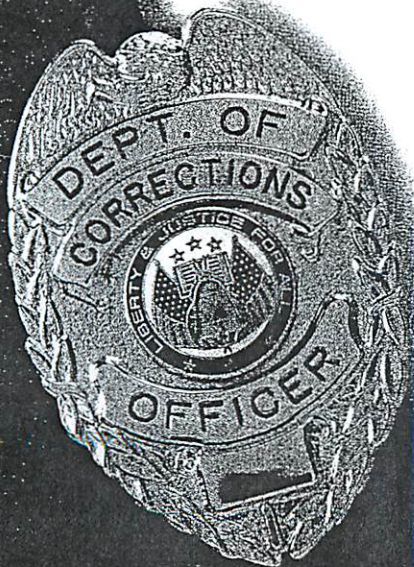


UNIT 2

Criminal Law and Juvenile Justice



Visit the *Street Law* Web site at streetlaw.glencoe.com for unit-based activities.



Crime is a serious problem in the United States. According to the FBI, in 2001 a property crime occurred every 3 seconds and a violent crime occurred every 22 seconds. Public opinion polls show that citizens are very concerned about crime and about certain factors—such as illegal drug use and the availability of firearms—that can lead to criminal activity. While most measures of crime showed overall decreases throughout the 1990s and into 2001, data showed an increase in the proportion of young people involved as both perpetrators and victims of serious, violent crimes.

The first chapter of this unit—Chapter 7—provides an overview of crime in the United States, describing the nature and causes of crime and looking at the relationship between gangs, guns, alcohol, drugs, and crime. Chapter 8 introduces you to the study of criminal law. Chapters 9 and 10 contain information on crimes against persons and crimes against property. Defenses used in criminal cases are covered in Chapter 11.



Crimes committed by both adults and juveniles are a major problem in the United States.

Chapters 12 through 15 deal with the criminal justice process—from the rules that police must follow when conducting arrests, searches, or interrogations (Chapter 12), through the proceedings that occur before trial (Chapter 13) and the Bill of Rights protections that shape the trial itself (Chapter 14), to issues dealing with sentencing and corrections (Chapter 15). Chapter 16 looks at the operation of the juvenile justice system and the special challenges it faces in dealing with young people who commit serious and violent offenses. Chapter 17, the

last chapter in this unit, discusses law as it applies to terrorism.

Both the criminal and juvenile justice systems continue to be a focus of intense public scrutiny. We look to these systems not only to control antisocial behavior, but also to protect individuals from having their freedoms taken away by the government. This unit should help you better understand your role as a citizen by discouraging you from committing crimes, teaching you effective crime prevention strategies, and encouraging you to work to improve the justice system.

CHAPTER 7

Crime in America

*"Time is a
great legalizer,
even in the field
of morals."*

—H. L. Mencken



**Street Law
online**

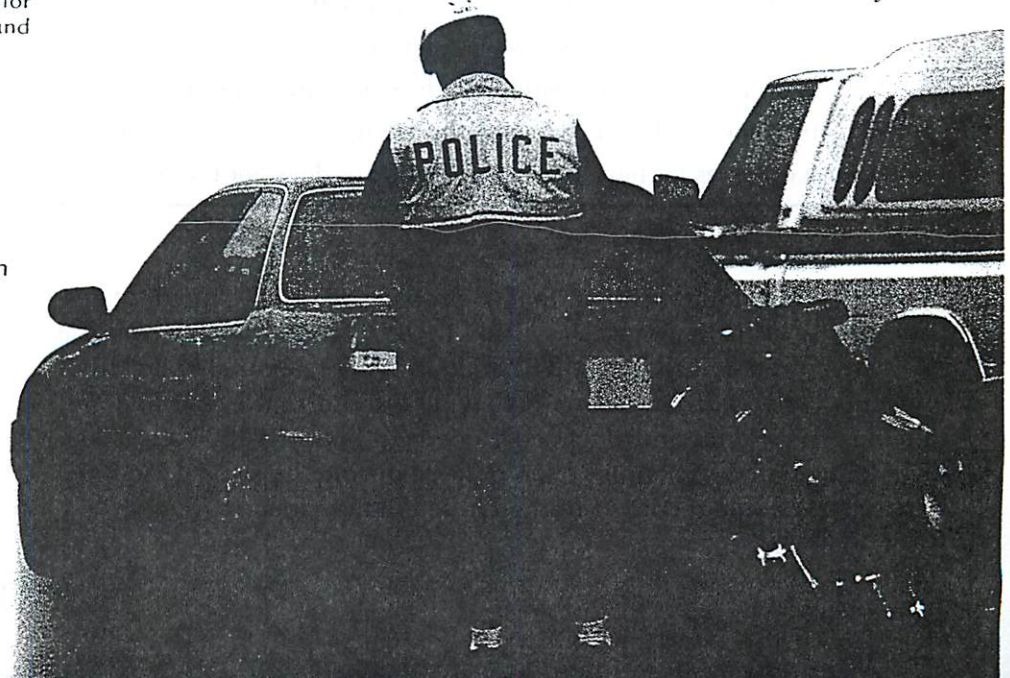
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Police duties range from writing simple parking tickets to investigating violent crimes.

Crime wears many faces. It may be the teenager snatching a woman's purse or the career criminal planning a kidnapping. It may be the youth who steals a car for a joyride or the car theft ring that takes it for later sale. It may be the professional criminal who profits from organized gambling, extortion, or narcotics traffic, or the politician who takes a bribe. Crime may be committed by the professional person who cheats on tax returns, the businessperson who secretly agrees to fix prices, the burglar who ransacks homes while the owners are at work, or the terrorist who acts under the claim of a greater cause.

The Nature of Crimes

A **crime** is something one does or fails to do that is in violation of a law. It can also be defined as behavior for which a government has set a penalty. Criminal law designates certain conduct "criminal" and other conduct "noncriminal." Decisions as to what constitutes a crime are made by legislatures, which try to protect the public based on what most people believe is right and necessary for the orderly conduct of society. Certain acts are prohibited or required to protect life and property, preserve individual freedoms, maintain the system



of government, and uphold the morality of society. Ideally, the goals of law are to protect human rights for all and to regulate human conduct so that people can live in harmony.

Many people do not realize that crime victims are also victims of human rights violations. For example, people have a human right to ownership of their own property (Universal Declaration of Human Rights [UDHR], Article 17). Theft crimes violate this right. People also have a human right to protection of their personal security (UDHR, Article 3). Violent crimes such as murder, rape, and assault violate this human right.

Problem 7.1

Assume you are a member of a commission established to evaluate laws. Consider the following acts. In each case decide whether the act should be treated as a crime. Then rank the acts from most serious to least serious using the following scale: VS (very serious), S (serious), U (undecided), LS (less serious), and NS (not serious). Also note if you think an act should not be a crime (NAC). Give reasons for your decisions.

- a. Robert sells crack cocaine and uses the proceeds to support his mother, who is on welfare.
 - b. Marley is a passenger in a car she knows is stolen, although she did not participate in the theft of the car.
 - c. A corporate executive gives a million dollars to a candidate for the U.S. Senate.
 - d. A wife finds out her husband is having an affair and runs over him with her car.
 - e. Paulina is caught with a pound of marijuana.
 - f. Ted robs a liquor store at gunpoint.
 - g. Ellen leaves a store with change for a \$10 bill, knowing that she gave the cashier a \$5 bill.
 - h. Lily approaches a man for purposes of prostitution.
 - i. The president of the United States lies under oath.
 - j. Ming refuses to wear a helmet while riding a motorcycle.
 - k. A company pollutes a river with waste from its automobile factory.
 - l. Pat gets drunk and hits a child while speeding through a school zone.
 - m. Dakota observes his best friend shoplifting but does not turn him in.
-

Crime has long been a major problem in the United States. Preventing crime is not an easy task. In 2001, U.S. residents over the age of 12 experienced nearly 24.2 million crimes, about 24 percent of which were violent in nature. Following a trend that began in 1994, the rate of violent crime declined 10 percent between 2000 and 2001. The rate of property crimes fell 6 percent during the same period, the lowest crime rate recorded in the United States since 1973.

FIGURE 7.1 Crimes Reported and Arrests Made (2001)

Type of Crime	Number Reported	Percent Arrested		Total Number Reported	Percent Arrested
Larceny/Theft	5,329,949	17.6	} Total Property Crime	7,860,198	16.2
Burglary	1,585,074	12.7			
Motor Vehicle Theft	945,175	13.6			
Aggravated Assault	640,168	56.1	} Total Violent Crime	1,024,134	46.2
Robbery	304,077	24.9			
Forcible Rape	67,907	44.3			
Murder and Non-negligent Manslaughter	11,982	62.4			
			Crime Index Total*	8,884,332	19.6

*The crime index is the sum of violent crimes and property crimes.
Source: FBI, 2001.

Problem 7.2

- a. According to the information above, what was the most commonly reported crime in 2001?
- b. What percentage of the total reported crimes resulted in arrest?
- c. Of the crimes reported, for which crimes were people most likely to be arrested? Least likely to be arrested? Why do you think this is so?
- d. How can citizens act to help police improve arrest rates?



Visit streetlaw.glencoe.com and click on **Textbook Update—Chapter 7** for an update of the data.

According to surveys of victims, about 50 percent reported crimes against themselves to the police. Less than 40 percent reported property crimes to the police. Surveys of law enforcement records indicate that of the cases reported, about 20 percent led to an arrest. However, the arrest rate is considerably higher for violent crimes reported to police.

Crime rates are influenced by many factors, such as your location, age, and gender. Based on 2001 statistics, crime rates are higher in urban areas than in suburban areas. Similarly, crime rates are generally higher in suburban areas than in rural areas. Crime is not confined to any particular group, but people between the ages of 15 and 24 commit more violent crimes than any other group. Males commit almost

four times as many crimes as females, but the rate for female offenses has increased in recent years. In 2001, 68 percent of female victims knew their offenders, whereas only 45 percent of males knew their offenders. About 35 percent of victims report that the offender had been using alcohol. Violent crimes are more likely to occur during the day, but two-thirds of rapes occur at night.

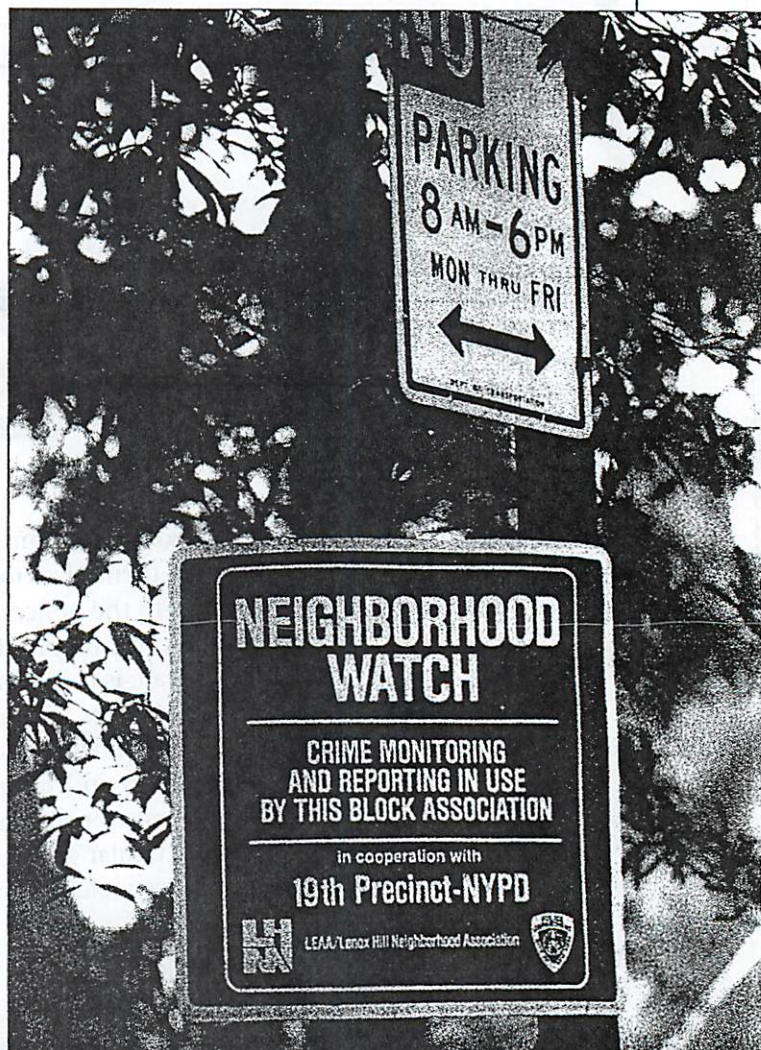
One way in which crime affects us all is that it costs everyone money. Aside from the very significant cost of lost or damaged lives or of fear and suffering, the total amount of government expenditures on crime is approximately \$150 billion per year! A family of four pays an average of more than \$1,500 per year in taxes relating to crime, even if they are not victims of crime.

Although authorities agree that crime is a major problem, much disagreement exists over the causes of crime and what can be done about it. Among the reasons suggested for the high crime rate in the United States are poverty, permissive courts, unemployment, lack of education, abuse of alcohol and drugs, inadequate police protection, rising population, lack of parental guidance, a breakdown in morals, an ineffective correctional system, little chance of being caught or punished, and the influence of television and films. This lack of agreement indicates that the causes of crime are many and complex.

Let's examine some suggested causes of crime more closely. Some people point to the economic system in the United States, with its wide disparity between rich and poor, as a major influence on the rate of crime. In the 1990s, with a generally strong economy and low unemployment, the crime rate did tend to go down. Between 2001 and 2002, the United States experienced a weaker economy and a rise in crime rates. At other times in American history a strong economy has not reduced crime, and a weak economy has not caused crime to increase. Further, there are other countries around the world where the poverty level is high, but the crime rate is low.

Researchers have also looked at data from high-crime urban areas. They have found that poverty by itself is not a good predictor of crime; a more important factor is the stability of the family. For example, many families with few financial resources raise children who are responsible, law-abiding citizens. However, it is also true that poverty and lack of educational and economic opportunities make it more difficult for *families* to achieve the stability that would help reduce crime.

Many communities organize neighborhood crime watch groups to help monitor suspicious activities. *What approaches has your community taken to prevent crime?*



Would tougher penalties curb crime? Many people think so, but the United States already has some of the toughest criminal laws—as well as the highest **incarceration** rate—of any industrialized nation. Tough penalties may deter some people from committing crimes, but compared with the number of crimes committed, only a small number of people ever go to prison. Thus, some experts say that longer prison terms are not the answer. They say the certainty of punishment is more important than the length of the sentence.

Adequate police protection obviously has something to do with the crime rate, but studies show that simply increasing the number of police officers does not necessarily reduce the overall crime rate.

FIGURE 7.2 U.S. Crime Clock

Crime	2001 Data	1996 Data
PROPERTY CRIME	One every 3 seconds	One every 3 seconds
Larceny/Theft	One every 4.5 seconds	One every 4 seconds
Burglary	One every 14.9 seconds	One every 13 seconds
Motor Vehicle Theft	One every 25.7 seconds	One every 23 seconds
VIOLENT CRIME	One every 22 seconds	One every 19 seconds
Burglary	One every 14.9 seconds	One every 13 seconds
Aggravated Assault	One every 34.8 seconds	One every 31 seconds
Forcible Rape	One every 5.8 minutes	One every 6 minutes
Robbery	One every 1.2 minutes	One every 59 seconds
Murder	One every 32.9 minutes	One every 27 minutes
TOTAL CRIME INDEX OFFENSE	One every 2.7 seconds	One every 2 seconds

Source: *Uniform Crime Reports*, 1996 and 2001.

Problem 7.3

Consider the frequency of crimes listed above and answer the questions that follow.

- Did crimes occur less or more frequently in 2001 than they did in 1996? Do you think these changes are significant in any single category of crime? Among all the categories?
- What are the possible explanations for these changes? Are there any crimes that people might be reluctant to report to police? Explain.
- Based on what you read in the newspaper or watch on television news, do you think the data above accurately reflects the crime problem in your community?



Visit streetlaw.glencoe.com and click on **Textbook Update—Chapter 7** for an update of the data.

Many communities have embraced the idea of **community policing**. This strategy builds closer connections between police and the communities they serve. Police officers who have more direct contact with residents in neighborhoods can more effectively participate in community crime prevention activities, understand the nature and extent of local crime problems, and gather information about criminal activity.

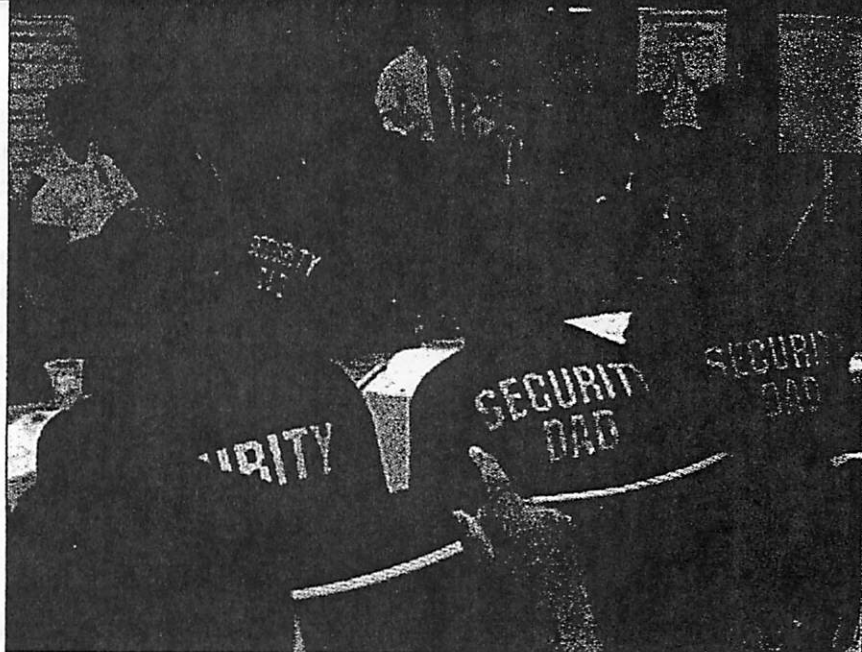
Crime on Campus

Crime on high school and college campuses has been a source of increasing concern in recent years.

According to the U.S. Department of Education and the Department of Justice, in 2000, students 12 to 18 years old experienced nearly two million incidents of violent and property crime while at school. Of these, about 128,000 were serious violent crimes, including rape, sexual assault, robbery, and aggravated assault. In 2001, approximately 10 percent of male students surveyed in grades 9 through 12 reported carrying a gun to school at least once in a 30-day period (compared to about 3 percent of female students in the same grades). During 2001, nearly one-third of students reported that drugs were available to them at school, an increase of 20 percent from 1993. Although the total nonfatal crime rates for students generally declined between 1992 and 2001, there was an increase in incidents of bullying at school during that same period. The overwhelming majority of these incidents occurred among middle school students in grades 6 through 8.

College campus crime includes violent assaults, hate crimes, and property crimes. Many of these crimes involve alcohol. In 2000, 20 murders were reported on college campuses, along with 1,858 forcible sex offenses, 1,933 robberies, 3,644 aggravated assaults, 26,543 burglaries, and 5,792 motor vehicle thefts. The incidence of crimes involving college students that occur off campus is considerably higher. Unfortunately, these statistics may not reflect the extent of the crime problem, as some colleges and universities may not fully report crime out of concern that this information would reduce student applications.

Thinking about crime requires us to go beyond slogans and stereotypes. We should carefully consider each of the suggested causes and the possible solutions to the problem. Perhaps the most that can be said is that disagreement exists over the causes of crime and that solutions to the crime problem are not simple.



At some schools, “security dads” volunteer to provide an adult presence at after-school activities and in the halls. *How else might a school attempt to reduce crime on campus?*

Where You Live

What is the major crime problem in your school? In your community? Have most crimes increased or decreased over the last three years where you live? Where can you get this information?

After-school programs give kids a place to go instead of hanging out on the street. How might the presence of after-school programs help reduce crime?



It takes a village to raise a child.

— African Proverb

The National Council on Crime and Delinquency (NCCD) has been studying criminal justice in the United States since 1907, and recommends the following strategies for reducing crime:

- Build safer communities with special attention to safe schools, after-school programs, community policing, and prevention of domestic violence and child abuse.
- Reduce the costs and improve the fairness of the criminal justice system.
- Develop cost-effective alternatives to incarceration, reserving prison sentences for those who cannot be treated safely in the community.
- Create effective drug-control policies. Reduce funds spent on catching drug sellers and users; expand funding for drug treatment and job training; and repeal laws requiring mandatory prison sentences for drug possession.

Problem 7.4

- a. Not everyone agrees with the NCCD's recommendations. Do you agree or disagree with their recommendations for reducing crime in the United States? Explain your answer.
- b. List the causes of crime described on page 77. Then rank them from most important to least important. Discuss your ranking.
- c. Are there other possible causes of crime not mentioned in the text? If so, what are they?
- d. What steps should the federal government take to reduce crime? What steps should your state government take? What steps should be taken by your local government?

Weapons at School

Sunshine City is a suburb of Metropolis, the largest city in the state. Sunshine High School (SHS), the only high school in Sunshine City, has 1,500 students. SHS's student population is racially and economically mixed. The school has many student organizations, as well as girls' and boys' sports teams. There are college and personal counselors on staff.

Sunshine High School has its share of problems with underage drinking and drugs. Except for an occasional fist fight, however, until recently it has not had a problem with school violence. The school board is aware of the problem of weapons being brought into Metropolis schools. It is committed to SHS student safety and recently discussed installing metal detectors at the school. However, although security guards are on duty at SHS, no detectors have been installed.

Samuel is a 16-year-old junior at SHS. He moved to Sunshine City from another state with his family four months ago and started school in the middle of last term. Samuel is a loner, has few friends, and spends most of his time surfing the Internet and playing violent video games. He has not had any disciplinary problems at school, but has been caught shoplifting.

Samuel has had a difficult transition to SHS. His grades are poor, and his general demeanor is dark. He is picked on by the popular guys. He skips school and is not allowed to enter school if he is late. Samuel's parents have noticed that lately he has been more withdrawn than usual and have been concerned about him. They contacted the school counselor, who promised to talk to him. Samuel did not go to the two appointments the counselor scheduled with him.

One Wednesday morning, Samuel left for school early, telling his mother good-bye and that he loved her. Although this struck his mother as odd—usually, he was late and did

not say anything as he left—she hoped it meant he was feeling better about things.

Because of the rain that day, the students congregated in the cafeteria to wait for the bell. Before going inside, Samuel saw Eddie, a quiet kid who sat next to him in algebra. Before reaching the front door, Samuel told Eddie that he “had to take care of something,” but that he did not want Eddie to be around when “it all went down.”

Eddie had the sense that something was wrong and went to the school resource officer. Officer Lee found Samuel just as he was about to enter the cafeteria. When the officer questioned Samuel and received a mumbled response, he decided to frisk him for weapons. Under Samuel's jacket was a semiautomatic gun. The actions that Eddie and Officer Lee took helped avoid a major tragedy at SHS.

The police and school administrators investigated. One student, Trisha, told a school counselor that Samuel advised her not to come to school that day. He wanted to keep her safe from danger, as she was always nice to him. The police discovered that Samuel had purchased the gun illegally from someone on the street and also found a disturbing note in Samuel's jacket pocket. In it, he outlined his plan to shoot people and remarked “after today, no one will push me around again!”

Problem 7.5

- What conditions might have led up to Samuel's decision to commit this crime?
- What, if anything, could have been done to help Samuel? Were there signs at school or home that he was at risk?
- Are there measures in place at your school to prevent acts of violence from occurring? Are additional measures needed? If so, what are they?

Gangs and Crime

At one time, violent gangs were thought to operate only in the largest cities in the United States. Evidence indicates, however, that gangs are now active in towns and cities of all sizes throughout the country. Nearly all cities with populations of more than 200,000 now report having gang problems. In 2001, 20 percent of all students aged 12 to 18 reported that street gangs were present at school. One reason gangs have spread is the lure of profits from the sale of illegal drugs, an activity in which many gangs participate. Many gang members also buy, sell, and steal firearms. The combination of drugs and guns has led to increased gang violence.

Estimates of the numbers of gangs and gang members vary greatly. However, most experts believe that there are several thousand youth gangs and several hundred thousand gang members, indicating the magnitude of the problem.

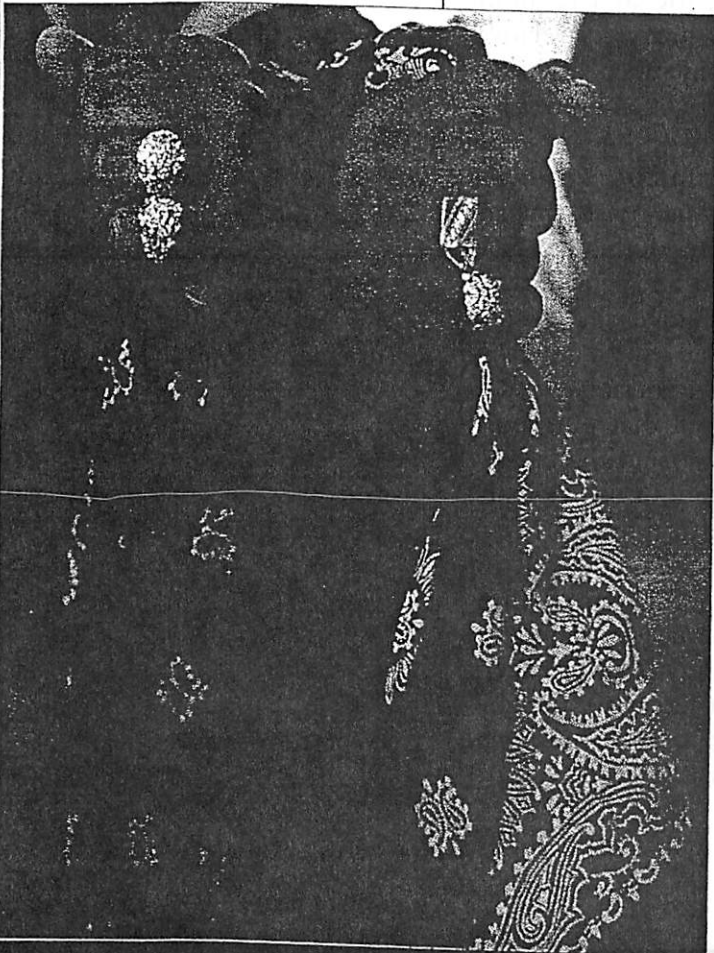
What Are Gangs?

In this discussion, gangs refer to people who form groups closed to the general public, for certain common business or nonprofit purposes that may include violent criminal activity. While the media have featured gang activity a great deal in recent years, gangs are not new in the United States. In the nineteenth century, gangs existed in

many American neighborhoods. They were primarily composed of adults and were usually organized along ethnic lines. Even then gangs had names, rules, emblems, initiation rituals, and distinctive ways of dressing. Early gangs were interested in protecting turf, reputation, and cultural heritage. But not all of these gangs engaged in criminal activity; neither do all gangs today. In fact, some gangs perform community work and operate job-training and other government-funded programs. Generally, however, these are not the gangs that contribute to the crime problem.

Today's gang members range in age from young children to middle-aged adults. While traditional youth gangs are still concerned with issues of status and turf, many gangs now operate with much more sophisticated organizational structures. Many focus on drug trafficking, firearm sales, auto theft, prostitution, and other criminal activity. Others use group-oriented violence or other criminal behavior to defend certain beliefs, which may be racist or sexist.

Many gangs identify themselves with colors. How are today's gangs different from those of the nineteenth century?



Gangs often associate themselves with one of several major gang "nations" and choose particular symbols, emblems, colors, phrases, and clothing with which to identify themselves. Gangs often use graffiti to mark, or "tag," particular territory as theirs, to intimidate rival gangs, or to instill fear in citizens of a neighborhood. People who join gangs usually have to endure some initiation ritual or test, such as committing a crime, being beaten, or for female initiates, having sex with multiple members of the gang. Many gangs, however, are more concerned with prospective members' abilities to sell drugs and make a profit. They may require new recruits to successfully complete a robbery or drug deal, or to commit an act of violence such as a drive-by shooting. It is not uncommon to have to endure a similar rite to get out of a gang, if getting out is an option at all. Violence, the use of deadly weapons, the use of drugs and alcohol, constant danger to themselves and their families, and criminal records are strongly associated with the lives of most gang members.



People join gangs for many reasons. What are the factors that put young people at risk for gang involvement?

Who Joins Gangs and Why?

While female gang membership is increasing, the overwhelming majority of gang members are male. In many cases, members' relatives or friends are also involved with gangs. Many gang members live under poor conditions at home, where their basic needs are often unmet, and they lack success in school. They are frequently very pessimistic about their job prospects and other opportunities for the future.

While the media and entertainment industry may portray gang membership as appealing only to inner-city minority youth, there is no shortage of white gang members in urban, suburban, and rural areas. In addition, the idea that gang members can become financially prosperous as the result of gang membership is just an urban legend. In reality, very few gang members ever find either financial or social success.

Researchers have identified a number of factors that put young people at risk for gang involvement: poverty, school failure, substance abuse, family dysfunction, and domestic and community violence. Many gang recruits have poor self-esteem and little adult participation in their lives. However, there is no magic formula for predicting whether a young person will or will not join a gang. Millions of young people face the conditions described above, yet never join gangs.

Some young people join gangs to receive attention and to feel a sense of belonging that is missing in their lives. Others are the children of gang members and are choosing a similar lifestyle. Still others join because they feel pressure from friends, possibly in the form of

threats, or because they believe that once they join they will be protected from police or members of other gangs. To people who see a future without job or financial opportunities, gang membership may appear to be their only alternative. This may explain why many older members, still lacking opportunities, are not “maturing out” of gangs.

How Can the Gang Problem Be Solved?

Most experts agree that the best way to handle the problem of gangs is to prevent young people from getting involved with gangs. Communities that are successful in dealing with gangs take the following actions:

- Operate outreach and intervention programs in which social workers and trained counselors encourage gang members to become involved in positive, non-gang activities.
- Provide greater opportunities for young people, including athletics, clubs, school tutoring, community service work, and job training.
- Mobilize government agencies, schools, parents, community groups, religious organizations, and other youths to increase awareness of the problem and develop opportunities for young people.
- Organize prevention strategies in which police and probation officers identify gang members (and wanna-bes) and place them in anti-gang membership programs.
- Prosecute gang members for illegal activity.
- Organize neighborhood watch groups that regularly remove graffiti and make it difficult for gangs to establish a presence or intimidate the community.

Problem 7.6

- a. Is there a gang problem in your community? If not, what steps should be taken now to prevent such a problem? If there already is a problem, how do you know it exists? What steps should be taken to deal with it? Should police be able to place gang members (and wanna-bes) in special programs without charging them with specific crimes? Explain.
 - b. Why do you think gangs are such a serious problem in the United States today? How do gangs resemble families? Why do you think people join gangs? What steps, if any, should be taken on the national level to deal with the problem?
 - c. Do you think gang membership appeals only to those from lower socioeconomic groups? Is a group of middle-class or rich kids that hangs out, vandalizes, and sells drugs a gang?
 - d. Do you think the nightly news and other television shows, certain cartoons and movies, and the lyrics of some popular music encourage violence? What, if anything, should be done about this?
-



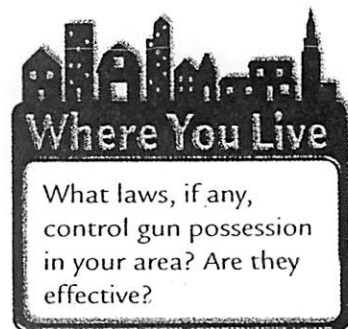
Guns and the Law

Most Americans who own firearms own them legally and use them lawfully. However, guns are frequently used in violent crimes. Efforts (or lack of efforts) by the government to control firearms are very controversial among U.S. citizens, millions of whom believe passionately that their liberty and perhaps their safety will be at risk if gun ownership is restricted. Others believe that the relatively easy availability of firearms to young persons has aggravated the crime problem. Still others argue that it is not guns, but gun users, who cause violence and that law-abiding citizens have a right to own firearms.

Gun control is an extremely controversial issue. Some groups look to the Second Amendment as protection against government attempts to ban or regulate firearms. Other groups argue that the language of the Second Amendment protects a state's right to maintain a militia, or armed forces, but does not protect citizens against government efforts to legislate in this area.

The U.S. Supreme Court has interpreted the Second Amendment on several occasions, and so have many lower courts. All courts have ruled that the amendment guarantees a state's right to maintain a militia. However, the U.S. Supreme Court has not used the Second Amendment to strike down federal, state, or local legislation that controls guns.

The Million Mom March is a national organization advocating responsible limits to gun access and use. *How is the Second Amendment used as protection against government attempts to ban or regulate guns?*



A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

— Second Amendment to the U.S. Constitution

The primary federal gun-control law is the *Gun Control Act of 1968*, passed after the murders of Dr. Martin Luther King, Jr., and Senator Robert Kennedy. This law prohibits certain categories of persons—such as convicted felons, minors, and illegal aliens—from buying or possessing weapons. The act requires serial numbers on all guns and establishes a licensing-fee schedule for firearms manufacturers, importers, and dealers. It prohibits the mail-order sale of all firearms and ammunition, and it also prohibits the interstate sale of handguns. The passage of the *Gun Control Act* set penalties for carrying and using firearms in crimes of violence or drug trafficking, and it set age guidelines for firearms purchased through dealers (handgun purchasers must be at least 21; long-gun purchasers must be at least 18). A more recent federal law bans the importation of certain semiautomatic weapons.

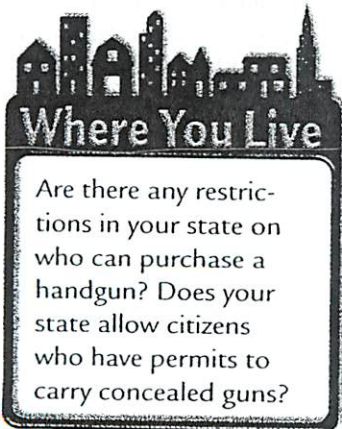
In 1993 Congress amended the *Gun Control Act* by enacting the *Brady Act*. The *Brady Act* is named for former White House press secretary James Brady, who was shot and paralyzed by a bullet an assassin intended for President Ronald Reagan. The act required the attorney general to create a national system to instantly check the background of persons who want to buy guns. Gun dealers must check the instant background service before completing the proposed sale. Until the national background check system could be set up,



For Your Information . . .

Guns In America

- Although it is difficult to state with certainty how many guns there are in the United States (because of illegal guns), it is estimated that between 40 and 45 percent of households have a gun in their home. (U.S. Bureau of the Census)
- In 2000, firearms claimed the lives of 28,663 people in the United States. Of those, 10,801 were homicides, 16,586 were suicides, and 776 were accidental shootings. Another 270 were the result of legal intervention, and the causes of the other 230 were undetermined. (National Center for Health Statistics, 2002)
- Firearms are the second leading cause of injury-related death in the United States for people 19 and younger, second only to automobile fatalities. (National Center for Health Statistics, 2002)
- In 2001, guns were used in 63 percent of all homicides. Young people aged 20–24 were the most common victims. (Uniform Crime Reports, 2002)



Are there any restrictions in your state on who can purchase a handgun? Does your state allow citizens who have permits to carry concealed guns?

an interim provision required local law enforcement officers to conduct the background check and required gun dealers to wait five days for the results before selling guns. This interim provision, however, was declared unconstitutional by the U.S. Supreme Court in 1997, which said Congress does not have the constitutional authority to force states to conduct such background checks. Even so, many states have enacted their own legislation requiring background checks, fingerprinting, firearm training, and other application requirements to purchase a gun. In 2001, 8 million applications for guns were processed in the United States; 151,000 were rejected.

A wide range of gun laws have been enacted at the state and local levels. Some states require a person to take a training course or test before purchasing a gun. State laws permitting citizens to carry a concealed weapon became a trend during the 1990s. Proponents of these laws often justify them on the grounds that individuals have a right to carry a weapon for purposes of self-defense. By 2002, 30 states had passed laws making it relatively easy to get a permit to carry a concealed weapon. Thirteen states make this permit process more difficult by requiring a specific need, such as working in a security job. Six states and the District of Columbia do not allow citizens to carry a concealed weapon. Vermont is the only state that does not regulate the carrying of weapons (concealed or openly) in any way. While many states are making it easier to get permits, polling data show that a majority of Americans favor stricter gun control laws.



James Brady became concerned about gun control after he was shot during an assassination attempt on President Reagan in 1981. *How does the Brady Act control gun possession?*

Problem 7.7

- a. Which is a better way to reduce crime—more gun control or less gun control? Give your reasons.
- b. What restrictions, if any, should the government place on the manufacture of firearms? The sale of firearms? The possession of firearms? Explain.

Law in Action

Child Access Prevention (CAP) Laws

In 1989 Florida became the first state to pass a so-called child access prevention law. The purpose of the law is to limit children's access to guns owned by adults. Florida's law makes it a crime to store or leave a loaded firearm within the reach or easy access of a minor. For this law, a minor is a person under the age of 16. The law applies only if the minor gains access to the gun. The law does not apply if the gun is stored in a locked box or secured with a trigger lock. The gun owner's offense is a misdemeanor if the minor gains access to the gun, but a felony if the minor uses the weapon to harm himself or others. Fourteen additional states and some cities have passed similar laws.

After a series of tragic shootings on school grounds by young people in 1997 and 1998, Congress passed a similar federal law.

Problem 7.8

- Do you think a child access prevention law is effective? Give your reasons.
- Is it appropriate that there is a similar federal criminal law? Explain.
- Suppose you wanted a similar law passed in your state. What steps might you take to get such a law enacted? What organizations might help you? What organizations might oppose such a law?

Substance Abuse and Crime

The term *substance abuse* has come into general use in recent years. The word *substance* is used to describe all the different kinds of chemicals that people abuse, including alcohol and drugs. This type of abuse has always plagued American society. Substance abuse contributes to many social problems, including the breakup of families, decreased productivity, injuries in the workplace, and automobile crashes. Criminal activity often results from substance abuse or the desire for money to purchase drugs.

Alcohol

Alcohol is the most widely abused substance in the United States today. One reason for this is that drinking alcohol is generally socially acceptable in our society. Alcohol use has been legal for adults over 21 years of age since the birth of the country—with the exception of a 14-year period from 1920 to 1933 known as Prohibition. Not all countries, however, believe alcohol use is acceptable. For example, it is a criminal offense to drink alcohol in Saudi Arabia.

Alcohol abuse is detrimental to society. Alcoholism contributes to the poor functioning of some families, and many people commit spouse and child abuse and other crimes while under the influence of alcohol. The annual cost of alcohol abuse to American society is estimated at nearly \$150 billion.

When considering alcohol and crime, most people focus on the tragic loss of life resulting from drinking and driving accidents. This topic will be covered below. However, many people do not connect alcohol to other forms of violence. According to the U.S. Department of Justice, alcohol abuse was a factor in 35 percent of violent crimes committed in the United States in 2001. And two-thirds of the victims who suffered violence by a spouse, former spouse, boyfriend, or girlfriend report that alcohol had been a factor.

The term **drunk driving** is used in a general sense to refer to the legal terms *driving while intoxicated* (DWI) and *driving under the influence* (DUI). Legally, these terms have meanings more precise than their meanings in everyday usage. The legal definition of DWI/DUI refers to a person's blood alcohol concentration (BAC). The BAC indicates the grams per deciliter (g/dl) of alcohol in the blood. A person's BAC can be determined through breath, urine, or blood samples. Alcohol is a mind-altering drug, and tests have shown that thinking and reaction time are affected in varying degrees by the level of alcohol in the blood system. Although the legal levels on BAC vary from state to state, an individual generally is considered *impaired* when the BAC is between 0.01g/dl and 0.09g/dl, and *intoxicated* when the BAC is 0.10g/dl or greater.

Every state in the country has a DWI/DUI law. In 1999 nearly 1.5 million people were arrested for driving under the influence of alcohol. Use of drugs, legal or illegal, that impair driving ability is also a violation of DWI/DUI laws. People can receive a variety of penalties for driving under the influence:

- monetary fine
- enrollment in a DWI school
- community service
- license suspended (taken away for a period of time)
- license revoked (permanently taken away)
- jail sentence (some laws require a minimum term)

Any combination of these penalties may be imposed on a convicted drunk driver. A repeat offender is likely to receive stiffer penalties, and many states now automatically suspend

Tasks such as walking a straight line help police determine if a person is driving while intoxicated. How does an implied consent law work?





Where You Live

How does your court system handle drunk drivers? Does it treat adults and juveniles differently? Are there programs in your community designed to help teens and adults with alcohol problems?

drivers' licenses for DWI/DUI. In most states, repeat offenders end up in jail. In some states, even a first-time offender must serve a brief jail sentence.

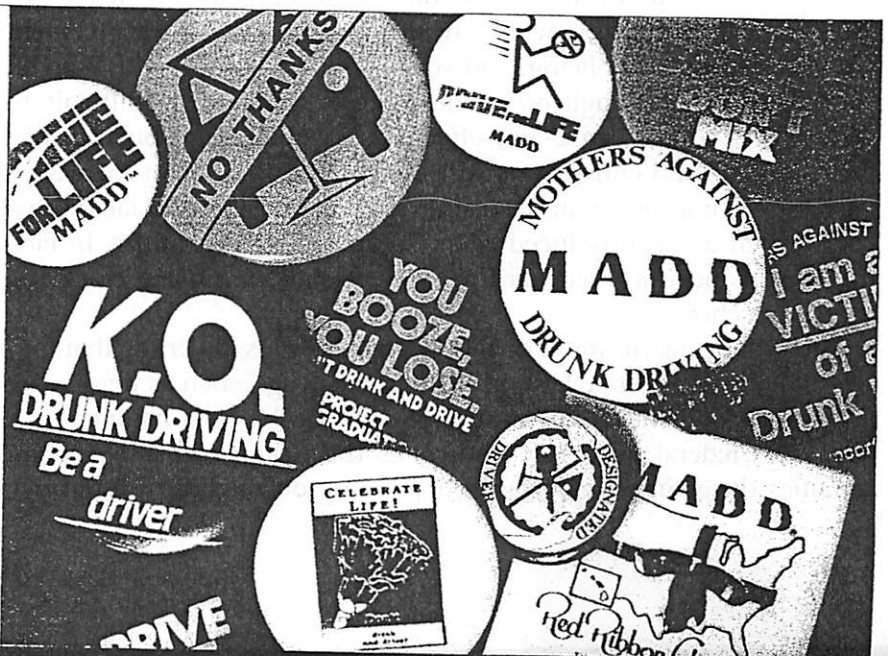
A driver who has been stopped may choose not to take an alcohol test. However, most states have an **implied consent** law under which the driver agrees to submit to a BAC test in exchange for the privilege of driving. In those states, refusal to take the test could result in immediate and automatic suspension of the driver's license for a certain period, even if the driver is not found guilty of DWI.

As drivers or passengers, young people are at a greater risk of being injured or killed in alcohol-related accidents than are people of any other age group. This is because teens are affected by alcohol faster and to a greater extent than adults and because teens tend to be less-experienced drivers. Approximately 40 percent of all highway deaths involved alcohol in 2001, and thousands of teens are injured each year in alcohol-related car crashes.

National and local organizations exist to help reduce drunk driving and provide assistance to those who are victims of drunk-driving crashes. Such organizations include Mothers Against Drunk Driving, Students Against Destructive Decisions (formerly Students Against Drunk Driving), Remove Intoxicated Drivers, the National Commission Against Drunk Driving, and the National Coalition to Prevent Impaired Driving. The work of these groups and others has resulted in greater public awareness of the dangers of drinking and driving.

Arrests for driving under the influence (DUI) peaked in the early 1980s, and started to decline by the early 1990s. Although total arrests for DUI declined by over 20 percent from 1991 to 2000, underage drinking continues to be a significant problem. Even though the arrest rate for drivers under age 18 decreased after all states adopted a uniform drinking age of 21 in the 1980s, the arrest rates for persons under age 18 who are caught driving under the influence rose nearly 14 percent from 1991 to 2000.

Organizations such as MADD have focused public awareness on drunk driving in recent years. Which of these organizations are active where you live?



Problem 7.9

Assume your state has recently had a series of automobile crashes, including a number of deaths, caused by people driving under the influence of alcohol. A high percentage of these crashes have been caused by drivers aged 17 to 25. Others have been caused by older drivers who have had drinking problems for years. These drivers have been arrested before for DWI and were either fined or given probation.

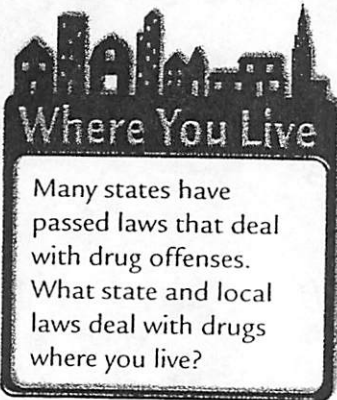
- a. You are a member of the state legislature, which has the power to change the law to try to solve this problem. Draft such a law.
 - b. Analyze the law that you drafted. Will it create any new problems? What can be done to resolve them?
 - c. What else could be done to reduce alcohol-related crashes? Would these measures work better than the law you proposed? Explain.
-

Drugs

While illegal drug use is not new, it has become increasingly widespread, and its effects have touched nearly everyone in American society. Illegal drug use costs society billions of dollars a year. The flourishing illegal-drug industry has led to a dramatic increase in criminal activity, ranging from murder to high-level government corruption. This has placed an overwhelming burden on the criminal justice system because so many people are arrested for selling or possessing drugs. Between 50 and 75 percent of persons taken into the criminal justice system test positive for one or more drugs at the time of their arrest. The trends in this area are difficult to determine: some cities have outbreaks of crack cocaine, while other cities experience increases in the use of marijuana, heroin, or methamphetamines. Some reports have shown a particularly close relationship between the increased use of crack cocaine and increases in the rate of violent crime in a community.

Earlier in this chapter you studied statistics that showed an overall reduction in crime in the 1990s. Various groups take credit for this reduction: economists cite the healthy economy, law enforcement credits community policing, and some politicians suggest that credit should go to get-tough-on-crime policies. While it is difficult to determine a certain cause-and-effect relationship, drug abuse arrests, prosecutions, and convictions rose during the 1990s. But increasing peer pressure *against* crack cocaine use may be the one factor that contributed most to reduced crime in specific communities. In fact, many teens have worked hard to show friends that using crack is a disastrous choice.

Possession, distribution, or sale of certain drugs is a crime that may violate federal law, state law, or both. Some drugs, such as heroin, are particularly addictive and can severely disrupt the personal life of the user. The federal drug law, known as the *Controlled Substances Act*, classifies drugs into five groups, depending on medical use (if any),



potential for abuse, and capability to create physical or psychological addiction. The penalties and criminal sanctions are different for each of the five groups.

Federal laws and most state laws now carry harsher penalties for drug offenders than they once did. Those who sell drugs or possess large amounts with intent to sell often face mandatory jail terms even for their first offense. Under federal law and in some states, those found guilty of being major drug traffickers may face a sentence of “life without parole.” Some states treat simple possession of even small amounts of certain types of drugs as felonies. In addition to the federal government, some states have also enacted special drug forfeiture laws, which allow the government to seize property such as bank accounts, airplanes, automobiles, and even houses that were used for, or were acquired through the proceeds of, drug crimes.

Partly in an effort to combat drug-related crime, more than 40 states have some type of repeat offender or **recidivist** law. These laws, passed primarily in the 1990s, require long sentences—including sentences of life in prison without parole—for persons who are repeatedly convicted of the same crime, even relatively minor ones. Some of these laws have been highly criticized as being unduly harsh. In 2003, however, the U.S. Supreme Court ruled that California’s recidivist law (called the Three Strikes Law) did not violate the Eighth Amendment protection against cruel and unusual punishment.

Law in Action

Drug Courts

In 1989 the federal government began promoting the use of drug courts. Drug courts embody a humane philosophy of treating drug offenders in that they offer treatment in place of punishment. These specialized courts give nonviolent offenders a simple deal: submit to drug testing on a regular basis, enroll in court-supervised drug treatment, stay off drugs, and you can stay out of jail. Failure to meet any of these conditions results in prosecution. Drug courts also work with offenders, helping them obtain

education, training, and employment. By the end of 2000, there were over 600 drug courts, with plans to add several hundred more.

Problem 7.10

- Are drug courts a good idea? Explain.
- Do you have a drug court where you live? If so, is it effective?
- Why might some places not want a drug court?

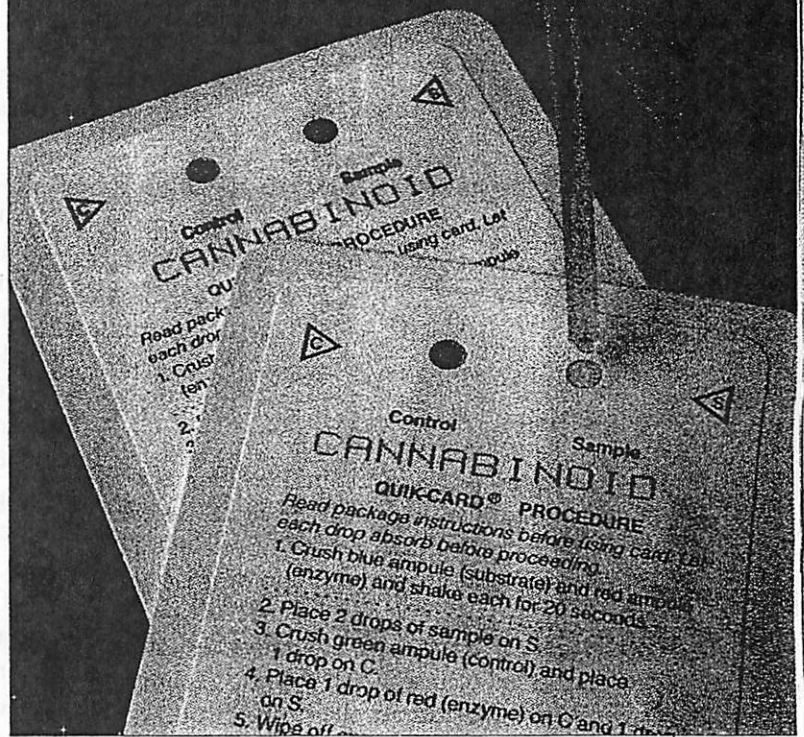
As a result of escalating drug use and drug-related violence, some people, including a few politicians, have proposed that perhaps American society should consider legalizing certain drugs, such as marijuana. These people point to the failure of the “war on drugs” and say that as long as some drugs are illegal, we are creating a market for their illegal sale. They believe the United States would be better able to control the sale and use of drugs if the laws changed from drug prohibition to drug regulation. Proponents of the legalization of drugs suggest that the United States treat drugs as a health problem. It is hypocritical, they claim, to restrict the use of drugs while allowing the legal sale of alcohol and tobacco, which studies show are very harmful to people’s health and cause many more deaths than drugs.

Some people favor legalizing certain drugs that can be used for medical purposes. Several states have passed ballot initiatives in favor of removing state criminal penalties for marijuana possession because of its potential medical use. While not striking down these state laws, in 2002 the Supreme Court ruled that federal drug laws do not contain any “medical use” exception. For this reason, criminal penalties remain in place for those prosecuted under federal laws.

Many others are opposed to any sort of drug legalization. They believe that legalizing drugs and making them easier to get would lead to greater drug use, cause more deaths, and increase other drug-related problems. These people feel that criminal laws deter drug use and that reducing penalties would deliver a message of acceptance. Legalizing drugs, they say, would result in what some people call “the addicting of America” and would endanger our society as a whole.

Problem 7.11

- a. Are there any controlled substances that should be legalized (which still might allow some form of government regulation and even fines)? If so, which controlled substances should be legalized?
- b. What are the most convincing arguments in favor of legalizing some controlled substances?
- c. What are the most convincing arguments against legalizing any controlled substances?
- d. How would society change if some controlled substances were legalized? Would these changes be good or bad? Explain.



Drug courts require offenders to submit to regular drug testing. *What other conditions set by the drug court must an offender meet?*

Law in Action

Drugs in the City

The city of Southland has been plagued by a growing drug epidemic. City officials and citizens are especially outraged that adults are using teenagers to sell drugs for them. This happens because teens often receive lighter sentences than adults do for drug-related offenses. Southland is also facing an influx of drugs and drug dealers from other cities. The mayor has called a special council meeting to address the problem. Six experts have been asked to testify and present six different approaches to address the problem.

Police Chief Anderson (Law Enforcement Approach): “We cannot be everywhere at once. The department needs 100 more officers. The best way to combat the drug epidemic is to put more officers on the street and arm them with the newest and best weapons. Let’s show the dealers and their customers that we mean business.”

District Attorney Fisher (Restrict Civil Liberties Approach): “I think the city should declare an emergency and clamp down on drug sales on the street. Because of the epidemic, the civil liberties of the citizens of Southland must be temporarily limited. Since teenagers are selling drugs late at night, we need to institute a 9 P.M. curfew for anyone under the age of 18. I also advocate conducting random searches of students at school and establishing checkpoints where all cars will be stopped and searched in areas where drug trafficking is high.”

Terry Blade (Drug Treatment Approach): “I am an ex-drug addict who was cured because I was arrested and sent to a good treatment program. I see drug treatment as the best way to cut the demand for drugs, thereby driving the drug dealers out of business. Many addicts are turned away because treatment spaces are limited in this community. I want the city to devote more resources to treating people addicted to drugs.”

School Superintendent Lee (Preventive Education Approach): “Preventive education is the real answer to the drug problem. We must address the issue of values and the choices every student has—obey the law, or use or sell drugs. I want innovative drug education for every student, starting in the first grade.”

Judge Horton (Penalties Approach): “Stiffer penalties are needed. The city council should recommend to the state legislature tougher mandatory sentences for drug offenders. Anyone aged 15 or older who is convicted of selling drugs should be given a mandatory two-year sentence and be treated as an adult.”

Alana Fuentes (Legalization Approach): “We should push for the legalization of drugs. If drugs are made legal, the government can regulate the price and quality of the product, and thereby reduce or eliminate the black market for drugs. Drug addicts won’t need to commit other crimes in order to obtain money to buy drugs at outrageously high street prices. Finally, our tax dollars won’t be wasted chasing drug traffickers and international cartels. Some of the money saved should be used to fund preventive education programs and treatment programs.”

Problem 7.12

- After listening to the experts, decide which of the approaches will most help the city of Southland. List the six approaches in order of your preference and give reasons for your rankings.
- What are the costs and benefits of each approach? What are the problems of each?
- Could more than one of the approaches be tried at the same time? If so, which ones go together most easily?
- Which approach will you vote for? Explain.

Victims of Crime

Crime affects us all, but victims suffer most. Victims of crime are found among all segments of society: young, old, rich, poor, and among people of all racial and ethnic groups. Each year, more than 24 million Americans aged 12 and older are victims of crime.

Teens and young adults are more likely to be victims of crime than people in any other age group. In 2001, persons 12 to 24 years old were victims of violent crime at rates higher than any other age group. Among persons aged 12 to 15, 55 of every 1,000 were victims of violent crime, compared to 3 of every 1,000 persons over age 65.

Gender, socioeconomic status, race, and location are also factors that influence a person's likelihood of becoming a victim of crime. Except for rape and sexual assault, males are more frequently the victims of violent crime. Persons from lower-income households are more likely to be victims of crime than those with higher incomes. Members of minority groups, urban dwellers, and those who rent their homes are more likely to be victims of crime than persons who are white, nonurban and property owners. For example, in 2000, 49 percent of all murder victims were African American, even though only 12 percent of the U.S. population were African American.

In recent years, public interest in aiding victims of crime has grown. Most states now have victim assistance programs. These programs provide victims with counseling, medical care, and other services and benefits. Most states also have victim compensation laws. These laws provide financial help for victims—paying medical bills, making up lost salary, and, in some cases, paying funeral costs and death benefits to victims' families. In recent years some states have begun to allow prosecutors to submit victim impact statements to the court when a person is sentenced for a crime. These impact statements show the effect of the defendant's crime on the victim's physical and psychological well-being. In addition, courts sometimes order **restitution**—requiring criminals to pay back or otherwise compensate the victims of their crimes.

Today, victim advocacy groups are playing a more significant role in the criminal justice system. Their primary function is to help victims through their trauma and also to protect the rights of victims. Most of these groups deal with specific crimes, like rape, spouse abuse, drunk driving, and child abuse. One highly successful victim advocacy group is Mothers Against Drunk Driving (MADD). In recent years, MADD has been instrumental in calling attention to the problem of drunk driving and in lobbying for and winning stricter punishment for people caught driving while intoxicated.



Contact your police or prosecutor's office to learn whether there is a victim's assistance program in your community. If there is one, how does it operate? Is there a victim compensation law? If so, how does it operate?

Urban dwellers are more likely to become victims of crime. *What other factors influence a person's likelihood of becoming a victim of crime?*

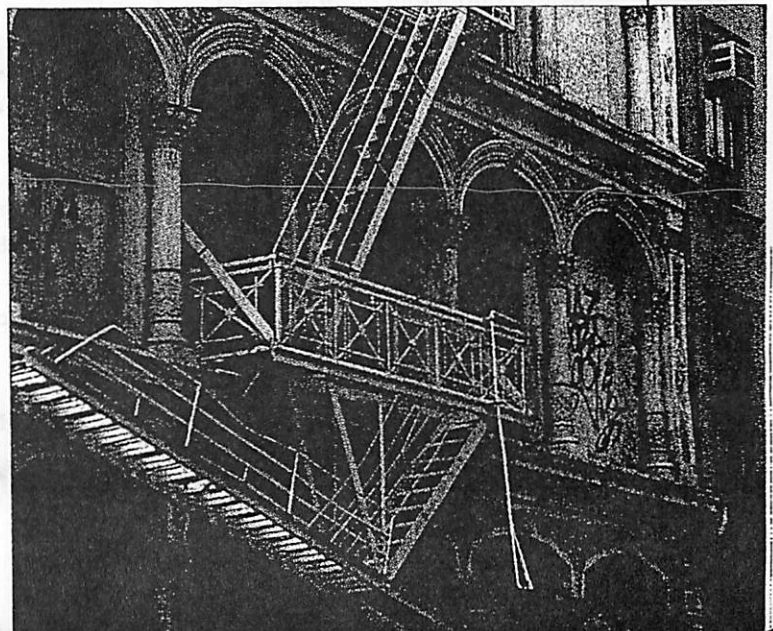
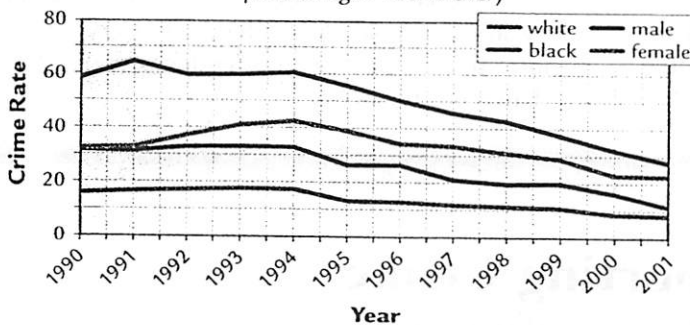


FIGURE 7.3 Violent Crime Rates

Year	Age of Victim (Adjusted victimization rates per 1,000 persons aged 12 and over)						
	12-15	16-19	20-24	25-34	35-49	50-64	65+
1990	101.1	99.1	86.1	55.2	34.4	9.9	3.7
1991	94.5	122.6	103.6	54.3	37.2	12.5	4.0
1992	111.0	103.7	95.2	56.8	38.1	13.2	5.2
1993	115.5	114.2	91.6	56.9	42.5	15.2	5.9
1994	118.6	123.9	100.4	59.1	41.3	17.6	4.6
1995	113.1	106.6	85.8	58.5	35.7	12.9	6.4
1996	95.0	102.8	74.5	51.2	32.9	15.7	4.9
1997	87.9	96.3	68.0	47.0	32.3	14.6	4.4
1998	82.5	91.3	67.5	41.6	29.9	15.4	2.9
1999	74.5	77.6	68.7	36.4	25.2	14.4	3.9
2000	60.1	64.4	49.5	34.9	21.8	13.7	3.7
2001	55.1	55.9	44.9	29.4	23.0	9.5	3.2

Race and Gender of Victim
(Adjusted victimization rates per 1,000 persons aged 12 and over)



Sources: Rape, robbery, and assault data are from the *National Crime Victimization Survey (NCVS)*. The homicide data are collected by the *FBI's Uniform Crime Reports (UCR) Supplementary Homicide Reports* from reports from law enforcement agencies. Homicide estimates for 2001 are based on 2001 Preliminary Annual Release data.

Problem 7.13

Study the victimization data above. Then answer the following questions.

- a. Which age group is most frequently the victim of crime? Least frequently?
- b. What trend do you see in the data on victimization by age? Explain this trend.
- c. What trend do you see in the data on victimization by gender? How would you explain this trend?
- d. What trend do you see in the data on victimization by racial group? How might you explain this trend?

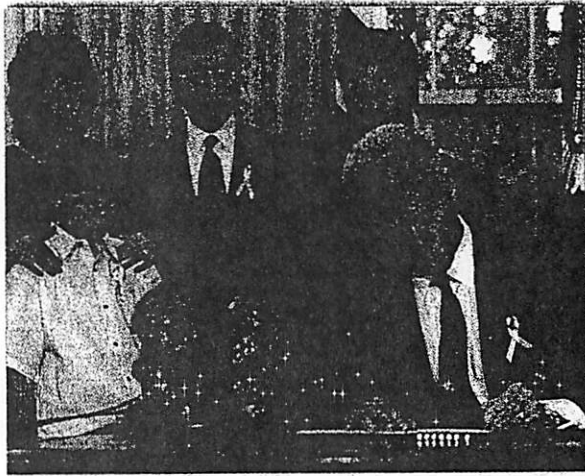


Visit streetlaw.glencoe.com and click on **Textbook Update—Chapter 7** for an update of the data.

Law in Action

Victims' Rights: Megan's Law as Advocacy

Victims' groups can often be successful in helping to pass legislation that provides protection for particularly vulnerable members of society. For example, in the early 1990s, seven-year-old Megan Kanka was abducted, sexually molested, and murdered by a neighbor who, unknown to her parents, was a convicted sex offender. Following this tragedy, through the advocacy of parent groups and communities, voters across the country began enacting local legislation that would help protect children from sex offenders. Within two years of Megan's abduction and murder, all 50 states and the District of Columbia had passed their own versions of Megan's Law, requiring the registration of all convicted sex offenders in the community. Ex-offenders have challenged these laws in several states, claiming they are being punished twice for the same offense—once by a term in jail and then again by being listed on these registries. In 2003 the U.S. Supreme Court upheld the Alaska and



Signing Megan's Law

Connecticut versions of these laws based on the states' interest in maintaining public safety and because the goal of an offender registry is to inform, not to judge an offender as currently dangerous to society.

Preventing and Reporting Crime

Crime is something that almost everyone worries about. As an effective citizen, you can help fight crime by learning how to protect yourself. This means knowing both how to prevent crime and what to do if you are ever a victim of crime. Remember that reporting crime helps to prevent others from becoming victims in the future. To reduce the risk of crime, be sure to take the following steps:

- Report suspicious activity to the police. The police cannot help you if you do not call them.
- Always lock doors and windows. You can prevent many burglaries by locking up! Also, when at home, do not open the door unless you know who is outside. Cancel newspapers and the mail when on vacation. Do not enter your home if you think someone has broken in. Instead, call police from a neighbor's house.

- Be alert when in high-crime areas such as dark, deserted streets and parking lots.
- Use the “buddy system.” Criminals are less likely to target pairs or groups of people.
- Do not flash money in public.
- If you witness a crime or have been victimized, stay calm and call the police.
- Try to provide police with as much information as possible. If you can, write down the details of the situation as well as a description of the suspect.
- You may be asked to file a complaint or to testify in court. Helping the police will assist them in preventing the criminal from committing additional crimes in the future.

Crimes of identity theft and consumer fraud are also significant and growing problems. You can learn more about protecting yourself from these crimes in Chapter 10, Crimes Against Property. You will also learn about identity theft and consumer fraud in Unit 4, Consumer and Housing Law.

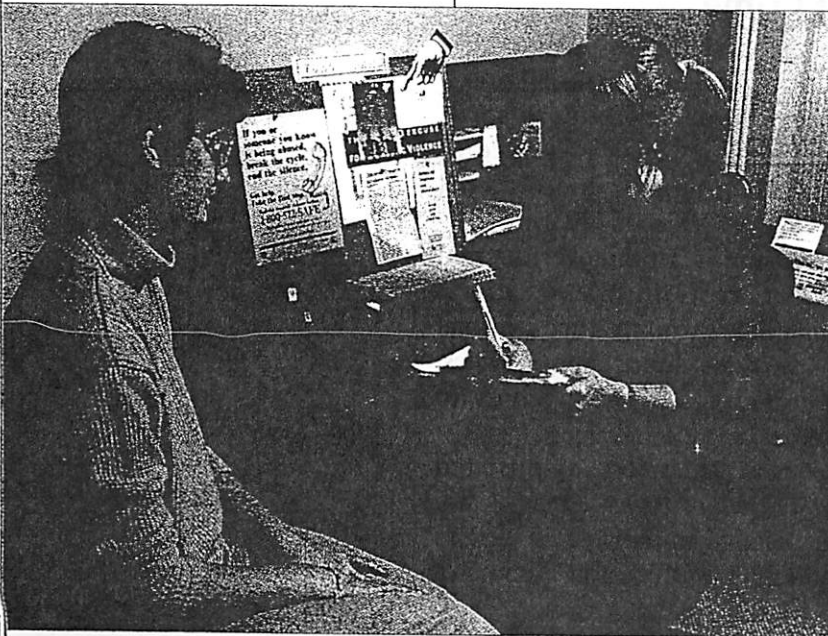
If You Become a Victim

There are two different views on what to do if you believe you are about to become the victim of a crime. The first theory is that you should not fight back. For property crimes, for example, many believe you should give up the property without objection to reduce your risk of injury. The second theory is that you should resist the assailant. Many advocate learning self-defense techniques to protect yourself in the event of a personal crime. Which course should you follow? Every situation is unique, but your safety should always come first.

If you choose to fight back against the assailant, be prepared to risk injury. Know your own limitations. Not everyone has the strength or size to be able to fight back successfully. If the assailant has a weapon, you should assume it is going to be used.

As a general rule, criminals do not want an audience. If you are able to scream or blow a whistle, do so if you know you will be heard. If you cannot run away, sit down so you will not get knocked down. Finally, call the police as soon as you can. Do not wait! The longer you wait, the more likely it is that the criminal will get away.

Survivors of crime can turn to governments and private organizations for assistance. In what ways can a rape crisis center help a rape victim?



Good Samaritan Laws

Are witnesses to crimes under any obligation to come to the aid of victims? Until recently, the legal answer, as opposed to the moral answer, was no. Most states have had Good Samaritan laws that relieve bystanders from most civil liability when they help people in danger, but they have not required bystanders to help. Now,

however, several new state laws require witnesses to offer whatever help they can reasonably provide without endangering themselves. In the case of a violent crime, this simply means reporting the crime to the police. Does your state require witnesses to report violent crimes to police? If not, should it?

Problem 7.14

- a. Do you know anyone who has been the victim of a crime? What was the crime? How did it affect the person? The person's family?
 - b. List and discuss at least four things you can do to protect yourself from becoming a victim of crime.
 - c. Have you ever witnessed a crime? What happened? What did you do? If it happened again, would you do the same thing?
-

Getting Help for Survivors of Crime

Many federal, state, and local governments, as well as private organizations, have established programs to assist survivors of crimes. These programs range from counseling and support groups to advocacy initiatives to funds established to lend financial assistance to families of and survivors of crime. Two such groups are the National Center for Victims of Crime and the Office for Victims of Crime.

The National Center for Victims of Crime is a nongovernmental organization that provides local services, crisis intervention, and practical information related to navigating through the criminal justice system. The organization also provides counseling services. Additional information about the National Center for Victims of Crime and its services can be found online at www.ncvc.org.

The Office for Victims of Crime is a federally administered program that was established by the *Victims of Crime Act of 1984*. It provides a vehicle for policy and legislative initiatives, as well as providing services to victims and families. The Office for Victims of Crime provides information online at www.ojp.usdoj.gov/ovc.

Introduction to Criminal Law

“Criminal law has to do with relations between the misbehaving individual and his government . . . Criminal law establishes rules of conduct; their breach, if prosecuted and conviction follows, results in punishment.”

— Lawrence M. Friedman,
American Law



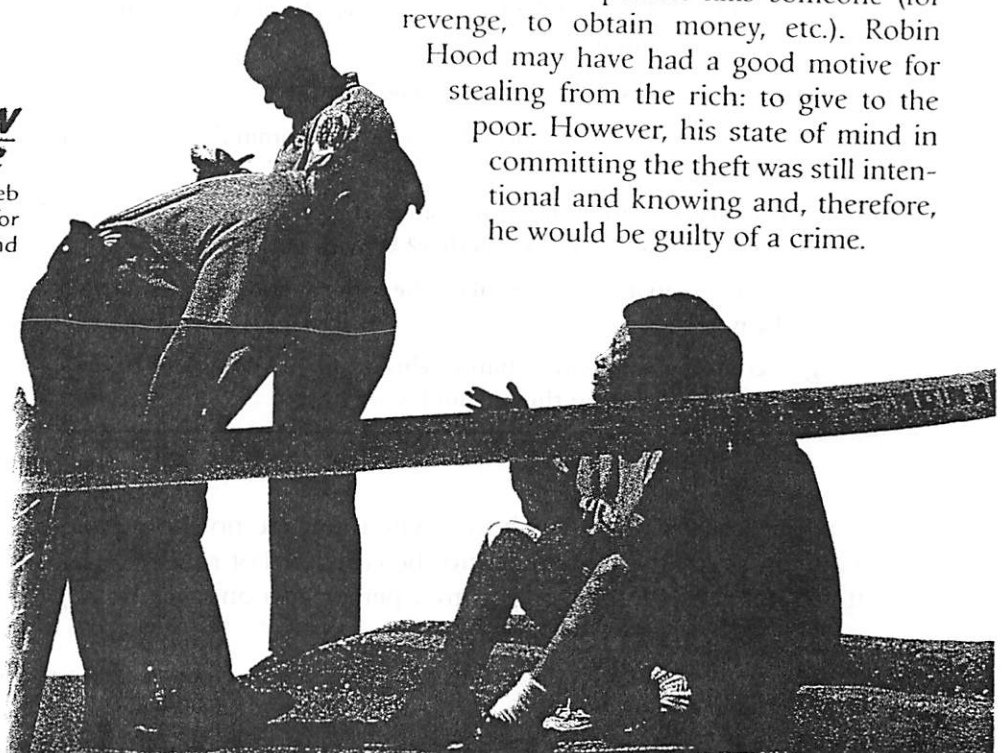
Street Law online

Visit the *Street Law* Web site at streetlaw.glencoe.com for chapter-based information and resources.

Police officers secure a crime scene to ensure that evidence is not lost.

Almost all crimes require an act, accompanied by a guilty state of mind. A guilty state of mind usually means that the prohibited act was done intentionally, knowingly, or willfully. In most cases, mere carelessness is not considered a guilty state of mind. For example, if Meredith accidentally forgot to turn the stove off before leaving for work and the whole apartment building caught fire as a result, she would not be guilty of arson, which is the intentional burning of a person’s property. She committed the act (burning a person’s property) but did not have the guilty state of mind (intent).

State of mind is different from motive. While state of mind deals with the level of awareness of performing some act—whether it was done purposely, intentionally, or recklessly—motive is the reason for performing the act. For example, in murder, the motive is the reason a person kills someone (for revenge, to obtain money, etc.). Robin Hood may have had a good motive for stealing from the rich: to give to the poor. However, his state of mind in committing the theft was still intentional and knowing and, therefore, he would be guilty of a crime.



A few crimes are **strict liability** offenses. These crimes do not require a guilty state of mind. The act itself is criminal, regardless of the knowledge or intent of the person committing the act. For example, the law makes it a strict liability crime to sell alcoholic beverages to minors. This is true regardless of whether or not the seller knew the buyer was underage. Just because a crime does not specify a state of mind, however, does not mean it is a strict liability offense. Courts will usually assume that some guilty state of mind is required unless the legislature specifically intended to pass a strict liability law. Most often, strict liability statutes are limited to crimes that do not carry severe penalties or to crimes that are part of a larger attempt to regulate some area of conduct.

General Considerations

Every crime is defined by certain **elements**, each of which must be proven at trial in order to convict the offender. Thus, in addition to proving any required guilty mental state, the prosecutor must prove beyond a reasonable doubt that every element of the crime was committed. For example, robbery is defined as the unlawful taking and carrying away of goods or money from someone's person by force or intimidation. Thus, the elements of robbery are (1) the taking and carrying away of goods or money, (2) the taking from someone's person, and (3) use of force or intimidation.

Problem 8.1

Anton is a bully. One night while eating at a local diner, he notices Derek selecting a tune on the jukebox. Anton does not like the song Derek picks, so to show his pals who is in charge, Anton orders Derek to change the song. When Derek refuses, Anton punches him in the face, breaking Derek's jaw. As a result of the injury, Derek misses several weeks of work and has to pay both medical and dental bills.

- a. Has Anton violated civil laws, criminal laws, or both?
 - b. Who decides whether Anton should be charged criminally? Sued in a civil action?
 - c. If Anton is charged with a crime and sued in a civil action, would the civil and criminal cases be tried together? Why or why not?
 - d. Would procedures in a criminal trial be the same as those in a civil trial? Why or why not?
 - e. Is going to court the only way to handle this problem? What alternatives are there and which do you think would work best?
-

If someone breaks into your house when you are not home and takes your property, the person cannot be convicted of robbery. The person did not take the property from a person (no one was home)

and did not use force or intimidation. However, the person could be guilty of burglary—breaking and entering into a home with intent to commit a felony—because the elements of that crime do not require the taking from a person or the use of force.

A single act can be both a crime and a civil wrong. For example, if Clay purposely sets fire to Tamika's store, the state may file criminal charges against Clay for arson. Tamika may also bring a separate civil action (lawsuit) against Clay to recover for the damage to her store. You will learn more about civil cases (torts) in Unit 3.

State and Federal Crimes

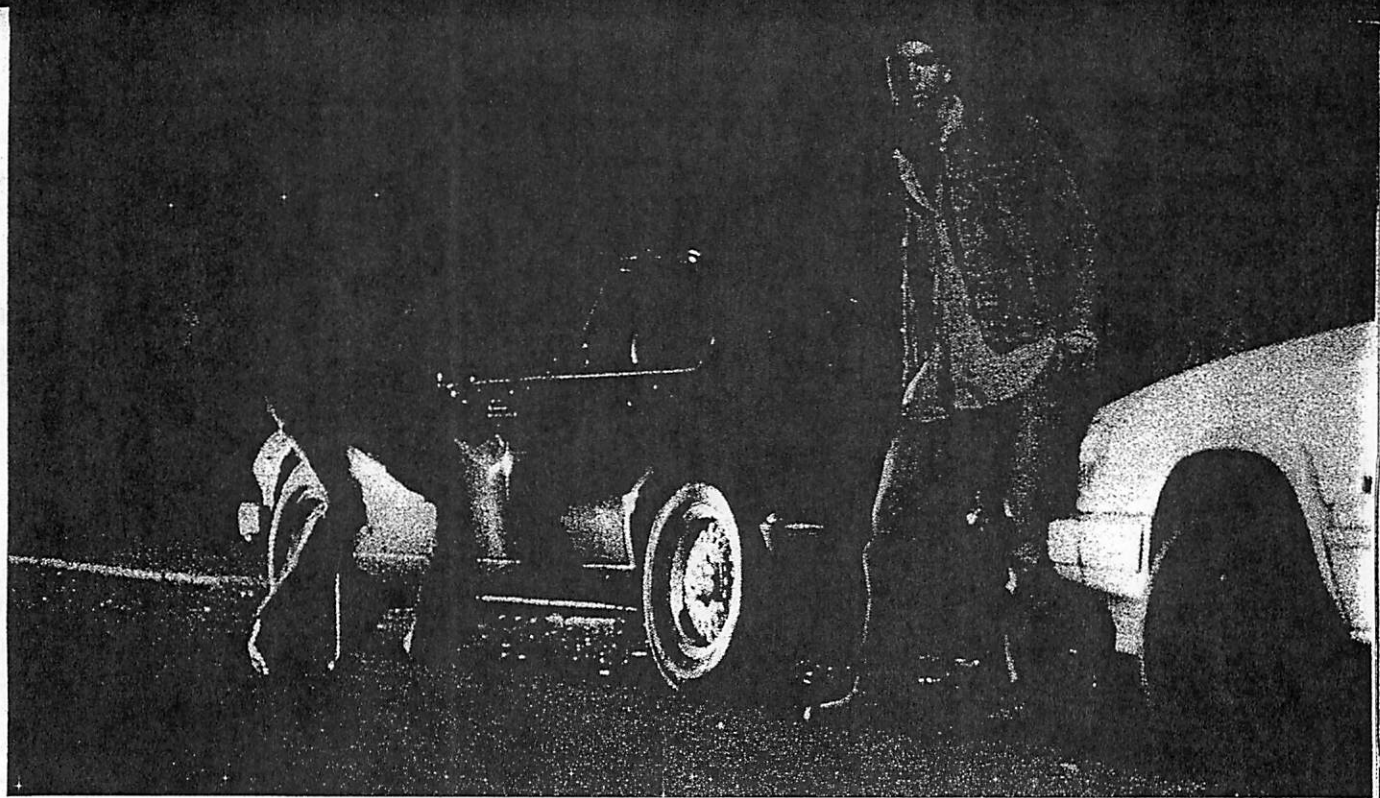
Criminal laws exist at both the state and federal levels. Some acts, such as simple assault, disorderly conduct, drunk driving, and shoplifting, can be prosecuted only in a state court unless they occur on federal property, such as a national park. Other acts, such as failure to pay federal taxes, mail fraud, espionage, and international smuggling, can be prosecuted only in a federal court. Certain crimes, such as illegal possession of drugs and bank robbery, can violate both state and federal law and can be prosecuted in either state or federal court.

Classes of Crimes

Crimes are classified as either felonies or misdemeanors. A **felony** is a crime for which the potential penalty is imprisonment for more than one year. Felonies are usually more serious crimes. A **misdemeanor** is any crime for which the potential penalty is imprisonment for one year or less. Minor traffic violations are not considered crimes, although they are punishable by law. This chapter deals primarily with felonies and major misdemeanors.

Parties to Crimes

The person who commits a crime is called the **principal**. For example, the person who fires the gun in a murder is the principal. An **accomplice** is someone who helps the principal commit a crime. For example, the person who drives the getaway car during a bank robbery is an accomplice. An accomplice may be charged with and convicted of the same crime as the principal. A person who orders a crime or helps the principal commit the crime but who is not present during the crime—for example, the mob leader who hires a professional killer—is known as an **accessory before the fact**. This person can usually be charged with the same crime and can receive the same punishment as the principal. An **accessory after the fact** is a person who, knowing a crime has been committed, helps the principal or an accomplice avoid capture or helps them escape. This person is not charged with the original crime but may be charged with harbor-



ing a fugitive, aiding the escape, or obstructing justice. Being an accessory after the fact has been made a separate crime by statute in many jurisdictions.

Problem 8.2

Jeb and Marci decide to burglarize Superior Jewelers. Their friend Carl, an employee at Superior, helps by telling them the location of the store vault. Marci drives a van to the store and keeps a lookout while Jeb goes inside and cracks the safe. After Jeb and Marci make their getaway, Jeb meets a friend, Shawn, who was not involved in the actual burglary. Jeb tells Shawn about the burglary, and Shawn helps Jeb get a train out of town. David, a former classmate of Jeb and Marci, witnesses the crime but does not tell the police, even though he recognizes both Jeb and Marci. How will each person be charged?

An accomplice can be charged with the same crime as the person who commits the crime. *Describe the difference between an accessory before the fact and an accessory after the fact.*

Crimes of Omission

Most crimes occur when a person does something or performs some act in violation of a law. In a few cases, however, failing to act—called an omission—may be a crime if the person had a legal duty to act. For example, it is a crime for a taxpayer to fail to file a tax return or for a motorist to fail to stop after being involved in an automobile accident. A person is guilty of a **crime of omission** when he or she fails to perform an act required by a criminal law, if he or she is physically able to perform the required act.

Preliminary Crimes

Certain types of behavior take place before, and often in preparation for, the commission of a crime. However, these preliminary crimes are nevertheless complete crimes in themselves. These offenses—solicitation, attempt, and conspiracy—give the police the opportunity to prevent the intended crime. Each offense can be punished even if the harm intended never occurred. For example, when two people agree to rob a bank, they commit the offense of conspiracy—whether or not they actually commit the robbery.

Solicitation

A number of states make it a crime for a person to solicit—or ask, command, urge, or advise—another person to commit a crime. The offense is committed at the time the **solicitation** is made. It does not require that the person solicited, or asked, actually commits the crime. For example, Dennis wishes to kill his wife, Carmella. Lacking the nerve to do the job himself, he asks William to kill her. Even if William refuses, Dennis has committed the crime of solicitation.

Attempt

In most states, an attempt to commit a crime is itself a crime. To be guilty of an attempted crime, the accused must have both intended to commit a crime and taken some “substantial step” toward committing the crime. Mere preparation to commit a crime is not enough.

When someone performs all of the elements of a crime but fails to achieve the criminal result, an **attempt** has occurred. For example, when a person intends to shoot and kill someone but misses or merely wounds the intended victim, the person is guilty of attempted murder. Sometimes, the crime is foiled before all of the necessary steps are completed, such as when a person purchases a gun, intends to shoot another person, but is arrested on the way to the intended victim’s house. Courts must then determine whether the actions of the accused constituted a “substantial step” toward the actual commission of the crime or were mere acts of preparation.

The Case of . . .

The Drowning Girl

Abe, Kristi, Chin, and Hannah see Jill drowning in a lake, but none of them takes steps to save her. Abe is the girl’s father. Kristi

deliberately pushed Jill into the lake by shoving Chin against her. Hannah, a medal-winning swimmer, just stands and watches. Would any of the four be criminally liable for Jill’s drowning? Should any of them be liable? Explain your answer.

Problem 8.3

Examine the following situations and decide whether any of the individuals involved would be guilty of the crime of attempt.

- a. Martin, a bank teller, figures out a foolproof method of stealing money from the bank. It takes him some time to get up the nerve to steal any money. Finally, he makes up his mind and tells his girlfriend, Yuka, that tomorrow he will steal the money. Yuka goes to the police, and Martin is arrested an hour later.
- b. Gilbert, an accomplished thief, is caught while trying to pick Lewis's pocket. He pleads not guilty and says he cannot possibly be convicted, because Lewis did not have a penny on him.
- c. Rita and Anwar decide to rob a liquor store. They meet at a pub and talk over their plans. Rita leaves to buy a revolver, and Anwar leaves to steal a car for use in their getaway. Rita is arrested as she walks out of the gun shop with her new revolver. Anwar is arrested while trying to hot-wire a car.
- d. Amy decides to burn down her store to collect the insurance money. She spreads gasoline around the building. She is arrested while leaving the store to get a book of matches.

Conspiracy

A conspiracy is an agreement between two or more persons to commit a crime. The designation of conspiracy as a crime is meant to prevent other crimes and to strike against criminal activity by groups. It also allows police to arrest conspirators before they come dangerously close to completing the crime. For example, the federal government aggressively pursued anyone believed to have conspired with the

The U.S. government took into custody people, such as Zacarias Moussaoui, believed to have conspired against the United States in the September 11, 2001 terrorist attacks. *Why is the designation of conspiracy as a crime sometimes criticized as a threat to First Amendment freedoms?*



al-Qaeda network in the terrorist attacks of September 11, 2001. The goal is to punish those involved in the attacks and to prevent any future terrorist activities from being carried out against U.S. interests. However, the designation of conspiracy as a crime is sometimes criticized as a threat to freedom of speech and association. For example, during the Vietnam War, the government charged several people with conspiracy for speaking publicly to young men on how to avoid the draft. Many critics of criminal conspiracy said the accused were being denied the freedom of speech.

An example of criminal conspiracy is the situation in which Nick, a drug dealer, asks Lyle, his associate, to help him kill another dealer. If Lyle agrees to Nick's request and then takes some step toward committing the crime, both are guilty of conspiracy to commit murder, even if the murder is never attempted or accomplished.

In most states and under federal law, an **overt act**—an act that is open to view—is required for conviction on a conspiracy charge. For example, a young man named John Walker Lindh was charged and pled guilty to several counts of conspiring against the United States in the wake of the 2001 terrorist attacks. The fact that he failed to warn the U.S. government about his knowledge of planned attacks against the country constituted overt acts upon which the conspiracy charges were based.

Law in Action

Conspiracy and the Oklahoma City Bombing

On April 19, 1995, there was a tragic bombing of a large federal building in Oklahoma City, Oklahoma. Many employees, as well as children in a day-care center located in the building, were killed.

In addition to federal and state prosecutions of the individuals who allegedly committed the bombing, the federal government also prosecuted an individual who did not actually take part that day in the bombing. He was convicted of conspiracy to transport explosives across state lines and of failing to inform authorities about this illegal activity.

A federal law called **misprision of felony** makes it a felony, punishable by up to three years in prison, for a person with knowledge of the actual commission of a felony that violates federal law to actively conceal this information (i.e., that he knew about the planned bombing) from law enforcement or judicial officers. What are the benefits of having a law that punishes actively concealing information about the commission of a felony that violates federal law? What obstacles might the government face in prosecuting the violation of such a law? Do you think such a law should exist? Explain.

CHAPTER 9

Crimes Against the Person

“Crime and the fear of crime have permeated the fabric of American life.”

— Warren E. Burger

Crimes against the person include homicide, assault, battery, and rape. All of these crimes are serious offenses. A defendant found guilty of any one of them may receive a harsh sentence. The law also protects the defendant from overly harsh penalties by defining various levels of these crimes and by considering the circumstances of each offense.

Homicide

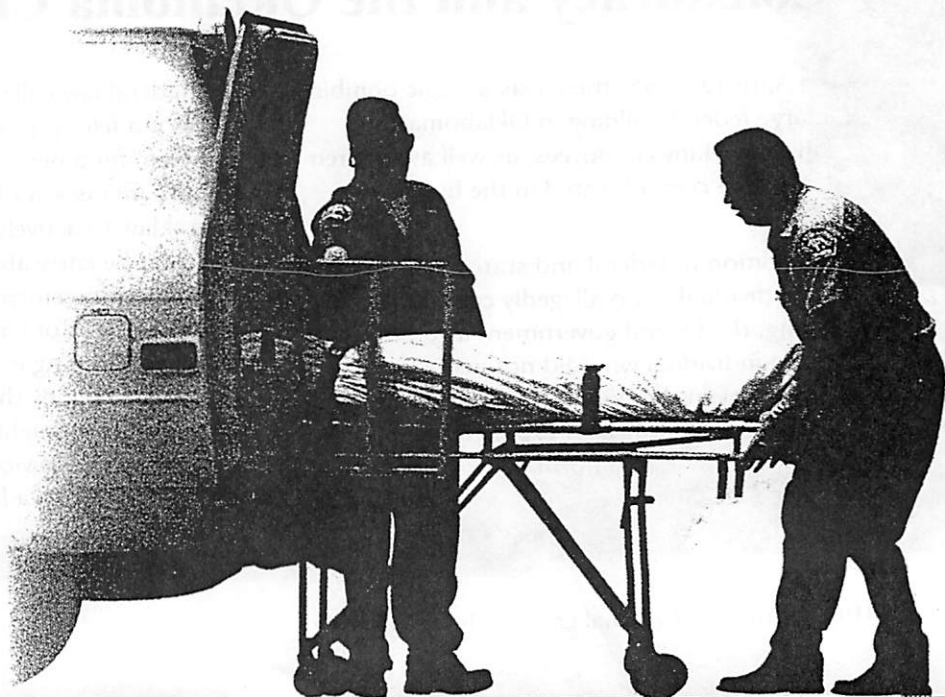
Homicide—the killing of one human being by another—is the most serious of all acts. Homicides may be either criminal or non-criminal. Criminal homicide is committed with intent, or a plan. It is also considered criminal homicide if a person’s reckless actions, without regard for human life, result in the killing of another person. Noncriminal homicide can be classified as either “excusable” or “justifiable,” and is not subject to criminal charges.

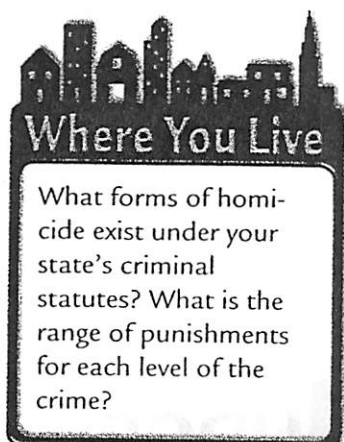


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Coroners remove a body from the scene of a homicide.





Criminal Homicide

Murder, the most serious form of criminal homicide, is killing that is done with **malice**. Malice means having the intent to kill or seriously harm another person or acting in an extremely reckless manner which shows a lack of regard for human life. At one time, there were no degrees of murder. Any homicide done with malice was considered to be murder and was punishable by death. To reduce the punishment for less-grievous homicides, most states now have statutes that classify murder according to the killer's state of mind or the circumstances surrounding the crime.

First-degree murder is usually defined as killing that is premeditated (thought about beforehand), deliberate, and done with malice. It is an action with an intent to kill or cause severe bodily injury or with a depraved indifference to human life. Courts have often found that the premeditation and deliberation can occur very close to the time of the homicide.

Felony murder is any killing that takes place during the commission of certain felonies, such as arson, rape, robbery, or burglary. It is not necessary to prove intent; malice is presumed because the homicide occurred during the felony, even if the killing was accidental. Most states consider felony murder to be first-degree murder regardless of whether malice, premeditation, and deliberation exist.

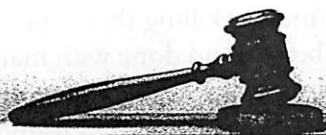
Second-degree murder is killing that is done with malice, but without premeditation or deliberation. That is, the intent to kill did not exist until the moment of the murder. Second-degree murder includes intentional but spontaneous killings that are unplanned.

Voluntary manslaughter is killing that would otherwise be murder, but that occurs after the victim has done something to the killer that would cause a reasonable person to lose self-control or act rashly. A person who kills someone in a violent argument or quarrel without first planning to do so is guilty of voluntary manslaughter. Words alone, no matter how offensive, do not reduce the severity of a murder to voluntary manslaughter. Also, the killing must occur just after the provocation so that the killer did not have an opportunity to "cool down." A typical example of voluntary manslaughter is when a person discovers his or her spouse with someone else and that person kills the spouse's lover in a jealous rage. Voluntary manslaughter is punished somewhat less severely than murder as a concession to the frailty of human character.

Involuntary manslaughter is a killing in which there is no intent to kill at all. It is unintentional killing resulting from conduct so reckless that it causes extreme danger of death or bodily injury. An example of involuntary manslaughter is killing that results from playing with a gun known to be loaded.

Negligent homicide means causing death through criminal negligence. **Negligence** is the failure to exercise a reasonable or ordinary

amount of care in a situation, thereby causing harm to someone. Some states classify death by gross, or extreme, negligence as involuntary manslaughter. The most common form of negligent homicide is vehicular homicide. This is killing that results from operating a motor vehicle in a reckless and grossly negligent manner. Any death that results from careless driving may lead to a civil suit for damages, but it is usually not considered a crime unless the death results from gross negligence.



YOU BE THE JUDGE

Homicide Cases

Read each of the following situations carefully. For each one, determine who can be charged with homicide and the degree of homicide for which they should be charged. Give your reasons.

- a. Walt decides to shoot Yolanda, whom he blames for all his troubles. As he is driving to her home to carry out the murder, he accidentally hits a jogger who darted out from behind a tree. Stopping immediately, Walt rushes to help the jogger, who is already dead. Assume that Walt was driving at a safe speed and that the collision was unavoidable.
- b. Belva is cheated when she buys a car from Fast Eddie's Car Mart. She attempts to return the car, but Eddie just laughs and tells her to go away. Every time Belva has to make a repair on the car, she gets angry. Finally, she decides to wreck Eddie's car to get even with him. Following him home one evening, Belva tries to ram his car, hoping to bend the axle or frame. Instead of bending the frame, the collision smashes Eddie's gas tank, causes an explosion, and kills him.



The car explosion

- c. Alison and Brad decide to rob a bank. Brad drives the getaway car. Alison goes into the bank and pulls out her gun, announcing, "This is a stickup. Don't move!" The bank guard, Gordon, shoots at Alison but misses, killing Dawn, a customer.

Noncriminal Homicide

Some homicides are not considered crimes at all. Noncriminal homicide is killing that is justifiable or excusable and for which the killer is deemed faultless. Examples of noncriminal homicide include the killing of an enemy soldier in wartime, the killing of a condemned criminal by an executioner, the killing by a police officer of a person who is committing a serious crime and who poses a threat of death or serious harm, and a killing performed in self-defense or in defense of another person.

Suicide

Suicide, the deliberate taking of one's own life, was once considered a crime. States that regard it as a crime today, however, prohibit only *attempted* suicide. Courts often treat suicide as a plea for help, requiring the person who attempted it to undergo a psychological examination and receive treatment, often in the form of counseling. Someone who helps another person commit suicide can, however, be found guilty of the crime of murder or manslaughter.

Suicide is one of the leading causes of death among teenagers. The Centers for Disease Control and Prevention (CDC) reported that in 2001, 19 percent of teens in grades 9 through 12 reported seriously

considering suicide, 15 percent made a plan to commit suicide, and 9 percent attempted suicide. The CDC also reported that, on average, a high school student succeeds in killing himself or herself every 15 minutes.

Although many people have suicidal thoughts at some point in their lives, most never attempt suicide. Many can be helped by suicide hotlines, medication, counseling, and other programs for those who may be considering suicide. Despairing individuals may need someone else to talk to who can help them see positive alternatives to ending their life.

There are many national hotlines that may be helpful for teens considering suicide, a few of which are described here. The National Crisis Helpline assists by locating the nearest crisis service in the United States, and can be reached by calling toll-free 1-800-999-9999.

Hotlines and other services are available for people who are considering suicide. How can hotlines help such individuals?



The Case of . . .

The Dying Cancer Patient

Wilfred, age 75, has been suffering from cancer for 10 years. The pain associated with the cancer is severe and has become worse over time. Wilfred's doctors say there is no treatment to either slow down the cancer's growth or substantially reduce the pain. Wilfred asks Martha, his wife of 50 years, to relieve him of the terrible pain. He asks her to bring him a bottle of pills that would help him end his own life. Martha, who cannot stand watching Wilfred suffer anymore, gives him the pills. He swallows them all, slowly fades off to sleep, and dies.

Problem 9.1

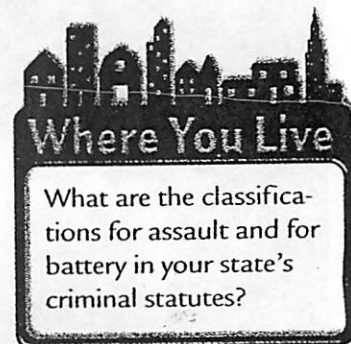
- a. Was Wilfred's request related to suicide? Explain.
- b. If you were the district attorney in the state where Martha lives, would you file criminal charges against her? Explain.
- c. If manslaughter charges were filed and you were on the jury, would you vote to convict Martha? Give your reasons. If Martha were convicted, what sentence should she receive? Why?
- d. If the bottle of pills had been given to Wilfred by a physician instead of by his wife, would your answers have been different? Give your reasons.
- e. If you were a state legislator, would you advocate a law allowing assisted suicide? Explain.

The National Youth Crisis Hotline provides guidance and support to teens in crisis. Volunteers discuss issues and provide referrals in such areas as suicide prevention, pregnancy, gangs, runaway services, eating disorders, physical abuse, and substance abuse. The National Youth Crisis Hotline can be reached by calling toll-free 1-800-HIT-HOME (448-4663) or 1-800-442-HOPE (4673). It also offers information online at www.1800hithome.com.

You can also use the phone book or Internet to find suicide hotlines and prevention programs located in your community. A directory of suicide hotlines for every state can be found online at www.suicidehotlines.com. There may also be programs especially for teenagers or the elderly.

Assault and Battery

Assault is any attempt or threat to carry out a physical attack upon another person. **Battery** is any unlawful physical contact inflicted by one person upon another person without consent. Actual injury is not necessary. The only requirement is that the person must have intended to do bodily harm. Today, there is often not much difference in law or practice between the uses of the words *assault* and *battery*.





Anti-stalking laws protect people from harassment and threats. *Does your state have anti-stalking laws?*

Just as there are degrees of murder, there are also different classifications for assault and battery. Many states now have separate statutes for assault with intent to rob or assault with intent to murder. Aggravated battery is often defined by the harm inflicted: an unarmed assault that results in a serious physical injury is an aggravated battery rather than a simple assault.

Assaults typically result from arguments between people who know each other. In such arguments, rage—often stimulated by alcohol or jealousy—leads to violence. Whether the violence leads to serious injury or death often depends on the presence of a weapon.

Stalking occurs when a person repeatedly follows or harasses another person and makes threats, causing the victim to fear death or bodily injury. Women are the targets of most of the cases of stalking that occur each year. To deal with the growing problem of harassment, most states now have anti-stalking laws.

Sexual assault is a specific kind of assault that can include rape or attempted rape. Sexual assault includes a wide range of victimizations from verbal threats of a sexual nature to unwanted sexual contact between the victim and the offender. Like assault and battery, sexual assault can be an attack that is either completed or attempted. The unwanted contact might include grabbing or fondling and may, but does not have to, involve force. Contrary to traditional views of male and female roles, both men and women are capable of committing and being victims of sexual assault.

Rape

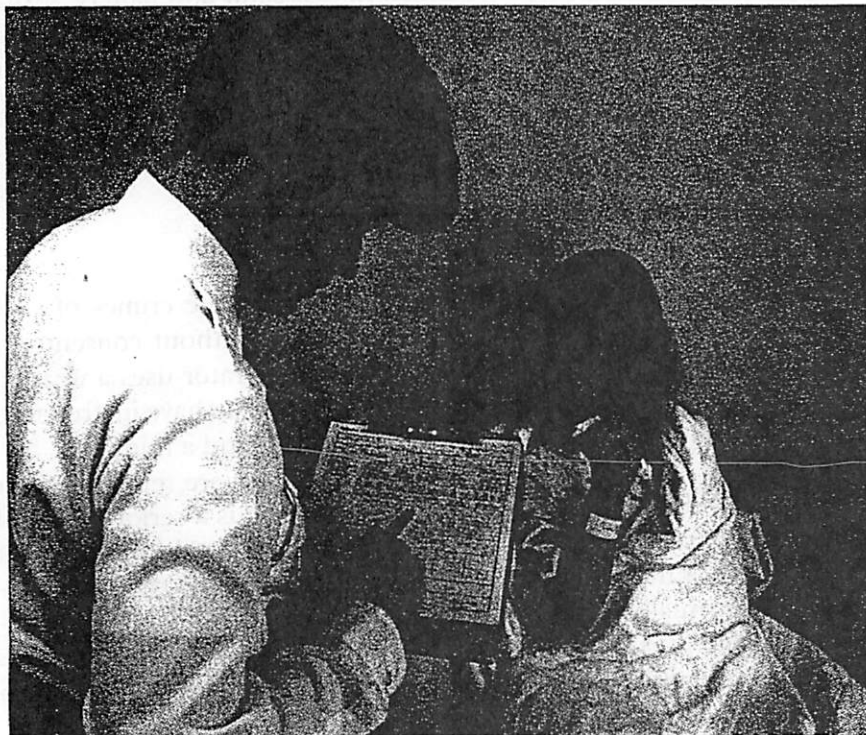
Traditionally, the law has recognized the separate crimes of rape and statutory rape. **Rape** is sexual intercourse without consent. An aggravated form of rape occurs when the perpetrator uses a weapon or some other form of force to compel the victim to have intercourse. **Statutory rape** is intercourse between an adult and a minor.

This area of law is in transition as many states are replacing their rape laws with criminal sexual assault laws. Rape is a serious form of criminal sexual assault. As noted, the crime requires a lack of consent on the part of the victim. There is no consent if the victim is unconscious or mentally incompetent or if drugs or alcohol impair the victim's judgment. The perpetrator and the victim can be of either sex. These laws, therefore, can be used to prosecute women as well as men and can be used to prosecute same-sex criminal sexual assault.

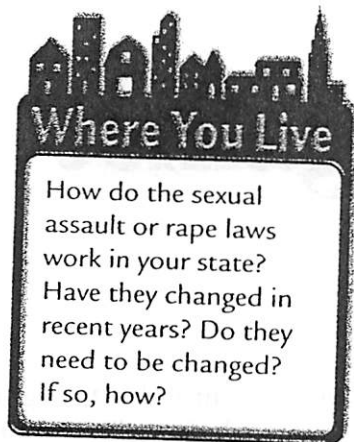
Statutory rape—sexual intercourse between an adult and a minor child—has traditionally been used to punish males for having sexual relations with underage females (generally females under the age of 12 or under the age of 16, depending on the state’s law). Statutory rape differs from rape in a very important way: lack of consent is not an element of the crime. This crime is based on the notion that a minor is incapable of giving legal consent. A male can be prosecuted for statutory rape with a minor even if the female lied about her age. Statutory rape goes to the crime when the victim is younger than the specific age and “consents.” Statutory rape laws are also changing. The tendency is to recognize that either males or females can commit or be victims of statutory rape. There is also a trend in many states not to charge a person with statutory rape unless the perpetrator is several years older than the victim, although this age difference requirement is never used to define rape.

There is a range of ways that states define forcible or statutory rape. States also tend to have specific sentencing laws that require more severe punishments for certain forms of sexual assault. When the victim is under a certain age, over a certain age, disabled, or threatened with a weapon, punishment may be more severe.

In the past, defendants in rape cases were allowed to present evidence to the jury about the victim’s past sexual behavior and reputation in order to show that she had probably consented to the act. Most states and the federal system have passed “rape shield” laws, which now prohibit introducing such evidence. To convict a person



Authorities must confirm the rape victim’s story in order to proceed with the case. What are “rape shield” laws?



of rape, some states require independent proof that the act took place. This means confirmation or support for the story of the victim, including testimony of a witness, a doctor's report that sexual intercourse took place, or a prompt report to the police.

The trend has been to be more protective of victims—that is, to make sure the defendant and not the victim is put on trial. Yet it is also true that the sometimes unclear nature of male-female relationships, as well as same-sex relationships, presents challenges for the criminal justice system. While criminal sexual assault is a serious crime and should be punished as such, the criminal justice system must also protect against punishing an accused person unless the victim clearly expresses a lack of consent.

In recent years, the term **acquaintance rape** (also known as **date rape**) has been used to describe a sexual assault by someone known to the victim—a date, steady boyfriend, neighbor, or friend. Many victims of acquaintance rape do not report the assault. This may be because they do not realize an attack that occurs on a date can in fact constitute a rape.

Problem 9.2

For each case below, assume that the two people have sexual intercourse. Assume that the police find out about the sexual activity in each instance. How should each situation be handled?

- a. At midnight, a man breaks into the home of a woman he does not know. He goes to her bedroom, awakens her, pulls out a knife, and threatens to stab her unless she has sex with him. She tells him that she does not want to have sex. But then she says, "If you are going to do this, you'd better use a condom." He agrees.
- b. A famous boxer serves as a judge at a beauty contest. After the contest, he invites an 18-year-old contestant to his hotel room. She meets him there. Later, she says he forced her to have sex.
- c. A male high school student, aged 17, and a female high school student, aged 14, go out on a date. After attending a party, they agree to have intercourse in his car. The next day, he brags about this at school, and she goes to the police. There is some evidence that he is part of an informal organization of high school seniors who are involved in a competition to have sex with as many girls as possible.
- d. Leo and Nina are college juniors who have had three dates. On these dates, they have never engaged in any sexual activity beyond a brief good-night kiss. On their fourth date, he invites her to an all-night drinking party at his fraternity house. She drinks too much, goes up to his room alone around 1:00 A.M., and falls asleep. In the morning, she wakes up to discover that she and Leo had intercourse during the night.
- e. Lori, a 25-year-old high school teacher, becomes a good friend of Jim, a 17-year-old student in one of her classes. On a senior class trip to the state capital, Jim knocks on her hotel room door late at night. Lori lets him in, and they have sexual intercourse.

CHAPTER 10

Crimes Against Property

"The more laws, the more offenders."

— Anonymous

The category of crimes against property includes two groups. Crimes in which property is destroyed include such acts as arson and vandalism. Crimes in which property is stolen or otherwise taken against the will of the owner include those acts such as robbery and embezzlement.

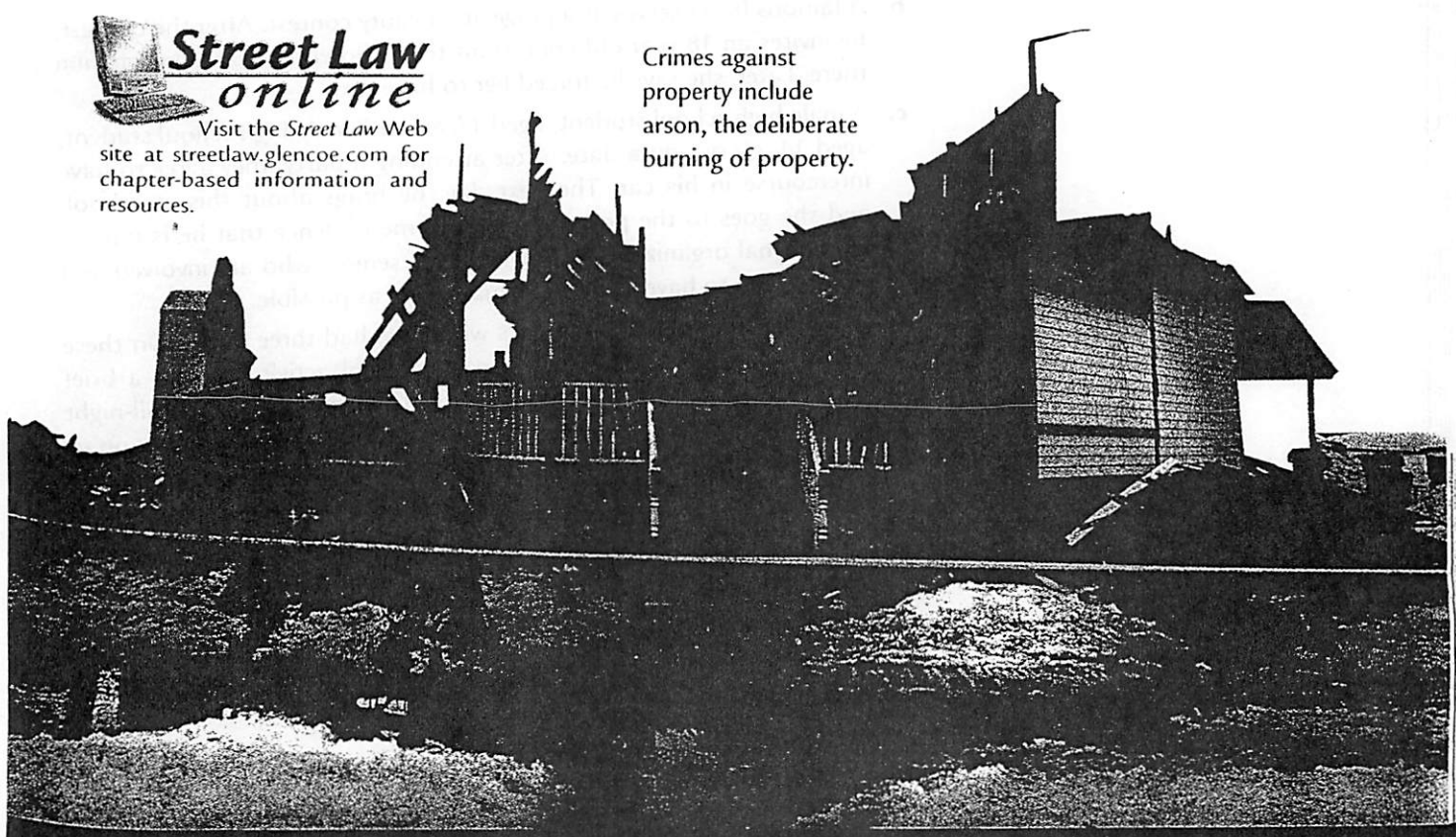
In recent years the number of property crimes has fallen, in part at least because Americans have developed better crime prevention behaviors. These behaviors include security lighting, home and automobile alarm systems, steering wheel locks, greater attention to locking doors and windows, and a tendency to carry less cash due to the greater use of credit cards.



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Crimes against property include arson, the deliberate burning of property.



Arson

Arson is the willful and malicious burning of a person's property. In most states, it is a crime to burn any building or structure, even if the person who burns the structure owns it. Moreover, burning property with the intent to defraud an insurance company is usually a separate crime, regardless of the type of property burned or who owned the property.

At various times arson has also been a form of racial violence. To help federal prosecutors deal with a rash of racially motivated church arsons, Congress passed the *Church Arson Prevention Act of 1996*. This act helps oversee the investigation and prosecution of arson at places of worship across the United States. The act also seeks to increase the penalties for such crimes.

Vandalism

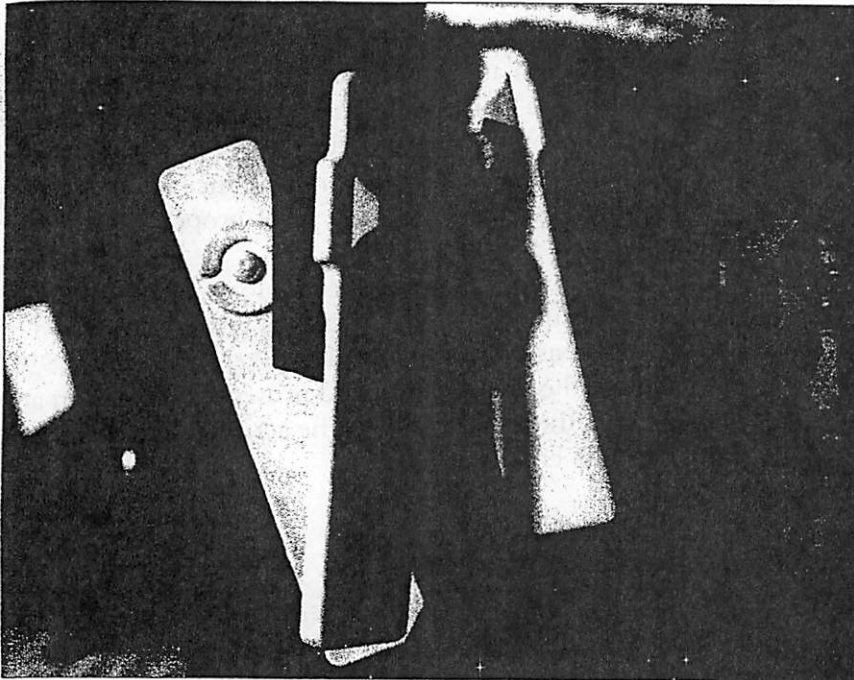
Vandalism, also known as malicious mischief, is willful destruction of, or damage to, the property of another. Vandalism is responsible for millions of dollars in damage each year. It includes such things as breaking windows, ripping down fences, writing graffiti, and breaking off car hood ornaments. Depending on the extent of the damage, vandalism can be either a felony or a misdemeanor.

Problem 10.1

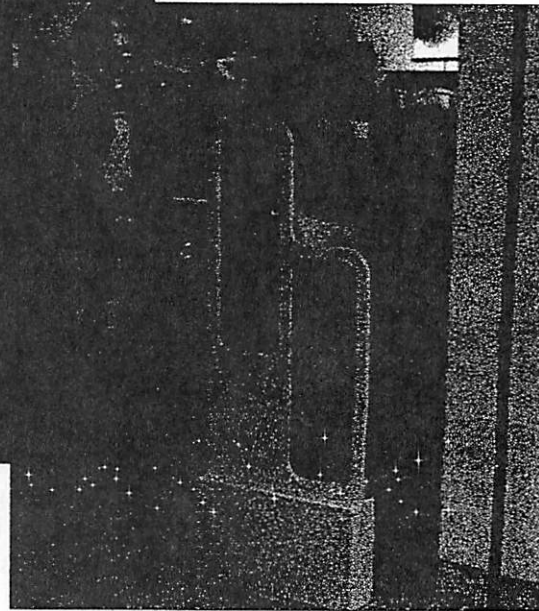
- a. Why do young people sometimes commit acts of vandalism?
 - b. What, if anything, can be done to reduce vandalism?
 - c. Should parents be criminally responsible for willful damage caused by their children? Why or why not?
 - d. If you saw two youths throwing rocks through the windows of a school at night, would you report the youths to the police? Why or why not? Suppose you saw two friends throwing rocks through the windows of a neighbor's home. Would you report your friends to the police? Why or why not? Did you answer both questions the same way? If not, explain why.
-

Larceny

Larceny is the unlawful taking and carrying away of the property of another person with intent to permanently deprive the owner of it. In most states, larceny is divided into two classes, grand and petty, depending on the value of the stolen item. Grand larceny involves the theft of anything above a certain value, often \$100 or more, and is a felony. Petty larceny is the theft of anything of small value, usually less than \$100, and is a misdemeanor.



There are several ways store owners can reduce shoplifting. How do sensor tags on clothing reduce shoplifting?



The crime of larceny also includes keeping lost property when a reasonable method exists for finding the owner. For example, if you find a wallet that contains the identification of its owner but nevertheless decide to keep it, you have committed larceny. Likewise, you may be guilty of larceny if you keep property delivered to you by mistake.

Shoplifting is a form of larceny. It is the crime of taking items from a store without paying or intending to pay for them. Some states have a separate crime called **concealment**. This is the crime of attempted shoplifting.

Shoplifting results in businesses' losing billions of dollars each year. The costs are usually passed on to consumers in the form of higher prices. Consequently, everyone ends up paying for shoplifting.

Problem 10.2

- a. Why do you think people shoplift? List the reasons.
- b. What could be done to address each of the reasons for shoplifting you listed? Which would be most effective? Why?
- c. If you saw a stranger shoplifting in a store, what would you do? Would your answer be different if you knew the person? If the person were a good friend of yours?
- d. A famous movie star is caught shoplifting thousands of dollars worth of merchandise from an upscale women's clothing store. It is her first offense. What penalty should she receive? Would the penalty you recommend be different if she were not famous?

Human Rights USA

Discussions of human rights often refer to the importance of every person treating every other person with dignity. Closely related to this are the human rights to equality and for people not to be subjected to degrading treatment or discrimination (Universal Declaration of Human Rights, [UDHR] Articles 1, 2, 5, and 7).

There is also a human right to own property and to not be deprived arbitrarily of it (UDHR, Article 17).

Examine the case below from a human rights perspective.

The Case of the Teenagers and the Store Owner

Mr. Zimmerman, who is white, has owned Smart Clothing, a clothing store in an urban area, for over twenty years. The city's population used to be about 80 percent white, and most of Smart Clothing's customers were also white. Crime—and in particular, shoplifting—used to be very low, but the rate has risen in recent years. During this time more African Americans and Hispanics have moved into the city, and they have become the store's principal customers.

Over the past year, Mr. Zimmerman increased security in the store and even began to search some suspicious-looking customers. He put up a highly visible sign for people to see as they entered the store:

“Due to an increase in shoplifting, all customers must agree to be subject to random searches as requested by the security guard. We apologize for the inconvenience, but reducing the incidence of shoplifting will result in lower prices for our law-abiding customers and enable us to stay in business.”

During the past year, over 200 customers have been searched because they were viewed as suspicious. In 50 cases, unpaid-for goods were discovered. In 40 of these 50 cases, the arrested shoplifters were teenagers, and 90 percent of them were either African American or Hispanic. Because of the high percentage of teen and minority shoplifters, Mr. Zimmerman has instructed his security guards to “pay particular attention to these types of people.” Consequently, the guards watch minority teens very closely, walking behind them while they are in the store, and search them more often than white teens or adults.

These events have upset many African American and Hispanic teens and some of their parents. The parents believe the teens' human rights have been violated. Mr. Zimmerman says he is just trying to protect his own human rights and those of his other customers. He says the increase in shoplifting has reduced his profits and that he may have to close the store if shoplifting continues at the same rate.

Problem 10.3

- What human rights might the teenagers claim are being violated by the searches?
- What human rights might Mr. Zimmerman claim are being violated by the shoplifting?
- Whose human rights are more important in this situation? Explain.
- Role-play a meeting between Mr. Zimmerman, his security guards, and the teens. What other options might Mr. Zimmerman have for addressing the problem of shoplifting in his store? Were these or any other options discussed in the role play?

Embezzlement

Embezzlement is the unlawful taking of property by someone to whom it was entrusted. For example, the bank teller who takes money from the cash drawer or the stockbroker who takes money that should have been invested are both guilty of embezzlement. In recent years, a number of states have merged the crimes of embezzlement, larceny, and obtaining property by false pretenses (intentional misstatements of fact) into the statutory crime of theft.

Robbery

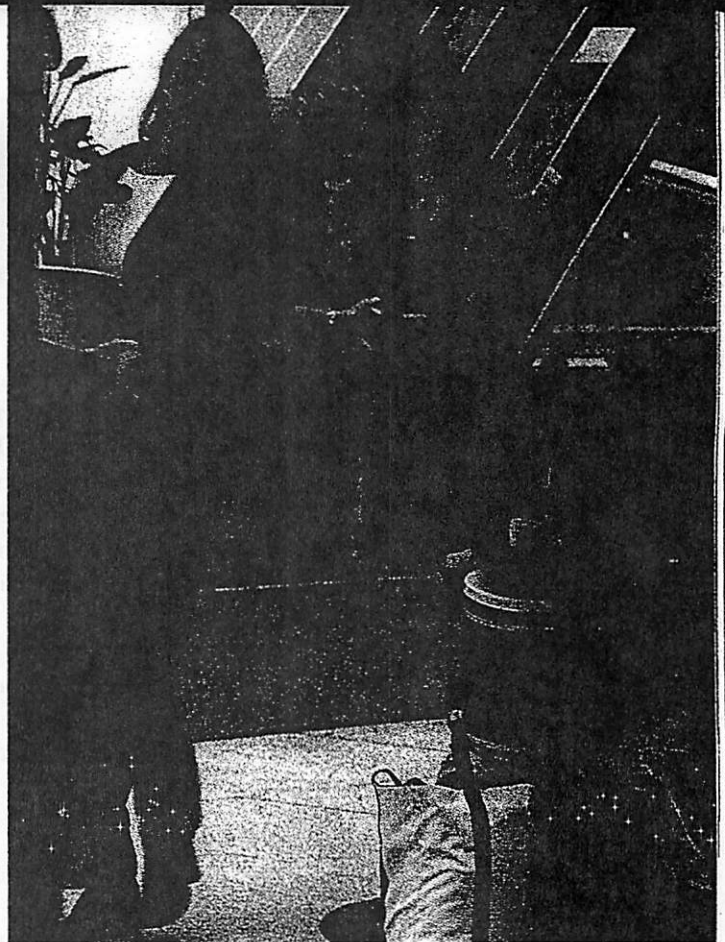
Robbery is the unlawful taking of property from a person's immediate possession by force or intimidation. Though included here as a crime against property, robbery, unlike other theft offenses, involves two harms: theft of property and actual or potential physical harm to the victim. In most states, the difference between robbery and larceny is the use of force. Hence, a pickpocket who takes your wallet unnoticed is guilty of the crime of larceny. A mugger who knocks you down and takes your wallet by force is guilty of the crime of robbery. Robbery is almost always a felony, but many states impose stricter penalties for armed robberies—thefts committed with a gun or other weapon.

Extortion

Extortion, popularly called blackmail, is the use of threats to obtain the property of another. Extortion statutes generally cover threats to do future physical harm, destroy property, or injure someone's character or reputation. For example, a person who threatens to injure you or your property unless you give him your car is guilty of extortion.

Burglary

Burglary was originally defined as breaking and entering the dwelling of another person during the night with intent to commit a felony therein. Modern laws have broadened the definition to include the unauthorized entry into any structure with the intent to commit a crime, regardless of the time of day. Many states have stiffer penalties for burglaries committed at night, burglaries of inhabited dwellings, and burglaries committed with weapons.



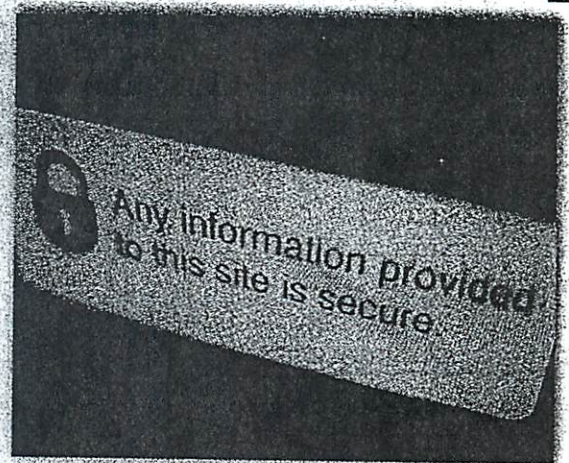
After being charged with illegal business practices, Enron corporation laid off many employees. How are larceny and embezzlement different? How are they similar?

Steps to Take

Identity Theft

Despite the great benefits our society has gained from technological developments, technology has also spawned the development of a new kind of crook: the identity thief. This thief steals a piece of personal information like your Social Security number, your bank account number or a credit card number and uses it to commit a fraud or further theft. Everyday actions like throwing out your garbage, sending a rent check to your landlord, or ordering a book online put you at risk for identity theft. If someone steals and uses your personal information illegally, it can cost you hundreds or thousands of dollars. Identity theft can also cost you your credit rating and good name, not to mention the significant time and emotional expense of trying to clean up the mess. While it might not be possible to prevent identity theft altogether, there are steps you can take to minimize your exposure to this crime.

- **Check your credit report.** Order your credit report from each of the three main credit bureaus in the United States (www.equifax.com, www.transunion.com, www.experian.com), and check each for accuracy.
- **Protect your personal information in your own home.** This is especially important if you have roommates or other people who have access to your home.
- **Place passwords that are not easy to guess on your bank, credit card, and phone accounts.**
- **If you work, ask about security procedures in place to protect your personal**



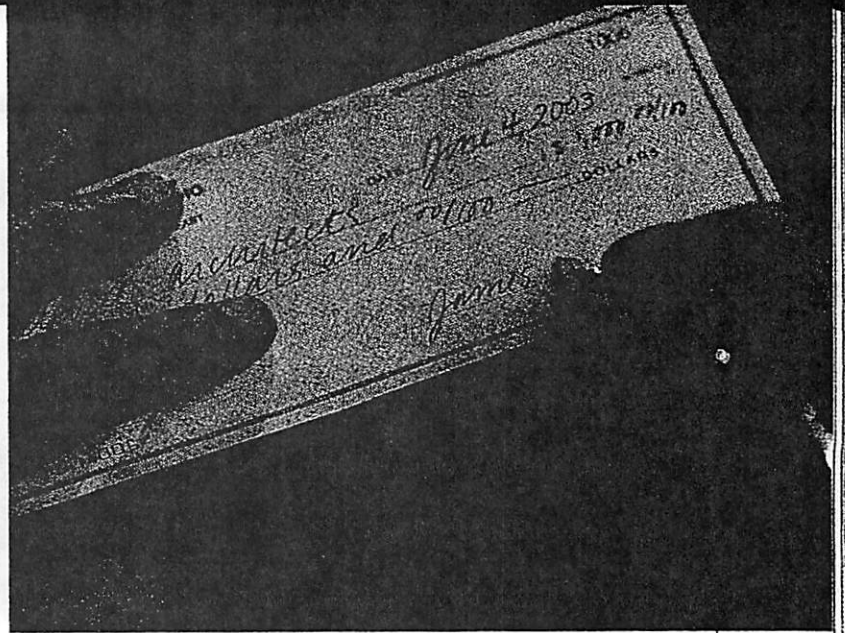
A secure Web site

- **records and hiring information.** Do not leave your purse or wallet unattended at your desk.
- **Do not give out personal information unless you know who you are dealing with and are satisfied that your information will be handled in a secure manner.** This applies to transactions over the phone, through the mail, or on the Internet.
- **Guard your mail and trash from theft.** Ask a friend to pick up your mail while you are away from home. Tear up or shred mail containing your personal or financial information.
- **Do not carry your Social Security card with you, and avoid giving out your Social Security number when possible.** Instead, ask for a unique identification number to be assigned to you.
- **Pay attention to your bank statements and statements and billing cycles for any credit and charge cards you have. Report any inconsistencies you discover.**

You will learn more about protecting yourself as a consumer in the marketplace, including the electronic marketplace of the Internet, in Unit 4, Consumer and Housing Law.

Forgery

Forgery is a crime in which a person falsely makes or alters a writing or document with intent to defraud. This usually means signing the name of another person to a check or some other document without permission. It can also mean changing or erasing part of a previously signed document. Uttering, which in many states is a separate crime, is offering to someone as genuine a document (such as a check) known to be a fake.



Receiving Stolen Property

If you receive or buy property that you know or have reason to believe is stolen, you have committed the crime of **receiving stolen property**. Knowledge that the property is stolen may be implied by the circumstances, for example, buying goods out of the trunk of an automobile or for a price that is unreasonably low. In most states, receiving stolen property is a felony if the value of the property received is more than \$100 and a misdemeanor if the value is \$100 or less.

Forgery is a serious crime. Why is it dangerous to give someone a signed check without filling out the rest of the check?

Problem 10.4

Ivan met his friend Anthony, who was driving a flashy new red convertible. Ivan knew that neither Anthony nor his family owned this car, but it looked good, so he got in and let Anthony take him for a ride. Ivan also knew Anthony used drugs and sometimes took other people's things and sold them to get money to buy cocaine. Anthony offered to sell Ivan a Discman he had in the back seat of the car for \$20. Ivan agreed to pay him the money.

- a. Have any crimes been committed? If so, which crimes and by whom?
- b. Why does society make receiving stolen property a crime? Do you think it should be a crime?
- c. Would you ever buy something for an extremely low price from a friend? How would you know for sure it was not stolen?

Unauthorized Use of a Vehicle

Several crimes may occur when a person unlawfully takes a motor vehicle without the owner's consent. The crime of **unauthorized use of a vehicle** (UUV) is committed if the person only intends to take

the vehicle temporarily. This crime includes joyriding. However, if the person intends to take the car permanently, then the crime may be larceny or auto theft. These crimes usually have stiffer penalties than UUV. The crime of **carjacking** occurs if a person uses force or intimidation to steal a car from a driver. Carjacking is a federal crime and is punishable by a sentence of up to life in prison.

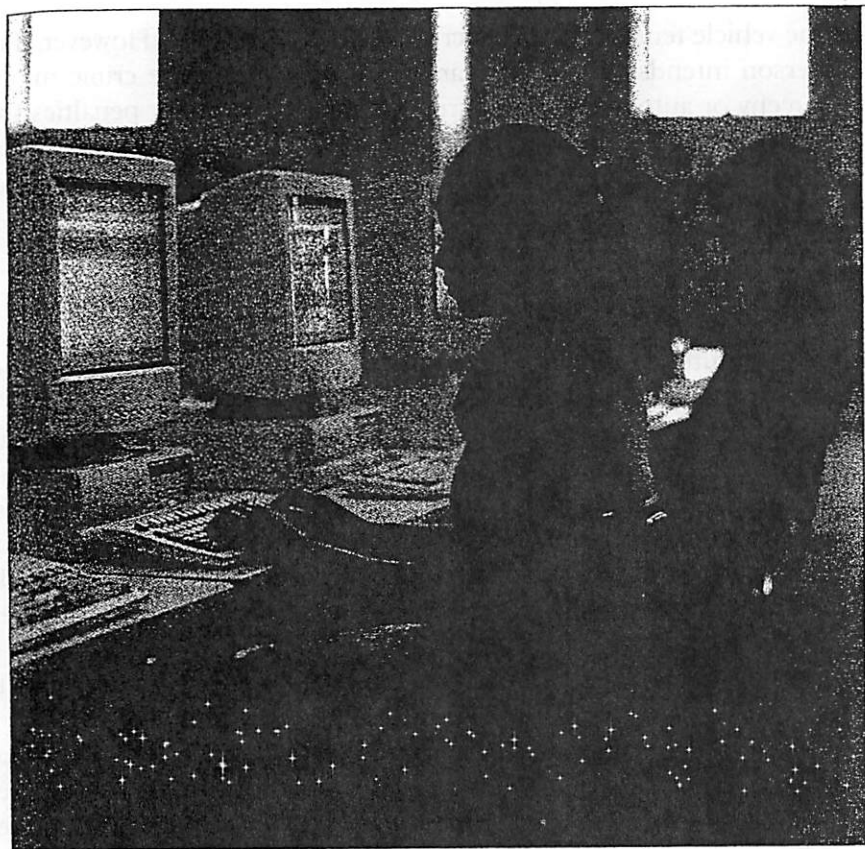
Computer Crime

Computer crime has been defined broadly to include any violation of criminal law that involves the use of computer technology to commit the prohibited act. Computer crime includes traditional crimes that now may be committed through use of a computer, such as using an art program to create fake identification or making fraudulent credit card purchases with someone else's credit card number that has been intercepted over the Internet. Computer crime also involves crimes that are relatively new and specific to computers, such as spreading a harmful virus to other computer systems or using programs to steal passwords and gain free access to computer services.

Computer crime has become more of a problem with the rapid expansion of the Internet, which had more than 500 million users worldwide by the end of 2002. The Internet is a vast network of interconnected computers over which users may send and receive e-mail, download and upload files, access chat rooms, access World Wide Web pages, read and post to newsgroups, play games, and buy goods and services. Just as in the "real" world, a wide variety of crimes occur on the Internet.

Computer viruses can delete information and damage your computer. How has the U.S. government attempted to deal with computer crime?





Filtering software is used to protect children from adult content available on the Internet. *What is the Children's Internet Protection Act?*

Computer crime is committed for several different reasons. Some computer crime is committed by employees who are angry with their company for some reason. Youthful hackers sometimes gain illegal access to government or corporate computer systems. There is disagreement over how hackers should be punished. Many feel that hackers are dangerous and should receive jail terms and pay large fines like other white-collar criminals. Others argue that hackers break into systems as a hobby, do not intend any harm, and can be rehabilitated. A distinction has been drawn between hackers—who are relatively harmless and tend to break into sites for fun, for a challenge, or to point out security flaws—and “crackers,” or criminal hackers, who seek to make money from breaking into computers. However, breaking into a corporate or government system to which one does not have access is a federal crime regardless of motive (as long as one has the guilty state of mind of intending to break into the site). In the wake of the terrorist attacks of 2001, several provisions related to using computers and the Internet in the commission of terrorist activities were included in the *USA Patriot Act of 2001*.

One common Internet crime is the transmission of obscene images, movies, and sounds. Concerned that children may be harmed by their access to this material on the Internet available at public libraries, in 2000 Congress enacted the *Children's Internet Protection Act*.

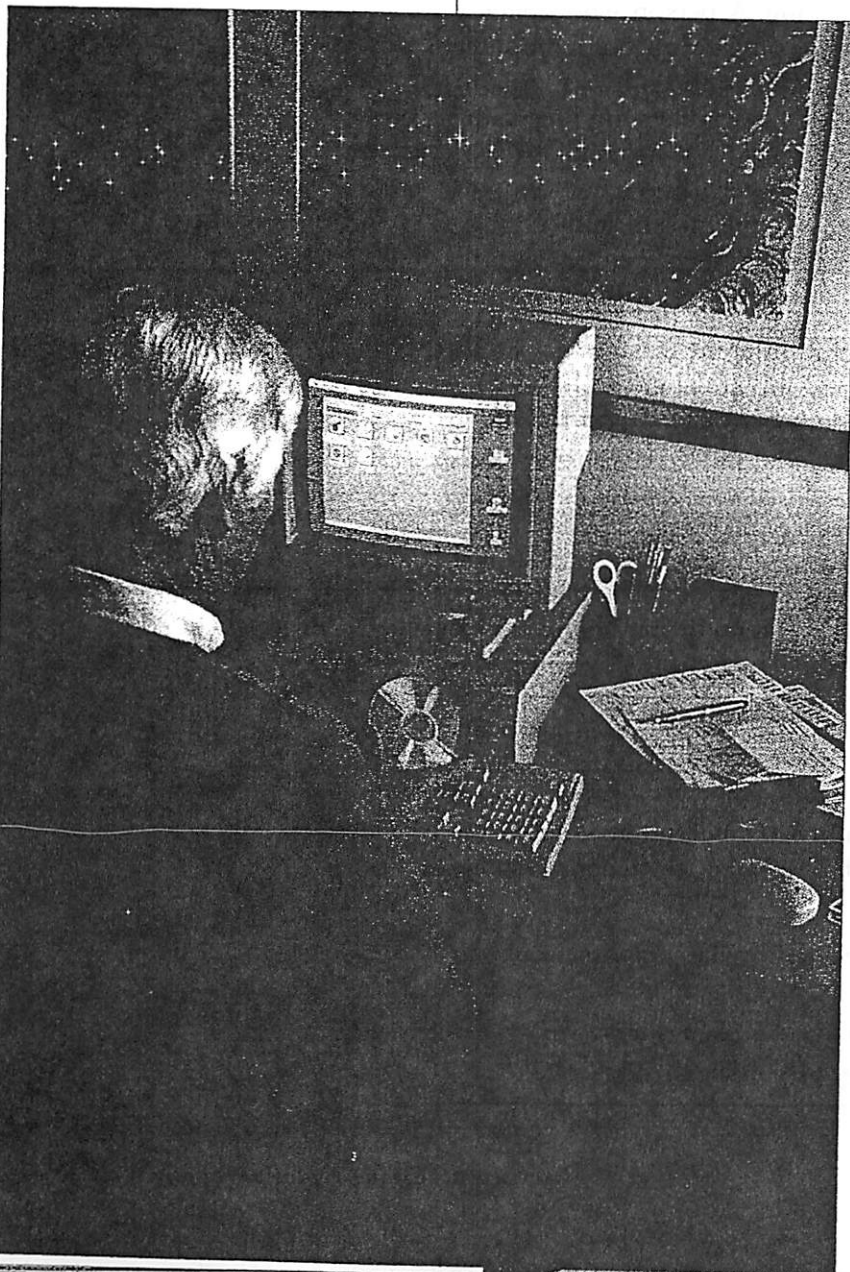
This act requires that all public libraries purchase and install filtering software on all of their computers or risk losing federal technology funding. In 2003, the Supreme Court decided that this law did not violate the First Amendment (freedom of speech) rights of those sending and receiving information on the Internet. For further information on computer crime and the First Amendment, see the information on freedom of speech in Chapter 37.

Some hackers release viruses, which are programs capable of automatically copying themselves and attaching themselves to other programs. Viruses may be designed to play practical jokes, slow down computers, erase or damage data, or act in a variety of other harmful ways. Logic bombs are also frequently employed. These are programs that are set to activate upon the occurrence of some event, such as the arrival of a particular date or time. Hackers may also use "sniffers" to gather passwords to systems, or password-cracking programs that

use dictionary files to try different combinations of letters until they come across valid passwords.

Throughout the 1980s, federal legislation related to computer crime, as well as traditional criminal statutes, was used to prosecute computer criminals. However, the laws proved to be vague and ineffective. In response, Congress passed the *Computer Fraud and Abuse Act of 1986*, which provided the government with a specific law to prosecute hackers. The law made it a crime to modify, destroy, or disclose information gained from unauthorized entry into a computer. The *National Information Infrastructure Act of 1996* makes it illegal to threaten to cause damage to a computer system unless the owner gives something of value, such as when someone threatens to crash a system unless they are given system privileges. Another part of the act makes it illegal to intentionally give or receive passwords that would permit unauthorized access to systems. The law is jointly enforced by the United States Secret Service and the FBI. By 2003, all 50 states had also enacted laws specifically dealing with computer crime.

Copyright laws apply to users of computer software. How are copyright laws broken by software users?



Despite the attention given to computer crimes, most probably go unreported. Many companies are reluctant to publicize their vulnerability to computer criminals. Also, many are discouraged by the resources and time needed to prosecute individuals.

The federal government has also been carefully watching computer bulletin board systems. Bulletin boards allow users to exchange computer files and messages using computers and modems. Some of these bulletin boards make commercial software programs available to users. However, making the programs available without the publisher's permission is illegal. Many bulletin board operators claim that users upload these programs without the operators' knowledge. Nevertheless, many states hold the operator responsible for making sure that no illegal copies appear. Furthermore, the person downloading the program is in possession of illegal software.

Another type of computer crime occurs when someone illegally copies software he or she has purchased. Software companies lose over \$2 billion each year to illegal copying. A person who opens a software package is agreeing to use the software on one computer only. This person is allowed to make copies of the software only to use as a backup. Placing software on more than one computer without the publisher's permission is illegal and violates federal copyright laws. The violator is subject to a possible jail term and a fine of up to \$250,000. Violators can include individuals, businesses, and schools.

Computers have become a way of life for most people. Courts, Congress, and state legislatures will continue to deal with new criminal law problems as computer technology evolves.

Problem 10.5

Jamahl and Nigel are college freshmen who run a computer bulletin board system. They decide to hack into the computer system of the local telephone company. They enter the system without being asked for a password. While looking through computer files, Jamahl finds a confidential memo written by the company president admitting that the telephone rates are too high. Jamahl copies the file and posts it on the bulletin board for users to read. To get even with the telephone company, Nigel inserts a worm to slow its computer system down and sends the company president the message "You are a crook." However, because of a mistake Nigel made in creating the worm, the system crashes, and telephone service is out for eight hours. Many office buildings and government services are disrupted. The police chief shuts down Jamahl and Nigel's bulletin board, and the prosecutor charges both young men with trespassing, theft, and the intentional destruction of property.

- a. Should Jamahl and Nigel be prosecuted? What purpose would be served?
 - b. Are Jamahl and Nigel guilty of the charges? Explain your answer.
 - c. If they are convicted, how should they be punished?
-

CHAPTER 11

Defenses

*"Necessity
has no law."*

— Oliver
Cromwell

For a conviction to occur in a criminal case, the prosecutor must establish beyond a reasonable doubt that the defendant committed the act in question with the required intent. The defendant is not required to present a defense but can instead simply force the government to prove its case. However, a number of possible defenses are available to defendants in criminal cases.

No Crime Has Been Committed

The defendant may present evidence to show that (1) no crime was committed or (2) no criminal intent was involved. In the first case, a defendant might attempt to show that she was carrying a gun but had a valid license, or a defendant might attempt to show that he did not commit rape because the woman was of legal age and consented. In the second case, the defendant might attempt to show that he mistakenly took another person's coat when leaving a restaurant. The defendant is innocent of a charge of larceny if it was an honest and reasonable mistake.

 **Street Law
online**

Visit the *Street Law* Web site at streetlaw.glencoe.com for chapter-based information and resources.

A jury reaches consensus
on a verdict.



Defendant Did Not Commit the Crime

Often, no doubt exists that a crime has been committed. In such cases, the question is, who committed it? In this situation, the defendant may present evidence of a mistake in identity or may offer an **alibi**, which is evidence that the defendant was somewhere else at the time the crime was committed. Developments in science and technology have made it possible to use biological evidence, called **DNA evidence**, to connect an offender conclusively to a crime. Even if an offender does not leave fingerprints at a crime scene, he or she may leave biological evidence—a single hair, for example—at the scene without knowing it. It is possible through a blood test to then conduct a test to determine whether that hair or other piece of evidence belongs to the defendant. Although it is possible for the state to prove through DNA evidence that the defendant was at the scene or committed the crime, a defendant may also use DNA evidence to prove that he or she *did not* commit the crime. Additionally, many people who have been convicted of crimes have used DNA evidence, which may not have been available at the time of the trial, to exonerate themselves and be set free.

Defendant Committed a Criminal Act, but the Act Was Excusable or Justifiable

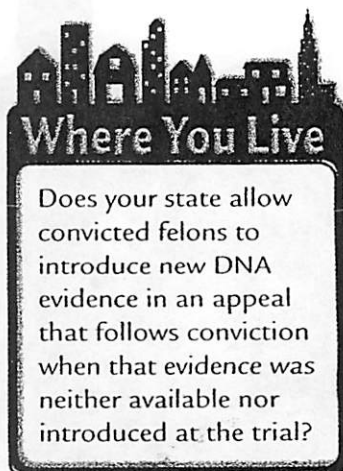
Sometimes, a criminal act may be considered excusable or justifiable. Defenses in this category include self-defense, defense of property, and defense of others.

The law recognizes the right of a person who is unlawfully attacked to use reasonable force in self-defense. It also recognizes the right of one person to use reasonable force to defend another person from an attack that is about to occur. There are, however, a number of limitations to these defenses.

A person who reasonably believes there is imminent danger of bodily harm can use a reasonable amount of force in self-defense. However, a person cannot use more force than appears to be necessary.



Scientific developments allow the use of DNA evidence to connect an offender to a crime. *How else may DNA evidence be used?*



Does your state allow convicted felons to introduce new DNA evidence in an appeal that follows conviction when that evidence was neither available nor introduced at the trial?

If, after stopping an attacker, the defender continues to use force, the roles reverse, and the defender can no longer claim self-defense. Deadly force can usually be used only by a person who reasonably believes that there is imminent danger of death or serious bodily harm. A person is also allowed to use deadly or nondeadly force to defend a third person if the person defended can claim self-defense.

Reasonable nondeadly force may be used to protect property. Some states have enacted controversial Make My Day laws, which give persons the right to use deadly force to defend their property against unwarranted intrusion. See page 241 in Chapter 19 for more information on these laws.

Problem 11.1

- a. Ms. Urbanski kept a pistol in her home as protection against intruders. One evening, she heard a noise in the den and went to investigate. Upon entering the room, she saw a man stealing her television. The burglar, seeing the gun, ran for the window, but Ms. Urbanski fired and killed him before he could escape. In a trial for manslaughter, Ms. Urbanski pleaded self-defense. Would you find her guilty? Why or why not?
 - b. Mr. Peters has a legal handgun to protect his home against intruders and against the increasing crime in his neighborhood. One night, Takeshi, a 16-year-old Japanese exchange student, walks up Mr. Peters's driveway looking for a party. Takeshi thinks Mr. Peters is hosting the party and begins yelling and waving his arms. Mr. Peters gets scared, retrieves his handgun, and points it at Takeshi while yelling "Freeze!" Takeshi does not understand English and keeps walking toward Mr. Peters. Thinking he is an intruder, Mr. Peters shoots and kills Takeshi at the front steps of his house. Mr. Peters is charged with first-degree murder. Does he have a defense?
 - c. Would your answers to a. and b. above be any different if your state had a Make My Day law?
 - d. The owner of a jewelry store spots a shoplifter stealing an expensive necklace. Can the owner use force to prevent the crime? If so, how much?
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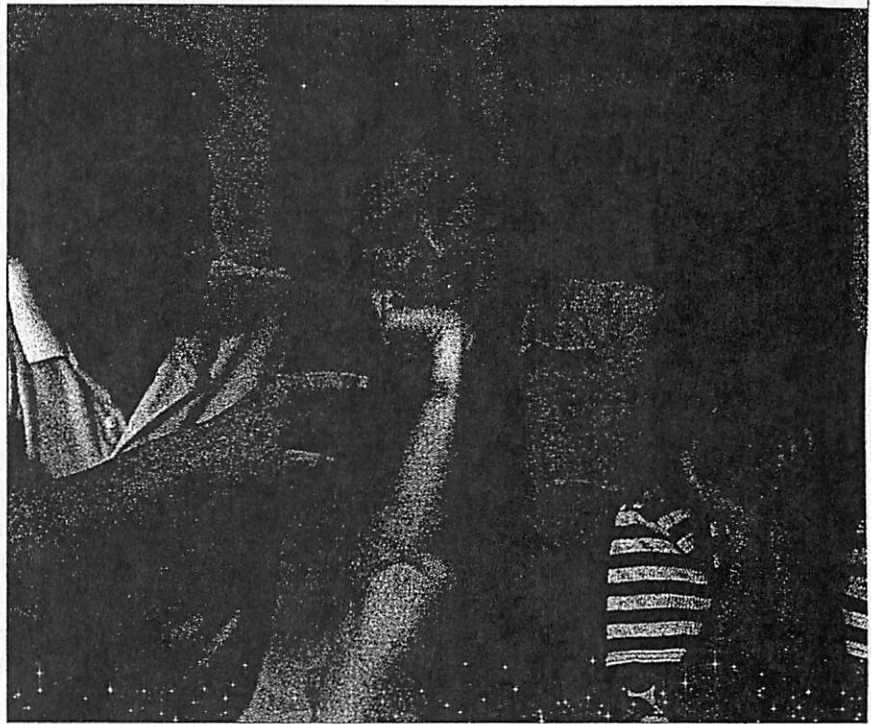
Defendant Committed a Criminal Act but Is Not Criminally Responsible for His or Her Actions

Some defenses rest on the defendant's lack of criminal responsibility even though it is acknowledged that he or she committed the criminal act. In this category are the defenses of infancy, intoxication, insanity, entrapment, duress, and necessity.

Infancy

Traditionally, children of a young age, usually under age 7, were considered legally incapable of committing a crime. Children between the ages of 7 and 14 were generally presumed incapable of committing a crime, but this presumption could be shown to be wrong. Under modern laws, many states follow some version of this common-law approach. Other states simply provide that children under a specified age shall not be tried for their crimes but shall be turned over to the juvenile court. Children under the specified age have the defense of **infancy**.

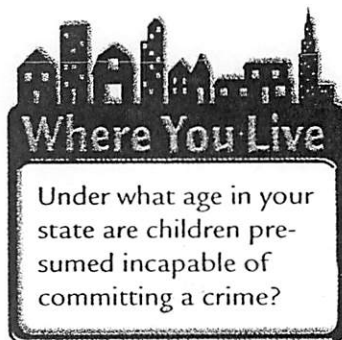
It is argued that those states that either do not have a defense of infancy or allow prosecutors to decide whether to try a child as an adult have more discretion to deal with juvenile delinquency on a case-by-case basis. However, these policies sometimes lead to the controversial result of trying a child for heinous crimes as an adult, and allowing sentencing of up to life in prison. In Florida, for instance, a 12-year-old boy was tried as an adult for the death of a 6-year-old girl that resulted from the boy using a wrestling move on her that he saw on television. He received a mandatory life sentence under a "tough on crime" law that was passed in the mid-1990s.



The defense of infancy rests on the defendant's lack of criminal responsibility. *How does this defense vary among states?*

Intoxication

Defendants sometimes claim **intoxication** as a defense—that is, they claim that at the time of a crime, they were so drunk on alcohol or high on drugs that they did not know what they were doing. As a general rule, voluntary intoxication is not a defense to a crime. However, it may sometimes be a valid defense if the crime requires proof of a specific mental state. For example, Grady is charged with assault with intent to kill. He claims he was drunk. If he can prove that he was so drunk that he could not have formed the intent to kill, his intoxication may be a valid defense. Grady can still be convicted of the crime of assault, because specific intent is not required to prove that crime. However, if Grady had decided to kill the victim before he got drunk or if he got drunk to get up enough nerve to commit the crime, then intoxication would not be a defense. This is because the required mental state (the intent to kill) existed before the drunkenness.





After an assassination attempt on President Ronald Reagan, John Hinckley, Jr., pled insanity. How should a person who successfully pleads insanity be punished?

Insanity

Over the centuries, the **insanity defense** has evolved as an important legal concept. Ancient Greeks and Romans believed that insane people were not responsible for their actions and should not be punished like ordinary criminals. Since the fourteenth century, English courts have excused offenders who were mentally unable to control their conduct. The modern standard grew out of an 1843 case involving the attempted murder of the British prime minister.

The basic idea is that people who have a mental disease or disorder should not be convicted if they do not know what they are doing or if they do not know the difference between right and wrong. About half the states and the federal government use this standard. The other states hold that accused persons must be acquitted if they lack the *substantial capacity* to appreciate the nature of the act or to conform their conduct to the requirements of the law.

During criminal proceedings, the accused's mental state can be an issue in determining whether (1) the defendant is competent to stand trial, (2) the defendant was sane at the time of the criminal act, and (3) the defendant is sane after the trial. The insanity defense applies only if the accused was insane at the time of the crime. Insanity at the time of the trial may delay the proceedings until the accused is competent to stand trial or can understand what is taking place. However, insanity during or after the trial does not affect the defendant's criminal liability.

In most states, there are three possible verdicts: guilty, innocent, or not guilty by reason of insanity. In some states, the last verdict results in automatic commitment to a mental institution. In others, the judge or jury exercises discretion, sometimes in a separate hearing, to determine commitment of the accused. In recent years, a number of states have come up with a new verdict: guilty but mentally ill. About one-third of the states have this verdict. Defendants found guilty but mentally ill can be sent to a hospital and later transferred to a prison once they are judged sane.

To prove insanity, the defense must produce evidence of a mental disease or disorder. Psychiatrists usually give testimony in these cases. Both the defense and the prosecution may have psychiatrists examine the defendant, and the testimonies are often in conflict. The decision as to whether insanity is a valid defense rests with whoever—judge or jury—decides the facts of the case.

There is a great deal of controversy about the insanity defense. Three states—Montana, Idaho, and Utah—have abolished it entirely in their state courts. According to polling information, Americans believe that this defense has been successfully used by many heinous criminals. In reality, however, this defense is seldom used. Virtually all studies conclude that it is used in about one percent of criminal cases. When it is used, it is seldom successful.

Problem 11.2

- a. What is the insanity defense? How does it work?
- b. Should the insanity defense be kept as is, changed in some way, or abolished? Explain your answer.

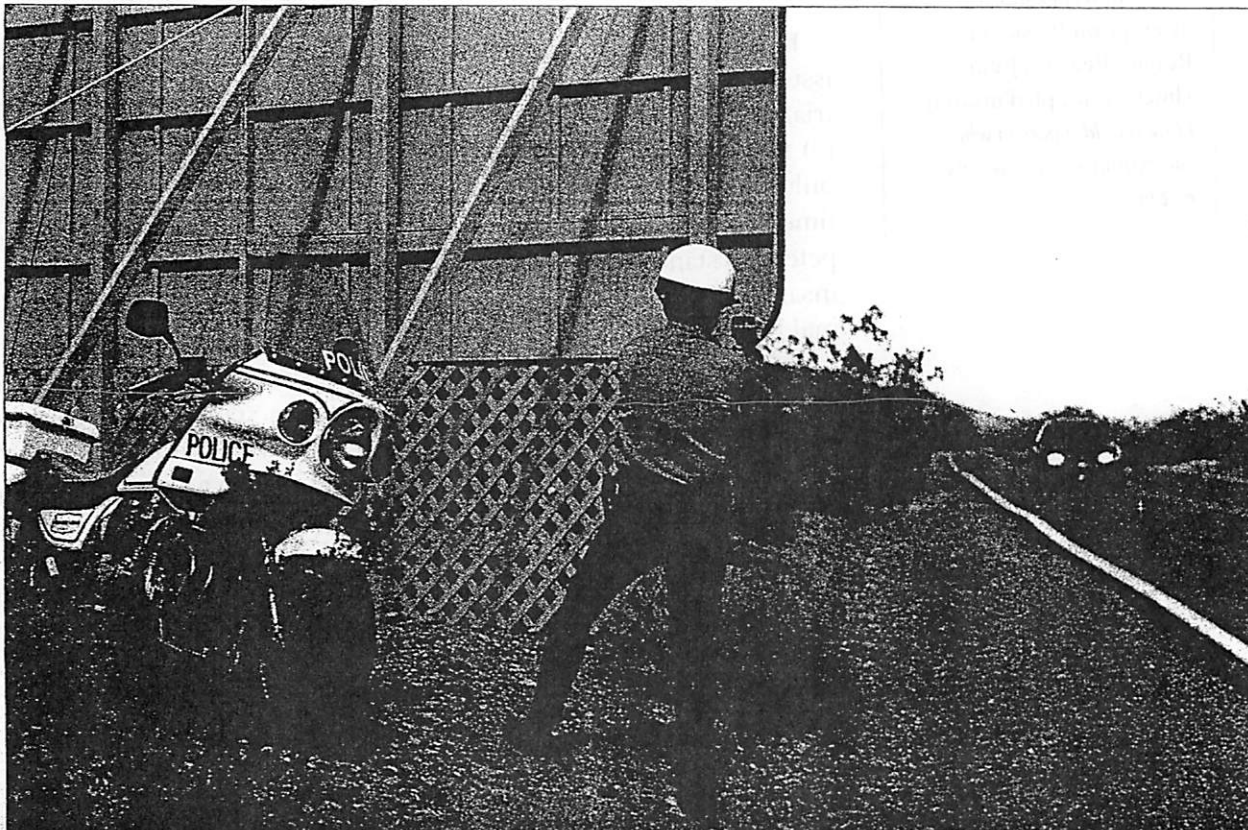
Entrapment

The entrapment defense applies when the defendant admits committing a criminal act but claims that he or she was induced, or persuaded, to commit the crime by a law enforcement officer. There is no entrapment when a police officer merely provides the defendant



How does the insanity defense work in your state? Is it difficult or easy for a defendant to plead the insanity defense and win in your state? Have there been recent changes? Are changes needed? If so, what are they?

Entrapment is difficult to prove. *Could the situation in this photograph be considered entrapment?*



with an opportunity to commit a crime; rather, it must be shown that the defendant would not have committed the crime but for the inducement of the police officer. Entrapment is difficult to prove and cannot be claimed as a defense to crimes involving serious physical injury, such as rape or murder.

Problem 11.3

Can entrapment be claimed as a valid defense in any of the following cases? Explain your answer.

- a. Mary, an undercover police officer masquerading as a prostitute, approaches Edward and tells him that she'll have sex with him in exchange for \$50. Edward hands over the money and is arrested.
 - b. Jan, a drug dealer, offers to sell drugs to Emilio, an undercover police officer disguised as a drug addict. Emilio buys the drugs, and Jan is arrested.
 - c. Rashid, an undercover FBI agent, repeatedly offers Sammy a chance to get in on an illegal gambling ring, with the promise that he will win big. After refusing several offers, Sammy, who has no history of gambling and who just lost his job, finally gives Rashid \$200 as a bet. Rashid immediately arrests Sammy.
-

Duress

A person acts under **duress** when he or she does something as a result of coercion or a threat of immediate danger to life or personal safety. Under duress, an individual lacks the ability to exercise free will. For example, suppose someone points a gun at your head and demands that you steal money or be killed. You steal the money. Duress would be a good defense in this case if you were prosecuted for theft. Duress is not a defense to homicide.

Necessity

An individual acts under **necessity** when he or she is compelled to react to a situation that is unavoidable in order to protect life. Suppose, for example, that a group of people is left adrift in a lifeboat and the lifeboat is so heavy with cargo that it is in danger of sinking. The group throws the cargo overboard to make the lifeboat lighter and more manageable. In this case, necessity would be a good defense to a charge of destruction of property. Necessity is not a defense to homicide.

Problem 11.4

Reread The Case of the Shipwrecked Sailors on page 6. Would any of the defenses discussed in this section be available to the sailors who survived and were prosecuted? Should they be? Explain your answers.
