CHAPTER

CRIMINAL JUSTICE POLICY
The war on drugs began in 1971 when President Nixon declared the abuse of illegal drugs as "public enemy number one." While the trend of decriminalization experienced a brief revival under President Carter in the late 1970s, the tides shifted back to drugs as a criminal justice issue during President Reagan's administration. The campaign to "just say no" led to stricter legislation and enhanced penalties. Throughout the 1980s, the public's fears about drugs grew exponentially. In October 1986, Reagan signed the Anti–Drug Abuse Act. In addition to allocating $1.7 billion to expand prison facilities and provide drug education and treatment, the act established mandatory minimum sentences for the possession of crack and powder cocaine. In crafting these regulations, a belief was perpetuated that crack cocaine was more dangerous than powder cocaine, which, in turn, led to differences in sentencing for the two substances. While the possession of 500 grams of powder cocaine led to a mandatory five-year incarceration sentence, the same five-year sentence was given for the possession of a mere 5 grams of crack. The 100 to 1 ratio is largely responsible not only for the rapid growth in the U.S. prison population throughout the end of the 20th century but also for contributing to significant racial disparities in the arrest, prosecution, and incarceration of men and women of color.

With the signing of the Fair Sentencing Act in 2010, the sentencing disparity for violations involving crack cocaine and powder cocaine was reduced, but not eliminated. Some argue that since these are just different forms of the same drug there should be no differences in sentencing. Do you think a person charged with possession of crack cocaine should receive a longer sentence than someone in possession of powder cocaine?
Despite significant amounts of research on these disparate sentencing practices, it wasn’t until 2010 that drug sentencing laws were amended. The Fair Sentencing Act of 2010 reduced the sentencing ratio between crack and powder cocaine to an 18:1 ratio. Under the new law, a conviction for the possession of 28 grams of crack or 280 grams of powder cocaine triggers a five-year mandatory sentence. However, this change in policy was not retroactive, allowing those who had previously been sentenced under such draconian laws to remain incarcerated. To date, district and appellate courts have upheld this declaration. While the Fair Sentencing Act of 2010 applies only to federal drug crimes, California recently passed a Fair Sentencing Act of its own (SB 1010). Prior to the passage of this new law, possession of crack cocaine led to a mandatory three-year sentence, and nearly every case involved a person of color. Under the new law, the possession of 28.5 grams of crack or powder cocaine carries the same sentence of two years in prison.

In this chapter, you will learn about how policy can shape—and is shaped by—the criminal justice system. The chapter begins with a discussion about the need for and function of criminal justice policies. The chapter then looks at how policies are developed and the role of politics in this process. The chapter concludes with two Current Controversy debates related to criminal justice policies. The first, by David Bierie and Sarah Craun, looks at whether sex offender registries are an effective tool for keeping the public safe. The second, by Shelly Arsneault, questions whether street-level bureaucracy is a good practice in criminal justice.

WHAT IS POLICY?

Policy is used in a variety of ways by the criminal justice system. Policies provide guidance to criminal justice officials. Policies can be particularly useful in cases where there are high levels of discretion. For example, sentencing guidelines have been used in a number of different states as well as by the federal government. These guidelines provide judges with a range that they can use to help make sentencing decisions for offenders. Policies are also used to facilitate and regulate action. In this sense, policies serve as the rules that workers in the criminal justice system use to do their jobs. For example, many jurisdictions use mandatory arrest policies in cases of intimate partner violence. Here, officers are required to make an arrest in these cases if called to a domestic dispute; an officer’s discretion is significantly reduced, and it is policy that guides her or his action on the job.

WHY DO WE NEED CRIMINAL JUSTICE POLICIES?

Changes in criminal justice policy generally occur in response to a need or issue that faces the criminal justice system and society as a whole. Many of these
needs are rooted in discussions about the levels of crime in society. Here, policy is seen as a way to deal with the presence of crime and the handling of offenders. The federal government has been an active player in the creation of crime control policies. Given the high level of policy implementation related to criminal justice issues, one might be led to believe that crime rates have spiraled out of control. After all, we have more police officers on the streets, our prisons are overcrowded, and we spend billions of dollars nationwide supporting the enterprise of criminal justice. In 2011, the Department of Justice’s budget included $27.1 billion in discretionary funding.7

**HOW DO CRIMINAL JUSTICE POLICIES DEVELOP?**

While there have been a number of different theories and discussions about the policy development process, we can generally organize this process into six stages: (1) problem identification, (2) policy demands, (3) agenda formation, (4) policy adoption, (5) policy implementation, and (6) policy evaluation. Figure 6.1 showcases how these six stages work together in the development of policy.

**Planning a Policy**

Before a policy can be developed, there must be an issue at hand. Issues can be identified by concerned citizens, the media, and advocacy groups, as well as politicians.
Issues in criminal justice might include rising crime rates, the need for drug and alcohol counseling in prisons, or concerns about the residency requirements for convicted sex offenders in the community. Once an issue is identified, there can be significant debate about the demands of the policy. What is the goal or objective of the policy? Is it to increase punishments? Is it to increase community safety? It is during this stage that the intent of the policy is put forward. Once this is decided, we move into the agenda formation process. This is perhaps one of the most politicized stages in policy development as it involves a variety of different voices—from government officials to special interest groups and individuals who will ultimately be affected by the policy—all of whom want to be heard.

Adopting and Implementing a Policy

The next stage involves the adoption of the policy. Depending on the nature of the policy, this could involve the passage of new laws or the signing of executive orders. Upon completion of this stage, the cycle moves to policy implementation. Implementation is all about spending money—from hiring more officers to increasing police presence in particular regions to allocating funds to supervise offenders in the community. This can present significant challenges—perhaps the law as it was written was too vague, or there isn’t enough funding to effectively implement the policy, or there may be challenges to the policy that may stall or halt its implementation.

Evaluating a Policy

Finally, the evaluation stage looks at the efficacy of the policy. Did the policy accomplish what it set out to do? What impact does the policy have? Policy evaluation can be divided into two general categories: process evaluation and outcome evaluation. Process evaluation involves looking at the progression of the policy development experience. Are there areas where these methods could be improved or streamlined? If the implementation of the policy differs from the original intent (positively or negatively), how might this be resolved? In contrast, an outcome evaluation looks at the changes that occur as a result of the policy. For example, does the implementation of early intervention programming in elementary school reduce the number of youth who are adjudicated delinquent in juvenile court? It is important that both process and outcome evaluations are conducted in order to identify whether the policy produced a change (outcome) and why the change did or did not occur (process). Evaluation is perhaps the most important stage of policy development but one that many suggest is overlooked and underemphasized.

Who Develops Criminal Justice Policy?

When it comes to developing criminal justice policy, there are several key players involved. Political figures, such as a congressional member of a state government or a member of the U.S. Congress, may sponsor a bill that affects the criminal justice system. Following a period of debate and discussion about the proposed policy, the bill is voted on by the members of the governing body and is then signed into law by either the state’s governor or the president of the United States (depending on whether it is a state or federal policy that is being enacted). For many states, this is the primary way that new policies are developed and implemented.
Direct Democracy

Some states have an alternative method of creating new laws and policies. Under the practice of direct democracy, citizens in 17 states are empowered to make law through an initiative process. The initiative process begins with a petition for a new law. If a minimum number of signatures from registered voters is obtained, the measure is placed on the ballot for the citizenry to vote on. In states such as California, if a measure receives a majority of the votes, it is enacted into law. What makes the process of direct democracy unique is that it completely bypasses the traditional structures of lawmaking—that is, it does not require the support of elected officials in order to pass new laws. In addition, a policy enacted through the process of direct democracy does not necessarily endure the same rigorous process of vetting the budget in terms of implementing such a policy. Many of California’s most famous criminal justice policies were created through the citizen initiative process, including the habitual-offender law Three Strikes (Proposition 184, 1994, later amended through Proposition 36 in 2012); Jessica’s Law (Proposition 83, 2006), which created new regulations for sexual offenders; and the diversion of low-level drug offenders from prison to drug treatment (Proposition 36, 2000).

The Goals of Criminal Justice Policies

In many cases, criminal justice policies are implemented to change the way in which offenders are processed by the criminal justice system. A review of recent history demonstrates that many of these policies are designed to be tougher on crime by increasing the penalties for various crimes and restricting the movement of offenders in the community. Despite the continued push toward retributive punishments, we do find examples of policies that seek to change the definitions of criminal behavior and the responses by police agencies to crime. In recent years, many states have attempted either to legalize the use of marijuana for medical purposes or to decriminalize marijuana use in general. For example, in 2010, California citizens introduced an initiative to legalize marijuana. While California’s measure ultimately failed at the ballot box, other states have been successful in changing their laws. In 2012, voters legalized the use of marijuana in both Washington and Colorado. Washington State voters approved the possession of up to an ounce of marijuana for individuals over the age of 21. While the sale of marijuana remains illegal, the state is making plans to set up a system of state-approved growers (similar to having state-licensed liquor stores) within the year, a plan that could bring in hundreds of millions of dollars in revenue to the state. A similar law passed in Colorado with 55% of voters in support. In 2014, voters legalized marijuana in Alaska, Oregon, and Washington, DC.

Criminal justice policies around the use of marijuana have evolved significantly in recent years as many states move to decriminalize or legalize the practice. How has this policy change come about?
Cost-Saving Measures

Attempts such as these have highlighted the fiscal concerns of states, as many are struggling to maintain the growing incarcerated populations stemming from the implementation of the tough-on-crime initiatives that have dominated the criminal justice landscape in recent times. However, the legalization of marijuana is not the only topic in this debate about dollars and cents. For example, the Savings, Accountability, and Full Enforcement (SAFE) for California Act (2012) highlighted the fiscal concerns of maintaining the death penalty. While public-polling data indicated that many California voters were in support of this initiative, it ultimately failed, with only 48% of the votes in favor of the measure. In Maryland, legislators sought to introduce a graduated-sanctions program for technical parole violators. Rather than return these offenders back to prison, this program allowed for nonincarceration forms of punishment in cases such as missing a meeting with a parole officer or failing to complete community service hours. This change in policy would have freed up some of the one billion dollars that the state spends on its correctional system. Due to the high start-up costs of the program (versus focusing on its long-term savings), its implementation was scaled back to only three counties, instead of a statewide effort.

Politics and Criminal Justice Policy

When we think about politics, we can generally divide beliefs into two separate camps: liberals and conservatives. Liberal politics tend to focus on the importance of due process, individual freedoms, and constitutional rights. Liberals also look to the government to help create equality in society and to solve problems. Socially, liberals believe that the government should help support those individuals who may suffer from various disadvantages in society. In terms of crime-related issues, liberals believe that society should fight against the racist, gendered, and classist disparities that exist in the system. When it comes to the punishment of offenders, liberals tend to lean toward a more rehabilitative focus.

In contrast, conservative politics lean toward less intervention by the government and focus on traditional values. "Conservatism also refers to a belief that existing economic and political inequalities are justified and that the existing order is about as close as is practically attainable to an ideal order." On crime, conservatives see the actions of criminals as part of a rational-choice process whereby the offender makes a cognitive decision to participate in criminal activity. Conservatives follow more of a law-and-order philosophy and generally cite retributive values, or an “eye for an eye,” in their perspective on punishing offenders.

Given these different philosophical foundations, it is not surprising that liberals and conservatives think differently about criminal justice policies. One example is Arizona’s immigration law (called the Support Our Law Enforcement and Safe Neighborhoods Act, or SB 1070). Since the law was adopted in 2010, it has been debated by politicians and the public and challenged in the legal arena. One of the more controversial issues within the law calls for police officers to determine whether an individual is a legal U.S. citizen during a “lawful stop, detention or arrest” or any other form of “lawful contact” where there is reasonable suspicion that the person is an illegal immigrant. Supporters of SB 1070 (most of whom were conservative policymakers) argued that the federal government has failed to adequately police illegal immigration. For these conservatives, SB 1070 served to protect their communities from rising crime rates and other social problems (such as strains on educational resources and the state welfare system) that they perceived were directly related to illegal immigrants. However, opponents of the law (who generally identify as more liberal on the political spectrum) argued that Arizona’s law
SPOTLIGHT

Stand-Your-Ground Policy

Stand-your-ground laws exist in 24 states nationwide. Such laws are also referred to as the *castle doctrine*. These policies are based on the common-law doctrine that individuals have the right to protect themselves in their homes if they are under attack. Florida’s use of the stand-your-ground policy has led to significant attention by the media and public alike.

Florida’s stand-your-ground law was the first such law in the nation that reflected an expansion of the castle doctrine. Passed in 2005 and signed into law by Governor Jeb Bush, the stand-your-ground law only requires that the police and courts consider three basic criteria: (1) Was the individual entitled to be present, (2) was the individual engaged in a law-abiding activity, and (3) could the individual reasonably believe that he or she was at risk for significant bodily harm or injury? Recently, there have been several controversial perceptions of the law related to some high-profile cases in which the offender alleged self-defense.

A recent high-profile critique of the stand-your-ground law involved the case of Trayvon Martin and George Zimmerman. Martin was walking in his gated neighborhood community following a trip to a local convenience store. Zimmerman, head of the neighborhood watch, contacted the police to report a suspicious individual (Martin) walking in the neighborhood. Zimmerman followed Martin and confronted him. Zimmerman alleged that Martin attacked him. In response, Zimmerman pulled out a gun and shot Martin, who died from his injuries. While much was made of the stand-your-ground law, ultimately, Zimmerman did not use this option in his case. In July 2013, Zimmerman was acquitted of second-degree murder, admitting that he shot Martin in self-defense. While Zimmerman did not expressly rely on the pretrial option of the stand-your-ground law, the public perception is that the law was used to acquit Zimmerman.

A case where stand your ground was used was that of Marissa Alexander. During a confrontation with her husband in August 2010, Alexander fired a bullet into the wall. She testified that she felt threatened. Luckily, no one was hurt in the incident. Even though Alexander used Florida’s stand-your-ground law, the jury convicted her of aggravated assault with a deadly weapon, and she was sentenced to 20 years in prison, as her actions triggered a mandatory minimum gun law. Her case was overturned on appeal, and in January 2015, she pled guilty to aggravated assault. She was sentenced to three years and received credit for the time she had already served.

While several groups have called for the repeal of the stand-your-ground law in Florida, the state legislators are working on reforms to the law. One proposal currently under consideration would shift the burden of proof for the pretrial hearing to the prosecutor. The proposed changes...
also articulate that the stand-your-ground
law “is not intended to encourage vigilantism
or acts of revenge, authorize the initiation of
a confrontation as a pretext to respond with
deadly force, or negate a duty to retreat for
persons engaged in unlawful mutual combat.”

While high-profile cases have drawn a dispro-
portionate amount of attention (and in many
cases, attention based on incorrect facts about
the law), it remains to be seen what changes
the legislature will make to the law.

CRITICAL THINKING QUESTIONS
1. What challenges exist with stand-your-
ground laws?
2. Given these examples, what
recommendations for reform should states
consider in relation to these policies?

As a result of growing public concerns about crime, it seems that virtually every election
discussion on criminal issues results in candidates presenting a tough-on-crime stance in their
attempts to garner public support.
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As the leader of our nation’s government structure, the president has surprisingly little power when it comes to making policy. While each president enters the office with ideas for reforming policies such as health care, education, and social welfare, success in making these reforms is dependent on the actions of the House and the Senate. While it is up to the president to sign these acts into law, even this practice can be overruled by a two-thirds vote. Here, presidents have no direct ability to pass legislation; rather, their goal is to persuade members of Congress to introduce items that are consistent with their interests. (At the state level, similar processes occur between the governor and state senators and representatives.)

**Congress and Criminal Justice Policies**

Given that presidents have made criminal justice issues a part of their policy agenda for the past five decades, it begs the question of how much influence various presidents have had over Congress’s ability to introduce legislation on crime-related issues. Between 1946 and 1996, 3,373 congressional hearings were held on crime-related issues, such as drug abuse and drug trafficking, juvenile crime, white-collar crime, and court administration. In comparing these data with the number of presidential speeches and conferences on crime-related issues, we learn that the president has little influence over the actions of Congress when it comes to crime policy. In fact, research demonstrates that the only variables that appeared to influence crime policy discussions in Congress were the crime rate and whether it was an election year. Specifically, as the crime rate increased, the number of congressional hearings on crime-related issues increased. In addition, the number of congressional hearings on crime drops significantly during an election year. While presidential politics don’t appear to impact congressional activity during that same year, it does appear to have an influence on the actions of Congress in the following year. This finding shows that it can take time to raise awareness of an issue within Congress and to effect behavioral changes.21

**Public Perception and Criminal Justice Policies**

At the same time, it’s important to remember that criminal justice policies change over time. In some cases, this reflects changes in our government structure and the positions of those who hold political office. You’ll learn more about the juvenile justice system in Chapter 13, but the laws surrounding juvenile crime are a great example.
Drug Policy in the Netherlands

While popular culture presents the image that drug use in the Netherlands is widely accepted, this is not an accurate reflection of drug policies throughout the country. Drugs are prohibited in the Netherlands. However, the Netherlands approaches drug use as a public health issue, accepts that drugs are an inevitable feature of a modern society, and utilizes a harm reduction strategy.

Current drug policies in the Netherlands organize drugs into two separate categories. In the first category are substances that are viewed as harmful to individuals, such as heroin and cocaine. The second category includes soft drugs, such as marijuana and hashish. The division of drugs into these two separate categories allows the Dutch to approach the enforcement of hard drugs differently than soft drugs. Despite claims that marijuana is a gateway drug to more significant drug use, there is little research to substantiate this claim. While there is no punishment for the simple possession of marijuana, possession of 15 to 300 grams of crack cocaine yields a six- to 18-month sentence. Compare this with mandatory minimum laws in the United States, where the possession of one ounce (28 grams) of crack will trigger a mandatory sentence of five years.

The Dutch also rely on a harm reduction model to deal with cases of addiction. Harm reduction policies argue that the best way to address drug use is to minimize the risks on both a social and an individual level. In the Netherlands, drug treatment programs are widely available, and the costs are covered by the nationalized health care system. The Dutch were also the first to implement needle exchange programs for IV drug users. Such policies demonstrate a concern with reducing the personal harms (such as HIV transmission as a result of IV drug use) related to drug addiction.

While policies in the United States have suggested that drug use can lead to criminal activity, crime rates in the Netherlands are significantly lower, as is the presence of violence related to drugs. Indeed, the crime rates are so low in the Netherlands that Dutch officials recently announced the closure of eight prisons throughout the country due to low population levels. Evidence also indicates that there are fewer users of such substances in the Netherlands than there are in regions where stricter drug policies exist. For example, research tells us that 41% of...
people in the United States have used marijuana in their lifetime while only 23% of people in the Netherlands have. Similar results are demonstrated with hard drugs, where 14.7% of Americans have used cocaine compared with 3.4% of the Dutch.5

The majority of Americans surveyed thought that when it comes to drug policy, the government should focus more on providing treatment than on prosecuting drug users and that courts should move away from mandatory minimum sentences for nonviolent drug crimes (Figure 6.2).

CRITICAL THINKING QUESTIONS

1. Given the challenges with the war on drugs in the United States, are there things we can learn from the policies in use under Dutch law? If so, what?
2. How could a harm reduction model, coupled with the decriminalization or legalization of soft drugs such as marijuana, provide opportunities for us to think differently about our drug laws in America?

of how our beliefs about offenders have evolved throughout history. For example, the juvenile court was founded on the notion that youth should be treated differently from adult offenders. Yet the rising crime rates and the involvement of youth in these activities led many policymakers to shift their thinking about how children who engage in at-risk and criminal behaviors should be treated. Indeed, the tough-on-crime practices that were common within the criminal justice system also influenced the juvenile court. Whereas youth were once seen as individuals capable of reform and change, laws during the late 20th and early 21st centuries began to view juveniles as similar to their adult counterparts, particularly in relation to violent crime. As a result, many young teen offenders saw themselves sentenced to significant prison terms (or even life sentences) as early as 14 years old. In 2012, the U.S. Supreme Court held that the use of mandatory juvenile life-without-the-possibility-of-parole sentences for certain crime categories was unconstitutional. At the time, this ruling only applied to future cases and left the current population of juvenile lifers with little recourse. In 2016, the U.S. Supreme Court held in Montgomery v. Louisiana that their decision in Miller v. Alabama (2012) was retroactive. This means that juveniles who received a mandatory sentence of life without the possibility of parole can now return to the courts to have a hearing on whether they should be sentenced to a term with the opportunity of parole.
RESEARCH AND CRIMINAL JUSTICE POLICIES

When it comes to responding to crime, how do we know what works? Alas, policymakers do not always know what the cutting-edge research says about the types of programs and strategies that are effective at reducing crime rates. While there are certainly examples that exist that reference research when creating or changing policy, these cases are often the exception rather than the rule. As a result, scholars are often left looking at whether a policy is effective after it has been implemented.

One of the initial efforts to share research findings on effective crime control strategies and prevention/intervention programming came with the passage of the Crime Control Act of 1973. Within this legislation, the government established the National Institute of Law Enforcement and Criminal Justice, which served as a clearinghouse for criminal justice information. Today, there are many federal agencies (such as the Office of Justice Programs, Community Oriented Policing Services, and the Office on Violence Against Women, to name a few) as well as private foundations and organizations (such as the Sentencing Project and the Police Foundation) that fund, conduct, and disseminate research on criminal justice policies and practices.

At the beginning of this chapter, you learned about the role of process and outcome evaluation with criminal justice policies. It is important to remember that the results of evaluations can vary across time and space. For example, what if a program evaluation demonstrates that a particular policy is effective at reducing crime? This is great news. But what if the next time someone implements the policy, they do so in a slightly different manner? Or in a community with different structures or needs? Are we to assume that if the program fails, it is a bad program? Consistency is important when it comes to replicating successful efforts in a new environment. This is called program fidelity. Program fidelity involves seven different factors. Table 6.1 highlights these factors and how they can impact the results when a program or policy is implemented.

| Table 6.1 Program Fidelity Factors
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Source: Adapted from the California Healthy Kids Resource Center. http://www.californiaheathykids.org/fidelity
CAREERS IN CRIMINAL JUSTICE

So You Want to Be a Policy Advocate?

There are a variety of career opportunities for someone interested in criminal justice policy. Although some of these jobs are found within governmental agencies and offices, others involve work with non-profit organizations.

Policy work within the government occurs at every stage and within a variety of different settings. At the local level, policy is made by a number of individuals and involves the criminal justice system in different ways. For example, as a chief of police you would be involved in setting policy and managing the organization. Your day-to-day activities might include meeting with the mayor or city manager, working with representatives from the police union, or talking with your managerial staff about issues facing your city and how the police are involved in responding to these concerns. Another example of policy work at the local level is the city council. City councils (also referred to as the board of supervisors or municipal legislature in some regions) are composed of several elected individuals who work together to propose policies and laws to help govern the city. In some cases, decisions are made in response to a public reaction. For example, the Greensboro, North Carolina, city council voted in May 2016 to release body camera footage of a shooting death of one of its residents after family members argued that the shooting was unjustified. In some cases, the decisions made by these councils are financial. In 2011, Topeka, Kansas, debated whether to decriminalize domestic violence due to a lack of funds to handle such cases.

Government-based policy work also occurs at the state and federal levels. As you’ve learned throughout this chapter, members of each state legislature and the U.S. Congress are elected officials who are responsible for the drafting and passage of new legislation. The requirements to serve as a member of the U.S. Congress are stated in Article I of the Constitution, which notes that senators must be at least 30 years old, citizens of the United States for the past nine years, and live in the state that they represent at the time of their election. To serve as a member of the House of Representatives you must be 25 years old and have been a citizen of the United States for the past seven years. Members of the House and Senate serve on a variety of different committees, and several of these groups focus on criminal justice issues. For example, the Senate Caucus on International Narcotics Control focuses on issues related to domestic and international drug trafficking. Committees hold hearings, issue reports, and draft legislation related to their areas of interest. However, there are other opportunities to work as a policy advocate without serving as an elected official. For example, each of these officials has staff members who work on research related to various policy issues. They may attend committee hearings and help members of Congress prepare items for discussion and debate.

There are also several non-government-based opportunities to engage in policy work. Perhaps you are interested in working for a nonprofit organization such as The Sentencing Project, the Police Foundation, or the Death Penalty Information Center. Each of these groups is involved in research and advocacy around criminal justice issues. Nonprofit organizations are also involved in local-level activities, such as domestic violence shelters and rape crisis organizations. These agencies work with local and state officials to provide training for the police and courts, as well as advocate for city and state funding to help support their organizations. In addition, research-based organizations focus on policy development and advocacy. Here, you might be involved in evaluating a local program designed to prevent at-risk youth from joining gangs, or in assessing whether police use-of-force tactics are effective in reducing injuries to officers in the line of duty. As a research policy analyst, you might work for organizations such as the RAND Corporation or the Urban Institute. These types of organizations often use their research findings to influence policymakers at the regional and national level.

The requirements for policy analyst positions vary dramatically. Some require sophisticated analytical skills, whereas others require strong interpersonal and networking skills. Some of these positions would be available to students with a bachelor’s degree, while others would require advanced education and experiences in the field. Regardless of the type of position, people who work in these fields have a strong desire to engage in public service and advocacy.
As you review the Current Controversies at the end of this chapter, as well as policies that are presented throughout this text, ask yourself, What does the research show about whether these policies are effective at reducing crime rates, preventing future crimes, and reforming offenders? Or, as is the case in some examples, has the policy made matters worse?

CONCLUSION

From elected officials who utilize criminal justice issues as key components of their political platform to citizens who issue demands for safer communities and increased punishments for offenders, discussions about criminal justice policy invoke a variety of emotions across the ranks. Each of these policies has relied on political influence to pass and implement these practices. In many cases, the passage of such policies is intended to increase the safety of our communities. But is this actually the case? Or do these policies just make people think that they are protected? While politicians aim to reflect the values and ideals of their constituency, agents of the media can inflame the “threats” that criminal activity can represent. Is it possible that such threats lead to the retention of outdated policies and practices? Consider these questions as you read the following debates: Does the presence of these policies lead to reductions in crime? Is there the potential for unintended consequences as a result of such laws?

CURRENT CONTROVERSY 6.1

Are Laws Requiring Sex Offender Registries Effective?

—David Bierie and Sarah Craun—

INTRODUCTION

Sex offender registries first appeared in the United States in California during the mid-1940s. Registry laws provide for the creation of a database for law enforcement that contains personal identifiers, addresses, and criminal histories for convicted sex offenders. They have expanded significantly since that time and transitioned into national policy in 1994 via the Jacob Wetterling Act and Megan’s Law in 1996. The most recent iteration of national policy was created in the Adam Walsh Child Protection and Safety Act of 2006.23

The fundamental premise of the registry is that people who have been convicted of a sex crime in the past are at a higher-than-average risk of committing a new sexual crime. Sex offender registries generally comprise two components: (1) the creation of a database for law enforcement that contains personal identifiers, addresses, and criminal history for convicted sex offenders (registration) and (2) the public display of portions of that information for some offenders (community notification) through a public sex offender registry website. There are numerous goals of the sex offender registry. However, two are particularly important from a law enforcement perspective: to prevent sexual crimes and to help law enforcement in responding to sexual crimes.

The first goal of registries is to prevent sexual crimes—primarily through enhancing guardianship of potential victims. In signing the Adam Walsh Act, for example, President Bush argued that a key intent was to make sure “parents have the information they need to protect their children
from sex offenders that might be in their neighborhoods.\textsuperscript{24} Research suggests that nearly 80% of sexual assaults are committed by friends, acquaintances, neighbors, or people otherwise known to the victim.\textsuperscript{25} In addition, a large portion of sexual predators target victims living within a 15-minute walk of a given crime location.\textsuperscript{26} The hope, then, is that identifying known sex offenders in one’s neighborhood allows citizens to better protect themselves and their children through limiting contact with those known offenders.

The second goal of registries is to assist law enforcement in solving a specific type of sexual crime (those committed by strangers). If a child is abducted, for example, police might want to check whether the suspect’s description matches any registered sex offenders who live or work in the area. This might lead to a higher clearance rate and, more importantly, a faster recovery of victims. The latter benefit (speed) is critical to law enforcement because the harm an abducted child experiences grows quickly as time passes. Research shows 75\% of kidnapped children who are murdered are killed within the first three hours of their abduction.\textsuperscript{27} Thus, “law enforcement officials realize that the faster the child is found, the greater the chance he or she will be unharmed.”\textsuperscript{28} The same is presumed with other types of sex crimes by strangers—a faster apprehension will reduce the total harm that person can inflict on the community.

### CON

**Sex Offender Registries Are Not Effective**

Academic researchers have been deeply critical of registries and have articulated a broad number of potential costs or limitations associated with them.\textsuperscript{29} For example, they argue that registration may lead to unfair stigma placed on family members of registrants, vigilante justice, and money spent...
maintaining a registry instead of alternative policies. They worry that having a registry may give a false sense of security to families, as there are plenty of people who are sexually dangerous and not on the registry. Most importantly, however, critics warn that registries may actually increase danger to the public by making registrants more crime prone. They argue that being on the registry likely makes it difficult to get a job, obtain housing, or make friends. This might add stress that manifests in strain or defiance (motivation toward crime) and diminishes social control or prosocial values that might otherwise constrain or reduce that motivation.

With respect to the first key goal (reducing sexual assault), early research comparing sexual offense rates in communities before and after the enactment of a registry generally found no effect.

Regarding the second key goal (clearance rate), there is far less research available to consider. One of the only studies examining this question to date found a nonsignificant increase in clearance rates as a function of registries.30 One might expect the effect of registries to be helpful in locating victims of abduction or rape by strangers (i.e., when the offender isn’t already known at the time the crime is reported). But one wouldn’t expect it to matter with the (approximately) 80% of sex crimes in which the offender is already known (e.g., those committed by family members against children or date rape).

There is no doubt that registries are controversial—inform ed people can and do disagree on what benefits and costs they generate and especially whether the benefits outweigh the potential costs. The scientific literature is not particularly persuasive in this debate. Opponents have generated a number of criticisms and found some evidence that there are unintended consequences of the registry (as noted above). On the other hand, there is some evidence that registries are associated with decreases in sexual offending. But in general, there are too few studies available, coupled with methodological limitations,31 which collectively limit understanding about the effects of the registry on law enforcement outcomes.

**PRO**

**Sex Offender Registries Are Effective**

Despite these challenges, recent research on this issue showed that sexual crimes declined by an average of 13% in communities after the enactment of a registry.32 Additionally, there are qualitative examples that illustrate the power of sex offender registries. For example, a woman in New Jersey opened the door to a census worker and recognized him from the registry as an offender who had multiple convictions for sexually assaulting children (though he gave a fake name when obtaining employment with the census). Concerned that the registrant was using a fake name and federal credentials to gain access to area homes, she contacted police. The registrant was arrested.33 In another example, a former deputy in Colorado saw a man who appeared to be watching children from his car, which was parked outside an elementary school. The deputy recognized the man from his image on the sex offender registry. The registrant, previously convicted of sexually assaulting children, was interviewed by police. They determined he was there looking for the “perfect” girl to lure into his car. He was arrested.34 It’s not guaranteed that these offenders would have committed a sexual assault if not recognized. But is it possible that they were pursuing opportunities and access to potential victims? If so, it is unlikely these crimes would have been detected without the registry. This effect is difficult to measure.

**DISCUSSION QUESTIONS**

1. What are the goals of sex offender registries?
2. What are some of the criticisms of sex offender registries?
3. Do sex offender registries infringe on the rights of those accused and convicted of these crimes? Or are they important tools in evaluating and managing the risk of potentially dangerous offenders in the community?
4. Based on the evidence presented, are the laws that permit sex offender registries effective at preventing crime?
5. Do these laws go too far? Or not far enough?
CURRENT CONTROVERSY 6.2

Is Street-Level Bureaucracy a Good Thing?

—Shelly Arsneault—

INTRODUCTION

A well-dressed couple in their mid-50s sits on a shady park bench talking and laughing. They pull out a bottle of champagne from a picnic basket and drink a toast. A police officer, recognizing the champagne as a clear violation of the city’s ordinance against open alcohol containers, stops at the park bench. The couple explains that they were married under these trees 25 years ago and have come to celebrate. The officer congratulates them, reminds them to keep the champagne out of sight, and moves on. Now, imagine that on that same park bench two homeless people are sharing a bottle of Boone’s Farm wine from a paper bag. What do you suppose the officer’s reaction would be to the second couple? While both couples are engaged in the same illegal behavior, the people in these two scenarios will probably experience very different treatment from the police. This different treatment of a similar situation is an example of bureaucratic discretion. When an officer of the law has the authority to use her own judgments, opinions, experience, or reason to make decisions in the course of carrying out the law, he or she is exhibiting discretion.

You might think that it isn’t fair for these two couples to be treated differently because they both violated the same law, or you may think that different treatment is perfectly logical and that the circumstances and characteristics of each couple should allow an exception to the law for the anniversary couple. Maybe you can see it both ways; if so, you are well on your way to understanding the complexity and ambiguity of bureaucratic discretion in the criminal justice system.

Before discussing the pros and cons of bureaucratic discretion, let us define some terms. Bureaucracy describes any large organization that is characterized by a defined structure and rules that allow it to pursue its mission and goals. In this case, bureaucracy is “the system” of the criminal justice system; it includes law enforcement agencies such as local police and sheriff’s departments or the state highway patrol. Other bureaucratic agencies of the criminal justice system include criminal courts, county probation offices, or a state’s department of prisons.

A bureaucrat in the criminal justice system, therefore, is someone who works in the criminal justice system.
bureaucracy, such as a police officer, judge, district attorney, probation officer, or prison guard. We consider these people to be the street-level bureaucrats of the criminal justice system, those “who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work.”35 These are the people at the front lines, carrying out the difficult, often dangerous work of the justice system.

**Street-Level Bureaucracy Is Not a Good Thing**

Criminal justice bureaucrats often have authority to use their own judgments, opinions, experience, or reasoning to make decisions in the course of carrying out the law. There are two key problems with this discretion. First, street-level bureaucrats have not been elected by anyone, and sometimes their discretionary decisions seem to ignore the laws written by democratically elected lawmakers. For example, if state law requires a minimum 10-year sentence in a drug case, should the county’s prosecuting attorney have the authority to reduce the charges against a defendant to avoid the minimum sentence? This question is related to the second, more troubling aspect of bureaucratic discretion: the fact that it gives a high level of power to street-level bureaucrats. Especially in the criminal justice system, where police, prosecutors, judges, and corrections and parole officers have coercive power over citizens—including the right to kill—discretion can be used in ways that may appear to be discriminatory, unfair, political, and, at worst, abusive.

For example, individual bureaucrats often make decisions based on their perceptions of the “worthiness” of the citizens they encounter. We saw this concept with the couples enjoying alcohol in the park.36 Many would argue that it is unfair for two equally guilty parties to be treated so inequitably based upon one police officer’s judgments.

Another example comes from California’s three-strikes law, which requires 25 years to life for someone convicted of a third felony. An early study found that district attorneys and judges at the local level played an important role in implementation of the law because they were granted a fair amount of discretion over how prior “strike” violations were counted. In politically liberal regions of the state, such as the San Francisco Bay area, defendants were less likely to be subject to three strikes than in more politically conservative areas.37 Some would argue that political ideology should not matter when charging or sentencing criminals and that this is a misuse of bureaucratic discretion.

The worst cases involve instances of racial profiling, violence, and excessive force experienced at the hands of prison guards or police officers. Although there are policies for escalation of physical force against suspects, what is appropriate use of force is left to the discretion of officers and their evaluation of the situation. A well-known case involving excessive force occurred in Los Angeles in 1991 when, after a high-speed chase, four White officers used batons and a Taser gun on an African American, Rodney King, in order to force him to comply with arrest. The videotaped beating left King hospitalized with multiple broken bones; however, the LAPD defended its officers, arguing that this was not an abuse of power but rather “a professional response to the seemingly dangerous situation.”38

Although a jury acquitted the officers of excessive use of force, the verdict sparked six days of rioting in 1992 during which time 50 people were killed and more than 1,000 injured.39 Later, King successfully sued the city of Los Angeles for $3.8 million, and in a federal trial, two of the officers were found guilty of federal civil rights violations and sentenced to two years in prison.40 To this day, some argue that Rodney King’s treatment was an appropriate use of professional police discretion while others say it was a racially motivated abuse of police power.

**Street-Level Bureaucracy Is a Good Thing**

Given all of the ways in which bureaucratic discretion at the street level can go wrong, why does the system allow for so much discretion? Those at the street level are granted discretion for a variety of reasons. First, although elected officials make the laws, putting those laws into practice in the criminal justice system often occurs in situations that lawmakers cannot imagine. Discretion allows
street-level bureaucrats the freedom to carry out their duties and obligations in complex, often dangerous situations, such as a hostage-taking or domestic-violence case. It would be impractical to provide detailed instructions on dealing with such complicated situations; instead, street-level bureaucrats must use their discretion—based on their training, education, experience, and moral judgments—to carry out their duties.

Second, those at the front lines in the criminal justice bureaucracy are typically professionals in their fields. There are training academies for law enforcement officers and law schools for lawyers and judges, and a great deal of experience and level of mastery is learned while on the job. For example, seasoned police officers often learn how to detect cues that lead them to successful discovery of illegal goods during discretionary citizen searches. When we give a parole officer the discretion to assess a parolee’s progress and recommend intervention programs or allow a judge to sentence someone to the minimum rather than the maximum term in prison, we are acknowledging that they have the professional standing and experience to make a good decision.

Third, we must remember that while they enjoy a great deal of discretion, the behavior of street-level bureaucrats in the criminal justice system is constrained in many ways. These constraints include the following: basic rules and procedures that must be followed, monitoring and evaluation of performance, and sanctions for poor performance. Other constraints include professional norms and codes of conduct; for example, attorneys and judges who fail to uphold appropriate legal standards or engage in unethical behavior can be disbarred from the profession. Finally, those in the criminal justice bureaucracy usually view public service as a noble calling and dedicate themselves to it, reducing the odds that they will abuse their power.

DISCUSSION QUESTIONS

1. As citizens, how do we ensure that street-level bureaucrats of the criminal justice system use their discretion wisely and fairly?
2. Should the powers of discretion be restricted? How do the various levels of discretion serve as a benefit to the criminal justice system?

KEY TERMS

Conservative 134
Direct democracy 133
Discretion 130
Initiative 133
Liberal 134
Marijuana 133
Outcome evaluation 132
Policy 130
Process evaluation 132

DISCUSSION QUESTIONS

1. How does fear of crime influence criminal justice policy decisions?
2. What are the six stages of policy development?
3. How have criminal justice policies led to unintended consequences for individuals and the larger system?
4. How might a criminal justice policy or practice be compromised or challenged due to political differences?

LEARNING ACTIVITIES

1. Review the six stages of policy development. Pick a criminal justice policy, and discuss how your example was developed through each of these stages.
2. Locate a criminal justice policy that has been implemented in your state. How has this policy assisted in reducing criminal behavior?
3. Review the efforts of states that have been successful in legalizing marijuana (Colorado and Washington) and those that have failed (California). What were the differences in these campaigns that led to their success or their failure?

4. Research a criminal justice policy or practice that is used internationally. What could the American criminal justice system learn from this international example?

**SUGGESTED WEBSITES**

- Urban Institute Research Center: http://www.urban.org/justice
- Center for Evidence-Based Crime Policy: http://cebcp.org
- Center for Research on Direct Democracy: http://c2d.ch
- Initiative & Referendum Institute: http://www.iandrinstitute.org

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