



Bureau of Justice Statistics Bulletin

An Overview of Criminal Justice Systems

The American Response to Crime

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The response to crime in the United States is provided primarily by government through the criminal justice system, a loose confederation of more than 50,000 agencies at all levels of government with varying responsibilities, which together provide the means by which Americans apprehend, try, and punish offenders. The American system of justice has evolved from an adaptation of the English common law into a complex series of procedures and decisions. There is no single criminal justice system in this country; rather there are many systems, which, while similar, are individually unique.

Criminal cases may be handled differently in different jurisdictions, but court decisions based on the due-process guarantees of the U.S. Constitution require that specific steps always be taken in the administration of criminal justice.

The following description of the criminal and juvenile justice systems portrays the most common sequence of events in the response to serious criminal behavior.

Entry into the system

Most crime is not responded to by the justice system because it has not been discovered or reported to the police. Law enforcement agencies usually learn about crime from citizens, from a discovery by a police officer in the field, or from investigative and intelligence work.

Once a law enforcement agency has established that a crime has been committed, a suspect must be identified and apprehended for the case to proceed through the system. Sometimes, a suspect is apprehended at the scene; however,

This month's bulletin is drawn from a newly released BJS publication, Report to the Nation on Crime and Justice. This report is a collaborative effort of the entire BJS staff and has been in preparation for almost 2 years. It brings together a wide variety of data drawing on outside sources as well as on BJS statistical series and studies.

The report attempts to provide the concerned citizen with a comprehensive portrait of crime in the United States and the response of the criminal justice system to it. Written in a nontechnical style, it uses graphic presentation to simplify complex material.

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This bulletin provides an overview of the basic concepts in the response of criminal justice institutions to crime in the United States. Understanding how the criminal and juvenile justice systems work is essential to collecting pertinent criminal justice statistics. Knowledge of the discretion and variation that exists among jurisdictions in their response to crime is basic to the collection and interpretation of justice statistics.

Future bulletins will feature other selections from Report to the Nation on Crime and Justice.

Steven R. Schlesinger
Director

identification of a suspect often requires extensive investigation. Quite often, no one is identified or apprehended.

Prosecution and pretrial services

After an arrest, law enforcement agencies present information about the case and about the accused to the prosecutor, who will decide if formal charges are to be filed with the court. If no charges are filed, the accused must be released. The prosecutor can also drop charges after making efforts to prosecute (nolle prosequi).

A suspect who is charged with a crime must be taken before a judge or magistrate without unnecessary delay. At the initial appearance, the judge or magistrate

informs the accused of the charges and decides whether there is probable cause to detain the accused persons. In some jurisdictions, a pretrial-release decision is made and the defense counsel is assigned at the initial appearance. If the offense is minor, the determination of guilt and the assessment of a penalty may also occur at this stage.

In many jurisdictions, the initial appearance may be followed by a preliminary hearing. The main function of this hearing is to discover whether there is probable cause to believe that the accused committed a known crime within the jurisdiction of the court. If the judge does not find probable cause, the case is dismissed; however, if the judge or magistrate finds probable cause for such a belief, or the

accused waives his right to a preliminary hearing, the case may be bound over to a grand jury.

A grand jury hears evidence against the accused presented by the prosecutor and decides if there is sufficient evidence to cause the accused to be brought to trial. If the grand jury finds sufficient evidence, it submits to the court an indictment (a written statement of the essential facts of the offense charged against the accused). Where the grand jury system is used, the grand jury may also investigate criminal activity generally and issue indictments called grand jury originals that initiate criminal cases.

Some felony cases and misdemeanor cases proceed by the issuance of an information (a formal, written accusation submitted to the court by a prosecutor). Indictments are usually required in felony cases. However, the accused may choose to waive a grand jury indictment and, instead, accept service of an information for the crime.

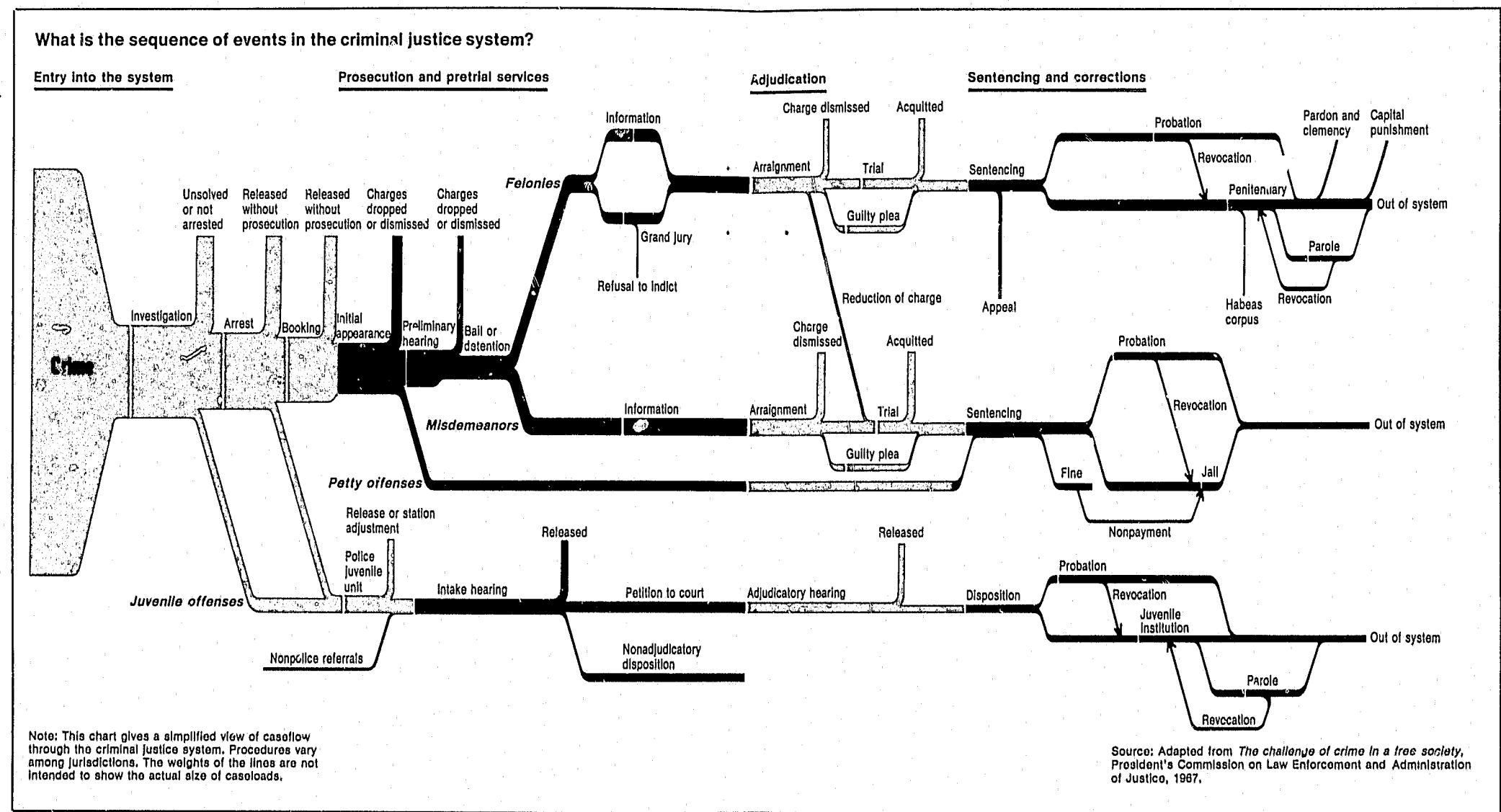
Adjudication

Once an indictment or information has been filed with the trial court, the accused is scheduled for arraignment. At the arraignment, the accused is informed of the charges, advised of the rights of criminal defendants, and asked to enter a plea to the charges.

In the great majority of cases, the accused pleads guilty under an arrangement known as plea bargaining. In plea bargaining the attorney for the defense and the prosecuting attorney agree that the accused will plead guilty to an offense less serious than that originally charged or that he will plead guilty to one of several original charges in return for the prosecution's dropping of the other offenses. For pleading guilty the accused receives a less severe sentence than he would have if he had been convicted in court. The prosecution gains the certainty that the accused will not be acquitted and will serve the agreed-upon sentence, and the time and expense of a court trial has been avoided.

GUILTY pleas can also be a straightforward admission of guilt by a defendant. This may result from a hope or impression that such a plea will be rewarded by a lighter sentence or from concern that a trial will reveal damaging evidence.

If the accused pleads guilty or pleads *nolo contendere* (accepts penalty without admitting guilt), the judge may accept or reject the plea. If the plea is accepted, no trial is held and the offender is sentenced at this proceeding or at a later date. The plea may be rejected if, for example, the judge believes that the accused may have been coerced. If this occurs, the case may proceed to trial.



Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show the actual size of caseloads.

Source: Adapted from *The challenge of crime in a free society*, President's Commission on Law Enforcement and Administration of Justice, 1967.

If the accused pleads not guilty or not guilty by reason of insanity, a date is set for the trial. A person accused of a serious crime is guaranteed a trial by jury. However, the accused has the right to ask for a bench trial where the judge, rather than a jury, serves as the finder of fact. In both instances, the prosecutor and defense present evidence by questioning witnesses, while the judge decides on issues of law. The trial results in acquittal or conviction on the original charges or on lesser included offenses.

After the trial, a defendant may request appellate review of the conviction or sentence. In many criminal cases appeals are a matter of right; all States with the death penalty provide for automatic appeal of a death sentence. However, under some circumstances and in some jurisdictions, appeals may be subject to the discretion of the appellate court and may be granted only upon acceptance of a defendant's petition for a writ of certiorari.

Sentencing and corrections

After a guilty verdict or guilty plea, sentence is imposed. In most cases, the judge decides on the sentence, but in some States, the sentence for capital offenses such as murder is decided by the jury.

In arriving at an appropriate sentence, a sentencing hearing may be held at which evidence of aggravating or mitigating circumstances will be considered. In assessing the circumstances surrounding a convicted person's criminal behavior, courts often rely on presentence investigations performed by probation agencies or other designated authorities.

The sentencing choices available to judges and juries vary widely among jurisdictions and may include—

- Death penalty
- Incarceration in a prison, jail, or other detention facility
- Probation—allowing the convicted person to remain at liberty but subject to certain conditions and restrictions
- Fines—primarily applied as penalties in minor offenses

• **Restitution**—requiring the offender to provide financial compensation to the victim.

If sentenced to prison, the convicted person may be eligible for parole after serving a specific portion of his or her sentence. Parole is the conditional release of a prisoner before the prisoner's full sentence has been served. The decision to grant parole is made by a paroling authority such as a parole board, which has power to grant or revoke parole or to discharge a parolee altogether. The manner in which parole decisions are made varies widely among jurisdictions.

The juvenile justice system

The processing of juvenile offenders is not entirely dissimilar to adult criminal processing, but there are crucial differences in the procedures. Many juveniles are referred to juvenile courts by law enforcement officers, but many others are referred by school officials, social service agencies, neighbors, and even parents, for behavior or conditions that are determined

to require intervention by the formal system for social control.

When juveniles are referred to the juvenile courts, their intake departments, or prosecuting attorneys, determine whether sufficient grounds exist to warrant the filing of a petition requesting an adjudicatory hearing or a request to transfer jurisdiction to criminal court. In a few States and at the Federal level, prosecutors under certain circumstances may file criminal charges against youths directly in adult courts.

The court with jurisdiction over juvenile matters may reject the petition or the juveniles may be diverted to other agencies or programs in lieu of other court processing. Examples of diversion programs include alcohol or drug counseling, driver education, or psychiatric therapy.

If a petition for an adjudicatory hearing is accepted, the juvenile may be brought before a court quite unlike the court with jurisdiction over adult offenders. In disposing of cases, juvenile courts

usually have far more discretion than adult courts. In addition to such options as probation, commitment to correctional institutions, restitution, or fines, State laws grant juvenile courts the power to order removal of children from their homes to foster homes or treatment facilities. Juvenile courts may also order participation in special schools aimed at shoplifting prevention, drug counseling, or driver education. They may also order referral to criminal court for trial as adults.

Despite the considerable discretion associated with juvenile court proceedings, juveniles are afforded most of the due-process safeguards associated with adult criminal trials. Sixteen States permit the use of juries in juvenile courts; however, in light of the U.S. Supreme Court's holding that juries are not essential to juvenile hearings, most States do not provide for juries in juvenile courts.

Discretion is exercised throughout the criminal justice system

Discretion is "an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience."¹ Traditionally, criminal and juvenile justice officials, in particular the police, prosecutors, judges, and paroling authorities, have been given a wide range of discretion.

Legislative bodies have recognized that they cannot foresee every possibility, anticipate local mores, and enact laws that clearly encompass all conduct that is criminal and all that is not.² Therefore, those charged with the day-to-day response to crime are expected to exercise their own judgment within guidelines set by law.

Discretion is also necessary to permit the criminal and juvenile justice systems to function within available resources.³ The enforcement and prosecution of all laws against all violators is beyond the financial resources available. Therefore, criminal and juvenile justice officials must have the authority to allocate resources in a way that meets the most compelling needs of their own communities.

The limits of discretion vary from State to State and locality to locality. For example, the range of options available to judges when they sentence offenders varies greatly. In recent years, some States have sought to limit judges' discretion in sentencing by passing mandatory and determinate sentencing laws.

¹ Roscoe Pound, "Discretion, Dispensation and Mitigation: The Problem of the Individual Special Case," *New York University Law Review* (1960) 35:925, 926.

² Wayne R. LaFare, *Arrest: The Decision to Take a Suspect into Custody* (Boston: Little, Brown & Co., 1964), pp. 63-184.

³ *Ibid.*

Who exercises discretion?

These criminal justice officials...	...must often decide whether or not or how to—
Police	Enforce specific laws Investigate specific crimes Search people, vicinities, buildings
Prosecutors	Arrest or detain people File charges or petitions for adjudication Seek indictments Drop cases Reduce charges
Judges or magistrates	Set bail or conditions for release Accept pleas Determine delinquency Dismiss charges Impose sentence Revoke probation
Correctional officials	Assign to type of correctional facility Award privileges Punish for disciplinary infractions
Paroling authority	Determine date and conditions of parole Revoke parole

The response to crime is founded in the intergovernmental structure of the United States

Under our form of government, each State and the Federal Government has its own criminal justice system. All systems must respect the rights of individuals set forth in the U.S. Constitution and defined in case law.

State constitutions and laws define the criminal justice system within each State and delegate the authority and responsibility for criminal justice to various jurisdictions, officials, and institutions. State laws also define criminal and delinquent behavior.

Municipalities and counties further define their criminal justice systems through local ordinances that proscribe additional illegal behavior and identify those local agencies responsible for criminal justice processing that were not established by the State.

Congress has also established a criminal justice system at the Federal level to respond to Federal crimes such as bank robbery, kidnaping, and transporting stolen goods across State lines.

The response to crime is mainly a State and local function

Very few crimes are under exclusive Federal jurisdiction (see table 1). The responsibility to respond to most crime rests with the State and local governments. Police protection is primarily a function of cities and towns, while corrections is primarily a

function of State governments. More than three-fifths of all justice personnel are employed at the local level.

Table 1. Percent of criminal justice employment by level of government

	Local	State	Federal
Police	75%	14%	11%
Judicial	66	29	5
Legal services and prosecution	63	27	10
Public defense	56	41	3
Corrections	38	57	4
Other	38	45	17
Total	64%	27%	9%

More than one agency has jurisdiction over some criminal events

The response to most criminal actions is usually begun by local police who react to violation of State law. If a suspect is apprehended, he or she is prosecuted locally and may be confined in a local jail or State prison. In such cases, only one agency has jurisdiction at each stage in the process.

However, some criminal events because of their characteristics and location may come under the jurisdiction of more than one agency. For example, such overlapping occurs within States when local police, county sheriffs, and State police are all empowered to enforce State laws on State highways.

Congress has provided for Federal jurisdiction over crimes that—

- Occur on Federal land
- Involve large and probably interstate criminal organizations or conspiracies
- Are offenses of national importance, such as the assassination of the President.⁴

Bank robbery and many drug offenses are examples of crimes for which the States and the Federal Government both have jurisdiction. In cases of dual jurisdiction, an investigation and a prosecution may be undertaken by all authorized agencies, but only one level of government usually pursues a case.

Within States, the response to crime also varies from one locality to another

This is because of statutory and structural differences and differences in how discretion is exercised. Local criminal justice policies and programs change in response to local attitudes and needs. For example, the prosecutor in one locality may concentrate on particular types of offenses that plague the local community while the prosecutor in another locality may concentrate on career criminals.

⁴Attorney General's Task Force on Violent Crime—Final Report, August 17, 1981 (Washington: U.S. Department of Justice, 1981), p. 2.

The response to crime also varies on a case-by-case basis

No two cases are exactly alike. At each stage of the criminal justice process, officials must make decisions that take into account the varying factors of each case. Two similar cases may have very different results because of various factors, including differences in witness cooperation and physical evidence, the availability of resources to investigate and prosecute the case, the quality of the lawyers involved, and the age and prior criminal history of the suspects.

Differences in local laws, agencies, resources, standards, and procedures result in varying responses in each jurisdiction

The variation in the outcomes of arrests for serious cases among five States illustrates this (see table 2).⁵ At the State level, some of this variation can be explained by differences among States, for example—

- Arrestees released by magistrates during pretrial appearances are considered prosecuted in New York; this raises the proportion prosecuted.
- Pennsylvania uses a pretrial diversion program in which successful participants are not considered convicted; this lowers the conviction rate.

Table 2. Percent of arrests for serious crimes that result in...

	Prosecution	Conviction	Incarceration
New York	97%	56%	25%
California	76	57	39
Pennsylvania	76	39	15
Oregon	73	49	22
Arkansas	61	40	18

⁵The data provided in the table were derived from offender-based transaction statistics (OBTS) from five States. Each of these States has its own system for collecting the statistics. With the exception of Arkansas, which conducted a survey of all 1974 felony arrest records, the data systems rely on reporting of information from criminal justice agencies. Because of nonreporting, some arrests are not included. For example, California estimates that its OBTS data are underreported by about 35%. Because each system is unique to its own State, some other differences exist between data sets, such as year of collection and types of crimes included.

Bureau of Justice Statistics
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