

# CRIMINAL JUSTICE



Step-by-step outline of the U.S. system for investigating & prosecuting criminal offenses—from arrest to disposition

## CRIMES & CRIMINAL OFFENSE

Entry into the **criminal justice** system typically begins with the commission of a **crime** or **criminal offense**

### I. Crime

A criminal offense committed in violation of the criminal laws of a state, the federal government, or a local jurisdiction in which the guilty party may be punished; the word originated from the Latin *crimen*; criminal offenses are often categorized into three broad categories: street crime, white collar crime and victimless crimes

A. **Street Crime:** A class of offenses; sometimes formally defined as those that occur in public locations, are **visible** and **assaultive**, and thus constitute a **special risk to the public** and a special target for law enforcement preventative efforts and prosecutorial attention

» **Example – Aggravated Assault**

1. **Aggravated Assault:** Unlawful, intentional causing of serious bodily injury, with or without use of a deadly weapon

B. **White Collar Crime:** Crimes that are often nonviolent, yet committed for financial gain by means of deception by persons whose occupational status is entrepreneurial, professional or semiprofessional, and who use their special occupational skills and opportunities

» **Example – Embezzlement**

1. **Embezzlement:** The misappropriation, misapplication or illegal disposal of legally entrusted property by the person(s) to whom it was entrusted, with the intent to defraud the legal owner or intended beneficiary

C. **Victimless Crime:** Illegal acts that are often perceived to cause no specific harm, especially since it is often negated by the informed and legal consent of the participants of the crime; the harm may take several forms

1. Harm to the person
2. Harm to the property
3. Psychological harm
4. Social harm
5. Harm to an individual's freedom

» **Example – Prostitution**

a. **Prostitution:** Offering or agreeing to engage in, or engaging in, a sex act with another in return for a fee

D. **Additional Crime Categories:** Include terrorism, sex offenses and cybercrime

1. **Terrorism:** The calculated use of violence to obtain political goals through instilling public fear, intimidation or coercion

» **Example – September 11, 2001**

2. **Sex Offenses:** Any of a broad category of varying offenses having a sexual element, except for forcible rape

» **Example – Indecent Exposure**

3. **Cybercrime** (also referred to as *computer crimes*): Any crime perpetrated through the use of computer technology or the Internet

» **Example – Cyberstalking**

### II. Criminal Offense

A term defined by **statute** describing any offense, misdemeanor or felony, for which punishment by imprisonment

or fine may be imposed under the law of a state, federal government, or a local jurisdiction; most crimes are divided into **felonies** and **misdemeanors**

A. **Statute:** A law enacted by, or with the authority of, a legislature

B. **Law:** A body of rules—including constitutions, the common law, equity, statutes, judicial decisions, administrative orders, and ordinances—together with the principle of justice commonly applied in their enforcement

C. **Misdemeanor:** An offense punishable by incarceration, usually in a local confinement facility, for a period of which the upper limit, typically a year or less, is prescribed by statute in a given jurisdiction

» **Example – Simple Assault**

1. **Simple Assault:** Unlawful threatening, attempted inflicting, or inflicting of less than serious bodily injury in the absence of a deadly weapon (i.e., push, shove, kick or slap)

D. **Felony:** A criminal offense punishable by death or by incarceration in a prison facility for at least one year

» **Example – Murder in the First Degree**

1. **Murder in the First Degree:** Intentionally causing the death of another without legal justification or excuse, and/or causing the death of another while attempting to commit another crime

E. **Degree:** In criminal law, the term refers to the ranking of crimes by seriousness, with the classification of first degree being the most serious

## CRIMINAL LAW

### I. Criminal Law (also referred to as *Penal Law*)

A specialized branch of the law dealing with a body of rules and regulations that specify the nature of and punishment for a criminal offense; the criminal law aspect of the criminal justice system is divided into two subsections: *Substantive Criminal Law* and *Procedural Law*

A. **Substantive Criminal Law:** The part of the law that defines crimes and specifies punishments

B. **Procedural Law:** The part of the law that prescribes in detail the methods or procedures to be used in determining and enforcing the rights of the accused

1. Crimes are often reported to the police after a victim or witness observes that a crime has taken place

2. There are also instances in which law enforcement may apprehend a suspect while in the commission or attempted commission of a crime

C. **Elements of a Crime**

1. **Actus Reus:** The requirement that, for an act to be considered criminal, the individual must have committed an overt act that resulted in harm

2. **Mala Prohibita:** Acts that are considered wrong only because there is a law against them

» **Example – Speeding**

3. **Mala In Se:** Acts that are regarded, by tradition and convention, as wrong in themselves

» **Example – Treason**

a. **Treason:** A citizen's actions to help a foreign government overthrow, make war against, or seriously injure the country in question

4. **Mens Rea:** The state of mind (intent) that accompanies the particular act (*actus reus*) defined as criminal; also referred to as the **criminal or evil mind**

D. **Criminal Law Violations**

1. **Crimes Against Property:** Any criminal offense against property

» **Example – Criminal Mischief**

a. **Criminal Mischief:** Intentionally destroying or damaging, or attempting to destroy or damage, the property of another without his/her consent

2. **Crimes Against the Person:** Any offense that attempts, threatens or uses physical force against a person

» **Example – Robbery**

3. **Public Order Offenses:** Violations of the peace or order of the community, or threats to the public health, through unacceptable public conduct, interference with governmental authority, or violation of civil rights or liberties

» **Example – Tax Evasion**

a. **Tax Evasion:** Illegally avoiding paying taxes, failing to report, or reporting inaccurately

### II. Criminal Justice

As defined by the *Federal Crime Control Act of 1973*, criminal justice is any activity pertaining to:

A. Crime prevention, control or reduction, or the enforcement of the criminal law

B. Police efforts to prevent, control or reduce crime, or to apprehend criminals

C. Activities of the courts having criminal jurisdiction and related agencies, including the prosecutorial and defense services

D. Activities of corrections, probation or parole authorities

E. Programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction

### III. Justice

The principles of law applied to the facts of a case

### IV. Crime Prevention

The anticipation, recognition and appraisal of a crime risk, and the initiation of action to eliminate or reduce it

» **Example – Anti-Drug Use Campaign**

## CRIMINAL INVESTIGATION

### I. Criminal Investigation

The process of discovering, collecting, preparing, identifying and presenting evidence found at a crime scene to determine what happened and who is responsible when a crime has occurred

A. **Crime Scene:** The physical area in which a crime is thought to have occurred and in which evidence of the crime is thought to reside

B. **Evidence:** Anything helpful and practical to aid a judge or jury in deciding the facts of a case; evidence may take the form of witness testimony, DNA, written documents, videotapes, magnetic media, photographs, physical objects, and so forth

1. **Plain View Doctrine:** A legal term describing the ready visibility of objects that might be seized as evidence during a search by police in the absence of a search warrant

a. **Search Warrant:** A document that is issued by a judicial officer to direct a law enforcement officer to conduct a search at a specific location, for specified property or person relating to a crime, to seize the property or person if found, and to account for the results of the search to the issuing judicial officer

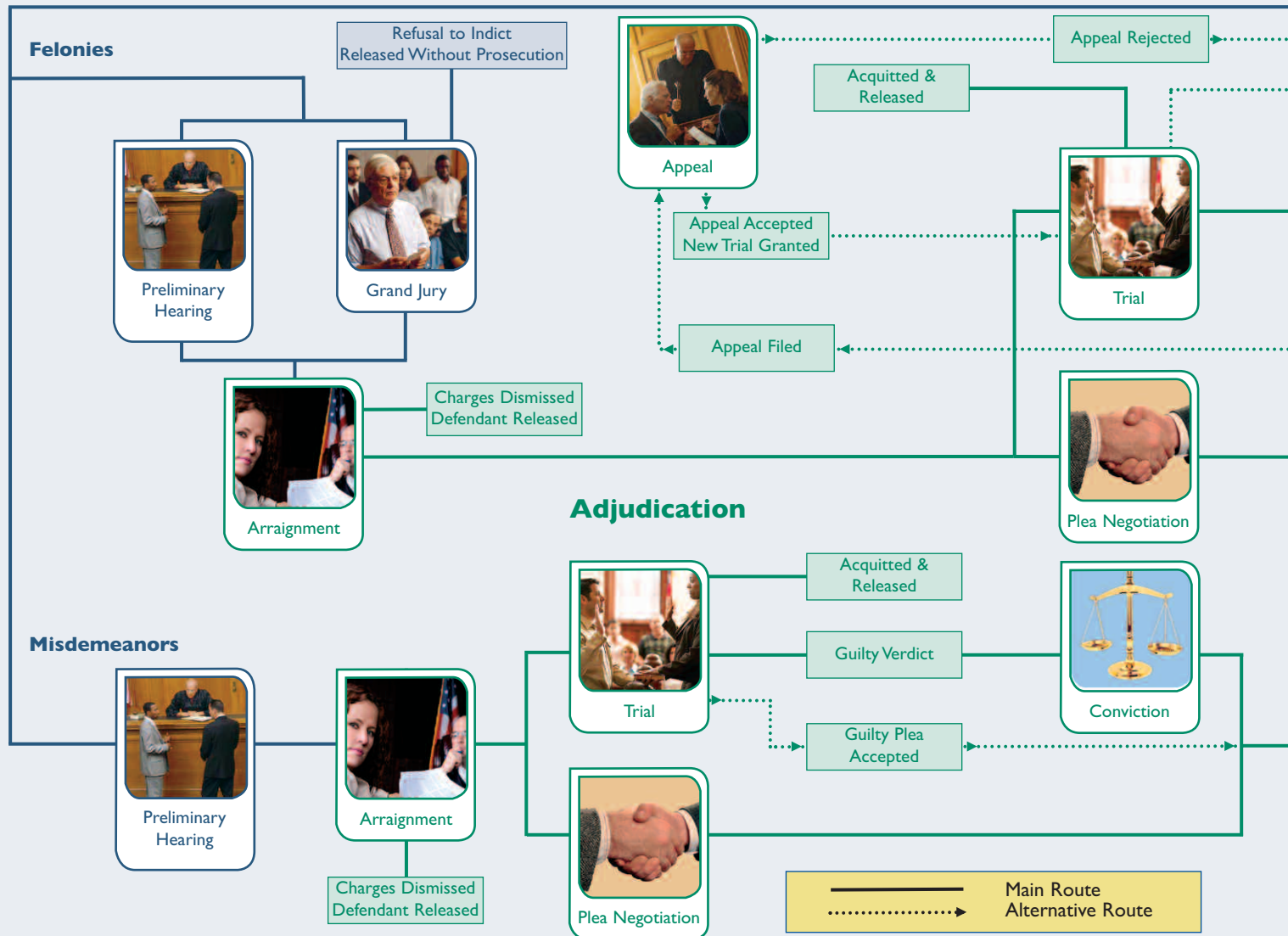
b. **Exclusionary Rule:** A court-generated rule holding that evidence obtained in violation of the protections granted by the U.S. Constitution becomes tainted and, thus, inadmissible at trial

c. **Corpus Delicti:** The facts that show that a crime has occurred; the term when translated means “the body of the crime”

d. **Victim:** Any person having suffered death, physical or mental injury, and/or loss of property or property rights as a result of the criminal activity or attempted criminal activity of another

THE CRIMINAL JUSTICE SYSTEM

Entry into the System

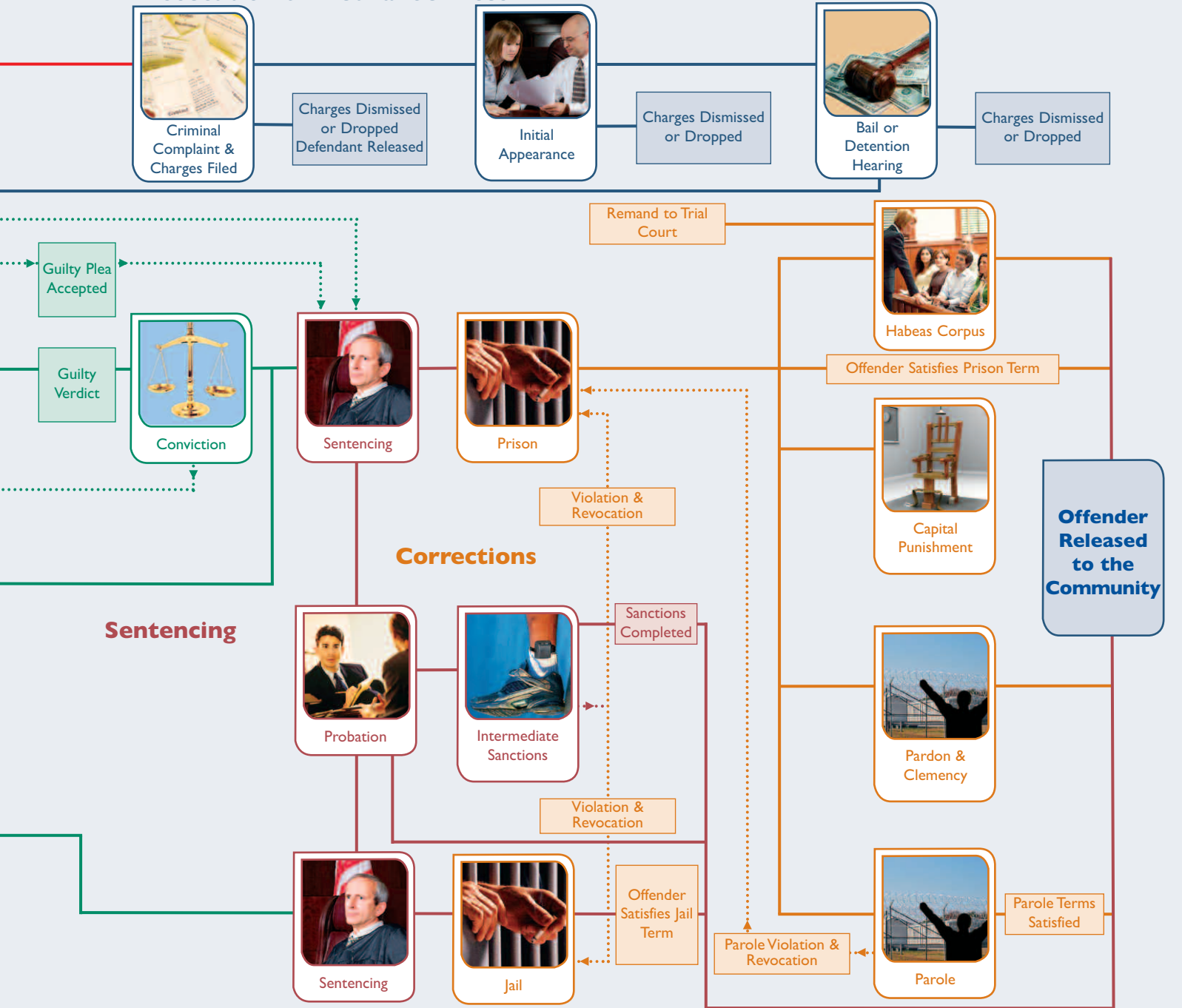


Criminal Investigation (continued)

- C. **Preliminary Investigation:** All the activities undertaken by the police officer who initially responds to the scene of a crime, including determining whether a crime has occurred, securing the crime scene and preserving evidence
  - 1. **Police Officer:** A peace officer; a sworn member of a police department usually within a city, township, county or state, charged with the responsibilities of protecting public safety, preserving the peace, providing emergency services, the detection of crime, and the enforcement of the law
- D. **Probable Cause:** A set of facts and circumstances that would induce a reasonably intelligent and prudent person to believe that a particular other person has committed a specific crime
- E. **Search and Seizure:** A phrase encompassing that body of procedural and evidentiary law dealing with the 4<sup>th</sup> Amendment's protections against unreasonable searches and seizures, executed by governmental authorities at either the state or federal level on private persons and public and private agencies, and institutions; some search and seizure law derives from statutory law, in other situations by court rules, and in still other situations under codified rules established in the *Federal Rules of Criminal Procedure* (1945)
- F. **Criminal Complaint:** Any accusation that a person has committed an offense, received by or originating from a law enforcement or prosecutorial agency requesting that the person who has committed a specific offense be prosecuted
- G. **Crime Scene Investigator:** An expert trained in the use of forensics techniques, such as gathering DNA evidence, collecting fingerprints, photographing the crime scene, making sketches to show the positions of items at the scene, and interviewing witnesses; **important to any investigation are the solvability factors**

- 1. **Forensic Science:** An area related to the legal medicine that applies anatomy, pathology, toxicology, chemistry, botany, and other fields of science in expert testimony in court cases or hearings
- 2. **Crime Laboratory:** A forensic laboratory where police agencies send evidence to be identified and analyzed for use in subsequent criminal adjudications; crime laboratories may be found at the federal, state, and local level
- 3. **DNA (Deoxyribo Nucleic Acid):** Also referred to as *Genetic Fingerprinting* or *Genetic Profiling*; DNA is an essential component of all living matter, enabling investigators to identify suspects by comparing their unique individual genetic codes with the code(s) found in samples (hair, blood, skin and/or semen) left at crime scenes
  - a. **CODIS (Combined DNA Index System):** A computerized database of DNA profiles, composed of those convicted of serious offenses such as Rape, Murder, and various sexual crimes against children; the system is also known as the *National DNA Index System (NDIS)*, which holds the DNA of known offenders
  - b. **Daubert Standard:** A test of scientific acceptability applicable to the gathering of evidence in criminal cases; DNA evidence meets the Daubert standard of scientific evidence
- 4. **Fingerprinting:** Also referred to as *dactyloscopy*, the prints or impressions produced by the friction ridges of the inner surface of the fingertips
  - a. **AFIS (Automated Fingerprint Identification Systems):** A computer-based fingerprint recording and classification system; many AFIS computers have the ability to live-scan prints, thereby supplanting the traditional paper-and-ink method of fingerprint-taking

## Prosecution & Pretrial Services



5. **Ballistics:** The analysis of firearms, ammunition, projectiles, bombs and explosives
6. **Solvability Factor:** Information about a crime that forms the basis for determining the perpetrator's identity
  - a. **Clearance Rate:** The number of known offenses that have been cleared, divided by the total number of offenses known to police
  - b. **Dark Figure of Crime:** A phrase referring to the number of crimes that remain unknown or unreported to police

### II. Charging the Suspect

- A. **Arrest:** The act of taking an adult or juvenile into physical custody by authority of law for the purpose of charging the person with a criminal offense, a delinquent act or a status offense
  1. **Charge:** An allegation that a specific person or group has committed a specific offense, which is recorded in a document such as a record of arrest, a criminal complaint, an indictment or a judgment of conviction
- B. **Arrest Without a Warrant:** A law enforcement officer may, without a warrant, arrest a person when:
  1. The person to be arrested has committed a felony or misdemeanor in the officer's presence (in the case of such arrest for a misdemeanor, the arrest shall be made immediately or while in fresh pursuit)
  2. The person to be arrested has committed a felony, although not in the officer's presence
  3. A felony has in fact been committed, and the officer has **reasonable grounds/suspicion** to believe that the person to be arrested has committed it

- a. **Reasonable Suspicion:** A belief based on a consideration of the facts at hand (and on reasonable inferences drawn from those facts) that would induce an ordinarily prudent and cautious person under the same circumstances to conclude that criminal activity is taking place or has recently occurred
4. The officer has reasonable grounds/suspicion to believe that a felony has been or is being committed and reasonable grounds to believe that the person to be arrested has committed or is committing it
  - a. **Emergency Search:** A search that is conducted by police without a warrant and is justified on the basis of some immediate and overriding need, such as public safety, the likely escape of a dangerous suspect, or the removal or destruction of evidence
- C. **Arrest Warrant:** An official document, signed by a judge or other authorized court official, accusing an individual of a crime and authorizing law enforcement personnel to take that person into custody
  1. **Reasonable Force:** The police must only use a degree of force that is appropriate in a given situation and is not excessive
  2. **Excessive Force:** The application of an amount and/or frequency of force greater than that required to compel compliance from a willing or unwilling subject
    - » **Example – The controversial arrest of Rodney King (1991)**
  3. **Deadly Force:** That level of force likely to cause death or great bodily harm; it is never justified in making an arrest for a misdemeanor offense; even in felony situations, officers who use deadly force do so at their own risk, and may be held civilly or criminally liable for negligence



- a. Unless the suspect poses a significant threat of death or serious physical injury to the officer or another, deadly force cannot legally be used; cited in *Tennessee v. Garner* (1985)
- D. **Miranda Warnings:** The advisement of certain rights afforded to criminal suspects before questioning begins; the Miranda rights were established with the 1966 U.S. Supreme Court ruling of *Miranda v. Arizona*

**Warning Rights**

- You have a right to remain silent
- Anything you say can and will be used against you in a court of law
- You have the right to talk to a lawyer and to have a lawyer present when you are being questioned
  - If you want a lawyer before or during questioning but cannot afford to hire a lawyer, one will be appointed to represent you at no cost before any questioning
  - If you answer questions without a lawyer present, you still have the right to stop answering questions at any time

**Waiver of Rights**

Statements to be read after the Miranda rights have been read to the suspect:

- Do you understand each of the rights I have explained to you?

- If yes, having these rights in mind, do you now wish to answer any questions?
- If yes, do you now wish to answer without a lawyer present?
- If a juvenile (ages 14 to 17), do you now wish to answer questions without your parents, guardians or custodians present?

E. **The Interrogation:** To probe, with questions, persons believed to be involved in a crime; to question in detail with the purpose of obtaining information relative to the involvement in crime of the person being questioned

1. **Admission:** A voluntary statement or acknowledgment, made by a party, that is admissible in court as evidence against that person
2. **Confession:** A statement, usually recorded, by a person who admits violating the law; an admission of criminal activity
  - a. A confession must be given voluntarily, without force, threats, promises, or coercion being used by the officer receiving the confession
  - b. Under the Miranda ruling, persons being interviewed must be warned of their constitutional rights, and

suspects must understand and waive such rights before any incriminating statements they make in response to questions can be admitted into evidence

**III. Booking of the Suspect Following an Arrest**

A. **Booking:** Following an arrest, suspects are booked and processed

1. A law enforcement or correctional administrative process officially recording an entry into detention after arrest and identifying the person, the place, the time, the reason for the arrest, and the arresting authority
2. During the booking process, the suspect will be photographed, be required to complete a fingerprint identification card, and relinquish all personal artifacts which will be inventoried
3. The suspect's personal information will be permanently recorded, including the suspect's name, address, date of birth, height and weight
4. Details of the criminal charges lodged against the individual are recorded and an administrative recording of the arrest is created
5. The suspect will, once again, be advised of his/her rights under the Miranda ruling
6. The arrested suspect may be remanded to a custodial/detention facility, which is a secure facility

**CRIMINAL PROSECUTION****I. Pre-Trial Activities**

A. **Initial Appearance:** Within hours of the arrest, suspects must be brought before a magistrate, judge or any other judicial officer for an initial appearance; the judge will inform the **defendant** (also known as the *accused*) of the charges that have been lodged against him/her, advise him/her of his/her rights, and may post bail

[NOTE: Criminal charges may be dropped or dismissed at the **initial appearance**, or the accused may be diverted out of the criminal justice system at this stage or any other stage prior to a decision being rendered in regard to the defendant's fate]

1. **Judge:** An elected or appointed public official who presides over a court of law and who is authorized to hear and sometimes decide cases and conduct trials
2. **Bail:** The money or property pledged to the court or actually deposited with the court to effect the release of a person from legal custody
3. **Bail Bondsman:** An individual, usually licensed, whose business it is to effect release on bail for people charged with offenses and held in custody, by pledging a sum of money if the defendant fails to appear in court as required
4. **Preventive Pretrial Detention:** A procedure that allows an individual to be held in custody without the benefit of bail; historically, the only condition for denying bail, other than in capital cases, has been that the accused might flee in order to avoid prosecution
5. **Bail Revocation:** The court decision withdrawing the status or release on bail that was previously conferred upon a defendant
6. **Bench Warrant:** A document issued by a court directing law enforcement to bring a specified person before the court; often issued upon those who have failed to obey a court order or a notice to appear
7. **Diversion:** The official suspension of criminal or juvenile proceedings against an alleged offender at any point after a recorded criminal justice intake but before the entering of a judgment and a decision, either to refer the person to a substance-abuse treatment program or psychiatric/medical-care program administered by a non-justice or private agency

**II. Preliminary Phase**

A. **Preliminary Hearing:** The primary purpose is to establish whether sufficient evidence exists against the accused to establish a *prima facie* case and to continue the justice process; it also allows the **defense counsel** a chance to assess or discover the strength of the **prosecution's** case; the prosecution may present **witnesses** and will offer evidence in support of the criminal complaint; the defendant is afforded the right to testify and may also call witnesses; in short, a preliminary hearing is a proceeding before a judicial officer in which three matters must be decided:

1. Whether a crime was committed
  2. Whether the crime occurred within the territorial jurisdiction of the court
  3. Whether there are reasonable grounds (**probable cause**) to believe that the defendant committed the crime [NOTE: Criminal charges may be dropped or dismissed at this stage]
    - a. **Probable Cause:** A set of facts and circumstances that would induce a reasonably intelligent and prudent person to believe that a particular other person has committed a specific crime
      - **Prima Facie:** The prosecution must prove that there is probable cause to believe that a crime has been committed and the accused (defendant) probably committed the specified crime(s) in question
    - b. **Expert Witness:** A person who has special knowledge and skills recognized by the court as relevant to the determination of guilt or innocence
    - c. **Witness:** A witness is typically anyone called to testify, as directed in a subpoena, by either the prosecution or the defense in a hearing; the witness is sworn in, under oath, and offers evidence deemed relevant to the case by testifying to what he/she has observed or has knowledge of, in regard to a particular criminal event; because a witness is sworn in under oath, the witness must present factual evidence to avoid being criminally charged with **perjury**
      - **Testimony:** Oral evidence offered by a sworn witness on the witness stand during a criminal trial
      - **Hearsay:** A statement made in which the witness has no direct personal knowledge; hearsay evidence is inadmissible in court
      - **Perjury:** The intentional making of a false statement as part of the testimony by a sworn witness in a judicial proceeding on a matter relevant to the case
      - **Subpoena:** A formal written writ, issued by a judicial officer, demanding a person to appear in court at a specified date and time, to testify or to bring specified materials with him/her
- B. **Defense Counsel** (commonly referred to as a *defense attorney*): Counsel for the defendant; an attorney who represents and aids the defendant in a criminal action; defense counsel may be hired privately or appointed (**public defenders**) by the court
1. **Public Defender:** An attorney appointed by a court to represent indigent individuals (i.e., those who do not have the resources to hire their own defense counsel) in criminal proceedings (not provided to defendants in civil trials)
    - a. Defense counsel will typically provide evidence and arguments to show why the defendant should not be held liable for a criminal charge
- C. **Prosecutor:** An attorney who is the elected or appointed chief of a prosecution agency and whose official duty is to conduct criminal proceedings on behalf of the people (citizens) against persons accused of committing criminal offenses; also called district attorney, DA, state's attorney, county attorney, U.S. Attorney; any attorney deputized to assist the chief prosecutor

1. **Prosecute:** To bring a matter or person into a court of law with a view of obtaining justice
2. **Prosecuting Agency:** A federal, state or local criminal justice agency whose principal function is the prosecution of alleged offenders
- D. **Information or Indictment:** In some states, the prosecutor may seek to continue the case against a defendant by filing an **information** with the court; other states may require that an **indictment** be returned by a **grand jury** before prosecution can proceed
  1. **Information:** A formal, written accusation submitted to a court by a prosecutor, alleging that a specified person has committed a specified offense
  2. **Indictment:** A formal, written accusation submitted to the court by a grand jury, alleging that a specified person has committed a specified offense, usually a felony
    - a. **Grand Jury:** A group of jurors (typically 23) who have been selected according to law and have been sworn to hear the evidence and to determine whether there is sufficient evidence to bring the accused to trial, to investigate criminal activity generally, or to investigate the conduct of a public agency or official; a grand jury could refuse to indict for a number of reasons, including:
      - Lack of probable cause
      - Lack of evidence
      - Lack of formal rules of criminal procedure

### III. Arraignment

A hearing before a court having jurisdiction in a criminal case in which the identity of the criminal defendant is established; the defendant is informed of the criminal charge(s) and his/her rights, and the defendant is required to enter a **plea**

- A. **Plea:** A defendant's formal answer in court to the criminal charges contained in a complaint, information or indictment: That is, **guilty** or **not guilty** of offense(s) charged, or **does not contest** to the charge (*nolo contendere*)
  1. **Guilty:** By entering a guilty plea, the criminal defendant acknowledges that he/she did commit the offense(s) listed; a guilty plea bypasses the need for a criminal trial, insofar as the defendant is admitting guilt; sentencing will follow shortly after a guilty plea has been entered
  2. **Not Guilty:** By entering a not-guilty plea, the criminal defendant claims that he/she did not commit the offense(s) listed; after the court accepts the not-guilty plea, a trial date will be set in which the defendant's innocence or guilt will be determined by a judge (bench trial) or a jury (jury trial)
  3. **Nolo Contendere:** A Latin term translated, "no contest"; a no-contest plea is used when the defendant does not wish to contest conviction; sentencing will follow shortly after a no-contest plea has been entered
- B. **Plea Negotiation:** The process of negotiating an agreement among the defendant, the prosecutor and the court, as to an appropriate plea and associated sentence in a given case; charges may be reduced or dropped or the sentence may be significantly reduced; plea bargaining circumvents the trial process and dramatically reduces the time required for the resolution of a criminal case [NOTE: As many as 90 percent of all criminal cases prepared for trial are eventually resolved through plea negotiations, thereby bypassing the need for a trial]
- C. **Pretrial Motions:** A request that the judge file an order of some type; initiated by either the prosecution or the defense
- D. **Pretrial Discovery:** The disclosure by the prosecution and/or the defense of evidence in their possession, prior to trial, generally in compliance with a discovery order of the court; the opportunity to obtain additional information about the opponent's case and to inspect physical evidence

### IV. Criminal Trial

The American criminal justice trial system is an **adversarial system** that pits the **prosecution against the defense**; in the U.S., it is assumed that **criminal defendants are innocent until proven guilty** [NOTE: All criminal trials must follow stringent **rules of evidence**]

- A. **Rules of Evidence:** Court rules that govern the admissibility of evidence at criminal hearings and trials
- B. **Stages of a Criminal Trial:** The criminal trial proceeds through the following eight stages:
  1. **Trial Initiation:** Under the *Speedy Trial Act of 1974*, a criminal case must be brought before the court within a specified number of days (varies from state to state)
    - a. **Jury Selection:** The 6<sup>th</sup> Amendment of the U.S. Constitution guarantees every defendant the right to an impartial jury of his/her peers (typically 12 citizens); the prosecution and defense will use a number of legal challenges, which vary from state to state, to ensure the impartiality of the jury being impaneled; this process is also known as *voir dire* examination
    - b. **Challenge for Cause:** The right to challenge a potential juror who is believed to be biased, thereby preventing him/her from acting impartially and without prejudice during the criminal trial

- c. **Peremptory Challenge:** The right to challenge a potential juror without disclosing the reason for the challenge; prosecutors and defense attorneys routinely use peremptory challenges to eliminate from juries individuals who, although they express no obvious bias, are thought to be capable of swaying the jury in an undesirable direction
2. **Juror:** A member of a trial or grand jury who has been selected for jury duty and is required to serve as an arbitrator of facts in a court of law; jurors are expected to render verdicts of "guilty" or "not guilty," as to the charges brought against the accused
  - a. Once a jury has been selected, alternates may be chosen to replace jurors who cannot fulfill the requirements of jury duty
  - b. Once the selection process has been completed, the jurors will be sworn in by the court
  - c. Some juries may be **sequestered**, which means that the jury is isolated from the public during the course of the trial and throughout the deliberation process

» *Example – The jury in the O.J. Simpson trial (1995)*

3. **Opening Statements:** The initial statement of the prosecution or the defense, made in a court of law to a judge alone (bench trial), or to a judge and jury (jury trial), describing the facts that each side intends to present during the trial to prove the case; attorneys from each side can only introduce evidence that each intends to present during the trial, as each is bound by a "good faith" ethical requirement
4. **The Presentation of Evidence:** The heart of a criminal trial often relies on the evidence that each side (prosecution and defense) presents to the jury
5. **Closing Arguments:** Once the trial has concluded, both the prosecution and the defense have an opportunity to present an oral summation of a case to the judge (bench trial) or the judge and jury (jury trial)
6. **The Charging of the Jury:** The judge provides detailed instructions to the jury regarding any legal issues or points of law which are applicable to the case and asks the jury to deliberate on the evidence that has been presented until it reaches a verdict
7. **Jury Deliberations:** Jury weighs the evidence that has been presented; deliberations may range from brief (matter of minutes) to lengthy (matter of days); deliberations will continue until a unanimous verdict can be rendered
8. **Verdict:** The unanimous decision of the jury in a jury trial or of a judicial officer (i.e., judge) in a non-jury trial (bench trial); the jury's verdict will either result in an **acquittal** (the judgment of a court, based on a verdict of a jury or a judicial officer, that the defendant is "**not guilty**" of the offense[s] for which he/she was tried) or a **conviction** (the decision of the jury in a jury trial or of a judge in a bench trial that the defendant is "**guilty**" of the offense[s] for which he/she was tried)
  - a. **Hung Jury:** The jury, after exhaustive deliberations, cannot agree on a unanimous verdict, necessitating a mistrial and a subsequent retrial
  - b. **Mistrial:** A trial that has been terminated and declared invalid by the court because of some circumstance that creates a substantial and uncorrectable prejudice to the conduct of a fair trial, or that makes it impossible to continue the trial in accordance with the prescribed procedures
  - c. **Not Guilty by Reason of Insanity:** The plea of a defendant or the verdict of a jury or judge in a criminal proceeding that the defendant is "not guilty" of the offense charged because, at the time the crime was committed, the defendant did not have the mental capacity to be held criminally responsible for his/her actions; the defendant may be remanded to a psychiatric/mental-health facility, not as a punishment, but rather to aid the individual in his/her recovery
  - d. **Guilty but Mentally Ill:** A verdict, equivalent to a finding of "guilty," which establishes that the defendant, although mentally ill, was in sufficient possession of his/her faculties to be morally blameworthy for his/her acts; the individual will be punished, however, there will be an emphasis on treating the mental disorder

### V. Sentencing

The penalty phase, whereby sanctions (punishment) are imposed by a court on a person **convicted** of a crime in a trial or one that has **pled guilty** to the charge(s)

- A. **Presentence Investigation Report:** An investigation undertaken by a probation agency or other designated authority, at the request of the court, to generate a comprehensive report that examines a convicted offender's background prior to sentencing (including the offender's past behavior, family circumstances, past convictions, mental-health history, medical history, substance-abuse history, and any other pertinent information deemed necessary to aid the court in imposing the most appropriate sentence)
- B. **Victim-Impact Statement:** A written or oral statement permitted in court during the sentencing phase, allowing the victim or another (typically the surviving family members) to inform the court of the personal impact of the offender's criminal behavior

- C. **Mitigating Circumstances:** Circumstances relating to the commission of a crime that may be considered to reduce the blameworthiness of the defendant  
 » *Examples – The defendant's age, a substance-abuse problem or a lack of a criminal record*
- D. **Aggravating Circumstances:** Circumstances relating to the commission of a crime that make it more grave than the average instance of that crime  
 » *Example – A rapist who uses torture and other acts of excessive brutality during the commission of a rape*

## VI. Sentencing Options

- A. **Fine:** A sanction imposed by a court on a convicted person, stipulating a specific sum of money to be paid to the court
- B. **Probation:** A sanction that allows for the conditional release of a convicted offender into the community under the supervision of a **probation officer**; it is essentially a sentence of imprisonment that is suspended as long as the offender meets certain conditions
1. **Probation Officer:** An official of a probation agency (local, state or federal) charged with the responsibilities of supervising probationers and the conducting of presentence investigations
  2. **Probation Revocation:** A court order taking away a convicted offender's probationary status in response to a violation of the conditions of probation (*Gagnon v Scarpelli – 1973*)
    - a. **Revocation Hearing:** A hearing concerning the withdrawal of either privilege of probation or parole, as a result of the offender's behavior that has allegedly violated the conditions of the probation or parole contract or the criminal law, which may result in being re-sentenced to a prison term
- C. **Intermediate Sanctions:** The use of split sentencing, shock incarceration, community service, intensive probation supervision, home confinement, electronic monitoring or global positioning in lieu of other, more traditional sanctions, such as imprisonment, probation, or fines (also referred to as **alternative sanctions**)

## VII. Sentencing Provisions

- A. **Indeterminate Sentencing:** A sentencing scheme that encourages rehabilitation, whereby an offender is sentenced to a "non-fixed" range of incarceration in which there is a minimum and maximum sentence  
 » *Example – A sentence of 5 to 10 years in prison*
  1. **Minimum Sentence:** The minimum amount of time to be served in confinement (5 years in the above example)
  2. **Maximum Sentence:** The maximum amount of time to be served in confinement (10 years in the above example)
- B. **Determinate Sentencing:** A sentencing scheme wherein the offender is given a "fixed" sentence that may be reduced for either prior earned time or good behavior  
 » *Example – A sentence of 6 years in prison*
  1. **Good Time Credit:** Time that is deducted from the offender's sentence as a result of good behavior
- C. **Mandatory Sentencing:** A statutory provision requiring that a specified penalty be imposed for specific offenses upon conviction, despite special mitigating circumstances  
 » *Example – Three-Strikes Laws*
  1. **Three-Strikes Laws:** Statutes that require mandatory sentences for offenders convicted of a third felony offense; deterrence is aimed at known and potentially violent offenders, and is intended to incapacitate convicted criminals through long-term incarceration
- D. **Suspended Sentence:** The court-ordered decision to delay imposing or executing a penalty for a specified or unspecified period; the defendant is unconditionally discharged in abeyance, as long as the defendant remains on good behavior for a specified or unspecified period
- E. **Death Sentence:** The imposition of a sanction of death upon a criminal; conviction for a small number of criminal offenses that generally must meet special aggravating circumstances; considered to be the most extreme of all sentencing options
- F. **Appeal:** A request to a court with appellate jurisdiction to review the judgment, decision or order of a lower court, and then to reverse or modify the lower court's decision
  1. **Appellant:** An individual who contests the judgment or other decision of a court by seeking relief in a court having appellate jurisdiction
  2. **Appellate Court:** A court whose primary function is to review the judgments of other courts and administrative agencies

## VIII. Corrections

The branch of the criminal justice system dealing with the custody, control, treatment and rehabilitation of prisoners

- A. **Jail:** A custodial/detention facility generally located at the county seat and administered by the sheriff's office or a county jail administrator; it is a temporary or short-term custodial facility (usually a year or less), which holds individuals detained pending adjudication or those who have been convicted of a crime

1. **Sheriff:** The elected chief law enforcement officer of a county law enforcement agency who is responsible for law enforcement in unincorporated areas of the county and for the operation of most county jails
- B. **Prison:** A state or federal correctional institution housing those convicted of felony violations and sentenced to a period of incarceration for no less than one year
1. **Corrections Officer:** An individual, employed by a local, state or federal correctional institution, who is responsible for the care, custody and control of prisoners
  2. **Prisoner** (also referred to as **inmate**, **convict** or **detainee**): A term used to describe:
    - a. An individual held in police custody
    - b. An individual detained in jail awaiting trial
    - c. An individual serving a sentence in jail for a misdemeanor conviction
    - d. An individual sentenced to a state or federal correctional facility for which the sentence is a period of incarceration for no less than one year
- C. **Community Corrections:** A model of corrections based on the assumption that reintegrating (based on the **reintegration model**) the offender into the community should be the goal of the criminal justice system
1. **Community Correctional Center:** A small group-living facility for offenders, especially those who have been recently released from prison
    - a. **Reintegration Model:** A model of correctional institutions that emphasizes maintenance of the offender's ties to family and the community as a method of reform, in recognition of the fact that the offender will be returning to the community
- D. **Habeas Corpus:** Translated as, "you have the body"; the shortened form of the writ of *habeas corpus ad subjiciendum*
  1. The writ is a procedural device used to challenge the lawfulness of the detention of a person who has been taken into custody
- E. **Clemency/Pardon:** Considered an "act of grace" on the part of the chief executive of the sovereignty (typically the state's governor); a remission for criminal acts that restores all rights and privileges of citizenship taken at the time of conviction

## IX. Parole

The discretionary and conditional release of an individual after serving a portion (typically the minimum) of the sentence in prison, under the authority of the court or a parole board; parolees are placed under the supervision of a parole officer (agent) for the duration of the sentence of incarceration

- A. **Parole Officer:** An official of a parole agency (local, state or federal) charged with the responsibilities of supervising parolees and the conducting of pre-parole investigations
- B. **Parole Board:** A state paroling authority that decides when an incarcerated offender is ready for conditional release; the board also functions as a revocation hearing panel
- C. **Parolee:** An individual conditionally released from a sentence of incarceration by the paroling authority, prior to the expiration of his/her judicially imposed sentence; the parolee is placed under the supervision of a parole officer and required to observe all conditions stipulated in the parole contract
  1. **Parole Revocation:** An administrative action taken by the paroling agency (after a negative ruling emanating from a revocation hearing) removing the parolee from the status of parole, as a result of a **technical violation** of the parole contract or a "new" violation of the criminal law [NOTE: A revocation proceeding generally results in the offender being remanded to prison]
    - a. **Technical Violation:** A violation of one or more of the stipulated technical rules in the parole contract  
 » *Example – Failing to report for a scheduled meeting with the probation officer*

## X. Capital Punishment

A sanction issued by a court imposing a sentence of death by means provided by statute; considered to be one of the most controversial forms of punishment

- A. **Death Sentence:** The imposition of the sanction of death upon a criminal convicted of a **capital offense**  
 » *Example – Homicide*
- B. **Capital Offense:** Generally any offense punishable by death  
 » *Example – Murder in the First Degree*
- C. **Death Row:** The section of the prison reserved for housing inmates who have been sentenced to death

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