

# 2

## Corrections and the Criminal Justice System

*It is the mission of the Federal Bureau of Prisons to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.*

Mission Statement of the Federal Bureau of Prisons

### Chapter Outline

- The Police
- Arrest and Release
- Prosecution
- The Courts
- Sentencing
- Corrections
  - Probation
  - Fines
  - Restitution
  - Electronic Monitoring
  - Community Service and Creative Sentencing

In this chapter, we take a quick and broad look at the criminal justice system in the United States and how corrections, as a discipline, fits into that system. Because there are many areas where the different components of criminal justice interrelate, it would be desirable to coordinate planning and working between those components. In practice, unfortunately, and in most jurisdictions there is very little coordination between the different components. That lack of coordinated planning also is evident in most legislatures, where programs and appropriations are historically pursued in one area, with little attention paid to how legislative action may affect other criminal justice areas.

One example of such lack of attention to coordinated planning is a fairly common one: the enactment of new criminal statutes that increase the penalties for crimes without consideration of the impact that action will have on police, prosecutors' offices, the courts, and corrections. For example, the implementation of determinate sentencing and the abolishment of parole have clearly achieved a "get tough on crime" stance.

To illustrate, we can look at the state of Florida. Between 1993 and 2007, the state's inmate population grew from 53,000 to over 97,000. A number of state correctional policies and practices contributed to this growth. In 1995, Florida's legislature abolished **good time** credits and discretionary release by the parole board. The legislation required every inmate to serve 85% of his sentence. A "zero tolerance" policy also was put in place, requiring probation officers to report every offender who violated any condition of supervision and increasing prison time for these "technical violations." From this legislative action, the number of violators in Florida's prisons increased by an estimated 12,000.<sup>1</sup> A by-product of this increase is the need for additional expenditures. This impacts the state's budgetary resources, as those newly expended funds can detract from the funds that are available for other programs.

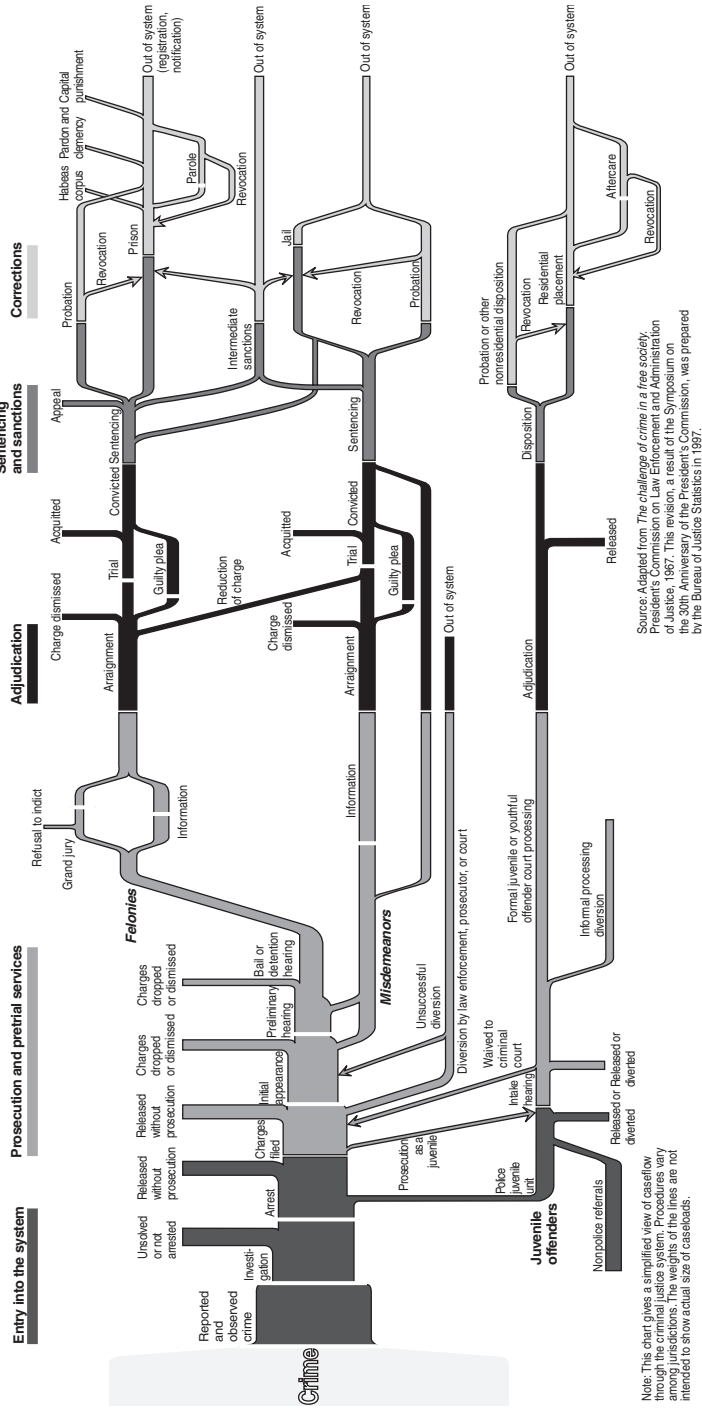
At the same time, practices such as determinate sentencing and the abolishment of parole have produced the unintended consequence of lessening the motivations for inmates to abide by institution regulations and work toward their release. This places an increased burden on prison administrators to maintain institution security and good order. Some state governments and state legislatures have tried to provide a more comprehensive process by creating criminal justice planning agencies for an entire state or by better organizing committee work and legislative drafting in the legislature. On the federal level, legislation has been introduced in the United States Congress proposing the establishment of the National Criminal Justice Commission. The legislation gives the commission the responsibility for doing a comprehensive review of all areas of the criminal justice system, including criminal justice costs, practices, and policies of federal, state, local, and tribal governments.<sup>2</sup>

Criminal law deals with violations of duties that citizens owe to the society at large. By enactments of the legislature, certain conduct is described as prohibited and violative of societal standards. Such conduct is, by those legislative actions, declared to be criminal. These legislative enactments, taken together, constitute the "criminal law" for a specific jurisdiction. When conduct is declared to be criminal, the statute that defines the crime also sets the punishments (or range of punishments) that accompany that particular crime.

The legislature, whether state or federal (or even local, in cases where counties, towns, or cities have been given limited authority to legislate on criminal matters), also defines the procedure by which crimes are investigated, prosecuted, and punished. In law schools, courses are often given in these two areas: criminal law, which examines the substantive law of criminal activities, definitions of different crimes, and classification of crimes; and criminal procedure, which is the study of the agencies and actions of criminal law enforcement, prosecution, court proceedings, and criminal sanctions. These procedures, as well as the agencies and individuals that pursue them, make up the criminal justice system.

**Figure 2-1** shows the principal elements in the criminal justice system in the United States. There may be variations of this system in individual states, but the major components are the same: police, prosecution, courts, and corrections.

What is the sequence of events in the criminal justice system?



**Figure 2-1** The criminal justice system. The above diagram illustrates the sequence of events in the criminal justice system. To link to a description of one of the areas shown, go to <http://bjs.ojp.usdoj.gov/content/largechart.cfm> and click on the section of interest.

Source: Bureau of Justice Statistics, United States Department of Justice. Available from <http://bjs.ojp.usdoj.gov/content/largechart.cfm>

## ■ The Police

---

The role of the police in our criminal justice system is to prevent, detect, and investigate crime and apprehend offenders. This role is sometimes called law enforcement. The police carry out this role within the constraints of constitutional and statutory requirements and with the overriding principle that their work is done for the protection and welfare of the citizenry as a whole.

Crimes may be committed within sight of the police. Most crimes, however, are not observed by the police. Some of these are reported to the police, and some are never reported. The police are given authority to prevent crimes, enforce the criminal law, investigate criminal activities, turn investigative material over to prosecutors for initiating criminal prosecutions, and work with prosecutors in the prosecution of cases.

Police have great discretion in investigative matters. Through training and experience, they learn that certain crimes may best be handled by informal discussion. Some reported crimes are investigated vigorously and swiftly; others are investigated summarily or not at all. These investigative decisions are based on local enforcement policy, which, in turn, is derived from a range of sources, including available police resources and the relative seriousness of different crimes as viewed by the police department, prosecutors, and local courts. In theory, the views of the police department, prosecutors, and the courts reflect the opinions and attitudes of the citizenry in that jurisdiction regarding the relative seriousness of different crimes. The criminal justice system, after all, is founded on the concept that the criminal law should appropriately punish those who violate prescribed standards of conduct.

Because of the volume of crime in most jurisdictions and seriously limited police resources, the discretionary action of police is, in fact, a potent element of law enforcement. Decisions not to investigate or decisions to handle some cases of misconduct that are technically criminal by informal resolution, such as with a discussion and warning, result in a large number of criminal matters that proceed no further into the system. Adding together the cases that are never reported and those that are handled “in-house” by the police (that is, the cases that are not referred for prosecution), only a small minority of the total cases of criminal conduct is pursued in the courts.<sup>3</sup>

---

## ■ Arrest and Release

---

Of significant importance, especially to the accused, is the decision to hold the suspect in custody. Taking a person into custody based upon suspicion of criminal conduct is called **arrest**. There are precise standards that the police use to decide whether a person may be arrested. These involve such elements as the seriousness of the offense committed, the record of the suspect, actions of the suspect when apprehended, and, certainly, what action has been taken in comparable cases. If taken into custody by the police (by physical restraint, such as placing in handcuffs and placing in a cell), the suspect will be advised of his or her right to remain silent and to contact and consult with an attorney. The suspect will also be booked. This is the entry into the police records of information about the crime and the suspect.

At this point, there may be a process for obtaining **release on bail**. An attorney will often move promptly to obtain bail or have the suspect **released upon his own recognizance** (that is,

without any bail or any **bond** having to be posted). Depending on the crime and local procedures, this may be obtained in some cases without court review. Otherwise, the application for release will be made at the initial court appearance or as soon thereafter as possible.

---

## ■ Prosecution

---

Another component with great discretionary authority is the prosecution.<sup>4</sup> The police bring to the prosecutor's office their records of investigation, which include the complaint made (by the victim or others); statements of witnesses; other evidence gathered; in some cases, a statement by the accused (confession); the prior record of the accused; and, usually, recommendations for prosecution. The **prosecutor** weighs this information and makes a decision about proceeding. Weak cases may be dropped here or sent back for further investigation. More complex cases may remain under continuing investigation by the police. However, such a case may be referred to the prosecutor for preliminary review regarding the strength of the case or to meet time requirements to bring the accused into court for an initial appearance while he is under arrest.

If the prosecutor decides that there is sufficient evidence to proceed, she will initiate the formal steps of prosecution. What these steps are depends on the nature of the crime and what category of seriousness it falls into. This in turn may vary from one jurisdiction to another. (As with all of these criminal justice procedures, this discussion is based on the most common practice. The reader should always be alert to the fact that circumstances may be different in a particular local jurisdiction.)

If the offense is a minor one—that is, a petty offense—the prosecutor files a complaint, an **information**, or a criminal charge, and the defendant is taken promptly before a lower court (a magistrate, a commissioner, or a justice of the peace). Note that once **charges** are filed, the person accused of the criminal act has become a defendant—a party in a criminal proceeding. The title of the case will typically read, “*The People of the State*” or “*The State of (name of the state) versus (name of the accused), defendant.*” For minor crimes, the proceedings are usually quick; the defendant is advised of his rights and asked for his plea. Even if the defendant denies the charges, the case will usually proceed quickly. If a trial is requested, an early trial date will be set, but sufficient time for attorneys to prepare and to obtain the presence of necessary witnesses must be allowed. If the defendant is found guilty (by plea or by trial), penalties are proportionally smaller (usually limited to fines or short jail terms) for minor offenses.

If the offense is a greater one, then the crime is considered to be either a misdemeanor or a felony. As noted previously, in most jurisdictions, misdemeanors are offenses that carry penalties of up to one year in prison. Felonies are offenses that carry penalties of more than one year in prison. For misdemeanors, prosecutors can almost always file the charges by signing an information or similar prosecutive document. For felonies, an **indictment** is one method of charging the accused, and this requires taking the evidence before a grand jury, which decides whether there is sufficient evidence to take the accused to trial, and, if there is, the grand jury hands up an indictment. (Some states have no grand juries. Other jurisdictions seldom use them.) It is common for a defendant who is charged with a felony to be asked to waive indictment and to agree to proceed by information. Thus, only a small number of prosecutions nationwide originate with grand jury action.

Soon after arrest, defendants are brought before the lower (preliminary) judicial authority, where they are told their rights, the assignment of **counsel** is discussed (if they have not retained an attorney), and the sufficiency of the charges is preliminarily reviewed (by a judicial official, ensuring, for the first time, review of the evidence by someone outside the prosecution and police offices). Whether by indictment, information, or other official prosecutor's charges, the case is formally and publicly filed in the court system at this time. After an information or indictment is filed, the defendant is taken before the criminal court for arraignment.

At **arraignment**, the accused person is brought before the court and is asked to enter a plea of "guilty" or "not guilty." Arraignment is conducted in open court and consists of reading the indictment or information to the defendant or otherwise providing him with the substance of the charges against him. At arraignment, the court makes certain that indigent defendants (persons without funds) are provided counsel. Here also the defendant elects whether to have a **trial by jury** or **trial by judge** alone.

After reviewing the evidence presented at this preliminary stage, the court may order some charges to be dismissed for insufficient evidence or some charges to be reduced to lesser offenses. From these earliest stages, the defense counsel will negotiate with the prosecutor to get charges dropped or reduced, either on the basis of the strength of the case or in return for entering a guilty plea. The defense counsel will file motions with the court, challenging the legality of the prosecution papers, sometimes challenging arrest or other police actions, or challenging the propriety of detention.

---

## ■ The Courts

---

After the initial papers are filed with the clerk of the court, the judge assigned to the criminal matter has jurisdiction over the disposition of the case.

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

U.S. Constitution, Amendment 6

**No person shall be ... deprived of life, liberty, or property, without due process of law.**

U.S. Constitution, Amendment 5

**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

U.S. Constitution, Amendment 14

Every criminal court must ensure that constitutional standards for **criminal proceedings** and **due process** are met. If the defendant pleads guilty, the court makes sure that the action of the defendant in pleading guilty is understood by him and is voluntarily made. If he pleads not guilty, the case proceeds to trial. If the defendant elects not to have a jury, the court will hear the trial and make the decision as to the defendant's guilt. If there is a jury, the judge supervises all proceedings, makes rulings on evidence and procedural matters, and instructs the jury about the law that applies to their deliberations. A defendant found not guilty is, of course, released (unless there are other charges pending on which to hold him). A defendant found guilty is then ready for sentencing.

The corrections component involvement in the criminal justice process can begin as early as the arrest stage if the suspect is detained in jail, and for some, pretrial release may include aspects of correctional supervision. But for many criminal defendants, the corrections stage of criminal justice becomes involved at sentencing. Sentencing is the legal process that anticipates the correctional function. In many cases, corrections authorities may be involved in the sentencing itself. But sentencing is a judicial function; only courts impose **sentences**, as authorized by the criminal statutes.<sup>5</sup> It is true that, in some jurisdictions, sentencing reforms in recent years have diminished the wide authority of sentencing judges by prescribing mandatory or determinate sentences. In most cases, these procedures reduce the range of sentences that may be imposed by the judges. There is usually a formula, in states that have adopted determinate sentencing, under which elements of criminal conduct are described and assigned values, which are then used (in charts or by other means) to arrive at a narrow range of sentences. Judges may be allowed to go above or below these sentence guides, for reasons that are found in the record and that are based on circumstances that are particularly mitigating or aggravating, in comparison to the average case. Where such sentencing guidelines have not been adopted,<sup>6</sup> judges are typically given (by the legislature, through the criminal statute) a wider range of penalties that may be imposed. While many judges object to the restrictions placed on their wide discretion as a result of sentencing guidelines or **mandatory sentences**, others welcome the attempts to ensure more consistent results in sentencing from case to case across all courts in the jurisdiction.

---

## ■ Sentencing

---

To assist in their sentencing decisions, it has become common in many jurisdictions for the courts to request sentencing reports regarding individual defendants. The Supreme Court has made it clear that individualizing sentences to fit particular defendants is an approved practice. *Williams v. New York*, 337 U.S. 241 (1949). In that case, the Court also emphasized that the sentencing procedure is more relaxed than the strict procedural and evidentiary requirements of due process at the criminal trial itself:

[A] sentencing judge...exercise[s] a wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed within limits fixed by law...Highly relevant—if not essential—to his selection of an appropriate sentence is

**the possession of the fullest information possible concerning the defendant's life and characteristics ... [M]odern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.**

The Court repeatedly emphasized the importance of individualizing sentences in modern sentencing philosophy. The reason for this was also stated by the Court:

**Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence.**

Note that this was said in a case where the Supreme Court upheld the imposition of the death penalty. But *Williams* is still good law, and it is often cited to sustain rulings about the relaxed nature of sentencing portions of criminal trials and importance of getting as much information as possible about the defendant in order to fit the sentence to the individual. To assist the courts in this process, the Supreme Court recognized the value of the sentencing report:

**Under the practice of individualizing punishments, investigational techniques have been given an important role. [The reports of probation workers] have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guesswork and inadequate information.**

Presentencing reports are often sought, particularly in felony cases. In earlier days, these reports usually came from the prosecutor and perhaps from the defense. To obtain a fairer, more balanced, and more consistent report, such reports are today usually sought from a judicial office, the probation office, or even from the corrections department. Sometimes these reports are commenced before the defendant is found guilty. More often, the judge orders a report to be prepared following the defendant's entering of a guilty plea or after conviction. This report usually reviews the criminal conduct of the defendant but focuses more on social, educational, psychological, medical, and family background and needs. These, together with the criminal record that is always available from the police and prosecution, are used to enable the court to impose a more informed sentence:

The aim of the [federal] presentence investigation is to provide a timely, accurate, objective, and comprehensive report to the court. The report should have enough information to assist the court in making a fair sentencing decision and to assist corrections and community corrections officials in managing offenders under their supervision.<sup>7</sup>

As an example, one of your authors, who was working as a caseworker in a prison facility, received a telephone call from a person asking to talk with a specific inmate. The caller said he wanted to personally inform the inmate that the inmate's mother had died. From checking the presentence report, the caseworker learned that the inmate's mother had actually passed on several years earlier. The report is also used by staff to confirm family relationships (such as the inmate's spouse, siblings, and children) for making decisions on inmate visits and correspondence.



Appendix 1 provides a model **presentence report**, which shows the kind of language that would be used in providing a good report to the sentencing judge. This model report is very detailed and involves complicated criminal activity. It shows the range of information a judge needs in order to make an informed sentencing decision.

This inevitably brings us to the question: What is the purpose of sentencing? Although some criminal statutes have attempted to address this ultimate penological question, most legislation is silent, or ambiguous, about the purpose of punishment. The historic and traditional answer to the question is that we sentence criminal offenders for **retribution, incapacitation, deterrence** (general and individual), and **rehabilitation**. When a judge sees rehabilitation as the primary purpose to be achieved in sentencing, the presentence report, with its detailed information about the defendant, is of the greatest use. For incapacitation, retribution, or general deterrence, the details of the defendant's psychological or educational background may be viewed as irrelevant, except for possible mitigation or aggravation in exceptional cases.

In any event, the final answers regarding the purposes of sentencing have not yet been made. Criminal justice authorities, and especially legislatures, have not reached an agreement about which of the grand purposes (individually or in combination) are most justified in sentencing. The debate continues, and what is certain is that judges and the public, as well as professors and legislators, hold widely varying views about the proper purposes of punishment. What we can report also is that emphasis on one sentencing goal or another seems to shift from decade to decade. Rehabilitation as a primary goal was widely taught in schools beginning in the 1930s and after. It was finally adopted by many judges and legislatures in the 1950s and 1960s. By the 1980s, serious questions were raised regarding its validity as a correctional purpose. The questions were raised by academicians, correctional practitioners, and judges. As a result—and as a result too of public reaction to constantly increasing criminal activity—there was a swing of the pendulum in the 1980s and 1990s toward retribution and incapacitation as the justifiable (and more clearly achievable) goals of sentencing. In the first part of the 21st century, there is a belief that imprisonment is warranted for persons committing the most serious criminal acts (e.g., violent crimes) but that alternatives should be considered for persons posing a minimal risk to the community. The American Correctional Association (ACA) is the leading professional association in the correctional area. In August 2010, the ACA approved a new public correctional policy that, with respect to criminal sentencing, said:

The length of a term of incarceration resulting from a criminal conviction should be only as long as necessary to accomplish the objectives of punishment... This will optimize the cost to the taxpayers... minimize any deleterious effects of imprisonment, and maximize the chances for the successful reintegration of offenders into the community after release and also ensure that the public's interest in the long-term incarceration of habitual, violent and predatory sexual offenders is preserved.<sup>8</sup>

---

## ■ Corrections

---

**Corrections** is the collection of agencies that perform those functions that carry out the sentencing orders of criminal courts. It is the last component in the continuum of criminal justice

activities of the criminal justice system. Included in corrections are (1) the probation authority, (2) **jails** (at least to the extent that they carry out short sentences, usually called jail terms), (3) the agencies that perform community corrections functions, (4) prisons, and (5) paroling authorities. Under our definition, those who collect **fin**es and **restitution** money (often clerks of court) and those who assist in supervising offenders in the community (which may include police) are also part of corrections. But the five authorities listed are the principal, traditional components of corrections.

Sentences in the United States range from fines, restitution, community service, probation supervision, suspended sentences, and terms of imprisonment, to execution in capital cases. Corrections agencies carry out all of these sentences. Fines and restitution are typically paid by the defendant to the clerk's office or another judicial office, so involvement of a corrections agency in such cases is minimal as long as payments are made.

Probation is a type of sentence that allows the defendant to remain in the community, and it usually allows him to stay at his home and keep his job. The defendant who is placed on probation is required to report regularly to a probation officer, who counsels the probationer and helps in crises. There are always conditions imposed by the court that govern the activities of the defendant. Violations of these may result in a negative report to the court. If these are serious enough, the probationer may be called into court to determine whether the probation should be revoked. Courts rely heavily on the insights and judgment of the probation officers on these matters. In most cases, if probation is revoked, the defendant can be sent to prison at that time. Nonpayment of fines or restitution may also result in the defendant being called before the court to face possible jail terms as sanctions.

It should be noted that, for all of these components of corrections for **adults**, there are similar components in the **juvenile** justice system. From probation to **incarceration**, specialized juvenile agencies handle delinquency cases in the criminal justice system.

In recent years, there has been much said and written about "alternatives to imprisonment." In truth, there have always been alternatives to imprisonment (probation being the main one), but because of the attention, legislatures and courts have looked to additional ways to sentence. Why? There are many reasons. Because of crackdowns on sentencing (longer sentences for many offenses, especially involving violence), prisons have become more crowded. Prisons are expensive to build and run. For lesser offenders, at least, it seems to make sense to use anything that might work instead of prison. But what will work? This is not the place to air the claims and counter-claims that have been made or examine the limited studies and evidence that sometimes accompany them. Here are descriptions of some of the alternatives that have been tried.

## **Probation**

---

**Probation** is a commonly used sanction and is often used for first- or second-time offenders and those involved in lesser crimes. The essence of probation is that the defendant is allowed to remain in the community, while also remaining under some degree of supervision by a **probation officer**. Usually, a judge imposes a term of imprisonment upon a defendant and suspends the execution of it so long as the defendant satisfactorily completes a designated period of time

under supervision. Less common are suspensions of sentences involving fines or other penalties or the suspension of the imposition of a sentence, allowing the judge (upon revocation of probation) to impose any sentence that could have been imposed at initial sentencing.

There are usually general conditions imposed upon the **probationer** that are used in all similar cases. (For example: do not commit any offense, do not use drugs, and maintain steady employment.) In addition, very specific conditions geared to the individual defendant may be used. (For example: do not go to the Main Street Tavern, where there are bad influences; get training in welding to improve your employment opportunities; and pay restitution of \$150 per month to the victims from whom you embezzled money.) Appendix 2 lists mandatory, standard, special, and other conditions that may be imposed as a condition of a person's supervised release in one group of courts (federal).

Although many people (in the media, in the public, and even in the judiciary) do not consider probation a sanction, but rather as a "slap on the wrist" that allows criminals to get off free, probation is properly viewed as an alternative sanction, carrying varying degrees of restraint on liberty. In many jurisdictions, more than half of the persons who are sentenced receive probation. In fact, more persons are on probation supervision in the United States than are in prison. At the end of 2009, over 7.2 million adults were under some kind of adult correctional supervision in the United States. Of these, over 4.2 million were on probation, 819,000 were on parole, 760,000 were in jails, and over 1.5 million were in state and federal prisons.<sup>9</sup>

Probation officers have a difficult job. One of the major problems they face is the large numbers of persons whom they are expected to supervise. Sometimes, the numbers run to 200 offenders or more per officer. For example, the average standard probation **caseload** in Georgia in fiscal year 2008 was 250, and in Rhode Island, probation and parole officers assigned to general caseloads have caseloads of approximately 190 offenders.<sup>10</sup> This usually means that officers look after the most demanding problem probationers, and many probationers are left unsupervised. At best, many probationers report in every month or so by telephone, which serves as their supervision.

There are many degrees of supervision within the realm of probation. At one extreme is *unsupervised probation*, which is virtually an oxymoron, given the definition we have provided that says that supervision is the essence of probation. Still, with overloads of probationers, we have noted that many officers do minimal supervision on many cases. It is an official recognition of this fact that prompts some courts to approve of probation for some defendants without any supervisory contact at all. In effect, unless the probationer is picked up for a new offense, probation is dormant. At the other extreme is intensive probation, in which a court requires much more frequent contacts between probation officer and probationer. This level of contact necessarily requires smaller caseloads for the probation officer, and if there are resources for this in the jurisdiction, *intensive probation* is a more meaningful alternative for some defendants who would otherwise go to prison.<sup>11</sup> The fact of the matter is that there are many well-trained officers in this country who, with additional resources, could make probation a strong and viable sentencing alternative. It is the most reliable and potentially the most valuable type of community corrections.

(Warning: it is important to distinguish between probation and parole. Probation is a sanction, imposed by a judge at sentencing. **Parole** is release from a term of imprisonment by a

paroling authority. They are similar in that both probationers and parolees are released into the community and placed under the supervision of government officers; in some jurisdictions, the same officers supervise both probationers and parolees. But the status of probationers and the status of parolees are very different, both in their initial placement and in their revocation. Both placement and revocation of probationers are done by the sentencing court. The placement into parole and revocation of parole—returning the parolee to prison—are done by the paroling authority, which is usually an independent administrative board or a commission appointed by the executive, typically by the governor of the state.)

## **Fines**

---

For many offenses, fines may be used in lieu of or in addition to jail or prison terms. For crimes at the bottom end of the severity scale (traffic offenses), fines have become the accepted method of punishment. In some other countries, fines are used more often than in the United States. The advantages of fines are that they are punitive; fairly easy to administer; and fairly easy to fit into a sentencing schedule, with ranges of severity. The disadvantages are that fines are seen as being unavailable for many defendants who are indigent, and they are viewed by some as being not punitive enough for high-income defendants (such as drug dealers or wealthy white-collar defendants). Using fines for the latter types of defendants is often seen as an example of rich people being able to buy their way out of criminal difficulties.

## **Restitution**

---

Restitution is an attempt in the criminal system to make the injured “whole,” to even the balance that has been unjustly tipped by the criminal act. (This is much the same kind of balancing that is the basis of administering justice, with monetary awards as damages, in the civil field.) Victims may feel that restitution is a satisfying type of sentence, because they personally receive something for their injuries.

Every state gives courts statutory authority to order restitution. In over one-third of the states, courts are required to order restitution unless there are compelling or extraordinary circumstances. An example is Florida, which provides that “[i]n addition to any punishment, the court shall order the defendant to make restitution to the victim for: 1) Damage or loss caused directly or indirectly by the defendant’s offense; and 2) Damage or loss related to the defendant’s criminal episode, unless it finds clear and compelling reasons not to order such restitution.”<sup>12</sup>

Restitution sanctions are some of the oldest kinds of sentences used.<sup>13</sup> The concept is one of leveling benefit and loss; the defendant must pay back his ill-gotten gains, either directly to the victim or to some place (such as a victims’ fund) where it can be used for the good of those harmed by criminal activity. The U.S. Department of Justice report on ordering restitution<sup>14</sup> identifies an issue that impacts restitution. This is the presence of conflicting directives on restitution within a state; for example, states may give the victim the right to restitution but may fail to require that courts order restitution. Some other identified restitution problems include

the victim's failure to request restitution, the difficulty in calculating loss, and the defendant's inability to pay.

As with fines, there are frequent problems in making sure restitution is paid. This is partly because payments are being made over time. In addition, many offenders who were ordered to pay are confined and unable to make significant payments until they are released or placed in a work program; other factors can include limited assets, difficulty in securing and maintaining employment, and the lack of skills to get higher paying jobs. Efforts are being made by the states to enforce restitution orders, including improved monitoring of restitution payments; the attachment of state payments to the defendant; the revocation of probation or parole for willful failure to pay; and using state entities or private collection agencies to collect restitution (any collection fee can be added to the amount of the debt).<sup>15</sup>

## **Electronic Monitoring**

---

With technological advances, new methods of community sanctions are inevitable. Electronic monitoring is one that has now been tried in many jurisdictions. The theory is that, with huge supervision loads and difficulty in keeping track of probationers, electronic monitoring does what a probation officer cannot do—keep constant track of the whereabouts of the offender. This, in theory, helps to enforce the conditions of probation that relate to where the probationer can be, whether at home or at work, or at limited other places (such as school, church, or social places). There is usually a bracelet or anklet that transmits to a telephone connection, signaling that the person is at home or has left the approved area. Although there are some equipment and administrative costs associated with running such programs, they are, of course, far less expensive than the cost of imprisonment. Some argue that, for persons at the lower end of the imprisonment spectrum, electronic monitoring provides public protection and a degree of sanction that justify its use as an alternative to prison.<sup>16</sup>

## **Community Service and Creative Sentencing**

---

To avoid prison as a sanction and to give more clout to the noncustodial sentence, some courts regularly use an order for **community service** or for some type of work or activity that is intended to “teach a lesson.” Sometimes, these sanctions are used often enough (such as requiring offenders who have committed less serious offenses to work in the parks for a certain number of days) that they have become established alternative sanctions. We also read about them in the press, in instances in which a judge is reported to have used a “creative” order to fit the criminality of a particular offender. A slumlord is ordered to live for two weeks in one of his filthy apartments and to clean it up, or an attorney is ordered to give talks to high school classes on the benefits of the American legal system. These examples illustrate an inherent problem in such sentencing: it is eccentric and departs from a system that aims for consistency as a goal to promote fair sentencing. It also tends to be used for the affluent offender. Creativity probably needs to be encouraged, but creative ideas should be incorporated into sentencing standards to avoid any further disparity in our sentencing structure.

**SUMMARY**

- The criminal justice system in the United States is divided into four components: police, prosecution, courts, and corrections.
- Police prevent, detect, and investigate crimes and apprehend offenders. Different levels of crimes are handled by the police with different levels of intensity. There is considerable discretion given to the police in carrying out their functions.
- When a suspect is taken into custody, this is called an arrest. An arrested person will be taken before a judicial authority to obtain release on bail or on recognizance.
- Police take their records of investigation to prosecutors. Prosecutors evaluate the investigative material and, if they determine there is sufficient evidence to proceed, they will take steps to file charges (by indictment from a grand jury, information, or criminal complaint). Felonies, which typically carry penalties of more than one year in prison, may be initiated by indictments. Lesser offenses (misdemeanors or petty offenses) are initiated by information or criminal complaints.
- Once charges are filed, the criminal court is responsible for seeing to it that a speedy and fair trial is conducted. The procedural rules for guaranteeing fair trials (due process) are complex. If the defendant is convicted, which may be by jury trial or by the court alone, he may be sentenced according to the criminal statutes in the jurisdiction.
- Many courts use sentencing reports, from the probation office or another source, to assist in sentencing, especially in higher-penalty cases. The Supreme Court has encouraged the individualization of sentences.
- Corrections agencies carry out the sentences of the criminal courts. The field of corrections includes probation authorities, jails, community corrections agencies, prisons, and parole authorities. (There are also juvenile corrections counterparts to all of these criminal corrections agencies for adults.)
- Fines and restitution orders are other types of sentences, but they are usually enforced by officials within the judicial system (such as clerks of court) and so are not included within traditional “corrections agency” definitions. Electronic monitoring, community service, and other “creative sentencing” alternatives have been employed in recent years. These are typically supervised and enforced by one of the traditional corrections agencies.

**THINKING ABOUT IT**

How would you decide the following true case? In May 2002, a father of 13 children unintentionally left his 21-month-old daughter in a car seat in the family’s van. She was in the car seat for seven hours before being discovered. The child died of hyperthermia. The father, a civil engineer who was very active in the church, was convicted. He could have received a prison sentence of 15 years. The jury, however, recommended a 12-month sentence, believing the father

had no intent to hurt the child but also feeling he had to be punished for the death. You are the judge—what would you do? What is the purpose of sentencing in this case?

## KEY TERMS

- adult:** A person who is within the original jurisdiction of a criminal court rather than a juvenile court because his age at the time of an alleged criminal act was above a statutorily specified limit.
- arraignment:** The appearance of a person (soon after arrest or after charges have been lodged) before a court in order that the court may inform him of the accusation(s) against him and that he may enter his plea to the charges.
- arrest:** Taking a person into custody by authority of the law for the purpose of charging him with a criminal offense or initiating juvenile proceedings, terminating with the recording of a specific offense.
- bond (appearance bond):** A written promise by a financially responsible person to pay the bail sum if the offender does not follow the terms of release. See also release on bail.
- caseload (corrections):** The total number of clients registered with a corrections agency, or with an individual officer within an agency, during a specified time period. (Usually refers to persons under probation or parole supervision or those assigned to caseworkers inside a corrections facility.)
- charge:** A formal allegation that a specific person has committed a specific offense.
- community service:** A sentence (or alternative to sentencing) in which the offender performs work benefiting a charity, government operation, or another organization; the work is approved by the sentencing court as being in the public's (or community's) interest.
- corrections:** A generic term that includes all government agencies, facilities, programs, procedures, personnel, and techniques concerned with the investigation, intake, custody, confinement, supervision, or treatment of alleged or adjudicated adult offenders, juvenile delinquents, or status offenders.
- counsel:** A person trained in the law, admitted to practice before the bar of a given jurisdiction, and authorized to advise, represent, and act for other persons in legal proceedings. (Used interchangeably with lawyer or attorney.)
- criminal proceedings:** Proceedings in a court of law, undertaken to determine the guilt or innocence of an adult accused of a crime.
- deterrence:** The act, or theory, of stopping action by frightening the potential actor. In penology (sentencing philosophy), deterrence refers to the discouragement of crime because of fear of its consequences (the sanctions that may be imposed). There are two aspects of deterrence: specific (or individual) deterrence—discouragement of the individual offender; and general deterrence—discouragement of a large number of persons who might consider the criminal conduct but who might be convinced not to engage in that conduct because of its adverse consequences, as shown by the punishment of others.

**due process (due process of law):** Exercise of the powers and authority of government in those ways that are prescribed by settled principles of law. There is a wide range of principles and procedures that may be prescribed (that is, process that may be due) according to the nature of the proceedings. The minimum process (principles and procedures) requires adequate advance notice of the proceeding, an opportunity to be heard and to assert one's rights, and consideration before a person or tribunal that is authorized by law to hear and determine the matter, according to established rules of good order.

**fine:** A penalty imposed on a convicted person by a court that requires payment of a specified sum of money.

**good time:** An award, authorized by statute, that reduces the length of time an inmate must spend in prison. It is given for satisfactory conduct in prison. There may also be authorization for *extra good time*, an additional award for particularly meritorious or outstanding actions or behavior. Good time does not usually reduce the total length of the sentence. Initially conceived as an incentive for good behavior, it has become virtually an automatic award in most places, lost only when the inmate misbehaves (withholding good time for current awards, forfeiture of good time for accumulated awards). In a few jurisdictions, the good time allowance may reduce the maximum term of the sentence or even the parole eligibility date (the earliest date the inmate can be considered for parole release).

**incapacitation:** The inability to act. In penology (sentencing philosophy), the justification for a term of imprisonment on the grounds that it renders the offender unable to commit offenses during the time of his imprisonment.

**incarceration:** Imprisonment. Confinement in a jail or prison.

**indictment:** A formal, written accusation made by a grand jury and filed in a court, alleging that a specified person has committed a specific offense.

**information:** A formal, written accusation made by a prosecutor and filed in a court, alleging that a specified person has committed a specific offense.

**jail:** A confinement facility, usually administered by a local law enforcement agency, such as a sheriff's department (that is intended for adults but may sometimes contain juveniles) which persons are being detained pending adjudication or are committed, after adjudication, for a short period of time (usually a year or less).

**juvenile:** A person subject to juvenile court proceedings or certain other special status or treatment because his age is below the statutorily specified limit of adulthood.

**parole:** The status of an offender who has been conditionally released from a confinement facility prior to the expiration of his sentence and placed under the supervision of a parole agency. The various aspects of parole—such as which inmates are eligible for parole and when, who is the paroling authority, the setting of parole standards (conditions), and the authority to revoke parole and to terminate parole—are defined by statute.

**presentence report:** The document resulting from an investigation undertaken by a probation agency or other designated authority, at the request of a criminal court, into the past behavior, family circumstances, and personality of an adult who has been convicted of a crime, in order to assist the court in determining the most appropriate sentence. (For a juvenile, the same kind of report is called a predisposition report.)



**probation:** The conditional freedom granted by a judicial officer to an alleged offender or an adjudicated adult or juvenile, as long as the person meets certain conditions of behavior, for a given period of time. The conditions and period of time are set by the judicial officer. The offender is released into the community, under the supervision of a probation officer.

**probation officer:** An employee of a probation agency whose primary duties include one or more of the probation agency functions.

**probationer:** A person required by a court or probation agency to meet certain conditions of behavior as required by a sentence or disposition of probation.

**prosecutor:** An attorney employed by a government agency or subunit, whose official duty is to initiate and pursue criminal proceedings on behalf of the government against persons accused of committing criminal offenses.

**rehabilitation:** Restoring an offender to a law-abiding lifestyle. In penology (sentencing philosophy), rehabilitation refers to the theory that a purpose of sentencing is to help the offender live a crime-free life in the community. To that end, a corrections agency is expected to have rehabilitation programs, which improve the offender's prospects of being a productive and law-abiding citizen.

**release on bail:** The release, by a judicial officer, of an accused person who has been taken into custody, upon his promise to pay a certain sum of money if he fails to appear in court as required, the promise of which may or may not be secured by the deposit of an actual sum of money or property.

**release on own recognizance:** The release, by a judicial officer, of an accused person who has been taken into custody, upon his promise to appear in court as required for criminal proceedings.

**restitution:** Compensation or reparation by one person for loss or injury caused to another. In criminal law, a court sanction requiring restoration by the offender to a person of that of which he has been wrongfully deprived, or payment by the offender of some monetary amount to the wronged person (victim) to compensate for injury or loss caused by criminal conduct.

**retribution:** In sentencing philosophy, the theory that every crime deserves a concomitant punishment.

**sentence (criminal law):** The penalty (sanction) imposed by a court on a convicted person. This includes a court decision to suspend (defer) the imposition or the execution of a penalty and place the defendant on probation.

**sentence, mandatory:** A statutory requirement that a certain penalty, a certain minimum penalty, or a penalty with severe restrictions (such as no parole eligibility) shall be imposed and executed upon certain convicted offenders.

**trial by judge (court trial):** A trial in which there is no jury and a judicial officer determines the issues of fact as well as the law in the case.

**trial by jury (jury trial):** A trial in which a jury determines the issues of fact in a case and renders a verdict.

## ENDNOTES

1. Pew Center on the States, *One in 100: Behind Bars in America 2008* (Washington, DC: The Pew Charitable Trusts, February 2008) 9–10. This report noted that while crime in Florida did drop during this time, crime also dropped as much or more in other states that had not increased, or had even shrunk, their prison systems.
2. 112th Congress (2011-2012). *S. 306, National Criminal Justice Commission Act*. Accessed June 11, 2011, <http://www.govtrack.us/congress/bill.xpd?bill=s112-306>. This legislation was first introduced in 2009. In January 2010, it was approved by the Senate Judiciary Committee. In July 2010, the bill passed the U.S. House of Representatives but did not pass in the Senate. It was reintroduced in the 112th Congress on February 8, 2011.
3. Further, even if arrested and charged, many persons are not convicted and sentenced. The California Department of Corrections report, *Dispositions of Adult Felony Arrests, 1997*, shows that of the 326,768 felony arrests that year, only about 66% of those who had complaints filed against them were found guilty and sentenced. About 13% of those who were arrested for felonies were imprisoned. Allen, H. and Simonsen, C. *Corrections in America—An Introduction*, 9th ed (Upper Saddle River, NJ: Prentice Hall, 2001), 106.
4. The title for this agency varies. In federal courts, each district has a U.S. Attorney, who has prosecutorial authority. In the states, prosecutions are pursued at the county or city (or town) level. These prosecutors are called state’s attorneys, district attorneys, prosecuting attorneys, city attorneys, or other titles, depending on the location.
5. A few jurisdictions have used a sentencing procedure in which courts merely commit the defendant to another agency, and the length of sentence is determined by that agency. An example was the sentencing of young offenders to the California Youth Authority. Once found guilty, a youth was sent to the correction agency, which determined how long was needed for the rehabilitation of the offender. These indeterminate sentences have usually been tied to rehabilitation models, in which case corrections experts, rather than the courts, are thought to be better qualified to decide how long the offender should remain in custody.
6. In 2008, the National Center for State Courts issued a research report on “Assessing Consistency and Fairness in Sentencing.” The report indicates at least 20 states and the District of Columbia have sentencing guidelines. These guidelines are described as “a relatively new reform effort to encourage judges to take specific legally relevant elements into account in a fair and consistent way when deciding whether a convicted offender should be imprisoned, and if so, for what length of time.” Guidelines may be either advisory (voluntary) or mandatory (more presumptive—stricter requirements for departure from the guidelines, tighter sentencing ranges, more vigorous appellate review). National Center for State Courts. *Assessing Consistency and Fairness in Sentencing* (Williamsburg, VA: National Center for State Courts, 2008), 1.
7. Administrative Office of the U.S. Courts. *The Presentence Investigation Report*. Publication 107, Office of Probation and Pretrial Services. Revised March 2006., accessed June 11, 2011, [http://www.fd.org/pdf\\_lib/publication%20107.pdf](http://www.fd.org/pdf_lib/publication%20107.pdf).
8. American Correctional Association. “Public Correctional Policy on Criminal Sentencing and Early Release from Confinement.” *Corrections Today* 72(5) (2010): 86–87.

9. Glaze, L. *Correctional Populations in the United States, 2009*. Table 1. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice, 2010.
10. Georgia Department of Corrections. *Field Operations*. Accessed January 15, 2011, <http://www.dcor.state.ga.us/Divisions/Corrections/ProbationSupervision/FieldOperations.html>. Also Rhode Island Department of Corrections. *Probation and Parole: Overview of Units*. Accessed January 15, 2011, <http://www.doc.ri.gov/probation/overview.php>.
11. Some studies indicate that intensive probation results in more violations—which could be explained by the fact that probationers placed on intensive probation are more at risk (more likely to commit violations), or that greater supervision uncovers more technical violations.
12. Office of Justice Programs. *Ordering Restitution to the Crime Victim*. Washington, DC: Office for Victims of Crime, U.S. Department of Justice, 2002.
13. The *Code of Hammurabi*, dating from about 1750 B.C., included the following: “Anyone trespassing upon the land of another and cutting wood therefrom, shall pay to the owner thereof one-half ‘mine’ of gold.” Baum, H. M., ed. *Records of the Past*, Vol. 2. (Philadelphia: Patterson & White, 1903), 74.
14. See endnote 12.
15. Office of Justice Programs. *Restitution: Making It Work*. Washington, DC: Office for Victims of Crime, U.S. Department of Justice, 2002. Also: Colorado Judicial Department. *Restitution—Background and Highlights May 2005*. Accessed January 15, 2011, [http://www.courts.state.co.us/userfiles/File/Self\\_Help/Victim\\_Restitution/may05restitution.pdf](http://www.courts.state.co.us/userfiles/File/Self_Help/Victim_Restitution/may05restitution.pdf).
16. A publication from the International Association of Chiefs of Police (IACP) notes electronic monitoring may also be used for individuals posing a higher risk. The publication states that law enforcement agencies are beginning to get funding from state legislatures to begin Global Positioning Satellite (GPS) sex offender tracking programs. IACP. *Tracking Sex Offenders with Electronic Monitoring Technology*. Alexandria, VA: International Association of Chiefs of Police, 2008.

