
EDJJ PROFESSIONAL DEVELOPMENT SERIES

MODULE 1:

**HISTORY OF THE CRIMINAL
JUSTICE SYSTEM**

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Introduction

This module is one in a series of training packages that have been designed for working with students with disabilities in a correctional setting; it focuses on the juvenile and criminal justice systems.

Objectives

Upon completion of instruction under this module, participants will be able to

1. define the criminal justice system.
2. identify the components of the criminal justice system.
3. understand the elements of the juvenile justice process.
4. delineate the differences between the juvenile justice process and the criminal justice process.
5. categorize the types of juvenile offenses.

Content Outline

1 The Criminal Justice System (CJS)

1.1 Criminal justice is concerned with the violation of criminal law and, strictly interpreted, deals with the enforcement and procedures of criminal law (Schmallegger, 1997).

1.2 Samaha (1991) states that there are two aims of the criminal justice system: to *control crime* and to assure *due process*.

1.3 The criminal justice system is complex; therefore it may be helpful to view the system by examining of a flowchart (Transparency 1).

2 Components of the Criminal Justice System

- 2.1 There are three components that make up the criminal justice system: police, courts, and corrections. This is not to be confused with the three branches of government. The three branches of government interact with the criminal justice system through the nature of the functions that they perform.
- 2.2 The three branches of government are:
 - 2.2.1 The *legislative* branch which has the responsibility for passing laws that define illegal behavior, setting permissible sentences for violation of the laws, and appropriating the money available for correctional operations.
 - 2.2.2 The *executive* branch of government approves (or vetoes) the law passed by the legislators and is responsible for enforcing the laws.
 - 2.2.3 The *judicial* branch of government has three responsibilities: interpreting the laws brought into question, ruling on lawsuits involving correctional supervision, and granting *probation*.
- 2.3 The three components that make up the criminal justice system are:
 - 2.3.1 Police
 - 2.3.1.1 History- Inciardi (1993) noted that the emergence of modern police can be traced to the ninth century and a system installed by Alfred the Great of *mutual pledge* whereby families grouped together to ensure the responsible behavior of their members. Groups of families

were under the charge of a constable and those within a geographic area were under the control of the *shire-reeve* (sheriff)--shire for shire or county and reeve, meaning the person in control or in charge of the county. In America, similar occupations were listed in New England for preserving the peace and performing the duties of security and are mentioned in the mid-1600s in Massachusetts law. The functions of police go beyond the control of crime and protection of society. As a component of the CJS, *police* have responsibility for investigating and apprehending individuals suspected of criminal acts. (Most crime is not responded to by the justice system because it has not been discovered or reported.) Police officers typically wield a large amount of *discretion* in determining whether to arrest, warn, or investigate those suspected of criminal activity. In facilitating an arrest, law enforcement agencies can present information about the accused to the *prosecutor* who will decide if formal charges will be filed with the court or they can arrest based on *probable cause*. In many instances, two things must be present to charge someone with a crime: *actus reus* and *mens rea*. Actus reus is the act of committing the crime and mens rea is the mental knowledge of committing that crime. One without the other

typically results in a lower charge against the defendant. If the case is not strong enough, the prosecutor may elect to drop the charges, subjecting the police to potential civil suits for false arrest. If no charges are filed, the accused must be released.

2.3.2 **Courts-** In determining an arrest for delinquent behavior, there are clear roles for the State courts, Federal judiciary system, prosecutors, judges, and other stakeholders. The prosecuting or *state attorney's office* is responsible for presenting the court with evidence concerning those suspected of committing a crime. The prosecuting attorney is typically involved at times during the initial investigation (depending on the severity of the charges and timeliness of charge), at pretrial hearings, and during the trial or dispositional hearing if one occurs. Most cases brought by a prosecutor result in a plea of guilty, many as a result of plea negotiation. Negotiation helps free up courtroom dockets for other cases. If all cases went to trial, there wouldn't be time for all of them to be heard. At the *preliminary hearing*, the severity of the offense, the age of the individual, and other circumstances determine the next step for individuals charged with a crime or involved in criminal activity. If the judge does not find probable cause to believe the accused committed the crime, the case is dismissed. If the judge finds probable cause in the case of felonies,

the case may be bound over to a grand jury. The grand jury decides if there is sufficient evidence to bring the accused to trial.

2.3.2.1 From arraignment through trial—With both felonies and misdemeanors there is *arraignment* and subsequent trial or guilty plea. Felonies typically have information and grand jury (those convicted of a felony typically serve one year or more in prison/jail). *Misdemeanors* have information (those convicted of a misdemeanor typically serve up to 1 year in prison/jail). At the arraignment, the accused may plead guilty of *nolo contendere* (accepts penalty without admitting guilt). If the plea is accepted, no trial is held and the offender is sentenced at this proceeding or at a later date. A person accused of a serious crime is guaranteed a trial by jury. However, the accused has the right to ask for a bench trial where only the judge decides guilt or innocence. Most cases that go to trial result in a guilty plea or conviction.

2.3.2.2 Sentencing, appeal, and the death penalty—Objectives of sentencing are retribution, isolation, vengeance, deterrence, and rehabilitation (Inciardi, 1993). *Diversion* from the system frequently occurs for juveniles that have not had previous contact with the CJS. Juveniles diverted from the CJS to social service agencies often are required to perform

the restitution or become involved in treatment or *rehabilitation*. Juveniles and adults placed on *probation* typically have restrictions placed on their activities and are required to maintain contact with a probation officer. After the trial, a defendant may request *appellate review* of the conviction or sentence. The right to appeal varies from state to state. Fines or financial sanctions may also be imposed in addition to incarceration or probation or in lieu of either (Inciardi, 1993).

2.3.3 **Corrections**—One purpose of corrections is punishment of offenders. Punishment is believed to be a deterrence of others from criminal behavior. Whether punishment is an effective deterrent to criminal behavior is a controversial issue. Another purpose of corrections is to protect society. A third purpose of corrections is the rehabilitation of those charged with engaging in criminal acts. Advocates of this approach maintain that individuals with social and vocational skills will be able to choose between competitive employment and criminal activity.

2.3.3.1 Types of correctional programs

2.3.3.1.1 Probation (front-end): Front-end alternatives sanction the convicted *before or as an alternative to prison*.

2.3.3.1.2 Incarceration involves placing the offender in a detention facility or prison for a specified period of time. Of those arrested, about 10% are eventually incarcerated.

2.3.3.1.3 Prison

2.3.3.1.4 After prison there may be *parole* (back-end).

Back-end alternative serve the convicted after they are released from prison or jail.

2.3.3.1.5 *Community detention facilities* are another component of the CJS. Some individuals charged with violating the law spend time in lockups or jails prior to an initial hearing or trial.

2.3.3.1.6 Other suspects are released on bail or on their own recognizance. Juveniles may be released to the custody of parents or guardians prior to a hearing.

2.3.3.2 Administration of the CJS

2.3.3.2.1 Terminology and procedures for administration of the CJS vary among states and the federal system. Major differences also exist in the handling of juvenile and adult offenders (Transparency 2).

- 3 How The Juvenile Justice Process Differs from the Criminal Justice Process
 - 3.1 The juvenile justice system differs from the treatment of adult offenders because of the differences between the juveniles and adult offender and society's protective attitudes towards youth (Transparency 3).
 - 3.1.1 Although similar in some respects, juvenile offenders are different from adult offenders in the type of crimes committed and with whom they are committed. Youths (under age 18) are more likely than older persons to be picked up for property crimes. Over one third of all juvenile offenses involve *larceny* or *burglary*. About the same proportion of each age group is arrested for violent crimes (4% - 5%). About 20% of referrals to juvenile court are for status offenses: running away, truancy, curfew violation, possession of liquor, etc. A major difference between juvenile and adult offenders is the importance of gang membership and the tendency of youth to engage in group criminal activity.
 - 3.1.2 However, juvenile offenders are similar to adults in that a disproportionate number are male, economically disadvantaged, hispanic or black, and/or from families with high degrees of conflict and instability. Both adults and juvenile offenders typically have had interpersonal problems at school or work.
 - 3.1.3 A primary focus of the juvenile justice system is rehabilitation and protection of youth from publicity, the trauma of harsh sentences, and the negative consequences of contact with adult offenders.

- 3.1.4 Juvenile court judges also have much broader discretionary powers in juvenile courts than in adult courts and are more actively involved in promoting rehabilitation rather than punishment.
- 3.1.5 While adults may begin the criminal justice process only through arrest, summons, or citation, juveniles may be referred to the court by parents, school, or other sources.
- 3.1.6 The juvenile and adult systems use different terminology to describe procedures and components (Transparency 2) .
 - 3.1.6.1 The adult system uses terms like complaint, warrant, arraignment, trial, guilt, and sentencing. Corresponding terms in the juvenile system are petition, summons, detention hearing, adjunction hearing, involvement, and dispositional hearing.
- 3.2 Each state's processing of law violators is also unique.
 - 3.2.1 Even within states, case processing often varies from community to community depending on local practice and tradition. Consequently, any description of juvenile justice processing must be general, outlining a common series of decision points.
 - 3.2.2 Law enforcement diverts many juvenile offenders out of the justice system. At arrest, a decision is made either to send the matter further into the justice system or to divert the case out of the system, often into alternative programs. Usually, the prosecutor or local district attorney makes this decision after talking to the

victim, the juvenile, and the parents and after reviewing the juvenile's prior contacts with the juvenile justice system. Thirty percent of all juveniles arrested in 1992 were handled within the police department and then released. Two-thirds of arrested juveniles were referred to juvenile court. Federal regulations discourage holding juveniles in adult jails and lockups. If law enforcement must detain a juvenile in secure custody for a brief period in order to contact a parent or guardian or to arrange transportation to a juvenile detention facility, Federal regulations require that the juvenile be securely detained for no longer than six hours and in an area that is not within sight or sound of adult inmates.

4 The Juvenile Justice Process

- 4.1 Referral. Most juvenile court cases are referred by law enforcement.
 - 4.1.1 Law enforcement referrals accounted for 85% of all delinquency cases referred to juvenile court in 1992.
 - 4.1.2 The remaining referrals were made by others such as parents, victims, schools, and probation officers.
- 4.2 Intake. The court intake function is generally the responsibility of the juvenile probation department and/or the prosecutor's office. At this point intake must decide whether to dismiss the case, handle the matter informally, or request formal intervention by the juvenile court.
 - 4.2.1 To make this decision, an intake officer first reviews the facts of the case to determine if there is sufficient evidence to prove the allegation. If there is not, the case is dismissed. If there is sufficient evidence, intake will then determine if formal intervention is necessary.
 - 4.2.2 About half of all cases referred to juvenile court intake are handled informally. Most informally processed cases are dismissed. In the other informally processed cases, the juvenile voluntarily agrees to specific conditions for a specific time period. These conditions are often outlined in a written agreement, generally called a *consent decree*. Conditions may include such items as victim restitution, school attendance, drug counseling, or a curfew. In most jurisdictions, a juvenile may be offered an informal disposition

only if he or she admits to committing the act. A probation officer often monitors the juvenile's compliance with the informal agreement. Consequently, this process is sometimes labeled *informal probation*. If the juvenile successfully complies with the informal disposition, the case is dismissed. If, however, the juvenile fails to meet the conditions, the intake decision may be to formally prosecute the case, and the case will proceed just as it would have if the initial decision had been to refer the case for an adjudicatory hearing.

- 4.3 Detention. During the processing of a case, a juvenile may be held in a secure detention facility:
 - 4.3.1 Juvenile courts may hold delinquents in a secure detention facility if the court believes it is in the best interest of the community or the child.
 - 4.3.2 After arrest a youth is often brought to the local juvenile detention facility by law enforcement.
 - 4.3.3 Juvenile probation officers or detention workers review the case and decide if the juvenile should be held pending a hearing by a judge.
 - 4.3.4 In all states, a detention hearing must be held within a time period defined by statute, generally within 24 hours. At the detention hearing a judge reviews the case and determines if continued detention is warranted. As a result of the detention hearing the

youth may be released or detention continued. In 1992, juveniles were detained in one in five delinquency cases processed by the juvenile courts. Detention may extend beyond the adjudicatory and dispositional hearings. In some cases, crowded juvenile facilities require that detention continue beyond adjudication until a bed becomes available in a juvenile correctional institution or treatment facility.

- 4.4 Filing. Prosecutors may file a case in either juvenile or criminal court.
 - 4.4.1 In many states prosecutors are required to file certain (generally serious) cases involving juveniles in the criminal court. These are cases in which the legislature has decided the juvenile should be handled as a criminal offender.
 - 4.4.2 In a growing number of states the legislature has given the prosecutor the discretion of filing either a defined list or cases in either juvenile or adult court. In these states, both the juvenile and adult courts have original jurisdiction over these cases and the prosecutor selects the court that will handle the matter.
 - 4.4.3 If the case is handled in juvenile court, two types of petitions may be filed: *delinquency* or *waiver*. A delinquency petition states the allegations and requests the juvenile court to adjudicate (or judge) the youth a delinquent, making the juvenile a ward of the court. This language differs from that used in the criminal court system (where an offender is convicted and sentenced). In response to the

delinquency petition, an adjudicatory hearing is scheduled. At the adjudicatory hearing (trial), witnesses are called and the facts of the case are presented. In nearly all adjudicatory hearings the determination that the juvenile was responsible for the offense(s) is made by a judge, although in some states the juvenile is given the right to a jury trial. In 1992 juveniles were adjudicated delinquent in 57% of cases petitioned to juvenile court for criminal law violations. A waiver petition is filed when the prosecutor or intake officer believes that a case under jurisdiction of the juvenile court would be more appropriately handled in criminal court. The court decision in these matters follows a review of the facts of the case and a determination that there is probable cause to believe that the juvenile committed the act. With this established, the court then considers whether jurisdiction over the matter should be waived and the case transferred to criminal court.

- 4.5 Investigation. Between the adjudication decision and the disposition hearing, an investigation report is prepared by probation staff:
- 4.6 Disposition. Once the juvenile is adjudicated delinquent, a disposition plan is developed.
 - 4.6.1 To prepare this plan, probation staff develops a detailed understanding of the youth and assesses available support systems and programs.

- 4.6.2 To assist in preparation of disposition recommendations, the court may order psychological evaluations, diagnostic tests, and/or a period of confinement in a diagnostic facility.
- 4.6.3 At the disposition hearing, dispositional recommendations are presented to the judge.
- 4.6.4 The prosecutor and the youth may also present dispositional recommendations.
- 4.6.5 After considering options presented, the judge orders a disposition in the case.
- 4.6.6 Most cases placed on probation also receive other dispositions. For example, a probation order may include additional requirements such as drug counseling, weekend confinement in the local detention center, and community or victim restitution. The term of probation may be for a specified period of time or open ended. Review hearings are held to monitor the juvenile's progress and to hear reports from probation staff. After conditions of the probation have been successfully met, the judge terminates the case. In 1996, 6 in 10 adjudicated delinquents were placed on formal probation.

4.7 Incarceration. The judge may order the juvenile committed to a residential placement.

- 4.7.1 Residential commitment may be for a specific or indeterminate ordered time period.

4.7.2 In 1992, 3 in 10 adjudicated delinquents were placed in a residential facility. The facility may be publicly or privately operated and may have a secure prison-like environment or a more open, even home- like setting. In many states, when the judge commits a juvenile to the state department of juvenile corrections, the department determines where the juvenile will be placed and when the juvenile will be released. In other instances the judge controls the type and length of stay. In these situations review hearings are held to assess the progress of the juvenile.

4.8 Aftercare. Juvenile aftercare or parole is similar to adult parole. Following release from an institution, the juvenile is often ordered to a period of aftercare or parole. During this period the juvenile is under supervision of the court or the juvenile corrections department. If the juvenile does not follow the conditions of aftercare, he or she may be recommitted to the same facility or to another facility.

5 Types of Juvenile Offenses

5.1 Delinquency Offenses

5.1.1 A delinquent offense is an act committed by a juvenile for which an adult could be prosecuted in criminal court.

5.2 Status Offenses

5.2.1 The processing of status offense cases differs from that of delinquency cases. Status offenses are behaviors that are law violations only for youth of juvenile status.

5.2.2 These status offenses may include such behaviors as running away from home, truancy, ungovernability, curfew violations, and underage drinking. In many ways the processing of status offense cases parallels that of delinquency cases.

5.2.3 Not all cases, however, consider all of these behaviors to be law violations.

5.2.4 Many states view these behaviors as indicators that the child is in need of supervision and respond to the behavior through the provision of social services.

5.2.5 This different characterization of status offenses causes them to be handled more like dependency than delinquency cases.

5.2.6 While many status offenders enter the juvenile justice system through law enforcement, in many states the initial, official contact is a child welfare agency. In 1992, 55% of all status offense cases referred to juvenile court came from law enforcement.

5.2.7 The Juvenile Justice and Delinquency Prevention Act discourages the holding of status offenders in secure juvenile facilities, either for detention or placement. This policy has been labeled deinstitutionalization of status offenders. An exception to this policy occurs when the status offender violates a valid court order such as a probation order that requires the adjudicated status offender to attend school and observe a court-ordered curfew. In such situations, the status offender may be confined in a secure detention facility.

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Transparencies

This transparency presentation summarizes the content of this module. It does not include all the information contained within this module and should be used to supplement its implementation.

Transparency 2

Is it Juvenile or Adult?

Juvenile

Adult

Petition

Complaint

Summons

Warrant

Detention Hearing

Arraignment

Adjudication Hearing

Trial

Involvement

Guilt

Depositional Hearing

Sentencing

Transparency 3

The Juvenile Justice System

- The treatment of the juvenile offenders differs from the treatment of adult offenders because of the differences between the juvenile and the adult, as well as society's protective attitudes toward youth.
- About 20% of referrals to juvenile court are for status offenses: running away, truancy, curfew violations, possession of liquor, etc.
- Another difference between juvenile and adult offenders is the importance of gang membership and the tendency of youth to engage in group criminal activity.
- While adults enter in the criminal justice system through arrest, juveniles may be referred through their parents, school, or other sources.

Glossary

Adjudication

The judgment made by the court in the case of juveniles. Juvenile offenders are *adjudicated* to be *delinquent* rather than found guilty of a crime.

Arraignment

The hearing or court appearance at which the accused is formally charged, advised of the rights of criminal defendants, and asked to enter a plea to the charges (guilty, not guilty, or nolo contendere—accepting penalty without admitting guilt). If the accused pleads guilty, the offender may also be sentenced at that time. or nolo contendere

Assault

Unlawful intentional inflicting, or attempted inflicting, of injury upon another person.

Aggravated Assault

The unlawful intentional inflicting of serious bodily injury or unlawful threat or attempt to inflict bodily injury or death by means of a deadly or dangerous weapon.

Bail

Anyone of a number of mechanisms for pretrial release from detention of accused individuals.

Burglary

Unlawful entry of any residence, industry, or business, with or without force, with the intent to commit a felony.

Community-based

Any and all activities involving the community in efforts to reintegrate offenders.

Corrections

The systematic and organized efforts directed by a society that attempt to punish offenders, protect the public from offenders, change offender behavior, and compensate victims. Inciardi (1993) defines corrections as a generic term that includes techniques, governmental agencies, facilities, procedures, programs, and personnel concerned with supervision, treatment, intake, custody, confinement, or presentencing or predisposition of alleged or adjudicated offenders.

Deterrence

The effect that the threat of punishment has in inducing citizens to refrain from illegal activity.

Discretion

Latitude of free choice within certain legal bounds or decisions made that is not generally open to reexamination by others.

Disposition

Determination of a juvenile offender's status, given instead of a sentence and extending until the juvenile becomes an adult or until the offending behavior has been corrected.

Due Process

A fundamental idea wherein a person should not be deprived of life, liberty, or property without legal procedures that are fair and reasonable.

Felony

Serious crimes, such as armed robbery, assault, or murder, with punishment ranging from incarceration for one year or more through a death sentence.

Fines

A penalty that requires the offender to pay a specific sum of money within the limit set by law. Fines are often imposed in addition to probation or as an alternative to incarceration.

Homicide

Causing the death of another without legal justification or excuse.

Incarceration

Detention of a person in jail or prison. In many states, convicted offenders sentenced to less than one year are held in a local jail; those sentenced to longer terms are committed to the state prison.

Intake

A procedure among juvenile courts where officials evaluate social histories of accused offenders to decide whether or not to refer cases to court.

Involvement

The term used in the juvenile justice system rather than *guilt* to describe the judgment on the youth's participation in unlawful activity.

Jail

A confinement facility under local authority to hold individuals for periods in excess of 48 hours.

Juvenile Justice System

Various laws and courts established to have jurisdictional authority over younger persons, usually specified as under the age of 18. This system is concerned with the violations of criminal law by juveniles, status offenses, and dependent and neglected children.

Larceny

Unlawful taking or attempted taking of property (other than a motor vehicle) from the possession of another, by stealth, without force and without deceit, with the intent to permanently deprive the owner of the property.

Lockup

A temporary holding facility which by law or practice can incarcerate an individual for less than 48 hours.

Misdemeanor

Considered a less serious violation of the criminal law, commonly penalized by a fine and/or short jail sentence.

Parens patriae

A philosophy from English law in which the state assumed authority and responsibility to oversee neglected and abused children.

Parole

The conditional release of an adult from incarceration in a correctional institution after having served less than a full sentence, and placement under the supervision of a correctional agency empowered with the authority to reincarcerate the individual if the conditions of parole have been violated.

Petition

A means of referral to the juvenile justice system whereby a complaint is made to authorities concerning the youth.

Prisons

Large facilities operated by state or federal governments to hold persons sentenced under state or federal laws to terms of confinement of more than one year.

Probable Cause

The amount of proof required to support an arrest (Samaha, 1991).
Inciardi (1993) noted that it is those facts that generate a reasonable belief that a crime has been committed.

Probation

A sentencing alternative in which incarceration is avoided and the offender remains in the community under the supervision of a probation officer.

Prosecutor/Prosecuting Attorney

The state or local official who represents the citizens of the community in matters of criminal law. The prosecutor coordinates the government's response to crime by pressing charges, presenting the case against the accused at the trial, and sometimes making sentence recommendations.

Rehabilitation

Removing or remediating presumed causes of crime by providing economic, psychological, or socialization assistance to offenders to reduce the likelihood of continuing in crime.

Robbery

Unlawful taking or attempted taking of property that is in the immediate possession of another by force or threat of force.

Sentencing

The process of placing an authorized judicial penalty on a person who pleads guilty or is convicted of a crime. Sentencing decisions have direct implications for corrections.

Status Offense

Noncriminal behavior, such as truancy and running away from home, which is in violation of law applicable only to juveniles (usually through age 17). Age varies by state and jurisdiction.

Summons

The term used in the juvenile justice system rather than *warrant* to signify authorization for a juvenile to be taken into custody or brought before the court.

Warrant

A document issued by a magistrate authorizing an officer to make an arrest, seize property, make a search, or carry out a judgment.