coming chapters. Since this is the case, why do people have this misperception about crime and criminality? Where do these myths develop?

The media plays an important role in the perception of crime, the American public's understanding of how the criminal justice system operates, and policies Americans are willing to support for reform. Public opinion gets connected with pressure to change crime policies (Toch & Maguire, 2014) especially when there is a high fear of a certain crime (Dowler, 2003). The media can provide the public with an estimation of how much crime there is, the types of crime that are common, trends in crime rates, and the daily operations of the criminal justice system. However, the media often does not portray an accurate portrayal of crime and criminal justice Kappeler & Potter, 2018).

## 1.12.1 Licenses and Attributions for Media Coverage

## of Crimes

"1.11. Media Coverage of Crimes" by Sam Arungwa is adapted from "1.10. Media Coverage of Crimes" by Shanell Sanchez in *SOU-CCJ230 Introduction to the American Criminal Justice System* by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, and Shanell Sanchez, licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

# 1.13 WEDDING CAKE MODEL OF JUSTICE

The Wedding Cake Model Theory of justice developed by Samuel Walker attempts to demonstrate how cases move through the system and may be treated differently by media and society. This model is unique because it differentiates types of crimes by how serious the offense is and the victim and offender relationship (Walker, 2006). It is referred to as a wedding cake because of the different tiers or layers on a cake, with layers and the bottom are the largest with the top being the smallest. This section will explain what each layer would resemble in the criminal justice system.


Figure 1.11. The Wedding-Cake Model of Criminal Justice.

We are going to work our way from the bottom of the cake, or the most significant piece, to the smallest piece on top. In the criminal justice system, the bottom layer of the model would represent the most significant number of cases handled by the system, which often includes misdemeanors and traffic violations. This layer may also include first-time offenders of less severe crimes (Walker, 2006). **Misdemeanors** are the least

dangerous types of crimes which can include, depending on the location, public intoxication, prostitution, graffiti, among others. Imagine getting caught tagging a park wall and never being caught for a crime before, which is where this crime would fall. These are often the crimes most of us have committed, but also most of us may not have been caught or punished. A misdemeanor may result in a monetary fine, rather than jail time.

## 1.13.1 Licenses and Attributions for Wedding Cake Model of Justice

# 1.14 STREET CRIME, CORPORATE CRIME, AND WHITE-COLLAR CRIME

As previously demonstrated, crime can be broadly defined, but the two most common types of crime discussed are, street crime and corporate or white-collar crime. Most people are familiar with street crime since it is the most commonly discussed amongst politicians, media outlets, and members of society. Every year the Justice Department puts out an annual report titled "Crime in the United States" which means street crime but has yet to publish an annual Corporate Crime in the United States report. Most Americans will find little to nothing on price-fixing, corporate fraud, pollution, or public corruption.

## 1.14.1 Street Crime

Street crime is often broken up into different types and can include acts that occur in both public and private spaces, as well as interpersonal violence and property crime. According to the Bureau of Justice (BJS), street crime can include violent crime such as homicide, rape, assault, robbery, and arson. Street crime also includes property crimes such as larceny, arson, breaking-and-entering, burglary, and motor vehicle theft. The BJS also collects data on drug crime, hate crimes, and human trafficking, which often fall under the larger umbrella of street crime (BJS, n.d.).

Fear of street crime is real in American society; however, street crime may not be as rampant as many think. The BJS noted an increase from 0.98% in 2015 to 1.14% in 2017, but note the small percentage overall. From 2015 to 2017, the percentage of persons who were victims of violent crime increased among males, whites, those ages 25 to 34, those age 50 and over, and those who had never married. There are clear risk factors that can be taken into account when attempting to develop policy, which discussed in subsequent chapters of the book. There were also areas where the BJS noted a downward trend in crime, such as the decline in the rate of overall property crime from 118.6 victimizations per 1,000 households to 108.4, while the burglary rate fell from 23.7 to 20.6 (Morgan & Truman, 2018).

Polls have consistently found that people are worried about crime in the United States, specifically street crime. Riffkin (2014) found that people worry about various crimes such as homes getting burglarized, the victim of terrorism, murdered, the victim of a hate crime, and being sexually assaulted as seen in the Gallup Polls in figure 1.10. For most people in society, people can go about their daily lives without the fear of being a victim of street crime. Street crime is important to take seriously, but it is reassuring to note that it is unlikely to happen to most people. The conversation should happen around why fears are high, especially amongst those less likely to be a victim. For example, elderly citizens have the greatest fear of street crime, yet they are the group

least likely to experience it. Whereas younger people, especially young men, are less likely to fear crime and are the most likely to experience it (Doerner & Lab, 2008).

## 1.14.1.1 Gallup Polls Crime Worries in the U.S. 2014 Table

| **Crime worries: How often do you worry about the following things – frequently, occasionally, rarely, or never?** | **% Frequently or occasionally worry** |
|---|---|
| Having the credit card information you have used at stores stolen by computer hackers | 69 |
| Having your computer or smartphone hacked and the information stolen by unauthorized persons | 62 |
| Your home being burglarized when you are not there | 45 |
| Having your car stolen or broken into | 42 |
| Having a school-aged child physically harmed attending school | 31 |
| Getting mugged | 31 |
| Your home being burglarized when you are there | 30 |
| Being the victim of terrorism | 28 |
| Being attacked while driving your car | 20 |
| Being a victim of a hate crime | 18 |
| Being sexually assaulted | 18 |
| Getting murdered | 18 |
| Being assaulted/killed by a coworker/employee where you work | 7 |

Because Americans are often fearful of street crime, for various reasons, resources are devoted to prevention and protecting the public. The United States spends roughly $265.2 billion dollars a year and employs more than one million police officers and more than 490,000 judicial and legal personnel on street crime

(Kyckelhahn, 2012). The Uniform Crime Reports (UCR) estimated in 2015 that financial losses from property crime at $14.3 billion in 2014 (FBI, 2015), but keep that number in mind for a minute. Although it is crucial to recognize that street crime does occur, and it impacts certain groups disproportionately more than others, it is also important to recognize other types of crime less commonly discussed. In fact, the BJS does not have a link that directs people to the next two types of crime discussed when on their main page of crime type.

## 1.14.2 Corporate Crime

When most people think of crime, they think of acts of interpersonal violence or property crime. The typical image of a criminal is not someone who is considered a 'pillar' in society, especially one who may have an excellent career, donate to charity, and devote time to the community (Fuller, 2019). Corporate crime is an offense committed by a corporation's officers who pursue illegal activity (various kinds) in the name of the corporation. The goal is to make money for the business and run a profitable business, and the representatives of the business. Corporate crime may also include environmental crime if a corporation damages the environment to earn a profit (Fuller, 2019). As C. Wright Mills (1952) once stated, "corporate crime creates higher immorality" in U.S. society (Horowitz, 2008). Corporate crime inflicts far more damage on society than all street crime combined, by death, injury, or dollars lost.

BNP Paribas pled guilty to violating trade sanctions and was forced to pay $8.9 billion, which exceeds the yearly out of pocket yearly costs of all the burglaries and robberies in the United States ($4.5 billion in 2014 according to the FBI) (DOJ, 2014).

In addition to financial loss, corporate crime can be violent. In 2016, the FBI estimated the number of murders in the nation to be 17,250. Compare that to the 54,000 Americans who die every year on the job or from preventable occupational diseases such as black lung and asbestosis and the additional tens of thousands of other Americans who fall victim every year to the silent violence of pollution, contaminated foods, hazardous consumer products, and hospital malpractice (Mokhiber, 1989). A vast majority of these deaths are often the result of criminal recklessness. Americans are rarely made aware of them, and they rarely make their way through the criminal justice system.

Sometimes the terms corporate and white-collar crime are used interchangeably, but there are important distinctions between the two terms (Kleck, 1982).

## 1.14.3 White-Collar Crime

In contrast to corporate crime, white-collar crime usually involves employees harming the individual corporation. Sometimes corporate and white-collar crime goes hand in hand, but not always. An example of white-collar crime would be Bernard Madoff , who defrauded his investors of approximately $20 billion.

Instead of trading stocks with his clients' money, Madoff had for years been operating an enormous Ponzi scheme, paying off old investors with money he got from new ones.

By late 2008, with the economy in free fall, Madoff could no longer attract new money, and the scheme collapsed, which resulted in hundreds of investors, including numerous charities, collapsing. As of today, a court-appointed trustee has managed to recover about $13 billion, which is most of the money Madoff's investors put into his funds. The trustee sold off Madoff family's assets, including their homes in the Hamptons, Manhattan, and France and a 55-foot yacht named Bull (Zaroli, 2018).

## 1.14.4 Licenses and Attributions for Street Crime, Corporate Crime, and White-Collar Crime

Crime Worries in the U.S. 2014 Table data taken from Crime Worries in U.S. by GALLUP.

# 1.15 DIFFERENT TYPES OF CRIMES AND OFFENSES

Once an act gets identified as a crime, the law then attempts to define crime in a way that can distinguish the harm done and the severity of the crime. There are different types of crime and two different types of offenses that will get discussed. In the previous section, street crime, corporate crime, and white-collar crime get discussed. However, more broadly, there are crimes against the person, crimes against property, crimes against public order, and drug crime that typically fall under street crime.

## 1.15.1 Crimes Against the Person

**Crimes against the person** are often considered the most serious and may include homicide, rape, assault, kidnapping, and intimate partner violence. Each of these crimes can carry a different penalty based upon the seriousness of the crime. For example, because Ted Bundy murdered women, rather than 'just' assaulted, Bundy was eligible for capital punishment in the U.S. The state defines the crime and the punishment.

## 1.15.2 Crimes Against Property

Property crimes are widespread and seen as less severe than crimes against the person. Property crimes may include larceny, burglary, arson, and trespassing. There are varying degrees of liability depending on the circumstances of the case.

## 1.15.3 Crimes Against Public Order

Public order crimes may not harm other people or property but impact social order. Think back to the example of feeding the homeless in communities where that is illegal. Other typical examples would be disorderly conduct, loitering, and driving under the influence. The victim is society, and the goal is to maintain social order. Many debate whether certain crimes against public order are more or less severe, but get inappropriately punished. For example, driving while intoxicated can take lives and may be more severe. However, the law will charge for vehicular manslaughter or murder if life gets taken because someone drove drunk.

## 1.15.4 Drug Offenses

Most often drug offenses can be seen as a crime against public order, but the United States reactionary "war on drugs." has shifted the resources of the CJ system. Some examples of drug offenses can be possession of illegal drugs, being high, and selling. Punishment will vary based on the drug, how much of the drug is in possession or sold, and where it gets sold.

## 1.15.5 Misdemeanor

A misdemeanor is considered a minor criminal offense that is punishable by a fine and jail time for up to one year.

## 1.15.6 Felony

A felony is an offense that is punishable by a sentence of more than one year in state or federal prison and sometimes by death.

Many different types of crimes and punishments can be handed out by the criminal justice system. Each state determines what and how this will operate if discussing state-level crime. Other crimes are defined in federal statutes and can get punished at the federal level such as treason. Some crimes are seen as more severe, especially if they are violent in nature or harm people. Others may get seen as 'victimless' or behavior that gets seen as consensual, yet undesirable to those making the laws. This general overview demonstrates the complexity of defining crime and understanding the role society has in shaping these perceptions.

## 1.15.7 Licenses and Attributions for Different Types of Crimes and Offenses

# 1.16 VICTIMS AND VICTIM TYPOLOGIES

It was not until 1660 that the word "victim" was first used in the sense of a person who is hurt, tortured or killed by another. A victim of crime did not exist until well into the 17th century (Hagemann et al, 2010). Why were victims ignored for so long? A victim is an integral part of the system, in fact, some say without a victim there would be no need for the CJ system. Victims are the people or communities that suffer physical, emotional, or financial harm as a result of a crime. Over the years different typologies of victims have been created to demonstrate the unique role or position of victims in relation to crime. Typically, when people hear someone has been a victim of a crime we often think of them as completely innocent. In fact, a lot of new legislation and policy changes created to provide the victim a greater role in the criminal justice system often perpetuates the stereotypical view of the victim as completely innocent (Fuller, 2019).

## 1.16.1 Typologies of Crime Victims

Theorists have developed victim typologies that are concerned primarily with the situational and personal characteristics of victims and the relationship between victims and offenders. Benjamin Mendelsohn was one of the first criminologists to create a victim typology, in the 1950s, but was not without controversy. Below is a table of Mendelsohn's typology of crime victims, emphasis was placed on the fact that it is most victims' attitude which leads to their victimization (1976).

# 1.16.2 Mendelshon's Typology of Crime Victims (Definitions Chart)

| Term | Definition |
|---|---|
| Innocent victim | Someone who did not contribute to the victimization and is in the wrong place at the wrong time. This is the victim we most often envision when thinking about enhancing victim rights. |
| The victim with minor guilt | Does not actively participate in their victimization but contributes to it to some minor degree, such as frequenting high-crime areas. This would be a person that continues to go to a bar that is known for nightly assault. |
| The guilty victim, guilty offender | Victim and offender may have engaged in criminal activity together. This would be two people attempting to steal a car, rob a store, sell drugs, etc. |
| The guilty offender, guiltier victim | The victim may have been the primary attacker, but the offender won the fight. |
| Guilty victim | The victim instigated a conflict but was killed in self-defense. An example would be an abused woman killing her partner while he is abusing her. |
| Imaginary victim | Some people pretend to be victims and are not. This would be someone falsifying reports. |

Other criminologists developed similar typologies but included other elements. For example, Hans Von Hentig expanded his typology from situational factors that Mendelsohn looked at and considered the role of biological, sociological and psychological factors as seen in the table below. For example, Von Henting said the young, elderly, and women are more susceptible to victimization because of things such as physical vulnerabilities. It is important to recognize that some crimes, and ultimately crime victims, are excluded in these typologies such as white-collar and corporate crime (Burgess, 2013) (Von Hentig, 1948).

# 1.16.3 Von Hentig's Typology (Definitions Chart)

| Term | Definition |
|---|---|
| Young people | Immature, under adult supervision, lack physical strength and lack the mental and emotional maturity to recognize victimization |
| Females/elderly | Lack of physical strength |
| Mentally ill/intellectually disabled | Can be taken advantage of easily |
| Immigrants | Cannot understand language or threat of deportation makes them vulnerable |
| Minorities | Marginalized in society, so vulnerable to victimization. |
| Dull normals | Reasonably intelligent people who are naive or vulnerable in some way. These people are easily deceived. |
| The depressed | Gullible, easily swayed, and not vigilant. |
| The acquisitive | Greedy and can be targeted for scammers who would take advantage of their desire for financial gain. |
| The lonesome and broken-hearted | Often prone to victimization by intimate partners. They desire to be with someone at any cost. They are susceptible to manipulation. |
| Tormentors | Primary abusers in relationships and become victims when the one being abused turns on them. |
| Blocked, exempted, and fighting victims | Enter situations in which they are taken advantage of such as blackmail. |

Von Hentig's work was the basis for later theories of victim precipitation. **Victim precipitation** suggests many victims play a role in their victimization. First, the victim acted first during the course of the offense, and second that the victim instigated the commission of the offense (Smith & Bouffard, 2014). It is important to note that criminologists were attempting to demonstrate that victims may have some role in the victimization and are not truly innocent. Today we often recognize the role in victimization without blaming the individual because ultimately the person who offended is the person who offended.

## 1.16.4 Licenses and Attributions for Victims and Victim Typologies

# 1.17 VICTIM RIGHTS AND ASSISTANCE

The Criminal Justice system refers to a victim as a person who has been directly harmed by a crime that was committed by another person. In some states, victims' rights apply only to victims of felonies while other states also grant legal rights to victims of misdemeanors. Some states allow a family member of a homicide victim or the parent or guardian of a minor, incompetent person, or person with a disability to exercise these rights on behalf of the victims (National Center for Victims of Crime, 2012).

The U.S. criminal justice system first introduced services for victims of federal criminal offenses during the 1980s. In the 1990s it was made law and Congress created the Victim's Rights and Restitution Act H.R.5368. The Act requires all Federal law enforcement agency officers and employees to make their best efforts to accord victims of crime with the right to:

1. Be treated with fairness and respect for the victim's dignity.
2. Be protected from their accused offenders.
3. Notification of court proceedings.
4. Attend public court proceedings related to the offense under certain conditions.
5. Confer with the Government attorney assigned to the case.
6. Restitution.
7. Information about the conviction, sentencing, imprisonment, and release of the offender.

The Act also directs Federal law enforcement agency heads to designate the persons responsible for identifying the victims of a crime and providing certain services to such victims such as:

1. Informing them where to receive medical care and counseling.
2. Arranging protection from an offender.
3. Keeping the victim informed of developments during the investigation and prosecution of the crime and after the trial.

Today we have introduced various rights and include victim-impact statements. **Victim-impact statements** given an account by the victim, the victim's family, or others affected by the offense that expressed the effects of the offense (National Center for Victims of Crime, 2012).

## 1.17.1 Victim Impact Statements Video: Listen and Learn Exercise

You will watch victim impact statements that were created to help educate people on the impact of various crimes. Warning: It is hard to watch at times and may cause you to feel upset, sad, angry, or more.

- First, watch the youtube video Victim Impact: Listen and Learn.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=194#oembed-1*

Figure 1.12. "Victim Impact: Listen and Learn [Youtube Video]."

- Second, write a 500-word response about the benefits of victim-impact statements, and the impact the film had on you.

## 1.17.2 Victim Rights

Today, all states and the federal government have passed laws to establish a set of victims' rights. The main goal of these laws is to provide victims with certain information and protections. It is important to note that victims' rights, just like criminal offenses, will depend on the jurisdiction where the crime is investigated and prosecuted. The rights may vary state, federal or tribal government, or military installation (National Center for Victims of Crime, 2012).

## 1.17.3 Overview of Victims' Rights

Below is a list of basic victims' rights from the National Center for Victims of Crime that are provided by law

in most jurisdictions. Again, it is important to remember these rights vary, depending on federal, state, or tribal law.

## 1.17.4 Rights

**Right to be Treated with Dignity, Respect, and Sensitivity**

Victims generally have the right to be treated with courtesy, fairness, and care by law enforcement and other officials throughout the entire criminal justice process. This right is included in the constitutions of most states that have victims' rights amendments and in the statutes of more than half the states.

Victim impact statements allow crime victims to describe to the court or parole board the impact of the crime on their lives. The victim impact statement may include a description of psychological, financial, physical, or emotional harm the victim experienced as a result of the crime. A judge may use information from these statements to help determine an offender's sentence; a parole board may use such information to decide whether to grant parole and what conditions to impose in releasing an offender. Many victims have reported that making victim impact statements improved their satisfaction with the criminal justice process and helped them recover from the crime. In some states, the prosecutor is required to confer with the victim before making important decisions. In all states, however, the prosecutor (and not the victim) makes decisions about the case.

**Right to Be Informed**

The purpose of this right is to make sure that victims have the information they need to exercise their rights and to seek services and resources that are available to them. Victims generally have the right to receive information about victims' rights, victim compensation (see "Right to Apply for Compensation," below), available services and resources, how to contact criminal justice officials, and what to expect in the criminal justice system. Victims also usually have the right to receive notification of important events in their cases. Although state laws vary, most states require that victims receive notice of the following events:

- the arrest and arraignment of the offender
- bail proceedings
- pretrial proceedings
- dismissal of charges
- plea negotiations
- trial
- sentencing
- appeals
- probation or parole hearings
- release or escape of the offender

States have different ways of providing such information to victims. Usually, information about court proceedings is mailed to the victim. Some states have an automated victim notification system that calls or e-mails the victim with updates on the status of the offender, while others require the victim to telephone the authorities to receive updates.

**Right to Protection**

In many states, victims have the right to protection from threats, intimidation, or retaliation during criminal proceedings. Depending on the jurisdiction, victims may receive the following types of protection:

- police escorts
- witness protection programs
- relocation
- restraining orders

Some states also have laws to protect the employment of victims who are attending criminal proceedings (see "Right to Attend Criminal Proceedings," above).

**Right to Apply for Compensation**

All states provide **crime victim compensation** to reimburse victims of violent crime for some of the out-of-pocket expenses that resulted from the crime. The purpose of compensation is to recognize victims' financial losses and to help them recover some of these costs. All states have a cap on the total compensation award for each crime, and not all crime-related expenses are covered. To be eligible for compensation, victims must submit a timely application, and show that the losses they are claiming occurred through no fault of their own. Some types of losses that are usually covered include:

- medical and counseling expenses
- lost wages
- funeral expenses

Compensation programs seldom cover property loss or pain and suffering. Also, victim compensation is a payer of last resort; compensation programs will not cover expenses that can be paid by some other program, such as workman's compensation.

**Right to Restitution from the Offender**

In many states, victims of crime have the right to restitution, which means the offender must pay to repair some of the damage that resulted from the crime. The purpose of this right is to hold offenders directly responsible to victims for the financial harm they caused. The court orders the offender to pay a specific amount of restitution either in a lump sum or a series of payments. Some types of losses covered by restitution include:

- lost wages
- property loss
- insurance deductibles

**Right to Prompt Return of Personal Property**

Crime investigators must often seize some of the victim's property as evidence for a criminal case. In most states, authorities must return such property to the victim when it is no longer needed. To speed up the return of property, some states allow law enforcement to use photographs of the item, rather than the item itself, as evidence. The prompt return of personal property reduces inconvenience to victims and helps restore their sense of security.

**Right to a Speedy Trial**

**Right to Enforcement of Victim's Rights**

To be meaningful, legal rights must be enforced. States are beginning to pass laws to enforce victims' rights, and several states have created offices to receive and investigate reports of violations of victims' rights. Other states have laws that permit victims to assert their rights in court.

(National Center for Victims of Crime, 2012).

## 1.17.5 Licenses and Attributions for Victim Rights and Assistance



Figure 1.12. "Victim Impact: Listen and Learn [Youtube Video]."

# 1.18 CONCLUSION

In this chapter, we focused on defining crime and the criminal justice system. We covered the different models and creation of laws within the system, while also discussing the components that make up the system. Finally we looked at the role of victims within the criminal justice process.

## 1.18.1 Learning Objectives

After reading this chapter, students will be able to do the following:

1. Describe the differences between deviance, rule violations, and criminality.
2. Explain the differences between the interactionist, consensus, and conflict views in the creation of laws.
3. Identify the three components of the criminal justice system: Police, Courts, and Corrections.
4. Briefly identify the unique role of victims in the criminal justice process.

## 1.18.2 Review of Key Terms

- consensus view
- crime control model
- crime prevention science (CPSc) and crime solutions
- crimes against the person

- criminal justice system
- criminalized act
- Deviance
- Folkways
- Misdemeanor
- victim-impact statements

## 1.18.3 Critical Thinking Questions

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. In your own words, what should be the primary function of a criminal justice system?
2. Why should we learn about crime solutions along with crime problems?

## 1.18.4 Licenses and Attributions for Conclusion

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# 1.20 CHAPTER 1 FEEDBACK SURVEY

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# CHAPTER 2: CRIMINAL JUSTICE POLICY

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 2.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

In this chapter, we will focus first on the relationship between theory, research and policy. Then we will identify the stages of creating policy and discuss how current events and politics shape and influence policy making. Finally we will identify Crime Prevention Science solutions that rely on policy while investigating policy support for these solutions.

## 2.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Examine the relationship between theory, research, and policy.
2. Identify the stages involved in creating policy.
3. Reflect on how current events and politics shape policy.
4. Identify Crime Prevention Science (CPSc) Solutions that rely on policy.
5. Investigate policy support for Crime Prevention Science (CPSc) Solutions.

## 2.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- Cost-benefit evaluations
- Crime prevention
- Crime prevention science (CPSc) solutions
- Folk devils
- Framing
- Impact (outcome) evaluations
- Moral panic
- Narratives
- Policy development
- Process evaluation

## 2.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. What is a current example of a moral panic?
2. How does the media influence policy?
3. If the media has so much influence over policy, how can we ensure fair and just laws and

practices?

4. Think of a crime problem in your area. What policy would you enact to combat it and how would you evaluate this policy to see if it was working?
5. What are some policies you can think of that have changed over time? (eg. Marijuana legalization)?

## 2.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 2.2 IMPORTANCE OF POLICY IN CRIMINAL JUSTICE

Why is policy so important in criminal justice? Because everyone is affected by the criminal justice system through public policy. Policy represents social control and ensures members of society are compliant and conform to the laws. Policies include issues related: to juvenile justice, drug legislation, intimate partner violence, prison overcrowding, school safety, new federal immigration laws, terrorism, and national security.

Modern-day crime policies can be traced to changes in crime and delinquency in the 1960s. That decade saw major increases in the crime rate along with widespread social unrest due to the Vietnam War and the civil rights movement. The work of the 1967 President's Commission on Law Enforcement and the Administration of Justice highlighted the crime problem and the criminal justice system's failure to address the problem. The commission called for new approaches, programs, policies, funding models, and research on the cause of crime. In addressing the causes of crime (theory) and using appropriate data collection (research), effective policies and programs could be proposed as noted in figure 2.1.

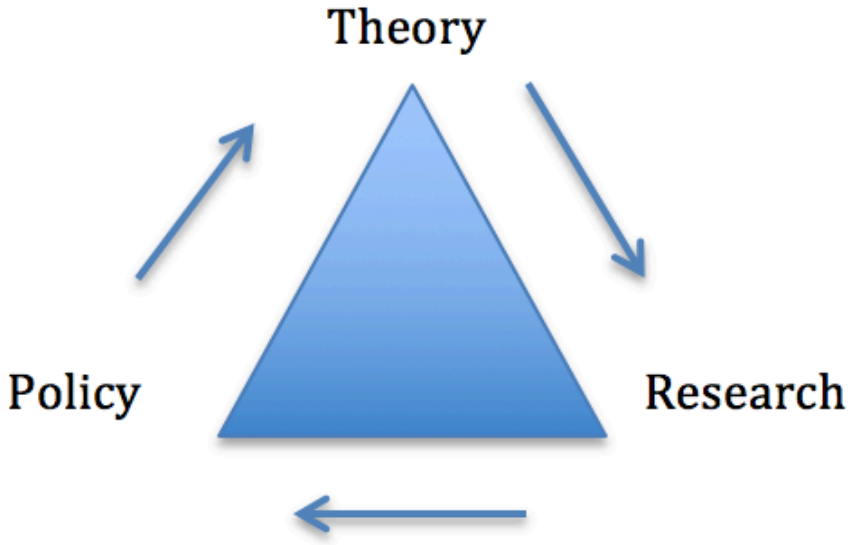


Figure 2.1. Diagram of Theory-Policy-Research.

When discussing crime policies, it is important to understand the difference between "crime prevention" and "crime control." Policies and programs designed to reduce crime are crime prevention techniques.

Specifically, **crime prevention** "entails any action designed to reduce the actual level of crime and/or the perceived fear of crime" (Lab, S., 2016). On the other hand, crime control alludes to the maintenance of the crime level. Policies, such as the three strikes law or Measure 11, sought to prevent future crime by incapacitating offenders through incarceration. Other policies like sex offender registration acknowledge that sex offenders exist, and registering them will control the level of deviation, sometimes preventing or perceiving to prevent future offenses.

Public policies and laws are created at different levels of government, with micro-level policies enacted on the local level and macro-level applied at the federal or state level. For example, local towns and cities might create specific ordinances tailored to their unique needs, such as banning cigarette smoking in the downtown area. At the federal level, policies are created that apply to the federal criminal justice system and can also apply to states. However, federal laws can differ from state laws, such as marijuana legalization. Individual organizations can also make policies that address their agency needs, such as requirements for local police officers. Therefore, depending on who creates the policies, they can be far-reaching or extremely localized (Lab, S., et al., 2013).

## 2.2.1 Fake News Exercise

Fake News has received a lot of press lately. In fact, according to the Associated Press, "fake news" was the top word in 2017 ("Fake News" Is Collins Dictionary's Word of the Year 2017, 2017). For people under 30, online news is more popular than TV news and people under 50 get half of their news from online sources (Forman-Katz & Matsa, 2022).

Here are four steps for evaluating news:

1. Vet the Publisher's Credibility.

- What is the domain name? A domain name that ends with ".com.co" is not to be trusted. Something like abcnews.com looks legit, but if it is listed as abcnews.com.co, be wary.
- What is the publication's point of view? Check out the "About Us" section to learn more about the publishers. It will also tell you if the publication is meant to be satirical, like the Onion.

2. Pay Attention to Writing Quality.

- Does the publication have all caps or too many emphatic punctuation marks?!?!?!? Proper

reporting does not adhere to such informal grammar. Thus if it is written poorly, the article is probably not vetted.

3. Check out the Sources and Citations.

- Does the publisher meet academic citation standards? Your teachers and professors constantly tell you to cite and reference appropriately. This is how we can check your sources. The same is true for online news. Check the sources.

4. Ask the Pros

- Check out fact-checking websites like www.factcheck.org.

Learn more at 4 Tips for Spotting a Fake News Story – Harvard Summer School.

Take the Fake News Quiz! 4 Tips for Teaching Media Literacy in the Classroom.

## 2.2.2 Licenses and Attributions for Importance of Policy in Criminal Justice

# 2.3 THE MYTH OF MORAL PANICS

**Moral panic** has been defined as a situation in which public fears and state interventions greatly exceed the objective threat posed to society by a particular individual or group who is/are claimed to be responsible for creating the threat in the first place (Bon, S., 2015).

Moral panics arise when distorted mass media campaigns create fear and reinforce previously held or stereotyped beliefs, frequently centered around ethnicity, religion, or social class. Often, moral panics occur swiftly, focusing attention on the behavior and then fluctuating concern over time. The most problematic aspect of moral panic is that the hysteria often results in a need to "do something" about the issue and most commonly "results in the passing of legislation that is highly punitive, unnecessary, and serves to justify the agendas of those in positions of power and authority." Moral panics focus attention on what we should fear and who we should blame for that fear. Instigators of moral panics frequently misinterpret data for their own agenda. Cohen said at least five sets of social actors are involved in a moral panic. These include 1) folk devils, 2) rule or law enforcers, 3) the media, 4) politicians, and 5) the public (1972).

## 2.3.1 Moral Panics, Sex Offender Registration, and Youth

In her article, "There Are Too Many Kids on the Sex Offender Registry," Lenore Skensazy discusses the unpopular view that perhaps sex offender registration is more harmful than helpful.

The purpose of sex offender registries is to prevent one of the worst of the worst crimes: sexual assault. However, Roger Lancaster, author of "Sex Panic and the Punitive State," suggests that "Only a tiny fraction of sex crimes against children are committed by people who are on the registry" (2011). About five percent of people on the list commit another crime, a far lower recidivism rate than almost any other class of criminals, including drug dealers, arsonists, and muggers (Skenazy, 2018).

"Available research indicates that sex offenders, and particularly people who commit sex offenses as children, are among the least likely to re-offend," Human Rights Watch has found (2013). Furthermore, the Bureau of Justice Statistics reports that the "single age with the greatest number of offenders from the perspective of law enforcement was age 14" (Snyder, 2000). This means that 14-year-olds, more than any other age, are being placed on a lifetime registry.

Sometimes this results from minors engaging in consensual sexual encounters simply because they are underage and cannot legally consent. And in some states, sexual contact is not required to end up on the registry. In some instances, sexting under the age of 18 is a felony and can earn someone a place on the

registry. Until recently, Missouri offenders were grouped together in one category regardless of the offense, so individuals who urinated in public endured lifelong registration and were categorized with the worst of the rapists and molesters. There was no distinction or tier structure.

Is lifelong registration appropriate punishment, or is it strictly punitive? Most offenders serve their time in prison and therefore serve their debt to society. This is not the case with lifelong sex offender registrants who can't live near a school, park, or playground and must report to authorities anytime they get a new job, a new place to live, or even a new hairstyle. They can never fully re-enter society and are seen as never being able to be rehabilitated.

All these requirements are based on the "flawed but pervasive idea that those convicted of sex offenses became incurable and predatory monsters requiring—and deserving—lifetime punishment," writes Emily Horowitz, a professor of sociology at St. Francis College and author of two books on this subject (n.d.).

What would happen if the registry were to disappear? All other criminal laws would remain in place, including increased penalties for repeat offenses. Only the list and the dehumanization it wreaks would be gone.

"If my child was victimized, I'd want to kill a person," Horowitz says (n.d.). "But what if my child was a victimizer? I'd also want them to have a chance" (Skenazy, 2018). Read more at: There Are Too Many Kids on the Sex Offender Registry.

## 2.3.1.1 How Fake News Does Real Harm

Learn more by watching Stephanie Busari: How fake news does real harm | TED Talk.

First, **folk devils** are the people who are blamed for being allegedly responsible for the threat to society. Folk devils are completely negative and have no redeeming qualities. This is how juvenile offenders became "super-predators," as they were referred to in the 1990s. Here are a few excerpts from the Washington Examiner's newspaper article, "The Coming of the Super-Predators:"

> "We're talking about kids who have absolutely no respect for human life and no sense of the future....And make no mistake. While the trouble will be greatest in black inner-city neighborhoods, other places are also certain to have burgeoning youth-crime problems that will spill over into upscale central-city districts, inner-ring suburbs, and even the rural heartland...They kill or maim on impulse, without any intelligible motive...The buzz of impulsive violence, the vacant stares and smiles, and the remorseless eyes...they quite literally have no concept of the future....they place zero value on the lives of their victims, whom they reflexively dehumanize...capable of committing the most heinous acts of physical violence for the most trivial reasons...for as long as their youthful energies hold out, they will do what comes "naturally": murder, rape, rob, assault, burglarize, deal deadly drugs, and get high." (Dilulio, 1995)

Folk devils are the center stage of the moral panic drama. It is easy for the population to fear and hate them.

Second, the police or other law enforcement officials (prosecutors or even the military) are essential for propagating the moral panic since they are responsible for upholding and enforcing the citizens' codes of

conduct and expectations. They are expected to protect society from the folk devils by detecting, apprehending, and punishing their evil ways. Furthermore, the moral panic can offer law enforcement legitimacy as moral crusaders and protectors. Law enforcement has a purpose to defend society and rid it of the folk devils which threaten their safety and well-being.

Third, the media are particularly powerful in creating and advancing the moral panic. Generally, news media coverage of folk devils is often skewed and exaggerated. The media coverage often displays the folk devils as much more threatening to society than they really are. Journalists feed public anxiety and fear, which heightens the moral panic. Media influences policy in two ways:

1. They select the "important" issues (agenda setting).
2. They problematize policy by attaching meaning to it. In this way, they frame and construct the narratives.

**Agenda setting** is how the media draws the public's eye to a specific topic. **Framing** refers to a type of agenda setting in a prepackaged way, and **narratives** are about the story that is told. Said another way, framing focuses on the broad categories, segments, or angles through which a story can be told. Frames include factual and interpretive claims that allow people to organize events and experiences into groups. Narrative construction involves decisions by storytellers that determine the specific characters, plot, causal implications, and policy solutions presented. Narratives are pictures that the public already accepts and embraces. See Table 2.2. for examples of criminal justice frames and narratives (Surette, R., 2011).

## 2.3.1.2 Table 2.2. Criminal Justice Frames and Examples of Narratives

| **Frame** | **Cause** | **Policy** |
|---|---|---|
| Faulty system | Crime stems from criminal justice leniency and inefficiency. | The criminal justice system needs to get tough on crime |
| Blocked opportunities | Crime stems from poverty and inequality | The government must address the "root causes" of crime by creating jobs and reducing poverty. |
| Social breakdown | Crime stems from family and community breakdown | Citizens should band together to recreate traditional communities. |
| Racist system | The criminal justice system operates in a racist fashion | African Americans should band together to demand justice |
| Violent media | Crime stems from violence in the mass media | The government should regulate violent imagery in the media |
| **Narrative** | **Costume** | **Characteristic** |
| The PI (private investigator) | Cheap suit and car | Loner, cynical, shrewd, shady but dogged |
| The rogue cop | Plainclothes, disguise, often has special high tech equipment | Maverick, smart, irreverent, violent but effective |
| The sadistic guard | Unkempt uniform | Low intelligence, violent, racist, sexist, perverted, and enjoys cruelty, inflicting pain, and humiliation |
| The corrupt lawyer | Expensive suite and office | Smart, greedy, manipulative, dishonest, smooth talker and liar, able to twist words, logic, and morality |
| The greedy businessman | Very expensive office and home, trophy wife | Very smart, decisive, and a polished, unquenchable sometimes psychotic need for power and wealth |

Journalists and reporters are taught to tell stories through first-hand accounts and experiences people have because audiences care about these human experiences and their stories more than they care about abstract societal issues. In theory, journalists and reporters are the gatekeepers to the information, and they choose how

they organize and present ideas to the public. This helps us create social meaning from events or actions. See table 2.3. for framing techniques (Crow & Lawlor, 2016).

## 2.3.1.3 Table 2.3. Framing Techniques

| **Framing techniques per Fairhurst and Sarr (1996):** |
| --- |
| Metaphor: To frame a conceptual idea through comparison to something else. |
| Stories (myths, legends): To frame a topic via narrative in a vivid and memorable way. |
| Tradition (rituals, ceremonies): Cultural mores that imbue significance in the mundane, closely tied to artifacts. |
| Slogan, jargon, catchphrase: To frame an object with a catchy phrase to make it more memorable and relatable. |
| Artifact: Objects with intrinsic symbolic value – a visual/cultural phenomenon that holds more meaning than the object itself. |
| Contrast: To describe an object in terms of what it is not. |
| Spin: to present a concept in such a way as to convey a value judgment (positive or negative) that might not be immediately apparent; to create an inherent bias by definition. |

Fourth, politicians are also protagonists in a moral panic. They spin public opinion and present themselves as the safeguards of the moral high ground. They are similar to law enforcement in this drama, and they have an obligation to protect society from folk devils.

The fifth and final category of moral panic is the public. The public is the most important actor on the stage. Public anxiety and fear over the folk devils is the central theme of moral panics. A moral panic only exists because the public cries out for policymakers and law enforcement to "do something" and save them from the alleged threat that has been created.

## 2.3.2 Licenses and Attributions for The Myth of

## Moral Panics

"The Myth of Moral Panics" by Alison S. Burke is adapted from "4.2. The Myth of Moral Panics" by Alison S. Burke in *SOU-CCJ230 Introduction to the American Criminal Justice System* by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, and Shanell Sanchez, licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

# 2.4 THE STAGES OF POLICY DEVELOPMENT

The stages of **policy development** can generally be categorized into five general stages. U.S. policy development encompasses several stages.

Most policy models generally include the following stages:

1. identifying the issue to be addressed by the proposed policy,
2. placement on the agenda,
3. formulation of the policy,
4. implementation of the policy, and
5. evaluation of the policy.

This is similar to the community police response acronym SARA (scanning, analysis, response, and assessment) and uses some of the same techniques but on a much bigger, national level.

Perpetuating stereotypes about juvenile sex offenders has the potential to create more victims. Watch Dangerous myths about juvenile sex offenders: Meghan Fagundes at TEDxAustinWomen to learn why.

## 2.4.1 Identifying the Issue

Identifying the problem involves addressing what is happening and why it is an issue. In criminal justice, this might look at the increase in opioid use and overdoses or acts of youth violence. Once the issue is identified, there can be a serious debate about the plans of the policy. Once it is decided what the policy will look like, it is placed on the agenda.

## 2.4.2 Placement on the Agenda

Getting placed on the agenda is perhaps the most politicized part of the process, as it involves many different stakeholders. It involves identifying the legislative, regulatory, judicial, or other institutions responsible for policy adoption and formulation.

## 2.4.3 Formulation of the Policy

The next stage involved adopting the policy. Depending on the nature of the policy, this could involve a new law or an executive order.

## 2.4.4 Implementation of the Policy

Then, it is a matter of enforcing the new policy. If a new law or order was initiated, then governing bodies would ask law enforcement or control commissions to enforce this new law as a result of the policy.

## 2.4.5 Evaluation of the Policy

Finally, the evaluation examines the efficacy of the policy, where data is gathered to see the results. There are three different types of evaluation: impact, process, and cost-benefit.

**Impact (outcome) evaluations** focus on what changes after the introduction of the crime policy (Lab, 2016). Changes in police patrol practices aimed at reducing residential burglaries in an area are evaluated in terms of subsequent burglaries. The difficulty with impact evaluations is that changes in the crime rate are rarely, if ever, due to a single intervening variable. For example, juvenile crime decreased after implementing curfew laws for juvenile offenders. Can we say that was because of curfew laws? The entire crime rate for America decreased at the same time. Attributing a single outcome based on a solitary intervention is problematic.

**Process evaluations** consider the implementation of a policy or program and involve determining the procedure used to implement the policy. These are detailed, descriptive accounts of the implementation of the policy, including the goals of the program, who is involved, the level of training, the number of clients served, and changes to the program over time (Lab, 2016). Unfortunately, process evaluations do not address the actual impact policy has on the crime problem, just what was done about a specific issue or who was involved. While this is indeed a limitation, it is essential to know the inner workings of a program or policy if it is to be replicated.

**Cost-Benefit evaluations**, or analysis, seek to determine if the costs of a policy are justified by the benefits accrued. A ubiquitous example of this would be an evaluation of the popular anti-drug D.A.R.E. program of the 1980s and 1990s. The D.A.R.E. program was a school-based prevention program aimed at preventing drug use among elementary school-aged children. Rigorous evaluations of the program show that it was ineffective and sometimes increased drug use in some youths. The cost of this program was roughly $1.3 billion dollars a year (about $173 to $268 per student per year) to implement nationwide (once all related expenses, such as police officer training and services, materials and supplies, school resources, etc., were factored

in) (Shepard, Winter 2001-2002). Using a cost-benefit analysis, is that a good use of money to support an ineffective program?

Policy formation is often a knee-jerk reaction to the current problem. Many policies result from grassroots efforts to change something in their communities. For example, let us pretend the issue is youth crime in our city. Kids are roaming the streets like packs of wild dogs, jeering at the elderly and making us feel unsafe. A proposed policy might be to hold parents accountable for their child's misbehavior. If parents are responsible, they will take better care of their kids, right? Take, for example, Little Skippy. He's kind of a jerk. He smokes, curses, and recently stole his neighbor's car. Arrested after crashing into the drive-thru sign at the local fast-food restaurant, based on parental responsibility law, his mom and dad are to blame for his reckless driving fiasco. Let's look at the policy process in this case:

1. Identifying the issue: We identified the issue as youth crime in our city because parents are not being responsible for their children. So what's next?
2. Formulation of the policy: How can this be instituted? By fining the parent? By sentencing the parents to jail time? The policy needs to be a concrete solution to a problem. Many states use fines instead of jailing the parents because who will watch over the children if the parents are locked up? Fines sound great. This will ensure parents take an active interest in their children because they do not want to pay money if their kid gets into trouble.
3. Placement on the agenda: Who needs to be involved in lobbying for this law? Legislators? Senators? Local police? Maybe even city officials, local school boards, and religious organizations. So it's put on the agenda and gets moved onto a ballot for an official vote. The citizens who think their city needs to be tough on crime vote to approve this policy.
4. Implementation of the policy: Bam, it's the law. It is implemented, and now parents of juvenile delinquents are charged fines. This is actually the law in nearly every state. In the 1990s, Silverton, Oregon, was a model for communities interested in imposing ordinances that hold parents accountable for their children's behavior. In Silverton, parents can be fined up to $1,000 if their child is found carrying a gun, smoking cigarettes, or using illegal drugs. Parents who agree to attend parenting classes can avoid fines. Within the first two months after the law was passed in early 1995, seven parents were fined, and many others registered for parenting classes.

Oregon has ORS 30.765 (2021), which states:

(1) In addition to any other remedy provided by law, the parent or parents of an unemancipated minor child shall be liable for actual damages to person or property caused by any tort intentionally or recklessly committed by such child. However, a parent who is not entitled to legal custody of the minor child at the time of the intentional or reckless tort shall not be liable for such damages.

(2) The legal obligation of the parent or parents of an unemancipated minor child to pay damages under this section shall be limited to not more than $7,500, payable to the same claimant, for one or more acts.

5. Evaluation of the policy: So, it is law, but is it effective? The evaluation stage of policy is critical. The goal is to curb youth crime, and we might expect to see a decrease in the juvenile crime rate. However, charging parents fines for the misdeeds of their children actually increases recidivism! It's true! A study, "Justice system–imposed financial penalties increase the likelihood of recidivism" in Pennsylvania found that the total amount of fines, fees and/or restitution significantly increased the likelihood of recidivism for 1,167 adolescent offenders. The study also found that, in particular, males, non-Whites, youth with prior dispositions, and those adjudicated with a drug or property offense were at an increased likelihood of recidivism associated with owing fines and fees (Piquero & Jennings, 2017). This is problematic as fees not only increase recidivism but also increase the likelihood of a "revolving door" juvenile justice system for minority youth. In the end, what is law is not always effective and what is effective is not always law. This is where evidence-based practices come in.

## 2.4.6 Licenses and Attributions for The Stages of Policy Development

# 2.5 CRIMINAL JUSTICE POLICIES

In this section we will review policies that have had an impact on the criminal justice system. Some of these policies, like Colonialism, have been in the works for over hundreds of years, setting the stage for how justice would be implemented in America. Where others, like Disproportionate Minority Contact, have been addressed and implemented more recently as a result of identified disparities in the system.

## 2.5.1 Colonialism

As the word implies and history shows, colonialism was implemented in the U.S. when colonial Europeans immigrated to the Americas and took over the land. This takeover was often savage and violent, with White men entering indigenous lands, creating fear, killing some, and taking others as their property. As American history unfolded, colonial ways were implemented in the forms of government, commerce, and the implementation of justice. As a result these colonial ways led to a criminal justice system based on these colonial practices.

These colonial practices continued to shape how laws were enforced and crime was addressed, thus continuing to employ controls that affected marginalized populations. In the article, "Wicked Overseers: American Policing and Colonialism" authors noted that colonialism "should be seen not as an event but as an ongoing structure"(Steinmetz, et al., 2016, qtd Glenn, 2015). The U.S. structure has been driven by colonialism and the unfortunate impacts are still very visible in our systems today.

Two of the many impacts of colonialism, found within the criminal justice system, have been the focus on 1) police being used to enforce laws created by the majority and 2) punishment being implemented as a resolve for justice. As we will discuss in future chapters on policing and corrections, these colonial strategies have created a hierarchical system and criminal justice policies that have had drastic impacts on minority groups within the states. Steinmetz, et al noted that these colonial police policies "have taken the form of slave patrols, the enforcement of segregative laws such as the black codes and Jim Crow laws, and...the war on drugs, broken-windows and zero-tolerance policing, and police militarization" (2016).

As a result, some are looking at the idea of "Decolonization" as a way to respond to these colonial systems and thus "fix" what has been established. Cortez noted in "Decolonization and Justice," that decolonization 'involves undoing colonial ideologies contained in "intellectual, psychological, and physical forms and it won't happen by magic, happenstance, or friendly agreement'" (2022, qtd Asadullah, 2021, p. 3). Thus continuing to identify policies that have been implemented which are negatively impacting marginalized populations and re-evaluating these policies.

## 2.5.2 Disproportionate Minority Contact

As we will discuss in this text, there are significant racial and ethnic disparities within the criminal justice system. Disproportionate Minority Contact (DMC) resulted in juvenile justice policy through the Office of Juvenile Justice and Delinquency Prevention (OJJDP, 2014). DMC "refers to rates of contact with the juvenile justice system among juveniles of a specific minority group that are significantly different from rates of contact for white non-Hispanic juveniles" (OJJDP, 2014.) Data show that BIPOC youth are over represented at every stage of the juvenile justice system, from arrest to adjudication. In 1974, the Juvenile Justice and Delinquency Prevention Act (JJDPA) was signed into law. As a result, OJJDP was implemented, requiring States to annually report their DMC rates of contact, however, these initial DMC rates were for confinement not contact. It became evident through years of research that disproportionate minority confinement was only one part of the problem. The real problem was the contact at every stage and not just at the end. This prompted a change in the terminology to reflect the need to address the overrepresentation of BIPOC in the justice system as a whole.

In 2018, the Juvenile Justice Reform Act of 2018 (JJRA) amended the JJDPA, requiring states to not only report on contacts but to also "implement policy, practice, and system improvement strategies...to identify and reduce racial and ethnic disparities (R/ED) among youth who come into contact with the juvenile justice system" (OJJDP, 2019). This topic will be covered more fully in the juvenile justice chapter later in the text but is one example of the implementation of policy within the criminal justice system.

## 2.5.3 Racial and Political Divide

Another impact of Criminal Justice policy has to do with the politically motivated and divided parties running the American government. The two major political parties (Democrats and Republicans) have an evolving history in relation to supporting, or not, racial issues and inequities.

Watch the History Two-Party Democratic Republican System Explained United States Democrats Republicans Origin to learn more about the evolution of the political parties in the United States.

With the evolution of the different political parties came differing focuses and policies. This created a flip-flop rotation every 4-8 years, in which one individual within a party would be elected and would focus their time in office fighting for equitable changes and policies, and then when their rotation ended, the opposing party leader would be elected, turning their party's interests and views in the opposing direction. As a result of the historical progression of the parties and their policy focuses, the United States has become extremely divided in both its policies and views.

One example of this can be found in a Pew Research Center report, "Deep Divisions in Americans' Views of Nation's Racial History — and How To Address It." They noted in the report that they conducted a "study to understand how the American public views the country's progress toward ensuring equal rights for

all Americans, regardless of their racial or ethnic background" (Nadeem, 2021). In figure 2.4. from the Pew Research Center, the divisions by parties and racial and ethnic groups are broken down on this issue.

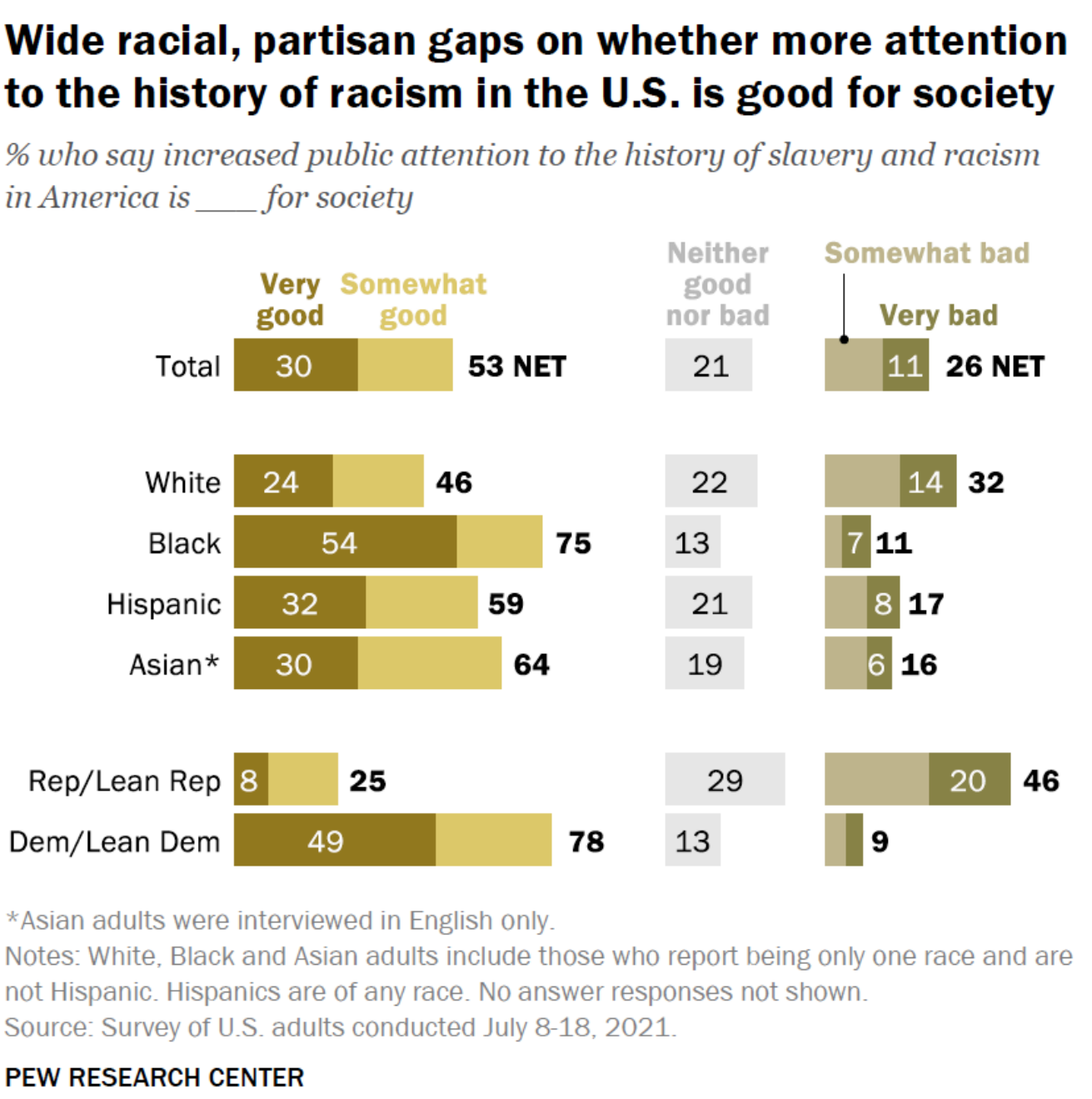


Figure 2.4. Bar graphs by race/ethnicity in response to whether more attention to the history of racism in the U.S. is "good" (on a scale) for society. Pew Research Center's Americans' Views on Nation's Racial History (Graph).

In the American Journal of Criminal article, "The Politics of Racial Disparity Reform: Racial Inequality and Criminal Justice Policymaking in the States," the author notes how "prior literature" has suggested that "elected officials promulgate punitive, racially disparate criminal justice policies due to partisanship and racial

fears" (Donnelly, 2017). The article goes on to discuss policy reform and how some elected officials are pursuing change through policy reform.

The state of California is one example of how policy reform, spurred by a federal court order, has motivated additional policy change. In 2011, a federal court order was issued "to address severe prison overcrowding" but Californians took it a few steps further. They addressed policies for "realignment" which routed individuals who would have previously been prison-bound to shorter-term jail sentences or community alternatives. They passed Proposition 47, reclassifying "a number of drug and property felonies to misdemeanor" crimes (Lofstrom, et al, 2021).

The CATO Institute's article titled, "Racial Disparities in Criminal Justice Outcomes Lessons from California's Recent Reforms," cited some impressive statistical improvements noting,

> "Racial disparities narrowed much more for the offenses targeted by the reform. The gap between African Americans and whites in arrest rates for property and drug offenses dropped by about 24 percent, and the bookings gap shrank by almost 33 percent. Even more striking, gaps between African Americans and whites in arrest and booking rates for drug felonies decreased by about 36 percent and 55 percent, respectively." (Lofstrom, et al, 2021)

With changing times and new political leaders on a constant rotation, it is up for debate as to whether policies will continue to change across America as a whole or remain isolated reaching communities on a smaller level. Re-evaluation has been one way of moving in that direction.

## 2.5.4 Licenses and Attributions for Criminal Justice Policies

Figure 2.4. Americans' Views on Nation's Racial History © The Pew Trust. Used under fair use.

# 2.6 RE-EVALUATING POLICY

Throughout American history, groups have come together to draw attention to some of the inequities within criminal justice policy, sometimes leading to a re-evaluation of the policy and thus new processes put in place. Some of these re-evaluations have been a result of public outcry to media attention and others have been in relation to statistical data showing results that were less than desirable in regards to the intent of the original policy. We will look at a few examples in this section and others will be considered in future chapters.

## 2.6.1 Black Lives Matter

One organization that has focused its efforts on re-evaluating criminal justice policy is The Sentencing Project. The organization has been at the forefront of collecting and disbursing information related to reform efforts and options. In their article, "Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System," they outline some "best practices for reducing racial disparities" through criminal justice policy reform and note "Jurisdictions around the country have implemented reforms to address these sources of inequality. This section showcases best practices from the adult and juvenile justice systems. In many cases, these reforms have produced demonstrable results" (Ghandoosh, 2015).

### 2.6.1.1 Research from The Sentencing Project On Racial Inequity in the Criminal Justice System

### 2.6.1.2 The Sentencing Project – Black Lives Matter:Eliminating Racial Inequity in the Criminal Justice System by Nazgol Ghandoosh (Pages 19-20 Excerpt)

**1) REVISE POLICIES AND LAWS WITH DISPARATE RACIAL IMPACT**

Through careful data collection and analysis of racial disparities at various points throughout the criminal justice system, police departments, prosecutor's offices, courts, and lawmakers have been able to identify and address sources of racial bias.

**Revise policies with disparate racial impact:** Seattle; New York City; Florida's Miami-Dade and Broward County Public Schools; Los Angeles Unified School District.

- After criticism and lawsuits about racial disparities in its drug law enforcement, some precincts in and around Seattle have implemented a **pre-booking diversion strategy:** the **Law Enforcement Assisted Diversion program** (Knafo, 2014). The program gives police officers the option of transferring individuals arrested on drug and prostitution charges to social services rather than sending them deeper into the criminal justice system.
- Successful litigation and the election of a mayor with a reform agenda effectively curbed "**stop and frisk**" policing in New York City (Bostock & Fessenden, 2014). Mayor Bill de Blasio vowed that his administration would "not break the law to enforce the law" and significantly curbed a policy that was described by a federal judge as one of "indirect racial profiling (2014). Thus far, the reform has not had an adverse impact on crime rates (Bostock & Fessenden, 2014). In a related effort to address disparities in enforcement, the New York City Police Department stated it would **no longer make arrests for possession of small amounts of marijuana** but would instead treat these cases as non-criminal offenses subject to a fine rather than jail time (Goldstein, 2014). Yet experts worry that this policy does not go far enough to remedy unfair policing practices and may still impose problematic consequences on those who are ticketed (Sayegh, 2014).

- Several school districts have enacted **new school disciplinary policies** to reduce racial disparities in out-of-school suspensions and police referrals. Reforms at Florida's Miami-Dade and Broward County Public Schools have cut school-based arrests by more than half in five years and significantly reduced suspensions (Smiley & Vacquez, 2013). In Los Angeles, the school district has nearly eliminated police-issued truancy tickets in the past four years and has enacted new disciplinary policies to reduce reliance on its school police department (Watanade, 2013). School officials will now deal directly with students who deface property, fight, or get caught with tobacco on school grounds. Several other school districts around the country have begun to implement similar reforms.

**Revise laws with disparate racial impact:** Federal; Indiana; Illinois; Washington, D.C.

- The Fair Sentencing Act (FSA) of 2010 reduced from 100:1 to 18:1 the weight disparity in the amount of **powder cocaine versus crack cocaine** that triggers federal mandatory minimum sentences. If passed, the Smarter Sentencing Act would apply these reforms retroactively to people sentenced under the old law. California recently eliminated the crack-cocaine sentencing disparity for certain offenses, and Missouri reduced its disparity. Thirteen states still impose different sentences for crack and cocaine offenses (Porter & Wright, 2011).
- Indiana amended its **drug-free school zone sentencing laws** after the state's Supreme Court began reducing harsh sentences imposed under the law and a university study revealed its negative impact and limited effectiveness. The reform's components included reducing drug-free zones from 1,000 feet to 500 feet, eliminating them around public housing complexes and youth program centers, and adding a

requirement that minors must be reasonably expected to be present when the underlying drug offense occurs. Connecticut, Delaware, Kentucky, Massachusetts, New Jersey, and South Carolina have also amended their laws (Porter & Clemons, 2013).

- Through persistent efforts, advocates in Illinois secured the repeal of a 20-year-old law that required the **automatic transfer** to adult court of 15- and 16-year-olds accused of certain drug offenses **within 1,000 feet of a school or public housing**. A broad coalition behind the reform emphasized that the law was unnecessary and racially biased, causing youth of color to comprise 99% of those automatically transferred.
- Following a campaign that emphasized disparate racial enforcement of the law, a ballot initiative in Washington, D.C. may **legalize possession of small amounts of marijuana** in the district (Sebens, 2014).

**Address upstream disparities:** New York City; Clayton County, GA.

- The District Attorney of Brooklyn, New York informed the New York Police Department that he would **stop prosecuting minor marijuana arrests** so that "individuals, and especially young people of color, do not become unfairly burdened and stigmatized by involvement in the criminal justice system for engaging in non-violent conduct that poses no threat of harm to persons or property" (Clifford & Goldstein, 2014).
- Following a two-year study conducted in partnership with the Vera Institute of Justice, Manhattan's District Attorney's office learned that its **plea guidelines** emphasizing **prior arrests** created racial disparities in plea offers. The office will conduct implicit bias training for its assistant prosecutors, and is being urged to revise its policy of tying plea offers to arrest histories (Kutateladze, 2014).
- Officials in Clayton County, Georgia reduced **school-based juvenile court referrals** by creating a system of graduated sanctions to **standardize** consequences for youth who committed low level misdemeanor offenses, who comprised the majority of school referrals. The reforms resulted in a 46% reduction in school-based referrals of African American youth.

**Anticipate disparate impact of new policies:** Iowa; Connecticut; Oregon; Minnesota.

- Iowa, Connecticut, and Oregon have passed legislation requiring a **racial impact analysis** before codifying a new crime or modifying the criminal penalty for an existing crime. Minnesota's sentencing commission electively conducts this analysis. This proactive approach of **anticipating disparate racial impact** could be extended to local laws and incorporated into police policies.

**Revise risk assessment instruments:** Multnomah County, OR; Minnesota's Fourth Judicial District.

- Jurisdictions have been able to reduce racial disparities in confinement by documenting racial bias inherent in certain **risk assessment instruments (RAI)** used for criminal justice decision making. The development of a new RAI in Multnomah County, Oregon led to a greater than 50% reduction in the number of youth detained and a near complete elimination of racial disparity in the proportion of delinquency referrals resulting in detention. Officials examined each element of the RAI through the lens of race and **eliminated known sources of bias**, such as references to "gang affiliation" since youth of color were disproportionately characterized as gang affiliates often simply due to where they lived.
- Similarly, a review of the **RAI** used in consideration of pretrial release in Minnesota's Fourth Judicial District helped reduce sources of racial bias. Three of the nine indicators in the instrument were found to be **correlated with race**, but were **not significant predictors** of pretrial offending or failure to appear in court. As a result, these factors were removed from the instrument.

Check out the entire article here at BLACK LIVES MATTER: Eliminating Racial Inequity in the Criminal Justice System.

## 2.6.2 LGBTQIA+

*Profile: Anti-LGBTQIA+ Hate Crimes In The United States: Histories and Debates* by Ariella Rotramel.

On June 12, 2016, forty-nine people were killed and fifty-three wounded in the Pulse nightclub shooting in Orlando, Florida. It was the deadliest single-person mass shooting and the largest documented anti-LGBTQIA+ attack in U.S. history. Attacking a gay nightclub on Latin night resulted in over 90 percent of the victims being Latinx and the majority being LGBTQIA+ identified. This act focused on an iconic public space (figure 2.5) that provided LGBTQIA+ adults an opportunity to explore and claim their sexual and gender identities. The violence at Pulse echoed the 1973 UpStairs Lounge arson attack in New Orleans that killed thirty-two people. These mass killings are part of a broader picture of violence that LGBTQIA+ people experience, from the disproportionate killings of transgender women of color to domestic violence and bullying in schools. There are different perspectives within the LGBTQIA+ community about responses to hate-motivated violence. These debates concern whether the use of punitive measures through the criminal legal system supports or harms the LGBTQIA+ community and whether more radical approaches are needed to address the root causes of anti-LGBTQIA+ violence. This profile explores hate crimes as both a legal category and a broader social phenomenon.

### 2.6.2.1 What Are Hate Crimes?

Anti-LGBTQIA+ hate crimes have had a simultaneously spectacular and invisible role in U.S. society. Today, hate crimes are defined as criminal acts motivated by bias toward victims' real or perceived identity groups

(Blazak, 2011). Hate crimes are informal social control mechanisms used in stratified societies as part of what Barbara Perry calls a "contemporary arsenal of oppression" for policing identity boundaries (Perry, 2009). Hate crimes occur within social dynamics of oppression, in which other groups are vulnerable to systemic violence, pushing marginalized groups further into the political and social edges of society. It is theorized that hate crimes are driven by conflicts over cultural, political, and economic resources; bias and hostility toward relatively powerless groups; and the failure of authorities to address hate in society (Turpin-Petrosin, 2009).

Figure 2.5. An image of flowers, candles and flags left at the Stonewall Inn memorial.

Prejudicial cultural norms perpetuate otherness, promoting prejudice and normalizing and rewarding hate, as well as punishing those who respect and embrace difference (Levin & Rabrenovic, 2003; Perry, 2003). Cultures of hate identify marginalized groups as enemies through dehumanization and perpetuate group violence (Levin & Rabrenovic, 2003; Perry, 2003). Perpetrators' actions thus reflect an understanding and navigation of overarching social structures that separate the othered from the accepted.

In the case of anti-LGBTQIA+ hate crimes, heterosexism is an oppressive ideology that rejects, degrades, and others "any non-heterosexual form of behavior, identity, relationship or community." It provides a complementary bias to cissexism, the oppressive ideology that denigrates transgender, gender nonbinary, genderqueer, and gender-nonconforming people (Herek, 1992). Anti-LGBTQIA+ hate crimes are based on a

view of the LGBTQIA+ community as a suitable target for violence (Perry, 2005) (Green, et al, 2001). Such crimes are often identified as hate-based by such factors as that "the perpetrator [was] making homophobic comments; that the incident had occurred in or near a gay-identified venue; that the victim had a 'hunch' that the incident was homophobic; that the victim was holding hands with their same-sex partner in public, or other contextual clues"(Chakraborti & Garland, 2009). Importantly, anti-LGBTQIA+ hate crimes intersect with hate crimes against gender, racial and ethnic groups, and other marginalized people (Dunbar, 2006).

State-enacted or state-sanctioned violence against LGBTQIA+ people has not been deemed a form of hate crime, though it draws on hatred toward a group of people. The hate-crime framework has focused largely on the acts of private individuals rather than addressing larger institutionalized forms of hate-motivated violence such as forced conversion therapy or abuse within the criminal and military systems. One estimate attributes almost one-quarter of hate crimes to police officers (Berrill, 1990).

Anti-LGBTQIA+ violence committed by police officers undermines LGBTQIA+ victims' willingness to report crimes, particularly after experiencing police violence firsthand or having communal knowledge that police officers may not view LGBTQIA+ victims as deserving of appropriate services. Even when victims are willing to take the risk of reporting a hate crime, they can be unsuccessful. For example, despite a Minnesota state law requiring police to note in initial reports any victims' belief that they have experienced a bias-motivated incident, responding officers fulfilled less than half of hate-crime filing requests between 1996 and 2000 (Wolff & Cokely, 2007). Because of bias, lack of training, and limited application, significant underreporting of sexual orientation and gender-motivated hate crimes occurs at the state and federal levels.

## 2.6.2.2 Historical LGBTQIA Policy

The Enforcement Act of 1871, also known as the Ku Klux Klan Act, addressed rampant anti-Black violence and marked the first effort at the federal level to criminalize hate crimes (Lurie & Chase, 2004). However, the Supreme Court's United States v. Harris decision in 1883 greatly weakened the act and the ability of the federal government to intervene when states refused to prosecute hate crimes (1883). In the wake of the mid-twentieth-century civil rights movement and violence against activists, the 1968 Civil Rights Law covering federally protected activities was signed into law. It gave federal authorities the power to investigate and prosecute crimes motivated by actual or perceived race, color, religion, or national origin while a victim was engaged in a federally protected activity—for example, voting, accessing a public accommodation such as a hotel or restaurant, or attending school. The categories of identity named by the law were the key social categories of concern during this period and followed the language of the Civil Rights Act of 1964. However, the law excluded sex, reflecting an unwillingness to address gender-based discrimination fully rather than piecemeal through laws such as Title IX of the Education Amendments Act of 1972.

In 1978, California enacted the first state law enhancing penalties for murders based on prejudice against the protected statuses of race, religion, color, and national origin. State lawmakers took the lead in developing explicit hate-crime laws, and federal legislators followed suit in the mid-1980s (Jennes & Grattet, 2001). The

emergent LGBTQIA+ movement gained traction in the 1980s as the HIV/AIDS epidemic, its toll on the community, and intolerance toward its victims galvanized activists. For example, New York's Anti-Violence Project (AVP) was founded in 1980 to respond to violent attacks against gay men in the Chelsea neighborhood. A major concern for these groups was the lack of documentation of such crimes; without evidence that these incidents were part of a broader picture of violence, it was difficult to push efforts to address hate crimes. As a lead member of the National Coalition of Anti-Violence Programs, AVP has coordinated many hate-violence reports since the late 1990s (AVP, 201). Such groups also have pushed for governmental efforts to collect data and criminalize hate crimes.

In 1985, U.S. Representative John Conyers proposed the Hate Crime Statistics Act to ensure the federal collection and publishing annually of statistics on crimes motivated by racial, ethnic, or religious prejudice (Perry, 1985). It took five years for the Hate Crimes Statistics Act to become law, in 1990, and it did so only after sexual orientation was explicitly excluded from the legislation. The text of the law emphasizes that nothing in the act (1) "creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation" and (2) "shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality" (1990).

Congress took great pains to emphasize that the legislation did not prevent discrimination against LGBTQIA+ people nor did it support that community. The law reinforces that Congress was not treating sexual orientation as it did other social identities that were already protected under civil rights laws. The law resulted in the Federal Bureau of Investigation collecting data from local and state authorities about hate crimes, but there are major challenges to collecting accurate data. Police are not consistently trained at the local and state levels to address anti-LGBTQIA+ hate crimes, and there continues to be stigma and risk associated with identifying as LGBTQIA+ to such authorities. Reporting practices thus vary dramatically across contexts, but the law has assisted anti-violence groups in gaining official data to document violence.

The 1998 beating and torture death of college student Matthew Shepard in Laramie, Wyoming, became a rallying point to address hate crimes more fully in the late 1990s. His murder received substantial media coverage and inspired political action as well as artistic works. As an affluent, white, gay young man, Shepard became a symbol of antigay violence. His attackers were accused of attacking him because of antigay bias but were not charged with committing a hate crime because Wyoming had no laws that covered anti-LGBTQIA+ crimes. The attention to his death contrasted with the lesser attention given to Brandon Teena's sexual assault and murder, which was immortalized in the film Boys Don't Cry (1999), and to the untold number of murders of trans women, particularly women of color (Wikipedia contributors, 2022).

Although the particularities of the case have been debated, Shepard's murder became iconic and served as a means of challenging U.S. lawmakers and society at large to address hate-motivated violence. The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act was passed by the U.S. House of Representatives on October 8, 2009, and the U.S. Senate on October 22, 2009 (Bessel, 2010). James Byrd Jr., a Black man, was attacked, chained to a truck, and dragged to his death for over two miles in Jasper, Texas. Both crimes

received national attention, and there was public outrage that neither Texas nor Wyoming could enhance the punishment for these bias-motivated murders (McPhail, 2000).

The act expanded protections to victims of bias crimes that were "motivated by the actual or perceived gender, disability, sexual orientation, or gender identity of any person," becoming the first federal criminal prosecution statute addressing sexual orientation and gender-identity-based hate crimes (DOJ, 2018). It also increased the punishment for hate-crime perpetrators and allowed the Department of Justice to assist in investigations and prosecutions of these crimes. On October 28, 2009, in advance of signing the act into law, President Barack Obama stated, "We must stand against crimes that are meant not only to break bones, but to break spirits, not only to inflict harm, but to inflict fear." His words emphasized the broader social context of hate crimes, experienced as attacks on marginalized communities (Office of the Press Secretary, White House, 2009).

Federal laws address constitutional rights violations, but states have—or don't have—their own specific hate-crime laws (Levin & McDevitt, 2002). Today, there are a wide range of laws regarding hate-crime protections across states, and they vary regarding protected groups, criminal or civil approaches, crimes covered, complete or limited data collection, and law enforcement training (Shively, 2005). As of 2019, nineteen states did not have any LGBT hate-crime laws, and twelve states had laws that covered sexual orientation but did not address gender identity and expression. Twenty states included both sexual orientation and gender identity in their hate-crime laws (Movement Advancement Project, n.d.). The majority of these laws were created in the first years of the 2000s, and gender identity and expression were included in the following years.

## 2.6.2.3 Debating Hate-Crime Laws

The arguments supporting hate-crime laws note that offenders' acts promote the unequal treatment of not only individuals but also the broader communities that victims belong to, cause long-term psychological consequences for victims, and violate victims' ability to freely express themselves (Cramer, et al, 2013) (Bessel, 2005) (Sullaway, 2004). The creation of laws serves to "form a consensus about the rights of stigmatized groups to be protected from hateful speech and physical violence" (Spade & Willse, 2000). This approach, however, centers on the perpetrator perspective and avoids a structural approach to oppression that acknowledges the numerous forms of bias and the overarching perpetuation of bias in society.

Many scholars have criticized the term hate crime for its erasure of the broader structures that support hate violence and instead place the blame for such acts solely on individuals assumed to be pathological and acting out of emotion (Ray and Smith, 2001)(Perry, 1999). Moreover, hate-crime laws primarily function at the symbolic level; crimes are reported at low rates, and statutes are not applied to such crimes by authorities (McPhail, 2000). Such laws focus not on prevention of crimes but rather on punitive measures to punish particular crimes.

With the existing high incarceration rates of LGBTQIA+ people as well as people of color, hate-crime

laws support rather than challenge mass incarceration (Meyer, et al, 2017). Some activists argue for efforts to "build community relationships and infrastructure to support the healing and transformation of people who have been impacted by interpersonal and intergenerational violence; [and efforts to] join with movements addressing root causes of queer and trans premature death, including police violence, imprisonment, poverty, immigration policies, and lack of healthcare and housing" (Bassichis, et al, 2011).

No universal consensus about the role of hate-crime laws in furthering the acceptance and inclusion of LGBTQIA+ people in American society currently exists (Figure 2.6.). For many people, such laws carry with them an emphasis on the value of their lives and help further their sense of belonging. Others, particularly LGBTQIA+ activists engaged in broader social justice struggles, argue that such laws merely buoy a broken criminal justice system that cannot truly benefit the LGBTQIA+ community.

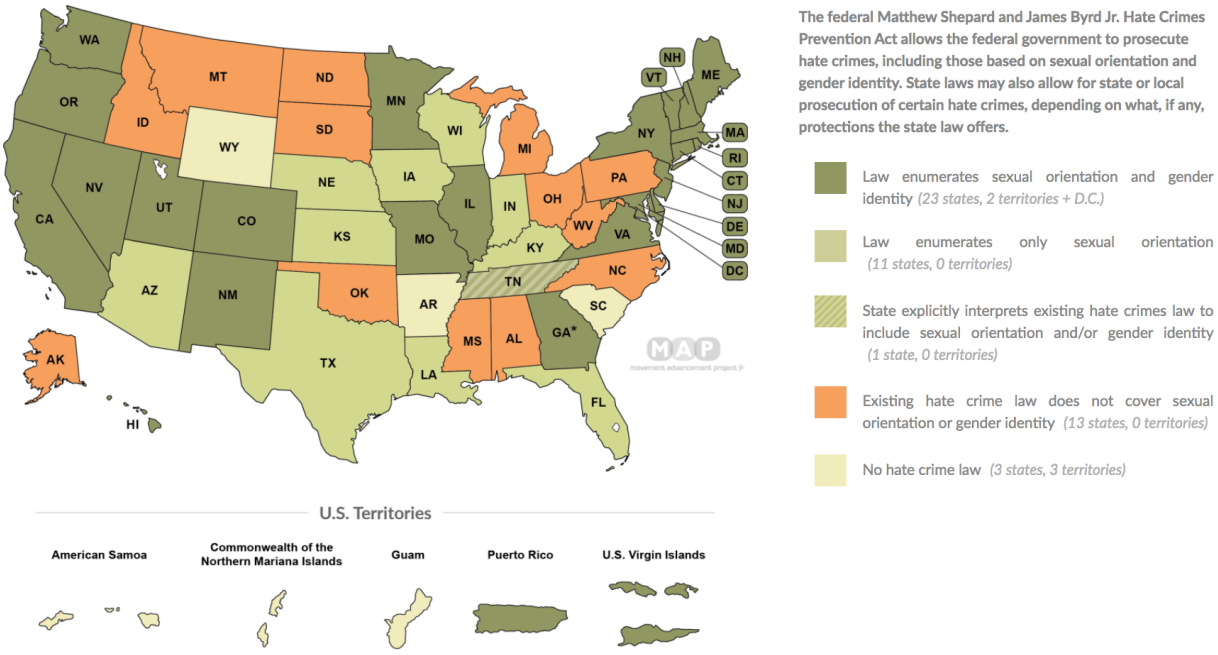


Figure 2.6. A map of state policy tallies for hate-crime laws. (Courtesy of the Movement Advancement Project.)

## 2.6.3 Licenses and Attributions for Re-Evaluating Policy

"Re-Evaluating Policy" by Alison S. Burke and Megan Gonzalez is adapted from "4.5 Re-Evaluating Policy" by Alison S. Burke in *SOU-CCJ230 Introduction to the American Criminal*

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"2.6.2. LGBTQIA+d" by Megan Gonzalez is adapted from "Profile: Anti LGBTQ Hate Crimes in the United States:Histories and Debates" by Ariella Rotramel in *LGBTQ+ Studies: An Open Textbook* by James Aimers, Christ Craven, Marquis Bey, Kimberly Fuller, Rev. Miller Jen Hoffman, Thomas Lawrence Long, Jennifer Miller, Gesina Phillips. Clark A. Pomerleau, Christine Rodriguez, DNP, APRN, FNP-BC, MDiv, MA, Ariella Rotramel, Shyla Saltzamn, Dara J. Silberstein, Marianne Snyder, PhD, MSN, RN, Lynne Stahl, Rachel Wexelbaum, Dr. Ryan J. Watson, Sarah R. Young is licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

Figure 2.5. Stonewall Inn with Orlando Memorial used under CC-BY-SA Rhododendrites.

Figure 2.6. Equality Maps: Hate Crime Laws used under Fair Use by the Movement Advancement Project.

# 2.7 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND POLICY MAKING

**Crime Prevention Science (CPSc) solutions** are the best policy solutions for crime problems in communities. They consist of the known programs, practices, and policies that are based on the most rigorous research evidence. Each CPSc solution has been carefully reviewed and recommended by top scientists in the field of criminology and criminal justice. For more than a decade, CPSc solutions have been made available online. The expectation is that policy makers in every community will choose to implement these CPSc solutions in their communities. Sadly, there is little evidence that most policy makers know about CPSc, much less support them properly. An important goal of this book is to increase the level of awareness and support for CPSc in every community. Below is a table with two unique CPSc solutions. These two CPSc solutions are designed to increase policy makers' ongoing awareness and support for CPSc solutions in every community. Any criminal justice faculty and their students can collaborate with their policy makers to install & support these two CPSc solutions in their communities.

## 2.7.1 Crime Solutions for Criminal Justice Policy (Table)

| Title and Evidence Rating | Summary Description of CPSc Solutions |
|---|---|
| ☑ Communities That Care **(CTC)** | This is a planning and implementation system that helps community stakeholders come together to address adolescent behavior problems such as violence, delinquency, substance abuse, teen pregnancy, and dropping out of school. |
| ☑ PROmoting School-Community-University Partnerships to Enhance Resilience (PROSPER) | This is a community-based program that was designed to address substance abuse and antisocial behavior. The program is rated Promising. Students in the schools that implemented the PROSPER model had statistically significant fewer conduct problems and lower lifetime illicit substance use, compared with students in control schools. |

## 2.7.2 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and Policy Making

# 2.8 CONCLUSION

In this chapter, we focused first on the relationship between theory, research and policy. Then we identified the stages of creating policy and discussed how current events and politics shape and influence policy. Finally we identified Crime Prevention Science solutions that rely on community based programs which increase community connectedness and investment into the community which can eventually have powerful impacts on local policy.

## 2.8.1 Learning Objectives

1. Examine the relationship between theory, research, and policy.
2. Identify the stages involved in creating policy.
3. Reflect on how current events and politics shape policy.
4. Identify Crime Prevention Science (CPSc) Solutions that rely on policy
5. Investigate policy support for Crime Prevention Science (CPSc) Solutions.

## 2.8.2 Review of Key Terms

- Cost-benefit evaluations
- Crime prevention
- Crime prevention science (CPSc) solutions
- Folk devils

- Framing
- Impact (outcome) evaluations
- Moral panic
- Narratives
- Policy development
- Process evaluation

## 2.8.3 Review of Critical Thinking Questions

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. What is a current example of a moral panic?
2. How does the media influence policy?
3. If the media has so much influence over policy, how can we ensure fair and just laws and practices?
4. Think of a crime problem in your area. What policy would you enact to combat it and how would you evaluate this policy to see if it was working?
5. What are some policies you can think of that have changed over time? (eg. Marijuana legalization)?

## 2.8.4 Licenses and Attributions for Conclusion

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# 2.10 CHAPTER 2 FEEDBACK SURVEY

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# CHAPTER 3: DEFINING AND MEASURING CRIME AND CRIMINAL JUSTICE

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 3.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

In this chapter, we will focus on the importance of studying research methods related to criminal justice and criminology. Then we will discuss some of the different statistics and data that are reported as well as under and misreported. Finally we will investigate possible Crime Prevention Science solutions which could be implemented to improve research and data collection in the criminal justice system.

## 3.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Develop an understanding of the different data sources used to gather precise and accurate measures of crime.
2. Recognize the difference between official or reported statistics, self-report statistics, and victimization statistics.
3. Evaluate the reliability of statistics and data heard about the criminal justice system.
4. Identify Crime Prevention Science (CPSc) Solutions that rely on crime data.
5. Investigate data support for Crime Prevention Science (CPSc) Solutions.

## 3.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- dark figure
- official statistics
- respondents
- self-report statistics
- survey research
- victim
- victimization studies

## 3.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. What are the three different types of data sources we often rely on in CJ?
2. What are the strengths and limitations of each data source?
3. Identify when each type of data source would be appropriate for different crimes and why.

## 3.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 3.2 RESEARCH METHODS

It is important to study research methods to determine which method would work best in a particular scenario. Below we will examine the top five research methods used by criminologists today: survey, longitudinal, meta analysis, quasi-experimental research, cross-sectional research methods, and the gold standard of research methods – randomized control trial (RCT) method. (trudi)

## 3.2.1 Survey Research Method

**Survey research** is a quantitative and qualitative method with two important characteristics. First, the variables of interest are measured using self-reports. In essence, survey researchers ask their participants (who are often called **respondents**) to report directly on their own thoughts, feelings, and behaviors. Second, considerable attention is paid to the issue of sampling. In particular, survey researchers have a strong preference for large random samples because they provide the most accurate estimates of what is true in the population. In fact, survey research may be the only approach in which random sampling is routinely used. Beyond these two characteristics, almost anything goes in survey research. Surveys can be long or short. They can be conducted in person, by telephone, through the mail, or over the Internet. They can be about voting intentions, consumer preferences, social attitudes, health, or anything else that it is possible to ask people about and receive meaningful answers. Although survey data are often analyzed using statistics, there are many questions that lend themselves to more qualitative analysis.

## 3.2.2 Meta Analysis Research Method

Meta-analysis is a research method that involves combining data from multiple studies to draw conclusions about a particular research question or topic. The goal of a meta-analysis is to identify consistent patterns or trends across studies, which can provide more reliable and precise estimates of the effects of an intervention or factor than any single study could provide on its own.

To conduct a meta-analysis, researchers typically begin by identifying a research question and a set of studies that have investigated that question. They then use statistical methods to combine the results of those studies, often weighting each study according to its sample size or other factors. By combining the results of multiple studies, meta-analysis can help to identify consistent findings across studies, as well as identify factors that may explain variability in results across studies.

One example of how a criminologist might employ meta-analysis is to examine the effectiveness of a

particular intervention aimed at reducing crime, such as a community policing program. By conducting a meta-analysis of studies that have investigated the effectiveness of community policing, a criminologist could identify whether the intervention consistently leads to reductions in crime across different settings, populations, and study designs. They could also identify factors that may moderate the effectiveness of the intervention, such as the quality of implementation, the characteristics of the community, or the nature of the crime problem being addressed. Such findings could help policymakers and practitioners to make more informed decisions about how to allocate resources and implement crime reduction strategies. (chat gpt)

## 3.2.3 Quasi-Experimental Research Method

The prefix quasi means "resembling." Thus quasi-experimental research is research that resembles experimental research but is not true experimental research. Although the independent variable is manipulated, participants are not randomly assigned to conditions or orders of conditions (Cook & Campbell, 1979). Because the independent variable is manipulated before the dependent variable is measured, quasi-experimental research eliminates the directionality problem. But because participants are not randomly assigned—making it likely that there are other differences between conditions—quasi-experimental research does not eliminate the problem of confounding variables. In terms of internal validity, therefore, quasi-experiments are generally somewhere between correlational studies and true experiments.

Quasi-experiments are most likely to be conducted in field settings in which random assignment is difficult or impossible. They are often conducted to evaluate the effectiveness of a treatment or program. A criminal justice example of a quasi-experimental research method is the evaluation of a new correctional program in a state prison system. Suppose that a new educational program is implemented in one prison, but not in another prison, due to resource constraints. The correctional system may want to evaluate the impact of the program on the outcomes of the participating prisoners, such as recidivism rates or successful reentry into society after release.

To evaluate the program's impact, researchers could use a quasi-experimental design by comparing the outcomes of prisoners who participate in the program with those who do not. However, since participation in the program is not randomly assigned, the researchers must take steps to control for other factors that may influence the outcomes, such as prior criminal history or demographic characteristics.

One way to control for these factors is to use statistical techniques, such as regression analysis or propensity score matching, to create comparable groups of participants and non-participants. The researchers can then compare the outcomes of these two groups to evaluate the program's impact, while accounting for potential confounding factors.

This type of quasi-experimental research design can help correctional systems and policymakers to make informed decisions about the effectiveness of new programs, without requiring the time and resources necessary for a randomized controlled trial. However, it is important to note that quasi-experimental designs

may be more prone to bias than randomized controlled trials, and therefore, the findings should be interpreted with caution. (trudi / chat gpt)

## 3.2.4 Cross-Sectional Research Method

A cross-sectional research method is a research design that involves collecting data from a sample of individuals at a single point in time. A criminal justice example of a cross-sectional research method is a survey of public attitudes towards the police. In this study, a sample of individuals from a particular community or region would be selected and asked to complete a survey about their perceptions of the police, their confidence in the police, and their experiences with the police.

The survey would be administered at a single point in time, such as over the course of a week or a month. The data collected from the survey would provide a snapshot of public attitudes towards the police in the community during that period.

The findings from this cross-sectional research method could help law enforcement agencies to understand the perceptions of the public towards their work, identify areas of concern, and develop strategies to improve police-community relations. For example, if the survey reveals that a significant portion of the community does not trust the police, law enforcement agencies may consider implementing programs to improve transparency and accountability, or increase community engagement efforts.

However, it is important to note that cross-sectional research designs can only provide a snapshot of a particular point in time, and cannot provide information about how attitudes and perceptions may change over time. Longitudinal research designs that track changes in attitudes over time may be necessary to fully understand how attitudes towards the police may be influenced by events or interventions. (trudi / chat gpt)

## 3.2.5 Randomized Control Trial (RCT) Research Method

A Randomized Controlled Trial (RCT) is a research method that involves randomly assigning participants to different groups, typically an intervention group and a control group, to test the effectiveness of an intervention or treatment. The goal of an RCT is to minimize bias and establish a causal relationship between the intervention and the outcome being studied.

**Advantages**

- Good randomization will "wash out" any population bias
- Results can be analyzed with established statistical tools
- Populations of participating individuals are clearly identified

**Disadvantages**

- Expensive in terms of time and money
- Volunteer biases: the population that participates in the study may not be representative of the actual entire population

A criminal justice example of an RCT is the evaluation of a new education program for first-time offenders. In this study, a group of first-time offenders would be randomly assigned to either the intervention group or the control group. The intervention group would participate in free college courses and research opportunities for college credit as well as other types of support to address the underlying causes of their criminal behavior. The control group, on the other hand, would not receive the education program or support and would continue with the traditional criminal justice process.

After the intervention period, both groups would be assessed for outcomes such as recidivism rates or successful completion of probation. The researchers would then compare the outcomes of the two groups to evaluate the effectiveness of the diversion program.

A RCT in this criminal justice setting would provide strong evidence of the effectiveness of the diversion program, since the random assignment of participants to groups would help to control for other factors that may influence the outcomes. By establishing a causal relationship between the intervention and the outcomes, this RCT could help policymakers and practitioners to make informed decisions about the implementation and expansion of the diversion program to reduce recidivism and improve outcomes for first-time offenders. (trudi / chat gpt)

## 3.2.6 Impact on People's Lives

Scientific research is a critical tool for successfully navigating our complex world. Without it, we would be forced to rely solely on intuition, other people's authority, and blind luck. While many of us feel confident in our abilities to decipher and interact with the world around us, history is filled with examples of how very wrong we can be when we fail to recognize the need for evidence in supporting claims. At various times in history, we would have been certain that the sun revolved around a flat earth, that the earth's continents did not move, and that mental illness was caused by possession. It is through systematic scientific research that we divest ourselves of our preconceived notions and superstitions and gain an objective understanding of ourselves and our world.

Specifically in the field of criminal justice, research is critical because it provides a scientific and evidence-based approach to understanding and addressing the complex problems and issues that arise in the justice system. Through research, criminal justice professionals can gain a better understanding of the root causes of

crime, the effectiveness of different intervention programs, and the impact of various policies and practices on public safety and community well-being.

In addition, research helps to identify and address biases and disparities in the criminal justice system. Through rigorous and objective research, criminal justice professionals can gain a better understanding of the factors that contribute to disparities in policing, sentencing, and other aspects of the justice system, and develop evidence-based solutions to address these issues. The Crime Prevention Science sections of each chapter in this textbook provide examples of such research and these sections are included in every chapter to demonstrate how important research is to the improvement of our criminal justice system.

Overall, research is critical in the field of criminal justice because it helps to promote evidence-based practices, improve outcomes, and ensure that the justice system operates fairly and equitably for all.

## 3.2.7 Statistics on "Other Groups"

Conducting research relies on gathering accurate and reliable data. When analyzing inequities within the Criminal Justice System, race and ethnicity are two of the variables gathered and considered in the research. However, how race and ethnicity are represented in the research can skew the data and cause challenges. For example, the U.S. Office of Management and Budget (OMB) disaggregates race into the following categories:

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

And ethnicity into the following categories:

- Hispanic or Latino
- Not Hispanic or Latino

Simply using these categories can, in and of itself, cause distention and misinformation in how one self-identifies, in that not everyone feels they fit into these groupings. Over the years, the OMB has conducted reviews of race and ethnicity categories and have made some changes, and yet many still do not feel they fit within these prescribed groups. For example, someone may identify with the ethnicity of Hispanic or Latino but may not identify with any of the prescribed race categories. Thus if they chose to leave the race category blank the data would be incomplete or if the race category was a required field, the person may feel compelled to just choose one of the options, even if they didn't identify as it, thus providing inaccurate information.

Although researchers have the ability to expand these categories, if they so choose, this too can cause

misinformation as some research may have more disaggregated data than others. Researchers are also not required to expand these categories, except in a few specific situations, like those in the state of New York in which in December 2021, Governor Kathy Hochul signed New York State Law S.6639-A/A.6896-A. The law requires state agencies, boards, departments, and commissions to include more disaggregated options for Asian races to include: Korean, Tibetan, and Pakistani as well as more disaggregated options for Native Hawaiian or Other Pacific Islander races to include: Samoan and Marshallese (Governor Hochul Signs Package of Legislation to Address Discrimination and Racial Injustice, 2021).

This has led to a number of researchers including "other" categories, allowing individuals to thus choose if they don't feel they identify with one of the specific categories. Some researchers have also included the fill-in-the blank model in which respondents then check the "other" box and specify their self-identified race. These two options, although more inclusive to self-identification, can lead to additional data reporting issues, in which researchers are not able to aggregate the data due to too many variations in responses. This same concern can be applied in additional data collection categories as well, when the category options are limited and thus have the potential to exclude certain individuals.

## 3.2.8 Statistics on Native American and Latinx

According to a Bureau of Justice Statistics report in 1999, Native Americans were incarcerated at a rate that was 38% higher than the national average (Greenfield, 1999). More recent data suggest that in jails 9,700 American Indian/Alaskan Native people – or 401 per 100,000 population – were held in local jails across the country as of late June, 2018. That's almost twice the jail incarceration rates of both white and Hispanic people (187 and 185 per 100,000, respectively) (Zen, 2018). In 19 states, they are more overrepresented in the prison population compared to any other race and ethnicity (Sakala, L., 2010). Between 2010 and 2015, the number of Native Americans incarcerated in federal prisons increased by 27% (Flanigan, 2015). In Alaska, data published by the 2010 US Census revealed that 38% of incarcerated people are American Indian or Alaskan Native despite the fact that they make up only 15% of the total population (Sakala, 2010). Native youth are highly impacted by the US prison system, despite accounting for 1% of the national youth population, 70% of youth taken into federal prison are Native American (Lakota People's Law Project, 2015). Native American men are admitted to prison at four times the rate of white men, and Native American women are admitted at 6 times the rate of white women(Lakota People's Law Project, 2015).

Latinos are incarcerated at a rate about 2 times higher than non-Latino whites and are considered one of the fastest-growing minority groups incarcerated (Kopf, Wagner, 2015).

## 3.2.9 Licenses and Attributions for Research Methods

# 3.3 UNDERREPORTING OF CRIME

It is difficult to determine the amount of crime that occurs in our communities every year because many crimes never come to the attention of the criminal justice system. There are more than a dozen different reasons that the majority of crimes go unreported to the proper criminal justice officials. The reasons include: **victims** or those who have "suffered direct or threatened physical, financial, or emotional harm as a result of the commission of a crime," not reporting, victims not realizing they are victims, and offenders not getting caught (*Victim Information*, 2021). One of the most recent studies on the significance of the dark Figure of crime has analyzed unreported violent crime statistics from 2006 to 2010 (Solorzano, 2021). It showed that there are more than half a dozen major reasons for not reporting crime to law enforcement. They include that the crime incidents were: reported to another official; deemed unimportant by the victim; believed police wouldn't/couldn't help; protecting the offender(s); fear of retaliation; and others (2021).

Research reveals that on average, more than half of the nation's violent crimes, or nearly 3.4 million violent victimizations per year, went unreported to the police between 2006 and 2010, according to the U.S. Bureau of Justice Statistics (BJS, 2012). Because of this underreporting of crime, criminologists often refer to this problem as the "dark figure" of crime. The phrase "**dark figure**" is used to recognize that a large portion of crime each year is unreported.The latest report from BJS shows that almost half of the 50-States in America provided insufficient 2021 data to the FBI crime data (BJS, 2022). Another most recent study detailed in Figure 3.1 shows that "fewer than half of crimes in the U.S. are reported, and fewer than half of reported crimes are solved" (Pew Research Center, 2020). Meaning that less than 25% of all crimes remain unsolved every year. This is illustrated in figure (3..) which combines multiple official data from the U.S. federal agencies.

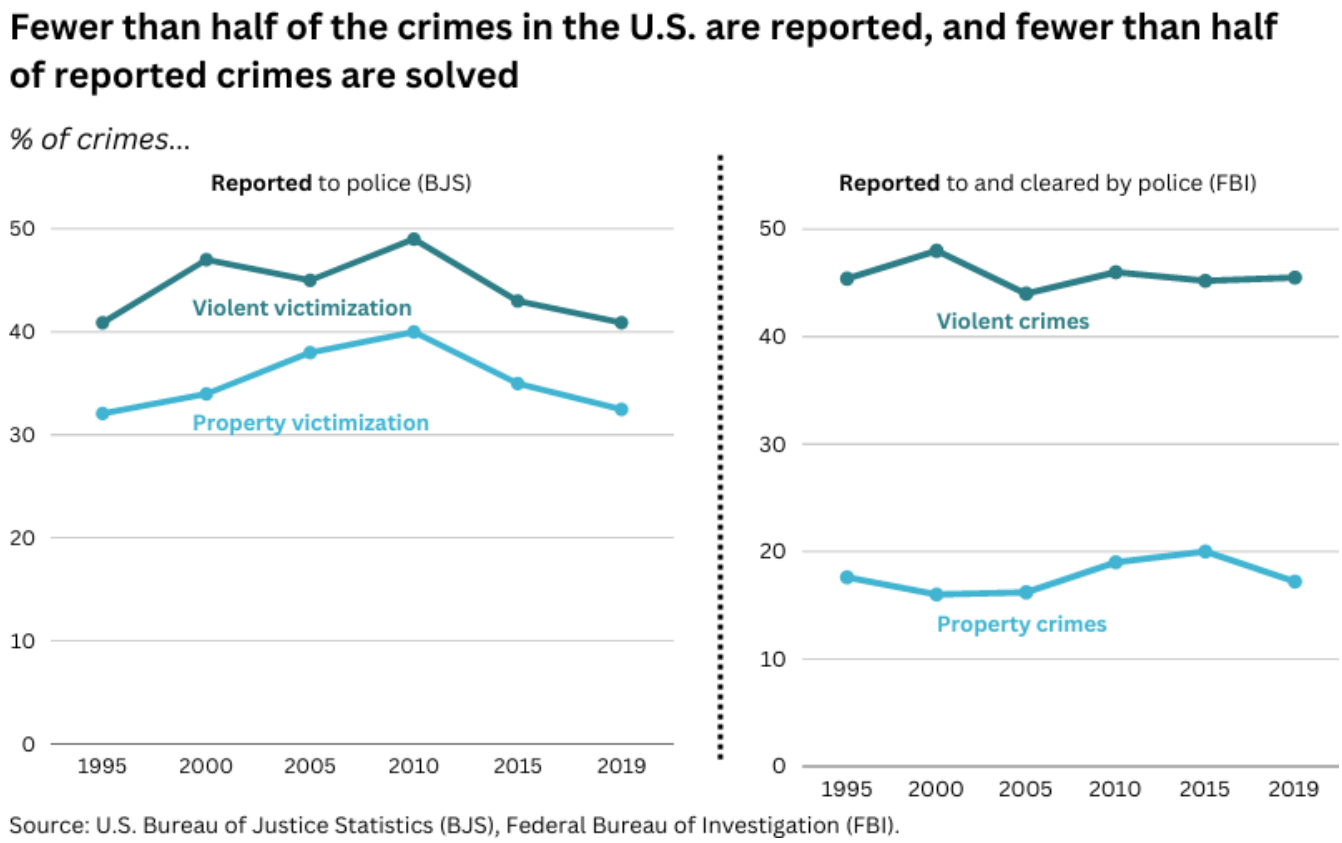


Figure 3.1. Crime reporting and clearing in the U.S.

Underreporting is one of the biggest problems that continues to plague the criminal justice systems in America and most other nations. As with other major crime problems, underreporting is also highly preventable, especially if the key leaders of communities and universities are willing to end the dark figures of crime.

There are three general sources of crime statistics that will be covered in this chapter. They include the **official statistics**, which we often describe as reported statistics, self-report statistics, and victimization statistics. Each of these sources of crime statistics has pros and cons, and we will spend time discussing those as well. Additionally, we will discuss other key considerations regarding crime statistics. First is the importance of looking at crime trends over time. The other is relying upon statistics and research when developing policy. Finally, we will explain how data should be a tool that enhances the criminal justice system.

If we have accurate and reliable crime statistics, we can evaluate criminal justice policies and programs. For example, we could use crime statistics to see if incarcerating drug offenders is effective. Such effectiveness is studied in the correctional system via the 'risk principal,' or classifying people based on the level of risk.

Let us take the example of looking at the gap between reported and unreported crimes.

## 3.3.1 Some Reasons People May Not Report:

1. The victim may not know a crime occurred.

2. The offender is a member of the family, a friend, or an acquaintance.
3. The victim thinks it is not worth reporting.
4. The victim may fear retaliation.
5. The victim may also have committed a crime.
6. The victim does not trust the police.

## 3.3.2 Licenses and Attributions for Underreporting of Crime

# 3.4 OFFICIAL STATISTICS

Despite knowing that crime does go unreported, it is still important to estimate and attempt to measure crime in the country. However, it is essential to be aware of the data sources' strengths and weaknesses when reading crime statistics. Also, be cautious of how changing data collection techniques may alter statistics.

**Reading Data Right – Crime Reporting statistics**

In the past, crime reporting relied on paper-based systems, where citizens were required to report crimes in person or through a phone call to the police station. These reports were then manually recorded in a database, which was time-consuming and could result in errors or missing data.

With the advent of digital technology, many police departments transitioned to online crime reporting systems, where citizens can report crimes through a website. This has made it easier and more convenient for citizens to report crimes, resulting in a significant increase in the number of reported crimes.

As a result of this change in data collection technique, crime statistics may appear to show a sudden increase in crime rates in the area, even if the actual rate of criminal activity has remained relatively constant. In some cases, the increase in reported crimes may also be attributed to an increase in public awareness and willingness to report crimes, rather than an actual increase in criminal activity.

Thus, it is important to consider the impact of changes in data collection techniques on statistical analysis and interpretation, and to adjust the analysis accordingly to account for these changes. Failure to do so may lead to misleading conclusions and inaccurate policy decisions.

Official statistics are gathered from various criminal justice agencies, such as the police and courts. Therefore these statistics represent the total number of crimes officially reported to the police or the number of arrests made by that police agency. If an officer uses discretion and does not arrest a person, even if a crime was committed, the crime does not get reported.

The Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) Program is the largest and most well-recognized data collection program on crime currently available. The UCR lists the number of crimes that were reported to the police and the number of arrests made.

The UCR Program's primary objective is to generate reliable information for use in law enforcement administration, operation, and management. Various groups and agencies rely upon the UCR crime data, including criminal justice students, researchers, the media, and members of the public (*Crime/Law Enforcement Stats (UCR Program)*, 2023). The UCR began in 1929 by the International Association of Chiefs of Police to meet the need for reliable, uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics. Every year reports were produced from data received from more than 18,000 reporting agencies, including cities, counties, universities, and colleges. Also included are

state, tribal, and federal law enforcement agencies voluntarily participating in the program to share their crime data (*Crime/Law Enforcement Stats (UCR Program)*, 2023).

The UCR Program contains data from four collections: the National Incident-Based Reporting System (NIBRS), the Summary Reporting System (SRS), the Law Enforcement Officers Killed and Assaulted (LEOKA) Program, and the Hate Crime Statistics Program. The UCR also publishes special reports on cargo theft, human trafficking, and NIBRS topical studies. In 2020, UCR data began being published in the FBI's Crime Data Explorer (CDE), an interactive online tool containing data from the four collections as well as additional data, including the National Use-of-Force Data Collection.

Check out the FBI's Uniform Crime Reporting Program— FBI and Crime Data Explorer to learn more.

## 3.4.1 National Incident-Based Reporting System, or NIBRS

The National Incident-Based Reporting System, or NIBRS, was created to improve the overall quality of crime data collected by law enforcement. NIBRS is unique when compared to other crime databases. It collects data on crimes reported to the police, but also incidents where multiple crimes are committed. For example when a robbery escalates into a rape (Rantala, 2000). NIBRS also collects information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in the crimes.

## 3.4.2 Summary Reporting System

The Summary Reporting System or SRS, collects aggregate counts of the number of occurrences of offenses as well as arrest data for those offenses (*UCR Technical Specifications, User Manuals, and Data Tools*, 2022). Combined with the data of the NIBRS, the two collections help portray a fuller picture of data of crime offenses and arrests.

## 3.4.3 Law Enforcement Officers Killed and Assaulted (LEOKA) Program

Law Enforcement Officers Killed and Assaulted Program (LEOKA) provides data and training that helps keep law enforcement officers safe by providing relevant, high-quality, potentially lifesaving information to law enforcement agencies. These agencies may often be focusing more on why an incident occurred, as opposed to what occurred during the incident. The purpose of LEOKA is to prevent future incidents of officer killings

and assaults through officer safety awareness training (*LEOKA*, 2022). In 2019, the FBI published figure 3.2. based on the data submitted to LEOKA related to officers killed through felonious and accidental incidents.

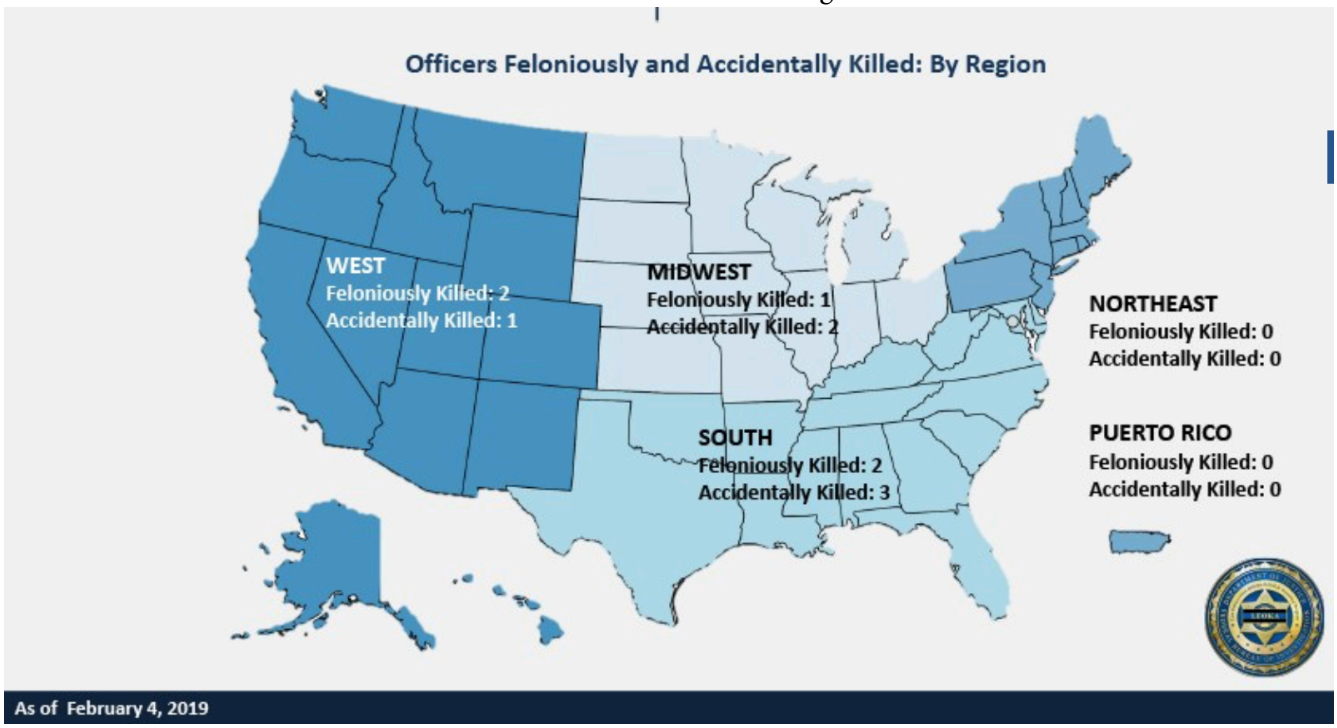


Figure 3.2. Officers Feloniously and Accidentally Killed by Region 2019.

## 3.4.3.1 Exclusions from the LEOKA Program's Data Collection

Deaths resulting from the following are not included in the LEOKA program's statistics:

- Natural causes such as heart attack, stroke, aneurysm, etc.
- On duty, but death is attributed to their own personal situation such as domestic violence, neighbor conflict, etc.
- Suicide

Examples of job positions not typically included in the LEOKA program's statistics (unless they meet the above exception) follow:

- Corrections/correctional officers
- Bailiffs
- Parole/probation officers
- Federal judges
- The U.S. and assistant U.S. attorneys

- Bureau of Prison officers
- Private security officers

Although official statistics are a great starting point, recognize that they are imperfect in nature. Police agencies can focus on different types of crime, which can change the overall number of arrests. For example, if police begin cracking down on domestic violence, the statistics may go up. This crackdown can make it appear that the problem has increased, but it could be related to the crackdown. Just remember, if the crime is not reported, or no arrest is made, it will not get captured in the data.

## 3.4.4 Hate Crime Statistics

Congress passed the Hate Crime Statistics Act in 1990. This required the attorney general to collect data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." Hate crime statistics may assist law enforcement agencies, provide lawmakers with justification for certain legislation, or provide the media with credible information. It can also be used to simply show hate crime victims that they are not alone (*About Hate Crime Statistics*, 2019).

### 3.4.4.1 CR Program's Hate Crime Data Collection

Race/Ethnicity/Ancestry:

- Anti-American Indian or Alaska Native
- Anti-Arab
- Anti-Asian
- Anti-Black or African American
- Anti-Hispanic or Latino
- Anti-Multiple Races, Group
- Anti-Native Hawaiian or Other Pacific Islander
- Anti-Other Race/Ethnicity/Ancestry
- Anti-White

Religion:

- Anti-Buddhist
- Anti-Catholic
- Anti-Eastern Orthodox (Russian, Greek, Other)

- Anti-Hindu
- Anti-Islamic
- Anti-Jehovah's Witness
- Anti-Jewish
- Anti-Mormon
- Anti-Multiple Religions, Group
- Anti-Other Christian
- Anti-Other Religion
- Anti-Protestant
- Anti-Sikh
- Anti-Atheism/Agnosticism, etc.

Sexual Orientation:

- Anti-Bisexual
- Anti-Gay (Male)
- Anti-Heterosexual
- Anti-Lesbian
- Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)

Disability:

- Anti-Mental Disability
- Anti-Physical Disability

Gender:

- Anti-Male
- Anti-Female

Gender Identity:

- Anti-Transgender
- Anti-Gender Non-Conforming

### 3.4.4.2 Types of Hate Crimes by Category

The types of hate crimes reported to the FBI are broken down by specific categories. The aggregate hate crime data collected for each incident include the following:

- **Bias Motivation**: Incidents may include one or more offense types.
- **Victims**: The types of victims collected for hate crime incidents include individuals (adults and juveniles), businesses, institutions, and society.
- **Offenders**: The number of offenders (adults and juveniles), and when possible, the race and ethnicity of the offender(s).
- **Location type**: One of 46 location types can be designated, such as house of worship, sidewalk, home, school, etc.
- **Jurisdiction**: Includes data about hate crimes by judicial district, state, and agency.

## 3.4.5 National Use-of-Force Data Collection

The National Use-of-Force Data Collection was created by the FBI in 2015 and began collecting data in 2019 to provide statistics on law enforcement use of force incidents. The data collected includes information about the circumstances of the use-of-force incident, the subject(s) and the officer(s) involved, offering big-picture insights on the incidents (*Use-of-Force*, 2022).

### 3.4.5.1 Activity: Bureau of Justice Statistics

The Bureau of Justice Statistics (BJS) is relatively user-friendly. Look at crime statistics by state, region, or city, and explore different years and crime types in the Arrest Data Analysis Tool

- Examine current state AND city crime trends in the past five years.
- Second, pick a state AND city interested in living in and examine the crime trends for the past five years.

One downside to the FBI's data collection program is that it is only as good as the data it receives. Because much

of the data collected is voluntarily provided by law enforcement agencies, there are many missing pieces. There is a lack of proper collaboration between the local community and university key leaders to prioritize data collection. The FBI have not been sufficiently proactive in facilitating this community key leader collaborations on data.

### 3.4.5.2 50-State Crime Data

Many Americans believe that crime in their area is constantly increasing but is that really the case? The Council of States Justice Center has developed an interactive tool to help individuals track change in violent crime in their state. Explore the Crime Data Tool to learn more about how Crime rates in your state.

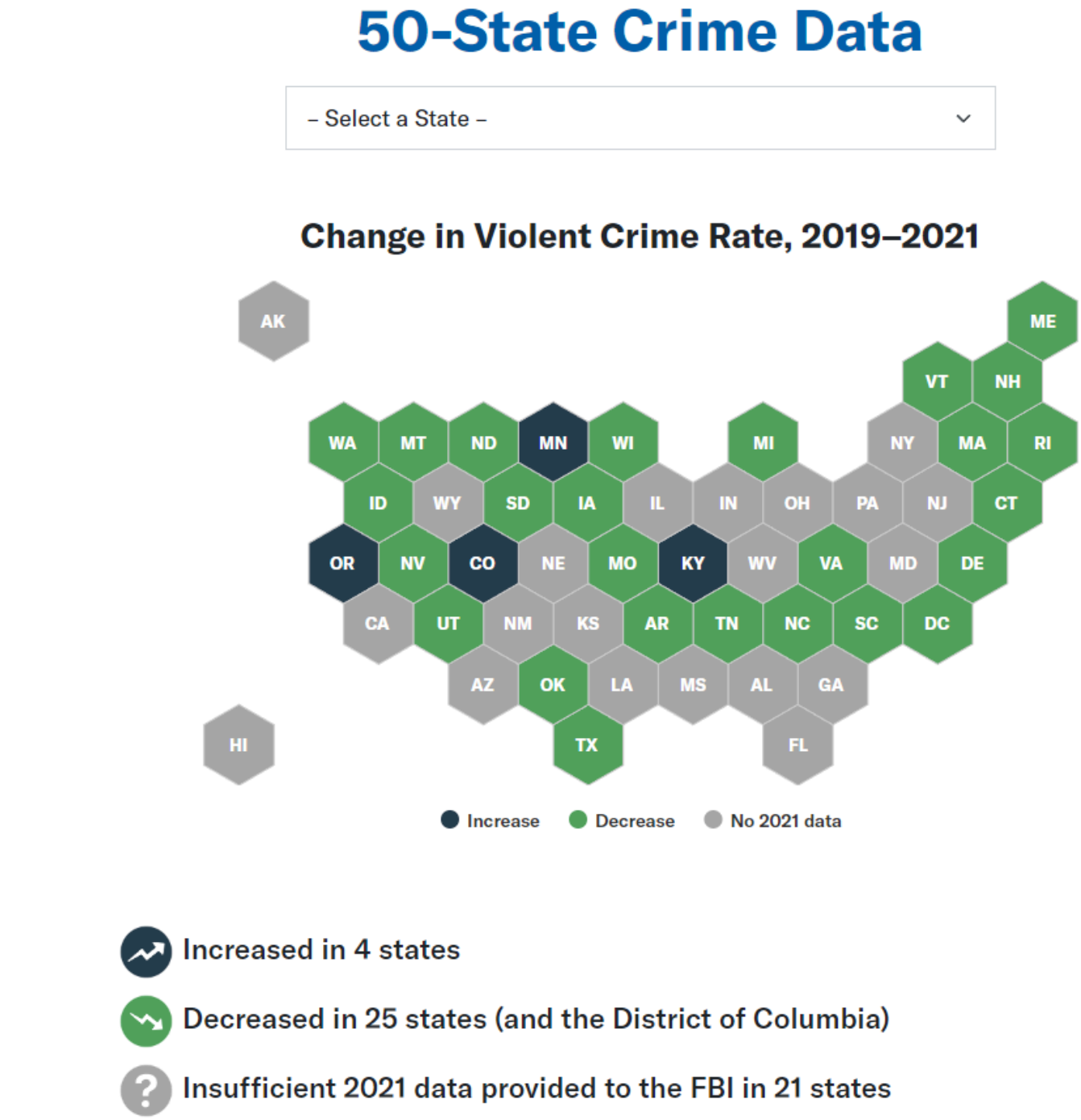


Figure 3.3. Tools for States to Address Crime in your state – The Council of State Governments Justice Center

## 3.4.6 Licenses and Attributions for Official Statistics

Figure 3.2. Officers Feloniously and Accidentally Killed by Region 2019 by the Federal Bureau of Investigation is in the Public Domain.

Figure 3.3. Tools for States to Address Crime in your state by CSG Justice Center is in the Public Domain.

"Official Statistics" by Sam Arungwa is adapted from "2.2. Official Statistics" by Shanell Sanchez in *SOU-CCJ230 Introduction to the American Criminal Justice System* by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, and Shanell Sanchez, licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

# 3.5 VICTIMIZATION STUDIES

**Victimization studies** asking people if they have been a victim of a crime in a given year, reported or not. This is an attempt to fill in where police reports are missing unreported crimes. The National Crime Victimization Survey (NCVS) is the primary source of information on criminal victimization in the United States. The NCVS helps fill data gaps in the UCR and NIBRS data. Every year the Bureau of Justice Statistics administers the NCVS survey. They gather data on frequency, characteristics, and consequences of criminal victimization.

The NCVS collects information on non-fatal personal crimes, such as rape or sexual assault, robbery, aggravated and simple assault, and personal larceny. They also include household property crimes, such as burglary, motor vehicle theft, and other theft. These two categories of crimes are included, regardless of whether they are officially reported or unreported to police (*NCVS Dashboard*, 2022). The NCVS ask respondents questions on their age, sex, race, and Hispanic origin, marital status, education level, income, and whether they experienced victimization. NCVS also collects information on the offender including age, race and Hispanic origin, sex, and the victim-offender relationship. Characteristics of the crime, such as the time and place of occurrence, use of weapons, nature of injury, and economic consequences are also included. Whether the crime gets reported to police, reason(s) the crime was or does not get reported, and victim experiences with the criminal justice system are also reported (*NCVS Dashboard*, 2022).

## 3.5.1 Activity: NCVS Data Analysis

Go to the National Crime Victimization Survey (NCVS) | Bureau of Justice Statistics and use the analysis tool that allows you to examine the National Crime Victimization Survey (NCVS) data. It can show you both violent and property victimization. You can select the victim, household, and incident characteristics.

You can instantly generate tables with national estimates. These can include the numbers, rates, and percentages of victimization from 1993 to the most recent year that NCVS data are available. The preset Quick Tables show you trends in crime and reporting to the police. If you would like more detail, use the Custom Tables to analyze victimization by excellent characteristics.

As with any data source, there are challenges and limitations to victimization surveys. Respondents may have issues recalling victimization, which can lead to underreporting or overreporting. If an individual was traumatized the event may blur together, and it may have occurred in 2017 rather than 2018, but gets reported as 2018. Other times respondents may lie or omit information for various reasons such as shame, fear, confusion, and a lack of trust. If the respondent is uncomfortable with the interviewers, they may not report specific details, fearing that they will get reported to police. However, methodological techniques can attempt to mitigate the chances of this happening (Lab, et al., 2013).

## 3.5.2 Licenses and Attributions for Victimization Studies

# 3.6 SELF-REPORT STATISTICS

**Self-report statistics** are data that are reported by individuals. These are gathered when people are surveyed and asked to report the number of times they may have committed a particular crime. The time frame is a set period in the past, regardless of whether the offender was caught or not. Monitoring the Future (MTF) is an ongoing study of the behaviors, attitudes, and values of American secondary school students, college students, and young adults. Each year, a total of approximately 50,000 eighth, tenth, and twelfth-grade students get surveyed. In addition, annual follow-up questionnaires are mailed to a sample of each graduating class for some years after their initial participation. The Monitoring the Future Study has been funded mainly by the National Institute on Drug Abuse, a part of the National Institutes of Health. MTF is conducted at the Survey Research Center in the Institute for Social Research at the University of Michigan.

## 3.6.1 Monitoring the Future

How do we get estimates on drug use amongst teens if most of them do not get caught? We rely on reports like the one from the Monitoring the Future (MTF). This is a long-term study of substance use among U.S. adolescents, college students, and adult high school graduates through age 60. The survey is conducted annually, which allows researchers to examine long-term trends. MTF findings identify emerging substance use problems, track substance use trends, and inform national policy and intervention strategies. Respondents are confidential, which means we cannot link their answers to them. Therefore, people may be more likely to tell the truth (Johnston, et. al., 2018).

## 3.6.2 In the Report: One Form of Drug Use Showed a Sharp Increase in Use in 2018

The most important findings to emerge from the 2018 MTF survey is the dramatic increase in vaping by adolescents. Vaping is a relatively new phenomenon, so we are still developing measures related to this behavior, which included asking separately for the first time in 2017 about the vaping of three specific substances—nicotine, marijuana, and just flavoring. There was a substantial increase in 2018 in the vaping of all three of the substances mentioned. The result includes some of the most substantial increases MTF has ever tracked for any substance. Given that nicotine is involved in most vaping, and given that nicotine is a highly addictive substance, this presents a severe threat (Johnston, et al, 2018).

Self-report statistics are helpful because they can point to problems researchers were unaware of, like vaping. Further, they help identify victimless crimes, or crimes in which there is no victim, such as drug use, gambling, and underage drinking. Lastly, they uncover offenses that are not as serious such as shoplifting, which are less likely to be known to police (Hindelang, et al., 1981).

However, self-report data also has its limitations. Respondents may exaggerate or underreport their criminal behavior for various reasons. For example, sometimes in class activities, many students don't know that their behavior was illegal until the statute was read. They never thought that they committed a crime. Also, if poor statistical sampling methods are used, the survey responses may be skewed. If high schoolers are surveyed about substance abuse one afternoon, but the students who missed school that day weren't surveyed, important data will be missing (Lab, et al., 2013).

### 3.6.2.1 Activity: Which Data Should We Use?

Each type of data (official, self-report, victimization) has pros and cons. Additionally, each data source is more likely to produce a better picture of what is occurring depending on the area of study. If a person wanted to get the best statistics on reported homicides in the U.S., which source would be best? How about domestic violence? What if we were interested in finding out drug abuse rates amongst teens in high school?

## 3.6.3 Licenses and Attributions for Self-Report Statistics

# 3.7 MISUSING STATISTICS

The **misuse of statistics** refers to the improper, misleading, or inappropriate use of numerical data to support a particular argument or agenda, or to draw conclusions that are not supported by the evidence. Misuse of statistics can take many forms, such as limiting public access to critical information, intending to mislead the public by presenting false information, or using deceptive formats to present information (Kappler & Potter, 2018). It can also involve using statistical techniques in a manner that is inconsistent with their intended purpose or overgeneralizing statistical results beyond their scope or applicability. The misuse of statistics can promote crime myths and generate fear of crime.

## 3.7.1 Activity: Genocide: Misuse of Statistics

Find a news article that demonstrates an apparent misuse of statistics for a crime OR an article that demonstrates that people are trying to publish accurate and reliable information about a crime. Specifically, discuss how it is a misuse of statistics or not and why that particular article was picked in 500 words.

For example, the article I found is about the genocide in Myanmar. The article is titled, "What is happening in Myanmar is genocide. Call it by its name" in the *Washington Post*. For a long time, most people did not refer to this crime as a genocide. There were deliberate attempts by the government in Myanmar and the world to not refer to it as genocide. Despite visual evidence that a genocide was occurring, the government tried to deny it. The news said, "NO MORE. Call it what it is."

What is happening in Myanmar is genocide. Call it by its name. – The Washington Post

Figure 3.4. Genocide of Rohingya families.

## 3.7.2 Licenses and Attributions for Misusing Statistics

# 3.8 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS

Throughout every chapter of this book, this section will emphasize the need for Crime Prevention Science (CPSc) Solutions. This is intended to increase the levels of awareness and support for CPSc solutions. This section for this chapter will highlight the important role that proper data and measurement can play in providing better support for CPSc solutions. Two CPSc solutions are discussed, along with two important sets of measurement data that are currently missing. One is the data measurements on pro-bono profs. The other is data on the willingness to support (WITS) for crime solutions. Individually, these two missing sets of data might not seem to be critically important. That might explain why they continue to be ignored. But together, they might define the future of CPSc in the majority of communities where there is no proper funding for crime solutions. As with other chapters, the new ideas presented in this section are meant to empower the readers to critically examine any existing resources that remain untapped.

**Pro Bono Profs (Professors / Professionals):**

In most communities, there is a need for professors and professionals who are willing and able to volunteer their time and expertise to help support CPSc solutions. We will refer to these expert volunteers as **pro-bono profs**. The need for pro-bono profs have always existed due to the lack of adequate public funding support for CPSc solutions in the communities. Without the help of pro-bono profs, many vulnerable people will continue to suffer, and sometimes die, from crime problems.

Very little data has been collected about pro-bono profs in each of the communities where crime problems exist. There is currently no official information on the total number of pro-bono profs, especially those who specialize in CPSc solutions. There are indications that pro-bono profs already exist in the legal profession where lawyers are expected to volunteer to practice law each year.

What do you think about mobilizing pro-bono profs to help support crime solutions? How might the experience of pro-bono lawyers serve as a model for mobilizing and measuring data on pro-bono profs?

## 3.8.1 Measuring The Willingness to Support (WITS) for CPSc Solutions

We have established that every crime solution requires proper data measurements. We have also established that there is strong support for these crime prevention science (CPSc) solutions at the federal levels of government. However, crime rates or crime problems occur primarily at the local levels of governments inside our

communities. There is a great need for data measurement regarding the levels of awareness and support for CPSc solutions within each local community (Arungwa, 2015). We refer to this data as the willingness to support (WITS) measurement. Previous studies have shown that the WITS in communities can be measured and mobilized (Arungwa, 2014). Meaning that a simple WITS survey can reveal the level of awareness and support for crime solutions (2014).

Despite this novel WITS capability, very little data has been collected in communities where crime solutions are badly needed. There is currently no official information on which of the communities are willing to support or suppress crime solutions. The practical implication of this data gap is that even if pro-bono profs exist in the community, their services may not be welcome.

What are your thoughts regarding the measurement and mobilization of support data in each community? Would you participate in measuring the WITS of your community and why is this important to you?

> **"When performance is measured, performance improves."**<
> Thomas S. Monson in Conference Report, Oct. 1970, 107

Crime Prevention Science (CPSc) involves the investment of community resources to support the best possible Crime Solutions (Crimesolutions.gov). There are several other names for CPSc, such as evidence-based programs (EBPs) and prevention science programs or PSPs. What these programs have in common is that each of them have been designed with the most rigorous science and research methods possible. In this book, we simply refer to these programs as Crime Solutions or CPSc solutions. In this section of each chapter, we highlight some of the major crime solutions that relate specifically to the courts. While a few courts and judges are already supporting these CPSc solutions, it is important to note that the majority of the courts are not showing strong willingness to support (WITS) for these crime solutions. An important goal of this book, therefore, is to help the reader to participate in raising the level of "awareness and support" for crime solutions. We are providing a practical opportunity for any faculty in criminal justice, to collaborate with their students, and to participate in routine measurement and mobilization of support for CPSc solutions that are already available.

For decades, some key leaders in America have expressed a high level of Willingness to Support (WITS) for CPSc solutions. This is an important positive development for everyone, especially for minoritized groups in America. Marginalized groups have been disproportionately punished and incarcerated by the tradition-based programs and practices (TBPs) of courts. The TBPs include the decisions and sentencing of courts and judges that are neither effective nor efficient in reducing or preventing crime rates. The courts often seem to compound, rather than solve, the crime problems brought before them. The CPSc solutions are carefully designed to reduce or prevent the glaring inequalities that generally plague the American courts.

# 3.8.2 Directory of CPSc Solutions for Courts

For more than a decade, the U.S. Department of Justice (DOJ) has collaborated with researchers to maintain an online directory of the best crime solutions for courts and judges. A simple online search of this crime solution, under the topic of "courts" shows that there are dozens of highly effective, as well as promising crime solutions, specifically for the courts. In table 3.1 below, there are three of the most effective and promising CPSc for courts. The three-fold benefit of crime solutions is that they are usually more effective, sustainable, and efficient, when compared with tradition-based programs or TBPs. Unfortunately, the TBPs are still more popular than the CPSc programs.

## 3.8.2.1 Crime Prevention Science (CPSc) Solutions and Measurement Gaps

Table 3.1 highlights two CPSc solutions from the federal directory (Crime Solutions, 2023). They are the postsecondary correctional education (PSCE), and the communities that care (CTC). Each of the programs contain the title, evidence rating, and summary description. They have been chosen because they each suffer from lack of proper public funding as well as data gaps in most communities and universities.

These two crime solutions can also greatly benefit from existing resources and efforts to close the resources measurement data gaps they face. The first is on the demand side which can be solved by a WITS survey to show whether the communities are willing to support them. The other data gap is on the supply side to show whether there are pro-bono profs that would volunteer to implement each program.

As we study crime problems and crime solutions together, it can be empowering to know that we are not just helpless spectators. This section is intended for us to move beyond awareness to providing practical support for crime solutions that can reduce or prevent crime problems. The suggestions in this section are just a few of many practical ways that students and faculty can engage with their own communities to improve our justice system.

## 3.8.2.2 Crime Prevention Science (CPSc) Solutions and Measurement Data Gaps (Table 3.1 )

| Title and Evidence Rating | Summary Description of CPS Solutions |
|---|---|
|  **Postsecondary Correctional Education (PSCE)** | Postsecondary correctional education (PSCE) is academic or vocational coursework taken beyond a high school diploma or equivalent that allows inmates to earn credit while they are incarcerated.The practice is rated Promising in reducing recidivism (including reoffending, rearrest, reconviction, reincarceration, and technical parole violation) for inmates who participated compared to nonparticipants. |
|  **Communities That Care (CTC)** | Communities that care (CTC) is a planning and implementation system that helps community stakeholders come together to address adolescent behavior problems. The targeted problems include: violence, delinquency, substance abuse, teen pregnancy, and dropping out of school. It is rated Promising. There were statistically significant lower levels of risk factors and a lower likelihood of initiation of delinquent behavior for intervention communities, compared control communities, but mixed results in substance use initiation. |

## 3.8.3 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions

# 3.9 CONCLUSION

In this chapter, we focused on the importance of studying research methods related to criminal justice and criminology. Then we discussed some of the different statistics and data that are reported as well as under and misreported. Finally we wrapped up investigating possible Crime Prevention Science solutions which could be implemented to improve research and data collection in the criminal justice system.

## 3.9.1 Learning Objectives

1. Develop an understanding of the different data sources used to gather precise and accurate measures of crime.
2. Recognize the difference between official or reported statistics, self-report statistics, and victimization statistics.
3. Evaluate the reliability of statistics and data heard about the criminal justice system.
4. Identify Crime Prevention Science (CPSc) Solutions that rely on crime data
5. Investigate data support for Crime Prevention Science (CPSc) Solutions.

## 3.9.2 Review of Key Terms

- dark figure
- official statistics
- self-report statistics

- victim
- victimization studies

## 3.9.3 Review of Critical Thinking Questions Box

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. What are the three different types of data sources we often rely on in CJ?
2. What are the strengths and limitations of each data source?
3. Identify when each type of data source would be appropriate for different crimes and why.

## 3.9.4 Licenses and Attributions for Conclusion

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# 3.11 CHAPTER 3 FEEDBACK SURVEY

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# CHAPTER 4: CRIMINAL LAW

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 4.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

This chapter examines the fundamental principles of criminal law. It describes the functions of formal criminal law, how crimes differ from civil and moral wrongs, and various classification schemes used in discussing criminal law. This chapter also explores the sources of substantive and procedural criminal law (where we look to find our criminal law), the limitations that the constitution places on both substantive criminal law and procedural criminal law, and the important concept of the rule of law in American jurisprudence (legal theory).

## 4.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Distinguish between a criminal wrong, a civil wrong, and a moral wrong.
2. Recognize the many sources of substantive and procedural criminal law.
3. Identify the limitations that the federal constitution and state constitutions place on creating substantive laws and enforcing those laws.
4. Recognize the importance of rule of law in American jurisprudence and understand the importance of judicial review in achieving rule of law.
5. Identify relationships between criminal laws and crime prevention science (CPSc) Solutions.

## 4.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- Aggravating factors
- Case law
- Civil wrong
- Criminal wrong
- Ex post facto laws
- Inchoate crimes
- Law
- Mitigating factors
- Moral wrong
- Rule of law

## 4.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. What does formal law do well? What does formal law not do so well?
2. Should we be able to impose sanctions for violations of moral wrongs?
3. Consider the constitutional requirement of separate but equal branches of government. Why

do you think the drafters of the constitution intended each of the branches of government to be a check on each other? How does that "play out" when deciding what laws should be made and what laws should be enforced? What current issues are you aware of that highlight the importance of three separate but equal branches of government?

4. How does direct democracy (in the form of ballot measures and propositions) influence substantive criminal law (creating crimes and punishing crimes). What, if any, are the advantages of using direct democracy to create and punish crime? What, if any, are the disadvantages?
5. Consider state-wide decriminalization of marijuana possession and use across the nation and the federal statute banning possession and use of marijuana. How should this federal/state conflict be resolved? Does your opinion change if the behavior is one that you favor or disfavor?

## 4.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 4.2 LAW DEFINITION

Law is a formal means of social control. Society uses laws (rules designed to control citizens' behaviors) so that these behaviors will conform to societal norms, cultures, mores, traditions, and expectations. Because courts must interpret and enforce these rules, laws differ from many other forms of social control. Both formal and informal social control have the capacity to change behavior. Informal social control, such as social media (including Facebook, Instagram, and Twitter), has a tremendous impact on what people wear, how they think, how they speak, what people value, and perhaps how they vote. Social media's impact on human behavior cannot be overstated, but because these informal controls are largely unenforceable through the courts as they are not considered the law.

Laws and legal rules promote social control by resolving basic value conflicts, settling individual disputes, and making rules that even our rulers must follow. Kerper (1979) recognized the advantages of law in fostering social control and identified four major limitations of the law. First, she noted, the law often cannot gain community support without the support of other social institutions. Consider, for example, the United States Supreme Court (Court) case of Brown v. Board of Education of Topeka, Kansas, 347 U.S. 483 (1954), which declared racially segregated schools unconstitutional. The decision was largely unpopular in the southern states, and many had decided not to follow the Court's holding. Ultimately, the Court had to call in the National Guard to enforce its decision requiring schools to be integrated. Second, even with community support, the law cannot compel certain types of conduct contrary to human nature. Third, the law's resolution of disputes is dependent upon a complicated and expensive fact-finding process. Finally, the law changes slowly (Kerper, 1979).

Lippman (2015) also noted that the law does not always achieve its purposes of social control, dispute resolution, and social change but rather can harm society. He refers to this as the "dysfunctions of law."

> "Law does not always protect individuals and result in beneficial social progress. Law can be used to repress individuals and limit their rights. The respect that is accorded to the legal system can mask the dysfunctional role of the law. Dysfunctional means that the law is promoting inequality or serving the interests of a small number of individuals rather than promoting the welfare of society or is impeding the enjoyment of human rights." (Lippman, 2015).

## 4.2.1 Dysfunctions of Law

Similarly, Lawrence Friedman has identified several dysfunctions of law. First, legal actions may be used to harass individuals or to gain revenge rather than redress a legal wrong. Second, the law may reflect biases and prejudices or reflect the interest of powerful economic interests. Thirdly, the law may be used by totalitarian

regimes as an instrument of repression. And finally, the law can be too rigid because it is based on a clear set of rules that don't always fit neatly. The law may impede social change because it may limit the ability of individuals to use the law to vindicate their rights and liberties. (Lippman, 2015).

## 4.2.2 Licenses and Attributions for Law Definition

# 4.3 CIVIL, CRIMINAL, AND MORAL WRONGS

This chapter is about people committing crimes—engaging in behavior that violates the criminal law—and how society responds to these criminal behaviors. Crimes are only one type of wrong. People can also violate civil law or commit a moral wrong and not be guilty of any crime whatsoever. So, what is the difference between a civil wrong, a criminal wrong, and a moral wrong?

## 4.3.1 Civil Wrongs

A **civil wrong** is a private wrong, and the injured party's remedy is to sue the party who caused the wrong/injury for general damages (money). The plaintiff (the injured party) sues or brings a civil suit (files an action in court) against the defendant (the party that caused the harm). The primary purpose of a civil suit is to financially compensate the injured party. The plaintiff must convince or persuade the jury that it is more likely than not that the defendant caused the harm. This level of certainty or persuasion is known as preponderance of the evidence.

## 4.3.2 Criminal Wrongs

Criminal wrongs differ from civil or moral wrongs. **Criminal wrongs** are behaviors that harm society as a whole rather than one individual or entity specifically. When people violate the criminal law, there are generally sanctions that include incarceration and fines. A crime is an act, or a failure to act, that violates society's rules. The government, on behalf of society, is the plaintiff. A criminal wrong can be committed in many ways by individuals, groups, or businesses against individuals, businesses, governments, or with no particular victim.

## 4.3.3 Moral Wrongs

Moral wrongs differ from criminal wrongs. "**Moral (wrong)** law attempts to perfect personal character, whereas criminal law, in general, is aimed at misbehavior that falls substantially below the norms of the community." (Gardner, 1985). There are no codes or statutes governing violations of moral laws in the United States.

## 4.3.3.1 The Witness Exercise

Watch the 2015 Netflix documentary "The Witness" in which Bill Genovese re-examined what was said, heard, and reported about his sister, Kitty Genovese. This frequently cited example of a moral wrong involves the story of thirty-seven neighbors who purportedly did nothing when "Kitty" Genovese was stabbed to death outside their apartment building in New York City in 1964. There are many discrepancies about this story and what the neighbors knew or didn't know and what they did or didn't do. Still, the general belief is that they had at least a moral obligation to do something (for example, call the police), and by failing to do anything, they committed a moral wrong. Ultimately, none of the neighbors had any legal obligation to report the crime or intervene to help Ms. Genovese.

## 4.3.4 Licenses and Attributions for Civil, Criminal, and Moral Wrongs

# 4.4 SOURCES OF CRIMINAL LAW: FEDERAL AND STATE CONSTITUTIONS

Where do you look to see if something you want to do violates some criminal law? The answer is that criminal law originates from many sources. One major source of criminal law is the federal and state constitutions. Another source is the state statutes and federal congressional acts. Criminal laws can also come from administrative agencies that make state and federal administrative rules. Other criminal laws, called **case law**, originate from appellate court opinions written by judges.

## 4.4.1 Constitution of the U.S.

The United States Constitution recognizes only three crimes—counterfeiting, piracy, and treason. Nevertheless, it plays one of the most significant roles in the American criminal justice system. First, the Constitution establishes limits on certain types of legislation or substantive law. Secondly, it provides significant procedural constraints on the government regarding how to prosecute individuals for crimes. Thirdly, the Constitution established federalism (the relationship between the federal government and state governments), and required the separation of powers between the three branches of government (the judicial branch, the legislative branch, and the executive branch). Lastly, it limits Congress's authority to pass laws not directly related to either its enumerated powers (powers listed in the Constitution) or implied powers (powers inferred but not listed).

### 4.4.1.1 Constitutional Limitations on Criminal Law and Procedure Exercise

The drafters of the federal Constitution were so concerned about two historic cases of abuse by the English Parliament. Those abuses are the ex post facto laws and bills of attainder. Therefore they prohibited Congress from passing these types of laws by adding this limitation in the original body of the Constitution. (See Article I Section 9 of the Constitution.) **Ex post facto** laws are laws that are retroactively applied, such as new punishments retroactively increased. Bills of attainder are laws that are directed at named individuals or groups. It has the effect of declaring people guilty without proper trial.

### 4.4.1.1.1 First Amendment Limitations (Example)

Under the First Amendment, Congress cannot create laws that limit individuals' speech. The Court has recognized symbolic speech (for example, wearing black armbands) and expressive conduct (for example, picketing) as protected under the First Amendment's guarantee that Congress shall not abridge freedom of speech. The Court struck down a law banning flag burning. Texas v. Johnson, 491 U.S. 397 (1989). The Court upheld a local ordinance prohibiting public indecency when applied to business establishments wishing to provide totally nude dancing. Barnes v. Glen Theater, 501 U.S. 560 (1991). The Court has recognized political speech and commercial speech as protected by the First Amendment as well. See e.g., Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

The Court has, however, deemed some speech not worthy of protection and, consequently, may be limited. According to the Court, non-protected speech includes libel and slander, fighting words, words that present a clear and present danger when spoken, obscenity and profanity. See Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). The Court has said anti-hate crime statutes permissibly limit individuals' speech to the extent they are directed at conduct rather than the content of the speech. See e.g., Rav v. City of St. Paul, 505 U.S. 377 (1992) and Wisconsin v. Mitchell, 508 U.S. 476 (1993).

The First Amendment limits Congress's authority to legislate in the realm of religion as well. Finally, the First Amendment guarantees that people have the right to freely associate and assemble with others. However, the Court has indicated that the government can place reasonable time and manner limitations based on the location in which the gathering is to take place. See e.g., Cox v. Louisiana, 379 U.S. 536 (1965).

### 4.4.1.1.2 Second Amendment Limitations (Example)

Legislatures can place restrictions on weapons and ammunition purchase and possession. Still, they cannot completely restrict people's ability to possess guns for the purpose of self-defense. See, District of Columbia v. Heller, 554 U.S. 570 (2008) (an individual's right to possess a weapon is unconnected with service in the military). According to the Court, the Second Amendments' protections apply equally to the states. See McDonald v. Chicago, 561 U.S. 742 (2010).

### 4.4.1.1.3 Fourth Amendment Limitations (Example)

The Fourth Amendment limits the government's ability to engage in searches and seizures. Under the least restrictive interpretation, the Amendment requires that, at a minimum, searches and seizures be reasonable. The Court interpreted the Fourth Amendment in many cases and the doctrine of stare decisis notwithstanding, search and seizure law is subject to the Court's constant refinement and revision.

### 4.4.1.1.4 Fifth Amendment Limitations (Example)

The Fifth Amendment protects against self-incrimination (having to disclose information that could ultimately harm you) in that it states that no person "shall be compelled in a criminal case to be a witness against himself." Defendants have the right not to testify at trial and the right to remain silent during a custodial interrogation. See Miranda v. Arizona, 384 U.S. 436 (1966). The Fifth Amendment also provides for a grand jury in federal criminal prosecutions, prohibits double jeopardy, demands due process of law, and prohibits taking private property for public use (a civil action). This is discussed more fully below as a Fourteenth Amendment right.

### 4.4.1.1.5 Sixth Amendment Limitations (Example)

The Sixth Amendment guarantees a criminal defendant: the right to a speedy trial, the right to a public trial, the right to a jury trial, the right to have his or her trial in the district where the crime took place, the right to be told what charges have been filed, the right to confront witnesses at trial, the right to compel witnesses to testify at trial, and the right to assistance of counsel.

### 4.4.1.1.6 Eighth Amendment Limitations (Example)

Legislatures cannot make laws that make the punishment for a crime "cruel or unusual." This means that punishments cannot be either barbaric (causing needless pain) or disproportionate (i.e., too severe to fit the crime). In addition to the prohibition against cruel and unusual punishment, the Eighth Amendment also prohibits the imposition of excessive bail and excessive fines.

### 4.4.1.1.7 Fourteenth Amendment Limitations (Example)

The Fourteenth Amendment mandates that states do not deny their citizen's due process of law. Due process can be summarized as making sure that the government treats people fairly. Part of fairness is giving people fair warning as to what behaviors are permitted and what behaviors are not permitted. Thus, legislators must be very careful and clear when making new laws. They cannot make laws that are so poorly drafted such that a person of ordinary intelligence would not understand the law or that would allow police too much discretion in how they will interpret and apply the law because such a law would be considered void for vagueness.

The Fourteenth Amendment also guarantees equal protection of the law. Generally, legislatures cannot make laws that treat people differently unless the laws are rationally related to a legitimate government interest.

Even outside of the criminal law it's important to understand how the 27 amendments affect our lives. Watch the following overview for a comprehensive overview of each of the 27 amendments.

## 4.4.2 State Constitutions

States' constitutions, similar to the federal constitution, set forth the general organization of state government and basic standards governing the use of governmental authority. Although the federal constitution is preeminent because of the Supremacy Clause, state constitutions are still significant. State constitutional rules are supreme when compared to other state legal sources such as statutes, ordinances, and administrative rules. The federal constitution sets the floor of individual rights. But states are free to provide more freedoms and protections that are not granted by the federal constitution.

State constitutions affect those that reside in them daily. Watch this video to have a deeper understanding of why state constitutions are so important.

### 4.4.2.1 Rule of Law, Constitutions, and Judicial Review (Example)

One of the key features of the American legal system has been its commitment to the rule of law. Rule of law is the belief that everyone is equal before the law and that the same set of laws applies to everyone (Feldmeier, J.P., & Schmalleger, F., 2021).

> *"I firmly believe in the rule of law as the foundation for all our basic rights."*
> Justice Sotomayor

Watch the following video to learn the far-reaching effects of the rule of law.

## 4.4.3 Licenses and Attributions for Sources of Criminal Law: Federal and State Constitutions

# 4.5 SOURCES OF CRIMINAL LAW: STATUTES, ORDINANCES, AND OTHER LEGISLATIVE ENACTMENTS

Most substantive criminal law is legislative law. State legislatures and Congress enact laws that take the form of statutes or congressional acts. Statutes are written statements enacted into law by an affirmative vote of both chambers of the legislature and accepted (or not vetoed) by the governor of the state or the president of the United States. State legislatures may also create legislative law by participating in interstate compacts or multi-state legal agreements. An example of this includes the Uniform Extradition Act or the Uniform Fresh Pursuit Act. Congress makes federal law by passing acts and approving treaties between the United States and other nation-states. At the local level, city, town, and county leaders can make laws through the enactment of ordinances.

## 4.5.1 State's Authority to Pass Criminal Laws

States are sovereign and autonomous, and unless the Constitution takes away state power, the states have broad authority to regulate activity within the state. Most criminal laws at the state level are derived from the state's general police powers, or authority, to make and enforce criminal law within their geographic boundaries. Police power is the power to control any harmful act that may affect the general well-being of citizens within the geographical jurisdiction of the state. A state code, or state statutes, may regulate any harmful activity done in the state or whose harm occurs within the state.

## 4.5.2 Congress's Authority to Pass Laws

Congress must draw its authority to enact criminal statutes from specific legislative powers and responsibilities assigned to it in the Constitution. The legislative authority may be either enumerated in the Constitution or implied from its provisions. If Congress cannot tie its exercise of authority to one of those powers, the legislation may be declared invalid.

Enumerated powers, for example, the power to regulate interstate commerce, are those that are specifically mentioned in Article I Section 8 of the Constitution. Over the years, however, courts have broadly interpreted the term "interstate commerce" to mean more than just goods and services traveling between and among the

states. Instead, interstate commerce includes any activity—including purely local or intrastate activity—that affects interstate commerce. The affectation doctrine maintains that congressional authority includes the right to regulate all matters having a close and substantial relation to interstate commerce. Although the Court has found limits on what affects interstate commerce, Congress has used its broad power to regulate interstate commerce to criminalize a wide range of offenses. They include carjacking, kidnapping, wire fraud, and various environmental crimes.

The implied powers of Congress are those that are deemed to be necessary and proper for carrying out all the enumerated powers. Article I Section 8 of the Constitution states, "Congress shall have Power . . . to make laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution." The implied powers doctrine expands the legislative power of Congress, and for that reason, the Necessary and Proper Clause has often been called the "expansion clause." Due to the implied powers found in the Necessary and Proper Clause, Congress has the authority to pass legislation and regulate a wide variety of activities. Congress must always show that each law furthers one or more enumerated powers. The Court will overturn acts of Congress when it believes Congress has overstepped its constitutional authority. Despite the broad expanse of implied powers, Congress's authority is limited compared to the state's police powers.

## 4.5.3 Licenses and Attributions for Sources of Criminal Law: Statutes, Ordinances, and Other Legislative Enactments

# 4.6 SOURCES OF LAW: ADMINISTRATIVE LAW, COMMON LAW, CASE LAW, AND COURT RULES

Each of the following sections will overview the origins of the current U.S. law. Exploring how past legal systems came together to constitute a uniquely American legal system.

## 4.6.1 Administrative Law–Agency-Made Law

State and federal legislatures cannot keep up with the task of enacting legislation on all the myriad subjects that must be regulated by law. In each branch of government, various administrative agencies exist with the authority to create administrative law. At the federal level, for example, the Environmental Protection Agency enacts regulations against environmental crimes. At the state level, the Department of Motor Vehicles enacts laws concerning drivers' license suspension. Administrative regulations are enforceable by the courts, provided that the agency has acted within the scope of its delegated authority from the legislature.

## 4.6.2 Common Law

One important source of criminal law in the United States is common law. English law developed over centuries and generally, when we refer to American common law, we are referring to the common law rules brought over from England to the United States when it became a nation. It is important to note that there are no federal common law crimes. If Congress has not enacted legislation to make certain conduct criminal, that conduct cannot constitute a federal crime.

The most straightforward definition of common law is that it's a "body of law" based on court decisions rather than codes or statutes. But what is the history of common law, and why is it so important in the United States legal System? Watch the following video on Common Law to find out.

## 4.6.3 Judge-Made Law: Case Law

The term case law refers to legal rules announced in opinions written by appellate judges when deciding appellate cases before them. Judicial decisions reflect the court's interpretation of constitutions, statutes,

common law, or administrative regulations. When the court interprets a statute, the statute, as well as its interpretation, controls how the law will be enforced and applied in the future. The same is true when a court interprets federal and state constitutions. When deciding cases and interpreting the law, judges are bound by precedent.

### 4.6.3.1 Stare Decisis and Precedent (Example)

The doctrine of stare decisis comes from a Latin phrase that states, "to stand by the decisions and not disturb settled points." It tells the court that if the decisions in the past have held that a rule governs a certain fact situation, that rule should govern all later cases presenting the same fact situation. Stare decisis permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contribute to the integrity of our constitutional system of government, both in appearance and fact" (Vasquez v. Hillery, 474 U.S. 254, 1986).

## 4.6.4 Court Rules of Procedure

The U.S. Supreme Court and state supreme courts make a law that regulates the procedures followed in the lower courts in the jurisdiction. These rules may provide significant rights for the defendant. For example, the rules governing speedy trials are governed by the Constitution. But the specific implementations are governed by the court rules in each jurisdiction. Local courts may also pass local court rules that govern the day-to-day practice of law in these lower courts. For example, a local court rule may dictate when and how cases will be filed in that jurisdiction.

## 4.6.5 Licenses and Attributions for Sources of Law: Administrative Law, Common Law, Case Law, and Court Rules

# 4.7 CLASSIFICATIONS OF LAW

In this section of the chapter, we turn to the various ways that criminal law has been classified. Classification schemes allow us to discuss aspects or characteristics of criminal law. Some classifications have legal significance, meaning that how a crime is classified may make a difference in how the case is processed or what type of punishment can be imposed. Some classifications historically mattered (had legal significance) but no longer have much consequence. Finally, some classifications have no legal significance, meaning the classification exists only to help us organize our laws.

## 4.7.1 Classifications Based on the Seriousness of the Offense

Legislatures typically distinguish crimes based on the severity or seriousness of the harm inflicted on the victim. The criminal's intent also impacts the crime's classification. Crimes are classified as felonies or misdemeanors. Certain less serious behavior may be classified as criminal violations or infractions. The term offense is a generic term that is sometimes used to mean any type of violation of the law. In states allowing capital punishment, some types of murder are punishable by death. Any crime subject to capital punishment is considered a felony. Misdemeanors are regarded as less serious offenses and are generally punishable by less than a year of incarceration in the local jail. Infractions and violations, when those classifications exist, include minor behavior for which the offender can be cited but not arrested, and fined but not incarcerated.

The difference between being charged with a felony or misdemeanor may have legal implications beyond the length of the offender's sentence and in what type of facility an offender will be punished. For example, in some jurisdictions, the authority of a police officer to arrest may be linked to whether the crime is considered a felony or a misdemeanor. In many states, the classification impacts which court will have the authority to hear the case. In some states, the felony-misdemeanor classification determines the size of the jury.

## 4.7.2 Classifications Based on the Type of Harm Inflicted

Almost all state codes classify crimes according to the type of harm inflicted. The Model Penal Code uses the following classifications:

- Offenses against persons (homicide, assault, kidnapping, and rape, for example)
- Offenses against property (arson, burglary, and theft, for example)
- Offenses against family (bigamy and adultery, for example)
- Offenses against public administration (e.g., bribery, perjury, escape)
- Offenses against public order and decency (e.g., fighting, breach of peace, disorderly conduct, public intoxication, riots, loitering, prostitution)

By classifying the type of harm being alleged, the prosecutor will set the tone for how they plan to litigate the case. The defense is then able to prepare to argue against the classification.

## 4.7.3 Mala in se Mala Prohibita Crimes

Crimes have also been classified as either mala in se (inherently evil) or mala prohibita (wrong simply because some law forbids them). Mala in se crimes, like murder or theft, are generally recognized by every culture as evil and morally wrong. Most offenses that involve injury to persons or property are mala in se. All of the common law felonies (murder, rape, manslaughter, robbery, sodomy, larceny, arson, mayhem and burglary) were considered mala in se crimes. Mala prohibita crimes, like traffic violations or drug possession, are acts that are crimes not because they are evil but rather because some law prohibits them. Most of the newer crimes that are prohibited as part of a regulatory scheme are mala prohibita crimes.

## 4.7.4 Substantive and Procedural Law

Another classification scheme views the law as either substantive law or procedural law. Both criminal law and civil law can be either substantive or procedural. Substantive criminal law is generally created by statute or through the initiative process and defines what conduct is criminal. Procedural law gives us the mechanisms to enforce substantive law. Procedural law governs the process of determining the rights of the parties. It sets forth the rules governing searches and seizures, investigations, interrogations, pretrial procedures, and trial procedures. It may establish rules limiting certain types of evidence, establishing timelines, as well as require the sharing of certain types of evidence and giving a certain type of notice. The primary source of procedural law is judicial interpretations of the federal constitution and state constitutions, but state and federal statutes also provide much of our procedural law.

## 4.7.5 Licenses and Attributions for Classifications of Law

# 4.8 SUBSTANTIVE LAW: DEFINING CRIMES, INCHOATE LIABILITY, ACCOMPLICE LIABILITY, AND DEFENSES

Substantive law includes laws that define crime. They tell us what elements the government needs to prove in order to establish that this crime has been committed. Substantive law also includes the definitions of **inchoate crimes** (incomplete crimes) of conspiracies, solicitations, and attempts. Substantive law also sets forth accomplice liability (when a person will be held responsible when they work in concert with others to complete a crime). Substantive law also identifies the defenses that a person may raise when they are charged with a crime. Finally, substantive law indicates the appropriate penalties and sentences for crimes. Today, the great majority of substantive law has been codified and is found in the state's particular criminal code or in the federal code.

## 4.8.1 Elements of the Crime

The government will generally be responsible for proving that the defendant committed some criminal act, the actus reus element, and that defendant acted with criminal intent, the mens rea element. When prosecuting the crime, the state must prove that the defendant's conduct met the specific actus reus requirement. The government must prove that the defendant's behavior was either a voluntary act, a voluntary omission to act when there was a legal duty to do so, or that he or she possessed some item that should not have been possessed. To meet the mens rea element, the state must, at a minimum, prove that the defendant's act was triggered by criminal intent.

## 4.8.2 Inchoate Offenses: Attempt, Conspiracy, and Solicitation

In order to prevent future harm, state and federal governments have enacted statutes that criminalize attempts, solicitations, and conspiracies to commit crimes. The common law also recognized these inchoate offenses or incomplete offenses. With each of the inchoate crimes, the state must prove that the defendant intended to commit some other crime, the highest level of criminal intent. For example, there is no crime of attempt, but there is a crime of attempted theft. State laws vary in the approaches of whether the defendant has

taken enough steps to be charged with attempt, but all agree that mere preparation does not constitute an attempt. Conspiracies involve an agreement between at least two parties to commit some target crime. Some jurisdictions also require that there be an overt act in furtherance of the crime, which reaffirms there is a meeting of the minds between the co-conspirators. Solicitations involve a person asking another to commit a crime on his or her behalf, and they do not even require an agreement by the person requested to do so.

## 4.8.3 Accomplice Liability: Raiders and Abetters

People who commit crimes frequently do so with assistance. Substantive criminal law describes when a person can be found guilty for the acts of another. For example, the common law recognized four parties to a crime: principal in the first degree, principal in the second degree, accessory before the fact, and accessory after the fact. Many complicated legal rules developed to offset the harsh common law treatment of most crimes as capital offenses (death penalty eligible). The modern statutory trend has been to recognize both accomplices, people who render assistance before and during the crime, and accessories after the fact, people who help the offender escape responsibility after the crime has been committed. Accomplices, as treated as equally liable as the main perpetrator as "the hand of one, is the hand of them all." Accessories, after the fact, are charged with hindering prosecution or obstructing justice after the crime are punished to a lesser extent than the main perpetrators.

## 4.8.4 Vicarious Liability

A few states have enacted vicarious liability statutes seeking to hold one person responsible for another's actions, even when they did not provide any assistance and may not even know about the other's behavior. These statutes generally violate our belief in individual responsibility that only people who do something wrong should be blamed for the crime. Vicarious liability imputes (transfers) both the criminal intent and the criminal act of one person to another. Courts generally invalidate these purported vicarious liability statutes but have at times upheld liability based upon an employer/employee relationship or a parent/child relationship.

## 4.8.5 Defenses

Assuming the government has proven all the elements of a crime, defendants may nevertheless raise defenses that may result in their acquittal. Defense is a general term that includes perfect and imperfect defenses, justifications and excuses, and procedural defenses.

### 4.8.5.1 Perfect and Imperfect Defenses

A perfect defense is one that completely exonerates the defendant. If the defendant is successful in raising this defense, meaning the jury believes him or her, the jury should find the defendant not guilty. An imperfect defense is one that reduces the defendant's liability to that of a lesser crime. If the jury believes the defendant, it should find the defendant guilty of a lesser charge.

### 4.8.5.2 Negative Defenses and Affirmative Defenses

Sometimes, the government is unable to prove all the elements of the crime charged. When this happens, the defendant may raise a negative defense claim. For example, when charging a defendant with theft, the state must prove that the defendant intentionally took the property of another. If the jury finds that the defendant did not intend to take the property, or took property that was rightfully theirs, then the defendant is not guilty. Negative defenses, at their essence, are claims that there are "proof problems" with the state's case.

An affirmative defense requires the defendant to put on evidence that will persuade the jury that he or she should either be completely exonerated or be convicted only of a lesser crime. The defendant can meet this requirement by calling witnesses to testify or by introducing physical evidence. When the defendant raises an affirmative defense, the burden of production or persuasion switches, at least in part and temporarily, to the defendant. The defendant's burden is limited, however, to prove the elements of the defense he or she asserts.

## 4.8.6 Justifications

Sometimes, doing the right thing results in harm. Society recognizes the utility of doing some acts in certain circumstances that unfortunately result in harm. In those situations, the defendant can raise a justification defense. Justification defenses allow criminal acts to go unpunished because the resulting harm is outweighed by the benefit to society. For example, if a surgeon operates to remove a cancerous growth, the act is beneficial even though it results in pain and scarring. In raising a justification defense, the defendant admits he did a wrongful act but argues that the act was the right thing to do under the circumstances. Justification defenses include self-defense, defense of others, defense of property, defense of habitation, consent, and necessity, also called choice of evils. Justifications are affirmative defenses. The defendant must produce some evidence in support of these defenses. In most cases, the defendant must also convince the jury that it was more likely than not that their conduct was justified. For example, the defendant may claim that they acted in self-defense and, at trial, would need to call witnesses or introduce physical evidence that supports the claim of self-defense.

## 4.8.7 Excuses

Excuses are defenses to criminal behavior that focus on some characteristic of the defendant. With excuses, the defendant is essentially saying, "I did the crime, but I am not responsible because I was . . . insane (or too young, intoxicated, mistaken, or under duress)." Excuses include insanity, diminished capacity, automatism, age, involuntary intoxication, duress, mistake of fact, and a variety of non-traditional syndrome excuses. Like justifications, excuses are affirmative defenses in which the defendant bears the burden of putting on some evidence to convince the jury that they should not be held responsible.

## 4.8.8 Procedural Defenses

Procedural defenses are challenges to the state's ability to bring the case against the defendant for some valid reason. Procedural defenses include:

- double jeopardy (the defendant claims that the government is repeatedly prosecuting them for the same crime),
- speedy trial (the defendant claims the government took too long to get their case to trial),
- entrapment (the government in some way enticed them into committing the crime),
- the statute of limitations (the government did not charge him or her within the required statutory period), and
- several types of immunity (they are immune from being prosecuted).

Although procedural defenses are considered procedural criminal law, many states include the availability of these defenses in their substantive criminal codes.

## 4.8.9 Licenses and Attributions for Substantive Law: Defining Crimes, Inchoate Liability, Accomplice Liability, and Defenses

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# 4.9 SUBSTANTIVE LAW: PUNISHMENT: INCARCERATION AND CONFINEMENT SANCTIONS

Substantive criminal law not only defines what behaviors are crimes but also the law that determines the permissible punishment for the criminal behavior. All three governmental branches of government impact criminal punishment. One of the most important duties of a judge is to impose a sentence which means determining the appropriate punishment for an offender upon conviction. Thus, punishing offenders is a judicial function. Because of the trend toward mandatory sentencing, discussed below, much of the discretion of sentencing has been removed from judges and placed on the prosecutors in their screening and charging decision-making. As such, punishing offenders may rightly be considered an executive function. Finally, the lengths of sentences and types of punishment that attach to the various crimes are a product of the legislative process. In the last 30 years, through ballot measures such as propositions, referendums, and initiatives, the people have played a large role in deciding the types and lengths of punishment.

## 4.9.1 Incarceration/Confinement Sentence

Confinement sanctions include incarceration in prisons and jails, incarceration in boot camps, house arrest, civil commitment for violent sexual offenders, short-term shock incarceration, electronic monitoring, etc. Most believe that confinement is the only effective way to deal with violent offenders. Although people question the efficacy of prison, incarceration somewhat protects society outside the prison from dangerous offenders. Prison is effective at incapacitation but rarely is it effective at rehabilitation. In fact, serving time in prison often reinforces criminal tendencies.

State and federal approaches to incarcerating individuals have shifted in response to prevailing criminal justice thinking and philosophy. Over time, governments have embraced four different approaches to sentencing offenders to incarceration: indeterminate, indefinite, determinate, or definite. Criminal codes may incorporate more than one single approach. These approaches can be seen as a spectrum of judicial discretion. Indefinite and indeterminate sentences, at one end, are those that allow judges and parole boards the most discretion and authority. Determinate and definite sentences, at the other end, allow little or no discretion. Currently, most states are following determinate sentencing coupled with sentencing guidelines, mandatory minimums, habitual offender statutes, and penalty enhancement statutes.

## 4.9.1.1 Indeterminate-Indefinite Sentencing Approach

For much of the twentieth century, statutes commonly allowed judges to sentence criminals to imprisonment for indeterminate periods. Under this indeterminate sentencing approach, judges sentenced the offender to prison for no specific time frame and the offenders' release was contingent upon getting paroled, or rehabilitated. Because some criminals would quickly be reformed but other criminals would be resistant to change, indeterminate sentencing's open-ended time frame was deemed optimal for allowing treatment and reform to take its course. The decline of popular support for rehabilitation has led most jurisdictions to abandon the concept of indeterminate sentencing. Indefinite sentences give judges discretion, within defined limits, to set a minimum and maximum sentence length. The judge imposes a range of years to be served, and a parole board decides when the offender will ultimately be released.

## 4.9.1.2 Determinate-Definite Sentencing Approach

Under determinate sentencing, judges have little discretion in sentencing. The legislature sets specific parameters for the sentence, and the judge sets a fixed term of years within that time frame. The sentencing laws allow the court to increase the term if it finds **aggravating factors**, factors indicating the offender or offense is worse than other similar crimes**,** and reduce the term if it finds **mitigating factors,** factors indicating the offender or offense is less serious than other similar crimes. With determinate sentencing, the defendant knows immediately when he or she will be released. In determinate sentencing, offenders may receive credit for time served while in pretrial detention and "good time" credits. The discretion that judges are allowed in initially setting the fixed term is what distinguishes determinate sentencing from definite sentencing.

Definite sentencing completely eliminates judicial discretion and ensures that offenders who commit the same crimes are punished equally. The definite sentence is set by the legislature with no leeway for judges or corrections officials to individualize punishment. Currently, no jurisdiction embraces this inflexible approach that prohibits any consideration of aggravating and mitigating factors in sentencing. Although mandatory minimum sentencing embraces some aspects of definite sentencing, judges may still impose longer than the minimum sentence and therefore retain some limited discretion.

## 4.9.1.3 Presumptive Sentencing Guidelines

In the 1980s, state legislatures and Congress, responding to criticism that wide judicial discretion resulted in greater sentence disparities, adopted sentencing guidelines drafted by legislatively-established commissions. Guideline sentencing allows for judicial discretion but at the same time, limits that discretion. Judges must generally make findings when sentencing the offender to a term of incarceration that is different from the presumptive sentence. The judge must indicate which aggravating factors or mitigating factors informed the

departure. The Sentencing Reform Act of 1984 (18 U.S.C.A. §§ 3551 et. seq. 28 U.S.C.A. §§991-998) first established federal sentencing guidelines. The Act applied to all crimes committed after November 1, 1987, and its purpose was "to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes." Scheb, at 681. It created the United States Sentencing Guideline Commission and gave it the authority to create guidelines.

The Commission dramatically reduced the discretion of federal judges by establishing a narrow sentencing range and required that judges who departed from the ranges state in writing their reasons. The Act also established an appellate review of federal sentences and abolished the U.S. Parole Commission. Most states have adopted some version of sentencing guidelines, from the very simple to the very complex, and many states restrict their guidelines to felonies. Although limiting judicial discretion, state sentencing guideline schemes allow some wiggle room if the judge finds that the case differs from a typical case. See Apprendi v. New Jersey, 530 U.S. 466 (2000); United States v. Booker-United States v. Fanfan, 543 U.S. 220 (2005); Blakeley v. Washington, 542 U.S. 296 (2004).

## 4.9.1.4 Other Mandatory Sentences-Penalty Enhancements

Legislatures have also exercised their authority over sentencing by passing laws that enhance criminal penalties for crimes against certain victims, for crimes done with weapons, or for hate crimes. For example, Congress passed the Violent Crime Control and Law Enforcement Act of 1994 that included several provisions for enhanced penalties for drug trafficking in prisons and drug-free zones. States have passed gun enhancements and hate crime enhancements. See, e.g., ORS 161.610 (authorizing enhanced penalties for the use of a firearm during the commission of a felony); Wisconsin v. Mitchell, 508 U.S. 486 (1993) (authorizing enhanced penalties for hate crimes).

## 4.9.1.5 Concurrent and Consecutive Sentences

Frequently, judges sentence defendants for multiple crimes and multiple cases at the same sentencing hearing. Judges have the option of running terms of incarceration either concurrently (at the same time) or consecutively (back-to-back). States vary as to whether the default approach on multiple sentences is consecutive sentences or concurrent sentences.

## 4.9.2 Licenses and Attributions for Substantive Law: Punishment: Incarceration and Confinement Sanctions

# 4.10 SUBSTANTIVE LAW: CAPITAL PUNISHMENT

Capital punishment (lethal physical punishment) is a popular topic, and much has been written about the death penalty. One excellent resource for learning about the death penalty is the death penalty information center (DPIC), a nonprofit organization that publishes studies and analyzes trends in death penalty law and application.

- Link to Death Penalty Information Center: https://deathpenaltyinfo.org/
- Link to Death Penalty Information Center Fact Sheet https://deathpenaltyinfo.org/documents/FactSheet.pdf
- See Death Penalty Fast Facts at https://www.cnn.com/2013/07/19/us/death-penalty-fast-facts/index.html

The use of the death penalty as a response to crime in industrialized nations raises many questions:

- Is the death penalty a deterrent?
- Is the death penalty justified by principles of retribution?
- Is the death penalty morally or ethically justified?
- Does it cost more to impose a death sentence or to impose a true-life sentence?
- Are factually innocent individuals erroneously executed (and if so, how often)?
- Is any particular manner of execution cruel and unusual?
- Is the death penalty, in itself, cruel and unusual punishment?

Courts answer only the last two questions, and, to date, the Court has upheld every manner of execution that is currently approved in the United States: firing squad, electrocution, gas chamber, hanging, and lethal injection. The Court appears willing to uphold capital punishment and has found it is not disproportionately cruel and unusual when the crime resulted in the death of another. It has reached an opposite result when the crime did not involve the victim's death, i.e., when the defendant was convicted of rape of an adult and a child rape. See Coker v. Georgia, 433 U.S. 584 (1977).

The Court prohibited capital punishment for the crime of rape of an adult victim. Coker suggests that the death penalty is an inappropriate punishment for any crime that does not involve the taking of human life. In Kennedy v. Louisiana, 554 U.S. 407 (2008), the Court invalidated a Louisiana statute that allowed for the death penalty for the rape of a child less than twelve years of age. Justice Kennedy (not the defendant, Kennedy)

wrote, "the Eighth Amendment bars imposing the death penalty for the rape of a child where the crime did not result and was not intended to result, in the death of the victim."

## 4.10.1 Mental Illness, Mental Deterioration, and the Death Penalty (Example)

According to Court interpretations, the Eighth Amendment forbids the execution of someone who is legally insane. Ford v. Wainwright, 477 US 399 (1986). In 2007, the Court ruled that a prisoner is entitled to a hearing to determine his mental condition upon making a preliminary showing that his current mental state would bar his execution. Panetti. v. Quarterman, 551 US 930 (2007). On February 27th, 2019 the Court affirmed that the states may not execute a death row inmate who was unable to understand his punishments due to dementia. In Madison v. Alabama, ___ U.S. ___ (2019), the 70-year-old defendant had spent 33 years in solitary confinement after having been sentenced to death for killing a police officer in 1985. Madison had suffered a series of strokes causing severe cognitive impairment due to vascular dementia and the inability to remember his crime.

Justice Kagan's majority opinion held that an inmate's failure to remember his crime does not by itself render him immune from execution, but "such memory loss still may factor into the 'rational understanding' analysis that Panetti demands." If memory loss "combines and interacts with other mental shortfalls to deprive a person of the capacity to comprehend" his death sentence, "then the Panetti standard will be satisfied." ____ U.S. ____, at ____ (2019).

According to the Court, it doesn't matter if these "mental shortfalls" stem from delusions, dementia, or some other disorder. Courts must "look beyond any given diagnosis to a downstream consequence"—whether a disorder can "so impair the prisoner's concept of reality" that he cannot "come to grips with" the meaning of his punishment" (Atkins v. Virginia, 536 U.S. 304, 2002).

## 4.10.2 Licenses and Attributions for Substantive Law: Capital Punishment

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# 4.11 SUBSTANTIVE LAW: MONETARY PUNISHMENT SENTENCES

Under substantive law, offenders can be punished by seizing their property and resources. That may be in the form of fines, forfeiture, and restitution. Monetary punishments are often preferred to more severe sentences such as incarceration and death. Below we discuss some of the most common monetary punishments.

## 4.11.1 Monetary Punishments—Fines

Fines are generally viewed as the least severe of all possible punishments. Fines may either supplement imprisonment or probation, or they may be the sole punishment. Criminal codes generally authorize fines as punishment for most crimes, but some of the older criminal codes did not authorize fines for murder.

The Model Penal Code proposed legislative guidelines on the use of fines, but states have generally rejected this provision. Instead, judges are given extremely broad discretion in setting the fine amounts, and there are few limits on the judge's ability to impose a fine. Frequently, the criminal statute will specify the highest permissible fine. The Eighth Amendment's Cruel and Unusual Punishment Clause prohibits excessive fines, but courts rarely have found a fine to violate this provision. In Tate v. Short, 401 U.S. 395 (1971), the Court found that fines punish poor people more harshly than rich people and thus violate the Equal Protection Clause.

Historically, magistrates had given offenders the option of paying a fine or serving a jail sentence. Sentences were frequently "thirty dollars or thirty days." If defendants were too poor to pay the fine, they went to jail. The Tate Court reasoned that by requiring either time or a fine, the state was really incarcerating Tate because he was too poor to pay the fine. After Tate, courts began using installment plans that permit poor defendants to pay fines over a period of several months. This practice may nonetheless subject the poor to an increased punishment if the court administration requires interest or some fee associated with a payment plan.

## 4.11.2 Civil Forfeiture

Federal law allows civil forfeiture, the process by which the government confiscates the proceeds (property or money) of criminal activities. See 18 USCA §§981-982. Laws that allow the state to forfeit the property used in illicit drug activity are particularly controversial. In deciding whether forfeiture is legal, state courts generally look to constitutional provisions dealing with excessive fines. In Austin v. United States, 509 US 602,

at 622 (1993), the Supreme Court said that civil forfeiture "constitutes payment to a sovereign as punishment for some offense' . . . and, as such, is subject to the limitations of the Eighth Amendment's Excessive Fines Clause." However, the court left it to state and lower federal courts to determine "excessiveness" in the context of forfeiture.

In 2000, Congress passed the Civil Asset Forfeiture Reform Act. This Act curbed the government's asset forfeiture authority. It also added more due process guarantees to ensure that property will not be unjustly taken from innocent owners.

## 4.11.3 Restitution and Compensatory Fines

Restitution refers to the "return of a sum of money, an object, or the value of an object that the defendant wrongfully obtained in the course of committing the crime" (Scheb, J.M & Scheb, J.M. II, 2012). When the judge's sentence includes restitution, the amount should be sufficient to place the victim in the same position they would have been had the crime not been committed.

Restitution orders can include the actual cost of destroyed property, medical bills, counseling fees, and lost wages. Ordering restitution is not always practical. When offenders are sentenced to incarceration, they frequently are unable to pay fines and restitution.

## 4.11.4 Licenses and Attributions for Substantive Law: Monetary Punishment Sentences

# 4.12 SUBSTANTIVE LAW: COMMUNITY-BASED SENTENCES

In addition to incarceration and monetary sanctions, the defendant may be sentenced to some form of community-based sanction.

## 4.12.1 Community Shaming

Some judges, seeking alternatives to jail or prison, have imposed creative sentences such as requiring offenders to make public apologies, place signs on the door reading, "Dangerous Sex Offender, No children Allowed," and attach bumper stickers proclaiming their crimes. These sentences are intended to shame or humiliate the offender and satisfy the need for retribution. Shame is part of the restorative justice movement, but for it to be effective, it needs to "come from within the offender. ... Shame that is imposed without almost always hardens the offenders against reconciliation and restoration of the damage done" (Shame and Shaming in Restorative Justice, n.d.).

## 4.12.2 Community Service

Although not necessarily specified in the criminal code, judges frequently sentence offenders to complete community service as a condition of probation. Generally, a probation official will act as the community service coordinator. Their job is to link the offender to the positions and verify the hours worked.

## 4.12.3 Licenses and Attributions for Substantive Law: Community-Based Sentences

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# 4.13 PROCEDURAL LAW

Procedural law governs the process used to investigate and prosecute a criminal offender. Procedural law also governs how a person convicted of a crime may challenge their convictions. Whereas most substantive criminal law is now statutory, most procedural law is found in judicial opinions that interpret the U.S. and state laws. Generally, the federal and state constitutions set forth broad guarantees (for example, the right to a speedy trial), then statutes are enacted to provide more definite guidelines (for example, the Federal Speedy Trial Act) and then judges flesh out the meaning of those guarantees and statutes in their court opinions.

## 4.13.1 Phases of the Criminal Justice Process

The processing of a case through the criminal justice system can be broken down into five phases as seen in figure 4.1. They include:

- investigative phase,
- the pre-trial phase,
- the trial phase,
- the sentencing phase, and
- the appellate or post-conviction phase.

## 4.13.1.1 Overview of the criminal process (graph)

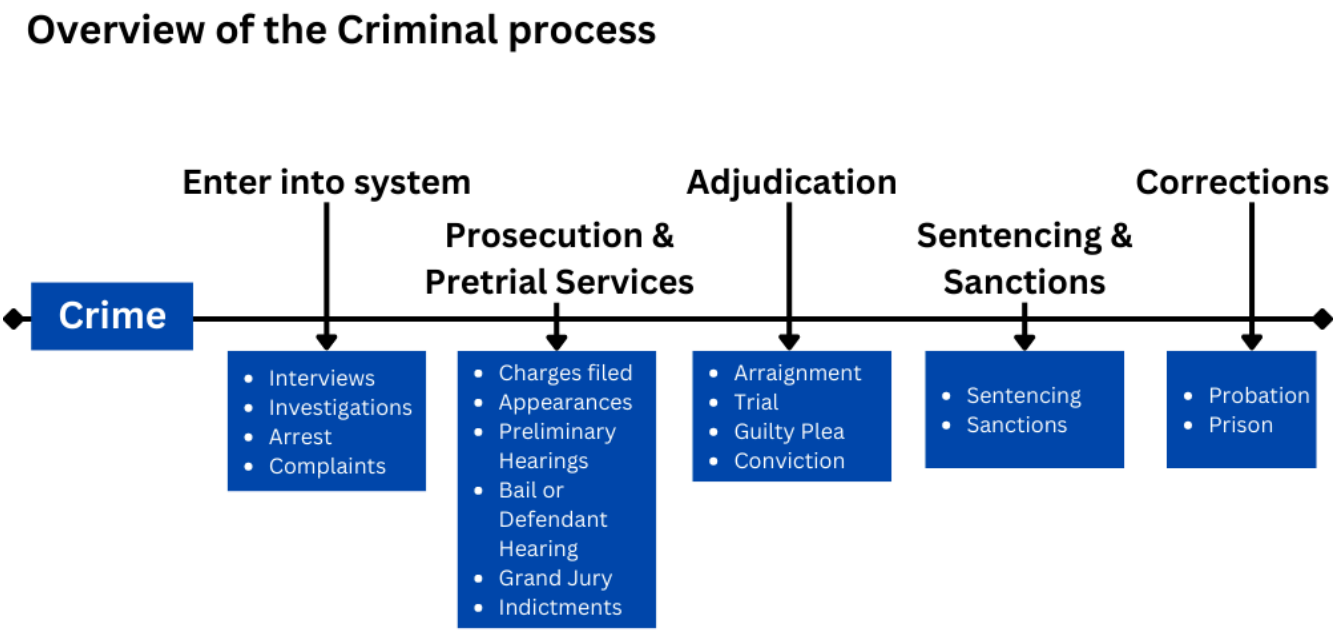


Figure 4.1. A line graph showing an overview of the criminal process from the crime being committed, entry into the system, prosecution and pretrial services, adjudication, sentencing and sanctions and corrections.

## 4.13.1.2 Investigative Phase

The investigative phase is governed by laws covering searches and seizures, interrogations and confessions, and identification procedures (lineups, showups, and photo arrays). This phase mostly involves what the police are doing to investigate a crime. However, when police apply for a search, seizure, or arrest warrant, judges must decide whether probable cause exists to issue a warrant. When an arrest is made without a warrant, a judge must promptly review the arrest.

## 4.13.1.3 Pretrial Phase

The pretrial phase is governed by laws covering the initial appearance of the defendant before a judge or magistrate. The arraignment process is when the defendant is informed of the charges filed by the state. Other activities during the pretrial include appearances, motions, bail, grand jury, and indictments. During the pretrial phase, prosecutors and defendants, through their defense attorneys, will engage in plea bargaining and will generally resolve the case and avoid a formal trial.

### 4.13.1.4 Trial Phase

The trial phase is governed by laws covering speedy trial guarantees, the selection, and use of petit jurors (trial jurors), the rules of evidence (rules governing the admissibility of certain types of evidence such as hearsay or character evidence); the right of the defendant compulsory process (to secure favorable testimony and evidence); the right of the defendant to cross-examine any witnesses or evidence presented by the government against him; fair trials free of prejudicial adverse pretrial or trial publicity; fair trials which are open to the public; and the continued right of the defendant to have the assistance of counsel during their trial.

### 4.13.1.5 Sentencing Phase

The sentencing phase is governed by rules and laws concerning the substantive criminal laws on punishment (discussed above); time period in which a defendant must be sentenced, the defendant's right of allocution (right to make a statement to the court before the judge imposes sentence); any victims' rights to appear and make statements at sentencing; the defendant's rights to present mitigation evidence and witnesses; and the defendant's continued rights to the assistance of counsel at sentencing. In capital cases in which the state is seeking the death penalty, the trial will be bifurcated (a trial split into the "guilt/innocence phase" and the "penalty phase"). The sentencing hearing will look like a mini-trial.

### 4.13.1.6 Post-Conviction Phase (Appeals Phase)

The post-conviction phase is governed by rules and laws concerning the time period in which direct appeals must be taken; the defendant's right to file an appeal of right (the initial appeal which must be reviewed by an appellate court) and right to file a discretionary appeal; the defendant's right to have the assistance of counsel in helping to file either the appeal of right or a discretionary appeal.

## 4.13.2 Licenses and Attributions for Procedural Law

# 4.14 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND CRIMINAL LAWS

One important missing piece in the justice systems is the lack of strong support for crime prevention science or CPSc solutions within the criminal laws. Criminal laws are heavily focused on punishment while being almost silent on CPSc solutions and programs that are needed to reduce and prevent crime rates. It does sometimes appear as if the CPSc programs have never been invented, given how they are not even mentioned in most criminal laws. A major overhaul of criminal laws is, therefore, long overdue. But any effort to improve criminal laws must begin with an awareness of CPSc solutions in every community. Bringing the awareness of CPSc to lawmakers and every justice key leader is a natural next step for each community and university. Today, there is a huge question of what every lawmaker knows about CPSc and when they knew it. Simple CPSc awareness can verify and clarify the answer to these two critical questions. It is the key leaders who possess the discretionary power to change criminal laws.

## 4.14.1 Criminal Law support for CPSc and Crime Solutions

Based on the American constitution, there are three major branches of government – legislature, judiciary, and the executive (https://www.usa.gov/branches-of-government). Each of these three branches can play a crucial role in reforming criminal laws to maximize support for crime prevention science (CPSc). For instance, the legislature can strategically modify existing criminal laws to include support for CPSc and crime solutions. The court judges can then use their sentencing powers to prioritize CPSc programs that are needed. The executive branch leaders can sign executive orders to reinforce governmentwide support for CPSc. In order for these reforms to take place, a sustained awareness campaign will be crucial to educate these key leaders at all branches of government. Generally, higher educational institutions are better positioned to help tackle this awareness and education piece. More specifically, the criminal justice professors and their students can be an invaluable resource for increasing awareness and support for CPSc, starting in their own communities and educational institutions.

## 4.14.2 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and Criminal Laws

# 4.15 CONCLUSION

In this chapter, we first examined the fundamental principles of criminal law. We then examined the sources of substantive and procedural criminal law. Finally we identified the need for implementation of Crime Prevention Science (CPSc) solutions and how these can be leveraged to make needed changes to laws.

## 4.15.1 Learning Objectives

After reading this chapter, students will be able to:

1. Distinguish between a criminal wrong, a civil wrong, and a moral wrong.
2. Recognize the many sources of substantive and procedural criminal law.
3. Identify the limitations that the federal constitution and state constitutions place on creating substantive laws and enforcing those laws.
4. Recognize the importance of rule of law in American jurisprudence and understand the importance of judicial review in achieving rule of law.
5. Identify relationships between criminal laws and crime prevention science (CPSc) Solutions.

## 4.15.2 Review of Key Terms:

- Aggravating factors
- Case law

- Civil wrong
- Criminal wrong
- Ex post facto laws
- Inchoate crimes
- Laws
- Mitigating factors
- Moral wrong
- Rule of law

## 4.15.3 Review Critical Thinking Questions Box

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. What does formal law do well? What does formal law not do so well?
2. Should we be able to impose sanctions for violations of moral wrongs?
3. Consider the constitutional requirement of separate but equal branches of government. Why do you think the drafters of the constitution intended each of the branches of government to be a check on each other? How does that "play out" when deciding what laws should be made and what laws should be enforced? What current issues are you aware of that highlight the importance of three separate but equal branches of government?
4. How does direct democracy (in the form of ballot measures and propositions) influence substantive criminal law (creating crimes and punishing crimes). What, if any, are the advantages of using direct democracy to create and punish crime? What, if any, are the disadvantages?
5. Consider state-wide decriminalization of marijuana possession and use across the nation and the federal statute banning possession and use of marijuana. How should this federal/state conflict be resolved? Does your opinion change if the behavior is one that you favor or disfavor?

## 4.15.4 Licenses and Attributions for Conclusion

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# 4.17 CHAPTER 4 FEEDBACK SURVEY

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# CHAPTER 5: CRIMINOLOGICAL THEORY

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 5.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

In this chapter, we will focus on theories that explore why some people may commit crime. As we cover these different theories and reasons, we will discuss how historical views have impacted the current U.S. criminal justice system. Finally we will look at Crime Prevention Science solutions, based on vetted criminological theories, that present new ways to tackle and decrease crime.

## 5.1.1 Learning Objectives

After reading this chapter, students will be able to do the following:

1. Distinguish between classical, positivism, and other (biological, psychological, and sociological) explanations of criminal behavior.
2. Recognize the links between crime control policy and theories of criminal behavior.
3. Demonstrate effective application of criminological theories to behavior.
4. Explain the major social structures in America and their relationship to crime theories.
5. Describe the criminological theories that support crime prevention science or CPSc Solutions.

## 5.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- control theories
- crime prevention science (CPSc) solutions
- feminist theories
- hedonism
- labeling theories
- learning theories
- positivism
- situational crime prevention
- social disorganization
- strain theories
- theory

## 5.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. How do we know what theories explain crime better than other theories?
2. How did the classical theory of crime influence the American criminal justice system?

3. Why is it difficult to study biological theories of crime without thinking about the social environment?
4. Which theory do you think explains criminal behavior the best? Why?
5. Why do you think there have been so many different explanations to describe the origins of criminal behavior?

## 5.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 5.2 CRIME THEORIES

A **theory** is an explanation to make sense of our observations about the world. We test hypotheses and create theories that help us understand and explain the phenomena. Criminological theories focus on explaining the causes of crime. They explain why some people commit a crime, identify risk factors for committing a crime, and can focus on how and why certain laws are created and enforced. Edwin Sutherland (1934), a prominent theorist has referred to criminology as the scientific study of breaking the law, making the law, and society's reaction to those who break the law. If we understand why crime problems are happening, we can then formulate crime solutions. In every chapter in this book, we will introduce crime prevention science (CPSc) solutions. They are a set of policies, programs, and practices designed to solve crime problems. The CPSc solutions are also based on crime theories. Some of the best crime theories are those ones that help us to implement crime solutions.

## 5.2.1 What Makes a Good Criminological Theory?

Numerous criminological theories attempt to explain why people commit a crime. The natural and physical sciences mostly agree on the knowledge of their disciplines. However, criminology is interdisciplinary, and many criminologists may not agree on what causes criminal behavior. For instance, Cooper, Walsh, and Ellis (2010) looked at the political ideology of criminologists and their preferred or favored theories and found that their political leanings influenced their beliefs about the causes of crime.

We must apply the scientific criteria to test our theories. Akers and Sellers (2013) have established a set of criteria to judge criminological theories: logical consistency, scope, parsimony, testability, empirical validity, and usefulness, outlined in table 5.1.

## 5.2.1.1 Table 5.1. Defining Akers and Sellers Criteria to Judge Criminological Theories.

| Criteria | Definition | Questions to consider |
|---|---|---|
| Logical consistency | The theory's basic ability to make sense. | Is it logical? Is it internally consistent? |
| Scope | The theory's range, or ranges, of explanations. (Better theories will have a wider scope or a larger range of explanation.) | Does it explain crimes committed by males AND females? Does it explain ALL crimes or just property crime? Does it explain the crime committed by ALL ages or just juveniles? |
| Parsimony | The theory's simplicity. | Is it concise, elegant and simple? Are there too many constructs or hypotheses? |
| Testability | The theory's ability to be tested. (Some theories are more testable, more exposed to refutation than others; they take, as it were, greater risks) | Is it open to possible falsification? |
| Empirical validity | The verification or repudiation of a given theory through empirical research. (According to Gibbs (1990), this is the most important principle to judge a theory.) | After testing, are the results supported by evidence? |
| Usefulness | Theories will suggest how to control, prevent, or reduce crime through policy or program. | What is the premise of the theory that will guide policymakers? |

## 5.2.2 Licenses and Attributions for Crime Theories

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# 5.3 THE ORIGINS OF CLASSICAL CRIMINOLOGICAL THEORY

During the Middle Ages, theological explanations assumed human beings broke laws or didn't conform to conventional norms of society because of spiritual problems. A law breaker was typically thought to be possessed by demons or the devil, or was a wizard or witch. These explanations assumed that when an individual broke a God-given "natural law," they had sinned. Thus, crime was equivalent to sin. Governments had the moral authority to punish criminals or sinners and the state was acting on behalf of God. As a result, the accused person could "prove" their innocence by a trial by battle, where only the victor was innocent, or trial by ordeal, where the innocent party would be unharmed while the guilty party would feel pain. Punishments and justice were arbitrary and severe, especially when feudal lords, with God's permission, determined guilt. A person's rank, status, and or wealth determined their punishment, rather than the merits of the case at hand.

As humans moved through the renaissance, age of enlightenment and the scientific revolution they began to develop frameworks that went beyond theological explanations of human behavior. Auguste Comte (1851), an early sociologist, was interested in epistemology, or in other words, how humans obtain valid knowledge. He claimed human being's progression of knowledge went through three separate stages: theological, metaphysical, and scientific. The theological stage used supernatural or otherworldly powers to explain behaviors, the metaphysical used rational and logical arguments, and the scientific used positivism and scientific inquiry.

## 5.3.1 Classical School

During the Enlightenment, from about 1600-1800, citizens and social thinkers began to question being governed by appointed rulers. In the *Leviathan* (1651), Thomas Hobbes wanted a new type of government, one that was ruled by the people and not by monarchs. He argued that humans were naturally in conflict with one another, pursued their self-interests, and were rational. He believed people had natural rights such as life, liberty, and the pursuit of happiness. Since humans had a natural tendency to seek authority figures out to protect them from others, then these authority figures should be democratically chosen and create rules that all citizens must follow.

Hobbes was one of the first social contract thinkers. Social contract thinkers believed people would invest in the laws of their society if, and only if, they knew the government protected them from those who break the law. Essentially, people would give up some of their self-interests as long as everyone reciprocates.

In addition to being rational, Hobbes and other social contract thinkers believed that humans have free will. Humans are able to choose one action over another based on perceived benefits and possible consequences. They also believed that human beings are hedonistic. Hedonism is the assumption that people will seek maximum pleasure and avoid pain.

In classical theory, this means that people are responsible for their actions because the action is a choice. These assumptions have been the basis for the American criminal justice system since its inception. The understanding of criminal behavior and the philosophies of punishments over time may have changed, but the criminal justice system is based on the assumption that committing a crime is a choice and offenders are totally responsible for their actions.

## 5.3.2 Reformers of Classical Theory

Cesare Beccaria (1738–1794), as seen in figure 5.1, was an Italian mathematician and economist who wanted to change the excessive and cruel punishment practices being used in Europe by applying rationalistic, social contract ideas. Beccaria is considered the father of the classical school of criminology, and a prominent figure in penology. To protest unfair treatment of accused criminals, he anonymously wrote *An Essay on Crimes and Punishment* (1764), which attacked the power of judges to determine guilt and create laws based on their decisions. Intellectuals received his essay well, but the Catholic Church banned it. His ideas were exceptionally radical, mainly because his writing questioned the power structures at the time.

Figure 5.1. Image of Cesare Bonesana di Beccaria (1738–1794), the father of classical criminology.

Beccaria laid out his ideas about legal reform including how and why to create effective punishments. He advocated that punishments should fit the crime and be proportional to the harm done. He also said that laws should only be determined by the legislature, that judges should only determine guilt, and that every person should be treated equally under the law. He claimed the sole purpose of the law was to deter people from committing the crime. Deterrence, which will be covered in more detail in Chapter 8, can be accomplished if the punishment is certain, swift, and severe.

First, by making certain that individuals know that offenses will be punished, there will be a deterrent factor. Second, the swiftness of punishment lets individuals know how swift the punishment will be, and that they will not offend. Third, according to Beccaria, "For punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime. . . All beyond this is superfluous and for that reason tyrannical" (Beccaria, 1963). In saying this, Beccaria referred to the severity or amount of punishment. It is not

how much punishment that is the primary motivator of deterrence, rather, the certainty. These may seem like common sense today, but they were considered radical ideas at the time.

Jeremy Bentham (1748–1832), pictured in figure 5.2, was an English philosopher and a founder of utilitarianism. Utilitarianism is the belief that decisions are considered right or wrong depending on how effective those decisions were at producing the desired outcome. Essentially, if a punishment was severe enough to make an individual think twice about committing a crime, less crimes would be committed if punishments were severe; this is an early example of deterrence. Based on this theory, punishment would promote happiness throughout society by helping to reduce crime. He helped popularize classical theory throughout Europe (Bentham, 1823).

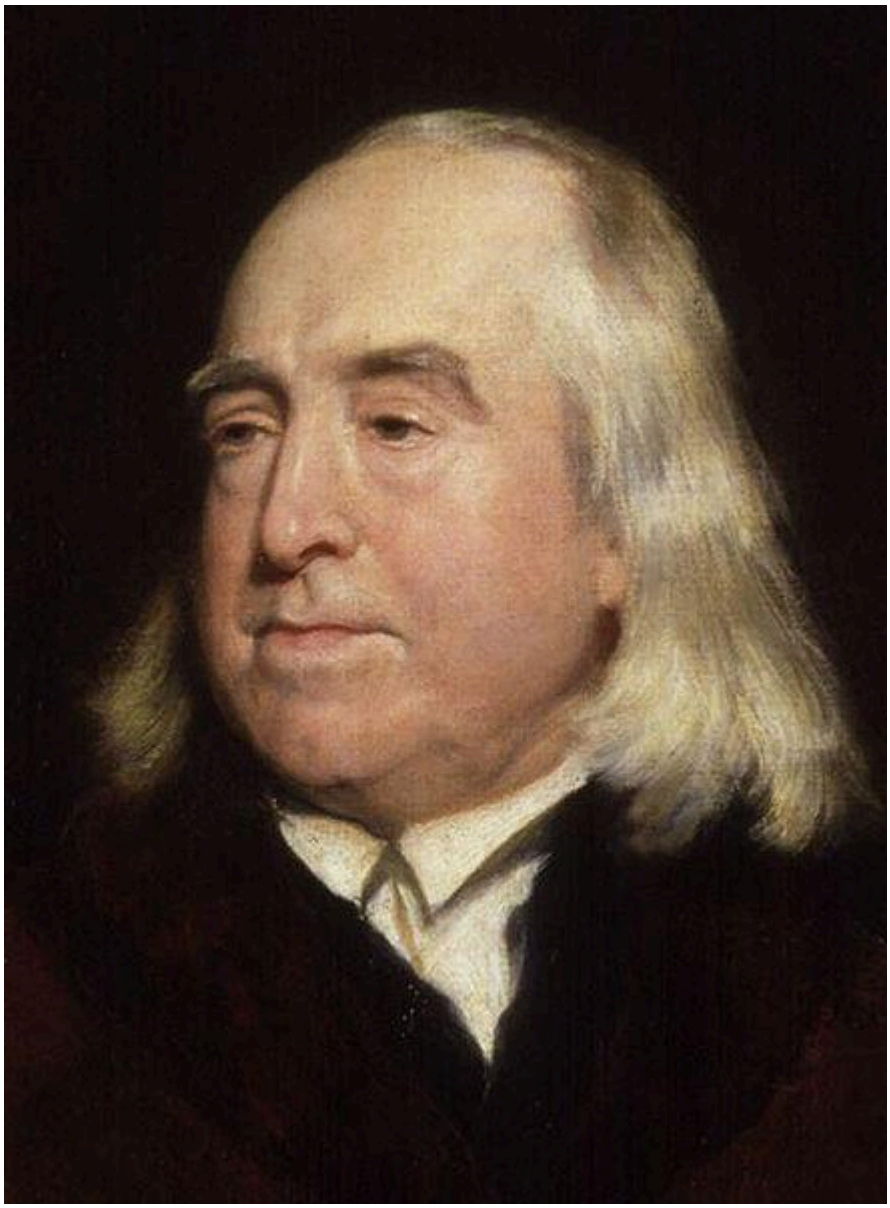

Figure 5.2. Jeremy Bentham (1748–1832), an English philosopher and a founder of Utilitarianism.

Deterrence theory tries to change a person's behavior through laws and punishments. Deterrence is the

belief that perceived punishments will serve as a warning of possible consequences and will discourage a person from committing the crime.

There are two types of deterrence: general deterrence and specific deterrence. General deterrence uses punishment to deter crime among people in the general population. It uses punishment as an example for those people who are not being punished. For example, capital punishment can serve as a deterrent to would-be offenders. Specific deterrence uses punishment to reduce the crime of particular persons. For example, the extreme punishment for illicit drug charges. The effect of the punishment depends on the nature of the punishment and who is punished. Deterrence theory has remained popular even to the present day and had a lasting impact on the modern American criminal justice system.

## 5.3.3 Licenses and Attributions for The Origins of Classical Criminological Theory

Figure 5.1. Image of Cesare Bonesana di Beccaria is in the Public Domain.

Figure 5.2. Image of Jeremy Bentham is in the Public Domain.

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# 5.4 NEOCLASSICAL

Classical ideology was the dominant paradigm for over a century. But it was eventually replaced by positivist approaches that seek to identify causes of criminal behavior, which you will learn about in the next section. However, classical ideology had a resurgence during the 1970s in the United States that is called neoclassical theory. Neoclassical theory recognizes people experience punishments differently and that a person's environment, psychology, and other conditions can contribute to crime as well. In neoclassical theory, crime is a choice based on context. Many crime-prevention efforts used classical and neoclassical premises to focus on "what works" in preventing crime instead of focusing on why people commit criminal acts.

## 5.4.1 Activity: In the News: Oregon Measure 11 Example

In 1994, Oregon voters passed Measure 11, which established mandatory minimum sentencing for several serious crimes. Besides removing the judge's ability to give a lesser sentence, Measure 11 prohibited prisoners from reducing their sentence through good behavior. Additionally, any defendant 15 years old or older who was accused of a Measure 11 offense was automatically tried as an adult. Recently, the Oregon Justice Resource Center reported the effects of Measure 11 on juveniles, especially minorities and many groups are actively working to reform Measure 11. Below are links to the news article and the report itself.

- The Oregonian – "New Report Calls Measure 11 Sentences for Juveniles 'Harsh and Costly'".
- Oregon Justice Resource Center's Report Youth and Measure 11 in Oregon: Impacts of Mandatory Minimums.

**Activity: Measure 11 Exercise**

After reading the above box and hyperlinks, please explain why many juveniles are not deterred from committing serious crimes in Oregon.

## 5.4.2 Rational Choice Theory

Derek Cornish and Ronald Clarke (1986) proposed Rational Choice Theory to explain criminals' behavior. They claimed offenders rationally calculate costs and benefits before committing crime and assume people want to maximize pleasure and minimize pain. The theory does not explain motivation, but instead it expects some people will always commit a crime when given the opportunity. They do not assume offenders are entirely rational, but they do have bounded rationality, which means that offenders must make a decision in a timely fashion with the information at hand before committing a crime. For example, if you were walking down a street and noticed an open window in a parked car, you may contemplate looking in. If you saw something inside, you may then consider stealing it. An entirely rational person may look around to see if there are any witnesses, try to determine if the owner is coming back soon, and so on. You may wait until nightfall. However, you may miss your opportunity. Thus, you need to make a quick decision with the relevant facts at that time.

That was an example of a "crime-specific" model, which is a model where all crimes have different techniques and opportunities. This model assumes that all crime is purposeful with the intention to benefit the offender. To dissuade offenders, Rational Choice Theory emphasized the significance of informal sanctions and moral costs. The theory advocates for a situational crime prevention approach by reducing opportunities. Reducing opportunities is much easier to manipulate and change compared to changing society, culture, or individuals. Ultimately, situational crime prevention strategies try to make crime a less attractive choice.

## 5.4.3 Routine Activity Theory

Another neoclassical theory is **Routine Activity Theory**, which was developed by Lawrence Cohen and Marcus Felson in 1979. It claims that changes in the modern world have provided more opportunities for offenders to commit crime. Routine Activity Theory says that three things must converge in time and space for a crime to be committed. They include a motivated offender, a suitable target, and the absence of a capable guardian.


Figure 5.3. A diagram showing Routine Activity Theory in which the convergence of each of the three concepts: a likely (motivated) offender, a suitable target, and the absence of a capable guardian, within the same time and space creates an opportunity for a crime to be committed.

The motivated offender is considered to be a given as there will always be people who will seize opportunities to commit criminal offenses. Besides, there are a variety of theories to explain why people commit a crime. Suitable targets can be vacant houses, parked cars, a person, or any item. In reality, almost anything can be a suitable target. Finally, the absence of a capable guardian facilitates the criminal event. What can serve as a capable guardian? A plethora of people and things can serve as a guardian. For example, police officers, security guards, a dog, being at home, or even increased lighting to allow other people to see. Other examples

are: security cameras, alarm systems, and deadbolt locks which can each reduce opportunities by serving as a capable guardian. Routine Activity Theory concentrates on the criminal event instead of the criminal offender.

## 5.4.4 Licenses and Attributions for Neoclassical

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# 5.5 POSITIVIST CRIMINOLOGY

If criminal behavior were merely a choice, the crime rates would more likely be evenly spread. However, when European researchers started to calculate crime rates in the nineteenth century, some places consistently had more crime from year to year. These results indicated that criminal behavior must be influenced by something other than choice and and must be related to other factors.

**Positivism** is the use of empirical evidence through scientific inquiry to improve society. Ultimately, positivist criminology sought to identify other causes of criminal behavior beyond choice based on measurement, objectivity, and causality (Hagan, 2018). Early positivist theories speculated that there were criminals and noncriminals and hoped to identify what causes made criminals.

In 1859 Charles Darwin wrote *On the Origin of Species* which outlined his observations of natural selection. A few years later, he applied his observations to humans in *Descent of Man* (1871) where he said that some people might be "evolutionary reversions" to an early stage of man. Although he never wrote about criminal behavior, others borrowed Darwin's ideas and applied them to crime.

## 5.5.1 Biological and Psychological Positivism

Biological and psychological positivism theories assume there are fundamental differences that differentiate criminals from noncriminals and that these differences can be discovered through scientific investigations. Additionally, many early biological and psychological theories used hard determinism, which implies people with certain traits will be criminals.

Cesare Lombroso was a medical doctor in Italy when he had an epiphany. As he was performing autopsies on Italian prisoners, he started to believe many of these men had different physical attributes compared to law-abiding people. He also thought that these differences were biologically inherited. In 1876, five years after Darwin's claim that some humans might be evolutionary reversions, Lombroso wrote *The Criminal Man* which said that one-third of all offenders were born criminals who were evolutionary throwbacks.

He identified a list of physical features he believed to deviate from the "normal" population. These included an asymmetrical face, monkey-like ears, large lips, receding chin, twisted nose, long arms, skin wrinkles, and many more, as seen in figure 5.4. Lombroso believed he could identify criminals simply by the way they physically looked. Even though his theory was later widely rejected, it is an example of the first attempt to explain criminal behavior scientifically.

## 5.5.1.1 Atavistic features image

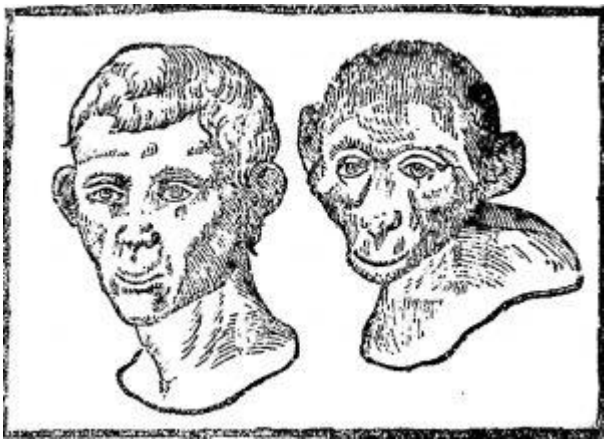


Figure 5.4. An example of what were considered Atavistic features.

A few decades after Lombroso's theory, Charles Goring took Lombroso's ideas about physical differences and added mental deficiencies. In *The English Convict*, Goring claimed there were statistical differences in physical attributes and mental defects. The focus on mental qualities led to a new kind of biological positivism called the Intelligence Era. Alfred Binet, who created the Intelligence Quotient (IQ) Test, believed intelligence was dynamic and could change.

Unfortunately, many Americans at the time believed intelligence was fixed and could not change. H. H. Goddard, an early psychologist, took Binet's well intentioned IQ test and used it to sort people into categories of "intelligence". Those who scored too low were institutionalized, deported, or sterilized. He was an early advocate of sterilizing those who were mentally deficient. He especially wanted to target "morons," who he said were just smart enough to blend in with the normal population. In 1927, the U.S. Supreme Court in *Buck v. Bell* allowed the use of sterilization of those incarcerated people with disabilities based on the ideas of Goddard and other such psychologists.

Even after Lombroso, Goring, and Goddard, more contemporary research revealed that intelligence is at least as critical as race and social class for predicting delinquency (Hirschi & Hindelang, 1977). However, how intelligence is measured and defined is based on preconceived assumptions of intelligence. For example, is intelligence inherited? Is it related to the dominant culture? Or is it based more on the person's environment? Each has at least some element of truth.

Modern science has revealed that biology plays a role in our behavior, but can't say how or even how much. Studies of people who are twins or adopted have examined the nature-versus-nurture debate. Both play a role in our behavior, so perhaps the question ought to be "how do our biological differences interact with our sociological differences?"

What about criminal personalities like sociopaths and psychopaths? Sheldon and Eleanor Glueck, (1950) Polish-American criminologists determined there was no real criminal personality, but there are some interrelated personality characteristics. For example, there have been correlations between certain personality

traits and criminal behavior: impulsivity, lack of self-control, inability to learn from punishment, and low empathy have all been linked to criminal behaviors.

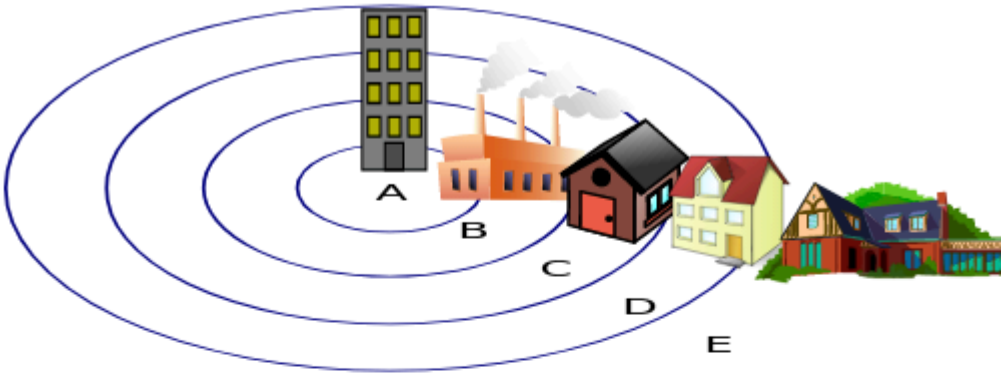
But none of these personality characteristics are criminal on their own. However when a person has many of these personality characteristics, there seems to be a higher association with criminal behavior. Capsi, et al., (1994) found that constraint and negative emotionality, two super traits that contain a number of different characteristics, were "robust correlates of delinquency."

Researchers have determined that biology and personality play a role in criminal behaviors, but they cannot say how much or to what degree. The characteristics of our social environment interact with our biology and personality. Human behavior is complex and it is difficult to determine the true causality of human actions.

## 5.5.2 The Chicago School

Biological and psychological positivism looked at differences between criminals and noncriminals. The Chicago School theories tried to detect differences between kinds of places where crime happens. In the 1920s and 30s, the University of Chicago pioneered the study of human ecology, which is the study of the relationship between humans and their environment. Robert Park (1925) viewed cities as "super-organisms," comparing the city-human relationship to the natural ecosystems of plants and animals that share habitats. Ernest Burgess (1925) proposed concentric zone theory, which explained how cities grow from the central business district outward, as seen in figure 5.5.

## 5.5.2.1 Concentric Zones image




**A**=Central business district (center)

**B**= Factory zone

**C**= Zone of transition

**D**= Working class zone

**E**=Commuter/Residential zone (outer ring)

Figure 5.5. Concentric Zones – Urban Social Structures as Defined by Sociologist Ernest Burgess.

In 1942, Clifford Shaw and Henry McKay, both former students of Burgess, began to plot the addresses of juvenile court-referred male youths and noticed crime was not evenly spread over the entire city. They found the highest crime rates were at addresses located in the transition zone. Upon further investigation, they noticed three qualitative differences within the transition zone compared to the other zones. First, these areas were not zoned specifically for residential dwellings, meaning homes were scattered around industrial buildings and had little surrounding residential infrastructure (parks, schools, stores, etc.) areas which had the largest number of condemned buildings. When many buildings are in disrepair, population levels decrease. Second, the population composition was also different. The zone in transition had higher concentrations of foreign-born and African American heads of families. It also had a transient population. Third, the transitional zone had socioeconomic differences with the highest rates of welfare, lowest median rent, and the lowest percentage of family-owned houses. Interrelated, the zone also had the highest rates of infant deaths, tuberculosis, and mental illness.

Shaw and McKay believed the transition zone led to social disorganization. Social disorganization is the

inability of social institutions to control an individual's behavior. This disorganization meant that social institutions, like family, school, religion, or government, and community members could no longer agree on essential norms and values and made it difficult to solidify community bonds. A lack of community and social safety net is especially destabilizing for young people, creates a sense of hopelessness, and has been linked to increased crime rates.

Overall, Shaw and McKay were two of the first theorists to put forth the premise that community characteristics matter when discussing criminal behavior.

## 5.5.3 Licenses and Attributions for Positivist Criminology

Figure 5.4. I precursori di Lombrso is in the Public Domain.

Figure 5.5 Burgess Model is in the Public Domain, adapted by Trudi Radtke.

# 5.6 OTHER MODERN CRIMINOLOGICAL THEORIES

Apart from classicalism and positivism, the following theories represent most of the modern criminological theories used by criminologists today.

## 5.6.1 Strain Theory

Strain theories assume people will commit crime because of strain, stress, or pressure that can come anywhere. Strain theories assume that human beings are naturally good but that bad things happen, which push people into criminal activity.

Emilé Durkheim (1897/1951) believed that economic or social inequality was natural and inevitable. He also believed that inequality and crime were not related unless there was also a breakdown of social norms. According to Durkheim, when there is rapid social change, social norms break down and society needs time to reevaluate "normal" behaviors. He also believed that social forces have a role in dictating human thought and behaviors and when they break down, society loses the ability to control or regulate individuals' behaviors.

Other researchers like Robert K. Merton built on Durkheim's ideas, but didn't believe that inequality was natural or inevitable. Instead, Merton (1938) believed that many human behaviors originate in the idea and pursuit of the American Dream, which is a belief that anyone who works hard enough will be able to succeed and move upward in society. He also believed that the social structure of American society restricts some citizens from attaining that dream. The culturally approved way to achieve the American Dream is through hard work, innovation, and education.

However, Merton knew that some people and groups don't have the same opportunities to achieve the American Dream. When a person's desire to achieve the American Dream meets society's barriers, the people unable to jump the barriers feel pressure or strain, and then feel that they are blocked from their goal.

Merton said that people who felt blocked from their goal by society's structures developed one of five personality adaptations: conforming, innovating, ritualizing, retreating, or rebelling.

Conformists are the most common adaptation. The conformist accepts the goals of society and the means for achieving them, and as an example becomes a college student. The innovator accepts the goals of society but rejects the means of achieving them and thus innovates their own ways to meet society's goals, and as an example becomes a drug dealer. The ritualists conform to the means but reject or are blocked from achieving the goals, and as an example becomes the person who has given up on the promotion, nice car, and so on, and simply punches the time clock to keep what they have. The retreatist gives up on both the goals and means,

and withdraws from society, and as an example becomes the alcoholic, the drug addict, or the vagrant. Finally, the rebel rejects both the goals and means of society, but they want to replace them with new goals and means, and as an example becomes a vigilante.

Merton emphasized economic strains even though his theory could explain any strain. Albert Cohen (1955) claimed strain could come from a lack of status. He wanted to know why most juvenile crimes occurred in groups. His research showed that many youths, especially those in lower-class families, rejected education and other middle-class values. Instead, many teenagers believed that status and self-worth were more important. When these teens had no status, reputation, or self-worth, it led to severe strain. Cohen found that youths sometimes committed a crime to gain status among their peer group. If youths had no legitimate opportunities, they were likely to join gangs to pursue illegitimate opportunities to achieve financial success.

In 2006, Robert Agnew proposed a general strain theory that claimed strains come from myriad sources. Agnew defined strain as any event that a person would rather avoid. Three types of strains include the failure to achieve a desired environment/outcome (e.g., monetary, status goals). The removal of a desired environment/outcome (e.g., loss of material possessions, the death of family members), and experiencing an undesired environment/outcome (e.g., parental rejection, bullying, discrimination, and criminal victimization). The characteristics of some strains are more likely to lead to crime. A strain that feels unjust and important can produce pressure that leads to criminal coping mechanisms. People with poorly developed coping skills are more likely to commit a crime because strains lead to negative emotions such as anger, depression, and fear. This can create social control issues like having trouble in school, as well as promote social learning, like joining peers who also need to vent their frustration. In general strain theory, criminal behavior serves a purpose: to escape strain, stress, or pressure.

## 5.6.1.1 Activity: Coping Mechanism Example

Everyone feels stress and copes with stress, pressure, or shame differently. Shame can motivate us to change for the better. For example, if you did poorly on an exam, you may start to study more. When you feel stress, what do you do?

When I ask students how they deal with stress, many say that they go for a run or a walk, lift weights, cry, talk, or eat ice cream. These are healthy (maybe not eating too much ice cream) and prosocial coping mechanisms. When I feel stressed, I write.

## 5.6.2 Learning Theories

In the previous section, strain theories focused on social structural conditions that contribute to people experiencing strain, stress, or pressure. Strain theories explain how people can respond to these structures. Learning theories complement strain theories because they focus on the content and process of learning.

Early philosophers believed human beings learned through association. This means that humans are a blank slate and our experiences build upon each other. It is through experiences that we recognize patterns and linked phenomena. For example, ancient humans used the stars and moon to navigate. People recognized consistent patterns in the stars that enabled long-distance travel over land and sea.

### 5.6.2.1 Classical Conditioning

A few centuries later, Ivan Pavlov was studying the digestive system of dogs. His assistants fed the dogs their meals. Pavlov noticed that even before the dogs saw food, they began to salivate when they heard the assistants' footsteps. The dogs associated the oncoming footsteps with the upcoming food. This type of learning is called classical conditioning as noted in figure 5.6.


Figure 5.6. An Example of Classical Conditioning – Pavlov's Dogs Experiment.

The acquisition of this learned response occurred over time. Human beings most certainly learn via classical conditioning, but it is a passive and straightforward approach to learning. You may feel fearful when you see flashing blue lights in our rearview mirror, salivate when food is cooking in the kitchen, or dance when you hear your favorite song. You passively learn from these events paired with your experiences.

## 5.6.2.2 Operant Conditioning

B.F. Skinner (1937) was also interested in learning and his theory of operant conditioning transformed modern psychology. Operant conditioning is active learning where organisms learn to behave based on reinforcements and punishments. Using rats and pigeons, Skinner wanted animals to learn a simple task through reinforcements. A reinforcement is any event that strengthens or maximizes a behavior that should continue

or increase. Positive reinforcement is the addition of something desirable and negative reinforcement is the removal of something unpleasant. For example, if you wanted more people to wear seatbelts, you would want to reinforce the behavior. A positive reinforcement is praise or a reward for buckling up. A negative reinforcement is the seat belt alarm that comes in newer cars. It rings until you buckle up and once you do, the ringing stops. Both examples reinforce the behavior, but in different ways.

Punishments are given if you want a behavior to stop or decrease. A positive punishment gives something unpleasant and a negative punishment takes something away. For example, parents who want their teenager to stop breaking curfew can punish the teen in two ways. A positive punishment is scolding. A negative punishment is taking away the teen's driving privileges. Both punishments want to stop the breaking of curfew, but in different ways.

### 5.6.2.3 Activity: Punishment Exercise

How does the Criminal Justice System positively punish offenders? How does the Criminal Justice System negatively punish? Give examples of both.

## 5.6.2.4 Differential Association Theory

In 1947 American sociologist Edwin Sutherland offered a groundbreaking perspective of a micro-level learning theory about criminal behavior, which he called differential association theory. It tried to explain how age, sex, income, and social locations related to the acquisition of criminal behaviors (Sutherland, 1947). He presented his theory as nine separate, but related propositions, which were:

1. Criminal behavior is learned.
2. Criminal behavior is learned in interaction with other persons in a process of communication.
3. The principal part of the learning of criminal behavior occurs within intimate personal groups.
4. When criminal behavior is learned, the learning includes: a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; b) the specific direction of the motives, drives, rationalizations, and attitudes.
5. The specific directions of motives and drives are learned from definitions of the legal codes as favorable or unfavorable. In some societies, an individual is surrounded by persons who invariably define the legal

codes as rules to be observed. While in others he is surrounded by a person whose definitions are favorable to the violation of the legal codes.

6. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of the law. This is the principle of differential association.
7. Differential associations may vary in frequency, duration, priority, and intensity. This means that associations with criminal behavior and also associations with anti criminal behavior vary in those respects.
8. The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
9. While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since noncriminal behavior is an expression of the same needs and values. (Sutherland, 1947)

Sutherland describes the content of what is learned, but also the process of how it is learned. Ultimately, he argued people give meaning to their situation and this meaning-making determines if they would obey or break the law. For Sutherland, this meaning-making explains how siblings who grow up in the same environment differ in their behavior.

## 5.6.2.5 Social Learning Theory

In the late 1990's American criminologist, Ronald Akers, utilized both operant conditioning and differential association theory in his "social learning" or "differential reinforcement" theory. Akers' theory was interested in the process of how criminal behavior is acquired, maintained, and modified through reinforcement in social situations and nonsocial situations. According to Aker's "differential associations" refer to the people one comes into contact with frequently and "definitions" are the meaning a person attaches to his or her behavior. Those meanings can be general (i.e., religious, moral, or ethical beliefs that remain consistent) or specific (i.e., apply to a specific behavior like smoking or theft).

In this theory peers are the source of definitions and the most important source of social learning. "Differential reinforcements" refer to the balance between anticipated rewards or punishment and the actual reward or punishment. For example, if a juvenile vandalized a storefront, their friend's praise may reinforce that behavior. If the juvenile sought more praise, they might continue vandalizing more property (the peers' reactionary praise positively reinforced the behavior). Aker's final concept was "imitation/modeling". Akers argued that human beings could learn by observing how other people are rewarded and punished. Thus, some people may imitate other people's behavior, especially if that behavior was rewarded (Akers, 1994).

Finally, there are theories that focus on the content of what is learned. Subcultural theories focus on the ideas of what is learned rather than the social conditions that foster these ideas. Residents who live in disadvantaged neighborhoods, like in the transitional zone, may learn things that people who live in affluent neighborhoods

do. Some groups may internalize values that are conducive to violence or justify criminal behavior (Anderson, 1994). In other words, where you grow up influences what you learn about crime, police, government, or religion.

## 5.6.3 Control Theories

**Control theories** ask why more people do not engage in illegal behavior. Instead of assuming criminals have a trait or have experienced something that drives their criminal behavior, control theories assume people are naturally selfish, and, if left alone, will commit illegal and immoral acts. Control theories try to identify what types of controls a person may have that stops them from becoming uncontrollable.

Early control theorists argued that there are multiple controls on individuals. Personal controls are exercised through reflection and following prosocial normative behavior. Social controls originate in social institutions like family, school, and religious conventions. Jackson Toby (1957) introduced the phrase "stakes in conformity," which is how much a person has to lose if he or she engages in criminal behavior. The more stakes in conformity a person has, the less likely they would be willing to commit crime. For example, a married teacher with kids has quite a bit to lose if he or she decided to start selling drugs. If caught, he could lose his job, get divorced, and possibly lose custody of his children. However, juveniles tend not to have kids nor are they married. They may have a job, but not a career. Since they have fewer stakes in conformity, they would be much more likely to commit crime compared to the teacher.

### 5.6.3.1 Activity: Parenting Exercise

Parenting can be a challenging responsibility. They Are supposed to teach children how to behave. Ideally, parents have control over their children in many ways.

- What are ways parents have "direct" control over their children?
- What are ways parents have "indirect" control over their children?

In 1969 Travis Hirschi argued that all humans have the propensity to commit crime, but those who have strong bonds and attachment to social groups like family and school are less likely to do so. Often known

as social bond theory or social control theory, Hirschi presented four elements of a social bond: attachment, commitment, involvement, and belief.

Attachment refers to affection we have towards others. If we have strong bonds, we are more likely to care about their opinions, expectations, and support. Attachment involves an emotional connectedness to others, especially parents, who provide indirect control. Commitment refers to the rational component of the social bond. If we are committed to conformity, our actions and decisions will mirror our commitment. People invest time, energy, and money into expected behavior like school, sports, career development, or playing a musical instrument. These are examples of Toby's "stakes in conformity" as shown in figure 5.7.

## 5.6.3.2 Stakes of Conformity (diagram)

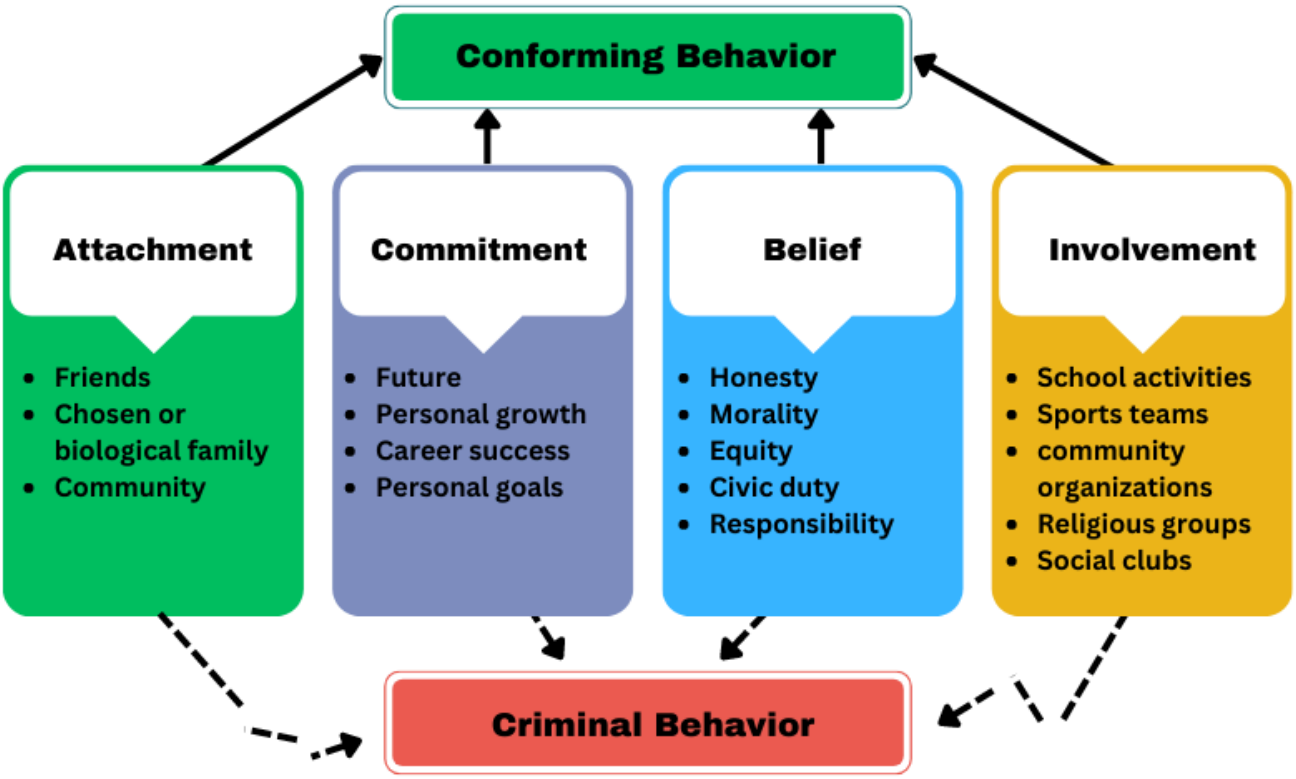



Figure 5.7. Diagram of the Stakes of Conformity.

If people started committing a crime, they would risk losing these investments. Involvement and commitment are related. Since our time and energy are limited, Hirschi thought people who were involved in socially accepted activities would have little time to commit a crime. The observational phrase "idle hands are the devil's worship" fits this component. Belief was the final component of the social bond. Hirschi claimed some juveniles are less likely to obey the law. Although some control theorists believed juveniles are tied to the conventional moral order and "drift" in and out of delinquency by neutralizing controls (Matza, 1964), Hirschi disagreed. He believed people vary in their beliefs about the rules of society. The essential element of

the bond is an attachment. Eventually, Hirschi moved away from his social bond theory into the general theory of crime.

### 5.6.3.3 Activity: Hirschi Exercise

Hirschi believed strong social bonds made people less likely to commit a crime. The components of a social bond include attachment, commitment, involvement, and belief. Please describe each of the components of the social bond and explain how each applies to your educational journey. How can you be attached, committed, involved, and believe in higher education?

Michael Gottfredson and Travis Hirschi (1990) claimed their general theory of crime could explain all crime by all people. They argued the lack of self-control was the primary cause of criminal behaviors. They claim most ordinary crimes require few skills to commit and have an immediate payoff. Moreover, they claim, people who commit these ordinary crimes tend to be impulsive, insensitive to the suffering of others, short-sighted, and adventuresome. If true, these traits were established before the person started committing crimes and will continue to manifest throughout a person's life. The root cause of low self-control is ineffective parenting. If parents are not attached to their child, supervise their child, recognize the child's deviant behaviors, or discipline their child, the child will develop low self-control. Gottfredson and Hirschi claim self-control, or the lack thereof, is established by eight years old.

Control theories are vastly different from other criminological theories. They assume people are selfish and would commit crimes if left to their own devices. However, socialization and effective child-rearing can establish direct, indirect, personal, and social controls on people. These are all types of informal controls.

## 5.6.4 Critical Theories

Critical theories originated in the United States in the 1960s and 70s. Massive political turmoil inside and outside of the country created a generation of scholars who were critical of society and traditional theories of crime. These critical theories share five central themes (Cullen et al., 2018). First, to understand crime, one must appreciate the fusion between power and inequality. People with power, political and economic, have an enormous advantage in society. Second, crime is a political concept. Not all those who commit crime are caught, nor are those who are caught punished. The poor are injured the most by the enforcement of laws,

while the affluent and powerful are treated leniently. Third, the criminal justice system and its agents serve the ruling class, the capitalists. Fourth, the root cause of crime is capitalism because capitalism ignores the poor and their living conditions. Capitalism demands profits and growth over values and ethical considerations. Fifth, the solution to crime is a more equitable society, both politically and economically.

## 5.6.5 Feminist Theories

Feminist criminology emerged in the 1970s as a response to the dominant male-centric perspective in criminology that had failed to account for the experiences of women in criminal justice systems. Feminist criminology is a critical framework that seeks to understand the relationship between gender, crime, and justice. This approach aims to highlight the gendered nature of crime and justice by acknowledging the ways in which gender-based inequality and power imbalances shape criminal behavior, victimization, and responses to crime.

Before we dive deeper it is important to begin with brief definitions of the different kinds of feminist theories. One central definition can be challenging, because as the Break Out Box below illustrates, there are many kinds of feminism, each with their own unique focus. However, there are features common to every type of feminism that we can use to establish a solid foundation when exploring feminist criminology. Primarily, *feminism argues that women suffer discrimination because they belong to a particular sex category (female) or gender (woman), and that women's needs are denied or ignored because of their sex.* Feminism centers the notion of patriarchy in understandings of inequality, and largely argues that major changes are required to various social structures and institutions to establish gender equality. The common root of all feminisms is the drive towards equity and justice.

**Different Feminisms**

Feminist perspectives in criminology comprise a broad category of theories that address the theoretical shortcomings of criminological theories which have historically rendered women invisible (Belknap, 2015; Comack, 2020; Winterdyk, 2020). These perspectives have considered factors such as patriarchy, power, capitalism, gender inequality and intersectionality in the role of female offending and victimization. The six main feminist perspectives are outlined below.

**Liberal Feminism**

According to Winterdyk (2020) and Simpson (1989), liberal feminism focuses on achieving gender equality in society. Liberal feminists believe that inequality and sexism permeate all aspects of the social structure, including employment, education, and the criminal justice system. To create an equal society, these discriminatory policies and practices need to be abolished. From a criminological perspective, liberal feminists argue that women require the same access as men to employment and educational opportunities (Belknap, 2015). For example, a liberal feminist would argue that to address the needs of female offenders, imprisoned women need equal access to the same programs as incarcerated men (Belknap, 2015). The problem with the

liberal feminist perspective is the failure to consider how women's needs and risk factors differ from men (Belknap, 2015).

**Radical Feminism**

Radical feminism views the existing social structure as patriarchal (Gerassi, 2015; Winterdyk, 2020). In this type of gendered social structure, men structure society in a way to maintain power over women (Gerassi, 2015; Winterdyk, 2020). Violence against women functions as a means to further subjugate women and maintain men's control and power over women (Gerassi, 2015). The criminal justice system, as well, becomes a tool utilized by men to control women (Winterdyk, 2020). It is only through removing the existing patriarchal social structure that violence against women can be addressed (Winterdyk, 2020).

**Marxist Feminism**

Like the radical feminist perspective, Marxist feminists view society as oppressive against women. However, where the two differ is that Marxist feminists see the capitalist system as the main oppressor of women (Belknap, 2015; Gerassi, 2015). Within a classist, capitalist system, women are a group of people that are exploited (Winterdyk, 2020). Exploitation in a capitalist system results in women having unequal access to jobs, with women often only having access to low paying jobs. This unequal access has led to women being disproportionately involved in property crime and sex work (Winterdyk, 2020). Like other Marxist perspectives, it is only through the fall of capitalism and the restructuring of society that women may escape from the oppression they experience.

**Socialist Feminism**

Social feminists represent a combination of radical and Marxist theories (Belknap, 2015; Winterdyk, 2020). Like radical feminists, they view the existing social structure as oppressive against women. However, rather than attributing these unequal power structures to patriarchy, they are the result of a combination of patriarchy and capitalism. Addressing these unequal power structures calls for the removal of the capitalist culture and gender inequality. Socialist feminists argue these differences in power and class can account for gendered differences in offending – particularly in how men commit more violent crime than women (Winterdyk, 2020).

**Postmodern Feminism**

Ugwudike (2015) outlines how postmodern feminism focuses on the construction of knowledge. Unlike other perspectives outlined above, which suggest there is "one reality" of feminism, postmodern feminists believe that the diversity of women needs to be highlighted when one considers how gender, crime and deviance intersect to inform reality (Ugwudike, 2015, p. 157). For postmodern feminists, they acknowledge the power differentials that exist within society, including gendered differences, and focus on how those constructed differences inform dominant discourses on gender. Of importance is the focus on "deconstructing the language and other means of communication that are used to construct the accepted 'truth' about women" (p. 158). Also of importance is the acknowledgement of postmodern feminism regarding how other variables, like race, sexuality, and class, influence women's reality (Ugwudike, 2015).

**Intersectional Feminism**

Winterdyk (2020) notes that some academics add a sixth perspective. Intersectional feminists address the failure of the above perspectives to consider how gender intersects with other inequalities, including race, class, ethnicity, ability, gender identities, and sexual orientation (Belknap, 2015). Some of the above theories attempt to paint the lived experiences of all women as equal, whereas intersectional perspectives acknowledge that women may experience more than one inequality (Winterdyk, 2020). There is an inherent need to examine how these inequalities intersect to influence a women's pathway to offending and/or risk of victimization. Recently, Indigenous Feminism has emerged as a critical discourse on feminist theory that considers the intersection of gender, race, as well as colonial and patriarchal practices that had been perpetuated against Indigenous women (Suzack, 2015).

Feminist activism has proceeded in four 'waves' (for a discussion of the waves of feminism, see A Timeline | Aesthetics of Feminism). The first wave of feminism began in the late 1800s and early 1900s with the suffragette movement and advocacy for women's right to vote. The second wave of feminism started in the 1960s and called for gender equality and attention to a wide variety of issues directly and disproportionately affecting women, including domestic violence and intimate partner violence (IPV) employment discrimination, and reproductive rights. Beginning in the mid-1990s, the third wave focused on diverse and varied experiences of discrimination and sexism, including the ways in which aspects such as race, class, income, and education impacted such experiences. It is in the third wave that we see the concept of intersectionality come forward as a way to understand these differences. The fourth wave, our current wave, began around 2010 and is characterized by activism using online tools, such as Twitter. For example, the #MeToo movement is a significant part of the fourth wave. The fourth wave is arguably a more inclusive feminism – a feminism that is sex-positive, body-positive, trans-inclusive, and has its foundations in "the queering of gender and sexuality based binaries" (Sollee, 2015). This wave has been defined by "'call out' culture, in which sexism or misogyny can be 'called out' and challenged" (Munro, 2013).

## 5.6.5.1 The Emergence of Feminist Criminological Theories

We return to the second wave of feminism, in a time of social change, where feminist criminology was born. The emerging liberation of women meant newfound freedoms in the workforce and in family law, including the availability and acceptability of divorce, but these relative freedoms rendered gender discrimination even more visible. In the 1960s and 1970s, North American society specifically was full of unrest, with demonstrations and marches fighting for civil rights for Black Americans, advocating for gay and lesbian rights, and protesting the Vietnam War. Marginalized groups were calling out inequality and oppression, and demanding change. Feminist activism brought attention to the inequalities facing women, including their victimization, as well as the challenges female offenders faced within the criminal justice system. The breadth and extent of domestic violence, specifically men's violence against women within intimate relationships, was demonstrated by the need for domestic violence shelters and the voices of women trying to escape violence. Conversations at the national level led to government-funded shelters as well as private donor funding from

those who saw the need for safe havens from abuse. At the same time, the historic and systemic trauma of women involved in the criminal justice system as offenders was being recognized, including attention to their histories of abuse, poverty, homelessness, and other systemic discriminations. In the late 1970s and early 1980s, feminist scholars recognised the absence of women within criminological theory; more specifically, as Chesney-Lind and Faith (2001, p. 287) highlight, feminist theorists during this time "challenged the overall masculinist nature of criminology by pointing to the repeated omission and misrepresentation of women in criminological theory."

Feminist criminologists have criticized mainstream criminological theories like Merton's strain theory and social learning and differential association theories for their male-centered approach and lack of consideration for the gendered nature of crime (Wang, 2021). However, some feminist criminologists argue that these theories can still be utilized if they are modified to account for the predictors of crime in both men *and* women. For instance, Agnew's general strain theory has attempted to incorporate a more comprehensive range of sources of strain into the theory, including relationship strains and negative life experiences, which are significant predictors of female delinquency. Additionally, life course theories present an opportunity for a gendered exploration of women's criminality by examining life events that may alter the pathways from criminal to noncriminal behavior, such as childbirth.

## 5.6.5.2 Practicing Feminist Criminology

Feminist criminology employs a range of research methods, including qualitative research, statistical analysis, and critical discourse analysis. Qualitative research methods, such as interviews and focus groups, are commonly used to gather rich data on women's experiences of crime, victimization, and justice. Statistical analysis is used to analyze large-scale datasets and identify patterns and trends in gendered crime and justice. Critical discourse analysis is employed to analyze language and power relations in legal and policy documents to uncover the ways in which gendered power imbalances shape criminal justice policy.

Feminist criminology has matured both in scholarship and visibility since its emergence in the 1970s. Feminist scholars have produced a rich body of literature that has challenged the dominant male-centric perspective in criminology and highlighted the gendered nature of crime and justice. Feminist criminology has also gained greater visibility in mainstream criminology and criminal justice policy, with feminist scholars engaging in policy debates and advocating for reforms that address gender-based inequality in the criminal justice system.

### 5.6.5.3 Activity: Gender and Crime Exercise

Write about how you were raised and how gender roles were reinforced through school, family, culture, or religion etc. Do you think men are more criminal because of their biology or because of cultural expectations of men versus women? You should support your claims with personal, vicarious, or well-known examples.

## 5.6.6 Social Reaction Theories

Social reaction theories concentrate on those people or institutions who label offenders, react to offenders, and want to control offenders. Social reaction theories emphasize how meanings are constructed through words, which carry power and meaning.If someone is labeled a criminal, that label carries meaning for other people. These meanings are culturally created through interactions with peers.

Not everyone who commits a crime is labeled as a criminal. Why? Labeling theories try to explain this phenomenon. In general, labeling theorists point to the social construction of crime, which varies over time and place. For instance, marijuana use is federally prohibited, but more and more states are legalizing recreational use. The same behavior can be legal in Oregon but illegal in Texas. Furthermore, labeling theorists emphasize the effects of being labeled and treated as a criminal. If a person is given a label, they may adopt that label. John Braithwaite (1989) applied some of these ideas in his theory of reintegrative shaming, which says that shaming can be reintegrative or stigmatizing. Reintegrative shaming centers on forgiveness, love, and respect. Ideally, we want to reintegrate the person back into the community by removing the label. However, in some societies, like the United States, stigmatizing shaming reigns supreme. Stigmatizing shaming uses formal punishment, which weakens a person's bond to his or her community. It is counterproductive and tends to shun the offender. For example, in some states, convicted offenders are required to self-identify as a felon on job applications. Even though they may have served their time in prison, they are required to continue to label themselves as a criminal. Stigmatizing shaming propels people toward crime and reintegrative shaming seeks to correct the behavior through respect and empathy.

## 5.6.7 Licenses and Attributions for Other Modern Criminological Theories

Figure 5.6. Pavlov's Classical Conditioning Diagram is licensed under CC BY-SA 4.0.

Figure 5.7. The Stakes of Conformity by Trudi Radtke is in the Public Domain.

"5.6 Other Modern Criminological Theories" by Sam Arungwa, Megan Gonzalez and Trudi Radtke is adapted from "5.9. Strain Theories, 5.10. Learning Theories, 5.11. Control Theories, 5.12. Other Criminological Theories" by Brian Fedorek in *SOU-CCJ230 Introduction to the American Criminal Justice System* by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, and Shanell Sanchez, licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

"5.6.5.1 The Emergence of Feminist Criminological Theories" by Trudki Radke and Megan Gonzalez is adapted from "11.1 Foundations of Feminist Criminology" by Dr. Rochelle Stevenson; Dr. Jennifer Kusz; Dr. Tara Lyons; and Dr. Sheri Fabian in Introduction to Criminology, licensed under CC BY-NC-SA 4.0.

# 5.7 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND CRIMINOLOGICAL THEORIES

A practical application of theories is that they are used to explain criminal behavior and crime problems. Conversely, theories are also used to explain crime solutions. Most if not all the highly effective crime prevention science (CPSc) solutions are backed by criminological theories. An important exercise will be to try and understand the theoretical background of every CPSc solution that has already been invented. Table 5.2 below contains some of the crime solutions with identified theoretical frameworks.

# 5.7.1 Table 5.2. CPSc Solutions And Criminological Theory

| Program Title, Evidence Rating, and Program Theory | Program Description and Theory |
|---|---|
|  **Program Title: Big Brothers Big Sisters (BBBS) Community-Based Mentoring (CBM) Program** | As with other mentoring programs, CBM is loosely based on **the theory of social control**, where attachments to prosocial, supportive adults, a commitment to appropriate goals, and a mutually trusting relationship between the mentor and mentee (adult and youth) can allow the mentee to begin to feel more socially accepted and supported. The increased level of support from adults allows youths to view themselves in a more positive light and engage in more constructive behavior. Youth who are more socially bonded have more to lose from misbehavior. |
|  **Program Profile: Baltimore City (Md.) Drug Treatment Court**<br>**Theory:** | This is a drug treatment court that seeks to reduce rearrests and reconvictions for drug-involved offenders with substantial criminal and drug addiction histories. The program is rated Effective. |
|  **Program Profile: Adolescent Diversion Project (Michigan State University)**<br>**Theory:** | This is a strengths-based, university-led program that diverts arrested youth from formal processing in the juvenile justice system and provides them with community-based services. The program is rated Effective. |

## 5.7.2 Licenses and Attributions for Crime Prevention

## Science (CPSc) Solutions and Criminological Theories

# 5.8 CONCLUSION

In this chapter, we focused on theories that explore the reasons behind why some people may commit crime. We covered these different theories and reasons while discussing how these historical views have impacted the current U.S. criminal justice system. Finally we looked at the theoretical background of Crime Prevention Science solutions that have helped explain and contextualize some crime problems.

## 5.8.1 Learning Objectives

1. Distinguish between classical, positivism, and other (biological, psychological, and sociological) explanations of criminal behavior.
2. Recognize the links between crime control policy and theories of criminal behavior.
3. Demonstrate effective application of criminological theories to behavior.
4. Explain the major social structures in America and their relationship to crime theories.
5. Describe the criminological theories that support crime prevention science or CPSc Solutions.

## 5.8.2 Review of Key Terms

- control theories
- crime prevention science (CPSc) solutions
- feminist theories
- hedonism

- labeling theories
- learning theories
- positivism
- situational crime prevention
- social disorganization
- strain theories
- theory

## 5.8.3 Review of Critical Thinking Questions Box

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. How do we know what theories explain crime better than other theories?
2. How did the classical theory of crime influence the American criminal justice system?
3. Why is it difficult to study biological theories of crime without thinking about the social environment?
4. Which theory do you think explains criminal behavior the best? Why?
5. Why do you think there have been so many different explanations to describe the origins of criminal behavior?

## 5.8.4 Licenses and Attributions for Conclusion

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# 5.10 CHAPTER 5 FEEDBACK SURVEY

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# CHAPTER 6: POLICING

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 6.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

In this chapter, we will focus on policing in the U.S., diving into the historical development and the inequities that impacted communities of color while looking at its current role. Then we will discuss current issues facing policing and the communities they serve, diving further into police misconduct, corruption and accountability. Finally we will investigate possible Crime Prevention Science solutions which could be implemented in policing and learn more about the role of a police officer and a victim advocate.

## 6.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Describe the historical development of policing in the U.S. and the impacts on communities of color.
2. Outline the current role of policing in the U.S.
3. Identify how Police Misconduct, Corruption, and Accountability impact police agencies and the communities they serve.
4. Interpret the impact of current issues on policing and the communities they serve.
5. Investigate police support for Crime Prevention Science (CPSc) Solutions.

## 6.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- Accountability
- Community-oriented policing
- Controlled substances
- Fourth Amendment
- Jim Crow laws
- Law enforcement
- Mental health
- Miranda rights
- Search and seizure
- Use of force

## 6.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. Why is the history of policing important to understand?
2. What about kin policing made it not a good form of policing?
3. What are the four eras of policing?

4. How was the Homeland Security Era established?
5. Why was Sir Robert Peel important to policing?
6. What did August Vollmer believe police should be doing?
7. How were police officers involved in enforcing Jim Crow laws?

## 6.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 6.2 BRIEF HISTORY OF POLICING

In this section, we will review the progression and establishment of policing through the beginning years of United States history. We will discuss the influences on policing from England as well as the impacts of Sir Robert Peel and Chief August Vollmer. We will also review the disturbing histories of how some have been discriminated against and even targeted by police based on their race. As these historical events and influences are discussed, reflect on how they have impacted certain groups and communities more negatively than others.

As you will see in this section, the terms "police officer" and "**law enforcement** officer" are used interchangeably without any gender reference, but what should be noted is the phrasing difference between "policeman/men" and "police officer." This differentiation was done intentionally by the authors, as through many of the policing eras, women, in general, were not allowed to work in the profession. If they were hired, it was under a microscopic view of certain stereotypical "matronly" duties. Some of these will be discussed in further detail within the section. The other noteworthy point is the reference to "policeman/men" being predominantly White as men of color, and more specifically, Black men were rarely hired. A few Black policemen made their way into policing in the late 1800s in the northern states. Still, when the Civil Rights Act of 1875 was ruled unconstitutional, most Black police officers disappeared from policing until the 1950s. This will be explained further within the section.

## 6.2.1 Policing in Ancient Times

The development of policing in the United States coincided with the development of policing in England. The United States' legal system traces its roots back to the common law of England. However, looking back before 1750 B.C. to see how forms of policing were common during ancient times, to what is now known as kin policing. Kin policing is when a tribe or clan policed their own tribe, and it often turned bloody quickly. The blood feuds would go on for long periods of time (Berg, 1999).

However, it is estimated, also sometime around 1750 B.C., that the Code of Hammurabi was engraved in stone. This code detailed 282 sections of how one individual should treat another individual in society and the penalties for such violations. The code is seen as the beginnings of law and justice. Around 1000 B.C., Mosaic Law emerged. This was a new form of rational law that hoped to predict prohibited behaviors. In Mosaic Law, the ruling class did not create the law. The Code of Hammurabi and Mosaic Law formed the ladder that would eventually lead to the creation of policing as we now know it today (Berg, 1999).

Peisistratus (605-527 B.C.), the ruler of Athens, has been called the father of formal policing. During this time of growth, new Greek city-states were being developed, and blood feuds that lasted decades had to be

quashed. Kin policing slowly faded due to its barbaric nature, and new doors opened for a modern city-driven policing model. The first police service in Athens was developed by Sparta, and it is often looked at as the first secret service (Berg, 1999).

Augustus Caesar (27 BC), the first emperor of Rome, was instrumental in creating what is now called the urban cohorts. The urban cohorts were men from the Praetorian Guard (Augustus' army), charged with ensuring peace in the city. As crime rose and became more violent, Augustus formed the vigils, which were not affiliated with the Praetorian Guard, but were charged with fighting crime and fires. The vigils were given the power to protect and arrest (Berg, 1999).

From 6 A.D. until the 12th century, Rome was patrolled day and night by a public police force. With the fall of the Roman Empire, kings then assumed the role of protection. From the 12th-18th centuries, kings in England appointed sheriffs. At age fifteen, boys could volunteer with the posse comitatus to go after wanted felons. Constables, a policeman with limited authority, assisted the sheriffs with serving summons and warrants. Because young volunteers did the policing work, there were several problems, such as corruption and drunkenness. Victims who had the means to hire private police or bodyguards did so for protection, but unfortunately, that meant those who were poor and disadvantaged had neither help nor protection (Berg, 1999) and thus were more of a target. In figure 6.1., you can see an image of a group of police from Suffolk, England.

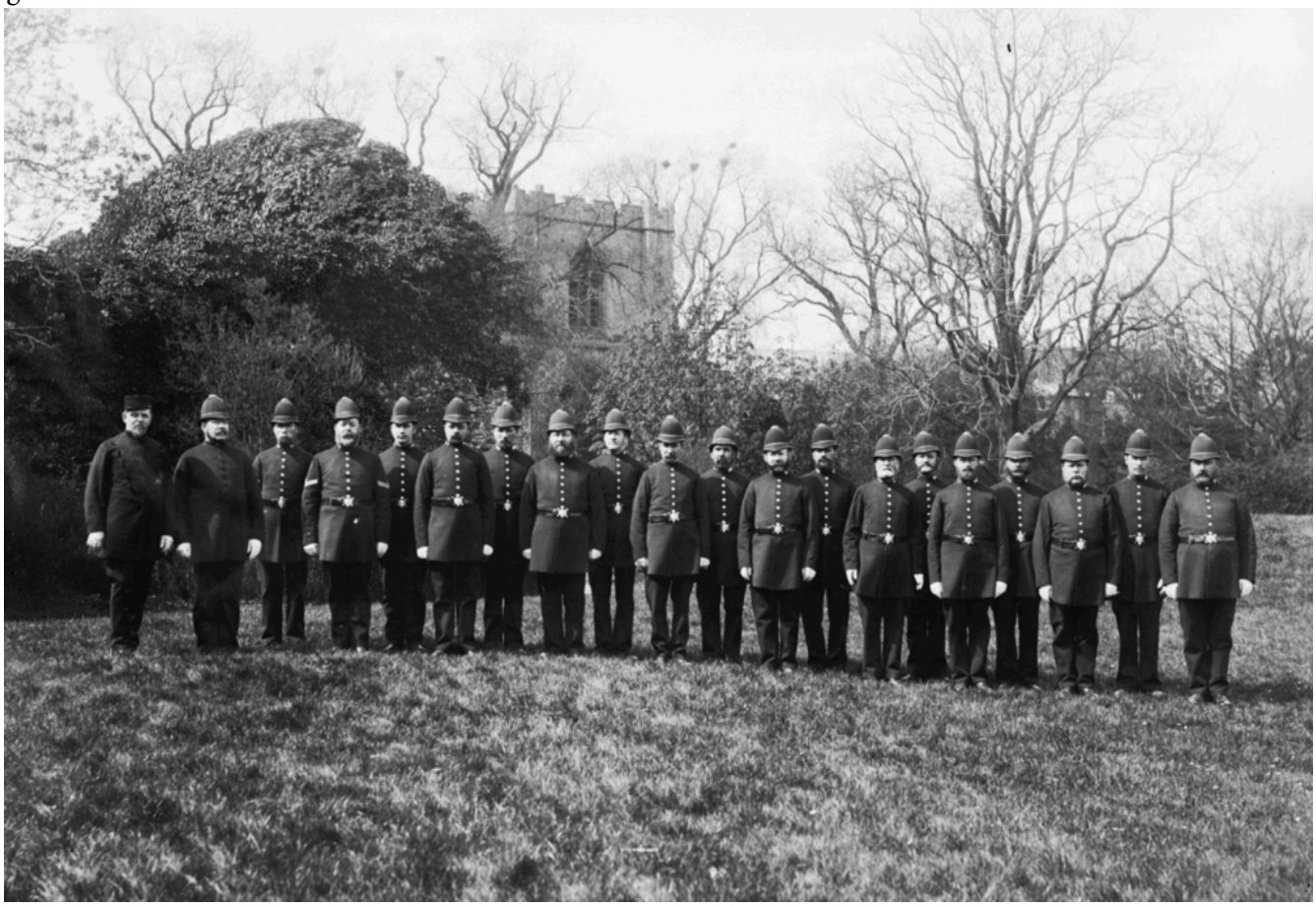

Figure 6.1. A photograph of Police in England.

## 6.2.2 Sir Robert Peel

The 19th century in England heavily influenced the history of policing in the United States. Not only did policing radically change for the first time in over six centuries, but the father of modern policing, Sir Robert Peel, seen in figure 6.2, set the stage for what is known today as modern policing. Sir Robert Peel, the British Home Secretary, coined the term "bobbies" as a nickname for policemen, and he believed policing needed to be restructured. In 1829 he passed the Metropolitan Police Act, which created the first British police force and what the 21st century now knows as modern-day police (Cordner et al., 2017).

Figure 6.2. Image of Sir Robert Peel.

Sir Robert Peel is best known for the Peelian Principles. He did not create the twelve principles but used a combination of previous codes that he expected police to follow. The exact historical origins of the twelve listed principles below are unknown. Still, it has been theorized that the principles were slowly created over the years by academics studying Peel (Cordner et al., 2017):

### 6.2.2.1 Peelian Principles

1. The police must be stable, efficient, and organized along military lines;
2. The police must be under government control;
3. The absence of crime will best prove the efficiency of police;
4. The distribution of crime news is essential;
5. The deployment of police strength both by time and area is essential;
6. No quality is more indispensable to a policeman than perfect command of temper; a quiet, determined manner has more effect than violent action;
7. Good appearance commands respect;

8. The securing and training of proper persons is at the root of efficiency;
9. Public security demands that every police officer be given a number;
10. Police headquarters should be centrally located and easily accessible to the people;
11. Policemen should be hired on a probationary basis; and
12. Police records are necessary to the correct distribution of police strength.

## 6.2.3 Policing Eras

With the influence brought to the United States by England, much of the early history was influenced by what the immigrants had previously experienced in their mother countries. These ways of policing were passed down from generation to generation until political figures and policymakers established in the United States started to make changes, influencing the progression of police changes in the coming years or eras. Researchers Kelling and Moore (1991) evaluated the first three eras of policing in the United States. These eras are discussed in this section and are often referred to as the Political Era, the Reform Era, and the Community Era. These eras impacted the way the police forces were organized and what their focuses were during a specific time period, in general terms.

### 6.2.3.1 The Political Era

The political era is often referred to as the first era of policing in the United States. It began around the 1840s with the creation of the first bonafide police agencies in America. (Kelling et al, 1991).

This era of policing was marked by the industrial revolution, the abolishment of slavery, and the formation of large cities. With the advent of the industrial revolution came goods and services. Along with new job opportunities came a myriad of conflicts as well. With the abolishment of slavery, the Klu Klux Klan began to make terrifying appearances, and their reign of terror left many in fear. Policing had not yet formally entered the scene; therefore, the Klan operated virtually unencumbered. The fast-growing cities answered these problems in the form of policing.

### 6.2.3.2 Some of the City Police Agencies Established During the Political Era

The United States saw tremendous growth in major cities resulting in the creation of police departments across the United States in larger cities as noted:

- New York Police Founded 1845

- Chicago Police Founded 1855
- Philadelphia Police Founded 1751
- Jacksonville Police Founded 1822
- Detroit Police Founded 1865
- Portland Police Founded 1870

With each of these three influences, the Political Era of policing was set into motion. As its name suggests, it was an era of politics, mainly because of how policing was limited due to new laws made clear by the Constitution. America answered the call by following the English and Sir Robert Peel's principles. Not unlike today, policing during this era was under the control of politicians. Politicians, like the mayor, had no problem controlling everything a policeman did during his call of duty.

## 6.2.3.3 Reform Era

Because the Political Era of policing ended up being laced with corruption and brutality, the panacea for the negativity became the Reform Era. One police chief was largely at the forefront of this new era, Chief August Vollmer. He is considered the pioneer for police professionalism. August Vollmer was the Chief of Police in Berkeley, California (1905–1932). He had many new beliefs about policing that would forever change the world of policing to include:

1. Candidates who were testing to be in policing had to undergo psychological and intelligence tests.
2. Detectives would utilize scientific methods in their investigations, through forensic laboratories.
3. Recruits, for the first time, would attend a training academy (police did not receive any formal training prior to August Vollmer's arrival).
4. Assisted with the development of the School of Criminology at the University of California at Berkeley.

Chief August Vollmer saw policing and officers as social workers that needed to delve into the causes behind the acts in order to solve the issue, instead of just arresting it (Reppetto, 1978). He knew to rehabilitate offenders, police officers needed to look beyond the handcuffs and start looking into the person and the reason behind the behavior (Reppetto, 1978).

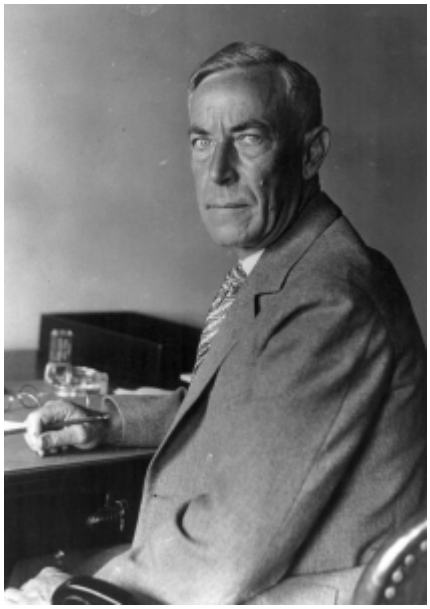

Figure 6.3. An image of Chief August Vollmer the Father of modern law enforcement.

Diversity in policing started to make a mark during this era, but it would fall irrevocably far from meeting any type of standard. It was a better era for diversity in that agencies started to hire some women and those of varying races than the Political Era, but nowhere near what the population ratios were at the time.

## 6.2.3.4 The Community Era- 1980s to 2000

In the 1960s and 1970s, the crime rate doubled, and it was a time of unrest and eye-opening policing issues. Civil rights movements spread across America, and the police were on the front lines. Media coverage showed controversial contact between White male officers and Black community members, which further irritated race relations in policing. The U.S. Supreme Court handed down the landmark Miranda v. Arizona and Mapp v. Ohio decisions. The writing was on the wall that the policing environment had to change. The days of answering everything with bullying or police professionalism were no more. The Community Era of policing began, and those in police administration hoped this new era held the answers to fixing decades-old issues. The police needed help, and they would turn to the community and its members for assistance.

This new era of community policing held that police could not act alone; the community must pitch in as well. Whether the problems were a dispute between neighbors or high crime area drugs and shootings, these issues did not develop overnight and could not be solved by a response of police alone. Instead, these community problems needed a pronged approach where the police worked together with the community, and over time the issues could be systematically solved. Out-of-the-box thinking was common in community policing, and often community leaders were identified in order to make an impact. During this time, police candidates started showing up to the application process with Associates and Bachelors degrees. The "old school officers" mocked these degree-holding candidates, but the landscape was changing, and officers needed more thorough training than ever to answer the call.

Problem-oriented policing was an after-effect of community policing in that it utilized community policing but focused on the problems first. The biggest difference was problem-oriented policing used a defined process for working toward the solution. The problem was torn apart layer by layer and rebuilt according to set parameters that had a proven record of working.

The Community Era was also a time for research. Prior to this era, research on crime, police, or criminal justice topics were few and far between. With new federal government funding options available, this era's missions could be accomplished through grants and the needed research began. Proof of what worked, what did not, and suggestions on how to improve policing were abundant. Without research or studies, policing can become stagnant, but with funding available, the answers were a questionnaire or interview away, and solutions came rolling in.

## 6.2.3.5 The Homeland Security Era- 2001 to Present

On September 11, 2001, when terrorists hijacked airplanes and flew them into the World Trade Center buildings and Pentagon in the United States, a fourth era of policing, the era of Homeland Security, was said to emerge (Oliver, 2006). The long-lasting repercussions of this terrorist act would forever change life for Americans.

The realities of the tragedy of 9/11 were that it did start a new era of policing. In fact, a case could be made for the large dark line that became metaphorically visible on September 11, 2001, when the Community Era shifted to the Homeland Security Era as airplanes destroyed America's feelings of safety. Although the focus shifted to Homeland Security, policing has continued to involve some Community Era policing components.


Figure 6.4. An image of destruction on the streets of New York following the 9/11 Tragedy.

Policing under Homeland Security was marked by a more focused concentration of its resources on crime control, enforcement of criminal law, traffic law, etc., to expose potential threats and gather intelligence (Oliver, 2006).

Scholars have examined the pros and cons of a national police department in the United States. For example, Canada has a Royal Canadian Mounted Police. Depending on location, one could go through several different cities and counties while driving to the store, all of which have their own respective police departments. With the advent of the Homeland Security Era, a new model of centralized organizational control began due to the need for information dissemination. One of the biggest flaws of 9/11 was the lack of communication between law enforcement agencies. The Department of Homeland Security was developed, and one of its first major missions became the dissemination of information and communication. While a national police department does not exist in the United States, communication and information are now a common thread that binds all of the different types of law enforcement agencies.

## 6.2.4 Racialized and Biased History

As mentioned previously in the policing eras of the United States, law enforcement and minority groups have a rocky past, but this past started even before the policing eras began. The NAACP's website titled, The Origins

of Modern Day Policing, explains that in the early 1700s, "Slave Patrols" were established in which white men were used to "establish a system of terror and squash slave uprisings with the capacity to pursue, apprehend and return runaway slaves to their owners. Tactics included the use of excessive force to control and produce desired slave behavior." (2021). The article goes on to explain that,

> "Slave Patrols continued until the end of the Civil War and the passage of the 13th Amendment. Following the Civil War, during Reconstruction, slave patrols were replaced by militia-style groups who were empowered to control and deny access to equal rights to freed slaves. They relentlessly and systematically enforced Black Codes, strict local and state laws that regulated and restricted access to labor, wages, voting rights, and general freedoms for formerly enslaved people." (NAACP, 2021)

The Black Codes continued to be enforced up until 1868, when the 14th Amendment of the Constitution was ratified, thus abolishing these codes, but in response individual states and local governments began passing **Jim Crow laws**, legalizing segregation in public places. With the creation of police departments, as noted in the political era, it became the role of policemen to thus enforce the Jim Crow Laws, which were in place until the 1960s (NAACP, 2021). To learn more about Jim Crow Laws, review Social Welfare History Project Jim Crow Laws and Racial Segregation.

Before the 1960s, as long as an individual was a white male, police officer positions were his for the taking. Women and minorities were all but non-existent on the force. Women were allowed into the "boys only club" if they wore a pencil skirt and fit a prescribed role consistent with being a woman. In some departments, women were allowed to work in the detective bureau and interview children victims because women supposedly talked to children better than men because of their "maternal" instincts. These stereotypes continued in policing towards women and minorities until new laws, forbidding such behavior, made their way into the scene. With new employment laws passed between the 1960s to the late 1990s, many doors opened for women and minorities who were interested in becoming police officers.

## 6.2.5 Licenses and Attributions for Brief History of Policing

Figure 6.1. Police Group Portrait Bury St Edmunds, Suffolk, England is in the Public Domain.

Figure 6.2. Sir Robert Peel is in the Public Domain.

Figure 6.3. August Vollmer, “father of modern law enforcement” is in the Public Domain.

Figure 6.4. LOC unattributed Ground Zero Photos, September 11, 2021-item 111 is in the Public Domain.

# 6.3 LEVELS OF POLICING AND ROLE OF POLICE

Police organizations operate at various levels in the United States. There are also different roles within individual police agencies. This section will break down those varying levels and roles/responsibilities. When you mention the police, most individuals think of their local police departments; i.e. city or county agencies, but in reality, there are various police entities at various levels of the government. Due to this, the roles of the police at these different levels, have varying responsibilities. This also means they work in different environments and take on different tasks. Throughout this section, we will dive into an array of careers one could have in the policing or law enforcement field.

## 6.3.1 Levels of Policing

Just as the United States Government is organized on a federal, state, county, and city hierarchy, police organizations are as well. Each level of government and even subsections within that level have specific law enforcement responsibilities. We will break each of these down and reference some of the different titles and roles they carry.

### 6.3.1.1 Federal Level

The federal arena of law enforcement is tasked with investigating and enforcing federal laws as well as protecting federal-level politicians and dignitaries. The federal law enforcement career options vary from working for border patrol to protecting dignitaries to investigating federal law violations. Federal officers are hired within specific federal law enforcement agencies and have specific roles and responsibilities. Their duties do not cross over. For example, if someone is hired with the Secret Service their primary duties will be those related to executive branch dignitary protection, whereas if someone is hired with the U.S. Marshals their primary duties will be to apprehend federal fugitives and provide dignitary protection for the judicial branch.

Click on any of the links to learn more about some of the more well-known Federal Law Enforcement agencies:

- Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
- Central Intelligence Agency (CIA)

- Customs and Border Protection (CBP)
- Drug Enforcement Administration (DEA)
- Federal Bureau of Investigation (FBI)
- Federal Protective Service (FPS)
- Secret Service
- U.S. Marshals Service
- Clackamas County Sheriff's Office
- Deschutes County Sheriff's Office
- Lincoln County Sheriff's Office
- Jackson County Sheriff's Office
- Marion County Sheriff's Office
- Morrow County Sheriff's Office
- Polk County Sheriff's Office
- Washington County Sheriff's Office

As you will see in comparing these various counties, their demographics and service areas vary greatly and yet their responsibilities are very similar.

## 6.3.1.4 City Level

City (also known as Municipal) police officers work under a municipality or city. If a city has a government, i.e., mayor, city council members, and a municipal code (misdemeanor laws for the city), then the city can have city police. If an officer works for a city, their title is a police officer. Some cities have a connected jail (also known as a corrections or detention facility), while others are operated by the County Sheriff.

City police officers handle all police calls for service within their city limits. This can range from basic law violations to felony crimes that may occur. Small city agencies often are tasked with all of these types of cases, whereas larger cities may have assignment opportunities to include specialty positions like detectives, K-9 officers, etc.

Click on the links to learn more about some of Oregon's City Law Enforcement agencies:

- Ashland Police Department
- Redmond Police Department
- Eugene Police Department
- Lincoln City Police Department
- Medford Police Department
- Monmouth Police Department
- Portland Police Bureau

- Salem Police Department

For a more complete list of law enforcement agencies (state, county, municipal/city) visit Discover Policing.

## 6.3.1.5 Divisions within Each Agency

Law enforcement agencies, whether they are federal, county, state, or city, generally have jobs available within two major areas: 1.) Commissioned (Sworn) and 2.) Civilian (Unsworn). Commissioned or sworn is a term that describes an employee that has been through police training is certified as a police officer, and has arresting powers in the state. Civilian or unsworn is a term that describes an employee who has not been through police training and does not have arresting powers.

One of the interesting parts of policing is the vast array of jobs available. Whether a person is looking in the commissioned or civilian arena, there are a plethora of choices. Once a candidate has gone through the testing process for a particular law enforcement agency and is hired after a certain number of years commissioned "on the road" (length of time required performing routine patrol/police duties 'on the road' is determined by each agency) the seasoned officer can then test for other "specialty positions." Every department is different as to these specialized divisions. For example, the Ashland Police Department (APD) in Oregon is a smaller police department and offers its officers a chance to engage in community policing and problem-oriented policing at a one-on-one level, due to its smaller size (less than 40 officers).

On the other hand, because of its smaller size, the opportunities for advancement are minimal. Officers with the department can also be promoted to management. However, APD does have a few detectives but they do not offer its officers the more glamorous divisions such as those offered by the Portland Police Bureau (PPB) in Oregon. An officer at PPB can be assigned to the following divisions: Air Support Unit, Alarms Unit, Behavioral Health Unit, Criminal Intelligence Unit, Detective Division, Family Services Division, Human Trafficking Unit, Narcotics, and Organized Crime, Professional Standards Division, Property and Evidence Division, Special Emergency Reaction Team, Strategic Communications Unit, Traffic Division, Training Division, and more.

Policing can be multifaceted, thereby keeping its officers engaged. The daily job of a police officer, depending on the respective department, can change with divisions and assignments. One year a police officer may be writing a traffic citation from a patrol car, and the next year the same police officer may be driving an off-road all-terrain vehicle (ATV), patrolling the local park, or riding a mounted horse in the downtown area.

### 6.3.1.5.1 Commissioned Assignments within a Law Enforcement Agency

- Detective/Investigations
- Motorcycles (Motors)

- Narcotics
- Human/Sex Trafficking
- Crime Scene Investigation (CSI)
- Special Weapons and Tactics (SWAT) Team
- K-9 (patrol, drug, and search & rescue)
- Crisis Negotiator
- Mounted Unit (horses)
- Air Unit
- Training/Range Master
- Bike Patrol
- Recruiting
- Internal Affairs
- Public Information Officer
- Gangs
- Search & Rescue
- Forest and Fish & Wildlife
- Marine
- Area Task Forces (usually made up of various law enforcement agencies in the area)

The civilian areas of each police agency are also crucial. Not every person is meant to go into law enforcement as a police officer. It is a strenuous and stressful job that attracts many but is only made for a few. However, there are many options in the law enforcement realm. Civilians are the other half of the equation and are a much-needed resource for every law enforcement agency. When an individual dials 9-1-1, a dispatcher answers the phone, and that dispatcher is a civilian. When a police officer finds heroin on a suspect and takes custody of it, and later books it into evidence at the police station, the evidence technician is the civilian who logs and follows through with the chain of custody for the heroin evidence. Civilians are just as important as the commissioned positions at a law enforcement agency.

### 6.3.1.5.2 Civilian Assignments within a Law Enforcement Agency

- Dispatch/911 Operator
- Records
- Crime Analysis
- Forensic Unit/Crime Scene Investigators
- Training
- Fleet Management
- Support/Facilities

- Human Resources
- Operations Support Unit
- Recruitment Coordinator
- Volunteer Coordinator
- Administrative Support

### 6.3.1.6 Contact with Outside Agencies

It takes a team to accomplish policing. One federal, state, county, or city police agency cannot do it alone. In order to succeed the agencies must work together. Whether a narcotics division works with the ATF or an entire SWAT team composed of officers from various city and county agencies, the team concept in policing is unwavering.

## 6.3.2 Police Related Case Law

There are lots of cases that have been decided in a court of law, setting precedents and thus requirements for law enforcement officers. We will cover just a couple of the cases which impact the daily responsibilities of police officers in more detail in this section.

### 6.3.2.1 Fourth Amendment/Search and Seizure

As described in Raber's *Criminal Court Processes and Procedures*, The Fourth Amendment protects individuals from "overzealous efforts by law enforcement to root out crime by ensuring that police have good reason before they intrude on people's lives with criminal investigations."

The text of the **Fourth Amendment** is as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The amendment places limits on both **searches** and **seizures**: searches are efforts to locate documents and contraband. Seizures are the taking of these items by the government for use as evidence in a criminal prosecution (or, in the case of a person, the detention or taking of the person into custody).

In either case, the amendment indicates that government officials are required to apply for and receive a search warrant prior to a search or seizure; this warrant is a legal document, signed by a judge, allowing police to search and/or seize persons or property. Since the 1960s, however, the Supreme Court has issued rulings

limiting the warrant requirement in situations where a person can be said to lack a "reasonable expectation of privacy" outside the home.

Police can also search and/or seize people or property without a warrant if the owner or renter consents to the search, if there is a reasonable expectation that evidence may be destroyed or tampered with before a warrant can be issued (i.e., exigent circumstances), or if the items in question are in plain view of government officials.

Furthermore, the courts have found that police do not generally need a warrant to search the passenger compartment of a car or to search people entering the United States from another country.

When a warrant is needed, law enforcement officers do not need enough evidence to secure a conviction. Still, they must demonstrate to a judge that there is probable cause to believe a crime has been committed or evidence will be found. Probable cause is the legal standard for determining whether a search or seizure is constitutional or whether a crime has been committed; it is a lower threshold than the standard of proof at a criminal trial.

Critics have argued that this requirement is not very meaningful because law enforcement officers are almost always able to get a search warrant when they request one; on the other hand, since we wouldn't expect the police to waste their time or a judge's time trying to get search warrants that are unlikely to be granted, perhaps the high rate at which they get them should not be so surprising.

What happens if the police conduct an illegal search or seizure without a warrant and find evidence of a crime? In the 1961 Supreme Court case Mapp v. Ohio, the court decided that evidence obtained without a warrant that didn't fall under one of the exceptions mentioned above could not be used as evidence in a state criminal trial, giving rise to the broad application of what is known as the exclusionary rule, which was first established in 1914 on a federal level in Weeks v. United States.

The exclusionary rule doesn't just apply to evidence found or to items or people seized without a warrant (or falling under an exception noted above); it also applies to any evidence developed or discovered as a result of the illegal search or seizure.

For example, if the police search your home without a warrant, find bank statements showing large cash deposits regularly, and discover you are engaged in some other crime of which they were previously unaware (e.g., blackmail, drugs, or prostitution), not only can they not use the bank statements as evidence of criminal activity—they also can't prosecute you for the crimes they discovered during the illegal search. This extension of the exclusionary rule is sometimes called the "fruit of the poisonous tree" because just as the metaphorical tree (i.e., the original search or seizure) is poisoned, so is anything that grows out of it.

However, like the requirement for a search warrant, the exclusionary rule does have exceptions. The courts have allowed evidence to be used that was obtained without the necessary legal procedures in circumstances where police executed warrants they believed were correctly granted but were not ("good faith" exception) and when the evidence would have been found anyway had they followed the law ("inevitable discovery").

The requirement of probable cause also applies to arrest warrants. A person cannot generally be detained by police or taken into custody without a warrant, although most states allow police to arrest someone suspected

of a felony crime without a warrant so long as probable cause exists, and police can arrest people for minor crimes or misdemeanors they have witnessed themselves." (2022). Here is a video explaining search and seizure a little further: Search and Seizure: Crash Course Government and Politics #27

## 6.3.2.2 Miranda and Arrest

One of the most significant issues with police accountability is knowledge of the job of a police officer. Suppose a person is ignorant about policing policies, procedures, rules, regulations, and how police operate. In that case, there is going to be a disconnect when the media portrays police in different situations. All too often community members get their knowledge of how the police operate through television shows. Miranda admonition is a classic example. The television show "Law and Order" is notorious for showing the actors playing detectives advising every suspect of their Miranda Rights as they place suspects under arrest. The classic clip shows the hand-cuffs "click, click" going on, and then as the detectives walk the suspect to their vehicle, they verbalize Miranda from memory. In reality, this could not be further from the truth.

This is not how Miranda is applied. The Miranda decision requires officers to read certain statements when those officers plan on interrogating a suspect. If the suspect is not free to leave and the officer wants to question the suspect, in an attempt for the suspect to make incriminating statements, the suspect must be read Miranda admonishments and must understand the admonishments. If an officer sees a person break the law, the only time that officer needs to read Miranda prior to interrogating the suspect, is if the officer wants to question the suspect. If the officer sees the crime, there generally is no need to question the suspect about the crime; therefore, Miranda is not required. For instance, if an officer is using a radar gun and sees a vehicle speeding 40 mph in a 25 mph speed zone, the officer does not need to read the driver of the vehicle Miranda, unless that officer wants to interrogate the driver. The officer can write the driver a citation without reading Miranda, and in some states, the officer can arrest the driver for speeding without reading Miranda (in Oregon, speeding is a traffic violation, therefore, drivers cannot be arrested for speeding, this is not true for all states, in some states traffic violations are misdemeanors).

### 6.3.2.2.1 Miranda Rights

**Miranda Rights**, the following admonishment must be provided:

1. You have the right to remain silent.
2. Anything you say can and will be held against you in a court of law.
3. You have the right to an attorney, if you cannot afford an attorney, one will be appointed to you free of charge.
4. Do you understand these rights? (The arrestee must verbally provide they understand the rights as explained.)

If these rights are not provided to the arrestee, any statements made could be inadmissible in a criminal trial. Officers must also respect these rights. Officers cannot force or coerce statements from the arrestee. If they decline to talk and invoke their right to remain silent, the officer must cease questioning. An arrested person has the right to be informed about the grounds for arrest and about the factual circumstances and legal classification of the crime he or she is suspected of committing (Raber, 2022).

## 6.3.3 Licenses and Attributions for Levels of Policing and Role of Police

# 6.4 POLICE CORRUPTION, MISCONDUCT, AND ACCOUNTABILITY

In this section we will discuss some of the areas in which corruption and misconduct can plague police agencies. We will also look at ways officers are held accountable for their actions and what some specific agencies are doing to be more transparent to the communities they serve.

## 6.4.1 Corruption Types

Police officers have a considerable amount of power and discretion. With one fell swoop, an officer can take a person's freedom away. An officer is also given the authority to carry a gun and for the protection of either the officer or a person, take the life of a community member as well. These decisions are dangerous, and unfortunately, at times there are some officers who not only overstep their boundaries but jump directly into the pit of corruption.

When media coverage of a police shooting begins, the investigation is still underway, therefore, the only answer the police department will have for the media is "no comment." Sometimes this can feel like a deflective response to the public; however, when the investigation is completed weeks to months later, media interest and coverage of the event may have dwindled. To become a police officer, cadets must undergo two years of training. Because of the specialized training the police undergo, it is sometimes difficult for the public to understand why an officer acted and responded the way they did.

However, no matter the profession, whether it is an actor, a cashier, a president of a non-profit organization, or a police officer, corruption can occur. Corruption should not be condoned and if it does occur, the reaction must be swift and stern. Those in law enforcement hold a badge that grants the carrier the authority to take away a person's rights therefore, the authority that comes with the badge is subject to increased scrutiny.

### 6.4.1.1 Grass Eaters and the Meat Eaters

In 1970, the Knapp Commission coined the terms 'grass eaters and 'meat eaters' after an exhaustive investigation into New York Police Department corruption. Police officers who were grass eaters accepted benefits. Whether it was a free coffee at the local coffee shop, fifty percent off lunch, or free bottled water from the local convenience store, these cops would take the freebie and not attempt to do the right thing by explaining why they cannot accept the benefit and then pay for the benefit. By accepting benefits, the officer

was, in turn, agreeing that whoever gave the benefit, i.e. coffee, lunch, etc., was to receive something in return. What if the coffee shop wanted the officer to patrol their shop every morning between the busy hours of six and seven a.m.? Would that be fair to other coffee shop owners who did not give free coffee to the officer? (Caldero, M. et al, 2018).

The meat eaters were officers who expected some tangible item personally from those served, in order to do their job. Whether it was money "shakedown" to ensure a convenience store was not robbed, or the officer felt there was nothing wrong with stealing from a drug dealer during a drug raid; "no one would notice a pound of cocaine missing, right?" These officers felt entitled and were aggressive in making sure they got what they thought was theirs. (Caldero, M. et al, 2018).

### 6.4.1.2 Noble Cause Corruption

Noble-cause corruption is a lot more commonplace than many think. Many officers work twenty-five years and may never see another cop steal something, but they will see noble-cause corruption. Most officers join the force to make the world a better place in one way or another. While officers understand they cannot solve everything alone, they do think they can make a difference. The noble cause is the goal that most officers have to make the world a better and safer place to live (Baker, M., 1985). Officers sign on and get hired wanting and striving to do the right thing. However, it is a slippery slope that the officer continually slides on from the academy, through field training, and on into the deeper parts of a police career.

"I am the Law." This is the belief that emerges over time, in which officers view what they do as the right thing to do. This is the practical outcome of the old adage "power corrupts, and absolute power corrupts absolutely." A police officer does not have absolute power, but they have the backing of the legal system in almost all circumstances. (Withrow, B., et al, 2018)

Therefore, every officer can start out wanting to save the world somehow, but when the real-world job of an officer starts to take hold, it is a problematic grasp to release.

## 6.4.2 Quotas

Quotas, whether for issuing a certain number of tickets (citations) in a shift or making contact with a certain number of community members, can be damaging to both a community and an agency. Most police agencies in the United States would tell you they don't have quotas. Yet, if you talk to the officers and teams working the streets, you hear a different story of informal agency incentives for the shift or team who made the most stops or issued the most tickets.

Although it may motivate some officers to stay busy during their shift, the danger is that officers will feel compelled by something other than the real reason for police involvement. For example, the supervisor tells the traffic team at a briefing that the first officer to get ten tickets written during the morning shift earns coffee, on

the supervisor. Although the supervisor's gesture may be genuine in wanting to motivate the team and offer a simple compensation of a coffee, what is the impact? Will a few officers on the team be motivated and thus work harder to make the stops and issue the tickets? Does it mean the officers may look for less meaningful violations, maybe issuing community members tickets when a warning would have sufficed in order to meet the day's goal? Could the officer's implicit bias end up targeting a certain group within the community due to being more focused on the number of tickets and less on the role of policing as a whole?

There is quite a bit of controversy from the community who feels that quotas and incentives for police efforts are motivating and reducing crime efforts in the wrong direction. To learn more about the impacts of quotas on communities, check out Outlawing Police Quotas | Brennan Center for Justice.

## 6.4.3 Internal Affairs, Discipline, and Accountability

Internal affairs (IA) exist to hold officers accountable for their actions. Whenever an issue is brought forth by another officer, a supervisor, or a member of the general public, the IA division of the police agency is responsible for conducting a thorough investigation into the incident. Members of the IA division work directly under the Chief or Sheriff.

In the 1960s, the overwhelming number of riots revealed the problem of corruption and misconduct in policing- one of the most significant issues centered around citizen complaints against officers and the lack of proper investigation into the complaint. Most officers back then were found exonerated (not guilty) when a complaint ensued, which did not bode with the public (Goldstein, H., 1977).

### 6.4.3.1 Discipline

Police departments are paramilitary organizations or a semi-militarized force whose organizational structure, tactics, training, subculture, and (often) function are similar to those of a professional military, but which is formally not part of a government's armed forces. Therefore, the handling of discipline is serious business. Suppose an officer is accused of a minor infraction, such as the use of profanity. In that case, the officer's immediate supervisor will generally handle the policy infraction and note what occurred in the officer's file and counsel the officer of the following:

- Inform the police officer why the conduct was wrong.
- Inform the police officer how to stop engaging in the conduct.
- Inform the police officer when the conduct must stop.
- Inform the police officer the time elapsed after the conduct and a scheduled meeting to review and ensure the conduct is still not occurring.
- Depending on the conduct, the supervisor may require the officer to attend training to assist the officer.

Another answer was to create external civilian review boards to hold police accountable for their actions by reviewing all complaints from community members and use of force incidents in which officers have compelled compliance or overcome resistance to take a person into custody (Police Data, Initiative, 2017). With the onset of the 21st century and new technology, came new tools in policing. One such tool was a new program called IA Pro. This program followed individual officers throughout their entire careers. IA Pro ensured any and all infractions by an officer were recorded and followed through upon by the applicable supervisor. If an officer used profanity, the program would require the officer to attend training. If the officer used profanity a second time within the prescribed time limits, the officer would be placed on a timed employee development program and could face discipline up to termination. IA Pro was not a panacea, but it would significantly lower the number of officers allowed to continue to operate as grass or meat eaters.

If an officer is accused of a more serious infraction, such as excessive use of force or lying, the officer would immediately be placed on administrative leave and the Internal Affairs Division of the department would investigate the incident. The Internal Affairs Division would offer a finding of:

- Sustained Complaint
- Not-Sustained Complaint
- Exonerated Complaint
- Unfounded Complaint

Once one of the above complaint dispositions was assigned, it was then forwarded to the Command Staff (Chief or Sheriff and Assistant Chief/Sheriff, Deputy Chief/Sheriff, and Captains) for review and discipline. Discipline can include time off up to termination.

## 6.4.3.2 Accountability

After events in 2020, like the death of George Floyd as a result of an officer's excessive use of force, the public demanded more **accountability** of the police, wanting to see police take responsibility for their actions and be held accountable to them. Riots and protests broke out across the nation, and politicians and public entities demanded more transparency and accountability from police agencies. In response, lawmakers also proposed and passed various house bills to address accountability. One such house bill was HB 2929 in Oregon. It requires officers to intervene and report any behavior they know, or reasonably should know, to be misconduct to a superior or to the Oregon Department of Public Safety Standards and Training (DPSST) within 72 hours (Levison, 2021).

The Oregon Department of Public Safety Standards and Training, which trains and certifies all Oregon police officers was asked to respond to the accountability to the officers they certify and went through numerous public hearings, community and lawmaker presentations. In response, they made changes to how they publicized the misconduct of officers. This can be seen in more detail by visiting their Professional

Standards : Criminal Justice : State of Oregon website which now holds a searchable database, available to the public, of professional standards cases and agency police officer discipline. Although not a fix-all, these changes have required a profession that is given so much authority and responsibility, a way of being more transparent and accountable to the people they serve.

## 6.4.4 Licenses and Attributions for Police Corruption, Misconduct, and Accountability

# 6.5 CURRENT ISSUES IN POLICING

In this section, we review some of the contemporary issues that are occurring in policing. The responsibility put on police officers puts them in difficult positions each and every day and thus these decisions impact not only the individuals they are interacting with and bringing into the justice system but also community members as a whole. Some of these issues include: officer-involved shootings, use of force, vehicle pursuits, stereotypes and bias-based policing, use of body cameras, mental health, and controlled substances. This section will provide a report on some of the more pervasive issues facing policing today.

## 6.5.1 Officer-Involved Shootings

One of the most controversial issues in regards to policing in the 21st century are police shootings. The "police shooting" topic causes much debate and is always in the headlines of every social media site and outlet when it occurs. After an officer-involved shooting, community members want answers, and rightfully so. Unfortunately, police departments cannot immediately provide those answers. The all too familiar 'no comment' or "we do not have any information at this time" or only providing limited facts does not appease saddened or angry family members or the general public.

Police departments cannot comment because they may genuinely not know the entire story. Police unions are there to protect officers, and the officers need time between the shooting and when they are required to write the police report on the incident and answer questions about the shooting for a variety of reasons. Therefore, directly after the shooting, when the media or the general public wants answers, there might not be any answers known to give. However, this immediately reads as if the department has something to hide. Whether that is true does not matter in the eyes of many. An investigation must occur before the department can make a formal statement and release body camera or dash-mounted camera footage and information about the shooting. All too often though, this information comes too late.

One case that signifies this all too well is the officer-involved shooting and killing of Michael Brown in Ferguson, Missouri (Department of Justice, 2015). To see a media excerpt on the case, watch Michael Brown Shooting: The Evidence.


Figure 6.6. Evidence Photo from Ferguson Police Department's Michael Brown Crime Scene.

The riots that occurred during the aftermath of the incident resulted in numerous arrests, millions of dollars in property damage sustained, and almost insurmountable damage to the relationship between police and young Black males.

Officer-involved shootings are very serious. Officers train and qualify quarterly with their duty firearms and regularly review what is required to use deadly force. After every officer-involved shooting (use of deadly force), once the investigation is complete, a grand jury or coroner's inquest (depending on the jurisdiction and outcome of the shooting) must take place. There is a trial where the actions of the officer involved are examined to determine if the use of deadly force was justified. The officer describes in detail the shooting and why the officer felt it necessary to use deadly force. Witnesses take the stand and tell what they heard or saw. Finally, a jury decides whether or not the use of deadly force was justified. If the shooting is justified, the officer will not face formal charges for the use of deadly force. However, if the shooting is determined to be unjustified, the officer can face felony charges, up to murder. Generally, at this point, the officer is fired from the respective police department, and the prosecutor's office files charges against the officer. For example: Officer charged with murder in fatal shooting of Patrick Lyoya has been fired – ABC News.

## 6.5.2 Use of Force and Vehicle Pursuits

Police officers have the ability to use force, if deemed necessary. If an officer uses more force than required for the situation, this brings up many red flags. The Violent Crime Control and Law Enforcement Act of 1994 authorized the Civil Rights Division of the U.S. Department of Justice (DOJ) to initiate civil actions against

policing agencies if the use of force is excessive or constitutes a pattern of depriving individuals of their rights (Conduct of Law Enforcement Agencies, 2022).

One additional issue in police use of force situations is that it is difficult to measure. There are many types of force police can use. The force utilized varies from going hands-on with control holds or takedowns to using tools like pepper spray, tasers, or batons to the use of deadly force with a firearm. Every situation is different because it involves imperfect human beings and can be interpreted differently from those involved to those standing on the side-lines. The courts currently use the Graham v. Connor standards to determine if the force used was "objectionably reasonable" based on the specific circumstances.

Another police response is in the form of vehicle pursuits, which have dramatically changed over the last decade. It used to be commonplace for officers to engage in several vehicle pursuits during one-shift. Officers would get in a vehicle pursuit for many reasons, stemming from locating a rolling stolen vehicle to a driver failing to stop after running a stop sign. Vehicle pursuits have at a minimum, two, four-to-five thousand-pound deadly weapons (also known as the vehicles) that are driven recklessly (most times), chasing one another. The morgue has seen large numbers of fatalities due to vehicle pursuits. Victims range from an innocent person in a crosswalk at the wrong time when the vehicle police pursued, hit the victim, or the innocent person driving across an intersection with a green traffic light struck while the pursuing vehicle runs a red traffic light. There are too many sad stories of the innocent victim killed because the police decided to pursue a vehicle with lights and siren and the pursuing vehicle refused to pull over.

Because of the many senseless fatalities, many police departments have updated their vehicle pursuit policies and procedures. Although the policies of each department do differ in minor areas, most departments have chosen to only approve a vehicle pursuit in dire situations. Such a situation fitting that description would be if the driver of the fleeing vehicle were actively engaging in behavior that was placing other community members in immediate dire harm.

## 6.5.3 Stereotypes and Bias-Based Policing

Human beings are infamous for stereotyping. "We actually form impressions about people within milliseconds to seconds. From a split-second glance at a person's face, people readily make socially relevant inferences about that individual" (Willis & Todorov, 2006 as cited in Xie et al., 2021).

Stereotyping in policing is almost a foregone conclusion. Community members expect the police to protect them by being not only reactive but proactive. One of the most popular policing methods is to view a situation and proactively make a quick decision on whether or not a crime is about to occur, and if it is, stop it from happening. One of the ways police proactively operate is through stereotyping. "Police officers spend a great deal of time working their beats...one thing is common to all police officers working personalities: in an effort to know who or what is 'wrong' on their beat, police officers must know who is 'right' or who belongs." (Perez, D., 2011).

When officers cross over the line is when they leave out the step of asking the who, what, where, when, why, and how after the stereotyping occurs, to confirm their thoughts. It is at this point that the officer is engaging in a type of implicit bias policing and this opens many doors to corruption. It is another slippery slope that officers must always be aware of while performing their many duties.

## 6.5.4 Disparities and Racism in Policing Communities of Color

As we have discussed, policing has had a rocky history and relationship with communities of color. In looking at the disparities in how communities of color have been treated by police and reviewing the systemic issues within the criminal justice system, many organizations are calling for change. One of these organizations is The Initiative: Advancing the Blue and Black partnership. The article, The Initiative: Partnerships Between Police and Communities of Color states the goal of the initiative is to bring "together local leaders, communities, and progressive police departments to implement effective community policing solutions to create mutual respect and healthy relationships between police and the communities they serve. The Initiative was founded on the premise that we must push through our differences and work with each other to heal the community-police divide, re-envision public safety, and build safer communities where we are all seen and heard" (n.d.).

The initiative focuses its change through **community-oriented policing** which "is a philosophy of policing whereby a police agency organizes itself, trains its officers, and implements policies that prepare officers to engage with citizens to work in a collaborative and proactive manner to further public safety" (n.d.).

In response to these issues, many stakeholders have tried to determine possible solutions. To more about the racial issues and additional responses to addressing these disparities and racism check out the Harvard Gazette's article, Solving racial disparities in policing – Harvard Gazette. The racism and disparities in policing are difficult to digest for everyone in the community but especially for those who enter the law enforcement profession wanting to make a difference and break down these issues. To hear more about this from former Portland Police Chief Danielle Outlaw's perspectives, watch Policing in America: The Road to Reconciliation | Danielle Outlaw | TEDxPortland

## 6.5.5 Body Cameras

An overwhelming number of police officers welcome body cameras, just like community members. The camera footage can be reviewed to determine the actual events. "The officer yelled at me and made me feel stupid and used profanity," is an example of a community member's complaint sometimes reported to a supervisor. Body camera footage of the incident can indicate the exact opposite. The truth often is that the community member did run the red light or failed to stop at the stop sign and did not want to accept

responsibility and pay the fine. Body cameras changed the environment of complaints; however, body cameras also ensure that "grass-eaters" do not partake in temptation. Moreover, those "meat-eaters" are also held accountable for excessive use of force or illegal actions.

Body cameras would seem to be the panacea for all police misconduct, but the truth of the matter is not so concrete. First, body cameras only show one point of view. Until small drones can hover above the officer showing a 360-degree view, the accurate recollection of an event can never indeed be known. Second, no matter how full-proof department policies and procedures regulate the use of body cameras, there will always be a user that can turn off the camera, or it can malfunction, in some situations. Body cameras are one answer in a giant puzzle to hamper and stop police misconduct. As technology improves, so hopefully will the view the body cameras record.

### 6.5.5.1 Police Body Cameras: What Do You See Exercise

"People are expecting more of body cameras than the technology will deliver," Professor Stoughton said. "They expect it to be a broad solution for the problem of police-community relations, when in fact it's just a tool, and like any tool, there's limited value to what it can do." (Willams et al., 2016). Review the videos within Police Body Cameras: What Do You See? – The New York Times.

## 6.5.6 Mental Health

As defined by the Mayo Clinic, "Mental illness, also called **mental health** disorders, refers to a wide range of mental health conditions – disorders that affect your mood, thinking and behavior. Examples of mental illness include depression, anxiety disorders, schizophrenia, eating disorders, and addictive behaviors (2019).

Mental illness conditions are plaguing individuals worldwide. There are no boundaries and no discrimination when it comes to who may be taunted by the disorders that come from them. One of the many unfortunate things about mental illness is that sometimes it can cause the individual who is battling it, to act in a way that causes others to fear for their or the other's safety. The illness may also influence the individual's decision-making and thus leads to the person committing a crime. In these instances, 9-1-1 is often the first person called and in most communities, it is police officers who are sent to respond to these calls.

In the article "Building mental health into emergency responses" Abramson states, it is "estimated that at least 20% of police calls for service involve a mental health or substance use crisis, and for many departments,

that demand is growing." In a nationwide survey of more than 2,400 senior law enforcement officials conducted by Michael C. Biasotti, formerly of the New York State Association of Chiefs of Police, and the Naval Postgraduate School, around 84% said mental health–related calls have increased during their careers, and 63% said the amount of time their department spends on mental illness calls has increased during their careers. More than half reported the increased time is due to an inability to refer people to needed treatment. Referring to appropriate mental health resources—and following up on progress—takes time and resources that already strained police, especially those from smaller departments, don't always have.

As a result, more police departments are teaming with mental health clinicians—including psychologists—out in the field or behind the scenes via crisis intervention training. When these groups collaborate well, people with mental illness in crisis can access mental health care more easily, police experience less trauma and stress, and clinicians have an opportunity to make an even bigger difference in the community. Early data also indicate that these partnerships are making communities healthier, safer, and more financially secure" (2021).

As Abramson mentioned, Crisis Intervention Teams are one of the current tools that are being implemented to help police officers and agencies address mental health issues, and better prepare officers. To learn more about what some agencies are doing to implement these teams visit the Crisis Intervention Team (CIT) Programs | NAMI: National Alliance on Mental Illness and watch the video Meet Police Offers Trained to Respond to Mental Illness Calls.

## 6.5.7 Controlled Substances

As noted in Abramson's article, individuals struggling with substance use crisis is another issue police officers are facing daily. Interacting with those who are under the influence of **controlled substances**, often defined as opioids, stimulants, depressants, hallucinogens, and anabolic steroids, is extremely difficult and can be very dangerous. These substances, known more commonly as cocaine, heroin, ecstasy, methamphetamine, and many others, make those under the influence act and behave in unpredictable ways, at times causing irrational thinking and lasting health effects.

Similarly to mental health conditions, when individuals are under the influence of these substances and acting strangely or committing crimes as a result of their use, the community becomes fearful and they call 9-1-1. As a result, police officers are again the first to respond and an individual's substance abuse issues turn into a policing issue. For centuries, the general public and politicians have struggled with allowing those who are "different" or "scary" to stay in the community, and without systems in place to help those struggling with addiction or substance abuse issues, the criminal justice system has to turn into a community fix to "remove" these individuals temporarily from the community. As a result, laws have been in place for years making the possession, manufacturing, and delivery of these substances illegal, resulting in an absorbent amount of people who are now currently incarcerated, which will be discussed in a future chapter.

Recently though, many states across the nation are taking a different approach of legalizing certain substances, like marijuana and psilocybin, and "decriminalizing" the possession charges for smaller amounts of other substances like methamphetamine, heroin, and cocaine, etc. As a result, law enforcement is no longer enforcing certain laws which are being repealed, and in other cases when officers would have arrested or issued a citation to the person, they are now offering treatment and recovery options instead. Take a look at the Police Offering Drug Recovery Help: 'We Can't Arrest Our Way Out Of This Problem' : NPR article to learn a little more about this.

As a result of these changes at the state level, there are some conflicting laws and standards currently in place across the United States. To learn more about the federal drug schedules watchWhat are Schedule Drugs? | Controlled Substances | PTCB EXAM | Schedule Drugs and Types | and to learn more about the movement nationwide related to drug decriminalization check out the Drug Decriminalization | Drug Policy Alliance.

## 6.5.8 Licenses and Attributions for Current Issues in Policing

# 6.6 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND POLICING

As we have discussed in prior chapters, there are Crime Prevention Science Solutions that when implemented could help in making improvements to some of the struggles when policing our communities. Below are a couple of examples of evidence-based solutions agencies are implementing to address some of those concerns in the community with law enforcement officers.

## 6.6.1 Crime Solutions for Policing

| Title and Evidence Rating | Summary Description of CPSc Solutions |
|---|---|
|  **Program Profile: Portland (OR) Burglary Prevention Project** | This community crime-prevention program in Portland, OR., used a combination of private prevention techniques and neighborhood prevention efforts to protect neighborhoods from burglary. This program is rated Effective. Participating homes showed statistically significant reductions in burglary rates and were more likely to report burglaries to the police, compared with non-participating homes. However, there were no statistically significant differences in recovery rates of stolen property. |
|  **Program Profile: Operation Thumbs Down (Los Angeles, Calif.)** | An FBI-led, anti-gang strategy in Los Angeles, California, designed to reduce neighborhood-level violent crime through the identification, disruption, and dismantling of violent street gangs. This program is rated Effective. Results indicated a statistically significant 22 percent reduction per month in violent crime between the treatment areas and the comparison areas. |

## 6.6.2 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and Policing

# 6.7 CAREER ANCILLARIES

As we have covered in this chapter, the most common career opportunity within Policing is the Police Officer, although there are Telecommunicators, Victim Advocates, and many other positions within the field as well. To learn more about each of these positions check out the links below.

## 6.7.1 Telecommunications

To learn more about the role, responsibility and job opportunities of Telecommunicators (also known as Dispatchers and Call-Takers) review the following resources:

- Visit the Washington County Consolidated Communications Agency to learn more about a Telecommunication agency.
- Visit the Willamette Valley Communications Center site at 911 Services | Salem, Oregon
- Watch the California Highway PatrolCHP Public Safety Dispatchers and Operators – You hear their voices, now see their faces.
- Watch the City of Edina On The Job – 911 Dispatcher – May 2016
- Watch the South Metro Fire Rescue Centennial, Colorado911 Dispatcher – A Day in the Life
- Watch the New Castle County, Delaware 911 Dispatchers in Action

## 6.7.2 Police Officer

To learn more about the role, responsibility and job opportunities of Police Officers review the following resources:

- Oregon Revised Statute ORS 133.220 – Who may make arrest outlines some of the responsibilities of a police (peace) officer.
- Watch the Grand Rapids Police Department's A Day in the Life: Patrol Officer
- Watch A Day in the Life of #SLOCounty Sheriff's Deputy
- Watch the Portland Police Bureau's Join the Best
- Watch aRide along with Portland police officer Jordan Zaitz
- To learn more about federal law enforcement officer training visit the Federal Law Enforcement Training Centers.

# 6.7.3 Victim Advocate

To learn more about the role, responsibility, and job opportunities of Victim Advocates review the following resources:

- Watch the City of Vancouver's Inside The City: Victim Advocate
- Visit Marion County's District Attorney's Victim Assistance Office website.
- Visit the Center for Hope & Safety, a non-profit resource that works with victim advocates to provide victims with resources in Salem, Oregon.
- Visit the Liberty House, a child abuse assessment center in Salem, Oregon that works with law enforcement, victims, and advocates during child abuse investigations.

# 6.8 CONCLUSION

This chapter focused on policing in the U.S., diving into the historical development of policing and the inequities that have impacted communities of color while looking at the current role of policing. Then we discussed current issues facing policing and the communities they serve, diving further into police misconduct, corruption and accountability and investigating possible Crime Prevention Science solutions that could be implemented. We wrapped up by learning more about the role of a police officer and a victim advocate.

## 6.8.1 Learning Objectives

1. Describe the historical development of policing in the U.S. and the impacts on communicates of color.
2. Outline the current role of policing in the U.S.
3. Identify how Police Misconduct, Corruption, and Accountability impact police agencies and the communities they serve.
4. Interpret the impact of current issues on policing and the communities they serve.
5. Investigate police support for Crime Prevention Science (CPSc) Solutions.

## 6.8.2 Review of Key Terms

- Accountability
- Community-oriented policing

- Controlled substances
- Fourth Amendment
- Jim Crow laws
- Law enforcement
- Mental health
- Miranda rights
- Search and seizure
- Use of force

## 6.8.3 Review of Critical Thinking Questions

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. Why is the history of policing important to understand?
2. What about kin policing made it not a good form of policing?
3. What are the four eras of policing?
4. How was the Homeland Security Era established?
5. Why was Sir Robert Peel important to policing?
6. What did August Vollmer believe police should be doing?
7. How were police officers involved in enforcing Jim Crow laws?

## 6.8.4 Licenses and Attributions for Conclusion

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# 6.10 CHAPTER 6 FEEDBACK SURVEY

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Did you like reading this chapter? Want to help us make it better? Please take a few minutes to complete the Chapter Feedback Survey Your feedback matters to the textbook authors!

# CHAPTER 7: COURTS

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 7.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

The courts or judiciary is one of the three main branches of the American justice system. What follows is an examination of the structure and role of the courts in the American criminal justice system and the requirement of jurisdiction. As you read this chapter, pay attention to the context when you see the word "court" because it is used in various ways. The courts are probably one of the most traditional and highly regarded institutions in every American community. This perception of legitimacy derives from the organization, structure, and roles the courts have upheld for centuries. Therefore, understanding court traditions, jurisdictions, roles, and practices are critical to our basic understanding or introduction to the entire American justice system. After all, the courts make some of the most important decisions, including the ultimate decisions about life and death in our justice systems.

A "court" can mean a building—it is short for "courthouse" (for example, "he went to the court"). There are many different types of courts as determined by the constitution and laws. Some courts, such as trial courts, may have only one judge. Other courts, such as the U.S. Supreme Court, as seen in figure 7.1., has several judges. Courts (the institution and processes) have the power to determine the facts of a crime and the legal sufficiency of the charges. The facts of a crime are about whether the defendant did the crime. Legal sufficiency is about whether the government can prove the criminal charge.

Figure 7.1. The U.S. Supreme Court Building in Washington, D.C., is the site of many landmark decisions and protests.

**Courts** ensure that criminal defendants are provided due process of law or that the procedures used to convict the defendants are fair. Courts play a more influential role in criminal cases than in civil cases. While "parties" in civil cases can settle their disputes outside the court system, all criminal prosecutions must be funneled through the criminal courts. The term "party" is a person or group (such as defendant or plaintiff) who are directly involved in a legal proceeding.

After reading this chapter, you will be able to project the trajectory of a criminal case from the filing of criminal charges in a local courthouse through the final appeals process. This requires understanding the dual court system, the structure of typical state court systems, and the federal court system. This chapter explores the differences between a trial court and an appellate court. You will learn how trial judges and juries decide (determine the outcome of) a case by applying the legal standards to the facts presented. During trial, appellate judges determine if the case was rightly decided after examining the trial record for legal error. Appellate courts make their decisions known through their written opinions, and this chapter introduces the types of opinions and rulings of appellate courts.

This chapter also examines the selection, roles, and responsibilities of the participants in the criminal courts, frequently referred to as the courtroom workgroup. You will become familiar with who the players are during each of these steps of the process.

While the courts are supposed to be impartial, they are also not perfect. This is especially true in their treatment of women and people who are low-income or members of minoritized racial groups, whether they are suspects or defendants. The American justice system, in general, and the courts in particular, have a problematic history with diversity, equity, and inclusion (DEI). This chapter will highlight some of these DEI-related issues in the courts.

As students of the criminal justice system, you have reasons to be optimistic about the future of the courts. The last section of this chapter will focus on court support for Crime Prevention Science (CPSc) Solutions. These crime solutions represent some of the best efforts to mend some of the courts' systemic flaws. An important goal of this chapter is to empower readers to increase their personal awareness and support for these crime solutions in their courts.

## 7.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Describe how a crime/criminal case proceeds from the lowest level trial court up through the U.S. Supreme Court. (i.e., students should understand the hierarchy of the federal and state courts).
2. Describe the function and selection of state and federal trial and appellate judges in the American criminal justice system.
3. Discuss the function and selection of state and federal prosecutors in the American criminal justice system.
4. Explain the role of the criminal defense attorney in the American criminal justice system and at what stage a court-appointed attorney may be needed.
5. Discuss Crime Prevention Science (CPSc) Solutions and how this impacts the effectiveness and efficiency of the courts DEI goals.

## 7.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- appeals of right
- appellant (petitioner)
- appellate courts
- appellee (respondent)

- bench trial
- case
- court of last resort
- court-appointed attorney
- courtroom workgroup
- courts
- courts of general jurisdiction
- courts of limited jurisdiction
- defense lawyers
- dual court system
- jurisdiction
- jury trial
- majority opinion
- opinions – concurring, dissenting, per curiam, plurality
- original jurisdiction
- petition for the writ of certiorari (rule of four)
- petitions for writs of habeas corpus
- principle of orality
- prosecutor
- standard of review
- trial courts
- U.S. Court of Appeals
- U.S. District Courts
- U.S. Magistrate Courts
- U.S. Supreme Court

## 7.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you

already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. Knowing what happens at trial and what happens on appeal, would you be more interested in being a trial judge or an appellate judge? Why?
2. Why is there a different standard of review for questions of fact and questions of law?
3. Do you agree that cases should be overturned only when a fundamental or prejudicial error occurred during the trial?
4. Do you think it is easier to be a defense attorney than a prosecutor believing the defendant is guilty but knowing that the justice system has violated the defendant's rights?
5. Should the defendant ever waive the assistance of counsel?
6. Does any position as a court staff particularly interest you? Why or why not?

## 7.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 7.2 COURT JURISDICTIONS

**Jurisdiction** has many meanings within the context of the courts, but in general, it refers to the legal authority to hear and decide a case (legal suit) (figure 7.2.). Jurisdiction is a crucial element in any court case. For instance, a case can be dismissed, at any stage, if the court lacks jurisdiction to hear the case. In this section, we'll introduce the different types of jurisdiction based on the function of the court, the subject matter, the seriousness of the case, the court's authority, and the location of the court.

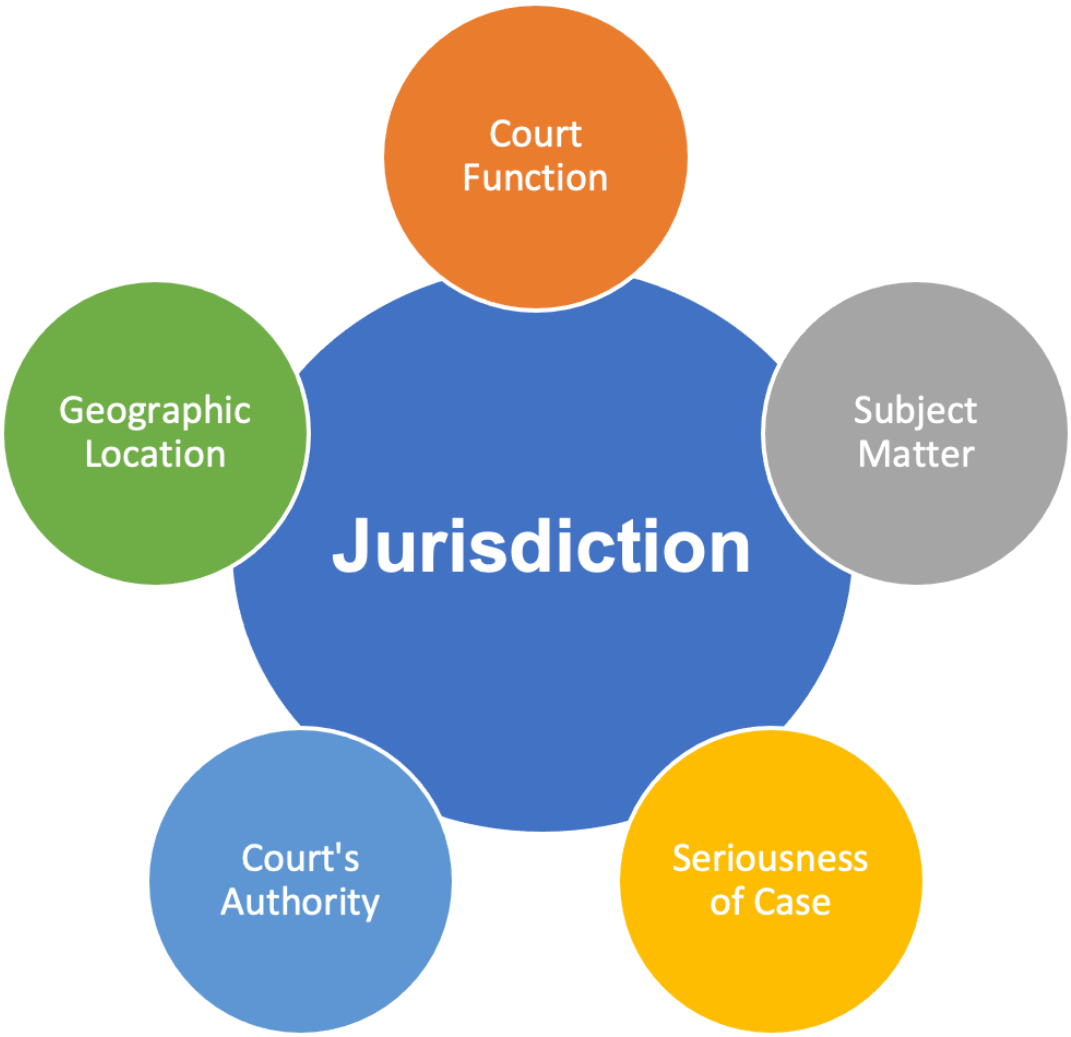


Figure 7.2. A figure showing the different elements that make up court jurisdiction.

## 7.2.1 Dig Deeper

This box contains important links to additional links to materials. Click on the links to learn more about court jurisdiction.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=291#oembed-1*

Figure 7.3. "What Is the Judicial Branch of the U.S. Government? | History [Youtube Video]."

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=291#oembed-2*

Figure 7.4. "The Judicial Branch Explained [Youtube Video]."

## 7.2.2 Jurisdiction Based on the Function of the Court

The court's legal authority can be based on its function. For example, a trial court differs from an appellate court in its specific function in the case. The trial court has the initial authority to try the case and decide the outcome. In contrast, the appellate court has the authority to overrule that outcome if a serious mistake is made by the trial court. The federal and state court systems have hierarchies that divide trial and appellate courts.

**Trial courts** have jurisdiction over pretrial matters, trials, sentencing, probation, and parole violations. Trial courts deal with facts. Did the defendant stab the victim? Was the eyewitness able to clearly see the stabbing? Did the probationer willfully violate the terms of probation? As a result, trial courts determine guilt and impose punishments.

On the other hand, **Appellate courts** review the decisions of the trial courts. They are primarily concerned

with matters of law. Did the trial judge properly instruct the jury about the controlling law? Did the trial court properly suppress evidence in a pretrial hearing? Does the applicable statute allow the defendant to raise a particular affirmative defense? Appellate courts correct legal errors made by trial courts and develop laws when new legal questions arise. Appellate courts do not hold hearings in which evidence is developed, but rather only review the record, or "transcript," of the trial court. In some instances, appellate courts determine if the record is legally sufficient or enough evidence to uphold a conviction.

## 7.2.3 Jurisdiction Based on Subject Matter

The authority of the court can also be based on the subject matter of the case. For example, criminal courts handle criminal matters, tax courts handle tax matters, and customs and patent courts handle patent matters. Because the higher appellate courts are usually designed to hear different types of cases, the issue of subject matter jurisdiction is mostly relevant in lower trial courts. However, each state is different, and state constitutions dictate the specific structure of the state court system. The specialized courts represent only a small portion of all trial courts. Most trial courts are not limited to a particular subject but may deal with all fields. More than 60 million cases in 2020, and more than 95 percent of these cases are from state courts (Kerper, 1979, p. 34). State courts also differ in how they select judges and the type of cases each court can hear.

## 7.2.4 Jurisdiction Based on the Seriousness of the Case

The seriousness of the case may also affect the court's jurisdiction. Most of the trial courts are called **courts of general jurisdictions**, meaning that they can hear almost any type of case. However, the **courts of limited jurisdiction** can only try minor misdemeanor cases such as petty crimes, violations, and infractions.

## 7.2.5 Jurisdiction Based on the Court's Authority

Jurisdiction also refers to the court's authority over the parties in the case. For example, juvenile courts have jurisdiction over delinquency cases involving youth. Other court jurisdictions are based on the special nature of the parties, such as military tribunals and the U.S. Court for the Armed Services.

## 7.2.6 Jurisdiction Based on Location

Finally, jurisdiction is also tied to our system of federalism, the autonomy of national and state governments.

State courts have jurisdiction over state matters, and federal courts have jurisdiction over federal matters. Jurisdiction is most commonly known to represent geographic locations of the court's oversight. For example, Oregon courts do not have jurisdiction over crimes in California. In the next section of this chapter, we will discuss how courts exercise their jurisdiction at the state and federal levels of government.

## 7.2.7 Licenses and Attributions for Court Jurisdictions

# 7.3 STRUCTURE OF THE DUAL COURT SYSTEMS

Each state has two parallel court systems: the federal system and the state's own system. This two-part structure results in at least 51 legal systems: the fifty created under state laws and the federal system created under federal law. Additionally, there are court systems in the U.S. Territories, and the military has a separate court system. Next, we will consider how the different court systems are structured.

The state/federal court structure is sometimes called the **dual court system**. State crimes, created by state legislatures, are prosecuted in state courts concerned primarily with applying state law. Federal crimes, created by Congress, are prosecuted in the federal courts, which are concerned primarily with applying federal law. As discussed in table 7.1, a case can sometimes move from the state system to the federal system, depending on the type of case.

| Dual Courts | Federal Courts | State Courts |
|---|---|---|
| Highest Appellate Court | U.S. Supreme Court (Justices) (Note: Court also has original/trial court jurisdiction in rare cases) (Note: Court will also review petitions for writ of certiorari from State Supreme Court cases). | State Supreme Court (Justices) |
| Intermediate Appellate Court | U.S. Circuit Court of Appeals (Judges) | State Appellate Court (e.g., Oregon Court of Appeals) (Judges) |
| Trial Court of General Jurisdiction | U.S. District Court (Judges) (Note: this court will review petitions for writs of habeas corpus from federal and state court prisoners) | Circuit Court, Commonwealth Court, District Court, Superior Court (Judges) |
| Trial Court of Limited Jurisdiction | U.S. Magistrate Courts (Magistrate Judges) | District Court, Justice of the Peace, Municipal Courts (Judges, Magistrates, Justices of the Peace) |

Table 7.1. Dual Court System Structure

# 7.3.1 The Federal Court System

Article III of the U.S. Constitution established a United States Supreme Court and granted Congress power to adopt a lower court system. The Constitution states the "judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." In line with this authority, Congress immediately created a lower federal court system in 1789 (The Judiciary Act, 1789). The lower federal court system has been expanded over the years, and chances are that Congress will continue to exercise its power to modify the court system as the need arises. Table 7.2 shows the difference between the federal court system and the state court system in the selection of judges and the types of cases heard.

## 7.3.1.1 Selection of Judges

| The Federal Court System | The State Court System |
|---|---|
| | State court judges are selected in a variety of ways, including |
| The constitution states that federal judges are to be nominated by the President and confirmed by the Senate.<br>They hold office during good behavior, typically, for life. Through Congressional impeachment proceedings, federal judges may be removed from office for misbehavior. | • election,<br>• appointment for a given number of years,<br>• appointment for life, and<br>• combinations of these methods, e.g. appointment filled by election. |

## 7.3.1.2 Types of Cases Heard

| The Federal Court System | The State Court System |
|---|---|
| • Cases that deal with the constitutionality of a law;<br>• Cases involving the laws and treaties of the U.S.;<br>• Cases involving ambassadors and public ministers;<br>• Disputes between two or more states;<br>• Admiralty law;<br>• Bankruptcy; and<br>• Habeas corpus issues. | • Most criminal cases, probate (involving wills and estates)<br>• Most contract cases, tort cases (personal injuries), family law (marriages, divorcs, adoptions), etc.<br><br>State courts are the final arbiters of state laws and constitutions. Their interpretation of federal law or the U.S. Constitution may be appealed to the U.S. Supreme Court. The Supreme Court may choose to hear or not to hear such cases. |

Table 7.2. Judges Selection & Cases.

## 7.3.1.3 Dig Deeper

This box contains important links to additional materials. Click on the links to learn more about the relationship between the state and federal courts.

- View the authorized federal judgeships at http://www.uscourts.gov/sites/default/files/allauth.pdf.
- Trace the history of the federal courts at https://www.fjc.gov/history/timeline/8276.
- Trace the history of the subject matter jurisdiction of the federal courts here

https://www.fjc.gov/history/timeline/8271.

- View cases that shaped the roles of the federal courts at https://www.fjc.gov/history/timeline/8271.
- Trace the administration of the federal courts at https://www.fjc.gov/history/timeline/8286.

## 7.3.2 U.S. Supreme Court

The **U.S. Supreme Court** (Court), located in Washington, D.C., is the highest appellate court in the federal judicial system. Nine justices sitting en banc, as one panel, together with their clerks and administrative staff, make up the Supreme Court (figure 7.5). You can view the biographies of the current U.S. Supreme Court Justices here: https://www.supremecourt.gov/about/biographies.aspx.

The Supreme Court's decisions have the broadest impact because they govern the state and federal judicial systems. Additionally, this Court influences federal criminal law because it supervises the activities of the lower federal courts. The nine justices can determine what the U.S. Constitution permits and prohibits, and they are most influential when interpreting it. Associate Justice of the Supreme Court Robert H. Jackson stated in *Brown v. Allen*, 344 U.S. 433, 450 (1953), "We are not final because we are infallible, but we are infallible only because we are final." In other words, Jackson seems to emphasize that the Supreme Court is often the final word on major legal decisions, making the Court's decisions authoritative and indisputable. However, there are rare instances when the court's decision can be changed. For instance, Congress can sometimes enact a new statute to change the Court's holding.

Figure 7.5. Current U.S. Supreme Court From left to right: Associate Justices Amy Coney Barrett, Neil M. Gorsuch, Sonia Sotomayor, and Clarence Thomas, Chief Justice John G. Roberts, Jr., and Associate Justices Ketanji Brown Jackson, Samuel A. Alito, Jr., Elena Kagan, and Brett M. Kavanaugh.

The Court has a discretionary review over most cases brought from the state supreme courts and federal appeals courts. In a process called a **petition for the writ of certiorari (rule of four),** four justices must agree to accept and review a case, which happens in roughly 10 percent of the cases filed. Once accepted, the Court schedules and hears oral arguments on the case, then delivers written opinions. Over the past ten years, approximately 8,000 petitions for writ of certiorari have been filed annually. It is difficult to guess which cases the court will accept for review. However, a common reason the court accepts to review a case is that the federal circuit courts have reached conflicting results on important issues presented in the case (UScourts.gov – Writs of Certiorari, 2022).

Take a more in-depth look at the U.S. Supreme Court: Supreme Court Procedures | United States Courts

When the U.S. Supreme Court acts as a trial court it is said to have **original jurisdiction**, which rarely happens. One example is when one state sues another state. The U.S. Constitution, Art. III, §2, sets forth the jurisdiction of the Supreme Court, and provides the necessary strict restrictions on cases allowed (Uscourts.gov/Supreme Court Procedures, 2022). This statutory restriction allows the highest court to focus on the most important cases.

## 7.3.2.1 Changes to the U.S. Supreme Court

Any change to the U.S. Supreme Court, as the highest court in America, is highly anticipated and newsworthy. This past decade has seen several important changes that impact diversity, equity, and inclusion in the American judicial court systems.

## 7.3.2.2 Diversity in the Supreme Court

In 2022, President Joe Biden made news when he announced his intention to nominate a Black woman to the U.S. Supreme court. Despite the strong pushback from Senate Republicans, the president fulfilled his campaign promise by nominating Justice Ketanji Brown Jackson. Before her confirmation to the Supreme Court, Jackson rose through the judicial ranks, making her one of the most qualified for the job. She had previously been promoted to the country's "second-highest court," known as the D.C. Circuit (Howe, Amy L. 2022, February 1). She is also the first public defender to serve on the supreme court (Pilkington, E. 2022, April 7). A divided U.S. Senate voted to confirm her nomination. On June 30, 2022, Jackson was sworn in as the 116th Supreme Court justice and the first Black woman to serve on this highest court in America. (Bustillo, X. (2022, June 30. Ketanji Brown Jackson was sworn in as the first Black woman on the Supreme Court. NPR).

## 7.3.2.3 Roe v. Wade and the Supreme Court


Figure 7.6. Protests at the Supreme Court on the day Roe v. Wade was overturned.

On June 24, 2022, the U.S. Supreme Court overturned Roe v. Wade, the landmark 1973 decision that affirmed the constitutional right to abortion (figure 7.6). The supreme court has been leaning more conservatively for the last few years. But the most recent ruling indicates that the current supreme court is the most conservative it has ever been for almost a century (Totenberg, N. 2022, July 6). Researchers and scientists are scrambling to warn about the many social, economic, and public health consequences of this anti-abortion ruling. On the political front, this abortion issue is bound to further the conflict and divide that already exists in America.

## 7.3.2.4 Packing the Supreme Court

The supreme court was originally designed to remain impartial and above politics. But over the last few years, there have been a number of rulings from the court that seem partisan (Lazarus, S. 2022, March 23). One of the many proposals to balance the conservative-leaning U.S. Supreme Court is known as "court-packing." This highly controversial method involves adding more supreme court justices to try and equalize the number of liberal and conservative judges (Noll, D. What Is Court Packing?). See figure 7.7 for a short video explaining

how the court-packing process evolved over the years. While the "court-packing" idea remains controversial, many proponents and Democrats felt that the recent U.S. Supreme court appointments made by Republican presidents amount to court-packing (Calmes, J. 2021, June 22).

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=293#oembed-1*

Figure 7.7. "How calls to 'pack' the Supreme Court evolved over the years [Youtube Video]."

### 7.3.2.4.1 Dig Deeper

Watch these videos to learn more about the Supreme Court:

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=293#oembed-2*

Figure 7.8. "The Supreme Court Is Unpopular. But Do Americans Want Change? | FiveThirtyEight [Youtube Video]."

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=293#oembed-3*

Figure 7.9. "Court Packing Explained by a Constitutional Attorney [Youtube Video]."

## 7.3.2.5 U.S. Courts of Appeal

Ninety-four judicial districts comprise the 13 intermediate appellate courts (figure 7.10.) in the federal system known as the **U.S. Courts of Appeals**, sometimes referred to as the federal circuit courts. These courts hear challenges to lower court decisions from the U.S. District Courts located within the circuit, as well as appeals from decisions of federal administrative agencies, such as the social security courts or bankruptcy courts.

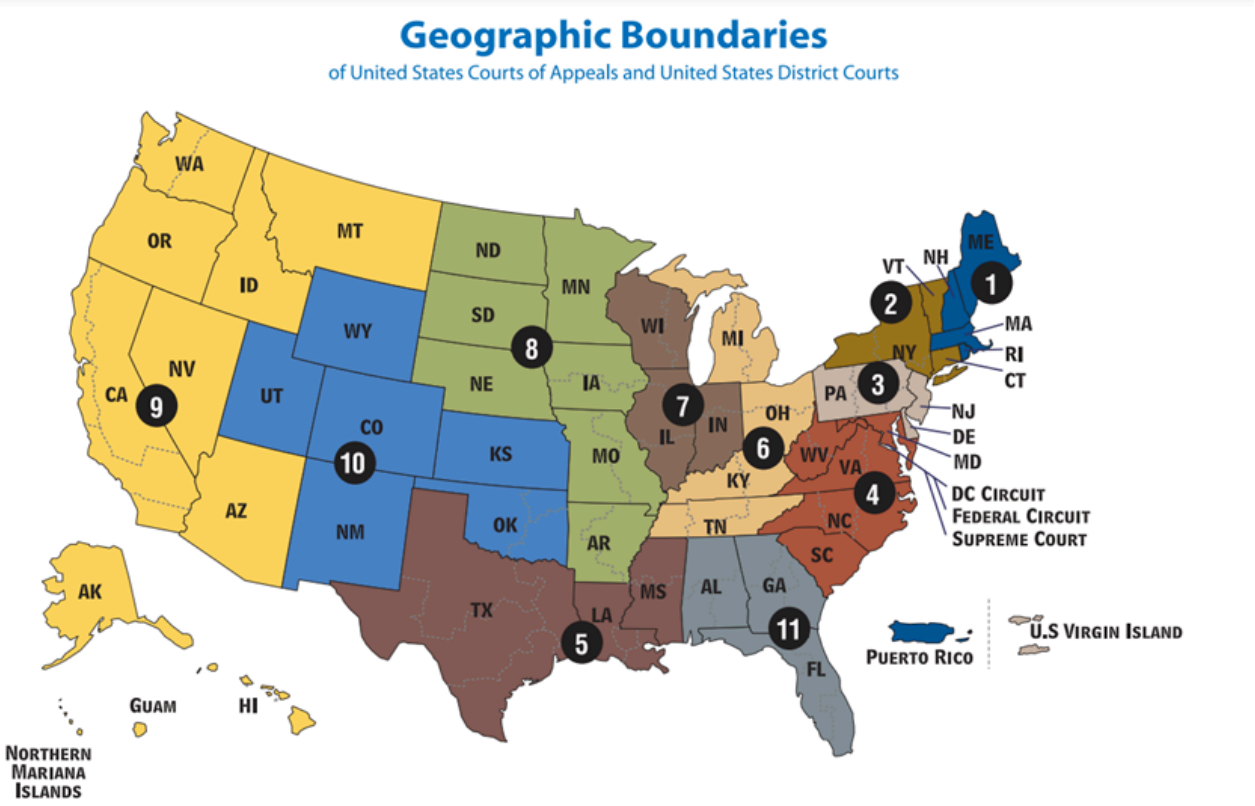


Figure 7.10. Geographical jurisdiction of the U.S. Courts of Appeals

There are twelve circuits based on locations. One circuit has nationwide jurisdiction for specialized cases, such as those involving patent laws and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims. The smallest circuit is the First Circuit with six judgeships, and the largest court is the Ninth Circuit, with 29 judgeships.

Appeals court panels consist of three judges. The court will occasionally convene en banc and only after a party, that has lost in front of the three-judge panel, requests review. Because the Circuit Courts are appellate courts that review trial court records, they do not conduct trials or use a jury. The U.S. Courts of Appeal trace their existence to Article III of the U.S. Constitution.

## 7.3.2.6 U.S. District Courts

The **U.S. District Courts**, also known as "Article III Courts," are the main trial courts in the federal court

system. Congress first created these U.S. District Courts in the Judiciary Act of 1789. Now, 94 U.S. District Courts, located in the states and four territories, handle prosecutions for violations of federal statutes. Each state has at least one district, and larger states have up to four districts. The name of district courts reflects their location (for example, the U.S. District Court for the Northern District of California). The district courts have jurisdiction over all prosecutions brought under criminal and civil suits brought under federal statutes. A criminal trial in the district court is presided over by a judge who is appointed for life by the president with the consent of the Senate. Trials in these courts may be decided by juries.

Although the U.S. District Courts are primarily trial courts, district court judges also exercise an appellate-type function in reviewing **petitions for writs of habeas corpus** brought by state prisoners. Writs of habeas corpus are claims by state and federal prisoners who allege that the government is illegally confining them in violation of the federal constitution. The party who loses at the U.S. District Court can appeal the case in the court of appeals for the circuit in which the district court is located. These first appeals must be reviewed, and thus are referred to as **appeals of right**.

## 7.3.2.7 U.S. Magistrate Courts

**U.S. Magistrate Courts** are courts of limited jurisdiction, which means they do not have full judicial power. Congress first created the U.S. Magistrate Courts with the Federal Magistrate Act of 1968. Under the Act, federal magistrate judges assist district court judges by conducting pretrial proceedings, such as setting bail, issuing warrants, and conducting trials of federal misdemeanor crimes. More than five hundred Magistrate Judges work on more than a million cases each year.

U.S. Magistrate Courts are "Article I Courts" as they owe their existence to an act of Congress, not the Constitution. Unlike Article III judges, who hold lifetime appointments, Magistrate Judges are appointed for eight-year terms.

## 7.3.3 Licenses and Attributions for Structure of the Dual Court Systems

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Figure 7.5. "Current U.S. Supreme Court" by the Supreme Court of the United States is in the Public Domain.

Figure 7.6. "2022.06.24 Roe v Wade Overturned – SCOTUS, Washington, DC USA 175 143227" by Ted Eytan, Flickr is licensed under CC BY-SA 4.0.

Figure 7.7."How calls to 'pack' the Supreme Court evolved over the years" by the Washington Post is licensed under the Standard YouTube License.

Figure 7.8. "The Supreme Court Is Unpopular. But Do Americans Want Change? | FiveThirtyEight [Youtube Video]."

Figure 7.9. "Court Packing Explained by a Constitutional Attorney [Youtube Video]."

Figure 7.10. "Geographic Boundaries of United States Courts of Appeals and United States District Courts" is in the Public Domain.

# 7.4 STRUCTURE OF THE COURTS: STATE COURTS

Each state has its own independent judicial system. State courts handle more than 90 percent of all criminal prosecutions in the United States. compared to federal courts. In this section, we examine the structure of state courts.

Although state court systems vary, there are some common features. Every state has one or more levels of trial courts and at least one appellate court. Most state courts have both courts of general jurisdiction, which conduct felony and major misdemeanor trials, and courts of limited jurisdiction, which conduct violations, infractions, and minor misdemeanor trials. Similar to the U.S. Magistrate Courts, states' courts of limited jurisdiction will also handle pretrial matters for felonies until they are moved into the general jurisdiction court. All states have a **court of last resort**, generally referred to as the state Supreme Court. Depending on the state laws, the Governor is sometimes authorized to appoint Judges. The Governor can therefore use these appointments to make history. In Figure 7.11, Governor Inslee appointed Judge Mary Yu to the Washington State Supreme Court back in 2014. This was a historic moment for diversity, equity, and inclusion. Judge Yu became the first Asian-American, Latina, and openly gay person on the state Supreme Court (Governor.wa.gov, 2014).


Figure 7.11. Governor Inslee appoints Judge Mary Yu to the Washington State Supreme Court.

## 7.4.1 Hierarchy of State Courts

State trial courts tend to be very busy with lots of activity. On the other hand, Appellate courts tend to be solemn and serene places. There are three comparative differences between the state and federal court systems. They include: court structure, selection of judges, and the types of cases heard. (See link: Uscourts.gov Comparing Federal & State Courts, 2022).

## 7.4.2 Licenses and Attributions for Structure of the Courts: State Courts

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Figure 7.11. "Governor Inslee appointed Judge Mary Yu to the Washington State Supreme Court" by Governor Jay Inslee, Flickr is licensed under CC BY-ND 4.0.

# 7.5 STATE TRIAL COURTS AND THE PRINCIPLE OF ORALITY

When disputes cannot be settled in a case, the parties can elect to go to trial in a state court. The trial courts have the authority to hear every case first. This section will examine the principle of orality and the adversarial system used to settle disputes in trial courts.

## 7.5.1 Principle of Orality

At trial, the state will present evidence showing facts demonstrating that the defendant committed the crime. The defendant may also present facts that show they did not commit the crime. The **principle of orality** requires that the trier of fact (generally the jury, unless the defendant waives a jury trial) considers only the evidence developed, presented, and received into the record during trial. As such, jurors should only make their decision based on the testimony they heard at trial and the evidence introduced and admitted by the court. The principle of orality would be violated if, for example, the jury searched the internet during deliberations to find information on the defendant or witnesses. Similarly, if the police question the defendant and write a report, the jury cannot consider the report unless it has been offered with the rules of evidence during the trial. The principle of orality distinguishes the functions of a trial court, developing the evidence, and the function of the appellate courts, reviewing the record for legal error (figure 7.12).

Figure 7.12. The Principle of Orality means juries only consider evidence developed, presented, and received into the record during trial.

## 7.5.2 Adversarial System

The principle of orality is one major difference between the adversarial and inquisitorial systems. The adversarial system (practiced in America) requires both parties to compete in making their case before the judge or jury. Frequently in civil law countries (for example, most European nations), the police, prosecutors, or investigating magistrates follow the inquisitorial system. Meaning that they question witnesses prior to trial and write summaries of their statements called a dossier. In determining guilt, the trier of fact is presented with summaries of the witness statements. Unlike trials in the United States, trials in civil law countries focus more on presenting evidence for giving appropriate sentences or punishments.

## 7.5.3 Licenses and Attributions for State Trial Courts and the Principle of Orality

# 7.6 THE APPELLATE PROCESS

When disputes are not satisfactorily resolved in the trial courts, each party can petition the appeals court to review the case. In this section, we will review the process of appeals and how decisions are made by the appellate courts.

## 7.6.1 Overview of the Appeals Process

The government cannot appeal a jury's decision by acquitting the defendant or finding the defendant not guilty. Thus, most criminal appeals involve defendants found guilty at trial. The government may appeal a court's pretrial ruling in a criminal matter before the case is tried. For example, the decision to suppress evidence obtained in a police search may result in an interlocutory appeal. Although the defendant is permitted to appeal after entering a guilty plea, the only basis for their appeal is to challenge the sentence given. When the defendant appeals, they are referred to as the **appellant (or petitioner)**, and the State is the **appellee (or respondent)**. The petitioner is the party who lost in the last court and is petitioning the next level court for review; the respondent is the party who won in the last court.

In routine appeals, the primary function of appellate courts is to review the record for errors made by the trial court before, during, or after the trial. No trial is perfect, so the goal is to ensure a fair trial. The appellate courts examine the fairness of a trial by looking for fundamental errors. Appellate courts will reverse the conviction and possibly send the case back for a new trial when they find that trial errors affected the case's outcome. A lower court's judgment will not be reversed unless the appellant can show that a serious error was made by the lower court. By reviewing for errors and then writing opinions that become case law, appellate courts perform dual functions in the criminal process: error correction and lawmaking.

Appellate judges generally sit in panels of three judges. They read the appellant's brief (a written document filed by the appellant) and the reply brief (a written document filed by the appellee). They may also read amicus curiae briefs written and submitted by the parties or friends of the court. Amicus curiae, a Latin phrase that translates as "friend of the court," are individuals or groups who have an interest in the case or some expertise but are not parties to the case. The appellate panel will generally listen to very short oral arguments, generally twenty minutes or less, by the parties attorneys. During these oral arguments, appellate judges may interrupt to question the attorneys about their positions. The judges will consider the briefs and arguments before deciding on majority rule. The appellate court can issue an order to affirm or reverse the decision. The court can order a new trial or dismiss the case when the case is reversed.

## 7.6.2 Standards of Review

You have just learned that one function of the appellate courts is to review the trial record and see if there is a prejudicial or fundamental error. Appellate courts do not consider each error in isolation; instead, they look at the cumulative effect of all the errors during the trial. Appellate court judges must sometimes let a decision of a lower court stand, even if they personally don't agree with it.

An analogy that sports enthusiasts will be familiar with is instant/video replay. Officials in football, for example, will make a call, a ruling on the field, immediately after a play is made. This decision, when challenged, will be reviewed, and the decision will be upheld unless there is "incontrovertible evidence" that the call was wrong. When dealing with appeals, the **standard of review** indicates how much consideration the appellate court will give to the lower court's decision. Sometimes the appellate courts will defer to the trial court's decision, and sometimes the appellate courts will reject the trial court's decision.

The appellate court will allow a trial court's decision about a factual matter to stand unless the court clearly got it wrong. The appellate court reasons that the judge and jury were in the courtroom listening to and watching the demeanor of the witnesses and examining the physical evidence. They are in a much better position to determine the credibility of the evidence. Thus, the appellate court will not overturn findings of fact unless it is firmly convinced that a mistake has been made and that the trial court's decision is clearly erroneous or "arbitrary and capricious." The arbitrary and capricious standard means the trial court's decision was completely unreasonable, and it had no rational connection between the facts found and the decision made.

When it comes to questions of law, the appellate courts employ a different standard of review called de novo review. De novo review allows the appellate court to use its own judgment about whether the trial court correctly applied the law. Appellate courts give little or no deference to the trial court's determinations and may substitute their own judgment on questions of law. Questions of law include the interpretation of statutes or contracts, the constitutionality of a statute, and the interpretation of rules of criminal and civil procedure. Trial courts presume that laws are valid and do not violate the constitution, and the burden of proving otherwise falls on the defendant. However, trial courts sometimes get it wrong. Appellate judges are perhaps in a better position to decide the law than the trial judge. They are not faced with the fast-pace of the trial and have the time to research and reflect.

Sometimes the trial court must resolve a question in a case that presents factual and legal issues. For example, when the police stop and question a suspect, there may be both legal and factual questions. One legal question is whether the police had reasonable suspicion for the stop. A factual question is whether police read the suspect the required warnings.

# 7.6.3 Various Appellate Opinions

In most appeals filed in the intermediate courts of appeal, the appellate panel will rule without a written opinion stating why it ruled as it did. The position and decision by the majority of the panel (or the entire court when it is a supreme court case), is called the **majority opinion**.

When appellate court judges disagree, they may issue one of the following written statements about why they disagree with the majority opinion:

- **Concurring opinion**: a statement where the judge agrees with the result reached in the majority opinion but not the reasoning.
- **Dissenting opinion**: a statement where the judge disagrees with the results and votes against the majority opinion.
- **Per curiam opinion**: an unsigned statement or a court opinion issued in the name of the court rather than specific judges.
- **Plurality opinion**: a statement where not enough justices agree on the result for the same reason; a plurality opinion controls only the case currently being decided by the court and does not establish a precedent that judges in later similar cases must follow.
- **Federal Appellate Review of State Cases**: Through petitions for writ of certiorari, the U.S. Supreme Court can review cases from the state courts. The Court will generally accept review when the cases involve the federal constitution. The U.S. Supreme Court in Michigan v. Long, 463 U.S. 1032, at 1040-1041 (1983), explained when the Court will "weigh in" on a state court matter. It held, "When . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, (Michigan v. Long, 463 U.S. 1032, at 1040-1041 (1983)."

In this section, we have looked at the process and activities through which the courts help to facilitate appeals of cases. This is so vital to the justice and fairness that must be guaranteed in the justice system. Without this carefully laid out appeals process, the lower courts will be free to commit serious errors that could destroy public confidence in the entire justice system.

## 7.6.4 Licenses and Attributions for The Appellate Process

# 7.7 COURTROOM PLAYERS: JUDGES AND COURT STAFF

In their 1977 book, *Felony Justice: An Organizational Analysis of Criminal Court*s, James Eisenstein and Herbert Jacob, coined the term "**courtroom workgroup**" (Eisentstein & Jacob, 1977). They specifically referred to the cooperative working relationship between prosecutors, defense attorneys, and judges in working together to efficiently resolve cases in the criminal courts. This chapter generally uses courtroom workgroups to include all the individuals working in criminal courts—judges, attorneys, and other court staff. In figure 7.13, the judge is shown sitting on an elevated platform. This physical elevation helps to illustrate that the Judge is the most powerful member of the courtroom workgroup.

Figure 7.13. Hennepin County Judge Jeannice Reding presides over a motion hearing in Hennepin County District Court, Minneapolis, Minnesota.

The accusatory phase (the pretrial phase) and adjudicatory phase (the trial phase) of the criminal justice process include individuals who regularly work together in the trial courts:

- The prosecutor files the accusatory instrument, sometimes called an indictment. They then represent the state in plea bargaining, on pretrial motions, during the trial, and in the sentencing phase.
- The defense attorney represents the defendant after charges have been filed, through the pretrial process, in a trial, and during sentencing, and maybe on the appeal process.
- Judges, aided by several court personnel, conduct the pretrial, trial, and sentencing hearings.

Prosecutors, defense counsel, and judges perform different roles, but all are concerned with the judicial process and the interpretation of the law. These law professionals are graduates of law schools and have passed the bar examination establishing their knowledge of the law and their ability to do legal analysis. As members of the state or federal bar associations, they are subject to the same legal codes of professional responsibility, disciplinary rules, and ethical rules and opinions for lawyers. Although the American criminal justice system is said to represent the adversarial model, the reality is that prosecutors, defense attorneys, judges, and court staff work with cooperation and consensus rather than conflict. This is understandable when considering the common goal of efficient and expedition case processing.

## 7.7.1 Trial Judges

Trial court judges are responsible for presiding over pretrial, trial, and sentencing hearings, as well as probation and parole revocation hearings. They issue search and arrest warrants, set bail or authorize release, sentence offenders, engage in presentence conferences with attorneys, and work with court clerks, bailiffs, jail staff, and others. Trial judges have considerable, but not unlimited, discretion. In addition to the ethical and disciplinary rules governing all attorneys in the state, trial judges are subject to judicial codes of conduct. Judges are bound by the applicable rules of law when deciding cases and writing their legal opinions. Some rules governing judges are flexible guidelines, while others are precise requirements.

During the pretrial phase, judges make rulings on the motions brought before the court. These rulings include motions or requests to exclude certain evidence, to require important information, and to change the venue or location of the trial. Because most cases are resolved before trial through plea-bargaining, one important judicial function is taking the defendant's guilty plea.

If a defendant chooses to give up (or waive) their right to a trial by jury, they receive a bench trial. In a **bench trial**, the judge hears and decides the case as the sole "trier of facts." Like jurors in a **jury trial**, the judge has considerable discretion or authority when deciding what facts were proven (or not) by the parties. The judge also decides the credibility of witnesses. If the defendant chooses a jury trial instead, the jury decides what the facts are. In either a bench or jury trial, the trial judge rules on whether any of the evidence—that is, whether a jury is entitled to hear certain testimony or look at physical evidence. The judge also decides whether witnesses are competent, whether privileges exist, whether witnesses qualify as experts, whether jurors will be excused

from jury service, and so forth. At the end of the jury trial, the judge gives a set of jury instructions to the jurors, which informs them on the law that applies to the case they are deciding.

If the defendant is convicted, then the judge will impose the sentence. Except for death penalty cases, jurors are generally not involved with sentencing the defendant. Judges have perhaps the broadest discretion in their role of imposing sentences. However, with more states enacting mandatory minimums and sentence guidelines, judicial discretion has been severely curtailed.

### 7.7.1.1 Trial Judge Selection and Qualifications

The sole qualification to be a judge in most jurisdictions is a degree from a law school and membership in the state's bar association. State procedures in selecting judges vary tremendously, but the main differences are whether judges are elected, appointed, or selected based on merit. Four primary methods are used to select judges in the United States:

1. By appointment, with or without confirmation by another agency.
2. By partisan political election.
3. By nonpartisan election.
4. By a combination of nomination by a commission, appointment, and periodic reelection (the Missouri Plan).

The length of time a judge will "sit," called a term in office or tenure, varies greatly, generally from four to sixteen years. Frequently, the term for a trial judge is less than that of appellate judges. At the appellate level, six years is the shortest term. A few states have lifetime tenure for judges.

## 7.7.2 Judicial Clerk, Law Clerk, and Judicial Assistants

Generally, judges have one or two main assistants. These individuals are known as judicial clerks, clerks of court, law clerks, or judicial assistants. There may be several court clerks who interact each day with all the judges in the courthouse. The clerk of court works directly with the trial judge and is responsible for court records and paperwork both before and after the trial. Usually, each judge has their own clerk. The clerk prepares all case files that a judge will need for the day. During hearings and the trial, these clerks record and mark physical evidence introduced in the trial, swear in the witnesses, administer the oath to the witness, take notes cataloging the recordings, and so forth. In some jurisdictions, law clerks are lawyers who have just completed law school and may have already passed the bar exam. In other jurisdictions, the law clerks are not legally trained but may have specialized paralegal or legal assistant training.

## 7.7.3 Local and State Trial Court Administrators

Local and state trial court administrators oversee the administration of the courts. These administrators' responsibilities include hiring and training court staff such as clerks, judicial assistants, and bailiffs. ensures that the court caseloads are efficiently processed while keeping records and sending case files to reviewing courts. Court administrators also verify that local court rules are being implemented and work with the local and state bar associations. This collaboration is done through effective communications to promote the expedient resolutions of civil and criminal cases.

## 7.7.4 Indigency Verification Officers

The Indigency Verification Officer (IVO) is a court employee who investigates defendants' financial status and determines whether they meet the criteria for court-appointed counsel or attorney. A **court-appointed attorney** is a lawyer selected by the court to represent an indigent defendant. Many individuals accused of a crime qualify as indigent—someone unable to afford a lawyer. Qualification for a court-appointed attorney varies from place to place. One difficulty in qualifying is having equity in a home that cannot be easily sold quickly enough to hire an attorney. Another difficulty for the IVO is getting information from defendants who may have mental health conditions.

## 7.7.5 Bailiffs

Bailiffs are the court staff responsible for courtroom security. Bailiffs are often local sheriff deputies or other law enforcement officers. But they can also be civilians hired by the court. Sometimes, bailiffs can be volunteers. Bailiffs work under the supervision of the trial court administrator. During court proceedings, bailiffs or clerks call the session to order and announce the judge's entry. They ensure that public spectators remain orderly, keep out witnesses who might testify later, and attend to the jurors. As courtroom security becomes a bigger concern, law enforcement officers are increasingly used as bailiffs. They are responsible for the safety of the court personnel, spectators, witnesses, and parties. In some communities, law enforcement bailiffs may transport in-custody defendants between the jail and the courthouse. In most jurisdictions today, bailiffs screen people for weapons and require them to silence cell phones before entering the courtroom.

## 7.7.6 Jury Clerk

The jury clerk sends out jury summons to potential jurors and works with jurors' requests for postponements

of jury service. They coordinate with the scheduling clerk to ensure enough potential jurors show up at the courthouse for trials (figure 7.14). They also schedule grand jurors and arrange payment to jurors for their service. In some cases, the judge might decide to sequestrate the jury, meaning that the jury must be isolated to avoid any outside influence. During jury sequestrations, the clerks arrange lodging and meals for jurors.

Figure 7.14. The jury clerk coordinates with the scheduling clerk to ensure enough potential jurors show up at the courthouse for trials.

## 7.7.7 Court Clerks and Staff

Court structure varies by courthouse, but frequently court staff is divided into units. For example, staff may be assigned to work in the criminal unit, the civil unit, the traffic unit, the small claims unit, the juvenile unit, the family unit, or the probate unit. Smaller communities may have just a few court clerks who "do it all." With the trend towards specialized courts (drug, mental health, domestic violence, and veteran courts), staff may specialize in and/or rotate in and out of the various units. Court staff is expected to know local court rules, protocols, statutes, and administrative rules. These rules involve filing processes, filing fees, filing timelines, accounting, record maintenance, and a knowledge of general office established practices. Court staff order supplies, master office machinery, and follow safety protocols. Due to the COVID-19 pandemic, many courts

transitioned to electronic filing of all documents, usually managed through a centralized state court system. Court staff work with the filing software, keep up with new filings, and archive past court documents.

## 7.7.8 Release Assistance Officers

Release assistance officers (RAOs) are court employees who meet with defendants at the jail. They gather information to pass on to the judge, who makes release decisions. RAOs make their recommendations based on the defendant's likelihood of reappearance. They make other considerations specified by statute or local rules. In determining whether the defendant is likely to reappear, the RAO considers the defendant's ties to the community and their prior record of failures to appear. They also look at the defendant's employment history, whether the defendant lives in the community, the nature and seriousness of the charges, and any potential threat the defendant may present to the community.

The available space at the jail may also play a role in whether an individual is released. Court and jail staff may need to work together to establish release protocols when space is limited. The RAO should have a significant voice in drafting those protocols. The RAO may recommend security (bail) or conditional release. They will generally suggest to the judge the conditions the defendant should abide by to make bail or be conditionally released. Defendants released before trial will sign release agreements indicating the conditions of release recommended by the RAO and imposed by the judge. RAOs may also investigate the defendant's proposed living conditions upon release to ensure that they promote lawful activity and the ability to reappear for all scheduled court appearances.

## 7.7.9 Scheduling Clerk

The scheduling clerk, or docketing clerk, sets all hearings and trials on the court docket. The scheduling clerk notes the anticipated duration of trials, speedy trial constraints, statutory and local court rules, time frames, and more. Effective scheduling clerks contribute to the overall efficiency of the legal process. Part of scheduling is keeping track of law enforcement officers and defense attorneys' scheduled vacations. The scheduling clerk must track the judges' calendars, scheduled vacation time and training days, and desk time for resolving cases they have taken under advisement.

## 7.7.10 Licenses and Attributions for Courtroom Players: Judges and Court Staff

# 7.8 COURTROOM PLAYERS: PROSECUTORS

A **prosecutor** is a public official and lawyer who brings a legal case against a suspected offender. Prosecutors play a pivotal role in criminal justice and work closely with law enforcement officials, judges, defense attorneys, and probation and parole officers. They also work with victims' services, human services, and, to a lesser extent, with jail and other corrections officers. The authority to prosecute is divided among city, state, and federal officials. City and state officials are responsible for prosecutions under local and state laws, and federal officials for prosecutions under federal law.

## 7.8.1 Prosecutor's Function

Figure 7.15. Former San Francisco District Attorney and current U.S. Vice President Kamala Harris speaking at an event in 2010.

Prosecutors guide criminal investigations and work with law enforcement to procure search and arrest warrants. Following an arrest, prosecutors continue to be involved with various aspects of the investigation. A prosecutor's roles include meeting with the arresting officers, interviewing witnesses, visiting the crime scene, reviewing the physical evidence, determining the offender's prior criminal history, and making bail and release recommendations. They appear on pretrial motions, initiate pleas, propose diversions, extradite offenders, present to a grand jury, call witnesses, and conduct the trial. They also make sentencing recommendations. In many communities, the prosecutor is the spokesperson for the criminal justice system.

The American Bar Association (ABA) standards indicate that "the prosecutor's [ethical] duty is to seek justice." This standard means that the state should not go forward with prosecution if there is insufficient evidence of the defendant's guilt or if the state has "unclean hands," which might mean illegally conducted searches or seizures or illegally obtained confessions. Ethical and disciplinary rules of the state bar associations govern prosecutors who must follow state and constitutional directives when prosecuting crimes.

## 7.8.2 State Prosecuting Attorney

Prosecutors represent the citizens of the state, not necessarily a particular victim of a crime. States vary in how they organize the groups of attorneys hired to represent the state's interest. The official with the primary responsibility for prosecuting state violations is the local prosecutor. They are referred to as the district attorney, county attorney, or state's attorney. Local prosecutors are usually elected from a single county or a group of counties combined into a prosecutorial district. In many states, the state attorney general's office has the authority that trumps the local prosecutors' authority, but in practice, the state attorney general rarely intervenes in local matters.

Generally, assistant prosecutors, called deputy district attorneys, are hired as "at will" employees by the elected district attorney. Historically, the applicant's political party was a key criterion, and newly elected prosecutors would make a virtual clean sweep of the office and hire outsiders from the former office. Now, most offices hire on a nonpartisan, merit-oriented basis. Most states require that the prosecutor be a member of the state bar.

## 7.8.3 Federal Prosecuting Attorney

Prosecutors in the federal system are part of the U.S. Department of Justice and work under the Attorney General of the United States. The Attorney General does not supervise individual prosecutors and relies on the 94 U.S. Attorneys, one for each federal district. U.S. Attorneys are given considerable discretion, but they must operate within general guidelines prescribed by the Attorney General. The U.S. Attorneys have several Assistant U.S. Attorneys who do the day-to-day prosecution of federal crimes. For certain types of cases, approval is needed from the Attorney General or the Deputy Attorney General in charge of the Criminal Division of the Department of Justice. The Criminal Division of the Department of Justice (DOJ) operates as the arm of the Attorney General in coordinating the enforcement of federal laws by the U.S. Attorneys.

## 7.8.4 Selection and Qualifications of Prosecutors

Most local prosecuting attorneys are elected in a partisan election in the district they serve. State attorney

generals may also have significant prosecutorial authority. They are elected in forty-two states, appointed by the governor in six states, appointed by the legislature in one state, and appointed by the state supreme court in another. State attorney generals serve between two to six-year terms, which can be repeated. Federally, senators from each state recommend potential U.S. Attorney nominees who are then appointed by the President with the consent of the Senate. U.S. Attorneys tend to be of the same political party as the President and are usually replaced when a new President from another party takes office.

## 7.8.5 Licenses and Attributions for Courtroom Players: Prosecutors

# 7.9 WHEN DOES A DEFENDANT HAVE THE RIGHT TO ASSISTANCE OF AN ATTORNEY?

An important question for the courts is determining the right time and stage for the defendant to be assisted. Some stages in the process are presumed to be more important than others. This section will examine when assistance is needed from attorneys. Ideally, a defendant would retain a lawyer at every stage, but cost is a factor worthy of consideration.

## 7.9.1 Critical Stages of Criminal Justice Process

In White v. Maryland, 373 U.S. 59 (1963), the Court found that defendants are entitled to counsel at any critical stage of the proceeding. This is defined as a stage in which the defendant is compelled to make a decision that may later formally be used against them. The Court has found the following court procedures to be critical stages:

- The initial appearance in which the defendant enters a nonbinding plea–White v. Maryland, 373 U.S.59 (1963).
- A preliminary hearing–Coleman v. Alabama, 399 U.S. 1 (1970).
- A lineup that includes a previously indicted defendant–Wade v. United States, 388 U.S. 218 (1967) and Gilbert v. California, 388 U.S. 263 (1967).

## 7.9.2 During Other Proceedings

The Court has extended the right to counsel to psychiatric examinations, juvenile delinquency proceedings (*In re Gault*, 1967), civil commitments proceedings (Stefan S., 1985), and probation and parole hearings (see below). Further, the court in Estelle v. Smith, 451 U.S. 454 (1981), held that a defendant charged with a capital crime and ordered by the court to be examined by a psychiatrist to evaluate possible future dangerousness was entitled to consult with counsel. Similarly, in Satterwhite v. Texas, 486 U.S. 249 (1988), the Court found prejudicial error occurs when defense counsel was not appointed to represent a defendant subjected to a psychiatric evaluation. The Court further held that counsel must be made aware of the projected psychiatric evaluation before it occurs.

## 7.9.3 During Probation and Parole Revocation Hearings

In Mempa v. Rhay, 389 U.S. 128 (1967), 17-year-old Jerry Douglas Mempa was placed on probation for two years after he pleaded guilty to "joyriding." About four months later, the prosecutor moved to have the petitioner's probation revoked, alleging that Mempa had committed a burglary while on probation. Mempa, who was not represented by counsel at the probation revocation hearing, admitted being involved in the burglary. The court revoked his probation based on his admission to the burglary. The U.S. Supreme Court held that Mempa should have had counsel to assist him in his hearing.

Five years later, in Gagnon v. Scarpelli, 411 U.S. 778 (1973), the state sought to revoke the defendant's probation. Originally, Gagnon was sentenced to fifteen years of imprisonment for armed robbery, but the judge suspended the sentence's imposition and placed him on seven years of probation instead. The Court found that the probation revocation hearing did not meet due process standards. Because a probation revocation involves a loss of liberty, the probationer was entitled to due process. The Court did not adopt a rule that all probationers must have the assistance of counsel in every revocation hearings but rather stated:

> The decision as to the need for counsel must be made on a case-by-case basis. In every case in which a request for counsel at a preliminary or final hearing is refused, the grounds for refusal shall be stated succinctly in the record. (*Gagnon v. Scarpelli,* 1973)

## 7.9.4 Licenses and Attributions for When Does a Defendant Have the Right to Assistance of an Attorney?

# 7.10 COURTROOM WORKGROUP: DEFENSE ATTORNEYS

There are many different professionals that participate in the important task of mounting a credible defense. Below we examine some of these professionals and their role alongside defense attorneys.

## 7.10.1 Functions of Defense Attorneys

**Defense lawyers** investigate the circumstances of the case, keep clients informed of any developments in the case, and take action to preserve the legal rights of the accused. They're responsible for some decisions, such as which witnesses to call, when to object to evidence, and what questions to ask on cross-examination.. The defendant must make other decisions, most notably after getting advice from the attorney about the options and their likely consequences. Defendants' decisions include whether to plead guilty and forgo a trial, whether to waive a jury trial, and whether to testify on their own behalf.

The ABA Standards relating to the Defense Function established basic guidelines for defense counsel in fulfilling obligations to the client. The primary duty is to zealously advocate or represent the defendant within the bounds of the law. As a zealous advocate, the defense lawyer should be seen as energetic and enthusiastically fighting to protect the rights of the accused. Defense counsel is to avoid unnecessary delay, avoid misrepresentations of law and fact, and avoid personal publicity connected with the case.

## 7.10.2 Privately Retained Defense Attorneys

Individuals accused of any infraction or crime, no matter how minor, have the right to hire counsel and have them appear with them at trial. The attorney must be recognized as qualified to practice law within the state or jurisdiction. Generally, criminal defendants do well to hire an attorney who specializes in criminal defense work. However, because many criminal defendants don't have enough money to hire an attorney, the court will need to appoint an attorney to represent them in criminal cases.

## 7.10.3 Court-Appointed Attorney

Federal and state constitutions do not mention what to do when the defendant cannot afford an attorney.

Initially, the Court interpreted the Sixth Amendment as permitting defendants to hire an attorney to assist them during the trial. Later, the Court held that the Due Process Clause of the Fifth and Fourteenth Amendments includes the right to a fair trial, and a fair trial includes the right to the assistance of counsel. In Powell v. Alabama, 287 U.S. 45, at 58 (1932), the Court concluded that the focus on trial was too narrow. They further emphasized the need for an attorney in every stage of the justice system.

Powell was decided in 1932, and because of television and the multitude of crime drama programs, people probably know more about the criminal justice process than ever imagined by the Powell court. Few nonlawyers know how to conduct themselves at trial, challenge the state's evidence, make evidentiary objections, or file proper pretrial motions with the rudimentary knowledge gained from watching television. One could consult the internet; however, many individuals charged with crimes have limited education and may struggle to distinguish between sources applicable to their case and those that are not.

## 7.10.4 The Right to Counsel in Federal Trials

The Court in Johnson v. Zerbst, 304 U.S. 458 (1938), held that in all federal felonies, trial counsel must represent a defendant unless the defendant waives that right. The Court further held that the lack of counsel is a jurisdictional error that would render, or make, the defendant's conviction void. A court that allows a defendant to be convicted without an attorney's representation has no power or authority to deprive an accused of life or liberty (*Johnson v. Zerbst,* 1938).

Zerbst also established rules for a proper waiver of the Sixth Amendment right to counsel. The court said that it is presumed that the defendant has not waived their right to counsel. For a waiver to be constitutional, the court must find that the defendant knew they had a right to counsel and voluntarily gave up that right, knowing they had the right to claim it. Therefore, if the defendant silently goes along with the court process without complaining about the lack of counsel, their silence does not amount to a waiver. The Court defined waiver as an "intelligent relinquishment or abandonment of a known right or privilege."

In 1945 Congress passed the Federal Rules of Criminal Procedure (FRCP). Rule 44 of the FRCP requires defendants to have counsel or affirmatively waive counsel, either retained or appointed, at every stage of the proceedings from the initial appearance through appeal. This rule was difficult to implement because there was no recognized federal defense bar or federal defense attorneys available or willing to take on appointed cases. So, Congress passed the Criminal Justice Act of 1964, which established a national system for providing counsel to indigent defendants in federal courts.

## 7.10.5 Effective Assistance of Counsel

Defendant's attorneys must provide competent assistance and should not harm the defendant's case by their legal representation. According to McMann v. Richardson, 397 U.S. 759 (1970), the right to counsel means

the right to effective assistance of counsel. The constitutional standard for evaluating effective assistance was determined in Strickland v. Washington, 466 U.S. 688 (1984). The Strickland decision looked at two aspects of the representation to determine whether counsel was ineffective. First, the defense attorney's actions were not those of a reasonably competent attorney exercising reasonable professional judgment. And second, the defense attorney's actions caused the defendant prejudice, meaning they adversely affected the case outcome.

## 7.10.6 Waiving Counsel

Sometimes, a defendant wishes to waive counsel and appear pro se, which means to represent oneself at trial. In Faretta v. California, 422 U.S. 806 (1975), the Court held that the Sixth Amendment includes the defendant's right to represent themself. The Faretta Court found that where a defendant is adamantly opposed to representation, there is little value in forcing them to have a lawyer. The Court stressed that it was important for the trial court to make certain and establish a record that the defendant knowingly and intelligently gave up their rights (*Faretta v. California,* 1975).

## 7.10.7 Licenses and Attributions for Courtroom Workgroup: Defense Attorneys

# 7.11 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND THE COURTS

Crime Prevention Science (CPSc) solutions represent important scientific findings that benefit the U.S. criminal justice system. Yet CPSc solutions are mostly overlooked in the academic scholarship of justice studies, as well as in the judicial court programming and practices. This section will highlight some of the CPSc solutions for the courts.

## 7.11.1 The WITS for CPSc Solutions in Courts

Little is known about the willingness to support (WITS) for CPSc solutions in the American courts or judiciary (CrimeSolutions.gov, 2022). For instance, court leaders across America do not necessarily track their own level of WITS for crime solutions. This level of silence regarding the court's WITS for crime solutions has created a policy condition where local judges and key judiciary leaders are free to ignore these crime solutions. However, one important piece of good news is that the WITS for CPSc solutions can be measured and mobilized. In other words, the current silence of court judges and key leaders can be easily broken. One way to end this leadership silence is to conduct a rather simple research survey to measure the WITS of courts and community leaders. For instance, the faculty and students in any criminal justice course can collaborate to interview their local court judges. If they do so, they will perhaps discover the level of WITS for crime solutions in their courts for the first time. If the judges express high levels of WITS, the faculty and students can partner with their courts to pilot some of the crime solutions already available for the courts.

This service learning and community engagement research activity might seem simple. But it might also have the potential to significantly increase the willingness to support (WITS) for crime solutions in any court. It should be noted that this example is only one of many opportunities to measure and mobilize the WITS in every court. Below is a table that highlights some of the CPSc solutions that courts can choose to implement.

## 7.11.1.1 Table 7.3. Crime Solutions for Courts.

| Title and Evidence Rating | Summary Description of CPSc Solutions |
|---|---|
| **Program Profile: Adolescent Diversion Project (Michigan State University)** | This is a strengths-based, university-led program that diverts arrested youth from formal processing in the juvenile justice system and provides them with community-based services. This program is rated Effective. |
| **Program Profile: Juvenile Breaking the Cycle (JBTC) Program (Lane County, Oregon)** | Using comprehensive assessments, the program identified, provided, and coordinated individualized services for high-risk, drug-involved, justice-involved juveniles. This program is rated Effective. |
| **Program Profile: Multnomah County (Ore.) Sanction Treatment Opportunity Progress (STOP) Drug Diversion Program** | This is a drug court program that focuses on providing treatment services for offenders facing first-offense drug charges. The program is rated Effective. |

## 7.11.2 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and the Courts

# 7.12 CONCLUSION

As seen in this chapter the courts is one of three main branches of the U.S. criminal justice system. By examining the structure and role of the courts within the system and the requirement of jurisdiction we have learned more about how it functions. An overview and understanding of court traditions, jurisdictions, roles, and practices were tied to basic understanding and an introduction to the entire system.

## 7.12.1 Learning Objectives

1. Describe how a crime/criminal case proceeds from the lowest level trial court up through the U.S. Supreme Court. (i.e., students should understand the hierarchy of the federal and state courts).
2. Describe the function and selection of state and federal trial and appellate judges in the American criminal justice system.
3. Discuss the function and selection of state and federal prosecutors in the American criminal justice system.
4. Explain the role of the criminal defense attorney in the American criminal justice system and at what stage a court-appointed attorney may be needed.
5. Discuss Crime Prevention Science (CPSc) Solutions and how this impacts the effectiveness and efficiency of the courts DEI goals.

## 7.12.2 Review of Key Terms

- appeals of right
- appellant (petitioner)
- appellate courts
- appellee (respondent)
- bench trial
- case
- court of last resort
- court-appointed attorney
- courtroom workgroup
- courts
- courts of general jurisdiction
- courts of limited jurisdiction
- defense lawyers
- dual court system
- jurisdiction
- jury trial
- majority opinion
- opinions – concurring, dissenting, per curiam, plurality
- original jurisdiction
- petition for the writ of certiorari (rule of four)
- petitions for writs of habeas corpus
- principle of orality
- prosecutor
- standard of review
- trial courts
- U.S. Court of Appeals
- U.S. District Courts
- U.S. Magistrate Courts
- U.S. Supreme Court

## 7.12.3 Review of Critical Thinking Questions

Now that you've read the chapter, answer these questions to assess how much you've learned:

1. Knowing what happens at trial and what happens on appeal, would you be more interested in being a trial judge or an appellate judge? Why?
2. Why is there a different standard of review for questions of fact and questions of law?
3. Do you agree that cases should be overturned only when there was a fundamental or prejudicial error that occurred during the trial?
4. Do you think it is easier to be a defense attorney than a prosecutor believing the defendant is guilty but knowing that the justice system has violated the defendant's rights?
5. Should the defendant ever waive the assistance of counsel?
6. Is there any position as a court staff that particularly interests you? Why?

## 7.12.4 Licenses and Attributions for Conclusion

# 7.13 REFERENCES

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# 7.14 CHAPTER 7 FEEDBACK SURVEY

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# CHAPTER 8: CORRECTIONS

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 8.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

This chapter focuses on the field of incarcerated corrections, specifically on the basic concept of punishment, where it comes from, and the different ideologies of why and how people are punished. After overviewing punishment, we will discuss the emergence of prisons and jails in the U.S. and compare how the design and supervision styles of these facilities serve different purposes. We will break down the differences in incarcerated populations, facility levels, and governance between jails, state prisons, federal facilities and privatized prisons. Finally we will review correctional support for Crime Prevention Science solutions and learn more about the role of a corrections officer.

**Author's Note** – To be noted in this chapter, the term individual or person has been used throughout the sections to bring attention to the real people who have found themselves within the justice system and have and are experiencing the ups and downs of this system. This was done to be mindful and respectful of them as individuals. Oregon recently legally changed these terms to no longer refer to individuals who are incarcerated as inmates or prisoners but instead to refer to them as Adults in Custody (AICs) or Youth in Custody (YICs). Many organizations across the nation have also turned to using terms like Justice-Involved Individuals (JIIs), allowing for these titles to be temporary based on the state the individual is in during their involvement with the system and not a permanent negative label. There are places (specifically within cited works) though where the terms inmate, offender, prisoner, probationer, parolee, have been used, but only where needed for clarity purposes or to note a cited work or resource which used the term in their title or description. As this text was being written, it was extremely important to the authors to make this distinction and in every way possible to use these terms in a respectful and professional way.

## 8.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Analyze where the basic concept of punishment comes from and compare the different

ideologies of why and how people are punished.
2. Relate global ideas around punishment to the emergence of prisons and jails in the U.S.
3. Compare the design structure and supervision style of facilities.
4. Describe differences in incarcerated populations, facility levels, and governance between jails, state prisons, federal facilities and private prisons.
5. Investigate correctional support for crime prevention science solutions.

## 8.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- correctional facility
- corrections officer
- deterrence
- facility design-linear
- facility design-podular
- incapacitation
- jail
- prison
- punishment
- rehabilitation
- retribution
- supervision style-direct
- supervision style-indirect

## 8.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. Why are we more punitive at times than others? What changes our punitive values?
2. What are some of the pros/cons of each of the four correctional ideologies?
3. Does crime change depending on our collective correctional ideology, or practice?
4. Does punishment change, based on our correctional ideology? How?
5. What are some key explanations for the rise in the prison population in the U.S.?
6. Explain the operational process of most jails in the United States today. Where does this come from historically?
7. How does the difference in the type of jail influence how the jail is managed?
8. Explain the similarities and differences in the two early types of prisons in the United States.
9. Explain the current operational process of most State prisons in the United States today. Where does this come from historically?

## 8.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 8.2 PHILOSOPHIES OF PUNISHMENT

This section will highlight the history and function of the corrections in the justice system. It will relate the three current goals of corrections, which are to:

- punish the offender,
- protect society, and
- rehabilitate the offender.

Within these goals, it will look at and compare the philosophies of punishment over time and how ideologies have changed a result. The section wraps up with a comparison of the eras of corrections.

## 8.2.1 A Brief History of Punishment

Feeling safe and secure in person and home is arguably one of the most discussed feelings in our nation today. The fear of crime influences how we think and act day to day, and has throughout our history. This has caused great fluctuation in the United States in regards to how we punish people who are convicted of violating the law. **Punishment** is a penalty imposed on an individual convicted of a crime or law violation. This comes, in part, from the will of the people, which is then carried out through the legislative process, and converted into sentencing practices. People have differing views, or ideologies, on why others should be punished, and how much punishment they should receive. In this section, we will dive into a brief history of these ideologies and the various eras related to corrections. These correctional ideologies, or philosophical underpinnings of punishment, have been prevalent throughout the history of the United States and they have been imposed by governments and societies worldwide since the beginning of humankind as a way to uphold justice and impose punishment. This section details basic concepts of some of the more frequently held punishment ideologies, which include retribution, deterrence, incapacitation, and rehabilitation.

## 8.2.2 Ideologies of Punishment

Two news stories pop up on your feed. In the first story, a man living in your city is described as a convicted sex offender. His neighbors are picketing in front of his house, voicing their displeasure that he is allowed to live there. The video shows how angry the neighborhood is and you can see the frustration and anger on the people's faces.

The second story is about a woman who was detained for stealing food from a local grocery store, apparently to feed her children. She is shown in the back of a police car. The store manager is interviewed and says he is offering to donate the food to her so that she does not have to spend time in jail or get into any more trouble.

How do these two stories make you feel? Is it the same feeling for each story? Does one of these stories make you feel more afraid of crime? More angry or upset? Which one? Who deserves to get punished more? How much punishment should they get? The answers to questions like these flood our thoughts as we see stories like this, and when we hear about crime, in general. These questions and feelings are normal. It is this process that generates our own personal punishment ideology.

Now, which one of these two individuals has actually committed a crime? Technically, the woman is the person who has broken the law. Our perceptions of punishment can be influenced by the narrative we hear online or from others.

In this section, we will reference forward-looking ideologies and backward-looking ideologies. Forward-looking ideologies are designed to provide punishment, but also to reduce the level of recidivism (reoffending) through some type of change, while the backward-looking approach is solely for the punishment of past actions. The change in ideologies and in how society views punishment is a shift that occurs over time and is impacted by the dominant culture, politics, and even religion.

## 8.2.2.1 Retribution

**Retribution**, arguably the oldest of the ideologies of punishment, is punishment which is imposed on a person as revenge or vengeance for a criminal act and the only backward-looking philosophy of punishment. That is, the primary goal of retribution is to ensure that punishments are proportionate, or equal, to the seriousness of the crimes committed regardless of the individual differences between the offenders and their circumstances, other than mens rea and an understanding of moral culpability. Thus, retribution focuses on the past offense, rather than the individual who offended. People committing the same crime should receive a punishment of the same type and duration that balances out the crime that was committed.

It is argued as the oldest of the main punishment ideologies because it comes from a basic concept of revenge. This concept of vengeance means that if someone perceives harm, they are within their right to retaliate at a proportional level. This idea that retaliation against a transgression is allowable has ancient roots in the concept of *lex talionis*, which is the law of retaliation. A person who injures someone should be punished with a similar amount of harm. This concept was developed in early Babylonian law and around 1780 B.C.E. the Babylonian Code, or the Code of Hammurabi, was written. It is the first attempt at written laws. These laws, pictured in figure 8.1., represent a retributive approach to punishment.

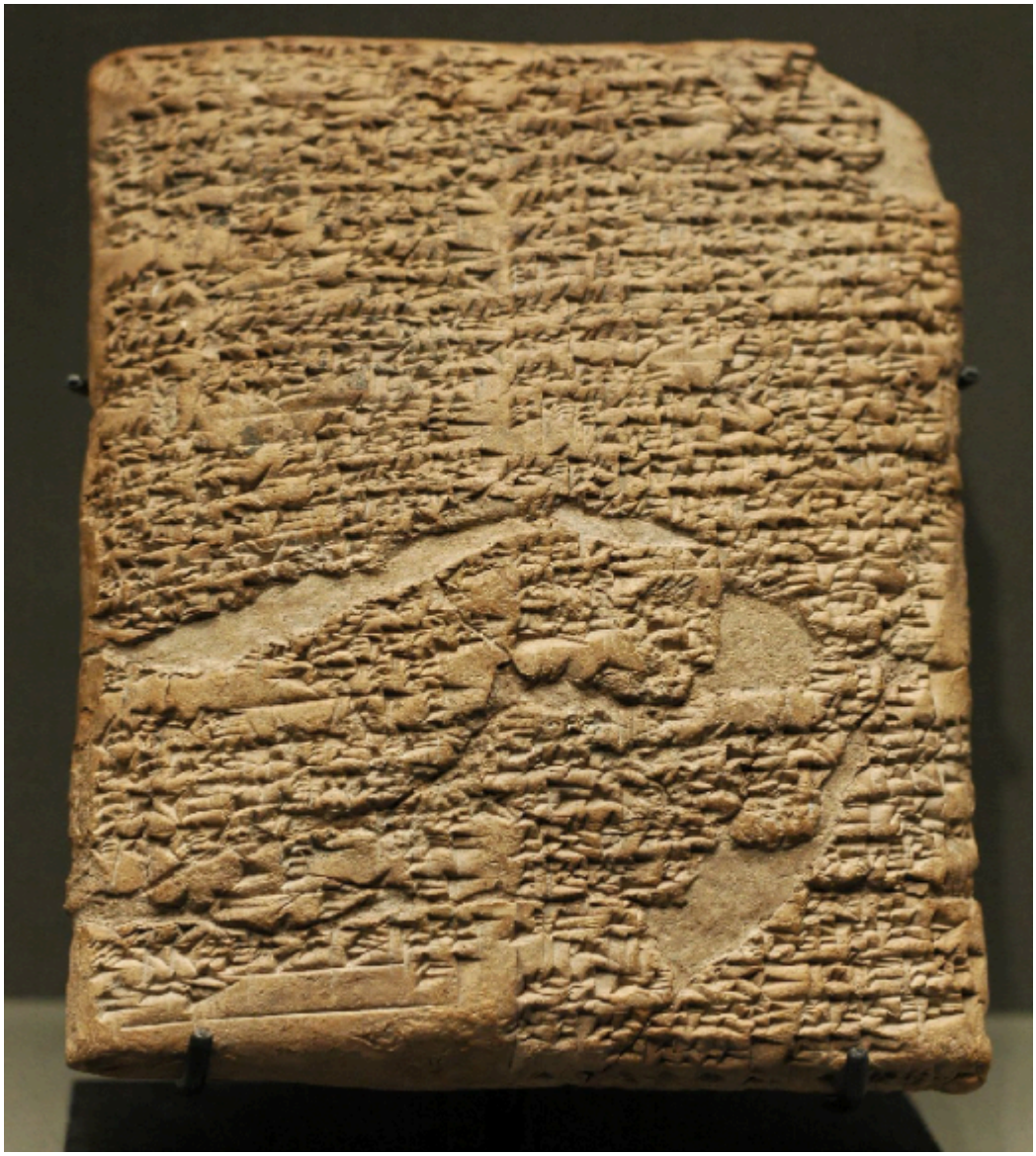


Figure 8.1. The Hammurabi Code.

The retributivist philosophy also calls for any suffering beyond what was originally intended during sentencing to be removed. This is because the dosage of punishment is the core principle of retribution: individuals who commit the same crime must receive the same punishment. The concept of retribution was violent and it laid the foundation for physical punishments to resolve the actions of another. We see this concept still applied today in the imposition of capital punishment, or the death penalty. This is one form of retribution that many U.S. States and the federal government still use today to impose punishment to those who have murdered other individuals. As we continue forward in the history of punishment, we will see some changes to the perceptions of how society reacts to crime. This includes the changing views of punishment, to include punishment ideologies that are more forward-looking.

## 8.2.2.2 Deterrence

From Hammurabi, deterrence is the next major punishment ideology. Rooted in the concepts of classical criminology referenced in Chapter 5, **deterrence** is designed to punish current behaviors, but also ward off future behaviors through sanctions or threats of sanctions. Deterrence can be focused on a group or on one individual. The basic concept of deterrence is to discourage individuals from offending by imposing punishment sanctions or threatening such sanctions.

Deterrence can be split into two distinct categories: general and specific. General deterrence is the idea that when someone commits an offense, they will be punished. In this way, the group imposing the punishment determines the ideals of the community and says that future criminal acts will be punished. Specific deterrence tries to teach the individual a lesson and make them better so that they will not recidivate. By punishing or threatening to punish the individual, it is assumed they will not commit a crime again. This is what makes deterrence a forward-looking theory of punishment.

Some other principles of deterrence to discuss in brief are marginal, absolute, and displacement. Marginal deterrence works on the principle that the action itself is only reduced in amount by the individual committing the offense, not removed completely. For example, if a person sees a police car sitting on the side of the freeway and they are driving 70 mph, they might slow to 58 mph. Technically, they may still be breaking the law, yet their level of criminal behavior has been reduced.

Absolute deterrence believes that by creating a police force, all crime will be removed. Today, we know this is false. There is little to no evidence to support that all crime can be deterred within a specific area or even in general.

Displacement deterrence argues that crime is not deterred, but is shifted by time, location, or the type of crime committed. For example, instead of someone stealing cars on the weekend, they may sell drugs during the day. Although the weekend crime carjacking rate would decrease in this scenario, the daily drug trade would increase.

In order for all of these principles of deterrence to work, the society must have an idea of the level of punishment they will receive. For this theory to be effective, individuals must have three key elements: free will, rationality, and felicity. Free will means that everyone has the ability to make choices about their future actions, like choosing when to offend and not to offend. They must also have some ability to think rationally and to see what the outcomes of their choices will be. Felicity is the idea that they must desire more pleasurable things than harmful ones. Thus, it is more probable that crime will be deterred if all three of these elements are in place within a society. This is both a strength and weakness of the deterrence theory.

These concepts, along with the classical criminology concepts discussed in Chapter 5, were cornerstones to the works of Beccaria. Many of his concepts shaped the U.S. Bill of Rights. If deterrence is to work, the ideology of the punishment is what should drive this goal of corrections.

Today, we have a better understanding of the effectiveness of deterrence. It does appear to work for low-level offenses and for individuals who are generally prosocial. However, the overall effect of deterrence is limited.

#### 8.2.2.2.1 Dig Deeper

For more details on deterrence, see the National Institute of Corrections' Five Things About Deterrence.

## 8.2.2.3 Incapacitation

Rooted in the concepts of banishing individuals from society, **incapacitation** is the removal of an individual from society for a set amount of time so they cannot commit crimes. In British history, this often occurred on hulks, as seen in figure 8.2. Hulks were large ships which carried convicted criminals to other places so they would be unable to commit crimes in their community any longer.

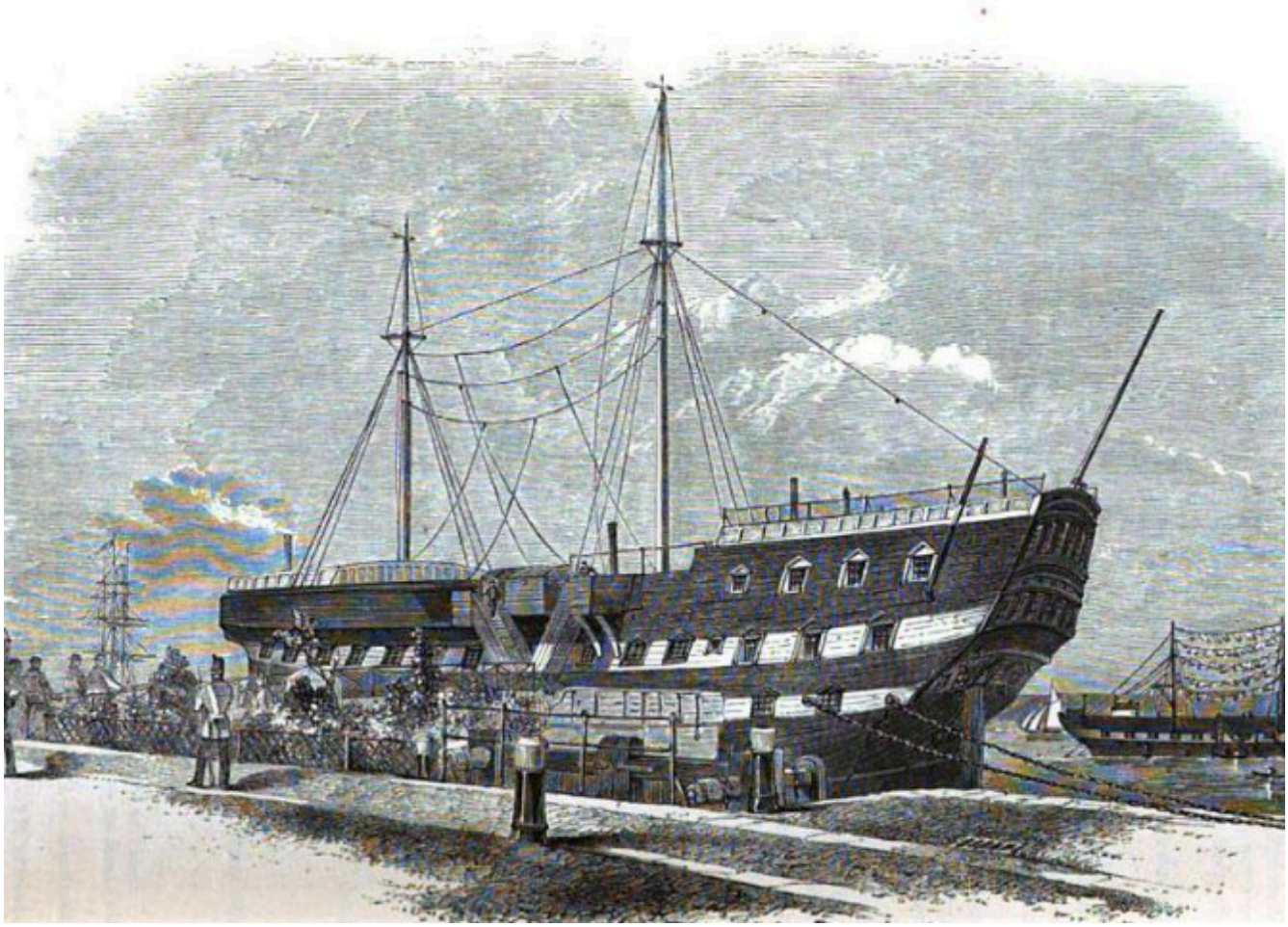


Figure 8.2. The Warrior prison ship.

In the 1970s, punishment became much more of a political topic in the United States, and perceptions of the fear of crime became important. Lawmakers, politicians, and others began to campaign on their toughness on crime, using the fear of crime and criminals to benefit their agendas to impose punitive prison sentences. This is considered collective incapacitation, or the incarceration of large groups of individuals to remove their ability to commit crimes for a set amount of time in the future.

Since this time, and exacerbated in the 1980s and 1990s, there has been the increasing use of punishment by prison sentences. Thus, we saw a 500% increase in the prison population between 1980 and 2020 (Ghandnoosh, 2022). The politicization of punishment increased the overall incarcerated populations in two ways. First, by allowing decision makers more discretion, as a society, we have gotten tougher on crime. In turn, more people are now being sentenced to prison that may have gone to specialized probation or community sanction alternatives otherwise. Second, these same attitudes have led to harsher and lengthier punishments for certain crimes. Individuals are being sent away for longer sentences, which has caused the intake-to-release ratio to change, thus creating enormous buildups of the prison population. We will cover more on this topic in Chapter 9, specifically how these buildups have disproportionately affected minority populations.

The incapacitative ideology followed this design for several decades, but in the early 1990s, three-strike

policies were implemented that would target individuals more specifically based on prior offenses or crimes committed. These selective incapacitation policies would incarcerate an individual for greater lengths of time if they had prior offenses. These policies incarcerated certain individuals for longer periods of time than others, even if they had committed the same crime. Thus, it removed their individual ability to commit crimes in society for greater periods of time as they were incarcerated.

There are mixed feelings about selective and collective incapacitation. Policymakers promote incapacitation by giving examples of locking certain individuals away in order to help calm the fear of crime. Others, like Blokland and Nieuwbeerta (2007), have stated that there is little evidence to suggest that this solves the problem. Selective incapacitation has evolved to include tighter crime control strategies that target individuals who repeat the same offenses. Others opt for tougher community supervision options to keep individuals under supervision longer. In summary, we have seen a shift from collective incapacitation, to a more selective approach.

After learning about retribution, deterrence, and incapacitation, we are left with questions: do they work? And at what cost? Are there other methods that seem the same or are more effective than the ones already in practice? This takes us to the last of the four main punishment ideologies: rehabilitation.

## 8.2.2.4 Rehabilitation

Although not as old as some of the older ideologies, rehabilitation is not a new concept. **Rehabilitation** is the ideology of helping individuals who have committed crimes change their behavior through interventions, treatment, therapy, education, and training in order to help them reenter society.

Rehabilitation has taken different forms in the United States. At one time, society considered people who commit crimes to be out of touch with God. One of America's earliest prisons was designed to enhance incarcerated individuals' connection with God. The Eastern State Penitentiary in Philadelphia, Pennsylvania, opened in 1829 and included outside reflection yards so individuals could look up to God for penance.

### 8.2.2.4.1 Dig Deeper

To see more about this prison, check out The Eastern State Penitentiary.

Reformatories were another type of correctional facility but with a focus on rehabilitation. The reform

movement tried to rehabilitate the individual through more humane treatment, to include basic education, religious services, work experience, and general reform efforts. This was done in an effort to reform individuals, thus allowing them to come back to society. The Elmira Reformatory in Elmira, New York, seen in figure 8.3, was one of the earliest efforts of the reform ideal and many prisons built in the United States were based on this reformatory.

Figure 8.3. The Elmira Reformatory.

Rehabilitation has also included medical approaches. Incarcerated individuals were viewed as sick and in need of medical cures. This medical approach, while less common, is still used in some areas today. As of November of 2021, in the United States six states and one territory included the use of testosterone-inhibiting medications as a treatment for individuals convicted of sex offenses being considered for early release.

Rehabilitation as an ideology has its critics. Many see it as being soft on individuals who have been convicted of committing crimes. There are several examples that suggest rehabilitation is ineffective in some cases. For example in 1974, Robert Martinson reviewed more than 230 programs and concluded that "With few and isolated exceptions, the rehabilitative efforts that have been undertaken so far have had no appreciative effect on recidivism" (p. 25). This report caused many policymakers to turn to more punitive ideologies.. However, it did prompt some researchers to ask more detailed questions about why rehabilitation was not working, including critical questions about measurement of outcomes, evaluation of specific rehabilitative programs, and attempts to understand outcomes for individuals involved in the justice system. The answers to these questions became the principles of effective intervention that are the cornerstone of modern rehabilitation.

Rehabilitation is the only one of the four main ideologies that most comprehensively attempts to address

current goals of corrections: punishing the offender, protecting society, and rehabilitating the offender. Certainly, all four ideologies address the first two goals, punishment and societal protection. However, the goal of rehabilitating the offender is not addressed in retribution, deterrence, or incapacitation. But ignoring rehabilitation comes as a cost. In this chapter's section on jails and prisons, you will read about the challenge of relying heavily on these facilities. About 95 percent of people released from prison had little or no rehabilitative support while incarcerated (Bureau of Justice, 2004). And yet there is the expectation that individuals leaving prisons will not commit crimes in the future.

The question here is this: what have we done to help change them so they are not reoffending? Without the incorporation of some form of rehabilitation, the answer is fairly clear. . . Nothing. Yet, we expect it.

## 8.2.2.5 Understanding Risk and Needs in Rehabilitation

Today's rehabilitative efforts still carry punishment and societal protection as goals, but the focus of rehabilitation is on the changing of individuals' behaviors so that they do not recidivate. To change behavior, corrections professionals need to understand what causes some individuals to be at risk for offending and what causes some individuals to be at higher risk for offending than others. Risk factors include items like prior criminal history, antisocial attitudes, antisocial or procriminal friends, a lack of education, family or marital problems, a lack of job stability, substance abuse, and personality characteristics, like mental health issues and antisocial personality.

While we can't change the number of prior offenses someone already has, all of these other items can be addressed. These are considered as criminogenic needs. **Criminogenic needs** are items that, when changed, can lower an individual's risk of offending. This is a core component of Paul Gendreau's principles of effective intervention, and are at the heart of most modern effective rehabilitation programs (1996). Thousands of individuals have been assessed on these items, which has helped to develop evidence-based rehabilitation practices. When these criminogenic needs are addressed, higher-risk individuals demonstrate positive reductions in their risk to offend.

Cognitive behavioral therapy has been noted as one of the most effective approaches to changing criminogenic needs. Cognitive behavioral therapy is based on the concept that behaviors can be changed by changing thinking patterns behind the behaviors, or before the behaviors are exhibited. Criminal behavior is based on cognition, values, and beliefs that are learned through the interactions and observations of others. This is important when rehabilitating individuals from prison, where antisocial ideas, peers, values, and beliefs may dominate the institution.

### 8.2.2.5.1 Dig Deeper

For a more detailed explanation, please see What is Cognitive Behavioral Therapy?

Today, evidence-based rehabilitative efforts are now used as benchmarks when establishing programs that are seen as effective. Rehabilitation programs that follow principles of effective intervention show that they can achieve the three goals of corrections, punishment, societal protection, and rehabilitation. In fact, there is a department in the National Institute of Justice devoted to these evidence-based practices that evaluates programs to see which are effective and not effective. We will discuss some specific examples of these programs later in this chapter.

## 8.2.3 Eras of Corrections

In the U.S. correctional system, history continues to repeat itself through various eras of corrections. From the late 1700s to the present, policymakers, government officials, and the community-at-large have changed how the system impacted those who have committed crimes or been accused of committing them.

Over the years, these eras have attempted to try and "fix" the system and yet what we see is that issues still remain generation after generation. For example, from 1790–1825 corrections focused on locking individuals up and having them repent before God. When the system moved to a focus on mass incarceration. Later the focus moved to reforming individuals and providing education and work training. When that became expensive, the focus shifted to an industrial era in which incarcerated individuals worked and performed labor and tasks to make the facilities more self-sufficient.

In the last 100 years this cycle from punitive punishment to treatment to community-based to warehousing has come and gone around again, depending on the mindsets of the community and policymakers of the moment. In the next chapter you will learn about how some of these changes have impacted communities. Specifically, you'll learn about how these philosophies of punishment have inequitably impacted communities of color over time, and what that means for the field of criminal justice.

### 8.2.3.1 Dig Deeper

To learn more about how some of these historical eras have impacted certain groups, review the American History, Race, and Prison | Vera Institute article.

## 8.2.4 Licenses and Attributions for Philosophies of Punishment

# 8.3 JAILS

As a part of the growth of punishment and society's desire to remove accused criminals from the community, the "Brick and Mortar" correctional facility was born. These facilities are called by different names, such as jails, detention centers, prisons, penitentiaries, or camps, but their purpose is the same. **Correctional facilities** are secure buildings that are used to house or incarcerate individuals accused of or convicted of criminal offenses. The individual's age, gender, status with the courts, the criminal offense, the jurisdiction, and length of punishment will determine which correctional facility they are housed in. In the coming sections, you will learn about some of these facilities and their role in the criminal justice system.

## 8.3.1 A Brief History of Jails in the United States

A **jail** is a place in which individuals accused or convicted of crimes are held. The concept of a jail was brought from Western Europe when the U.S. criminal justice systems were first formed. Influenced by the county-level establishment and management of jails in England, American facilities have largely been run by county sheriffs and have been called various things depending on their function and use, such as bridewells, and workhouses. Figure 8.5. shows the Walnut Street Jail in Philadelphia, Pennsylvania, which was the first structure built to house individuals who had been processed through the courts. Opened around 1790, this facility housed both pretrial custodies and convicted individuals. It was a blueprint for later prison construction, which we will discuss later in this chapter.

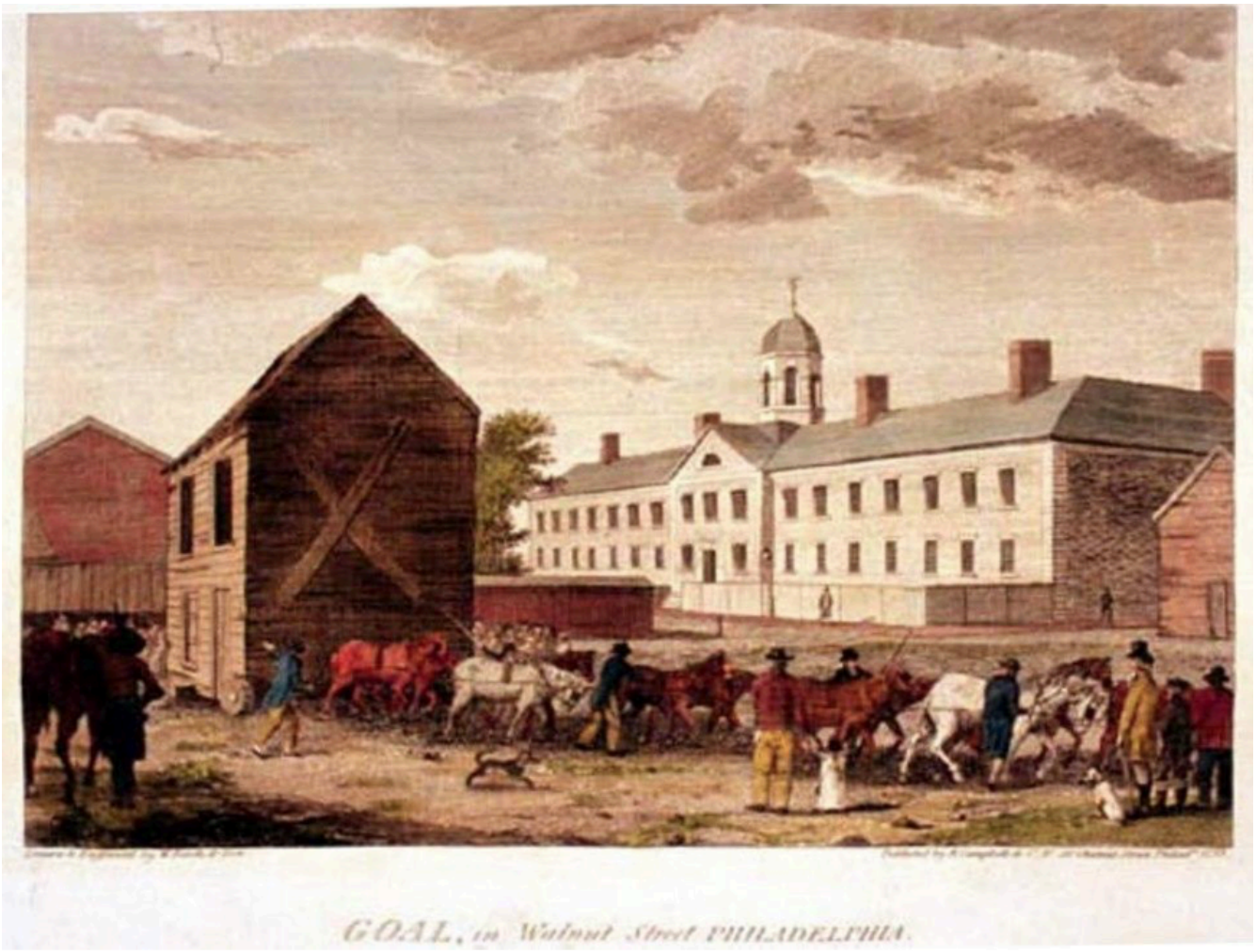



Figure 8.5. Goal in Walnut Street Philadelphia Birch's views plate 24 (cropped).

As the United States' population began to expand, county lines were drawn and county jails flourished. Sheriffs began to police their counties and were responsible for managing the low-level infractions within their jurisdictions. Many jails were nothing more than parts of a sheriff's office, literally cells in the back room. Today, large structures constitute jails in the United States.

While the number of jails in America has changed over the years, in 2019, there were roughly 2,850 jails in the United States according to the Bureau of Justice Statistics (Zeng et al., 2021). Some jails are managed by cities or jurisdictions. For example, Chicago, New York, Philadelphia, and Washington, D.C., all manage their own jails. A growing trend in some areas are the additions of city-run jails in smaller communities as well. One example of this is the city of Springfield, Oregon. In response to the Lane County Jail budget reductions and reduced capacity, Springfield built their own facility and staffed it with certified officers. They hold individuals with lower-level offenses instead of releasing them back into the community prior to their court appearances, as their county jail was having to do.

## 8.3.2 Facility Size, Design and Supervision Models

Jails vary greatly in design, function, and size. The vast majority of jails hold less than 50 individuals. The 50 largest jails hold over half of the total number of individuals incarcerated in the U.S., more than 350,000 individuals (Minton, 2021). One example of these larger jails is the Los Angeles County Jail. It is actually a system of buildings spread across Los Angeles County, including an Inmate Reception Center, Century Regional Detention Facility, Men's Central Jail and the Twin Towers Correctional Facility, just to name a few of their facilities.

Jails also vary in physical design. The two main types of facility design models are the older generation, or linear design, and the newer generation, or podular design. The **linear-design facilities** were built with space efficiency in mind. Made up of long hallways with cells lining the massive corridors, they hold numerous individuals in a small area of space. In larger facilities, multiple floors hold these long corridors, expanding the number of individuals who can be housed there. Figure 8.6. shows the linear style of jail. Although utilizing every square foot of space efficiently for their design, these types of facilities are not as effective in their supervision of the individuals housed within them as the officers and staff are required to travel down the hallways to each individual cell in order to observe and supervise the occupants of the space.

Figure 8.6. Department of Youth Services Facility showing the long linear corridor with cells on either side.

The **podular-design facilities** are built with more of a communal living feel. Multiple cells face toward a central living space, allowing an officer to be in the middle of the unit and see the majority of the occupants of

the cells around them. It also has common-living areas where socialization and supervision can take place, as seen in figure 8.7.


Figure 8.7. Image of a Podular Designed Pod (cropped). In the image, the officer's operational booth or desk (immediate right) is open to access the day area or common area, and the doors of the cells open to the shared space.

Along with the different physical design models there are also different types of supervision styles employed within jail facilities. The two main styles of supervision are direct and indirect supervision. The **direct supervision** style requires an officer to be stationed within the living unit, working with the individuals housed in it, without any barriers. Officers' roles are to interact with the individuals housed in the unit, supervising their daily activities. In the **indirect supervision** style, officers are stationed in a control room or away from the unit, separate from where those housed in the unit are. Officers can visually monitor individuals through glass windowed barriers or surveillance cameras but they have to leave their work station and enter through secured doors to enter and interact with the individuals housed in the unit/cells.

### 8.3.2.1 Dig Deeper

To learn more about these types of facility designs, supervision styles and some pros and cons of each, watch the video from the National Institute of Corrections: NIC—Jails in America: A Report on Podular Direct Supervision.

## 8.3.3 Who Goes to Jail?

One of the more fascinating aspects of jails in the United States is who gets placed in them. The short answer is everyone. Whenever someone is arrested, jail starts their process in the criminal justice system. Jails are a collection point for many agencies, including arrests made by municipal city police, county sheriff's offices, state police, and even federal agencies may use a local jail as a point of entry. For example, Immigration and Customs Enforcement (ICE) houses many thousands of individuals pending immigration related charges in jails across the country. While this list is not comprehensive, it does present many of the types of people held in jails:

- Individuals arrested for felony and misdemeanor crimes
- First-time and repeat offenders
- Individuals awaiting arraignment or trial
- Individuals who are accused and convicted
- Parolees leaving prison
- Juveniles pending transfer
- Individuals with mental illness awaiting transfer
- Chronic alcoholics and drug abusers
- Individuals held for the military
- Individuals held for federal agencies
- Protective custody
- Material witnesses
- Individuals in contempt of court
- Persons awaiting transfer to state, federal or other local authorities

- Temporarily detained persons

At any given point in time, there are approximately 650,000 to 750,000 individuals held in jails in the United States. This number has steadily increased since the 1970s. It is estimated that roughly 10 million people process through America's jails annually (Sawyer & Wagner, 2022). As shown in figure 8.8, the types of people in jail at a single point in time is varied.

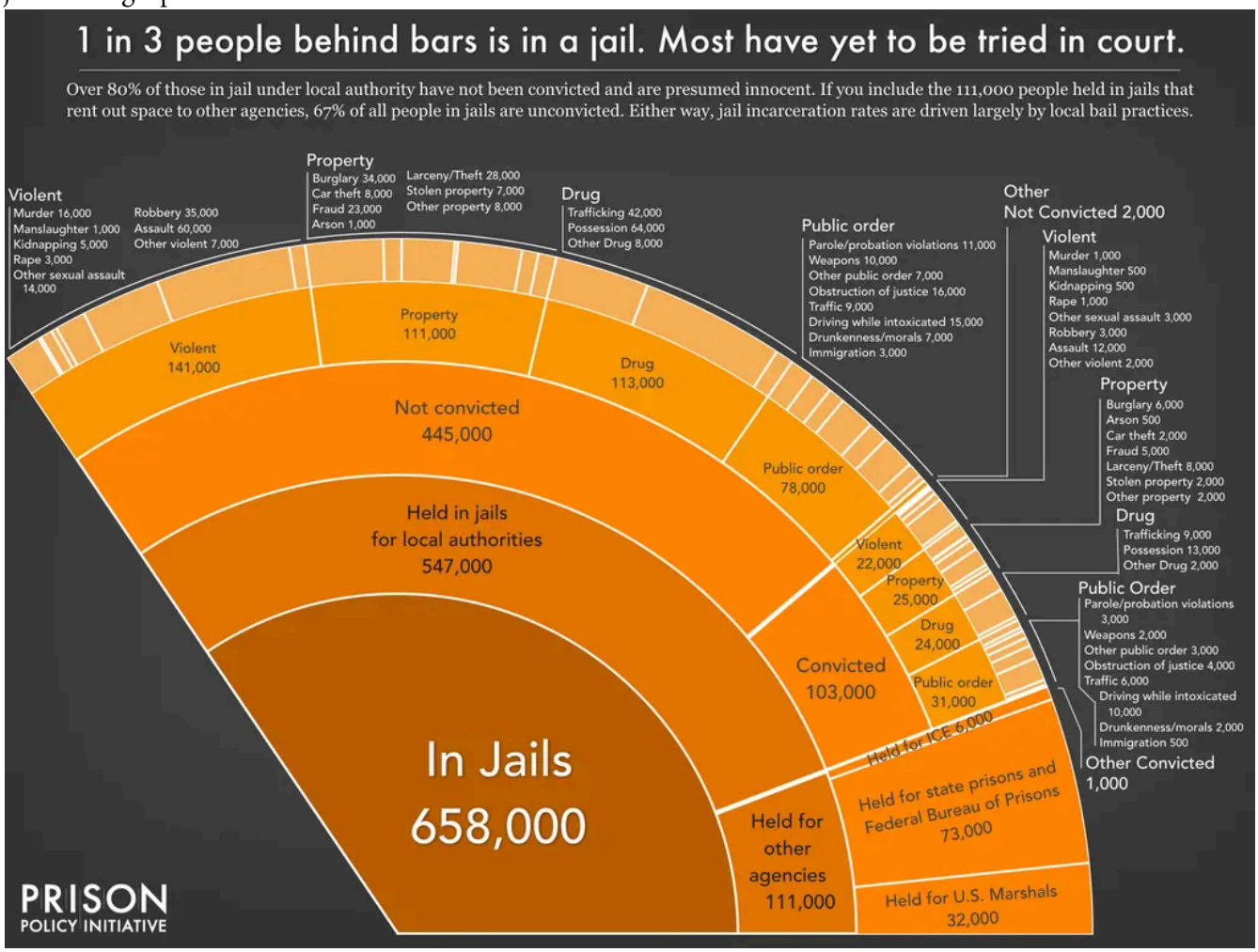



Figure 8.8. Graph breaking down the various individuals held within the Jail population.

Probably one of the most notable items in the snapshot above is the proportions of individuals that are not convicted. Roughly 68 percent of individuals in jails at any given time are not convicted. Other notable groups are individuals held for other agencies. This could be a matter of processing time or allocations of bed space. Still, jails only make up one portion of the brick-and-mortar approach to punishment. Prisons are the other large part.

# 8.3.4 Life and Culture in Jail

With the rise of popular television series like *60 Days In*, the view of everyday life inside the walls of a jail can be skewed. Jails stick to a daily schedule of serving meals and managing unit activities for those who are eligible including cleaning shared and individual spaces, recreation time, attending court appearances, programs, and work or educational opportunities. The majority of individuals inside the walls follow the daily routine and take advantage of telephone calls, visiting opportunities and recreation privileges, while others choose to remain in their cells the majority of the day and read books, write letters, or sleep. The intake, behavioral health, and segregation units are the areas which see the most activity. Individuals still under the influence of substances or struggling with mental health issues can be found, at times, yelling out of their individual cells at those in the surrounding areas.

## 8.3.4.1 Rights and Privileges

Individuals housed in jails maintain some rights and are afforded some privileges but not as many as those housed in prisons. They have constitutional rights to be free from discrimination, to access the courts and counsel, of speech, of religious freedom when it doesn't impede safety and security, to due process, and to be protected from cruel and unusual punishment. They are also entitled to protections under the Americans with Disabilities Act and, in some cases, the Rehabilitation Act of 1973.

### 8.3.4.2 Dig Deeper

To learn more about individuals rights of those incarcerated, visit Know Your Rights | Prisoners' Rights | American Civil Liberties Union.

They receive three meals a day, clothing, and basic toiletries. They have access to a place to sleep, sit, exercise, shower, and use the bathroom, but they lose their rights to privacy when it comes to having their personal items searched at any time. Officers have the ability to pat them down and search their cells. Privileges like the ability to purchase additional food, clothing, and toiletry items are earned, incentivizing good behavior.

### 8.3.4.3 Program and Work Opportunities

Additional privileges are provided depending on the facility's resources. Some jails provide options to participate in short-term education and treatment programs like General Education Development (GED), Alcoholics Anonymous (AA), and Narcotics Anonymous (NA). Various religious organizations have representatives who also run optional services and programs for individuals to attend like Catholic Prayer Services, Jehovah's Witness Bible Studies, and Prison Fellowship.

Working within the facilities is an option as well, although most jails do not pay the incarcerated individuals for their work, as it is seen as a privilege and optional. Some states like Oregon have implemented "worker time" which allows, sentence eligible, individuals to get time off their sentence for working, allowing them to be released from custody sooner in compensation for their efforts.

## 8.3.5 Licenses and Attributions for Jails

# 8.4 PRISONS

A **prison** is a place in which individuals convicted of felony crimes are held. The differences between jails and prisons have developed overtime with the growth of both institution types with distinct purposes. As discussed in the previous section, jails are looked at by society as a more temporary holding location, for those pending court appearances or who have been sentenced to "shorter" (less than one year) sentences. Where prisons have developed into institutions used to house convicted felons for more than one year and in some cases for life sentences. We will cover these topics in more detail in this section.

## 8.4.1 Growth of Prisons in the United States

As mentioned in the previous section, the Walnut Street Jail is recognized as the first built institution in the United States to house individuals, functionally becoming a prison in 1776 (Skidmore, 1948-1949). In 1829, another prison opened in Philadelphia, the Eastern State Penitentiary (ESP), pictured in figure 8.9., and it ran like a prison for nearly 150 years. The word "penitentiary" came from the Pennsylvania Quakers' belief in penitence and self-examination as a means to salvation (Huang & Lee, 2020). Many of the prisons today were first built on this idea of a separated penitent prison. Many of the cells in the prison would open to individual courtyards where individuals could look up and "get right with God," hence the concept of penitentiary or penance. Individuals in ESP spent much of their time in their cells, or in their own reflection yards, reading the Bible, praying, and always in silence. Solitude was believed to be a way to serve penance.

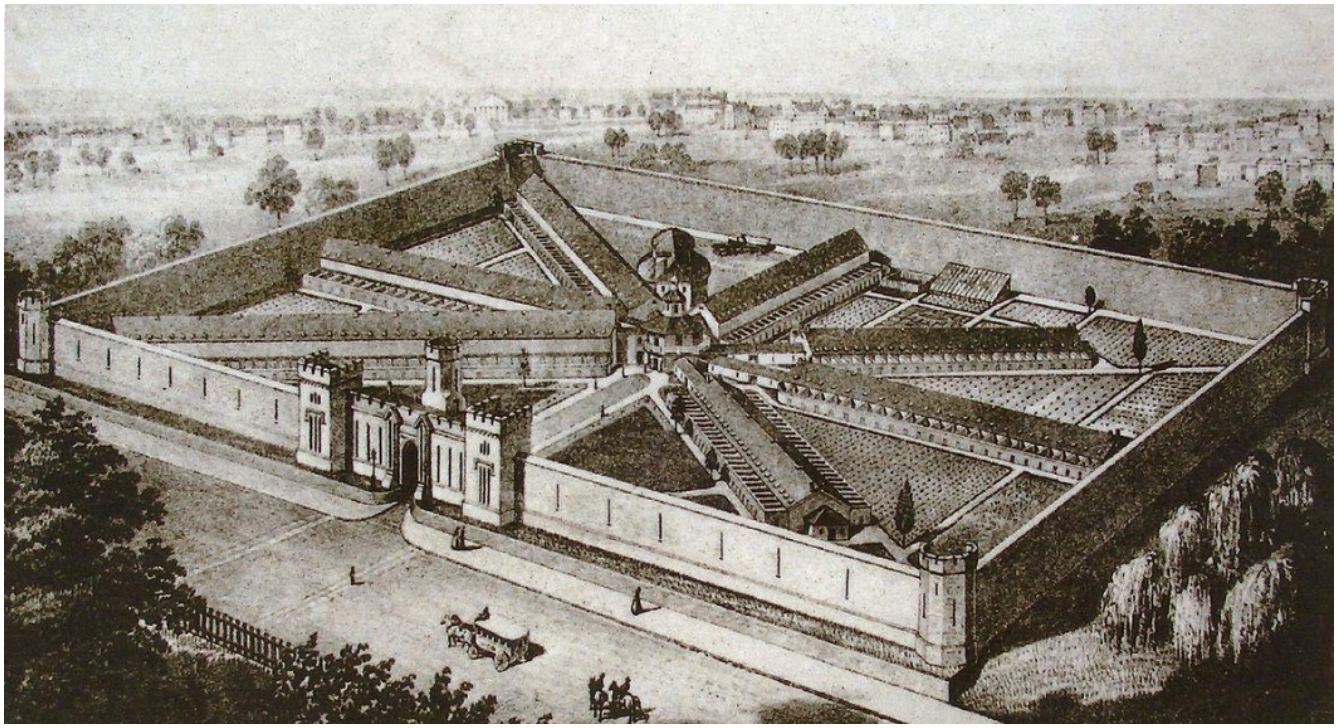


Figure 8.9. The State Penitentiary for the Eastern District of Pennsylvania, Lithograph by P.S: Duval and Co., 1855.

In 1819 another prison was built in New York named the Auburn Prison. This prison would become the model of the second main prison style, the Auburn prison system. Auburn utilized a congregate system, which meant that the individuals incarcerated there would gather to do tasks or work in silence.

Proliferation, or the concept of labor, eventually replaced the ideals of constant solitude. The congregate system took hold as the dominant model for many prisons, and many states began to model their prisons on the Auburn prison. Notably, Auburn was also the prison where the first death by electric chair was executed in 1890. Today, there are roughly 1,566 State prisons in the United States (Initiative & Wagner, 2022). As figure 8.10. demonstrates, it is clear that many of the prisons in the U.S. have been built more recently.

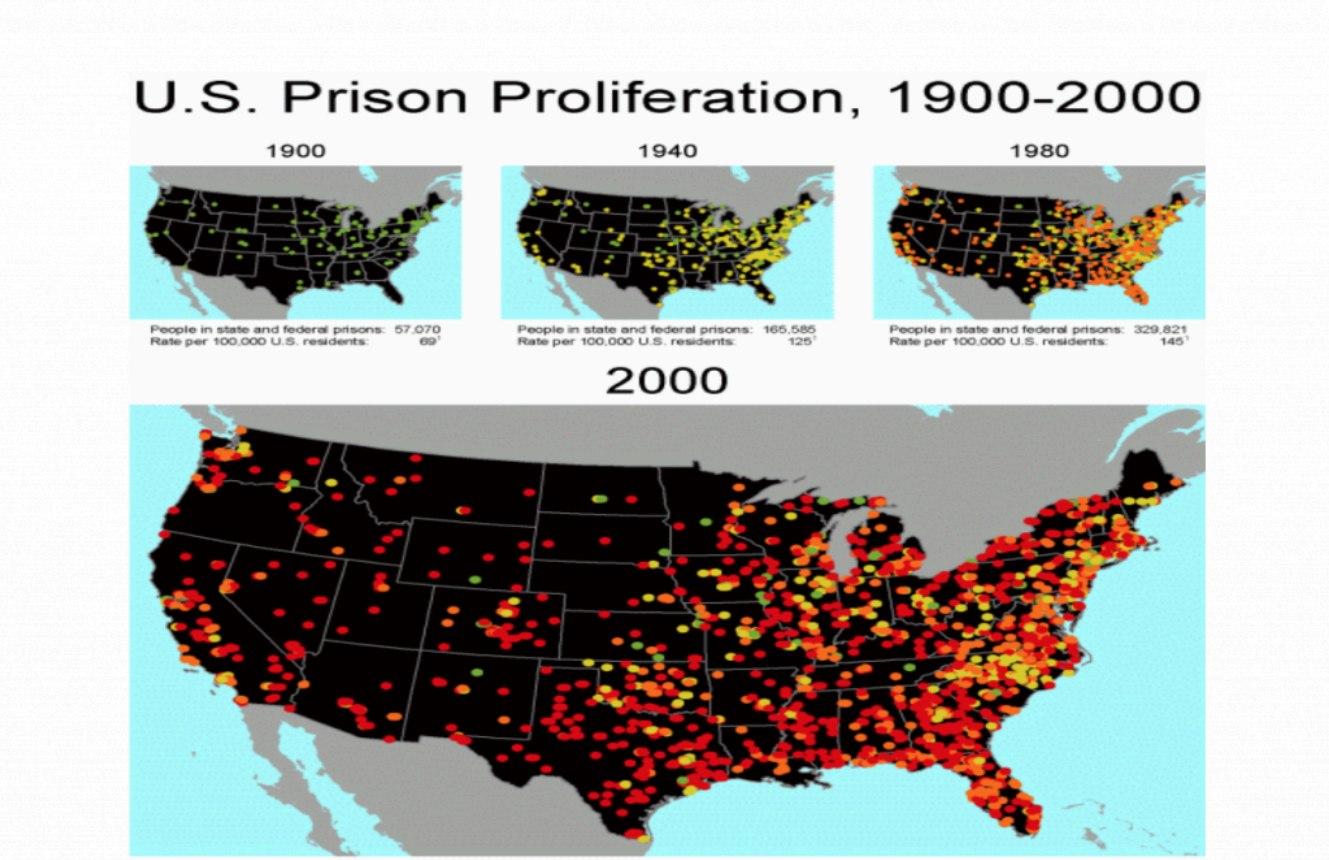



Figure 8.10. Prison Growth in the U.S.

## 8.4.2 Prison Jurisdictions

There are two ways to categorize prisons in the United States. The first is by jurisdiction which refers to which organization manages the prisons. A prison warden is considered the managerial face of the institution. However, a prison warden and the prison itself is part of a much larger organizational structure, usually separated by state. Some nonstate jurisdictions manage or operate prisons, including U.S. cities and territories like New York, Chicago, Philadelphia, Washington D.C., Puerto Rico, and the Virgin Islands.

### 8.4.2.1 State Prisons

At the state level, most prisons are organized under a Departments of Corrections, which is run by a director, who is usually appointed by a governor. For example, the Oregon Department of Corrections has a governor-appointed director. The Oregon Department of Corrections (ODOC) currently oversees twelve State prisons.

### 8.4.2.2 Federal Facilities

The Federal Bureau of Prisons (FBOP or BOP) was established in 1930 to house an increasing number of individuals convicted of federal crimes. While there were some federal facilities at the time, congressional legislation officially created the BOP as a division of the Justice Department. Sanford Bates became the first Director of the FBOP based on his long-standing work as an organizer and leader at Elmira Reformatory in New York. Today, the BOP has 132 facilities (prisons, camps etc.) across the nation. There are also military prisons, alternative facilities, reentry centers, and training centers that are managed by the BOP. The federal prisons are separated into regions. Within these regions are regional directors, who are similar to state-level directors for departments of corrections.

#### 8.4.2.2.1 Dig Deeper

To see a detailed listing and map facilities run by the Federal Bureau of Prisons visit BOP: Locations By State.

## 8.4.3 Private Prisons

Often to cut costs the state will allow private companies to provide goods and services within the prison. This privatization is a long-standing practice of states' department of corrections. This includes services like food and transportation services, medical, dental, and mental health services, education services, even laundry services.

As mentioned in the previous section on punishment, crime became highly politicized in the United States in the 1970s and 1980s which brought about an increased fear of crime and a more punitive state within the U. S. It was during this time that a small company known as Wackenhut, a subsidiary of The Wackenhut Corporation (TWC) sought to privatize the entirety of a prison, not just services within the prison. A second company, Corrections Corporation of America ultimately won the contract and became the first privately owned prison in the United States (in 1984). Today, CoreCivic (formerly Corrections Corporation of America) runs approximately 113 correctional, detention, or reentry facilities in the United States (CoreCivic, n.d.). The GEO Group, the other primary private prison company, runs 136 correctional, detention, or reentry facilities (StackPath, n.d.). Figure 8.11. shows that in 2020,roughly half of the states had privately run prisons.

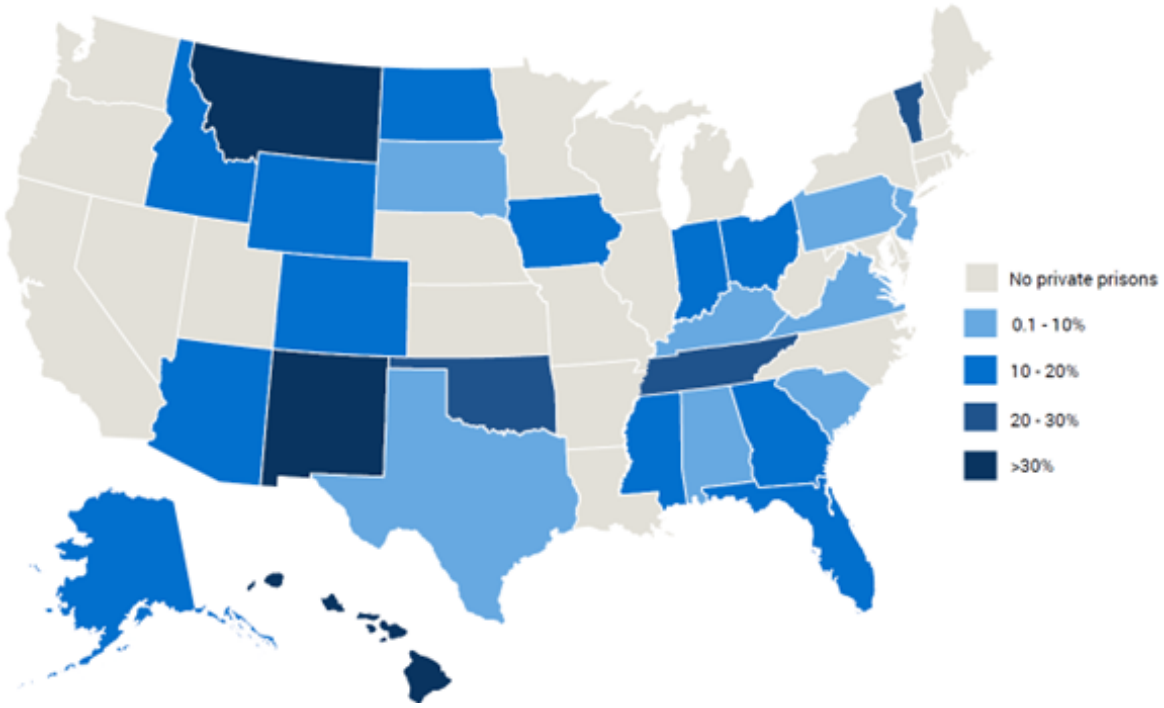



Figure 8.11. Percent of Imprisoned People in Private Prisons, 2020 (cropped).

## 8.4.3.1 States Using Private Prison Industry

Much debate has come from the incorporation of private prisons. The critics of private prisons denote the lack of transparency in the reporting processes that would come from a normal prison. Still, others tackle a bigger issue—punishment for profit. That is—while taxpayers ultimately pay for all punishment of individuals, either at the State or Federal level, shareholders and administrators of the companies are making money by punishing people, under the guise of capitalism.

### 8.4.3.1.1 Dig Deeper

It's important to understand the equity issues caused by the privatization of prisons. To understand the larger scope of these issues watch the following video on prison privatization and read the article on Private Prisons in the United States presented by the Sentencing Project.Adam Ruins Everything – The Shocking Way Private Prisons Make Money

# 8.4.4 Prison Levels

Each prison jurisdiction also operates facilities of varying degrees of intensity or seriousness. These are often considered prison levels or classifications. Prison level is associated with the seriousness of crimes committed by the individuals housed within these institutions. For example, many states have three classification levels: minimum, medium, and maximum. Some states have a fourth level called super-maximum, close, or administrative level. The BOP has five levels: minimum, low, medium, high, and unclassified. ADX Florence is a United States Penitentiary (USP) that would be considered an unclassified facility known as a super-max. It houses the most dangerous individuals at the Federal level. Although not in operation today, Alcatraz, seen in figure 8.12., was probably the most famous Federal USP and was also considered a super-max at one point. It too housed the most dangerous federal custodies.

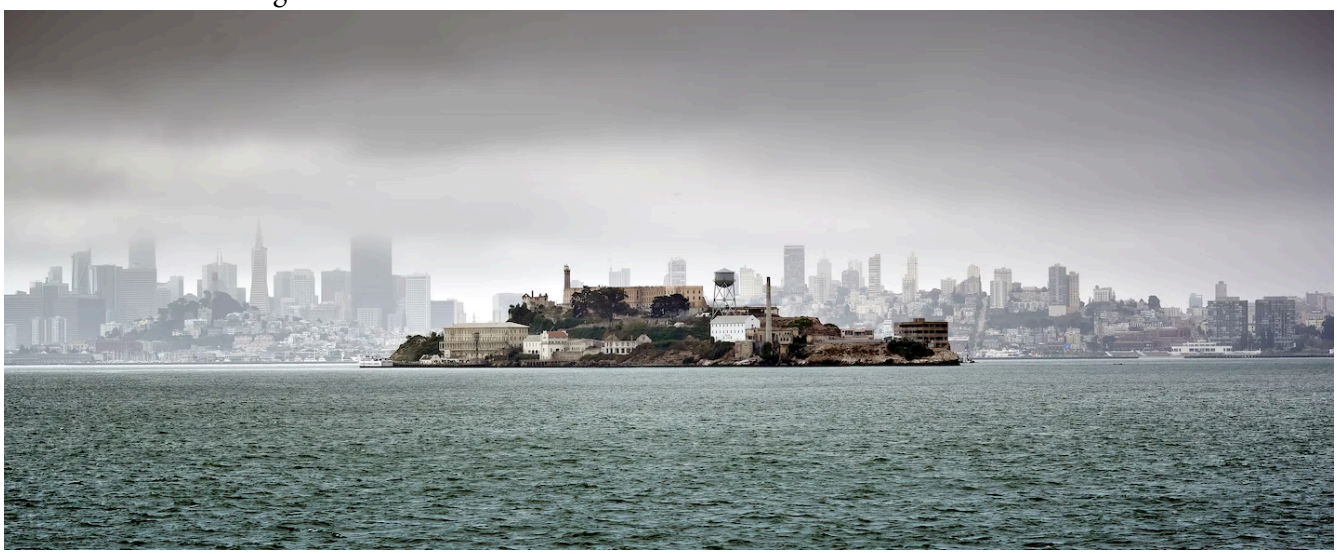


Figure 8.12. The iconic Alcatraz prison, known as the "rock."

Some states use a simple number designator to assign prison intensity, such as Level I, Level II, Level III, Level IV, and sometimes Level V. Others incorporate a Camp level to their list of designations. The facilities have a specific purpose within the low level, such as a Fire Camp, which is dedicated to fighting fires.

## 8.4.4.1 Intake Centers

An intake center can be part of an institution, running alongside the normal operations of an institution, or standing-alone as a separate institution. The purpose of an intake center is to classify felony-convicted individuals coming from courts in the jurisdiction. The individual's initial classification comes from a points-based assessment and determines which of the jurisdiction's prisons they are assigned to. This assessment is looking at prior convictions, prior and current violence, escape risk, potential self-harm, and more. For example, Coffee Creek Correctional Facility (CCCF) in Oregon is the intake facility for the Oregon Department of Corrections (DOC). It also is the women's prison in Oregon. All individuals in the DOC

jurisdiction come to CCCF and are assessed. If male, they are then transported to one of the other institutions in Oregon. If female, they are placed in a level within CCCF. Individuals will gain later classifications at their destination prison, in terms of work assignments, programming, mental health status, cell assignments, and more.

### 8.4.4.2 Minimum

Minimum prisons usually have dorm-style housing and are typically for only nonviolent individuals with shorter sentences. There is freedom of movement as individuals housed within the prisons have the ability to move about without being escorted from place to place. The fencing or perimeters of these types of facilities are usually low levels. The BOP generally refers to these as camps.

### 8.4.4.3 Medium

Medium prisons have cells rather than dorms. There are usually two people in a cell. The perimeter is usually a high fence, and may even have barbed wire, or there are large walls surrounding the institution. Freedom of movement within the institution is reduced and seen as a privilege. Individuals housed here typically have longer sentences and have more serious convictions.

### 8.4.4.4 Maximum

People housed in maximum prisons have been convicted of serious and sometimes violent offenses and have longer sentences, including life in prison. Most cells are single occupancy and many individuals housed here will spend most of their day in a cell. Freedom of movement is even more reduced and seen as a privilege. Perimeter fences are doubled with the use of wire and cement block fences circling the prison. Exterior fences often have towers with armed-guards manning them.

### 8.4.4.5 Administrative

Administrative prisons have different missions and the individuals housed in these institutions could be vastly different. For instance, a prison designated to address mental health concerns does not operate the same way as a super-max. The supermax houses individuals in their cells for almost the entire day, every day. The cells are almost all single occupancy. Many services, like sick calls and meals, come to individuals in their cell, instead of them going to a cafeteria or infirmary. Most of these individuals are also classified as extreme threats and have long sentences like life without the possibility of parole.

# 8.4.5 Who Goes to Prison?

All people who go to prisons in the United States are people who have been convicted of felony-level crimes and are serving more than a year for their conviction. Figure 8.13 shows a more detailed depiction of the crimes and population breakdown in prisons.

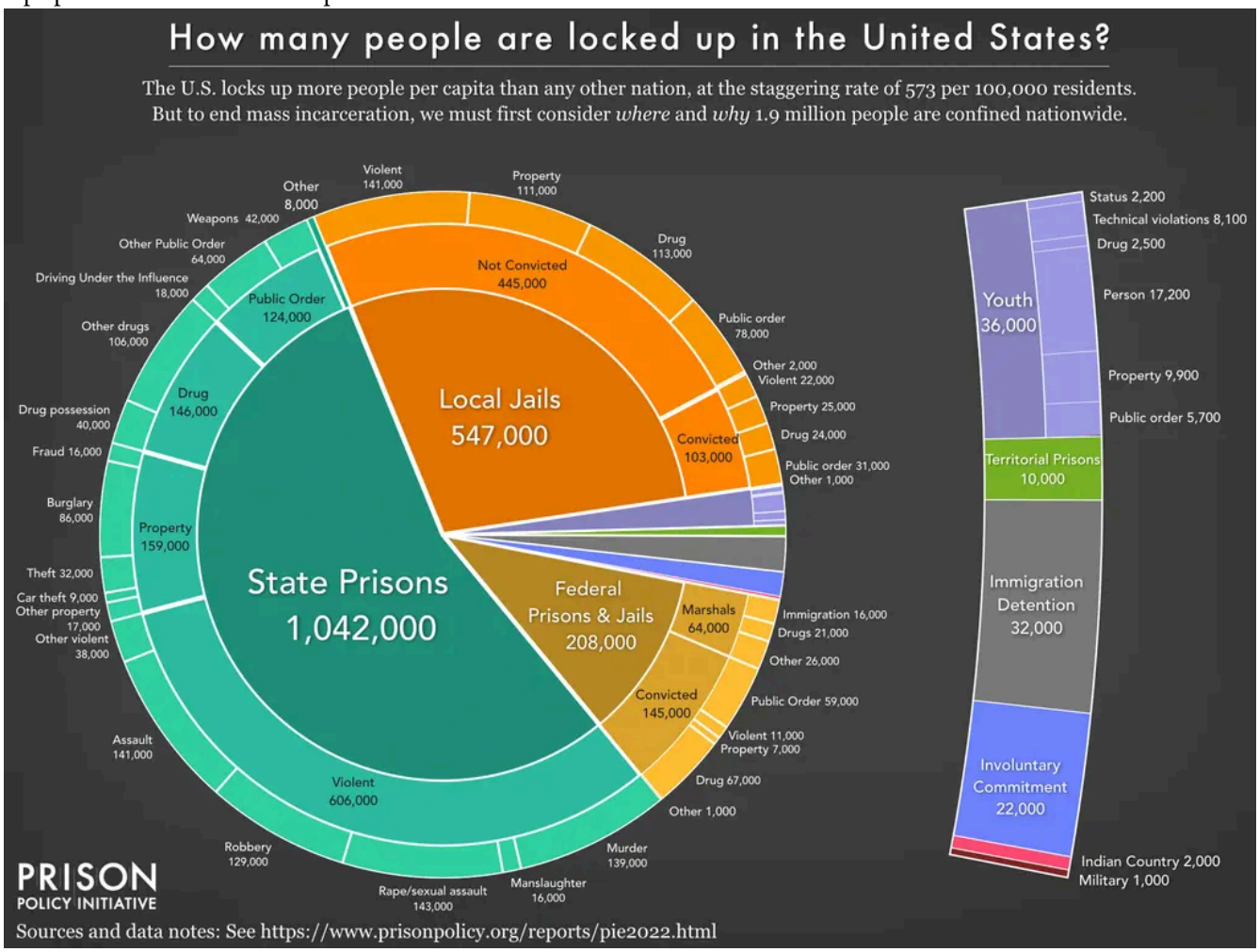



Figure 8.13. Number of individuals incarcerated in correctional facilities in the United States.

Focusing in on the left side of the graphic, there are roughly 1,042,000 locked up in State prisons. Here we can see the types of crimes that they are convicted of. A little over half (58 percent) are incarcerated for violent crimes. Drug crimes and property crimes make up the next big sections. When you add in those in federal facilities (about 208,000), territorial prisons (10,000), Indian Country prisons (2,000) and military prisons (1,000), we start to see how that number changes to about 1,263,000 not including privatized prison populations.

While the total volume of those in prison has dropped slightly in the last few years (since 2015), Figure 8.14. shows the overall numbers have increased substantially over the last 45 years.

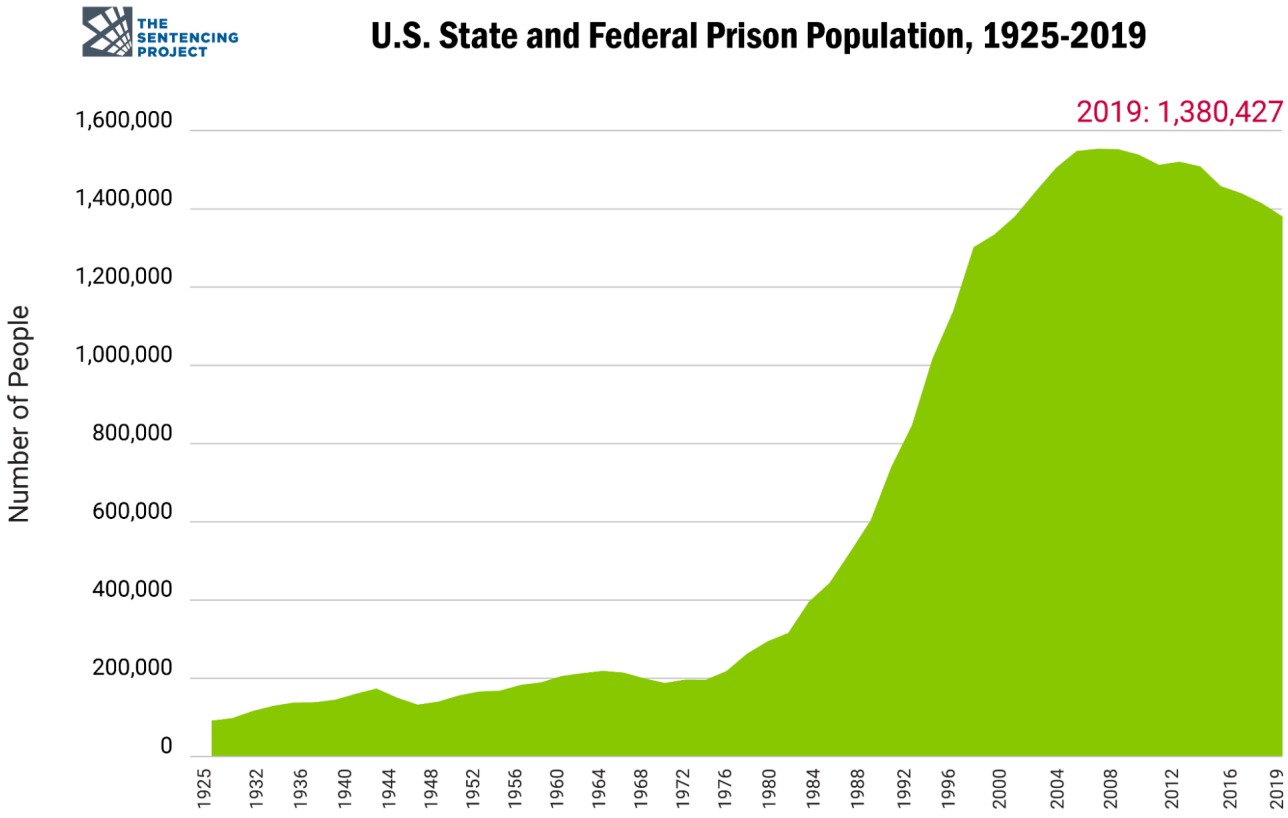
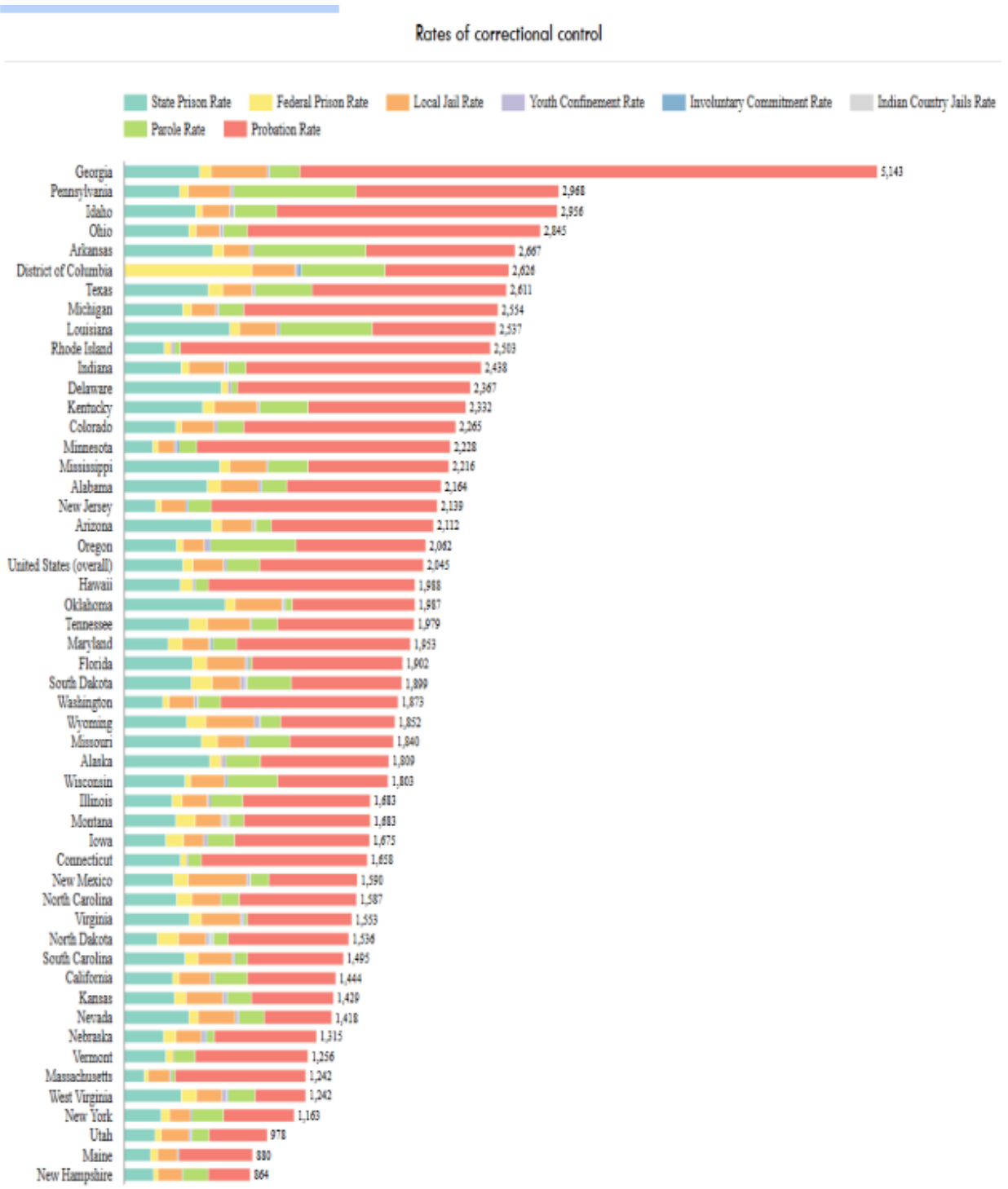



Figure 8.14. Graph showing prison population growth from 1925–2019.

It is estimated that we have over 8 million people in correctional control, and that number does not seem to be subsiding. Yes, there are reductions in certain areas, such as a decline in the prison population in the last few years, but this does not mean that they are not still under control. In one of the more detailed examples of just where individuals are at in corrections, Alexi Jones (2018) of the Prison Policy Initiative provides a graphic, figure 8.15., based on State and Federal data to demonstrate this impact.




**Aging Prisoner Graphic Update_v01.jpg**
*Source:* https://www.prisonpolicy.org/reports/correctionalcontrol2018.html
*License:* Acceptable attribution for educational purposes - https://www.prisonpolicy.org/reports/correctionalcontrol2018.html
*Attribution - By Alexi Jones*

Figure 8.15. Rates of Correctional Control Breakdown by individual states.

Not only does this graphic demonstrate the overall volume of correctional control, but it also highlights how states are handling their populations differentially. The second half of Jones' report details the volume of individuals within each state (2018). Please take a moment to review the last portion of this report to see how

many are under correctional control, found here: Correctional Control 2018: Incarceration and supervision by state | Prison Policy Initiative.

Prison overcrowding is problematic for multiple reasons. First, when there are too many individuals (especially antisocial ones) within a facility, there are more assaults and injuries that occur within the institution. Moreover, there is a safety concern for not only the offender on offender violence but also the offender of staff crimes. Second, the more people you have in a facility, the faster that facility wears down. Operating a jail or prison at maximum (or over maximum) capacity causes more items to break or wear out within the facility at a fast rate.

Finally, when individuals are unable to access adequate health and mental health care because of excessively long waits, due to overcrowding, it is a violation of their constitutional rights.

The public and the State have a responsibility to house and properly care for the individuals who are incarcerated. This is not to say these individuals are getting better care than the community, but that they are at least receiving a modicum of care. When this low level of care is deliberately denied due to excessive volumes of individuals, it is a violation of a person's 8th amendment rights against cruel and unusual punishment. As was found in the case of Estelle v. Gamble, (1976).

This similar issue was presented in California over ten years ago. A three-judge panel ruled with the incarcerated individuals, citing the need for California to reduce its prison population to a level where the individuals could effectively be managed and cared for [emphasis on the latter]. Dealing with overcrowding is a constant issue for most prisons and jails. Some have resolved to release more out into the community at a higher volume, on parole, or just release. However, this has its own set of problems, as reentry is now becoming the current issue within corrections.

## 8.4.6 Life and Culture in Prison

Life inside prison walls or fences is structured and organized. A daily routine includes three meals in a cafeteria or served in cells, depending on the individual's classification level, and completing unit activities of cleaning. Individuals housed in prisons are allotted recreation time, but eligible individuals also have more opportunities than those in jail to participate in programming, treatment, higher-education, and employment opportunities. Visiting is expanded within prisons and many facilities allow eligible individuals contact visits where family and friends are able to see their loved ones without a glass barrier between them.

### 8.4.6.1 Rights and Privileges

Like people housed in jails, individuals in prison maintain their basic constitutional rights, including to be free from discrimination, to access the courts and counsel, of speech, of religious freedom when it doesn't impede safety and security, to due process, and to be protected from cruel and unusual punishment. They are also

entitled to protections under the Americans with Disabilities Act and, in some cases, the Rehabilitation Act of 1973. People in prisons are actually afforded more privileges once housed in prisons.

They have privileges like the ability to purchase additional food, clothing, and toiletry items, but they also have access to more commissary items compared to those housed in jail. Like jails, these privileges are still earned, continuing to incentivize positive behavior.

## 8.4.6.2 Program and Work Opportunities

Most prisons provide the same basic education and treatment programs as found in jails, like GED, AA, and NA, but some provide additional programs and educational opportunities, like parenting classes, behavior change and support groups, college and university courses, clubs and social activities, and various religious programs.

Additional work opportunities within the facility are encouraged, including basic facility maintenance like plumbing, electrical, and manufacturing. There are also professional organizations and businesses that partner with prisons to provide opportunities to incarcerated individuals for real-world experience. For example, the Oregon Department of Motor Vehicles hires incarcerated individuals to work at call centers located in Oregon Department of Corrections' prisons. In 1994, Oregon passed a law requiring those incarcerated in prison to work 40 hours a week. Up to 20 of those hours can be fulfilled by participating in job training and educational programs. Currently, in Oregon those participating in the correctional enterprises program receive wages or a stipend, although they are not comparable to those doing similar work in the community.

## 8.4.7 Licenses and Attributions for Prisons

Figure 8.11. “Percent of Imprisoned People in Private Prisons, 2020” (cropped) in Private Prisons in the United States (p. 2) by The Sentencing Project is included under fair use.

Figure 8.12. Alcatraz Image by Nikolay Tchaouchev is licensed under Unsplash

Figure 8.13. How many people are locked up in the United States © The Prison Policy Initiative. All Rights Reserved, Used with permission materials.

Figure 8.14. U.S. State and Federal Prison Population © The Sentencing Project. Used under fair use.

Figure 8.15. Rates of Correctional Control © The Prison Policy Initiative. All Rights Reserved, Used with permission materials.

# 8.5 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND CORRECTIONS

As we have discussed in prior chapters, there are Crime Prevention Science Solutions which could help make improvements to some of the struggles the corrections system is facing. Below are a couple examples of evidence-based solutions agencies are implementing to prepare those who are incarcerated to reenter the community.

Table 8.1. Crime Solutions for Corrections.

| Title and Evidence Rating | Summary Description of CPSc Solutions |
|---|---|
|  **Program Profile: Adolescent Diversion Project (Michigan State University)** | The program provides postsecondary educational classes and programs to prisoners via one-way internet courses or onsite vocational instruction. The goal of the program is to reduce arrests following release from prison. The program is rated Promising. |
|  **Program Profile: College Program at Maryland Correctional Training Center (MCTC)** | This program offered postsecondary education for incarcerated individuals to reduce or break the cycle of continued or repeated criminal behavior. The program is rated Promising. Participants in the program had a statistically significant lower rate of arrests for a new crime than comparison group members. |

## 8.5.1 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and Corrections



"Table 8.1. Crime Solutions for Corrections (Table)" is adapted from "Program Profiles" by the

National Institute of Justice Crime Solutions, which is in the Public Domain. Modifications in this adaptation by Sam Arungwa, licensed under CC BY 4.0, include selecting and putting the descriptions in a table.

# 8.6 CAREER ANCILLARIES

As we have covered in this chapter, the most common career opportunity within Corrections is the Corrections Officer, although there are Security Aides, Correctional Counselors, Programming Specifications, and other positions within the field as well. The **Corrections Officer**, in many states, is a sworn-officer trained and certified by the state and tasked with everything from maintaining the daily routine and safety and security of the facility and individuals housing within it to role modeling and mentoring those in their care.

## 8.6.1 Corrections Officer

To learn more about the role, responsibility and job opportunities of a Corrections Officer review the following resources:

- The Oregon Department of Corrections' Become a Correctional Officer website.
- The Multnomah County Sheriff's Office, Oregon Corrections Deputy Job Announcement
- Oregon's roles and responsibilities of those working in the Corrections field Chapter 169 — Local and Regional Correctional Facilities
- Watch "Working Behind Bars."

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=320#oembed-1*

Figure 8.16. "Working behind bars: Becoming a corrections deputy in the Pierce County Jail [Youtube Video]."

- Watch the Hennepin County Sheriff's Office "Detention Deputies Video."

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=320#oembed-2*

Figure 8.17. "Detention Deputies Video [Youtube Video]."

- Watch this video from the Washington State Department of Corrections.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=320#oembed-3*

Figure 8.18. "Correctional Officers on the Front Lines in Evidence-Based Programs [Youtube Video]."

- Watch the Charlotte County Sheriff's Office jail tour.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=320#oembed-4*

Figure 8.19. "072020 Virtual Jail Tour HD4 [Youtube Video]."

## 8.6.2 Licenses and Attributions for Career Ancillaries

Figure 8.18. “Correctional Officers on the Front Lines in Evidence-Based Programs” © WACorrections. License Terms: Standard YouTube license.

Figure 8.19. “072020 Virtual Jail Tour HD4” © Charlotte County Sheriff’s Office. License Terms: Standard YouTube license.

# 8.7 CONCLUSION

In this chapter the field of incarcerated corrections was examined, outlining the goals, ideologies, and U.S. historical context of punishment. This chapter also explored the emergence of prisons and jails in the U.S., and how the design structure and supervision styles of these facilities have differed over time. A snapshot of incarcerated populations, facility levels, and governance between jails, state prisons, federal facilities and privatized prisons were provided and two correctional support crime prevention science solutions were examined as potential solutions to the issues that plague these facilities. Finally, this chapter reviewed career ancillaries for those interested in learning more about corrections officer professions.

## 8.7.1 Learning Objectives

1. Analyze where the basic concept of punishment comes from and compare the different ideologies of why and how people are punished.
2. Relate global ideas around punishment to the emergence of prisons and jails in the U.S.
3. Compare the design structure and supervision style of facilities.
4. Describe differences in incarcerated populations, facility levels, and governance between jails, state prisons, federal facilities and privatized institutions.
5. Investigate correctional support for crime prevention science solutions.

## 8.7.2 Review of Key Terms

- correctional facility
- corrections officer
- deterrence
- facility design (linear vs podular)
- incapacitation
- prison
- punishment
- rehabilitation
- retribution
- supervision style (direct vs indirect)

## 8.7.3 Review of Critical Thinking Questions

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. Why are we more punitive at times than others? What changes our punitive values?
2. What are some of the pros/cons of each of the four correctional ideologies?
3. Does crime change depending on our collective correctional ideology, or practice?
4. Does punishment change, based on our correctional ideology? How?
5. What are some key explanations for the rise in the prison population in the U.S.?
6. Explain the operational process of most jails in the United States today. Where does this come from historically?
7. How does the difference in the type of jail influence how the jail is managed?

8. Explain the similarities and differences in the two early types of prisons in the United States.
9. Explain the current operational process of most State prisons in the United States today. Where does this come from historically?

## 8.7.4 Licenses and Attributions for Conclusion

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# 8.9 CHAPTER 8 FEEDBACK SURVEY

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# CHAPTER 9: COMMUNITY CORRECTIONS

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 9.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

In this chapter, we will focus on the community corrections part of the criminal justice system, while comparing the pros and cons of the various community corrections programs. Then we will discuss current issues facing corrections as a whole, diving further into inequities and investigating possible solutions. Finally, we'll learn more about the role of a parole and probation officer.

**Author's Note** -To be noted in this chapter, the term individual or person has been used throughout the sections to bring attention to the real people working their way through the justice system and experiencing the pros and cons of these programs. This was done to be mindful and respectful of them as individuals. There are places (specifically within cited works) though, where the terms inmate, offender, prisoner, probationer, and parolee have been used, but only where needed for clarity purposes or to note a cited work or resource which used the term in their title or description. As this text was being written, it was extremely important to the authors to make this distinction and in every way possible, to use these terms in a respectful and professional way.

## 9.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Define the role of Community Corrections and recognize the different Community Corrections options within the Criminal Justice System.
2. Compare the pros/cons of the different types of Community Corrections.
3. Identify current issues facing Corrections and investigate possible solutions.
4. Examine how punishment has changed over the years and how communities play a role in the outcomes of incarceration and supervision.
5. Investigate how community corrections can support crime prevention science (CPSc) Solutions in your community.

## 9.1.2 Key Terms:

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- Community corrections
- Diversion
- Evidence-based practices
- Mass incarceration
- Overcrowding
- Parole
- Post-prison supervision
- Probation
- Restorative justice
- Specialty courts

## 9.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. Why do some people convicted of a crime get jail/prison, while others do not?
2. What factors are involved with the decision to use alternative sanctions, versus incarceration?

3. What are some of the pros/cons of each decision point?
4. Does the level of punishment change, based on the person? How?
5. Are there other consequences involved after the punishment has been given? If so, what are they?
6. What are some of the reasons there are so many people in jails and prisons?
7. What impacts these levels of people under corrections?
8. Can we solve these issues?
9. What has been our approach to this point? Has it worked?

## 9.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 9.2 THE ROLE OF COMMUNITY CORRECTIONS

**Community corrections** is a system imposed by the court on individuals who have committed a crime in which they serve all or part of their sentence/sanction through community-based placements and programs as an alternative to incarceration. Like incarcerated corrections, community corrections have similar goals: to promote public safety, to administer punishment, and to rehabilitate individuals, but unlike incarcerated corrections, this is done in a very different way.

In this chapter, we will consider how these different community corrections options reach each of these goals. We will highlight various different programs available through the Community Corrections parts of the justice system. Along with highlighting and defining these options, we will discuss what the current research, government, and community groups are reporting about program effectiveness.

## 9.2.1 Diversion

The bulk of this chapter deals with official actions from the courts on individuals in the community while they are under some sanction. However, a large number of individuals do not even make it that far in the system due to some form of diversion. **Diversion** is a process whereby an individual, at some stage, is routed away from continuing on in the formal justice process. Diversion is an action that would effectively keep a person in the community and, in some cases, out of the criminal justice system altogether.

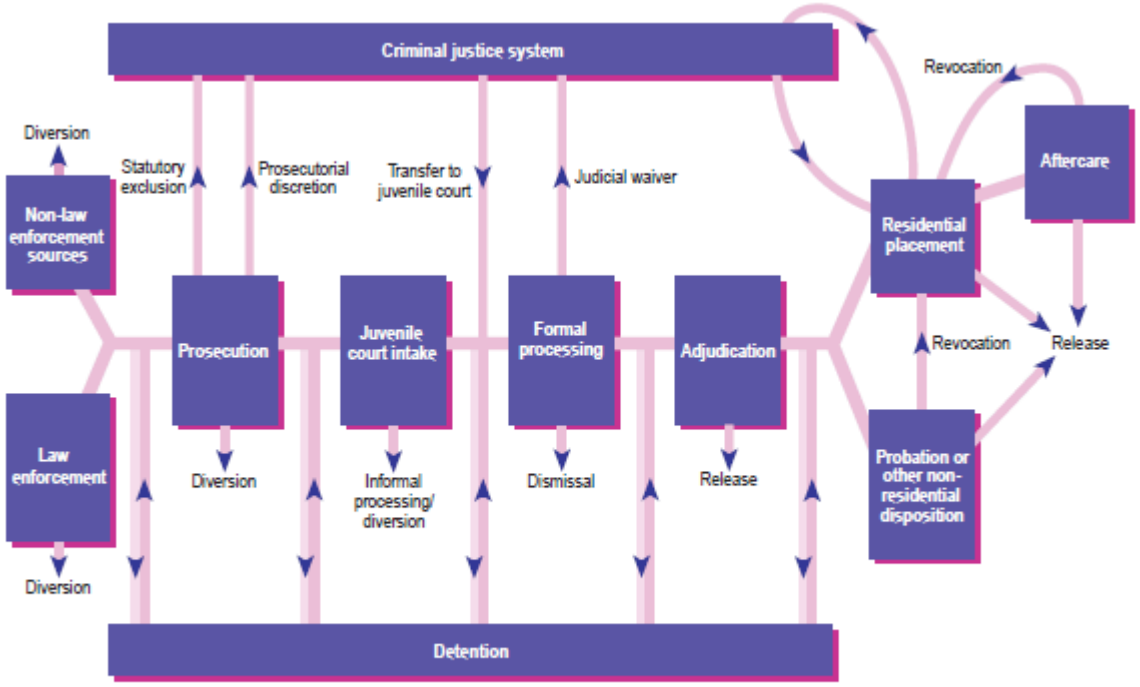
### 9.2.1.1 Different Diversion points in the System

Diversion can come as early as the initial contact with a law enforcement officer. The discretion an officer uses could be considered a diversion, as the officer decides whether the individual needs to continue on the justice path. It could be a verbal warning, a warning ticket, or just a decision by the officer not to issue a formal ticket (citation).

Officers may also recognize the person has a need that is not being fulfilled and thus identify an underlying reason the person may be committing a crime. For example, a person is trespassing on someone else's property to find a place to sleep. The officer has the legal authority to issue a citation for trespass if the property owner allows and thus arrests the person, but the underlying issue may be the person's housing need. Could the officer divert the person to a shelter or other housing option, instead of issuing the citation and arresting them?

One such diversion program in Marion County, Oregon is Law Enforcement Assisted Diversion (LEAD). The program partners law enforcement officers with community resources and mentors. It trains officers to identify these underlying needs, thus finding support for those they are coming into contact with in the community and not just automatically routing them through the justice system without any support for the underlying issue.

Diversion can also be more formal, for instance, a diversion can be issued by a judge in lieu of a judgment, or as a condition of a judgment. In a formal diversion process, for example, a judge could offer a person the chance to complete a diversion program in place of a sentence, making it a condition of the judgment. For example, if the person committed a crime due to a substance abuse problem, the judge could offer the person substance abuse treatment and then effectively nullify the judgment once the person has successfully completed the diversion. In figure 9.1, you will find a graph outlining how diversion could be applied at various points in the justice system.




Note: This chart gives a simplified view of caseflow through the juvenile justice system. Procedures vary among jurisdictions.

Figure 9.1. Justice System Flow Chart with various diversion options noted along the path.

It is difficult to know the exact amount of diversions that occur in the United States, especially across the variety of places where diversion can occur. It is also difficult to determine if there are inequities in how diversions are applied across populations. These diversion options could save the courts or corrections systems hundreds of millions of dollars and keep individuals in the community instead of incarcerating them. The Prison Policy Initiative highlights in their article, *Building exits off the highway of mass-incarceration: Diversion programs explained*, many of the ways diversion can be implemented to address incarceration issues nationally.

## 9.2.2 Intermediate Sanctions

Community corrections have changed dramatically over the last half-century. Due to a rapid and overwhelming increase in the incarcerated population, largely based on policy changes, we have witnessed an immense increase in the use of sanctions at the community level; this includes probation. **Probation** is a form of a suspended sentence, in that the jail or prison sentence of the convicted individual is suspended, for the privilege of serving conditions of supervision in the community. We will discuss probation in further detail in the coming sections. One thing to note is it has only been within the most recent 15 years that we have seen a decrease in community corrections (figure 9.2.).

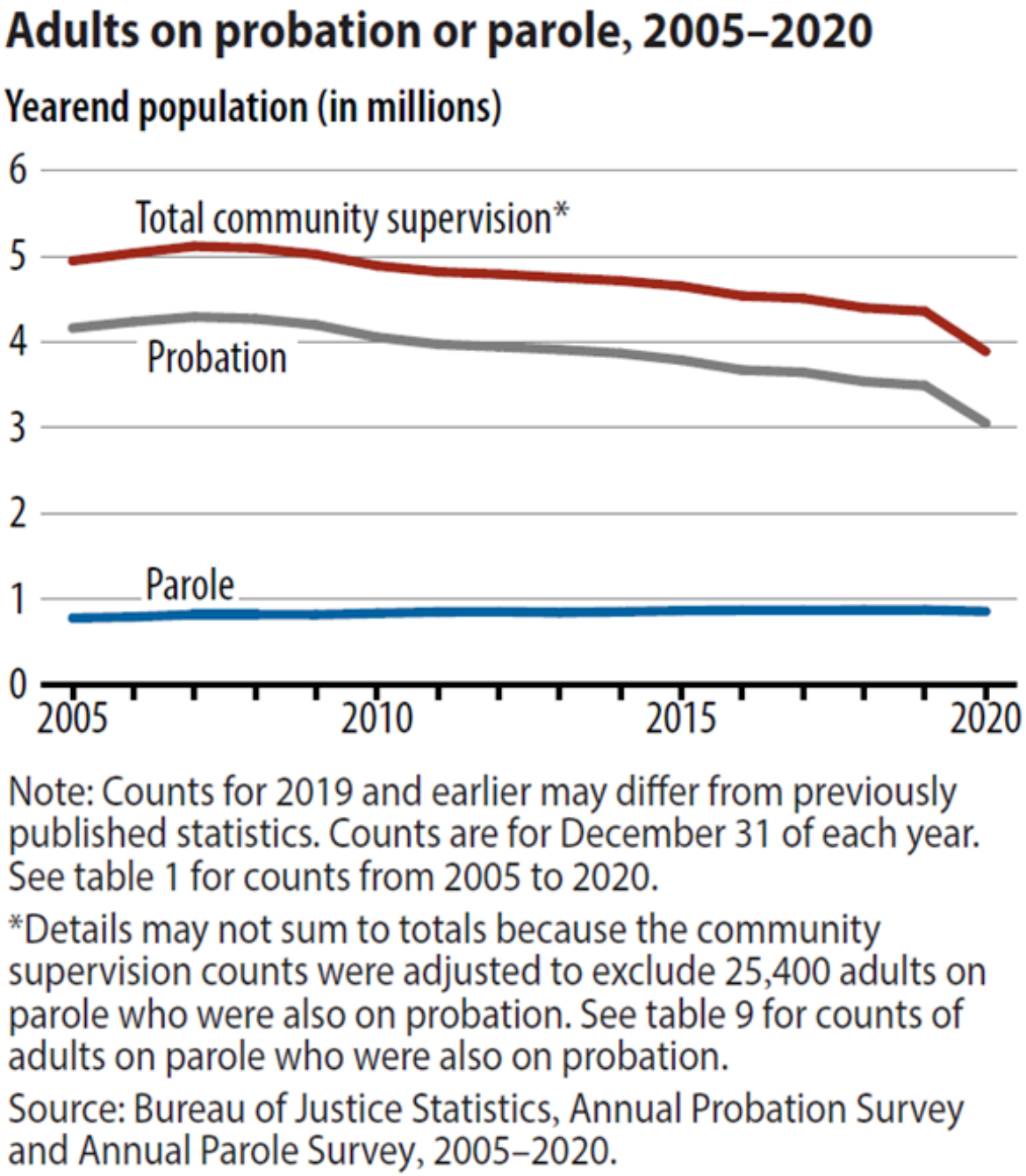



Figure 9.2. Decrease from 2005–2020 of those on parole, probation, and community supervision.

As noted in the Bureau of Justice's article, the number of individuals on probation hovers around 3 million, with another million in some form of community-level control, for a total of about 4 million under community supervision, probation, or parole (Kaeble, 2021). Because of the sheer volume of these intermediate sanctions, it is important to put this in perspective of jails and prisons. In figure 9.3., you can see this breakdown more clearly.

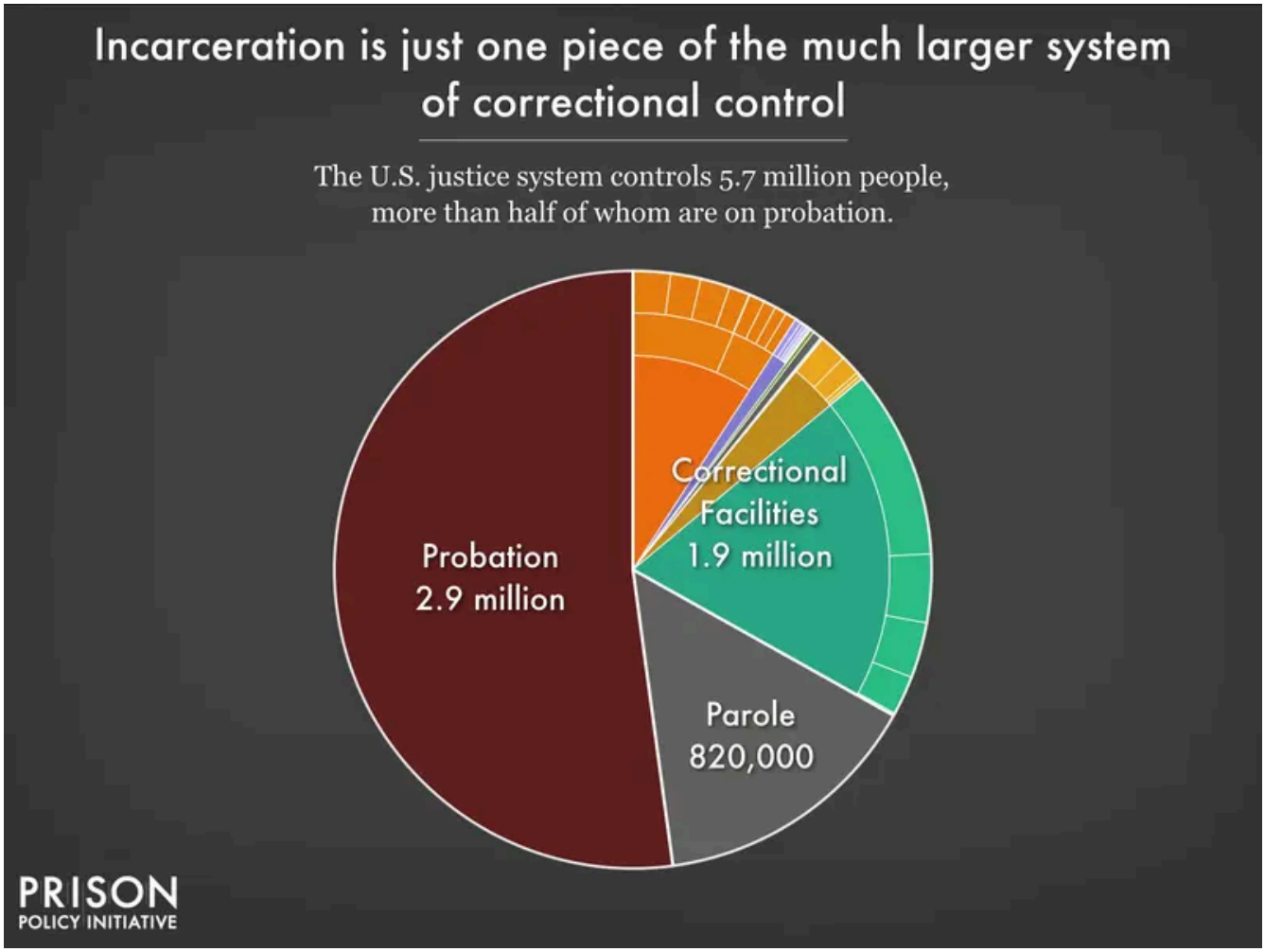



Figure 9.3. Breakdown of correctional control populations, specifically probation making up more than 50 percent of the overall total.

This graphic does not include the volume of people in the community corrections outside of regular probation or parole (which is about another million) (Kaeble, 2021). Still, it sheds light on just how much probation is used. It is important to understand that most individuals under correctional control are not in prisons and jails in the United States. The majority of people within correctional control fall under sanctions like probation, intensive supervision probation, post-prison supervision, parole, boot camps, drug courts, and transitional housing, among others. This section will discuss the history and effectiveness of some forms of intermediate sanctions used in the United States, as well as the inequities that affect some populations as a result.

In the late 1970s and early 1980s, there was a fundamental shift in corrections. This is largely due to the "Nothing Works" dogma in rehabilitation. Many reforms were made toward the housing of individuals. Some liked this idea because they did not trust the government's attempts at rehabilitation. Others were pleased as there was more of an emphasis placed on control. Rooted in deterrence theory and to a lesser extent incapacitation, intermediate sanctions promised greater control over the growing incarcerated population at

reduced cost. Because of these promises such programs were quickly welcomed across the nation. However, upon review, we can see that these approaches failed to fully fulfill these promises.

## 9.2.3 Probation

Probation is arguably the oldest, and certainly the largest, of the intermediate sanctions. Its roots stem from concepts of common law from England, like many of our other legal/correctional practices. In early American courts, a person could be released on their own recognizance if they promised to be responsible and pay back what they owed. In the early 1840s, John Agustus, a Boston bootmaker, regularly attended court and began to supervise these individuals as a Surety. A Surety was a person who would help these individuals in court, making sure they repaid these costs to the courts. We would consider John Augustus as the Father of Probation, for his work in the courts in Boston in the 1840s and 1850s. Augustus, pictured below, would take in many of these individuals, providing options like work and housing, to help ensure these individuals would remain crime-free and pay back society. He continued this practice for nearly two decades, effectively becoming the first probation officer. For a more lengthy historical discussion of probation, see The History of Probation | County of San Mateo, CA. An image of John Agustus can be seen in figure 9.4.


Figure 9.4. Image of John Augustus.

Probation is a form of a suspended sentence, in that the jail or prison sentence of the convicted individual is suspended, for the privilege of serving conditions of supervision in the community. Conditions of probation often include: reporting to a probation officer, submitting to random drug screenings, not associating with known felons, paying court costs, restitution, and damages, attending treatment/programming, and other conditions. Probation lengths vary greatly, as do the conditions of probation placed on an individual. Almost all individuals on probation will have at least one condition of their probation. Some have many conditions, depending on the seriousness of the conviction. In contrast, others have just a blanket condition that is imposed on all in that jurisdiction or for that conviction type. To review a list of state-mandated conditions of probation for Oregon, see ORS 137.540—Conditions of probation.

Juvenile probation departments were established within all states by the 1920s, and by the middle of the 1950s all states had adult probation.

Probation officers usually work directly for the state or federal government but can be assigned to local or municipal agencies. Many counties have a community justice level structure where probation offices operate. Within these offices, probation officers are assigned cases (caseload) to manage. The volume of cases in a probation officer's caseload can vary from just a few clients, if they are high need/risk clients, to several hundred individuals. It depends on the jurisdiction, the local office's structure, and the probation officers' abilities.

The role of the probation officer (PO) is complex and sometimes diametrically opposing. A PO's primary function is to enforce compliance of individuals on probation. This is done through check-ins, random drug screenings, and enforcement of other conditions that are placed on the individuals. Additionally, the PO may go out into the field to serve warrants, do home checks for compliance, and even make arrests if need be.

However, at the same time, a probation officer is trying to help individuals on probation succeed. This is done by trying to help individuals get jobs or schooling, enter into substance or alcohol programs, and offering general support. This is why the job of the PO is complex, as they are trying to be supportive but also have to enforce compliance. Many equate this to being a parent. Recently, there has been a movement within probation to have probation officers act more like coaches and mentors rather than just disciplinarians. Here is a talk about how POs can view themselves as coaches to enact positive change within individuals on probation.

Another primary function of a probation officer is to complete pre-sentence investigation reports on individuals going through the court process. A pre-sentence investigation report or PSI is a psycho-social workup on a person headed to trial. It includes basic background information on an individual, such as age, education, relationships, physical and mental health, employment, military service, social history, and substance abuse history. It also has a detailed account of the current offense, witness or victim impact statements of the event, and prior offenses (criminal records), which are tracked across numerous agencies. The PSI also has a section that is devoted to a plan of supervision or recommendations, which are created by the PO. These usually list the conditions of probation recommendations if probation is to be granted.

An article published by the Office of Justice Programs noted that judges use this information during sentencing discussions and hearings and will usually follow these recommendations (Norman Ed.D. & Wadman, 2000). Thus, many of the conditions of probation are prescribed by the PO. There has been criticism in allowing POs to complete the PSIs as the defense counsel has little to no input in the content of the report or the recommendations. Due to this, some entities hire professionals outside of the criminal justice system (social workers, psychiatrists, etc.) to compile the investigative reports.

## 9.2.3.1 Individuals on Probation

As stated, several million people are on probation, serving various lengths of probation, and under numerous types of conditions. Additionally, the convictions which place individuals on probation vary, to include misdemeanors and felonies. Individuals serve their probation at the state level or federal level.

Probation is a privilege, but it most certainly comes with conditions. Due to how cheap probation is, relative

to jail or prison, and the ability for lower-risk individuals to maintain connections within their community, millions of people will be on probation in the United States at any given time.

Other important factors that help to decide if a person warrants probation are found within the PSI and other risk and need assessments (RNA). RNAs are instruments used to determine the level of risk and need a person has to recidivate or commit new crimes. If the person is prosocial, has an education, a job, and a family, these are all considered as ties to the community, making them lower risk than those who don't have these ties. These ties to the community could weaken or break if a person was incarcerated. Providing an alternative to incarceration and instead imposing a sanction while allowing the person to stay in the community is often the approach utilized within probation and other intermediate sanctions. To learn more about RNAs check out the National Institute of Justice's article on Redesigning Risk and Needs Assessment in Corrections.

## 9.2.3.2 Probation Effectiveness

There are mixed reviews about probation. Recently, the Bureau of Justice Statistics listed the successful completion rate at about 43 percent in 2020 (Kaeble, 2021). In 2008–2013, this number has been reported higher, upwards of 65 percent (Huberman & Bonczar, 2014). There are a host of reasons listed for unsuccessful completion, which include: incarcerated on a new sentence/charge, or placement for the current sentence/charge, absconding (fleeing jurisdiction), discharged to warrant or detainer, other unsatisfactory reason, death, or some other unknown or not reported reason.

Unsuccessful completion can often include a concept called tourniquet sentencing. Tourniquet sentencing occurs when the restriction levels of a sanction are increased, due to non-compliance, in order to force compliance. There have been disparities in how the revocations and sanctions are imposed as outlined in this study titled, *Examining Racial and Ethnic Disparities in Probation Revocation | Urban Institute*.

## 9.2.3.3 Intensive Supervised Probation

Intensive Supervision Probation (ISP) began in the late 1950s and early 1960s in California. The basic premise was to allow caseworkers (POs) to have smaller caseloads and increase the level of treatment across individuals. Many promised multiple success measures. If an individual was revoked because of a technical violation due to an increase in control, they were not seen as a failure. They were seen as a success because of the way the public was served by the recidivism. However, this went directly against the notion that ISPs could save money. Over time, the earlier forms of ISPs become less popular.

In the 1980s, a newer model of the ISP was created in Georgia. More emphasis was placed on the control aspect rather than on treatment. Further, less emphasis was placed on the reduction of money saved.

ISP and regular probation are similar, except for the frequency of contacts with POs, the increases in surveillance and monitoring, and usually the volume of conditions. Rather than meeting a PO once a month

in regular probation, a person on ISP would likely be meeting with their PO weekly or even more frequently. Additionally, individuals on ISP normally submit drug screens weekly. The increased conditions of supervision more frequently include more substance abuse treatment, either in the form of Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or some other residential or outpatient substance abuse treatment programs. Thus, the core difference concerns increased surveillance and control over the individual on ISP.

### 9.2.3.4 IPS Effectiveness

While initial praise of the newer model for its increased control was evidenced by its rapid spread through the States, some researchers questioned its effectiveness. One of the largest studies of ISPs was conducted in conjunction with the RAND Corporation. They examined the effectiveness of ISPs in reducing recidivism and saving costs. In a random sample of 14 cities across nine states, they evaluated the reductions of recidivism against a sample of individuals on regular probation. Their findings suggested that there were higher amounts of technical violations, which were probably substance violations, but there were no significant differences between control-centered ISPs and regular probation as far as new arrests. Moreover, when looking at outcomes over three years, they found that recidivism rates were slightly higher for these ISPs (39 percent) vs. regular probation (33 percent) (Petersilia & Deschenes, 2004). Also, there were no substantive cost savings.

Other studies have produced similar findings regarding the effects of non-treatment oriented ISPs. While these findings might be better than prison recidivism rates, there were no reductions in prison **overcrowding** defined as the number of individuals incarcerated exceeding the available prison bed space, meaning there was no impact on the number of individuals incarcerated and thus still insufficient resources, which was one of the goals of implementing ISP.

## 9.2.4 Boot Camps/Shock Incarceration

Another form of intermediate sanction may be seen in the creation of boot camps, also known as shock incarceration facilities. Developed in the 1980s in Georgia, boot camps were targeted to youths and adults and seen as a way to alter individuals through a "shock" effect. Essentially, boot camps are programs designed to change the recidivism rate through a physical change. Designed around a militaristic ideal, boot camps operated on the assumption that a regimen of strict physical exercise would teach structure and discipline in youths. Once again, because of a high level of face validity (this looks like it will work, so it must work), boot camps flourished in the 1980s and 1990s. To learn more about Boot Camps check out this YouTube video (figure 9.5).

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=326#oembed-1*

Figure 9.5. "Jail without Walls – How does that work?! | Free Doc Bites | Free Documentary [Youtube Video]."

### 9.2.4.1 Boot Camps/Shock Incarceration Effectiveness

While there are some positive results; generally, boot camps fail to produce the desired reductions in recidivism as noted in a research study published by the National Institute of Justice (Parent, 2018). For prosocial individuals, structure and discipline can be advantageous. However, when individuals of differing levels of antisocial attitudes, antisocial associates, antisocial temperament (personality), and antisocial (criminal history) are all mixed together, reductions in recidivism generally do not appear.

As discussed in the rehabilitation section, criminogenic needs are often not addressed within boot camps. They fail to reduce recidivism for several reasons. First, since boot camps fail to address criminogenic needs, they tend not to be effective. Second, because of the lower admission requirements of boot camps, individuals are generally "lumped" together into a start date within a boot camp. Therefore, high-risk individuals and low-risk individuals are placed together, building a cohesive group. Thus, lower-risk individuals gain antisocial associates that are high-risk. Finally, when boot camps emphasize the increase of physicality rather than behavioral change, it generally does not reduce aggressive behavior (antisocial personality & recidivism). A recent meta-analysis (a study of studies of a topic) published by the Campbell Systematic Reviews found this to be the case (Wilson et al., 2003). For more information on the status of boot camps, please see Practice Profile: Adult Boot Camps | CrimeSolutions, National Institute of Justice.

## 9.2.5 Specialty Courts

Specialty Courts are courts designed to handle individuals charged or convicted with specific crimes or who have specific needs related to their crimes. The idea is that these courts are better equipped to address the specific issues the individual faces. They are unique because the courtroom works in a non-adversarial way to identify supportive programs to successfully rehabilitate the individual. Judges, prosecutors, case workers, program coordinators, and others all work together within the specialty court to develop individual treatment and programming plans. In many cases, successful completion of these plans allows for the individual's charges to be dismissed or expunged. For a listing of some of the nationally-recognized specialty courts visit the National Drug Court Resource Center.

Drug Courts are one of the specialty types of courts first developed in the mid-1980s in Dade County, Florida. As with other intermediate sanctions, drug courts flourished in the United States rapidly, to the point that they are now in every state. Currently, more than 3,800 drug, treatment, or specialty courts operate in the United States, as reported by the Office of Justice Programs (2022). With the growing popularity of drug courts, jurisdictions began incorporating other specialty courts, including Veterans Courts, Mental Health Courts, Domestic Violence Courts, Family Courts, Reentry Courts, and others. To learn more about Drug Courts, watch the YouTube video in figure 9.6.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=326#oembed-2*

Figure 9.6. "Part 1: What are Drug Courts? [Youtube Video]."

## 9.2.5.1 Specialty Court Effectiveness

While the results on Specialty Courts are mixed, as a whole, drug courts are more favorable than the control of boot camps and ISPs. The results are mixed, largely due to how successes and failures are assessed and tracked. If only talking about the cost savings versus jail or prison, they are seen as an effective community alternative. If looking at recidivism, it depends if the metric is looking at relapses, solely drug charges, any arrests, or persistence models (length of time before arrest). As a whole, the risk of being rearrested for a drug crime for individuals from drug courts has shown lower rates than their comparison group. While other research, shared by the Vera Institute, has demonstrated that graduates of drug court programs were half as likely to recidivate (10 percent vs. 20 percent) (Fluellen & Trone, 2000). To learn more about the effectiveness of Drug Courts watch the video in figure 9.7. While more research is still required, specialty courts are currently seen as an effective community alternative.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=326#oembed-3*

Figure 9.7. "Part 3: Drug Courts are Effective [Youtube Video]."

## 9.2.6 House Arrest/Electronic Monitoring

House arrest is where an individual is remanded to stay home for confinement as a punishment, in lieu of jail or prison. There are built-in provisions where individuals are permitted to attend places of worship, places of employment, and food places. Otherwise, individuals are expected to be home. It is difficult to assess how many are on house arrest at any given time, as these are often short stents given during early stages of probation or pretrial release.

A component that is often paired with the house arrest model is electronic monitoring (EM). This electronic bracelet or device is equipped with Global Position Systems (GPS). The individual wears the device and an agency official tracks their actions and locations to ensure they only travel and move within the confines of their conditions. To learn more about the growth in EM use, review the article Use of Electronic Offender-Tracking Devices Expands Sharply | Pew Charitable Trust.

### 9.2.6.1 House Arrest/Electronic Monitoring Effectiveness

As mentioned above, house arrest is often joined with EM. Many of the studies incorporate both sanctions at the same time. Given the difficulty in separating EM from house arrest in studies, less is known about the independent effects of house arrest. However, it is certainly a cost-saving mechanism over other forms of sanctions. There is a relatively no-cost to low-cost for house arrest, not coupled with electronic monitoring, especially when comparing house arrest to intensive supervised probation. In all, house arrest would probably best serve individuals with low criminogenic risks and needs. However, it is also argued that those individuals need little sanctions already to be successful. Thus, the utility of house arrest is debatable.

The cost of pairing house arrest with EM can be similar to that of a cell phone contract payment each month, and these costs often fall on the individual and not the agency to cover. This can cause financial hardship on the individual, and outside of tracking the person's location to ensure they are where they are supposed to be, the agencies have to impose additional rules. Due to the rise of the use of EM during the COVID-19 pandemic, there have been quite a few critics of EM, as noted in George Washington University Law School's research titled, the Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System.

## 9.2.7 Community Residential Facilities

Community Residential Facilities (CRFs) have long been used to control/house individuals. Dating back to the early 1800s from England and Ireland, halfway houses began around 1820 in Massachusetts. Initially, they

were designed to help a person "get back on their feet" and were generally funded benevolently by non-profit organizations like the Salvation Army.

Currently, halfway houses are typically used as a stopping point for individuals coming out of prisons to assist with reentry into the community. Still, they have also recently been used as more secure measures of monitoring individuals in place of going to prison. They are even used as a test measure of parole. With the creation of the International Halfway House Association (IHHA) in 1964, halfway houses have become an integral part of every state, with mixed but more promising results than ISPs or boot camps. The core design of a halfway house is meant to be a place where individuals can get back on their feet halfway out of prison. However, as stated, their uses have evolved, becoming residential or even partial residential places where individuals under correctional control can check in, and find reprieve or assistance in order to rejoin society as normal functioning members.

There are some issues regarding the examination of halfway houses. The IHHA breaks down halfway houses into four groups along two dimensions. As discussed, halfway houses were initially funded by private non-profit organizations. However, many halfway houses today (in part due to the IHHA) are both privately and federally (and State) funded. Additionally, halfway houses are also divided into supportive and interventive groups. That is, halfway houses that serve only a minimal function (a place to stay while reintegrating back into society) are generally labeled supportive, where interventive halfway houses typically have multiple treatment modalities and may have up to 500 beds. However, most halfway houses fall somewhere in the middle of these two continuums.

Other forms of Community Residential Facilities (CRFs) are often called Community Correctional Centers (CCCs), Transition Centers (TCs), or Community-Based Correctional Facilities (CBCFs), among other names. From this point, these variations will all be considered as CRFs, as there are many varieties of facility types and names. However, even two community residential facilities with the same name can be different, as the functions of CRFs can be multifaceted. CRFs can function similarly to a halfway house, they can provide a stop for individuals just checking in for the day before they go off to their jobs, they can be used for outpatient services, even residential services where there is a need for public control/safety.

The overall benefit of CRFs is their ability to have an increased focus on rehabilitation at a lower cost than a State institution. This is where their greatest effect can materialize if there is adherence to the principles of effective intervention. As we touched on in the first section on punishment, the principles of effective intervention have been demonstrated to have the best impacts on reductions in recidivism. Collectively, these are called the Principles of Effective Intervention or PEI. These include proper identification of criminogenic risks and needs of individuals, using evidence-based practices that address these items, matching and sorting clients appropriately, and responsivity in terms of programs and services.

The National Institute of Corrections defines **evidence-based practices** as "the objective, balanced and responsible use of current research and the best available data to guide policy and practice decisions, such that outcomes from consumers are improved" (2022). Based on this definition, Corrections agencies employ evidence-based practices to use the best techniques possible to help individuals who have committed crimes

make positive changes. For a detailed account of how the PEI integrates into community corrections, see this detailed report by the National Institute of Corrections under the U.S. Department of Justice: Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention.

### 9.2.7.1 CFR Effectiveness

Because of the variations in halfway houses, researchers find them difficult to assess. For instance, it may be difficult to generalize because of the variability. Second, gathering a representative comparison may also prove difficult. That is, halfway houses may have increased recidivism, reduced recidivism, or had no effect. Although clouded, one could argue that halfway houses are at least useful in the sense that these individuals who received more treatment fared no worse than individuals who needed less treatment.

As a whole, halfway house studies show mixed results. That is, some studies yield reductions in recidivism, while some show no difference, and others show almost equal increases. When disaggregated by type, programs using the principles of effective interventions generally have better reductions in recidivism. One difficulty with understanding the effectiveness of halfway houses may be within their funding. As stated, there are numerous revenue streams for creating and managing a halfway house, including for-profit agencies. This design may override the design of providing the level of care comprehensive enough to match the level of need of the individuals in the halfway houses. As with the other intermediate sanctions, it is important to note that using the principles of effective intervention are among the driving causes of their success.

What should come as no surprise, as is the theme with correctional practices in the community, CRFs have mixed results. This is largely dependent on the composition of the facility, the individuals within the facility, and the programs offered. When individuals are lumped together in non-directive programs that do not adhere to the PEI, the outcomes of CRFs are not favorable over jail, prison, or probation. However, when CRFs separate individuals based on risk, putting more programming with the higher-risk clients and little programming on the low-level clients, the outcomes are substantially better. For example, in a study on CRFs, Lowenkamp and Latessa found that when the individuals were separated by their risk, targeting higher-risk individuals, much larger reductions in recidivism can be achieved (Lowenkamp & Latessa, 2004).

Unfortunately, many CRFs do not adhere to these principles, and thus, their effectiveness is not as positive. As stated, this is the case for many of these agencies within community corrections. When programs do not follow the principles of effective intervention, they do not fare as well. For a recent report on the status of Community-Based Correctional Facilities, see a question and answer session with the PEW Foundation and Dr. Joan Petersillia titled, What Works in Community Corrections.

## 9.2.8 Restorative Justice

The process of restorative justice (RJ) programs is often linked with community justice organizations and is

normally carried out within the community. Therefore, RJ is discussed here in the community corrections section. **Restorative justice** is a community-based and trauma-informed practice used to build relationships, strengthen communities, encourage accountability, repair harm, and restore relationships when wrongdoings occur. As an intervention following wrongdoing, restorative justice works for the people who have caused harm, the victim(s), and the community members impacted.

Working with a restorative justice facilitator, participants identify harms, needs, and obligations, then make a plan to repair the harm and put things as right as possible. This process, restorative justice conferencing, can also be called victim-offender dialogues. It is within this process that multiple items can occur. First, the victim can be heard within the scope of both the community and the scope of the offense discussed. This provides the victim(s) an opportunity to express the impact on them but also to understand what was happening from the perspective of the transgressor. At the same time, it allows the person committing the action to potentially take responsibility for the acts committed directly to the victim(s) and the community as a whole. This restorative process provides a level of healing that is often unique. In figure 9.8, you can see the different processes that can occur during the different types of dialogues within restorative justice conferences. To learn more about the restorative process, review the Defining Restorative article.

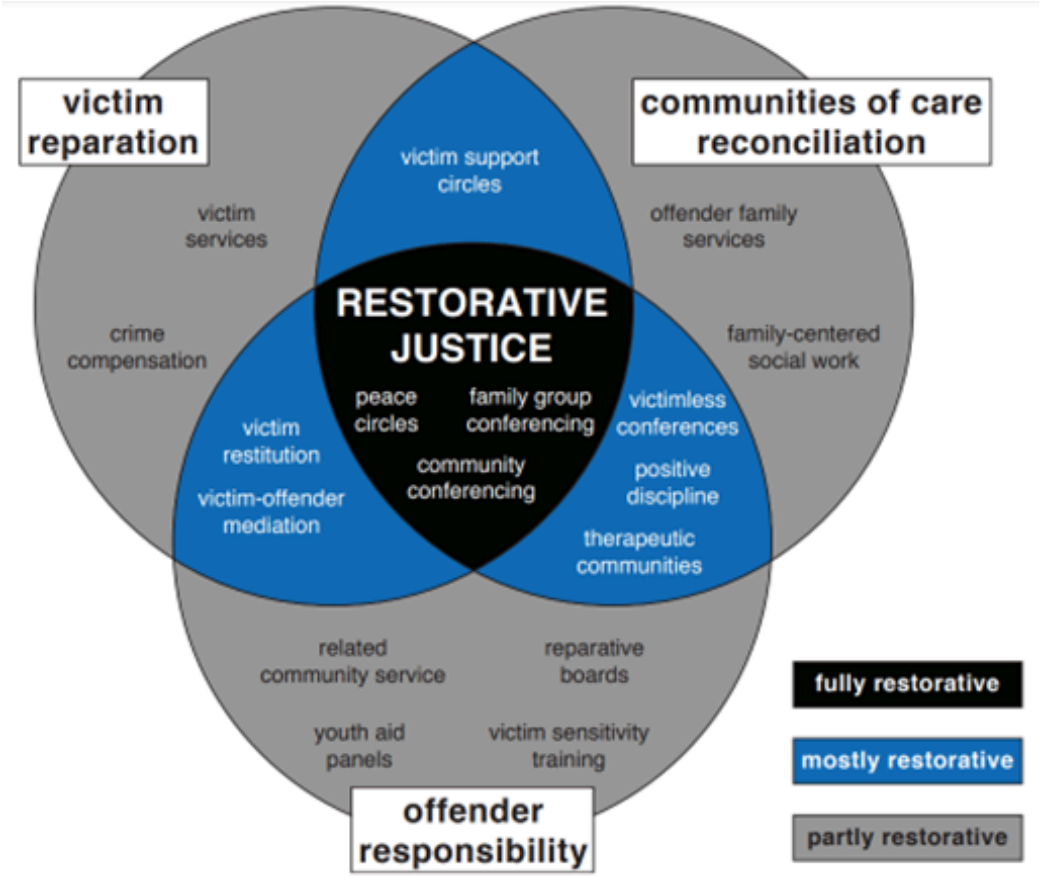



Figure 9.8. Venn Diagram of Restorative Justice showing the unions and intersections of victim reparation, communities of care reconciliation, and offender responsibility.

### 9.2.8.1 Restorative Justice Effectiveness

For over a quarter century, restorative justice has been demonstrated to show positive outcomes in accountability of harm and satisfaction in the restorative justice process for both offenders and victims. This is true for adults, as well as juveniles, who go through the restorative justice process. Recently, there have been questions about whether a cognitive change occurs in the thought process of the individuals completing a restorative justice program. A growing body of research demonstrates the change in cognitive changes that may occur through the successful completion of restorative justice conferencing. This will be an area of increasing interest for practitioners as restorative justice continues to be included in the toolkit of actions within the justice system. For additional thoughts on restorative justice from a judge's perspective, check out the following TedTalk titled, Wesley Saint Clair: The case for restorative justice in juvenile courts | TED Talk.

## 9.2.9 Parole and Post Prison Supervision

**Parole** is an individual's release (under conditions) after serving a portion of their sentence. It is also accompanied by the threat of re-incarceration if warranted. As with most concepts in our legal system, their roots of parole can be traced back to concepts from England and Europe. If John Agustus is known as the founding father of probation, then Alexander Maconochie and Zebulon Brockway could be identified as two of the founding fathers of parole based on their published work related to early parole-like systems (figure 9.9 and 9.10).

Figure 9.9. Image of Alexander Maconchie.

Figure 9.10. Image of Zebulon Brockway.

Both men were prison reformists during a time in history when many thought incarceration was the solution to crime. They wrote about and implemented, on a small scale, penal systems which rewarded well-behaved incarcerated individuals with the ability to earn "marks" or points toward shortening their sentences and thus allowed early release with stipulations for rejoining the community.

Parole today has greatly evolved based on American values and concepts. Parole in the United States began as a concept at the first American Prison Association meeting in 1870. At the time, there was much support for corrections reform in America. Advocates for reform helped to create the concept of parole and how it would look in the United States, and plans to develop parole grew from there. Parole authorities began establishing within the states, and by the mid-1940s, all states had a parole authority. Parole boards and state parole authorities have fluctuated over the years, but the concept is still practiced to varying degrees today. It is different from probation, which often operates under the judicial branch. Parole typically operates under the executive branch and is aligned with the departments of corrections, as parole is a direct extension of prison terms and release.

Many states operate a **post-prison supervision** (PPS) addendum to their sentencing matrix for the punishment of individuals, which is similar to parole in that the individual's release (under conditions) occurs after serving their prison sentence. As you can see in figure 9.11, the PPS section in gray represents the recommended times for parole (post-prison supervision).

| Crime Seriousness | A | B | C | D | E | F | G | H | I | Prob Term | Max Depart | PPS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11 | 225-269 | 196-224 | 178-194 | 164-177 | 149-163 | 135-148 | 129-134 | 122-128 | 120-121 | 5 Years | | 3 Years |
| 10 | 121-130 | 116-120 | 111-115 | 91-110 | 81-90 | 71-80 | 66-70 | 61-65 | 58-60 | | | |
| 9 | 66-72 | 61-65 | 56-60 | 51-55 | 46-50 | 41-45 | 39-40 | 37-38 | 34-36 | | | |
| 8 | 41-45 | 35-40 | 29-34 | 27-28 | 25-26 | 23-24 | 21-22 | 19-20 | 16-18 | 3 Years | 18 Mos. | |
| 7 | 31-36 | 25-30 | 21-24 | 19-20 | 16-18 | 180 90 | 180 90 | 180 90 | 180 90 | | | |
| 6 | 25-30 | 19-24 | 15-18 | 13-14 | 10-12 | 180 90 | 180 90 | 180 90 | 180 90 | | | 2 Years |
| 5 | 15-16 | 13-14 | 11-12 | 9-10 | 6-8 | 180 90 | 120 60 | 120 60 | 120 60 | 2 Years | 12 Mos. | |
| 4 | 10-11 | 8-9 | 120 60 | 120 60 | 120 60 | 120 60 | 120 60 | 120 60 | 120 60 | | | |
| 3 | 120 60 | 120 60 | 120 60 | 120 60 | 120 60 | 120 60 | 90 30 | 90 30 | 90 30 | | 6 Mos. | 1 Year |
| 2 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 1 ½ Years | | |
| 1 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | 90 30 | | | |

Figure 9.11. Oregon Sentencing Guideline Grid outlining the various amounts of incarceration, probation and pps.

Today, there are three basic types of parole in the United States, discretionary, mandatory, and expiatory. Discretionary parole is when an individual is eligible for parole or goes before a parole board prior to their mandatory parole eligibility date. It is at the discretion of the parole board to grant parole (with conditions) for these individuals. These individuals are generally well-behaving people who have demonstrated they can function within society (have completed all required programming). Discretionary parole had seen a rapid increase in the 1980s but took a marked decrease starting in the early 1990s. In more recent years, it is continuing to return as a viable release mechanism for over 100,000 individuals a year, as noted in a Bureau of Justice Statistics Special Report (Hughes et al., 2001).

Mandatory parole occurs when an individual hits a particular point in time in their sentence. When a person is sent to prison, two clocks begin. The first clock is forward counting and continues until the individuals' last day. The second clock starts at the end of their sentence and starts to work backward, proportional to the "good days" an individual has. Good days are days that a person is free from incidents, write-ups, tickets, or other ways to describe rule infractions. For instance, for every week that an individual maintains good behavior, they might get two days taken off of the end of their sentence. When these two times converge, this would be the point at which mandatory parole could kick in for them. This must also be conditioned by truth in sentencing legislation, or what is considered an 85 percent rule.

Many states have laws in place that stipulate that an individual is not eligible for mandatory parole until they hit 85 percent of their original sentence. Even though the date for the good days would be before 85

percent of a sentence is served, they would only be eligible for mandatory parole once they had achieved 85 percent of their sentence. Recently, states have begun to soften these 85 percent rules as another valve to reduce crowding issues. The Hughes et al. (2001) article also provides their proportions, indicating a direct inverse relationship to discretionary parole during the 1990s. As discretionary parole went down, mandatory parole went up. This is logical though, as once they had passed a date for discretionary parole, the next date would be their mandatory parole date. These proportions of releases switched in the 1990s (figure 9.12).

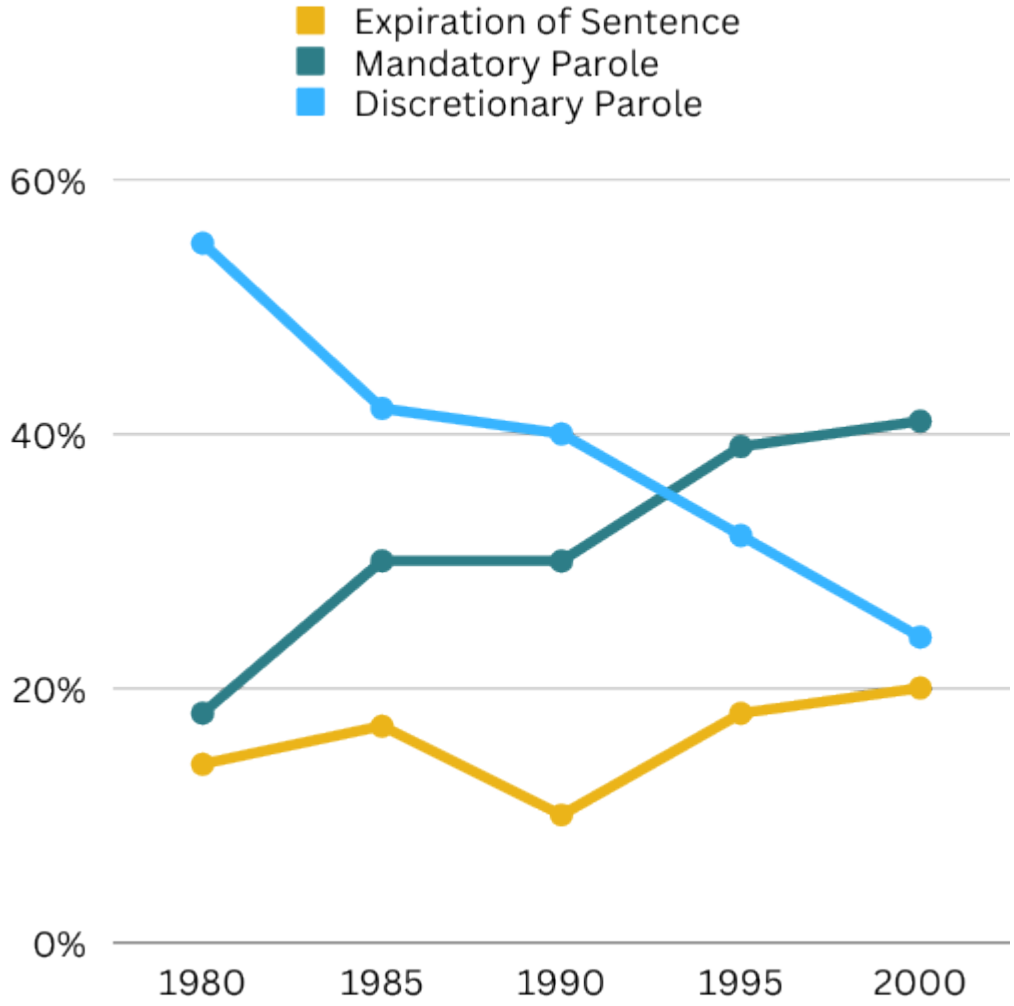



Figure 9.12. Three types of parole releases from state Prison from 1980–2000.

Perhaps most troubling is the Expiatory Release. We see a slow increase of expiatory release in the chart, which continued to climb in the 2000s. Expiatory release (a similar idea to post-prison supervision) means that a person has served their entire sentence length and is being released to the community, not because of their warranted behavior change but based on the end of their sentence and the need to accommodate incoming individuals. This sometimes means the person has misbehaved enough to nullify their "good days." This is unfortunate, because of the three types of release, it could be argued that these are the individuals who need the most post-prison supervision and yet, these are the individuals who are typically receiving the smallest amounts of community supervision because the majority of their sentence was completed while incarcerated. With the

newer idea of post-prison supervision, individuals are serving their entire sentence behind bars and then have a set amount of time on post-prison supervision in the community following the incarcerated sentence.

## 9.2.9.1 Parole Effectiveness

Successful parole completion rates hover around 50 percent, given a particular year. In the Hughes et al. (2001) article just mentioned, successful completion was roughly 42 percent in 1999. The same issues for failure that are found in probation completion are found in parole completion, including: revocation failures, new charges, absconding, and other infractions. This lower-than-expected success rate has prompted many critics to argue against parole. It is suggested that we are being too lenient on some while keeping lower-level individuals in prison for too long. It is also argued that we are releasing dangerous individuals into the community.

Whatever the criticisms are, the questions around parole still remain. What are we to do with the hundreds of thousands of individuals let out of prison each year? A more modern term for parole is called re-entry. The next section covers current issues within corrections, including what we do for individuals who are re-entering society.

## 9.2.10 Licenses and Attributions for The Role of Community Corrections

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Figure 9.11. Oregon Sentencing Guidelines Grid © The State of Oregon Criminal Justice Commission. Used under fair use.

Figure 9.12. Percentage of Release from State Prison by method of release 1980-2000 by Trudi Radkee, information from the Bureau of Justice Statistics/U.S. Department of Justice/Timothy Hughes/Doris James is in the Public Domain.

# 9.3 CURRENT ISSUES AND CRIME PROBLEMS IN CORRECTIONS

In this section, we review some of the contemporary issues occurring in our American jails, prisons, and community corrections. Our decision to incarcerate on a large scale as a solution to many issues does have significant impacts. These impacts affect not only the individuals in the justice system, but also community members as a whole. These issues include overcrowding, gangs, aging incarcerated individuals, and substance abuse. This section will report some of the more pervasive issues facing corrections today.

## 9.3.1 Mass Incarceration

The section on punishment started with a discussion about feeling safe and secure in our homes. Feeling safe and secure in person and at home is arguably one of the most discussed feelings in our nation today. Our fear of crime influences how we think and act day to day. This has caused great fluctuation in the United States in regard to how we punish people who are convicted of violating the law. In part, punishment comes from the will of the people, which is then carried out by the legislative process, and converted into sentencing practices. However, has our desire to feel safe and secure been taken too far by policy? And, have these policies created even bigger problems for us as community members? This final section on corrections attempts to answer what the United States is doing to solve our corrections crisis related to **mass incarceration**, which is defined as the reality that the United States incarcerates more people than any other country in the world.

Here is a comparison of the United States prison systems to other countries around the world. As one can see in figure 9.13, America uses punishment fairly well. One could argue that we are the best at it.

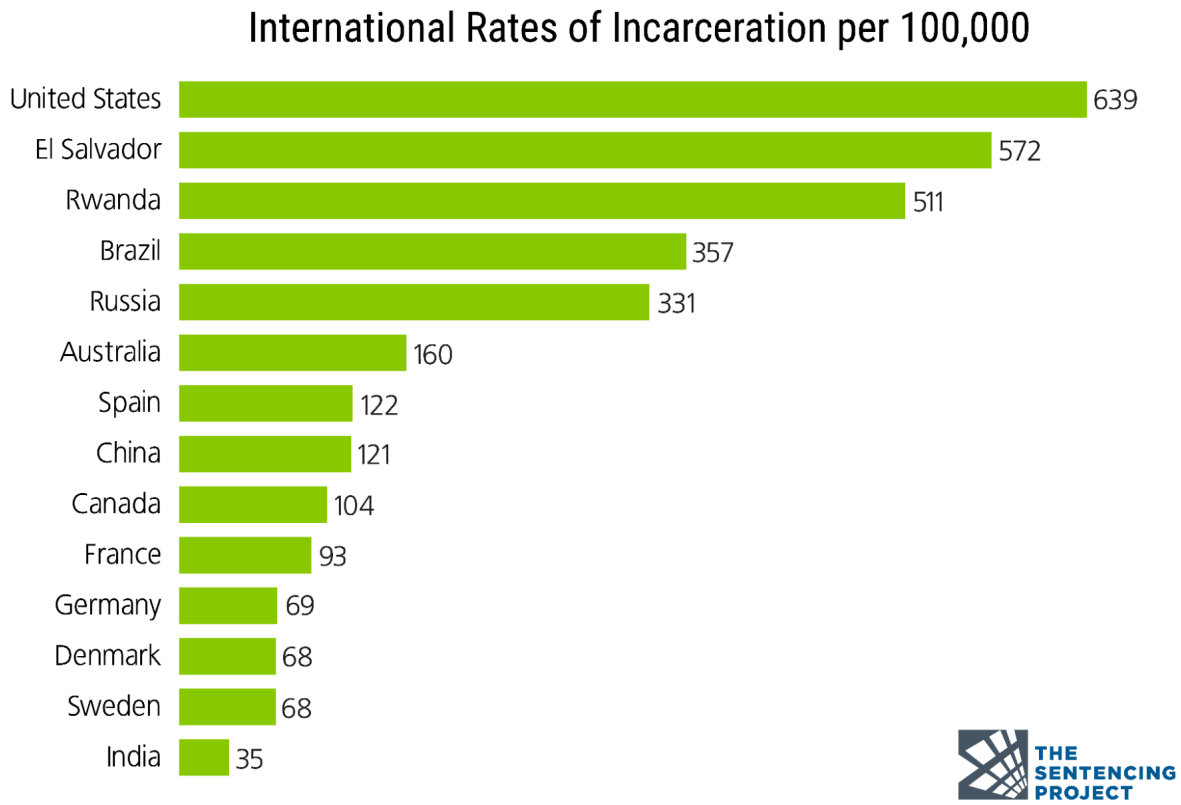


Figure 9.13. International Rates of Incarceration per 100,000 by Country.

The United States wasn't always this punitive. As we have discussed, with the context of eras we have moved through, our underlying philosophy of punishment has constantly evolved, even if it has been rather slow at times. Unfortunately, in the 1970s, there was a confluence of events that kicked us off on a path of incarcerating many types of individuals, more so than we had done in the past. This path of increased imprisonment has had lasting effects. Below, you can see in figure 9.14 when the expansion of the correctional system began.

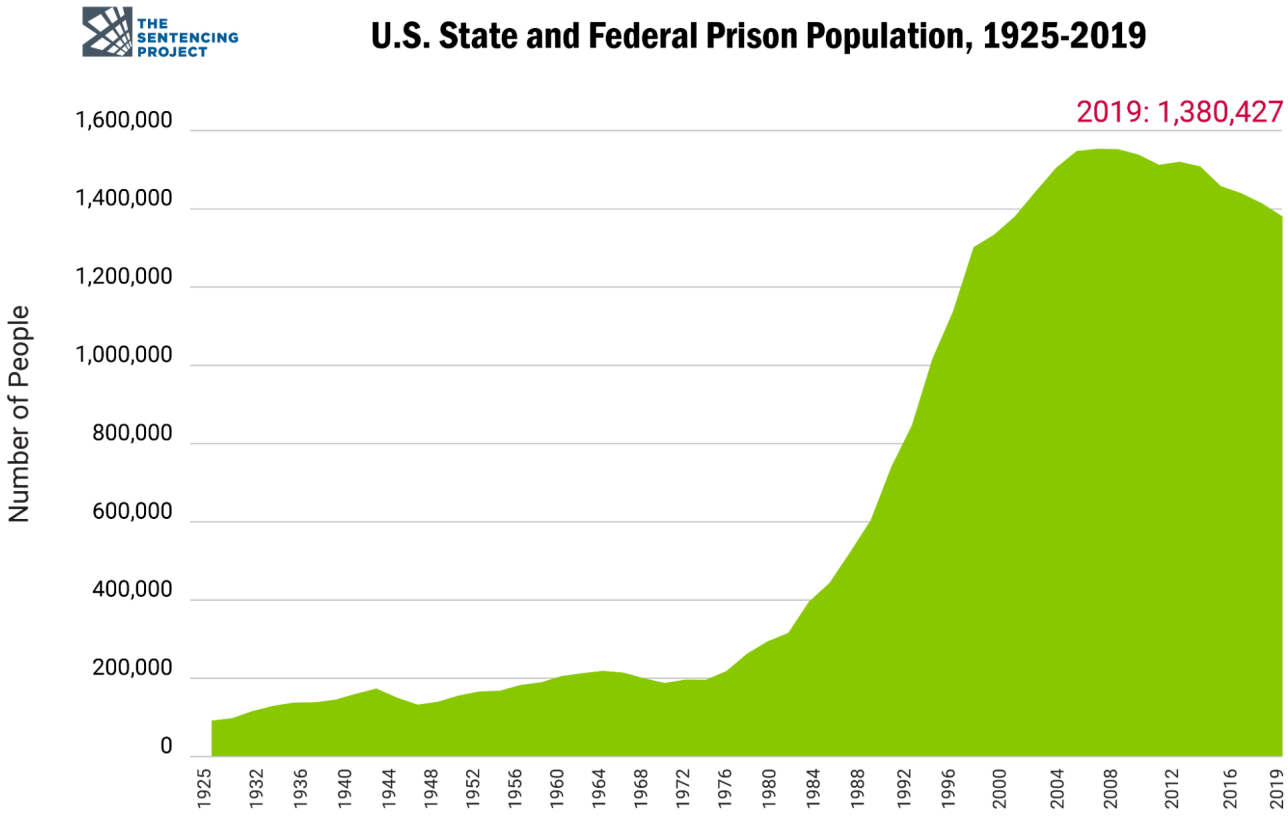


Figure 9.14. State and Federal Prison Population from 1925–2019.

The United States had just gone through a large-scale amount of civil unrest, which led to a civil rights movement among many Americans. As a country, we were not happy with how subpopulations were being treated, and it was during this time that many positive changes in the country were being adapted into law. This also corresponded with a massive influx of men who were returning from the Vietnam war. The disapproval of the war increased our growing distrust of the government to provide programs that could help individuals within the justice system. Many state-funded operations were seen as intrusive on the public, to include mental health facilities. There was also a large-scale importation of drugs occurring in America.

All of these items shifted our ideology rather abruptly in the United States, and we turned toward a more punitive approach. We would consider this the "get tough era" on crime. This included the war on drugs (gang involvement), tougher sentencing legislation across the country, trans-institutionalization or trans-carceration (the removal of many individuals from state mental health hospitals), and others. Collectively, these all had a large-scale increase in the prison population.

## 9.3.2 War on Drugs and Gangs

The war on drugs, initiated by President Nixon in 1971, was framed as an all-out war to eradicate drugs in the

United States. The massive expenditures on the curtailment of the drug epidemic also shifted our views on drug use. We became much more punitive towards drugs, treating it as more of a criminal justice issue, rather than as a substance dependence issue. Good or bad, drug use was demonized in the public and media, which aided in the development of much tougher sanctions on drug use in America. The Drug Enforcement Agency was created in 1973 to provide another arm of the government to tackle the specific issue of drugs. By the 1980s, lengthy sentences for drug possession were also in place. One to five-year sentences for possession were increased to upwards of 25 years. There was also an increased focus on gangs, which were held responsible for the majority of the drug trade in the United States.

Gang activity in the United States was prevalent long before the enactment of the war on drugs. However, once the linkage between our fear of crime and the drug trade by gangs became more pronounced due to the war on drugs, the conflict escalated. While there are hundreds of different gangs in many neighborhoods and communities in the United States today, gangs in prison have converged into four main gangs, or what corrections call security threat groups (STGs). These four basic gangs include the Whites, the Blacks, the Southerners (Sureños, or EME), and the Northerners (Norteños). Not only are these STGs considered violent inside and outside of prison, but they are also actively involved in the continuing drug trade in the United States today, even behind bars. Many of the leaders of all gangs on the streets are held in one prison in California, Pelican Bay State Prison.

Within the prisons in the United States, gangs actively recruit members, communicate with gangs on the streets, run the drug trade, and are also at war with each other over the power within the institutions from their perspective. There have been numerous documentaries on gangs in the United States, and even mainstream films about gangs and gang life, both inside and out. A few notable examples of films to watch on this subject include Felon (2008), Shot Caller (2017), and American Me (1992).

## 9.3.2.1 Get Tough Policies

Another reason for the large-scale increases can be found in our changes to policies surrounding sentences and sentence lengths. Get tough policies flourished in the latter half of the 1980s and 1990s. This included truth in sentencing legislation, three-strikes policies, and drug crime minimums. Truth in sentencing, also known as the 85 percent rule, is where mandatory sentence minimums would be forced to be served by incarcerated individuals. Thus if an individual was sentenced to prison, a mandatory minimum of 85 percent of the sentence would have to be served before the individual was eligible for release (parole). This added to the average length of sentences served in American prisons, which meant that individuals were not being released as early as in prior years. Thus, as more individuals were coming in due to increases in other legislation, more people were already in the prisons.

Three strikes policies were enacted in many states. In 1993, Washington overwhelmingly passed (75 percent voted yes) to approve initiative 593 (Wright, 1995). This policy increased sentence lengths for 40 felonies, which included life imprisonment. Perhaps the largest three-strikes policy was in 1994, in California, with

Proposition 184, commonly called the "Three Strikes and You're Out" policy. It mandated a minimum of 25 years of prison for individuals committing three felonies. What made this policy more pervasive than others was how it could be applied. If a person had two previous strikes for violent or serious felonies (not necessarily violent), any new felony was life imprisonment, with a minimum of 25 years. For a more detailed view of this policy, see A Primer: Three Strikes: The Impact After More Than a Decade.

Drug laws were also changing at this time. The Controlled Substances Import and Export Act (1970), started the increases for drugs in the United States under federally mandated minimums found within the federal code 21 U.S.C. § 841. For a detailed report of these minimums, see Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System.

One of the most debated issues within the drug sentencing laws was the differential between cocaine (in powder form) and crack (a form of cocaine, diluted and in a hardened paste form). During the increases in sentencing, there was a disparity in the lengths of sentences for comparable weights of these two drugs. There has been much debate about whether this targeted poorer individuals more harshly, as crack was seen as a poor man's cocaine. However, with additional mandatory minimum increases in the 1980s, differences in sentence lengths began to widen. In a detailed report, Barbara Meierhoefer detailed how the average sentence lengths for African Americans, for similar weights of crack v. cocaine for White people, was roughly 50 percent higher, supporting this assertion that drug sentences were not equal (1992).

With over a million arrests per year for drugs, it adds to the prison system. While the proportion of individuals with drug offenses in state prisons hovers around 20–25 percent, it is much larger at the federal level. As seen below, in figure 9.15., it makes up over half of the federal prisons. In all, the drug seriousness went up (how drugs are scheduled within federal guidelines), and sentence lengths for drugs went up; certain drugs more than others also went up.

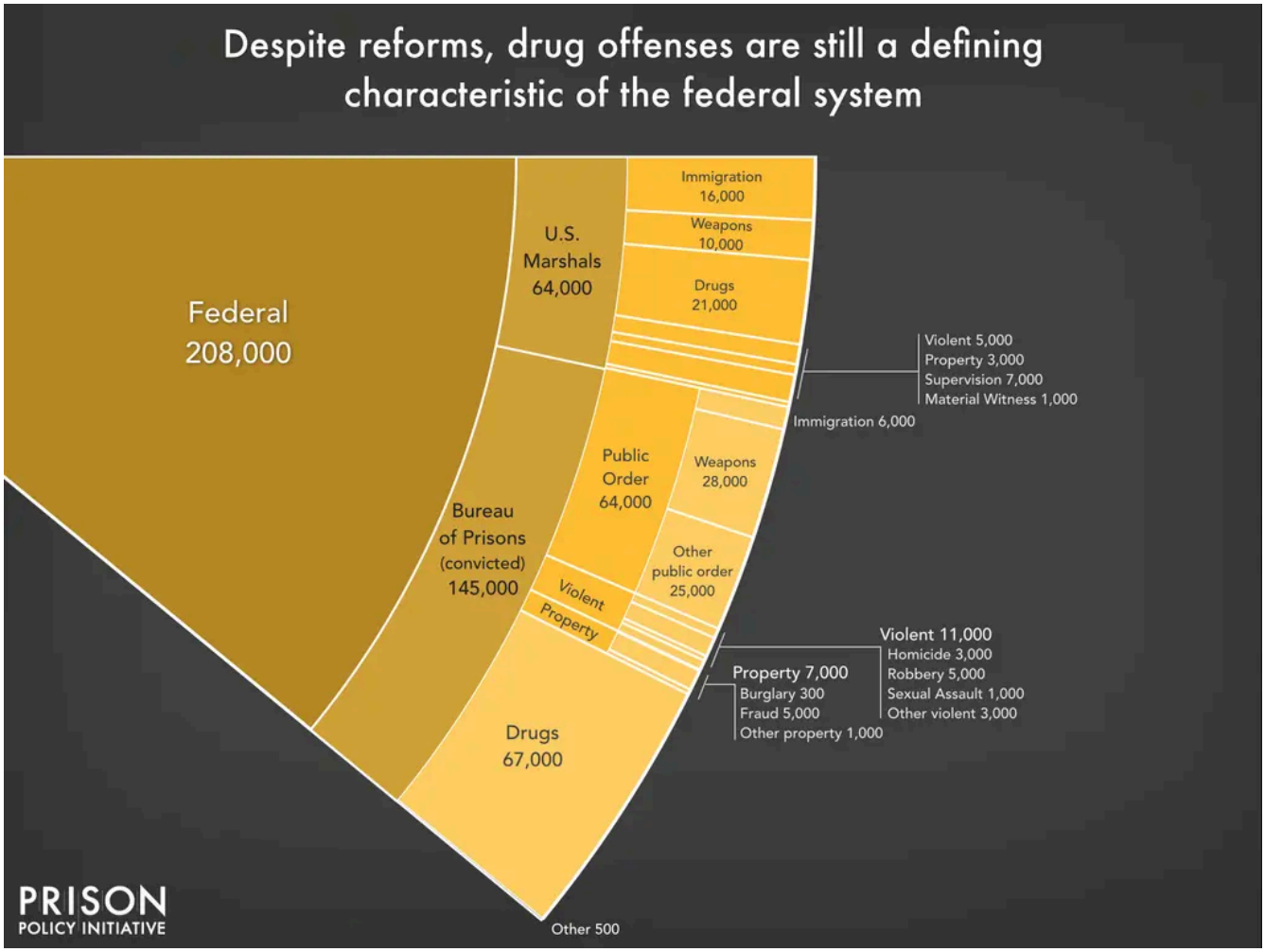


Figure 9.15. Federal offense charge breakdown.

Some states are starting to address lower-level drug issues to help curb them from entering the justice system. One state leading the way is Oregon, passing Measure 110 in November 2020. Tagged "drug decriminalization," the measure allows for individuals who have personal-use amounts of illegal substances to not be charged criminally with a misdemeanor drug possession charge as they would have previously. Instead, law enforcement officers can choose to impose a violation fine, which can be waived if the individual participates in a substance abuse assessment. Oregon's measure is new and thus needs more time and resources to see the longer-term effects, but it is one way communities are looking at addressing the criminal component of substance abuse. To learn more about how Oregon's changes are impacting the community check out Oregon's Drug Decriminalization May Spread, Despite Unclear Results | The Pew Charitable Trusts.

## 9.3.3 Aging

One of the side effects of lengthier sentences is that: the individuals in prison get older, in prison. Thus, the amount of individuals in prisons over 55 years old has dramatically increased. As McKillop and Boucher relate

in figure 9.16 below, based on BJS data, there has been a 280 percent increase in individuals, aged 55 and older (2018).

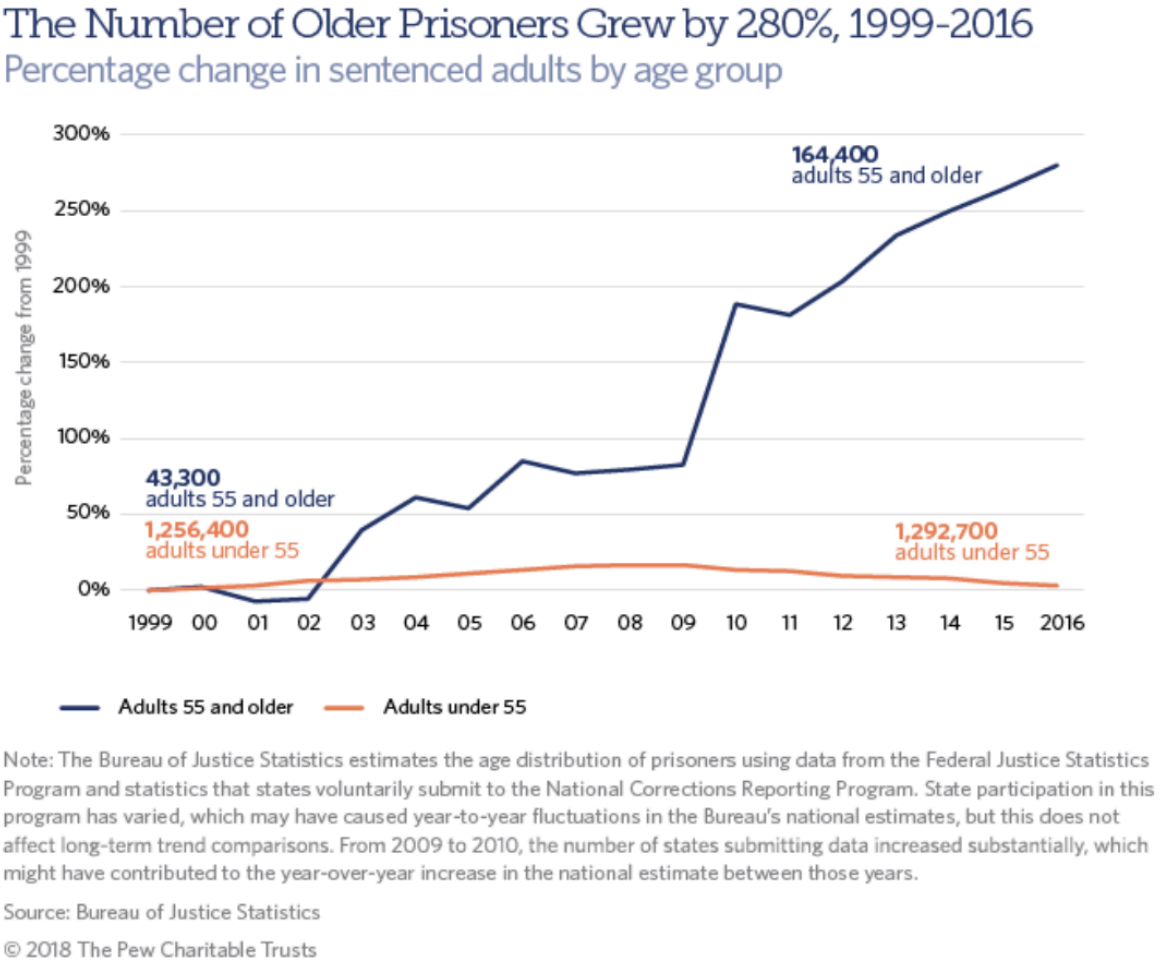


Figure 9.16. The number of incarcerated individuals by age group from 1999–2016.

And as the title of their article, Aging Prison Populations Drive Up Costs depicts, there is a growing cost within this subpopulation. McKillop and Boucher relay that the cost of this group of individuals can be upwards of three times the cost of the normal incarcerated individual (30k to 100k per individual) (2018).

Beyond just the cost of incarcerated individuals, a more philosophical question has risen, in regard to how to treat them as they enter their last phase in life. Some have articulated compassionate releases for individuals who are entering hospice care or in need of assisted living conditions. Others articulate that this is unfair to put the burden on the aging individual, as they have been incarcerated for long periods of time and have few self-support options available. In a powerful documentary on this matter, Edgar Barens details these issues in the film, The Prison Terminal (2013).

## 9.3.4 Mental Health

The incarceration of those struggling with mental health illnesses has been on the rise. With the few remaining

State-run mental health facilities maxed for resources and many communities struggling to provide anything but emergency room crisis beds for those with mental health issues, many battling mental health issues have found their way into the justice system. Graves noted in a report published by the California Budget & Policy Center in March of 2020 found that "more than one-quarter of people incarcerated at the state level in California receive mental health care," (figure 9.17).

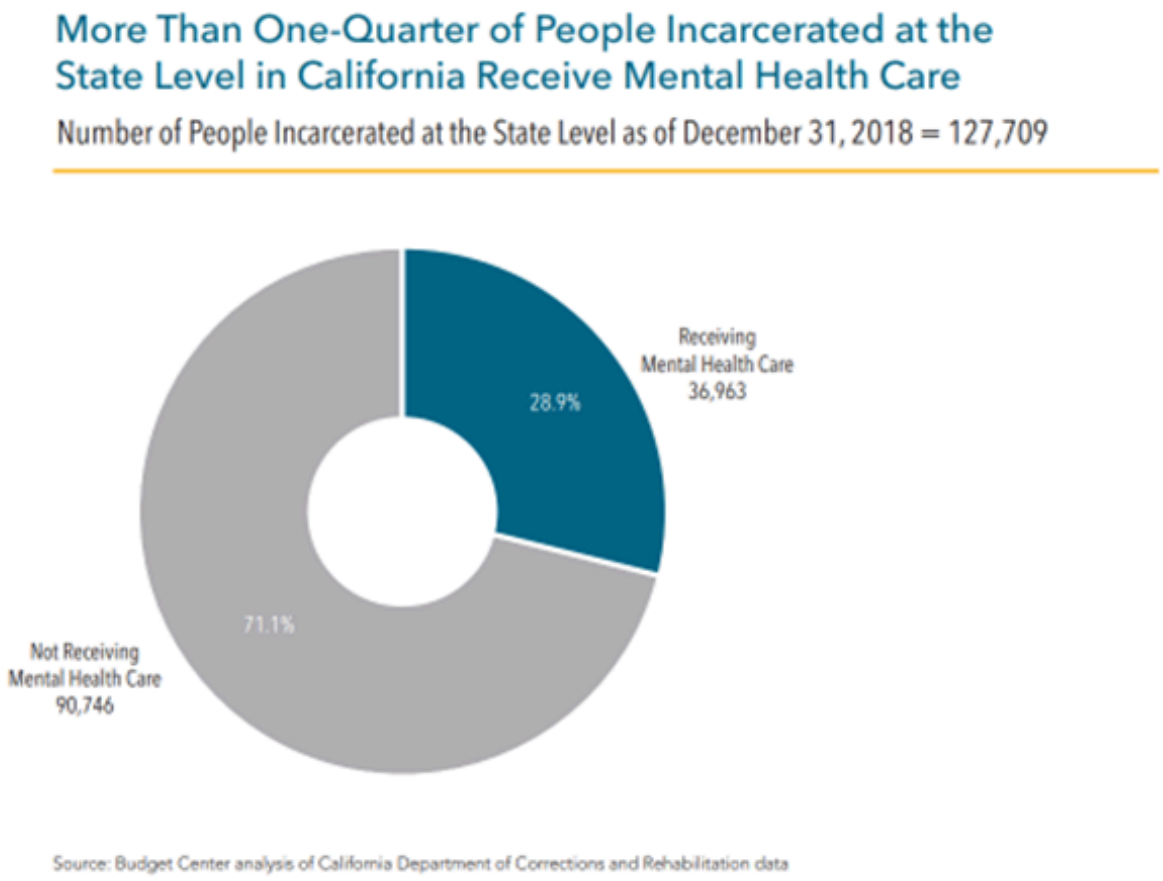


Figure 9.17. More than 28 percent of people incarcerated in California State Prisons are Receiving Mental Health Care.

The report also went on to state that three in 10 people incarcerated in Los Angeles County Jails received treatment for mental illness meaning they were housed in a mental health unit and/or prescribed psychotropic medication (Graves, 2021). More recent preliminary studies across the nation suggest these numbers to be even higher, especially after coming out of the COVID-19 pandemic. Another staggering statistic from the Bureau of Justice Statistices Mortalitiy in Local Jails, 2000–2018 report is that suicide remains the single leading cause of death in local jails in 2018, accounting for almost 30 percent of deaths (Carson, 2021). Knowing that so many in our incarcerated populations are struggling with mental illness and many losing their lives to it, how are agencies responding?

Outside of prescribing psychotropic medications and housing them in special housing units, many facilities across the nation have added more mental health services within the walls. One of these additional resources is the introduction of Qualified Mental Health Professionals (QMHPs) or trained mental health providers

working within these facilities to complete suicide risk assessments, provide brief counseling, and complete evaluations and referrals. Some QMHPs can also provide transitional services, partnering individuals with community resources upon their release from facilities. Another resource that has been incorporated within many agencies is the training of all staff on Crisis Intervention Teams (CIT). The intent of this training is to better educate staff on mental illness, break down the stigmas related to it and address steps to intervene when someone is in crisis or demonstrating signs of mental health issues. To learn more about these teams and their role in Corrections, watch and download the Crisis Intervention Teams: An Effective Response to Mental Illness in Corrections [Satellite/Internet Broadcast].

A report published by Disabilities Rights Oregon titled, Four Years Later: Oregon Prison Overhauls Treatment of Inmates with Serious Mental Illness outlines a four year agreement with recommendations and changes that were identified as part of a partnership between the Oregon Department of Corrections (ODOC) and Disabilities Rights Oregon (DRO). The two groups signed a Memorandum of Understanding (MOU) with the goal of improving conditions within Oregon's Maximum Security Prison's Behavioral Health Unit (Townsend, 2021). Partnerships like these are ways agencies are actively working to make improvements.

Along with partnerships like the ODOC and DRO, many agencies are actively implementing mental health specialty courts, and mental health community corrections teams with POs assigned to specific caseloads for those facing mental health diagnoses. Yet, even with all of these programs and partnerships, the justice system continues to be a place where those with mental health issues can get stuck. So how is this fixed? What other options are out there to provide for those with mental health needs and yet still hold them accountable for their actions. Many think the justice system is not doing enough.

## 9.3.5 Reentry and the Future of Corrections

In order to make steps forward and address these issues we have been discussing, we have to look at how our reentry systems are working or not and have an understanding as a community who is being impacted and how we can move forward into the future.

### 9.3.5.1 Reentry and the Revolving Door

Parole, as discussed, has had mixed reviews. Overall, the effectiveness of parole hovers around 50 percent success. It is estimated somewhere between 600,000 and 800,000 individuals are on parole in any given year over the last three decades. Additionally, several hundred thousand are exiting parole in each of these years. This brings up questions about what happens to these individuals. The reality is that most of them will be rearrested. In one of the more comprehensive studies on recidivism, Alper et al. (2018) discussed the recidivism rate of individuals tracked over a nine-year follow-up period. What they found was that rearrest occurred for

about 70 percent in the first three years, and by year nine, 83 percent of the individuals released had been rearrested. Many of these individuals return to prison, hence the concept of the "revolving door" of justice.

In order for reentry programs to be more successful, individuals returning to society need assistance to get back on their feet and stay on their feet. This includes items such as education and training, employment assistance to get a job, legal services, education on public benefits, and housing assistance. Interestingly, it appears as though many of the items here are the same items that many of them had deficits in that landed them in trouble in their lives before (Alper et al., 2018). That is—many of these items are the same predictors of offending that were discussed in the first section (known as the known predictors of recidivism). Unfortunately, it appears as though they are not getting all of these while they are incarcerated. Again, creating a cycle of release and catch again.

Situations and circumstances that compound these problems for many who were previously incarcerated is the difficulty faced with trying to get a job once released. Over the last 20 years, there was an overwhelming push to include items on employment applications that asked questions about prior incarceration history. Not only were there questions about prior incarcerations and prior convictions, but many employers also have questions about ever being arrested. If an individual told the truth (which is what they should do), the reality is that their applications would be discarded, or overlooked for others without an arrest/conviction. If an individual who had been previously incarcerated lied about it, and it was discovered during a background investigation, the application was certainly discarded.

In either scenario, it became increasingly difficult for an individual to obtain legitimate employment. In response to this issue, Oregon and other states have pursued legislation to not allow employers to ask applicants about their criminal history before the interview stage of hiring or in some cases until they are making a conditional job offer. Titled Oregon's "ban the box" law, it is just one more example of where communities are seeing the impacts a criminal record can have on getting someone hired. To learn more about Oregon's steps to get individuals hired, review the BOLI : Hiring discrimination and "Ban the Box" : For Workers : State of Oregon.

Criminal records also have an adverse impact on apartment rental applications. Again, when individuals would put down prior arrests, their applications would often be placed at the bottom of the pile. If someone were to lie about it, and it was discovered, it could be used as grounds for not selecting an individual for tenancy. Once again, society was making it difficult for a person who was previously incarcerated to even function as a normal member of society, based on a sentence that they had served, which is when the punishment should have ended. Collectively, these items are included in the concept of collateral consequences. That is—items that are barriers to successful integration that are remnants of prior punishment.

## 9.3.5.2 Impacts

As a result of these issues and other factors, the statistics are clear; these changes and issues are having a disparate impact on our community and specifically our minority communities. With years of injustices and inequalities

that have been built into policies, change has to happen. Looking at figure 9.18 below, you can see just a few of the disparities facing individuals in our communities.

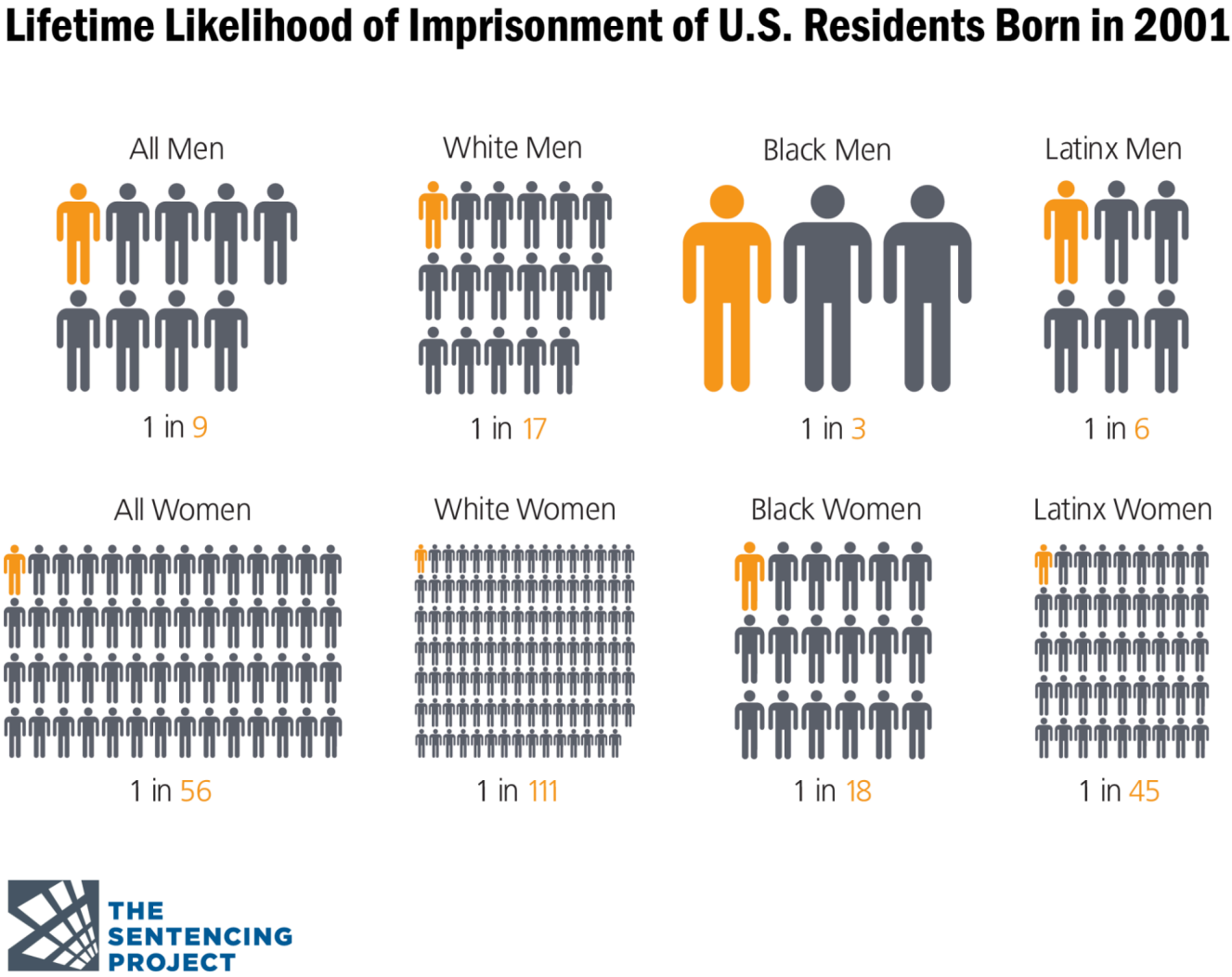


Figure 9.18. Infographic outlining imprison rates by gender, race and ethnicity in the United States.

Or if we are not just looking at the likelihood based on these factors but the data in relation to racial and ethnic disparities that currently exist in correctional facilities as seen in this Prison Policy graph shown in figure 9.19.

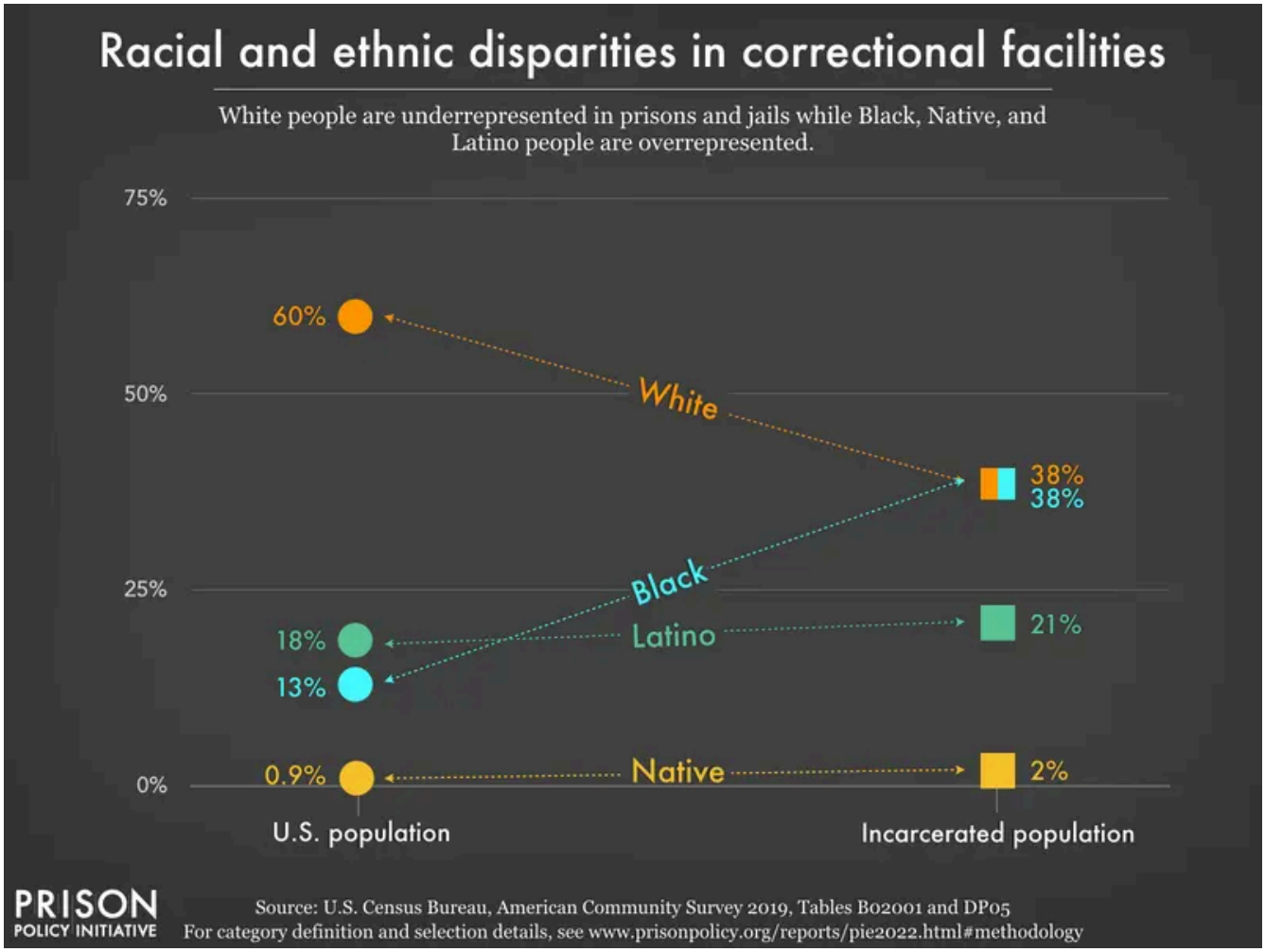


Figure 9.19. Graph of Racial and Ethnic Disparities in Correctional populations.

Similar statistics can be found in Community Corrections populations as well, seen here in the article, Community Supervision Marked by Racial and Gender Disparities | The Pew Charitable Trusts (figure 9.20).

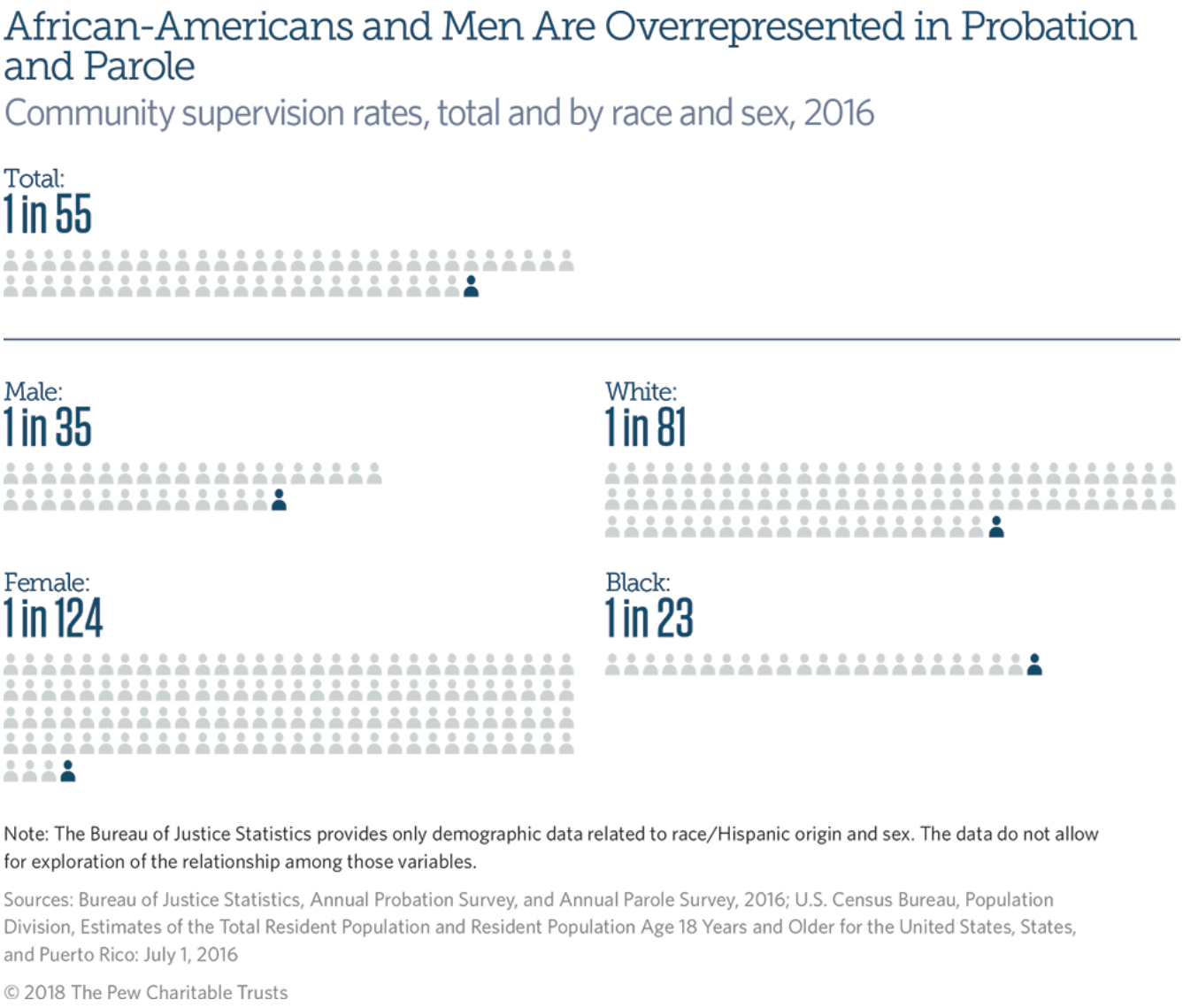


Figure 9.20. Gender and Race Rates in Parole and Probation.

## 9.3.5.3 Future Outlook of Corrections

Based on the major issues presented, the problems facing corrections are not likely to go away anytime soon. We have seen an increase in the overall correctional population for years now. While there are some reductions in prisons, this is not likely to stay this way, unless changes are made. Additionally, while there is space for growth in the area of community corrections, the functions of it need to be supported and based on evidence-based practices if it is to be more successful. It too has limits, and without support, it is more likely to be another failure. If it is not supported, then the prison population is likely to increase even more, due to the eventual placement of too many failures of individuals in community corrections.

Most individuals are in need of some basic assistance to get themselves back to a functioning level in society, including addressing their education, their substance abuse, their employment, and general and mental health.

Our correctional system needs to change its habit of treating substance abuse and mental health issues as legal and punishment-oriented issues if we are going to curb the tide of the growing problems we face in corrections. If not, our 8 million individuals in all forms of correctional control could quickly turn into 10 million.

According to a 2016 report from the U.S. Department of Education (p.13), "from 1979–80 to 2012–13, state and local government expenditures on corrections rose by 324 percent (from $17 billion to $71 billion)." And keep in mind that this is taxpayer money. Communities are funding this issue. It is time to address these problems from a more holistic approach if we are going to see a change in our current correctional practices. Some organizations are proposing abolishing the criminal justice system altogether. Others seek reform and advocacy for those already in the system. What do we do about it? How do we fix it? What is the next era of punishment for justice? And how will you be a part of it?

## 9.3.6 Licenses and Attributions for Current Issues and Crime Problems in Corrections

Figure 9.19. Racial and Ethnic disparities in correctional facilities © The Prison Policy Initiative. All Rights Reserved, Used with permission materials.

Figure 9.20. Community Supervision Rates, total and by race and sex, 2016 © The Pew Trust. Used under fair use.

# 9.4 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND COMMUNITY CORRECTIONS

As we have discussed in prior chapters, there are Crime Prevention Science Solutions which when implemented could help relieve some of the issues we have discussed within Community Corrections. Some were noted within this chapter as we discussed diversion, specialty courts, and implementing evidence-based practices in probation, but there are many others. Below are just a few of the additional examples of evidence-based solutions agencies are implementing to make changes to reduce recidivism and provide support to those who need it most.

# 9.4.1 Table 9.1. Crime Prevention Science Solutions for Community Corrections.

| Title and Evidence Rating | Summary Description of CPSc Solutions |
|---|---|
|  **Program Profile: Allegheny County (Pa.) Jail-Based Reentry Specialist Program** | This was a two-phase reentry program with an overall goal of reducing recidivism and improving inmates' transition into the community. Phase one provided inmates with in-jail programming and services to prepare them for release. Phase two provided inmates with up to 12 months of supportive services in the community. The program was rated Effective. Program participants had a 10 percent chance of rearrest, compared with a 34 percent chance for the comparison group. |
|  **Program Profile: YouthBuild Offender Program** | The program provides education, vocational training, and other youth-development services to low-income youths, ages 16–24, who have been convicted of a crime. The program is rated Promising. The program statistically significantly reduced recidivism and increased the likelihood of receiving a high school diploma, GED, trade license, or training certificate. However, there were no effects on enrollment in postsecondary courses, employment, or certain measures of youth development. |
|  **Program Profile: Jackson County (Ore.) Community Family Court** | This program is for parents whose children are wards of the state. The program is rated Effective. Intervention parents had statistically significant improvements in treatment outcomes and lower rates of rearrest, compared with control parents. Children of intervention parents experienced statistically significant improvements in child welfare outcomes, compared with children of control group participants. There were no significant differences between groups for placement stability. |

## 9.4.2 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and Community Corrections

"Table 9.1. Crime Prevention Science Solutions for Community Corrections (Table)" is adapted from "Program Profiles" by the National Institute of Justice Crime Solutions, which is in the Public Domain. Modifications in this adaptation by Sam Arungwa, licensed under CC BY 4.0, include selecting and putting the descriptions in a table.

# 9.5 CAREER ANCILLARIES

As we have covered in this chapter, the most common career opportunity within Community Corrections is the Parole and Probation Officer (Community Corrections Officer). Many agencies who have begun to implement Crime Prevention Science Solutions and Evidence-Based Practices are also expanding their Reentry and Diversion Specialists as well as Program Coordinators.

## 9.5.1 Parole and Probation Officer

To learn more about the role, responsibility and job opportunities of a Parole and Probation Officer review the following resources:

- The Oregon Revised Statutes ORS 137.630—Duties of parole and probation officers
- The Multnomah County Sheriff's Office, Oregon Parole and Probation Officer—Job Announcement
- The Marion County Sheriff's Office in Oregon, Community Corrections Division Website
- The Oregon Department of Corrections Community Corrections Website
- The Tennessee Department of Corrections put together a series of five "Day in the Life" YouTube videos highlighting the role of their probation and parole officers, review the five-chapter video series below.

*One or more interactive elements has been excluded from this version of the text. You can view them online here: https://openoregon.pressbooks.pub/crimjustsysintro/?p=331#oembed-1*

Figure 9.21. "Day in the Life: TN Probation & Parole Officer – Chapter 1-5 [Youtube Video]."

- To learn more from those currently working in the field of Community Corrections in Oregon check out the Corrections Community Podcast.

## 9.5.2 Licenses and Attributions for Career Ancillaries

# 9.6 CONCLUSION

In this chapter, we learned more about the community corrections aspect of the criminal justice system, while comparing the pros and cons of the various community corrections options. Then we discussed current issues facing corrections as a whole, looking at inequities and investigating possible solutions. Finally, we learned more about the role of a parole and probation officer.

## 9.6.1 Learning Objectives

1. Define the role of Community Corrections and recognize the different Community Corrections options within the Criminal Justice System.
2. Compare the pros/cons of the different types of Community Corrections.
3. Identify current issues facing Corrections and investigate possible solutions.
4. Examine how punishment has changed over the years and how communities play a role in the outcomes of incarceration and supervision.
5. Investigate community corrections support for crime prevention science Solutions.

## 9.6.2 Review of Key Terms

- Community corrections
- Diversion
- Evidence-based practices

- Mass incarceration
- Overcrowding
- Parole
- Post-prison supervision
- Probation
- Restorative justice
- Specialty courts

## 9.6.3 Review of Critical Thinking Questions

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. Why do some people convicted of a crime get jail/prison, while others do not?
2. What factors are involved with the decision to use alternative sanctions, versus incarceration?
3. What are some of the pros/cons of each decision point?
4. Does the level of punishment change, based on the person? How?
5. Are there other consequences involved after the punishment has been given? If so, what are they?
6. What are some of the reasons we have so many people in jails and prisons?
7. What impacts these levels of people under corrections?
8. Can we solve these issues?
9. What has been our approach to this point? Has it worked?

## 9.6.4 Licenses and Attributions for Conclusion

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# 9.8 CHAPTER 9 FEEDBACK SURVEY

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# CHAPTER 10: JUVENILE JUSTICE

Click on the + in the **Contents** menu to see all the parts of this chapter, or go through them in order by clicking **Next** → below.

# 10.1 CHAPTER OVERVIEW AND LEARNING OBJECTIVES

In this chapter, we will focus first on the juvenile justice philosophy, court system, and correctional institutions and explore how they differ from the adult criminal justice system, specifically the juvenile justice focus on rehabilitation. Then we will discuss the historical progression of the juvenile justice system, from its inception in 1899 to landmark cases in 2016 and 2012 that have marked a change in how the law deals with youth. Finally we will examine how the juvenile justice system treats juveniles and takes their unique needs and circumstances into consideration.

## 10.1.1 Learning Objectives

After reading this chapter, students will be able to:

1. Summarize the history and purpose of the juvenile court.
2. Explain how due process has evolved through the juvenile court.
3. Briefly examine the structure of the juvenile justice system.
4. Examine the reasons supporting and criticizing the process of waiver to adult court.
5. Investigate juvenile justice support for crime prevention science (CPSc) Solutions.

## 10.1.2 Key Terms

Below are some of the most important key terms and phrases used in this chapter. You should review and become familiar with these terms before reading this chapter:

- Disposition
- Disproportionate minority contact (DMC)
- Ex parte Crouse
- Juvenile delinquency
- Parens patriae
- Status offenses
- Superpredator
- School to prison pipeline (SPP)
- Waivers [prosecutorial, legislative, and judicial (discretionary, presumptive, and mandatory)]

## 10.1.3 Critical Thinking Questions

Take a few minutes and reflect on these questions before you read the chapter to assess what you already know. Then, after reading the chapter, return to these questions to gauge how much you've learned:

1. What impact did the child savers have on juvenile justice reform?
2. Explain how due process has been used throughout the history of the juvenile justice system.
3. How has the juvenile justice system evolved since it was created?

4. What are the different types of waiver?
5. What four areas changed the juvenile court?

## 10.1.4 Licenses and Attributions for Chapter Overview and Learning Objectives

# 10.2 YOUTH CRIME & JUVENILE JUSTICE

In his last speech as Vice President of the United States, Hubert H. Humphry said that the moral test of a government is reflected in how it treats its children. If that is the case, how does America do on the moral litmus test of how it treats delinquent children? This chapter will discuss the juvenile justice system in America, from the inception of the juvenile court in 1899 to the Supreme Court's ruling making it easier to sentence kids to life in prison without the possibility of parole in Jones v. Mississippi in 2021. This chapter will also discuss the school-to-prison pipeline and the ubiquitous problem of disproportionate minority contact, which is witnessed at every stage of the criminal justice system.

## 10.2.1 Youth Crime

Since the early 1990s, America has witnessed an increased fear of youth crime. Sensationalized media exposure in the 1990s facilitated the public's fear of youth crime, which resulted in "get tough" legislation and a perceived need to "do something" about juvenile crime (Benekos & Merlo, 2004). The juvenile court was criticized for its inability to control youth crime, and, as a result, policies shifted from rehabilitation to punishment of juvenile offenders (Feld, 2001). This punishment included an increase in the number of states that adopted new legislation or revised their previous statutes to facilitate the transfer of youthful offenders from juvenile court to criminal court to be tried as adults (Snyder & Sickmund, 2006).

### 10.2.1.1 Ted Talk: Jeffrey Brown's—How we cut youth violence in Boston by 79 percent

An architect of the "Boston miracle," Rev. Jeffrey Brown started out as a bewildered young pastor watching his Boston neighborhood fall apart around him, as drugs and gang violence took hold of the kids on the streets. The first step to recovery is to listen to those kids, not just preach to them, and help them reduce violence in their own neighborhoods. It's a powerful talk about listening to make a change. Watch Jeffrey Brown: How we cut youth violence in Boston by 79 percent | TED Talk to learn more.

## 10.2.2 Juvenile Justice

The contemporary juvenile justice system operates under the premise that juveniles are different from adults

and require special attention and treatment. The juvenile justice system believes that juveniles are malleable and can be rehabilitated. The juvenile court is based on the premise that public safety is best served by emphasizing rehabilitation rather than the incapacitation and punishment of juveniles (Myers, 2001). Unfortunately, sensationalized media exposure of violent youth has led to exaggerated public fear of juvenile crime, "get tough" legislation, and a perceived need to "do something" about juvenile crime (Benekos & Merlo, 2004).

This punitive position is nothing new. Before the inception of the juvenile justice system, just over 100 years ago, youth were treated the same as adults. They were considered culpable for their actions and housed alongside adult offenders in jails and prisons. Recent research has utilized neuroscience to support the need to treat juveniles differently because they are different. The sections of the brain that govern characteristics associated with moral culpability do not stop maturing until the early 20s. Therefore, it is assumed that someone under age 20, such as a juvenile delinquent, has an underdeveloped brain.

When addressing **juvenile delinquency**, when youth commit crimes/law violations, in America, the pendulum swings from punitive policies to rehabilitative policies and then back again depending on media, politics, and the current climate. There is no magic bullet approach to preventing juvenile delinquency, but as the court evolves, changes, and utilizes best practices, it gets closer.

## 10.2.2.1 Ted Talk: Stephen Case's—Solving the Youth Crime 'Problem'

The youth crime 'problem' is examined as a social construction and moral panic created by institutions in Western societies. The talk traces the evolution of youth crime into a phenomenon persistently misrepresented as an escalating social epidemic. The developmental life stages of 'childhood' and 'adolescence' as inventions are explored, highlighting differences between young people and adults. In this way, 'youth crime' can be identified as a social problem requiring distinct responses. A running theme is a child as a source of adult anxiety and fear, motivating societies to create structures, processes, theories, and images of youth crime that punish lawbreakers. The "solution" is the "positive youth justice" model. Children should not be punished as adults, but their criminal behavior should be seen as a normal part of growing up. Instead, they should be worked with to meet their needs, embrace their human rights, and promote their life chances. Watch Solving the Youth Crime 'Problem' | Stephen Case | TEDxLoughboroughU to learn more.

## 10.2.3 Licenses and Attributions for Youth Crime &

## Juvenile Justice

"Youth Crime & Juvenile Justice" by Alison Burke is adapted from "10.1 Youth Crime" and "10.2 Juvenile Justice" by Alison S. Burke in *SOU-CCJ230 Introduction to the American Criminal Justice System* by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, and Shanell Sanchez, licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

# 10.3 HISTORY OF THE JUVENILE JUSTICE SYSTEM

The juvenile court was created in Cook County Illinois in 1899, but the concept dates back to seventeenth-century Europe. The term **parens patriae** originated in the 12th century with the King of England and literally means "the father of the country." Applied to juvenile matters, *parens patriae* means the king is responsible for and in charge of everything involving youth (Merlo & Benekos, 2019). *Parens patriae* was often used by royalty in England from their homes in the name of the king. Children were often seen as property and were thus subject to the wishes of the king or his agents (Shoemaker, 2018). This was especially relevant when they violated the law.

Within the scope of early English common law, parents had the primary responsibility of raising their children in any manner they deemed fit. However, when children reached seven years of age or committed a criminal act, chancellors, acting in the name of the king, adjudicated matters concerning the youth. The youth had no legal rights and were essentially wards of the court. As such, the courts were tasked with safeguarding their welfare. While parents were merely responsible for childbearing, the state had the primary and legitimate interest in the upbringing of the children (Merlo & Benekos, 2019).

The concept of *parens patriae* had a substantial influence on events in the United States, such as the child-saving movement, houses of refuge, and reform schools. The persistent doctrine of *parens patriae* can be seen evolving from "king as a father" to a more general ideology, that of the state "acting in the best interest of the child." Subsequent matters involving youth revolve around this notion of acting in the best interest of the child, whether children were taken away from wayward parents, sent to reform schools for vagrancy, or even held in institutions until they read the age of majority, or 18 years old. The idea is that the state is acting in their best interest, protecting the youth from growing up to be ill-prepared members of society. Thus, the courts are intervening for the youth's own good.

In the nineteenth century, children were gradually seen as vulnerable and in need of special care and supervision. One illustration of this concept was the establishment of a house of refuge in New York City in 1825. These were urban establishments used to corral youth who were roaming the street unsupervised or who had been referred by the courts (Merlo & Benekos, 2019).

These houses were not intended to house criminals, but rather at-risk youth, or youth who were on the verge of falling into a life of crime because of their social circumstances. Because of the notion of *parens patriae*, many of the parents of these youth were not involved in the placement of their children in these houses. The case of **ex parte Crouse** is an example. . .in 1838, a girl named Mary Ann Crouse was sent to a Philadelphia house of refuge at the request of her mother. Her father petitioned to have her released since she was committed without his consent. However, on the grounds that the state has the right to remove children

from their home, in their best interest and even sometimes over parental objection (because of parens patriae), the Pennsylvania Supreme Court denied the father's petition. The court declared that failed parents lose their rights to raise their children. Parental custody and control of their children is natural, but not an absolute right. If parents fail to care for their children, educate, train, or supervise them, then the children can be taken by the state. The state is acting in the best interest of the child.

## 10.3.1 Reform Schools

The 1850s ushered in the development of reform schools or institutions used for the housing of delinquent and dependent children. The schools were structured around a school schedule rather than the work hours that defined the workhouses and houses of refuge. Many reform schools operated like a cottage system where the youth were divided into 'families' with cottage parents who oversaw the day-to-day running of the family, discipline of the youth, and schooling. The structure is still used in some youth correctional institutions today, however, back in the nineteenth century, children were often exploited for labor, and many schools de-emphasized formal education as seen in figure 10.1. (Mennel, 1973). Additionally, the emphasis of the reform school was on the strength of the family and they believed that by reinserting a strong family presence in the cenves of the youth, they would be deterred from further criminal pursuits (Shoemaker, 2018). Regardless of the lack of evaluations as to the effectiveness of these institutions, the popularity of reformatories continued to grow.

Figure 10.1. Young children miners with soot on their faces.

The state had the legal authority to commit children and youth to reform schools based under *parens patriae*. However, in 1870, a boy named Daniel Turner was considered a "misfortunate", or someone who was in danger of becoming delinquent because his family was poor and unable to care for him. He was remanded to a Chicago house of refuge for vagrancy, not a delinquent act. His father filed a writ of habeas corpus and the court ruled that the state has no power to imprison a child, who has committed no crime, on the mere allegation that he is "destitute of proper parental care, and is growing up in mendicancy, ignorance, idleness, and vice."*(People Ex Rel. O'connell v. Turner*, 55 Ill. 280 (Ill. 1870)). This effectively closed the reform schools in Illinois since they could no longer house noncriminal children. This case challenged the practice of *parens patriae* and ruled that the state can only take control of children if the parents are completely and utterly unfit and/or the child had committed some act of "gross misconduct" (Fox, 1970).

## 10.3.2 Child Saving Movement

By the end of the nineteenth century, cities were experiencing the effects of three major things: industrialization, urbanization, and immigration. Industrialization refers to the shift in work from agricultural

jobs to more manufacturing work. This led to a greater number of people moving from the country to the cities, and the cities increased exponentially in population without the infrastructure to support the increase. Immigration refers to the internal migration of people in America and the external movement of people from other countries. Within America, people were moving from the southern states (remember, this is not long after the end of the Civil War, which ended in 1865) and immigrating from European countries such as Ireland (the potato famine lasted from 1845–1854 and killed an estimated 1.5 million people). Millions of Germans and Asians also immigrated to America during this time, lured by Midwest farmlands and the California Gold Rush (History.com Editors, 2009).

The influx of people into cities weakened the cohesiveness of communities and the abilities of communities and families to socialize and control children effectively (Feld, 1999). Nonetheless, the child-saving movement emerged during this time to change the way the state was dealing with dependent, neglected, and delinquent children. The child savers were women from middle and upper-class backgrounds.

There is some debate as to the motives of child savers. The traditional view is that they were progressive reformers who sought to solve problems of urban life. In contrast, others contend that they used their station and resources in an effort to preserve their middle-class White way of life by overseeing the treatment of the immigrant children. Regardless of their motives, it is safe to say that child-savers were prominent, influential, philanthropic women, who were "generally well educated, widely traveled, and had access to political and financial resources" (Platt, 1977).

## 10.3.3 Creation of the Juvenile Court

The juvenile court was created in Cook County, Illinois, in 1899. The Illinois Juvenile Court Act of 1899 was the first statutory provision in the United States to provide an entirely separate juvenile justice system. The court was created to have jurisdiction over all matters pertaining to youth-dependent, neglected, and delinquent youth.

A 1905 Pennsylvania Supreme Court case, Commonwealth v. Fisher, 213 Pennsylvania 48 (1905), conveyed the legal authority of the new juvenile court under parens patriae:

> To save a child from becoming a criminal, or from continuing in a career of crime . . . the legislatures surely may provide for the salvation of such a child, if its parents or guardians be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection. (n.d.)

In this case, a juvenile was given a seven-year sentence for a minor crime which would have received a much lesser sentence in adult court. The court upheld the sentence and deemed it was in the child's best interest. As a result of the case, parens patriae was back. The court ruled that:

> . . . importance to the commonwealth which is vitally interested in rescuing and saving its children, wherever

rescue, care and a substitute for parental control are required, to the end that they may, in the enjoyment of sober, industrious and happy lives, fill the full measure of good citizenship. (Commonwealth V. Fisher, 213 Pa. 48 (1905), n.d.)

## 10.3.4 Licenses and Attributions for History of the Juvenile Justice System

# 10.4 DELINQUENCY

Before the creation of the juvenile court, there was no such thing as "delinquency." Youth were convicted of crimes, the same as adults. Just as the concept of "childhood" is socially constructed, scholars also say that "juvenile delinquency" is likewise socially constructed as a result of social, economic, and religious changes (Feld, 1999). The juvenile court oversees cases for youth between the ages of seven and 17. Seven is considered the lower limit of the reaches or protections of the juvenile justice system, while 17 is the upper limit. At 18, youth are considered adults and are tried under the laws of the adult criminal justice system. However, some states have differing upper age limits. For example, in Oregon, the Oregon Youth Authority houses youth until the age of 25. Other states have similar provisions, and although the lower limit is seven years of age, most states do not intervene in cases under nine. In figure 10.2., you can see the juvenile age breakdown across the United States.

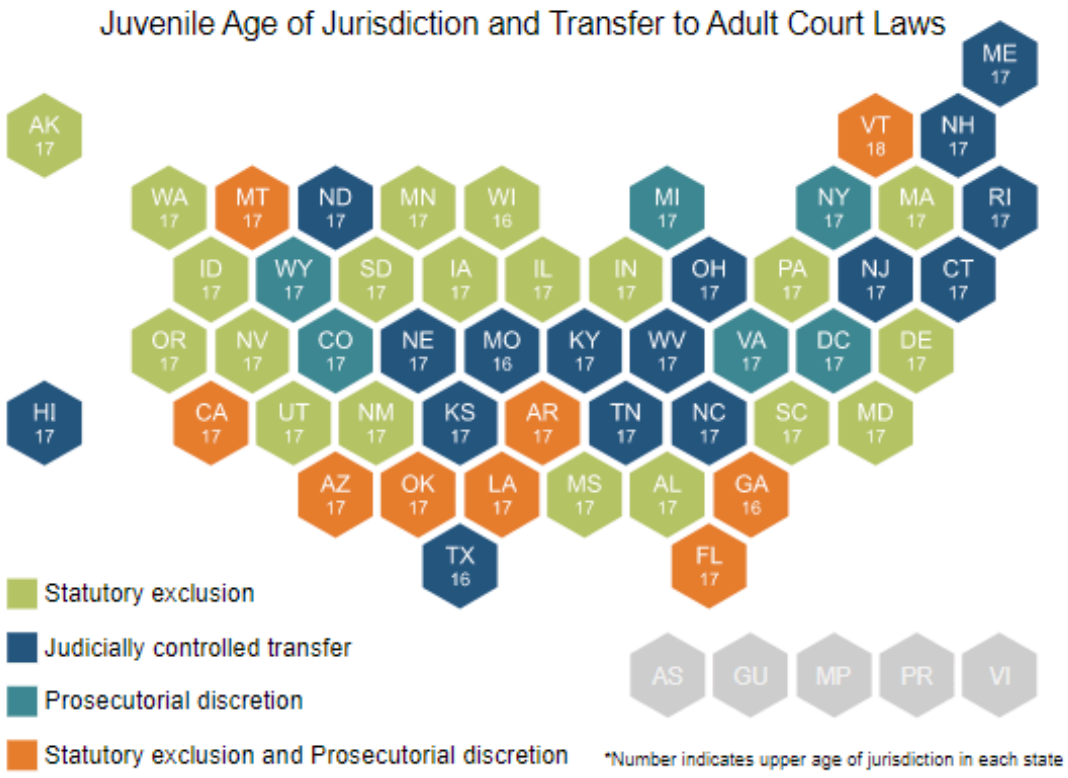



Figure 10.2. A map of States in the United States noting Juvenile Age of Jurisdiction and Transfer to Adult Court Laws.

## 10.4.1 Youth Processing Ages

After the creation of the juvenile court, the child savers and reformers were worried that restricting the court to only deal with criminal youth would make the court function like an adult criminal court rather than a rehabilitative parental figure. Within a couple of years of its founding, amendments to the Illinois Juvenile Court Act broadened the definition of delinquency to include incorrigible youth, or otherwise unruly and out of the control of their parents (Feld, 1999). The definition of juvenile delinquency now included **status offenses** or offenses that are only illegal because of the age of the offender. Examples include: drinking alcohol, running away, ungovernability, truancy (skipping school), and curfew violations. Overall, the juvenile justice system is responsible for youth who are considered dependent, neglected, incorrigible, delinquent, and/or status offenders.

To learn more check out the Podcast: Caught. WNYC studios presents a nine part series about justice-involved youth. Check out the the series at Caught: Episodes | WNYC Studios | Podcasts.

The purpose of the original court was to act in a rehabilitative ideal. The main function was to emphasize reform and treatment over punishment and punitive action (Feld, 1999). Terminology in the court is even different, to denote the separate nature from the adversarial adult processes. To initiate the juvenile court process, a petition is filed "in the welfare of the child," whereas this is called an indictment in the adult criminal process. The proceedings of juvenile courts are referred to as "hearings," instead of trials, as in adult courts. Juvenile courts find youths to be "delinquent," rather than criminal or guilty of an offense, and juvenile delinquents are given a "**disposition**," instead of a sentence, as in adult criminal courts, meaning dispositions are the punishment imposed by the courts on the youth.

## 10.4.2 School to Prison Pipeline

Most theorists and researchers agree that there is a correlation between poor school performance and delinquency. Negative experiences in school foster delinquent behavior, but there is more to delinquency than failing social studies class or algebra. The **school to prison pipeline (SPP)** refers to the increasing connection between school failure, school disciplinary policies, and student involvement in the justice system. In their book, Kim, Losen and Hewitt (2010; p. 1) define the SPP as "the intersection of a K–12 educational system and a juvenile justice system" through education and discipline structures that facilitate school disengagement (Rocque & Snelligs, 2018). These systems are marred with low graduation rates, high dropout rates, high number of suspensions and expulsions, and zero tolerance disciplinary practices. These practices disproportionately place students of color into the criminal justice system.

When school officials unfairly apply harsh disciplinary measures or overuse referrals to law enforcement agencies through the use of school resource officers (SROs) or zero-tolerance policies, they ignore the underlying causes of the behavior and set up vulnerable students for failure. Students from marginalized

groups are at the greatest risk of being drawn into the school to prison pipeline. Black students in particular miss an average of five times as many instructional days because of out-of-school suspensions compared with White students. And missing school increases the likelihood of dropping out of school which then increases the likelihood of other negative life outcomes such as poverty or lower earning potential over one's life, poor health, substance abuse, and contact with the criminal justice system. In fact, students who are suspended are over five times more likely to be charged with a violent crime as an adult (Wright et al., 2014).

African Americans, American and Alaskan Natives, low-income students, those with mental disabilities, and those at risk of academic failure are disproportionately involved with the SPP (Welch et al., 2022). There continues to be a very clear racial disparity between White and Black students in school discipline, including office referrals, suspensions, and expulsions. Structural or institutional racism refers to systems or policies that create or maintain racial inequalities. It is not a stretch to correlate SPP and discriminatory discipline actions with institutional racism within the schools.

What can we do? As we'll talk about later in the chapter, restorative justice practices have the potential to eliminate the school to prison pipeline. Restorative justice (RJ) seeks to heal harm, understand the causes of behavior, and build a sense of community. RJ can help create a supportive school environment, but school officials also need to actively work on addressing cultural biases and understanding educational trauma to ensure that schools provide an equal chance for educational success for all students.

## 10.4.2.1 In the News: The Prison Pipeline

6-year-old Zachery Christy, a first grader in Newark Delaware, was suspended for 45 days for bringing a spork to school. The camping utensil, which contains a spoon, fork, knife, and bottle opener was a gift from Cubs Scouts. The first grader brought the camping utensil to school although the "dangerous weapon" violated zero tolerance rules at the school.

Spurred in part by the Columbine and Virginia Tech shootings, many school districts around the country adopted zero-tolerance policies on the possession of weapons on school grounds. More recently, there has been growing debate over whether the policies have gone too far. (Urbina, 2009)

Zero Tolerance policies are strict adherence to regulations and bans to prevent undesirable behaviors. The idea behind them is to promote student safety and to be fair and consistent with all children. The idea behind them is to promote a one size fits all approach, so as to treat all children equally, however, research suggests that minority youth are unfairly targeted by such practices, which counters their purposes. Zero Tolerance policies contribute to the school to prison pipeline. Children who interact with law enforcement at earlier ages are more likely to end up in the criminal justice system.

What was thought to remove discretion from school administrators in issues of discipline, actually results in African American students being more likely to be suspended or expelled than other students for the same offenses? Additionally, the suspension or expulsion from school severs ties and harms the relationship youth have with school, making it harder for the youth to return and engage.

For Zachary and his spork, it's more than breaking his attachment to school and his teachers. He fears being teased by the other students. If his parents choose not to home-school him, he must spend the next 45 days in the district's reform school.

Watch Rethinking zero tolerance: Dean Allen Groves at TEDxUVA to learn more.

## 10.4.3 Disproportionate Minority Contact (DMC)

In an article published by the Juvenile Justice Information Exchange, titled, "Why Disproportionate Minority Contact Exists, What to Do," author Rebecca Fix explained that **Disproportionate minority contact (DMC)** "occurs when the proportion of youth of color who pass through the juvenile justice system exceeds the proportion of youth of color in the general population." (2018). It can be assessed at every stage of the juvenile justice system, from arrest to adjudication. Considerable research on disproportionate minority contact has been conducted over the past three decades. Research shows minority youth are over-represented in arrests, sentencing, waiver, and secure placement. African American, Latinx/Hispanic American, and Indigenous/Native American youth are disproportionately represented at every single stage of the justice system. States receiving federal grant money are required to address DMC "regardless of whether those disparities were motivated by intentional discrimination or justified by 'legitimate' agency interests" (Johnson, 2007). However, it still exists. For example, African American males represent roughly 35 percent of juvenile arrest rates but only 8 percent of the U.S. juvenile population. This is problematic (Fix, 2018).

When racial/ethnic minority youth are disproportionately involved in the juvenile justice system, they have a higher chance of suffering the consequences that stem from being justice-involved, such as mental and physical health issues, lower academic achievement, poorer employment potential, and are more than 13 times more likely to be arrested and incarcerated again.

Some argue that DMC is a direct and measurable result of institutional racism. This can be seen in instances of "differential selection" when professionals in the juvenile justice system, such as police officers, judges, and probation officers, treat ethnic and minority youth more harshly than White youth. Similarly, "justice by geography" suggests that youth are treated and perhaps even stereotyped based on the areas where they are located during their interactions with juvenile justice professionals.

Another factor associated with DMC is "differential opportunities" or privileges for treatment and prevention are available for some youth and not for others. For example, "European American youth are more likely" to have access to treatment programs and benefit from restorative justice in their schools and communities (Fix, 2018).

## 10.4.4 Licenses and Attributions for Delinquency

# 10.5 JUVENILE JUSTICE PROCESS

Did you know that there is no uniform juvenile justice system in the United States? It is quite surprising. Matters concerning minors and children who break the law are left to the discretion of individual states and their legislative bodies. States have different priorities, and legislators enact new laws and revise legislation according to their own needs at the time. Although every state operates independently, they manifest common trends and respond to certain issues in a similar manner. For example, the increasing fear of youth violence in the 1990s precipitated more specific and punitive legislation in almost every state (Feld, 2003). Some states with very specific and real gang problems devised targeted gang suppression laws and legislation, while other states did not. The fear of youth crime led states to create mandatory minimum legislation (like Measure 11 laws in Oregon), waiver and transfer laws, and zero-tolerance policies.

The juvenile justice system has two main responsibilities: to oversee cases involving (1) juvenile delinquency (criminal law violations and status offenses) and (2) dependency, neglect, and child abuse (Rubin, 1996). Due to the loose definitions of *parens patriae* and the court's attempt to act in the best interest of the child, after World War II, the juvenile court was criticized for disregarding due process.

Due process refers to the procedural rights established in the Constitution, especially the Bill of Rights. It includes rights such as the right to legal counsel, the right to call witnesses, and the right to be notified of charges (which will be revisited in *In re Gault*). The original juvenile court did not implement due process rights because it was intervening in the lives of youth for their own good, not in such a formalized adult way that they would need constitutional protections. However, because of the abuse of power, this changed in later decades.

Beginning in the 1960s, four areas drastically changed in the juvenile court:

1. The juvenile due process revolution from 1966 to 1975.
2. The Juvenile Justice and Delinquency Prevention Act of 1974.
3. A growing emphasis on punishment and accountability in the 1980s and 1990s.
4. Contemporary juvenile justice reform that is driven by evidence-based practices and empirical research on adolescent development, which in turn leads us back to rehabilitation.

## 10.5.1 Due Process in the Juvenile Court

As discussed, the juvenile court was created with rehabilitation and individualized treatment in mind.

However, between 1966 and 1975, the court became more formalized and started "adultifying" the process. Landmark cases for establishing due process rights in the juvenile justice system include:

## 10.5.1.1 Kent v. United States (1966)

Kent v. United States (1966)

Morris Kent was a 16-year-old boy living in Washington DC who was on probation for burglary and theft. He was arrested again and charged with three burglaries, three robberies, and two counts of rape. Due to the seriousness of the changes and Kent's previous criminal history, the prosecutors moved to try Kent in adult court. However, because of his age, he was under the exclusive jurisdiction of the juvenile court. Kent's lawyers wanted his case to be heard in juvenile court. The judge sided with the prosecutors without a hearing or a full investigation, and Kent was tried in adult court. He was found guilty and sentenced to 30–90 years in prison. On appeal, Kent's lawyers argued that the case should have to stay in juvenile court, and was unfairly moved to adult court without a proper hearing.

The Supreme Court ruled that while minors can be tried in adult court, the original judge needed to conduct a full investigation and an official waiver hearing where the merits of the case were weighed, such as the juvenile's age, prior charges, and mental state. Kent was entitled to a hearing that provided "the essentials of due process and fair treatment." This standard includes the right to a formal hearing on the motion of waiver and a written statement of the reasons for a waiver, the right to counsel, and the defense's access to all records involved in the waiver decision. It also ruled that "The *parens patriae* philosophy of the Juvenile Court 'is not an invitation to procedural arbitrariness" (Kent, 1966).

## 10.5.1.2 In re Gault (1967)

In re Gault (1967)

Gerald "Jerry" Gault, a 15-year-old Arizona boy, was taken into custody for making obscene calls to a neighbor's house. After the neighbor, Mrs. Cook, filed charges, Gault and his friend were taken to the Juvenile Detention Home. When he was taken into custody, his parents were at work, and the arresting officers made no effort to contact them, nor did they leave a note about the arrest or where they were taking their son. They finally learned of his whereabouts from the family of the friend who was arrested with him.

When the habeas corpus hearing was held two months later, Mrs. Cook was not present, no one was sworn in before testifying, and no notes were taken. He was released and scheduled to reappear a few months later for an adjudication hearing. In the following hearing, again, Mrs. Cook was not present, and no official transcripts of the proceeding were taken.

The official charge was "making lewd phone calls." The maximum penalty for an adult charge with this was

a $50 fine or not more than two months in jail. Gault was found guilty and sentenced to six years in juvenile detention.

Gault's parents filed a writ of habeas corpus, which was eventually heard by the Supreme Court. The Supreme Court ruled that juveniles are entitled to due process rights when the court proceedings may result in confinement to a secure facility. The specific due process rights highlighted in this case include (1) fair notice of charges; (2) right to counsel; (3) right to confront and cross-examine witnesses; and (4) privilege against self-incrimination.

The Court held that the Due Process Clause of the Fourteenth Amendment applies to juvenile and adult defendants. "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." (In re Gault, 1967).

## 10.5.1.3 In re Winship (1970)

In re Winship (1970

Samuel Winship, a 12-year-old boy living in New York, was charged with stealing $112 from a woman's purse in a store, a charge that "if done by an adult would constitute the crime or crimes of Larceny." Since he committed a crime, the charges of juvenile delinquency were justified. Winship was found delinquent in a New York juvenile court, using the civil law standard of proof, "preponderance of the evidence." Winship was committed to a state training school for an initial period of 18 months with an annual extension of no more than six years.

Upon appeal, the U.S. Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment requires "proof beyond a reasonable doubt." (In re Winship, 1970). The court acknowledged that juvenile proceedings are designed to be more informal than adult proceedings. Still, if charged with a crime, the juvenile is granted protection of proof beyond a reasonable doubt. Winship expanded the constitutional protections established in Gault.

## 10.5.1.4 Breed v. Jones (1975)

Breed v. Jones (1975)

A 17-year-old boy named Gary Jones was charged with armed robbery and found guilty in a California juvenile court. At the dispositional hearing, the probation officer assigned to the case testified that Jones was not amenable to treatment. After the hearing, the court determined that Jones should subsequently be tried as an adult. Jones' lawyers filed a writ of habeas corpus. They argued that waiving the case to adult court after it was already adjudicated in juvenile court violated the double jeopardy clause in the Fifth Amendment. The Supreme Court ruled that, yes, Jones had been placed in double jeopardy. This further formalized the juvenile court. However, the court moved, "Giving respondent the constitutional protection against multiple

trials in this context will not, as petitioner claims, diminish the flexibility and informality of juvenile-court proceedings" (Raley, 1995).

## 10.5.2 The Juvenile Justice and Delinquency Prevention Act of 1974

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 reformed and redefined the philosophy, authority, and procedures of the juvenile justice system in the United States. This was the first major federal initiative to address juvenile delinquency nationwide (OJJDP, 1998). While historically, the oversight of juvenile matters fell on the states, the JJDP Act established some oversight at the federal level.

The JJDP Act attached to state funding to reform efforts. For example, one major reform effort involved revising policies around secure detention, separating juveniles from adult offenders, and deinstitutionalizing status offenders. Status offenders were no longer to be held in secure facilities with delinquent youth (OJJDP, 1998). In 1992, as part of the reauthorization of JJDPA, states were encouraged to identify gaps in their ability to provide appropriate services for female juvenile delinquents (42 U.S.C. 5601; OJJDP). The federal government expected states to provide specific services for the prevention and treatment of female delinquency and prohibit gender bias in the placement, treatment, and programming of female delinquents.

## 10.5.3 Licenses and Attributions for Juvenile Justice Process

# 10.6 GETTING TOUGH: INITIATIVES FOR PUNISHMENT AND ACCOUNTABILITY

The 1980s saw a huge shift in the way states and federal laws were addressing juvenile law. Gangs, gun violence, and drugs drew attention to the identification, punishment, and prevention of violent and chronic youth offenders. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) focused research on youth violence and state and local programming. Attention focused on identifying and controlling serious, violent, and chronic offenders.

At the state level, lawmakers enacted policies to crack down on youth crime. In the mid-1990s, the idea of the juvenile **superpredator**, youth so impulsively violent, remorseless, and without respect for human life, led to widespread reform and more punitive approaches to juvenile crime and delinquency. This included more punitive sentences, lowering the age at which a juvenile could be tried as an adult, and loosening the provisions for trying juveniles in adult court. The motto "adult time for adult crime" drove accountability initiatives and get-tough campaigns. A youth was no longer seen as vulnerable minors needing protection and treatment. Instead, the narrative changed, and they were seen as violent monsters acting "with no conscience and no empathy," a statement Hillary Clinton has publicly regretted saying.

## 10.6.1 Waiver and Adult Time

All states have enacted laws that allow juveniles to be tried in adult criminal courts. There are several mechanisms by which a juvenile can be transferred to adult criminal court: prosecutorial, legislative, and judicial waiver. The **prosecutorial waiver** also is referred to as "Direct File" and "Concurrent Jurisdiction." With this waiver mechanism, the legislature grants a prosecutor the discretion to determine which court to file charges against the juvenile. The prosecutor or district attorney can choose to file charges in juvenile or adult criminal court. This procedure does not require a transfer hearing, so the defense is not allowed to present evidence to avoid the transfer (Feld, 2001).

**Legislative waiver**, or statutory waiver, identifies certain offenses mandated by state law to be excluded from juvenile court jurisdiction. It is utilized to decrease or eliminate the discretionary powers of judges and prosecutors. For example, the number of state statutes specifies that violent felony offenses such as homicide, rape, and robbery, when committed by older adolescents, are automatically sent to adult criminal court.

**Judicial waiver** allows the juvenile court judge to transfer a case to adult criminal court (Steiner et al., 2006). There are three types of judicial waiver: discretionary, presumptive, and mandatory.

The **discretionary** (regular) **waiver** allows a judge to transfer a juvenile from juvenile court to adult

criminal court (Hemmens & Bell, 2006). With this type of transfer, the burden of proof rests with the state, and the prosecutor must confirm that the juvenile is not amenable to treatment. As discussed previously, in Kent v. United States (383 U.S. 541, 566–67 [1966]), the Supreme Court outlined threshold criteria that must be met before a court can consider waiving a case. These waiver statutes typically include a minimum age, the specified type of offense, a sufficiently serious prior record, or a combination of the three.

**Presumptive waiver** shifts the burden of proof from the State to the defendant. It is presumptive because it is presumed that it will occur unless the youth can meet the burden of proof and provide a justifiable reason to remain in juvenile court. If the youth cannot show just cause or sufficient reason why the case should be tried in juvenile court, the case will be transferred and tried in adult court.

The third type of judicial waiver is a mandatory waiver. **Mandatory waiver** means that a juvenile judge must automatically transfer to adult court juvenile offenders who meet certain criteria, such as age and current offense. In these cases, the role of the judge is simply to confirm that the waiver criteria are met and then to transfer the case to adult court. Mandatory waiver removes all discretionary powers from the juvenile court judge in transfer proceedings (Sanborn, 2014).

State juvenile courts with delinquency jurisdiction handle cases in which juveniles are accused of acts that would be crimes if adults committed them. In 45 states, the maximum age of juvenile court jurisdiction is age 17. Five states—-Georgia, Michigan, Missouri, Texas, and Wisconsin—now draw the juvenile/adult line at age 16. However, all states have transfer laws that allow or require young offenders to be prosecuted as adults for more serious offenses, regardless of age.

In addition to increasing transfer mechanisms, at least 13 states lowered the age of majority to 15, 16, and 17, which allowed the youth of these ages to be automatically tried in adult criminal courts. These were supposed to provide procedures that curbed only the worst of the worst offenders. However, these provisions increased the prosecution of all juvenile offenders and youth of color in particular (Burke, 2015).

## 10.6.2 Superpredator and Discriminatory Practices

As mentioned before, the term "superpredator" was associated with those considered so violent and remorseless as to be not amenable to treatment. Said another way, superpredators were youth who could not be rehabilitated. John J. DiIulio Jr. a political science professor at Princeton University, first proposed the idea of the superpredator theory. He argued that America in the 1990s faced a growing generation of violent youth—kids that had no regard for human life. Tapping into the country's long history of systemic racism and racialized fear, he posited that the superpredators would be disproportionately youth of color, specifically Black teenage males (Forman & Vinson, 2022).

America's criminalization of Black youth can be seen in transfer or waiver legislation that allows youth to be tried as adults and the overly harsh sentences youth received in the 1990s. These reflect a notion of "othering" youth of color and allows society to fear and control them. The concept of "othering" is a way for society

to distance themselves, and labeling youth as "super predators" or monsters means that they are not like our children—they are other, vile, and violent.

While the notion of the superpredator has been debunked, even by Dr. DiIulio himself, the harm it caused to the lives of children and the families of those children is very real. It incited moral panic based on faulty and flawed logic and forecasting.

## 10.6.3 Licenses and Attributions for Getting Tough: Initiatives for Punishment and Accountability

# 10.7 RETURNING TO REHABILITATION IN THE CONTEMPORARY JUVENILE JUSTICE SYSTEM

Empirical research drives recent reform efforts. The past decade has witnessed the identification of key developmental processes associated with delinquent behavior, such as brain development research. Ergo, evidence-based practices utilize the scientific method to assess the effectiveness of interventions, policies, and programs. In looking at what works, what doesn't, and what is promising, researchers and policymakers assess the implementation of interventions to best meet the needs of the individual youth.

## 10.7.1 Key Supreme Court Cases

Several noteworthy Supreme Court cases exemplify society's evolving standards of decency and treatment of youth. These key cases demonstrate a move back to rehabilitation and acknowledge the fundamental differences between children and adults.

### 10.7.1.1 Roper v Simmons (2005)

Roper v. Simmons (2005)

In 2005, a landmark decision by the Supreme Court ruled it unconstitutional to impose a death penalty sentence on any youth who was under the age of 18 when they committed their offense (*Roper v. Simmons*). Although Christopher Simmons planned and committed a capital offense (he murdered his neighbor, Shirley Cook), the court ruled that 18 years of age is where criminal responsibility should rest. That is to say, if a child is too young to vote, sign contracts, or do many other things (because society deems them not responsible enough), then they are too young to receive the death penalty. The court stated, "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be "cruel and unusual." Simmons received life in prison. It was ruled that imposing the death penalty on a person under 18 at the time of the crime constituted cruel and unusual punishment. At the time of the *Roper v Simmons* verdict, the United States was only one of a handful of countries that still imposed the death penalty on juveniles (among other countries were Yemen, Saudi Arabia, and Iran).

## 10.7.1.2 Graham v Florida (2010)

Graham v. Florida (2010)

While the death penalty was taken off the table for youth under the age of 18, they were instead sentenced to life in prison without the possibility of parole (LWOP). This was until the 2010 case of *Graham v. Florida*. Terrance Graham received life in prison for a felony offense (armed burglary) when he was only 16 years old. Since Florida does not have parole, his sentence de facto became a life without the possibility of parole. The Supreme Court heard his case and ruled that it was unconstitutional to sentence a minor to life without the possibility of parole for a nonhomicide offense.

## 10.7.1.3 Miller v Alabama (2012)

Miller v. Alabama (2012)

Two years later, juvenile law again rested in the hands of the Supreme Court. Even though *Graham v. Florida* abolished life without the possibility of parole for nonhomicide offenses, youth under the age of 18 were still receiving that sentence for crimes of murder. In 2012, when Evan Miller was 14 years old, he killed his neighbor by severely beating him with a baseball bat while attempting to rob him. With contemporary research about brain formation and juvenile culpability, the Supreme Court ruled that youth are not as responsible as adults for their actions because their brains have not fully formed. In the majority opinion, Justice Elena Kagan wrote that "mandatory life without parole for those under the age of 18 at the time of their crime violates the 8th Amendment's prohibition on cruel and unusual punishments." "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences," Justice Kagan said. "It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional."

This seemed like a huge win for juvenile justice reformers. Juveniles could no longer receive the death penalty, life without parole for nonhomicide, nor mandatory life without parole for homicide. However, so many people serving LWOP sentences were still juveniles when they committed their crime.

## 10.7.1.4 Montgomery v Louisiana (2016)

Montgomery v. Louisiana (2016)

In 2016, the Supreme Court heard the case of Henry Montgomery, who was 17 years old in 1963 when killed a sheriff's deputy. He initially received a death sentence, but this was overturned because of the racial tension of the time (Montgomery was Black youth who killed a White law enforcement officer.) He instead received a life sentence and appealed this sentence after the Miller v. Alabama ruling. *Montgomery v. Alabama*

barred mandatory life without parole sentences retroactively. This meant that all youth sentenced prior to 2012 with LWOP sentences needed to be retried.

These four major Supreme Court cases identify the differences between adults and juveniles. They recognize the difference in brain formation and culpability, owning the ability for rehabilitation of youth and moving step by step away from a retribution/punishment model for youth. In 2012, there were about 2,600 youth serving life without parole and in 2020 that number decreased to around 1,465 (Rovner, 2021).

Unfortunately, while the court appeared to be on the right track for reform, the reality is much different. Evan Miller was resentenced to life without the possibility of parole, and Henry Montgomery was denied parole in 2018 and 2019 only finally being released in 2021 after serving 57 years in prison.

### 10.7.1.5 Jones v. Mississippi (2021)

Jones v. Mississippi (2021)

Brett Jones, a young victim of abuse and neglect, was 15 years old when he killed his grandfather. He struggled with mental health issues and lost access to his psychiatric medications when he was kicked out of his mother's house and moved in with his grandparents. He was sentenced to life without the possibility of parole, which was the mandatory sentence in Mississippi for homicide. After the Miller decision, Jones retired, and the judge determined that life without parole was the appropriate punishment. Jones appealed stating that under Montgomery v. Louisiana the judge must find a murder under the age of 18 is permanently incorrigible beyond hope. The Supreme Court ruled that the judge did not need to use those magic words—that a finding of incorrigibility was not necessary in order to sentence a youth to life without parole. It was enough that the judge reheard the case. The Court ruled that discretionary sentencing is sufficient.

Critics argue that this ruling guts the proceeding two Supreme Court decisions and moves juvenile justice reform back two steps. The question remains, is the sentencing of a youth to life without the possibility of parole considered cruel and unusual punishment and a violation of the 8th Amendment? The Supreme Court would argue it does now, however, the United States is the only country in the world that permits youth to be sentenced to life without parole. Sentencing children to die in prison is condemned by international law (Juvenile Law Center, 2022).

## 10.7.2 Licenses and Attributions for Returning to Rehabilitation in the Contemporary Juvenile Justice

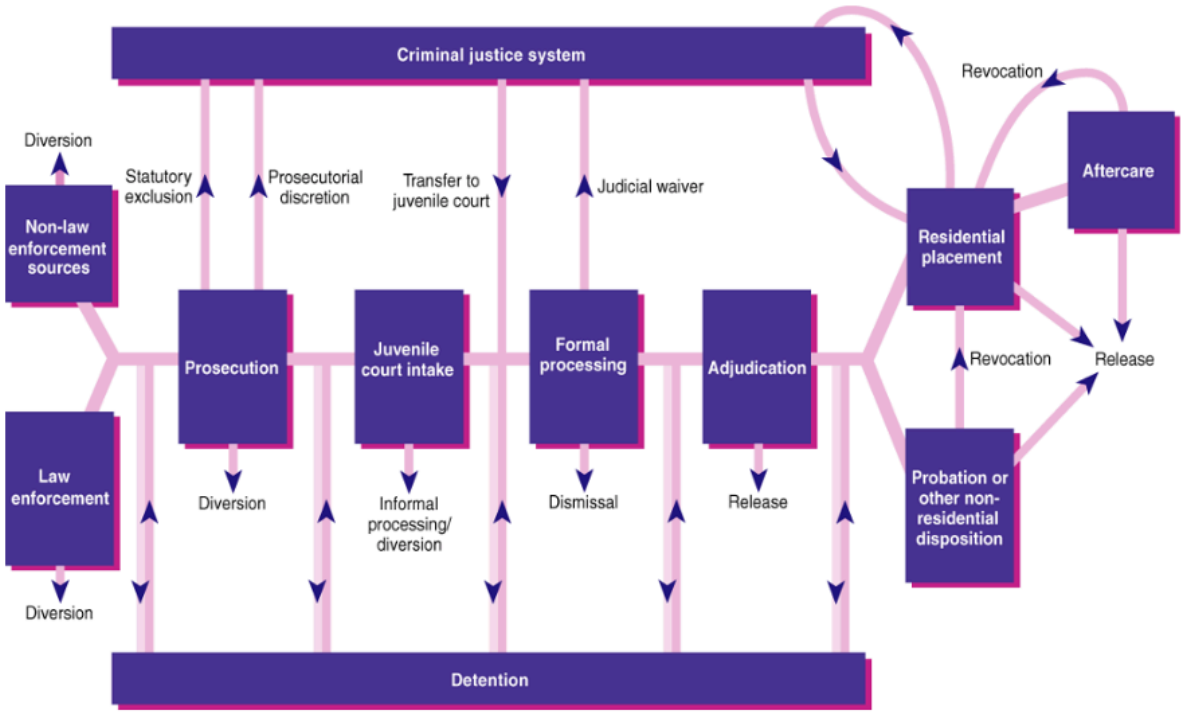
## System

"Returning to Rehabilitation in the Contemporary Juvenile Justice System" by Alison Burke is adapted from "10.9 Returning to Rehabilitation in the Contemporary Juvenile Justice System" by Alison S. Burke in *SOU-CCJ230 Introduction to the American Criminal Justice System* by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, and Shanell Sanchez, licensed under CC BY-NC-SA 4.0. Edited for style, consistency, recency, and brevity; added DEI content.

# 10.8 THE STRUCTURE OF THE JUVENILE JUSTICE SYSTEM

The Juvenile Justice Process has various different decision points. The major decision points in this process are: (1) arrest, (2) referral to court, (3) diversion (at multiple points in the process), (4) secure detention, (5) judicial waiver to adult criminal court, (6) case petitioning, (7) delinquency finding/adjudication, (8) probation, and (9) residential placement, including confinement in a secure correctional facility. These can be seen in figure 10.3. in the Juvenile Justice Case Flow Diagram.

Figure 10.3. A Juvenile Justice System Flow Chart noting decision points along the path.




The majority of cases are first referred to the juvenile justice system through contact with police. Probation officers, school officials, or parents usually refer the remaining cases. The most common offenses referred to juvenile court are person offenses (~32.5 percent), followed by property offenses (~30 percent), public order offenses (~25.5 percent), and drugs (~13.5 percent) (Hockenberry, 2022). Other referrals come from schools, families, social workers, or probation officers.

At the intake stage, probation officers or attorneys determine whether or not the case needs the attention of the juvenile court or if it can be handled informally, such as through diversion to probation or a drug treatment program. If the case progresses to court, the authorities need to determine if the youth can be released to a

parent/guardian or if the youth needs to be held in a secure detention center. When determining this, the court needs to assess the risk the youth poses to society and if the youth poses a flight risk. In some cases, the parent cannot be located or, if located, refuses to take custody of the youth. In these cases, the juvenile is remanded to custody. The decision to detain or release the juvenile will be made by the judge at a detention hearing.

The county attorney must file a petition if the case is handled in court. When the youth has a formal hearing, it is called an adjudication rather than a trial in adult court. The adjudication of a youth as delinquent can result in either dismissal of the charges or confinement at a secure institution. In most juvenile cases, the least restrictive option is usually sought, so the youth is usually put on probation or community treatment. Formal processing is less common than informal processing involving diversion or community-based programming.

## 10.8.1 Licenses and Attributions for The Structure of the Juvenile Justice System

# 10.9 JUVENILE INSTITUTIONS

Just as the juvenile court has different practices, so too does the correctional side of the juvenile justice system. Since the aim of the juvenile justice system is rehabilitation, the treatment of youth is somewhat different than the treatment of adults. For example, justice-involved youth can be sent to detention centers, group homes, boot or wilderness camps, residential treatment centers, long-term secure facilities, or other institutions.

## 10.9.1 Detention

In the first stages of the justice system, the court must decide if it will detain the youth. If a youth is detained, he/she is sent to a detention center, which is a short-term, secure facility. These are comparable to adult jails. Youth are often kept in detention facilities while waiting for disposition or transfer to another location. The average length of stay is two–three weeks. Factors that increase the likelihood of detention include prior offenses, age at first offense and current age, and the severity of the current offense. Research also suggests that race, gender, and socioeconomic status play a role in deciding whether to detain a youth.

## 10.9.2 Group Homes

Group homes are long-term facilities where youth are allowed and encouraged to have extensive contact with the community. Youth attend regular school, hold jobs, and take public transportation. In many group homes, youth learn independent living skills that prepare them for living on their own. These are similar to adult halfway houses.

## 10.9.3 Boot Camps and Wilderness Camps

Boot Camps are secure facilities that operate like military basic training. They focus on drills, manual labor, and physical activity. They are often punitive and overly strict. Despite popular opinion, research shows that these are ineffective in preventing future delinquency. The length of stay is generally several weeks. On the other hand, ranch/wilderness camps are prosocial and preventative. These are long-term residential facilities that are nonrestrictive and are for youth who do not require confinement. These include forestry camps and wilderness programs.

## 10.9.4 Residential Treatment Centers (RTCs)

RTCs are long-term facilities that focus on individual treatment. They include positive peer culture, behavior modification programming, and helping youth develop healthy coping mechanisms. Many have specific targeted populations, such as kids with histories of substance abuse or issues with mental health. They are often considered medium security, and the average stay is often six months to a year.

## 10.9.5 Long-Term Secure Facilities

Long-term facilities are strict secure conferment. These include training schools, reformatories, and juvenile correctional facilities. These facilities are often reserved for youth who have committed serious offenses. They are similar to adult prisons but operate under a different philosophy. For example, incarcerated youth are still required to attend school within the facility.

## 10.9.6 Licenses and Attributions for Juvenile Institutions

# 10.10 CRIME PREVENTION SCIENCE (CPSC) SOLUTIONS AND JUVENILE JUSTICE

As we have discussed in prior chapters, there are Crime Prevention Science Solutions that when implemented, could help improve some of the struggles the Juvenile Justice System faces. Below are a couple examples of evidence-based solutions agencies are implementing to help juveniles on the right path.

## 10.10.1 Table 10.1. Crime Solutions for Juvenile Justice

| Title and Evidence Rating | Summary Description of CPSc Solutions |
|---|---|
|  **Program Profile: Adolescent Diversion Project (Michigan State)** | This is a strengths-based, university-led program that diverts arrested youth from formal processing in the juvenile justice system and provides them with community-based services. The program is rated Effective. Participants in the program had statistically significant lower rates of official delinquency, compared with control group youth. However, there was no statistically significant difference between groups in self-reported delinquency. |
|  **Program Profile: Communities that Care (CTC)** | This is a planning and implementation system that helps community stakeholders come together to address adolescent behavior problems such as violence, delinquency, substance abuse, teen pregnancy, and dropping out of school. This program is rated Promising. There were statistically significant lower levels of risk factors and a lower likelihood of initiation of delinquent behavior for intervention communities, compared control communities, but mixed results in substance use initiation. |
|  Program Profile: PROmoting School-COmmunity-University Partnerships to Enhance Resilience (PROSPER) | This is a community-based program that was designed to address substance abuse and antisocial behavior. The program is rated Promising. Students in the schools that implemented the PROSPER model had statistically significant fewer conduct problems and lower lifetime illicit substance use, compared with students in control schools. However, there were no statistically significant impacts on driving after drinking alcohol or frequency of drunkenness. |

## 10.10.2 Licenses and Attributions for Crime Prevention Science (CPSc) Solutions and Juvenile Justice

# 10.11 CAREER ANCILLARIES

To learn more about the role, responsibility, and job opportunities working in the juvenile justice system, review the following resources:

- Watch Working as a Group Life Coordinator – MacLaren Youth Correctional Facility
- Watch Juvenile Justice: Detention – What's It Like?
- Watch Juvenile Correctional Officers
- Check out Jobs at OYA – Oregon Youth Authority to learn more

## 10.11.1 Juvenile Detention

When I graduated from college with a BA in psychology, I applied for a job working with the Division of Youth Corrections in Denver, CO. I worked in a Residential Treatment Facility (RTC), which used behavior modification techniques, assigned case-workers to each youth and their families, and attempted to help the kids learn problem-solving skills and accountability. Youth were confined for a variety of reasons, from committing gang-affiliated drive-by shootings, to youth who were designated dependent youth through social services and had nowhere else to go. We had high-risk kids, low-risk kids, conduct disorder, and mental health kids all together in the same unit. Having a mix of all these different kids is not a great formula; the low-risk kids learn negative behavior from the high-risk kids, and the conduct disorder kids victimize the mental health kids. In an ideal institution, these different populations would all be on separate units.

Working with youth is hard. They push boundaries, are angry, try to manipulate those around them, and reject authority. However, working with youth is exceptionally rewarding. They are kids. They come from abusivue and neglectful homes and are yearning for approval and love. For example, one boy in our facility was named Josh. He was a super angry and violent 16-year-old who was sentenced for committing aggravated assault. Through working with counselors and caseworkers, we discovered his anger was hiding immense sadness. He lashed out at those around him when he was sad because he had no way to show his feelings other than through aggression. Many months of working with him, encouraging him to journal, express his feelings, talk with others, and use other tools to help him with his sadness led to amazing results. He left our facility after more than a year, graduated from high school, and even went to college! Getting the individualized attention helped Josh change. He became a success story of the juvenile justice system.

Working with youth takes patience, consistency, and compassion. It is one of the most difficult jobs, but it can be a very positive influence in the lives of kids who need it the most. If you are interested in working with

youth, plan on committing to at least a year. Incarcerated kids are used to having people give up on them and disappoint them, so you do not want to add to their negative experiences. Show up, follow through, and be optimistic about a better future for justice-involved youth (Burke, 2018).

# 10.12 CONCLUSION

The juvenile justice system has its own philosophy, court system, and correctional institutions that differ from the adult criminal justice system. The major difference between the juvenile justice system and the adult system is its focus on rehabilitation. The juvenile justice system uses private, informal hearings, and individualized justice to act in the best interest of the delinquent youth.

The past century has witnessed a marked change in how the law deals with youth. From the inception of the juvenile justice system in 1899 to the ruling of Montgomery v Louisiana in 2016, the pendulum of juvenile justice swings from a parens patriae model of protection of youth to juvenile waiver, fear of youth crime, and punishment, back to incorporating brain research in assessing rehabilitation and the back again with Jones v. Mississippi in 2021. The juvenile justice system was designed to treat juveniles differently from adults and take their unique needs and circumstances into consideration. Youth are malleable and can change their trajectories with the right treatment and intervention at the right time.

## 10.12.1 Learning Objectives

1. Summarize the history and purpose of the juvenile court.
2. Explain how due process has evolved through the juvenile court.
3. Briefly examine the structure of the juvenile justice system.
4. Examine the reasons supporting and criticizing the process of waiver to adult court.
5. Investigate juvenile justice support for crime prevention science (CPSc) Solutions.

## 10.12.2 Review of Key Terms

- Disposition
- Disproportionate minority contact (DMC)
- Ex parte Crouse
- Juvenile delinquency
- Parens patriae
- Status offenses
- Superpredator
- School to prison pipeline (SPP)
- Waivers [prosecutorial, legislative, and judicial (discretionary, presumptive, and mandatory)]

## 10.12.3 Review of Critical Thinking Questions

Now that you have read the chapter, return to these questions to gauge how much you've learned:

1. What impact did the child savers have on juvenile justice reform?
2. Explain how due process has been used throughout the history of the juvenile justice system.
3. How has the juvenile justice system evolved since it was created?
4. What are the different types of waiver?
5. What four areas changed the juvenile court?

## 10.12.4 Licenses and Attributions for Conclusion

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