PART I

FOUNDATIONS

Chapter 1
An Introduction to Crime and the Criminal Justice System

Chapter 2
The Nature and Extent of Crime

Chapter 3
Criminal Justice and the Law

CHAPTER 1

AN INTRODUCTION TO CRIME AND THE CRIMINAL JUSTICE SYSTEM

LEARNING OBJECTIVES

After finishing this chapter, you should be able to:

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

Introduction: Making Our Way Through the Criminal Justice System

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

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

What Is the Criminal Justice System?

Laws that define crime represent a small portion of the legal field and create a large web of entanglements. Society needs a way to deal with individuals who violate these laws and those who are victims of crime, hence the development of the **criminal justice** system. The criminal justice system comprises three primary components: law enforcement, courts, and corrections.[1] **Law enforcement** is charged with investigating crime and apprehending individuals alleged to have committed crimes. **Courts** are responsible for interpreting and applying the law. The correctional component protects society from criminals through housing, monitoring, and other community-based programs. In some instances, **corrections** involves incarceration in jails or prisons, while in other cases it consists of supervision in the community, parole, or probation. In the most extreme cases, it means putting someone convicted of a crime to death.

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

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

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

Corrections: Functions to protect society from criminals through housing, monitoring, and other community-based programs.

CASE STUDY

Jennifer Schuett: A Case of Attempted Murder and Rape

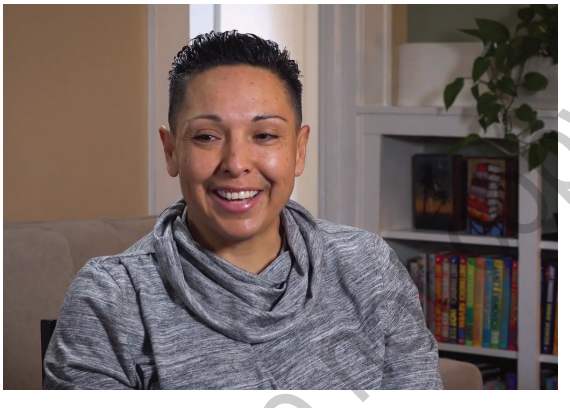
On August 10, 1990, 8-year-old Jennifer was abducted from her bedroom at 2:30 a.m. The offender, a complete stranger, covered her mouth, assuring her that she was safe because he was a police officer. He told her this while running down the sidewalk with her in his arms. He placed Jennifer in his vehicle and sped away from the apartment complex where she lived with her mother. The man later stopped the car and brutally raped Jennifer. In an effort to remove the only witness to his heinous violent crime, he slashed her throat from ear to ear and left her in a vacant field, thinking she was dead.[2]

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

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

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

Esther Lucero's life involved unforeseen pathways that resulted in happiness and hardship. She grew up in a tightly bonded family, which eventually became largely extended after her parents divorced when she was 7 years old. She grew up in a primarily Hispanic neighborhood and now self-identifies as a Spanish, Mestizo Indian or Chicana Lesbian. Esther was the middle child with an older brother and sister. Esther's parents protected and nurtured their children. They also provided opportunities to travel. Her father was a producer and often took the family on trips to see concerts in places like Telluride, Colorado, an elite, well-known music festival and skiing area. Esther grew up in Denver, Colorado, and attended Catholic school, which likely shielded her from many of the challenging experiences associated with public education. In fact, her education was extensive and of high quality, but her worldview, by her own admission, was somewhat limited. Esther's early voyage to self-awareness was turbulent, like many young adults who face personal and societal challenges as they attempt to determine their place in the world. Esther, however, faced greater marginalization to establish herself as she struggled with being a Chicana gay woman. Eventually, her social identification also would include that of being a felon.



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

Joshua Paul Benjamin: A Case of Sexual Assault

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

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

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

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

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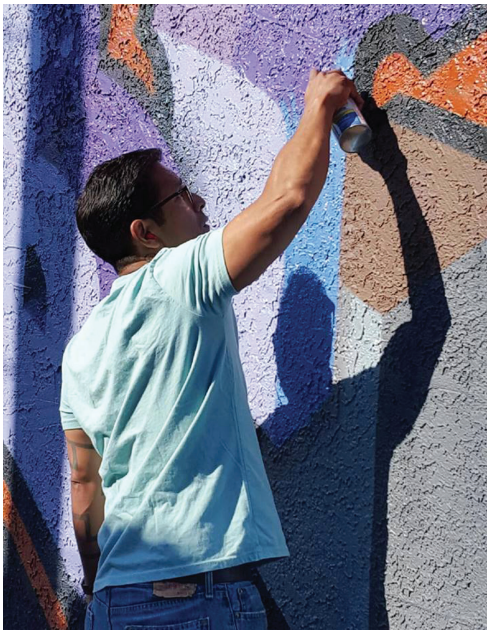
Danny Madrid: A Case of a Gang Member and Attempted Murder

As a young boy growing up in a predominantly Latino and Black neighborhood in South Los Angeles, Danny Madrid dreamed of one day becoming an astronaut. Danny's dreams as a small child faded when he became involved with a gang at the age of 13. He was asked to join the gang by the older boys in the neighborhood, and because he had known the gang members' younger siblings since early childhood, life on the streets with these boys seemed natural. With his new peer group, Danny engaged in graffiti, drug crimes, and other street-level crimes in the Los Angeles area. Not surprisingly given these offenses, Danny's clashes with law enforcement increased substantially. In addition, violent conflicts with rival gangs were common. Eventually, Danny was assaulted, or "packed," by a group of rival gang members. In retaliation, he and a friend got in a car with a gun to seek revenge against the rivals. That day in 1990, Danny's life took a turn for the worse.

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



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

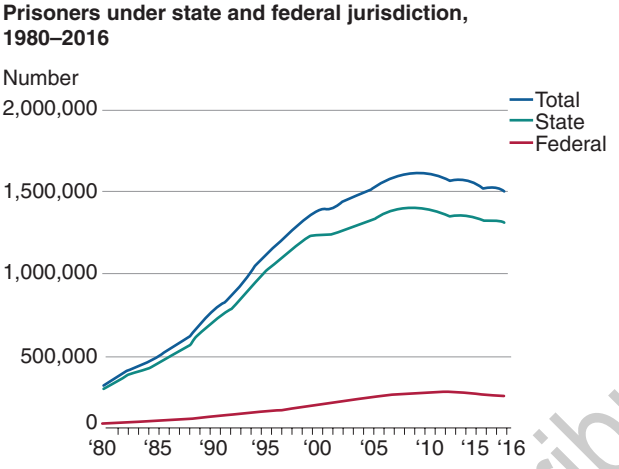
Danny Madrid

Size of the System

The criminal justice system is enormous and costly even in light of reductions in violent and property crimes since the early 1990s. Through 2007, annual growth in the system was dramatic (it has declined slightly since). Why is the criminal justice system in the United States so large and costly? It is large because an enormous proportion of the juvenile and adult population is under the control of the criminal justice system. By the end of 2016 in the United States (the most recent data available), more than 6.6 million individuals were being supervised in the adult correctional system, which includes incarceration in local jails and prisons, and parole or probation (see Figure 1.1). This corresponds to 1 in every 38 adults, which is the lowest rate measured since 1994. While smaller, large numbers of individuals continue to be under the control of the criminal justice system. At the end of 2016, the majority of these adults were being supervised in the community (nearly 3.7 million on probation and 874,800 on parole). In addition, more than 2.2 million adults were incarcerated at the end of 2016 (740,700 in local jails and 1.5 million in prisons).[5] Though decreasing since 2007, the prison and jail populations are so enormous that some describe the United States as "addicted to incarceration."[6]

▼ FIGURE 1.1

Individuals Incarcerated Under State and Federal Jurisdiction, 1980–2016



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

Gender, Race, and Hispanic Origin in the System

The adult imprisonment rate differs greatly by the offender's gender, race, and Hispanic origin. At the end of 2017, men were imprisoned at a rate of 829 per 100,000, which is more than 13 times greater than the 63 per 100,000 rate for women (see Infographic 1.1 later in the chapter).[7] Black non-Hispanic men were imprisoned at a rate of 2,336 per 100,000, which is almost six times the rate of 397 per 100,000 that characterizes White non-Hispanic men.[8] During the same period, differences in the imprisonment rate were apparent for women by race and Hispanic origin as well. Black non-Hispanic women were imprisoned at a rate of 92 per 100,000, while their White non-Hispanic and Hispanic counterparts were imprisoned at much lower rates: 49 per 100,000 and 66 per 100,000, respectively.[9]

Not all of the differences in imprisonment rates are based solely on variation in criminal behavior. Research indicates that some personal characteristics are associated with a greater likelihood of harsher punishment.[10] In other words, a White woman and a Black man committing the same criminal act may be treated differently in the criminal justice system. The White woman may never be arrested, while the Black man may find himself incarcerated. This lack of equity in justice is reflected in the quotation by Judge Sturgess: "Justice is open to everyone in the same way as the Ritz Hotel." In other words, powerful citizens who are wealthy and in the majority may receive lenient treatment, while people living in poverty and people of color are treated harshly. Given the serious consequences of being incarcerated, this inequity is important to recognize.

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

The Cost of the Criminal Justice System

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

COMMON MISCONCEPTIONS

THE DIFFERENCE BETWEEN PRISON, JAIL, PAROLE, AND PROBATION

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

Two other commonly confused terms are *probation* and *parole*. These are not synonyms, but refer to two different situations. Probation and parole are types of sentences. Probation is a sentence that suspends or delays a term of full-time incarceration in prison or jail. In return for the suspended or delayed sentence, the judge orders the offender returned to the community, where they must abide by certain rules and conditions. Since its inception, the use of probation (and other intermediate sanctions) has become the most common form of sanction administered in the United States. Typically, a person given probation has not served time in a jail or prison for that particular offense. A person just released from prison may be placed on parole as part of their sentence. Parole operates like probation in that the offender is released from prison back into the community, where they must abide by certain rules and conditions. Failure to comply with those rules often means returning to prison.

Think About It

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

voters implemented legislation such as three-strikes, habitual offending, and mandatory sentencing laws. The result was a massive expansion of the criminal justice population, a large number of people working in the system, and an equally dramatic increase in the cost of the system. In 2013, Ted Gest noted that the U.S. criminal justice system employed 2.4 million people at an annual cost of $212 billion. To put this in perspective, each person in the United States, regardless of age, paid $670 in 2013 to support the criminal justice system.[11] Costs differ by location. The cost of state incarceration (a part of the overall criminal justice system), for example, varies greatly. Research by Mai and Subramanian found that in 2015

> the total cost per inmate averaged $33,274 and ranged from a low of $14,780 in Alabama to a high of $69,355 in New York. Eight states—Alaska, California, Connecticut, Massachusetts, New Jersey, New York, Rhode Island, and Vermont—had a cost per inmate above $50,000. Eighteen, mostly southern, states had costs less than $25,000, while 19 states had costs between $25,000 and $50,000.[12]

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

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

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

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

How Does the Criminal Justice System Work?

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

A Road Map

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

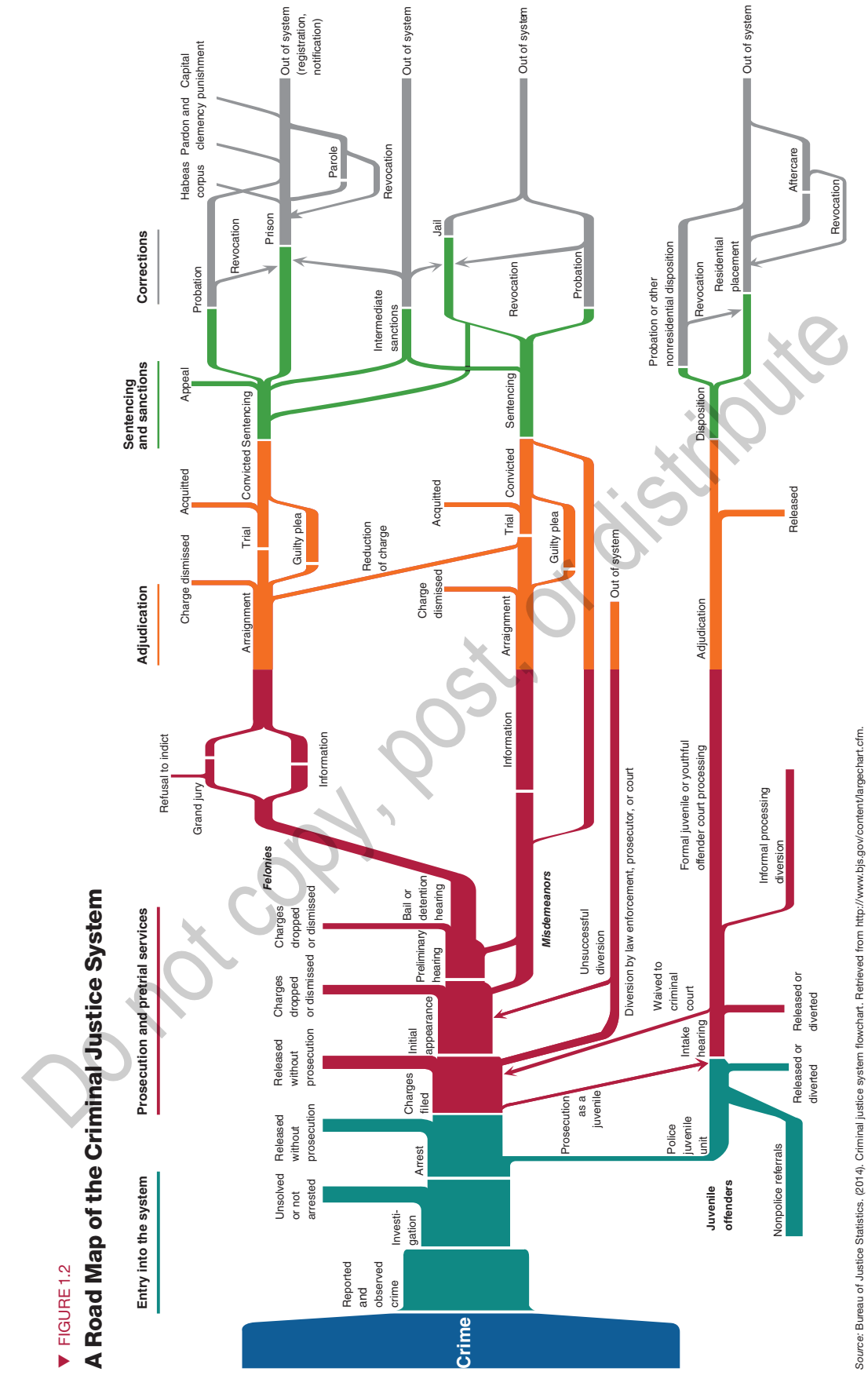
Once alerted, law enforcement agents investigate whether a crime has occurred. If a determination is made that a crime occurred, attempts to identify and apprehend the offender(s) are made. Evidence gathered from the investigation is presented to prosecutors, who, using their discretion, determine whether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

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

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

▼ FIGURE 1.2

A Road Map of the Criminal Justice System



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

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

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

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

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

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

The Victim

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

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

No bill: A decision made by a grand jury that indicates that insufficient evidence is present to proceed with the case.

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

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

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

Crime and the Importance of Personal Liberties

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

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

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

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

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

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

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

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

What Is Crime?

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

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

Street Crimes

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

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

Property Crimes

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

Victimless Crimes

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

White-Collar Crimes

As noted, when people think about criminals and the criminal justice system, they tend to focus on street or property crimes and how law enforcement, courts, and corrections handle them. Rarely do people envision white-collar crimes, which affect far more people than street or property crimes. Edwin Sutherland, in his presidential address to the American Sociological Society, first recognized white-collar crime as a serious problem in 1939.[21] (The name of this organization was later changed to the American Sociological Association to avoid the embarrassing acronym.) Sutherland described white-collar crime as a "crime committed by a person of respectability and high social status in the course of his occupation."[22] White-collar crime is ill defined, but generally conceived of as lying, cheating, and stealing by occupational, corporate, and government actors using a wide range of frauds. While there is no consensus, the following often are considered white-collar crimes:

- bribery
- securities fraud
- Ponzi schemes
- mortgage fraud
- misuse of pension funds
- bank fraud
- unsafe products
- violations of public trust
- medical fraud
- insider trading
- price fixing
- toxic dumping
- fiduciary fraud
- religious fraud

Street crimes: These crimes are relatively common and serious, involving a victim and offender who come together in space and time.

Property crime: Crime against property. The most common forms of property crime include burglary, property theft (aka larceny), and motor vehicle theft.

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

POLICY ISSUES

CRIMINAL OFFENDING AND UNDOCUMENTED IMMIGRATION

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

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

Think About It

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

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

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

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

Cybercrime

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

- network intrusions
- dissemination of computer viruses, malicious code, botnets, and various e-mail scams such as phishing
- denial-of-service attacks
- identity theft
- stalking
- cyberbullying
- fraud
- theft of service
- online gambling
- trade secret theft
- securities fraud
- child pornography
- Zoom bombing

This list of cybercrimes reveals a controversy as to whether the offenses represent unique and different types of crime. Consider that decades ago, several of these crimes (e.g., network intrusions, dissemination of malicious code, viruses, botnets, phishing, denial-of-service attacks) were nonexistent, given the lesser technology that was available. Overall, these crimes fail to neatly fit in a typology of violent and property crime. Yet it appears that some cybercrime refers to a different method used to commit violent crimes (e.g., bullying, stalking), property crimes (e.g., identity theft), and white-collar crimes (e.g., securities fraud). Clearly, there is some overlap, as even the FBI releases statistics on what it refers to as "white-collar cybercrime."[30] Additional overlap is found between cybercrime and terrorism because some incidents of the latter are being committed using computers. Terrorists are making great advancements in devising ways that can adversely affect critical networks and infrastructure in the United States. Imagine if the banking or air traffic control system were attacked. On the home front, smart grid and smart home products are means by which criminals can infiltrate houses. Many people use Amazon Echo–type devices in their homes. While they may provide some conveniences, they also represent a potential vulnerability for hackers. In time, greater clarity defining the boundaries of cybercrime will emerge.

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

Terrorism

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

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

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

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

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

McVeigh was responsible for actually detonating the ammonium nitrate fertilizer–based bomb at the Murrah Federal Building. He parked a van, which hid the 4,800-pound bomb, in a loading zone and detonated it using a 5-minute and a 2-minute fuse. Nichols built the bomb. The Fortiers were considered accomplices given their knowledge of the attack as well as their assistance in the planning. As a result of these actions culminating in the blast on April 19, 1995, 680 people were injured and 168 people lost their lives. Nineteen of those killed were under age 6, as a day care center operated in the building.

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

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

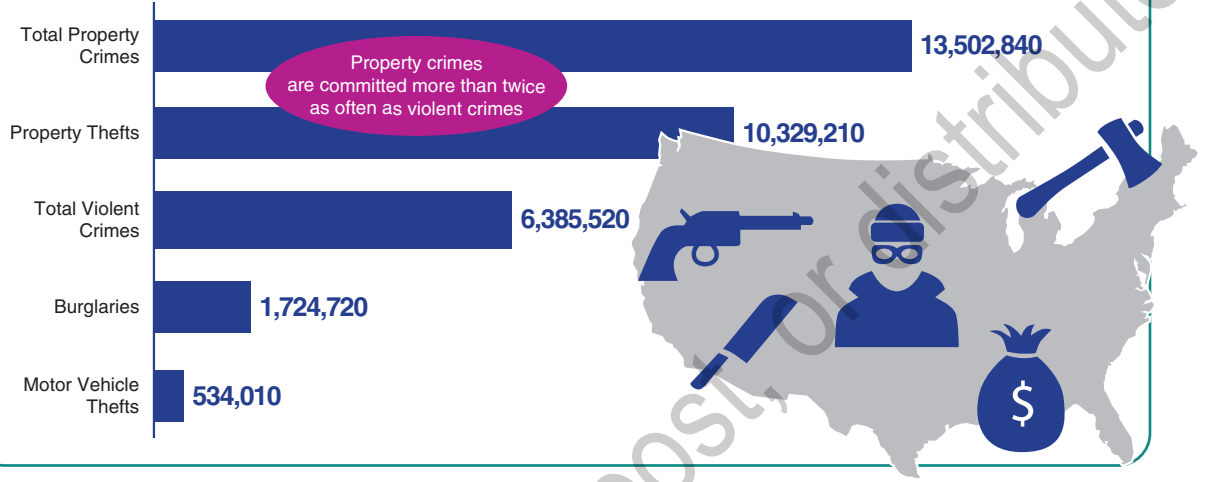
▼ INFOGRAPHIC 1.1

DATA MATTERS: THE STORY IN NUMBERS

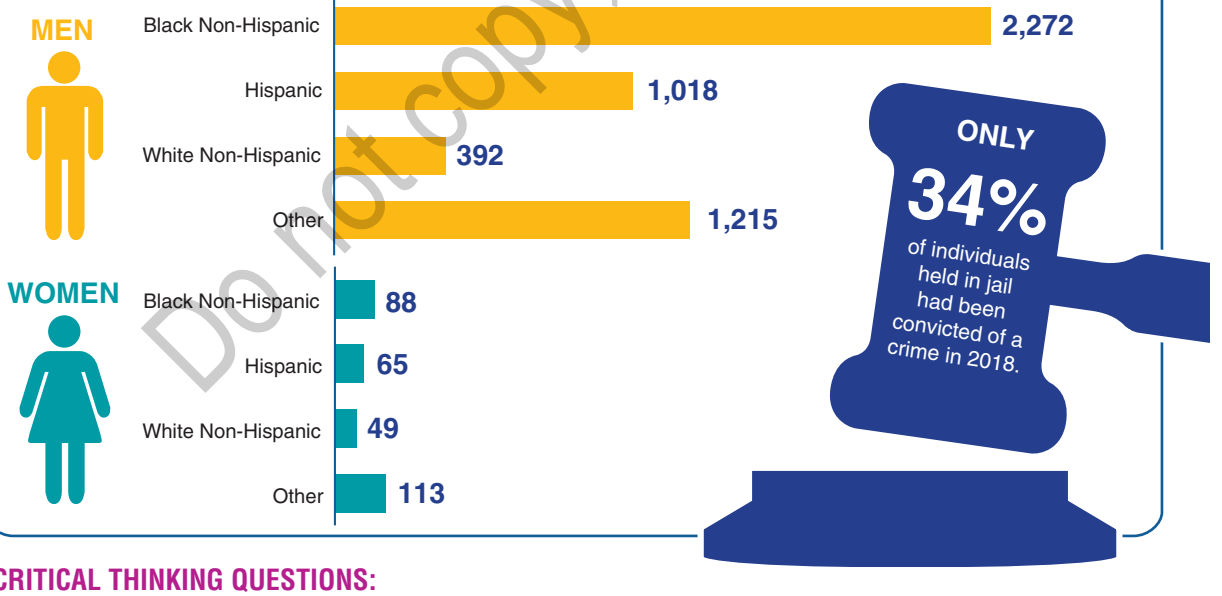
RATES OF IMPRISONMENT AND RATES OF CRIME

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

VIOLENT AND PROPERTY CRIMES IN THE UNITED STATES, 2018



YEAR-END 2018 IMPRISONMENT RATES PER 100,000



CRITICAL THINKING QUESTIONS:

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

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

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

Crime Definitions Change Over Time

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

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

Justifiable Homicide

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

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

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

Adultery

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

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

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

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

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

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

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

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

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

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

Driving Under the Influence

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

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

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

Rape

Rape is another example of a crime that has seen an expansion in its definition over time. While rape has always been a crime and considered *mala in se,* how it has been legally defined has changed. For example, originally, the FBI defined rape as the "carnal knowledge of a female forcibly and against her will."[34] In 2011, the FBI definition was changed to broaden the behaviors that constitute rape: "penetration, no matter how slight, of the vagina or anus with a body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." This modification meant that for the first time, the FBI recognized that boys and men could be victims of rape. This change also recognized that rape involves more than the penetration of a vagina by a penis. A women can commit rape, and rape can be committed by something other than a penis (e.g., fingers, objects such as sticks), and the penetration can occur in places other than a vagina (e.g., anus). In 2013, the FBI removed the word *forcibly* from its definition of rape to further reflect contemporary understanding of

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

CASE STUDY

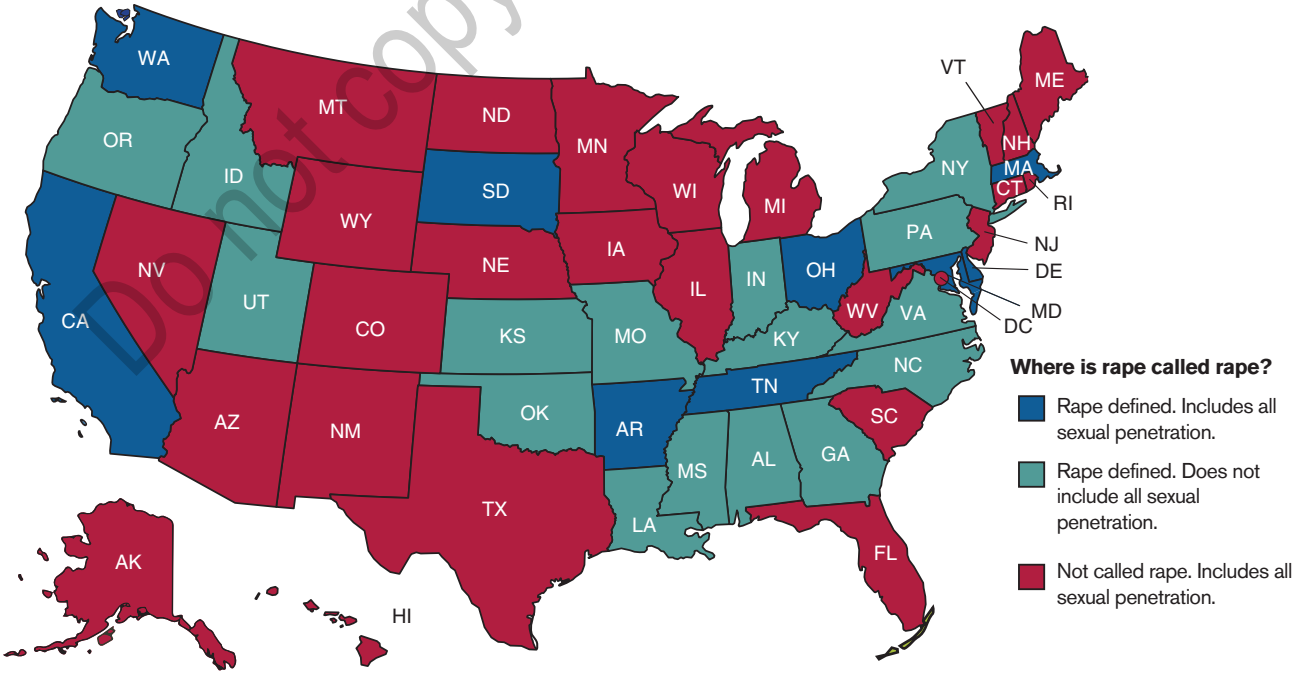
Esther Lucero, like many young women, faced an incident that may have resulted in rape, though, unfortunately, the event resulted in Esther's first arrest. One evening, Esther and her girlfriend decided to go out for drinks at a local bar. At some point her partner left the bar, and Esther was alone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

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

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

▼ FIGURE 1.3

Map of Rape Laws by State



Source: Alan Kennedy, University of Colorado Denver.

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

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

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

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

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

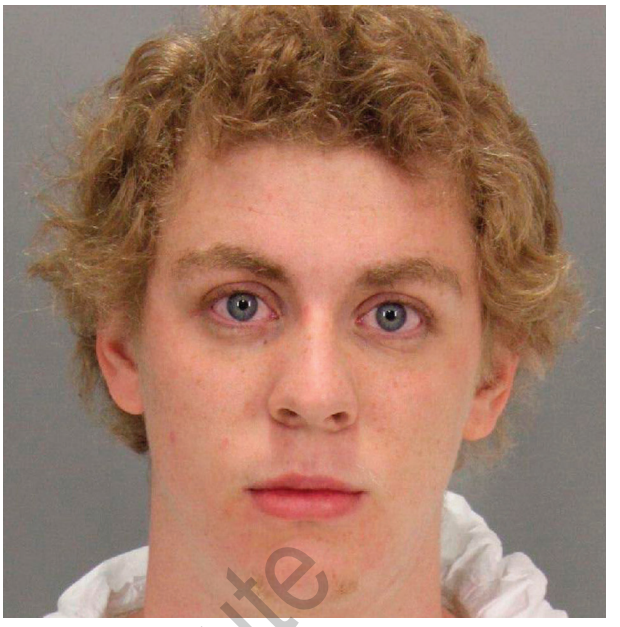
Discussing the FBI's definition of rape makes sense given this book is examining the national criminal justice system (versus smaller jurisdictions). The FBI collects, analyzes, and archives crime data through the Uniform Crime Reporting (UCR) Program (Chapter 2 covers this and other national data collection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

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

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

Brock Turner: A Case Study in Defining Rape

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



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

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

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

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

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

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

ETHICAL ISSUES

SHOOT OR DON'T SHOOT?

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

Think About It

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

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

The Criminal Justice System: Purpose and Perspectives

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

Crime Control

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

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

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

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

Rehabilitation

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

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

Due Process

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

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

Restorative Justice

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

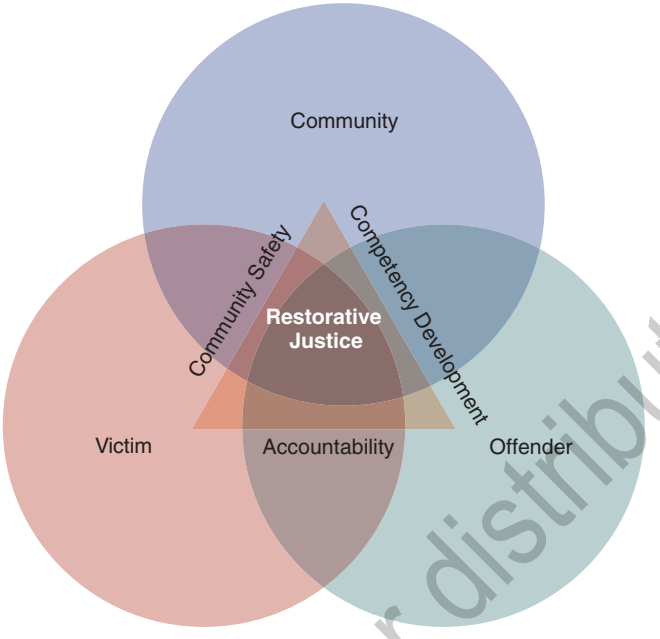
Rehabilitative perspective: A view that the purpose of the criminal justice system is to rehabilitate offenders.

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

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

▼ FIGURE 1.4

Restorative Justice Approaches



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

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

Nonintervention

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

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

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

Conflict model: A theoretical view of the criminal justice system that highlights the adversarial nature of the system. Components of the criminal justice system work in competition to produce a fair outcome or justice.

Criminal Justice and Public Policy

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

Consensus Model

A consensus model, which supports the idea of a social contract, originated from the work of John Locke and is based on the view that everyone in the criminal justice system works in unison to achieve justice. The consensus model operates on the notion that there is general agreement about what behaviors are harmful to the majority of the public and that these behaviors are deemed criminal. This model recognizes that criminal law then serves a social control function designed to protect citizens and maximize peace.

Conflict Model

A conflict model is based on the notions of division and disparity among members of society and the struggles for power that this causes. The conflict model has roots in the ideology espoused by Karl Marx and focuses on the power struggle between the haves and have-nots—or, stated differently, those with and without power. According to the conflict model, those with power define what is criminal and, in doing so, exert control over the powerless. By exerting this power, those in powerful positions are able to maintain their dominance and privilege over the less fortunate. Given the relationship between race, ethnicity, and gender and power in the United States, it is not surprising that evidence exists pointing to the use of the criminal justice system to control persons of color and women. In this chapter, and those that follow, you will encounter evidence of both the consensus and conflict models at all levels of the system.

The importance of crime and public policy is essential to our understanding of all components of the criminal justice system. Public concerns about gun violence, gangs, human trafficking, and other high-profile crimes increase pressure on lawmakers to respond. Legislative efforts seeking harsher punishments are common and create political common ground. No political party or potential candidate can be against tougher laws for reducing crime and violence. Social scientists and empirical research provide the evidence for many of the decisions driving our lawmakers. Joan Petersilia and James Q. Wilson, pioneers in crime and public policy, warn of avoiding two mistakes in approaching policy. First, we still are identifying the problems and searching for solutions. This lack of knowledge creates a need for *action.* Second, researchers can inform policy, and abdicating responsibility to law enforcement, judges, and politicians is a mistake. Their position emphasizes collaboration.[41] The interaction among criminologists, practitioners, and lawmakers to solve crime problems is discussed throughout the following chapters.

Crime and the Media

The criminal justice system and media such as newspapers, blogs, the Internet, television shows, movies, and books are engaged in a troubled relationship that almost everyone is exposed to. Separating the two is impossible.[42] The media are dominated by stories of crime and victimization, and while there is nothing inherently wrong with the media being preoccupied with these things, much of what is conveyed to the public projects inaccuracies about crime, victimization, and the criminal justice system. This situation is troubling because most people gain their understanding about crime, victimization, and the criminal justice system from the media. From these stories the public identifies what it feels are important criminal justice–related issues. These issues come to the attention of policymakers, who in turn enact legislation that influences our lives. Unfortunately, this process means that some critical (but unsexy) criminal justice issues are ignored while other rare or unimportant issues gain a great deal of resources and attention. The implementation of memorial criminal justice policies often reflects this process. These policies are named for persons who were victims of crime. This book covers many of these memorial policies, including Megan's Law and Amber Alerts. Other policies well known to the public are those in memory of Adam Walsh and Polly Klaas. Clearly, the crimes against these individuals were tragic, but whether these memorial policies improve the criminal justice system is debatable.

Framing

Crime is portrayed in the media through **framing.** Framing means that criminal justice and crime stories are packaged into tidy presentations that make sharing the information easy. Frames simplify criminal events and make processing, labeling, and understanding crimes easier for the audience. Unfortunately, frames fail to allow the expression of important variation and nuances in the crimes. It is vital to recognize that frames are

Framing: The packaging of criminal events in the media into tidy presentations that make sharing the information easy.

tied to the criminal justice policies (also oversimplified) designed to address the problem. Sasson offers five common crime-and-justice frames found widely in the media in the United States:[43]

- faulty criminal justice system
- blocked opportunities
- social breakdown
- racist system
- violent media

The **faulty criminal justice system frame** indicates that crime occurs because of a dearth of law and order in the country. Presentations using this frame indicate that crimes are committed because criminals feel they can get away with them. This frame contends that criminal sanctions are a joke and that offenders are rarely held accountable. This frame depicts prisons as having revolving doors and blames bleeding-heart liberals for the chaos in which we all live. Because the problem is clearly framed as a lack of adequate sanctions, the policies required to address crime are clear: Enact sanctions that are swift, certain, and severe. Offenders must be punished brutally, and the crime problem will be solved.

A second common crime frame found in the media is the **blocked opportunities frame**. This perspective suggests that crime results from a lack of legal opportunities among offenders. Offenders live in poverty and are uneducated, unemployed, and discriminated against. Therefore, those living in these conditions are left with no other option but to commit crimes. Given this tidy explanation for the presence of crime, the solution is simple and clear: Enact policies that lift people out of poverty, educate them, offer them skills to enhance employability, and end discrimination. Given the right opportunities, offenders will not commit crime.

The **social breakdown frame** presents crime as the obvious result of a breakdown in family and community. Alleged evidence of this collapse includes high divorce rates, cohabitation of unmarried people, out-of-wedlock births, same-sex marriage, and other nonconventional family units. This frame also contends that the availability of welfare has further enabled families and the community to disintegrate. This clear framing of the issue identifies the policies needed to correct crime: Enact policies that promote family and community values, and end handouts.

The fourth common crime frame found in the media is the **racist system frame**. This perspective holds that the problem is not crime, but rather the criminal justice system. In this frame, law enforcement, courts, and corrections are depicted as racist agents of oppression. The criminal justice system, then, is used as a means to oppress people of color. Given this simple problem, the solution is clear: Enact policies that ameliorate racial injustices, and include the banding together of people of color to gain the justice that they deserve.

And finally, the **violent media frame** depicts crime as a direct result of the violent media that bombard us in television, movies, video games, and music. It holds that this constant display of violence leads to a lack of respect for human life and increased violence in the nation. To remedy this situation, the required policy is clear: Enact policies that would regulate widespread violent imagery available to the masses.

Faulty criminal justice system frame: Suggests that crime occurs because of a dearth of law and order in the country and that criminals offend because they feel they can get away with it.

Blocked opportunities frame: Indicates that crime results from a lack of legal options. Offenders live in poverty, are uneducated, unemployed, and discriminated against, and because of that commit crime.

Social breakdown frame: Indicates that crime is the result of a breakdown in family and community.

Racist system frame: Indicates that the problem is not crime, but rather that law enforcement, courts, and corrections are racist agents of oppression.

Violent media frame: This frame finds that crime is depicted as a direct result of the violent media present in television, movies, video games, and music.

Infotainment: The marketing of a highly edited and distorted combination of entertainment and information purported to be truthful and comprehensive.

Infotainment

An unfortunate result of the relationship between media and crime is infotainment. **Infotainment** is the marketing of a highly edited and distorted combination of entertainment and information purported to be truthful and comprehensive. Infotainment leads the viewing public to feel that they are being educated with facts and information about crime and the criminal justice system in the United States. In reality, the public is receiving a highly edited and narrow view of the topic. There are endless examples of false beliefs held by the public that are commonly portrayed in the media:

- Women are more likely to be victims of violence than men.
- Murder is one of the most frequent types of violence committed.
- Children are at higher risk of being violently victimized at school than away from school.

- Most crime committed in the United States is violent in nature.
- Offenders are crazed monsters.
- Most violence is committed by armed offenders.
- Strangers commit most crimes.
- Only guilty people confess to crimes.
- Most violent crimes result in injuries to the victims.
- Blacks are more likely to violently victimize Whites than other Blacks.
- Most individuals accused of crimes go to trial.

Do you believe supporters of the Black Lives Matter movement see the criminal justice system through the racist system frame? What other frames might explain their position?

Probal Rashid/LightRocket/Getty Images

All of these statements are false. Yet most believe them to be accurate, and as a result many people live in unwarranted fear of becoming victims of crime. This misinformation also misleads the public into believing they know what an offender really looks or acts like. This misinformation can be dangerous or deadly if it leads some to fail to understand who may actually be a threat to them. Sadly, these commonly held misunderstandings can lead people who were violently victimized to question whether they were in fact victimized: The offender was a friend, there was no weapon, I was not seriously injured . . . was it really a crime? Misunderstandings about the reality of crime and victimization in the United States distort policies, waste time and resources, create unnecessary fear, and may endanger individuals.

Narrow-Casting

Further exacerbating the distorted presentation of crime in the media is the contemporary practice of **narrow-casting**. Once upon a time, there were few media outlets, which meant that each needed to offer a wide range of perspectives on crime. Broad coverage was required to appeal to their viewership. Today, there are countless media channels, and most offer narrow and often distorted views of reality. Viewing audiences are smaller and more homogeneous, and the infotainment presented to them, described as factual and comprehensive, is not. Failure to tune in to a multitude of media and nonmedia sources and an inability to critically consume information lead to uninformed and misinformed citizens.

Viewers must understand that the media constitute a for-profit business. The primary goal of the media—including so-called news programs—is not to inform and educate members of the public. The ultimate goal of these for-profit businesses is to deliver viewers to advertisers. This agenda is seldom accomplished by offering truthful and comprehensive accounts of crime. Rarely is it accomplished by offering the nuances of crime, mundane criminal events, and difficult policy discussions. Rather, delivery of viewers to advertisers is best achieved by emphasizing the most heinous of crimes, the most vulnerable of victims, and titillating topics, packaged in easy-to-digest frames. This approach leaves an audience that feels crime is perpetually out of control.

Criminal Justice Versus Criminology

What is the difference between criminal justice and criminology? Many use the terms interchangeably, and while there is some overlap, they refer to two disciplines. Adding to the confusion is the lack of agreement over the degree of overlap or differences between criminology and criminal justice. Criminal justice refers to the system—that is, the system of law enforcement, courts, and corrections. This approach involves investigating the practices of these three institutions, including laws relating to crime and offenders, approaches to deterring future crime, sanctioning and/or rehabilitating offenders, and recidivism. In contrast, ***criminology*** refers to the study of the nature, extent, and causes of criminal offending and criminal victimization. Some scholars suggest that criminal justice refers more to the policy aspects of crime, whereas criminology applies more to the behavioral aspects of offending and victimization. While these perspectives offer tidy descriptions, separating the two in practice is messy. For instance, some scholars conduct research on the behavior of police officers. Others conduct research on the interaction of victims with policing agencies. Others examine

Narrow-casting: The presentation of a narrow view of information in the media to small homogeneous audiences.

Criminology: An academic discipline that investigates the nature, extent, and causes of criminal offending and criminal victimization.

CONTEMPLATING CAREERS

CONTEMPLATING A CAREER IN CRIMINAL JUSTICE

The information in this chapter is indicative of a large and far-reaching criminal justice system. The size and breadth of the criminal justice system have implications in terms of the many career and job opportunities available. Positions include victim advocates; researchers; probation and parole officers; federal, state, and local law enforcement agents; prosecutors; defense attorneys; judges; prison psychologists; reentry specialists; law clerks; and corrections officers. Each of these positions (and others not noted here) benefit from individuals wishing to help others and improve society. Additional personal characteristics, such as being a leader, inquisitive, detail oriented, and organized, may point to specific careers for you. In the remainder of the text, many of these important careers and specific personality characteristics associated with them are highlighted.

jurors' responses to victims of violence and their likelihood to render a guilty verdict based on the characteristics of the offender.

The fields of criminal justice and criminology are extensive, and opportunities for careers as academics, practitioners, and advocates are widely available. Overall, the two disciplines are intertwined in ways that are often indistinguishable. Many criminal justice programs offer courses in criminology, and many criminology departments offer courses in criminal justice. Content and research cannot easily be pigeonholed into one or the other category. The material presented in this text reflects that overlap. You will be exposed to criminal justice as well as criminology material. Together, this information offers a comprehensive overview.

Chapter Wrap-Up

This chapter explored the nature of crime and the controversies surrounding definitions, types of crimes, different perspectives, and legal changes over time. The material and examples demonstrated that the criminal justice system fluctuates over time, changes given advances in technology, and is believed by many to act differently dependent on the characteristics of the victim, the offender, and the crime committed. The problematic relationship between crime and the media also was addressed in this chapter. Understanding crime and the media is vitally important for all students of criminal justice. We hope that this inclusion offers the basics and raises questions that lead to greater exploration of the topic. We introduced four individuals personally entangled with the criminal justice system as victims or offenders and their stories. The remainder of this text continues their stories as they wend their way through the system. Keeping in mind the road map as well as the role of the victim in the system, you will follow each of our case studies as it takes its unique path through the system.

KEY POINTS

- Crime affects everybody either directly or indirectly.
- Crime is not uniformly defined, encompasses a variety of acts, differs across jurisdictions, evolves over time given available technology, and changes to reflect cultural norms and mores.
- The popular view of crime tends to be narrow and to focus on street crimes such as robbery, rape, murder, and burglary. In fact, crime is far more expansive and includes white-collar crimes, cybercrimes, so-called victimless crimes, and terrorism.
- The criminal justice system is a large array of institutions with three main components: law enforcement, courts, and corrections. Traditionally overlooked, the victim is an integral part of the criminal justice system.
- The criminal justice system has expanded dramatically in the past several decades. Only recently has the growth in some areas slowed and, in some cases, even reversed course. Some commentators and scholars argue that the criminal justice system affects particular subpopulations (e.g., the disadvantaged) more than others.
- There is no single criminal justice system; rather, it is composed of many local, state, and federal systems that operate differently across jurisdictions. In addition, some people argue that the criminal justice system experience

differs based on characteristics of the offender, the victim, and the event.

- Not everyone agrees on the purpose of the criminal justice system. Some view it as a mechanism to punish offenders to deter them from future offending. Some view it as a way to rehabilitate offenders to be productive citizens. Others view it as a system that deals with the offender, victim, and community to make whole the damage from a crime. And finally, many feel that the system's role should be greatly reduced as it does more harm than good.
- Public policies established in response to crime and the criminal justice system influence every person's life. Evidence exists that policies may disproportionately affect the disadvantaged to a greater degree than others.
- Though criminal justice and criminology are distinct disciplines, there is overlap between the two. Basically, *criminal justice* refers to the system of law enforcement, courts, and corrections. Investigating the practices of these three institutions includes how laws relate to crime and offenders, approaches to deterring future crime, sanctioning and/or rehabilitating offenders, and recidivism. *Criminology* refers to the study of the nature, extent, and causes of criminal offending and criminal victimization.
- One can neither study criminal justice without considering the role of the victim and victimization nor study it without giving attention to the role of diversity among victims and offenders.
- The purpose of the media is to deliver viewers to advertisers, not necessarily to educate the public about crime and the criminal justice system. Media depictions of crime are more likely to come in the form of infotainment, be narrow-casted, and offer the viewer a false sense of full and accurate information.

KEY TERMS

Adultery 19
Blocked opportunities frame 28
Castle doctrine 19
Conflict model 26
Consensus model 26
Corrections 5
Courts 5
Crime 13
Crime control perspective 24
Criminal justice 5
Criminology 29
Cybercrime 16
Decriminalization 19
Due process perspective 25
Faulty criminal justice system frame 28
Framing 27
Inalienable rights 13
Indeterminate sentence 12
Infotainment 28
Judicial activism 13
Justifiable homicide 19
Law enforcement 5
Mala in se 19
Mala prohibita 19
Narrow-casting 29
No bill 12
Nolle prosequi 10
Nolo contendere 12
Nonintervention perspective 26
Property crime 14
Racist system frame 28
Rape 20
Rehabilitative perspective 25
Restorative justice perspective 25
Social breakdown frame 28
Street crimes 14
Terrorism 17
USA Freedom Act 13
USA PATRIOT Act 13
Victim advocates 12
Victimless crimes 14
Violent media frame 28

REVIEW QUESTIONS

1. How are policies related to crime and our personal liberties associated?
2. Why is crime difficult to define? What are some issues that make it difficult?
3. What type of behaviors does crime encompass?
4. How does increased criminalization and decriminalization of behaviors influence your life?
5. What is the difference between *mala prohibita* and *mala in se*?
6. What causes crime to change over time?
7. What is the criminal justice system? What are its primary components?
8. What factors account for high incarceration rates?
9. What personal characteristics are related to one's likelihood of being incarcerated?
10. What are the major perspectives regarding the purpose of the criminal justice system?
11. Why is narrow-casting a departure from past portrayals of crime in the media?

CRITICAL THINKING MATTERS

1. **Achieving Justice and Fairness.** In what ways can the criminal justice system ensure equal and fair treatment for all? Are there methods that could be used to streamline the system and still respect due process rights? How can the criminal justice system operate in a more cost-effective manner and still protect the public from offenders? How can the system better care for victims? How could the system have helped in the case of Jennifer Schuett? Is expecting the system to assist victims going beyond the boundaries of what a criminal justice system should focus on?

2. **How Do You Distinguish Terrorism?** What makes a domestic terrorist attack different from traditional violent crime? How is it that what Timothy McVeigh and Terry Nichols did in Oklahoma City is terrorism, when the Columbine massacre is a school shooting? Are we drawing a false distinction in violent acts? Why should it matter whether a terrorist act was one of domestic or international origin? What difference does it make to the victims, the offenders, or the citizens of the nation?

3. **Policy and Drunk Driving Laws.** Research shows that drivers with BAC levels higher than 0.10% are responsible for more than 80% of drunk driving deaths. Yet in most states, the legal BAC limit is 0.08%, and MADD is continuing to work toward lowering this threshold. What is the right thing to do? Should we use resources to lower the legal BAC if these drivers are not likely to be involved in fatal accidents? Should the legal limit go to 0.10% to focus on the worst offenders? Should persons under age 18 be held to tougher BAC thresholds? Have drunk driving laws created an industry allowing attorneys to get rich while costing citizens their reputations, opportunities at employment, and high fines? Or have the tough drunk driving laws made our society safer?

4. **Crime and the Media.** Many people have distorted views of the criminal justice system given that their knowledge is based on media portrayals only. Does having a distorted view of criminal justice matter? Is there any harm in remaining uninformed? Should the government step in and regulate portrayals of crime in the media to ensure that the public is better educated? What are the advantages and disadvantages of such a policy? Or should the education system do a better job at teaching individuals the truth about the criminal justice system? What can be done to make a more educated populace, and does it really matter?

5. **Male Rape and Marital Rape.** Many people find it difficult to understand how a man can be raped. Gabe Wright was raped at gunpoint after being beaten while on a fishing trip. Was this rape? Do we need specific laws to address rape when the victim is male? Why or why not? Similarly, many struggle to understand how rape can occur between married people. Consider women who have left their violent husbands. Prior to the dissolution of their marriage, their husbands violently raped the women. Numerous stories of marital rape are available in a web search. After reading some of these stories, do you view these to be incidents of marital rape? Prior to changes in law, husbands could not have been charged with rape. Are these changes in statutes a positive or negative thing? Why?

6. **Frameworks and Gang Violence.** Danny Madrid was raised by his mother and grandmother in an impoverished Latino and Black neighborhood in Los Angeles. In this environment he became a gang member, committing minor and serious crimes. Given the little you know about Danny, what framework do you believe explains his descent into offending? Were his criminal acts a result of a faulty criminal justice system—a system that is easy on crime and one in which criminals know they can get away with their deeds? Or is it the lack of opportunities made available to Danny to become an astronaut that steered him to a life of violence? Perhaps you find that the breakdown of his family was the culprit? Danny's father was a "rolling stone" who was primarily absent from his life, and when he was around, he could be violent. Danny's last interaction with his father was when he was 14, when an argument resulted in Danny being beaten by his father with a broomstick. Does this sort of breakdown have something to do with Danny's story? What role is played by the fact that Danny is Latino in what some consider a racist country? Which of these do you believe account for his eventual gang membership and criminal behavior and why? Given the framework that you have selected, what solutions are indicated? As a policymaker, what would you do to maximize the chances of other little boys growing up in the same situation to become law-abiding citizens?

7. **Violence and Crime.** Although a great deal of violence is portrayed in the media, does it incite criminal behavior? Or are aggressive people drawn to aggression depicted in the media? Does watching a movie or playing a violent video game make one commit an act of violence? Does watching a violent movie make you feel like acting out in a violent fashion? If the media are so influential, why is most crime that is committed property crime? If people become more violent by watching violence in the media, why do most violent crimes that are committed result in uninjured victims? Should it be the government's role to step in and regulate what we see in the media? Or does such a proposal trample our freedoms? How do you moderate viewing of violence for yourself and your family? Or do you? Does it matter?

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