



Criminal Law

T W E L F T H E D I T I O N

Thomas J. Gardner Terry M. Anderson

Criminal Law

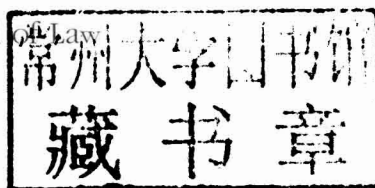
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Dedicated to Eileen Gardner
January 25, 1925–September 26, 2005



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 Materiel 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, as a police legal adviser, and in police in-service legal training. He was a member and president of a police and fire commission. For 28 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.

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Goals

The first edition of this text was published more than 30 years ago. Its goal was to introduce law enforcement personnel and others in the criminal justice field to the main principles of American criminal law. In the subsequent editions, including this, the twelfth edition, we have tried to adhere to that goal and at the same time broaden the scope of the text while also keeping it current. As in past editions, we have included recent court opinions and legislative acts that illustrate the current status of those principles of American criminal law. We have also tried to include information we believe to be helpful to the study of criminal law, taken from governmental reports, empirical studies, and news accounts of current criminal cases and developments. We hope these additions and changes in the twelfth edition serve to advance our goal for this text.

We make extensive use of court opinions, especially U.S. Supreme Court opinions, and case citations in the text. We use these opinions and case citations primarily to illustrate how the majority of courts interpreted and applied criminal statutes within their jurisdiction. We also identify and cite decisions on key points of criminal law so that teachers and students will have a sound basis for doing more extensive research into such points. It has always been our plan to create a text that would prove useful as both a classroom learning tool and a reference book for post-classroom use. We are gratified that users of our text have found that it met that plan in previous editions, and we hope they will conclude the same about this edition.

Features

In this edition we continue to use more detailed case excerpts called Case Close-Ups to examine courts' analyses of difficult or emerging criminal law issues, sometimes including our observations about the possible effect of a court's decision on a particular issue. These case excerpts generally include a more detailed factual statement, and a more complete discussion of the court's reasoning, than in the other case excerpts found in the text. Also, in some chapters we examine an important U.S. Supreme Court case or cases, and then discuss lower court cases that apply the rules announced by the Supreme Court. As an example, in Chapter 8 we include an extensive analysis of the two recent U.S. Supreme Court cases involving juvenile life sentences, *Graham v. Florida*, and *Miller v. Alabama*, together with important lower court decisions decided subsequently.

Where possible, we chose U.S. Supreme Court cases for the Case Close-Up features. In subject areas where the Supreme Court does not ordinarily issue opinions, we chose opinions of the federal circuit courts or the highest state courts. Cases were usually selected because their topics were of current interest, but not

necessarily because the opinion represented the majority view on the topic. We hope these closer looks at important cases will add substance to our coverage of the issues framed in those cases.

We continue to make references to specific state and federal criminal statutes, as well as illustrations from the Model Penal Code, which we have expanded in this edition. For example, in Chapter 6, we include excerpts from the Florida “Stand Your Ground” statute, which has been a model for similar legislation in twenty-nine other states.

In this edition we have retained the chapter-opening vignettes, with new vignettes for most chapters. We also retained the chapter-ending “Case Analysis and Writing Exercises” feature. Most of the cases highlighted in the exercises are new to this edition, though we did retain a small number from the previous edition. In this edition we also continue to use charts, boxes, and lists as supplements to text and case summaries. We intend the textual materials and case summaries to serve as the main exposition of criminal law principles, with the boxes and other tools helping to illustrate specific applications or examples of those principles.

New to This Edition

In addition to the features just discussed, we have made other changes and additions to this edition. While we have always striven to incorporate new cases and statutes into each new edition, in the twelfth edition we did this on a very broad scale. We not only added many cases decided since the eleventh edition was published; we also replaced a substantial number of older cases that illustrated legal principles with more recent cases that accomplish the same result, but in a more current setting. There are hundreds of cases cited or discussed in our book; in this edition over **250** court decisions will have come from cases decided in the years 2010–2013. With this effort we believe we have made the twelfth edition as up to date and complete as possible, while at the same time maintaining the clarity and ease of understanding that we hope are the hallmarks of our Criminal Law textbook.

Finally, we have added the most recent reports available in the many places in the book where we include statistical information. There is commonly a lag between when statistics are gathered and reports are published, and we tried our best to minimize that lag time.

We have always been appreciative of the efforts of those who review our book before we begin work on a new edition. In this edition, as in the past, we have made it a point to incorporate specific suggestions made by our reviewers and others who have taken the time to communicate with us. We thank them and invite all our readers to share their thoughts on the book with us at Terry Anderson’s e-mail address, which is listed in the brief biography that appears in the front pages of this edition.

New Content

In addition to the changes discussed above, in the twelfth edition we have made many substantive additions as well. They include the following:

- **Chapter 1, Criminal Law: Purposes, Scope, and Sources:** We made one organizational change: we moved the box on “omission crimes” to Chapter 3. The box on SORNA cases was updated, since courts continue to struggle with

the scope of that legislation and its relation to the Ex Post Facto Clause. In that regard, we included a brief discussion of the 2013 U.S. Supreme Court decision in *Peugh v. United States* on when changes in minimum sentences trigger the Ex Post Facto Clause. In the Case Analysis section we included the California Proposition 8 case, *Hollingsworth v. Perry*. Though not a criminal law case, it does have an interesting discussion of equal protection in the lower court decision, and introduces the concept of standing and how the Supreme Court applies that doctrine.

- **Chapter 2, Jurisdiction:** We updated facts and cases in the various jurisdictions, including jurisdiction of the sea and Indian tribal jurisdiction, focusing on the Tribal Law and Order Act of 2010. We condensed the section on military jurisdiction and martial law.
- **Chapter 3, Essential Elements of a Crime:** We added materials, a new box and new cases, on general intent, specific intent, and scienter as elements of crimes. We also expanded our discussion of the various causation issues that may arise in criminal prosecutions. We added two new boxes on causation: one that distinguishes “but for” from “proximate” cause, and one that looks at multiple causes in homicides. We also added new cases on the effect of a substantial time gap between injury and death in homicide crimes.
- **Chapter 4, Criminal Liability:** We added new cases on solicitation to illustrate both attempts to persuade another to commit a crime, and attempts aimed at victims of crimes. The distinction between “bilateral” and “unilateral” approaches to conspiracy convictions has been expanded and, we hope, clarified. We used current cases to illustrate the difference between those approaches. We added several recent cases, including a U.S. Supreme Court decision, on abandonment of and withdrawal from a conspiracy. The attempt section was rewritten with subheadings to direct attention to the classic elements of crimes, *actus reus* and *mens rea*, as they apply to attempt crimes. We updated the accomplice liability and *Pinkerton* rule sections with new cases, as well as a new box distinguishing accomplice liability from liability under rules like the *Pinkerton* rule.
- **Chapter 5, Criminal Responsibility and the Capacity to Commit a Crime:** In the capacity materials, we expanded the box on juvenile courts to include several recent cases and statutes that highlight changes making transfer from juvenile to adult courts more common. We added a new box on corporate liability for environmental crimes to illustrate both how corporations are treated as criminal defendants and how environmental laws are applied to corporate activities. We updated the diminished capacity, competency, and involuntary medication to restore competency sections with recent cases and statutes.
- **Chapter 6, The Law Governing the Use of Force:** In this chapter we added many new cases, examples, and boxed material to illustrate the use of force in self-defense. This includes updating cases under the “stand your ground” laws, with a new box on the meaning of “unlawful” activity under those laws, as well as a new box tracing the evolution of use-of-force rules. In the use of force by police materials we added a new (and relatively rare) case on the right to resist an unlawful arrest. We also discuss the 2013 U.S. Supreme Court case of *Missouri v. McNeely*, in which the Court discussed the requirements for police to use force to obtain a blood sample from a DUI suspect.

- **Chapter 7, Other Criminal Defenses:** We added a 2011 case on legislative immunity under the Speech and Debate Clause of the Constitution. We have not previously included a case under this clause. We rewrote the section on the mistake defense, using several recent cases to illustrate when a mistake defense is permitted and when it is not allowed. We also added a 2012 case illustrating the limited rules on when the defense of coercion can be used in murder trials. We added new recent case examples on use of the necessity defense. Finally, we expanded the Double Jeopardy materials, adding a box on the meaning of “acquittal” after the 2013 U.S. Supreme Court’s decision in *Michigan v. Evans*. We also discuss the Supreme Court’s 2012 decision in *Blueford v. Arkansas* on mistrials and the Double Jeopardy Clause and include a new box that summarizes the various outcomes in a criminal trial and their effect on retrials and the Double Jeopardy Clause. To make room to do all of this we deleted the material on *res judicata* and collateral estoppel that appeared in the eleventh edition.
- **Chapter 8, Criminal Punishment:** We added the 2013 U.S. Supreme Court case of *Alleyne v. United States* on the distinction between elements of an offense and sentencing facts for *Apprendi* purposes, a continuing problem in the courts. We added a box that discusses both of the U.S. Supreme Court’s decisions on life sentences for juvenile defendants, *Graham v. Florida* (2010) and *Miller v. Alabama* (2012). We updated prison statistics, and discussed the U.S. Supreme Court’s 2012 decision in *Brown v. Plata*, which likely has significant consequences for California prisons in 2013. We also included in a new box the 2012 U.S. Supreme Court case of *Southern Union Co. v. United States* on the constitutionality of fines against corporations for violation of environmental criminal laws.
- **Chapter 9, Free Speech, Public Order Crimes, and the Bill of Rights:** The title of this chapter was changed, thanks to a helpful suggestion from a reviewer, to substitute “Public Order” for “Street Crimes.” We think the change more accurately expresses the content of the chapter. We highlight the 2012 U.S. Supreme Court “Stolen Valor” case, *United States v. Alvarez*, by using the case both in the chapter-opening vignette and as a Case Close-Up. We made room for this by deleting the campaign finance box, and greatly shortening the box on obeying police orders. We extensively updated with recent cases the sections on abusive language toward police officers and threats using the U.S. mail, telephones, and the Internet. Finally, we deleted the long box on state gun control laws, and substituted a new section, “Regulating Guns After *Heller*,” with seven 2011–2013 cases that considered the constitutionality of state gun regulations after the *Heller* decision. The law on gun regulation is evolving.
- **Chapter 10, Homicide:** This chapter has been substantially changed. Many reviewers suggested we give more attention to the *corpus delicti* requirement, so we expanded our discussion in that section, including adding a 2013 Colorado case that illustrates how a court-created *corpus delicti* rule can also be abrogated by a court. We substituted two 2012 cases on “no body” *corpus delicti* problems for the older case in the eleventh edition, and a 2011 case on proving *corpus delicti* in “no proof of death” cases. We deleted the Case Close-Up of *United States v. Begay*, because in 2011 the Ninth Circuit Court *en banc* reversed the panel decision. We discuss the reasons for that reversal. We rewrote part of the transferred intent section, substituting a 2011 Maryland Supreme Court case

for the older Maryland case used in previous editions. We also added several 2012 state cases illustrating how states that use the “intent-to-do-serious-bodily-harm” and “depraved-heart” forms of murder construe their statutes. We extensively rewrote the felony murder section. We introduce the “continuous transaction” doctrine to illustrate how states using that doctrine apply the felony murder rule to deaths that occur after the felony has been committed, such as during an escape. We also added several recent cases that address the issue of the application of the felony murder rule to the death of a co-felon. We made room for all of this by deleting the felony murder box used in previous editions. Finally, we greatly expanded the imperfect self-defense/manslaughter section by using examples of the defense, and several recent cases applying the defense.

- **Chapter 11, Assault, Battery, and Other Crimes Against the Person:** We clarified the elements under the federal assault statutes by deleting the “simple assault” box (which some thought too complicated) and added three recent cases that do a better job of illustrating assault, both under the federal statutes and the common law. We updated and expanded the discussion of hate crimes with recent cases. The “faith healing” case in Wisconsin went to the Wisconsin Supreme Court in 2013 on the meaning of the “religious healing” exception to child neglect. Other states have similar exceptions, and the decision might have ramifications outside Wisconsin. We updated the kidnapping cases, with emphasis on the “moving” requirement when another felony, like robbery, is being committed. This is an evolving issue, so we also used a case on the moving requirement in the case analysis exercises. We substantially rewrote the domestic violence section, noting the status of the Violence Against Women Act in Congress. We deleted two sections (court order violations and duty to report laws).
- **Chapter 12, Sexual Assault, Rape, Prostitution, and Related Sex Crimes:** We substantially rewrote the forcible rape section, with new titles and subsections. We replaced older cases with new ones. We deleted the lengthy Case Close-Up box on consent, force and resistance, and instead cover this important topic in the text, with new cases. We rewrote and expanded the report of rape section. We added several new cases under various rape shield laws, including a controversial 2012 Michigan Supreme Court decision. We discuss statutes and cases on the mistake of age defense in statutory rape, expanding the discussion of this issue found in Chapter 7. We also add a 2013 case of first impression under the federal sex trafficking statute. We added national statistics and a 2013 report that cast doubt on (1) the need for civil commitment of sexual offenders, and (2) the wisdom of child pornography prosecutions based on Internet use. We deleted the section on sexual harassment, which is mainly civil in nature.
- **Chapter 13, Theft:** We updated cases that illustrate the classic elements of theft, such as property of another, lost property, and abandoned property. We also added new cases on shoplifting to replace older cases. To illustrate the perils of merchants confronting suspected shoplifters, we included a Case Close-Up that involves an action by a supposed shoplifter against the merchant who confronted her.
- **Chapter 14, Robbery, Burglary, and Related Crimes:** The chapter-opening vignette is taken from a 2012 case from New Jersey that in 2013 will be reviewed by the New Jersey Supreme Court. We think it is interesting to see how our readers believe that review will (or should) turn out. In this chapter we

substantially deleted older cases (and an older box) on the elements of the crimes covered in this chapter, and added new cases and statutes. Those include bank robbery, carjacking, and extortion. We rewrote the robbery–theft distinction section, adding new cases of what force is required, when force must be used, and the lack of the necessity of a completed robbery. In burglary we added new cases on “dwelling of another” and “intent to commit a crime therein,” including a 2012 case that ties in with the Double Jeopardy materials in Chapter 7. Finally, in the Case Analysis exercises we look at two federal cases under the Hobbs Act, where courts found violations under doubtful circumstances. In 2013 the U.S. Supreme Court agreed to review one of these cases, perhaps to consider how federal prosecutors are using the Hobbs Act.

- **Chapter 15, White-Collar Crime, Cybercrime, and Commercial Crime:** In one organizational change, we moved the materials on receiving stolen property and possession of burglary tools to Chapter 14, where they seem to fit better. We did substantial updating in the identity theft section, and the discussion of computer access crimes. This includes a new box on the criminal liability of employees who use employer computers for illegal purposes. We also updated the product tampering section. We added a new box on environmental crimes and corporate responsibility for those crimes, keeping with our goal (based in part on reviewers’ requests) for more cases on environmental crimes.
- **Chapter 16, Drug Abuse and Alcohol-Related Crimes:** We continue to update the statistics on the international drug war/gun sales/border problems. We also updated the news on medical marijuana and recreational use of marijuana. We rewrote the drunk driving section, adding recent cases on how courts are handling the issues in such prosecutions, including a Case Close-Up case from Illinois that illustrates how presence of a controlled substance in a driver’s system relates to aggravated drunk driving. We include in that Case Close-Up discussion of a 2013 Michigan case that struggles with a similar issue: a driver who has marijuana in his system, but is a registered medical marijuana user.
- **Chapter 17, Terrorism:** Once again, the various tables and boxes with statistical information have been updated. We added a new Case Close-Up on the meaning of “material support of terrorism” under federal law. We believe it is likely the U.S. Supreme Court will grant review in one of these cases very soon to address that issue.
- **Chapter 18, Organized Crime and Gangs:** We substituted newer cases for older cases where we could, including those on money laundering, and Congressional legislation designed to overturn some controversial decisions. We note the passage of the sports betting statute in New Jersey, but include reference to the federal district court decision that recently struck down that statute. We added more material on RICO prosecutions, a subject some of our reviewers asked us to expand.
- **Chapter 19, Immigration Crimes, Contempt, and Other Crimes Against Government:** Immigration cases and statutes are the news in this edition. The U.S. Supreme Court decision in the Arizona immigration statute litigation leads off our discussion of immigration crimes. We also discuss lower court decisions and the impact of the Arizona decision on those decisions. We discuss in detail the “fraudulent marriage” scheme to illegally gain entry to the United States, and in a new box focus on the *mens rea* needed for violation of immigration

laws. We list the highlights of proposed Congressional legislation on immigration reform. We include a U.S. Supreme Court case that has important implications in civil contempt cases, where it is now the law that in some circumstances a defendant in a civil contempt hearing must have appointed counsel. Finally, we deleted the environmental crimes section; as reviewers suggested, crimes against the environment are not crimes against government. As we noted earlier, we have tried wherever possible to integrate prosecutions for environmental crimes into other chapters.

Supplements

A number of supplements are provided by Cengage Learning to help instructors use *Criminal Law*, Twelfth Edition, in their courses and to aid students in preparing for exams. Supplements are available to qualified adopters. Please consult your local sales representative for details.

For the Instructor

Instructor's Manual Updated by Valerie Bell of Loras College, the manual includes learning objectives, key terms, a detailed chapter outline correlated to each chapter's PowerPoint slides, a chapter summary, lesson plans, discussion topics, student activities, "What If" scenarios, media tools, a sample syllabus, and an expanded test bank with 30 percent more questions than the prior edition. The learning objectives are correlated with the discussion topics, student activities, and media tools. Each chapter's test bank contains questions in multiple-choice, true false, completion, essay, and new critical thinking formats, with a full answer key. The test bank, revised by Scott Rudeen of Globe University, is correlated to the chapter objectives that appear in the main text as well as to Bloom's taxonomy levels and includes the sections in the main text where the answers can be found. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage—so you can be assured that you are working with an assessment resource of the highest caliber.

PowerPoint Slides Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint® slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint® slides, updated by Lisa Briggs of Western Carolina University, reflect the content and organization of the new edition of the text and feature some additional examples and real-world cases for application and discussion. Available for download on the password-protected instructor book companion website, the presentations can also be obtained by e-mailing your local Cengage Learning representative.

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For the Student

CourseMate Companion Website Cengage Learning's Criminal Justice CourseMate brings course concepts to life with interactive learning, study, and exam preparation tools that support the printed textbook. CourseMate includes an integrated eBook as well as critical chapter review tools, including pre-tests students can use to quiz themselves in advance of reading the assignment so they are focused on issues that present a particular challenge to them personally. Also included are quizzes mapped to chapter learning objectives, flashcards, and videos, plus EngagementTracker, a first-of-its-kind tool that monitors student engagement in the course. The accompanying instructor website offers access to password-protected resources such as an electronic version of the instructor's manual and PowerPoint® slides. The web quizzes were developed by Cornel Plebani of Husson College.

Careers in Criminal Justice Website This unique website gives students information on a wide variety of career paths, including requirements, salaries, training, contact information for key agencies, and employment outlooks. Several important tools help students investigate the criminal justice career choices that are right for them.

- *Career Profiles*: Video testimonials from a variety of practicing professionals in the field as well as information on many criminal justice careers, including job descriptions, requirements, training, salary and benefits, and the application process.
- *Interest Assessment*: Self-assessment tool to help students decide which careers suit their personalities and interests.
- *Career Planner*: Resume-writing tips and worksheets, interviewing techniques, and successful job search strategies.
- *Links for Reference*: Direct links to federal, state, and local agencies where students can get contact information and learn more about current job opportunities.

Current Perspectives: Readings from InfoTrac College Edition These readers, designed to give students a closer look at special topics in criminal justice, include free access to InfoTrac College Edition. The timely articles are selected by experts in each topic from within InfoTrac College Edition. They are available free when bundled with the text and include the following titles:

- *Cyber Crime*
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- *Ethics in Criminal Justice*
- *Forensics and Criminal Investigation*
- *Corrections*
- *Law and Courts*
- *Policy in Criminal Justice*

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