

# **CRIMINAL PROCEDURE**

**Judy Hails Kaci**

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## **CRIMINAL PROCEDURE**

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## About the Author

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## **Dedication**

Miriam and Kahina

My twin inspirations

# Preface

*Criminal Procedure* is designed to help students/officers understand how activities in both law enforcement and corrections interface with court proceedings. It will de-mystify the judicial process and help the reader understand the importance of collecting evidence and documenting facts that may not appear relevant to the crime being investigated. A knowledge of the lengthy court process that follows the arrest makes it easier for officers to prepare to testify and assist the prosecutor. Obtaining convictions will be easier because officers can efficiently focus on what needs to be done. Study questions at the end of each chapter are designed to develop a better understanding of the process in your local area.

Chapters 1 and 2 place the police role in the larger context of American government. Chapter 3, which relies heavily on the Fourth Amendment warrant clause, discusses arrest and search warrants. It provides a detailed discussion of how to prepare affidavits, obtain warrants from a judge and execute them. Chapter 4 discusses many of the agencies that local law enforcement interacts with at the local, state and federal level.

The remaining chapters of this book follow the chronological order of court proceedings. Chapter 5 covers the first steps in the journey through the court system. It discusses interaction with the prosecutor in order to obtain a criminal complaint. Detailed information is given on what facts must be included in this legal document. The arraignment that follows formally launches the criminal case. Felonies are screened by a judge at the preliminary hearing or by grand jurors when an indictment is sought. Chapter 6 discusses these two processes in detail.

Many behind-the-scene activities precede the start of a criminal trial. These are discussed in Chapters 7 and 8. While the prosecutor is officially in charge at this stage, it is important for law enforcement officers to be familiar with the issues involved because they may be called to testify at pre-trial hearings. Investigators must understand what they are expected to do to prepare the case for trial and the types of information the prosecutor will need to effectively question each witness. All officers involved should review the case focusing on what questions are likely to be asked when they are testifying.

No two trials are alike, but there are many similarities. Chapter 9 follows the presentation of evidence at a typical trial. Officers need to understand the rules on direct and cross examination and what can be done on rebuttal. Several special mini-trials are discussed in Chapter 10: evaluation of the defendant's mental competency; adjudication of the defendant's plea of not guilty by reason of insanity; and determination if the death penalty should be imposed. Juvenile Court hearings are also discussed in this chapter.

The sentencing hearing, discussed in Chapter 11, follows a conviction. In nearly all cases the judge may consider facts in addition to those used to establish the defendant's guilt when sentencing. Presenting appropriate evidence at this hearing may have a major impact on the length of the defendant's sentence. The case is not final until the appeal is over. Chapter 12 reviews the appellate process and discusses direct appeals as well as avenues used to reach the state's highest court and the United States Supreme Court.

Most decisions related to the defendant's punishment and/or rehabilitation are not made in the courtroom. Chapter 13 looks at the various hearings involved in the correctional system and the due process requirements for each. Both institutional hearings, such as those to impose discipline or set parole dates, and proceedings related to community based corrections, such as probation revocation hearings, are discussed.

Civil suits play an increasingly large role in our lives. Chapter 14 discusses various forms of litigation that result from on-duty activities of law enforcement and correctional officers. Suits typically filed in state courts and under the federal Civil Rights Act are covered. Forfeiture proceedings used to attach a defendant's property are also discussed.

Ideally a student should complete an introductory course in criminal justice prior to taking this class. There is sufficient material in the book, however, to provide necessary background information for those who have not and to refresh the memories of those who have not reviewed the topic recently. While a course in evidence is recommended for all students planning careers in law enforcement, it is not required in order to comprehend this material.

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## ❧ CHAPTER 1 ❧

# CRIMINAL JUSTICE AS PART OF THE AMERICAN LEGAL SYSTEM

### **== LEARNING OBJECTIVES ==**

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After reading this chapter, the student will be able to:

- Explain six sources of criminal law.
  - Explain how a bill becomes a law.
  - Describe the structure of the judicial system.
  - Explain the authority of federal and state courts.
  - Describe the roles of the following participants in the criminal justice system: law enforcement, prosecutor, defendant, defense attorney, judge, and jury.
-

## == KEY TERMS ==

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bench trial	self-incrimination
bills of attainder	state constitution
common law	subject matter jurisdiction
cruel and unusual punishment	sunset laws
defendant	U.S. Code
double jeopardy	U.S. Congress
due process	U.S. Constitution
equal protection	U.S. Courts of Appeals
ex post facto	U.S. District Courts
exclusionary rule	U.S. Supreme Court
freedom of speech	unreasonable search and seizure
geographic jurisdiction	venue
jury nullification	<i>writ of certiorari</i>
precedent	<i>writ of habeus corpus</i>

## == 1.1 SOURCES OF LAW ==

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No single code book contains all the laws. Due to the federal system of government used in the United States there are at least two layers of laws: state and federal. Cities and other municipal agencies also enact laws.

### FEDERAL LAWS

There are two distinct types of federal law: the United States Constitution and the United States Code. The Constitution is binding on all levels of government in the United States. The U.S. Code has provisions that apply to the entire nation and others that are only used in federal territories such as Washington D.C. and the national parks.

#### U.S. Constitution

A few provisions of the Constitution apply to criminal laws. **Ex post facto** laws are prohibited. Laws that make conduct criminal that was legal at the time it was done are *ex post facto*. So are laws that make

the penalty more severe than was authorized at the time the crime was committed. A law which changes the rules of evidence to make it easier for the prosecution to obtain a conviction than it was at the time the crime was committed would also be *ex post facto*.

No **bills of attainder** may be passed by the legislature. A bill of attainder was used by the British Parliament to impose the death penalty and required that the person's property be forfeited to the government. The constitutional prohibition also includes bills of pains and penalties which were used to impose criminal penalties without trials for non-capital crimes. These bills were passed by the legislature and there was no trial. The key is that individuals are either named, easily identified members of a group or described in terms of conduct.

The *writ of habeus corpus* is used by a person to challenge illegal confinement. The Constitution prohibits suspension of the *writ of habeus corpus* except when required due to rebellion or invasion.

The majority of what we call "constitutional rights" come from the Bill of Rights and the Fourteenth Amendment. While the Bill of Rights was originally enacted to prevent oppressive conduct by the federal government, the U.S. Supreme Court has used the due process clause of the Fourteenth Amendment as a vehicle for applying many, but not all, the provisions of the Bill of Rights to state actions.

The following is a brief summary of the constitutional amendments that apply to local law enforcement. An in-depth study of these principles is required to function effectively as a police officer. These topics are covered in a separate course.

### *First Amendment*

The First Amendment provides for **freedom of speech**, freedom of assembly, freedom of the press, freedom of religion and the right to petition the government for redress of grievances.

Nearly all speech is protected by the First Amendment. A few categories, such as obscenity (pornography, not profanity) and "fighting words" are not protected. The key to freedom of speech is that the minimum restraint necessary must be used and that the law must be "content neutral." A law is unconstitutional if it forbids both legally protected speech and speech that is not protected. It is also impermissible to base decisions on the content of the speech. For example, a law prohibiting speeches in the park would be "overbroad" because it would cover both protected and unprotected speech. Refusing to give a parade

permit to a racist group because the town does not approve of the opinions expressed would violate the “content neutral” requirement.

Freedom of the press is a difficult issue in criminal cases because the defendant has the right to trial by an impartial jury. Inflammatory media coverage may make it impossible to find jurors who are not already prejudiced against the defendant. The press has access to any court hearing that is open to the public and may publish any information it discovers on its own. The court may be closed to the press only if there is a specific, compelling reason for closure, such as emotional trauma to a young child who is testifying regarding being molested. The judge may issue gag orders which forbid disclosure of information to the press by prosecutors and defense attorneys. When used, such “gag orders” must be very limited in scope.

Criminal laws may not be designed to interfere with a person’s exercise of religion. Laws, such as bigamy and a prohibition on possession of peyote, that have a purpose other than deterring religious activities are allowed. The government cannot establish religion. Conditions of probation that include attending church are forbidden.

### *Fourth Amendment*

The Fourth Amendment prohibits **unreasonable searches and seizures**. A “reasonable expectation of privacy” test has been used instead of restricting the amendment to “persons, houses, papers, and effects” (the words used in the amendment). The Fourth Amendment is violated if a person’s reasonable expectation of privacy is invaded by government agents. A person who does not take reasonable steps to protect his/her privacy cannot complain that the Fourth Amendment has been violated.

Probable cause is defined as a group of facts that would convince a reasonable person that an event occurred. The Fourth Amendment sets probable cause as the minimum standard for issuing warrants. Probable cause must be established under oath or affirmation. This is usually done by a written affidavit signed under penalty of perjury. Specific facts must be given which, under the totality of the circumstances, establish probable cause to arrest an individual for a specified crime (arrest warrant) or to search a specific location for items of evidence listed in the warrant (search warrant). A neutral magistrate or judge must review the facts and determine that probable cause exists to issue the warrant.