

# Criminal Justice *in* America

EIGHTH EDITION



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# 10

# Corrections

# LEARNING OBJECTIVES

- LO1 - Describe how the American system of corrections has developed.
- LO2 - Describe the roles that the federal, state, and local governments play in corrections.
- LO3 - Explain the law of corrections and how it is applied to offenders and correctional professionals.
- LO4 - Explain why the prison population has nearly quadrupled in the past 30 years.

# INCARCERATION RATES

- Over the past 30 years, the incarceration rate has quadrupled, even though crime in the United States has been declining for two decades. The prison populations increased due to the imposition of longer sentences on offenders, including non-violent drug offenders who were imprisoned in large numbers. Some states imposed decades-long sentences on repeat offenders, even if they did not commit the most serious crimes.
- What are the financial consequences of the increases in state budget correctional spending?

# DEVELOPMENT OF CORRECTIONS

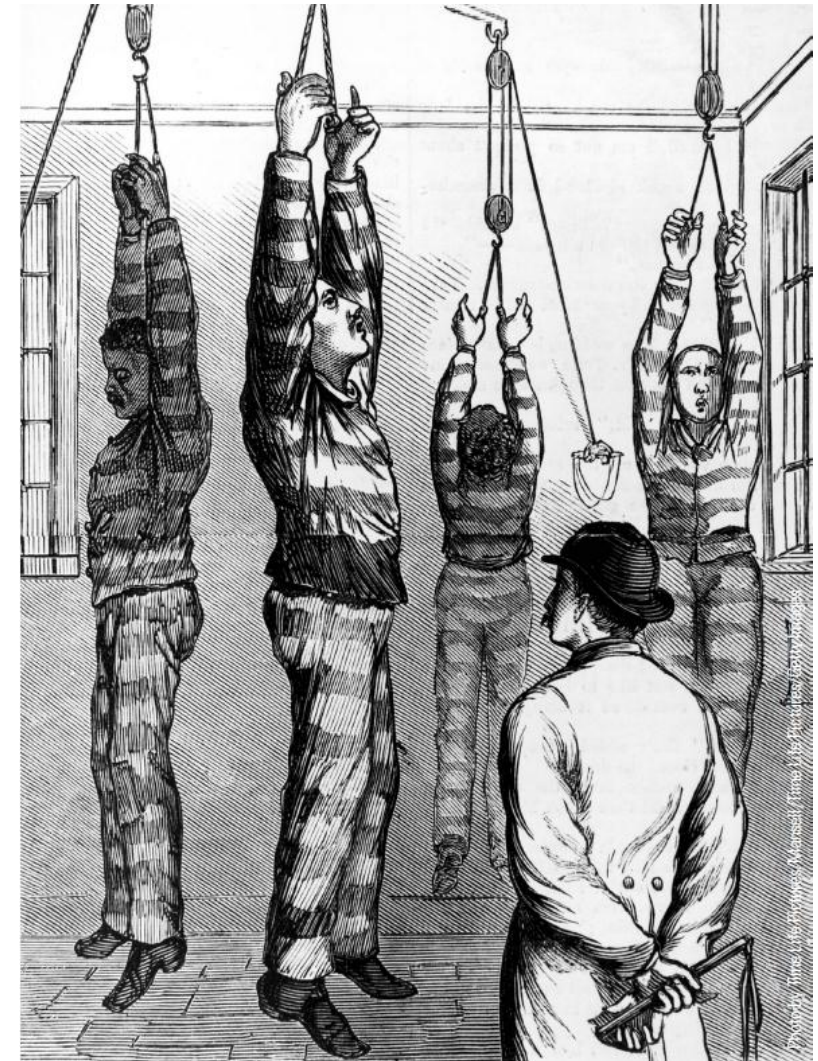
- **Corrections**
  - Programs, services, facilities and organizations responsible for the management of people accused or convicted of a crime
- **Modern system grew up during Enlightenment in which the concepts of liberalism, rationalism, equality and individualism dominated political and social thinking.**
  - Serious questions were raised about harsh and cruel punishments

# PENITENTIARY

- A house of hard labor where offenders would be imprisoned for up to two years. The institution would be based on four principles:
  - Secure and sanitary building
  - Inspection to ensure that offenders followed the rules
  - Abolition of the fees charged offenders for their food
  - A reformatory program

# REFORM IN THE UNITED STATES

- John Howard in England wrote *The State of Prisons in England and Wales* in 1777
  - Book was highly critical of English prisons
- Parliament passed *Penitentiary Act* in 1779
  - Secure and sanitary buildings
  - Inspections to insure wardens follow the rules
  - Abolition of fees for food
  - Reformatory regime
- *The Penitentiary* was born



# REFORM: THE PENNSYLVANIA SYSTEM

- **Inspired by John Howard's ideas**
  - In 1790, the Pennsylvania legislature authorized the construction of two penitentiaries
    - An institution intended to punish criminals by isolating them from society and from one another so they can reflect on their past misdeeds, repent, and reform
      - The first, created out of an existing three-story stone structure in Philadelphia, was the Walnut Street Jail
      - Pennsylvania system advocated separate confinement in which each inmate was held in isolation from other inmates. All activities including craft work, took place in the cells.



# SEPARATE CONFINEMENT MODEL WAS BASED ON SIX PRINCIPLES:

- Prisoners would not be treated vengefully
- Prisoners should be convinced that through hard and selective forms of suffering they could change their lives
- Solitary confinement would prevent further corruption inside prison
- In isolation, offenders would reflect on their transgressions and repent
- Solitary confinement would be punishment because humans are by nature social animals
- Solitary confinement would be economical because prisoners would not need a long time to repent



# REFORM: THE NEW YORK SYSTEM

- In 1819 New York opened a penitentiary in Auburn that evolved as a rival to Pennsylvania's concept of separate confinement
  - Under New York's congregate system, prisoners were held in isolation at night but worked with other prisoners in shops during the day
  - Working under a rule of silence, they were forbidden to exchange glances while on the job or at meals.
    - The Auburn penitentiary was the first to utilize a convict labor system in which inmate's labor was sold on a contractual basis to private employers who provided the machinery and raw materials with which inmates made salable products.

# THE SOUTHERN MODEL

- Outside the Northeast, reform took a different model
- The lease system
  - In return for clothes and food prisoners were leased to private parties who used them on plantations, farms, and mines

# THE REFORMATORY MOVEMENT

- After 40 years the Penitentiary Movement was seen as a failure
- The American Correctional Association formed in 1870 sought changes:
  - Reformation is rewarded by release
  - Sentences of indeterminate length would replace fixed sentences, and proof of reformation—rather than mere lapse of time—would be required for a prisoner's release
  - Classification of prisoners on the basis of character and improvement would encourage the reformation program

# THE ELMIRA REFORMATORY

- An institution for young offenders emphasizing:
  - Training
  - A mark system
  - Indeterminate sentences
  - Parole
- **Mark System**
  - Earning marks or credits towards release by labor, good behavior and educational achievement

# REFORMING WOMEN'S PRISONS

- Between 1873 and 1923 a separate system developed
- Three stated goals:
  - Separate prisons for women
  - Provisions of care in keeping with the needs of women
  - Staffing female prisons with women

# REHABILITATION MODEL

- A model of corrections that emphasizes the need to restore a convicted offender to a constructive place in society through some form of vocational or educational training or therapy
  - First advocated during the Progressive Era of the early 1900s
  - Two main strategies were pursued:
    - Improving conditions in social environments that seemed to be the breeding grounds of crime
    - Rehabilitating individual offenders

# OTHER MODELS

- **Medical Model**

- A model of corrections based on the assumption that criminal behaviour is caused by biological or psychological conditions that require treatment

- **Community Model**

- A model of corrections based on the goal of reintegrating the offender into the community
- The community model dominated corrections until the late 1970s, when it gave way to a new punitiveness in criminal justice



# CRIME CONTROL MODEL

- A model of corrections based on the assumption that criminal behavior can be controlled by more use of incarceration and other forms of strict supervision

# COSTS OF INCARCERATION

- The history of corrections reflects a series of swings from one model to the other. The optimism of corrections has diminished and researchers are now scrutinizing the financial and human costs of crime control policies of the 1990s.
- Are the costs of incarceration and surveillance justified?
- Is society safer than it was 25 years ago?
- How do we really know if crime is up or down?

# ORGANIZATION OF CORRECTIONS IN THE UNITED STATES

- The organization of corrections in the United States is fragmented, with each level of government holding some responsibility for corrections
  - The federal government, the 50 states, the District of Columbia, the 3,047 counties, and most cities all have at least one correctional facility and many correctional programs
  - State and local governments pay about 95% of the cost of all correctional activities in the nation

# FEDERAL CORRECTIONS SYSTEM

- **Federal Bureau of Prisons**
  - Created by Congress in 1930
  - Operates a system of prisons located throughout the nation
  - Houses over 210,000 inmates
  - Staff of more than 38,000
- **Federal Probation and Parole Supervision**
  - A branch of the Administrative Office of the U.S. Courts
  - The federal judiciary appoints probation officers, who serve the court
- **Classified by levels 1 (minimum) to 5 (supermax)**

# STATE CORRECTIONS SYSTEMS

- A wide range of state correctional institutions, facilities, and programs exists for adult felons
  - These include:
    - Prisons
    - Reformatories
    - Prison farms
    - Forestry camps
    - Halfway houses
  - 40 states have 20,000 supermax prisoners
  - 21% of all inmates are held in maximum security prisons

# STATE CORRECTIONS SYSTEMS

- 40% of state inmates are held in medium-security prisons
- 33% of inmates are held in minimum-security prisons
- Small percentage of inmates are held in work camps and county jails

# STATE INSTITUTIONS FOR WOMEN

- Only 7% of the incarcerated population are women
  - A higher proportion of female defendants are sentenced to probation and intermediate punishments
    - Partly as a result of male offenders' tendency to commit most of the violent crimes
- The growth rate in number of incarcerated women has exceeded that for men since 1981
- Most states only have one female facility, usually located in rural areas



# PRIVATE PRISONS

- Private entrepreneurs argue that they can build and run prisons at least as effectively, safely, and humanely and at a profit and lower cost to taxpayers
  - At year end 2009, 32 states and the federal system reported a total of almost 129,000 inmates held in privately operated prisons
- Private facilities held 8% of all state prisoners and 16% of all federal prisoners
- 17% of estimated 30,000 individuals detained by ICE are held in private facilities

# CRITICISMS OF PRIVATE PRISONS

- Questions concerning delegation of social-control functions to other than state employees
- Administration of justice is a basic function of the government
- Fear that private operations would skew correctional policy
- Contractors would use political influence to continue programs not in the public interest
- Profit incentive will lead to corruption

# CRITICISMS OF PRIVATE PRISONS

- In 2009, two Pennsylvania juvenile court judges pleaded guilty to federal fraud and income tax fraud for taking more than \$2.6 million in kickbacks to send teenagers to privately run youth detention centers. In 2014, a Detroit judge was found to regularly subject misdemeanor offenders to daily drug and alcohol testing at the same time his son was employed at the largest Detroit based private drug and alcohol testing company.
- Do privately run correctional companies breed corruption?
- Would incidents, such as the examples above, happen if all correctional facilities were government run?
- Should we continue down the road of handing over correctional responsibility to for-profit corporations?

# COSTS OF PRIVATE PRISONS

- \$1 billion per year industry dominated by 2 corporations:
  - CCA (Corrections Corporation of American)
  - GEO
    - Major debate if they save money or cost money to the states
    - Prisoners are in harsher conditions
    - Correction officers are fewer and have lower pay

# JAILS

- An institution authorized to hold pretrial detainees and sentenced misdemeanants for periods longer than 48 hours
  - Most operate at the county level, administered by an elected sheriff
  - Increasingly used to detain undocumented immigrants prior to processing by ICE



Erica Brough/Gainesville Sun/Landov

# JAILS

- Jails contain both pre-trial detainees, who are presumptively innocent until proved guilty, and convicted offenders awaiting transfer to prison or serving short sentences.
- Should un-convicted offenders, some of whom will eventually be found not guilty, experience the same conditions and deprivations as convicted offenders inside jails?
- What if the jail lacks the space and resources to treat the groups differently?

# JAILS

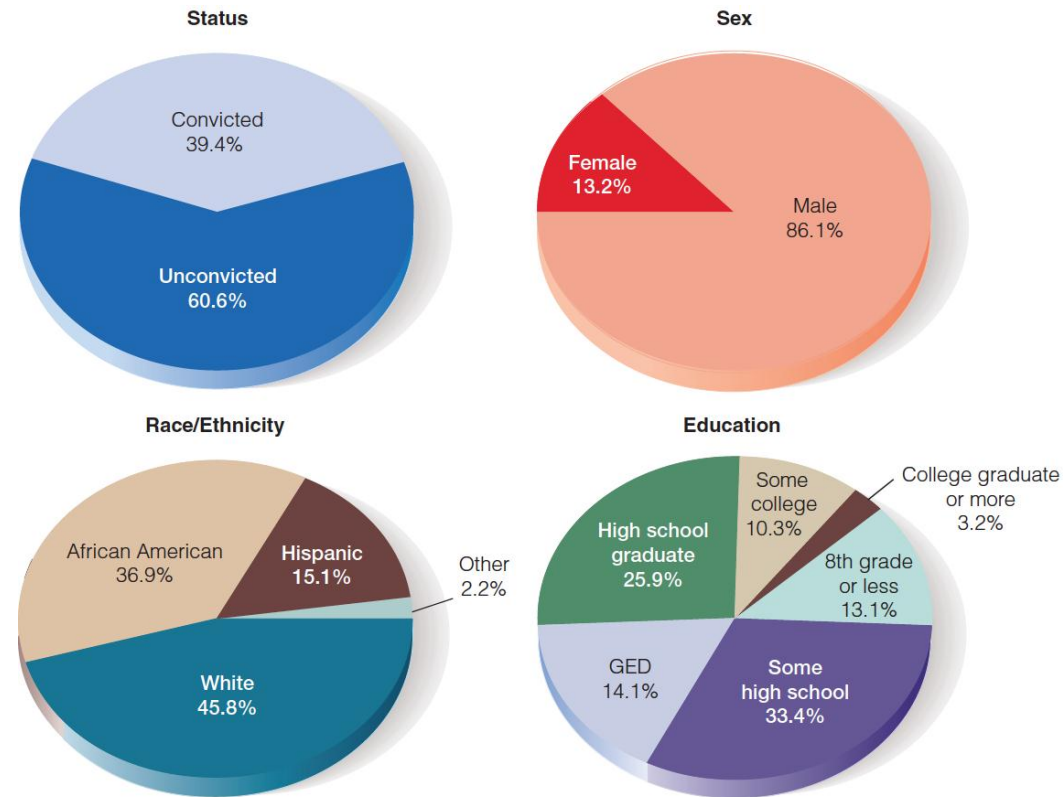
- **Most Americans do not distinguish between jails and prisons**
  - **Prison**
    - An institution for the incarceration of people convicted of serious crimes, usually felonies
  - **Jail**
    - An institution authorized to hold pre-trial detainees and sentenced misdemeanants for periods longer than 48 hours



# JAIL CHARACTERISTICS

- *The capacity of jails varies greatly*
  - The 50 largest jail jurisdictions hold 31% of the nation's jailed inmates
  - Most jails are much smaller, with 40% holding fewer than 50 people each
  - 700,000 inmates on any given day and 13 million inmates over 1 year

# JAIL CHARACTERISTICS



**FIGURE 10.1**

**Characteristics of Adult Jail Inmates in U.S. Jails** Compared with the American population as a whole, jails are disproportionately inhabited by men, minorities, the poorly educated, and those with low income.

Sources: Todd Minton, *Jail Inmates at Midyear 2012—Statistical Tables*, Washington, D.C.: Bureau of Justice Statistics, May 2013; C.W. Harlow, "Education and Correctional Populations," *Bureau of Justice Statistics Bulletin Special Report*, January 2003, p. 2. Percentages may not equal 100 due to incomplete data and rounding.

# LAW OF CORRECTIONS

- Prior to the 1960s, most courts maintained a hands-off policy with respect to corrections
- Only a few state courts had recognized rights for offenders
  - Hands off policy
    - The belief that judges should not interfere with the administration of correctional institutions

# CONSTITUTIONAL RIGHTS OF PRISONERS

- **Cooper v. Pate (1964)**
  - Signalled the end of the hands-off policy
  - The court said that through the Civil Rights Act of 1871 state prisoners were persons whose rights are protected by the Constitution
  - The act imposes civil liability on any official who violates someone's constitutional rights
  - It allows suits against state officials to be heard in the federal courts

# FIRST AMENDMENT RIGHTS

- Prisoners have successfully challenged many of the restrictions of prison life including access to reading materials and censorship of mail
- The Supreme Court has also approved restrictions on access to written materials including denial of access to newspapers and magazines for prisoners housed in a disciplinary segregation unit.
  - Cases concerning the free exercise of religion have caused the judiciary some problems, especially when the religious practice may interfere with prison routine and the maintenance of order

# FOURTH AMENDMENT RIGHTS

- The Fourth Amendment prohibits unreasonable searches and seizures
  - Courts have not extended these protections much to prisoners
  - Thus, regulations viewed as reasonable to maintain security and order in an institution may be justified
    - Bell v. Wolfish (1979) upheld body searches justified by institutional needs
    - Hudson v. Palmer (1984) upheld the authority of officials to search cells and confiscate any materials found

# EIGHTH AMENDMENT RIGHTS

- The courts have applied three principal tests under the Eighth Amendment to determine whether conditions are unconstitutional:
  - Whether the punishment shocks the conscience of a civilized society
  - Whether the punishment is unnecessarily cruel
  - Whether the punishment goes beyond legitimate penal aims
- In 2011 Supreme Court ordered California to reduce its prison population because of overcrowding and poor health care

# Brown v. Plata (2011)

- In 2011, the Court upheld lower court decisions ordering California to reduce its prison population because overcrowded conditions had overwhelmed the prison system's ability to provide proper health care and mental health treatment for prisoners. At the time of trial, California's facilities held 156,000 persons; nearly double the amount of capacity. Two hundred prisoners were monitored by 2-3 officers. One toilet was shared by 54 prisoners, and 200 prisoners were living in a gym.
- Does being a prisoner mean that a person is not entitled to even basic human dignity?
- What would be the effect of such immense overcrowding on the correctional and administrative staff?



# FOURTEENTH AMENDMENT

- The Bill of Rights restricts state government actions affecting criminal justice
  - State government officials must treat all people fairly and justly with decisions being made according to procedures prescribed by law
  - Assertions that prisoners have been denied equal protection of the law are based on claims of racial, gender, or religious discrimination

# DUE PROCESS IN PRISON DISCIPLINE

- **Wolff v. McDonnell (1974)**
  - Basic elements of procedural due process must be present when decisions are made about the disciplining of an inmate:
    - To receive notice of the complaint
    - To have a fair hearing
    - To confront witnesses
    - To get help in preparing for the hearing
    - To be given a written statement of the decision
    - Prisoners do not have the right to cross-examine witnesses

# LAW AND COMMUNITY CORRECTIONS

- **Samson v. California (2006)**

- The Supreme Court approved a California statute that requires every parolee to agree to be subject to warrantless searches

- **Morrissey v. Brewer (1972)**

- The Court ruled that parolees facing revocation must be given due process:
  - A hearing officer determines whether there is probable cause that a violation has occurred
  - Parolees have the right to be notified of the charges against them, to know the evidence against them
  - To be allowed to speak on their own behalf
  - To present witnesses and to confront the witnesses against them
  - Parolee must receive a notice of charges and the evidence of a violation is disclosed and may cross-examine witnesses

# LAW AND COMMUNITY CORRECTIONS

- *Gagnon v. Scarpelli* (1973) – before probation can be revoked, a two-stage hearing must be held and the offender provided with specific elements of due process. Requested counsel will be allowed on a case-by-case basis.

# LAW AND CORRECTIONAL PERSONNEL

- Civil Service laws apply to hiring, employment and termination
- Liability of correctional personnel
  - Correctional clients can sue state employees using Section 1983 of the United States Code if the person's civil rights are violated by the agency's "Customs and usages", meaning harm was caused by employees whose wrongful acts were result of practices and policies including poor training and supervision
  - Federal corrections officials can be sued under Federal Tort Claims Act for intentional harms inflicted on prisoners

# INCARCERATION TRENDS

- Since 1970s corrections has increased dramatically:
  - 500% budget increase
  - 2 million incarcerated
  - 4 million on probation
  - 800,000 under parole supervision
    - Spending on prison now exceeds spending on higher education
    - 60% if those in system are in probation, but little increased funding, caseloads now over 200-300 per manager.
    - 851,000 on parole, 3X as many as in the 1980s

# INCARCERATION TRENDS

- If little relationship exists between crime rate and incarceration rate, these five factors are cited for the rise in incarceration:
  - Increased arrests and more likely incarceration
  - Tougher sentencing
  - Prison construction
  - War on drugs
  - State politics