

# Criminal Law

E I G H T H   E D I T I O N

Thomas J. Gardner  
Terry M. Anderson



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# Criminal Law

*Eighth Edition*

**Thomas J. Gardner**

*Attorney at Law*

**Terry M. Anderson**

*Creighton University School of Law*

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## About the Authors

**Thomas J. Gardner**, after earning a Bachelor of Science degree in economics, served three years as a naval officer in the South Pacific during and immediately after World War II. He then attended and graduated from Marquette Law School with a Juris Doctor degree in 1949. During the Korean War he worked in procurement for the Air Material Command. He also earned a Master of Arts degree in political science. His long association with the criminal justice system began as a criminal defense lawyer. He then worked as a prosecutor, a police legal adviser, and in police in-service legal training. He was a member and president of a police and fire commission.

For twenty-eight years, he taught courses in Criminal Law, Criminal Evidence, and Arrest, Search and Seizure at the Milwaukee Area Technical College complex of campuses. He lives in Milwaukee, Wisconsin, with his wife, Eileen.

**Terry M. Anderson**, Professor of Law, is a Visiting Professor at the Denver University College of Law. He will return to Creighton University School of Law in Omaha, Nebraska, for the 2002–2003 school year. He received his Bachelor of Arts degree in 1968 and Juris Doctor degree in 1971 from the University of North Dakota, where he was a member of the Order of the Coif and the Case Editor of the *North Dakota Law Review*. After earning a Master of Laws degree from Harvard Law School in 1972, he joined the Creighton Law School faculty. He has also been a Visiting Professor of Law at the University of New Mexico. He teaches Contracts, Insurance, and Secured Transactions in Personal Property. His next project is co-authoring a new edition of *Criminal Evidence*.



# Preface

Thomas J. Gardner co-authored the first edition of this text more than twenty-five years ago. The authors' goal then was to introduce law enforcement personnel and others interested in criminal justice to the main principles of American criminal law. To accomplish this goal, they integrated excerpts from case law with a sound and practical textual discussion of the criminal law.

In subsequent editions, Terry M. Anderson joined as a co-author. In those editions, we increased the coverage of the text to reflect its use in more broadly based criminal justice programs. We also increased the number of case excerpts and case references in the text, believing that understanding criminal law demanded an understanding of the importance of court decisions to the growth and development of the criminal law. However, our goal of providing a practical, commonsense discussion of criminal law remained an important part of the text's mission. Throughout the history of this text, readers and reviewers have pointed to the straightforward, readily understandable manner in which it is written as one of its primary strengths. We have endeavored to retain that strength with each new edition.

## New to This Edition

Our goals in this eighth edition of *Criminal Law* mirror those of previous editions: to incorporate the most recent developments in criminal law into the text while at the same time retaining the basic organization and pedagogical approach that we believe best suits this subject. We have accordingly integrated criminal law decisions of the U.S. Supreme Court and the highest state courts from as late as January of 2002 into the text. We have also included discussions of significant legislative acts enacted since the seventh edition, such as the Federal USA Patriot Act of October 2001.

We have made several changes in the subject matter covered in this edition, both in the nature and the extent of that coverage. In Part 1, Chapters 1 and 2 have been reorganized and expanded to include more discussion of the common law in federal and state courts. In Chapter 4, the discussions of conspiracy and criminal attempt have been reorganized and rewritten, and an expanded discussion of the application of factual and legal impossibility has been added to reflect the modern treatment of those issues. In Chapter 6, our discussion of the use of force and physical restraints by law enforcement



officers and the use of force in disciplining children has been updated. We updated the many affirmative defenses discussed in Chapter 7, and, in some cases, such as mistake of fact and double jeopardy, we rewrote them. In Chapter 8, in the discussion of criminal punishment, we expanded and reorganized the discussion of corporal punishment, focusing on the different tests for the use of such punishment when administered in prisons or by state school officials. We also added a new box on the death penalty as applied to juveniles and the mentally retarded; there is some likelihood that the U.S. Supreme Court soon may be prepared to give more definitive answers to those questions. Finally, in Chapter 9, we extensively expanded the discussion of tribal jurisdiction over criminal acts and added a new section on the jurisdiction of military tribunals to try suspected terrorists following President George W. Bush's 2001 order to hold such trials.

In Part 2, we attempted to edit the coverage of the balancing of constitutional rights with need for public order, in the belief that this area is increasingly the subject of a separate course in the criminal justice curriculum. We hope we have retained the essential material for those who wish to cover it in the criminal law class.

The organization of Part 3 remains unchanged. New materials regarding child "safe haven" laws and so-called end-of-life decisions have been added to Chapter 13. In Chapter 14, we added a new section discussing hate crime laws and court interpretations of some of those laws.

In Part 4, we rewrote Chapter 15 to more fully discuss basic property concepts and their relationship to theft of property. Treatment of the theft crimes was also rewritten to better illustrate the elements of those offenses. We have also included an expanded discussion of carjacking. In Chapter 16, the coverage of shoplifting has been updated and includes new materials, such as recent cases explaining more fully when the crime has occurred and recent legislative responses to the liability of store owners who cause customers to be stopped and searched or questioned. A new section on computer crimes has been added that includes computer crime statutes. We substantially edited Chapter 17 to eliminate discussion of some less important crimes, and added coverage of more contemporary issues such as Internet securities fraud. Because of its enormous popular interest, we added a discussion of the events leading up to the Enron scandal in 2001–2002. Though criminal charges against Enron or its officers have not been filed as of the publication of this edition, such charges may come about in the near future.

In Part 5, we rewrote Chapters 18 and 19 to reflect ongoing developments in sex-related crimes and criminal activity. Chapter 19 has an expanded discussion of child pornography, with emphasis on the use of the Internet in that activity. That chapter also includes an exercise devoted to examination of the Child Pornography Prevention Act of 1996 and the *Free Speech Coalition v. Reno* case construing that act. The U.S. Supreme Court has taken certiorari of that case, and its decision obviously will have an enormous effect on Internet activities.

Part 6 includes a new chapter on terrorism, in which we discuss the various terrorist actions of past and recent periods and the statutory responses to those acts. It includes a review of a major part of the U.S. Congress's legislation concerning terrorism enacted in the past one hundred years.



## Supplements Available with This Edition

Supplemental materials available to accompany this new edition consist of the following:

### *Instructor's Manual*

This revised and updated *Instructor's Manual* includes the following for every text chapter: detailed chapter outlines, learning objectives, key terms, critical thinking questions, and a test bank. The completely new test bank features the following for each text chapter: thirty multiple-choice, twenty-five true/false, twenty fill-in-the-blank, and five essay questions.

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- BookFinder
- Terrorism: An Interdisciplinary Perspective
- National Criminal Justice Reference Service Calendar of Events

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### ***Crime Scenes: An Interactive Criminal Justice CD-ROM***

Recipient of several *New Media* magazine Invision Awards, this interactive CD-ROM allows your students to take on the roles of investigating officer, lawyer, parole officer, and judge in excitingly realistic scenarios!

### ***Mind of a Killer CD-ROM***

Voted one of the top one hundred CD-ROMs by an annual PC magazine survey, *Mind of a Killer* gives students a chilling glimpse into the realm of serial killers with over eighty minutes of video, 3-D simulations, an extensive mapping system, a library, and much more.

### ***Internet Guide for Criminal Justice, Second Edition***

Intended for the novice Internet user, this completely updated eighty-page booklet explains the background and vocabulary for navigating the World Wide Web and offers criminal justice-related Web sites and Internet project ideas.

### ***The Criminal Justice Internet Investigator, Third Edition***

This colorful trifold pamphlet lists the most popular Internet addresses for criminal justice-related Web sites. Categories include policing, investigations, courts, corrections, research, juvenile delinquency, victimization, and more.



### ***Key Cases, Comments, and Questions on Substantive Criminal Law***

This book by Henry F. Fradella examines numerous cases with comments, analysis, and fully integrated pedagogy to help students grasp challenging material and test their knowledge through discussion questions.

### ***Careers in Criminal Justice Interactive CD-ROM, Release 2.0***

The *Careers in Criminal Justice Interactive CD-ROM*, Release 2.0, provides extensive career profiling information and self-assessment testing. It is designed to help students investigate and focus on the criminal justice career choices that are right for them. It also offers links and tools to assist students in finding a professional position. The 2.0 version includes seventeen new career profiles and eight new video interviews.

### ***Seeking Employment in Criminal Justice and Related Fields, Fourth Edition***

This book by J. Scott Harr and Karen M. Hess includes a free copy of the new *Careers in Criminal Justice CD-ROM*, Release 2.0. This supplemental book is designed to help students develop a job search strategy through resumes, cover letters, and interview techniques. It also provides extensive information on various criminal justice professions, including job descriptions, job salary suggestions, and contact information.

### ***Guide to Careers in Criminal Justice, Second Edition***

This updated sixty-page booklet helps students review the wide variety of careers in the criminal justice field. Included are job descriptions, salary suggestions, and contact information.

### ***State Guides to Criminal Law (for California, Florida, Maryland, New York, Tennessee, and Texas)***

These concise booklets include topics, laws, and other information related to criminal law specific to each state. State crime enforcement, court procedures, correctional systems, and juvenile justice programs are just a few of the issues covered.

Finally, *Criminal Law*, Eighth Edition, has several new features. Every chapter now has questions and problems and a brief summary at the end of the chapter, a keyword list at the beginning of the chapter, and at least two exercises designed to introduce the InfoTrac College Edition Internet resource to students (available free with the Eighth Edition). We trust these additions will add to the Eighth Edition's pedagogical value.

We hope you find that this new edition of *Criminal Law* retains the best features of past editions while adding material that will enhance the student's understanding of the course. As always, we welcome your comments and suggestions.



## Explanatory Note

The authors have presented the general principles of criminal law in this textbook. However, a few states will vary somewhat in their laws because of statutes or court decisions within that state.

For this reason, it is recommended that students and law enforcement officers consult with their legal advisers before assuming that the law applicable in other states is used in their state.

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Thomas J. Gardner  
Milwaukee, Wisconsin

Terry M. Anderson  
Denver, Colorado



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