Introduction to Criminal Justice

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.
The criminal justice system encapsulates the changing social norms and values of the society. Some changes result in laws changing slowly over decades and other changes occur rapidly. The changing laws related to same-sex marriage are an example of the latter. In the 1980s, sodomy between same-sex couples was a constitutionally upheld crime in more than half the states, same-sex marriage was not legal, and homosexuals were discharged from military service. In 1986, Congress passed the Defense of Marriage Act (DOMA) defining marriage as a union between one man and one woman.

In 2003, the U.S. Supreme Court overturned its ruling upholding the constitutionality of laws criminalizing sex between same-sex couples. President Clinton adopted a “Don’t Ask – Don’t Tell” policy for military personnel, and President Obama abolished military prohibitions against same-sex couples. In 2013, 13 states and the District of Columbia have legalized same-sex marriages. In 2013, the U.S. Supreme Court declared DOMA unconstitutional.

The Court’s ruling triggered numerous changes in the law. Within a month of the Court’s ruling, the Internal Revenue Service, Social Security Administration, Medicare, and the military revised their laws and provided equal benefits for spouses of same-sex couples. California prisons permitted inmates to marry same-sex partners who are not incarcerated and in Elane Photography, LLC v. Willock, the New Mexico Court ruled there was a moral and legal equivalence between racial discrimination and sexual discrimination.

What does society do when there appears to be a conflict over due process rights or over what should be legal behavior and one party has to compromise? In cases where there is outright conflict, as to the rights claimed by one group but opposed by another group, the criminal justice system plays an important role in resolving the conflict. When changing social values and norms result in conflicts between what the laws say are legal behavior and in the current morality, often there must be changes made to the criminal justice system. Laws may need to be changed or deleted or new laws may need to be passed.

While the Declaration of Independence declares that people have unalienable rights and the U.S. Constitution describes those rights, from time to time, some of them may be in conflict with popular opinion, the law, or social values. Society uses several means to balance conflicting rights and social values. In general, these means can be divided into informal and formal sanctions. Informal sanctions include social norms that are reflected in the formal systems of order maintenance.

**Balancing Public Safety and Unalienable Rights**

Frequently, the norms and values embedded in informal systems are reflected in the formal systems of order maintenance.
enforced through the social forces of the family, school, government, and religion. These social institutions teach people what is expected for normative behavior. In addition to teaching normative behavior, these primary social institutions also provide punishment when people violate social norms. In the informal system, parents punish children for disobedience, bosses reprimand employees, teachers discipline students, and religious groups call on offenders to repent of their sins.

The balancing of rights and public safety can also be achieved through use of formal sanctions (such as laws) found within the criminal justice system. Frequently, the norms and values embedded in informal systems are reflected in the formal systems of order maintenance. 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.

**Limited Powers 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.

When there is conflict between rights, often the U.S. Court system decides which rights are to be sanctioned. For example, the U.S. Supreme Court has recognized the right of people who have conscientious objections to killing to be exempted from combat service (the exemption does not exempt them from military service when required by law), the right to refuse childhood immunizations required by law, the right to withdraw children from public school before the age allowed by law, the right of Amish to be exempt from military rules that forbid nonuniform head coverings, and the right of Native Americans to use certain drugs in religious ceremonies and gather eagle feathers (which is prohibited by law for nonnative Americans). Often conflicts between competing social norms are protected from arbitrary and excessive abuse of power by the government.

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**Timeline of Key Events**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>1896</td>
<td>The U.S. Supreme Court case of <em>Plessy v. Ferguson</em> establishes the “separate but equal” doctrine of racial discrimination that permitted the legal separation of whites and blacks.</td>
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<tr>
<td>1920</td>
<td><em>The Nineteenth Amendment</em> extends voting rights to women.</td>
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<tr>
<td>1941</td>
<td><em>Broadcast television</em> begins in the United States.</td>
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<tr>
<td>1954</td>
<td><em>Brown v. Board of Education</em> declares state laws establishing separate public schools for black and white students unconstitutional. The decision overruled the <em>Plessy v. Ferguson</em> decision of 1896 that established the doctrine of “separate but equal” racial segregation.</td>
</tr>
<tr>
<td>1955</td>
<td>In 1955, Rosa Parks is arrested and convicted for refusing to give up her seat to a white passenger on a bus. Her arrest initiates the 381-day Montgomery bus boycott and many acts of civil disobedience.</td>
</tr>
</tbody>
</table>
norms and values that are embodied in the law are resolved by the Supreme Court. The Supreme Court is the final arbitrator as to which rights are considered unalienable and who has to compromise. The Supreme Court has made many decisions that have resulted in significant changes in legal and social behavior. Many more major decisions will follow.

**Crime Control versus Due Process**

In the Declaration of Independence, Thomas Jefferson embedded Locke's arguments that government is limited in its power. This philosophy was further asserted in the Constitution and its amendments. Thus, the government has the power to act as final arbitrator of which rights are to be sanctioned, but there are checks and balances on this power. The government is charged with maintaining harmony among conflicting interests and sanctioning those who violate the rights of others. However, the government is restricted in the powers and actions it may use in its pursuit of maintaining law and order in society.

The rights guaranteed to persons by the Constitution and its amendments are called *due process rights*. There is no universal agreement as to what powers the government may exercise in the pursuit of law and order. Some would give the government more power and citizens few rights to tip the scale toward greater public order. Others would give the government less power and citizens more rights to achieve an acceptable level of crime control but maintain strict limits on government power.

There must be a balance between law and order and due process rights. Law without order is anarchy, but order without law is tyranny. In the United States, the emphasis on public order or crime control versus emphasis on due process rights 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 under Chief Justice Earl Warren and then back to the right again with the "law and order" platform on which Richard Nixon based his campaign for the presidency. Nixon's term as president (1969–1974) was characterized by a period of social unrest, violent protests and demonstrations, and high crime rates. Crime was the number one fear of citizens, and many people were receptive to the promise of crime control, public order, and swift—preferably harsh—justice for the offender.

Crime control cannot be achieved at the expense of constitutionally protected liberties.
This emphasis on efficient and effective justice is known as the crime-control (public-order) model of criminal justice. However, 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 the due process model of criminal justice. Due process means that in the quest for crime control and public order, 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 refuse to prosecute the alleged offender or void a conviction obtained in violation of these rights.

Think About It . . .

It is essential that citizens believe the criminal justice system exists to serve and protect the community in a fair and unbiased manner. Corruption, abuse, bias, and even incompetency can diminish this trust. One practice that has raised citizen’s concern across the United States is the use of traffic cameras to issue citations to motorists for speeding and red light violations. In large cities, such enforcement tactics can produce tens of millions of dollars in revenue. Numerous allegations of bribery are associated with the awarding of contracts. Many citizens feel that traffic cameras are revenue generators for the city and have little to do with public safety. What do you think?

One of the primary roles of the state and federal courts is to provide authoritative guidance as to the proper balance between due process and crime control that should be exercised by criminal justice personnel and agencies. Often the guidelines of the Court are the result of cases of alleged violation of constitutional and due process rights by law enforcement, the courts, or correctional personnel. For example, one of the best-known guidelines issued by the U.S. Supreme Court came from Miranda v. Arizona (1966), in which the Court mandated the specific due process rights that law enforcement must follow in arrest and interrogation of accused persons. The due process model reflects belief in the saying that it is better that a guilty person should escape the punishment of justice than an innocent person be wrongfully punished.
Agencies in the Criminal Justice System

Criminal justice agencies can be divided into (1) law enforcement; (2) prosecutors and the courts; (3) the probation and parole agencies; and (4) the jails, prisons, and other correctional agencies. These agencies exist in the local, state, and federal levels of government. Each level of government has its own criminal justice agencies and process. Thus, there is not a single criminal justice system, but an interconnected system of criminal justice agencies at the local, state, and federal level. Also, there is a separate but interconnected criminal justice system for adults and juveniles at both the state and federal level of government.

Dual Criminal Justice System

The U.S. criminal justice system is distinct from criminal justice systems of other nations in which there is a centralized system of oversight and command from top to bottom. The American system can be described as a dual system, which refers to the fact that the federal government and the states each have the power to create their own semiautonomous criminal justice system. While all criminal justice systems must preserve the rights guaranteed by the U.S. Constitution, there is great diversity between states and the federal government in the details of their criminal justice systems.

Thus, while 2.5 million people are employed by the criminal justice system, each of the thousands of criminal justice agencies hires its own employees. There is no central employment agency for the criminal justice system. Each agency sets standards of employment, defines job responsibilities and duties, and pays

In 2011, the expenditures by the criminal justice system were flat or slightly declining, but from 1982 to 2007, the expenditures for criminal justice increased 171%.14
its employees independently of central control. As a result, there is great diversity in the educational achievement, skills, knowledge, and abilities of the people who work in the criminal justice system. One law enforcement agency may require officers to have only a high school diploma, whereas another law enforcement agency may require a bachelor’s degree. One state may have no requirements of legal training for its municipal judges, whereas another state may require that municipal judges meet strict standards for education and other qualifications.

Sometimes the interrelationship of local, state, and federal criminal justice agencies is described in a hierarchical relationship by comparing them to a three-layer cake—a broad layer consisting of local agencies on the bottom, a small layer of state agencies on top of that layer, and a smaller layer consisting of federal agencies on the top. However, the analogy of a three-layer cake suggests that each political entity is separate and that there is a hierarchy with local political entities at the bottom and federal government at the top. This analogy does not accurately describe the criminal justice system. Because of the semiautonomous nature of criminal justice agencies, although the agencies may interact often, the agencies are independent and there is no hierarchical authoritative relationship between them. For example, the Federal Bureau of Investigation does not have administrative powers over state law enforcement agencies and state law agencies do not have administrative powers over local law enforcement agencies. The court system does have a hierarchical relationship in that higher courts can overturn the decisions of lower courts, but separation and independence still exist among the various local, state, and federal courts.

A better analogy to describe the relationship between the local, state, and federal criminal justice agencies is the **picket fence model**. In this analogy, the three horizontal boards in the fence represent the local, state, and federal government and the vertical boards represent the various criminal justice agencies, such as law enforcement, courts, and corrections. Although separate autonomy of each agency is represented by the space between criminal justice agencies at each level of government, an interrelationship is represented by the vertical pickets.

Each person and agency in the criminal justice system has a certain amount of autonomy, but each also is controlled by interactions with other criminal justice agencies.

The early founders of the United States. As a result, the U.S. government was created with numerous checks and balances. Each person and agency in the criminal justice system has a certain amount of autonomy, but each also is controlled by interactions with other criminal justice agencies. The balance of authority exercised over other agencies and the authority of agencies to void actions of other criminal justice agencies is called the power of **checks and balances**. The flowchart created by the President’s Commission identifies five stages in the criminal justice system: (1) entry into the system, (2) prosecution and pretrial services, (3) adjudication, (4) sentencing and sanctions, and (5) corrections. The agencies that compose these stages are semiautonomous, and as discussed earlier, no one agency has the oversight powers to supervise and regulate the processing of an accused person through the criminal justice system. This separation of power acts as checks and balances to ensure fairness and to minimize the arbitrary exercise of power or abuse of power by one of the agencies.

One of the ways this power of checks and balance works is that when an accused person is transferred from one stage of the criminal justice system to another, there is the opportunity for a review of the charges against the accused. Often at these transition points, the receiving agency has the authority to refuse to continue the processing of the accused in the criminal justice system. For example, the prosecutor may alter the charges the police filed against the accused or may dismiss all charges and free the accused. The prosecutor must obtain permission of the court before the defendant can be formally tried for the alleged criminal activity. After the trial and sentencing, the defendant can appeal both the verdict and sentence. Finally, due process rights ensure that when a defendant is transferred to a correctional facility, his or her rights regarding cruel and unusual punishment and due process rights to appeal revocation of probation or parole are protected.
The Criminal Justice Process

As mentioned, there is no single criminal justice system. Thus, a discussion of the criminal justice process cannot accurately describe the criminal justice process used by each state and the federal government. However, the criminal justice system of each state and the federal government must provide that the constitutional rights of people who have come in contact with the criminal justice system are protected. Each person must be treated with fairness and equality, and due process rights cannot be abridged. Thus, despite the differences between the criminal justice systems of the various states and the federal government, there is a commonality as governments must ensure that accused people are treated in accordance with the rights proscribed by the Constitution and that their journey through the criminal justice system is without bias and conforms to the guidelines provided by the Constitution and the U.S. Supreme Court.

In 1967, the President's Commission on Law Enforcement and Administration of Justice undertook one of the first attempts to describe the process of the American criminal justice system. Prior to the Commission's study, there was little research as to the process of the criminal justice system. The Commission produced a flowchart of the criminal justice system. The flowchart was not reflective of every state's system, but it did provide a visual depiction of a generalized understanding of the process of the criminal justice system. Since the publication of the Commission's flowchart, the process described by the 1967 report has been updated by other studies and the Bureau of Justice Statistics. Thus, the flowchart (Figure 1–1) has become a standard for depicting the criminal justice process.

The flowchart of the President's Commission describes the criminal justice system as a classical input-output model. In this model, the process describes how people are processed into the criminal justice system and then move through the system until they exit from it. (See Figure 1–2 for a description of the five stages in the criminal justice process and Figure 1–3 for the roles and functions of criminal justice personnel.)

Entry into the System

Law enforcement agencies are the primary officials responsible for detecting crime violators and bringing these individuals into the criminal justice system. Often the process of detecting crimes is a partnership between law enforcement and the public. To a large degree, law enforcement must depend on the public to report crime, to cooperate as witnesses, and to work with law enforcement in crime-prevention programs.

The prosecutor's office has complete autonomy to accept, modify, or dismiss the charges upon which the defendant was booked.

The arrest of a suspected criminal may be spontaneous, as when a patrolling law enforcement officer chances upon a crime in progress, or it may be the result of months, perhaps years, of planning that involves many different law enforcement agencies. Often arrests for major crimes, especially ongoing criminal enterprises, are characterized by extensive effort, resources, and collaboration by multiple criminal justice agencies. Arrest means that law enforcement can restrict the freedom of people by taking them into custody.

When a person is arrested, that individual must be transported to a facility where he or she can be booked. Booking is the process whereby law enforcement formally accuses a person of committing a crime. The purpose of booking is not to establish guilt, but (1) to establish the identity of the person and (2) to charge the person with a specific violation of the criminal law.

Booking acts as the transition point to determine whether the accused will be further processed by the criminal justice system.

Prosecution and Pretrial Services

In the next stage of the sequence of events in the criminal justice system, the government must decide whether the evidence presented by the police is sufficient to pursue prosecution of the alleged offender and must ensure that the due process rights of the defendant are protected. The decision to move the accused from booking to prosecution often is decided by collaboration between law enforcement officials and officials of the prosecutor's office. The government official responsible for charging and prosecuting the defendant is known by different names from state to state. Some common titles are prosecuting attorney, district attorney, and state's attorney. The prosecutor's office has complete autonomy to accept, modify, or dismiss the charges upon which the defendant was booked. If the prosecutor does not seek criminal charges against the defendant, law enforcement has no authority to bring charges against the defendant. If the prosecutor decides to bring the defendant to trial for the alleged offense(s), a number of preliminary steps must occur. The purpose of these steps is, in part, to guarantee the due process rights of the defendant.

GLOSSARY

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Chances</td>
<td>A term used to describe the probability of an event occurring.</td>
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<tr>
<td>Evidence</td>
<td>Physical or testimonial material that can be used to prove a fact.</td>
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<tr>
<td>Guilt</td>
<td>A state of being legally responsible for a crime.</td>
</tr>
<tr>
<td>Identifiable</td>
<td>Something that can be identified or recognized in a unique way.</td>
</tr>
<tr>
<td>Judgment</td>
<td>An official decision or conclusion based on evidence and legal criteria.</td>
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<tr>
<td>Laws</td>
<td>The body of rules, regulations, and procedures established by a government.</td>
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<tr>
<td>Mitigating Circumstances</td>
<td>Circumstances that lessen the severity of a crime or enhance the defendant's chances of a lighter sentence.</td>
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<td>Preliminary Hearing</td>
<td>A hearing before a magistrate judge in which the prosecution presents evidence to convince the judge that there is probable cause to bring the defendant to trial.</td>
</tr>
<tr>
<td>Probable Cause</td>
<td>A determination that there is a reasonable likelihood that a person has committed a crime.</td>
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<tr>
<td>Process</td>
<td>The series of steps or actions that are taken to carry out a particular function.</td>
</tr>
<tr>
<td>Proceedings</td>
<td>The formal series of actions taken in a court of law.</td>
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<tr>
<td>Probation</td>
<td>A period during which a person is supervised by a court and is required to follow certain conditions.</td>
</tr>
<tr>
<td>Recidivism</td>
<td>The tendency to commit a new crime.</td>
</tr>
<tr>
<td>Sentencing</td>
<td>The act of determining the appropriate punishment for a crime.</td>
</tr>
<tr>
<td>Statute</td>
<td>A law that is enacted by a legislative body.</td>
</tr>
<tr>
<td>Summary Judgment</td>
<td>A court's decision based on its review of the evidence presented in court.</td>
</tr>
<tr>
<td>Testimony</td>
<td>Statements made by a person under oath, used as evidence in a court.</td>
</tr>
<tr>
<td>Trial</td>
<td>A legal proceeding in which evidence is presented to determine guilt or innocence.</td>
</tr>
<tr>
<td>Verdict</td>
<td>The final decision of a court in a legal proceeding.</td>
</tr>
</tbody>
</table>
What is the sequence of events in the criminal justice system?

**Entry into the system**
- Crime
  - Reported and observed crime
  - Investigated
  - Arrest
  - Charges filed
  - Initial appearance
  - Preliminary hearing
  - Bail or detention hearing
- Misdemeanors
  - Filing
  - Preliminary hearing
  - Bail or detention hearing

**Prosecution and pretrial services**
- Felonies
  - Information
  - Grand jury
  - Refusal to indict
- Misdemeanors
  - Information
  - Arraignment
  - Trial
  - Guilty plea
  - Convicted sentencing

**Adjudication**
- Felonies
  - Information
  - Grand jury
  - Refusal to indict
- Misdemeanors
  - Information
  - Arraignment
  - Guilty plea
  - Sentencing

**Sentencing and sanctions**
- Juvenile offenders
  - Diversion
  - Waived to criminal court
  - Unsuccessful diversion
- Nonpolice referrals
  - Unsolved or not arrested
  - Released without prosecution

**Corrections**
- Jail
  - Probation
  - Pardon and clemency
  - Capital punishment
  - Parole
  - Intermediate sanctions
  - Probation
  - Probation or other nonresidential disposition

**Out of system**
- Released
- Released or diverted or diverted
- Released or diverted or diverted
- Released or diverted or diverted
- Released or diverted or diverted
- Released or diverted or diverted
- Released or diverted or diverted

**Habeas corpus**
- Out of system (registration, notification)

**Aftercare**
- Residential placement
- Probation
- Parole

**Flowchart of the Criminal Justice Process**

### Stage | Major Agencies and Events
--- | ---
**Entry into the system** | This stage includes the detection of crime, which can involve both the police and the public.
**Prosecution and pretrial services** | After the police book and charge the accused with a crime, the accused becomes the defendant. During this stage, formal charges are filed against the defendant through a process that protects the rights of the defendant and decisions are made regarding release on bail.
**Adjudication** | The guilt of the defendant is determined through trial, plea bargaining, or dismissal of charges.
**Sentencing and sanctions** | The judge sets a punishment guided by the limits established by law. The defendant and the prosecutor have the right to appeal the sentence.
**Corrections** | The defendant is now the convicted and is transferred to a correctional authority to carry out the sanction. The convicted no longer is granted the presumption of innocence, and many due process rights, such as those related to interrogation and search and seizure, are lost. When the convicted person completes his or her sentence, he or she exits the criminal justice system.

#### Figure 1–2 Five Stages in the Criminal Justice Process Model
*Source: Adapted from Bureau of Justice Statistics, http://bjs.ojp.usdoj.gov/content/justsys.cfm (accessed February 29, 2012).*

#### Figure 1–3 Criminal Justice Officials and Their Role in the Criminal Justice Process
*Source: Adapted from Bureau of Justice Statistics, http://bjs.ojp.usdoj.gov/content/justsys.cfm (accessed February 29, 2012).*
If the defendant pleads not guilty, a trial date is set. If the defendant pleads guilty (or no contest), a sentencing date is set.

**First Appearance**

If the defendant is to be prosecuted, he or she will appear before a magistrate judge. Magistrate judges are judicial officers with authority to evaluate charges filed by law enforcement against the accused and to determine whether the charges are legitimate according to state statutes and federal laws. At the first appearance, the accused is advised of his or her legal rights, the magistrate must determine whether the accused has legal representation, and bail may be set. **Bail** is a promise, sometimes backed by a monetary guarantee, that the accused will return for further proceedings in the criminal justice system. The decision of bail can be revisited at several points in the criminal justice process. At the first appearance, the accused is not asked whether he or she pleads guilty or not guilty to the charges. The question of guilt is not raised at this time. The first appearance will be discussed in greater detail in Chapter 9, “Sentencing.”

**The Path to Indictment**

After the first appearance, the prosecutor must obtain an indictment if he or she is to prosecute the defendant. An **indictment** is a formal, written legal document forwarded to the court, asserting probable cause that the defendant committed an offense. The indictment authorizes the court to issue an arrest warrant for the defendant and to set an arraignment hearing at which the defendant must formally respond to the charges with a plea of guilty or not guilty.

There are two ways the prosecutor may obtain an indictment. One way is the preliminary hearing. A preliminary hearing is a court hearing before a magistrate judge in which the prosecution must convince the judge that there is probable cause that (1) an offense as defined by the criminal laws of the jurisdiction has been committed within that jurisdiction and (2) the defendant accused of the offense committed the crime. The preliminary hearing is sometimes called a **probable cause hearing** because of this responsibility. Each state and the federal government have different rules regarding preliminary hearings, so the hearing differs from court to court.

Another path to obtaining an indictment is by use of a grand jury. A **grand jury** is a legal procedure that in some ways resembles a trial. Grand jury rules differ by state; in some states, the defendant’s legal counsel may be present, and in others, defense counsel is barred. Similar to the preliminary hearing, the prosecutor presents evidence to the members of the grand jury to convince them that the defendant probably committed the offense. The grand jury does not determine guilt, but if the prosecutor is successful, the grand jury returns a **true bill**; this authorizes the prosecutor to arraign the defendant. If the prosecutor is not successful, he or she cannot proceed to an arraignment.

The grand jury will be discussed in greater detail in Chapter 9, “Sentencing.”

**Adjudication**

At the **arraignment hearing**, the charges are read and the defendant is asked whether he or she pleads guilty or not guilty. If the defendant pleads not guilty, a trial date is set. If the defendant pleads guilty (or no contest), a sentencing date is set. When a guilty plea is entered, there is no trial and the government is not required to prove guilt beyond a reasonable doubt to a jury or a judge.

**Sentencing**

If the defendant is found guilty, the judge will decide on a sentence guided by the limits set by law. The judge will be assisted in determining the sentence using a presentence investigation report provided by a probation officer, who will perform an extensive life history and background investigation of the convicted defendant. (The actual title of this person varies by state.) The sentence is announced at a sentencing hearing wherein both the prosecutor and the defendant’s counsel can challenge the sentence and the information presented by the presentence investigation report.

The sentencing procedure for capital offenses (death penalty) is different from that of noncapital cases and will be discussed in Chapter 9, “Sentencing.”

After adjudication and sentencing, the defendant has the right to appeal both the criminal conviction and the sentence.

**Corrections**

Once the convicted defendant is sentenced, he or she is transferred to a correctional facility. For those defendants given alternative sanctions that do not require incarceration in a correctional facility, they are placed under the supervision of probation officials. (The same officers also may supervise inmates released early from correctional institutions or some form of intermediate sanction.)

**Exit, Recidivism, and Multiple Dimensionality of the Criminal Justice System**

There are a limited number of options as to how a person is processed into the criminal justice system, but there are numerous exit options.
occur shortly after the person enters the system; other options occur only at the end of the process model. Law enforcement officials may quickly discover that they have arrested the wrong person and release him or her before booking. Prosecuting officials may conclude that there is insufficient evidence to convict a person arrested by law enforcement and refuse to prosecute, resulting in the person exiting the system. The prosecutor may fail to win an indictment at a preliminary hearing, and the accused may exit the system. Few people who enter the system by arrest are processed through the entire criminal justice system. Since 1990, the percentage of defendants released pretrial has remained relatively stable at about 60%. In the typical case disposition, the Bureau of Justice Statistics report Felony Defendants in Large Urban Counties, 2006 suggests that of 100 felony defendants arraigned only 69 will be prosecuted. Sixty-five defendants will plea guilty and only four defendants will go to trial. Three of the four defendants will be convicted and only one acquitted.

Furthermore, the criminal justice system is not a one-dimensional, one-way input-output model. About 43% of felony defendants who enter the criminal justice system have at least one prior felony conviction. Also, many who enter the criminal justice system may be charged with a crime in multiple jurisdictions. About 18% of defendants commit new offenses while they are being processed by the criminal justice system.

The Changing Criminal Justice System

The criminal justice system reflects the complex interaction of social values, technology, law, concepts of social justice, and economic forces. Sometimes the changes in the criminal justice system are deliberate, as when the government undertakes to change or reform the system or landmark U.S. Supreme Court decisions cause transformative change. Other forces may have unintentional influences on the criminal justice system. The invention of the revolver, the telephone, the automobile, and the television all had major impacts on the criminal justice system, resulting in transformative change.

Four meta-influences have shaped the U.S. criminal justice system since the mid-twentieth century. A meta-influence is a phenomenon that results in encompassing transformative changes. Meta-influences have the ability to transcend the immediate environment and objectives in which the phenomenon is situated, resulting in significant changes throughout social behavior, values, and interactions.

The Civil Rights Movement

In a sense, the roots of parts of the U.S. criminal justice system are founded in racial discrimination. In colonial times and during the early years of the United States, slave patrols were a central component of the criminal justice system of the southern colonies and states. Slave patrols were composed of organizations of free white adults, sometimes called militia, who were responsible for controlling, returning, and punishing runaway slaves. In The Police in America, Samuel Walker describes the slave patrols as the first "modern" police organization. Hence, from the founding of the United States, the criminal justice system has reflected the social values of racial discrimination.

The protests and demonstrations leading up to the protests and demonstrations leading up to the passage of the Thirteenth Amendment, which abolished slavery, and the Fourteenth Amendment, which prohibited the denial of due process, marked the start of a long struggle for equality within society and the criminal justice system. The U.S. Supreme Court played a central role in this struggle for equality in the Brown v. Board of Education decision, which overturned the "separate but equal doctrine," resulting in the movement to integrate schools, public transportation, businesses, and society.

The protests and demonstrations leading up to the passage of the Civil Rights Act of 1964 were marked by extensive and widespread violence. For example, when civil rights workers attempted to desegregate bus stations and waiting rooms in the South, the bus in which they were traveling was fire-bombed and the demonstrators were beaten. NAACP leader Medgar Evers was murdered, and due to the complicity of the police in the crime, it took decades to bring his killer to justice. Civil rights protesters often feared not only the violence of the mob, but also that of local law enforcement.

The criminal justice system was at the center of this conflict as the segregation laws were enforced by law enforcement and the courts. This discrimination was
Until the 1972 Equal Employment Opportunity Act, law enforcement and correctional agencies could refuse employment to minorities and females with legal impunity.

reflected in so-called Jim Crow laws (Black Codes), which provided legal sanctions for customs and practices of discrimination. Also, employment in the criminal justice system was not open to minorities and females. Until the 1972 Equal Employment Opportunity Act, law enforcement and correctional agencies could refuse employment to minorities and females with legal impunity. In Slavery by Another Name, Douglas A. Blackmon argues that the correctional system preserved enslavement.

The civil rights movement was divided into two distinct approaches: those who advocated violence and separation of the races and those who advocated nonviolent civil disobedience and integration of the races. Malcolm X was characteristic of the former; Martin Luther King, Jr., was characteristic of the latter.

King's strategy of nonviolent civil disobedience captured national attention in December 1955 with the 381-day Montgomery bus boycott of public transportation. This event was triggered by the arrest and conviction of Rosa Parks for violating the segregation laws because she would not give up her bus seat to a white passenger. However, King's nonviolent civil rights approach often resulted in retaliatory acts of violence, even murder, mob actions, and extensive destruction of property.

The evolution of the criminal justice system to provide fair and impartial justice for all is an underlying theme of the criminal justice system. In the twenty-first century, significant progress has been made in achieving this goal, but great challenges still face the criminal justice system. For example, Michelle Alexander, author of The New Jim Crow: Mass Incarceration in the Age of Colorblindness, argues that the rising incarceration rates of the late twentieth century reflect a racially based system of control to serve the perceived interests of white elites.

Protests and the Vietnam War

U.S. involvement in the Vietnam War produced great acrimony in society. The conflict between antiblack protesters and the government was characterized by violent demonstrations resulting in property damage, injuries, and deaths.

The Vietnam War lasted from 1955 to 1975 and involved Vietnam, Laos, and Cambodia. The U.S. government considered it a war against the spread of communism based on what was called the domino theory. The domino theory claimed that the fall of Vietnam to communist rule would be followed by the fall of another and then another country, until democracy itself would be threatened by communist insurgency. The estimated number of Vietnamese soldiers and civilians killed varies from 1 million to more than 3 million. About 58,000 U.S. service members also died in the conflict.

There was great debate as to the legitimacy of U.S. military involvement, but U.S. involvement in the war continued to escalate starting with President Kennedy and continuing under Presidents Johnson, Nixon, and Ford. In 1975, the communist government of North Vietnam militarily defended South Vietnam, officially ending the conflict.

During these approximately 15 years the United States was involved in the war, antiblack protestors staged numerous and sometimes violent demonstrations. Law enforcement officials were often in conflict with protestors, and these conflicts were lead stories for the evening news. The police were often captured on film engaged in physical conflict with the protestors. The conflicts often were such that local law enforcement was considered incapable of handling the crowd and military troops were used to respond to the demonstrations. However, military troops did not have the training in crowd control and civil demonstrators that law enforcement officers did. As a result, the presence of military troops often escalated the conflict. One example of the violent encounters between protestors and the military was the Kent State University antiwar protests in 1970. National Guard troops opened fire on unarmed student demonstrators, killing four students and injuring nine more.

The often violent encounters between law enforcement and antiblack protestors resulted in a public perception of law enforcement officials as being brutal and disrespectful of the Constitution. This rift between a large section of the public and law enforcement had a great influence on police-community relations. Also, it bred contempt for the criminal justice system because it was seen as an extension of the status quo government committed to the war effort. This perception contributed to the derogation of confidence by the public in the criminal justice system that was to become a central concern in the War on Crime.
neighborhoods at night, and by the end of 1972, the number of respondents said that they were afraid to walk in their own neighborhoods at night, and by the end of 1972, the number had risen to 42%. Many citizens thought that rather than providing a solution to the rising fear of crime, the police contributed to the problem.28

The criminal justice system was perceived as falling apart—failing. On July 25, 1965, President Lyndon Johnson responded by declaring a War on Crime. He created a series of federal presidential commissions to study crime and justice 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), the role of the public in public safety, and the necessity of eliminating injustices in the criminal justice system.

To further the implementation of the recommendations of the President's Crime Commission, Congress passed legislation to provide substantial resources to the various agencies of the criminal justice system. The Omnibus Crime Control and Safe Streets Act of 1968 provided resources to local and state government to assist in the adoption of reforms (for example, better training, better-qualified recruits, in-service education for police officers, funding of police–community relations programs, and other strategies to promote public safety and build up public confidence in the criminal justice system).

The Omnibus Crime Control and Safe Streets Act of 1968 created the Law Enforcement Assistance Administration (LEAA). 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’s goal was to promote adoption of the standards and reforms outlined by the National Commission on Criminal Justice Standards and Goals. To receive the generous funds available from the federal government through LEAA, local and state agencies had to show that they had implemented or were working to implement the commission’s standards and goals. Many of the advances made in law enforcement agencies were a result of the compliance with standards and goals necessary to qualify for federal funds.

One of the goals of the National Commission on Criminal Justice Standards and Goals was to increase the professionalism and ethical behavior of criminal justice personnel, particularly law enforcement officers. One of the primary strategies used to achieve this goal was to raise the educational level of criminal justice personnel. The task of the Law Enforcement Educational Program (LEEP) was to achieve this goal. LEEP offered loans and grants to law enforcement personnel who would pursue higher education.

The LEEP left a tremendous legacy. It not only resulted in a significant increase in the educational levels of law enforcement officers, but also helped develop criminal justice as an academic

Think About It …

Economic crimes often are eclipsed by violent crimes and the public and the news media often fail to appreciate the magnitude and harm of economic crimes. Economic crimes can have tremendous impact upon persons, society, and governmental agencies. Bernard Madoff stole billions of dollars from investors in a massive Ponzi scheme. Rita Crundwell, comptroller for Dixon, Illinois—a town of less than 18,000 people—embezzled more than $53 million of city funds.26 The operators of the currency exchange Liberty Reserve were charged with laundering $6 billion for criminal traffickers around the world.26 Should the criminal justice system give more attention and resources to combating economic crime?
The availability of federal grants spurred many law enforcement officers to enroll in college. In turn, the growing demand for college programs stimulated many colleges and universities to develop criminal justice programs. This in turn resulted in law enforcement departments requiring higher educational levels for entry-level law enforcement positions and for promotions.

The Rise of Concern over Homeland Security

Prior to 2001, there was no Department of Homeland Security and the threat of an attack by international terrorists on U.S. soil was not a concern of the criminal justice system or the public. The biggest crisis in the twenty-first century was caused by a foreign attack on the United States. Responding to this attack by international terrorists on September 11, 2001, just as President Johnson had declared a war on crime, President George W. Bush declared a war on terrorism.

The impact of the war on terrorism has transformed the criminal justice system and continues to exert powerful forces for change. The 9/11 attacks resulted in creation of the Department of Homeland Security, new legislation expanding the powers of federal law enforcement agencies, and suspension of due process rights for accused terrorists labeled enemy combatants by the president. If labeled an enemy combatant upon the sole authority of the president, the accused loses all due process rights normally afforded to people accused of a crime. In fact, President Barrack Obama has extended the scope of the enemy combatant executive order issued by President Bush to include the power to execute accused enemy combatants, including U.S. citizens, without trial, due process, or disclosure of the standards that are used to justify the execution.

The war on terrorism poses one of the most serious challenges to the balance between public safety and due process. The influence of the war on terrorism on the criminal justice system continues and will be discussed in greater detail in Chapter 14, "Homeland Security."

Due Process Rights

The primary sources of due process rights are the state constitutions of the 50 states, the U.S. Constitution, and the Bill of Rights. However, it is the decisions of the U.S. Supreme Court that define which rights are enforced and how these rights are to be expressed in the criminal justice system. Most of these rights are contained in the first ten amendments and in the Thirteenth and Fourteenth Amendments of the U.S. Constitution.

In fact, the Fourteenth Amendment is sometimes called the due process amendment because its language prohibits state and local governments from depriving persons of life, liberty, or property without due process. The due process clause requires the government to recognize substantive and procedural rights of people and to apply the law equally to everyone. Substantive due process refers to the constitutionality of laws, and procedural due process refers to the process and procedure the government can use to seek a conviction for violation of a law.

Due Process Rights and the U.S. Supreme Court

The due process rights granted to the accused have varied throughout history. The protection of the due process rights guaranteed by the U.S. Constitution does not extend to state and local criminal justice systems unless the U.S. Supreme Court incorporates the federal rights defined by the U.S. Constitution. State constitutions may grant the accused due process rights independently from the U.S. Constitution. However, if the state constitution does not grant a right and the right has not been incorporated, the accused can only claim this right in federal court. The due process rights in the U.S. Constitution have been incorporated right by right and amendment by amendment throughout history.

Think About It . . .

On August 28, 1963, Dr. Martin Luther King, Jr., delivered his "I Have a Dream" speech. The following month, four members of the United Klans of America, a Klu Klux Klan group, bombed the Birmingham 16th Street Baptist Church killing 4 girls and injuring 22 others. These two events were the turning point in the struggle for racial equality in the United States. The path to equality started with the Civil Rights Act of 1964. However, the legislation did not prohibit discrimination in the hiring practices of law enforcement and correctional agencies. It was not until the Equal Employment Opportunity Act of 1972 that federal legislation prohibited discriminatory hiring practices by law enforcement and corrections. This Act opened up employment opportunities for persons of color and females in law enforcement and corrections. Today there are still allegations and lawsuits claiming discriminatory hiring and promotion practices in these agencies. What do you think?
A landmark decision occurs when the U.S. Supreme Court declares a significantly different interpretation of the rights guaranteed by the U.S. Constitution.

Often these rights are incorporated by U.S. Supreme Court landmark decisions. A landmark decision occurs when the U.S. Supreme Court declares a significantly different interpretation of the rights guaranteed by the U.S. Constitution. Landmark decisions define rights the federal and state courts must recognize even if the law or previous court decisions do not recognize the right. For example, the First Amendment right of free speech did not apply to the states until Gitlow v. New York (1925), when the U.S. Supreme Court ruled state laws unconstitutional if they arbitrarily infringed upon free speech. The First, Fourth, and Sixth Amendments have been fully incorporated, and states must guarantee these rights to accused persons.

The Second Amendment (the right of individuals to bear arms) is the most recent amendment to be incorporated. It was incorporated in District of Columbia v. Heller (2008) and McDonald v. City of Chicago, et al. (2010).

Some rights guaranteed in the U.S. Constitution are not incorporated. For example, parts of the Seventh Amendment have not been incorporated. In part, the Seventh Amendment states, “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . .” While this amendment has not been repealed, federal and state defendants are not guaranteed a right of trial by jury for all lawsuits exceeding $20.

**Due Process and Liberal versus Conservative Courts**

The incorporation of due process rights depends in part on the philosophy and values reflected by the U.S. Supreme Court justices in their decisions. At the beginning of the twenty-first century, the U.S. Supreme Court has often been described as a “conservative court.” Unlike the U.S. Supreme Court under Chief Justice Earl Warren (1953–1969), which created many new due process rights for the accused, the U.S. Supreme Court under the leadership of Chief Justice John Roberts (2005–) has created few new due process rights and has modified or curtailed many put in place by previous Court decisions.

The decisions of the Roberts Court are described as “conservative,” with more emphasis on crime control than due process. As a result, the Roberts Court has often ruled to allow law enforcement greater latitude in arrest, interrogation, and search and seizure than the U.S. Supreme Court did under Chief Justice Earl Warren.

**Due Process Rights of the Accused**

Due process rights protect the accused 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 power of the government that could be brought to bear in prosecuting the individual.

The central premise of due process rights 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 is treated as if he or she is not guilty of the charges in regard to the rights afforded to individual. In other words, an accused person cannot be denied constitutional rights simply because he or she is accused of a crime or because of the apparent overwhelming belief in his or her guilt prior to trial.

The First Amendment guarantees the right of freedom of speech, religion, and the press and the right of the people to assemble and to petition the government for a redress of grievances. The major due process rights granted by various other amendments as interpreted by the U.S. Supreme Court guarantee protections against unreasonable searches (Fourth Amendment), forced and self-incriminating testimony (Fifth Amendment), excessive bail and fines (Eighth Amendment), and cruel or unusual punishment (Eighth Amendment), as well as the right to a speedy public trial by jury. The way the U.S. Supreme Court guarantees these rights is to define through case law whether a law or an action violated a Constitutional right. (See Figure 1–4 for a summary of the due process rights of the accused.)

**What Is Criminal Justice?**

The study of criminal behavior dates to the earliest origins of civilization, but it was not until the mid-nineteenth century that a word was coined to describe this endeavor. In 1855, Italian law professor Raffaele Garofalo coined the term criminologia, the study of crime. In 1887, French anthropologist Paul Topinard used criminologia to refer to any scientific concern with the phenomenon of crime.

The study of crime as an academic discipline emerged in the United States in the twentieth century and was rooted in the academic discipline of sociology, the study of human social behavior. American sociologist Edwin Sutherland provided a definition of criminology that is still widely used today. He described criminology as the theories that explain why and how laws are made, why some people violate those laws, and how society responds to those who break the laws.

While criminology can include the study of the criminal justice system, criminal justice has evolved into a distinctively different discipline from criminology. Sutherland’s definition of the power of the government that could be brought to bear in prosecuting the individual.
What Is Criminal Justice?

The following U.S. Supreme Court decisions are landmark cases in criminal justice. The name of each landmark case is followed by a brief description of the right defined in the case.

<table>
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<tr>
<th>Case</th>
<th>Description</th>
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<tr>
<td><em>Weeks v. United States</em>, 1914</td>
<td>Established the exclusionary rule disallowing evidence obtained in violation of constitutional rights in federal courts</td>
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<tr>
<td><em>Mapp v. Ohio</em>, 1963</td>
<td>Incorporated Fourth Amendment search rights granted under <em>Weeks</em> to defendants in federal court to defendants in state courts</td>
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<td><em>Gideon v. Wainwright</em>, 1963</td>
<td>Guaranteed defendants the right to an attorney to represent them at criminal trial</td>
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<tr>
<td><em>Miranda v. Arizona</em>, 1966</td>
<td>Summarized a number of rights granted by previous decisions into a single standard establishing that a defendant has a right to counsel and a right against self-incrimination and that the defendant understands his or her rights</td>
</tr>
<tr>
<td><em>Klopfer v. North Carolina</em>, 1967</td>
<td>Incorporated the Sixth Amendment right to a speedy trial for defendants in state courts</td>
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<tr>
<td><em>Witherspoon v. Illinois</em>, 1968</td>
<td>Prohibited the exclusion of those opposed to capital punishment from capital crime juries</td>
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<tr>
<td><em>Furman v. Georgia</em>, 1972</td>
<td>Declared that the death penalty was applied in an arbitrary and capricious manner, and required states to draft new laws and procedures to ensure that due process rights were guaranteed in capital cases</td>
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<tr>
<td><em>Gagnon v. Scarpelli</em>, 1973</td>
<td>Declared that a probationer’s sentence can be revoked only after preliminary and final revocation hearings</td>
</tr>
<tr>
<td><em>Roper v. Simmons</em>, 2005</td>
<td>Abolished capital punishment for juveniles who were under the age of 18 at the time of their crime</td>
</tr>
<tr>
<td><em>District of Columbia v. Heller</em>, 2008</td>
<td>Defined the Second Amendment as upholding an individual’s right to possess a firearm unconnected with service in a militia and to use that arm for traditionally lawful purposes</td>
</tr>
<tr>
<td><em>McDonald v. City of Chicago, et al.</em>, 2010</td>
<td>Incorporated the Second Amendment right to bear arms, thus prohibiting states from banning individual ownership of firearms</td>
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Criminal justice research may develop theories, but often criminal justice research is applied research.

Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>sociology</td>
<td>The study of human social behavior.</td>
</tr>
<tr>
<td>criminology</td>
<td>The body of knowledge regarding crime as a social phenomenon.</td>
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</table>

of criminology emphasized that the end purpose was to understand the general principles that influenced people’s obedience to laws for the purpose of developing programs and responses that would provide effective treatment and crime prevention strategies. In other words, the purpose of criminology is to develop theories that explain crime as a social phenomenon.

The discipline of criminal justice emerged in the 1960s and matured in the 1980s. Many early academic programs related to criminal justice were housed in sociology departments. Criminal justice refers to the study of the processes involved in a system of justice; the people who perform these tasks; the scope and nature of the system; and the public policy, laws, and regulations that shape the administration and outcomes of a criminal justice system. An objective of the study of criminal justice may be to develop theories, but often criminal justice research is applied research, comparison research, descriptive research, or problem-solving research.

The study of law leading to the credentials to practice law as a licensed attorney is a distinctly different discipline from criminal justice or criminology. A career as an attorney, a prosecutor, or a judge requires completion of a graduate law degree. Lawyers are but one of the professionals who work in the criminal justice system.

Today, the field of criminal justice includes many related fields in counseling, forensic science, law, medicine, psychology, science, and sociology. New fields of study such as aviation security, forensic science, homeland security, intermediate sanctions, psychological profiling, and reentry of offenders into society have created new opportunities for those who have an interest in criminal justice but do not want to enter traditional law enforcement or correctional professions. Also, as foreign language barriers become less of a challenge and travel restrictions to certain countries ease, many are finding the study of the criminal justice systems of other nations to be an exciting field.

Many college-level criminal justice departments offer study-abroad programs to those who want to study another country’s criminal justice system.
Marijuana: Federal versus State Laws

The criminal justice system is a dual system composed of the criminal justice systems of the federal government and the 50 states. Under federal law, marijuana is illegal. The Drug Enforcement Agency (DEA) has classified marijuana as a Schedule 1 controlled substance. “Substances in this schedule have no currently accepted medical use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse.” Marijuana is in the same schedule of drugs as heroin and LSD. However, about 20 states and the District of Columbia allow the use of marijuana for medical reasons or for recreation. What happens when federal laws clash with state laws?

Federal laws trump state laws in that a state law cannot make legal what a federal law makes illegal. Normally state and federal laws are administered in harmony but the case of medical and legalized marijuana is causing conflict and confusion. In states that have legalized marijuana for medical and recreation use, marijuana use, possession, and distribution are still federal offenses.

Since 1969, public support for legalization of marijuana has grown significantly. According to Pew Research Center polls, only 12% of persons polled in 1969 supported legalization of marijuana. That number grew to 32% in 2002, 45% in 2011, and a majority (52%) in 2013. Furthermore, 65% of adults between the ages of 18 and 32 support marijuana legalization. Nearly half (48%) of persons polled said they had tried marijuana. A minority (38%) reported they thought marijuana was a “gateway drug” and a minority (32%) reported they believed it is morally wrong to use marijuana. According to the Pew poll, 72% of respondents said the enforcement of anti-pot laws “cost more than they are worth.”

The advocacy group Americans for Safe Access (ASA) estimate that the DOJ has spent nearly $300 million over the past four years on aggressive enforcement practices in medical marijuana states.

In 2013, U.S. Attorney General Eric Holder announced that the Department of Justice (DOJ) has adopted new policies to minimize the conflict between state drug laws and federal law. Appearing before the Senate Judiciary Committee in September 2013, Deputy Attorney General James Cole told the Committee members that the DOJ “would not at this time seek to push back against laws allowing its recreational use . . . The DOJ will continue to rely on state and local law enforcement to address marijuana activities in accordance with their state and local drug laws.” Mr. Cole said the DOJ will rely on states to regulate marijuana “from seed to sale.”

However, the DOJ’s policy leaves many unanswered questions. The DEA has refused to reclassify marijuana despite the fact that there have been over 200 peer-reviewed studies documenting the medical efficacy of marijuana.

Federal laws still make financial institutions such as banks liable under money laundering and drug trafficking laws if they provide loans to marijuana producers and sellers. Also, the DOJ guidelines are not binding on federal prosecutors—they are recommendations. Deputy Attorney Generals may still choose to exercise prosecutorial discretion and go after marijuana producers and sellers as the laws are still on the books.

This case raises several interesting questions. Among them are the following:

1. Is it legal for the U.S. Attorney General (AG) to ignore federal laws regarding marijuana? Should it be necessary for Congress to change the law? If the AG can issue guidelines to ignore marijuana drug laws, what other laws can the AG choose to ignore?
2. There have been many examples where public opinion does not coincide with legality. Is the fact that a majority of people favor legalization of marijuana sufficient reason to do so?
3. If marijuana is legal in some states for medical or recreation use, will there be a “spill over” to neighboring states as marijuana is transported illegally across state lines?
4. Since it is difficult or near impossible to conduct clinical trials on the medical efficacy of marijuana due to federal laws, how can the medical efficacy of marijuana be established?
5. If marijuana production, distribution, and use are a threat to public safety and promote gang and international crime, are states unwise in legalizing it?
6. Should states have “state’s rights” that would allow them to nullify federal laws?
7. What would be the effect of abolishing federal prohibitions and legalizing marijuana for recreation use in all states?
Describe the public-order (crime-control) and individual-rights (due process) perspectives of criminal justice and explain how the criminal justice system balances the two.

The need to balance each individual's due process rights with the need to protect the larger part of society poses a challenge for the criminal justice system. Balancing the exercise of civil liberties and the need for law and order is a difficult and complex task. Formal sanctions (laws) within the criminal justice system are necessary to balance individual rights and public safety. A homogeneous society has less need for reliance on a formal system of social control. However, the United States is not a homogeneous society; rather, it is a society characterized by great diversity in race, religion, ethnicity, and values.

1. Explain why public order (crime control) is necessary in our society.
2. What makes balancing public order and individual rights so complex?
3. How do the courts provide guidance in balancing crime control and due process?

Describe the structure of the criminal justice system.

The criminal justice system is comprised of various components. Those components include law enforcement, the courts, probation and parole, and correctional institutions. These components exist in federal, state, and local government. The distinct autonomy of each component at each level of government can be likened to a picket fence, with the local, state, and federal criminal justice systems depicted as three horizontal levels connected vertically by the roles, functions, and activities that each performs. The U.S. government has created many checks and balances to control the autonomy and to void actions of other criminal justice agencies.

1. What are the categories of agencies that comprise the criminal justice system?
2. What is meant by the term picket fence model?
3. How is the power of criminal justice agencies controlled?

informal sanctions Social norms that are enforced through the social forces of the family, school, government, and religion.
social norms The expected normative behavior in a society.
formal sanctions Social norms enforced through the laws of the criminal justice system.
order maintenance Activities of law enforcement that resolve conflicts and assist in the regulation of day-to-day interactions of citizens.
system of social control A social system designed to maintain order and regulate interactions.
due process rights Rights guaranteed to persons by the Constitution and its amendments.
crime-control (public-order) model A model of the criminal justice system in which emphasis is placed on fighting crime and protecting potential victims.
due process model A model that ensures that individuals are protected from arbitrary and excessive abuse of power by the government.
Outline the fundamentals of the criminal justice process.

The police are responsible for investigating, arresting, and booking a defendant. If the defendant is to be prosecuted, the next step is the first appearance before a judge. A judge determines whether the charges are legitimate according to statutes, advises the person of his or her legal rights, and determines bail. A case moves from the police to the prosecutor by a preliminary hearing or a grand jury indictment. At the arraignment, the defendant is asked whether he or she pleads guilty or not guilty. Guilt or innocence is determined by the judge in a bench trial or by the jury in a jury trial. The judge determines an appropriate sentence for a convicted defendant. The sentence is announced at a sentencing hearing. The defendant has a right to appeal a verdict based on alleged judicial errors. The convicted defendant may become an inmate in a correctional facility or may be placed on probation. Under certain conditions, parole may allow for an early release from a correctional facility.

1. List the major processes a defendant faces in the criminal justice system.
2. Describe what takes place during an initial appearance.
3. How can a defendant challenge a conviction?

Summarize major events that led to changes in the American criminal justice system.

A number of phenomena encouraged change within the criminal justice system and led to its distinction as one of the most examined and criticized aspects of government operations. These historical events included the Civil Rights Act of 1964; the Vietnam War; President Johnson’s War on Crime; and President Bush’s war on terrorism following the attacks of September 11, 2001. In many respects, these four historical events were interrelated and cumulative in their effect on bringing change to the criminal justice system.

1. Name four events that stirred interest in examining the effectiveness of the criminal justice system.
2. Describe the struggle for equality within society and the criminal justice system.
3. How was the criminal justice system perceived as a failure?
4. What did the President’s Crime Commission legislate to offer funding to improve the criminal justice system?

meta-influence A phenomenon that results in encompassing transformative changes.
slave patrols White militia who were responsible for controlling, returning, and punishing runaway slaves.
Brown v. Board of Education Topeka (1954) The U.S. Supreme Court decision that resulted in the movement to integrate schools, public transportation, business, and society.
Civil Rights Act of 1964 The act declaring that it is illegal for businesses, hotels, restaurants, and public transportation to deny citizens service based on their race.

4. What type of punishment might a judge impose on a defendant?

input-output model A model of how people are processed through the criminal justice system until they exit the system.
arrest To restrict the freedom of a person by taking him or her into police custody.
booking Police activity that establishes the identification of an arrested person and formally charges that person with a crime.
bail Release of the defendant prior to trial.
indictment The formal verdict of the grand jury that there is sufficient evidence to bring a person to trial.
preliminary hearing A hearing before a magistrate judge in which the prosecution presents evidence to convince the judge that there is probable cause to bring the defendant to trial.
probable cause hearing A hearing to determine whether there is a direct link between a suspect and a crime.
grand jury A panel of citizens that decides whether there is probable cause to indict a defendant on the alleged charges.
true bill A jury’s decision that authorizes the prosecutor to arraign the defendant.
arraignment hearing A hearing where charges are read and the defendant is asked to enter a plea.

Jim Crow laws (Black Codes) Laws passed after the Civil War to overstep the basic human rights and civil liberties of African-Americans.
1972 Equal Employment Opportunity Act The act that ended discrimination in law enforcement and corrections based on race, gender, and other protected categories.
civil disobedience A nonviolent approach of protest in the civil rights movement.
Montgomery bus boycott A boycott of public transportation initiated by the arrest of Rosa Parks.
Vietnam War A war from 1955 to 1975 involving Vietnam, Laos, and Cambodia.
domino theory A claim that the continued fall of governments to communist rule would threaten democracy.
War on Crime A declaration by President Lyndon Johnson in 1965 to counter crime and social disorder.
Omnibus Crime Control and Safe Streets Act of 1968 An act that provided resources to local and state government to assist in the adoption of reforms, including the Law Enforcement Assistance Administration.
Law Enforcement Assistance Administration (LEAA) A conduit for the transfer of federal funds to state and local law enforcement agencies.
Law Enforcement Educational Program (LEEP) A program created to promote education among criminal justice personnel by offering loans and grants to pursue higher education.
War on terrorism President George W. Bush’s declaration regarding the response of the United States to the events of September 11, 2001.
enemy combatants The suspension of due process rights for accused terrorists under the enemy combatant executive order.
**LEARNING OUTCOMES 5**

**Summarize a defendant’s due process rights.**
The Fourteenth Amendment guarantees the principle of due process to the citizens of all states. Due process means that every defendant is given procedural rights in criminal cases and receives fairness and equity while being processed through the criminal justice system. Quite often due process rights are incorporated by U.S. Supreme Court decisions. A central premise of due process is that an accused person is presumed innocent of the charges prior to trial.

1. Which amendment provides due process for anyone accused of a crime?
2. How are federal rights granted to the states?
3. What are the primary sources of due process rights?

**LEARNING OUTCOMES 6**

**Summarize criminology, criminal law, and criminal justice.**
The study of criminal behavior in the United States emerged in the twentieth century. Scientific research has become a large part of the academic discipline of criminal justice today. The study of human social behavior in a society is called sociology. The scientific study of the root causes of crime in society is known as criminology. Today, the field of criminal justice includes many other related fields.

1. What are two academic disciplines that conduct research in the criminal justice field?
2. How long has crime been studied by scholars in United States?
3. What is the purpose of criminology?

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due process amendment  The Fourteenth Amendment of the U.S. Constitution prohibiting local governments from depriving persons of life, liberty, or property without due process.
substantive due process  Due process that refers to the constitutionality of laws.
procedural due process  The process and procedure the government can use to prosecute an individual.
incorporate  To grant rights defined by the U.S. Constitution to the citizens of a state.
presumption of innocence  The most important principle of the due process model requiring all accused persons to be treated as innocent until proven guilty in a court of law.
sociology  The study of human social behavior.
criminology  The body of knowledge regarding crime as a social phenomenon.