



CHAPTER

2

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FOUNDATIONS OF LAW AND CRIME

Nature, Elements, and Measurement

The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity.

—Henry Clay

LEARNING OBJECTIVES

As a result of reading this chapter, you will be able to

1. Explain how modern-day law evolved from English common law
2. Describe the three sources of law in the U.S. legal system
3. Identify the differences between criminal and civil law
4. Explain the difference between substantive and procedural law
5. Review two critical elements of the criminal law—criminal intent (*mens rea*) and the physical commission of the criminal act (*actus reus*)
6. Describe how felonies and misdemeanors are placed into two separate broad categories
7. Delineate the definitions of, and distinctions between, crimes against persons and property; the different degrees of homicide; and offenses classified as public order, white-collar, and organized crimes
8. Explain the three primary methods for measuring crime and advantages and disadvantages of each

ASSESS YOUR AWARENESS

Test your knowledge of the foundations of law and crime by responding to the following nine true-false items; check your answers after reading this chapter.

1. The U.S. legal system is based on English common law.
2. A person who, upon returning home, discovers that her premises have been illegally entered and valuables removed, will correctly tell police, “I’ve been robbed.”
3. Under current U.S. law, one can be charged only for those criminal acts that he or she actually performs, and not for failure to act or perform in some manner.
4. As opposed to the situation under English common law, today one may use force, even deadly force, if he or she reasonably believes that an attack against him or her is imminent.
5. No particular amount of time is necessary for one to legally premeditate a murder.
6. Rape and theft are often referred to as public order or victimless crimes.
7. The term *white-collar crime* was introduced in 1939, when a researcher discovered that many crimes were committed by persons of respectability and high social status in the course of their occupations.
8. If a burglar enters a premise and also commits a rape and a murder while inside, the hierarchy rule requires police to report to the FBI only the crime of murder.
9. Carjacking is now one of the FBI’s eight Part I crimes.

<< Answers can be found on page 293.

As stated in this chapter, one’s intent while committing a crime is not always easy to prove. For example, in a crime of homicide, there are a variety of possible outcomes, and the prosecutor will “look behind the act” to determine the killer’s state of mind, the elements of the crime that were present, and so on. For example, in 2017, a 10-month-old girl in Methuen, Massachusetts, suffered cardiac arrest and was revived twice. While police worked to revive the child, the mother, who was a former drug addict, shuffled back and forth between her bedroom and bathroom. Police wondered whether this was nervous behavior, or whether she was flushing evidence of the drug that had harmed her baby. With no obvious signs of child endangerment in the residence, criminal justice officials found it difficult to identify the responsible party or determine intent. A prosecutor who reviews this case must ask and attempt to answer several questions:

- Was this a crime or an unfortunate accident?
- Did someone purposefully expose this child to a lethal dose of fentanyl?
- If not purposeful, did someone recklessly expose the child to this substance, or did the child ingest residue unintentionally left on an object?

As you will learn in this chapter, different crimes contain different elements and correspond with various levels of punishment. Think about why different facts should lead to a different criminal charge and punishment. What facts are important in defining crimes and why? Why should these facts matter? What other facts might help you to decide more easily what really happened and what type of crime might have been committed against this infant?

The answers to these questions are at the very heart of the criminal law and of our system of justice, which holds people criminally responsible only when the state can prove beyond a reasonable doubt that the accused committed each and every element of a crime without a valid defense.

INTRODUCTION

John Adams famously said we have a “government of laws and not of men,” meaning that our democracy is not ruled at the whim of kings or rulers or demagogues. As explained in Chapter 1, Americans willingly give up some of their rights to their elected governments to create laws and to receive protection for their persons and property. It thus becomes important that Americans possess fundamental knowledge of our laws: how they are created and to what types of behaviors they apply.

Confusion sometimes surrounds the definition of specific crimes and criminal justice system responses. We might hear someone screaming, “I’ve been robbed!” on television or in the movies after returning home and discovering that his house has been entered and ransacked (he was not robbed; he was burglarized). Or, someone discovers a dead body and exclaims, “He’s been murdered!” A person may have indeed been killed, but many killings are not criminal in nature; only a judge or jury can decide if a murder has taken place. News reporters commonly mistake jail for prison and might erroneously state, “John Jones,



The Code of Hammurabi, written in about 1780 B.C.E., set out crimes and punishments based on *lex talionis*—“an eye for an eye, a tooth for a tooth.” It is the earliest-known example of a ruler’s setting forth a body of laws arranged in orderly groupings.

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a convicted murderer, was sentenced to 10 years in jail today” (if sentenced to 10 years, Jones will serve his time in a prison, not a jail). As French philosopher Voltaire wrote, “If you wish to converse with me, define your terms.” That statement represents the major purpose of this chapter.

The reader should bear in mind, however, that several important components of the rule of law are not discussed here, primarily because they go beyond the reach of an introductory textbook. Persons wishing to inquire more deeply into the law—for example, in such areas as conspiracies, attempted crimes, omissions, and causation—would be wise to enroll in criminal law and procedure courses.

COMMON LAW AND ITS PROGENY

Rules were laid out in ancient societies. The use of societal laws can be traced back to the reign of Hammurabi (1792–1750 B.C.E.), the sixth king of the ancient empire of Babylon. The Code of Hammurabi set out crimes and punishments based on *lex talionis*—“an eye for an eye, a tooth for a tooth.” A more recent source of law is found in the Mosaic Code of the Israelites (1200 B.C.E.), in which, according to tradition, Moses—acting as an intermediary for God—passed on the law to the tribes of Israel. The Mosaic Code includes the Bible’s Ten Commandments and contains descriptions of forbidden behaviors that are still defined as criminal acts in modern society (e.g., thou shall not kill nor steal).

Lex talionis: Latin for “an eye for an eye, a tooth for a tooth”; retaliation or revenge that dates back to the Bible and the Middle Ages.

But the system of law as we know it today (except for Louisiana’s, which is based on the French civil code) is based on common law: collections of rules, customs, and traditions of medieval England, created during the reign of Henry II (1154–1189 C.E.), who began the process of unifying the law. Henry established a permanent body of professional judges who traveled a “circuit” and sat on tribunals in shires throughout the Crown’s realm. These judges eventually gave the Crown jurisdiction over all major crimes and sowed the seeds of the trial by jury and the doctrine of *stare decisis*.¹

The *stare decisis* (Latin for “to stand by things settled”) doctrine is perhaps the most distinctive aspect of Anglo-American common law. According to *Black’s Law Dictionary*, *stare decisis* is the doctrine stating that, when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle—and apply it in the same manner to all future cases where the facts are substantially the same.² This doctrine binds courts of equal or lower status or levels in a given jurisdiction to the principles established by the higher appellate courts within the same jurisdiction.

Stare decisis: Latin for “to stand by a decision”—a doctrine referring to court precedent, whereby lower courts must follow (and render the same) decisions of higher courts when the same legal issues and questions come before them, thereby not disturbing settled points of law.

For example, the federal courts have a three-tier structure (see Figure 2.1). According to the *stare decisis* doctrine, a federal district court in Maryland is required to follow the decisions of the Fourth Circuit Court of Appeals, of which it is a part, as well as those of the U.S. Supreme Court. However, it is not bound by the decisions of other district courts.³ Note, however, that our system of law still must remain flexible and capable of change, and thus courts can also revisit earlier decisions and set new precedents.

MODERN-DAY SOURCES AND HIERARCHY OF LAW

In addition to the two primary types of law—criminal and civil (discussed in the next section)—the U.S. legal system features different sources of law and jurisdictions where those laws are enforced and administered. Our system of government is based on the concept of *federalism*, which divides government powers between the federal government and other government entities, including state and local governments. We have federal and state laws with corresponding federal and state courts to preside over such cases. Within those two legal arenas, laws—criminal and civil—are organized hierarchically, with different priorities and legal effects depending on their source and application.

Federalism: a type of government that divides powers between a national (federal) government and governments of smaller geographic territories, including states, counties, and cities.

Figure 2.1 /// Three-Tier Structure of the U.S. Federal Court System



Again, terminology is critical to understanding law. Generally speaking, a *statute* is a law enacted by Congress (a federal law) or by a state legislature (a state law). Statutes are also known as *statutory law*. A *code* or *ordinance* typically refers to a law enacted by a local law-making body—a county board or a city council, for example (municipal laws). These and other types of laws are prioritized as follows:

Federal Law

1. The U.S. Constitution—“the supreme law of the land,” which takes precedence over state constitutions and law even if they conflict
2. Federal statutes—civil and criminal laws enacted by Congress
3. Administrative laws—orders, directives, and regulations for federal agencies, such as workplace laws promulgated by the Occupational Safety and Health Administration (OSHA)
4. Federal common law—published decisions from the U.S. Supreme Court and the U.S. Circuit Courts of Appeal, which, like the common law from England (discussed earlier), establish legal “precedence” and must be followed by lower courts in the federal and state systems (Chapter 7 describes how the Supreme Court decides to hear cases and render its decisions.)

State Law

1. State constitutional law—state constitutional rulings (from a state’s highest court) that may give greater protection or rights than the federal constitution but may not give less, and that contain protections similar to the U.S. Constitution—civil rights and liberties, separation of powers, and checks and balances⁴

2. State statutes—laws enacted by state legislatures, including criminal laws like statutes prohibiting murder or robbery
3. State common law—precedent established in published opinions by state appellate judges when deciding civil or criminal cases

City/County Law

Municipal ordinances or codes govern many aspects of our daily lives, including the following:

- Building and construction standards
- Rent control
- Noise and nuisance regulations
- Public health and safety
- Business licenses
- Civil rights and antidiscrimination

CRIMINAL AND CIVIL LAW

Simply put, **criminal law** applies to criminal matters, for example, when someone breaks a law prohibiting the commission of a robbery. **Civil law** applies to civil matters, for example, when two parties have a property dispute or want to get divorced. These two distinct types of law differ in several critical ways.

First, each type involves different parties. Criminal law represents what we as a people have decided is criminal behavior, and crimes are considered harmful to all of us in society. As such, when someone commits a crime, the state or government—through the prosecutor or district attorney—prosecutes the person on behalf of the people. Since the title of a case always first references the party that brought suit against the other (i.e., the government entity responsible for prosecution in a criminal case), a typical criminal case name is something like *U.S. v. Jones* or *State of Maine v. Smith*. In a civil matter, two individuals (or business entities like a corporation) are on either side. In a property dispute, such as when A erects a fence over the property line of B, one neighbor brings a lawsuit against the other so that the court can referee their dispute. Or, if a person is injured using a product like a hairdryer, that person can bring a civil case against the manufacturer, probably a corporation. A typical civil law case name is something like *Jones v. Smith* or *Jones v. ABC Corporation*. In the former example, Jones is the party bringing the suit—the **plaintiff**—and Smith is the party defending against the suit—the **defendant**. Not surprisingly, these two types of cases are heard in different courts, and most courthouses have separate criminal and civil “divisions,” where judges are more experienced in either of these particular types of cases.

Another important difference involves how these cases are decided. In a criminal case, the prosecutor or the state has the burden of proving—the **burden of proof**—the defendant’s guilt “beyond a reasonable doubt.” This sometimes-heavy burden is designed to force the government—the prosecutor—to prove its case with the strongest possible evidence to avoid wrongful convictions of innocent persons. Underlying our rule of law in the United States is the all-important concept that one is innocent until proven guilty. Sometimes the burden shifts to the defense to prove something, as with self-defense claims (discussed in Chapter 7). In a civil case, the burden on the party seeking

Criminal law: the body of law that defines criminal offenses and prescribes punishments for their infractions.

Civil law: a generic term for all noncriminal law, usually related to settling disputes between private citizens, governmental, and/or business entities.

Plaintiff: the party bringing a lawsuit or initiating a legal action against someone else.

Defendant: a person against whom a criminal charge is pending; one charged with a crime.

Burden of proof: the requirement that the state must meet to introduce evidence or establish facts.



U.S. National Archives and Records Administration

Sources of federal law include the U.S. Constitution, the U.S. Supreme Court, and those laws enacted by Congress.

damages or a remedy is less than in a criminal matter—those representing this party must prove their case by a “preponderance of the evidence.” The precise difference between the legal standards of “beyond a reasonable doubt” and “preponderance of the evidence” can be hard to distinguish, even for experienced lawyers.

Reasonable doubt: the standard used by jurors to arrive at a verdict—whether or not the government (prosecutor) has established guilt beyond a reasonable doubt.

Reasonable doubt can be difficult to explain; in fact, several courts prefer not to attempt to give the jury any explanation at all. However, in most cases reasonable doubt means that, after hearing all of the evidence, jurors do not possess an abiding conviction—to a moral certainty—that the charges brought against the defendant are true. This does not necessarily mean absolute certainty—there can still be some doubt, but only to the extent that it would *not* affect a “reasonable person’s” belief that the defendant is guilty. By contrast, if such doubt *does* affect a reasonable person’s belief that the defendant is guilty, then the prosecution has not met its burden of proof, and the judge or jury must acquit—find the defendant not guilty.

The civil standard of a preponderance of the evidence is a much less difficult burden to meet and is often referred to as the “50 percent plus a feather” test. It asks jurors to decide which way the evidence causes the scales of justice to tip, toward guilt or innocence, and to decide the case on that basis.

The major difference between civil and criminal matters is the penalty. In a criminal case, the state or prosecutor seeks to punish a defendant with prison or jail time, a monetary fine, or both (or perhaps a community-based punishment such as probation, discussed in Chapter 11). In a civil matter, one party is seeking “damages” (money or some legal remedy) from the other party rather than trying to send him or her to jail or prison. In the property dispute example, A would be required to tear down or move the fence and perhaps pay for the legal fees B incurred in bringing the suit. And in the hairdryer example, the corporation could be ordered to pay the consumer’s medical expenses and legal fees.

Some conduct can give rise to both a criminal and a civil matter. A few examples might serve to explain the difference—and how the two types of cases can cause problems for the police and misunderstanding by the public.

Assume that Jane calls the police to her home and tells the officer that she and her husband, Bill, recently separated and he went to their home and removed some furniture and other goods that she does not believe he should have taken. The officer must inform Jane that there is nothing he can do—at this point, this is a *civil*, not a criminal, matter. Jane may be upset with the officer, but legally the police have no jurisdiction in such disputes. Assume, however, that Bill goes to the home and makes serious threats of injury toward Jane, and she then goes to court and obtains a temporary protection order (TPO) commanding Bill to avoid any

Table 2.1 /// Differences Between Civil and Criminal Law

| | Civil | Criminal |
|-----------------|--|---|
| Burden of proof | “Preponderance of evidence” | “Beyond a reasonable doubt” |
| Nature of crime | A private wrong | A public wrong |
| Parties | Case is filed by an individual party | Some level of government files charges against the individual |
| Punishment | Usually in the form of monetary compensation for damages caused; no incarceration | Jail, fine, prison, probation, possibly death |
| Examples | Landlord/tenant dispute, divorce proceeding, child custody proceeding, property dispute, auto accident | Person accused of committing some crime (or, perhaps, neglecting a duty to act) |

form of contact with her; Bill then disregards the TPO and stalks Jane at her place of employment. Because he violated the court's order, this has now become a *criminal* matter, and the police may arrest Bill.

Or, look again at the example of someone erecting a fence that cuts across his neighbor's property. The neighbor refuses to move or tear down the fence, so the matter is taken to court. This is a civil cause of action. Both sides have a dispute that the courts will resolve if the parties cannot reach an agreement. Assume further that the neighbors cannot resolve the fence matter, and one day while one of them is working in his yard the other attacks him with a club. Now the attacking neighbor could face a criminal charge from the state (assault with a deadly weapon) and a civil lawsuit by the injured neighbor (for medical expenses and emotional trauma).

Table 2.1 shows the primary differences between civil and criminal law.

SUBSTANTIVE AND PROCEDURAL LAW

Substantive law is the written law that defines criminal acts—the very “substance” of the criminal law. Examples are laws that define and prohibit murder and robbery. **Procedural law** (discussed in detail in Chapter 6) sets forth the procedures and mechanisms for processing criminal cases. The following examples of procedural law stem from constitutional amendments: Police officers are required to obtain search and arrest warrants, except in certain situations (Fourth Amendment), officers must give the *Miranda* warning before a suspect is interrogated while in custody (Fifth Amendment), and defendants have the right to an attorney at key junctures during criminal justice system processing (Sixth Amendment). Note that these laws govern how police officers, lawyers, judges, corrections officers, and a host of others do their work in the justice system. Procedural law also prescribes rules concerning **legal jurisdiction**, jury selection, appeal, evidence presented to a jury, order of conducting a trial, and representation of counsel.

Substantive law: the body of law that spells out the elements of criminal acts.

Procedural law: rules that set forth how substantive laws are to be enforced, such as those covering arrest, search, and seizure.

Legal jurisdiction: the authority to make legal decisions and judgments, often based on geographic area (territory) or the type of case in question.

ESSENTIAL ELEMENTS: MENS REA AND ACTUS REUS

The Latin term for criminal intent is *mens rea*, or “guilty mind,” and its importance cannot be overstated. Our entire legal system and criminal laws are designed to punish only those actors who *intend* to commit their acts. As will be seen later in the discussion of homicide, acts that are clearly intentional and premeditated (e.g., murder in the first degree) are punished most severely, while those acts that are less intentional and/or accidental are punished less harshly. For example, assume that Bill, while hunting deer, shoots another hunter while out in the woods. If the prosecutor has evidence to show the shooting was purely accidental in nature (the other hunter was out of position, or Bill's gun malfunctioned), the prosecutor will not charge Bill with unlawful killing. If, by contrast, the evidence shows that Bill intended to shoot the other hunter (again, considering evidence of the position of the two men, the number of shots, or proof of Bill's planning), the prosecutor will charge Bill with homicide.

Mens Rea: Intent Versus Motive to Commit Crime

There is an important distinction to be made between *intent* and *motive*. One's **specific intent** concerns what he or she is seeking to do and is connected to a purpose or goal; **motive** refers to one's reason for doing something. For example, when a poverty-stricken

Intent, specific: a purposeful act or state of mind to commit a crime.

Motive: the reason for committing a crime.



The Foundations of Philosophy and Treatment

As noted in Chapter 1, ideological changes began to occur in the early 19th century with respect to strategies and practices concerning why and how youthful offenders and those in need of services could be differentiated from their adult counterparts. Two major aspects of that differentiation are the doctrines of *parens patriae* and *in loco parentis*.

Parens patriae means that the “state is the ultimate parent” of the child. In effect, this means that as long as we as parents adequately care for and provide at least the basic amenities for our children as required under the law, they are ours to keep. But when our children are physically or emotionally neglected or abused, the juvenile court and police may intervene and remove the children from that environment. Then the doctrine of *in loco parentis* takes hold, meaning that the state will act in place of the parent.

For police officers and other criminal justice personnel, there is perhaps no greater or more somber duty than having to

testify under subpoena in juvenile court that a parent is unfit (and that his or her parental ties should be legally severed). However, when a parent or guardian’s actions indicate a pattern of neglect and/or abuse toward a child, it is clearly better that the state assume responsibility for the child’s care and custody.

Table 2.2 shows what might be termed the **idealistic contrast** between the juvenile court process and the adult criminal justice process. Note that this is the *ideal* process for juveniles, in keeping with the more nurturing and forgiving juvenile justice philosophy. However, that philosophy can easily go away when a juvenile commits a crime that is so heinous that he or she is deemed not to be amenable to the more lenient philosophy and jurisdiction of the juvenile courts; in such cases, he or she may be remanded to the custody of the appropriate adult court of jurisdiction. Also note that much of the difference between the philosophies of juvenile and adult courts is found in the terminology used.

Table 2.2 /// The Idealistic Contrast Between Juvenile and Adult Criminal Justice Processes

| Adult | Juvenile |
|-------------------------------------|----------------------------------|
| Adversarial procedure | Relatively amiable procedure |
| Individual responsibility for crime | Societal/family factors involved |
| Punishment is typically the goal | Rehabilitation is the goal |
| Arrest process | Petition |
| Trial—public | Hearing—private |
| Guilt or innocence | Guilt not the sole issue |
| Public record | Confidential record |
| Verdict | Decision |
| Sentence | Disposition |

Idealistic contrast: the differences between juvenile and adult criminal justice processes, to include treatment and terminology.

woman steals milk for her child, her intention is to steal, but her motive is to provide for her child. Therefore, motive (the “why” someone is stirred to perform an action) is grounded primarily in psychology; intent, conversely, is the result of one’s motive, is grounded in law, and carries a higher degree of blameworthiness because a harmful act was committed. Crime movies often focus a great deal on offenders’ possible motives for committing particular crimes. However, as one law professor put it, “As any first year law student will tell you, motive is irrelevant in determining criminal liability. Unlike in the television show . . . in the perceived real world of criminal liability, motive is just a

bit player, appearing only in limited circumstances, usually as a consideration in certain defenses. Ordinarily, the only real questions at trial are (1) did the defendant commit the illegal act and (2) did she have the necessary mental state (*mens rea*, or intent)?”⁵

To determine the requisite *mens rea* for a specific crime, we look to the criminal statute that defines the offense. But you will not find the term “*mens rea*” as part of any criminal law. Instead, this element is expressed through a variety of terms that differ from state to state. For example, an intentional crime might be defined as an act committed “intentionally,” “willfully,” or “maliciously,” while a less serious crime—an accidental crime—can be expressed as an act committed “negligently,” “recklessly,” or “without due caution.” The terms used to express *mens rea* are not uniform, so criminal justice professionals must learn to identify these terms and understand how they operate within a criminal statute (see the discussion of homicide and related exercises later in this chapter).

One’s intent while committing a crime is not always easy to prove. As is discussed later, regarding the crime of homicide, when A shoots B, there are a variety of possible outcomes, and the prosecutor will “look behind the act” to determine what was going on in the mind of the killer, and whether to reduce what appears to be a charge of murder in the first degree (an intentional killing) to one of manslaughter (an accidental killing).

Actus Reus: The Act

Another critical feature of the U.S. criminal justice system is that we do not punish people for merely thinking about committing criminal acts; rather, the law generally requires a voluntary, overt act—killing, injuring, threatening, or breaking and entering, for example. The intentional *failure* to act (an “omission”) can also be criminal but only when there is a legal duty to do something, such as when a person willfully fails to pay income tax owed or a parent fails to feed a child or give him or her medical attention.

The rule for establishing criminal liability is to prove that the defendant committed the **actus reus** element (the criminal act) with the **mens rea** (“guilty mind”) set forth in the particular criminal law. When these two critical elements are present, it is known as “concurrency.” For example, a man in a ski mask breaking into a locked home might seem to be committing the *actus reus* element for burglary (see “Crimes Against Property,” below). But what if he is doing so to save himself from a terrible snowstorm after his car broke down? The all-important *mens rea* element is missing, and there is no concurrency. Accordingly, the prosecutor must prove both elements beyond a reasonable doubt—a question of fact for the jury to decide.

Actus reus: Latin for “guilty deed”—an act that accompanies one’s intent to commit a crime, such as pulling out a knife and then stabbing someone.

Mens rea: Latin for “guilty mind”—the purposeful intention to commit a criminal act.



One’s criminal intent is a major consideration in our legal system; for example, one who intentionally kills someone during a robbery may well be charged with premeditated murder.



A hunter who accidentally (without intent) shoots and kills another typically would not be charged with premeditated murder.

FELONIES AND MISDEMEANORS

Felony: a serious offense with a possible sentence of more than a year in prison.

Misdemeanor: a lesser offense, typically punishable by a fine or up to one year in a local jail.

Crimes are also classified into two broad categories based on the severity of the criminal act and the corresponding punishment. **Felonies** are offenses punishable by death or that have a possible sentence of more than one year of incarceration in prison. Many states further divide their felonies into different classes; for example, under Arizona's laws, first-degree murder is a Class 1 felony and is punishable by death or life imprisonment; sexual assault is a Class 2 felony (the number of years for which one may be sentenced to prison for this and other offenses will differ, depending on an offender's prior record); aggravated robbery (the offender has an accomplice) is a Class 3 felony; and forgery is generally a Class 4 felony.⁶

A **misdemeanor** is a less serious offense and is typically punishable by fines or incarceration for less than one year in a local jail. Like felonies, misdemeanors are often classified under state laws. In Arizona, shoplifting is a Class 1 misdemeanor (if the value of items taken is less than \$1,000 and the item is not a firearm); reckless driving is a Class 2 misdemeanor; a vehicle driver who dumps trash on a highway or road is guilty of a Class 3 misdemeanor.⁷



You Be the . . .

Police Officer

The Nevada Revised Statutes⁸ set forth the following statutory provisions related to driving. Read them carefully and then respond to the questions posed.

NRS 484B.657. Vehicular manslaughter.

A person who, while driving or in actual physical control of any vehicle, proximately causes the death of another person through an act or omission that constitutes simple negligence is guilty of vehicular manslaughter .

NRS 484B.653. Reckless driving.

It is unlawful for a person to: (a) Drive a vehicle in willful or wanton disregard of the safety of persons or property, (b) Drive a vehicle in an unauthorized speed contest on a public highway, or (c) Organize an unauthorized speed contest on a public highway.

NRS 484B.165. Using handheld wireless communications device.

Except as otherwise provided in this section, a person shall not, while operating a motor vehicle on a highway in this State: (a) Manually type or enter text into a cellular telephone or other

handheld wireless communications device, or send or read data using any such device to access or search the Internet or to engage in nonvoice communications with another person, including, without limitation, texting, electronic messaging and instant messaging, or (b) Use a cellular telephone or other handheld wireless communications device to engage in voice communications with another person, unless the device is used with an accessory which allows the person to communicate without using his or her hands, other than to activate, deactivate or initiate a feature or function on the device.

1. What is the *mens rea* element under the vehicular manslaughter statute? What is the *actus reus* element?
2. Provide an example of what would qualify as reckless driving under section (a).
3. A woman who is texting while driving strikes and kills a pedestrian who is crossing the street. The woman was not speeding. Can she be charged for a violation of NRS 484B.165—Using handheld wireless communications device? Why or why not?

OFFENSE DEFINITIONS AND CATEGORIES

Crimes Against Persons

Crimes against persons are what most people consider “violent crime” or “street crime,” such as certain homicides, sexual assaults, robberies, and aggravated assaults. As you will learn later in this chapter, the Federal Bureau of Investigation (FBI) defines these crimes as offenses that involve force or threat of force.

Crimes against persons: violent crimes, to include homicide, sexual assault, robbery, and aggravated assault.

Homicide

The taking of a human life—homicide—is obviously the most serious act that one can perpetrate against another person. But not every killing is criminal in nature, as the following examples demonstrate:

- Justifiable homicide—self-defense, legal state or federal executions, acts of war, or when a police officer uses lawful lethal force
- Excusable homicide—killings that are wholly accidental, such as when a person who is driving the speed limit and paying full attention hits a small child who darts into the street from behind a large RV, where no reasonable person could have known that such a risk was possible or preventable

Criminal homicides fall into two categories: murder (intentional killings) and manslaughter (accidental killings). Within these two categories, offenses are ranked in seriousness by degrees. As mentioned earlier, under our system of justice, the premise underlying homicide is that “when A shoots B, there are a variety of possible outcomes.” The prosecutor must attempt to determine the shooter’s intent, which can result in criminal charges ranging from murder in the first degree to involuntary manslaughter. A useful way to think of the universe of possible homicide charges is as a “ladder of offenses,” going from the least serious up to the most serious (see Table 2.3).

| Charge | Mens Rea | Example |
|---|--|--|
| Murder (Intentional Killings) | | |
| First-Degree Murder | Premeditated, with malice aforethought | Planning to kill your wife’s boyfriend by waiting at his home one evening and killing him when he arrives |
| Second-Degree Murder | Intentional but not premeditated | Unexpectedly seeing your wife’s boyfriend several days after you discover their affair, then quickly grabbing a gun you keep in your car and killing him |
| Manslaughter (Accidental Killings) | | |
| Voluntary Manslaughter | Committed in the “heat of passion”; being adequately provoked and not having time to “cool off” before the act | Arriving home and finding your wife and her boyfriend together, immediately grabbing a nearby weapon, and killing the boyfriend in a blind rage |
| Involuntary Manslaughter | Unintentional/accidental; causing a death while breaking the law (typically a misdemeanor criminal law) or while being negligent | Texting while driving and then accidentally hitting a child who darts out into the street |
| Felony Murder (Strict Liability) | | |
| Felony/First-Degree Murder | Unintentionally causing a death while intentionally committing a dangerous felony; no mens rea required = strict liability | While burglarizing your boss’s office to steal from the petty cash fund, she arrives unexpectedly, discovers you there, has a heart attack, and dies |



Excusable killings include those that are accidental in nature, such as when a driver strikes and kills a toddler who darts out into the street; in such cases the driver will not be deemed culpable (blameworthy).

Felony-murder rule: the legal doctrine that says that, if a death occurs during the commission of a felony, the perpetrator of the crime may be charged with murder in the first degree, regardless of the absence of intent, premeditation and deliberation, or malice aforethought.

Murder. The term *murder* includes only intentional killings, which are categorized by degrees:

- *Murder in the first degree* (sometimes termed “murder one”) is the unlawful, intentional killing of a human being with *premeditation and deliberation* (often termed “P&D”) and *malice aforethought*. Federal and state statutes define murder and its elements differently, but generally they all require the elements of intent, P&D, and malice aforethought.

P&D means the defendant thought about committing the act before doing so. Courts generally look at the following factors to determine P&D: evidence of planning, the manner of killing, and

the prior relationship between the defendant and the victim.⁹ Courts also look at the *time* the defendant may have spent contemplating or planning in order to determine whether premeditation existed, but courts differ on this issue. The federal courts have held that *no* minimum time period is necessary, and a jury can determine from the facts whether or not a defendant premeditated murder.¹⁰ Malice aforethought is often said to be shown when someone acts with “a depraved heart,” evidenced by one’s conscious intent to shoot another person with a gun or stab someone with a knife.

Dangerous conduct can also be prosecuted as first-degree murder under the **felony-murder rule**, which provides that if a death occurs during the commission of a felony, the defendant will be charged with murder in the first degree, regardless of his or her intent (a crime that does not require a *mens rea* element is known as a “strict liability” crime—see also the discussion of statutory rape, later). The classic example involves multiple defendants robbing a bank and during the robbery the bank security guard dies from a heart attack. In that case, all the defendants may be charged with first-degree murder under the felony-murder rule. Likewise, if one of the bank robbers panics and shoots a security guard, all of the defendants will be charged with first-degree murder even though the robbers intended only to rob, not to kill anyone. The felony-murder rule is designed to deter those who might otherwise commit dangerous felonies. If a would-be bank robber knows the penalty for an accidental death during his or her crime might be a charge of first-degree murder, perhaps the robber will think twice about committing the crime.

- *Murder in the second degree* (“murder two”) is distinguished from first-degree murder in that it is also intentional—with malice—yet *impulsive*, without P&D. An example would be when two men get into an argument at a bar, and one pulls a knife and stabs the other to death. He intended to stab the other man, but the killing did not involve premeditation. Furthermore, although the intent to kill is an essential element of both first- and second-degree murder, a defendant can also be found guilty of second-degree murder if his or her actions show gross recklessness and a high disregard for human life, and there is extreme risk of death. Although it will depend on the jury’s views, acts such as allowing a dangerous dog to run free and bite a child, intentionally shooting a gun into a crowd of people, throwing a heavy object off a roof onto a crowded street below, and playing Russian roulette (loading a gun and intentionally firing it at another person) have led to conviction for second-degree murder. As you will see later, these actions could also qualify as involuntary manslaughter.¹¹

Manslaughter. The term *manslaughter* refers to accidental killings, categorized as voluntary (intentional but without malice) and involuntary (unintentional):

- *Voluntary manslaughter* is an intentional killing, but it involves (at least in the eyes of the law) no malice. Instead, there is “heat of passion” to a degree that a “reasonable person” might have been provoked into killing someone. The best example is when a person comes home early in the day and finds his or her significant other in the arms of another person, becomes enraged, grabs a gun, and kills one or both of them. The killer acted in the heat of passion rather than intentionally. A killing can be downgraded on the homicide ladder, from murder to voluntary manslaughter, only if the actor was adequately provoked (generally, words alone—as in an argument—are not enough to provoke, but seeing something like a cheating spouse is), and the actor must not have had time to “cool off.” The person discovering his cheating spouse cannot leave, go to a bar and drink a few beers, and then return to the scene and kill the offending couple (this would be first-degree murder, as explained earlier). The “passion” that aroused the person to kill must have arisen contemporaneously—at the time of the provocation—and continued until the time of the criminal act.

The circumstances of a killing might cause a prosecutor to look at both second-degree murder and voluntary manslaughter as possible charges. When a perpetrator clearly killed with intent but without P&D (e.g., two people fighting with weapons), a second-degree murder charge is appropriate. But when that same actor is fighting with weapons because the victim provoked her and she did not have time to “cool off” after that provocation, the charge could be downgraded to voluntary manslaughter. A prosecutor will consider all of the evidence to determine the right homicide charge, up or down the “ladder.”

- *Involuntary manslaughter* is typically established in one of two ways: (1) through acts of negligence, such as when one is driving too fast on a slick road and kills a pedestrian, or (2) via the misdemeanor-manslaughter rule—similar to the felony-murder rule, but the crime involved is a misdemeanor. For example, a man enters a convenience store and shoplifts a six-pack of beer; the clerk chases him out the door but slips and falls, striking his head on the sidewalk and dying from the force of the impact. The shoplifter may be charged with involuntary manslaughter, as his actions caused the clerk’s death.

The Methuen Fentanyl Case: Now that you have learned the different types of homicide and how the critical element of *mens rea* determines the degree and punishment, consider the scenario (from the beginning of the chapter) under which the jury could have convicted the mother from Methuen, Massachusetts, and how *mens rea* plays a part in each of the following:

- *First-degree murder:* The mother intentionally gave fentanyl to her child, and she planned the child’s death.
- *Second-degree murder:* The mother gave fentanyl to her child intentionally but did not plan for the child to die.
- *Voluntary manslaughter:* The mother held her child while consuming fentanyl while experiencing severe withdrawal symptoms, knowing that the child would likely be exposed and harmed by the drug.
- *Involuntary manslaughter:* The mother used fentanyl, but never anticipated that the child would accidentally and unintentionally be exposed to the drug.

Further, consider the fact that drug paraphernalia was found in the mother’s car during the subsequent investigation. But the police noted that the mother, father, and grandparents were highly cooperative during the investigation. How might those facts affect a case for homicide?

Sexual Assault

Sexual assault, referred to as “rape” or “forcible rape” under some older state laws, was historically defined as the carnal knowledge of a female forcibly and against her will, and



istockphoto.com/GregorBlister

Robbery involves taking, or attempting to take, anything of value from another person by force or threat of force or violence, where the victim is in fear of injury or death.

vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” About 134,000 rapes are reported to the police annually in the United States.¹²

Like other crimes, sexual assault is categorized by degrees depending on the type of contact, from sexual penetration without the consent of the victim (first degree, the most serious) to unwanted sexual contact that does not result in physical injury (often third degree). Like homicide, sexual assault includes a “strict liability” crime with no *mens rea* element, also known as “statutory rape.” This crime is defined as sexual contact between a “victim” of a certain age, typically between ages 12 and 16, and a “perpetrator” who is older, typically 19 and above.

Robbery

Robbery is the taking of or attempt to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear. About 319,000 robberies are reported to the police annually in the United States.¹³ As stated earlier in this chapter, many times people who come home to find their houses have been broken into claim they have been “robbed” when they obviously have not been (they have been burglarized), given that robbery requires a face-to-face taking—a combination of theft and assault.

Aggravated Assault

Aggravated assault is an unlawful attack upon another for the purpose of inflicting severe or aggravated bodily injury. This offense is usually accompanied by the use of a weapon or by other means likely to produce death or great bodily harm. When aggravated assault (or even regular assault, as long as there is a threat) and larceny-theft (described in the next section) occur together, the offense falls under the category of robbery. Each year about 811,000 aggravated assaults are reported in the United States.¹⁴

As is the case with homicide crimes, criminal justice students often have difficulty understanding the “ladder” of assault crimes. A few examples will help to clarify the differences:

- First, the mere placing of someone in fear for his or her safety is an assault. If Joe yells at Jack threateningly, “I’m going to beat your brains out,” this is an assault. An *assault*, then, occurs when one person makes threatening gestures that alarm someone and makes that person feel under attack; actual physical contact is not necessary.
- But if Joe intentionally strikes Jack on his cheek, the intentional physical contact intended to harm raises this conduct to the crime of *assault and battery*.

- Finally, if Joe gets a tire iron out of his car and strikes Jack with it several times, inflicting severe injury, Joe has now committed an *aggravated assault*.

Crimes Against Property

Crimes against property are offenses where no violence is involved, only the taking of property—crimes such as burglary, larceny-theft, motor vehicle theft, and arson.

Crimes against property: crimes during which no violence is perpetrated against a person, such as burglary, theft, and arson.

Burglary

Burglary is the unlawful entry of a structure to commit a felony or theft. To classify an offense as a burglary, the use of force to gain entry need not have occurred, nor does anything of value have to have been stolen. The FBI, in its *Uniform Crime Reports* (detailed later in this chapter), defines “structure” as an apartment, barn, house trailer or houseboat when used as a permanent dwelling, office, railroad car (but not an automobile), stable, or vessel (i.e., ship). About 1.4 million burglaries are reported annually in the United States.¹⁵

Larceny-Theft

Larceny-theft is the unlawful taking, carrying, leading, or riding away of property from the possession of another; it includes attempted thefts as well as thefts of bicycles, motor vehicle parts and accessories, shoplifting, pocket-picking, or the stealing of any property or article that is not taken by force and violence or by fraud. The value of the item stolen is significant, and in all states the monetary worth will determine whether the larceny-theft is a felony or a misdemeanor; each state’s statutes will set forth its limits. For example, according to Massachusetts statutes, if the item is worth more than \$250, it is a felony; Iowa, however, has several classifications: It is a “serious misdemeanor” if the item stolen is valued between \$200 and \$500, an “aggravated misdemeanor” if worth between \$500 and \$1,000, and a felony if worth more than \$1,000.¹⁶ Each year about 5.5 million larceny-thefts are reported to the police in the United States.¹⁷

Motor Vehicle Theft

Motor vehicle theft involves the theft or attempted theft of a land-based, self-propelled vehicle that does not run on rails and is not classified as farm equipment. Examples of motor vehicles include cars, buses, motorcycles, trucks, snowmobiles, and scooters. Approximately 773,000 motor vehicle thefts are reported annually in the United States. The estimated loss associated with these events is approximately \$6 billion.¹⁸

Arson

Arson is any willful or malicious burning of or attempting to burn, with or without intent to defraud, a dwelling house, a public building, a motor vehicle or aircraft, personal property of another, and so forth. There are different types of arsonists, with very different motives for setting fires. Each year about 41,000 arsons are reported to police, with an average loss per event of about \$15,600. About half (45 percent) of all arsons involve structures (residential, storage, public, and so on).¹⁹

Public Order Crimes

Public order crimes are offenses that violate general public values or the norms shared among most members of society. They are sometimes called “victimless” crimes, since many people argue that these crimes harm only the offenders. Public order crimes are also sometimes called “complacent” crimes, since many involve consensual activities or do not involve clearly identifiable victims. Offenses classified as public order crimes include drug-related crimes, prostitution, public drunkenness, gambling, and various forms of disorderly conduct. Although public order crimes often involve consensual activities between offenders (e.g., a drug dealer and a drug user, a prostitute and a “John” who pays for sex), violence and

Public order crimes: offenses that violate a society’s shared norms.



You Be the . . .

Prosecutor

A mother in New York asks her sister to babysit her infant son for two days while she goes to a job interview. The mother asks that either her sister or her sister's 17-year-old daughter give the boy a teaspoonful of medicine two times per day, but she fails to inform them of the proper dosages. The sister becomes distracted and forgets to medicate the infant. Later, realizing that the medicine has not yet been administered, the 17-year-old daughter gives the infant what turns out to be an overdose of the medicine, and the infant dies. A potentially relevant law in New York is as follows:

New York Penal Law § 125.25: A person is guilty of *murder in the second degree* when . . . under circumstances evincing a depraved indifference to human life, and being eighteen years old or more the defendant recklessly engages

in conduct which creates a grave risk of serious physical injury or death to another person less than eleven years old and thereby causes the death of such person (penalty: 15 to 25-year prison term).

As the prosecutor reviewing this case, you must ask and attempt to answer several questions:

1. What crime, if any, was committed here?
2. If there was a crime committed, who bears responsibility (culpability) for it?
3. If any of the involved parties is charged, would you have enough evidence to prove the *actus reus* and *mens rea* elements for second-degree murder?

Note: See The New York State Senate, The Laws of New York, Section 125.25, Murder in the Second Degree, <https://www.nysenate.gov/legislation/laws/PEN/125.25>.

other serious criminal offenses often accompany these activities. For example, shootings and homicides are commonplace in open-air drug markets when dealers fight over market territory. Further, human trafficking is closely tied to prostitution. The United Nations Office on Drugs and Crime reports that sexual exploitation accounts for up to almost half of all human trafficking in North, Central, and South America.²⁰

White-Collar Crime

White-collar crime: crimes committed by wealthy or powerful individuals in the course of their professions or occupations.

The concept of **white-collar crime**, sometimes called occupational or corporate crime, was introduced in 1939 in an address to the American Sociological Association by Edwin Sutherland, who defined it as “a crime committed by a person of respectability and high social status in the course of his occupation.”²¹ White-collar crime challenges many of the traditional assumptions concerning criminality—that it occurs in the streets and is mostly committed by criminals who are lower class and uneducated. Sutherland, after examining 40 years of records held by regulatory agencies, courts, and commissions, reported that of the 70 largest industrial and mercantile corporations, each had violated at least one law, averaged eight violations apiece, and had an adverse decision related to false advertising, patent abuse, wartime trade violations, price fixing, fraud, or intended manufacturing and sale of faulty goods.²²

Although we frequently hear of white-collar criminals, the extent of white-collar crime is difficult to measure for several reasons. First, collecting accurate data is difficult since official statistics and victim surveys generally do not include much information concerning this type of crime. And, for obvious reasons, corporations zealously guard their public image and thus prefer to regulate themselves and maintain a code of silence. In addition, the police, social scientists, and members of the media are often inexperienced in the ways of corporate crime, much of which involves insider corporation- and industry-specific knowledge.

Furthermore, although the Sherman Antitrust Act (1890) and hundreds of laws and regulatory agencies exist to keep white-collar crime in check and to police corporations—through recalls, warnings, consent agreements, injunctions, fines, and criminal proceedings—guilty companies often maintain legions of attorneys and accountants who possess considerable expertise in seeing that their bosses are seldom if ever punished.²³ We do know, however, that white-collar crime is the largest and most costly type of crime in the United States. As criminologist Frank Hagan put it, “All the other forms of criminal behavior together do not equal the costs of occupational and organizational (corporate) crime.”²⁴

Several celebrity white-collar crime cases have made national news. Most people have heard of Bernie Madoff’s \$50 billion fraudulent Ponzi scheme (where one basically uses new investors’ funds to pay early investors, rather than using profits earned by the individual or organization running the operation); Madoff was sentenced to 150 years in prison for his crimes.²⁵ Or they know that businesswoman/author/television personality Martha Stewart was convicted of committing and lying about insider trading, in which she sold stock that she knew was likely to plunge in price.²⁶ These celebrated cases are well known, but white-collar crime can take many more forms, including the following:

- A 2019 college admissions bribery scandal, called Operation Varsity Blues, exposed parents and university staff involved in bribery and other forms of fraud to facilitate applicant admissions to top American colleges and universities.
- A Swiss pharmaceutical company pleaded guilty and paid a record \$500 million in fines for price fixing on vitamins.
- Medical quackery and unnecessary surgical procedures victimize more than two million Americans, cost \$4 billion, and result in 12,000 deaths per year. Fee splitting and “ping-ponging” (in which doctors refer patients to other doctors in the same office) also occur.
- A major auto manufacturing company, aware that a defect (which would cost \$11 to repair) in one of its vehicles could result in a fiery explosion during a rear-end collision (even at low speeds), decided it would be cheaper not to recall the vehicles and make repairs, but instead to pay drivers’ injury and death claims.²⁷ Lawyers engage in “ambulance-chasing,” file unnecessary lawsuits, and falsify evidence.
- Corporations dump or release toxic chemicals and hazardous materials into the environment to cut costs and avoid regulatory laws.
- Companies steal secrets and patents from one another and thus commit corporate espionage.
- Individuals steal the identities of others, with nearly 18 million persons in the United States being victimized by identity thieves in any given year.²⁸ Offenders may target victims of natural disasters or other types of victims in phony fund-raising schemes.
- Nigerian letter scams often involve emailed pleas to help transfer money from Nigeria or some other part of the world, with false promises of financial compensation if victims agree to provide their banking information.



Bernie Madoff, a former stockbroker and financial advisor, was convicted of operating a Ponzi scheme that is considered to be the largest of its kind in U.S. history.

TIMOTHY A. CLARKE/Getty Images

An often-cited crime typology, developed by Herbert Edelhertz, distinguishes between two types of white-collar crime.²⁹ The first type involves crimes committed in the course of offenders' occupations by those operating inside business, government, or other establishments in violation of their duty of loyalty and fidelity to employer or client. These crimes could include commercial bribery and kickbacks, embezzlement, insider trading, expense account fraud, or any other offense committed by an offender in the course of carrying out his or her work duties. The second type of white-collar crime involves crimes incidental to and in furtherance of business operations (but not the central purpose of the business). For example, producing false company financial statements, using deceptive advertising, or committing antitrust violations can indirectly benefit the offender by benefiting his or her employment company.

Organized Crime

Organized crime: crimes committed by members of illegal organizations.

Organized crime is a term used to describe illegal acts committed by individuals involved in illegal organizations. White-collar criminals commit crimes as part of larger organizations, using their association or relationship with legitimate businesses and organizations to carry out their offenses. Organized crime offenders differ in that they use their association or relationship with illegal entities to carry out criminal activities. These illegal groups commonly engage in behaviors known as racketeering activities. The FBI defines these activities under the Racketeer Influenced and Corrupt Organizations (RICO) statute,³⁰ and they include the following: bribery (including sports), counterfeiting, embezzlement of union funds, mail and wire fraud, money laundering, obstruction of justice, murder for hire, drug trafficking, prostitution and sexual exploitation of children, alien smuggling, trafficking in counterfeit goods, theft from interstate shipment, and interstate transportation of stolen property. Organized crime may also include the following state crimes: murder, kidnapping, gambling, arson, robbery, bribery, extortion, and various drug offenses.

MEASURING CRIME AND VICTIMIZATION

Data about actual crime rates—incidents, offenders, location, and so on—help us more fully understand after the fact just how prevalent crime and offenders are. This information can then guide scholars and researchers to seek explanations for rates that are spiking or falling. Crime measurement attempts to answer the question of “how much” with respect to crime in the United States, arming both criminal justice professionals and policy makers with critically important information to run this complex, human system.

How Much Crime in the United States? Depends on Whom You Ask

Mark Twain once said, rather famously, that there are “lies, damn lies, and statistics.”³¹ Unfortunately, that assessment of statistics is somewhat (if not significantly) accurate with respect to U.S. reported crime figures. One example that will make the point is two different data sets reporting hate crimes. Specifically, in a recent year, the Federal Bureau of Investigation's (FBI's) *Uniform Crime Reports* (discussed in the next section) reported a total of 7,175 hate crimes (with 8,493 victims).³² However, the National Crime Victimization Survey (NCVS, also discussed later in this chapter) reported an annual average of 250,000 violent hate crime victimizations. This significant discrepancy is largely due to the fact that more than half (54 percent) of victims in the NCVS did not report their crimes to the police. Furthermore, in the NCVS, hate-related victimizations are based on victims' *suspicion* of the offenders' motivation, rather than on the police's suspicion.³³ Thus, crime figures must be viewed with caution and with an understanding of the limitations associated with each data source.

Errors and variations notwithstanding, to comprehend the impact of crime on our society, criminologists, victimologists, sociologists, psychologists, and members of other related disciplines need such information for their research and for making planning and policy recommendations.

Knowing the nature and extent of crime also helps us understand the social forces that are driving those offenses and aggregated trends. Furthermore, measuring crime is one of the best ways to determine the effectiveness of our criminal justice agencies and policies. We can better examine the structure and functions of the police (by looking at reported crimes and the proportion of crimes solved by arrest or other means), the courts (to determine the types of punishment and treatment that offenders are receiving), and corrections organizations (to ascertain, among other things, whether or not offenders are being returned to prisons and jails).

Having crime data also allows for calculations of a national *crime rate* (discussed later), which in turn provides us with a “victim risk rate”—the odds that we (or relatives and friends) will become a victim of a serious crime.

Discussed first is the FBI’s *Uniform Crime Reports*, followed by a review of a more in-depth method of capturing and analyzing reported crimes: the National Incident-Based Reporting System; finally, the National Crime Victimization Survey is examined. As you will learn, these three sources of crime information are very different in their approaches and findings.

The FBI’s Uniform Crime Reports

The Uniform Crime Reporting (UCR) Program was conceived in 1929 by the International Association of Chiefs of Police to meet a need for reliable, uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics. Today, several annual statistical publications, such as the comprehensive *Crime in the United States*, are produced from data provided by nearly 18,000 law enforcement agencies across the United States.

Other ancillary annual publications, such as *Hate Crime Statistics* and *Law Enforcement Officers Killed and Assaulted*, address specialized facets of crime such as hate crime or the murder and assault of law enforcement officers.³⁴ Special studies, reports, and monographs prepared using data mined from the UCR Program’s large database are published each year as well. In addition to these reports, information about the National Incident-Based Reporting System (discussed later in this chapter), answers to general UCR questions, and answers to specific UCR questions are available on the program’s website.

For the purposes of the *Uniform Crime Reports*, the FBI divides offenses into two groups, Part I and Part II crimes. Each month, contributing agencies voluntarily submit information to the FBI concerning the number of Part I offenses reported to them, as well as those offenses that were cleared by arrest, and the age, sex, and race of persons arrested for each of the offenses.

Crime Rate

A fundamental aspect of calculating and understanding crime concerns how the FBI calculates the **crime rate**. The formula used is not complicated in nature. It is as follows: number of crimes reported, divided by the population of the jurisdiction in question, then multiplied by 100,000; this renders the number of crimes reported for each 100,000 population. It is depicted as follows:

$$\frac{\text{Number of offenses}}{\text{Population of the jurisdiction}} \times 100,000$$

FBI: UCR

Home

Uniform Crime Reporting

The Uniform Crime Reporting (UCR) Program has been the starting place for law enforcement executives, students of criminal justice, researchers, members of the media, and the public at large seeking information on crime in the nation. The program was conceived in 1929 by the International Association of Chiefs of Police to meet the need for reliable uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics.

Today, four annual publications, *Crime in the United States*, *National Incident-Based Reporting System*, *Law Enforcement Officers Killed and Assaulted*, and *Hate Crime Statistics* are produced from data received from over 18,000 city, university/college, county, state, tribal, and federal law enforcement agencies voluntarily participating in the program. The crime data are submitted either through a state UCR Program or directly to the FBI’s UCR Program.

In addition to these reports, information is available on the Law Enforcement Officers Killed and Assaulted (LEOKA) Program and the Hate Crime Statistics Program, as well as the traditional Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS).

The FBI is undertaking a redesign of the system that has supported the FBI’s UCR Program for more than 30 years. In support of this initiative, the FBI is currently managing the UCR Technical Refresh. [Details](#)

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Publications

- Crime in the United States
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- Cargo Theft 2014 (pdf)
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- New Rape Definition (pdf)
- New Rape Definition Frequently Asked Questions (pdf)
- New Rape Fact Sheet (pdf)

Latest Releases

Law Enforcement Officers Killed and Assaulted 2016
The latest edition of Law Enforcement Officers Killed and Assaulted provides national statistics on lives lost in 2016. [Details](#)

Crime Stats for 2016
Violent crime increased and property crimes decreased during 2016 when compared to 2015 data. [Details](#)

The Federal Bureau of Investigation’s Uniform Crime Reporting Program publishes annual crime data for selected crimes as reported to the police in the United States.

Uniform Crime Reports: published annually by the FBI, each report describes the nature of crime as reported by law enforcement agencies; includes analyses of Part I crimes.

Crime rate: the number of reported crimes divided by the population of the jurisdiction, and multiplied by 100,000 persons; developed and used by the FBI Uniform Crime Reports.

As an example, assume, as in a recent year, that about 1,247,321 violent crimes were reported to the police in the United States; also, for that year the nation's reported population was 325,719,178. According to this formula, the resulting crime rate for that year was 382.9 violent crimes per 100,000 population.³⁵

The crime rate formula can also be considered a “victim risk rate,” or the chances of one's becoming a victim; therefore, the chances of one's being a victim of a violent Part I offense for that recent year were about 383 in 100,000.

Part I Offenses

Part I or “index” crimes are composed of eight serious felonies—murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. About 9 million such crimes are reported each year (about 1.3 million being violent and 7.7 million, property).³⁶ The first four of these eight offenses are deemed crimes against *persons* and are defined in the UCR Program as offenses that involve force or threat of force.

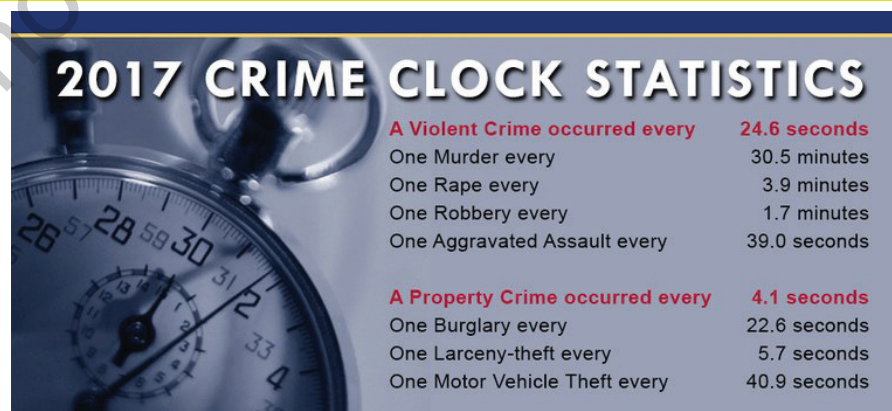
As seen in Table 2.4, crimes of murder had declined each year between 2012 and 2014. However, murders increased between 2014 and 2015 by about 12.1 percent and increased

Table 2.4 /// Rates of Murder Committed in the United States

| Year | Population | Murder and Nonnegligent Manslaughter | Murder and Nonnegligent Manslaughter Rate |
|------|-------------|--------------------------------------|---|
| 2010 | 309,330,219 | 14,722 | 4.8 |
| 2011 | 311,587,816 | 14,661 | 4.7 |
| 2012 | 313,873,685 | 14,856 | 4.7 |
| 2013 | 316,497,531 | 14,319 | 4.5 |
| 2014 | 318,907,401 | 14,164 | 4.4 |
| 2015 | 320,896,618 | 15,883 | 4.9 |
| 2016 | 323,405,935 | 17,413 | 5.4 |
| 2017 | 325,719,178 | 17,284 | 5.3 |

Source: Adapted from Federal Bureau of Investigation, “Table 1. Volume and Rate per 100,000 Inhabitants, 1998–2017,” *Crime in the United States—2017* (Washington, D.C.: Uniform Crime Reporting Program).

Figure 2.2 /// FBI's UCR “Crime Clock”



Source: Federal Bureau of Investigation

again by about 9.6 percent in 2016. Between 2016 and 2017 the number of homicides reported to the police in the United States remained relatively stable (less than a 1 percent decline).³⁷

The FBI's annual *Uniform Crime Reports* contain a "Crime Clock" that depicts the average time intervals between Part I crimes; a sample Crime Clock is shown in Figure 2.2.

Part II Offenses

In addition to information concerning the eight Part I offenses, the FBI provides arrest-only data for about 20 Part II offenses—simple assaults, forgery, embezzlement, prostitution, vandalism, drug violations, and so forth.³⁸

Cautions and Criticisms of UCR Data

Each year when the FBI's *Crime in the United States* is published, many people and groups with an interest in crime rush to use the crime figures in attempts to rank and compare crimes in cities and counties. The FBI is quick to point out each year in its *Uniform Crime Reports* that making such comparisons is ill advised, due to the variety of characteristics of different states, counties, and communities.

Many variables can contribute to the amount of crime occurring in a specific jurisdiction. First, it is important to understand a jurisdiction's industrial/economic base, its dependence on neighboring jurisdictions, its transportation system, its reliance on tourism and conventions, its proximity to military installations and correctional facilities, and so forth. Indeed, the strength and aggressiveness of the local police are also key factors in understanding the nature and extent of crime occurring in an area.

In addition to the crime theories discussed earlier, other factors known to affect the volume and type of crime are largely outside the control of the criminal justice system:

- Population density and degree of urbanization
- Variations in composition of the population, particularly youth concentration
- Stability of the population with respect to residents' mobility, commuting patterns, and transient factors
- Modes of transportation and highway system
- Economic conditions, including median income, poverty level, and job availability
- Cultural factors and educational, recreational, and religious characteristics³⁹

Critics of UCR data—who include any person engaged in serious research into crime, criminology, victimology, and so on—commonly note the shortcomings of these data (see Table 2.5).⁴⁰

The Hierarchy Rule: Definition and Application

In tabulating how many crimes occur each year, law enforcement agencies are instructed by the FBI to use what is known as the **hierarchy rule**, which basically says that when more than one Part I offense is committed during a criminal event, the law enforcement agency must identify and report only the offense that is highest on the hierarchy list.⁴¹

Put another way, the hierarchy rule requires counting only the most serious offense and ignoring all others. Note, however, that this rule applies only to the crime reporting process; it does *not* affect the number of charges for which the defendant may be prosecuted in the courts.

Hierarchy rule: in the FBI *Uniform Crime Reports* reporting scheme, the practice whereby only the most serious offense of several that are committed during a criminal act is reported by the police.

National Incident-Based Reporting System: a crime reporting system in which police describe each offense that occurs during a crime event as well as characteristics of the offender.

The National Incident-Based Reporting System

Being aware of the criticisms leveled over time against the UCR Program, the U.S. Department of Justice in 1988 launched the **National Incident-Based Reporting System**

Table 2.5 /// Limitations of the Uniform Crime Reports

Although the FBI's *Uniform Crime Reports* include several unique publications such as special reports providing statistics on hate crimes and law enforcement officers killed and assaulted, the data have some limitations.

UCR Limitations

- Offense data are available only for a small number (eight) of all crimes committed in the United States.
- The UCR data list only crimes reported to law enforcement agencies (not all crimes that occur are known to the police).
- Reporting of citizens' reports of crime by the police is voluntary; therefore, police may choose not to report or might report inaccurately (thus UCR data may be affected by the reporting practices of local law enforcement).
- The hierarchy rule (discussed in the text) is used, meaning that when a number of crimes are committed as part of a single criminal act, only the most serious offense of all of them is reported to the UCR.
- Attempted crimes are combined with completed crimes.
- When computing crime rates, the UCR counts incidents involving all kinds of targets (e.g., crimes of burglary are against businesses and residents, not against "populations").
- The UCR includes very little information concerning crime victims.

Source: A complete UCR handbook may be viewed at https://ucr.fbi.gov/additional-ucr-publications/ucr_handbook.pdf.

(NIBRS). Although the UCR Program collects and analyzes data for eight Part I offenses, the NIBRS furnishes crime data provided by more than 5,900 participating federal, state, and local law enforcement agencies for 49 specific crimes (called Group A offenses) grouped into 23 crime categories.⁴² The FBI posts an interactive map, which depicts the locations of participating agencies and the number of offenses reported for each of the major crime categories. This map can be accessed at <https://nibrs.fbi.gov/>.

With NIBRS, legislators, municipal planners/administrators, academicians, sociologists, and the public have access to more comprehensive, detailed, accurate, and meaningful crime information than the traditional UCR system can provide. With such information, law enforcement can better make a case to acquire the resources needed to fight crime. The NIBRS also enables agencies to locate similarities in crime-fighting problems so that agencies can work together to develop solutions or discover strategies for addressing the issues. Several NIBRS manuals, studies, and papers are available on the UCR Program's website at <https://www.fbi.gov/services/cjis/ucr>.

There are important differences between the UCR and the NIBRS data sets. For example, the NIBRS does not apply the UCR's "hierarchy rule" (discussed earlier). If more than one crime was committed by the same person or group of persons during the same event, then all of the crimes would be reported in the NIBRS database. Further, in addition to having the UCR Program's two crime categories—crimes against persons (e.g., murder, rape, and aggravated assault) and crimes against property (e.g., robbery, burglary, and larceny-theft), the NIBRS includes a third crime category, crimes against society, to represent society's prohibitions against certain types of activities (e.g., drug or narcotic offenses). The more detailed NIBRS data are scheduled to become the national crime data standard by January 1, 2021.⁴³

National Crime Victimization Survey: a random survey of U.S. households that measures crimes committed against victims; includes crimes not reported to police.

The National Crime Victimization Survey

The **National Crime Victimization Survey** (NCVS), created to address some of the shortcomings of the UCR Program, has been collecting data on personal and household



Practitioner's Perspective

Criminal Justice Program Director; Former Law Enforcement Officer and Drug Investigator



Michael Verro
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Location: Excelsior College, Albany, New York

What is your career story? Prior to working for Excelsior College, I was in law enforcement, starting when I was 18 years old. I started doing seasonal work as a peace officer, which is like private security, but they have police authority. When I got out of college, I realized that law enforcement was an area I wanted to go into as a profession. So for the next couple of years, I started like most people do in private security. I was a private investigator, a bodyguard, and worked my way up. At about age 27, I was hired as a police officer and I did that for 25 years. For 15 of those years, I worked as both a police officer and a detective. I was subsequently recruited to the DEA drug task force, and I worked for them for about three years.

I eventually went back to work as a police officer and then came back to New York and worked again as a peace officer. That really led into my world of academia; and now, I'm the program director for criminal justice at Excelsior.

What characteristics and skills are most helpful to succeed in this position? To me, skills are trainable. And there's a big distinction between training and education. That's one thing I think a lot of people have a misconception about. For education, you go to college. You learn theory, application, and critical thinking. Whereas training and some of the other skills are usually taught at an academy, things like driving, shooting, and defensive tactics.

But there are some psychological and mental skills people should possess for this career. And I consider those to be traits or characteristics of their broader personality. Things such as maturity, intelligence, wanting to help other people, and being level headed. Those are very important characteristics and skills, and some they should possess if they're going to go into this field.

Do you see any common trends in this position? When I went on the job almost 30 years ago, there wasn't a lot of technology. We carried a radio around on our hip that we used to call the brick, because it was about the size of a red building brick. It was very heavy and unreliable. Years ago, you had to call for dispatch and then wait and hope that they could go through their information, their databases or make phone calls as quickly as possible to obtain the information you wanted. Nowadays, every patrol car has a laptop with immediate access to information at your fingertips. Police officers wear body cameras, everything is digitally recorded, and they're using drones for surveillance and intelligence gathering. It used to be, again, when we looked to get a warrant—let's say a search warrant—it was basically searching a house. Now, there are digital search warrants if you want to ascertain information off computers or servers. So technology is growing—not only from the criminal justice perspective but also from the crime perspective. Every 90 days, there's some new form of digital crime being perpetrated, and the criminal justice system has to keep up with that.

What are some challenges and misconceptions you face in this position? One of the hardest things that we have to deal with is the fact that criminal justice education is often seen as more of a trainable thing, that it's not really taken seriously in academia as an actual degree, or not considered one of the real sciences. That's a misconception. It's kind of like psychology in that it wasn't really seen as a science until the late 1800s.

To learn more about Michael Verro's experiences as a Criminal Justice Program Director, Former Law Enforcement Officer, and Drug Investigator, watch the Practitioner's Perspective video in SAGE Vantage.

victimization since 1973. The NCVS claims on its website to be “the nation’s primary source of information on criminal victimization.” Each year, data are obtained from a nationally representative sample of about 95,000 households comprising nearly 240,000 persons on the frequency, characteristics, and consequences of criminal victimization in the United States. Each household is interviewed twice during the year. The survey enables the Bureau of Justice Statistics to estimate the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders.⁴⁴

The survey—which asks respondents to report crime experiences occurring in the past six months—is administered by the U.S. Census Bureau (under the U.S. Department of Commerce) on behalf of the Bureau of Justice Statistics (under the U.S. Department of Justice).

The four primary objectives of the NCVS are to

- Develop detailed information about the victims and consequences of crime
- Estimate the number and types of crimes not reported to the police
- Provide uniform measures of selected types of crimes
- Permit comparisons over time and types of areas⁴⁵

The NCVS categorizes crimes as “personal” or “property.” Personal crimes cover rape and sexual attack, robbery, aggravated and simple assault, and purse-snatching/pocket-picking, whereas property crimes cover burglary, theft, motor vehicle theft, and vandalism.

A potential problem with the NCVS is that it estimates crime based on a representative sample; it would be too costly and time consuming to try to survey all U.S. residents. Also, since it relies on victim reports, there is the possibility that respondents might forget crimes, be unable to recall crime details, or provide inaccurate information to surveyors.⁴⁶

/// IN A NUTSHELL

- Our legal system is based on the English common law: collections of rules, customs, and traditions. At its core is the doctrine of *stare decisis*, meaning that when a court has decided a case based on a set of facts, it will adhere to that principle, and other courts will apply that decision in the same manner to all future cases where facts are substantially the same.
- There are three sources of law in the U.S. legal system: federal law, state law, and city/county law.
- There are both civil and criminal laws at the federal, state, and local levels. Many more laws are enacted each year by the U.S. Congress, state legislatures, and city councils.
- Substantive law is the written law that defines or regulates our rights and duties. Procedural law sets forth the procedures and mechanisms for processing criminal cases.
- Two essential elements that underlie our system of law are *mens rea* (criminal intent) and *actus reus* (a criminal act or a failure to act where there is a legal duty).
- Criminal laws define crimes by specifying the *actus reus* (such as killing for homicide and the taking of property for robbery) and the *mens rea* (intentionally, recklessly, by force, unintentionally, etc.). Most crimes are categorized by degrees depending on the seriousness of the physical contact or threat (threatening versus physical contact) and the perpetrator’s *mens rea* (intentional versus accidental), or based on the value of items stolen or damaged in crimes against property.
- Common crime categories include crimes against persons, crimes against property, public order crimes, white-collar crime, and organized crime.
- Crimes in the United States are measured and reported in three primary ways: the FBI’s *Uniform Crime Reports*, the National Incident-Based Reporting System, and the National Crime Victimization Survey. Each has its unique approaches as well as advantages and disadvantages.

/// KEY TERMS & CONCEPTS

Review key terms with eFlashcards at edge.sagepub.com/peakbrief.

| | | |
|----------------------------|--|---|
| <i>Actus reus</i> 33 | Felony-murder rule 36 | National Incident-Based Reporting System 45 |
| Burden of proof 29 | Hierarchy rule 45 | Organized crime 42 |
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/// REVIEW QUESTIONS

Test your understanding of chapter content. Take the practice quiz at edge.sagepub.com/peakbrief.

1. What are the differences between criminal law and civil law?
2. How would you define and explain the importance and contributions of *mens rea* and *actus reus* as they operate in our legal system?
3. What is the difference between one's motive and one's intent to commit a crime, and which is the most important in our legal system?
4. A Nebraska law states the following: "Any person who knowingly or intentionally causes or permits a child or vulnerable adult to ingest methamphetamine, a chemical substance used in manufacturing methamphetamine, or paraphernalia is guilty of a Class 1 misdemeanor." The *mens rea* for this crime is _____; the *actus reus* element of this crime is _____.
5. What is the difference between white-collar crime and organized crime?
6. What are the three primary methods of measuring the extent of crime, and what have been offered as disadvantages for some of them?

/// LEARN BY DOING

Below are two additional case studies, each of which is grounded in actual case facts and chapter materials (concerning sexual assault and homicide, respectively). While studying each scenario, first assume that you are the *prosecuting* attorney and decide which charge(s), if any, should be brought against the accused on the basis of the facts. Next, assume the role of the *defense* attorney and explain, given the facts, what defenses should legitimately be made against the crime(s) charged. Remember that the Sixth Amendment entitles every defendant to the "guiding hand" of effective counsel, whose job it is to ensure that all legal protections are afforded. Answers and/or outcomes for each case are provided in the Notes section. For purposes of discussion, however, approach all of them as if there are no absolute, totally correct answers.

A high school principal threatens a graduating senior that if she does not have sex with him, he will prevent her from graduating. She submits against her will and then reports the incident to police after she is able to graduate. The state prosecutes the man under a first-degree sexual assault statute that reads as follows:

A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. "Without consent" shall mean the victim is compelled to submit by force or by threat of force.

1. What is the prosecution's best argument that this is precisely the type of situation the law seeks to prevent and that the

defendant is guilty of first-degree sexual assault? What facts would you want to know in your capacity as a prosecutor to bolster your case?

2. What is the defense attorney's best argument that this statute does not apply in this case? What other facts would you want to know to strengthen your argument?
3. You are a state lawmaker—how would you revise this statute to better address this case and ones like it? Be specific and rewrite the law as necessary.⁴⁷

Peterson is relaxing at home when he hears noises in the alley behind his house; he looks in that direction and sees three men who are removing parts from his parked vehicle. Peterson approaches the men and tells them to stop what they are doing; he then runs inside his home, obtains a pistol, and returns to the alley. By now the three men are back in their vehicle and preparing to drive away. Peterson approaches them and tells them not to move, or he will shoot. The driver exits the car and, with a wrench in his hand, begins advancing toward Peterson. Peterson then warns the driver not to come any closer. Still carrying the wrench, the man continues to move toward Peterson, who then shoots and kills him.

4. What is the *primary* legal issue here?

5. Also consider the following questions:

- What charge should the prosecutor bring against Peterson: Murder in the first degree? Murder in the second degree? Manslaughter?
- Did Peterson act in self-defense?
- What other options might have been available to Peterson, aside from obtaining a gun and returning to the alley? Besides shooting the driver?⁴⁸

The following two activities will allow you to explore and discuss several of the crime data sources discussed in this chapter.

6. As part of a criminal justice honor society paper to be presented at a local conference, you are asked to use the Internet and determine how many crimes were reported for your city, your county, your state, and the United States during the past calendar year. How will you proceed?
7. Your criminal justice professor is working on a journal article concerning the dangers of police work, and she asks you to obtain some information on police deaths and assaults. Using the FBI's UCR website and its supplemental report, *Law Enforcement Officers Killed and Assaulted* (at <https://ucr.fbi.gov/ucr-publications>), what would you report?

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