HOW DO YOU AVOID CONVICTING AN INNOCENT PERSON?

In 2011, Illinois abolished the death penalty. The controversial debate to abolish the death penalty began in 2000 when then governor George Ryan commuted the sentence of every inmate on death row because of his concern that the Illinois criminal justice system may have sentenced innocent persons to the death penalty.

The death penalty is controversial and often debated. This debate centers on important questions, such as: Does the state have the legal and moral right to put citizens to death? How do you avoid convicting an innocent person? Since the death penalty is irreversible it is vitally important that there be no error in executing a person convicted of a crime.

While the death penalty is an important aspect of the criminal justice system, each year millions of persons become involved in the system in other ways. For persons accused of a crime it is important that they receive a fair trial, that the law is fairly applied, and that it does not infringe upon their civil rights.

This chapter examines the American criminal justice system and the many ways it attempts to ensure a proper balance between public safety and individual rights. The criminal justice system is a complex process shaped by numerous influences including history, philosophy, sociology, economics, and social values. The criminal justice system can be described as an input–process–output model. The agencies and processes focus on moving people from arrest to final disposition while ensuring that due process rights are observed.

THE CRIMINAL JUSTICE SYSTEM CAN BE DESCRIBED AS AN INPUT–PROCESS–OUTPUT MODEL.
Contemporary Events That Have Shaped the Modern CJS

1945 Prior to World War II, there was little attention focused on the criminal justice system. A decade of prosperity followed the war, and crime remained low.

1961 Civil rights workers attempted to desegregate bus stations and waiting rooms. A bus in which they were traveling was fire-bombed and the demonstrators where beaten. NAACP leader Medgar Evers was murdered.

1964 The Civil Rights Act is enacted, making it illegal for businesses, hotels, restaurants, and public transportation to deny citizens service based on their race.

1965 Gallup poll reports that Americans view crime as the most serious problem in the country.

1967 The United States enters the Vietnam War. Political protests against the war generate conflict with police.

1968 Omnibus Crime Control and Safe Streets Act is passed.

1969 President Nixon declared a "War on Crime." The rising crime rate and the public's increased awareness of it, and the Civil Rights Movement, were declared by President Lyndon Johnson to counter crime and social disorder.

1970 National Guard troops open fire on unarmed student demonstrators on the Kent State University campus. Four students are killed.

1972 The President's Commission on Law Enforcement and Administration of Justice concludes that most people had lost confidence in the police.

1974 The Civil Rights Act of 1964, businesses, hotels, restaurants, and public transportation could and did refuse service with impunity to Black citizens. For example, in 1956, the University of Alabama expelled its first Black student, Autherine Lucy, on the grounds that her presence was a threat to public order. In the South, Blacks were frequently the victims of lynching, violence, and denial of public and private services.

1977 A blackout in New York City results in city-wide looting and disorder.

1994 Community Oriented Policing Services (COPS). This legislation provides funds to hire more police. Police presence in urban areas, with an emphasis on foot patrol and community interaction, is increased.

1995 The number of serious violent crimes begins a decline that continues throughout the late 1990s and into the 2000s, when the numbers begin to level off.

1999 The beating of Rodney King by Los Angeles police officers resulted in outrage and raised tensions between the police and the community.

2001 USA Patriot Act is passed.

2001 President George W. Bush declares War on Terrorism.


2001 2nd Amendment Incorporated

Rioting and the Fear of Crime

The mid-1940s is a good starting point for the study of the modern criminal justice system. Prior to World War II, the criminal justice system was dominated by political influences, there was little national attention focused on the criminal justice system, the federal agencies and federal government were not significant players, the crime rate was generally low, and for the most part any problems with the criminal justice system were perceived as problems concerning local administration, issues, and reforms.

Four phenomena stirred interest in the criminal justice system and led to its prominence as one of the most examined and criticized aspects of the government:

1. the Civil Rights Movement,
2. the Vietnam War,
3. the rising crime rate and the public's increased awareness of it, and

In many respects, these four influences were interrelated and cumulative in their effect on the criminal justice system.

Civil Rights and War Protests

Protests against institutional racism and U.S. involvement in the Vietnam War posed major challenges to the criminal justice system. Prior to the Civil Rights Act of 1964, businesses, hotels, restaurants, and public transportation could and did refuse service with impunity to Black citizens. For example, in 1956, the University of Alabama expelled its first Black student, Autherine Lucy, on the grounds that her presence was a threat to public order. In the South, Blacks were frequently the victims of lynching, violence, and denial of public and private services.

Civil rights leader Martin Luther King Jr. promoted the tactic of civil disobedience, which also challenged the criminal justice system. One of the most well-known examples of civil disobedience occurred in 1955 when Rosa Parks refused to move to the rear of the bus, as required by the law, and was arrested. Although King advocated nonviolence, there were many who rioted.

Political protests against U.S. involvement in the Vietnam War also generated acrimonious conflict in which the police often were captured on film engaged in brutality against the protesters. For example, on the Kent State University campus in 1970, National Guard troops opened fire on unarmed student demonstrators, killing four students and injuring many more.

Public awareness of safety issues in the 1960s made crime a government priority and led to legislation to improve the criminal justice system.
During this period, the crime rate continued to climb to the point that, according to a 1965 Gallup poll, Americans viewed crime as the most serious problem in the country. In 1968, 31 percent of Gallup survey respondents said they were afraid to walk in their own neighborhoods at night, and by the end of 1972, the number had risen to 42 percent. Many citizens thought that the police were part of the cause, not the solution, to the rising crime rate. The President's Commission on Law Enforcement and Administration of Justice concluded that most people had lost confidence in the ability of the police to maintain law and order.2

The War on Crime

The criminal justice system appeared to be failing. To counter the attack of crime and social disorder, on July 25, 1965, President Lyndon Johnson declared a War on Crime. He authorized a series of federal presidential commissions to study crime and justice in the United States and to recommend suggested reforms to restore public confidence.

The findings of the President’s Crime Commission concluded that fear of crime had eroded the basic quality of life for many Americans. It also recognized the importance of crime prevention, as opposed to crime fighting, and the necessity of eliminating injustices in the criminal justice system.

Omnibus Crime Control and Safe Streets Act of 1968

In response to recommendations of the President’s Crime Commission and demands from the public, substantial resources were added to the criminal justice system. For example, to attract better-qualified personnel, the police had to increase salaries; as a result, policing costs skyrocketed in major cities.3 To help defray these costs, local and state governments sought assistance from the federal government, whose response was to pass the Omnibus Crime Control and Safe Streets Act of 1968.

The Omnibus Crime Control and Safe Streets Act of 1968 created the Law Enforcement Assistance Administration (LEAA) and the Law Enforcement Educational Program (LEEP). The LEAA acted as a conduit for the transfer of federal funds to state and local law enforcement agencies. However, these funds were not without “strings.”

The LEAA appointed the National Commission on Criminal Justice Standards and Goals, which had the purpose of formulating specific standards and goals for police, courts, corrections, juvenile justice, and crime prevention. To receive the generous funds available from the federal government, local and state agencies had to show that they had implemented the commission’s standards and goals. Many of the advances made within law enforcement agencies were a result of compliance with standards and goals necessary to qualify for federal funds.

The Law Enforcement Educational Program (LEEP) was a branch of the LEAA. The goal of LEEP was to promote education among criminal justice personnel.

After massive amounts of federal assistance, numerous reform efforts, and the adoption of innovative strategies by the police, courts, and corrections, public confidence in the criminal justice system was restored and the crime rate dropped. Residents of large cities reported that they felt safe using public transportation. Violent crime rates for nearly all categories dropped. Things were looking up for public confidence in the criminal justice system until September 11, 2001.

The biggest crisis in the twenty-first century was caused by a foreign attack on the United States. Just as President Johnson had declared a war on crime, President Bush declared a War on Terrorism.

President Bush appointed a new Cabinet position—Secretary of the Office of Homeland Security—to coordinate the antiterrorism activities among federal law enforcement and intelligence agencies. The attack on the World Trade Center towers led to a call for greater police powers, including expanded authorization for wiretaps, expanded powers of search and seizure, and expanded powers to detain foreign nationals.

Legitimate government depends on the effective operation of the criminal justice system. Citizens have granted the criminal justice system great powers, including the power of life and death. Thus, criminal justice is a much more complex endeavor than simply enforcing the law or waging a war on crime, drugs, or terrorism. When challenged with a choice between safety and liberty, people often choose safety over liberty. The War on Terrorism poses one of the most serious threats since the 1960s to the balance between safety and liberty.
For the most part, people conform to the rules of society, including both formal and informal rules. However, when someone breaks the rules of society, the system responds. Formal sanctions are carried out by the criminal justice system. In the United States, the criminal justice system is based on the enforcement of obedience to laws by the police, the courts, and correctional institutions. When group and society norms are codified into law, government has the power to compel obedience to the rules on pain of punishment, including death.

The more homogeneous and stable the people and their belief systems, the fewer the violations of social norms. In a homogeneous, stable society with a common belief system, there is less need for reliance on a formal system of social control to maintain order and regulate interactions. Social control systems operate most effectively and efficiently where there is constant and unified, overt and covert, and cultural and social support from all control agencies. However, contemporary U.S. society is not characterized by a homogeneous and stable group of people with a common belief system. Rather, the United States is characterized by great diversity in race, religion, ethnicity, and values.

The criminal justice system has assumed an important central role in order maintenance. The criminal justice system is an important part of conflict resolution, crime prevention, order maintenance, and the preservation of individual liberties.

The Balance Between Individual Rights and the Power of Government

In *Two Treatises of Government* (1690), philosopher John Locke argued that all human beings are endowed with what he called “natural rights.” These rights are given to people by a power higher than government, and people cannot be deprived of them. Governments exist, according to Locke, to serve individuals. People surrender certain rights with the understanding that they will receive as much, or more, in other benefits, such as safety, order, and preservation of property rights. Locke conceded that the government must have the power of physical force to protect people and their property from the physical violations of others. However, this power was to be balanced against the need to preserve individual liberty.

John Locke’s philosophies had a great influence on Thomas Jefferson when he drafted the Declaration of Independence. This document declares that people have unalienable rights given to them by their Creator. These rights include life, liberty, and the pursuit of happiness.
THE BILL OF RIGHTS DELINEATES CERTAIN GUARANTEED FREEDOMS OF CITIZENS IMPORTANT TO THE CRIMINAL JUSTICE SYSTEM.

AMENDMENT I: FREEDOM OF SPEECH Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II: THE RIGHT TO BEAR ARMS A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III: No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV: UNREASONABLE SEARCH AND SEIZURE The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V: SELF INCRIMINATION No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VII: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
The criminal justice system is not a static model, but a dynamic model that is constantly evolving, changing, and redefining itself. This dynamic nature has always been a characteristic of the U.S. criminal justice system, and the description of it in this book is only a portrait of one place and time.

**Agencies and People**

The criminal justice system is divided into three categories of agencies: police, courts, and corrections. Each of the agencies in the criminal justice system is independent. There is no single agency that has oversight control of all of the criminal justice agencies. This decentralization and autonomy is an intentional characteristic of the American criminal justice system. One of the values of the early founders of the United States was a mistrust of a strong, centralized government and as a result, the U.S. government was created with numerous checks and balances. This philosophy is mirrored in the criminal justice system.

The main agencies in the criminal justice system are:

1. the police,
2. the courts,
3. the probation and parole agencies, and the jails, prisons, and other correctional agencies.

These agencies exist at the local, state, and federal levels of government. Each jurisdiction has its own distinctive criminal justice agencies that provide services to the local, state, or federal government. For example, there are local police, state police, and federal police. Likewise, there are local, state, and federal courts and correctional institutions.

One of the difficulties of capturing the dynamics of this multi-level system is understanding that the local, state, and federal political agencies, although independent, are at the same time united and interdependent.

An analogy for the criminal justice system is a picket fence. In the picket fence model, the horizontal boards in the fence represent the local, state, and federal governments, and the vertical boards represent the various functions within the criminal justice system, such as law enforcement, courts, and corrections. For example, local municipal courts have their own missions, personnel, and resources. However, a case can be appealed from a local municipal court to a state court, and from a state court to a federal court. Thus, each court system is separate, but each is linked by a vertical picket.

**Process and Flow**

The process and flow of the criminal justice system refers to the means by which people accused of a crime enter the criminal justice system, are found guilty or not guilty, and are punished or exit the system.

No agency or person oversees the status of an offender’s process through the criminal justice system. Rather, each agency processes people through their part of the system independently, which often results in bottlenecks.

**Here’s Something to Think About. . .**

Often the Supreme Court must address issues of personal liberties about which there is controversy and little guidance from the U.S. Constitution. For example, in City of Ontario v. Quon, in 2010, the Supreme Court had to decide if SWAT officer Sergeant Jeff Quon’s Fourth Amendment protection against unreasonable search was violated when his employer, the Ontario, California, Police Department, searched the text messages sent and received by Sgt. Quon off duty using his department-issued cellphone. The search turned up hundreds of sexually explicit text messages to his wife and his mistress resulting in disciplinary action against Sgt. Quon. The Court ruled unanimously that the chief’s search did not violate Sgt. Quon’s constitutional protection against unreasonable searches. When issuing decisions on contemporary questions, what should the Court use as guidance?
The criminal justice system has more than one purpose. One of the primary purposes is to provide for the orderly interaction of citizens in a complex society. The criminal justice system also has the goal of promoting socially approved behaviors, morals, and values. Another goal is to provide an environment that promotes commerce by encouraging honesty and trust in commercial transactions. There are various means to achieve each of these goals, but there is no single best criminal justice system.

The criminal justice system of a society reflects its values as well as its desire to be safe from crime. In the United States, the criminal justice system reflects a balance between crime control and due process; both goals are esteemed, and the balance between them changes from time to time. More than other criminal justice agencies, the U.S. Supreme Court monitors the balance between individual rights and community safety. Through its power of judicial review, the Court can declare when laws violate constitutionally protected liberties and can declare certain practices of the criminal justice system unconstitutional.

Crime Control Versus Due Process

The preservation of citizens’ individual rights must be balanced against the necessity to enforce laws and maintain social order. Law without order is anarchy, but order without law is tyranny. The balance between law and order resembles a pendulum that swings back and forth between the two values. Concern for due process swung to its most liberal extent in the 1960s and then back to the right again with the “law and order” platform on which Richard Nixon based his campaign for the presidency. In that period of social unrest, many people were receptive to the promise of crime control, community safety, and swift—preferably harsh—justice for the offender. This emphasis on efficient and effective justice is known as the crime control model.

Crime control cannot be achieved at the expense of constitutionally protected liberties. The emphasis on ensuring that individuals are protected from arbitrary and excessive abuse of power by the government is known as due process. Due process means that in the quest for crime control, the government is bound to follow certain rules and procedures. Even if a person is guilty, if the government does not follow the rules and procedures in obtaining a conviction, the courts can void the conviction.

THE CENTRAL PREMISE OF THE CRIMINAL JUSTICE DUE PROCESS MODEL IS THE PRESUMPTION OF INNOCENCE.

The basic sources of due process rights are the U.S. Constitution and the Bill of Rights, both of which guarantee protections against unreasonable searches, forced and self-incriminating testimony, excessive bail and fines, and cruel or unusual punishment, as well as rights to a speedy public trial by jury.

Due process guards against abuse of power by police, prosecutors, courts, and corrections at the expense of swift and sure justice for the victim. By insisting that the government operate within certain limitations in securing the conviction of the accused, citizens are protected against the misuse of the enormous power of the government, which could be brought to bear in prosecuting the individual. It is better that a guilty person should escape the punishment of justice than an innocent person be wrongfully punished.

The central premise of the criminal justice due process model is the presumption of innocence. Regardless of overwhelming evidence against the accused, the court proceeds on the presumption that until the guilt of the accused is proven beyond a reasonable doubt in a court of law, the defendant will be treated as if he or she were not guilty of the charges.

Here’s something to think about...

The power of judicial review gives courts the power to void criminal convictions and set the defendant free if the defendant was denied due process rights. In such cases the guilt of the defendant is irrelevant. The release of defendants who have committed serious violent crimes may endanger public safety. Should there be other remedies for violation of a defendant’s rights?
The Criminal Justice Process

As mentioned previously, the criminal justice system has three major components: police, courts, and corrections. Within these three major components are criminal justice agencies that have various roles to play in making this system work. Each of the agencies is independent, but they must work together. Each has a limited role in processing the defendant, and the system has a built-in process for moving offenders from the police to the courts to corrections. Here are the six major processes in the criminal justice system.

1. **Deciding What Is a Crime**
   Boundaries are set for determining who and what behaviors are subject to the criminal justice system. In the United States, these boundaries are determined by criminal laws that define illegal behaviors. Criminal laws are fluid and change over time.

2. **Detecting a Crime and Arresting a Suspect**
   - **Crime Is Reported**
   - **Crime Is Committed**
   - **Investigation**
   - **Arrest**
   - **Booking**
   - 
   **Deciding to Arrest**: The police are the primary agency responsible for detecting crime violators and bringing these individuals into the criminal justice system. Investigating crime and apprehending suspects is the primary job function of police detectives. The power of arrest means that police can restrict the freedom of persons by taking them into police custody.
   - **Probable Cause**: means that the police cannot arrest a person unless there is evidence—more than a suspicion or “feeling,” that the person has committed a crime.
   - **Due Process Criteria**: If the defendant can prove that the police did not follow due process criteria, the court may dismiss all of the charges against the defendant, even if it is “obvious” that the defendant committed the crime.
   - **Documentation and Evidence**: If the police cannot produce evidence gathered at the scene of the crime at the trial or if there is doubt regarding whether the evidence has been securely stored to prevent tampering, the court may dismiss charges against the accused.
   - **Released Without Prosecution**: After the allowed 48 hours of detention have elapsed, police must formally charge the person with a crime or release him or her. If the police release the person without filing charges, they may re-arrest that person at a later time for the same offense when they feel that they have more substantial evidence. If police formally charge a suspect with a crime, the person is moved to the next step in the criminal justice process.

4. 

4. **Filing of Charges**
   After the allowed 48 hours of detention have elapsed, police must formally charge the person with a crime or release him or her. If the police release the person without filing charges, they may re-arrest that person at a later time for the same offense when they feel that they have more substantial evidence. If police formally charge a suspect with a crime, the person is moved to the next step in the criminal justice process.
3. **Deciding to Prosecute (Pretrial)**

In this next step of the due process model, the prosecuting attorney reviews the charges filed by the police and the supporting evidence collected. If the prosecutor accepts the case, the defendant is processed further in a preliminary hearing and arraignment, beginning with the first appearance.

**Felonies**

- **Initial Appearance**
  - After the paperwork is forwarded to the prosecuting attorney, the accused is brought before a magistrate judge for a first appearance. The magistrate judge reviews the charges, advises the defendant of his or her rights, and sets bail. If charges filed could result in a prison sentence of 6 months or more, then the judge will determine whether the person has funds for a lawyer, and if not, will arrange for a lawyer to represent him or her at no charge.

- **Grand Jury**
  - This is made up of a panel of citizens selected to hear evidence against an accused person. Much like a jury, there is a presiding judge and the prosecution presents evidence and witnesses to convince the jury that a crime has been committed. The major difference is that the defendant and his or her attorney are not present. If the grand jury determines that there is probable cause, a true bill is returned and an indictment is written.

- **Indictment**
  - This is a formal, written legal document authorizing the court to issue an arrest warrant. An indictment does not establish guilt—it only authorizes the prosecution to move to the next step.

**Misdemeanors**

- **Initial Appearance**
  - After the paperwork is forwarded to the prosecuting attorney, the accused is brought before a magistrate judge for a first appearance. The magistrate judge reviews the charges, advises the defendant of his or her rights, and sets bail. If charges filed could result in a prison sentence of 6 months or more, then the judge will determine whether the person has funds for a lawyer, and if not, will arrange for a lawyer to represent him or her at no charge.

- **Preliminary Hearing**
  - This is sometimes referred to as the “probable cause” hearing. The judge will take an active role in questioning the prosecution and defendant. It is the prosecution’s responsibility to convince the judge that there is probable cause to believe that (1) a crime has been committed and (2) that the defendant committed that crime. Defense counsel can challenge the evidence. The judge determines whether the case should be dismissed or whether the defendant should be arraigned.

- **Arraignment**
  - At the arraignment, the defendant appears before the court with his or her attorney to hear the formal charges from the prosecution. The charges may differ from what was filed by the police. The prosecution will have chosen the charges based on the evidence they have to prove the guilt of the defendant. If the charges are changed after the arraignment, the defendant will need to go back to the preliminary hearing and indictment step. The defendant is asked how he or she pleads. Either before or after arraignment, most often the defendant or prosecutor initiates an offer of a plea bargain. Plea bargains are agreements where-in the defendant admits guilt, usually to lesser charges or an agreement to sentence reduction, rather than taking the case to trial.

- **Sentencing**
  - The judge sets a date for sentencing. The judge can decide not to accept the guilty plea and set a trial date instead.
4. **Determining Guilt**

At the trial, the judge or the jury makes the decision whether the defendant committed the crime. Some states allow defendants to waive their right to a jury trial and leave the decision to a judge. This is called a bench trial.

- **Jury Trial** Evidence is presented by the prosecution to convince the jury that the defendant is guilty of the crime that he or she is charged with. The defendant's attorney may present evidence to counter the prosecution's evidence. The jury is instructed to use only the evidence presented at the trial. After all the evidence is presented, the jury is asked to make a verdict.

- **Plea Bargain** Most cases do not go to trial. Sometime during the criminal justice process, even after the trial has begun, the defendant may contact the prosecution and request that a deal be made (a plea bargain). The prosecutor may also initiate a plea bargain. In a plea bargain, the defendant agrees to plead guilty in return for concessions from the prosecution.

5. **Deciding on Punishment**

If the defendant is found guilty, it is the responsibility of the judge to determine the punishment.

- **Sentence** To determine what sentence the defendant is to receive, the judge is guided by the law and input from the presentence investigation report. The law provides minimum and maximum guidelines for lengths of imprisonment and fines.

- **Appeal** The defendant retains the right to appeal both the sentence and the conviction to a higher court. An appeal must be made on the claim that a judicial error occurred during the trial that substantially affected the outcome of the trial. The defendant cannot appeal based on the claim that he or she is innocent. An appeals court can choose to hear or reject the appeal. If the appeal is successful, the appeals court will order that the judicial error must be corrected. This is not a decision that the defendant is not guilty. If the judicial error cannot be corrected, the trial verdict will be set aside and the defendant will be granted a new trial. The final appeal court is the U.S. Supreme Court.

6. **Carrying Out the Sentence**

There are three main categories of corrections agencies: (1) institutional corrections, (2) probation and parole, and (3) community corrections.

- **Institutional Corrections** These include jails, state prisons, and federal penitentiaries. Many of the due process rights that the defendant was entitled to are gone.

- **Probation and Parole** In many cases a defendant does not serve time in a correctional facility, or he or she may not serve out the full sentence. Probation allows the defendant to fulfill his or her sentence through certain conditions imposed by the court. Parole allows the defendant to serve less than the maximum sentence.

- **Community Corrections** This is often called intermediate sentencing. It is a form of punishment short of incarceration. Intermediate sanctions may include house arrest, community service, and intensive probation supervision. Counseling, drug rehabilitation, and restitution are often elements included in intermediate sanctions.

**Definitions**

- **Arraignment** a short hearing before the judge in which the charges against the defendant are announced
- **Jury Trial** the jury determines the guilt of the defendant
- **Bench Trial** a judge determines the guilt or innocence of the defendant
- **Sentence** the punishment determined by a judge for a defendant convicted of a crime
- **Corrections**
CHAPTER 1

CRIMINAL JUSTICE

**Parole** Early release from prison before the maximum sentence is served, based on evidence of rehabilitation and the good behavior of the inmate.

**Probation** A disposition in which a convicted defendant is offered an opportunity to avoid serving any time in prison by agreeing to fulfill conditions set forth by the court.

The criminal justice system is governed by the rule of law. The supreme law of the land is the U.S. Constitution. The rights and due process requirements of those accused of crimes are embodied in the first eight amendments of the U.S. Constitution. (The first 10 amendments are known as the Bill of Rights; however, Amendments IX and X are not related to the criminal justice system.) These amendments define the fundamental liberties and the due process rights of individuals.

The rights enumerated in the first eight amendments have not always been applied to the states and some of the rights still do not apply to the states today. The application of the rights required in the Bill of Rights to the states is called the incorporation of the Bill of Rights, or incorporation for short. It was not until the beginning of the twentieth century that the U.S. Supreme Court began applying rights enumerated in the Bill of Rights to the states. In one of the first cases in 1925, the Court declared that states were bound to observe First Amendment free speech protections (Gitlow v. New York, 1925).

Most of the rights associated with the criminal justice system were not incorporated until the Warren Court of the 1960s. The Warren Court produced such notable decisions as Mapp v. Ohio, 1961; Aguilar v. Texas, 1964; Klopfer v. North Carolina, 1967; and Gideon v. Wainwright, 1963.

The most recent amendment the Supreme Court decided to incorporate was the Second Amendment right regarding firearm ownership. In McDonald v. the City of Chicago et al., in 2010, the Supreme Court declared that the guarantee of the Second Amendment to bear arms applies to individuals.

Some rights that have not been incorporated are the right to indictment by a grand jury (Amendment V), protections against excessive bail and excessive fines (Amendment VII), and the right for a jury trial for juveniles (Amendment VIII).

Do you think all of the rights provided in the Bill of Rights should be applied to the states? Why?

**The Criminal Justice Funnel** As you can see most cases never make it to a formal trial. Defendants are released at various points as the case proceeds through the criminal justice system. More than 90 percent of cases are settled by a guilty plea. Usually guilty pleas result from plea bargaining. Plea bargains may involve the dismissal of charges, the reduction of charges, the sentence for the offense, and/or the institution where the defendant will serve his or her sentence. Plea bargains may include diversion from the criminal justice system. Defendants who committed crimes due to drug abuse may be diverted to drug treatment programs in lieu of criminal trial. Many youthful and first-time offenders are offered probation in exchange for a plea agreement. As a result only selected cases actually go to trial, resulting in a relatively high conviction rate. It would overwhelm the criminal justice system if it was necessary to provide all defendants a trial. Some argue plea bargains are unfair and have many potential problems. Should plea bargaining be abolished? Why?
1 **WHAT historical events influenced the development of our current criminal justice system?** p. 4

Four phenomena stirred interest in the criminal justice system and led to its prominence as one of the most examined and criticized aspects of the government:

1. the Civil Rights Movement,
2. the Vietnam War,
3. the rising crime rate and the public’s increased awareness of it, and

In many respects, these four influences were interrelated and cumulative in their effect on the criminal justice system.

2 **HOW does the balance between the need to maintain order and the rights and freedoms of individual citizens impact our criminal justice system?** p. 6

The American criminal justice system has its origins in a revolt against tyranny and a strong, centralized government that usurped the rights of its citizens. A decentralized system with many checks and balances ensures maximum preservation of constitutionally guaranteed liberties and rights. Due process protects the rights of the accused without regard to guilt.

3 **WHAT are the strengths and weaknesses of the U.S. criminal justice system?** p. 8

The criminal justice system is a dynamic model of interrelated, independent agencies. The system is divided into three categories of agencies: police, courts, and corrections. Local, state, and federal governments are separate but are linked by common activities, goals, and interests. There is no single agency that has oversight control of all of the criminal justice agencies. This system allows for numerous checks and balances.

4 **WHAT are the steps of the criminal justice system?** p. 10

Six major processes in the criminal justice system are:

1. Deciding what is a crime.
2. Detecting a crime violation and making an arrest.
3. Determining if the accused is to go to trial.
4. Deciding guilt or innocence in the trial.
5. Determining punishment.
6. Administering the punishment.

The police are responsible for investigation, arrest, and booking. A magistrate judge reviews the charges to determine if they are legitimate, advises the person of his or her legal rights, and determines bail.

A case moves from the police to the prosecutor via the preliminary hearing or grand jury system.

At the arraignment, the defendant pleads not guilty, guilty, or no contest to the charges. Guilt or innocence is determined by the judge in a bench trial or by the jury in a jury trial.

The judge determines the appropriate sentence for a convicted defendant. The sentence is announced at a sentencing hearing. Appeals of a verdict are based on alleged judicial errors, not innocence.

The convicted defendant may become an inmate in a correctional facility or may be put on probation. Parole permits, under certain conditions, early release from a correctional facility.

Overall, these processes act like a funnel for moving people through the criminal justice system.
Assess Your Understanding

1. Which of the following influenced public confidence in the criminal justice system during the latter part of the twentieth century?
   a. fear of crime
   b. civil rights rioting
   c. protests over U.S. involvement in the Vietnam War
   d. all of the above
   e. none of the above

2. What is the importance of the Bill of Rights in the U.S. Constitution?
   a. The Bill of Rights defines the balance between individual rights and the power of government.
   b. The Bill of Rights provides for separation of powers among the three branches of government.
   c. The Bill of Rights outlines the roles and functions of the various criminal justice agencies.
   d. none of the above

3. Which amendment in the Bill of Rights prohibits unreasonable search and seizure?
   a. First Amendment
   b. Fourth Amendment
   c. Fifth Amendment
   d. Eighth Amendment

4. Which of the following is the central premise of the criminal justice due process model?
   a. the focus upon crime control
   b. the assumption that if arrested a person must be guilty
   c. the presumption of innocence
   d. plea bargaining

5. Which model emphasizes the necessity to enforce laws and maintain social order?
   a. the due process model
   b. the crime control model
   c. both a and b
   d. neither a nor b

6. Which process in the criminal justice system involves a panel of citizens selected to hear evidence against an accused person to determine if there is probable cause to issue an indictment?
   a. booking
   b. initial appearance
   c. arraignment
   d. grand jury

7. Who determines what sentence the convicted defendant is to serve?
   a. the jury
   b. a panel of citizens
   c. the judge
   d. the prosecutor

ESSAY

1. Describe the factors that influenced public confidence in the criminal justice system during the latter part of the twentieth century.

2. How does the check and balance system work to limit the power of each of the three branches of government?

3. What is the importance of the Bill of Rights to the criminal justice system?

4. Compare and contrast the crime control model and the due process model of criminal justice.

5. Describe the process from arrest to carrying out the sentence or dismissal from the system for a defendant who is processed through the criminal justice system.

ANSWERS: 1. d, 2. a, 3. b, 4. a, 5. c, 6. d, 7. c

Media

Go to the Chapter 1: Criminal Justice section in MyCJLab to test your understanding of this chapter, access customized study content, engage in interactive simulations, complete critical thinking and research assignments, and view related online videos.

Additional Links

To watch a YouTube video explaining the purpose of the civil grand jury, see www.youtube.com/watch?v=NvRTh5cUxYo&NR=1

You can view and download high-resolution images of the Declaration of Independence, the Constitution, and the Bill of Rights at www.archives.gov/national-archives-experience/charters/charters.html

To view a presentation on the thirty-fifth anniversary of the Kent State Vietnam protest massacre, visit the C-SPAN video library at www.c-spanvideo.org/program/186598-1

Libertarian, politician, and 2004 presidential candidate Michael Badnarik presents his views on the Bill of Rights at www.youtube.com/view_play_list?p=7AB02F069017B232

For an overview of the American criminal justice system, see the discussion at www.youtube.com/watch?v=Vad1tiUwU

For a short introduction to plea bargaining, see www.5min.com/Video/Legal-Advice-Plea-Bargaining-34095298

To read the slip opinion of the U. S. Supreme Court of McDonald vs. the City of Chicago et al., 2010, the case which incorporated the Second Amendment, see www.supremecourt.gov/opinions/09pdf/08-1521.pdf