

LARRY K. GAINES AND ROGER LEROY MILLER

9E

CRIMINAL JUSTICE IN
ACTION **THE CORE**



POLICE AND LAW ENFORCEMENT

THE COURTS

CORRECTIONS

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Criminal Justice in Action

The Core

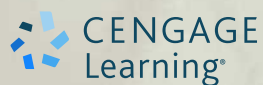
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Preface

Continuing a tradition established by its eight predecessors, the Ninth Edition of *Criminal Justice in Action, The Core* provides students with all the facts, analyses, and real-life examples they will need to be successful in this course. Relying on the help and advice of the many criminal justice professors who have adopted this best-selling textbook over the years, we are confident that we have established an invaluable introduction to the field.

Pushed by the constantly changing, constantly challenging world of crime and justice, however, we feel that we have upped the ante for ourselves and for those who study and teach this book. In this edition, we offer the criminal justice system not simply as a subject to be learned and taught, but as a crucial American institution to be critiqued and held to the highest moral and ethical standards.

Ethics, Discretion, and Public Policy

Criminal Justice in Action, The Core provides students not only with the tools to understand how the criminal justice system *does* work, but also the opportunity to express their opinions on how the criminal justice system *should* work. This opportunity presents itself primarily in the following three components, the first two of which are new to the Ninth Edition:

- **Ethics Challenges.** Each chapter contains three of these short challenges, placed at the end of a section. As well as reinforcing an important concept from that section, the challenges allow students to explore their own values in the context of the criminal justice system. Subjects covered include the use of deception during police interrogations (Chapter 6), for-profit bail (Chapter 8), and the ability of juvenile suspects to understand their *Miranda* rights (Chapter 13).
- **CJ Policy—Your Take.** This chapter-specific margin feature engages students by asking them to critique a hot-button criminal justice policy issue. Examples include Oregon’s Death with Dignity Act (Chapter 1), state “stand-your-ground” self-defense laws (Chapter 3), and the disenfranchisement of ex-convicts (Chapter 11).
- **Discretion in Action.** As in previous editions, this feature asks students to step into the shoes of a criminal

justice professional or other CJ participant and make a difficult decision. Nine new *Discretion in Action* features drive home the pivotal role that discretion plays in the criminal justice system, a subject that we have expanded upon over the past several editions of *Criminal Justice in Action, The Core*.

This expanded coverage of ethics, policy, and discretion allows us to present a *panoramic* view of important criminal justice issues. Chapter 5, for example, opens with an account of a disputed police shooting in Bexar County, Texas, that spurred local authorities to purchase body-worn cameras for local law enforcement officers. Throughout the chapter, the issue is revisited as we discuss policies that limit a police officer’s discretion regarding the operation of body-worn cameras, how such cameras may influence a police officer’s ethical decision making, the role of the cameras in ensuring police accountability, and the legal ramifications of use-of-force evidence gathered by this new technology.

Careers in Criminal Justice

We are well aware that many students using this text are interested in a criminal justice career. Consequently, as in previous editions, each chapter of *Criminal Justice in Action, The Core, Ninth Edition* includes a Careers in CJ feature in which a criminal justice practitioner presents a personal account of his or her occupation. These features also include a **Social Media Career Tip**, designed to help students succeed in today’s difficult labor market by successfully navigating the opportunities and pitfalls of searching for employment online.

To this same end, each chapter of the Ninth Edition also includes a **new** feature entitled **Getting LinkedIn**. These items focus on a profession such as computer forensics, victim advocacy, or homeland security, providing students with information on how to best research the profession while visiting the popular business-oriented social networking website.

Further Changes to the Ninth Edition

Each chapter in the Ninth Edition begins with a new “ripped from the headlines” vignette that introduces the themes to

be covered in the pages that follow. Furthermore, the text continues to reflect the ever-changing nature of our topic, with hundreds of new references to **research involving crime and criminal behavior** and **real-life examples describing actual crimes**. The Ninth Edition also includes dozens of **new features and figures**, as well as **discussions of every relevant United States Supreme Court decision** that has been handed down since the previous edition.

Three other extensive changes to the Ninth Edition involve topics crucial to the American criminal justice system:

- **Mental Illness.** We have significantly increased our coverage of the **challenges facing the criminal justice system involving the mentally ill**. Six chapters of *Criminal Justice in Action, The Core* now include in-depth discussions of this subject, covering a variety of issues such as the link between mental illness and offending and victimization, law enforcement strategies for managing mentally ill criminal suspects, and the impact of mentally ill inmates on American prisons and jails.
- **Public Trust in Law Enforcement.** A series of high-profile incidents in which law enforcement agents have either injured or killed unarmed civilians has led to **increased public scrutiny of police use of force**. We examine this controversial topic from the point of view of community members who feel they are unfairly targeted by police violence, and from the point of view of police officers who feel they are placed in a “no win” situation when it comes to use-of-force law and practice.
- **Privacy versus Security.** Chapter 14 of the Ninth Edition includes a new section that covers the **controversies surrounding the federal government’s efforts to balance civil liberties and homeland security**. The section focuses on **complex issues of mass surveillance and privacy in the age of terrorism**, and discusses how far we, the people, should allow the government to stretch the Fourth Amendment when it comes to collecting our personal data.

Concentrated Critical Thinking

As with previous editions, the Ninth Edition of *Criminal Justice in Action, The Core* focuses on developing critical thinking. Almost every feature and photo caption in the textbook includes a critical thinking question, and students are provided with five additional such questions at the end

of each chapter. Chapter-opening vignettes are followed by three critical analysis questions, which relate back to the vignette and introduce themes important to the upcoming chapter. Other critical-thinking tools in *Criminal Justice in Action, The Core, Ninth Edition*, include:

- **Learning Objectives.** At the beginning of each chapter, students are introduced to up to ten learning objectives (LOs) for that chapter. For example, in Chapter 10, “The Criminal Trial,” Learning Objective 2 (LO2) asks students to “Explain what ‘taking the Fifth’ really means.” The area of text that furnishes the information is marked with a square LO2 graphic, and, finally, the correct answer is found in the chapter-ending materials. This continuous active learning will greatly expand students’ understanding of dozens of crucial criminal justice topics.
- **CJ Controversy.** Each chapter of the textbook includes one of these features, which start with a short summary of a controversial criminal justice topic, followed by general “for” and “against” arguments concerning that topic. Then, students are asked to go online and research a specific issue, event, or policy related to the controversy surrounding the topic. Finally, students have the opportunity to analyze the results of their research in a short writing assignment of at least two paragraphs. These features not only help students improve writing and critical thinking skills, but they also act as a review of important material in the chapter.

Chapter-by-Chapter Organization of the Text

This edition’s fourteen chapters blend the principles of criminal justice with current research and high-interest examples of what is happening in the world of crime and crime prevention right now. What follows is a summary of each chapter, along with a description of some of the revisions to the Ninth Edition.

Part 1: The Criminal Justice System

Chapter 1 provides an introduction to the criminal justice system’s three major institutions: law enforcement, the courts, and corrections. The chapter also answers conceptual questions such as “what is crime?” and “what are the values of the American criminal justice system?”

- Students are introduced to a number of **social justice issues** that will be revisited throughout the textbook, including **law enforcement’s relationship with minority communities** in the United States, efforts to **help ex-inmates reintegrate into society**, and the problem of **wrongful convictions**.
- A **new** CJ Controversy feature (“Encryption and Terrorism”) that addresses the balancing act between protecting personal information on the Internet and on devices such as smartphones, and the government’s need to access such information to prevent and investigate terrorist attacks.

Chapter 2 furnishes students with an understanding of two areas fundamental to criminal justice: (1) the various methods of measuring crime, including the FBI’s Uniform Crime Report and the U.S. Department of Justice’s National Crime Victimization Survey, and (2) criminology, providing students with insight into why crime occurs. Then, in later chapters, they shift their attention toward combating it.

- A **new** Myth vs. Reality feature (“Black on Black Violence”) explores several misconceptions concerning the intersections between race, offending, and victimization in the United States.
- A **new discussion on the rapidly evolving drug landscape** in this country, including a description of **widespread destruction caused by prescription drug and heroin abuse** and a **new** CJ Policy—Your Take feature asks students to consider a federal law **legalizing marijuana** throughout the United States.

Chapter 3 lays the foundation of criminal law. It addresses constitutional law, statutory law, and other sources of American criminal law before shifting its focus to the legal framework that allows the criminal justice system to determine and punish criminal guilt.

- A **new** chapter-opening vignette (“No Good Deed . . .”) uses the example of Eddie Ray Routh, who was convicted of murdering “American Sniper” Chris Kyle, to highlight the difficulties of successfully offering a not-guilty-by-reason-of-insanity defense under American criminal law.
- The three **new** Ethics Challenges in this chapter confront the morality of criminal laws that promote the good of the community over the wishes of the individual, punish parents who negligently allow their children access to firearms, and allow federal law enforcement

officers to trick suspects into raiding non-existent “stash houses” full of nonexistent weapons and illegal drugs.

Part 2: The Police and Law Enforcement

Chapter 4 acts as an introduction to law enforcement in the United States today. This chapter offers a detailed description of the country’s numerous local, state, and federal law enforcement agencies and examines the responsibilities and duties that come with a career in law enforcement.

- A **new** Discretion in Action feature (“Handle with Care”) asks students to put themselves in the shoes of two police officers who must decide what level of force to use against a mentally ill suspect who may or may not pose a threat to herself, themselves, and others.
- A new discussion of **“hard”- and “soft”-power strategies** being implemented by **local police departments to combat domestic terrorism**—the “hard” strategies focusing on **“hostile surveillance” and militaristic weaponry**, and the “soft” strategies relying on **community outreach**.

Chapter 5 puts students on the streets and gives them a gritty look at the many challenges of being a law enforcement officer. It starts with a discussion of the importance of discretion in law enforcement and then moves on to policing strategies and issues in modern policing, such as the “thin blue line,” corruption, and the use of force.

- Throughout the chapter, the emergent issue of **police accountability** is given panoramic coverage, including a **new** chapter-opening vignette (“First Impressions”) about the impact of two citizen cell phone videos on media coverage of a fatal police shooting in Texas, a **new** Discretion in Action feature (“Deadly Force”) based on the real-life killing of twelve-year-old Tamir Rice by a police officer in Cleveland, and a **new** section entitled **“Issues of Race and Ethnicity,”** which covers topics such as how **police use of force** has impacted relations with **minority communities** in the United States and how the federal government uses **civil rights investigations** to combat misbehavior by local law enforcement agencies.
- A **new** discussion of **crisis intervention teams**, or partnerships with mental health professionals, used by a growing number of local police departments to improve local law enforcement’s response to the challenges posed by mentally ill suspects.

Chapter 6 examines the sometimes uneasy relationship between law enforcement and the U.S. Constitution by explaining the rules of being a police officer. Particular emphasis is placed on the Fourth, Fifth, and Sixth Amendments, giving students an understanding of crucial concepts such as probable cause, reasonableness, and custodial interrogation.

- A **new** section on **cell phones and the Fourth Amendment** features discussions of the legality of law enforcement efforts to track these devices and the Supreme Court's recent decision that police officers need a warrant to search the content of a suspect's cell phone.
- A **new** section discusses the role that police interrogation tactics may play in the **troubling phenomenon of false confessions**.

Part 3: Criminal Courts

Chapter 7 takes a big-picture approach in describing the American court system, giving students an overview of the basic principles of our judicial system, the state and federal court systems, and the role of judges, prosecutors, and defense attorneys in the criminal justice system.

- The court system's ability to live up to societal expectations of truth and justice, a running theme of the third part of this textbook, is explored in the chapter's **new** chapter-opening vignette ("Minor Threat?") on the fate of Anthony Elonis, whose challenge of his conviction for posting violent rap lyrics on the Internet eventually reached the United States Supreme Court.
- A **new** discussion of the **community pressures faced by public prosecutors**, including an examination of State's Attorney Marilyn Mosby's decision to charge six Baltimore police officers following the death of Freddie Gray while in custody and a **new** CJ & Technology feature explaining the ramifications of America's glut of untested rape kits.

Chapter 8 provides students with a rundown of pretrial procedures and highlights the role that these procedures play in America's adversary system. Chapter materials also place the student in the courtroom and give her or him a comprehensive understanding of the steps in the criminal trial.

- To help students understand recent attempts to improve the effectiveness of **pretrial detention** strategies, a **new** figure lists the risk factors used by courts in

certain Colorado jurisdictions to determine whether a defendant will "jump bail" before trial, along with a **new** Ethics Challenge that focuses on the ethical implications of America's "for-profit bail industry."

- Three **new** figures use excerpts from actual court records to give students a first-hand understanding of three crucial aspects of the criminal trial: jury selection, the opening statement, and the art of the cross-examination.

Chapter 9 links the many different punishment options for those who have been convicted of a crime with the theoretical justifications for those punishments. The chapter also examines punishment in the policy context, weighing the public's desire for ever-harsher criminal sanctions against the consequences of such governmental strategies.

- The subject of mandatory minimum sentencing arises several times in this chapter. First, a **new** chapter-opening vignette ("A Long Time Gone") introduces the growing national concern caused by such sentences for nonviolent offenders. Then, a **new** discussion of efforts to **repeal state mandatory minimum sentencing laws** shows how these laws have fallen into some disrepute.
- An **updated** overview of the declining use of the death penalty in the United States includes **new** discussions of problems surrounding lethal injection drugs and the Supreme Court's recent decision concerning capital punishment of the mentally ill.

Part 4: Corrections

Chapter 10 makes an important point, and one that is often overlooked in the larger discussion of the American corrections system: not all of those who are punished need to be placed behind bars. This chapter explores the community corrections options, from probation to parole to intermediate sanctions such as intensive supervision and home confinement.

- A **new** chapter-opening vignette ("Family Ties") compares two possible sentencing options—prison or probation—for a young woman who killed her cousin while driving drunk.
- Recognizing trends of innovative thinking among corrections officials, we include a **new** discussion of **risk assessment tools** and "**swift and certain**"

punishments designed to keep probationers from recidivating.

Chapter 11 focuses on prisons and jails. Record-high rates of incarceration have pushed these institutions to the forefront of the criminal justice system, and this chapter explores the various issues—such as overcrowding and the emergence of private prisons—that have resulted from the prison population boom.

- Continuing our focus on mentally ill offenders and the criminal justice system, we have **updated** our section on the **challenges facing jail administrators** because of **high rates of mental illness among inmates** to include a **new** figure describing Miami-Dade County’s Criminal Mental Health Project.
- Three **new** Ethics Challenges ask students to comment on ethical issues surrounding low wages for inmate employment, health care in private prisons, and the practice of charging pretrial detainees for their meals behind bars.

Chapter 12 is another example of our efforts to get students “into the action” of the criminal justice system, putting them in the uncomfortable position of being behind bars. This chapter also answers the crucial question, “What happens when the inmate is released back into society?”

- As part of our panoramic examination of the roles of correctional officers in prisons and jails: a **new** Getting LinkedIn feature that highlights the profession, a **new** Discretion in Action feature (“Downing a Duck”) that focuses on how inmates are sometimes able to manipulate correctional officers, and a **new** discussion of the recent Supreme Court decision that makes correctional officers more susceptible to civil rights violation lawsuits for excessive use of force against inmates.
- A **new** section entitled “**What Works in Reentry**” describes strategies developed by corrections officials to **help ex-convicts succeed following release from prison**, including reentry courts and various laws designed to aid offenders in the difficult task of finding post-incarceration employment.

Part 5: Special Issues

Chapter 13 examines the juvenile justice system, giving students a comprehensive description of the path taken by delinquents from first contact with police to trial and

punishment. The chapter contains a strong criminological component as well, scrutinizing the various theories of why certain juveniles turn to delinquency and what steps society can take to stop them from doing so before it is “too late.”

- A **new** CJ Policy—Your Take margin feature addresses whether juvenile sex offenders should be treated the same as adult sex offenders when it comes to lifelong legal constraints such as residency restrictions and inclusion on sex-offender registries.
- A **new** Discretion in Action feature (“Juvenile Drunk Driving”) asks students to decide whether a seventeen-year-old who commits vehicular homicide should be charged as a juvenile or as an adult.

Chapter 14 concludes the text by taking an expanded look at four crucial criminal justice topics: (1) privacy in the age of terrorism, (2) cyber crime, (3) gun control, and (4) white-collar crime.

- Starting with a discussion of four decades’ worth of crucial antiterrorism legislation, a **new** section entitled “**Security vs. Liberty**” gives students a comprehensive look at the current state of civil liberties in the context of homeland security. The section includes discussions of the constitutionality of governmental mass surveillance techniques and the use of Internet speech to ensnare potential “known wolf” domestic terrorists.
- A **new** CJ & Technology feature (“Hacking the ‘Internet of Things’”) examines the cyber crime–related risks that emerge when hundreds of everyday objects such as automobiles, refrigerators, and televisions are connected to the Internet via tiny, weakly protected computer chips.

Special Features

Supplementing the main text of *Criminal Justice in Action, The Core, Ninth Edition*, are more than one hundred eye-catching, instructive, and penetrating special features. These features, described below with examples, have been designed to enhance the student’s understanding of a particular criminal justice issue.

Careers in CJ: As stated before, many students reading this book are planning a career in criminal justice. We have provided them with an insight into some of these careers by offering first-person accounts of what it is like to work

as a criminal justice professional. Each Career in CJ feature also includes a **Social Media Career Tip** to help students succeed in today's competitive labor market for criminal justice professionals.

- In Chapter 13, Carl McCullough, a former professional football player, provides an inside look at his duties as a resident youth worker at a juvenile detention center in Hennepin County, Minnesota.

Mastering Concepts: Some criminal justice topics require additional explanation before they become crystal clear in the minds of students. This feature helps students to master many of the essential concepts in the textbook.

- In Chapter 6, this feature helps students understand the legal differences between a police stop and a police arrest.

Discretion in Action: This feature puts students in the position of a criminal justice actor in a hypothetical case or situation that is based on a real-life event. The facts of the case or situation are presented with alternative possible outcomes, and the student is asked to take the part of the criminal justice professional or lay participant and make a decision. Students can then consult Appendix B at the end of the text to learn what actually happened in the offered scenario.

- “The ‘Sexting’ Scandal” (Chapter 1), a **new** feature, requires students to play the role of a prosecutor who must decide whether to expend scarce resources by charging a large group of high school students with crimes related to child pornography for sharing inappropriate images of themselves with each other online.

CJ & Technology: Advances in technology are constantly transforming the face of criminal justice. In these features, which appear in nearly every chapter, students learn of one such emergent technology and are asked to critically evaluate its effects.

- This **new** feature in Chapter 3 describes how American criminal law is responding to the challenges posed by the increased civilian use of Unmanned Aerial Vehicles, or drones.

Comparative Criminal Justice: The world offers a dizzying array of different criminal customs and codes, many of which are in stark contrast to those accepted in the United States. This feature provides dramatic and

sometimes perplexing examples of foreign criminal justice practices in order to give students a better understanding of our domestic ways.

- “The Great Firewall of China” (Chapter 14), an **updated** feature, describes China's efforts to limit and control the use of the Internet through criminal laws to an extent that is unimaginable to most Americans.

CJ Controversy: Each one of these features introduces students to a controversial topic related to the text of the chapter in which it appears. Following a short introduction, students are provided with arguments “for” and “against” a particular aspect of the topic, to give them a better idea of the basis for the controversy. Then, they are asked to research the topic online and write a short essay outlining their own opinions on the relevant controversy. Not only do these features highlight an interesting aspect of the criminal justice system, but they also help students improve their research, writing, and critical thinking skills.

- In Chapter 3's **new** feature, “Hate Crime Laws,” students are asked to decide whether society benefits from laws that punish those who commit crimes motivated by bias more harshly than if no bias were present.

Landmark Cases: Rulings by the United States Supreme Court have shaped every area of the criminal justice system. In this feature, students learn about and analyze the most influential of these cases.

- In Chapter 12 “*Brown v. Plata*” (2011), the Supreme Court ordered California corrections officials to reduce the state's prison population after deciding that overcrowding was denying inmates satisfactory levels of health care.

Myth vs Reality: Nothing endures like a good myth. In this feature, we try to dispel some of the more enduring myths in the criminal justice system while at the same time asking students to think critically about their consequences.

- “Are Too Many Criminals Found Not Guilty by Reason of Insanity?” (Chapter 3) dispels the notion that criminal justice is “soft” because it lets scores of “crazy” defendants go free due to insanity.

Extensive Study Aids

Criminal Justice in Action, The Core, Ninth Edition, includes a number of pedagogical devices designed to complete the

student's active learning experience. These devices include the following:

- Concise **chapter outlines** appear at the beginning of each chapter. The outlines give students an idea of what to expect in the pages ahead, as well as a quick source of review when needed.
- Dozens of **key terms** and a **running glossary** focus students' attention on major concepts and help them master the vocabulary of criminal justice. The chosen terms are boldfaced in the text, allowing students to notice their importance without breaking the flow of reading. On the same page that a key term is highlighted, a margin note provides a succinct definition of the term. For further reference, a glossary at the end of the text provides a full list of all the key terms and their definitions.
- Each chapter has at least four **figures**, which include graphs, charts, and other forms of colorful art that reinforce a point made in the text. This edition includes eleven new figures.
- Hundreds of **photographs** add to the overall readability and design of the text. Each photo has a caption, and most of these captions include a critical-thinking question dealing with the topic at hand. This edition includes nearly one hundred new photos.
- At the end of each chapter, students will find five **Questions for Critical Analysis**. These questions will help the student assess his or her understanding of the just-completed chapter, as well as develop critical-thinking skills.

Acknowledgments

Throughout the creation of the nine editions of this text, we have been aided by hundreds of experts in various criminal justice fields and by professors throughout the country, as well as by numerous students who have used the text. We sincerely thank all who participated on the

revision of *Criminal Justice in Action, The Core*. We believe that the Ninth Edition is even more responsive to the needs of today's criminal justice instructors and students alike because we have taken into account the constructive comments and criticisms of our reviewers and the helpful suggestions of our survey respondents.

We continue to appreciate the extensive research efforts of Shawn G. Miller and the additional legal assistance of William Eric Hollowell. Product Manager Carolyn Henderson-Meier supplied crucial guidance to the project through her suggestions and recommendations. At the production end, we once again feel fortunate to have enjoyed the services of our content project manager, Ann Borman, who oversaw virtually all aspects of this book. Additionally, we wish to thank the designers of this new edition, tani hasegawa (interior) and Irene Morris (cover), who have created what we believe to be the most dazzling and student-friendly design of any text in the field. We are also thankful for the services of all those at Lachina who worked on the Ninth Edition, particularly Dane Torbeck. The eagle eyes of Sue Bradley and Beverly Peavler, who shared the duties of copyediting and proofreading, were invaluable.

A special word of thanks must also go to those responsible for creating the MindTap that accompanies *Criminal Justice in Action, The Core*, including content developer Jessica Alderman. We are also grateful to Jessica for ensuring the timely publication of supplements, along with content development services manager Joshua Taylor. A final thanks to all of the great people in marketing who helped to get the word out about the book, including marketing manager Mark Linton, who has been tireless in his attention to this project.

Any criminal justice text has to be considered a work in progress. We know that there are improvements that we can make. Therefore, write us with any suggestions that you may have.

L. K. G.
R. L. M.

Dedication

This book is dedicated to my good friend and colleague, Lawrence Walsh, of the Lexington, Kentucky Police Department. When I was a rookie, he taught me about policing. When I became a researcher, he taught me about the practical applications of knowledge. He is truly an inspiring professional in our field.

L.K.G.

For Lorraine,

Your positive outlook about life keeps you on top.

Stay there.

R.L.M.



1

Criminal Justice Today

Chapter Outline

Corresponding Learning Objectives

What Is Crime?

- 1 Describe the two most common models of how society determines which acts are criminal.

The Purpose of the Criminal Justice System

- 2 Explain two main purposes of the criminal justice system.

The Structure of the Criminal Justice System

- 3 Outline the three levels of law enforcement.
4 List the essential elements of the corrections system.

Discretion and Ethics

- 5 Explain the difference between the formal and informal criminal justice processes.
6 Define ethics, and describe the role that it plays in discretionary decision making.

Criminal Justice Today

- 7 Contrast the crime control and due process models.
8 List the major issues in criminal justice today.

To target your study and review, look for these numbered Learning Objective icons throughout the chapter.

the **Echo Chamber**

leading up to his death, Elton Simpson hardly kept his support for the Islamic State, an extremist terrorist group operating out of the Middle East, a secret. In particular, Simpson's Twitter contacts included Mohammed Hassan, who used social media to promote the Islamic State (also called ISIS or ISIL) from a base in the African country of Somalia. On April 23, 2015, Hassan went on Twitter to condemn an upcoming cartoon contest in Garland, Texas, which was to feature drawings of the Prophet Mohammed, images that are considered taboo by many Muslims. Referring to a recent deadly attack on a French satirical newspaper that had printed the prophet's likeness, Hassan encouraged "our brothers in the #US to do their part."

Ten days later, Simpson, who had expressed online approval of Hassan's call to arms, and a partner were killed by law enforcement when they opened fire on the

Garland cartoon contest with assault rifles. Before driving to the event, Simpson posted a message on Twitter using #texasattack as a hashtag. Even though the Islamic State took responsibility for the incident, U.S. authorities could not establish any direct contact between Simpson and the foreign organization. Rather, counterterrorism investigators believe that Simpson was an Internet enthusiast who got caught up in the "echo chamber" of recruitment propaganda on social media. "The ISIS guys are talking to these wannabes on Twitter all day long," said one expert. "It's like the devil is sitting on their shoulder."

The difficulty for America's counterterrorism infrastructure is determining which of "these wannabes" are merely spouting fantasies and which are planning actual violence. In fact, Simpson had been the subject of intermittent Federal Bureau of Investigation (FBI)

surveillance for several months before the Garland event. FBI agents could not, however, find any hard evidence that he intended to make good on his various threats. With hundreds of suspects in the United States constantly expressing online sympathy for various extremist ideologies, authorities do not have the resources to keep them all under control. In the words of one senior law enforcement official, "There are so many like [Simpson] that you have to prioritize your investigations."



Ben Torres/Stringer/Getty Images

▲ Federal law enforcement agents work the crime scene after Elton Simpson and an accomplice opened fire on the Muhammad Art Exhibit and Cartoon Contest in Garland, Texas.

1. Would you be in favor of a federal law that allowed law enforcement authorities to arrest any person who expressed support for violent terrorism on social media? Why or why not?
2. What are the arguments for and against requiring that social media companies such as Twitter and Instagram monitor their users for possible terrorist activity and report any suspicious behavior to law enforcement?
3. Suppose that Jaylen, an American citizen, drives a friend to the airport so that the friend can travel to Syria and join the Islamic State in the Middle East. Has Jaylen committed a crime? Explain your answer.

What Is Crime?

Members of the public often wonder why terrorist sympathizers such as Elton Simpson are allowed to operate with impunity on the Internet. The answer is relatively straightforward: American criminal law does not prohibit individuals from making anti-American statements or expressing sympathy with extreme terrorist organizations. At the same time, our laws *do* prohibit individuals from making threats that pose a “clear and present danger” of harm to others.¹ So, in November 2015, federal authorities arrested Ohio hospital worker Terrence J. McNeil after he reposted a “kill list” on Tumblr that contained detailed personal information about one hundred U.S. military members earmarked for death by the Islamic State.

Had McNeil been content with making posts such as, “Somebody should park a car bomb in front of a church, school, or mall” on Facebook, he likely would have avoided arrest. By reposting the Islamic State’s list of targeted military personnel with an exhortation to “kill them wherever you find them,” McNeil crossed a legal line, and was charged with solicitation of a crime of violence.² As this example shows, a *crime* is not simply an act that seems dishonest or dangerous or particularly appalling. A **crime** is a wrong against society that is *proclaimed by law* and that, if committed under specific circumstances, is punishable by the criminal justice system.

Determining Criminal Behavior

One problem with the definition of crime just provided is that it obscures the complex nature of societies. A society is not static—it evolves and changes, and its concept of criminality evolves and changes as well. On December 2, 2015, a married couple apparently radicalized by online extremist Islamic propaganda killed fourteen people and wounded twenty-one other victims in San Bernardino, California. Following this attack, some legal experts called for a loosening of the “clear and present danger” requirement. Eric Posner, a professor of law at the University of Chicago, even suggested that it should be a crime to access websites that “glorify, express support, or provide encouragement for” the Islamic State.³

Furthermore, different societies often have differing ideas of criminal behavior that reflect local customs and norms. Several years ago, for example, a court in the Southeast Asian country of Myanmar sentenced three men to two years in prison for posting an image of the Buddha wearing headphones. It is highly unlikely that American courts, bound by American traditions of free speech, would allow criminal sanctions for acts that “offend the majority religion.” (See the feature *Comparative Criminal Justice—No Hate Allowed* to learn about another foreign custom that runs counter to our legal traditions.)

To more fully understand the concept of crime, it will help to examine the two most common models of how society “decides” which acts are criminal: the consensus model and the conflict model.

The Consensus Model The term *consensus* refers to general agreement among the majority of any particular group. Thus, the **consensus model** rests on the assumption that as people gather together to form a society, its members will naturally come to a basic agreement with regard to shared norms and values. Those individuals whose actions deviate from the established norms and values are considered to pose a threat to the well-being of society as a whole and must be sanctioned (punished). The society passes laws to control and prevent unacceptable behavior, thereby setting the boundaries for acceptable behavior within the group.⁴

crime An act that violates criminal law and is punishable by criminal sanctions.

consensus model A criminal justice model in which the majority of citizens in a society share the same values and beliefs. Criminal acts are acts that conflict with these values and beliefs and that are deemed harmful to society.

Learning Objective

- 1 Describe the two most common models of how society determines which acts are criminal.

Comparative Criminal Justice



Central Intelligence Agency

No Hate Allowed

After reading an online article about sexual violence against women in Egypt, Swedish politician Michael Hess felt compelled to offer his opinion on the subject. “When are you journalists going to realize that it is deeply ingrained in Islamic culture to rape and mistreat those women who do not abide by the teachings of Islam?” Hess wrote. He then claimed that higher-than-normal rates of sexual assault in certain areas of Sweden were caused by the presence of Islamic immigrants.

In the United States, with its long tradition of freedom of expression, such comments would not be subject to punishment. In Sweden, however, criminal law prohibits any speech that threatens or expresses disrespect for groups or individuals based on ethnicity, race, nationality, creed, or sexual orientation. Consequently, Hess was convicted of “hate speech” and fined about \$5,000.

Swedish law protects a citizen’s right to make “hateful” statements in private. Such speech only becomes a crime when it is expressed publicly or, as in Hess’s case, on the Internet. In recent years, Swedish courts have fined a woman \$560 for yelling “Death to Jews” in a crowd and sentenced an artist to six months behind bars for exhibiting a poster that showed three African men with nooses around their necks.

For Critical Analysis

Besides Sweden, Western democracies such as Canada, Britain, Denmark, and Germany have criminal laws that punish hate speech. Do you think that the United States should criminalize public hate speech that “threatens” or “disrespects” members of minority groups? What would be some of the consequences—both intended and unintended—of such a law?

The consensus model, to a certain extent, assumes that a diverse group of people can have similar **morals**. In other words, they share an ideal of what is “right” and “wrong.” Consequently, as public attitudes toward morality change, so do laws. In seveneenth-century America, a person found guilty of *adultery* (having sexual relations with someone other than one’s spouse) could expect to be publicly whipped, branded, or even executed. Furthermore, a century ago, one could walk into a pharmacy and purchase heroin. Today, social attitudes have shifted to consider adultery a personal issue, beyond the reach of the state, and to consider the sale of heroin a criminal act.

The Conflict Model Some people reject the consensus model on the ground that moral attitudes are not constant or even consistent. In large, democratic societies such as the United States, different groups of citizens have widely varying opinions on controversial issues of morality and criminality such as abortion, the war on drugs, immigration, and assisted suicide. These groups and their elected representatives are constantly coming into conflict with one another. According to the **conflict model**, then, the most politically powerful segments of society—based on class, income, age, and race—have the most influence on criminal laws and are therefore able to impose their values on the rest of the community.

Consequently, what is deemed criminal activity is determined by whichever group happens to be holding power at any given time. Because certain groups do not have access to political power, their interests may not be served by the criminal justice system. For instance, nearly eight of every ten elected prosecutors in the United States are white men, while only five percent of these posts are held by members of minority groups.⁵ Given the authority of prosecutors to decide which charges will be brought against defendants, this lack of diversity can contribute to mistrust of law enforcement in many minority communities.

morals Principles of right and wrong behavior, as practiced by individuals or by society.

conflict model A criminal justice model in which the content of criminal law is determined by the groups that hold economic, political, and social power in a community.

An Integrated Definition of Crime

Considering both the consensus and conflict models, we can construct a definition of crime that will be useful throughout this textbook. For our purposes, crime is an action or activity that is:

1. Punishable under criminal law, as determined by the majority or, in some instances, by a powerful minority.
2. Considered an *offense against society as a whole* and prosecuted by public officials, not by victims and their relatives or friends.
3. Punishable by sanctions based on laws that bring about the loss of personal freedom or life.

At this point, it is important to understand the difference between crime and **deviance**, or behavior that does not conform to the norms of a given community or society. Deviance is a subjective concept. For example, some segments of society may think that smoking marijuana or killing animals for clothing and food is deviant behavior. Deviant acts become crimes only when society as a whole, through its legislatures, determines that those acts should be punished—as is the situation today in the United States with using certain drugs but not with eating meat. Furthermore, not all crimes are considered particularly deviant—little social disapprobation is attached to those who fail to follow the letter of parking laws. In essence, criminal law reflects those acts that we, as a society, agree are so unacceptable that steps must be taken to prevent them from occurring.

Ethics Challenge

In this section, we used the example of killing animals for clothing and food as behavior that, although deviant to some, is generally accepted by the majority. What is a widespread activity that, although considered “normal” in modern American society, goes against your personal values or morals? What is the likelihood that this activity eventually will become illegal in the United States? ■

The Purpose of the Criminal Justice System

Defining which actions are to be labeled “crimes” is only the first step in safeguarding society from criminal behavior. Institutions must be created to apprehend alleged wrongdoers, to determine whether these persons have indeed committed crimes, and to punish those who are found guilty according to society’s wishes. These institutions combine to form the **criminal justice system**. As we begin our examination of the American criminal justice system in this introductory chapter, it is important to have an idea of its purpose.



▲ Lawmakers are scrambling to devise regulations for the hoverboard, a relatively new form of personal transportation that has become popular, particularly among young people. **What are the arguments for banning the use of such devices on city sidewalks and school hallways? Why might using a hoverboard be considered deviant behavior?** Timothy A. Clary/AFP/Getty Images

deviance Behavior that is considered to go against the norms established by society.

criminal justice system

The interlocking network of law enforcement agencies, courts, and corrections institutions designed to enforce criminal laws and protect society from criminal behavior.

FAST FACTS

Youth intervention specialist/
gang investigator

Job description:

- Conducts assessments and refers at-risk youth to appropriate activities, programs, or agencies.
- Serves as a liaison between the police department, schools, other agencies, and the community regarding gang and other youth-related matters.

What kind of training is required?

- A bachelor's degree in counseling, criminal justice, or other social science-related field. Bilingual (English/Spanish) skills are desired.

Annual salary range?

- \$60,000–\$80,000

F. W. Gill Gang Investigator



Courtesy F. W. Gill

The problem, for most of these kids, is that nobody cares. Their parents don't, or can't, get involved in their children's lives. (How many times have I heard parents deny that their son or daughter is a gang banger, even though it's obvious?) Teachers are in the business of teaching and don't, or can't, take the time to get to know their most troubled students. So, when I'm dealing with gang members, the first thing I do is listen. I don't lecture them, I don't tell them that they are throwing away their lives. I just listen. You'd be amazed how effective this can be—these kids, who look so tough on the outside, just want an adult to care.

Not that there is any magic formula for convincing a gang member to go straight. It is very difficult to get someone to change his or her lifestyle. If they don't want to change—really want to change—then nothing I can say or do is going to make much of a difference. Unfortunately, there are many lost causes. I've even had a couple of cases in which a juvenile was afraid to leave the gang because his father was a gang member, and he insisted that the boy stay in the gang. I have had some success in convincing gang members to turn their lives around by joining the military. The military provides discipline and a new outlook on life, things that these kids badly need. The way I look at it, in some cases, war is the best shot these kids have at saving their own lives.

SOCIAL MEDIA CAREER TIP When you are posting on Facebook, assume that your post will be published in your local newspaper and read by a potential employer. So, if you think the post might reflect poorly on you as a potential employee, keep it offline.



Learning Objective

Explain two main purposes of the criminal justice system.

2

Maintaining Justice

As its name implies, the explicit goal of the criminal justice system is to provide *justice* to all members of society. Because **justice** is a difficult concept to define, this goal can be challenging, if not impossible, to meet. Broadly stated, justice means that all individuals are equal before the law and that they are free from arbitrary arrest or seizure as defined by the law. In other words, the idea of justice is linked with the idea of fairness. Above all, we want our laws and the means by which they are carried out to be fair.

Justice and fairness are subjective terms, which is to say that people may have different concepts of what is just and fair. If a woman who has been beaten by her husband retaliates by killing him, what is her just punishment? Reasonable persons could disagree, with some thinking that the homicide was justified and that she should be treated leniently. Others might insist that she should not have taken the law into her own hands. Police officers, judges, prosecutors, prison administrators, and other employees of the criminal justice system must decide what is “fair.” Sometimes, their course of action is obvious, but often, as we shall see, it is not.

Protecting Society

Within the broad mandate of “maintaining justice,” Megan Kurlychek of the University at Albany, New York, has identified four specific goals of our criminal justice system:

justice The quality of fairness that must exist in the processes designed to determine whether individuals are guilty of criminal wrongdoing.

1. To protect society from potential future crimes of the most dangerous or “risky” offenders.
2. To determine when an offense has been committed and provide the appropriate punishment for that offense.
3. To rehabilitate those offenders who have been punished so that it is safe to return them to the community.
4. To support crime victims and, to the extent possible, return them to their pre-crime status.⁶

drug Any substance that modifies biological, psychological, or social behavior. In particular, an illegal substance with those properties.

psychoactive drugs Chemicals that affect the brain, causing changes in emotions, perceptions, and behavior.

Again, though these goals may seem straightforward, they are fraught with challenges. Throughout this textbook, we will be discussing the role that the criminal justice system plays in controlling the use of *illegal drugs* in the United States. The broadest possible definition of a **drug**, which includes alcohol, is any substance that modifies biological, psychological, or social behavior. In the context of criminal law, the primary focus is on **psychoactive drugs** such as cocaine and heroin, which affect the brain and alter consciousness or perception.

Recently, our society has significantly changed its attitude toward one psychoactive drug in particular: marijuana. Although marijuana production and use is still illegal under federal law, state legislatures and voters across the nation have taken steps to lessen criminal punishments associated with the drug. As Figure 1.1 shows, thirty states now allow the use of marijuana or THC—an active ingredient in marijuana—for medicinal purposes. The drug has also been *decriminalized* in sixteen states, meaning that its use is treated as an infraction similar to a traffic violation rather than as a crime. Finally, in 2014, Alaska, Oregon, and Washington, D.C., joined Colorado and Washington State by *legalizing* small amounts of marijuana sale and possession, a trend that is expected to continue in the near future.

Proponents of this trend contend that society benefits when the criminal justice system is no longer required to expend scarce resources on arresting, trying, and incarcerating nonviolent marijuana users. Opponents, however, point to the negative consequences of liberalized marijuana laws. These include a dramatic increase in the number of Americans using the drug, which has led to a concurrent rise in problems such as marijuana addiction and driving under the influence of the drug.⁷ Both Colorado and Washington State reported a surge in marijuana-related calls to state poison control centers in the first year of legalization.⁸ Thus, the question of whether permissive marijuana laws benefit or harm society is, like so many questions relating to criminal justice, complex and difficult to answer.

Figure 1.1 Marijuana and Criminal Law

As this map shows, at the beginning of 2016 most states—representing about three-fourths of the population of the United States—allow for the use of marijuana under certain circumstances. Remember that *any* use of the drug is outlawed under federal law.

