

.The. Criminal Justice System

An Introduction



FOURTH EDITION

Ronald J. Waldron

THE CRIMINAL JUSTICE SYSTEM

An Introduction

FOURTH EDITION



1817

HARPER & ROW, PUBLISHERS, New York
Grand Rapids, Philadelphia, St. Louis, San Francisco,
London, Singapore, Sydney, Tokyo

Sponsoring Editor: Alan McClare
Project Editor: Steven Pisano
Text Design Adaptation: Barbara Bert/North 7 Atelier Ltd.
Cover Design: Edward Smith Design Inc.
Text Art: Fineline Illustrations, Inc.
Photo Research: Mira Schachne
Production Manager: Jeanie Berke
Production Assistant: Paula Roppolo
Compositor: ComCom Division of Haddon Craftsmen, Inc.
Printer and Binder: R. R. Donnelley & Sons Company
Cover Printer: Lynn Art Offset Corporation

The Criminal Justice System: An Introduction, Fourth Edition

Copyright © 1989 by Harper & Row, Publishers, Inc.

All rights reserved. Printed in the United States of America. No part of this book may be used or reproduced in any manner whatsoever without written permission, except in the case of brief quotations embodied in critical articles and reviews. For information address Harper & Row, Publishers, Inc., 10 East 53rd Street, New York, NY 10022-5299.

Library of Congress Cataloging in Publication Data

The criminal justice system: an introduction / Ronald J. Waldron . . .

[et al.].—4th ed.

p. cm.

Includes bibliographies and index.

ISBN 0-06-046886-6

1. Criminal justice, Administration of—United States.

2. Corrections—United States. I. Waldron, Ronald J.

KF9223.C75 1989

345.73'05—dc19

[347.3055]

88-23226

CIP

89 90 91 9 8 7 6 5 4 3 2 1

THE CRIMINAL JUSTICE SYSTEM

Ronald J. Waldron
United States Department of Justice

Chester L. Quarles
University of Mississippi

R. Paul McCauley
Indiana University of Pennsylvania

Hilary Harper
Ph.D., Sam Houston State University

Robert L. Frazier
Lamar University

James C. Benson
University of Houston/Clear Lake

John R. Altemose
Lamar University

Preface

This book views the criminal justice system as a whole composed of many subsystems—the police, the prosecutors, the courts, and corrections, including probation and parole. It describes the subsystems of the criminal justice system as the authors know them to be—not as they should be.

The system approach has proved viable, and the first, second, and third editions of *The Criminal Justice System* were well received. Since the development of the third edition, however, some major changes have taken place in the criminal justice system, and we have recognized the need to improve and update the text. This fourth edition incorporates the latest developments while retaining the basic organization of previous editions. Illustrations have been revised to reflect the latest facts and figures.

New topics include alternative dispute resolution, career criminal programs, sentencing commissions, sentencing guidelines, privatization of criminal justice activities, biometrics, and electronic home monitoring, to name but a few. To provide for improved documentation of legal points, the citation of relevant legal cases has been expanded considerably. Overall, a concerted effort was made to update material, eliminate redundancies, and organize the text throughout for logical order and consistency.

This book is designed to provide students with basic information on the criminal justice system. The first part of the text places the criminal justice system in proper perspective. Students are first introduced to the nature of law and society in general. The methods for assessing the amount of crime are presented, followed by a brief overview of criminal justice agencies and the criminal justice process. The criminal justice agencies are discussed in the order in which they are usually encountered when an individual goes through the criminal justice process. Sections on the police, the prosecution and defense, the courts, corrections, and probation and parole all follow a pattern: within each of these sections the history, present structure, current functions, and contemporary problems of each major area are thoroughly discussed. The final sections of the text speculate on what the future will bring for the criminal justice system.

A number of pedagogical features have been built into the fourth edition to help students master the material. Each chapter begins with an outline, so that students can quickly see what will be covered, and a statement of purpose, to help students understand exactly what they are supposed to master and why. Over 75 illustrations have been included to assist in the clarification and further development of topics in the text. At the end of each chapter, a summary and a list of key terms will aid students in reviewing material, and a

series of discussion questions will help stimulate thought. An annotated bibliography at the end of each Part will guide the interested student toward additional readings. We have prepared a computerized learning course based on this book. It is available by using the order form in the back of the book or by writing

The Criminal Justice System
4402 Pickett Road
Fairfax, VA 22032

At the back of the text are three appendixes and a glossary. Appendix A is an extremely handy reference for all students of the justice system: the United States Constitution. Appendix B describes the career opportunities available for anyone desiring to pursue a career in the criminal justice field. This is an excellent source of career information and the student might want to retain the text for use in the developing job leads in the latter years of college. Appendix C highlights major criminal law cases according to the functional areas of the criminal justice system. The glossary provides definitions of justice-system terms that every student of criminal justice ought to know.

The authors would like to express their special thanks to Dr. George Killinger, the former Dean of the School of Criminal Justice, Sam Houston State University. We all at one time or another were students of Dr. Killinger, and his generous giving of his time and resources made the first edition of this textbook a reality over a decade ago. In addition, we would like to thank the reviewers who assisted in the refinement of the text over the years. They include:

Vincent J. Capozzella/*Jefferson Community College*
A. P. Hernandez/*Arizona State University*
Maurice D. Lafferty/*College of Marin*
Walter Lewis/*St. Louis Community College*
Janet E. McClellan/*Park College*
Francis W. Norwood/*Middle Tennessee State University*
George T. Payton/*Evergreen Valley College*
Robert M. Regoli/*University of Colorado*
Ronald J. Rossi/*The University of Toledo*
Stanley W. Wisnioski/*Broward Community College*

The opinions expressed in this book are the authors' and are not necessarily those of the institutions that employ them.

Ronald J. Waldron
Chester L. Quarles
R. Paul McCauley
Hilary Harper
Robert L. Frazier
James C. Benson
John R. Altemose

Contents

Preface xix

One:

OVERVIEW: THE CRIMINAL JUSTICE SYSTEM 1

1 *Law and Society* 2

Sociology of Law 4

- The Evolution of Law 4
- The Nature of Law 5
- A Normative Legal System 5

General Functions of Law 6

Rule of Law 7

Divisions of Law 8

- Substantive Law and Procedural Law 8
- Civil Law and Criminal Law 9
- Statutory Law and Common Law 9

Sources of Law 11

Nature, Formulation, and Development of Criminal Law 13

- Controlling Crime in Primitive Societies 13
- Criminal Law in Ancient Greece 14
- Criminal Law in Ancient Rome 14
- Criminal Law in Medieval England 15
- Criminal Law in Colonial America 15
- Criminal Law in Postrevolutionary America 17
- Contemporary Criminal Law in America 18

Basic Premises of Criminal Law 19

- The Principle of Legality 19
- Guilty Act (*Actus Reus*) 20
- Mental State (*Mens Rea*) 21
- Concurrence in Time 21
- Harm (an Injury or Result) 22
- Causation 22

Legal Analysis 22

Purpose and Object of Criminal Law 23

- Deterrence 23
- Rehabilitation 25
- Restraint 26
- Retribution 26
- Education 26
- Restitution 26

Classification of Crimes 27

- Crimes of Social Harm 27
- Felonies and Misdemeanors 27
- Crimes *Mala in Se* and *Mala Prohibita* 28
- Infamous and Noninfamous Crimes 28
- Crimes of Moral Turpitude 29
- Common-Law Crimes and Statutory Crimes 29
- Major Crimes and Petty Offenses 29

Chapter Summary 29**2 *Counting Crime* 34**

- Uniform Crime Reports (UCR)* 35
- Structure of the UCR Program 36
- Uniform Crime Reporting Offenses 36
- Data Collection Procedures 37
- Data Analysis 38
- Trends in Crime 40
- Persons Arrested 41
- Assessing the Magnitude of Crime 41
- UCR Performance 42
- Blueprint for the Future UCR Program 44
- Victim Survey Research 44
- Crime Victimization 47
- Some Myths and Realities About Crime 48
- The Impact of Crime 53
- Chapter Summary 54

3 *The Criminal Justice System* 58

- Police 61
- Prosecution 62
- Criminal Court System 62
- Probation 63
- Corrections 63
- Parole 64
- Criminal Justice System as a System 65
- The Systems Approach to Criminal Justice 67
 - Examining the Whole System and Its Parts 67

Understanding Goals and Objectives	68
Stating Goals in Measurable Terms	69
Developing Alternative Systems	70
Long-Range Contributions of the Systems Approach	71
Measuring Effectiveness of Agencies and Programs	71
Resolving Conflicts within the System	71
Setting Criminal Justice System Priorities	71
Short-Range Benefits of the Systems Approach	72
Concentrating on Goals	72
Using a Systems Approach to Criminal Justice Subsystems	73
Limitations of the Systems Approach	73
Omitting Important Goals of the System	73
Assuming That Only the Criminal Justice System Can Be Changed	74
Chapter Summary	74

4 *The Administration of Justice in the United States* **76**

Due Process of Law	78
The Adversary System	78
The Criminal Incident	81
Prearrest Investigation	83
Apprehension	84
Constitutional Protections	84
The Arrest	85
Fourth Amendment	86
The Law of Confessions	86
Police Discretion	87
Booking	87
Case Screening	88
Police Interrogation	89
Constitutional Protections	90
Initial Appearance and Bail	91
Release on Bond	91
Release on Recognizance	92
Pretrial Detention	93
Assigned Counsel	93
Investigation	94
Constitutional Protections	94
The Exclusionary Rule	95
Preliminary Hearing	95
Characteristics of the Administration of Criminal Law	96
Trial Court Information Systems	97
The Decision to Charge	99
Alternative Dispute Resolution (ADR)	99
Career Criminal Programs	100

Grand Jury Indictment or Information	101
Constitutional Protections	101
Arraignment in Court of Trial	103
Exchange Justice	104
Shock Probation	105
Presentence Investigation Reports	106
Guilty Plea	106
Taking the Plea	107
Constitutional Protections	107
A Plea of Not Guilty	108
Filing a Motion	108
Trial	108
Speedy Trial	109
Right to Trial by Jury	109
Jury Selection Procedures	109
Prosecution's Case	110
The Brady Requirement	110
Defense Motion	110
Defense Case and Prosecution Rebuttal	111
Instructions of the Court to the Jury	111
Arguments to the Jury	111
Charging the Jury	111
Deliberation and Verdict	112
Sentencing	112
Appeals	113
<i>Habeas Corpus</i>	114
Juvenile Justice System	114
Juvenile Proceedings	115
Preadjudicatory Phase	115
Adjudicatory Hearing	116
Dispositional Hearing	117
Chapter Summary	117
<i>Part One: Annotated Bibliography</i>	120

Two: **THE POLICE 123**

5 *History and Development of Police 124*

Early English Development	127
Frankpledge System (A.D. 800)	127
Origin of Modern Policing	129
Nineteenth-Century Developments in England	129
Twentieth-Century Developments in England	131
Police Development in the United States	132
Municipal and County Law Enforcement	132

State Law Enforcement	133
Federal Law Enforcement	135
Chapter Summary	136

6 *Law Enforcement in the United States 138*

Law Enforcement: A Legal Construct	140
Federal Law Enforcement	140
State Law Enforcement	141
Local Law Enforcement	142
County Law Enforcement	142
Municipal Law Enforcement	143
Regional Policing	144
Special and Auxiliary Police	145
Nongovernmental Police: Private Security	145
Coordination and Cooperation of Police	147
Contract Law Enforcement	147
Coordination of Federal Resources	148
Interpol	148
Chapter Summary	150

7 *Police Management, Organization, and Operations 152*

Police Organization	153
Primary Line Functions	153
Secondary Line Functions	154
Nonline Functions	154
Staff Services	154
Auxiliary Services	154
Principles of Organization	155
Homogeneous Assignment (Division of Labor)	155
Unity of Command	155
Chain of Command	156
Delegation of Responsibility and Authority	157
Delineation of Responsibility and Authority	157
Span of Control	157
Objective	157
Coordination	157
Time	158
Territory	158
Clientele	159
Police Operations	159
Patrol	159
Traffic	162
Criminal Investigation	164
Intelligence, Terrorism, and Negotiations	166
Chapter Summary	167

8 *Contemporary Issues in Law Enforcement* 170

Role of the Police 172

Maintenance of Order 172

Law Enforcement 172

Service 173

Personnel 174

Civil Service 174

Civilians in Law Enforcement 175

Volunteers in Law Enforcement 175

The Assessment Center 176

Minority Recruitment 177

Personnel Training 177

Minimum Standards 178

Personnel Selection 179

Women Police Officers 180

Executive Training 180

Police Education 181

Law Enforcement Accreditation 182

Lawsuits Against and by Police Officers 183

Interagency Cooperation 183

Concurrent Jurisdiction: Federal Cooperation Against Drugs 185

Police Reorganization 185

Police Rethinking 187

Productivity 187

Police Unions 188

Crime Prevention 189

Crime Analysis 190

Research and Planning 191

Issues in Perspective: An Integrated Solution 192

Chapter Summary 194

Part Two: Annotated Bibliography 196

Three:

PROSECUTION AND DEFENSE 199

9 *History and Structure of Advocacy* 200

The Development of the Law Profession 201

The History of Prosecutorial Services 202

Development of Prosecution in America 204

United States Attorney General 206

State and Local Attorneys General 206

The Prosecutor Selection Process 209

Models of Prosecutorial Behavior 210

Influence of the Contemporary Prosecutor	211
Chapter Summary	211

10 *The State's Advocate* 214

Screening and Diversion	217
Decision to Prosecute	217
Preliminary Hearing	218
Indictment and Information	219
Pretrial Negotiations	220
Arraignment	223
Trial	224
Chapter Summary	226

11 *The Defendant's Advocate* 228

Defense Delivery Services	230
Defense Consultation	234
Role of the Defense	236
Assessing Criminal Defenders	236
Chapter Summary	237

12 *Contemporary Issues in Advocacy* 240

Improving the Offices of the Prosecutor and Public Defender	241
Status Pay	242
Advocacy Training	243
Working with the Police	244
Minimizing Discretion	245
Deciding the Charge	247
Suggesting Informal Alternatives to Prosecution	247
Examining the Role of the Grand Jury	248
Appointing a Public Defender	248
Controlling the Power of the Advocates	249
Chapter Summary	250
<i>Part Three: Annotated Bibliography</i>	251

Four: COURTS 253

13 *Developmental History of Courts* 254

Origin of Courts	256
Courts from Antiquity Through the Middle Ages	257

Development of Modern Courts	257
England	258
Europe	259
Other Continents	259
Development of Courts in the United States	259
Contemporary Courts	260
Chapter Summary	266

14 *Structure of the Courts in the United States* 268

Federal Court System	270
United States Supreme Court	270
United States Courts of Appeals	272
District Courts	274
Military Court System	274
Grade of Court-Martial	275
Safeguards	276
United States Court of Military Appeals	276
State Court System	276
Variety of State Courts	276
Levels of State Courts	277
Juvenile Court System	282
Chapter Summary	284

15 *Functions of the Courts* 286

Interfaces	287
Pretrial	289
Warrants	289
Presentment/Initial Hearing	291
Bail	291
Disposition of Misdemeanors	293
Preliminary Hearing, Information, Return of Grand Jury Indictment	294
Arraignment	294
Pretrial Motions	295
Trial	296
Petit Jury	296
Evidence	297
Witnesses	297
Closing the Trial	298
Sentencing	299
Objectives of Sentencing	299
Sentence Hearing Factors	300
Sentencing Alternatives and Diversion	300
Postconviction Remedies	301
Appeal	301

Appellate Review	301
Other Postconviction Remedies	302
Chapter Summary	302

16 *Court Issues and Problems* **304**

Court Lag	305
Dual Court System and Unification of State Systems	307
Overlap and Conflict	307
Court Unification	308
Quality of Judicial Personnel	310
Qualifications and Training	310
Selection	311
Role	311
Termination	311
Prosecutor's Effect on the Court	312
Court Management of Juries	312
Witnesses	313
Support Personnel of the Court	313
The Clerk of Court	313
Court Administrators	314
Court Reporters	314
Bailiffs	314
The Press and the Courts	315
Television in the Courts	315
Chapter Summary	316
<i>Part Four: Annotated Bibliography</i>	<i>317</i>

Five: **CORRECTIONS** **319**

17 *Background and History of Corrections* **320**

The European Heritage	321
Development of the American Prison System	322
Early Development (1600–1830)	322
The Systems of the 1800s	323
The Reform Era	323
The Industrial Era	324
Recent Prison Development	324
Women's Reformatories	325
Coed Prisons	325
Work Camps	326
Jails	326

Juvenile Training School	327
Juvenile Detention Centers	328
History of Community-based Corrections	328
Community Residential Centers	328
Community Treatment Programs	329
Chapter Summary	329

18 *Correctional Organizations* 332

Concept of Corrections	333
Types of Correctional Organizations	334
Federal Correctional Organizations	334
Military Correctional Organizations	336
State Correctional Organizations	337
Formal Prison Organizations	338
Informal Prison Organizations	340
Local Correctional Organizations	341
Jails	341
Predelinquent Centers	343
Community Residential Centers	344
Chapter Summary	344

19 *Functions of Correctional Organizations* 346

Management and Administration	348
Planning and Policy	348
Facilities Design, Construction, and Management	349
Fiscal Operations	349
Personnel Management	349
Research and Evaluation	349
Custody and Control	350
Security	350
Control Procedures	351
Reception and Intake	352
Classification	353
Correctional Services	353
Food Service	353
Medical Service	354
Inmate Legal Services	355
Correctional Treatment	355
Industry and Agriculture Programs	355
Prisoner or Client Services	356
Counseling, Therapy, and Individual Evaluation	357
Work Furlough	358
Education and Recreation	358
Prerelease Counseling	359
Chapter Summary	359