

Criminal Law in the United States: An Introduction

I. Criminal law: area of law dealing with public wrongs for which punishment (fines and prison sentences) is imposed.

A. Differentiate from civil law.

1. Behavior designated antisocial by lawmakers vs. private wrongs.
2. The Government (the **prosecution**) is the party bringing the case.
3. Punishment (incarceration, fines) vs. compensation (damages).
4. The act itself is not the distinguishing feature: The same act may give rise to both criminal penalties and civil liability.
5. Higher burden of proof in criminal cases: **Beyond a reasonable doubt.**

B. Federal/State considerations.

1. Law enforcement: Federal and state agencies.
2. Prosecution: Federal **prosecutors** are called U.S. Attorneys.

State prosecutors are called state's attorneys or
district attorneys ("DA")

3. Prison systems: state and federal facilities.

C. Substantive law

1. Crimes are statutory.
2. Model Penal Code: A systematic statement of American criminal law drafted by the American Law Institute. It is used as a model for many state criminal laws. Good place to obtain an overview of U.S. criminal law. Not: it is not a legislative code!
3. **Misdemeanors vs. felonies** (See definitions on Legal Terminology Nr. 5.)
4. Classification of offenses into different degrees based on culpability and extent of harm: first, second degree
5. State and federal crimes

D. Constitutional Rights: There are important U.S. constitutional rights to protect defendants in criminal proceedings.

1. Right to be secure against “unreasonable searches and Seizures” (4th Amendment)
 - **Probable cause.**
 - Important in the investigatory phase.
 - Exclusionary rule.
2. Right not to have to testify against oneself.
 - “take the 5th (Amendment)”
3. Right to counsel (6th Amendment).
 - Applies to the trial and to critical proceedings and stages taking place beforehand

- Indigent defendants have the right to counsel paid for by the state

4. “Miranda” rights”:

- Police must advise a suspect of the right to court appointed counsel and the right against self-incrimination.

U.S. Supreme Court case: *Miranda v. Arizona* (1966)

6. Right to a jury trial (6th Amendment).

◦ In serious criminal cases where imprisonment for more than six months is a possible penalty

7. Right to a grand jury; **double jeopardy** (5th Amendment).

8. Other Constitutional rights: Prohibition against excessive bails and fines, cruel and unusual punishment (8th Amendment); speedy and public trial; be apprised of charges: confront witnesses.

- D. Sentencing: be aware of the difference between **probation** and **parole** (See Terminology Nr. 5)

- II. The death penalty (“capital punishment”) in the United States
- A. Capital punishment is not per se unconstitutional. However, procedures by which it is imposed and carried out are subject to constitutional scrutiny and may be considered cruel and unusual.
 - B. Cannot be mandatory and usually only possible when murder is involved.
 - C. May not be imposed on offenders younger than the age of 18.
 - D. Jury is involved in sentencing decision; bifurcated proceeding.
 - E. Presently 31 states, the federal government and the U.S. military permit the death penalty.
 - F. More information: www.deathpenaltyinfo.org

Other sites with information on criminal law:

<http://criminal.findlaw.com> http://lawprofessors.typepad.com/crimprof_blog/

http://www.law.cornell.edu/wex/criminal_law

<http://www.americancriminallawreview.com/aclr-online/>