

A Governor's Guide to  
**CRIMINAL JUSTICE**



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# A Governor's Guide to Criminal Justice

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# Preface

Governors play a critical role in ensuring public safety. As the state's chief executive, they are responsible for setting public safety priorities for their administration and identifying policies and programs to achieve them. Further, they oversee the state agencies responsible for implementing those policies and programs, such as corrections, state police, and juvenile justice.

To help them define and achieve their priorities, governors rely on expertise and support from a core team of advisors including policy staff, legal counsel, and cabinet secretaries. Those criminal justice policy advisors serve as a primary source of information and play an integral role in the development of state policy. They provide guidance on best practices, help develop effective strategies for achieving policy objectives, coordinate agency actions, engage communities and stakeholders, allocate resources, and evaluate effectiveness.

For nearly 15 years, the National Governors Association Center for Best Practices (NGA Center) has supported a network of governors' criminal justice policy advisors with the goal of improving how justice and public safety policy decisions are made within states. The NGA Center provides them a trusted forum where they can learn best practices, receive technical assistance, and connect with and learn from their peers across the country.

As part of its ongoing effort to support that network, the NGA Center has developed *A Governor's Guide to Criminal Justice*. This guide:

1. Provides an overview of governors' roles and responsibilities as they relate to public safety;
2. Examines the key components that make up a state's criminal justice system and explains the interplay between state, local, and federal functions;
3. Explores budgetary aspects of criminal justice systems;
4. Defines evidence-based practices and examines their role in achieving policy objectives; and
5. Identifies ways that data can be used to drive policy, ensure accountability, and improve public safety.

Although much has been written for policymakers on effective criminal justice programs and initiatives, little has been written specifically for governors on how best to leverage the tools and authorities they have to build effective criminal justice systems. This guide is intended to fill that gap. It provides governors and their advisors a framework for understanding the structures and processes that underpin criminal justice. It also identifies principles of good governance related to managing public safety agencies and other entities that fall under the governor's purview.

Now is a time of great opportunity for our nation to make the criminal justice system smarter, fairer, and more cost-effective. After 40 years of growing incarceration rates, bipartisan consensus has emerged that too many people are being incarcerated for too long at too great a cost. At the same time, we now have more sophisticated tools for identifying individuals who are higher risk for reoffending as well as a deeper understanding of what works to reduce crime and improve public safety. With a majority of our country's incarcerated population behind bars in state prisons and under control of the state executive branch, governors are uniquely positioned to remake our system of justice. This guide can support them in that effort.



# Chapter I

## Governance of State Criminal Justice and Public Safety Systems

Ensuring the public safety and security of citizens and their property is often seen as the primary responsibility of government. As states' chief executives, governors play a critical role in achieving that aim through their authority over executive agencies and personnel charged with carrying out criminal justice and public safety functions within a state. State police, corrections, juvenile justice, and homeland security typically fall under executive authority, and governors must make essential decisions about how to organize and govern them.

### THE GOVERNOR'S CRIMINAL JUSTICE POLICY ADVISOR

To help manage that responsibility, governors rely on expertise, guidance, and support from a core team of advisors. Those criminal justice policy advisors (CJPAs) serve as a primary source of information for governors and play an integral role in the development of state policy. They help governors identify critical issues, develop effective strategies for achieving policy objectives, coordinate agency actions, engage communities, allocate resources, and evaluate performance and outcomes.

#### Role and Responsibilities of the Governor's Criminal Justice Policy Advisor

In a formal management structure, the CJPA is usually an analyst in the governor's policy office. Typical responsibilities include collaborating with agency officials to develop policy, monitoring agency performance to ensure implementation of the governor's agenda, and reviewing agency budget requests.<sup>1</sup> Analysts tend to work closely with the governor's communications office to develop key messages for materials and speeches.<sup>2</sup> In addition, analysts work with the legislature to promote the administration's priorities. As legislative liaison, they communicate with legislators on a regular basis, prepare bills that promote the governor's legislative agenda, review bills in advance of the governor's signature or veto, and participate in legislative hearings.

Governors also rely on legal counsel or cabinet officials for policy development.<sup>3</sup> According to a survey of governors' offices the NGA Center conducted in 2015, 67 percent of CJPAs are analysts in the governor's policy office, 18 percent are members of the governor's cabinet, and 14 percent are members of the governor's legal team.

### SETTING PRIORITIES

Because their time in office is limited, governors can be most successful in achieving their broader policy goals by choosing a few issues on which to concentrate.<sup>4</sup> By identifying a clear set of priorities, they can remain flexible to address unexpected challenges and crises as they arise.

*Governors rely on expertise, guidance, and support from a core team of advisors. Those criminal justice policy advisors (CJPAs) serve as a primary source of information for governors and play an integral role in the development of state policy.*

Governors seeking to ensure the success of the public safety enterprise should consider working with their CJPAs to:

- Define the state's public safety mission;
- Develop a policy agenda around three or four top priorities; and
- Assess the state's public safety enterprise to determine how executive agencies function and whether they are best aligned to achieve the administration's goals.

1 Madeleine Bayard, *Management Brief: Organizing the Governor's Policy Office* (Washington, DC: National Governors Association Center for Best Practices, 2005), 4.

2 *Ibid.*, 8.

3 *Ibid.*, 3.

4 National Governors Association, *Transition and the New Governor: A Planning Guide* (Washington, DC: National Governors Association, 1998) 25-26.

## Define the state's public safety mission

Defining the state's public safety mission is important for ensuring coordination across state agencies. By articulating the purpose of the public safety enterprise, governors can

better identify functions within different agencies that are duplicative or unaligned, and whether the enterprise is best organized to accomplish the governor's key priorities and policy objectives.

### State Public Safety Mission Statements

The following are examples of ways that states have defined their public safety missions.

**Connecticut:** The Connecticut Department of Emergency Services and Public Protection is committed to a mission of protecting and improving the quality of life of its citizens by providing a broad range of public safety services, training, regulatory guidance and scientific services using enforcement, prevention, education and state of the art science and technology.<sup>5</sup> In accomplishing that mission, it has defined its core values as "PRIDE":

Professionalism through an elite and diverse team of trained men and women.

Respect for ourselves and others through our words and actions.

Integrity through adherence to standards and values that merit public trust.

Dedication to our colleagues, our values, and to the service of others.

Equality through fair and unprejudiced application of the law.

**Kentucky:** The Kentucky Justice and Public Safety Cabinet's mission is to be a national leader in criminal justice and to continuously improve public safety and the quality of life for Kentuckians.<sup>6</sup>

**North Carolina:** The mission of the North Carolina Department of Public Safety is to safeguard and preserve the lives and property of the citizens of the state through prevention, protection and preparation with integrity and honor.<sup>7</sup> Further, it has defined the following goals for the department:

Prevent. We are the model for preventing and reducing crime.

Protect. North Carolina is safe for living, working, and visiting.

Prepare. We are leaders in public safety readiness, communication, and coordination.

Perform. We excel in every facet of our work – Law Enforcement, Emergency Management, National Guard, Adult Correction, Juvenile Justice and Quality of Administrative Services.

5 Ct.gov, "Mission Statement of the Department of Emergency Services and Public Protection" State of Connecticut, <http://www.ct.gov/despp/cwp/view.asp?a=4156&q=487896> (accessed March 10, 2015).

6 KY.gov, "Justice & Public Safety Cabinet" Commonwealth of Kentucky, <http://justice.ky.gov/> (accessed March 10, 2015).

7 NCDPS.gov, "North Carolina Department of Public Safety: Mission" North Carolina Department of Public Safety, <https://www.ncdps.gov/Index2.cfm?a=000003.000008.000158> (accessed March 10, 2015).

### **Develop a public safety policy agenda around three to four key priorities**

After defining the public safety mission, governors should consider developing a policy agenda around three to four priorities aligned with the goals of the mission statement. Together, the mission statement and policy agenda serve at least two critical functions: they provide direction for programs and services and promote accountability for outcomes.

### **Assess the state's public safety enterprise**

After defining the state's public safety mission and developing the policy agenda, governors stand ready to assess how executive agencies are organized, how they function, and whether they are best aligned to achieve the governor's public safety mission and policy agenda.

## **ORGANIZATION OF THE STATE PUBLIC SAFETY ENTERPRISE**

The structure of public safety systems varies greatly among states. However, some commonalities exist. In general, they reflect one of the following models:

- Oversight by a cabinet-level public safety executive;
- Oversight by several cabinet officials;
- Oversight not centralized as a cabinet-level function; and
- Oversight by the attorney general's office.

### **Oversight by a Cabinet-Level Public Safety Executive**

Although no one approach for structuring a state's public safety enterprise is necessarily best, centralizing the executive's authority in a cabinet-level person has certain benefits, including the potential for greater coordination across agencies and more accountability for system outcomes.

To that end, states that have reorganized their public safety systems in recent years have taken this approach. Currently, eight states have cabinet-level public safety executives who oversee public safety or criminal justice functions in the state.<sup>8</sup>

**Kentucky** provides an example of a state with centralized authority. The Justice and Public Safety Cabinet is managed by a secretary who oversees all major public safety executive functions, including corrections, criminal

justice training, juvenile justice, state police, drug control policy, the medical examiner, the parole board, grants management, and the office of investigations. The attorney general, an elected position, is independent of the Justice and Public Safety Cabinet.

### **Oversight by Several Cabinet Officials**

In 21 states, two or more cabinet secretaries share oversight of various aspects of the state's public safety enterprise.<sup>9</sup>

**North Dakota** illustrates this organizational model. Secretaries of the North Dakota Highway Patrol and the Department of Corrections and Rehabilitation hold cabinet-level positions. The Highway Patrol's general responsibility is to provide high-quality law enforcement services throughout the state. The Department of Corrections oversees adult corrections, juvenile corrections, parole and probation services, and juvenile and community services. The elected attorney general, who is not in the governor's cabinet, oversees the Bureau of Criminal Investigation, Fire Marshal Division, Crime Laboratory, and other smaller agencies.

### **Oversight Not Centralized as a Cabinet-Level Function**

Nineteen states do not have centralized public safety authority lodged within the governor's cabinet. Instead, they have several governor-appointed directors who lead state agencies with public safety responsibilities.<sup>10</sup>

**Maryland's** Department of Public Safety and Correctional Services oversees correctional facilities, parole and probation, and rehabilitation services, as well as several commissions. The Department of Juvenile Services supervises, manages and treats youth involved in the juvenile justice system. The state police carries out patrol, investigation, intelligence gathering, and interdiction efforts. And the attorney general, who is elected, is responsible for criminal appeals, consumer protection, environmental law, and other civil law functions.

### **Oversight by the Attorney General's Office**

In some states, the attorney general shares executive responsibility for overseeing the state's criminal justice enterprise.

<sup>8</sup> Hawaii, Kentucky, Louisiana, Massachusetts, Maine, North Carolina, Oklahoma, and West Virginia

<sup>9</sup> Alaska, Alabama, Colorado, Delaware, Idaho, Kansas, Michigan, Minnesota, North Dakota, Nebraska, New Mexico, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin

<sup>10</sup> Arkansas, Arizona, California, Connecticut, Florida, Georgia, Iowa, Illinois, Indiana, Maryland, Missouri, Mississippi, New Hampshire, New York, Oregon, Rhode Island, Texas, Vermont, and Wyoming

In **New Jersey**, the attorney general, who is appointed by the governor, serves as a cabinet member. He or she is the state's chief law enforcement officer and legal advisor and oversees the Department of Law and Public Safety, which consists of 10 divisions, including the state police, juvenile justice commission, and the division of criminal justice.

In **Montana**, the elected attorney general, who is not a cabinet member, oversees the state's department of justice (DOJ). The DOJ is responsible for services related to crime and law (including criminal investigations, consumer protection, and the sexual offender registry), law enforcement, and regulations. The department of corrections is an independent agency overseen by a cabinet-level member of the governor's office.

## SUPPORTING CRIMINAL JUSTICE ENTITIES

In every state, several entities play an important role in planning, developing, and implementing criminal justice policy. Those entities may be within an executive branch agency or may function independently but in close coordination with the administration. They include criminal justice coordinating councils, state administering agencies, state advisory groups, and statistical analysis centers.

### Criminal Justice Coordinating Councils

To enhance system wide criminal justice planning, many states have coordinating councils or commissions. Those criminal justice coordinating councils (CJCCs) are created by executive order or legislation and are typically charged with making recommendations to the governor and legislature for improving criminal justice system policy, operations, and outcomes.<sup>11</sup> CJCC membership is often governor-appointed and made up of representatives from the three branches of government (executive, judicial, and legislative); multiple levels of government (city, county, and state); community-based organizations; and citizens.<sup>12</sup> Members meet on a regular basis, with administrative support usually provided by a coordinator or director from a state agency who sits on the council.<sup>13</sup> CJCCs may also function as the state administering agency (SAA).<sup>14</sup>

11 Jmijustice.org, "National Network of Criminal Justice Coordinating Councils," The Justice Management Institute, <http://www.jmijustice.org/network-coordination/national-network-criminal-justice-coordinating-councils/> (accessed March 10, 2015). For an example of a governor's executive order creating a CJCC, see Office of the Governor, Executive Order #65, State of Wisconsin, available at [https://docs.legis.wisconsin.gov/code/executive\\_orders/2011\\_scott\\_walker/2012-65.pdf](https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2012-65.pdf)

12 Jmijustice.org, "National Network of Criminal Justice Coordinating Councils," The Justice Management Institute, <http://www.jmijustice.org/network-coordination/national-network-criminal-justice-coordinating-councils/> (accessed March 10, 2015).

13 Ibid.

14 For an example, see Georgia. <http://cjcc.georgia.gov/>

### State Administering Agencies

The SAA is the state entity primarily responsible for accepting and allocating federal funds under the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program, the main source of federal funding for state and local criminal justice systems. The SAA oversees other criminal justice formula grant programs as well, including: Residential Substance Abuse Treatment for State Prisoners Formula Grant; Paul Coverdell Forensic Science Improvement Grants Program; Services-Training-Officers-Prosecutors Violence Against Women Formula Grant Program, and the Sexual Assault Services Provider Formula Grant Program sub-grants; Victims of Crime Act; the National Criminal History Improvement Program; and the Juvenile Justice and Delinquency Prevention formula grants.<sup>15</sup>

The SAA director—who is appointed by the governor, or the mayor in the District of Columbia—helps coordinate criminal justice planning and policy development across the state. In several states, the SAA director also serves as the governor's criminal justice policy advisor. Most agencies are a component of the governor's office, a free-standing criminal justice planning entity, or a division of the state department of public safety.<sup>16</sup> In all, there are 56 Byrne JAG SAAs in the states, territories, commonwealths, and the District of Columbia.

### State Advisory Groups

To receive funding under the Juvenile Justice and Delinquency Prevention Act (JJJPA), states are required to submit a plan for carrying out the purposes of the act.<sup>17</sup> In addition, the state's chief executive is required to establish an advisory commission—usually referred to as the state advisory group, "commission," or "council"—that is responsible for monitoring and supporting the state's progress in that effort.<sup>18</sup> SAGs are made up of representatives from local government; law enforcement and juvenile justice agencies; public agencies, such as child welfare, social services, or education; private nonprofit service organizations; and service providers.<sup>19</sup> (For more information on the JJPDA, see Chapter 2 breakout box on page 30, "Spotlight on the Juvenile Justice and Delinquency Prevention Act.")

### Statistical Analysis Centers

Nearly every state has an entity that provides analytical

15 NCJP Center for Justice Planning, *SAAs: Who They Are & What They Do*, (Washington, DC: National Criminal Justice Association, 2014), [http://www.ncjp.org/sites/default/files/Content\\_Images/SAAs-who-they-are-what-they-do-2014.pdf](http://www.ncjp.org/sites/default/files/Content_Images/SAAs-who-they-are-what-they-do-2014.pdf) (accessed March 10, 2015).

16 Ibid.

17 *Juvenile Justice and Delinquency Prevention Act*, Public Law 93-415, 42 U.S.C. (1974) 5601 et seq.

18 Ibid., Section 5633(a)(3).

19 Ibid.

services in support of criminal justice policy and planning. In most states, those services are provided by the statistical analysis center (SAC), but they can also be provided by a university or other research partner.

According to a recent survey by the National Criminal Justice Association, 60 percent of SACs are located within the state administering agency, 35 percent are in an outside agency, and 5 percent of states do not have a SAC.<sup>20</sup> Among the most common services provided by the SAC are furnishing crime data, sharing information on best practices, providing analytical support, and assisting with grant reviews.

## IMPLEMENTING THE GOVERNOR'S POLICY AGENDA

Ensuring the public safety is a shared responsibility of government, but the power to lead in this area is perhaps most centralized in the governor's office. Governors' powers are both formal and informal and, when used to their fullest, afford an opportunity to achieve statewide, systemic change and a lasting legacy.

### Formal Powers

Formal gubernatorial powers generally have increased over the last century.<sup>21</sup> Those include powers articulated by the state's constitution and codified in state law, such as executive orders and emergency powers, appointments, oversight of state executive agencies, budgetary authority, the ability to propose new legislation and call special sessions, and veto authority. Other formal gubernatorial powers include the authority to grant clemency for convicted offenders and to serve as commander-in-chief of the state's National Guard forces.

### Executive Orders and Emergency Powers

Through executive order, governors can issue directives that are legally binding on agencies and officers of the executive branch without approval from the legislature. Governors' authority to issue executive orders derives

20 NCJP.org, "SAA/SAC Survey Findings" The NCJA Center for Justice Planning, <http://www.ncjp.org/content/saac-survey-findings> (accessed, March 10, 2015).

21 Ann O'M. Bowman, Neal D. Woods, and Milton R. Stark II, "Governors Turn Pro: Separation of Powers and the Institutionalization of the American Governorship," *Political Research Quarterly* 63 (May 2010), 307.

from state constitutions, statute, or case law, or it can be implied by the powers assigned to state chief executives.<sup>22</sup> Often, executive orders are used to direct management and administrative issues related to state government.

But they can also be used to create advisory task forces and investigative committees or to activate emergency powers during natural disasters or other crises.<sup>23</sup> In a state of emergency, the governor can petition the President to declare a major disaster in order to trigger federal assistance and the availability of additional resources.

### Power of Appointment

Governors also have the authority to nominate officials—usually subject to approval by the state legislature—to serve in

executive branch positions, state judgeships, or on state boards and commissions. Governors can use their appointment power to ensure agency heads are like-minded and committed to achieving the administration's policy agenda.<sup>24</sup>

### Oversight of State Executive Agencies

Additionally, as state managers, governors oversee the operation of the state's executive branch. They have the authority to direct agency priorities and goals, and in most instances have broad latitude to reorganize the state bureaucracy.

### Budgetary Authority

In most states, governors and the legislature share budgetary power. But because governors and their staff typically design and submit the initial budget for consideration by the legislature, they can set the terms of debate over spending priorities. Further, in a number of states, governors have "line item," or "reduction," veto power, which allows them to remove appropriations

22 NGA.org, "Governors' Powers and Authority," National Governors Association, <http://www.nga.org/cms/home/management-resources/governors-powers-and-authority.html> (accessed March 10, 2015).

23 Ibid. For state-by-state information on the power of governors to issue executive orders, see "Gubernatorial Executive Orders: Authorization, Provisions, Procedures" (Table 4.5, *The Book of the States 2014*, source: The Council of State Governments) <http://www.nga.org/files/live/sites/NGA/files/pdf/BOSTable4.5.pdf>.

24 For state-by-state information on the methods of selecting state officials, see "Selected State Administrative Officials: Methods of Selection" (Table 4.10, *The Book of the States 2014*, source: The Council of State Governments) <http://www.nga.org/files/live/sites/NGA/files/pdf/BOSTable4.10.pdf>.

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to which they object.<sup>25</sup> Together, gubernatorial budget making and line-item veto power give governors significant influence over how state resources are used.

#### **Ability to Propose Legislation and Call Special Sessions**

Governors can take an active role in the lawmaking process by preparing legislative proposals for consideration by the state legislature. Often, they use their annual State of the State message to outline their legislative agenda, providing guidance for state departments and agencies and signaling to the public the administration's priorities.

In every state, governors also have the authority to call special sessions of the state legislature, whereby legislators must reconvene outside the state's regular legislative session for consideration of specific issues. That power gives governors the ability to bring attention to priorities they see as most important, raise public awareness, and secure the legislature's undivided attention.<sup>26</sup> Calling a special session, however, is no guarantee that the legislature will support the governor's policy priorities. In 16 states, the governor has sole authority to call a special session; in 34 states, either the governor or the legislature (by a majority or supermajority vote) can call one.<sup>27</sup>

#### **Veto Power**

Governors' ability to reject legislation they oppose through veto is perhaps the greatest formal power they have over the creation of state law.<sup>28</sup> In every state, governors have some combination of four types of veto authority: the package

veto, item veto, amendatory veto, and pocket veto.<sup>29</sup>

The package veto gives governors the ability to reject an entire piece of legislation and is a powerful tool but limited to the extent that a governor might only want to reject part of the bill. The item veto gives governors more flexibility in that regard by allowing them to accept parts of a bill they approve of and reject those parts they do not.

By amendatory veto, governors in some states can veto a bill but send it back to the legislature with recommended changes.<sup>30</sup> If the legislature agrees to those changes, the governor will sign the bill into law.

In some states, if the governor decides not to act on a piece of legislation after the legislature has adjourned, the measure dies within a specified number of days. That tactic is known as the pocket veto.

#### **Clemency, Pardons, and Reprieves**

Through clemency, governors have the authority to lessen the severity of criminal penalties. The term "clemency" encompasses various mechanisms by which governors can remit penalties, including pardons, commutations, reprieves, and remissions of fines and forfeitures.<sup>31</sup>

Governors can exercise their clemency powers for a variety of reasons, such as accounting for mitigating circumstances not considered when the initial punishment was imposed, in cases of actual innocence or questionable guilt, for health reasons, in death penalty cases, to restore civil rights, or for political purposes.<sup>32</sup>

A pardon is an official cancellation, or nullification, of a punishment or other legal consequence of a crime.<sup>33</sup> It is the broadest of governors' clemency powers and essentially declares the convicted person not guilty. Similarly, a commutation can be used to reduce the severity of punishment (for example, reduction in sentence length). However, it does not absolve a person of the crime for which he or she has been convicted. Governors can also issue reprieves. By granting a reprieve, governors can temporarily delay the imposition of punishment. Most often, reprieves are used in extenuating circumstances where outstanding factual or legal questions must be resolved.

In some states, governors have exclusive authority to grant clemency. In others, the power is given to an executive

25 NGA.org, "Governors' Powers and Authority," National Governors Association, <http://www.nga.org/cms/home/management-resources/governors-powers-and-authority.html> (accessed March 10, 2015).

26 Margaret R. Ferguson, "Roles, Functions and Powers of the Governors" in *The Executive Branch of State Government: people, Process and Politics* (Santa Barbara, CA: ABC-CLIO, 2006).

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.

31 Kathleen Ridolfi and Seth Gordon, "Gubernatorial Clemency Powers: Justice or Mercy?" *Criminal Justice* 24:3 (Fall 2009), 28.

32 Ibid.

33 Ibid.

board or shared by the governor and an executive body.<sup>34</sup>

building public support, governors can put pressure on the legislature to pursue his or her goals.

### ***Military Chief***

Under Article I of the U.S. Constitution, governors have the authority, as state commander-in-chief, to deploy the National Guard in the event of a disaster, civil disturbance, or other emergency situation. They can use the National Guard to execute state law, suppress or preempt insurrection or lawless violence, and repel invasion.<sup>35</sup> Further, under declared emergencies, they can seize personal property, direct evacuations, and authorize the release of emergency funds.<sup>36</sup>

Governors' control over the National Guard, however, is not exclusive, as it is shared with the federal government. Further, legal safeguards have been passed to regulate the use of the National Guard in states.<sup>37</sup> In general, the President has authority over the National Guard when it deals with war and national crisis, and governors have authority over the National Guard when it performs domestic missions.

### **Informal Powers**

Beyond formal powers, governors also possess informal powers that include those set by tradition or by virtue of their position as head of state. Among the most important are their ability to convene key stakeholders and build public support for initiatives by using the bully pulpit.

### ***Ability to Convene***

As the highest elected official in the state, governors carry a symbolic importance that they can use to advance their agenda. In particular, the prestige of the office gives them the ability to convene key stakeholders, promote collaboration among them, and build consensus for a plan of action.

### ***Bully Pulpit***

Informal powers of governors also include serving the role of public champion by virtue of their office and the access they have to media. Public speeches, state of the state addresses, town hall meetings, press conferences, and interviews all provide opportunities for governors to elevate issues that are important to them before a wide audience. Through the media, governors can set the agenda for debate and build public support for their positions. And by

*Public speeches, state of the state addresses, town hall meetings, press conferences, and interviews all provide opportunities for governors to elevate issues that are important to them before a wide audience.*

34 Ibid., 31.

35 Carmen Ferro, David Henry, and Thomas MacLellan, *A Governor's Guide to Homeland Security*, (Washington, DC: National Governors Association, 2010), 41.

36 Margaret R. Ferguson, "Roles, Functions and Powers of the Governors" in *The Executive Branch of State Government: people, Process and Politics* (Santa Barbara, CA: ABC-CLIO, 2006).

37 The most significant legal safeguards are the Posse Comitatus Act of 1878 and the Insurrection Act.

## Chapter 2

# From Arrest to Release: An Overview of the Criminal Justice System

The criminal justice system refers to the collective practices and institutions that serve to protect the public safety, serve the rights of defendants and victims, and hold offenders accountable for the crimes they commit. Rather than comprising one unified system of justice, however, justice in the United States is multijurisdictional and made up of separate but interrelated systems. Depending on the jurisdiction—city, county, state, federal, tribal, or military—different laws, institutions, and processes apply.<sup>38</sup>

The three main systems through which crime is handled are local, state, and federal. All three carry out parallel functions and are organized around the same fundamental components—law enforcement, prosecution and pretrial services, courts, and corrections—but the administration of justice is mainly the responsibility of state and local government.<sup>39</sup> In fact, 95 percent of all crime is managed at the state and local level.<sup>40</sup>

### CORE COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM AT THE STATE, LOCAL, AND FEDERAL LEVEL

Law enforcement, prosecution and pretrial services, courts, and corrections each play distinct but interrelated functions. Law enforcement's traditional purpose is upholding the law by responding to and investigating potential violations of the law. Based on information gathered and presented by law enforcement, the prosecutor initiates and oversees legal proceedings against the defendant. Criminal courts provide a forum for determining whether the defendant is guilty beyond a reasonable doubt and provide options in pretrial release—usually through collaboration with local jails. And corrections—probation, jails, prisons, and parole—is the system responsible for administering sanctions handed down by the court.<sup>41</sup>

#### Law Enforcement

Law enforcement includes individuals and agencies responsible for upholding the laws of the jurisdiction from which their authority derives. In carrying out their

duties, they can apprehend and detain those suspected of violating the law.<sup>42</sup>

Local law enforcement includes municipal, county, and regional police. Their primary duties include providing patrol, investigating crimes, and enforcing local ordinances. If permitted by state law and their jurisdiction, they can also enforce state and federal law.<sup>43</sup>

State law enforcement's primary duties include highway patrol, statewide investigations, law enforcement in rural areas, and assisting local police.<sup>44</sup> Every state but **Hawaii** has a uniformed state police, but not every state combines both investigative and highway patrol functions in one entity. Investigative functions can be covered by a separate agency, such as the state bureau of investigation.

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*Justice in the United States is multijurisdictional and made up of separate but interrelated systems.*

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38 [Victimsofcrime.org](http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the-criminal-justice-system), "The Criminal Justice System" The National Center for Victims of Crime, <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the-criminal-justice-system>, (accessed March 9, 2015).

39 George Cole, Christopher Smith, and Christina DeJong, *The American System of Criminal Justice, 14th Edition* (Stamford, CT: Cengage Learning, 2015), 462.

40 Congressional Record, V. 151, Pt. 16, September 26 to October 6, 2005.

41 George Cole, Christopher Smith, and Christina DeJong, *The American System of Criminal Justice, 14th Edition* (Stamford, CT: Cengage Learning, 2015), 468.

42 Bjs.gov, "Law Enforcement" Bureau of Justice Statistics, <http://www.bjs.gov/index.cfm?ty=tp&tid=7>, (Accessed March 10, 2015); and Discoverpolicing.org, "Types of Law Enforcement Agencies" Discover Policing, [http://discoverpolicing.org/whats\\_like/?fa=types\\_jobs](http://discoverpolicing.org/whats_like/?fa=types_jobs), (accessed March 10, 2015).

43 International Association of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement* (Alexandria, VA: International Association of Chiefs of Police, 2005), 3.

44 George Cole, Christopher Smith, and Christina DeJong, *The American System of Criminal Justice, 14th Edition* (Stamford, CT: Cengage Learning, 2015), 462; and Discoverpolicing.org, "Types of Law Enforcement Agencies" Discover Policing, [http://discoverpolicing.org/whats\\_like/?fa=types\\_jobs](http://discoverpolicing.org/whats_like/?fa=types_jobs), (accessed March 10, 2015).



Special service—or special jurisdiction—police provide law enforcement services for specific entities. Those include campus police, school resource officers, park services and natural resource officers, transit police, airport police, and public housing security.<sup>45</sup> In general, they function in the same way as local law enforcement does.

Federal law enforcement responsibilities include emergency response and patrol, criminal investigation, inspections, security and protection, and court and corrections-related functions.<sup>46</sup> The two primary federal agencies that perform law enforcement functions are the U.S. Department of Justice (DOJ) and the U.S. Department of Homeland Security (DHS). Within DOJ are the U.S. Marshals Service, Federal Bureau of Investigation, Federal Bureau of Prisons, Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Agencies that fall under DHS include U.S. Immigration and Customs Enforcement, U.S. Bureau of Customs and Border Protection, U.S. Citizenship and Immigration Services, Federal Protective Service, Transportation and Security Administration, and the U.S. Secret Service.<sup>47</sup>

Other federal agencies with law enforcement functions include the U.S. Coast Guard, U.S. Postal Inspection Service, Bureau of Indian Affairs, and Internal Revenue Service.<sup>48</sup>

### Prosecution and Pretrial Services

After an individual is arrested by law enforcement, the prosecutor reviews the case and decides whether to file charges. Prosecutors wield great discretionary power in determining the extent to which a person becomes involved in the justice system. Not only do they decide whether to bring charges, they determine which charges are appropriate, negotiate plea agreements, and make sentencing recommendations to the judge.

During the trial phase, the prosecutor acts as representative of the government in convincing a judge or jury beyond a reasonable doubt that the defendant has committed the crimes for which he or she has been charged.<sup>49</sup> In

all but three states—**Alaska, Connecticut, and New Jersey**—counties elect a local prosecutor to investigate and prosecute offenses committed within the county's jurisdiction.<sup>50</sup>

The state's attorney general serves as the chief legal representative of the state, and often provides counsel to the state legislature and state agencies.<sup>51</sup> Responsibilities of state attorneys general include handling criminal appeals and statewide criminal prosecutions, instituting civil suits on behalf of the state, proposing legislation, and representing state agencies before state and federal courts.<sup>52</sup> In 43 states, as well as the District of Columbia, the state attorney general is an elected position. In 10 jurisdictions—**Alaska, American Samoa, Guam, Hawaii, New Hampshire, New Jersey, Northern Mariana Islands, Puerto Rico, the Virgin Islands, and Wyoming**—the attorney general is appointed by the governor. In **Maine**, the legislature elects the attorney general by secret ballot. And in **Tennessee**, the state supreme court decides.<sup>53</sup>

Under the federal system, the attorney general is head of DOJ and is responsible for all criminal prosecutions under federal law, for representing the government's interests in civil cases, and for administering agencies that fall under the authority of DOJ.<sup>54</sup>

The Attorney General is nominated by the President, who also nominates chief prosecutors (U.S. Attorneys) to each of the 94 federal districts across the states and territories.<sup>55</sup> Their appointments are contingent upon U.S. Senate confirmation.

### Courts

State and federal court systems are similarly structured. Federal courts and the vast majority of state courts have trial courts of general jurisdiction, intermediate appellate courts, and a court of highest appeal—usually the supreme court. Additionally, state systems usually have more specialized lower courts, county courts, small claims courts, or justices of the peace to handle minor matters.<sup>56</sup>

[criminal-justice-system](#), (accessed March 9, 2015).

45 Discoverpolicing.org, "Types of Law Enforcement Agencies" Discover Policing, [http://discoverpolicing.org/whats\\_like/fa=types\\_jobs](http://discoverpolicing.org/whats_like/fa=types_jobs), (accessed March 10, 2015); and George Cole, Christopher Smith, and Christina DeJong, *The American System of Criminal Justice, 14th Edition* (Stamford, CT: Cengage Learning, 2015), 462.

46 Discoverpolicing.org, "Types of Law Enforcement Agencies" Discover Policing, [http://discoverpolicing.org/whats\\_like/fa=types\\_jobs](http://discoverpolicing.org/whats_like/fa=types_jobs), (accessed March 10, 2015).

47 George Cole, Christopher Smith, and Christina DeJong, *The American System of Criminal Justice, 14th Edition* (Stamford, CT: Cengage Learning, 2015), 463.

48 Ibid., 462.

49 Victimsofcrime.org, "The Criminal Justice System" The National Center for Victims of Crime, <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the->

50 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 458/470. In Alaska, the state attorney general appoints local prosecutors.

51 NAAG.org, "What does an Attorney General Do?" National Association of Attorneys General, [http://www.naag.org/naag/about\\_naag/faq/what\\_does\\_an\\_attorney\\_general\\_do.php](http://www.naag.org/naag/about_naag/faq/what_does_an_attorney_general_do.php) (accessed March 16, 2015).

52 Ibid.

53 Ibid.

54 United States Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other Countries* (Washington, DC: United States Courts, 2010), 8.

55 Ninety-three U.S. Attorneys serve 94 districts, as Guam and the Northern Mariana Islands share a U.S. Attorney.

56 United States Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other*

over  
**95%** of cases  
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criminal cases, traffic offenses,  
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wills and estates, buying and  
selling of property, personal  
injury cases, and juvenile  
matters—are governed by  
state law.



In about half the states, court systems are “unified” by consolidating all state and local courts under one authority. Unified systems are designed to provide greater judicial efficiency and consistency.

Whereas state judges are usually elected by the public in general elections or appointed by the governor for an original term and retained for additional terms by popular vote, federal judges are appointed by the President with U.S. Senate approval.<sup>57</sup> Article III judges—as distinct from bankruptcy judges and magistrate judges—are guaranteed life tenure and an unreduced salary.<sup>58</sup>

Over 95 percent of cases are handled by state courts, as most legal matters—criminal cases, traffic offenses, divorce and custody matters, wills and estates, buying and selling of property, personal injury cases, and juvenile matters—are governed by state law.<sup>59</sup> Federal courts handle criminal

matters involving interstate commerce, certain serious felonies, violations of federal laws, and crimes committed on federal property.<sup>60</sup> Drug offenders currently constitute about half of all federal inmates.<sup>61</sup>

In both state and federal systems, trial courts determine the facts of a case, although courts of appeal make final decisions on any questions of law. State supreme court decisions are final in the state system but, in certain cases, can be appealed to the U.S. Supreme Court.

After conviction, the court or jury decides the appropriate sentence.<sup>62</sup> Offenders sentenced to a term of confinement for less than one year generally serve their time in a local jail. If sentenced to more than a year, they usually serve time in prison.

## Corrections

Corrections refers to the system of probation, jails, prisons, and parole. At year-end 2013, 2.8 percent of the U.S. population, or 1 in 35 adults, was under some form of correctional control.<sup>63</sup> The total U.S. correctional population was 6.9 million, with 4.7 million adults under community supervision (3.9 million on probation and

<sup>57</sup> *Countries* (Washington, DC: United States Courts, 2010), 16.

<sup>58</sup> *Ibid.*

<sup>59</sup> FJC.org, “How the Federal Courts are Organized” Federal Judicial Center, <http://www.fjc.gov/federal/courts.nsf/autoframe!openform&nav=menu1&page=/federal/courts.nsf/page/183> (accessed March 16, 2015). Article III of the U.S. Constitution establishes the U.S. Supreme Court, the federal courts of appeals and district courts, and the U.S. Court of International Trade. Justices and judges who serve on these courts are known as Article III judges. Magistrate judges help carry out the responsibilities of the district court, including initial proceedings in criminal cases, most misdemeanor cases, and trial of civil cases if the parties consent.

<sup>59</sup> Americanbar.org, “How Courts Work” American Bar Association, [http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/court\\_role.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/court_role.html) (accessed March 16, 2015); and United States Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other*

*Countries* (Washington, DC: United States Courts, 2010), 16.

<sup>60</sup> Todd Clear et al., *American Corrections*, 11th ed. (Boston, MA: Cengage Learning, 2014), 250.

<sup>61</sup> *Ibid.*

<sup>62</sup> BJS.org, “The Justice System” The Bureau of Justice Statistics, <http://www.bjs.gov/content/justsys.cfm> (accessed March 16, 2015).

<sup>63</sup> Lauren Glaze and Erinn Herberman, *Correctional Populations in the United States, 2013* (Washington, DC: Bureau of Justice Statistics, 2014), 1. [www.bjs.gov/content/pub/pdf/cpus13.pdf](http://www.bjs.gov/content/pub/pdf/cpus13.pdf)



*At year-end 2013*

**2.8%**

**or 1 in 35 ADULTS**

*was under some form of  
correctional control.*

Image Source: Gordon Incorporated

850,000 on parole) and 2.2 million incarcerated (1.27 million in state prisons, 216,900 in federal prisons, and 744,500 in jails).<sup>64</sup>

On a daily basis, prisons house more offenders than jails, but far more people circulate through jails in a given year. Generally, local governments operate jails, but states can contract with jails to house state inmates if they lack space in prison facilities.

Probation is a sentencing option available after conviction. It allows for a person to remain, or be placed once again, in the community under the supervision of probation officials. In some states, probation supervision is overseen by personnel who are employed by state agencies, while in other states it is managed at the local level by officers who can be employed by local courts. Parole, on the other hand, is an offender's conditional release from prison at some point before completion of the sentence.

At the federal level, discretionary parole was abolished in 1987 under the Sentencing Reform Act.<sup>65</sup> However, post-release supervision for offenders still exists and is managed by federal probation officers.

<sup>64</sup> Ibid., 10.

<sup>65</sup> The Sentencing Reform Act eliminated parole for those who committed their offense after November 1, 1987. However, the U.S. Parole Commission is still active and oversees parole of those who committed their offenses before November 1, 1987, those who violate the laws of the District of Columbia, and military service members convicted in the military criminal justice system. See United States Courts, The Third Branch, *Parole in the Federal Probation System*, [http://www.uscourts.gov/news/TheThirdBranch/11-05-01/Parole\\_in\\_the\\_Federal\\_Probation\\_System.aspx](http://www.uscourts.gov/news/TheThirdBranch/11-05-01/Parole_in_the_Federal_Probation_System.aspx) (accessed March 21, 2015).

## THE CRIMINAL JUSTICE PROCESS

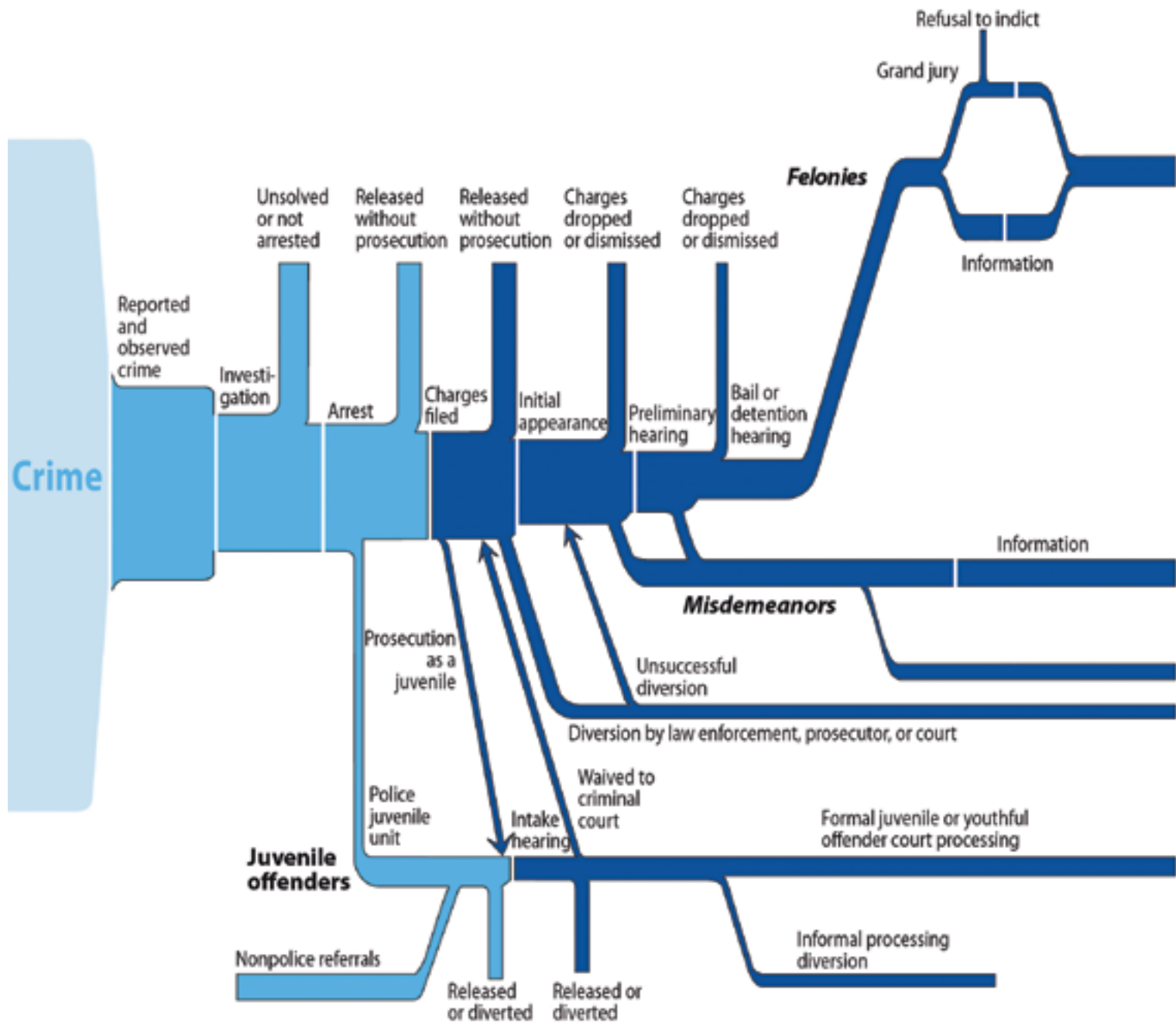
The complex interplay between law enforcement, prosecution, courts, and the corrections system requires CJPA's to understand the criminal justice process from arrest to release.<sup>66</sup> That process is underpinned by the U.S. Constitution, which guarantees certain fundamental rights to the accused and convicted. Such protections include the right to freedom from unreasonable search and seizures under the Fourth Amendment and, under the Fifth Amendment, the right not to be deprived of life, liberty, or property without due process of law. The Fifth Amendment also guarantees that those accused have the right not to testify against themselves or be tried more than once for the same offense. The Sixth Amendment provides the rights to counsel, a speedy and public trial by an impartial jury, and for the defendant to know who their accusers are and the nature of the charges and evidence against them. Under the Eighth Amendment, cruel and unusual punishment is prohibited.

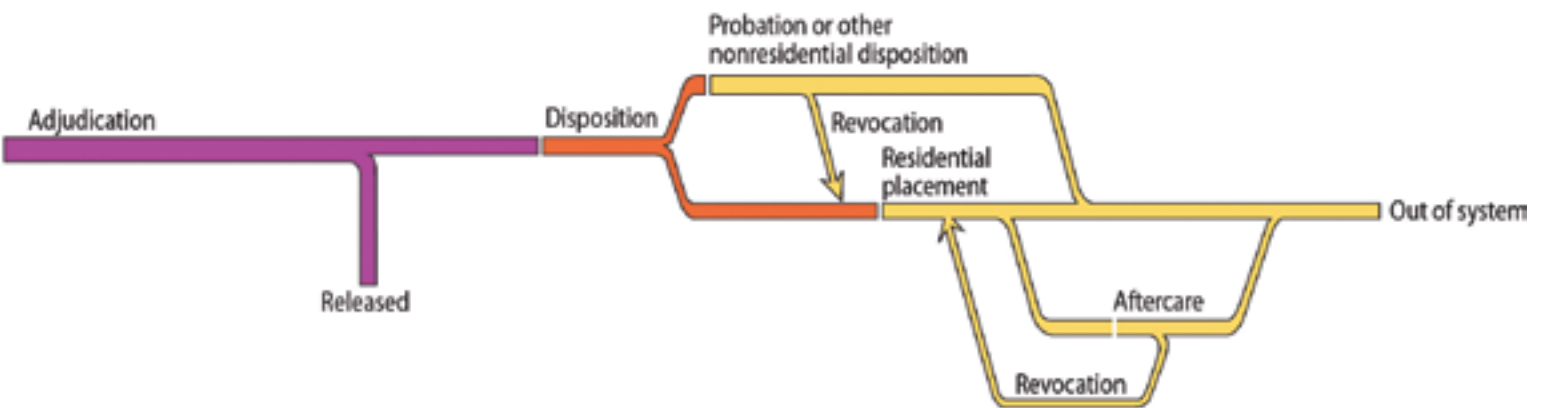
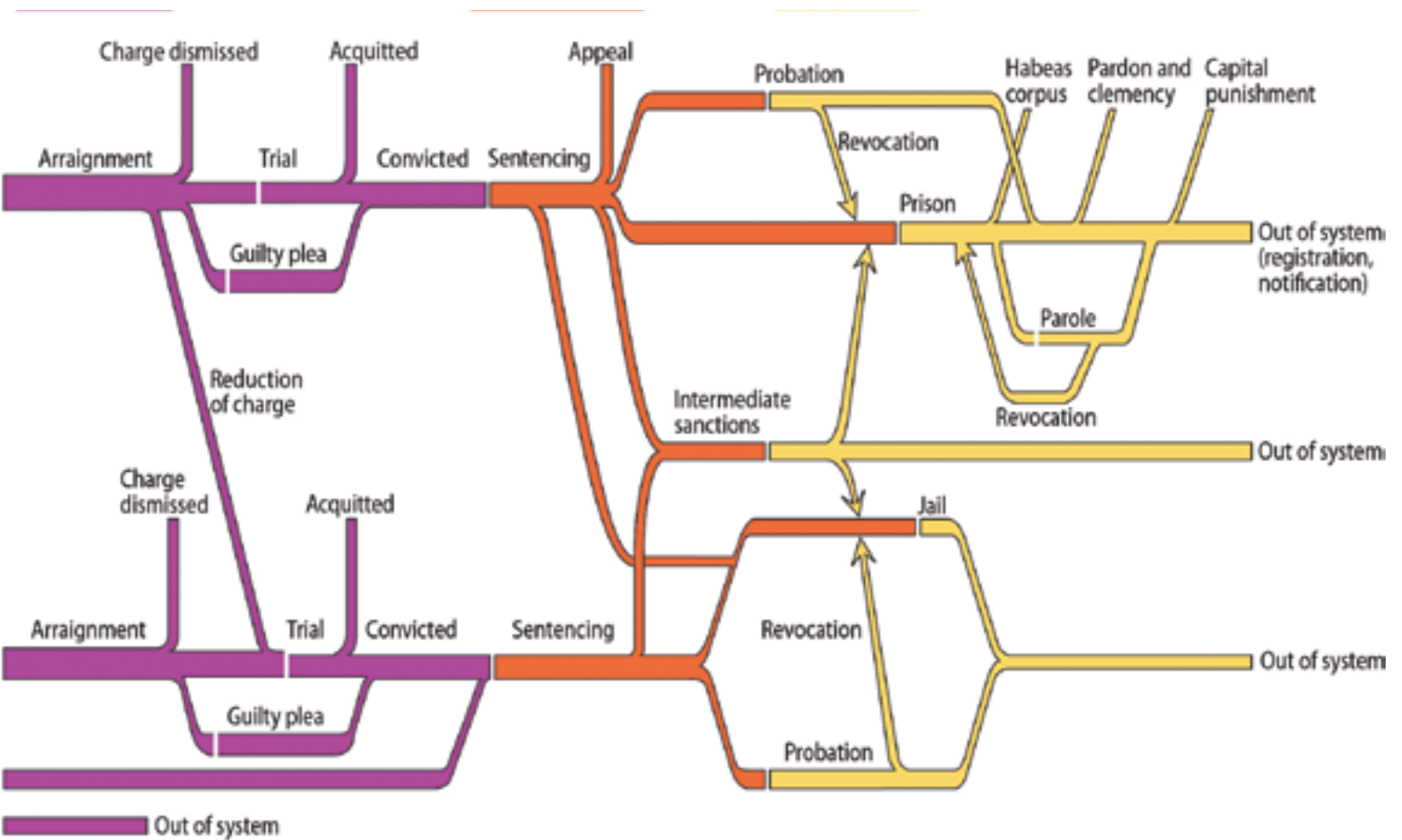
<sup>66</sup> The following overview is informed by from *The challenge of crime in a free society*, President's Commission on Law Enforcement and Administration of Justice, 1967, and the Bureau of Justice Statistics flowchart, "What is the sequence of events in the criminal justice system?," <http://www.bjs.gov/content/justsys.cfm> (access February 26, 2015).

BUREAU OF JUSTICE STATISTICS GRAPHICAL OVERVIEW OF CRIMINAL JUSTICE SYSTEM  
*What is the sequence of events in the criminal justice system?*

Entry Into the System

Prosecution & Pretrial Services





Source: Bureau of Justice Statistics, Criminal Justice System Flowchart, 1997, <http://www.bjs.gov/content/largechart.cfm>

The following provides a generalized overview of how the criminal justice process operates in states. It must be noted that, depending on state and local law, court rules, and local practice, the process in every jurisdiction will vary.

### Entry into the System

To make an arrest and bring a person into custody, police must have probable cause to believe it is more likely than not that a person committed a crime. That can be based on evidence gathered through an investigation, a reported crime, or an officer's observation that a crime likely occurred. Short of arrest, officers can detain a person for a brief period of time if they have reasonable suspicion that a person was involved in or is about to be involved in a crime.

The distinction between detention and arrest is important because protections under the Fifth Amendment attach at the point when a person is taken into custody for interrogation. After a formal arrest, or at a point during questioning when the person becomes a suspect, law enforcement must provide Miranda warnings in order for the suspect's statements to be used against him or her in a court of law: before and during an interrogation a person has the right to remain silent and anything he or she says can be used against them in court; they have a right to consult an attorney and to be accompanied by an attorney during interrogation; and, if the suspect is indigent, a lawyer will be appointed to represent him or her.<sup>67</sup>

When a suspect is arrested and taken into custody, they are "booked." Booking creates an official record of arrest. That process includes documenting the facts of the alleged crime, entering a preliminary statement of the law that was broken, and collecting the suspect's biographical information, photo, fingerprints and, in some states, DNA.<sup>68</sup>

### Measuring Rates of Crime

Two main data sources are used to track national crime rates: the Uniform Crime Reports (UCR) and the National Crime Victimization Survey (NCVS). Both have their merits, but it is important to understand the differences between the two and how they measure crime.<sup>69</sup>

UCR and NCVS measure the same subset of serious crimes, often referred to as index crimes, including rape, robbery, aggravated assault, burglary, theft, and motor vehicle theft. The major difference between the two measures is their collection methods.

The UCR Program, developed in 1929 and run by the Federal Bureau of Investigation, compiles data from monthly law enforcement reports, often submitted by local and state law enforcement agencies through the National Incident-Based Reporting System.

The NCVS—designed by the Bureau of Justice Statistics in 1973 to complement the UCR Program—provides a more detailed picture of crime. The NCVS collects crime information by sampling approximately 169,000 persons age 12 or older living in U.S. households and asks if they have experienced specific crimes—whether or not they reported them to law enforcement. Thus, the NCVS, in contrast to the UCR program, captures unreported crimes as well as reported crimes. Further, the NCVS survey provides detailed information about offenders, victims, and crimes not captured by the UCR Program.

### Prosecution and Pretrial

After arrest, the prosecutor must decide whether to bring formal charges. The decision to file charges is based on law enforcement's affidavit of probable cause and the prosecutor's assessment of the strength of the evidence presented and opinion about which laws the suspect may have broken. The prosecutor can decline to file charges as part of a plea agreement or where the potential defendant is diverted to a pretrial program.

67 *Miranda v. Arizona*, 384 U.S. 436, 467-473 (1966).

68 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 459.

69 U.S. Department of Justice, Bureau of Justice Statistics, *The Nation's Two Crime Measures* (Washington, DC: U.S. Department of Justice), [http://www.bjs.gov/content/pub/pdf/ntcm\\_2014.pdf](http://www.bjs.gov/content/pub/pdf/ntcm_2014.pdf) (accessed September 2015).

### Initial Appearance

If the prosecutor brings charges, the defendant must make an initial appearance before the court. During the initial appearance, the defendant is informed of the charges and advised of his or her rights. Further, the court must decide whether the defendant is eligible for release before trial begins. Nearly every state has a presumption in favor of release except for certain defendants such as those accused of capital offenses.<sup>70</sup>

### Pretrial Release

If a defendant is released, the court can impose conditions to ensure the appearance of the defendant and the safety of victims, witnesses, and the public. A defendant's drug use, residence, employment, criminal history, mental health, and pending charges are all factors that a court will weigh in such a decision.<sup>71</sup> Conditions of release can include restrictions on travel, required participation in alcohol or drug treatment, no contact orders with victims of crime, curfew, or driving prohibitions.

Money bail remains the most common mechanism for releasing or detaining defendants, but jurisdictions are increasingly relying on risk assessments to make such decisions.<sup>72</sup>

### The Preliminary Hearing and Role of the Grand Jury

Following the initial appearance, many jurisdictions hold a separate hearing for felony charges to determine whether there is probable cause to believe the accused committed the charged crimes. That process can include a preliminary hearing or deliberation by a grand jury.

A preliminary hearing is like a mini-trial: the prosecutor presents evidence and can call witnesses, and the defense can offer its version of the alleged facts or challenge the legality of the government's case. At the end of the preliminary hearing, a judge makes the final decision as to whether the prosecutor has shown probable cause to believe the defendant committed the crimes for which they are accused.<sup>73</sup>

The prosecutor could also request a grand jury review of evidence and an indictment—a formal written statement charging the defendant with a crime. Grand jury proceedings, in contrast to preliminary hearings, are not open to the public and no judge or defense lawyers are present. The prosecutor works with the grand jury to explain the law and gather witnesses and testimony.<sup>74</sup>

All states have legal provisions that allow for grand juries, but only about half the states use them.<sup>75</sup> Grand jury proceedings serve two principal purposes: to provide a shielded, confidential forum that allows witnesses to speak freely without fear of retaliation, and to protect the defendant's reputation in case the jury decides not to indict.<sup>76</sup>

Even if the grand jury decides not to indict the defendant, the prosecutor can decide to go to trial if he or she can convince a judge that there is enough evidence to proceed. However, grand jury proceedings serve as an important test run of the strength of a prosecutor's case.<sup>77</sup> More than likely, the grand jury will indict a defendant on charges the prosecutor presents.<sup>78</sup>

In the federal system, a felony case can proceed only if the grand jury decides to issue an indictment.<sup>79</sup>

### Arraignment

If the grand jury issues an indictment or the court finds probable cause to proceed to trial, the defendant is "arraigned" for an initial appearance before a judge. During an arraignment, the defendant hears the charges against him or her and enters a plea of guilty; not guilty or not guilty by reason of insanity; or "*nolo contendere*" (no contest) where the defendant accepts punishment without admitting or denying guilt. A defendant can decide to plead *nolo contendere* rather than guilty to avoid having an admission of guilt used against him or her in another cause of action.<sup>80</sup>

70 National Conference of State Legislatures, Pretrial Policy: State Laws, <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy-state-laws.aspx>

71 Pretrial.org, "Bail in America: Unsafe, Unfair, Ineffective" Pretrial Justice Institute, <http://www.pretrial.org/the-problem/> (accessed March 12, 2015).

72 See Clifford T. Keenan, "We Need More Bail Reform," Pretrial Services Agency for the District of Columbia, 2013, <http://www.psa.gov/?q=node/390> (accessed March 12, 2015); and NCSL.org, "Bail and Pretrial Release: A Q and A: May 2012," National Council of State Legislatures, <http://www.ncsl.org/research/civil-and-criminal-justice/bail-and-pretrial-release-a-q-and-a.aspx> (accessed March 12, 2015); and Pretrial.org, "Bail in America: Unsafe, Unfair, Ineffective" Pretrial Justice Institute, <http://www.pretrial.org/the-problem/> (accessed March 12, 2015).

73 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 461.

74 FindLaw.com, "How Does a Grand Jury Work?" Thompson Reuters Business, <http://criminal.findlaw.com/criminal-procedure/how-does-a-grand-jury-work.html> (accessed March 21, 2015).

75 Ibid.

76 Ibid.

77 Ibid.

78 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 460.

79 United States Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other Countries* (Washington, DC: United States Courts, 2010), 28.

80 Law.cornell.edu, "Nolo Contendere," Legal Information Institute: Cornell University Law School, [https://www.law.cornell.edu/wex/nolo\\_contendere](https://www.law.cornell.edu/wex/nolo_contendere) (accessed March 21, 2015).

### **Plea Bargaining**

The vast majority of defendants plead guilty rather than go to trial. The Bureau of Justice Statistics reports that about 90 percent to 95 percent of both state and federal court cases result in a guilty plea.<sup>81</sup> Often, in exchange for a plea of guilty, defendants are given a lesser penalty than they likely would have received if found guilty. Prosecutors can offer a plea bargain where evidence of guilt is ambiguous or where a key element of a crime might not be provable.<sup>82</sup>

Defendants can choose to accept a plea bargain if the evidence is strongly against them. That way, they can proceed with serving their sentence rather than going to trial where a finding of guilt is likely assured and the penalty potentially higher.

Critics of plea bargaining note that those who are innocent of crimes for which they are charged might choose to admit guilt simply to avoid the possibility of conviction for a much more serious crime. Proponents point out the benefits of greater administrative efficiency—trying every case would be very expensive and time consuming.

### **Adjudication (Trial Process)**

During the trial phase, both sides present evidence and witnesses before a judge or jury who decides whether the government has met its burden of proving the defendant guilty beyond a reasonable doubt. If found guilty, defendants can appeal if they provide a legal basis for overturning the finding, such as for an error of law or procedure.

Before a trial begins, the prosecution and defense can file motions during pre-trial hearings to suppress certain evidence, determine who can testify, or persuade the judge to dismiss charges for lack of evidence.<sup>83</sup>

Typically at a trial's start, the prosecution and defense offer opening statements about the nature of the case and

81 Lindsey Devers, *Plea and Charge Bargaining: Research Summary* (Arlington, VA: Bureau of Justice Assistance, 2011), 1, citing Bureau of Justice Statistics, 2005, Flanagan and Maguire, 1990.  
82 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 468.  
83 Law.cornell.edu, "Criminal Procedure," Legal Information Institute: Cornell University Law School [https://www.law.cornell.edu/wex/criminal\\_procedure](https://www.law.cornell.edu/wex/criminal_procedure) (accessed March 21, 2015).

their positions. Then, the prosecution presents its evidence and witnesses, followed by the defense's presentation of its evidence and witnesses. Both sides give closing statements before the trier of fact—judge or jury—returns a verdict.<sup>84</sup>

### **Sentencing and Sanctions**

The sentencing phase follows after a defendant signs a plea agreement, pleads guilty, or is convicted at trial. Usually, the judge decides the sentence, but it can be decided by a jury in capital cases—those cases in which the death penalty can be imposed.

The sentencing decision is guided by the four main goals of punishment: retribution (to make offenders pay for crimes they commit), deterrence (discourage those who would be offenders from committing crimes), incapacitation (prevent offenders from committing future crimes by physically removing them from society), and rehabilitation (reform offenders so they can lead productive lives).<sup>85</sup>

### **Sentencing Hearing**

In reaching the appropriate sentence, the court holds a sentencing hearing to consider aggravating or mitigating circumstances. In addition

to evidence and testimony presented by defense and the prosecution, the court can rely on victim impact statements or the presentence investigation (PSI) report, usually prepared by the probation or pretrial services agencies. The PSI report summarizes background information about the circumstances of the offense and the defendant's criminal history and characteristics.<sup>86</sup> Because the judge's knowledge about the defendant is usually limited to the PSI report, the sentence imposed and the probation officer's recommendations are highly correlated.<sup>87</sup>

Among the sentencing options that might be available to the judge (or jury in certain cases) include:

- The death penalty (imposed for capital crimes, like murder or treason);

84 Ibid.  
85 George Cole et al., *Criminal Justice in America (8<sup>th</sup> Ed.)* (Boston, MA: Cengage Learning, 2016), 288.  
86 United States Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other Countries* (Washington, DC: United States Courts, 2010), 29.  
87 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 571.

*The vast majority of defendants plead guilty rather than go to trial. The Bureau of Justice Statistics reports that about 90 percent to 95 percent of both state and federal court cases result in a guilty plea.*



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*The vast majority of paroling authorities use risk assessment instruments to aid them in making parole decisions. Those tools take into account the inmate's conduct while incarcerated, the offense that led to conviction, and other factors relevant to suitability for reentering the community.*

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- Incarceration in a prison, jail, or other confinement facility;
- Alternatives to incarceration (for example, Intensive Supervision Program, boot camps, house arrest and electronic monitoring, behavioral health treatment, or community service);
- Probation;
- Fines (imposed for misdemeanors or other minor offenses instead of jail or probation, as well as for a wide range of felonies); or
- Restitution (the offender must pay compensation to the victim).

### **Sentencing Regimes**

Every state imposes some limits on the sentence an offender can receive. In general, states follow one of three approaches to sentencing: determinate, indeterminate, and sentencing guidelines.

**Indeterminate Sentencing.** In an indeterminate sentencing system, the legislature establishes a range of years for certain offenses, such as 5 to 10 years for armed robbery. Consistent with that range, a judge imposes a sentence that establishes a minimum amount of time that must be served before a person can be released on parole, and a maximum amount of time that can be served before the sentence is completed.<sup>88</sup>

The vast majority of paroling authorities use risk assessment instruments to aid them in making parole decisions. Those tools take into account the inmate's conduct while incarcerated, the offense that led to conviction, and other factors relevant to suitability for reentering the community.

Until the 1970s, all states followed an indeterminate sentencing approach.<sup>89</sup> The rationale behind indeterminate

88 Law.cornell.edu, "Indeterminate Sentence," Legal Information Institute: Cornell University Law School, [https://www.law.cornell.edu/wex/indeterminate\\_sentence](https://www.law.cornell.edu/wex/indeterminate_sentence) (accessed March 21, 2015).

89 Michael Tonry et al., *The Handbook of Crime and Punishment*

sentencing is that offenders can be rehabilitated and that rehabilitation is best accomplished if judges can make individualized decisions about punishment.<sup>90</sup>

**Determinate Sentencing.** In a determinate sentencing system, the legislature defines specific penalties for specific crimes, and the sentence is not reviewable by the paroling authority. An inmate, however, can serve less than the penalty imposed with good time credits—time taken off of an offender's sentence for demonstration of good behavior and following prison rules—or earned time—credit off of an offender's sentence for completing education, vocational training, treatment, or work programs.<sup>91</sup> Good time and earned time can also be available under an indeterminate sentencing system.

Determinate sentencing systems emphasize decision making on a system wide basis and seek to limit a judge's discretionary authority over sentencing. The primary goal of determinate sentencing is the elimination of sentencing disparities—consistent punishment for similar crimes and proportional punishment for different crimes.<sup>92</sup>

Mandatory penalties—such as mandatory minimums, habitual offender laws, and truth-in-sentencing laws—reflect a determinate approach to sentencing in that they limit the discretion of judges and paroling authorities. However, they are used in every state, including those that follow a determinate approach, indeterminate approach, or sentencing guidelines approach to sentencing.<sup>93</sup> Mandatory minimums allow judges to choose a sentence above, but not below, a defined minimum. Habitual offender laws, such as three-strikes laws, impose harsher sentences for those with a lengthy criminal history.<sup>94</sup>

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(New York: Oxford Press, 1998), 543.

90 Ibid.

91 Alison Lawrence, *Cutting Corrections Costs: Earned Time Policies for State Prisoners* (Denver, CO: National Conference of State Legislatures, 2009), 1.

92 Gary T. Lowenthal, "Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform," *California Law Review*, 81:1 (January 1993): 63.

93 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 550.

94 Under "three-strikes laws," an offender must be sentenced to a life term for conviction of a third serious offense.

And, truth-in-sentencing laws require offenders to serve a substantial portion of their original prison sentence, usually 85 percent.

**Sentencing Guidelines.** In the late 1970s and 1980s, states began creating new bodies to oversee sentencing policy—sentencing commissions. Sentencing commissions have a range of responsibilities. Chief among them is developing guidelines based on a person’s offense and criminal history to aid judges in determining the proper sentence. Through sentencing guidelines, states have sought to combine the predictability of determinate sentencing with the flexibility of an indeterminate approach.<sup>95</sup> As of 2008, 20 states had active sentencing guidelines.<sup>96</sup>

Sentencing commissions often serve other functions as well, such as monitoring the effects of legislation on the size of the prison population and making recommendations for modifying sentencing laws and policies. The commission can also perform research or offer training and education.

The federal courts follow advisory guidelines developed by the U.S. Sentencing Commission.

#### **Appealing the Finding of Guilt or Sentence Imposed**

If a defendant is found not guilty by the trial court, the government can not appeal. However, if the defendant is found guilty, both the defendant and government can appeal.

On appeal, the appellant must show that the lower court made a procedural error or an error in its interpretation of the law that affected the outcome of the case. The appeals court is generally bound by factual findings of the trial court but can remand, or send back, the case to the trial court for further proceedings. The appeals court can also overturn a decision based on factual grounds where the findings are clearly incorrect. On all matters of law or procedure, the appeals court has final authority.

In cases where a prisoner believes that detention or conditions of confinement are unlawful, he or she can file a writ of *habeas corpus*—literally, “produce the body.” The U.S. Constitution, as well as many states, recognize *habeas corpus*, and state prisoners usually file *habeas* petitions to bring their case into the jurisdiction of the federal courts. *Habeas corpus* can also be used to challenge an extradition

process, the amount of bail, or the jurisdiction of the court.<sup>97</sup>

## **Corrections**

The corrections system is responsible for carrying out the sentence imposed by the court, and it includes probation and parole (community corrections), jails, and prisons.

### **Probation**

Probation is a court-imposed sanction that allows an offender to remain in the community under certain conditions. It is part of an offender’s initial sentence and usually used instead of prison or in combination with a term of incarceration.

Conditions of probation fall into three types: standard conditions, punitive conditions, and treatment conditions.<sup>98</sup> Standard conditions, which are imposed on all probationers, include such requirements as reporting to the probation office, reporting any change of address, remaining employed, and receiving permission to travel outside the jurisdiction. Punitive conditions, which are meant to punish, can include fines, community service, victim restitution, and house arrest. Treatment conditions, meant to force the offender to deal with a significant problem or need, can include substance abuse treatment, counseling, or job training.<sup>99</sup>

In between standard conditions of probation and prison lie intermediate sanctions. Intermediate sanctions can include intensive supervision probation, where probationers must follow strict reporting requirements; day reporting centers, where probationers attend day-long intervention and treatment sessions; boot camps; drug courts; community service; home confinement; and electronic monitoring.<sup>100</sup> Further, intermediate sanctions can be graduated such that subsequent violations result in more severe conditions of supervision.

95 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 547.

96 In addition to the Washington, D.C., those states include Alabama, Alaska, Arkansas, Delaware, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, and Wisconsin. See Neal B. Kauder and Brian J. Ostrom, *States Sentencing Guidelines: Profiles and Continuum* (Williamsburg, VA: National Center for State Courts, 2008), 4.

97 Law.cornell.edu, “Habeas Corpus” Legal Information Institute: Cornell University Law School, [https://www.law.cornell.edu/wex/habeas\\_corpus](https://www.law.cornell.edu/wex/habeas_corpus) (accessed March 21, 2015).

98 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 573.

99 Ibid.; Todd Clear et al., *American Corrections*, 11<sup>th</sup> ed. (Boston, MA: Cengage Learning, 2014), 208.

100 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 573; and Todd Clear et al., *American Corrections*, 11<sup>th</sup> ed. (Boston, MA: Cengage Learning, 2014), 235-237.

## Risk-Needs Assessment Tools

Risk-needs assessments are tools that can help criminal justice practitioners make more informed judgments about a person's likelihood of reoffending. Modern risk-needs assessment tools use actuarial, data-based science to determine a person's risk level. To do that, they rely on both static and dynamic risk factors.

Static risk factors are historical and unchangeable: for example, an offender's age at first arrest, number of prior convictions, and current convictions. Dynamic risk factors are characteristics that can change over time and can be addressed with effective interventions (needs), including antisocial attitudes, mental illness, and substance abuse.

Based on how an offender scores on an assessment, he or she is assigned a risk level such as low, moderate, or high. Each risk level correlates with the likelihood of recidivism, or reoffense, based on the recidivism rates of past offenders who fell into those risk groups.

Importantly, risk-needs assessments do not predict an individual's likelihood of re-offense but show how the offender compares to other similar offenders in terms of the risk to reoffend. They provide information about the drivers of an offender's criminal behavior and help criminal justice practitioners make more informed decisions about appropriate levels of supervision or treatment.

Risk-needs assessments are more frequently being used at various points in the criminal justice process. In addition to informing probation and post-release supervision decisions, risk-needs assessments can help guide pretrial detention decisions and the security level a prisoner should receive.

Probation can be revoked after a hearing for a new arrest, conviction of a new crime, or a technical violation—a failure to abide by rules of probation, such as by missing required appointments, failing to report a change in address, or not attending treatment. In practice, where a probationer is suspected of committing a serious offense, the probation officer can revoke based on a technicality rather than wait for resolution of a criminal proceeding.<sup>101</sup>

101 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 573; and Todd Clear et al., *American*

## Jails and Other Detention Facilities

If an offender fails on supervision, they are usually revoked to jail, where they are held until a hearing takes place. During the hearing, the prosecution must show by a preponderance of the evidence (more likely than not) that a violation occurred, a standard that is easier to meet than “beyond a reasonable doubt.” A judge can decide to continue supervision as is, impose new conditions, or send the offender to jail or prison.

In general, jails are locally operated. In five states, however, jails are state-run: **Connecticut, Delaware, Hawaii, Rhode Island, and Vermont.** Two states—**Alaska and West Virginia**—have jails that can be state or locally operated.

Jails serve a wide variety of functions. They are used to house offenders serving a term of one year or less, although most jail inmates are released or transferred within a few days.<sup>102</sup> They are also used to hold those awaiting arraignment, trial, or sentencing; transfer to another county or state or to federal or military authorities; or mental health commitment hearings.<sup>103</sup> Jails are used for people held as material witnesses, in protective custody, or for contempt of court, as well as convicts revoked from parole or probation or awaiting transfer to prison. Finally, jails can serve as temporary facilities for prisoners making court appearances or for juveniles waiting to be transferred to juvenile authorities or facilities.

Other local facilities serve much the same function as jails, including detoxification centers, police and court lockups, treatment facilities, halfway houses, and prison prerelease centers.<sup>104</sup>

## Correctional Facilities

The state executive branch administers a state's prison system, which is typically overseen by a governor-appointed commissioner. Each institution is run by a warden or superintendent who reports to the commissioner.<sup>105</sup>

Prisons are expensive, and taxpayers spend more than \$39 billion annually to fund them.<sup>106</sup> The most expensive resource required to operate a prison is its staff, which comprise between 70 and 80 percent of operating budgets.<sup>107</sup> Other major expenses include inmate

*Corrections*, 11<sup>th</sup> ed. (Boston, MA: Cengage Learning, 2014), 217.

102 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 482.

103 *Ibid.*, 474.

104 *Ibid.*, 476.

105 Todd Clear et al., *American Corrections*, 11<sup>th</sup> ed. (Boston, MA: Cengage Learning, 2014), 252.

106 Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers* (New York, NY: VERA Institute of Justice, 2012), i.

107 Camille G. Camp et al., *Prison Staffing Analysis: A Training Manual*

healthcare, the cost of feeding inmates, transportation of inmates to and from court, and building utilities (for example, electricity and water).<sup>108</sup> On an average annual basis, it costs around \$31,000 to incarcerate someone.<sup>109</sup> But the annual per-person average of housing elderly inmates (those over the age of 50) is nearly \$70,000.<sup>110</sup> Indeed, the “graying” of the U.S. prison system is a trend expected to continue, paralleling the aging of the general population and a consequence of longer sentences and more limited use of parole.<sup>111</sup>

With the goal of administering prisons more efficiently, many states have privatized services or entire facilities. Outsourced services can include food and medical care, educational and vocational training, transportation, and maintenance.<sup>112</sup> Facilities can be government owned and operated, privately owned and operated, or government owned but privately operated. Others can be owned by a private entity and operated by government through a lease.<sup>113</sup> Around 92 percent of all facilities are state operated, with the rest federally or privately operated.<sup>114</sup> In 2014, around 7 percent of state inmates were housed in privately operated facilities.<sup>115</sup>

### Parole

In states with parole, an offender can be allowed to serve the remainder of the sentence in the community if certain criteria are met, such as good behavior in prison and being low risk for recidivating. Parole is much the same as probation, except that parole generally imposes more stringent supervision conditions.<sup>116</sup> Further, parole is always a state function—whereas probation can be a state or local function—and parole conditions are determined by the executive branch of the state, usually through a parole board.

**Mandatory versus Discretionary Parole.** Parole can be mandatory or discretionary. Under mandatory parole, which is established by law, an inmate is automatically released on community supervision before or after the end of the sentence. In that case, their release is not subject to the discretion of a paroling authority.

In states with discretionary parole, a paroling authority—usually the parole board—decides whether an inmate will be released to serve the remainder of his or her sentence in the community after the inmate reaches the point of eligibility, as established by law and the imposed sentence.

**Paroling Authorities.** State entities responsible for making parole decisions go by a variety of names, such as parole board or board of pardons and paroles. They make decisions about the timing of release in those states with discretionary parole, set conditions of supervision, issue warrants and subpoenas, and can restore offenders’ civil rights.<sup>117</sup> Paroling authorities also have the authority to determine if an offender has failed to comply with conditions of their release and whether parole should be revoked.

Usually, parole board members serve terms of six years or less and are governor-appointed.<sup>118</sup> In some states, however, they are appointed by the chief judge, the legislature, or a mixture of the three. Often, parole boards are administratively supported by the department of corrections or department of public safety, but in some states they are cabinet-level agencies. In some instances, parole boards review requests for clemency or pardon and either forward recommendations to the governor’s office or make a final decision.

## JUVENILE JUSTICE

Every state has a distinct system for dealing with children and youth who come into contact with law enforcement or the courts, including separate courts and service delivery systems. A key difference between the juvenile justice and criminal justice systems is that rehabilitation is the primary focus of the juvenile justice system. That difference is reflected in language used to describe procedures of the juvenile court.<sup>119</sup> For example, youth undergo an “adjudication hearing” rather than a trial. Juveniles who are judicially determined to have committed an offense are referred to as having been “adjudicated delinquent” rather than found guilty. Juveniles adjudicated delinquent go

(Washington, DC: National Institute of Corrections, 2008), xvi.

108 Todd Clear et al., *American Corrections*, 11<sup>th</sup> ed. (Boston, MA: Cengage Learning, 2014), 252.

109 Jeremy Travis, Bruce Western, and Steve Redburn (Eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Research Council, The National Academies Press, 2014), 316.

110 American Civil Liberties Union, *At America’s Expense: The Mass Incarceration of the Elderly* (New York, NY: ACLU, 2012), ii.

111 Todd Clear et al., *American Corrections*, 11<sup>th</sup> ed. (Boston, MA: Cengage Learning, 2014), 260.

112 *Ibid.*, 252.

113 *Ibid.*

114 *Ibid.*, 249.

115 E. Ann Carson, *Prisoners in 2014* (Washington, DC: Bureau of Justice Statistics, 2015), 14.

116 Shannon M. Barton Bellessa, “The Parole Board,” in *Encyclopedia of Community Corrections* (Thunder Oaks: SAGE Publications Inc., 2012), 287.

117 Michael Tonry et al., *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 576.

118 Shannon M. Barton Bellessa, “The Parole Board,” in *Encyclopedia of Community Corrections* (Thunder Oaks: SAGE Publications Inc., 2012), 287.

119 Michael Tonry, *The Handbook of Crime and Punishment* (New York: Oxford Press, 1998), 512.

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*Prisons are expensive, and taxpayers spend more than \$39 billion annually to fund them. The most expensive resource required to operate a prison is its staff, which comprise between 70 and 80 percent of operating budgets.*

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through a “disposition hearing”—similar to the imposition of a sentence in the criminal justice system—where they are ordered to comply with specific conditions and sanctions; a final court order is referred to as the “disposition.” Post release supervision and services for youth returning to their community after placement in residential facilities—similar to reentry or parole—are known as “aftercare.”

The legal protections for youth in the juvenile justice system are also different. For example, under the U.S. Supreme Court’s decision in *McKeiver v. Pennsylvania*, juveniles do not have a constitutional right to a jury of peers.<sup>120</sup> Further, they do not have a right to bail but instead must prove they are not a flight risk and pose no danger to the community in order to be granted prehearing release. Juvenile court hearings can be closed to members of the public, and records are often confidential but can be expunged under certain conditions when the youth reaches the age of majority.

### **Entry into the Juvenile Justice System**

Most youth enter the juvenile justice system through arrest by law enforcement.<sup>121</sup> However, they can also be referred to courts by school officials, social service agencies, neighbors, or parents. When a case comes in, the prosecutor decides whether to send it further into the justice system. If the decision is to pursue further legal proceedings, the prosecutor can file a petition to request an adjudicatory hearing or a transfer to adult criminal court. If a decision is made not to refer a case for further legal proceedings, the youth can be diverted to alternative programs, such as drug treatment, individual or group counseling, or educational or recreational programs.<sup>122</sup> When awaiting a court hearing, or to protect the public safety pending a final court disposition, some youth are held in detention—temporary placement in a secure facility.

### **Jurisdiction of the Juvenile Court**

State statutes define the age at which youth fall under the jurisdiction of the juvenile court. In most states, the court has jurisdiction over youth below the age of 18 at the time of the offense, arrest, or referral to court. At the end of 2013, the upper age of original juvenile court jurisdiction was 17 in thirty-nine states, 16 in nine states, and 15 in two states.<sup>123</sup>

Generally, the juvenile court has jurisdiction over delinquency, status offenses, and abuse or neglect matters. Delinquency offenses are those acts committed by juveniles that would also be a crime if committed by an adult. Status offenses are acts that would not be criminal if committed by an adult, such as truancy, curfew violation, or possession of alcohol. The juvenile court can also have jurisdiction over adoption, termination of parental rights, and emancipation—the legal mechanism by which a juvenile is freed from parental or guardian control.<sup>124</sup>

In all states under certain circumstances, juveniles can be tried as adults in criminal court. Three basic transfer mechanisms exist for doing that: judicial waiver, statutory exclusion, and concurrent jurisdiction.<sup>125</sup> Transfer is based on the severity of the offense, the age of the offender, and the offender’s prior record. Under judicial waiver, the juvenile court judge has authority to transfer a case to criminal court. Under statutory exclusions, youth are automatically placed under criminal court jurisdiction for serious offenses such as first-degree murder. Where both the juvenile and criminal courts have jurisdiction, the prosecutor decides which court will initially handle the case. That is known as concurrent jurisdiction.

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120 403 U.S. 528 (1971).

121 OJJDP.gov, “Law Enforcement & Juvenile Crime” Office of Juvenile Justice and Delinquency Prevention, <http://www.ojjdp.gov/ojstatbb/crime/overview.html> (accessed March 16, 2015).

122 BJS.gov, “The Justice System,” Bureau of Justice Statistics, <http://www.bjs.gov/content/justsys.cfm> (accessed March 16, 2015).

123 OJJDP.gov, “Juvenile Justice System Structure & Process: Jurisdictional Boundaries” Office of Juvenile Justice and Delinquency Prevention, [http://www.ojjdp.gov/ojstatbb/structure\\_process/qa04101.asp?qaDate=2013](http://www.ojjdp.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2013) (accessed March 16, 2015).

124 Ibid.

125 Ibid.

## Spotlight on the Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act (JJDP), established in 1974 and reauthorized in 2002, sets standards and directs funding for state and local juvenile justice systems.<sup>126</sup> JJDP's standards include four core requirements with which each state must comply. Those requirements address the following:

- Deinstitutionalization of status offenders (for example, status offenders cannot be detained in juvenile detention facilities or adult jails and must instead be placed in nonsecure alternatives);
- Adult jail and lock-up removal (for example, a youth cannot be placed in adult jails or lock-ups except under limited circumstances);
- Sight and sound separation (for example, if a youth is placed in an adult jail or lock-up, the confinement area must be "sight and sound" separated from adult inmates); and
- Disproportionate minority contact (for example, states must address the overrepresentation of minority youth in the justice system).

Under the act, the state's chief executive is required to establish an advisory commission, usually referred to as the state advisory group, to provide policy direction, prepare and oversee the formula grants program plan, and commit to achieving and maintaining compliance with the four core requirements of the JJDP. To coordinate federal juvenile justice efforts, provide assistance to states, and administer state grants, the act also created the Office of Juvenile Justice and Delinquency Prevention, an agency that sits within the U.S. Department of Justice.

## Sanctions, Services, and Treatment

After a youth has been adjudicated for an offense in juvenile court, a disposition hearing is held to determine the sanction that should be imposed or the provision of, and requirements to participate in, services and treatment. In making dispositional decisions, judges in many states are required by law to balance the public safety with the best interest of the child and to consider the least restrictive environment for them.

Penalties can range from incarceration to probation, restitution, fines, or removal from home to foster care. The court can also order treatment, such as cognitive behavioral therapy, functional family therapy, or multisystemic therapy.

Residential options include house arrest and placement in a group home, foster care, residential treatment centers, juvenile detention facility, or secured juvenile facility. Secured juvenile facilities are most similar to an adult prison. They are intended for longer stays, such as a few months or years, and are usually operated by the state. Detention facilities are used for temporary stays and serve two main purposes: ensuring the youth appears for all court hearings and protecting the community from further offending by the youth.<sup>127</sup> Detention facilities are locally, regionally, or state operated.

Group homes are less restrictive, long-term facilities where youth are allowed contact with the community, usually for school and work.<sup>128</sup> They are not exclusive to the juvenile justice system and are sometimes used by youth-related agencies, such as child welfare and mental health. Generally, homes serve 5 to 15 youth. Similarly, house arrest, or home confinement, restricts the freedom of youth offenders by requiring that they stay at home during specified timeframes outside of work or school.<sup>129</sup> To ensure compliance with conditions set by the court, youth can be monitored electronically or through frequent visits by staff.

Based in large part on the growing science around youth brain development, the U.S. Supreme Court has recently restricted the severity of penalties that courts can impose on juvenile offenders. In 2005, the Supreme Court ruled

<sup>126</sup> Juvjustice.org, "Juvenile Justice and Delinquency Prevention Act" Coalition for Juvenile Justice, <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act> (accessed September 2015).

<sup>127</sup> James Austin, Kelly D. Johnson, and Ronald Weitzer, *Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention: Juvenile Justice Bulletin, September, 2005), 2.

<sup>128</sup> Development Services Group Inc., "Group Home," Literature Review [http://www.ojjdp.gov/mpg/litreviews/Group\\_Homes.pdf](http://www.ojjdp.gov/mpg/litreviews/Group_Homes.pdf) (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2008), 1.

<sup>129</sup> Development Services Group Inc., "Home Confinement and Electronic Monitoring," Literature Review [http://www.ojjdp.gov/mpg/litreviews/Home\\_Confinement\\_EM.pdf](http://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf) (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2014), 1.

it unconstitutional for a youth to receive the death penalty for crimes they committed before they were 18.<sup>130</sup> In 2010, the court ruled that life without parole for juveniles can only be imposed on homicide offenders. And, in 2012, it banned the use of mandatory life without parole.<sup>131</sup> Instead, the court must individualize sentences, taking into account the juvenile's age, developmental maturity, family background, and other factors.

## TRIBAL JUSTICE

American Indian and Alaska Native tribes are quasi-sovereign entities. As such, they have the rights of self-government to the extent their sovereignty has not been limited by the United States under treaties, acts of Congress, executive orders, federal administrative agreements, or court decisions.<sup>132</sup> Further, they are generally exempt from state jurisdiction and have the authority to regulate activities on their lands, including the right to enact stricter or more lenient laws than the state or states that surround them.<sup>133</sup> Often, however, tribes cooperate with states on issues such as law enforcement through agreements or compacts.

Whether a tribe has criminal jurisdiction over offenders can be complicated. In general, it depends on the location of the crime, the type of offense committed, and the identity of both the offender and victim.<sup>134</sup> As a rule of thumb, tribes exercise jurisdiction over all Indians, including those from non-member tribes, but not over non-Indian offenders. However, they can exercise jurisdiction over non-Indian offenders who commit acts of domestic violence against Indians on tribal land, provided the offender has sufficient ties to the tribe and they are afforded certain rights.<sup>135</sup>

In 2010, Congress passed the Tribal Law and Order Act (TLOA) with the goal of enhancing tribal justice systems. The purpose of the TLOA is to clarify the responsibilities

of federal, state, tribal, and local governments with respect to crimes in Indian Country and to increase coordination between federal, state, tribal, and local law enforcement agencies by standardizing the collection and sharing of information.<sup>136</sup> Further, the law aims to reduce the prevalence of violent crime and to combat sexual and domestic violence against Alaskan and American Indian women.<sup>137</sup>

*In making dispositional decisions, judges in many states are required by law to balance the public safety with the best interest of the child and to consider the least restrictive environment for them.*

<sup>130</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>131</sup> *Graham v. Florida*, 560 U.S. \_\_\_, 130 S. Ct. 2011 (2010); *Miller v. Alabama and Jackson v. Hobbes*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012).

<sup>132</sup> BIA.gov, "Frequently Asked Questions" U.S. Department of the Interior: Indian Affairs <http://www.bia.gov/FAQs/> (Accessed March 16, 2015).

<sup>133</sup> Jane M. Smith, *Tribal Jurisdiction Over Nonmembers: A Legal Overview* (Washington, DC: Congressional Research Service, 2013), available at <https://www.fas.org/sgp/crs/misc/R43324.pdf>; BIA.gov, "Frequently Asked Questions" U.S. Department of the Interior: Indian Affairs <http://www.bia.gov/FAQs/> (Accessed March 16, 2015).

<sup>134</sup> For a general overview of criminal jurisdiction on tribal lands, see <http://www.justice.gov/usam/criminal-resource-manual-689-jurisdictional-summary>.

<sup>135</sup> Jane M. Smith, *Tribal Jurisdiction Over Nonmembers: A Legal Overview* (Washington, DC: Congressional Research Service, 2013), at 2, available at <https://www.fas.org/sgp/crs/misc/R43324.pdf>.

<sup>136</sup> Public Law 111-211. See [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=88](https://www.bja.gov/ProgramDetails.aspx?Program_ID=88).

<sup>137</sup> BJA.gov, Tribal Law and Order Act (TLOA), [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=88](https://www.bja.gov/ProgramDetails.aspx?Program_ID=88).

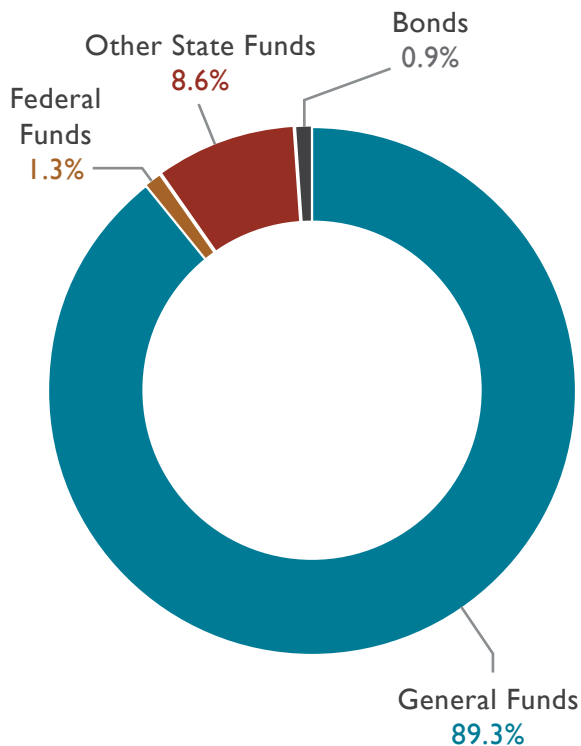
## Chapter 3

# Funding The Criminal Justice System

### SUPPORTING THE CORE FUNCTIONS OF STATE CRIMINAL JUSTICE SYSTEMS

State and local criminal justice systems are funded through a diversity of sources, including the state's general fund, federal grants, fees, and special or other funds. Those sources fund the core functions of state justice systems, including law enforcement, courts, corrections, and juvenile justice.

State Expenditures for Corrections by Fund Source, Fiscal 2014



Source: *State Expenditure Report: Examining Fiscal 2013-2015 State Spending* (Washington, DC: National Association of State Budget Officers, 2015), 54, <http://www.nasbo.org/publications-data/state-expenditure-report>

### Law enforcement

According to the Bureau of Justice Statistics, the bulk of law enforcement spending nationally derives from state and local government expenditures.<sup>138</sup> State governments provide approximately 11 percent of law enforcement spending, and local governments supply 67 percent.<sup>139</sup>

The largest single source of federal funding for state and local law enforcement is the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, administered by the Bureau of Justice Assistance (BJA), U.S. Department of Justice (DOJ). BJA makes funding awards to states based on a formula that considers the state's share of violent crimes nationwide and its portion of the national population. By statute, 60 percent of Byrne JAG funding is awarded to the state and 40 percent to eligible units of local government.<sup>140</sup> In addition, states have a variable percentage of the 60 percent allocation they receive that is required to "pass-through" to units of local government. The percentage is based on each state's crime expenditures.

The Byrne JAG Program is unique in that funding can be used to support a wide range of priorities that include training, personnel, equipment, program evaluation activities, and various state and local initiatives.<sup>141</sup> However, in most states, Byrne JAG funding is primarily used to support law enforcement: from 2009 to 2011, states used 62 percent of their Byrne JAG funding for law enforcement activities.<sup>142</sup>

Other major sources of federal funding for law enforcement include DOJ's Community Oriented Policing Services (COPS) Office, which provides grants in support of community policing initiatives, and the National Institute of Justice's DNA Backlog Reduction Program and Paul Coverdell Forensic Sciences Improvement Grant Program, which provide funding to reduce evidence backlogs and

138 Tracey Kyckelhahn, *Justice Expenditure and Employment Extracts, 2012 – Preliminary* (Washington, DC: Bureau of Justice Statistics, 2015).

139 Ibid. Law enforcement expenditures encompass state and local police services, crime prevention activities, temporary lockups and holding tanks, traffic safety, vehicular inspection, buildings used exclusively for police purposes, medical examiners and coroners, sheriff's offices, special police forces, and any other positions employed by a law enforcement agency.

140 Bureau of Justice Assistance, *Edward Byrne Memorial Justice Assistance Grant Program Frequently Asked Questions* (Washington, DC: Department of Justice, 2015), 1.

141 Ibid., 8.

142 Inimai Chettiar et al., *Reforming Funding to Reduce Mass Incarceration*, (New York: Brennan Center for Justice, 2013), 20.



improve the quality and timeliness of forensic science and medical examiner services.<sup>143</sup>

The Department of Defense (DOD) also provides funding for state and local law enforcement. Through DOD’s 1033 Program, state and local police departments can obtain free military surplus equipment, such as vehicles, weapons, tactical gear, computer equipment, radios and televisions, and office supplies.

DHS provides funding through the Homeland Security Grant Program (HSGP), a suite of sub-programs designed

to help state and local governments cover the costs of homeland security.<sup>144</sup> Three of the sub-programs provide direct support for law enforcement activities, including the State Homeland Security Program (SHSP), the Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG).

Below, Table 3.1, “Federal Public Safety Grant Programs,” provides an overview of the primary federal grant programs that support state and local law enforcement:

143 Nij.gov, “What NIJ Funds,” National Institute of Justice, <http://www.nij.gov/funding/pages/welcome.aspx#whatnijfunds> (accessed September 10, 2015).

144 6 U.S.C. § 603-609 (2012).

**TABLE 3.1: Federal Public Safety Grant Programs**

Funding Source	FY 2014 Funding Level	Eligible Applicants	Program Description
Edward Byrne Memorial Justice Assistance Grant (JAG) Program	\$290,928,252	States, local governments, territories, and the District of Columbia.	The funds can be used in seven areas: law enforcement; prosecution and courts; crime prevention and education; corrections and community corrections; drug treatment and enforcement; planning, evaluation, and technology improvement; and crime victim and witness programs (other than compensation).
National Institute of Justice	\$234,492,932	Public agencies; nonprofit organizations; faith-based organizations; individuals; profitmaking organizations willing to waive profits; and federal agencies, unless specifically stated otherwise in the solicitation document.	The funds are used for research, development, and evaluation; forensic laboratory enhancement; and research fellowships.
Department of Justice Community Oriented Policing Services	\$214,000,000	State, local, territory, and tribal law enforcement agencies.	The COPS Office awards grants to state, local, territory, and tribal law enforcement agencies to hire and train community policing professionals, acquire and deploy cutting-edge crime fighting technologies, and develop and test innovative policing strategies.
State Homeland Security Program	\$401,346,000	State administering agencies (SAAs) in the 56 states and territories	Provides funds to build capabilities at the state and local levels and to implement the goals and objectives identified in state preparedness reports.

Funding Source	FY 2014 Funding Level	Eligible Applicants	Program Description
Urban Areas Security Initiative	\$557,000,000	SAAAs in the 64 high-risk urban areas	Enhances regional preparedness in major metropolitan areas.
Operation Stonegarden	\$55,000,000	SAAAs in border states and local communities	Improves coordination among local, state, and federal law enforcement agencies to secure U.S. borders.

### Courts

State judicial systems use a wide range of funding structures and sources to support their operations. Depending on the state, courts are state funded or county funded, or rely on a combination of the two.<sup>145</sup>

In nearly every state, courts collect a variety of fines and fees in the course of their operations. Examples include filing fees, summary proceeding fees, motion fees, jury demand fees, and fines for numerous civil and criminal penalties.<sup>146</sup> Although some states allow for such revenue to remain in judicial coffers, others require that collected monies be remitted back into the state’s general fund.<sup>147</sup> Indeed, judicial systems in many states are largely dependent on legislative appropriation for funding.

### Corrections

Corrections—including prisons, parole, and state-supervised probation—is primarily supported by states’ general funds. In FY2013, general fund expenditures accounted for 90 percent of corrections costs. Bonds, federal funds, and other state funds—such as fees—accounted for the rest.<sup>148</sup> (See chart on page 32, “State Expenditures for Corrections by Fund Source, Fiscal 2014”)<sup>149</sup>

### Juvenile Justice

Although it depends on the state, the majority of funding for state-level juvenile justice systems usually comes from the state general fund. Typical state-level costs include aftercare (parole) supervision, residential operations, community settings, programs, and health care.<sup>150</sup>

At the local level, state general funds can provide a portion of juvenile justice funding, in addition to county-level and federal funding.<sup>151</sup> Local-level juvenile justice costs include probation intake, investigations, and supervision and operation of juvenile detention facilities.<sup>152</sup>

Most federal funding for juvenile justice systems is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP awards formula and block grants to states to support programs authorized in the Juvenile Justice and Delinquency Prevention Act. (For requirements under the JJDP, see Chapter 2 breakout box on page 30, “Spotlight on the Juvenile Justice and Delinquency Prevention Act”)

The three main federal grant programs administered by OJJDP are the Title II Formula Grant Program, the Juvenile Accountability Block Grants (JABG) Program, and the JJDP Title V Delinquency Prevention Program.

Title II formula grants are awarded to states in exchange for compliance with the Juvenile Justice and Delinquency Prevention Act.<sup>153</sup> Through the program, OJJDP provides funds directly to states, territories, and the District of Columbia to help them implement comprehensive state plans for preventing delinquency and improving justice systems. The JABG program is designed to reduce juvenile offending by supporting programs that promote offender accountability for and awareness of the loss, damage,

145 Michael D. Greenberg and Geoffrey McGovern, *Who Pays for Justice? Perspectives on State Court System Financing and Governance* (Washington, DC: The Rand Corporation, 2014), xii.

146 Courts.mi.gov, “District Court Fee and Assessments Table: July 2015,” Michigan Courts <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/dfee.pdf> (accessed September 10, 2015).

147 Michael D. Greenberg and Geoffrey McGovern, *Who Pays for Justice? Perspectives on State Court System Financing and Governance* (Washington, DC: The Rand Corporation, 2014), xiii.

148 National Association of State Budget Officers, *State Expenditure Report*, (Washington, DC: NASBO, 2014), 54, fig. 15.

149 Ibid.

150 See California, for example: State Commission on Juvenile

Justice, *Juvenile Justice Operational Master Plan: Blueprint for an Outcome Oriented Juvenile Justice System*, (CA: State Commission on Juvenile Justice, 2009).

151 Tyler, Jasmine L.; Ziedenberg, Jason and Lotke, Eric. “Cost Effective Corrections: The Fiscal Architecture of Rational Juvenile Justice Systems” (Washington, DC: The Justice Policy Institute, 2006), 3.

152 See California, for example: State Commission on Juvenile Justice, *Juvenile Justice Operational Master Plan: Blueprint for an Outcome Oriented Juvenile Justice System*, (CA: State Commission on Juvenile Justice, 2009).

153 Ojjdp.gov, “Program Summary” Office of Juvenile Justice and Delinquency Prevention, <http://www.ojjdp.gov/programs/ProgSummary.asp?pi=16> (accessed, accessed September 10, 2015).

or injury that the victim experiences.<sup>154</sup> Both local and governor-appointed state agencies are eligible to apply for JABG funds. The JJDPV Title V Delinquency Prevention Program is designed to prevent delinquency at the local level through incentive grants.<sup>155</sup>

Other federal support includes funding for state programs that mentor exploited and formerly missing children, as well as community-based violence-prevention initiatives that help girls in the juvenile justice system.<sup>156</sup>

## FUNDING CORRECTIONS

Of the core criminal justice functions—law enforcement, courts, corrections, and juvenile justice—corrections accounts for the largest category of state spending. In fact, corrections is now estimated to be the third-largest area of overall state spending at 7 percent, trailing only education and Medicaid.<sup>157</sup> In recent fiscal years, expenditures for all states topped \$53 billion.<sup>158</sup>

### What Drives Corrections Populations?

Over the last 40 years, the United States has seen unprecedented growth in the incarcerated population. Since the 1970s, the U.S. incarceration rate has quadrupled, resulting in what is now the world's largest prison population.<sup>159</sup> In 2012 the United States housed 25 percent of the world's prisoners, although it only accounts for about 5 percent of the world's population.<sup>160</sup>

Certainly, incarceration rates can be affected by the level of crime in society—if crime increases and all else remains equal, the prison population can increase because a larger number of people will be subject to arrest, conviction, and sentencing.<sup>161</sup> However, incarceration rates are much more dependent on society's policy response to crime. Indeed, the overall increase in the incarceration rates of the last 40

154 Ibid.

155 Ibid.

156 Gary Gately, "Federal Juvenile Justice Funding Declines Precipitously," Juvenile Justice Information Exchange, entry posted February 12, 2015, <http://jjie.org/federal-juvenile-justice-funding-declines-precipitously/> (accessed September 10, 2015).

157 Michael Mitchell and Michael Leachman, *Changing Priorities: State Criminal Justice Reforms and Investments in Education* (Washington, DC: Center on Budget and Policy Priorities, 2014), 1.

158 National Association of State Budget Officers, *State Spending for Corrections: Long-Term Trends and Recent Criminal Justice Policy Reforms* (Washington, DC: NASBO, 2013), 4; and Emily Badger, "The meteoric, costly and unprecedented rise of incarceration in America," *Washington Post*, April 30, 2014, <http://www.washingtonpost.com/news/wonkblog/wp/2014/04/30/the-meteoric-costly-and-unprecedented-rise-of-incarceration-in-america/> (accessed September 10, 2015).

159 Jeremy Travis, Bruce Western, and Steve Redburn (Eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Research Council, The National Academies Press, 2014), 2.

160 Ibid.

161 Ibid., 45, 47.

years is more reflective of changing policies that increased the number of people admitted to prison and kept them there longer, rather than changing crime rates.<sup>162</sup>

To understand how policy drives a state's incarceration rate and associated costs, three primary factors must be considered:

- **Admissions:** How many people are admitted to prison, and what policies and practices affect admission rates?
- **Length of stay:** How long are offenders staying in prison, and what policies and practices affect release decisions and time served?
- **Re-entry:** How many people are released from prison? What are their recidivism rates? What policies and practices inform reentry approaches, post-release supervision, and community engagement? How many people are successfully discharged from the corrections system?

Identifying trends associated with each of those factors illuminates the policies and practices contributing to the size of a state's prison population. For example, larger prison populations can result from more people entering prison and staying for longer periods. Likewise, smaller prison populations can reflect fewer people entering prison and staying for shorter periods.

A more in-depth examination of admissions helps illustrate that point. Admissions to state prisons come from three main sources. People can be admitted for new crimes, in which case they are sent to prison immediately following adjudication—known as "new court commitments."<sup>163</sup> They can be admitted for failing on parole by committing a new offense, or for not meeting the general conditions of parole—a technical violation. Alternatively, they can be admitted for failing to meet the terms of probation or for committing a new offense while on probation. (See Chapter 2 for a discussion of technical violations and revocation from parole or probation.)

In general, admissions for technical violations account for a large percentage of overall state prison admissions.<sup>164</sup> But policy makers usually have a high degree of discretion in deciding what the systemic response to such violations shall be. Thus, by limiting the number of people cycling back through the system who are low-risk for reoffending, policymakers can be able to safely decrease a state's prison population and also benefit from reduced corrections costs.

162 Ibid., 47, 69.

163 Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?* (New York: Russel Sage Foundation, 2013), 34-35.

164 Ibid.

*Incarceration rates are much more dependent on society's policy response to crime. Indeed, the overall increase in the incarceration rates of the last 40 years is more reflective of changing policies that increased the number of people admitted to prison and kept them there longer, rather than changing crime rates.*

### What Drives Corrections Costs?

The increase in state spending on corrections over the last 30 years has been driven almost entirely by the increase in the number of prisoners.<sup>165</sup>

Housing and caring for prisoners is expensive. On average, the annual cost of incarceration per inmate is \$31,000.<sup>166</sup> Depending on the state, costs can range from \$14,600 to \$60,000.<sup>167</sup> For elderly prisoners (those aged 50 and above), that cost is even higher—around \$70,000 per year.<sup>168</sup> By contrast, it costs about \$3 per day to manage probationers and \$7 per day to manage parolees, or about \$1,250 to \$2,750 a year.<sup>169</sup>

What accounts for the expense of incarcerating someone? Nearly 75 percent goes to covering personnel costs.<sup>170</sup> Capital outlays earmarked for the construction of new institutions and repairs of existing facilities only made up between 5 percent and 10 percent of state correctional

expenditures.<sup>171</sup> Thus, the bulk of state corrections expenses derive from operational costs.

### Personnel

Personnel costs include regular and overtime pay, health insurance, and retirement costs for staff working in facilities.<sup>172</sup> They can also include various fees, commissions, and contractual services.<sup>173</sup>

Because personnel expenses make up such a large portion of corrections budgets, effectively managing them with a staffing plan is critical to containing overall costs. Plans should be developed to define optimum staff levels for prison populations and ensure that the right types of staff are available at each state facility.<sup>174</sup>

In many states, managing overtime costs is an ongoing challenge because of high turnover and staffing shortages.

### Health Care

Health care makes up a substantial and growing portion of state correctional expenditures.<sup>175</sup> That trend owes much to the fact that states are obligated under the Constitution to provide inmates health care, and that, in most circumstances, private insurers and the federal government do not reimburse for medical payments made on behalf of inmates. Further, the health needs of the incarcerated population are unique and costly. Currently, state corrections departments spend between 10 percent and 20 percent of their budgets on health care.<sup>176</sup>

The rates of mental health problems, addiction, and communicable and chronic diseases are far higher in the correctional population than in the general population.<sup>177</sup> More than half suffer from mental health problems, and nearly one in three have Hepatitis C.<sup>178</sup> The prevalence of

165 Jeremy Travis, Bruce Western, and Steve Redburn (Eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (Washington, DC: National Research Council, The National Academies Press, 2014), 315.

166 *Ibid.*, 316.

167 *Ibid.*

168 American Civil Liberties Union, *At America's Expense: The Mass Incarceration of the Elderly* (New York, NY: ACLU, 2012), ii.

169 The Pew Charitable Trusts, "One in 31 U.S. Adults are Behind Bars, on Parole or Probation," Press Release, <http://www.pewtrusts.org/en/about/news-room/press-releases/0001/01/01/one-in-31-us-adults-are-behind-bars-on-parole-or-probation>

170 Tracey Kyckelhahn, *State Corrections Expenditures, FY 1982-2010*, (Washington, DC: Bureau of Justice Statistics, 2012), 5.

171 *Ibid.*, 2.

172 Maine Government Oversight Committee, *Costs Per Prison in the State Correctional System* (Portland: Office of Program Evaluation and Government Accountability, 2012), 5, table 5.

173 Virginia State Government Expenditure Structure, *Summary of the Current Expenditure Structure* (Richmond, VA: Department of Planning and Budget), 3.

174 Maine Government Oversight Committee, *Costs Per Prison in the State Correctional System* (Portland: Office of Program Evaluation and Government Accountability, 2012), 8.

175 Ojmarrh Mitchell, David B. Wilson, and Doris L. MacKenzie, "Does incarceration-based drug treatment reduce recidivism? A meta-analytic synthesis of the research," *Journal of Experimental Criminology* 3:4 (September 2007).

176 Association of State Correctional Authorities, *Healthcare Costs Survey* (April 2011) (on file with organization).

177 Susan D. Phillips, *The Affordable Care Act: Implications for Public Safety and Corrections Populations* (Washington, DC: The Sentencing Project, 2012).

178 Doris James and Lauren Glaze, *Mental Health Problems of Prison and Jail Inmates* (Washington, DC: Bureau of Justice Statistics, September 2006); and CDC.gov, "Hepatitis C and Incarceration" Center for Disease Control and Prevention, <http://www.cdc.gov/hepatitis/HCV/PDFs/HepCIncarcerationFactSheet.pdf>

AIDS is more than three times higher than in the general population, and nearly 9 in 10 inmates released from prison have chronic health conditions requiring ongoing treatment or management.<sup>179</sup>

Under the Eighth Amendment, states are obligated to provide medical care to properly treat such conditions. According to the U.S. Supreme Court, states violate the Eighth Amendment when corrections officials are deliberately indifferent to an inmate's serious medical needs.<sup>180</sup> Courts have interpreted deliberate indifference to mean circumstances where there is 1) denied or unreasonably delayed access to a physician for a diagnosis or treatment, 2) failure to administer treatment prescribed by a physician, or 3) denial of professional medical judgment.<sup>181</sup>

In practice, the approach most states take to comply with the deliberate indifference standard is to provide offenders a community standard of health care, or a level of care that someone in the community would receive.<sup>182</sup>

Because of prohibitions against coverage for incarcerated individuals by third-party insurers, states bear most of the financial burden of providing health care. Private insurers typically deny coverage of medical expenses provided to incarcerated persons, and federal law specifically prohibits states from receiving federal reimbursement for medical care provided to any individual who is an inmate of a public institution.<sup>183</sup>

The Affordable Care Act does, however, carve out an exception to this rule by allowing incarcerated individuals pending disposition to be covered by health plans participating in state health insurance exchanges.<sup>184</sup>

In the coming decades, health-care-related costs are expected to rise as the nation's prison population ages.<sup>185</sup> In 2010, more than 246,000 prisoners aged 50 and older were housed in state and federal prison, with nearly 90 percent of them held in state custody.<sup>186</sup> Predictions are that the number of such prisoners will rise to over 400,000 by 2030, which would represent a 4,400 percent increase over 1980s levels.<sup>187</sup>

*The health needs of the incarcerated population are unique and costly. Currently, state corrections departments spend between 10 percent and 20 percent of their budgets on health care.*

As in the general population, older prisoners disproportionately suffer from heart disease, cancer, complications from diabetes, and other conditions that are frequently age-related. Consequently, older prisoners cost significantly more to care for than their younger peers. According to some state estimates, medical care for prisoners aged 55 to 59 costs an annual average of \$11,000, which is double the average annual health care cost per prisoner.<sup>188</sup> For prisoners older than 80, the average annual cost is over \$40,000.<sup>189</sup>

### Facilities

Facility spending represents the total capital expenditures for state prisons. Such costs include new facility construction, renovations, and major repairs.<sup>190</sup> They can also include fees and services of architects, engineers, appraisers, and attorneys.<sup>191</sup> Budget line items for facility spending include land acquisition and equipment purchases.<sup>192</sup>

(accessed September 15, 2015).

179 CDC.gov, "National Prevention Information Network" Center for Disease Control and Prevention, <http://www.cdcnpin.org/scripts/population/prison.asp>, (accessed June 6, 2013); and Kamala Mallik-Kane and Christy Visser, *Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration* (Washington, DC: Urban Institute Justice Policy Center, February 2008).

180 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

181 Chad Kinsella, *Corrections Health Care Costs* (Lexington, KY: The Council of State Governments, 2004), citing "Correctional Health Care: Guidelines for the Management of an Adequate Delivery System, 2001 Edition," U.S. Department of Justice, December 2001, p. 15.

182 Chad Kinsella, *Corrections Health Care Costs* (Lexington, KY: The Council of State Governments, 2004), 5.

183 Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry*, (Washington, DC: Urban Institute, 2005), 192; and see report by Robert Johnson, American Bar Association, August 2007, available at <http://tinyurl.com/h55cxy>

184 Marsha Regenstein and Jade Christie-Maples, *Medicaid Coverage for Individuals in Jail Pending Disposition: Opportunities for Improved Health Care at Lower Costs* (Washington, DC: George Washington University, 2012).

185 B. Jaye Anno et al., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates* (Washington, DC: National Institute of Corrections, February 2004).

186 American Civil Liberties Union, *At America's Expense: The Mass Incarceration of the Elderly* (New York: ACLU, 2012), 1.

187 *Ibid.*

188 Steve Angelotti and Sara Wycoff, *Michigan's Prison Health Care: Costs in Context* (Lansing, MI: Michigan Senate Fiscal Agency, 2010), 16.

189 *Ibid.*

190 James Stephan, *State Prison Expenditures, 2001* (Washington, DC: Bureau of Justice Statistics, 2004), 2.

191 *Ibid.*, 5.

192 *Ibid.*

Operational expenses associated with facilities include utility services such as electricity, natural gas, heating oil, water, sewage, trash removal, and telephone costs.<sup>193</sup>

### **Food**

Prison food services must provide a sufficient number of calories per day for each inmate. In addition, they must meet inmate medical or religious dietary restrictions. Two strategies states have used to reduce food costs are outsourcing some or all food services and using prison-operated farms and food processing operations.<sup>194</sup>

### **Transportation**

Inmates can require transportation to and from prison facilities for various reasons, including transfers to other jurisdictions, medical issues that require treatment at a hospital, and court appointments.<sup>195</sup>



### Spotlight on Michigan

Over the last decade, Michigan has saved more than \$1 billion by closing 21 of 53 prison facilities as a result of declining recidivism rates and reductions in the state's prison population. Between 2001 and 2011, offender recidivism dropped 28 percent because of improvements in parole success rates. Subsequently, the overall prison population dropped by 17 percent from its peak in 2007.

<sup>193</sup> Ibid., 7.

<sup>194</sup> James Stephan, *State Prison Expenditures, 2001* (Washington, DC: Bureau of Justice Statistics, 2004), 7; Christopher Reinhart, *Food Service in Prisons* (Hartford, CT: Office of Legislative Research, 2010), 1.

<sup>195</sup> State Auditor, *Department of Corrections: Transportation of Inmates Performance Audit* (Denver, CO: State Auditor, 2000), 14.

## Chapter Four

### Using Research and Data to Improve Public Safety Outcomes

State executives face many demands on the limited resources they manage and are now expected to do more with less. Taxpayers want accountability for outcomes and state executives are under pressure to demonstrate the effectiveness of the policies and programs they adopt. Increasingly, state executives are turning toward wider adoption of evidence-based practices as well as greater use of data and sharing of information to drive policy decision making.

#### EXPANDING THE USE OF EVIDENCE-BASED POLICIES AND PRACTICES (EBPs)

Evidence-based policies and practices (EBPs) are approaches that have been empirically tested and shown to achieve their intended outcomes. Because EBPs have been proven to work, they are more likely to produce desired outcomes than non-EBPs.<sup>196</sup> That said, success is not assured when transferring a proven best practice from one circumstance to another; the EBP often must be tailored to local populations and settings.

As applied in the criminal justice context, EBPs can help policymakers make better use of public resources and more effectively reduce crime. In fact, research shows that implementation of EBPs leads to an average decrease in crime of between 10 percent and 20 percent.<sup>197</sup> Implementation of non-EBPs, on the other hand, are likely to result in no decrease or even a small increase in crime.<sup>198</sup>

196 See Morris Thigpen et al., *Evidence-Based Policy, Practice, and Decision-making: Implications for Paroling Authorities* (Washington, DC: National Institute of Corrections, 2011), xiii.

197 *One in 31: The Long Reach of American Corrections* (Washington, DC: Pew Center on the States, The Pew Charitable Trusts, 2009), 24.

198 *Ibid.*

However, it is important to note that, in general, the toolbox of EBPs is fairly limited; only a relatively small number of policies, practices, and programs have been rigorously evaluated at all. Thus, some untested programs, practices, and policies could be more effective than EBPs, but the evidence might simply not exist to make that determination. In situations that require immediate action but where EBPs are not in the toolbox policymakers should make informed decisions based on the best available evidence of what worked in similar settings.

#### How Does One Identify EBPs?

Policies and practices are evidence-based when their effectiveness has been positively demonstrated with causal evidence obtained through scientifically rigorous evaluation.<sup>199</sup> State executives might not have the training or time to determine which policy or practice meets that threshold. Fortunately, many repositories exist to support them in identifying EBPs. Table 4.1 describes several online databases that identify EBPs.

199 Ojpdagnosticcenter.org, "What are Evidence-Based Practices?" Office of Justice Programs," <https://www.ojpdagnosticcenter.org/faq/what-are-evidence-based-practices> (accessed September 10, 2015).

**TABLE 4.1: Inventories of Evidence-Based Practices**

Name of Criminal Justice Database	Description
CrimeSolutions.gov	A searchable online inventory of criminal justice programs and practices that have been evaluated for their effectiveness. The website rates programs or practices as "effective," "promising" or "no effects" in terms of whether they achieve their intended goals.
Results First Clearinghouse Database	A database that contains information from eight national clearinghouses that conduct systematic research reviews to identify what works. It can be accessed at <a href="http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/09/results-first-clearinghouse-database">http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/09/results-first-clearinghouse-database</a>

Name of Criminal Justice Database	Description
Blueprints for Healthy Youth Development	Blueprints for Healthy Youth Development provides a registry of evidence-based youth development programs designed to promote the health and well-being of children and teens. Programs listed range from broad prevention programs that promote positive behaviors and decrease negative behaviors to highly targeted programs for at-risk children and troubled teens. Of 1,300 programs reviewed, less than 5 percent are designated as model and promising programs. Blueprints can be accessed at <a href="http://www.blueprintsprograms.com/about.php">http://www.blueprintsprograms.com/about.php</a>
What Works in Reentry Clearinghouse	A clearinghouse that offers easy online access to important research on the effectiveness of a wide variety of reentry programs, synthesizes quality research on the effectiveness of different reentry interventions, and uses a rating system to help visitors assess the effectiveness of a given program or practice. The Urban Institute reviews, summarizes, and synthesizes each study included in the clearinghouse, which can be accessed at <a href="http://www.urban.org/policy-centers/justice-policy-center/projects/what-works-reentry-clearinghouse-0">http://www.urban.org/policy-centers/justice-policy-center/projects/what-works-reentry-clearinghouse-0</a>
Office of Juvenile Justice and Delinquency Prevention's National Training and Technical Assistance Center	The National Training and Technical Assistance Center (NTTAC) is a central source for accessing OJJDP training and technical assistance resources. The following webpage lists various EBP repositories, including the Promising Practices Network, National Criminal Justice Reference Service, the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs and Practices, and Social Programs that Work: <a href="https://www.nttac.org/index.cfm?event=resources.statePrograms">https://www.nttac.org/index.cfm?event=resources.statePrograms</a>

### What Are Potential Challenges to Successfully Implementing EBPs?

Once EBPs have been identified, state executives will need to consider potential challenges to successful implementation.

To be effective, EBPs must be delivered with fidelity to the original model in order to maintain the initiative's integrity. (Fidelity to the model concerns the quality with which the treatment is delivered.<sup>200</sup>) Yet because real-world settings are diverse and complex, achieving fidelity to the model can be a challenge.<sup>201</sup> Oftentimes, major components of a program are implemented and less obvious but key elements are left out. That may be because of resource

limitations or because those overseeing implementation do not perceive certain elements of the original model to be critical.

In general, resource constraints can limit the effectiveness of implementation: successful implementation might depend on a certain dosage of treatment being delivered over a period of time. Without adequate and sustained funding, that can be a challenge.<sup>202</sup>

Table 4.2 lists resources that can help guide implementation of evidence-based practices and principles.

<sup>200</sup> Ibid.

<sup>201</sup> Roger Przybylski and Brian Bumbarger, "Implementation Science and the Importance of Fidelity: Replicating Evidence-Based Practices," National Criminal Justice Association, <http://www.ncja.org/sites/default/files/documents/Implementation-Science-and-the-Importance-of-Fidelity.pdf> (accessed September 10, 2015), 8.

<sup>202</sup> Eboni Howard, *Statewide Implementation of Child and Family Evidence-Based Practices: Challenges and Promising Practices* (Washington, DC: Technical Assistance Partnership, 2012), 3.



**TABLE 4.2: Guidance for Implementing Evidence-Based Practices and Principles**

Topic	Tools, Guides, and Other Resources
Community Supervision (Probation and Parole)	<ul style="list-style-type: none"> <li>• <i>Increasing Public Safety Through Successful Offender Reentry: Evidence-Based and Emerging Practices in Corrections</i> (Washington, DC: Center for Effective Public Policy, 2007)</li> <li>• Mark Carey, <i>Coaching Packet Series</i> (Washington, DC: Center for Effective Public Policy, 2007)</li> <li>• Pew Center on the States Public Safety Performance Project, <i>Policy Framework to Strengthen Community Corrections</i> (Washington, DC: The Pew Charitable Trusts, 2008)</li> <li>• Pew Center on the States Public Safety Performance Project, <i>Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry</i> (Washington, DC: The Pew Charitable Trusts, 2008)</li> <li>• Madeline Carter, <i>Evidence-Based Policy, Practice and Decisionmaking: Implications for Paroling Authorities</i> (Washington, D.C.: National Institute of Corrections, 2011)</li> <li>• Peggy Burke and Michael Tonry, <i>Successful Transition and Reentry for Safer Communities: A Call to Action for Parole</i> (Silver Spring, MD: Center for Effective Public Policy, 2006)</li> </ul>
Correctional Programming	<ul style="list-style-type: none"> <li>• Steve Aos et al., <i>Evidence-Based Adult Corrections Programs: What Works and What Does Not</i> (Olympia, WA: Washington State Institute for Public Policy, 2006)</li> <li>• Alison Lawrence, <i>Cutting Corrections Costs: Earned Time Policies for State Prisoners</i> (Denver, CO: National Conference of State Legislatures)</li> </ul>
Correctional Staffing, Facilities, and Budgeting	<ul style="list-style-type: none"> <li>• Michael Leachman et al., <i>Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money</i> (Washington, DC: Center on Budget and Policy Priorities, 2012)</li> <li>• Camille Graham Camp, <i>Prison Staffing Analysis: A Training Manual</i> (Washington, DC: National Institute of Justice, 2008)</li> <li>• <i>The Continuing Fiscal Crisis in Corrections: Setting a New Course</i> (New York: Vera Institute of Justice, 2010)</li> <li>• Ram Subramanian and Rebecca Tublitz, <i>Realigning Justice Resources: A Review of Population and Spending Shifts in Prison and Community Corrections</i> (New York: Vera Institute of Justice, 2010)</li> </ul>
Courts	<ul style="list-style-type: none"> <li>• Roger Warren, <i>Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs</i> (Washington, DC: The Pew Charitable Trusts, 2009)</li> <li>• Shelli Rossman et al., <i>The Multi-Site Adult Drug Court Evaluation</i> (Washington, DC: Urban Institute Justice Policy Center, 2011)</li> </ul>
Evidence-Based Principles	<ul style="list-style-type: none"> <li>• <i>Evidence-Based Policymaking: A guide for effective government</i> (Washington, DC: Pew-MacArthur Results First Initiative, 2014)</li> <li>• Faye Taxman et al., <i>Tools of the Trade: A Guide to Incorporating Science into Practice</i> (Washington, DC: National Institute of Corrections)</li> <li>• <i>State Efforts in Sentencing and Corrections Reform</i> (Washington, DC: National Governors Association, 2011)</li> <li>• e-Consortium: George Mason University's Center for Evidence-Based Crime Policy</li> </ul>
Gubernatorial Authorities	<ul style="list-style-type: none"> <li>• Kathleen Ridolfi and Seth Gordon, <i>Gubernatorial Clemency Powers: Justice or Mercy?</i>, Criminal Justice, Vol. 24, Number 3 (Chicago, IL: American Bar Association, 2009)</li> <li>• <i>Management Brief: Tools and Techniques of Effective Governors</i> (Washington, DC: National Governors Association, 2014)</li> </ul>

Topic	Tools, Guides, and Other Resources
Inmate Health Care	<ul style="list-style-type: none"> <li>• <i>Medicaid and Financing Health Care for Individuals Involved in the Criminal Justice System</i> (New York: The Council of State Governments, 2013)</li> </ul>
Juvenile Justice	<ul style="list-style-type: none"> <li>• Mark Lipsey et al., <i>Improving the Effectiveness of Juvenile Justice</i> (Washington, DC: Center for Juvenile Justice Reform, Georgetown University, 2010)</li> <li>• <i>Strategies for Improving Outcomes for Justice-Involved Youth</i> (Washington, DC: National Governors Association, 2015)</li> <li>• <i>Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth</i> (Washington, DC: Justice Policy Institute, 2013)</li> <li>• Janet Wiig and John Tuell, <i>Guidebook for Juvenile Justice &amp; Child Welfare System Coordination and Integration: A Framework for Improved Outcomes (3<sup>rd</sup> Ed.)</i> (Boston, MA: Robert F. Kennedy National Resource Center for Juvenile Justice, 2013)</li> </ul>
Policing	<ul style="list-style-type: none"> <li>• Cynthia Lum, “Translating Police Research into Practice,” <i>Ideas in American Policing</i> (Washington, DC: Police Foundation, 2009)</li> <li>• Evidence-Based Policing Matrix, George Mason University’s Center for Evidence-Based Crime Policy</li> </ul>
Recidivism Reduction and Risk Assessment Tools	<ul style="list-style-type: none"> <li>• Fred Osher et al., <i>Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery</i> (New York: Council of State Governments, 2012)</li> <li>• Center for Advancing Correctional Excellence!: The CJ-TRAK Knowledge Translation Tool Suite, including (1) The RNR (Risk-Need-Responsivity) Simulation Tool; (2) SOARING2 – Skills for Offender Assessment and Responsibility in New Goals; and (3) The Evidence Mapping Tool (2013) See <a href="https://www.gmuace.org/tools/">https://www.gmuace.org/tools/</a></li> <li>• Recidivism Reduction Checklists for: Executive and Legislative Policymakers, State Corrections Administrators, and State Reentry Coordinators. The Council of State Governments. Available at <a href="https://csgjusticecenter.org/reentry/reentry-checklists/">https://csgjusticecenter.org/reentry/reentry-checklists/</a></li> <li>• Christopher Lowenkamp and Edward Latessa, <i>Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders</i> (Washington, DC: National Institute of Corrections Annual Issue, 2004)</li> </ul>

### What Are States Doing to Expand EBPs?

States have undertaken legislative and other actions to promote evidence-based decision-making.

For example, in **Washington**, the legislature authorized the Washington State Institute for Public Policy (WSIPP) and the University of Washington Evidence-Based Practice Institute to create an inventory of evidence-based and promising practices.<sup>203</sup> State agencies use that inventory to complete a baseline assessment to determine whether their current programs and services are evidence-

<sup>203</sup> *Washington State Institute for Public Policy and University of Washington, Updated Inventory of Evidence-based, Research-based, and Promising Practices* (Seattle, WA: Washington State Institute for Public Policy and University of Washington, 2014), 1, available at <http://www.wsipp.wa.gov/Reports/e2shb2536>

based.<sup>204</sup> In **Oregon**, the law requires that state agencies spend at least 75 percent of state monies that they receive for programming on programs that are evidence-based.<sup>205</sup>

In **Alabama**, the governor signed into law the Prison Reform Bill that required use of evidence-based policies and guidelines for community corrections and treatment programs. By executive order, the governor created the Alabama Criminal Justice Oversight and Implementation Council, representative of agency heads and the governor’s office, to oversee implementation of reforms and to ensure collaboration.<sup>206</sup>

<sup>204</sup> *Ibid.*

<sup>205</sup> ORS 182.525 (2013).

<sup>206</sup> Exec. Order No. 8, Ala. (June 25, 2015).

## USING COST-BENEFIT ANALYSIS TO INFORM POLICY DECISION MAKING

How do policymakers choose one evidence-based program over another? One approach they can use is cost-benefit analysis (CBA). With CBA, policymakers can assess the relative benefits of different options and determine which are likely to result in the best outcomes for lowest cost.<sup>207</sup> They can determine if existing programs are worth continued investment and make more informed decisions about which new interventions might be worth funding.

A strength of CBA is that it allows for comparison between two or more programs that can have different goals by turning all outcomes into monetary values.<sup>208</sup> For example, one policy or program might aim to reduce offender recidivism and another might be designed to increase employment rates among formerly incarcerated individuals. With CBA, policymakers could determine which program has the greater net social benefit with respect to cost savings. A limitation of CBA is that it depends on how well individual programs have been evaluated, the quality of the data used to estimate costs and benefits, and the inherent uncertainty of making such estimates. For example, analysts often have to estimate the value of subjective benefits, such as wellbeing, which might not be easily quantifiable.

Generally, CBA adheres to the following approach to determine relative benefits: systematic cataloguing of effects as benefits and costs, valuing in dollars, and then determining the net benefits of the policy or program relative to the status quo or alternative policy or program (net benefits equal benefits minus costs).<sup>209</sup>

The **Washington** State Institute of Public Policy (WSIPP) uses a three-step process that also considers the relative probability a given intervention will be successful. First, WSIPP systemically assesses all high-quality studies to identify those that achieve improvements in outcomes. Second, it determines how much it would cost Washington taxpayers to produce the results found in Step 1 and it calculates how much it would be worth (i.e., assigned a monetary value) to people in Washington State if it achieved the improved outcome. Third, WSIPP assesses the risk in those estimates to determine the odds that a

particular policy will at least break even.<sup>210</sup>

WSIPP has developed an inventory of all programs it has subjected to cost-benefit analysis. The inventory indicates when the literature was reviewed; the total benefits, including benefits to taxpayers and non-taxpayers; costs; and the chances that benefits will exceed costs.<sup>211</sup>

## USING EVALUATION TO GUIDE INTERVENTIONS AND ASSESS THEIR EFFECTIVENESS

During and after implementation of a policy or program, state executives can use methods of evaluation to assess whether the interventions are being implemented as intended and whether they are having, or have had, their intended effect. The benefits of integrating evaluation into policy decision making include the ability to: track performance and adjust course (sometimes called continuous improvement) in the event that preliminary outcomes indicate the program or initiative is off track (for example, through rapid cycle evaluation); demonstrate the effect and value of a policy intervention; account for resources invested; and better inform the development of future policies and initiatives.<sup>212</sup>

## ADOPTING MANAGEMENT APPROACHES THAT ARE DATA-DRIVEN TO IMPROVE PERFORMANCE

Adopting evidence-based practices, using cost-benefit analysis, and conducting ongoing assessments of implementation and outcomes are important to achieving programmatic and budgetary objectives. Achieving broader policy objectives depends on effective governance to provide the structure, vision, and purpose necessary to guide and support programmatic decision making. In the context of state government, governance can be understood as the establishment of policy priorities and the continuous monitoring of their implementation by governors and state executives.<sup>213</sup>

To promote good governance and accountability for outcomes, several states have adopted data-driven performance management systems. Those systems rely on frequent analysis of collected data and continuous communication between decision makers and service

207 “Cost-Benefit Analysis of Juvenile Justice Programs,” *Juvenile Justice Guide Book for Legislators*, National Conference of State Legislatures, 2014, p. 3, available at <http://www.ncsl.org/documents/cj/jguidebook-costbenefit.pdf>

208 National Conference of State Legislatures, *Cost-Benefit Analysis of Juvenile Justice Programs: Juvenile Justice Guide Book for Legislators*, (Denver, CO: National Conference of State Legislatures, 2014), 3.

209 Anthony Boardman et al., *Cost-Benefit Analysis: Concepts and Practice* (3<sup>rd</sup> Ed.) (Upper Saddle River, NJ: Pearson-Prentice Hall, 2006), 1.

210 [Wsipp.wa.gov](http://www.wsipp.wa.gov/BenefitCost?topicId=6), “Benefit-Cost Results,” Washington State Institute for Public Policy, <http://www.wsipp.wa.gov/BenefitCost?topicId=6> (accessed June 25, 2015).

211 Ibid.

212 Jeff McLeod and Kelly Murphy, *Reducing Prescription Drug Abuse: Lessons Learned from an NGA Policy Academy*, (Washington, DC: National Governors Association, February 2014), 7.

213 See *BusinessDictionary.com*, <http://www.businessdictionary.com/definition/governance.html>

*A strength of CBA is that it allows for comparison between two or more programs that can have different goals by turning all outcomes into monetary values.*

providers.<sup>214</sup> What gets measured and reported reflects the values and priorities of decision makers.<sup>215</sup>

**Maryland's** Office of Performance Improvement (OPI) aims to improve efficiency of Maryland agencies through transparency and accountability.<sup>216</sup> State agencies, including the department of corrections, regularly submit data to OPI, which tracks their performance in meeting predetermined goals. On a regular basis, representatives of the governor's office, the lieutenant governor, and the director of OPI meet to discuss results and identify action items.

**Washington's** Results Washington is designed to improve individual agency performance by using the latest technology to routinely gather, review, and publish performance data. Those data are updated on a dashboard to allow citizens to see how well state government is delivering services and meeting performance goals. One of the goals of Results Washington is to decrease offender recidivism from 27.8 percent to 25 percent by 2020.<sup>217</sup>

## INCREASING INFORMATION SHARING ACROSS AGENCIES AND BETWEEN STAKEHOLDERS

Individuals involved in the justice system often touch many different state agencies, such as juvenile justice, corrections, child welfare, education, and health and human services. Those agencies, however, may not effectively communicate with each other because systems are siloed or fragmented. The justice system in particular may be fragmented because of its intergovernmental, multidisciplinary nature and the separation of powers.<sup>218</sup> Consequently, services can work at cross-purposes or be duplicative, inadequate, or ineffective.<sup>219</sup>

By sharing data across systems, states can better serve citizens' needs and ensure they are appropriately matched with effective interventions. Some of the challenges states will need to address in order to improve information sharing include the following:

- Policies and practices that do not support interagency, cross-jurisdictional information sharing;<sup>220</sup>
- Interoperability challenges between systems, making it difficult or impossible for different technologies to communicate, exchange data, and use information;
- A lack of privacy policies to govern justice information-sharing systems and ensure that personal information is protected and only accessed by authorized users at appropriate times;<sup>221</sup>
- The increasing volume of data collected which make it difficult to sift through and manage;<sup>222</sup> and
- Funding to support information sharing systems.

To support broad-scale exchanges of justice and public safety information, the U.S. Department of Justice created

214 Devin Driscoll et al., *Capstone Project: Measuring for Success: Performance Management and Human Services*, (University of Minnesota: Hubert H. Humphrey Institute of Public Affairs, 2010), 9.

215 Ibid.

216 Gopi.maryland.gov, "Governor's Office of Performance Improvement," Maryland.Gov, <http://gopi.maryland.gov/about-gopi/> (accessed September 2015).

217 Data.results.wa.gov, "Safe People: Public" Results Washington, <https://data.results.wa.gov/en/stat/goals/qdwb-qdcy/w6ku-nvcq/8bjk-2kyf> (accessed September 2015).

218 Thomas MacLellan, *Improving Public Safety through Justice Information Sharing* (Washington, DC: National Governors Association, 2002), 1.

219 Jeffrey McLeod, *Strategies for Improving Outcomes for Justice-Involved Youth* (Washington, DC: National Governors Association, 2015), 4-5.

220 Nga.org, "Justice Information Sharing" National Governors Association, <http://www.nga.org/cms/home/nga-center-for-best-practices/center-divisions/center-issues/page-hsps-issues/col2-content/main-content-list/justice-information-sharing.html> (accessed October 18, 2015).

221 Anne-Elizabeth Johnson, *A System of Trust: Privacy Policies for Justice Information Sharing* (Washington, DC: National Governors Association, 2012), 1.

222 Ncjp.org, "Justice Information Sharing," The NJCA Center for Justice Planning, <http://www.ncjp.org/saas/jis> (accessed September 10, 2015).

the Global Justice Information Sharing Initiative (Global), a federal advisory committee charged with advising the U.S. Attorney General on justice information-sharing and integration initiatives.<sup>223</sup> Global promotes standards-based electronic information exchange to provide the justice community with timely, accurate, complete, and accessible information in a secure and trusted environment.<sup>224</sup>

Global has developed national standards and tools for justice information sharing that state, local, and federal government entities can adopt.<sup>225</sup> (See Table 4.3 below: “Global Standards for Justice Information Sharing.”)

### What criminal justice and public safety data repositories are available?

States employ various repositories and information exchange systems to share and provide access to criminal justice information. From law enforcement incident records to incarceration records and criminal justice indicators, there is a wealth of information available to states and law enforcement officials.<sup>226</sup> Table 4.4 summarizes several of the most widely used repositories.

223 It.ojp.gov, “Global Justice Information Sharing Initiative” US. Department of Justice: Justice Information Sharing, <https://www.it.ojp.gov/global> (accessed October 18, 2015).

224 Ibid.

225 Ncjp.org, “Justice Information Sharing,” The NJCA Center for Justice Planning, <http://www.ncjp.org/saas/jis> (accessed September 10, 2015).

226 Txdps.state.tx.us, “Texas Data Exchange,” Texas Department of Public Safety, [https://www.txdps.state.tx.us/administration/crime\\_records/pages/texasdataexchange.htm](https://www.txdps.state.tx.us/administration/crime_records/pages/texasdataexchange.htm) (accessed September 10, 2015).

**TABLE 4.3: Global Standards for Justice Information Sharing**

Standards	Description
National Information Exchange Model (NIEM)	NIEM has standardized the format for exchanging data.
Global Reference Architecture (GRA)	GRA has standardized the configuration of the technical architecture for information exchange services.
Global Federated Identity and Privilege Management (GFIPM)	GFIPM has set standards for resolving credentialing and access restrictions.
Global Information Sharing Toolkit (GIST)	GIST includes a standardized set of policies and practices developed to ensure privacy safeguards and information quality.

**TABLE 4.4: Criminal Justice and Public Safety Data Repositories**

Data Repositories	
Combined DNA Index System (CODIS)	CODIS, the FBI’s program of support and software for criminal justice DNA databases, is accessible by states. <sup>227</sup> The National DNA Index System, one aspect of CODIS, houses the DNA profiles contributed by 50 state forensic laboratories. <sup>228</sup>
The Integrated Automated Fingerprint Identification System (IAFIS)	IAFIS is a national fingerprint and criminal history database. IAFIS provides automated fingerprint search capabilities, latent search capability, electronic image storage, and electronic exchange of fingerprints and responses. <sup>229</sup>
Next Generation Identification (NGI) system	The NGI system was designed to improve on and eventually replace the Integrated Automated Fingerprint Identification System. <sup>230</sup> The FBI’s Criminal Justice Information Services (CJIS) Division uses guidance from the user community to advance biometric identification services for Next Generation Identification. <sup>231</sup>
National Missing and Unidentified Persons System (NamUs)	NamUs is a national centralized repository and resource center for missing persons and unidentified decedent records. <sup>232</sup> The free online system that can be searched by medical examiners, coroners, law enforcement officials and the general public to address missing persons and relevant cases. <sup>233</sup>
National Motor Vehicle Title Information System (NMVTIS)	NMVTIS is a federal database containing automobile information from states, insurance carriers, and other institutions. <sup>234</sup> The system is designed to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and consumers from fraud, reduce the use of stolen vehicles for illicit purposes such as funding of criminal enterprises, and provide consumers protection from unsafe vehicles. <sup>235</sup>
N-DEx	The National Data Exchange provides criminal justice agencies with a mechanism for sharing, searching, linking, and analyzing information across jurisdictional boundaries. <sup>236</sup> Building on state contributions and its own federal agency records, the FBI has created a free and secure repository of people, places, and things to link investigations for states and localities. <sup>237</sup>

227 Fbi.gov, “Frequently Asked Questions on the CODIS Program and the National DNA Index System,” Federal Bureau of Investigation, <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet> (accessed September 10, 2015).

228 Ibid.

229 Ibid.

230 Fbi.gov, “Next Generation Identification,” Federal Bureau of Investigation, [https://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/ngi](https://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ngi) (accessed September 10, 2015).

231 Ibid.

232 Namus.gov, “National Missing and Unidentified Persons System,” Office of Justice Programs, <http://www.namus.gov/index.htm> (accessed September 10, 2015).

233 Ibid.

234 Add123.com, “National Vehicle History Reports,” The National Motor Vehicle Title Information System, <http://www.add123.com/autodata/nmvtis> (accessed September 10, 2015).

235 Vehiclehistory.gov, “For Consumers,” National Motor Vehicle Title Information System, [http://www.vehiclehistory.gov/nmvtis\\_consumers.html](http://www.vehiclehistory.gov/nmvtis_consumers.html) (accessed September 10, 2015).

236 Fbi.gov, “N-DEx: The Leader in National Information Sharing,” Federal Bureau of Investigation, <https://www.fbi.gov/about-us/cjis/n-dex> (accessed September 10, 2015)

237 Ibid.



